



September 20, 2018

RJR Slapped With \$6.5M Verdict Over Musician's Mouth Cancer

Posted by [Arlin Crisco](#) on Sep 19, 2018 11:36:27 AM



Miami—R.J. Reynolds was hit with a \$6.5 million verdict Tuesday for the part jurors found the company played in the mouth cancer a Florida musician developed after years of smoking. [Harewood v. R.J. Reynolds, 2007-CA-46331](#).

The award followed the Florida 11th Circuit Court jury's conclusion that nicotine addiction and cigarettes caused the oral cancer doctors diagnosed Glenn Simmons with in 1995. Simmons, a bassist in bands throughout much of his life, began smoking as a teenager and smoked about a pack a day for decades. He died in 2003, at age 48, from complications related to cancer-related radiation therapy.

Monday's verdict found Reynolds liable on fraud and conspiracy claims related to a sweeping scheme to hide the dangers of cigarettes. However, while jurors awarded Simmons' daughter, Hanifah Harewood \$6.5 million in compensatory damages, they rejected a claim for punitives in the case.

The case is one of thousands of Florida's Engle progeny lawsuits against the nation's tobacco companies. They stem from a 2006 Florida Supreme Court decision decertifying Engle v. Liggett Group Inc., a class-action tobacco suit originally filed in 1994. Although the state's supreme court ruled that Engle progeny cases must be tried individually, it found plaintiffs could rely on certain jury findings in the original case, including the determination that tobacco companies had placed a dangerous, addictive product on the market and had conspired to hide the dangers of smoking through much of the 20th century.

In order to be entitled to those findings, however, each Engle progeny plaintiff must prove the smoker at the heart of their case suffered from nicotine addiction that legally caused a specific smoking-related disease.

Key to the seven-day Simmons trial was the link between his smoking and his mouth cancer. During Monday's closings, Reynolds' attorney, King & Spalding's Randall Bassett, argued the cancer's location and Simmons' relatively young age at diagnosis were inconsistent with smoking-related oral cancer. Bassett noted that defense expert Dr. Samir El-Mofty, an oral pathologist from Washington University, concluded Simmons' cancer stemmed from an infection related to a tooth extraction. "Not a cancer caused by smoking, but a cancer caused by a virus that sometime along the way Mr. Simmons had been exposed to," Bassett said.

But Harewood's attorney, Koch, Parafinczuk, Wolf & Susen's Austin Carr reminded jurors that Simmons' treating physician, Dr. Francisco Civantos, a South Florida otolaryngologist, believed cigarettes caused Simmons' cancer. "Dr. Civantos is the more credible, experienced, the more competent physician and surgeon," Carr said during Monday's closings. "He is the doctor that you should believe over [the defense] witness."

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Related Information

Hanifah Harewood is represented by Koch , Parafinczuk, Wolf & Susen's Austin Carr and Justin Parafinczuk.

R.J. Reynolds is represented by King & Spalding's Randall bassett & Harold Franklin.