



Judge Adds Punitives To Tobacco Lawsuit

Ex-smoker could get \$27.5M, once interest is included

By CHRISTIAN NOLAN

Barbara Izzarelli v. R.J. Reynolds Tobacco Co. A U.S. District Court judge in Connecticut has awarded \$4 million in punitive damages to a longtime smoker of Salem cigarettes who later developed cancer.

The damages are in addition to an \$8 million jury award to plaintiff Barbara Izzarelli, who in May won her lawsuit against R.J. Reynolds Tobacco Co. The jury's verdict was believed to be the first successful product liability lawsuit in Connecticut by an individual plaintiff against a tobacco company.

Izzarelli's attorney, **David Golub**, of Stamford's **Silver, Golub & Teitell**, said the total amount due could reach \$27.5 million, since state law requires interest to be paid in cases in which settlements are offered. In this instance, a settlement offer was made when the suit was filed back in 1999.

Despite the large sum, Golub will appeal U.S. District Court Judge Stefan Underhill's punitive damages award of \$4 million. Golub had hoped for \$16 million.

Golub said the judge used common law to compute punitive damages. Under that approach, the punitives basically cover attorney fees and related costs.

However, Golub argued that since the lawsuit centered on Connecticut product liability law, the state statute should govern damages. Under the statute, punitive damages can be double or triple compensatory damages if injuries are caused by recklessness.

"I have mixed feelings about the judge's award," said Golub. "I don't agree with his interpretation of the statute because I think it does deprive plaintiffs of the right to full punitive awards. The judges' interpretation

would result in plaintiffs not even getting their attorney fees in many cases.

"But having said that," continued Golub, "I'm very pleased the judge awarded the maximum amount he could under his interpretation [of the statute] and affirmed the jury's finding that R.J. Reynolds acted with reckless disregard for consumer safety."

R.J. Reynolds, meanwhile, remains hopeful of getting out from under the jury's verdict and the damages. "We are disappointed with the entire verdict in the case, including the imposition of any punitive damages, and we will appeal," said David Howard, a spokesman for R.J. Reynolds Tobacco Co. The appeal will be made to the 2nd Circuit Court of Appeals.

Izzarelli, a Norwich resident, was in her early teens in the 1970s when she began smoking cigarettes. She was soon hooked by the nicotine. She smoked heavily every day – all day – for more than 20 years.

In 1996, at age 36, she developed larynx cancer. The following year she underwent a total laryngectomy. That was followed by radiation and chemotherapy treatments. Izzarelli, now 50, can no longer breathe through her mouth or nose; she uses a tube in her throat. Her diet consists of soft foods



Attorney David Golub said he believes the judge misinterpreted the statute governing punitive damages, and that the \$4 million award should be higher.

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like pudding and mashed potatoes.

Izzarelli brought the products liability claim in 1999. She claimed that R.J. Reynolds continued to sell its products even after there was widespread knowledge that smoking could cause cancer.

Specifically, the complaint alleged that R.J. Reynolds stated in 1954 that, if someone could prove a specific ingredient in cigarettes caused cancer, it would remove that ingredient. Golub argued that even after the cancer link was established that R.J. Reynolds did not alter the ingredients of its cigarettes.

R.J. Reynolds' defense team was led by Mark Belasic of the national firm Jones Day.

The trial lasted from April 27 until May 26. The jury needed about a day to reach its decision. The panel didn't completely absolve the plaintiff. The total verdict was \$13.6 million, but jurors said Izzarelli was 42 percent at fault for smoking all those Sailems. ■