


## Ward v. R. J. Reynolds and Liggett: Ninth SDSBS Victory in Engle Progeny Trials

In January 2012, a Pensacola, Florida, jury awarded \$2.7 million to the husband of an Engle class member who died from chronic obstructive pulmonary disease after nearly 50 years of smoking cigarettes produced by R. J. Reynolds Tobacco Company and Liggett Group, L.L.C. It was the ninth trial victory in as many Engle progeny cases tried to verdict by SDSBS.

Mattie Emma Ward started smoking as a 13-year-old girl in 1949. At that time, it seemed like everyone smoked – even world-class athletes, physicians, actors, broadcast journalists on radio and, later, on TV. People smoked in schools, movie theaters, their workplace, and even hospitals. Cigarette advertising was directed at young people, and physicians were used in those advertisements to make unsubstantiated health claims. By age 22, Mattie Ward was a daily smoker; by age 25, she was smoking a carton of cigarettes a week. Despite repeated efforts to quit smoking, Mrs. Ward was unable to overcome her one- or two-pack-a-day addiction to cigarettes. In 2000, she was hospitalized with double pneumonia. In January 2005, at the age of 68, Mattie died from advanced chronic obstructive pulmonary disease.



Following Mattie's death, Erskin Donal ("Don") Ward, Mattie's husband, brought a wrongful death claim against the tobacco industry to pursue his wife's rights as a member of the landmark Engle class action case. In July 2006, the Florida Supreme Court's decision in Engle v. Liggett permitted individual litigation by a defined group of smokers, or their surviving family members, who had been part of the original class action to file suit. The individual suits



(l-r.) SDSBS partner, Jim Gustafson; Don Ward, surviving spouse of smoker, Mattie Ward; and co-counsel, Matt Schultz, with Levin Papantonio Thomas Mitchell Rafferty & Proctor.

would have to show that certain smoking-related illnesses manifested in the smoker between May 1990 and November 1996. Mr. Ward retained SDSBS attorney **Jim Gustafson** to represent him. Shortly before trial, Matt Schultz of Levin Papantonio Thomas Mitchell Rafferty & Proctor, P.A., who had successfully tried three Engle cases to verdict including the landmark Martin case, joined Mr. Ward's trial team. It was the first joint effort in an Engle case between SDSBS and Levin Papantonio, and it proved to be successful.

The jury unanimously found that Mattie Ward's addiction to the nicotine in cigarettes was the legal cause of her death. The jury also unanimously found that Reynolds and Liggett had intentionally concealed, or agreed to conceal, the health effects or addictiveness of cigarettes from Mrs. Ward, a legal cause of her death as well. The jury awarded Mr. Ward \$1 million for the wrongful death of his wife, and imposed punitive damages in the amount of \$1.7 million against Reynolds. The defense had focused on Mrs. Ward's "choice" to continue smoking, and had defended the industry's lies over the past 50 years. The jury also found Mrs. Ward 50% responsible for her own death.

In opening statements, Jim Gustafson asked the jury if Mrs. Ward's addiction had substantially contributed to her daily use of cigarettes for 40 to 50 years. Added Mr. Gustafson, ". . . **the evidence will be what we all know to be true, and that is: what else does nicotine addiction do than to cause you to keep smoking and exposing yourself to that stuff day after day after day? That's why these companies celebrated it. The truth about what this industry does is an eye-opening tale of arrogance and disdain for the health and lives of Americans.**" ♦