

# LAWYER MONTHLY

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## Miami Woman Wins \$6.5 Million Award For Father's Tobacco Death

A Miami-Dade County jury awarded \$6.5 million last week to the estate of Miami man who died following 20 years of cigarette smoking. Jurors found that an addiction to Kool cigarettes from R.J. Reynolds Tobacco Company led to Glenn Simmons' cancer and contributed to his eventual death.

In a unique twist, attorneys believe this is the first tobacco trial ever to be tried under the *Stuart v. Hertz* causation theory. This allows a plaintiff to recover for injuries or damages from subsequent errors in medical treatment that became necessary because of the negligent act of the original wrongdoer.

"Like so many before him, Mr. Simmons became addicted to smoking and eventually developed cancer," said Justin R. Parafinczuk, with law firm Koch Parafinczuk Wolf Susen, which represented Mr. Simmons' estate and personal representative, Hanifah Harewood, his only child. "When he sought treatment, he died from complications. However, the law was on his side and ensured justice was done."

During the two-week trial, the six-member jury learned about Mr. Simmons' life and suffering. The Detroit native worked in Michigan automobile factories before moving to Miami a generation ago.

A pack-a-day smoker of R.J. Reynolds' Kool brand cigarettes, Mr. Simmons developed squamous cell carcinoma and oral cavity cancer. Mr. Simmons had surgery to remove the cancer and was essentially cancer free. But follow-up radiation was required.

The radiation caused transverse myelitis, a rare neurological condition in which the spinal cord becomes inflamed. Mr. Simmons suffered in tremendous pain until his death in 2003.

"He was over-radiated," said Parafinczuk, who tried the case with firm partner Austin Carr. "A line on the verdict allowed for a zero verdict if the jury found that Mr. Simmons acted unreasonably in seeking the physician to treat him and did not follow the physician's instructions for treatment. It's difficult to get a jury to buy into that and assign liability to the tobacco company. But they were attentive, listened to the testimony, and realized Mr. Simmons actively sought out the best care in hopes of saving his own life. Although he died, ultimately the law was on his side."

The four-count complaint alleged strict liability, negligence, fraud by concealment, and civil conspiracy fraud by concealment. Ms. Harewood suffered loss of his parental companionship, loss of his parental instruction, loss of his parental guidance, and mental pain and suffering. The jury returned no punitive damages.

This case was considered an Engle progeny case. Named for the disbanded class-action settlement, plaintiffs under Engle were freed from the class to pursue their own lawsuits if they could prove addiction to cigarettes and that smoking was the cause of their illnesses. Parafinczuk has tried several Engle cases and has several cases pending.