

### FEATURED VERDICT

#### Wrongful Death

Fall from golf cart rendered plaintiff brain dead

#### Defense Verdict

*Edgar v. Ocean Reef Club Inc.*

Broward Co. Cir. Ct.

**Plaintiff Counsel** Steven P. Befera, Befera Law Firm, Miami; Ronald M. Simon, Simon & Bocksch, Miami

**Defense Counsel** Steve R. Adamsky and Noah S. Bender, Mitrani, Rynor & Adamsky, PA, Weston

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## BROWARD COUNTY

## FEATURED VERDICT

## WRONGFUL DEATH

Motor Vehicle — Passenger — Vicarious Liability

## Fall from golf cart renders plaintiff brain dead

## VERDICT Defense

**CASE** Maria Magdalena Edgar, as Personal Representative of the Estate of William Clayton Edgar, II, for the Use and Benefit of the Estate of William Clayton Edgar, II, Maria Magdalena Edgar and Colleen E. Edgar v. Ocean Reef Club, Inc. and Fred W. Woodward, III, No. 08-53528 (03)

**COURT JUDGE** Broward County Circuit Court, 17th, FL

**DATE** Mily Rodriguez-Powell  
3/3/2011

## PLAINTIFF

**ATTORNEY(S)** Steven P. Befera, Befera Law Firm, Miami, FL  
Ronald M. Simon, Simon & Bocksch, Miami, FL

## DEFENSE

**ATTORNEY(S)** Steven R. Adamsky, Mitrani, Rynor, Adamsky & Toland, P.A., Weston, FL  
Noah S. Bender, Mitrani, Rynor & Adamsky, PA, Weston, FL

**FACTS & ALLEGATIONS** On July 11, 2008, plaintiffs' decedent William Edgar II, 55, an electrical contractor, was attending a weekend event at Ocean Reef Club in Key Largo with his wife, Maria Edgar, and a co-worker, Fred Woodward.

That evening, Woodward was operating a golf cart he had rented from Ocean Reef Club when William Edgar, hopped on the back of it. As Woodward pulled into a parking spot, Edgar fell off the cart and hit his head on the ground. He eventually got up, with the only visible sign of injury being a scrape on the back of his head. He told Woodward and the other people on the golf cart that he was fine, and declined to get medical attention.

Edgar spent the rest of the evening and early morning of July 12 with his friends and colleagues, before returning to his room, where his wife had retired early. Sometime during the early morning hours of July 12, Edgar started vomiting and became unresponsive. He was taken to the hospital and eventually was found to be brain dead.

Edgar's wife, acting individually and as the representative of her husband's estate, filed a wrongful death action against Woodward and Ocean Reef Club. She alleged that Woodward

negligently operated the golf cart. She also alleged that, since a golf cart is deemed a dangerous instrumentality under Florida law, Ocean Reef Club, as the owner of the golf cart, was vicariously liable for Woodward's negligence.

Plaintiffs' counsel argued that Woodward knew that Edgar had stepped onto the back of the golf cart before driving off. They also argued that despite knowing his friend was on the cart, and knowing that he had too many people on the vehicle, Woodward drove down the wrong way of a one-way lane in the parking lot. Counsel contended that these actions were not only in violation of the manufacturer warnings, but were also in violation of Ocean Reef Club's written regulations, which were clearly set out in the rental agreement that Woodward signed when he rented the golf cart. Plaintiffs' counsel further asserted that as Woodward pulled into the parking spot, the defendant suddenly made a sharp turn. They argued that the momentum from Woodward's unexpected and extreme turn threw Edgar from the golf cart.

Defense counsel argued that Edgar fell from the golf cart due to a medical event, in keeping with his well-documented medical history of open heart surgeries, fainting spells and seizures. This conclusion was supported by another occupant of the golf cart who witnessed Edgar's fall and described him as "going limp" as he fell, failing to protect himself as he fell to the ground, lying on the ground glassy-eyed, and then recovering 20 seconds later as if nothing was wrong. Edgar's own treating neurologist and cardiologist testified that these symptoms were indicative of Edgar experiencing a fainting spell or seizure similar to previous such episodes. Defense counsel noted that, at the time of the accident, Edgar was taking numerous medications, including Coumadin and Plavix, as well as taking aspirin. As a result, he was under strict doctor's orders and would or should have known that a serious injury like the head trauma he sustained required getting immediate medical attention, as he would be unable to stop any bleeding, argued defense counsel.

**INJURIES/DAMAGES** *brain damage; coma; death; hematoma; loss of consortium; loss of parental guidance*

Edgar struck his head after falling from a golf cart. In the early morning hours of July 12, 2008, he started vomiting and became unresponsive. Eventually, he was airlifted to Jackson Memorial Hospital, arriving with a Glasgow Coma Score of 6. A CT scan of Edgar's brain showed bilateral hematomas in the right frontal and left parietal areas, which were destroying the motor cortex and crushing the brain stem. He was unresponsive, and was ultimately found to be brain dead.

Edgar died 12 hours after his fall. He was 55. He left behind a wife and a daughter from a previous marriage, who was in her 20s.

Edgar's wife, Maria, sought recovery of damages for her husband's wrongful death. Colleen Edgar, Edgar's daughter from his first marriage, as a statutory survivor under the wrongful death act and sought recovery of damages for her father's wrongful death.

Plaintiffs' counsel asked the jury to award \$3.8 million, which included \$1.2 million in economic damages.

Defense counsel presented testimony from the chief of neurology at Jackson Memorial Hospital, who testified that it was "crazy" for William Edgar not to have seen a doctor right away. Defense counsel argued that Edgar's wife failed to get immediate medical attention for her husband, despite knowing full well the risks associated with taking Coumadin, Plavix, and aspirin. They contended that, as her husband became unresponsive, Edgar's wife declined at least two offers to call an ambulance for her husband by resort employees.

Defense counsel also presented expert testimony about Edgar's life expectancy. The expert opined that, based on his numerous open heart surgeries and well-documented health problems, Edgar's life expectancy was only 10 years.

**RESULT** The jury returned a defense verdict.

**TRIAL DETAILS** Trial Length: 8 days  
Trial Deliberations: 1.5 hours

**PLAINTIFF EXPERT(S)** Fred Raffa, Ph.D., economics, Orlando, FL

**DEFENSE EXPERT(S)** Robert Myerburg, M.D., cardiology, Miami, FL

**EDITOR'S NOTE** This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

-Stephen DiPerte

**CLAY COUNTY**

**PRODUCTS LIABILITY**

Tobacco — Failure to Warn

**Plaintiff was aware of smoking's risks, cigarette makers argued**

**VERDICT** Defense

**CASE** Allen Oliva v. Philip Morris USA and R.J. Reynolds Tobacco, No. 2008-CA-001299

**COURT** Clay County Circuit Court, 4th, FL

**JUDGE** Aaron Bowden

**DATE** 3/28/2011

**PLAINTIFF ATTORNEY(S)** Judith Weinstein (co-lead), Grover & Weinstein, P.A., Miami Beach, FL  
Marvin Weinstein (co-lead), Grover & Weinstein, P.A., Miami Beach, FL  
Adam Trop, Trop & Ameen, P.A., Hollywood, FL

**DEFENSE**

**ATTORNEY(S)** Mark A. Belasic, Jones Day, Cleveland, OH (R.J. Reynolds Tobacco)  
William P. Geraghty, Shook, Hardy & Bacon L.L.P., Miami, FL (Philip Morris USA)

**FACTS & ALLEGATIONS** Plaintiff Allen Oliva, 63, is suffering from end-stage emphysema. He started smoking cigarettes when he was 15.

Oliva sued R.J. Reynolds Tobacco and Phillip Morris USA, the companies that made the cigarettes he smoked.

This case stems from Engle v. R.J. Reynolds, a class action lawsuit filed in 1994. In 2000, a Florida jury found that cigarettes cause lung cancer and other illnesses, and ordered a \$145 billion punitive award to sick smokers. In 2006, the Florida Supreme Court decertified the class, but allowed individual cases to proceed.

Plaintiff's counsel argued that the public was not adequately informed of the risks of smoking. Counsel contended that for decades the tobacco companies concealed the dangers of smoking while at the same time making cigarettes more addictive.

Defense counsel contended that Oliva was not addicted to cigarettes. Oliva decided to quit smoking in 1997 and, according to defense counsel, once Oliva made up his mind to give up smoking, he did so. Counsel noted that by Oliva's own admission he "absolutely enjoyed" smoking and had no interest in quitting for almost 30 years. Oliva further testified that once he made a serious choice to quit smoking he was able to do so.

Oliva enjoyed taking a variety of risks in his life that could have caused him harm, noted defense counsel. For example, Oliva surfed the Bonzai Pipeline in Hawaii when growing up and living there. By Oliva's own admission this is the deadliest surfing site in the world. Defense counsel further pointed to Oliva's long history of illegal, late-night drag racing with speeds of up to 140 mph on highways.

Defense counsel also contended that the dangers of smoking were known and had the attention of the public, but that Oliva continued to enjoy smoking anyway.

**INJURIES/DAMAGES** chronic obstructive pulmonary disease; emphysema

Oliva is suffering from end-stage emphysema and chronic obstructive pulmonary disease. He has a poor prognosis.

The defense stipulated that smoking causes COPD.

**RESULT** The jury returned a defense verdict, finding Oliva was addicted to nicotine but that his addiction was not the cause of his COPD.

**TRIAL DETAILS** Trial Length: 11 days

**PLAINTIFF EXPERT(S)** David Burns, M.D., public health, San Diego, CA  
Robert N. Proctor, Ph.D., historian, Palo Alto, CA