# Smoking caused coronary heart disease, plaintiff asserted

**Type:** Verdict-Mixed

**Amount:** $12,500,000

**Actual Award:** $5,000,000

**State:** Florida

**Venue:** Miami-Dade County

**Court:** Miami-Dade County Circuit Court, 11th, FL

**Injury Type(s):**
- *other* - coronary; acupuncture; catheterization
- *cardiac* - heart; angina attack
- *arterial/vascular* - artery

**Case Type:**
- *Products Liability* - Tobacco; Failure to Warn; Manufacturing Defect
- *Fraud* - Fraudulent Concealment
- *Intentional Torts* - Conspiracy

**Case Name:** Antonio Cuculino v. R.J. Reynolds Tobacco Company and Philip Morris USA, Inc., No. 10-62733-CA-25

**Date:** January 17, 2014

**Plaintiff(s):**
- Antonio Cuculino (Male, 49 Years)

**Plaintiff Attorney(s):**
- Allan B. Kaiser; The Ferraro Law Firm, P.A.; Miami FL for Antonio Cuculino
- Jeffrey H. Sloman; The Ferraro Law Firm, P.A.; Miami FL for Antonio Cuculino

**Plaintiff Expert (s):**

- Allan Goldman M.D.; Pulmonology; Tampa, FL called by: Allan B. Kaiser, Jeffrey H. Sloman
- Robert N. Proctor Ph.D.; Historian; Palo Alto, CA called by: Allan B. Kaiser, Jeffrey H. Sloman
- Theodore Feldman M.D.; Cardiology; Miami, FL called by: Allan B. Kaiser, Jeffrey H. Sloman

**Defendant(s):**

- Philip Morris USA Inc.
- R.J. Reynolds Tobacco Co.

**Defense Attorney(s):**

- Benjamine Reid; Carlton Fields, P.A.; Miami, FL for R.J. Reynolds Tobacco Co.
- David B. Thorne; Shook, Hardy & Bacon L.L.P.; Kansas City, MO for Philip Morris USA Inc.
- Kathleen A. Gallagher; Beck Redden LLP; Houston, TX for Philip Morris USA Inc.

**Defendant Expert(s):**

- Paul Phillips M.D.; Cardiology; Clearwater, FL called by: for Benjamine Reid, David B. Thorne, Kathleen A. Gallagher

**Facts:**

In 1994, plaintiff Antonio Cuculino, 49, an auto mechanic, was diagnosed with coronary heart disease.

Cuculino sued R.J. Reynolds Tobacco Co. and Philip Morris USA Inc., alleging products liability.

The case stemmed from the Florida state court class-action case, *Engle v. R.J. Reynolds Tobacco Co*. In 2000, a jury in *Engle* rendered a $145 billion punitive damages verdict in favor of a class of Florida smokers allegedly harmed by their addiction to nicotine. In 2006, the Florida Supreme Court reversed that award and decertified the class action, but allowed potentially thousands of lawsuits to be filed.

Cuculino began smoking in 1953 when he was 8 years old. He started smoking R.J. Reynolds' Pall Mall brand cigarettes in 1957. He switched to Philip Morris' Marlboros in 1964. He quit smoking in 2009.

Cuculino's counsel alleged that negligence on the part of the tobacco companies caused Cuculino's heart disease as a result of being addicted to nicotine.

Cuculino's expert cardiologist testified that smoking cigarettes was the only risk factor that caused Cuculino's premature coronary heart disease. He further testified that Cuculino did not have metabolic syndrome or high cholesterol. He also testified that a family history of heart disease was insignificant because no one developed it as early in life as Cuculino did. He testified that there were no other risk factors at the time of Cuculino's diagnosis. He also testified that smoking is the most significant risk factor for premature coronary heart disease. With regard to smoking R.J. Reynolds' Pall Malls for just seven years, he testified that the period was significant in causing his heart disease. He testified that Cuculino became addicted to R.J. Reynolds' cigarettes, which caused him to continue to smoke.

The expert cardiologist testified that smoking is a dose response in that every dose contributes to the disease. He testified that smoking one pack of Pall Malls a day for seven

years accounted for 20 percent of the total disease Cuculino suffered. He further testified that by the time Cuculino switched to the Philip Morris cigarettes, he already had 408,000 doses of the chemicals in the R.J. Reynolds cigarettes that he smoked.

Cuculino's addiction expert noted that Cuculino was prescribed nicotrol inhalers, Wellbutrin, hypnosis, acupuncture, laser therapy, group therapy and Chantix in his attempt to stop smoking. He testified that no one would be prescribed such a multitude of anti-addiction therapies unless he or she was addicted to smoking.

The plaintiff's expert historian testified that the defendants engaged in fraud and conspired to conceal the health effects of cigarettes and their addictive nature.

Defense counsel denied all of the plaintiff's claims, contending that Cuculino was not addicted to smoking. They further claimed that he chose to smoke knowing the risks and bore personal responsibility for the consequences of that decision. They argued that he continued to smoke despite being diagnosed with heart disease in 1994 and did not try to quit until 2000. They argued that he did not really want to quit smoking. They further argued that he never tried to quit before he suffered first heart attack, in 1994. They also argued that it was his wife's idea to try the many anti-addiction therapies that he began in 2006, and he only did so to appease her. They further argued that during that period, 2006 to 2009, Cuculino began claiming that he quit and/or minimized the amounts he smoked to his doctors to get them off his back. They argued that this was evidence of Cuculino's ability to control his smoking.

The defense's expert cardiologist disputed that smoking was a substantial cause of Cuculino's heart disease. He testified that Cuculino had an undiagnosed case of pre-diabetes or metabolic syndrome, and that combined with his age, gender, genetics, hypertension and undocumented high cholesterol as far back as the mid-1970s caused his premature heart disease -- not smoking. Defense counsel for R.J. Reynolds argued that Cuculino had smoked its Pall Mall cigarettes for just seven years, which was a de minimis amount of the approximately 45 years of continued smoking of the Philip Morris brand. R.J. Reynolds' counsel further argued that Cuculino had not smoked an R.J. Reynolds brand cigarette in 30 years by the time he had his heart attack in 1994.

**Injury:**

Cuculino alleged that as a result of using the defendants' products, he developed coronary heart disease. He suffered his first heart attack in 1994. Between 1994 and 1999, he suffered four more cardiac events that resulted in two catheterizations and ultimately a quadruple bypass. Between 2000 and 2013, Cuculino claimed that he suffered daily angina attacks and shortness of breath that resulted in 10 additional catheterizations.

Cuculino claimed that he cannot walk any appreciable distance without developing chest pains. He also claimed that he is unable to participate in boating or fishing as he did before due to physical limitations and fear of being too far away from available medical treatment if something were to happen when he was out to sea. He claimed that he lives in constant fear of another heart attack and not surviving it.

Cuculino sought to recover damages for past and future pain and suffering. His counsel suggested that the jury award $10 million. Cuculino also sought punitive damages.

Defense counsel argued that Cuculino's coronary heart disease was not caused by smoking. They further argued that in cases where smoking is a factor, an individual's risk upon quitting returns to that of a non-smoker between one and five years after smoking is ceased. They argued that Cuculino's heart disease has continued to progress despite quitting smoking in 2009.

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**Result:**

The jury found that Cuculino was addicted to cigarettes containing nicotine and that the addiction was a cause of his coronary heart disease. It also found that smoking cigarettes was a cause of his coronary heart disease. It also found that smoking cigarettes manufactured by Philip Morris was a cause of his coronary heart disease. It also found that smoking cigarettes manufactured by R.J. Reynolds was not a cause of his coronary heart disease.

The jury further found that Cuculino did not rely on to his detriment a statement or omission of material fact in furtherance of the defendants' alleged agreement to conceal the health effects or addictive nature of smoking cigarettes not otherwise known to him. Thus, jurors did not find that Cuculino was entitled to punitive damages.

The jury found Philip Morris 40 percent negligent and Cuculino 60 percent negligent. It determined Cuculino's damages totaled $12.5 million. Because of comparative negligence, the net award was $5 million.

**Antonio Cuculino**

$12,500,000 Personal Injury: pain and suffering

## Trial Information:

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|---|---|
| **Judge:** | Jorge E. Cueto |
| **Trial Length:** | 2 weeks |
| **Trial Deliberations:** | 2.5 hours |
| **Editor's Comment:** | This report is based on information that was provided by plaintiff's counsel and defense counsel for Philip Morris. Defense counsel for R.J. Reynolds did not respond to the reporter's phone calls. |
| **Writer** | Gary Raynaldo |

# Chemo started before results of follow-up tests came back

**Type:** Verdict-Plaintiff

**Amount:** $8,072,498

**State:** Florida

**Venue:** Broward County

**Court:** Broward County Circuit Court, FL

**Injury Type(s):**
- *other* - death; rhabdomyolysis

**Case Type:**
- *Wrongful Death*
- *Medical Malpractice* - Nurse; Cancer Diagnosis; Failure to Refer; Failure to Monitor; Negligent Treatment
- *Agency/Apparent Agency* - Respondeat Superior

**Case Name:** Charles Pandrea as personal representative of the Estate of Janet Pandrea v. Martin Stone M.D., Abraham Rosenberg M.D. , North Broward Hospital District d/b/a Coral Springs Medical Centerand University Hospital of Tamarac, No. CACE02023542

**Date:** June 08, 2005

**Plaintiff(s):**
- Estate of Janet Pandrea (Female, 65 Years)

**Plaintiff Attorney(s):**
- Michael Ryan; Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee, P.A.; Fort Lauderdale FL for Estate of Janet Pandrea

**Plaintiff Expert (s):**
- Allan Charney M.D.; Internal Medicine; New York, NY called by: Michael Ryan
- Bruce Chadner M.D.; Oncology; Boston, MA called by: Michael Ryan
- Nancy Harris M.D.; Pathology; Boston, MA called by: Michael Ryan

**Defendant(s):**
- Martin Stone M.D.
- Abraham Rosenberg, M.D.
- University Hospital at Tamarac
- North Broward Hospital District

**Defense Attorney(s):**

- William V. Carcioppolo; Conrad & Scherer; Fort Lauderdale, FL for North Broward Hospital District
- Robert J. Cousins; Stephens, Lynn, Klein, LaCava, Hoffman & Puya; Fort Lauderdale, FL for Abraham Rosenberg, M.D.
- Liana C. Silsby; George, Hartz, Lundeen, Fulmer, Johnstone, King & Stevens; Fort Lauderdale, FL for Martin Stone M.D.
- Kenneth J. Miller; Haliczer Pettis P.A.; Fort Lauderdale, FL for University Hospital at Tamarac

**Defendant Expert(s):**

- Allan Goldman M.D.; Pulmonology; Miami, FL called by: for Kenneth J. Miller
- Arnold Blanstein M.D.; Oncology; Miami Beach, FL called by: for Robert J. Cousins
- Daniel Sekinger M.D.; Pathology; Miami, FL called by: for William V. Carcioppolo
- Milton Bronstein M.D.; Pulmonology; Miami, FL called by: for Liana C. Silsby
- Kenneth Homer M.D.; Internal Medicine; Fort Lauderdale, FL called by: for Liana C. Silsby

**Insurers:**

- FPIC

**Facts:**

In January 2002, plaintiff's decedent Janet Pandrea, a 65-year-old retiree, went to see her family physician, Martin Stone, for a lingering cough. To rule out pneumonia, Stone ordered a chest X-ray which, incidentally, revealed a mass, so he ordered a needle biopsy that was performed at the end of the month.

Dr. Peter Tsivis, a pathologist employed by Coral Springs Medical Center, read the tissue slides from the biopsy and found them consistent with non-Hodgkins lymphoma. Stone then referred Pandrea to oncologist Abraham Rosenberg.

On Feb. 6, Rosenberg requested follow-up tests to be performed on the tissue obtained in January. However, the next day he initiated chemotherapy. Within days, Pandrea experienced seizures in reaction to the chemotherapy, a rare but not unheard-of occurrence. On Feb. 14, the results for the follow-up tests became available but Rosenberg didn't see them. Chemo treatments continued, resulting in a drop in her white blood cell count, for which he prescribed an antibiotic.

Pandrea developed rhabdomyolsis, a condition that weakens the muscles, and was admitted to University Hospital at Tamarac for problems breathing and muscle pain, both of which physicians attributed to the antibiotic. Stone took over her care in the hospital.

Pandrea's muscle pain, weakness and breathing problems continued and, on March 21 she went into respiratory failure. She spent four days on a ventilator and, when she developed abdominal pains, she underwent emergency surgery to repair a hole that had developed in her stomach. As a result of the surgery she developed an infection from which she died the following month.

Pandrea's family hired a pathologist from the Miami-Dade County Medical Examiner's Office to perform an autopsy. He told the family that Pandrea never had cancer, but only a benign mass that posed no danger and could have been easily removed.

On behalf of his wife's estate, Charles Pandrea sued Stone and Rosenberg for medical malpractice and wrongful death; North Broward Hospital District (which owned Coral Springs Medical), on a theory of vicarious liability for Tsivis' negligence; and University Hospital for the negligence of its nurses.

The estate argued that Rosenberg should have gotten the results of the follow-up test, which would have revealed to him that Pandrea didn't have cancer. The estate further contended that Stone was negligent for failing to consult with a pulmonologist when she was having breathing problems, as well as for failing to consult with a gastroenterologist before emergency abdominal surgery became necessary.

The estate argued that Tsivis was negligent for diagnosing cancer based on the first test result. Tsivis admitted during trial that he misread the slide from Pandrea's biopsy but claimed that he never expected anyone to start treatment on the basis of the initial results.

The estate argued that University Hospital's nurses failed to appropriately monitor Pandrea's vitals signs and input and output of fluids, and failed to follow doctor's orders. The estate contended that the failure to properly monitor her vital signs and fluid management led to her respiratory failure and the need for the ventilator.

Rosenberg's lawyer argued that Tsivis was to blame and that Rosenberg was acting on good faith and relying on the the pathologist's diagnosis. He claimed that the follow-up report, the supplemental report, stated that the pathology report showed a malignant neoplasm consistent with non-Hodgkins lymphoma, but the pathologist couldn't specify the exact type.

Stone's lawyer argued that he wasn't involved in the misdiagnosis or in the decision to start chemotherapy that began the decline in her condition. She argued that Stone timely called numerous specialists during her hospitalization.

In terms of allocating fault, Pandrea's counsel asked the jury, if it were to find negligence, to consider that Rosenberg was mostly at fault, followed by University Hospital and Stone bearing equal responsibility while North Broward Hospital District was the least at fault because Tsivis at least was willing to own up to his mistake.

**Injury:**

The husband claimed $72,498.08.in medical and funeral expenses and their lawyer asked the jury for $3 million to $10 million for his past and future pain and suffering.

Mr. Pandrea testified that three years after his wife's death, he still hugs the dresses she left hanging in her closet. The decedent and her husband were married for 46 years. They were enjoying their retirement and spending time with their four adult children --the youngest who testified about the last painful moments of her life -- and a number of grandchildren.

**Result:**

The jury awarded the estate $8,072,498.08. Jurors allocated liability as follows: Rosenberg, 50%; University Hospital, 28%, Stone, 12%, and North Broward Hospital District, 10%.

**Estate of Janet Pandrea**

$3,000,000 Personal Injury: Past Pain And Suffering

$5,000,000 Personal Injury: Future Pain And Suffering

$72,498 Personal Injury: medical/funeral expenses

## Trial Information:

**Judge:** Robert Collins

**Trial Length:** 7 weeks

**Trial Deliberations:** 4 hours

**Post Trial:** The defense counsel for the two doctors are expected to appeal the verdict.

**Editor's Comment:** The defense attorneys for Coral Springs Medical Center and University Hospital did not respond to a faxed draft of this report or a phone call.

**Writer** Jeff Skruck

# Woman died of undiagnosed pulmonary embolism

**Type:** Verdict-Plaintiff

**Amount:** $3,555,000

**Actual Award:** $700,000

**State:** Florida

**Venue:** Hillsborough County

**Court:** Hillsborough County Circuit Court, 13th, FL

**Case Type:**
- *Wrongful Death* - Survival Damages
- *Medical Malpractice* - Failure to Diagnose

**Case Name:** Daniel Davis, as personal representative of the Estate of Alma Davis v. Juanito Corpus, M.D., No. 03-3955

**Date:** May 07, 2004

**Plaintiff(s):**
- Daniel Davis (Male)
- Estate of Alma Davis (Female, 65 Years)

**Plaintiff Attorney(s):**
- Keith M. Carter; Morgan, Colling and Gilbert, P.A.; Tampa FL for Estate of Alma Davis, Daniel Davis
- Scott Borders; Morgan, Colling and Gilbert, P.A.; Tampa FL for Estate of Alma Davis, Daniel Davis

**Plaintiff Expert (s):**
- Edward J. Shahady; Family Medicine; Lighthouse Pointe, FL called by: Keith M. Carter, Scott Borders
- Thomas A. Raffin; Pulmonology; Stanford, CA called by: Keith M. Carter, Scott Borders

**Defendant(s):**
- Juanito Corpus, M.D.

**Defense Attorney(s):**

- Richard B. Mangan Jr.; Rissman, Weisberg, Barrett, Hurt, Donahue & McLain, P.A.; Tampa, FL for Juanito Corpus, M.D.
- Kimberly D. Thresher; Rissman Weisberg Barrett Hurt Donahue & McLain, P.A.; Tampa, FL for Juanito Corpus, M.D.

**Defendant Expert(s):**

- Allan L. Goldman; Pulmonology; Tampa, FL called by: for Richard B. Mangan Jr., Kimberly D. Thresher
- Scott C. Brady; Internal Medicine; Windermere, FL called by: for Richard B. Mangan Jr., Kimberly D. Thresher

**Facts:**

In July 2000, plaintiff's decedent, Alma Davis, a 65-year-old homemaker, had knee-replacement surgery at Brandon Regional Hospital, Fla. After the surgery, she developed a recurrent fever, nausea and vomiting. An echocardiogram revealed pulmonary hypertension. On Aug. 9, she saw Juanito Corpus, M.D. at Florida Hospital of Wauchula for these symptoms and he diagnosed her with a fever of unknown origin.

On Sept. 7, Davis suffered a pulmonary embolism and was admitted to Tampa General Hospital. She died soon after admission.

Davis' husband, as representative of her estate, sued Corpus for medical malpractice, seeking wrongful death and survival damages. Davis' family physician Raul Palomado, and her treating physicians at Brandon Regional Hospital Jocelyn Bueno and Chris Nussbaum settled for confidential amounts before filing.

The estate claimed that Corpus should have diagnosed her with chronic recurrent pulmonary embolism at the Aug. 9 visit. Plaintiff's pulmonology expert Thomas Raffin testified that Davis was suffering from it before and after her knee-replacement surgery. He testified that, based on her symptoms, Corpus also should have ordered a repeat echocardiogram or further testing to evaluate whether Davis was suffering from the embolism.

The defense contended that Davis wasn't suffering from pulmonary embolism when Corpus saw her on Aug. 9 and that his diagnosis was appropriate, given her symptoms.

Defense internal medicine expert Scott Brady testified that an additional echocardiogram wasn't indicated when Davis saw Corpus on Aug. 9 with recurrent fever, nausea and vomiting, and it was not his duty, as a consulting physician, to order either a repeat echocardiogram and/or workup.

In addition, defendant's pulmonology expert, Allan Goldman, testified that when Corpus saw Davis, she wasn't suffering from recurrent pulmonary embolism, based on the fact that her lung fields were not two-thirds occluded by pulmonary emboli, or she would have been suffering from shortness of breath and other cardinal signs and symptoms of pulmonary embolism, which was not the case prior to her admission to Tamp General on Sept. 7.

Corpus' counsel pointed the finger of blame at Palomado.

Defense expert Brady testified that it was the responsibility of Davis' family practitioner, Palomado, to order a repeat echocardiogram on an outpaitent basis and the defense noted that plaintiff's own family practice expert, Edward Shahady, testified that Palomado should have followed up on the abnormal echocardiogram, and that further testing would have revealed the chronic pulmonary embolism and prevented Davis' death.

**Injury:**

Davis died. She left behind a husband. Her estate sought wrongful death damages, including her medical and funeral expenses, loss of her services and for pain and suffering.

**Result:** The jury assigned 50% of the liability to nonparty Palomado, 20% to Corpus and 15% each to nonparties Nussbaum and Bueno.The jury found damages of $3,195,000 (see breakdown below). Defense counsel noted that actual funeral expenses were $5,252 and the actual medical expenses recoverable as part of theis claim were $27,346. After accounting for the liability assigned to non-parties, the net award was under $700,000.

**Estate of Alma Davis**

$40,000 Personal Injury: Past Medical Cost

$25,000 Personal Injury: Past Loss Of Services

$100,000 Personal Injury: Future Loss Of Services

$2,000,000 Personal Injury: Past Pain And Suffering

$1,000,000 Personal Injury: Future Pain And Suffering

$30,000 Personal Injury: funeral expenses

## Trial Information:

**Judge:** Samuel D. Pendino

**Demand:** $100,000

**Offer:** $0

**Post Trial:** The parties subsequently settled the case for a confidential amount.

**Writer** Paula Schaap

# Estate claimed urologist was slow to repair torn ureter

**Type:** Verdict-Plaintiff

**Amount:** $850,000

**State:** Florida

**Venue:** Hillsborough County

**Court:** Hillsborough County Circuit Court, 13th, FL

**Injury Type(s):**
- *other* - death

**Case Type:**
- *Insurance* - Fraud
- *Medical Malpractice*
- *Negligence* - Negligent Misrepresentation

**Case Name:** Shirley A. Tapp, Individually and as personal representative of the Estate of Terry A. Tapp, Deceased and Shannon Marie Tapp v. Tod J. Fusia, M.D., No. 01-9719

**Date:** December 19, 2003

**Plaintiff(s):**
- Terry A. Tapp (Male, 51 Years)

**Plaintiff Attorney(s):**
- Peter Brudny; Peter J. Brudny, P.A.; Tampa FL for Terry A. Tapp
- David Eaton; Eaton & Powell; Tampa FL for Terry A. Tapp

**Plaintiff Expert (s):**
- Brenda Mulder; Economics; Tampa, FL called by: Peter Brudny, David Eaton
- Michael Weiden MD; Pulmonology; New York, NY called by: Peter Brudny, David Eaton
- Stephen G. Cohen M.D.; Urology; Westfield, NJ called by: Peter Brudny, David Eaton

**Defendant(s):**
- Tod Fusia, M.D.

**Defense Attorney(s):**
- Thomas Saieva; Saieva & Rousselle, P.A.; Tampa, FL for Tod Fusia, M.D.

**Defendant Expert(s):**

- Dr. Kurt Stonefiser; Pulmonology; Tampa, FL called by: for Thomas Saieva
- Dr. Allan Goldman; Pathology; Tampa, FL called by: for Thomas Saieva,
- Dr. Brian Saltzman; Urology; Harvard, MA called by: for Thomas Saieva

**Insurers:**

- Florida Physician Insurance Company (FPIC)

**Facts:**

On June 29, 2000, Terry Tapp, a 51-year-old truck driver, presented to Tod Fusia, a urologist. Fusia told Tapp he needed surgery to remove a stone located in his ureter, near his bladder. During the July 14 surgery, Tapp's ureter was torn, allowing urine to leak into his retroperitoneal space.

On July 28, Fusia performed another surgery in an attempt to completely attach Tapp's ureter to his bladder.

On Aug. 9, Fusia saw Tapp and on Aug. 16, Tapp died of a blood clot that had migrated from his leg to his lungs.

Tapp's estate sued Fusia for medical malpractice, conceding that the first surgery was performed properly, but claiming that the second surgery should have been performed sooner.

The estate also sued for insurance fraud, claiming that Fusia told Tapp that he was a Prucare (HMO) provider even though he was not and then later billed Tapp using a different doctor's name.

In addition, the estate sued for negligent misrepresentation, contending that Fusia represented to Tapp that he needed to do the second surgery because a spasm in the ureter during the first surgery prevented him from placing a stent in the ureter after the stone's removal, when, in fact, the real reason was to repair a torn ureter.

On the medical malpractice claim, the defense argued that it was appropriate to see if the ureter would heal on its own before undertaking a second surgery.

On the fraud claim the defense asserted that Fusia never made a statement that he was an authorized Prucare (HMO) provider that would have led Tapp to believe his HMO would be billed. The defense further contended that the name that Tapp was billed under was irrelevant because the bills were paid anyway.

On the negligent misrepresentation claim, the defense argued that Fusia did not intentionally misrepresent the reason for the second surgery, but rather when he told Tapp that he would need another surgery to place the stent, he did not know yet that the second surgery was needed to correct a tear until tests demonstrated that later.

**Injury:**

Tapp died a week after the second surgery. His estate sought damages for his wrongful death, claiming that Tapp would have opted to have the second surgery sooner had he been informed of the torn ureter.

**Result:** The jury found the defendant not liable on the medical malpractice and insurance fraud claims, but awarded $850,000 for the claim of negligent misrepresentation. The jury found Tapp 10% contributorily negligent because he consented to wait for the surgery and the award was reduced to $765,000 as per the fault apportionment.

## Trial Information:

**Judge:** Vivian Maye

**Trial Length:** 5 days

**Trial Deliberations:** 6 hours

**Jury Vote:** 6-0

**Jury Composition:** 4 male, 2 female

**Writer** David Wenger

# Former smoker admitted partial fault for cancer & emphysema

**Type:** Verdict-Plaintiff

**Amount:** $600,000

**Actual Award:** $240,000

**State:** Florida

**Venue:** Hillsborough County

**Court:** Hillsborough County Circuit Court, 13th, FL

**Injury Type(s):**
- *cancer*
- *pulmonary/respiratory* - emphysema

**Case Type:**
- *Strict Liability*
- *Products Liability* - Tobacco; Design Defect

**Case Name:** Ronald J. Arnitz v. Philip Morris USA Inc., No. 00-CA-004208

**Date:** October 21, 2004

**Plaintiff(s):**
- Ronald J. Arnitz (Male, 54 Years)

**Plaintiff Attorney(s):**
- Bruce H. Denson; Whittemore, Denson, P.A.; St. Petersburg FL for Ronald J. Arnitz
- Howard M. Acosta; Law Offices of Howard M. Acosta; St. Petersburg FL for Ronald J. Arnitz
- Kent G. Whittemore; Whittemore, Denson P.A.; St. Petersburg FL for Ronald J. Arnitz

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|---|---|
| **Plaintiff Expert (s):** | • Dr. Allan Goldman; Pulmonary/Respiratory Diseases; Miami, FL called by: Bruce H. Denson, Howard M. Acosta, Kent G. Whittemore<br>• Louis Kyriakoudes PhD.; Cigarette/Tobacco; Hattiesburg, MS called by: Bruce H. Denson, Howard M. Acosta, Kent G. Whittemore<br>• Martin Lewis M.D.; Pathology; St. Petersburg, FL called by: Bruce H. Denson, Howard M. Acosta, Kent G. Whittemore<br>• William A. Farone PhD.; Cigarette/Tobacco; Irving, CA called by: Bruce H. Denson, Howard M. Acosta, Kent G. Whittemore |
| **Defendant(s):** | • Philip Morris USA Inc. |
| **Defense Attorney(s):** | • Daniel F. Molony; Shook, Hardy & Bacon; Tampa, FL for Philip Morris USA Inc.<br>• William P. Geraghty; Shook, Hardy & Bacon; Miami, FL for Philip Morris USA Inc. |
| **Defendant Expert(s):** | • Jerry Parssinen PhD.; Cigarette/Tobacco; Tampa, FL called by: for Daniel F. Molony, William P. Geraghty<br>• Douglas Pohl M.D.; Pathology; Baltimore, MD called by: for Daniel F. Molony, William P. Geraghty |

**Facts:**

Plaintiff Ronald J. Arnitz, now 57, is a former smoker. He began smoking in 1960 or 1961 at the age of 14 or 15 and smoked continuously until he was diagnosed with lung cancer (adenocarcinoma of the right lung) and emphysema in 2000.

From 1961 to 1968, the primary cigarette brand Arnitz smoked was Winston, manufactured by R.J. Reynolds Tobacco Co., and he smoked Marlboro by Philip Morris USA Inc. when Winston was not available. In 1968, when he was 22, Arnitz switched to just Marlboro and later, Benson & Hedges. Beginning on Jan. 1, 1966, all cigarettes sold in the United States had government-mandated warning labels.

In June 2000, Arnitz sued Philip Morris based on a theory of strict liability in tort. He claimed that his lung cancer and emphysema were caused by smoking cigarettes manufactured and/or sold by Philip Morris. He claimed that the cigarettes were defective in design because their risk outweighed any utility and they were more dangerous than consumers expected.

Arnitz contended that the manufacturer's tobacco flue curing processes increased the carcinogens in the cigarette. He also contended that Philip Morris manipulated the cigarettes to make them more addictive. Further, he claimed that Philip Morris altered the smoke of tobacco by adding such ingredients as sugar, licorice and corn syrup to overcome the body's defenses against smoke.

Arnitz admitted that he was, to some degree, at fault for being a smoker.

Philip Morris contended that its cigarettes are not defective. It contended that there is no safe cigarette. It argued that it did nothing to its products to make them defective. It contended that there was no evidence that a different design of the cigarette would have resulted in a different outcome for Arnitz.

Philip Morris argued that Arnitz could not be comparatively at fault on this matter and that it would be inappropriate for the jury to be allowed to compare fault. It contended that if the cigarette had a design defect, then the manufacturer would have to be found 100% responsible.

**Injury:**

Arnitz was diagnosed with adenocarcinoma of the right lung and emphysema in 2000. He underwent surgery to remove the lower lobe of his right lung in September 2000. He has remained cancer-free since his surgery. He experiences mild shortness of breath on exertion. He claimed past medical expenses of approximately $100,000.

He claimed past and future lost earnings of $90,000. At the time he became ill, he worked as a furniture salesman. He could not work due to chemotherapy and the surgery. He currently works part-time at his son's deli. He hopes to go back to work as a salesman.

He claimed past and future pain and suffering.

The defense contended that his lung cancer was caused by scarring. It argued that Arnitz had some industrial exposure when he was a teenager working in a tool and die factory from 1964 to 1970, which may have caused the scarring on his lung.

**Result:** The jury found that Philip Morris was 40% responsible and Arnitz was 60% responsible, reducing his award from $600,000 to $240,000. Arnitz will be entitled to attorney fees in addition to the award.

**Ronald J. Arnitz**

$101,000 Personal Injury: Past Medical Cost

$53,000 Personal Injury: past and future lost wages

$446,000 Personal Injury: past and future pain and suffering

## Trial Information:

**Judge:** Sam Pendino

**Demand:** $50,000

**Offer:** None reported

**Trial Length:** 3 weeks

**Trial Deliberations:** 4 hours

**Jury Vote:** 6-0

**Jury Composition:** 2 male, 4 female

**Post Trial:** The defense is expected to appeal.

**Writer** Jeff Skruck

# Plaintiffs: Cigarette company negligent in design of product

**Type:** Verdict-Plaintiff

**Amount:** $225,000

**State:** Florida

**Venue:** Miami-Dade County

**Court:** Miami-Dade County Circuit Court, 11th, FL

**Injury Type(s):**
- *other* - death; aspiration; radiation therapy
- *cancer* - lung; chemotherapy; metastatic
- *pulmonary/respiratory* - pneumonia; respiratory

**Case Type:**
- *Fraud* - Consumer; Fraudulent Concealment
- *Products Liability* - Tobacco; Design Defect; Failure to Warn; Strict Liability
- *Intentional Torts* - Conspiracy

**Case Name:** Frank Capone and Karen Capone, his wife v. Brown & Williamson Tobacco Corporation, as successor by merger to The American Tobacco Company, a foreign corporation, Philip Morris Incorporated, a foreign corporation Publix Supermarkets, Inc., a Florida corporation, No. 2005-010312-CA-01

**Date:** December 17, 2018

**Plaintiff(s):**
- Estate of Frank Capone (Male, 57 Years)

**Plaintiff Attorney(s):**
- Alex Alvarez; The Alvarez Law Firm; Coral Gables FL for Estate of Frank Capone
- Nathan D. Finch; Motley Rice LLC; Washington DC for Estate of Frank Capone
- Sara O. Couch; Motley Rice LLC; Mount Pleasant SC for Estate of Frank Capone

**Plaintiff Expert (s):**
- Allan L. Goldman M.D.; Pulmonology; Tampa, FL called by: Alex Alvarez, Nathan D. Finch, Sara O. Couch
- Robert Proctor Ph.D.; Historian; Stanford, CA called by: Alex Alvarez, Nathan D. Finch, Sara O. Couch
- Frederick Raffa Ph.D.; Economics; Orlando, FL called by: Alex Alvarez, Nathan D. Finch, Sara O. Couch

**Defendant(s):**

- Philip Morris USA Inc.
- Publix Supermarkets Inc.
- Brown & Williamson Tobacco Corp.

**Defense Attorney(s):**

- Bruce R. Tepikian; Shook, Hardy & Bacon L.L.P.; Kansas City, MO for Philip Morris USA Inc.
- Frank Cruz-Alvarez; Shook, Hardy & Bacon L.L.P.; Miami, FL for Philip Morris USA Inc.
- Jessica L. Grant; Venable LLP; San Francisco, CA for Philip Morris USA Inc.
- None reported for Brown & Williamson Tobacco Corp., Publix Supermarkets Inc.

**Defendant Expert(s):**

- Mary Riddel Ph.D.; Economics; Las Vegas, NV called by: for Bruce R. Tepikian, Jessica L. Grant
- Richard Jupe; Product Design; Richmond, VA called by: for Bruce R. Tepikian, Jessica L. Grant

**Facts:**

In May 2003, plaintiff's decedent Frank Capone, 57, a garage's owner, was diagnosed with lung cancer.

Capone started smoking when he was around 13 or 14 years old. By age 16, he was smoking two packs a day. He originally smoked Pall Mall cigarettes before switching to Benson & Hedges Light cigarettes in the late 1970s. In 1984, he began smoking Benson & Hedges Ultra Light cigarettes.

Capone sued Brown & Williamson Tobacco Corp., the successor to The American Tobacco Co., which made Paul Mall cigarettes; Philip Morris USA Inc., the manufacturer of Benson & Hedges cigarettes; and a retailer from which he regularly purchased cigarettes, Publix Supermarkets Inc. The lawsuit alleged products liability claims.

Capone died after the lawsuit had been filed. The lawsuit was continued by his estate.

Brown & Williamson resolved its claim prior to trial, and the claim against Publix Supermarkets was not pursued. The matter proceeded to a trial against Philip Morris.

The estate's counsel pointed to Philip Morris' internal documents and argued that the company designed its cigarettes to be as addictive as possible. Counsel called an expert historian who testified that cigarette companies like Philip Morris changed the design of cigarettes to make them more addictive. The historian further stated that Philip Morris and other similar companies could set the nicotine level to whatever it wanted but chose to put more nicotine in its products.

The estate also accused Philip Morris of fraudulent concealment and conspiracy. The historian also testified about the history of cigarette promotion and marketing in America. He argued that tobacco companies hid the truth about the dangers of cigarettes from consumers.

The estate's counsel specifically argued that Philip Morris promoted its light and ultra light cigarettes as healthier alternatives to other cigarettes, even though there was no medical or scientific evidence confirming that claim. The estate's counsel pointed to internal Philip Morris documents stating that light and ultra light cigarettes put the same

amount of carcinogens into the body as regular cigarettes did. Counsel further argued that cigarette ads were ubiquitous for decades, so it's likely that Capone saw them when he started smoking.

The defense presented an expert economist who stated that by the time Frank Capone started smoking, the public already knew that cigarettes can cause cancer. The defense also maintained that while cigarettes are dangerous, they are not defectively designed because there is no way to make a completely safe cigarette.

Although most Florida tobacco product liability cases stem from the state court class-action Engle v. Liggett Group, Inc., the Capone case did not. In 2000, the jury in Engle rendered a $145 billion punitive damages verdict in favor of a class of Florida smokers allegedly harmed by their addiction to nicotine. In 2006, the Florida Supreme Court reversed that award and decertified the class, but allowed thousands of potential class members to file individual lawsuits. The court ruled that the Phase I findings of the Engle jury would be res judicata for any plaintiff that proved his or her class membership. The Phase 1 findings included those against several major tobacco companies on issues of causation of certain diseases, such as chronic obstructive pulmonary disorder; addiction; strict liability; fraud; breach of warranties; and other causes of action. However, because the Capone case was not an Engle progeny, the jury had to determine liability and causation.

**Injury:**

After Frank Capone's cancer diagnosis, he underwent several treatments, including chemotherapy, radiation and brachytherapy. He also had one of his lungs removed.

Capone later developed aspiration pneumonia as a complication of the radiation treatment. He thus required the use of a feeding tube.

The cancer ultimately spread to Capone's trachea before he died on July 18, 2006. He was survived by his wife, Karen Capone, and a 20-year-old daughter, Kristina Capone.

Capone's estate sought recovery of damages for Karen Capone's loss of support and services, her loss of companionship and protection, and her pain and suffering. The estate also sought recovery of damages for Kristina Capone's loss of parental companionship, instruction and guidance, and her pain and suffering.

The estate's counsel specifically asked for approximately $344,000 in loss of support and services, which represented the amount Capone would have earned had he continued working and retired at age 70.

**Result:** The jury ruled in favor of the defense on the design defect claim. However, the jury found that Philip Morris was negligent in designing its light and ultra light cigarettes, and that this negligence was a legal cause of Capone's illness and death. The jury assigned 10 percent of the liability to Philip Morris, and the remaining 90 percent to Capone himself.

The jury awarded the Capone estate $225,000. There was no reduction in the verdict award based on comparative negligence because the jury also found that Philip Morris was liable for the intentional tort of fraud. However, the jury ruled in favor of the defense on the conspiracy claim.

**Estate of Frank Capone**

$150,000 Wrongful Death: pain, suffering, and loss of companionship and protection (Karen Capone)

$75,000 Wrongful Death: pain, suffering, and loss of companionship, guidance and instruction (Kristina Capone)

## Trial Information:

**Judge:** Antonio Arzola

**Trial Length:** 6 days

**Trial Deliberations:** 2 days

**Jury Vote:** 6-0

**Jury Composition:** 2 male, 4 female

**Editor's Comment:** This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Philip Morris' counsel did not respond to the reporter's phone calls, and the remaining defendants' counsel were not asked to contribute.

**Writer** Melissa Siegel

# Smoker: RJ Reynolds' curing process increased carcinogens

**Type:** Verdict-Plaintiff

**Amount:** $165,000

**State:** Florida

**Venue:** Hillsborough County

**Court:** Hillsborough County Circuit Court, 13th, FL

**Injury Type(s):**
- *cancer*

**Case Type:**
- *Products Liability* - Tobacco; Design Defect

**Case Name:** Floyd Kenyon v. R.J. Reynolds Tobacco Holdings, Inc., No. 00-05401

**Date:** December 12, 2001

**Plaintiff(s):**
- Floyd Kenyon (Male, 70 Years)

**Plaintiff Attorney(s):**
- Bruce H. Denson; Whittemore, Denson P.A.; St. Petersburg FL for Floyd Kenyon
- Howard M. Acosta; Law Offices of Howard M. Acosta; St. Petersburg FL for Floyd Kenyon

**Plaintiff Expert (s):**
- Dr. Allan Goldman; Pulmonary/Respiratory Diseases; , called by: Bruce H. Denson, Howard M. Acosta

**Defendant(s):**
- R.J. Reynolds Tobacco Holdings, Inc.

**Defense Attorney(s):**
- Stephanie Parker; Jones Day; Atlanta, GA for R.J. Reynolds Tobacco Holdings, Inc.

**Facts:**

Plaintiff Floyd Kenyon, who died from lung cancer in 2002, was a teacher and elementary school principal in Massapequa, N.Y., before he moved to Florida. He was 71.

Kenyon began smoking as a teenager in the 1940s, smoking Camels for 30 years and switching to Salems before quitting a two pack per day smoking addiction in 1982. Kenyon was diagnosed with lung cancer at age 69 in April 2000.

In 2001, Kenyon sued R.J. Reynolds Tobacco Co., the manufacturer of the Camels and Salems that he smoked, for products liability, alleging that the cigarettes were defective and caused his cancer.

Kenyon said that the cigarettes were defective due to the way in which they were manufactured. Instead of the tobacco leaves being air cured, R.J.Reynolds processed their tobacco by drying it out in a closed container heated by an unvented propane heater (flue curing) which caused the gases from the processing to be absorbed by the tobacco leaves. This curing process increased the carcinogens in the tobacco 90 percent over natural tobacco.

R.J. Reynolds argued that Kenyon's medical condition had no demonstrable nexus to their product, and that Kenyon's cancer could have been caused by any number of genetic propensities or outside agents.

**Injury:**

Kenyon was diagnosed with small cell lung cancer which is known to be almost exclusively caused by cigarette smoking. Kenyon claimed damages for past and future medical expenses related to his lung cancer.

**Result:**

A jury of smokers and non-smokers determined that the cigarettes were defective. Kenyon was awarded $165,000 in damages, on Dec. 12, 2001, and judgment was entered.

Kenyon died from the lung cancer in September 2002.

R.J. Reynolds appealed the verdict, which was heard in August 2003. In October 2003, the Second District Court of Appeal approved the 2001 judgment. There is no further right to an appeal. Kenyon's estate was paid $195,602.87 (the judgment entered in 2001 plus interest).

The payment was the first ever made by R.J. Reynolds and only the second one paid to an individual by a U.S. cigarette manufacturer and distributor.

**Floyd Kenyon**

$165,000 Wrongful Death: past medical expenses (preponderance) and allowance for future medical expenses

## Trial Information:

| | |
|---|---|
| **Judge:** | Herbert Bauman |
| **Demand:** | $50,000 |
| **Offer:** | None |
| **Trial Length:** | 1 months |
| **Trial Deliberations:** | 2 days |
| **Jury Vote:** | 6-0 |
| **Jury Composition:** | 3 male, 3 female |
| **Post Trial:** | Plaintiff counsels' claim for attorney fees of $1 million, for which the court has found entitlement, remains pending. Counsel for R.J. Reynolds has refused to show billings estimated to be between $6 and 10 million. |
| **Editor's Comment:** | Counsel for plaintiff opined that the verdict would likely have been larger if the clerk had not neglected to send back one of the design exhibits to the jury room. |
| **Writer** | Carol Kegler |

# Man developed lung disease after 55 years of smoking

**Type:** Verdict-Defendant

**Amount:** $0

**State:** Florida

**Venue:** Hillsborough County

**Court:** Hillsborough County Circuit Court, 13th, FL

**Injury Type(s):**
- *cancer*

**Case Type:**
- *Fraud*
- *Strict Liability*
- *Products Liability* - Tobacco; Design Defect; Failure to Warn
- *Intentional Torts* - Conspiracy
- *Affirmative Defenses* - Assumption of Risk

**Case Name:** Emmett A. Hall v. R.J. Reynolds Tobacco Company and Brown & Williamson Tobacco Corporation, individually and as successor by merger to The American Tobacco Company, No. 00-1061

**Date:** December 10, 2003

**Plaintiff(s):**
- Emmett A. Hall (Male, 75 Years)

**Plaintiff Attorney(s):**
- Gregory H. Maxwell; Spohrer, Wilner, Maxwell & Matthews; Jacksonville FL for Emmett A. Hall
- Norwood S. Wilner; Spohrer, Wilner, Maxwell & Matthews; Jacksonville FL for Emmett A. Hall
- Howard M. Acosta; Law Offices of Howard M. Acosta; St. Petersburg FL for Emmett A. Hall
- Kent G. Whittemore; Whittemore, Denson P.A.; St. Petersburg FL for Emmett A. Hall
- Bruce H. Denson; Whittemore, Denson P.A.; St. Petersburg FL for Emmett A. Hall

**Plaintiff Expert (s):**

- Dr. Allan Goldman; Pulmonary/Respiratory Diseases; Miami, FL called by: Howard M. Acosta, Kent G. Whittemore, Bruce H. Denson
- Allen Feingold MD; Pulmonology; Miami, FL called by: Howard M. Acosta, Kent G. Whittemore, Bruce H. Denson
- Louis Kyriakoudes Ph.D.; Historian; Raleigh, NC called by: Howard M. Acosta, Kent G. Whittemore, Bruce H. Denson
- William Farone Ph.D.; Chemistry; Anaheim, CA called by: Norwood S. Wilner, Kent G. Whittemore, Bruce H. Denson

**Defendant(s):**

- R.J. Reynolds Tobacco Company
- Brown & Williamson Tobacco Corporation

**Defense Attorney(s):**

- Andrew McGaan; Kirkland & Ellis; Chicago, IL for Brown & Williamson Tobacco Corporation
- Thomas Campbell; Kirkland & Ellis; Chicago, IL for Brown & Williamson Tobacco Corporation
- William A. Gillen Jr.; Gray, Harris, Robinson, Shackleford & Farrior; Tampa, FL for Brown & Williamson Tobacco Corporation
- Stephanie E. Parker; Jones Day; Atlanta, GA for R.J. Reynolds Tobacco Company
- John F. Yarber; Jones Day; Atlanta, GA for R.J. Reynolds Tobacco Company
- Troy A. Fuhrman; Hill, Ward & Henderson; Tampa, FL for R.J. Reynolds Tobacco Company

**Defendant Expert(s):**

- Lacy Ford M.D.; Cigarette/Tobacco; Columbia, SC called by: for Andrew McGaan, Thomas Campbell, William A. Gillen Jr., Stephanie E. Parker, John F. Yarber, Troy A. Fuhrman,
- Sanford H. Barsky M.D.; Lung Cancer; Los Angeles, CA called by: for Andrew McGaan, Thomas Campbell, William A. Gillen Jr., Stephanie E. Parker, John F. Yarber, Troy A. Fuhrman,

**Facts:** Plaintiff Emmett A Hall began smoking cigarettes in 1943 at the age of 15. He continued smoking cigarettes, particularly brands made by R.J. Reynolds Tobacco Co., Winston-Salem, N.C., and Brown & Williamson Tobacco Corp., Louisville, Ky., until 1998, when he developed lung cancer and chronic obstructive pulmonary disease (COPD).

Hall sued R.J. Reynolds and Brown & Williamson under negligence and strict products liability for defective design and failure to warn. (Warnings were mandated on all cigarettes in the United States in 1966.) Hall also filed a conspiracy to commit fraud claim, based on his allegations that the company concealed the health hazards of cigarettes in the past, but that claim was voluntarily dismissed.

The defense maintained that because Hall was well aware of the risks associated with smoking during the more than 50 years that he smoked, there was no duty to warn. It also argued that the product was not unreasonable dangerous. The defendants asserted that there was no feasible, safer alternative cigarette design that the plaintiff would have used that would have prevented his lung cancer or COPD.

Furthermore, the defendants argued that Hall's cancer showed evidence of Human Papilloma Virus (HPV), which is known to cause cervical cancer and lung cancer in humans. The HPV, not smoking, caused his cancer, the defendants maintained.

**Injury:** Hall developed lung cancer and chronic obstructive pulmonary disease. Now 75, he claims that the diseases reduced the number of years he has to live.

**Result:** The jury sided with the defendants, finding that Hall failed to prove that warnings would have made any difference in his decision to smoke or that the cigarettes he smoked were defective. The jury also found that Hall did not conclusively show that smoking caused his lung cancer or COPD.

## Trial Information:

**Judge:** James M. Barton II

**Trial Length:** 5 weeks

**Trial Deliberations:** 2 days

**Jury Vote:** 6-0

**Jury Composition:** 2 female, 4 male

**Post Trial:** The plaintiff filed a motion for a new trial.

**Editor's Comment:** Counsel for the plaintiff did not contribute to this report.

**Writer** Dave Venino

# Philip Morris could've made safer cig, cancer paient claimed

**Type:** Verdict-Defendant

**Amount:** $0

**State:** Florida

**Venue:** Hillsborough County

**Court:** Hillsborough County Circuit Court, 13th, FL

**Injury Type(s):**
- *cancer*

**Case Type:**
- *Products Liability* - Tobacco

**Case Name:** Glenn Beckum and Janet E. Beckum, his wife v. Philip Morris USA Inc., a foreign corporation, No. 02-01836

**Date:** January 06, 2006

**Plaintiff(s):**
- Glenn Beckum (Male, 74 Years)
- Janet E. Beckum (Female, 67 Years)

**Plaintiff Attorney(s):**
- Bruce H. Denson; Whittemore, Denson, P.A.; St. Petersburg FL for Glenn Beckum, Janet E. Beckum
- Howard M. Acosta; Law Offices of Howard M. Acosta; St. Petersburg FL for Glenn Beckum, Janet E. Beckum

**Plaintiff Expert (s):**
- Kern Davis M.D.; Pathology; St. Petersburg, FL called by: Bruce H. Denson, Howard M. Acosta
- Allan Goldman M.D.; Internal Medicine; Tampa, FL called by: Bruce H. Denson, Howard M. Acosta
- Louis Kyriakoudes Ph.D.; Historian; Raleigh, NC called by: Bruce H. Denson, Howard M. Acosta
- William A. Farone Ph.D.; Cigarette/Tobacco; Anaheim, CA called by: Bruce H. Denson, Howard M. Acosta

**Defendant(s):**

- Philip Morris USA Inc.

**Defense Attorney(s):**

- Kenneth J. Reilly; Shook, Hardy & Bacon; Miami, FL for Philip Morris USA Inc.
- Lucy E. Mason; Shook Hardy & Bacon; San Francisco, CA for Philip Morris USA Inc.

**Defendant Expert(s):**

- Kip Viscusi Ph.D.; Risk Assessment (Sciences); Cambridge, MA called by: for Kenneth J. Reilly, Lucy E. Mason
- Allen Kassman Ph.D.; Cigarette/Tobacco; , called by: for Kenneth J. Reilly, Lucy E. Mason
- Terry Parssinen Ph.D.; Historian; Tampa, FL called by: for Kenneth J. Reilly, Lucy E. Mason
- Arthur Andrews M.D.; Pulmonology; Tampa, FL called by: for Kenneth J. Reilly, Lucy E. Mason
- Patricia Ordorica M.D.; Psychiatry; Sarasota, FL called by: for Kenneth J. Reilly, Lucy E. Mason

**Facts:**

Plaintiff Glenn Beckum began smoking in 1947 at the age of 17. He alleged that he started out smoking various brands but, by the late 1950s Marlboros had become his brand of choice. He smoked about two to three packs a day until he quit in 1988. In 2001, he was diagnosed with lung cancer at the age of 71.

Beckum sued several cigarette manufacturers, including Philip Morris USA Inc., and one tobacco retailer. He dismissed the retailer and all manufacturers except Philip Morris, against whom he alleged strict liability on a design defect theory. Prior to trial, Beckum's counsel sought and obtained permission to plead comparative fault, which is usually an argument available only to the defense.

Beckum alleged the following defects: (1) tobacco was cured in a way that made it more carcinogenic than other means of curing; (2) Philip Morris manipulated nicotine levels and additives to increase the likelihood of addiction; (3) additives were used to make the cigarettes easier to inhale and overcome the body's natural defenses against smoke; and (4) consumers did not expect cigarettes designed with filters to be as dangerous as they, in fact, were.

Beckum's counsel also argued that a product is defective if it is not the safest product that can be made with the technology available at the time. Despite having the technology to do so, failed to modify the design of its cigarettes to reduce the risks of smoking, plaintiff argued. Beckum's counsel noted that Philip Morris introduced a product in the early 1980s which utlilized such technology and which plaintiff would not have classified as defective, but took the product off the market after a few years.

Philip Morris conceded that smoking can cause lung cancer and can be addictive and that there is no safe cigarette. However, just because a cigarette is not safe does not make it defective, it argued, pointing out that additives are common in many products and noting that none of the additives in cigarettes makes them any more dangerous than they otherwise would be as smoking tobacco is inherently dangerous. Philip Morris also argued that people expect cigarettes to have the very properties that Beckum claims make them defective: they expect cigarettes to taste good, contain nicotine and additives, and be inhalable.

Philip Morris argued that Beckum's own medical experts never said that implementing the design changes proposed by his design expert would have prevented him from getting cancer, that Philip Morris' products caused his cancer, or that he would not have developed cancer had he smoked different cigarettes. Philip Morris also argued that Beckum chose to smoke and could have quit whenever he wanted to, as he eventually did in 1988.

**Injury:**

Beckum, who was 75 at the time of trial, claimed that the defendant's product caused him to develop lung cancer. He sought unspecified damages for pain and suffering, and his wife sought an unspecified amount for loss of consortium.

**Result:** The jury returned a verdict for the defense, finding that Philip Morris' product did not contain a design defect that caused Beckum's injuries. In light of this finding, the jury did not reach the issue of comparative fault. So plaintiff counsel's strategy of pleading the issue as a way to avoid an verdict not only misfired but, according to defense cousel, backfired, giving Phillip Morris an even bigger win from a PR standpoint by showing that even given the opportunity to apportion fault, the jury still came out 100% in favor of the manufacturer.

## Trial Information:

**Judge:** Sam D. Pendino

**Demand:** None

**Offer:** None

**Trial Length:** 9 days

**Trial Deliberations:** 40 minutes

**Jury Composition:** 3 male, 3 female

**Writer** Lisa Braunstein

# Two-pack-a-day smoker dies from lung cancer at age 42

**Type:** Verdict-Defendant

**Amount:** $0

**State:** Florida

**Venue:** Hillsborough County

**Court:** Hillsborough County Circuit Court, 13th, FL

**Injury Type(s):**
- *other* - death
- *cancer* - lung

**Case Type:**
- *Products Liability* - Tobacco
- *Wrongful Death* - Survivorship Action

**Case Name:** Cathy Kalyvas, as personal Representative of the Estate of Spyridon Kalyvas v. Philip Morris USA Inc., RJ Reynolds Tobacco Co., Lorillard Tobacco Co., Liggett Group LLC, Vector Group Ltd. Inc., Brooke Group Holding Inc., Brook Group Ltd. Inc., No. 07-CA-15071

**Date:** April 29, 2009

**Plaintiff(s):**
- Cathy Kalyvas (Female)
- Estate of Spyridon Kalyvas (Male, 42 Years)

**Plaintiff Attorney(s):**
- Howard M. Acosta; Law Offices of Howard M. Acosta; St. Petersburg FL for Cathy Kalyvas, Estate of Spyridon Kalyvas

**Plaintiff Expert (s):**
- Allan L. Goldman; Internal Medicine; Tampa, FL called by: Howard M. Acosta
- Stephen H. Groff M.D.; Psychiatry; Tampa, FL called by: Howard M. Acosta

**Defendant(s):**
- Liggett Group LLC
- Brook Group Ltd. Inc.
- Lorillard Tobacco Co.
- Philip Morris USA Inc.
- Vector Group Ltd. Inc.
- RJ Reynolds Tobacco Co.
- Brooke Group Holding Inc.

**Defense Attorney(s):**

- Kenneth J. Reilly; Shook, Hardy & Bacon; Miami, FL for Philip Morris USA Inc.

**Facts:**

In 1996, plaintiff's decedent Spyridon Kalyvas, a 42-year-old pastry chef who had smoked cigarettes since his 20s in Greece, was diagnosed with lung cancer. Even after being diagnosed with the disease, Kalyvas continued to smoke until his death in 1997. The plaintiff's wife, Cathy Kalyvas, claimed that her husband was addicted to cigarettes and was unable to quit smoking. Cathy Kalyvas, once a smoker herself, testified that she encouraged her husband to try to quit with her during the late 80's and early 90's.

Cathy Kalyvas sued cigarette manufacturers R.J. Reynolds Tobacco Co., Philip Morris USA, Inc., Lorillard Tobacco Co., Lorillard Inc., Liggett Group, LLC, Liggett Group Inc., Liggett & Myers Tobacco Co., Vector Group, Ltd. and Brooke Group, Ltd. for products liability and wrongful death. The case was part of the *Engle v. R.J. Reynolds* class action lawsuit brought against multiple firms in the tobacco industry. In 2000, a Miami-Dade County jury awarded the class a record $145 billion in punitive damages. The jury based on its finding that the tobacco industry had manufactured a defective product and had intentionally omitted information about the risks of smoking.

The state Supreme Court decertified the class, but granted leave in order for individual former class members to sue. Approximately 8,000 claims are awaiting trial, half in state court and half in federal. This case went to trial against Philip Morris, the manufacturer of the cigarettes Kalyvas smoked - Marlboro and Benson & Hedges. Counsel for the estate argued that Kalyvas was hopelessly addicted to cigarettes, and that his addiction caused the lung cancer which led to his death. Cathy Kalyvas presented evidence that her husband had tried to quit smoking through multiple methods which included the patch.

The plaintiffs' psychiatry expert testified regarding the Diagnostic and Statistical Manual of Mental Disorders IV's definition of addiction. The expert opined that Kalyvas demonstrated the requisite three out of a set of seven requirements of addiction, which included repeated attempts at quitting, increased tolerance and withdrawal symptoms. He also maintained the best test for determining if someone were addicted was to determine how many cigarettes were smoked daily and when was the first cigarette of the day smoked.

Philip Morris contended that Kalyvas was capable of quitting smoking and that he was only a recreational smoker. The defendant conceded that Kalyvas smoked approximately two packs of cigarettes per day. However, Philip Morris contended that Kalyvas was sufficiently aware of the risks of smoking and that he chose to continue the habit anyway. The defendant claimed that Kalyvas' attempts to quit were not serious. Counsel interviewed a hospice worker who had been with the plaintiff before he died. He told the aide he had been a risk taker all his life. A photo from tha 1980s entered into evidence by the plaintiffs' attorney showed Kalyvas seated on a sofa. On the coffee table in front of him was a pack of Benson & Hedges and a mirror with what appeared to be cocaine on the surface. Defense counsel used the photo to demonstrate to the jury Kalyvas' choices of pleasure and risk.

According to plaintiffs' counsel, no one testified at trial that cocaine was actually on the mirror or that Kalyvas used cocaine during his life. The judge ruled that defense counsel could not tell the jury that cocaine was present in the image.

**Injury:** Cathy Kalyvas sought damages for wrongful death on behalf of herself and her 14-year-old daughter. The daughter was only one year old at the time of her father' death and had no memories of him.

**Result:** Jurors rendered a verdict in favor of the defendant.

## Trial Information:

**Judge:** James M. Barton II

**Editor's Comment:** This report is based on information provided by plaintiffs' and defense counsel.

**Writer** Shannon Green

# Earlier intubation would have prevented patient's death: suit

**Type:** Verdict-Defendant

**Amount:** $0

**State:** Georgia

**Venue:** Fulton County

**Court:** Fulton County, State Court, GA

**Injury Type(s):**
- *other* - sepsis; organ failure
- *cardiac* - cardiac arrest

**Case Type:**
- *Wrongful Death*
- *Medical Malpractice* - Hospital; Failure to Treat; Delayed Treatment; Ear, Nose & Throat

**Case Name:** Sandra Harper, Individually and as the Administrator of the Estate of Kenneth Glenn Harper, Deceased v. Michael Lamar Vick, M.D., Wellstar Physicians Group ENT, LLC d/b/a ENT Associates of North Georgia, Paul Zolty, M.D., and Georgia Lung Associates, P.C., No. 08EV005552

**Date:** July 21, 2016

**Plaintiff(s):**
- Sandra Harper (Female, 50 Years)
- Estate of Kenneth Glenn Harper (Male, 56 Years)

**Plaintiff Attorney(s):**
- William Q. Bird; Bird Law Group; Atlanta GA for Estate of Kenneth Glenn Harper, Sandra Harper
- Jennifer A. Kurle; Bird Law Group; Atlanta GA for Estate of Kenneth Glenn Harper, Sandra Harper

**Plaintiff Expert (s):**
- John C. Schaefer M.D.; Infectious Diseases; Norfolk, VA called by: William Q. Bird, Jennifer A. Kurle
- Allan L. Goldman M.D.; Pulmonology; Tampa, FL called by: William Q. Bird, Jennifer A. Kurle
- Scott Graham M.D.; Otolaryngology; Iowa City, IA called by: William Q. Bird, Jennifer A. Kurle

**Defendant(s):**

- Paul Zolty M.D.
- Michael Lamar Vick M.D.
- Georgia Lung Associates P.C.
- Wellstar Physicians Group ENT LLC

**Defense Attorney(s):**

- Henry D. Green Jr.; Green, Sapp & Moriarty, LLP; Atlanta, GA for Michael Lamar Vick M.D., Wellstar Physicians Group ENT LLC
- Roger E. Harris; Swift, Currie, McGhee & Hiers, LLP; Atlanta, GA for Paul Zolty M.D., Georgia Lung Associates P.C.
- Daniel J. Moriarty; Green, Sapp & Moriarty, LLP; Atlanta, GA for Michael Lamar Vick M.D., Wellstar Physicians Group ENT LLC
- Drew C. Timmons; Swift, Currie, McGhee & Hiers, LLP; Atlanta, GA for Paul Zolty M.D., Georgia Lung Associates P.C.

**Defendant Expert(s):**

- Wendy L. Wright M.D., FCCM, FNCS; Neurosurgery; Atlanta, GA called by: for Roger E. Harris, Drew C. Timmons
- Daniel M. Musher M.D.; Infectious Diseases; Houston, TX called by: for Henry D. Green Jr., Daniel J. Moriarty
- Douglas Mattox M.D.; Otolaryngology; Atlanta, GA called by: for Henry D. Green Jr., Daniel J. Moriarty
- J. Allen D. Cooper Jr., M.D.; Pulmonology; Birmingham, AL called by: for Roger E. Harris, Drew C. Timmons

**Insurers:**

- MagMutual Insurance Co.

**Facts:**

On Oct. 19, 2006, plaintiff's decedent Kenneth Glenn Harper, 56, a painter with a history of myelodysplasia, was admitted to the intensive care unit at WellStar Kennestone Hospital in Marietta. Harper had presented to the hospital the previous day with complaints of swelling and right-sided neck pain and was admitted to the hospital's emergency department. After being transferred to the hospital's intensive care unit, Harper underwent a consultation with otolaryngologist Michael Vick, M.D. at approximately 10:30 a.m. Dr. Vick performed a clinical evaluation of the patient and his airway. At approximately 11 a.m., Harper was seen by Paul Zolty, M.D., a pulmonologist and critical care physician. Doctors Vick and Zolty determined that, based on multiple risk factors, including significant thinning of the patient's blood and myelodysplasia, Harper was not a candidate for intubation by nose or mouth at that time. The doctors decided to monitor Harper's condition. Their plan included ICU monitoring by critical care specialists and ICU nurses.

At approximately 1:30 p.m. On October 19, Harper's oxygen saturation levels had significantly decreased and he was intubated. During the intubation, he went into cardiac arrest. He was resuscitated and placed on life support. A culture was performed and reportedly showed pseudomonas aeruginosa bacteremia, a sepsis-related pneumonia infection. On Oct. 23, 2006, Harper was taken off of life support and he died. The cause of death was determined to be sepsis induced by pseudomonas aeruginosa and multisystem organ failure.

Harper's wife, Sandra Harper, as administrator of her husband's estate, sued Vick, Zolty and their respective employers, WellStar Physicians Group ENT LLC d/b/a ENT Associates of North Georgia and Georgia Lung Associates, P.C. The estate alleged that

the doctors' actions constituted delayed treatment, causing the decedent's wrongful death.

According to plaintiff's counsel, the doctors should have intubated Harper's airway immediately after he was evaluated on the morning of Oct. 19, 2006, when his condition was relatively stable and controlled, instead of waiting for his condition to decline. The estate alleged that, by the time the decedent was intubated, his airway was completely occluded due to right-sided neck swelling from an infection. The estate claimed that an earlier intubation would have prevented Harper's cardiac arrest and multisystem organ failure.

The plaintiff's pulmonology expert opined that Dr. Zolty knew or should have known the severity of Harper's condition, and that his failure to timely order a prophylactic intubation violated the standard of care. The expert testified that Dr. Zolty should have had a plan in place to adequately monitor the condition of the patient's airway.

The estate's otolaryngology expert testified that Dr. Vick failed to perform an endoscopic evaluation of Harper's airway during the Oct. 19, 2006 evaluation, which constituted a violation in the standard of care and resulted in Harper's cardiopulmonary arrest, organ failure and death.

The estate's expert in infectious diseases testified that Harper would have been more likely to survive the sepsis infection if his airway had been preserved earlier.

The defense argued that the physicians' decision not to intubate the decedent was based on multiple risk factors, including myelodysplasia, a critically low platelet count and a supratherapeutic INR, a condition of the blood which made him susceptible to bleeding during intubation. The defense also argued that, at the time Harper was evaluated on the morning of Oct. 19, 2006, he was alert, oxygenating on his own and did not show clinical signs of breathing complications. The defense claimed that Harper required mechanical ventilation by 1:30 p.m. due to his decreasing oxygen saturation level, which declined as a result of the infection/sepsis.

The defense's pulmonology expert testified that the standard of care did not require Dr. Zolty to perform airway intervention on the morning of Oct. 19, 2006, and it was reasonable for Dr. Zolty to have performed a clinical exam and closely monitor the patient's condition due to the risk factors present.

The defense's ear, nose and throat specialist opined that the doctors created a plan to monitor the decedent's condition and instructed two critical care pulmonologists to monitor his condition in the ICU.

The defense's neurointensivist testified that Harper, who was in the end stage of a terminal illness, died due to overwhelming sepsis infection and there was no treatment for his terminal condition.

The defense's oncology expert, who was the decedent's treating oncologist, testified that the decedent had a six-month survival prognosis at the time of his death.

**Injury:** Kenneth Harper died at WellStar Kennestone Hospital on Oct. 23, 2006. His cause of death was determined to be multisystem organ failure and pseudomonas sepsis.

The estate sought recovery of wrongful death damages and damages for past pain and suffering that occurred during Harper's six-day hospitalization.

**Result:** The jury found for the defendants and a defense verdict was entered.

## Trial Information:

**Judge:** Jay Mark Roth

**Trial Length:** 8 days

**Trial Deliberations:** 1 hours

**Jury Vote:** 12-0

**Jury Composition:** 8 male, 4 female

**Editor's Comment:** This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

**Writer** Jacqueline Birzon

# Cigarette makers: Decedent was aware of smoking's risks

**Type:** Verdict-Defendant

**Amount:** $0

**State:** Florida

**Venue:** Broward County

**Court:** Broward County Circuit Court, 17th, FL

**Injury Type(s):**
- *other* - death
- *cancer* - lung; metastatic

**Case Type:**
- *Products Liability* - Tobacco

**Case Name:** The Estate of Arthur Rohr v. R.J. Reynolds, Lorillard Tobacco Co., Phillip Morris USA, Inc. and Liggett Group LLC, No. 2007-CV-44472

**Date:** October 28, 2010

**Plaintiff(s):**
- Arthur Rohr (Male, 86 Years)

**Plaintiff Attorney(s):**
- Bruce H. Denson; Bruce A. Denson, P.A.; St. Petersburg FL for Arthur Rohr
- John H. Pinder VI; The Whittemore Law Group, P.A.; St. Petersburg FL for Arthur Rohr

**Plaintiff Expert (s):**
- Neal L. Benowitz M.D.; Pharmacology; San Francisco, CA called by: Bruce H. Denson, John H. Pinder VI
- Allan Goldman M.D.; Pulmonology; Miami, FL called by: Bruce H. Denson, John H. Pinder VI
- David Burns M.D.; Pulmonology; San Diego, CA called by: Bruce H. Denson, John H. Pinder VI
- Louis Kyriakoudes Ph.D.; Historian; Raleigh, NC called by: Bruce H. Denson, John H. Pinder VI
- William A. Farone Ph.D.; Cigarette/Tobacco; Anaheim, CA called by: Bruce H. Denson, John H. Pinder VI

**Defendant(s):**

- R.J. Reynolds
- Liggett Group LLC
- Lorillard Tobacco Co.
- Phillip Morris USA, Inc.

**Defense Attorney(s):**

- Daniel F. Molony; Shook, Hardy & Bacon; Tampa, FL for Lorillard Tobacco Co.
- Stephanie E. Parker; Jones Day; Atlanta, GA for R.J. Reynolds
- John M. Walker; Jones Day; Atlanta, GA for R.J. Reynolds
- Sandra Giannone Ezell; Bowman & Brooke LLP; Richmond, VA for Phillip Morris USA, Inc.
- Michael P. Rosenstein; Kasowitz Benson Torres & Friedman, LLP; New York, NY for Liggett Group LLC

**Defendant Expert(s):**

- Thomas L. Bennett M.D.; Forensic Pathology; Billings, MT called by: for Daniel F. Molony, Stephanie E. Parker, John M. Walker, Sandra Giannone Ezell, Michael P. Rosenstein
- Jeffrey Scott Gentry Ph.D; Product Design; Richmond, VA called by: for Daniel F. Molony, Stephanie E. Parker, John M. Walker, Sandra Giannone Ezell, Michael P. Rosenstein
- Michael K. Spodak M.D.; Psychiatry; Towson, MD called by: for Daniel F. Molony, Stephanie E. Parker, John M. Walker, Sandra Giannone Ezell, Michael P. Rosenstein
- Elizabeth Cobbs Hoffman Ph.D.; Historian; San Diego, CA called by: for Daniel F. Molony, Stephanie E. Parker, John M. Walker, Sandra Giannone Ezell, Michael P. Rosenstein

**Facts:**

In 1995, plaintiff's decedent Arthur Rohr, 86, died from cancer. According to plaintiff's counsel, the cause of death was lung cancer caused by decades of cigarette smoking.

Rohr's estate, which was represented by his son, sued the four companies that produced the cigarettes that Rohr smoked: Liggett Group LLC, R.J. Reynolds, Lorillard Tobacco Co. and Phillip Morris USA Inc. The estate alleged they were liable for Rohr's wrongful death.

The case was part of the *Engle v. R.J. Reynolds* class action lawsuit brought against multiple firms in the tobacco industry. The class action was limited to Florida smokers who developed diseases prior to November 1996. In 2000, a Miami-Dade County jury awarded the class a record $145 billion in punitive damages. The jury based the award on its finding that the tobacco industry had manufactured a defective product and had intentionally omitted information about the risks of smoking.

The state Supreme Court decertified the class, but granted leave for individual former class members to sue. Approximately 8,000 claims are awaiting trial, half in state court and half in federal.

Plaintiff's counsel stated that Rohr started smoking before the 1950s, and was addicted to cigarettes. At trial, counsel argued that Rohr smoked a pack a day, which translated to more than 364,000 cigarettes in his lifetime. Counsel further argued that Rohr smoked for just nicotine, and not for taste, since Rohr smoked a variety of brands. Counsel further pointed to the numerous tobacco advertisements which portrayed the use of cigarettes as normal and part of daily living.

Defense counsel contended that Rohr was not addicted to smoking, noting that Rohr had quit cold turkey without assistance when he wanted. The defense argued that Rohr chose to start smoking and chose not to quit, and any injuries were not caused by a claimed addiction to nicotine. Counsel further argued that Rohr knew of the health risks, but continued to smoke anyway.

Counsel for Lorillard claimed that Rohr smoke the company's cigarettes infrequently.

Counsel for Liggett argued that trial testimony was speculative as to how long and how often Rohr smoked the company's cigarettes.

Counsel for Philip Morris argued that Rohr started smoking its brands after he was 60 years old, and well after warnings were placed on the packaging.

Defense counsel further argued that Rohr engaged in other risky behaviors, such as owning guns, drinking alcohol and signing a "do not resuscitate order."

**Injury:** The plaintiff claimed Rohr died of metastic lung cancer at the age of 86. According to plaintiff's counsel, Rohr was a "remarkable man" who learned to golf despite an arm amputation when he was in his 30s.

Defense counsel noted that no autopsy, pathology or radiology was performed on Rohr in which the cause of his death was determined. Counsel further contended that Rohr had a 2-centimeter malignant melanoma which was present in his body before his cancer was diagnosed in 1994. Counsel argued that it is more likely for cancers to spread from the skin to the lungs than for lung cancer to spread to the skin.

The defense further argued that 90 percent of people who smoke do not contract lung cancer.

**Result:** The jury returned a defense verdict as to all four defendants, finding that Rohr was 100 percent responsible for causing his injuries.

## Trial Information:

**Judge:** Jeffrey E. Streitfeld

**Trial Length:** 3 weeks

**Trial Deliberations:** 2 days

**Jury Vote:** 6-0

**Jury Composition:** 2 male, 4 female

**Editor's Comment:** This report is based on information provided by plaintiff's counsel and defense counsel

**Writer** Stephen DiPerte