

Legal team helped longtime smoker win \$27 million award

By Adolfo Pesquera

Daily Business Review

April 5, 2012



Richard J. Diaz and J.B. Harris
Photo by J. Albert Diaz



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Case: Emmon Smith v. R.J. Reynolds Tobacco

Case no: 09-000719-CA

Description: Negligence

Filing date: Aug. 3, 2009

Trial dates: March 6-28, 2012

Jury decision: \$27 million

Judge: Jackson Circuit Judge John L. Fishel II

Plaintiff attorneys: Rick Diaz, Law Offices of Richard J. Diaz, Coral Gables; J.B. Harris, Law Offices of J.B. Harris, Coral Gables; Robert D. Trammell, Robert D. Trammell Attorney at Law, Tallahassee; Don Fitzgerald, Crabtree & Associates, Key Biscayne

Defense attorneys: Stephanie E. Parker and John Walker, Jones Day, Atlanta; Charles Beall Jr., Moore Hill & Westmoreland, Pensacola

Details: Emmon Smith, 80, is a retired minister in Marianna, a small Panhandle town near Alabama. He began smoking hand-rolled cigarettes at 13. He soon switched to Camel and Lucky Strike brands, but for most of his life smoked Pall Malls. All are R.J. Reynolds Tobacco Co. products.

He tried several times to quit but did not succeed until 1992 when he was diagnosed with lung cancer. His left lung was removed, and he now has cancer in the right lung and walks with a cane. Smith, who is black, filed a lawsuit in 2009 as an Engle progeny case, one of thousands of individual suits named for a decertified Miami class action with shared findings preserved by the Florida Supreme Court.

Plaintiff case: Diaz, a federal criminal defense attorney, made a major departure from his comfort zone when he was asked by Stuart Ratzan of Ratzan Law Group in Miami to try Smith's case. Ratzan and Harris collaborated on signing up Engle progeny plaintiffs and between them have about 200 of 8,000 cases, Diaz said.

Harris and Ratzan, who are financing the litigation, assembled a legal team to take on the formidable forces they anticipated from the tobacco industry.

Diaz was the lead trial counsel and relied heavily on Harris' institutional knowledge. He took 52 depositions and traveled around the country for four years preparing for trial.

Trammell was brought in because he has an office in Marianna and has his roots in the region. He assisted with jury selection and schooled Diaz in the local culture.

Trying the case in Jackson County was considered a disadvantage because the populace is mostly conservative, rural and low-income with a tobacco-growing culture and strong beliefs in individual responsibility.

"Everybody there smokes or chews tobacco," including several jurors, Diaz said.

RJR once offered Smith a change of venue to Miami in exchange for a continuance, but Diaz refused. He decided to rely on the character of the locals.

"They are not as desensitized as urban juries to corporate fraud," Diaz said. "I felt like a jury in a rural part of the state would see right through the deceit and not tolerate it."

While Diaz was the face of the legal team, he said he relied heavily on other attorneys and paralegals to monitor jurors, advise him on tactics and respond to a barrage of issues raised by the defense.

"We had one lawyer in charge of exhibits. We had one lawyer answering every email [Jones Day] sent, and they sent emails galore."

The trial support team included Miami-area solo practitioners Maria Rubio and Carlos Santisteban Jr., and John Crabtree of Crabtree & Associates.

Plaintiff witnesses included Dr. David M. Burns, a retired pulmonologist from University of California-San Diego and Dr. Roland Schwarting, a pulmonologist at Cooper University Hospital in Camden, N.J., who testified on addiction and causation.

Also testifying were Stanford University historian Robert Proctor, author of the anti-tobacco book *Golden Holocaust*, and Frederick Raffa, an economist at Florida State University, who discussed RJR's net worth.

Defense case: RJR spokesman Bryan D. Hatchell said, "We are disappointed with the verdict and plan to appeal."

The company and its attorneys offered no other comment.

Dr. Clarence Watson, a defense expert and forensic psychiatrist from Philadelphia, argued Smith was not addicted. This was based on one 2½-hour interview with Smith, Harris said. William Stueck, a University of Georgia history professor, testified as a historian.

"He claimed the information environment of rural African-Americans during segregation was the same as for white people," Harris said, who disagreed with that premise.

Outcome: The jury found Smith was addicted to cigarettes and they caused his cancer. The jury found Smith did not know, nor could he have known before 1990, that he was injured by his smoking.

RJR was found negligent for selling a dangerous product and concealing what it knew about the health effects.

RJR was found 70 percent liable for \$10 million in compensatory damages, reducing the \$10 million award to \$7 million. The company also was found liable for \$20 million in punitive damages.

Quote: "We were in one of the most conservative counties in Florida, yet we obtained the largest jury award in the history of Jackson County," Harris said. "The smokers on the jury were outraged by the lies the tobacco industry engaged in over time."

Post-verdict: Don Fitzgerald, an appellate attorney with Crabtree & Associates, will advise on issues for the expected appeal and will handle the appeal phase for Smith.