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# VERDICTS & SETTLEMENTS

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## \$1.9M Verdict for Smoker Who Escaped Cuba in Mariel Boatlift



J. ALBERT DIAZ

Jose Menendez of the Menendez Law Firm and Austin Carr of Koch Parafinczuk Wolf Susen argued the plaintiff was bombarded with cigarette ads the moment she arrived in the U.S.



by Celia Ampel

As a young woman in Cuba, Linda Martin was a champion swimmer and table tennis player.

Today, she's always out of breath and can't exert herself at all, having lived nearly 25 years since being diagnosed with lung cancer.

After a decadelong legal fight, a jury pinned the blame on Philip Morris USA for the way it marketed the menthol cigarettes Martin said she began smoking when she arrived in the U.S. in 1980. Martin was awarded \$1.9 million on May 19.

Martin is an Engle plaintiff, named for the statewide tobacco class action the Florida Supreme Court disbanded in 2006. Plaintiffs who can show their smoking-related illness manifested itself between May 1990 and November 1996 benefit from established findings as to product defect, negligence,

fraudulent concealment and conspiracy to conceal.

According to Martin's complaint filed in Miami-Dade Circuit Court, she was diagnosed with squamous cell carcinoma of the lung and chronic obstructive pulmonary disease after a scary night in 1994.

"She woke up in the middle of the night coughing up blood, and her sister who had just come from Cuba three or four months earlier and Linda's friend rushed her to Jackson Memorial Hospital in the middle of the night," said Martin's attorney, Austin Carr of Koch Parafinczuk Wolf Susen in Fort Lauderdale.

Martin had lung surgery and since then has been "totally disabled," Carr said. Today, at age 66, she has emphysema in her other lung.

The ordeal was not Martin's first hardship in life. Her athletic career in Cuba was cut short in the worst way, Carr said.

"She never got to the international level because they found out she was gay and they put her in a camp for nine months and tried to reform her," he said.

When a number of Cubans stormed the Peruvian embassy in April 1980, Martin sneaked in through the fence, Carr said. She was one of about 10,000 people who occupied the embassy for weeks seeking political asylum. When Fidel Castro opened the port of Mariel, Martin joined the throngs on boats to Key West.

"Part of the theme of the case was that she came from Cuba, living under the Communist regime, [where] there's no marketing, there's no advertising," Carr said. "The minute she drove up here from U.S. 1 from the Keys, she's bombarded with all kind of advertising. ... Half of all billboards at that time were advertising cigarettes."

Martin found work at a dry cleaner and tried her first cigarette at a party.

She liked the feel of Benson & Hedges menthol cigarettes, according to her testimony.

She began smoking two packs a day, Carr said.

But at trial before Miami-Dade Circuit Judge Jose Rodriguez, counsel for Philip Morris argued 14 years of smoking was not enough to cause Martin's lung cancer. They argued she likely began smoking in Cuba or developed cancer from her dry cleaning job due to exposure to a chemical called perchloroethylene.

Carr, his colleague Justin Parafinczuk and co-counsel Jose Menendez of the Menendez Law Firm in Miami argued perchloroethylene is found in those kinds of quantities in "many everyday things, even red meat," Carr said. "It's not even one of the most dangerous chemicals. It's third-tier. Cigarette smoke is obviously first-tier."

Philip Morris representatives did not respond to a request for comment by deadline. The tobacco company is represented by New Jersey attorneys Diane Sullivan and Adam Tolin of Weil, Gotshal & Manges and Miami attorney Frank Cruz-Alvarez of Shook, Hardy & Bacon.

The jury awarded \$1.1 million in compensatory damages, but assigned Martin 45 percent liability, bringing that part of the award to \$605,000. At the punitive phase, jurors tacked on another \$1.3 million.

Philip Morris filed a motion for new trial May 31. The company argued the court made errors including instructing the jury that it could infer that Martin relied on omissions by the tobacco company about the dangers of smoking, rather than requiring direct evidence of her reliance.

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**Case:** Linda Martin v. Philip Morris USA

**Case no.:** 07-34267 CA 15

**Description:** Tobacco

**Filing date:** Oct. 15, 2007

**Verdict date:** May 19, 2017

**Judge:** Miami-Dade Circuit Judge Jose Rodriguez

**Plaintiffs attorneys:** Austin Carr and Justin Parafinczuk, Koch Parafinczuk Wolf Susen, Fort Lauderdale; Jose Menendez, Menendez Law Firm, Miami

**Defense attorneys:** Diane Sullivan and Adam Tolin, Weil, Gotshal & Manges, Princeton, New Jersey; Frank Cruz-Alvarez, Shook, Hardy & Bacon, Miami

**Verdict amount:** \$1.9 million