



Evans v. Lorillard: A Bittersweet Victory Against the Tobacco Industry

Marie Evans was born in 1947 in Boston’s Orchard Park Housing Project.¹ A school picture shows Marie at age ten, with long, wavy black hair and wearing a polka-dotted dress, beaming into the camera.² At the time this picture was taken, she had been receiving free cigarettes from Lorillard Tobacco Company agents for about a year.³ By the time she turned thirteen, Lorillard’s carefully targeted giveaways succeeded in hooking young Marie on Newport cigarettes.⁴ At the age of 54, after a swift and brutal illness, she died from lung cancer caused by a lifetime of smoking.⁵

Marie Evans’s remarkable story illustrates how Big Tobacco’s methodical, predatory targeting of children led to one woman’s painful premature death, and it ends with an improbable court victory, *Evans v. Lorillard*, in which the tobacco industry was finally held accountable for these tactics.

Lorillard’s Playground Cigarette Giveaways

Lorillard Tobacco Company has known since at least 1950 that cigarettes are addictive and cause cancer.⁶ Regardless, in 1957, Lorillard implemented a sweeping strategy to market Newport menthol cigarettes to children, particularly targeting low-income black children like Marie.⁷ Lorillard chose menthol cigarettes for these giveaways because menthol cigarettes are especially good at getting children hooked: menthol anesthetizes the throat, shutting off the natural negative reactions to cigarette smoke, like the gag reflex, that otherwise repels many children.⁸ As part of this strategy to turn vulnerable youth into lifelong smokers, Lorillard held frequent Newport cigarette giveaway events near Marie’s home in the Boston housing projects, often setting up shop in a playground near Marie’s school. Starting when she was nine years old,⁹ Marie would go to the playground and simply “stand out there and get free cigarettes.”¹⁰

At first, Evans traded the free cigarettes for candy. But soon, attracted by their constant availability and their “pretty” packaging, she began smoking them herself.¹¹ By the age of thirteen, she was hooked.¹²

Marie’s Struggle with Addiction

As an adult, Marie was so addicted to Newport cigarettes that she needed to smoke each morning within five minutes of waking up.¹³ Marie had heard of a 1964 Surgeon General report warning that cigarettes could cause lung cancer, but she had also heard reports to the contrary— likely the misleading reports disseminated by the tobacco industry to keep smokers like Marie from

quitting¹⁴—and she was unsure what to believe.¹⁵ She remained unsure even after her father, a lifelong smoker, died from lung cancer.¹⁶ When she suffered a heart attack at the age of thirty-eight, she finally became convinced that smoking was bad for her health.

During the remainder of her life, Marie tried to quit smoking more than fifty times. She never succeeded. She testified at her deposition that “[b]y then it was too late; I was addicted to it. I went to several places, spent thousands of dollars trying to find a cure, tried to help myself, psychiatrists, hypnosis, I went to patches, went to—like I said, everything.”¹⁷ At the age of fifty-four, after sixteen years of failed attempts to shake her addiction, Marie received the same diagnosis as her father—terminal lung cancer.¹⁸

Marie’s Son Fights to Hold Lorillard Accountable

Up to this point, Marie’s story is sadly typical, as her path to addiction was all part of Lorillard’s business plan. However, what distinguishes Marie from the countless other victims of Big Tobacco’s calculated efforts to hook children on cigarettes is Marie’s son, Will Evans. Will, a Harvard Law School graduate, was enraged when his mother recounted stories about the Lorillard cigarette giveaways of her youth, and he resolved to hold Lorillard accountable in court for its actions.¹⁹

Will filed a complaint in state court soon after his mother’s diagnosis, alleging that Lorillard’s marketing strategy was negligent, its addictive cigarettes were dangerous and defective products, and Lorillard should therefore be held responsible for his mother’s illness.²⁰ Will, fearing that he only had a “short time left” with his mother, left his job to stay by his mother’s side during the early stages of the litigation, during which tobacco industry lawyers bombarded her with questions at her home and at her hospital bed.²¹ Will’s worst fears were realized when, a mere seven months after her diagnosis, Marie Evans died.

Will carried on his mother’s fight long after his mother’s death. The *Evans v. Lorillard* case did not come to a verdict until 2010, eight years after Marie succumbed to lung cancer. Throughout the litigation, Lorillard denied that the cigarette giveaways ever happened,²² and asserted that the company only targeted adult smokers.²³ Will Evans, however, presented forceful evidence to the contrary. In addition to the testimony of his mother and several other people who recalled the playground giveaways, Will uncovered tobacco industry memoranda documenting that Lorillard’s “sampling” events had indeed occurred.²⁴ Will also introduced extensive evidence proving that Lorillard’s marketing efforts targeted children—so much evidence that the trial court judge called it “overwhelming.”²⁵ Among this evidence was a memo showing that as late as 1990, Lorillard continued to study its marketing impact on children in the “12–17” demographic.²⁶

Will also argued that Lorillard and other tobacco industry giants had devised a strategy to discredit the scientific research proving that nicotine is addictive and that smoking cigarettes causes lung cancer. Will showed that although Big Tobacco knew in the 1950s that this research was accurate, it stuck to its discredited story until 2000—nearly half a century after the story had been debunked—in order to keep people like his mother smoking at all costs.²⁷

An Improbable Court Victory

Historically, courts have not been sympathetic to smokers who sue tobacco companies for the harm cigarettes have done to them; at the time Will brought his lawsuit, only one plaintiff had ever prevailed in such a claim.²⁸ But at the end of a lengthy trial, the *Evans v. Lorillard* jury, in a groundbreaking ruling, found for the plaintiff on all counts.²⁹ The jury awarded the Evans estate \$50 million in compensatory damages and \$81 million in punitive damages.³⁰ The trial judge stated that “[t]here is no question but that [Lorillard] over decades pre and post 1979, targeted youths, children under age 18, as sought-after marketing targets of its cigarettes, including Newports.”³¹

Predictably, Lorillard appealed the verdict to the Massachusetts supreme court, arguing that cigarettes should not be subject to product liability claims.³² The supreme court disagreed, refusing “to place addictive chemicals outside the reach of product liability and give them special protection akin to immunity based solely on the strength of their addictive qualities.”³³ The court upheld the trial court’s compensatory damages award on the basis that Lorillard’s cigarettes were dangerous and defective.³⁴ However, the supreme court vacated the \$81 million punitive damages award due to procedural errors.³⁵ The supreme court ordered a new trial to determine whether Lorillard could be held liable for punitive damages.³⁶ Rather than risk yet another loss, Lorillard settled the case for \$79 million.³⁷

A Bittersweet Aftermath

Will Evans called his victory “bittersweet,” and emphasized that instead of a court victory, he would have rather Lorillard had never given his mother cigarettes when she was a nine-year-old girl.³⁸ Although Will’s court victory cannot fill the void left by his mother’s early death, it may signal an encouraging new trend in tobacco litigation. *Evans v. Lorillard* resulted in a favorable ruling for future plaintiffs who take the tobacco industry to court for blatantly targeting children. And the remarkable story of Marie and Will Evans should inspire others to fight to hold the tobacco industry accountable for its continued devastation of the public health.

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Notes

¹ *Evans v. Lorillard Tobacco Co.*, No. 2004-2840-B, 2011 WL 7860228, at *1, *aff’d in part, rev’d in part*, 990 N.E.2d 997 (Mass. 2013).

² *Tobacco Lawsuit Cites Long-ago Cigarette Giveaways*, PITTSBURGH COURIER (Nov. 17, 2010), <http://newpittsburghcourieronline.com/2010/11/17/tobacco-lawsuit-cites-long-ago-cigarette-giveaways>.

³ *Evans*, 2011 WL 7860228 at *1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at *3.

⁷ *Id.* at *2.

⁸ Evans v. Lorillard Tobacco Co., 465 Mass. 411, 422, 990 N.E.2d 997, 1010 (2013).

⁹ Milton J. Valencia, *Driving Suit, a Quest for Justice*, BOSTON.COM (Dec 18, 2010), http://archive.boston.com/news/local/massachusetts/articles/2010/12/18/son_views_tobacco_verdict_as_mothers_legacy.

¹⁰ *Evans*, 990 N.E.2d at 1007.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 1007–08.

¹⁴ See Robert N. Proctor, *The History of the Discovery of the Cigarette–Lung Cancer Link: Evidentiary Traditions, Corporate Denial, Global Toll*, 21 TOBACCO CONTROL 87, 89 (2012) (noting that “[c]igarette makers spent countless sums to deny and distract from the cigarette–cancer link . . .”). See also U.S. v. Philip Morris, 449 F.Supp.2d 1 (D.D.C. 2006) (finding that the tobacco industry engaged in a decades-long conspiracy to (1) mislead the public about the risks of smoking, (2) mislead the public about the danger of secondhand smoke; (3) misrepresent the addictiveness of nicotine, (4) manipulate the nicotine delivery of cigarettes, (5) deceptively market cigarettes characterized as “light” or “low tar,” while knowing that those cigarettes were at least as hazardous as full flavored cigarettes, (6) target the youth market; and (7) not produce safer cigarettes), <http://publichealthlawcenter.org/sites/default/files/resources/doj-final-opinion.pdf>.

¹⁵ *Evans*, 990 N.E.2d, at 1007.

¹⁶ *Id.* at 1008.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Valencia, *supra* note 9.

²⁰ Evans v. Lorillard Tobacco Co., No. 2004-2840-B, 2011 WL 7860228, at *1, *aff'd in part, rev'd in part*, 990 N.E.2d 997 (Mass. 2013).

²¹ Valencia, *supra* note 9.

²² *Id.*

²³ *Evans*, 2011 WL 7860228 at *1.

²⁴ *Id.* at *2.

²⁵ *Id.* at *1.

²⁶ *Id.* at *3.

²⁷ Evans v. Lorillard Tobacco Co., 990 N.E.2d 997, 1026 (Mass. 2013).

²⁸ *Smoker Wins First Individual Product Liability Lawsuit Against Tobacco Company*, SILVER GOLUB & TEITELL LLP, <http://www.sgtlaw.com/case/izzarelli-v-r-j-reynolds-tobacco-co> (last visited July 8, 2016). Although this case reached a jury verdict in 2000, appellate litigation in this case continues to this very day. See *Izzarelli v. R.J. Reynolds Tobacco Co.*, 321 Conn. 172 (2016). For examples of unsuccessful actions by smokers against the tobacco industry, see *Insolia v. Philip Morris Inc.*, 128 F. Supp. 2d 1220 (W.D. Wis. 2000); *Clay v. Am. Tobacco Co.*, 188 F.R.D. 483 (S.D. Ill. 1999); *Jackson v. Philip Morris Inc.*, 46 F. Supp. 2d 1217 (D. Utah 1998); *In re Tobacco Cases II*, 2002 WL 31628649 (Cal. Super. Ct. Nov. 22, 2002). Note that in *Cippolone v. Liggett Group*, a plaintiff whose wife contracted lung cancer from cigarette smoking sued the tobacco industry for negligence and product liability, and eventually won

a jury verdict of \$400,000; however, many of the plaintiff's initial claims were eliminated in pretrial motions, and an appeals court overturned the judgment. 505 U.S. 504 (1992).

²⁹ *Evans*, 2011 WL 7860228 at *1.

³⁰ Valencia, *supra* note 9.

³¹ *Evans*, 2011 WL 7860228 at *3.

³² *Evans*, 990 N.E.2d at 1006. See Elizabeth Laposta et al., *Tobacco Industry Influence on the American Law Institute's Restatements of Torts and Implications for Its Conflict of Interest Policies*, 98 IOWA L. REVIEW 1 (2012) (describing the tobacco industry's behind-the-scenes role in the crafting of the Second and Third Restatements of Torts, which exempt the tobacco industry from strict liability), https://ilr.law.uiowa.edu/sites/ilr.law.uiowa.edu/files/ILR_98-1_Glantz.pdf.

³³ *Evans*, 990 N.E.2d at 1019.

³⁴ *Id.*

³⁵ Punitive damages were not available under the plaintiff's product liability claim, but were available under the plaintiff's negligence claims. *Id.* at 1027. The supreme court held that the jury instructions on the subject of negligence were too vague, and so vacated the jury's negligence findings. *Id.* at 1025. Without a finding of negligence, the court could not impose punitive damages. *Id.* at 1027.

³⁶ *Id.* at 1041–42.

³⁷ Lorillard's payment of \$79 million for compensatory damages and statutory interest resulted in the dismissal of the case, including the potential for punitive or other damages. Andrew Scurria, *Lorillard Pays \$79M to Settle Mass. Smoker Case*, LAW360 (Oct. 23, 2013), <http://www.law360.com/articles/482660/lorillard-pays-79m-to-settle-mass-smoker-case>.

³⁸ Sally Garner, *Jury Awards Family \$152 Million in Damages Over Smoking Wrongful Death*, CNN (Dec. 17, 2010), <http://www.cnn.com/2010/CRIME/12/16/massachusetts.tobacco.verdict>.