

## FLORIDA LAW REVIEW

# Jury hands smoker \$11.65 million award

by **Adolfo Pesquera**  
apesquera@alm.com

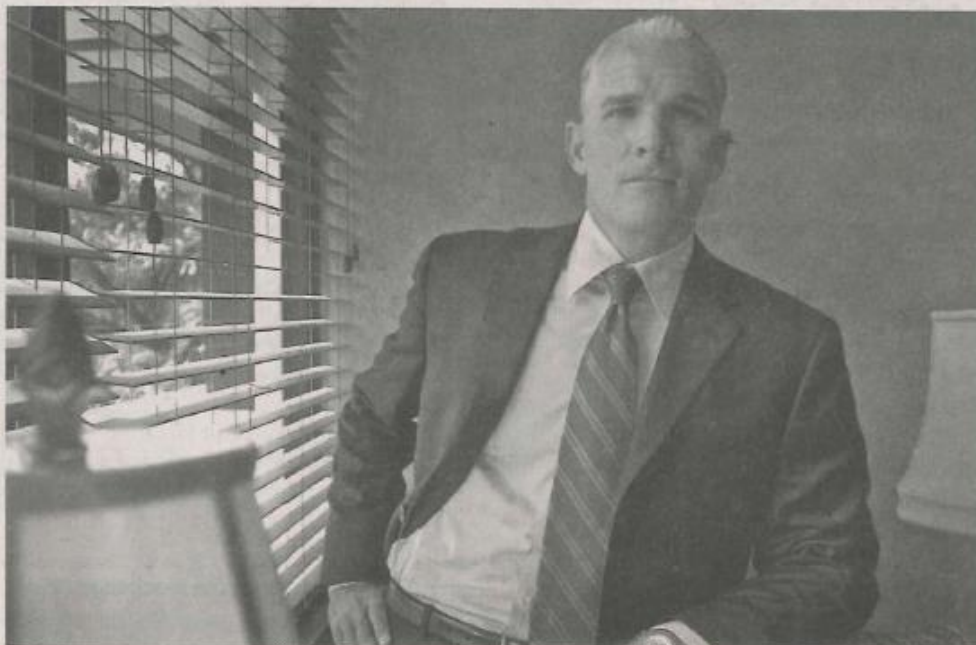
Philip Morris USA Inc. faces a \$11.65 million award in a Fort Lauderdale smoker's product liability case after a judge lowered a \$300 million verdict in an earlier trial.

Cindy Naugle, 65, a sister of former Fort Lauderdale Mayor Jim Naugle, quit smoking in 1993 but suffers from chronic obstructive pulmonary disease. She sued in 2007 and made headlines in 2009 with the massive jury award.

Broward Circuit Judge Jeffrey Streitfeld, who presided in the original trial, reduced the award to \$36.7 million on grounds the jury was "infected by passion and prejudice" and disregarded his instructions.

The Fourth District Court of Appeal concluded last year that the reduced judgment was not excessive. But six months later, the court changed its mind and remanded the case for a retrial on damages, finding the error could not be fixed by a reduction alone.

Circuit Judge Jack Tuter conducted the second trial that started Oct. 4 and ended late Wednesday.



MELANIE BELL

Kelley Uustal partner Todd McPharlin, above, of Fort Lauderdale led Cindy Naugle's case with John Uustal as co-counsel.

Kelley Uustal partner Todd McPharlin of Fort Lauderdale led Naugle's case with John Uustal as co-counsel.

Naugle smoked for 25 years and quit

after her doctor gave her nicotine patches.

To support her case for punitive damages, McPharlin put on evidence that Philip

Morris pressured Dow Chemical Co. to change its marketing of nicotine replacement therapy. Dow produced Nicorette gum and sent newsletters to doctors encouraging them to recommend it.

"Philip Morris was a huge buyer of Dow products and pressured Dow to stop sending the newsletters. It shows the mind-set of a company that put profits far above human life," McPharlin said.

After the trial, he accused Philip Morris of delaying litigation, knowing Naugle might die before she got a new trial. She was awarded \$646,389 for past and future medical costs, \$3.5 million for pain and suffering and \$7.5 million in punitive damages.

"Thankfully, our judge kept the trial on track, and she was able to get a verdict and may very well one day see what it is like to get justice," McPharlin said.

A spokesman for Philip Morris had no comment by deadline. The company was represented by Robert McCarter III of Shook, Hardy & Bacon in Washington.

Naugle's case flows from a Florida Supreme Court decision decertifying a class action if sick Florida smokers.

**Adolfo Pesquera can be reached at (954) 468-2616.**