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Health News Widow of Chain-Smoker Gets $8 Million

FORT LAUDERDALE, Fla. (Feb. 19) - While one Florida jury neared its decision that Philip Morris must pay a smoker's widow $8 million in damages, another panel was being selected in the same courtroom for the next tobacco case before the same judge.

The second of 8,000 similar Florida lawsuits filed against tobacco companies by Florida smokers and their families begins Thursday, a day after the first ended.

In the first one, six jurors deliberated over two days before returning the award Wednesday for Elaine Hess, 63, whose husband, Stuart Hess, died in 1997 at age 55 after decades as a chain smoker.

The Broward County jury's verdict marked a defeat for Richmond, Va.-based Philip Morris, a unit of Altria Group, and could set the standard for the rest of the cases.

Even though the amount is far below the $130 million Hess's lawyers sought, experts said it's significant because tobacco companies still rarely lose in the courts — and could mean hundreds of millions of dollars in liability, if not more, from all the other Florida cases.

"It is still a serious blow to Philip Morris," said Edward L. Sweda Jr., attorney for the Tobacco Products Liability Project at Northeastern University law school. "This jury saw through the smoke screen of Philip Morris' 'blame-the-smoker-for-smoking' defense and instead put its focus on the company's reprehensible conduct."

The Hess case was the first to go to trial since the Florida Supreme Court in 2006 voided a $145 billion class-action jury award in the so-called Engle case, by far the highest punitive damage award in U.S. history. The court said each smoker's case had to be decided individually, but let stand that jury's findings that tobacco companies knowingly sold dangerous products and hid risks from the public.

That didn't prevent Altria, the Philip Morris parent, from challenging the whole process in the Hess case.

The damage award, the company said in a statement, "was the result of an unconstitutional and profoundly flawed trial procedure. Fundamental fairness requires the plaintiff to establish basic liability before a jury can award damages."

Philip Morris will ask Circuit Judge Jeffrey Streitfeld — Broward's self-styled "tobacco judge" with about 350 cases on his docket — to throw out the $5 million punitive award and reduce the $3 million in compensatory damages. The company also will appeal the jury's key finding that Elaine Hess's husband, 40-year smoker Stuart Hess, was hopelessly addicted to cigarettes and incapable of quitting.

Elaine Hess, 63, said she was elated by the outcome. Her husband died in 1997 at age 55.

"It wasn't about the money from the beginning," Hess said after the verdict. "It was about doing the right thing. I just really hope this can help all the thousands of families who have also suffered."

The jury did find that Stuart Hess was 58 percent responsible for the cigarette addiction that led to his death. If Philip Morris prevails on appeal, that could cut the compensatory damage award from $3 million to about $1.3 million.

The Hess case has been closely watched by the tobacco industry and by the thousands of other Florida smokers and survivors who have sued. Although it does not directly control the outcome of the other lawsuits, the Hess case could signal how many of them will turn out.

The original Florida lawsuit was filed in 1994 by a Miami Beach pediatrician, Dr. Howard Engle, who had smoked for decades and couldn't quit. The class of smokers was estimated at up to 700,000 when the giant $145 billion award was issued in 2000.

For decades, tobacco companies almost never lost lawsuits filed by smokers but have had several major judgments against them more recently. Philip Morris, for example, is currently appealing to the U.S. Supreme Court a $79.5 million jury award in an Oregon case; other large damage awards against the industry have often been reversed or reduced on appeal.