

Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 13, NUMBER 3

\$5.8 million awarded in the tenth SDSBS Engle case win against Big Tobacco

Frank smoked for nearly 20 years before tobacco industry was forced to put a 'caution' label on packs.

In September 2013, a Palm Beach County jury rendered a verdict in favor of the widow of a man who died of lung cancer as a result of being addicted to cigarettes containing nicotine and smoking for 45 years, beginning when he was just 14 years old. The jury awarded \$5.8 million to Kathleen Gafney, who lost the love of her life, her high school sweetheart and husband of 36 years, Frank Gafney, who was just 59 years old when he died. SDSBS attorneys **Jim Gustafson** and **Darryl Lewis**, and former SDSBS partner David Sales, tried the case for four weeks against Lorillard Tobacco Company and R.J. Reynolds Tobacco Company. It was the tenth trial victory for SDSBS against Big Tobacco.

Kathleen Gafney's husband, Frank, died of lung cancer in 1995. Frank began smoking as a fourteen-year-old high school freshman in 1950, when 70%



Frank and Kathleen Gafney

of males smoked. Frank smoked for nearly 20 years before the tobacco industry was forced to put a "caution" label on packs of cigarettes, while the industry continued to lie to the American people, saying that nothing about cigarettes was proven to be harmful and that the Surgeon General of the United States was "dead wrong" about requiring warnings on cigarette packs. Despite the tobacco companies' testimony that they do not and have not marketed cigarettes to children, previously secret internal company documents showed Lorillard Tobacco Company not only marketed cigarettes to children, but considered the high school student "the base of our business," and that R.J. Reynolds Tobacco Company considered 14-year-old children to be vital to the future of the company because those children serve as "replacement smokers." Such was the environment *(Continued on page seven.)*

Be your own advocate

Joseph did not know this surgery had never been performed at the hospital.

When discussing surgery with your doctor, ask questions up front. It is important to know how many times the surgeon has performed this type of surgery and the rate of complications and death. Without question, Joseph trusted his doctors to do what was in his best interest. His doctors had recommended surgery for an aortic valve repair. Because of his young age, they said, surgery would be easy and involve only a short hospital stay. Joseph agreed to the surgery. What Joseph did not know

was that this surgery had not been performed at the hospital, and he did not know the risk of complications and death for this type of surgery.

Joseph was admitted to the hospital and surgery was performed. Shortly after, Joseph began vomiting and had difficulty breathing. Post-operative tests showed ominous signs of cardiac ischemia – an insufficient blood flow which could cause severe damage to the heart. Cardiac ischemia routinely requires an emergent response by medical professionals. Instead, a cardiologist ordered another test for Joseph – a transthoracic echocardiogram (TTE), or scan of the heart. The cardiologist ordered the test "stat," meaning that it must be done right away. After ordering the *(Continued on page six.)*



Chris Searcy and Karen Terry in 'Elite' top attorney list by Florida Trend magazine

PAGE TWO

IN THIS ISSUE:

SDSBS members receive special awards at FJA's Annual Masters of Justice Convention

PAGE NINE

\$1.2 million settlement for painful injuries to couple caused by mall's failure to maintain escalator

PAGE THREE

**SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY PA**

ATTORNEYS AT LAW

\$5.8 million awarded in the tenth SDSBS Engle case win against Big Tobacco

(Continued from page one.)

Mr. Gafney was born into, all the while being told that “More Doctors Smoke Camels” and cigarettes were not only not dangerous, but healthy to smoke. The jury was presented uncontroverted evidence of the history of the tobacco companies’ efforts not only to increase the addictiveness of their product, but to conceal that effort from their product users. Evidence from previously secret documents disgorged by the defendants and their co-conspirators showed they had engineered cigarettes to be addictive, experimented with

adding chemicals and compounds to cigarettes to “freebase” nicotine to the smoker’s brain, and to try to make cigarettes even more addictive. The evidence in the case showed that tobacco companies sought to entrap their customers in a way that ensured future sales, and then they spent years lying about what the companies knew to be true about the addictiveness of their cigarettes and the fact they caused deadly diseases like lung cancer, emphysema, and heart disease. The jury heard evidence of the consequences of Big Tobacco’s 50-year conspiracy and deceit and how devastating it was to our country – over 20 million Americans were killed by smoking, and 443,000 more Americans are now dying each year.

“It’s wrong to design something to be addictive and then lie about it and then market it as safe and then exploit addicted people to keep doing what they are addicted to, all the while knowing that your business plan is going to result in people dying,” Jim Gustafson argued to the jury in closing arguments. “What kind of people would do something like that to other people? You all are going to have to decide whether you are going to tolerate that.”

The Gafney case is one of approximately 8,000 cases filed statewide as a result of a landmark class action suit filed in 1994 by Miami pediatrician, Dr. Howard Engle, who, like the other class members, began smoking long before the dangers were known, became addicted to cigarettes containing nicotine, and suffered from a smoking-related disease as a result of that addiction. The jury in the Engle case found against the tobacco companies in 2000, holding that smoking was addictive and caused a variety of diseases including lung cancer. However, the Florida Supreme

Court reversed the award in 2006, ruling that each person in the class action must prove his/her membership in the class and damages individually. SDSBS has thus far won ten Engle progeny trials against the tobacco industry, with jury verdicts ranging from \$2.5 million to \$80 million.

Thanks to the success of the public health message today, it might seem unnecessary to point out that Big Tobacco is a bad actor. Perhaps it bears reminding that it wasn’t always understood, and that as recently as the late 1990’s it took a two-year trial to tell the story of what the tobacco industry did to generations of Americans, and that the telling of that story – finally – resulted in these findings made by the original Engle jury:

1. Smoking cigarettes causes lung cancer.
2. Nicotine in cigarettes is addictive.
3. R.J. Reynolds Tobacco Company, Philip Morris-U.S.A. Inc., Brown & Williamson Tobacco Corporation, American Tobacco Company, Liggett Group, Inc., and Lorillard Tobacco Company placed cigarettes on the market that were defective and unreasonably dangerous.
4. R.J. Reynolds Tobacco Company, Philip Morris-U.S.A. Inc., Brown & Williamson Tobacco Corporation, American Tobacco Company, Liggett Group, Inc., and Lorillard Tobacco Company concealed or omitted material information not otherwise known or available, knowing that the material was false or misleading or failed to disclose a material fact concerning the health effects, or addictive nature, of smoking cigarettes, or both.
5. R.J. Reynolds Tobacco Company and Lorillard Tobacco Company agreed with other Engle defendants to conceal or omit information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and the public would rely on this information to their detriment. The other Engle defendants include Philip Morris, U.S.A. Inc., Brown & Williamson Tobacco Company, American Tobacco Company, Liggett Group, Inc., the Council for Tobacco Research USA, Inc., and the Tobacco Institute, Inc.
6. R.J. Reynolds Tobacco Company, Philip Morris-U.S.A. Inc., Brown & Williamson Tobacco Corporation, American Tobacco Company, Liggett Group, Inc., and Lorillard Tobacco Company were negligent.

Big Tobacco is a cancer, a blight on our country, and it has killed millions of good Americans. Frank Gafney was one of those good Americans and the jury recognized that in this case, as good people do when exposed to the truth. SDSBS will continue to work to make sure there is a reckoning for Big Tobacco. ♦



Above:
Kathleen
and Frank
Gafney
on their
wedding
day.