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How South Florida Lawyers Won \$157 Million Verdict in Same-Sex Tobacco Case

The plaintiff's team at the Schlesinger Law Offices in Fort Lauderdale say this same-sex Engle progeny verdict appears to be the first of its kind in the state, and possibly the entire U.S.

By Raychel Lean | November 27, 2019



From left to right, Schlesinger Law attorneys Brittany Barron, Jonathan Gdanski, plaintiff Bryan Rintoul, Scott Schlesinger and Steven J. Hammer. Courtesy photo.

Fort Lauderdale attorneys Scott Schlesinger, Jonathan Gdanski and Steven J. Hammer of the Schlesinger Law Offices obtained a stinging \$157 million jury verdict against tobacco giants Philip Morris USA Inc. and R.J. Reynolds Tobacco Co. in a case that could transform tobacco litigation for same-sex couples across Florida.

Plaintiff Bryan Rintoul brought the wrongful death suit on behalf of his husband Edward Caprio, who died at 74 in 2018. Formerly a Delray Beach bookkeeper, Caprio was diagnosed in 1996 with emphysema and chronic obstructive pulmonary disease, which slowly destroys lung tissue. He later contracted lung cancer and had two-thirds of one lung removed.

Caprio's was "not a peaceful demise," according to Schlesinger.

"You can barely get a sip of air," Schlesinger said. "You constantly feel like you're on the verge of not being able to breathe. And it gets worse with aging. As it got worse, they put him on 24 hour-a-day oxygen just so he could get through the day and breathe."

Judge Haines made it possible

But after Caprio died, it was unclear whether Rintoul could sue on his behalf as Florida law says spouses must have been married before the alleged tobacco-related illness. Rintoul and Caprio had been together since the late 1970s but couldn't tie the knot until same-sex marriage became legal in 2015.

For Rintoul's claims to proceed, Broward Circuit Judge David A. Haines had to make an exception, finding it would be unconstitutional to apply the rule.

Then came jury selection, when Hammer recalled the plaintiff's team had to weed out would-be jurors with prejudiced views toward gay couples.

"Fortunately, we were able to eliminate the people that had strong feelings about that, and we got a group of people that were open to the idea that a gay couple has the same exact rights as any other married couple should have," Hammer said.

It wasn't the first time the case went to trial. Caprio originally sued in 2007, but that jury couldn't reach a verdict and the second trial was delayed three times, according to Gdanksi, who said Rintoul's stamina was crucial.

"I think this case is a great example of the determination and persistence that is needed by the client and by the lawyer on the plaintiff's side to see this litigation through to the end," Gdanski said. "Because this industry, they depend on outlasting their customers."

Gdanksi said he was in awe of jurors' acknowledgment that Rintoul and Caprio would have married before the diagnosis if the law had permitted it.

"To all of the couples who were not permitted to get married, it speaks, really, volumes to have a jury of six people speak to Brian and Ed, and recognize that they had a meaningful relationship, and that they would have been married earlier if the law permitted it," Gdanski said.

'Testimony from the grave'

The plaintiffs team used testimony from Caprio's earlier trial, when he talked about how he started smoking when he had no idea of the dangers it posed, how he felt he'd been fooled by advertising and misrepresentations, and about the love he and his husband shared.

"It was testimony from the grave, which was I think very powerful for the jury to hear," Hammer said. "Ed and Bryan both testified about how they felt like they were always treated as second-class citizens because they were both gay and growing up in an environment that did not accept it at the time. It was very powerful that the jury accepted them, accepted their marriage, and rendered a verdict."

To prove Caprio was addicted, and that that caused his disease and death, the plaintiffs put on historian of science Robert Proctor of Stanford University, who wrote the definitive book on the tobacco conspiracy to commit fraud by concealment.

Defense attorneys Jerry Furr of King & Spalding in Charlotte, Timothy Congrove, Mary Calderon and Thomas Sherouse of Shook, Hardy & Bacon's Kansas City and Miami offices, and Eric Lundt of GrayRobinson in Fort Lauderdale did not respond to requests for comment by deadline.

Their experts argued Caprio was not addicted and that other factors caused his disease.

The punitive damages phase served as one of the first jury referendums on Juul electronic cigarettes. Because while the defendants argued they'd reformed their practices, the plaintiffs team pointed to evidence of an influx of adolescents addicted to Juul e-cigarettes—and particularly to Philip Morris's moves to invest in the company (<https://www.npr.org/2018/12/20/678915071/altria-buys-35-percent-stake-in-e-cigarette-maker-juul>).

"Juul cigarettes had the predominant share of the market. By buying it and putting their people in charge of running it, they then could capture the future of adolescent nicotine addiction and perpetuate their industry, which is based on addicting youngsters," Schlesinger said.

Although Caprio never smoked Juul, Schlesinger said this evidence went a long way toward obtaining punitive damages for his husband.

Caprio picked up his first cigarette at 15, in 1958, when about 70% of boys his age were doing the same. But times have changed and, now that jurors know about the health risks, it's not always easy for them to imagine a time when it was weird not to smoke.

"Big Tobacco knew better, but 15-year-old Ed Caprio did not," Schlesinger said. "Every step along the way, Tobacco is trying to confuse, industry is trying to distract, and the defendants are trying to make everything about, 'it's all the smoker's fault. It's all Ed's fault.'"

The jury found Caprio just 2% at fault for his death, placing the defendants jointly on the hook for \$9 million in compensation and a whopping \$74.1 million each in punitive damages.

The defendants have moved for a new trial (<https://drive.google.com/file/d/1Qqxtqz1AU2f942V-GUjnOvqCif3wtmj4/view?usp=sharing>), labeling the award a “grossly excessive” verdict from a “run-away jury.” The motion highlights that punitive damages, in particular, were more than triple what the plaintiff requested.

Schlesinger, however, argued that the defendants earn more profits in a week than they would lose with the verdict.

Read the verdict:

	<p>IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA</p> <p>CASE NO. 07-036719 (08)</p> <p>JUDGE DAVID A. HAIMES</p>
<p>BRYAN RINTOUL, as Personal Representative of the Estate of EDWARD CAPRIO,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>PHILIP MORRIS USA INC. and R.J. REYNOLDS TOBACCO COMPANY</p> <p style="text-align: center;">Defendants.</p> <hr style="width: 50%; margin-left: 0;"/>	
<u>VERDICT</u>	
We, the jury, return the following verdict:	
<p>1. Was Edward</p>	<p>nd, if so, was that</p>
<p>addiction a legal cause of his CHRONIC OBSTRUCTIVE PULMONARY DISEASE (“COPD”)?</p>	
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Case: Bryan Rintoul as representative of Edward Caprio v. Philip Morris USA and R.J. Reynolds Tobacco

Case No.: CACE07036719

Description: Products liability, tobacco litigation

Filing date: Dec. 28, 2007

Verdict date: Nov. 7, 2019

Judge: Broward Circuit Judge David A. Haimes

Plaintiffs attorneys: Scott Schlesinger, Jonathan Gdanski and Steven J. Hammer, Schlesinger Law Offices, Fort Lauderdale

Defense attorneys: Jeffrey Furr, King & Spalding, Charlotte, North Carolina; Timothy Congrove, Mary Calderon and Thomas Sherouse, Shook, Hardy & Bacon, Kansas City and Miami; Eric Lundt, GrayRobinson, Fort Lauderdale

Verdict amount: \$157 million

More verdicts:

'It Just Didn't Add Up': Miami Lawyers Rebuff \$1.5M Suit Over Woman's Walmart Fall (<https://www.law.com/dailybusinessreview/2019/11/18/it-just-didnt-add-up-miami-lawyers-rebuff-1-5m-suit-over-womans-walmart-fall/>)

South Florida Lawyers Win \$1.35M Tobacco Verdict for Man Without Voice Box (<https://www.law.com/dailybusinessreview/2019/11/04/south-florida-lawyers-win-1-35m-tobacco-verdict-for-man-without-voice-box/>)

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