

**Fabiano v Philip Morris Inc.**

2006 NY Slip Op 30799(U)

March 22, 2006

Supreme Court, New York County

Docket Number: 102715/04

Judge: Charles E. Ramos

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK:COMMERCIAL DIVISION

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LORILYNN FABIANO, as Executor of the Estate  
of MAUREEN FABIANO, and COSMO FABIANO,  
Individually),

Plaintiffs,

Index No. 102715/04

- against -

PHILIP MORRIS INCORPORATED, PHILIP  
MORRIS COMPANIES, INC., PHILIP  
MORRIS USA, THE AMERICAN TOBACCO  
COMPANY, BROWN & WILLIAMSON,  
INDUSTRIES, INC., BROWN & WILLIAMSON  
TOBACCO CORPORATION, Individually,  
and as Successor by Merger of FORTUNE  
BRANDS, INC., R.J. REYNOLDS TOBACCO  
COMPANY, LIGGETT GROUP, INC., n/k/a,  
BROOKE GROUP, LTD., LIGGETT & MYERS  
TOBACCO COMPANY, LORILLARD TOBACCO  
COMPANY, LORILLARD INC., THE TOBACCO  
INSTITUTE, INC., and THE COUNCIL FOR  
TOBACCO RESEARCH-USA, INC.,

Defendants.

-----X

Charles Edward Ramos, J.S.C.:

Defendants R.J. Reynolds Tobacco Company, Philip Morris  
Incorporated, Brown & Williamson Tobacco Holdings, Inc., and  
Lorillard Tobacco Company (collectively, "defendants"), move to  
compel (1) decedent Maureen Fabiano's ("decedent"), insurance  
records; and (2) decedent's educational records, and to provide  
executed authorizations for the release of the records pursuant  
to CPLR 3124. Plaintiffs object to both demands.

Defendants additionally sought to compel production of  
documents: decedent's federal and state income tax returns,  
Social Security records and employment records. Plaintiffs have  
since attempted to comply with this discovery demand (See Exhibit  
A annexed to Plaintiffs' Aff. in Opp.), but failed to submit the

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MAR 27 2006  
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appropriate authorizations.

This is a products liability action brought by plaintiffs alleging various causes of action arising out of injuries allegedly sustained as a result of smoking cigarettes manufactured by defendants.

Defendants seek to obtain decedent's educational records and life insurance records, maintaining that they are relevant to plaintiffs' lost income claim and to decedent's alleged awareness of the health risks of smoking.

Defendants maintain that decedent's educational records are relevant as New York high schools allegedly instructed students in health and physical education classes about the health risks of smoking, and thus may lead to admissible evidence. Academic and school records are discoverable "upon demonstration that they are relevant and material to the action" (*Davis v Elandem Realty Co., Inc.*, 226 AD2d 419 [2<sup>nd</sup> Dept 1996]). The court grants that part of the motion seeking to compel disclosure of the decedent's education records, as plaintiffs seek recovery for defendants' alleged misrepresentations concerning the health risks of smoking and such records may demonstrate what decedent knew about the health risks associated with smoking.

Defendants seek production of decedent's life insurance records on the same ground as education records. Defendants argue that decedent's life insurance policy may reveal whether she was required to undergo a physical and whether decedent revealed that she was a smoker, leading to the charging of higher

insurance premiums due to the health risks of smoking. Moreover, such records could reveal any other illnesses which may have contributed to decedent's cancer. The court agrees with the defendants that such disclosure could lead to admissible evidence, where plaintiffs have put at issue what the decedent understood to be the health risks associated with smoking. Further, as defendants are not able to depose decedent to question her regarding what she knew about the health risks of smoking as she is deceased, they are entitled to glean such facts from various sources, including the decedent's health insurance records.

New York courts favor full disclosure as long as the documents demanded are relevant, material and necessary (*NYS Elec. and Gas Corp. v Lexington*, 160 AD2d 261 [1<sup>st</sup> Dept 1990]). As the information sought is not privileged and defendants having demonstrated the relevance of these records, the motion to compel is granted.

Accordingly, it is

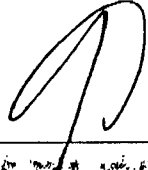
ORDERED that the motion to compel discovery is granted in full; and it is further

ORDERED that plaintiffs provide defendants with the complete authorizations to obtain records for:

- (1) the Internal Revenue Service;
- (2) Social Security;
- (3) the New Jersey Division of Taxation;
- (4) employment records from Saugerties;

- (5) decedent's education records;
- (6) decedent's health insurance records; and
- (7) corrected authorizations to obtain release of:
  - (A) decedent's employment records from Pine Street;  
and
  - (B) health insurance records from MVP Health Care that  
are HIPAA compliant.

Dated: March 22, 2006



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CHARLES E. RANDO  
JBA

Counsel are hereby directed to obtain an accurate copy of this Court's opinion from the record room and not to rely on decisions obtained from the internet which have been altered in the scanning process.

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