

Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 13, NUMBER 1

\$5.5 million awarded to family of smoker with 40-year addiction

Jury found in favor of the plaintiff on every liability issue presented.

In December 2012, a Tallahassee jury awarded \$5.5 million to the widow of a man who died of lung cancer after more than 40 years of nicotine addiction. SDSBS attorneys **Jim Gustafson** and **Bill Norton**, and former SDSBS attorney David Sales, tried the case against Philip Morris USA, Inc. and Liggett Group, LLC, on behalf of Nan Buchanan, whose husband, Mitchell "Ike" Buchanan, died of small cell lung cancer in 1995. Ike began smoking as a teenager in the 1940's - a time when about 80% of people his age smoked. Ike had been addicted to the nicotine in cigarettes for nearly 20 years before the tobacco industry began placing caution labels on cigarette packs.

Testimony by family members, friends, and experts, and damning internal documents authored by the defendants themselves provided unassailable evidence that the tobacco companies had endeavored not only to increase the addictiveness of their products, but to conceal that effort from the public. The tobacco



Ike Buchanan with his wife and two sons in early years.

companies had, in fact, engineered cigarettes to be addictive, to entrap the products' users in a way that ensured future sales, and then spent years lying about it and preventing public knowledge of the truth.

The jury awarded \$5.5 million in compensatory damages, and found in favor of the plaintiff on every liability issue presented to them, a scathing indictment of an industry whose monstrous conduct killed more good Americans than any other phenomenon – natural or man-made – in the history of our nation.

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Brain-injured child makes strides against all odds

Doctors treated cold symptoms, missing bacterial meningitis.

In May 2004, a young couple welcomed the arrival of their beautiful, healthy baby boy named Brandon (not his real name). At three months old, Brandon was thriving, meeting all developmental milestones, and in good health. He was described as a happy, smiling baby. In August, Brandon developed cold-like symptoms and his mother took him to see his pediatrician. Although Brandon's mother followed the pediatrician's instructions in the use of medications and a nebulizer, Brandon's symptoms did not improve. By September, Brandon was running a fe-

ver and his mother became alarmed. They returned to the pediatrician who, despite Brandon's worsening condition, did not order any blood tests. He merely instructed the mother to give the baby Tylenol.

Early on October 7, Brandon's mother noticed that the baby felt very hot. She checked Brandon's temperature and found that it was over 103 degrees. She dressed immediately and rushed the baby to the emergency room of a nearby hospital. She told the hospital staff that Brandon was only five months old, and that for the past several weeks he had been wheezing and coughing, suffering from a runny nose, vomiting, and diarrhea, *(Continued on page three.)*

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\$5.5 million awarded family of smoker with 40-year addiction

(Continued from page one.)

The Buchanan case is the first *Engle* progeny case to be tried in Tallahassee, Florida. Nan Buchanan's case is one of approximately 8,000 cases filed state-wide as a result of a landmark class action suit filed in 1994 by a Miami pediatrician, Dr. Howard Engle, who, like the other class members, began smoking long before the dangers were publicly known, became addicted to nicotine, and suffered from a smoking-related disease. The jury in the original *Engle* case ruled 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 damages individually. SDSBS has thus far taken ten cases against the tobacco industry to verdict, and is undefeated in those cases.

In the Buchanan case, the defense offered typical tobacco industry double-talk. The defendants attempted to establish that Mr. Buchanan did not smoke their cigarettes and that he did not have lung cancer, even though an oncologist diagnosed and treated Ike for lung cancer, and had certified that the cause of his death was lung cancer. Even though the defendants' own documents showed how successful



their fifty-year campaign of deceit was in keeping addicted smokers smoking, the defendants told the jury that nothing they had done or said had affected Mr. Buchanan. Mr. Gustafson stated, "In 1963, when Philip Morris sent a letter to the United States Surgeon General identifying the contents of cigarette smoke but withholding internal company knowledge and conclusions they knew to be true about the deadly nature of their products, they withheld information that would affect other human beings. They knew people would die and they didn't care. They still don't care. They are unapologetic about what they did, and by the way they defend the cases, it appears they'd do it all over again if they could."

Ike Buchanan was 64 years old when he died. Had he not succumbed to a lifetime of addiction to nicotine, Ike would have been expected to live to the age of 80. He and Nan were together for 45 years. Ike was Nan's best friend, a loving husband, father, and grandfather, and a tremendous member of the Tallahassee community. Ike Buchanan's death was a devastating loss to his wife, his family, and the community. This is one loss, one *Engle* progeny case. We must not forget that it happened to millions of Americans. That is the legacy of the American tobacco industry, and SDSBS will continue to make sure there is a reckoning. ♦

The tobacco companies engineered cigarettes to be addictive, to entrap the products' users in a way that ensured future sales, and then spent years lying about it.

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