

How E-Cigarettes Featured in a \$42.5 Million South Florida Tobacco Verdict

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By Raychel Lean



Stuart Ratzan (left) and Stuart Weissman (right) of the Ratzan Law Group in Miami. Courtesy photo.

Stuart Ratzan and Stuart Weissman of the Ratzan Law Group in Miami teamed with Edward Zebersky of Zebersky & Payne in Fort Lauderdale and John Crabtree of Crabtree & Auslander in Key Biscayne to obtain a \$42.5 million verdict for a Florida man who blamed tobacco behemoths R.J. Reynolds Tobacco Co. and Philip Morris USA Inc. for the death of his wife.

Irene Gloger was 47 when she died of lung cancer. But she was just 14 when she picked up her first cigarette in 1963, which Ratzan argued was exactly what Big Tobacco wanted.

“She was right inside their target age range at the time they were advertising their products on ‘The Flintstones’ and ‘The Beverly Hillbillies,’ and showing pictures of young, glamorous women and men and young movie stars and young athletes,” Ratzan said.

Her brand of choice was Newports, whose slogan was “Alive with pleasure!” But Gloger didn’t love cigarettes, according to Ratzan. She was dependent on them, as were more than half the women her age.

When her father-in-law was diagnosed with emphysema in 1985, Gloger tried to quit, but ultimately switched to low-tar and low-nicotine cigarettes, believing they would be better for her health.

But instead, they caused her to inhale more deeply, so that smoke reached the farthest edges of her lungs. When Gloger did quit smoking in 1994, it was too late, according to court pleadings. She died two years later, of a cancer that began at the edges of her lungs.

The trial featured testimony from Gloger's husband, daughter, and the best friend with whom she had smoked her first cigarette.

Though e-cigarettes didn't exist in Gloger's era, they featured heavily in the damages portion of the trial, when the defendants had the chance to argue their companies had changed since the days of manipulating the addictive properties of their products, concealing health risks and targeting children.

Ratzan and his team claimed that instead of marketing the electronic version as a way for cigarette smokers to quit nicotine altogether, the defendants had been promoting such flavors as mixed berry, and cream and mint, and using images aimed at youngsters.

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"In 2018 the Surgeon General and the CDC [Center for Disease Control and Prevention] declared an epidemic in this country for American youth, kids in middle school and high school on e-cigarettes, and the defendants had their hands right in that," Ratzan said.

Philip Morris owns a major stake in Juul Labs Inc., while R.J. Reynolds owns the Vuse Digital Vapor Cigarette.

"This *Engle* litigation is now proving to be extremely important as a method for making a difference in the world we live in right now, even though this conduct occurred in 1953 to 1999, these same companies are still in business, still selling nicotine and children are still at risk," Ratzan said.

R.J. Reynolds and Philip Morris denied any liability, and denied they targeted children and used misleading adverts. Their attorneys—Jennifer Kane of King & Spalding in Atlanta, and Benjamin Reid, Douglas Chumbley and Amy Hurwitz of Carlton Fields in Miami—did not respond to requests for comment by deadline.

The plaintiff's team submitted evidence that the defendants have fought bans against flavored e-cigarettes, and pointed to a rise of e-cigarette usage among high school children. It also presented research suggesting they caused lung cancer and bladder lesions in lab mice.

"While a lot of health officials say that e-cigarettes are safer than cigarettes, they're not safe," Ratzan said. "The motivations are still to addict as many people as possible, as young as possible, because the younger you addict them the more likely they're going to be lifetime customers."

Trial take two

The biggest obstacle for Ratzan and his team was having to try the case again, after having already won a \$17.5 million verdict in 2018.

The Third District Court of Appeal reversed that, finding the lower court should have limited Kenneth Gloger's testimony about discussions he had with his wife's doctors. This time around, the plaintiff's team couldn't ask Gloger what doctors told him and his wife about her diagnosis.

Jurors more than doubled the prior award, finding Gloger was just 10% at fault for her death because of the defendants' omissions and misrepresentations about the dangers of smoking. They awarded \$15 million in compensation, \$11 million in punitive damages from Philip Morris and \$16.5 million from R.J. Reynolds.

Ratzan said he urged jurors to exercise caution during deliberations, reminding them that the law won't allow a gigantic, billion-dollar verdict against the defendants, "even if that's what it would take to make them really notice."

"It's one case at a time," Ratzan said. "The degree of wrongdoing combined with the degree of responsibility that the jury must have felt regarding this case in this time, given this epidemic could lead a jury to a verdict that's out of proportion to the one family that we're talking about here," Ratzan said.

The point of punitive verdicts against tobacco companies, in Ratzan's view, should be to send a collective message to other businesses that might seek to defraud or conspire to defraud American consumers.

Read the verdict:

Case: Kenneth Gloger v. R.J. Reynolds Tobacco

Case no.: 2011-023377-CA-01

Description: Product liability, tobacco litigation

Filing date: July 27, 2011

Verdict date: Nov. 8, 2019

Judge: Miami-Dade Circuit Judge David C. Miller

Plaintiffs attorneys: Stuart Ratzan and Stuart Weissman, the Ratzan Law Group, Miami; Edward Zebersky, Zebersky & Payne, Fort Lauderdale; John Crabtree of Crabtree & Auslander, Key Biscayne

Defense attorneys: Jennifer Kane of King & Spalding, Atlanta; Benjamine Reid, Douglas Chumbley and Amy Hurwitz, Carlton Fields, Miami

Verdict amount: \$42.5 million

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