

Tobacco plaintiff wins \$780,000

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A Florida jury awarded \$1.3 million last week to the widow of a lifelong smoker who died of lung cancer in 2004.

Joseph Ferlanti smoked cigarettes for 65 years before being diagnosed with lung cancer in March 2003, his lawyer, Todd McPharlin, a partner at Kelley Uustal in Ft. Lauderdale, Fla., told Lawyers USA. He died the next year at age 81.

The *Ferlanti* case was filed as a solo personal injury case but at one point was joined with [the *Engle* litigation](#), McPharlin said, after the Florida Supreme Court reinstated the class of plaintiffs. But the case was tried on its own merits as a traditional personal injury suit without including the findings from *Engle*.

For the majority of his life, Ferlanti smoked Chesterfield cigarettes manufactured by the defendant, Liggett Group.

A spokesperson for the company had no comment on the case.

During the three-week trial, causation was not the primary issue, McPharlin noted. Instead, the case turned on the issue of addiction.

"The defense did not contest medical causation but argued that it was [Ferlanti's] choice to smoke and that he chose to do so," McPharlin said.

Both sides had experts testify on addiction.

"The defense essentially admitted that [Ferlanti] was addicted, but the question was whether or not he could quit, and how difficult it would have been for him to quit – really, it was a question of the degree of his addiction that was contested," McPharlin explained.

From the beginning of the trial, McPharlin said the plaintiff took some responsibility for Ferlanti's choice to smoke, and suggested to the jury that he be apportioned some fault, "in the range of 5 percent."

Instead, over the course of an eight-hour deliberation period, the jury apportioned 60 percent of the fault to Liggett Group, the maker of Chesterfields, and 40 percent to Ferlanti.

McPharlin had asked jurors to award \$1.5 million and they came close, awarding \$1.3 million – netting the plaintiff \$780,000 after apportionment.

The verdict did not include punitive damages.

The victory comes on the heels of [the plaintiff's win](#) in the first of the individual *Engle* cases to be tried, where plaintiff Elaine Hess was awarded \$8 million, including \$5 million in punitive damages.

McPharlin's firm, which is handling about 90 *Engle* cases, has a few slated for trial later this year.

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