

November 22, 2016

VERDICTS & SETTLEMENTS

Smoker's Cocaine Use Doesn't Sway Jury in Tobacco Trial



J. ALBERT DIAZ

Plaintiffs attorneys Austin Carr and Lakiesha Cannon of Kock Parafinczuk & Wolf said by restricting the historical documents they could introduce into evidence, the court kept them from demonstrating the arc of the tobacco industry's conspiracy to conceal the addictive nature of nicotine and the deadly cancers it caused.

by Celia Ampel

Jose Ledo started smoking cigarettes before he fled Cuba in 1961, going through one to two packs a day until he was diagnosed with throat cancer in the 1990s.

"He smoked up until he had a tracheotomy," said Fort Lauderdale attorney Austin Carr, who represented Ledo's widow in a wrongful death tobacco case. "Near the end of his days, he was bedridden and he was still asking his wife to give him cigarettes when he had the hole in his throat. She refused."

Smoking cigarettes wasn't Ledo's only habit: Like many Miamians in the 1980s, he also used cocaine. That fact became central to R.J. Reynolds Tobacco Co.'s defense strategy during a two-week trial before Miami-Dade Circuit Judge Migna Sanchez-Llorens.

Ultimately, the jury awarded \$2.94 million to Ledo's widow and son, find-

ing the tobacco company was almost as much to blame for Ledo's disease as he was. Jurors decided they wanted to assess punitive damages, but immediately afterward, Sanchez-Llorens granted a defense motion to enter a directed verdict against punitive damages.

R.J. Reynolds also prevailed on some of its other arguments, with the jury ruling Ledo did not rely on any statements from the company that concealed information about cigarettes' health effects.

Plaintiffs attorneys Carr and Lakiesha Cannon of Kock Parafinczuk & Wolf were also restricted in the historical documents they could introduce into evidence. The judge ruled that no tobacco industry internal documents from before Ledo's immigration or from after his death could be shown to the jury.

Carr said that was an unusual move that kept plaintiffs counsel from demonstrating the arc of the tobacco industry's conspiracy to conceal the addictive nature of nicotine and the deadly cancers it caused.

"By the time Mr. Ledo came here in 1961, that conspiracy was going full tilt," Carr said. "We weren't allowed to put in any of that buildup of the conspiracy."

Ledo was part of the *Engle* class, a group of Florida smokers whose diseases manifested themselves in the 1990s and who benefit from certain findings made by the Florida Supreme Court when it disbanded the statewide *Engle* tobacco class action in 2006.

He was diagnosed with throat cancer in 1994 and underwent radiation treatment. Two years later, the cancer came back, spreading to his brain and lungs before leading to his death in May 1996.

In telling the story of Ledo's life, which included a stint working with the U.S. government in anti-Castro efforts, plaintiffs counsel had to be upfront about the 15 years of cocaine use documented in his medical records. Ledo's lawyers mentioned cocaine in opening statements, but emphasized that contrary to R.J. Reynolds' arguments, the case was not about cocaine.

A pathologist and oncologist called by the plaintiff "testified unequivocally that cocaine had nothing to do with the cause of the cancer—that the cause of cancer was cigarettes," Carr said.

The jury agreed Ledo's death was caused by nicotine addiction and awarded \$6 million to his family: \$2 million for his widow, Mirtha, and \$4 million for his son, Carlos. The Nov. 2 verdict found R.J. Reynolds 49 percent liable for the damages, reducing the award to a total of \$2.94 million for the family.

Carr said he was glad the jury seemed to see beyond the defense's cocaine argument.

"You worry the jury is going to judge your client by who he was and what he did, rather than the sickness caused by R.J. Reynolds," Carr said. The Ledo verdict is "a good thing for the legal system. It shows that juries do follow instructions, and juries do focus on the evidence and what really matters rather than distractions."

R.J. Reynolds was represented by Jason Keehufus and W. Randall Bassett of King & Spalding in Atlanta. They did not respond to a request for comment by deadline.

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Case: Mirtha Ledo v. R.J. Reynolds Tobacco, et al.

Case no.: 08-00113-CA-31

Description: Tobacco wrongful death

Filing date: Jan. 2, 2008

Verdict date: Nov. 2, 2016

Judge: Miami-Dade Circuit Judge Migna Sanchez-Llorens

Plaintiffs attorneys: Austin Carr and Lakiesha Cannon, Kock Parafinczuk & Wolf, Fort Lauderdale

Defense attorneys: Jason Keehufus and W. Randall Bassett, King & Spalding, Atlanta

Verdict amount: \$2.94 million