

# Cigarette case ruling not likely to spark suits, experts say

By Steve McGonigle

Staff Writer

A jury's landmark decision that a cigarette company was partially responsible for the death of a New Jersey smoker drew mixed reactions from product liability law experts Tuesday but general agreement that the decision is not likely to unleash a flood of similar lawsuits.

The \$400,000 damage award to Antonio Cipollone for the death of his wife, Rose, gives further hope to the 100 plaintiffs with lawsuits pending against tobacco companies but also shows that the cost of bringing such suits still exceeds the return, six liability law specialists said.

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"This is a little bit of a crack in the dam," said William Powers, a law professor at the University of Texas at Austin. "But I think there will still be major impediments to plaintiffs to recover damages in these cases."

Reaction to the verdict on Wall Street sent tobacco stock prices slightly downward Tuesday in very active trading. Analysts said the slippage could have been greater had it not been for the positive reaction of traders to a much lower than expected U.S. trade deficit.

Cipollone, a 64-year-old retired cable worker, received the damage award Monday from a federal jury in Newark that concluded that Lig-

gett Group Inc. breached its warranty to Mrs. Cipollone to provide her a safe product and that cigarette smoking caused her death from lung cancer in 1984.

The verdict, nearly five years after the suit was filed, marked the first time in 34 years of cigarette litigation that a cigarette maker has been held liable for injuries linked to its products.

Mrs. Cipollone died at age 58 after smoking cigarettes made by Liggett, Philip Morris Inc. and P. Lorillard Inc. for 40 years.

The damage award was limited by the jury's finding that Mrs. Cipollone was 80 percent at fault for her illness. Jurors awarded her estate no damages and gave her hus-

band no punitive damages.

Jurors also rejected an argument that Liggett and its co-defendants conspired to withhold vital information about the dangers of smoking.

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To bolster their contention of conspiracy, Cipollone's attorneys showed jurors 300 internal documents that were obtained from the defendants' files.

Los Angeles attorney Mal Wheeler said the rejection was significant because it defused attempts by plaintiff attorneys to broaden the scope of their litigation to include the entire cigarette industry.

Some of the theories used and evidence produced in the Cipollone case may be used in other cases, but

Wheeler said the verdict has limited value. "Until you get some rulings from appellate courts, it really has no precedential value for either side," Wheeler said.

Powers, too, minimized the verdict's effect because it didn't set precedent and because laws in all but a few states prohibit plaintiffs from recovering damages if they are found to be more at fault for their injuries than the defendants.

Apparently, the jury largely agreed with the long-held contention of the tobacco industry that smoking is a matter of personal choice and is done with knowledge of the potential risks involved, Powers said.

On that contention, he said, the

companies are unlikely to change their strategy of refusing to settle any damage claims by smokers. "Just because a pitcher loses a no-hitter, he doesn't walk off the mound," Powers said.

Dallas attorney Windle Turley, a plaintiff's product-liability specialist, said he viewed the verdict more positively, agreeing with Cipollone attorney Marc Edell that it will aid the trial of future lawsuits.

"I have always thought it's going to take a few years to happen, and there'll be some more losses before it takes place. But there's a great need for a viable legal theory (in cigarette cases) and it's going to be developed in these cases."

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