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Jury in tobacco case awards smoker \$8 million

Michael P. Mayko
Staff Writer, Connecticut Post

BRIDGEPORT -- A federal court jury dealt a stunning blow to the tobacco industry this week when it awarded \$8 million to a Norwich woman who developed cancer after smoking Salem cigarettes for more than 25 years.

Her larynx had to be removed as a result of the cancer and she is forced to breathe through a hole in her throat.



Barbara Izzarelli points to the tracheotomy tube she breathes from following the removal of her larynx. AP Photo

The damages against the R.J. Reynolds Co. could soar later this summer when U.S. District Judge Stefan R. Underhill determines how much the company must pay in additional punitive damages to compensate Barbara Izzarelli, of Norwich.

Under the law, the judge can add up to double the \$8 million in compensatory

damages the jury awarded, bringing the total to \$24 million.

Underhill asked both sides to submit legal briefs on the punitive damage award within the next 21 days.

"The key to this case were Reynolds' own documents," said **David Golub**, who headed a legal team which included **Jonathan Levine** and **Marilyn Ramos**, all members of **Silver Golub & Teitell**, a Stamford law firm which represented Izzarelli.

The plaintiffs produced Reynolds' advertising and marketing campaigns from 1972 to 1974 which, they said, were designed to lure young smokers to its Salem and Winston cigarettes and keep them with that brand for the next 25 years.

"Then there were Reynolds' scientific reports that recommended 1.3 milligrams of nicotine as giving the best satisfaction as well as creating an addiction," Golub said. "These documents really enraged the jurors, some of whom are smokers."

Izzarelli, now 49, began smoking when she was 12 years old. Her smoking was intensified by a stint with foster parents who used cigarettes as a reward and took them away as punishment.

Izzarelli had surgery in 1997 to remove her larynx, leaving her with a hoarse, raspy voice that allows her to speak for only minutes a time. During the trial, her testimony was limited to 30-minute sessions, requiring it to take place over four days. At one point during the trial, she experienced a choking attack when she could not clear her throat. Additionally, Izzarelli has no sense of smell, can breathe only through a hole cut into her throat and must eat soft foods.

"The jury saw her as a person who has overcome a lot of adversity in her life," Golub said. "This verdict shows that a Connecticut jury will not accept a tobacco company's claim that a minor made a free choice to begin smoking and will impose substantial damages -- including punitive damages -- for targeting minors and setting nicotine doses to create an addiction."

David Howard, a spokesman for R.J. Reynolds, said this 10-year-old, hotly contested legal battle, which already wound its way through three federal judges, is not yet over. "Certainly we're disappointed," he said.

Now Reynolds' lawyers will challenge the verdict first by asking Underhill to set it aside and order a new trial. If that is unsuccessful they will take the case to the U.S. Second Circuit Court of Appeals in New York City where they could ask to overturn the verdict or in the alternative reduce the damages.

The verdict came late Wednesday afternoon, just moments after the jury sent a note to Underhill asking: "If we award punitive damages can we recommend some of it be used for smoker education."

However, that decision is one Underhill must now make.

Nevertheless, many in the courtroom suspected, at that point, that the trial, which began April 28, would result in a plaintiff's verdict. The question was how many zeroes would follow the first number.

The jury came back about 15 minutes later with their finding that Reynolds designed Salem cigarettes in "a dangerous and defective manner with reckless disregard for the safety of consumers."

They awarded Izzarelli \$13.925 million in damages but found both she and Reynolds were responsible for her condition. They assessed Reynolds as being 58 percent liable and her -- by continuing to smoke -- 42 percent liable. That reduced the damages awarded to Izzarelli to \$8 million.

They also found Reynolds liable for punitive damages.

Dr. Neil Grunberg, who helped edit the U.S. surgeon general's 1988 report that established nicotine as an addictive drug, and Dr. K. Michael Cummings, a senior research scientist at the Roswell Park Cancer Institute in Buffalo and head of the New York state quitline, were two of the witnesses called by Golub.

After being advised of the verdict and its monetary award, Cummings said it "should send shivers down the tobacco companies' CEOs' spines."

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