

Draft  
Employee Desk Drop/Worldwide/All Operating Companies  
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The verdict in Carter v. American Tobacco, while disappointing, is not without precedent. We should all remember that the jury returned a verdict against Liggett for \$400,000 in the 1988 Cipollone trial but the verdict was later reversed on appeal. In the 1960s, juries found against the industry on two occasions in the trial and retrial of another case, but both judgments also were overturned on appeal.

The verdict against American Tobacco is an aberration. It defies common sense and runs contrary to all ~~but one~~ verdicts in prior smoking and health cases. Jury after jury has agreed that people who are aware of the alleged risks of smoking and choose to smoke are responsible for their decisions.

The Carter verdict sets no legal precedent. It should not have any legal effect on future cases. Each case must be tried on its own facts and is based on the circumstances of each individual smoker. The verdict follows on the heels of many recent positive developments in tobacco litigation including the decertification of the Castano class, the dismissal of several individual smoking and health cases in Florida, and the decision by the Legal Aid Board in London not to fund a class action case against the industry in Great Britain.

American Tobacco is expected to appeal this decision given the number of ruling errors that occurred during the trial. These rulings resulted in, among other things, testimony that amounted to speculation rather than fact, the use of prejudicial evidence that had nothing to do with American's product, and the imposition on American of a duty to warn under Florida law that is preempted by federal statute. The case should not have even gone to the jury because the case was filed after the statute of limitations had run its course.

We look forward to a thorough appellate review.

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