

TOP (3) TEN JURY VERDICTS OF 2010

\$152 MILLION

\$152M for Woman Given Free Cigarettes as a Child

By Correy E. Stephenson
Staff writer

In a landmark victory, a Massachusetts jury has awarded \$152 million to the son of a deceased woman who received free cigarettes as a child from representatives of tobacco company Lorillard.

The verdict, which includes \$81 million in punitive damages, was the largest verdict in the state in 2010, and the first ever victory for an individual plaintiff over Lorillard, the third-largest cigarette manufacturer in the United States.

"The facts of this case are shocking," asserted plaintiff's attorney Michael D. Weisman. Weisman represented Willie Evans, the son of Marie Evans, who died of lung cancer in 2002.

"Mrs. Evans received cigarettes as give-aways in and around the Orchard Park playground when she was just a child," he said. Although Mrs. Evans initially traded the cigarettes to her big sisters for candy, she began smoking them

at about age 13 and continued to smoke for the next 40 years of her life.

Mark Gottlieb, director of the Tobacco Products Liability Project at Northeastern University School of Law, said this verdict is currently the largest in an individual smoking and health case, because larger verdicts in California and Florida were later reduced.

The jury's message to Lorillard was clear, he said: "What was done to Ms. Evans was totally unacceptable."

Gottlieb suggested that that more cases involving children and free samples will almost certainly be filed as a result.

In a statement, the company said it plans to appeal.

"Lorillard respectfully disagrees with the jury's verdict and denies the plaintiff's claim that the company sampled to children or adults at Orchard Park in the early 1960's," said Gregg Perry, a spokesman for Lorillard. "The plaintiff's 50-year-old memories were persuasively contradicted by testimony from several witnesses. The company will appeal and is confident it will prevail once the Massachusetts Court of Appeals reviews this case."



Marie Evans (pictured starting from left) began smoking at age 13 and continued to smoke for 40 years of her life. Her son, Willie Evans (pictured with her above), won a \$152 million wrongful death verdict against tobacco company Lorillard.

Cigarettes for candy

Marie Evans was just 9 years old when she first began receiving free Newport cigarettes from a representative of Lorillard Tobacco Co. in the early 1960's.

She recalled that representatives would approach children near the playground of the Orchard Park housing project in Roxbury where she lived.

Prior to Mrs. Evans' death from lung cancer in 2002, Weisman petitioned the court to preserve her testimony. He took her deposition, and the defense was allowed to cross-examine her as well.

At trial, both sides presented segments from the video deposition, which Weisman said was essential to the case.

"We made very sure that the jury appreciated who she was and we talked about her as much as possible," he said, with live testimony from her son and one sister and videotaped testimony from another sister.

The defense presented several arguments to the jury, Weisman said, including flat-out claiming that the give-aways didn't happen.

Lorillard also argued that "smoking is a choice, and Marie could have simply stopped smoking if she wanted to," he said.

To counter the defense, Weisman presented expert testimony about the power of addiction and argued that it was "not a character flaw."

His expert testified that nicotine addiction is more powerful than an addiction to alcohol, nicotine or heroin, Weisman said.

Both family members and other witnesses testified about the give-aways, Weisman said, although the defense produced half a dozen witnesses who didn't recall the program. He also relied upon internal Lorillard memos that referenced a give-away program to encourage people to take up smoking.

Referring to the tobacco companies' "campaign of confusion," Weisman said he presented a document called the "Frank Statement," in which the companies purported to promise the American public that they would cooperate with public health officials and let people know whether smoking was in fact dangerous. The document was drafted in the 1950's when the industry faced growing evidence that smoking was bad for a person's health, Weisman said.

But instead of living up to the statement, the industry created confusion, Weisman told the jury, because it responded to subsequent studies over the decades by asserting that cigarettes were not proven to be unhealthy.

The irony is that the defense also argued that it was common knowledge that smoking was unhealthy, Weisman said.

"So putting their arguments together, the public, including my client, should have known that smoking was bad for their health – even though they said it wasn't."

Two awards, more to come?

After 14 days of trial, the 14-person jury deliberated for six days over the compensatory damages award. Jurors reported that they were stuck on one question, causation on the plaintiff's claim of battery, which the plaintiff then dropped.

The jury awarded \$71 million on the remaining claims, finding that Lorillard was negligent in marketing Newport

cigarettes to children and failing to warn Mrs. Evans of the health risks, committed breach of warranty by distributing a dangerous product and acted in a malicious, willful and wanton manner.

Jurors awarded \$50 million to Mrs. Evans' estate and \$21 million to Willie Evans for loss of companionship, and apportioned 30 percent of fault to Marie Evans and 70 percent to Lorillard.

After a one-day hearing on punitive damages, the jury briefly deliberated before awarding \$81 million.

And the size of the verdict could grow – Weisman included a statutory claim under Massachusetts law that Lorillard breached the state's consumer protection law. Both sides have submitted their arguments to Judge Elizabeth M. Fahey, who will determine whether to award additional damages.

Questions or comments can be directed to the writer at: correy.stephenson@lawyersusaonline.com



Plaintiff's attorney Michael D. Weisman

AT-A-GLANCE

Verdict: \$71 million in compensatory damages and \$81 million in punitive damages

State: Massachusetts

Type of case: Wrongful death

Status: No change

Case name: *Evans v. Lorillard*

Date: Dec. 14, 2010 (compensatory award) and Dec. 16, 2010 (punitive award)

Plaintiff's attorneys:

Michael D. Weisman, Thomas Frisardi, Joshua S. Grossman and Kendra Kinscherf of Davis, Malm & D'Agostine in Boston

Defense attorneys:

Walter L. Cofer and Gay L. Tedder of Shook Hardy Bacon in Kansas City, Mo.; Andrew J. McElaney, Jr. of Nutter McClennen & Fish in Boston; Walter B. Prince of Prince Lobel Glovsky & Tye in Boston



Plaintiff's attorney Thomas Frisardi