



September 12, 2005

**MICHAEL L. BECKMAN**

Plaintiff

v.

**BROWN & WILLIAMSON TOBACCO CORPORATION and PHILIP  
MORRIS INCORPORATED (PHILIP MORRIS U.S.A.)**

Defendants

**Circuit Court of Jackson County, Missouri at Independence**

**Case No. 02-CV-228047-01  
Division 5**

## **BACKGROUND**

### **PURPOSE**

This backgrounder has been prepared by R.J. Reynolds Tobacco Company to provide a concise reference document on this individual smoking and health case. It is not a court document.

### **THE PLAINTIFF**

Dr. Michael L. Beckman filed this lawsuit on October 9, 2002 seeking monetary damages for lung cancer allegedly caused by his cigarette smoking. Dr. Beckman was born on November 22, 1947 in Maryville, Missouri. He graduated from Tarkio (Mo.) High School and subsequently enrolled in Northwest Missouri State University. Dr. Beckman married his first wife, Nancy Jane Van Hoozer, on June 7, 1966. Dr. Beckman graduated from college in 1969 with a major in chemistry and a minor in biology. Dr. Beckman and Nancy were divorced in 1969.

In late 1969, Dr. Beckman enlisted in the United States Navy and enrolled in the Officer Candidate School with hopes of becoming a naval aviator. Dr. Beckman was honorably discharged after approximately one month because of poor vision.

Dr. Beckman began working for the United States Postal Service in Washington, D.C. as a chemist in the crime laboratory. He subsequently became a Postal Inspector. As part of his duties for the Postal Service, Dr. Beckman testified as an expert witness for the government in many criminal trials. During this time period, Dr. Beckman also took graduate level science classes at George Washington University.

Dr. Beckman married his second wife, Mary Ellen Hoffman, on August 18, 1972. Dr. Beckman's only child, his son Jeffrey Beckman, was born in 1975. Mary Ellen Beckman and Dr. Beckman were divorced in 1978. Dr. Beckman transferred to the Atlanta Division of the Postal Service and was based out of the Albany, Ga., office. There he met Carol York, whom he married in Orlando, FL on April 15, 1978. The couple divorced in 1979. Dr. Beckman left the Postal Service in 1979 and went into the hot tub and spa business in Orlando, Fla., with his father. The hot tub and spa business failed in 1986.

In 1987, Dr. Beckman entered Osteopathy School at the University of Health Science in Kansas City, Mo. He graduated in 1991 with his Doctor of Osteopathy degree and entered an internship program at Deaconess Hospital in St. Louis, Mo. Dr. Beckman completed that program, before enrolling in a residency program at St. Mary's Hospital in St. Louis. Dr. Beckman resigned from that program after one month in 1992 for personal reasons. In 1992, Dr. Beckman began working as an emergency room

physician. Dr. Beckman worked at numerous hospitals from 1992 until 2003. Dr. Beckman received disability payments for a period of “occupational burnout” from May 1997 until October 1997. Dr. Beckman was unemployed at the time of his lung cancer diagnosis.

Dr. Beckman met his fourth wife, Debra Beckman, at one of the hospitals where he worked in the mid-1990s. The couple wed on February 14, 1996 and divorced in 2004.

Dr. Beckman alleges that his use of the defendants’ cigarettes caused him to develop lung cancer. He started smoking in 1961 at the age of 14. He stopped smoking cigarettes on June 8, 2001, the day he was diagnosed with lung cancer. Dr. Beckman claims to have smoked Marlboro (4 years), Kool (33 years) and Raleigh (3 years) cigarettes.

The plaintiff is represented by Kenneth McClain, Donald Loudon and Scott Hall of the Independence, Mo., law firm of Humphrey, Farrington and McClain, and by Gregory Leyh of the Gladstone, Mo., law firm of Leyh and Leyh.

## **THE DEFENDANTS**

### **Brown and Williamson Tobacco Corporation**

Brown & Williamson Tobacco Corporation (B&W), formerly based in Louisville, Ky., manufactured the Kool, Pall Mall, GPC, Carlton, Lucky Strike and Misty cigarette brands.

As of July 31, 2004, B&W’s domestic tobacco business merged with R.J. Reynolds Tobacco Company, a New Jersey corporation, to form R.J. Reynolds Tobacco Company, a North Carolina corporation. R.J. Reynolds is a wholly-owned subsidiary of Reynolds American Inc., and is headquartered in Winston-Salem, North Carolina. It is the nation’s second-largest manufacturer of cigarettes. Its brands include those of the former B&W as well as Winston, Salem, Camel and Doral.

Brown & Williamson is represented by Jeffrey Furr and Ursula Henninger of the Winston-Salem, N.C., office of Womble Carlyle Sandridge & Rice, PLLC.

## **Philip Morris U.S.A.**

Philip Morris U.S.A. is the nation's largest manufacturer of cigarettes. Headquartered in New York City, its major brands include Marlboro, Basic, Benson and Hedges, Virginia Slims and Merit.

Philip Morris is represented by Gary Long and Laura Fey of the Kansas City office of Shook, Hardy & Bacon, L.L.P.

## **TRIAL SITE**

The case is being tried in the Circuit Court of Jackson County, Mo., at Independence, Division 5.

## **JUDGE**

The Honorable W. Stephen Nixon is the trial judge.

## **EXPECTED DURATION**

Jury selection will begin on September 12, 2005. The parties expect the trial to last four to five weeks.

## **JURY AND VERDICT**

The jury will consist of 12 jurors and four alternate jurors. A verdict is reached when nine of the 12 jurors agree on a decision.

## **PLAINTIFF'S CASE**

Dr. Beckman alleges that his use of defendants' cigarette brands caused him to develop lung cancer. In his petition, plaintiff asserts claims for

negligence, strict liability, fraudulent concealment, fraudulent misrepresentation and conspiracy. In each of these five counts, the principal contention is that each defendant did not adequately warn consumers, including Dr. Beckman, about the health risks of smoking. Plaintiff contends that the defendant cigarette manufacturers conspired to withhold from the public pertinent medical and scientific data regarding the health effects of cigarette smoking. The plaintiff further contends that the cigarettes he smoked were defectively designed and unreasonably dangerous.

Dr. Beckman developed lung cancer in June of 2001 and is currently suffering from Idiopathic Pulmonary Fibrosis ("IPF"). Plaintiff's experts are expected to testify that the cancer is a primary lung cancer caused by his cigarette smoking. Plaintiff's experts are also expected to testify that Dr. Beckman's IPF is a result of complications from his cancer surgery.

Plaintiff seeks an unspecified amount in actual and punitive damages.

## **DEFENDANTS' CASE**

The defendants deny that they acted negligently in manufacturing their products, that their products are defectively designed or unreasonably dangerous, that they fraudulently concealed or misrepresented the inherent health risks of smoking and that they conspired to withhold information from the public regarding the well-known health risks inherent to cigarette smoking.

With respect to Dr. Beckman's claims of defective product design, the defendants argue that cigarettes manufactured by them presently conform, and always have conformed, with the available technological, medical and scientific states-of-the-art, and likewise comply and have complied with all applicable government regulations. Accordingly, the plaintiff has not offered and cannot offer any evidence at any time during Dr. Beckman's smoking history that there was a practical and technologically feasible, safer alternative cigarette design that would have been used by him and that would have prevented his lung cancer.

The defendants contend that, by his own admission, Dr. Beckman did not rely on any representations made by the cigarette manufacturers for any

decisions he made regarding his smoking behavior.

The defendants maintain that the potential health risks of cigarette smoking are, and have been, common knowledge. A historian the defendants expect to call at trial will testify to the widespread awareness of the health risks of cigarette smoking that were known since long before Dr. Beckman began smoking. Further, Dr. Beckman personally received many warnings about the risks of smoking from his family, friends, doctors and others. Since January 1, 1966, all packages of cigarettes that Dr. Beckman smoked bore a Surgeon General's warning. From July 1, 1969, that warning is deemed to be adequate as a matter of law. Additionally, as of March 1972, all print advertisements for defendants' cigarettes bore a label warning smokers about the potential harmful effects of smoking. Moreover, Dr. Beckman was a practicing physician with full knowledge of the health risks of smoking. In the face of all of these warnings, Dr. Beckman continued smoking until 2001.

Regarding his lung cancer, Dr. Beckman's treating physicians diagnosed Dr. Beckman's tumor as a squamous cell carcinoma in June, 2001. The defendants' experts are expected to testify that the cancer is a primary lung cancer of undetermined etiology. Defendants experts are also expected to testify that Dr. Beckman's IPF is unrelated to either his lung cancer or any complications of his surgery for lung cancer.

The defendants may call one or more doctors to testify not only about these medical issues, but also about the concepts of addiction, dependence, habituation, and abuse. Experts will discuss the historical development and current meanings of those concepts in public health and popular usage. If called, they will testify that there is nothing in cigarettes or in nicotine that either forces a person to smoke against his will or prevents one from making a decision to quit smoking and successfully acting upon that decision.

## **PROCEDURAL HISTORY**

The plaintiff filed his petition on October 9, 2002, in the Circuit Court for Jackson County, Mo. B&W was served with plaintiff's petition on November 18, 2002. B&W served its Answer on December 20, 2002.[1]

Defendants filed motions in July, 2004, seeking summary judgment of

plaintiff's claims on a variety of grounds, including failure of proof, statute of repose, and Federal Preemption, arguing that the federal government's regulation of the tobacco industry, including but not limited to, the Federal Cigarette Labeling and Advertising Act, precludes a variety of state requirements and prohibitions through both express and conflict preemption. The court denied defendants' summary judgment motions on September 1, 2005.

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[1] R. J Reynolds Tobacco Company was a defendant in this case, but was voluntarily dismissed without prejudice on March 24, 2004.