Fla. ruling Big Tobacco won comes back to bite it

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(AP) -- A Florida Supreme Court ruling that threw out a $145 billion award against cigarette makers is biting Big Tobacco back, making it dramatically easier for thousands of smokers to sue and turning the state into the nation's hot spot for damage awards.

The 2006 ruling has helped generate more than $360 million in damage awards in only about two dozen cases. Thousands more cases are in the pipeline in Florida, which has far more smoking-related lawsuits pending than any other state.

Though the justices tossed the $145 billion class-action damage award, they allowed about 8,000 individual members of that class to pursue their own lawsuits. And in a critical decision, they allowed those plaintiffs to use the original jury's findings from the class-action case.

That means the plaintiffs don't have to prove that cigarette makers sold a defective and dangerous product, were negligent, hid the risks of smoking and that cigarettes cause illnesses such as lung cancer and heart disease. The plaintiffs must mainly show they were addicted to smoking and could not quit, and that their illness - or a smoker's death - was caused by cigarettes.

Jurors have sided with smokers or their families in about two-thirds of the 34 cases tried since February 2009, when the first Florida lawsuit following the rules set by the Supreme Court decision went before a jury. Awards have ranged from $2 million or less to $80 million, though tobacco companies are appealing them all.

The successes by smokers or their survivors in Florida compares with just six wins between 1996 to 2006 in Florida. Before 1996, individual smokers won only a handful of cases nationwide.

Tobacco company lawyers insist the process is rigged.

"We believe the trial courts have used trial plans that are so fundamentally unfair they violate due process and Florida law," said Murray Guralnick of Altria Client Services, which represents Altria Group Inc. subsidiary Philip Morris USA. "Each case must be judged on its own facts."

The tobacco companies, however, have lost their first appeal over how Florida courts are handling the cases. The state's 1st District Court of Appeal ruled against R.J. Reynolds Tobacco Co. in December, upholding a $28.3 million verdict for a dead smoker's wife and endorsing the way trial judges have interpreted the state Supreme Court's decision.

Jay Hammer, an attorney whose Fort Lauderdale firm is handling dozens of smoker lawsuits, said the Florida cases have changed the balance of power in the courtroom because tobacco companies are prevented from arguing that their products aren't necessarily dangerous and addictive.

"As a result, the whole story is being told: how they lied to the public, all for the almighty dollar," he said.

One of Hammer's clients, 93-year-old Leon Barbanell, won a nearly $2 million verdict against Philip Morris USA for the 1996 death of his wife of 56 years from lung cancer. Shirley Barbanell smoked up to two packs of Chesterfields, Marlboros and other cigarettes a day for 50 years and could not quit despite many efforts, her husband said. He's worried that, because of appeals, he may die before he ever sees a cent.

"I miss her company every day," Barbanell said. "She was always there for me. We went everywhere together."

A jury in northern Florida's Levy County granted the largest award issued under the Supreme Court ruling, $80 million, to the daughter of a man who died of lung cancer in 1996 after smoking for decades. Others awarded $46.3 million for a widow in the Gainesville area who lost her husband to lung cancer; and almost $39 million for a Fort Lauderdale woman suffering from advanced emphysema after smoking Philip Morris' Benson & Hedges brand for years.

The tobacco companies point out that during one stretch in 2010 they prevailed in eight of nine cases, although the trend later was reversed. Attorneys said cigarette makers often win when it is difficult to prove that cigarettes caused a particular illness, or when jurors decide that people who smoke must take responsibility and assume the consequences.

"There are some jurors who are really opposed to the idea of someone who smoked bringing a case against the cigarette manufacturer," said Keith Mitnick, an Orlando attorney who won a multimillion-dollar verdict against R.J. Reynolds in April. "In jury selection, we target that very question. It doesn't take but one strong-willed juror to make the difference in the outcome."

Tobacco companies' recent setbacks are not limited to Florida:

- In Boston, a jury in December awarded $152 million to the estate and son of a woman who died of lung cancer in 2002. The lawsuit claimed that Lorillard Tobacco Co. hooked the woman on smoking after giving away free samples of cigarettes in the Boston housing project where she lived as a child.

- In Connecticut, U.S. Smokeless Tobacco Co., maker of Skoal and Copenhagen, agreed in December to pay $5 million to the family of a man who died of mouth cancer in what was believed to be the first wrongful-death settlement won from a chewing tobacco company.

- Also in December, Minnesota's appeals court allowed a class-action case to continue for people who claim Marlboro Light cigarettes, made by Philip Morris, were marketed as supposedly safer to smoke using false advertising and consumer fraud.

If the losing trend and multimillion-dollar verdicts continue, some legal experts said the tobacco companies may rethink their long-standing policy against settling the smoker lawsuits.

"When we get to the point that plaintiff verdicts are upheld, with the industry looking at thousands of additional trials and expenses, they would weigh all of that together and possibly settle later down the road," said Edward Sweda, senior attorney for the Tobacco Products Liability Project at Northeastern University law school in Boston.

Lawsuits will likely end up before the U.S. Supreme Court before that has a chance of happening.

"We have a strong legal and factual basis to fight each of these cases. We will fight every adverse decision against us," said Guralnick, the Philip Morris attorney.

The tobacco companies have a long history of doing just that, but they have settled in the past. The biggest came in 1998, when four cigarette makers and 46 states settled for $206 billion a series of lawsuits claiming that smoking drove up public health costs.

The industry continues to fight a 2006 ruling by a federal judge in Washington, D.C., who found the six largest tobacco companies guilty of racketeering and fraud for deceiving the public about the dangers of smoking.

The ruling, upheld by an appeals court in May 2009, requires that cigarette manufacturers change the way they market cigarettes. The requirements, which have been on hold during appeals, would ban labels such as "low tar," "light," "ultra light" or "mild," since such cigarettes have been found no safer than others.

The case is being appealed to the U.S. Supreme Court.