

TOBACCO INDUSTRY WINS FIRST INDIVIDUAL ENVIRONMENTAL TOBACCO SMOKE CASE

Muncie, Indiana, March 19, 1998

Jury Sees Through Plaintiffs' "Blue Haze"

A jury decided today that tobacco companies were not liable for the death of a non-smoking nurse whose surviving spouse claimed that she had died of lung cancer caused by exposure to second-hand smoke. Mildred Wiley had worked at the VA hospital in Marion for 17 years where, plaintiff lawyer Ron Motley claimed, she had been heavily exposed to cigarette smoke between 1973 and 1996. Plaintiffs' witnesses included former Surgeon General Jesse Steinfeld who based his opinion that ETS kills on reports of the World Health Organization, the U.S. Environmental Protection Agency, the American Cancer Society and other major public health organizations. In addition, Mrs. Wiley's treating physicians testified that she died of primary lung cancer. Several of Mrs. Wiley's co-workers told the jury there was a "blue haze" of smoke in the VA hospital when they were working there with Mildred.

In their defense, the tobacco companies claimed that Mildred's cancer had started in her pancreas and spread to her lung, and that, in any event, she could not have been exposed to enough smoke to cause disease. Furthermore, there were other possible causes of Wiley's cancer, including a high concentration of radon gas in her home which was located near a toxic waste dump. Finally, the tobacco companies argued that there is insufficient scientific proof that second-hand smoke causes cancer.

Plaintiffs' case centered on the claim that the tobacco industry had defrauded Mrs. Wiley and the public, hiding the dangers of second-hand smoke. Evidence of the alleged fraud included the testimony of one industry scientist who claimed that tobacco company lawyers were always looking over his shoulder to review his research and that they would remove any material that could be harmful to the companies in product liability litigation. Plaintiffs also offered the deposition testimony of another former tobacco company scientist who "took the Fifth" 87 times. Hundreds of industry documents were offered by plaintiffs in an attempt to establish the tobacco companies' scheme to "confuse and obscure" the health effects of tobacco smoke.

Plaintiffs, however, had credibility problems of their own. Mrs. Wiley's autopsy report had inadvertently omitted any reference to Mrs. Wiley's pancreatic cancer. No analysis of breast tissue had been done, despite the fact that Mrs. Wiley had been treated for breast cancer earlier. Her treating physician had not been informed by plaintiff attorneys of her exposure to radon before coming to his conclusion about the cause of her death. Mrs. Wiley's co-workers needed what Plaintiffs' attorney, Mr. Ron Motley, called "cheat sheets" to recall the brands of cigarettes they distributed to patients at the VA hospital.

After hearing more than five weeks of evidence, and deliberating 19 hours, the jury focused on the medical and scientific evidence and decided to believe the tobacco companies. Shocked plaintiffs walked away empty handed.

Litigation Strategies provided jury research and voir dire assistance to lead defense counsel, William Ohlemeyer of Kansas City's Shook, Hardy and Bacon.

- Strategic Research
- Witness Preparation
- Demonstrative Exhibits

