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Tobacco On Winning Rampage with Espinosa -- Eight Straight

Posted by Courtroom View Network on Fri, Nov 12, 2010 @ 02:20 PM

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The jury deliberated for less than an hour in [Espinosa v. Philip Morris](#) before returning a verdict in favor of the defense.

The jury agreed with the plaintiff that Ms. Espinosa was addicted to tobacco, and that her addiction was the legal cause of her smoking-related cancer, and that the cancer manifested early enough for Ms. Espinosa to be a member of the Engle class.

However, the jury found Ms. Espinosa's death was not caused by Philip Morris' negligence or by the defective nature of the cigarettes, and that she did not reasonably rely on any deceptive statement or act by Philip Morris.

Espinosa represents Tobacco's eighth consecutive win. Since August, juries have turned in defense verdicts (zero damages

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awarded) in [Vasko](#), [Budnick](#), [Warrick](#), [Willis](#), [Frazier](#), [Campbell](#), and [Rohr](#). A deadlocked jury resulted in a mistrial in [Koballa](#).

The victory represented a small winning streak for Engle-veteran Kenneth Reilly, of Shook Hardy Bacon's Miami office. Mr. Reilly tried not only this latest Engle trial, but also the very first Engle trial, back in February 2009 -- [Hess v. R.J. Reynolds](#) -- and also several cases in between, including [Kalyvas](#) and [Warrick](#). Mr. Reilly is responsible for two of eight recent wins.

During the plaintiffs' 16-trial winning streak that started in April 2009 and ended in June 2010 (see [CVN Engle Verdict Tracker](#)), Engle trials were considered very difficult for the defense. However, with eight wins in a row (plus a hung jury), Tobacco can now confidently claim to have [cracked the Engle Code](#).

CVN webcast the [Espinosa tobacco trial](#) live.

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Espinosa v. Philip Morris Closings

Posted by [Courtroom View Network](#) on [Fri, Nov 12, 2010 @ 08:54 AM](#)

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[Espinosa v. Philip Morris](#) completed completed closing arguments today on both liability and damages.

Turning the defense argument around, plaintiff attorney Alex Alvarez told the jury that indeed

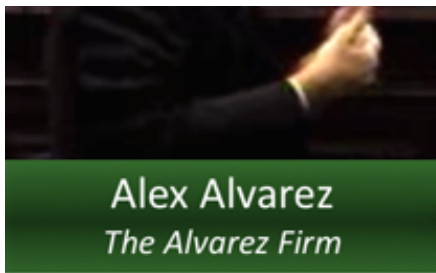
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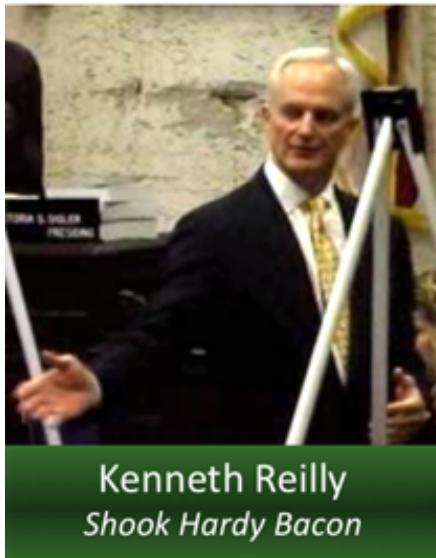
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the case was about "Opportunities and choices... Philip Morris knew what the right thing to do was...Philip Morris and its executives knew the difference between right and wrong. Every time they had an opportunity to change the outcome for Maria Espinosa, they chose not to tell the truth, so they could profit...What motivated them to take certain paths? Every time they had an opportunity to change the path, and they didn't do it."



There's a reason why addicted people don't stop smoking even if it's killing them, Mr. Alvarez told the jury. "If they were acting reasonable, then they would stop." That's the reason that the safety message works, Mr. Alvarez continued. "They want to find a reason to justify the addiction, to rationalize the addiction, to let them continue what they were doing...Half of the lung cancer patients who have a lung removed keep smoking. Forty percent of smokers who have had their larynx removed start smoking again. That's how powerful nicotine is."



"If you smoke a pack of cigarettes a day for ten years," Mr. Alvarez continued, "you're addicted. This lady was doing it for much longer than that...She got cancer from smoking, and she could not quit. That's key...She's got a hole in her throat and she could not stop. She's got a feeding tube in her stomach and she could not stop."

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Mr. Alvarez completed his closing with a segment he titled, "Choice, Lies, and Videotape," and reviewed for the jury evidence demonstrating a gap between the cigarette company's private documents and their public statements, and an express strategy to create doubt about the health issues without denying it.

"Philip Morris preyed on the weakness of addicted smokers for money," said Mr. Alvarez, "and each time she lit up she relied on" their statements.

For the defense, Shook Hardy Bacon's Kenneth Reilly said that the entire case resolved down to simple issues. Once the jury determined who controlled Maria Espinosa's lifestyle-choice behavior (including smoking), and what caused her cancer, then they would be able to decide who had responsibility in this case.

Mr. Reilly defended the credentials and credibility of the defense witness on addiction, and suggested that the plaintiff's expert lacked credibility because he had not been shown any information about Maria Espinosa. According to Mr. Reilly, the plaintiff's own expert had said that nicotine was more like caffeine in its addictive nature than it was like heroin.

Mr. Reilly suggested that the jury might throw out all the expert testimony on addiction and rely on their common sense to determine whether Ms. Espinosa was able to quit smoking. The evidence was that she liked smoking, and did not want to quit. According to Mr. Reilly, she never expressed any regret about her decision to smoke cigarettes, she said that she was "at peace" with her decision to smoke, and that she said, "you gotta die of something."

CVN webcast [Espinosa v. Philip Morris](#) live.

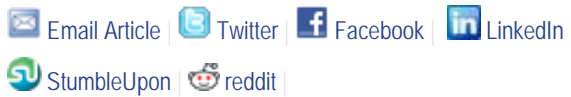
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Espinosa v. Philip Morris Opening Statements

Posted by Courtroom View network on Wed, Nov 03, 2010 @ 12:41 PM

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Alex Alvarez
The Alvarez Firm



Kenneth Reilly
Shook Hardy Bacon

Plaintiff attorney Alex Alvarez, of The Alvarez Law Firm, told the jury in [Espinosa v. Philip Morris](#) that Maria Espinosa died of a cancer that was legally caused by her addiction to cigarettes. Ms. Espinosa smoked for 46 years, up until her death, and for most of that time she smoked only Virginia Slims.

Ms. Espinosa's cancer was found in her neck, but the original source of the cancer was unknown. Mr. Alvarez told the jury that 95% of "neck cancers," found in the throat or oral cavity, were caused by smoking.

Shook Hardy Bacon's Kenneth Reilly, representing Philip Morris, told the jury that Ms. Espinosa's cancer was found in a lymph node, on the outside of her neck. Lymph nodes can capture cancer cells from many parts of the body, said Mr. Reilly, and Ms. Espinosa's

physician repeatedly searched the parts of Ms. Espinosa's body where smoking-related cancers normally start, to find the source of the cancer, but he found nothing. Mr. Reilly pointed out that it would be the plaintiff's burden to show that the cancer was smoking-related.

Moreover, the evidence in the case would show, Mr. Reilly predicted, that Ms. Espinosa

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loved to smoke, and that even addicted smokers can quit if they want to. Ms. Espinosa quit when she wanted to quit, said Mr. Reilly, and began smoking again when she wanted to begin.

CVN is webcasting [Espinosa v. Philip Morris](#) live.

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