

March 13, 2017

Man's Suffering, Not Death, From Tobacco Yields \$3M Verdict for Widow

Celia Ampel, Daily Business Review



Steven Hammer and Brittany Chambers of The Schlesinger Law Offices.

J. Albert Diaz

Fort Lauderdale attorneys won a [\\$3 million tobacco verdict](#) for a widow whose husband died a decade ago — but the legal battle [will likely continue](#) past her 90th birthday.

The Feb. 23 verdict for Blanche Fox found that her husband's lifelong addiction to Camel cigarettes caused him pain and suffering, as he developed debilitating heart and lung disease. But the Broward Circuit Court jury did not find smoking caused Malcolm Fox's death in 2006.

Malcolm Fox started smoking as a teenager in Boston. He enlisted in the military and served as a tailgunner on a B-52 bomber in World War II, according to his widow's lawyer, Steven Hammer of the [Schlesinger Law Offices](#) in Fort Lauderdale.

Fox's plane went down over enemy territory, leading the young man to win the Certificate of Meritorious Service and the Distinguished Flying Cross. All the while, he was a Camel smoker.

"A lot of those guys went off to war and they became heavy smokers because back in those days, they handed out cigarettes for free," said Hammer, who tried the case with his colleague Brittany Chambers. "If you ended up in the hospital, the nurses were handing out cigarettes to you."

Fox continued smoking the R.J. Reynolds Tobacco Co. brand until his death, even after developing chronic obstructive pulmonary disease and coronary artery disease. He was on oxygen at the end of his life and was placed in hospice care.

"It was terrible for the family watching him deteriorate like that," Hammer said.

Fox's case was one of thousands of "Engle progeny" cases filed after the Florida Supreme Court disbanded a statewide tobacco class action in 2006.

Plaintiffs benefit from certain jury findings from the Engle case if they can establish they had a smoking-related illness that manifested itself between 1990 and 1996. The Engle jury found tobacco companies conspired to hide the addictive nature and harmful health effects of smoking.

"Malcolm Fox was one of those guys who believed, certainly, that a company wouldn't make a product that would hurt you," Hammer said. "That's not how people thought back in those days."

In Fox's case, plaintiffs attorneys asked for a \$4 million verdict — but after hearing testimony from Blanche Fox and two of the couple's children, jurors awarded \$6 million. They found Malcolm Fox 50 percent liable for his own injuries, reducing the award by half.

But attorneys for R.J. Reynolds are asking Broward Circuit Judge John J. Murphy III for a new trial, arguing Blanche Fox sprung surprise testimony on them in court.

When asked about her husband's health problems during trial, Fox testified that when the couple moved to Tamarac in the early '90s, "he got himself a little job to keep himself busy, and ... maybe three months into the job, he had his first heart attack."

Defense counsel contends they had never heard any evidence of Malcolm Fox having a heart attack before the Engle cutoff date. Documents and testimony had indicated the veteran had no heart attacks prior to 2002, according to R.J. Reynolds' motion for new trial filed March 10.

The trial was also improper because of speculative evidence from a cardiologist and potentially confusing jury instructions, argue defense lawyers Mark Belasic, James Browning and Dennis Murphy of [Jones Day](#) in Cleveland, Ohio.

R.J. Reynolds does not comment on pending litigation.

Hammer said he knows the tobacco giant will fight the verdict tooth and nail, but he was proud to "bring the case home" for his client.

"Blanche is turning 90 years old this year, and she was just happy to finally have her day in court," he said.

Case: Blanche Fox v. R.J. Reynolds Tobacco Co.

Case no.: CACE08026348

Description: Tobacco

Filing date: June 9, 2008

Verdict date: Feb. 23, 2017

Judge: Broward Circuit Judge John J. Murphy III

Plaintiffs attorneys: Steven Hammer and Brittany Chambers, Schlesinger Law Offices, Fort Lauderdale

Defense attorneys: Mark Belasic, James Browning and Dennis Murphy, Jones Day, Cleveland, Ohio

Verdict amount: \$3 million

