

MOTOR VEHICLE

BROWARD CIRCUIT COURT

Jury Finds for Motorist on Underinsured Claim

A jury awarded a driver \$450,000 after a collision.

Hamid Motarjemi, 60, claimed he was driving on Southeast 17th Street in Fort Lauderdale when another vehicle ran a red light. The other motorist conceded negligence and settled for his \$10,000 liability limit. But because the other driver was underinsured, Motarjemi sued his own carrier, American Family Mutual Insurance Co. Motarjemi suffered a herniated disc at T5-6, a dented spinal cord and cited headaches, a mild concussion and back pain. He also was treated by a chiropractor and cited limitations in his ability to sit, stand and walk for prolonged periods.

The defense argued his injuries were pre-existing, but the jury determined he was permanently injured and awarded him \$450,000.

Case: Motarjemi v. American Family Mutual Insurance

Case No.: CACE14-015093(03)

Plaintiffs attorney: Julie A. Hager, Law Offices of Julie A. Hager, Fort Lauderdale

Defense attorney: Jonathan N. Zaifert, Caglianone & Miller, Tampa

\$39,000 Award for Driver With Back Injury After Crash

After a side-strike collision injured her back, a jury has awarded a driver a five-figure damage sum.

Amanda Ferrier claimed that while turning left on a road in Weston, her vehicle was struck by a vehicle in May 2010. Ferrier settled privately with the other vehicle's owner, who was not the defendant driver. In the damages trial against the driver, Ferrier cited a herniated disc, which she treated conservatively with 10 months of chiropractic care. A discectomy was recommended, but she said she would like to postpone it for as long as possible.

The defense argued she did not suffer a permanent injury. The jury found no permanent injury but awarded Ferrier \$39,131 for medical expenses.

Case: Ferrier v. Rodriguez, No.

CACE13020665

Plaintiffs attorney: M. Benjamin Murphey, Lawlor White & Murphey, Fort Lauderdale

Defense attorney: Randi Franz, Law Offices of Holly W. Carroll, Fort Lauderdale

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Plaintiffs attorneys Austin Carr and Lakiesha Cannon of Kock Parafinczuk & Wolf said by restricting the historical documents they could introduce into evidence, the court kept them from demonstrating the arc of the tobacco industry's conspiracy to conceal the addictive nature of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 Keehfus and W. Randall Bassett of King & Spalding in Atlanta. They did not respond to a request for comment by deadline.

Contact Celia Ampel at campel@alm.com. On Twitter: @CeliaAmpel

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, Koch Parafinczuk & Wolf, Fort Lauderdale

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

Verdict amount: \$2.94 million