

# *South Florida* **Sun-Sentinel**

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## **Friday is deadline for ailing smokers to sue Big Tobacco**

By Jon Burstein  
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Pasquale "Pat" Caprio started smoking when he was 10 years old. He and his buddies would pop into the candy store near his grammar school and buy cigarettes for a penny apiece. One to smoke at lunch. One to smoke after school.

Sixty-eight years later, the Newark, N.J., boy is a sick man in a wheelchair, hooked up to an oxygen tank and suffering from chronic obstructive pulmonary disease. The Fort Lauderdale retiree wants to hold the tobacco industry accountable.

Caprio, 78, is one of hundreds of Floridians who have filed lawsuits against the country's five largest tobacco companies within the past 18 months, blaming the cigarette makers for their health problems. Courtrooms across the state are poised to become battlegrounds for the latest incarnation of tobacco cases that must be filed by Friday for ill smokers to capitalize on a Florida Supreme Court ruling.

The wave of lawsuits arises from the state high court's July 2006 decision in a class-action case that sent shock waves through the tobacco industry. In July 2000, a Miami-Dade County jury leveled a \$145 billion damages verdict — thought to be the largest punitive award in American legal history — against Philip Morris Inc., R.J. Reynolds Tobacco, Brown & Williamson, Lorillard Tobacco and Liggett Group Inc.

The state Supreme Court tossed out the monetary award, but affirmed the jury's conclusions that the companies misrepresented the addictive nature of cigarettes and concealed the health dangers.

The court ruled that ill smokers and the families of deceased smokers covered under the class-action case had to file individual lawsuits to seek damages and the Miami-Dade jury's 1999 findings about the health risks of cigarettes already would be legally established when the plaintiffs walked into the courtroom.

"We start the [new] case[s] with the advantage of not having to prove that cigarettes are defective," said West Palm Beach attorney David Sales, who is representing 630 plaintiffs in cases filed throughout the state.

William Ohlemeyer, Philip Morris USA vice president and associate general counsel, said the company is prepared to defend all of the cases splintering off from the decision in the class-

action case.

"Most juries believe that no matter what you think about cigarette companies or what you have heard about cigarettes, people who smoke are making informed choices to smoke," he said.

When the Florida Supreme Court ruling first came down, plaintiff attorneys said it would open up the floodgates for tobacco litigation. There had been estimates that anywhere between 300,000 and 700,000 smokers or their estates could be covered under the class-action case known as *Engle vs. Liggett*.

Predictions of how many smokers will have filed suit by Friday vary wildly. South Florida plaintiff attorneys say they think 5,000 to 10,000 smokers or their estates will have filed cases. But an attorney for Philip Morris USA said he was aware of only 1,600 plaintiffs as of early this week.

In Broward County, about 122 such cases were pending as of early this week — some potentially with multiple plaintiffs — with Circuit Judge Jeffrey Streitfeld assigned to preside over all of them. At least 165 smokers or estates had filed lawsuits in Palm Beach County. There were at least 145 cases in Miami-Dade County.

"We are in the last week, and anything is possible, but at the rate that people have been filing their cases, I don't think we are going to approach anything near 5,000," said Kenneth Reilly, a Miami attorney who represents both Philip Morris and Lorillard.

The new cases have been 14 years in the making. Husband-and-wife legal team Stanley and Susan Rosenblatt filed the class-action suit in May 1994. The jury trial lasted two years with 157 witnesses, culminating in the eye-popping July 2000 award to plaintiffs that the cigarette makers said would bankrupt them. It took another six years for the case to wind its way through Florida's appellate court system, and last year the U.S. Supreme Court declined to review the Florida Supreme Court's decision.

To go forward with the latest cases, plaintiff attorneys will have to prove their clients would have qualified as members of the original class-action case. That means the clients need to be smokers who suffer from one of the illnesses that the Miami-Dade jury found were caused by cigarette smoking. In addition, plaintiffs would need to have suffered some injuries or symptoms of the diseases between 1990 to 1996, according to plaintiff attorneys.

Fort Lauderdale attorney Robert Kelley, who represents 87 plaintiffs including Caprio, said that he thinks the tobacco industry will try to delay cases as long as possible. The more delays, the less likely plaintiffs like Caprio will live to see their day in court, Kelley said.

Caprio said the goal of his lawsuit isn't money.

"I would like to see the industry put out of business and no one smoke," he said.

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