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VERDICTS & SETTLEMENTS

Fort Lauderdale Lawyers Win \$6.5M Over Smoker's Radiation Death

by Raychel Lean

Fort Lauderdale lawyers Justin Parafinczuk and Austin Carr of Koch Parafinczuk Wolf Susen used *Stuart v. Hertz's* causation theory, rarely seen in tobacco cases, to land a \$6.5 million Miami-Dade jury verdict for the family of Glenn Simmons, a cancer patient killed by complications after radiation treatment.

Simmons' daughter Hanifah Harewood brought the lawsuit in 2007 against R. J. Reynolds Tobacco Co., owners of Kool Cigarettes, and its two previous owners — Brown & Williamson and the American Tobacco Co.

In Simmons' day, Kool's ad campaigns seemed to speak directly to him. "They would depict an African-American guy playing a guitar, smoking a cigarette, which was exactly who our client was," Parafinczuk said.

As a young black man in the 1970s, Simmons played a few shows a week with his band. For the next 20 years, he also smoked a pack of Kool Cigarettes a day, court documents show.

In 1995 Simmons was diagnosed with oral cavity cancer, but that wasn't what killed him.

"He was actually going to be cancer-free," Parafinczuk said. "But he died from the radiation treatment as a result of having the cancer."

Simmons died April 1, 2003, at 48.

Parafinczuk and Carr argued that Simmons was specifically targeted by Kool, based on his lifestyle.

"We know that their tactic in getting people hooked on cigarettes was to saturate certain markets and glamorize cigarette smoking in certain markets," Parafinczuk said.

R. J. Reynolds denied it was to blame for Simmons' death, and defense attorney W. Randall Bassett, of King & Spalding's Georgia office argued that if Simmons had sought treatment earlier, he wouldn't have needed radiation therapy in the first place.



Fort Lauderdale lawyers Justin Parafinczuk and Austin Carr of Koch Parafinczuk Wolf Susen used the *Stuart v. Hertz* causation theory, based on a 1977 case in which the Florida Supreme Court ruled that car rental company Hertz Corp. was responsible for the alleged malpractice of a doctor after the plaintiff had a car accident.

the smoker's nicotine addiction was the legal cause of a smoking-related ailment.

As Simmons didn't die from cancer, the case wasn't straightforward for Parafinczuk and Carr, who instead had to legally link the tobacco companies to Simmons' radiation death.

"It's difficult to present all that to a jury, as opposed to just walking up and saying, 'They got him hooked on cigarettes, nicotine, tobacco and that's what killed him,'" Parafinczuk said. "It's a much more complicated case, and to my understanding that's why very few of them have even been tried in the state."

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Dr. Francisco Civantos was the plaintiff's "most important" witness, according to Parafinczuk. Civantos was their expert in odontology — the study of cancer in the mouth. He was also the surgeon who treated Simmons' cancer, the one who "eventually observed him die from the radiation," Parafinczuk said.

Civantos testified that Simmons died through no fault of his own and acted reasonably when seeking medical help for his cancer — counteracting R. J. Reynolds' argument that he waited too long to seek treatment.

But the jury dismissed that notion, finding that Simmons exercised reasonable care in securing a doctor and following his advice, after relying "to his detriment" on R.J. Reynolds' representation of the health effects of its

Bassett did not respond to a request for comment before deadline.

As with any Engle progeny trial, the plaintiff had to convince a jury that

Case: Hanifah Harewood, personal representative of the Estate of Glenn Simmons v. R.J. Reynolds Tobacco Co. et al

Case No.: 2007-46331-CA-02

Description: Wrongful death, product liability

Filing date: Dec. 28, 2007

Verdict date: Sep. 18, 2018

Judge: Miami-Dade Circuit Judge Rodolfo Ruiz

Plaintiffs attorneys: Justin Parafinczuk and Austin Carr, Koch Parafinczuk Wolf Susen, Fort Lauderdale

Defense attorneys: Randy Bassett, King & Spalding, Atlanta

Verdict amount: \$6.5 million

Florida Supreme Court ruled that car rental company Hertz Corp. was responsible for the alleged malpractice of a doctor after the plaintiff had a car accident.

The key to a successful *Stuart v. Hertz* case, according to Parafinczuk, is to avoid deviating from a simple narrative.

"It takes a lot of careful preparation with your witnesses and sticking to your plan for the trial. They've got to mention specific things in their testimony that you want to highlight," Parafinczuk said.

In Simmons' case, a Miami-Dade jury found the defendants liable for his death, despite having never administered the radiation.

"You do have a concern with a complicated case like this that (the jury) might not understand and be able to follow the law, but it's clear that they did," Parafinczuk said.

cigarettes.

At closing, defense attorney Bassett revisited the testimony of oral pathologist Dr. Samir El-Mofty, who argued that Simmons' cancer was caused by an infection after having a tooth removed.

From Parafinczuk's perspective, that was a "veiled attempt at a defense" that "the jury saw through."

The jury ultimately found Simmons 75 percent at fault, but lay the rest of the blame with R.J. Reynolds. It rejected the plaintiff's push for punitive damages, but did award Harewood \$2.5 million in past damages and \$4 million in future damages.

Harewood attended the trial, which Parafinczuk said "gave her closure."

Raychel Lean reports on South Florida litigation for the Daily Business Review. Send an email to rlean@alm.com, or follow her on Twitter via @raychellean.