

The Herald

Deadline nears for Fla. Smoking lawsuits

While lawyers are anticipating filing a barrage of suits around the state before the Jan. 11 deadline, the number of Florida residents actually suing likely will be a small fraction of the estimated 700,000 smokers who can bring individual claims against cigarette makers.

BY PATRICK DANNER
pdanner@MiamiHerald.com

"A large number of people have passed away. . . , which is one of the sad parts of this story," said David J. Sales, a West Palm Beach lawyer whose firm represents 612 smokers and their families, many of them in South Florida.

But some plaintiffs' lawyers also are being choosy about the cases they take, only pursuing those they have gauged as having the best chances of winning.

"We're trying to pick the cases where we think we can help people," said Todd McPharlin, a Fort Lauderdale lawyer who has filed suits on behalf of about 59 smokers. "There are firms who are being very selective about the cases they are taking. We are talking about people who got sick sometime in the early '90s, and obtaining records to substantiate some of those claims [can] be difficult."

Added Sales: "We have turned down many more cases than we kept." Why? "I probably can't answer that."

The cases stem from a 1994 class-action suit in Miami-Dade Circuit Court. The suit, whose lead plaintiff was a Miami Beach pediatrician, alleged tobacco companies intentionally addicted smokers and conspired to suppress information on the dangers of smoking.

A jury in 2000 awarded the class of about 700,000 smokers \$145 billion in punitive damages, the largest civil damage award in U.S. history.

The state Supreme Court last year overturned the award and decertified the class. The justices ruled each ailing smoker must prove individually that cigarettes caused their illnesses, from cancer to emphysema.

But the court let stand key findings that could help class members in their individual claims. Among them: that

tobacco companies committed fraud by deceiving smokers about the harmful effects and addictive nature of cigarettes. The court gave each member until Jan. 11 to sue.

Last month, the Supreme Court rejected tobacco companies' request to bar the findings from being used in individual suits.

About 50 suits had been filed in Broward Circuit Court and 66 in Miami-Dade Circuit Court as of last week. (The Miami-Dade figure came from a list of product-liability lawsuits filed against tobacco companies this year.) All tobacco cases in Broward are being assigned to Judge Jeffrey E. Streitfeld in the complex civil division.

"It's just prudent to have them before one judge," Streitfeld said, adding coordinating the cases will provide consistency in rulings.

Miami-Dade's chief judge hasn't assigned the cases to any one judge, a court spokeswoman said.

Sales, of West Palm Beach's Searcy Denney Scarola Barnhart & Shipley, expects the number of plaintiffs statewide will be between 3,000 and 5,000. The actual number of cases will be less because some suits include multiple plaintiffs with similar claims.

"Regardless of the number of individual cases filed, we're prepared to manage, defend and win the cases brought against us," said David Howard, spokesman for R.J. Reynolds Tobacco.

"Our track record in cases brought by people who have smoked or claimed to have developed diseases from smoking is really quite successful," said Kenneth Reilly, lead trial counsel for Philip Morris USA and Lorillard Tobacco. "Juries understand people make choices in their lives."

Reilly, of Miami's Shook Hardy & Bacon, couldn't provide the tobacco industry's win ratio, but it has lost only one of nine cases brought by flight attendants who claimed they suffered illnesses due to secondhand smoke on airplanes.

That doesn't worry plaintiffs' lawyer McPharlin, of Fort Lauderdale's Kelley / Uustal.

"They haven't faced this many claims and this many lawyers in the history of defending tobacco lawsuits," he said.