

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR VOLUSIA COUNTY, FLORIDA  
CIVIL DIVISION**

**MARGARET BROWN, as  
Personal Representative for the  
Estate of ARTHUR BROWN,**

CASE NO.:  
DIVISION:

Plaintiff,

v.

**R.J. REYNOLDS TOBACCO COMPANY,**

Defendant. /

**COMPLAINT FOR DAMAGES AND DEMAND FOR TRIAL BY JURY**

Plaintiff, **MARGARET BROWN**, as Personal Representative for the Estate of **ARTHUR BROWN**, sues Defendant R.J. REYNOLDS TOBACCO COMPANY, and alleges as follows:

**INTRODUCTION AND GENERAL ALLEGATIONS**

1. This is a complaint against Defendant seeking compensatory and punitive damages in accordance with the Florida Supreme Court's class action decision and mandate in *Engle v. Liggett Group, Inc.*, 945 So.2d 1246 (Fla. 2006). In approving the *Engle* Phase I class certification and trial, but ordering prospective class decertification, the Florida Supreme Court provided those who qualify for class member status this opportunity to complete unresolved individual damages claims. The Court held: "it was proper to allow the jury to make findings in Phase I on Questions 1 (general causation), 2 (addiction of cigarettes), 3 (strict liability), 4(a) (fraud by concealment), 5(a) (civil-conspiracy-concealment), 6 (breach of implied warranty), 7 (breach of express warranty), and 8 (negligence). Therefore, these findings in favor of the *Engle* class can stand." The Court further held that specified liability and general causation findings by

the *Engle* jury did not need to be proved again as they shall be given *res judicata* effect. Consequently, Plaintiff brings this action upon the limited remaining issues in dispute: specific causation, compensatory damages, comparative fault, apportionment of damages, and punitive damages.

2. In *Engle*, the Florida Supreme Court approved certification for liability purposes of a class including all Florida citizens and residents, and their survivors, who have suffered, presently suffer, or who have died from diseases and medical conditions caused by their addiction to cigarettes that contain nicotine.

3. At all times relevant to this action, Plaintiff **MARGARET BROWN'S** Decedent, **ARTHUR BROWN**, was a Florida citizen and resident who died from one or more of the diseases and/or medical conditions listed in the *Engle* opinion that was caused by his addiction to cigarettes that contained nicotine. Alternatively, Decedent suffered from one or more of the diseases and/or medical conditions listed in the *Engle* opinion that was caused by his addiction to cigarettes that contained nicotine, but died of causes unrelated to smoking cigarettes. Therefore, Decedent and his survivors have *Engle* class member status.

4. The Florida Supreme Court expressly reserved to class members the right to bring individual actions against Defendants for smoking-related injuries and damages, including punitive damages.

5. This action is timely because the original complaint was brought within one (1) year of the Florida Supreme Court's mandate in *Engle*, and this amended complaint relates back to the filing of the original complaint.

6. Plaintiff is seeking damages in excess of this Court's jurisdictional minimum.

7. Venue is proper in the county in which this lawsuit is being filed because the cause of action accrued in said county and/or one or more Defendants is a foreign corporation that has an agent or other representative in said county.

8. Decedent **ARTHUR BROWN** was at all times relevant to this action a citizen and resident of Florida

9. Decedent **ARTHUR BROWN** died on December 30, 2003.

10. At the time of his death, Decedent was married to **MARGARET BROWN**.

11. Plaintiff **MARGARET BROWN** is the duly appointed Personal Representative of the Estate of **ARTHUR BROWN**. A copy of the Letters of Administration have already been filed with this Court.

12. This action is brought on behalf of Decedent's survivors and Estate. The potential beneficiaries of a recovery by Plaintiff in this action and the relationship to Decedent **ARTHUR BROWN** are as follows:

<u>Potential Beneficiary</u>	<u>Relationship</u>
MARGARET BROWN	Wife and Personal Representative
BRANDON BROWN	SON (DOB: 6/8/1985)

13. Defendant **R.J. REYNOLDS TOBACCO COMPANY** ("RJR"), individually, and as successor by merger to **LORILLARD TOBACCO COMPANY** ("LTC"), individually, and as successor by merger to **BROWN & WILLIAMSON TOBACCO CORPORATION**, individually, and as successor by merger to **THE AMERICAN TOBACCO COMPANY**, is a North Carolina corporation that conducts business in the State of Florida, including the county in which this lawsuit is being filed, and did so during all times relevant to this action.

14. The Council for Tobacco Research U.S.A., Inc. (“CTR”) and the Tobacco Institute, Inc. (“TI”), at all times relevant to this action, were involved in promotion, lobbying, medical research, legislative, and political activities or related ventures throughout Florida and the United States both in connection with and on behalf of Defendants.

15. Plaintiff asserts the jury findings from the Phase I *Engle* trial which were given *res judicata* effect by the Florida Supreme Court, including but not limited to the following:

- a. Smoking cigarettes causes aortic aneurysm, bladder cancer, cerebral vascular disease, cervical cancer, chronic obstructive pulmonary disease, coronary heart disease (including cardiovascular disease, hardening of the arteries, atherosclerosis, coronary artery disease and arteriosclerosis, angina, abnormal blood clotting, blood vessel damage, myocardial infarction (heart attack)), esophageal cancer, kidney cancer, laryngeal cancer, lung cancer (specifically, adenocarcinoma, large cell carcinoma, small cell carcinoma, and squamous cell carcinoma), complications of pregnancy, oral cavity/tongue cancer, pancreatic cancer, peripheral vascular disease, pharyngeal cancer, and stomach cancer.
- b. Nicotine in cigarettes is addictive.
- c. All Defendants placed cigarettes on the market that were defective and unreasonably dangerous.
- d. All Defendants concealed or omitted material information not otherwise known or available, knowing that the material was false or misleading, or failed to disclose a material fact concerning the health effects or the addictive nature of smoking cigarettes or both.

e. All Defendants agreed to conceal or omit information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and the public would rely on this information to their detriment.

f. All Defendants sold or supplied cigarettes that were defective.

g. All Defendants sold or supplied cigarettes that, at the time of sale or supply, did not conform to representations of fact made by Defendants.

h. All Defendants were negligent.

16. At all times relevant to this action, Decedent **ARTHUR BROWN** was (1) addicted to, purchased, and smoked cigarettes containing nicotine that were designed, manufactured, advertised, and marketed by one or more Defendants, including Viceroy, believed to be manufactured by **RJR**; together with any other brands that may be uncovered during the course of discovery; and (2) did so in sufficient quantities and for a sufficient time period to cause or substantially contribute to causing injury or aggravation of a preexisting condition in the form of diseases and medical conditions, including the form of diseases and medical conditions that ultimately resulted in Decedent's death.

17. Alternatively, Decedent smoked a sufficient quantity of cigarettes containing nicotine that were designed, manufactured, advertised, and marketed by one or more Defendants for a sufficient time period to cause or substantially contribute to causing injury or aggravation of a preexisting condition in the form of diseases and medical conditions, but the smoking-related diseases and medical conditions with which Decedent suffered did not cause his death.

18. Decedent was and his survivors remain a member of the *Engle* class because on or before November 21, 1996, he suffered from or was diagnosed with one or more of the diseases enumerated in the *Engle* opinion and specifically listed above.

19. As a direct and proximate result of smoking cigarettes manufactured and sold by one or more Defendants, Decedent died. Plaintiff **MARGARET BROWN**, as the Personal Representative for the Estate of **ARTHUR BROWN**, claims all damages allowed by the Florida Wrongful Death Act, including the following: as a direct and proximate result of Decedent's death, Decedent's survivors have and will suffer loss of companionship and protection, instruction and guidance, mental pain and suffering, loss of support and services, and medical and funeral expenses. Decedent's Estate has also suffered loss of earnings, net accumulations, and medical and funeral expenses.

20. Alternatively, Plaintiff **MARGARET BROWN**, as the Personal Representative for the Estate of **ARTHUR BROWN**, alleges that the smoking-related disease with which Decedent suffered did not cause his death. Plaintiff **MARGARET BROWN**, as the Personal Representative for the Estate of **ARTHUR BROWN**, therefore, in the alternative, asserts a claim for survival damages pursuant to Section 46.021, Florida Statutes, as Decedent suffered bodily injury, pain and suffering, disability and physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life, medical expenses, and lost earnings, lost time, and lost earning capacity.

21. Additionally, whether part of a wrongful death or survival claim, Decedent's cigarette-related illness(es) resulted in him sustaining aggravation of previously existing condition(s), physical pain and suffering, mental and emotional distress, and medical expenses.

22. Decedent **ARTHUR BROWN** bears some measure of fault, but less than 100% of the applicable fault, for causing his smoking-related death. Decedent's acts or omissions relating to the frequency and duration of his efforts to quit smoking were a partial proximate cause, in combination with the acts and omissions of each Defendant, of his death.

Alternatively, Decedent bears some measure of fault, but less than 100% of the applicable fault, for causing his smoking-related injuries he suffered prior to his death, which was unrelated to smoking cigarettes. Decedent's acts or omissions relating to the frequency and duration of his efforts to quit smoking were a partial proximate cause, in combination with the acts and omissions of each Defendant, of his injuries but not his death, which was unrelated to smoking cigarettes. Plaintiff **MARGARET BROWN** therefore seeks apportionment of fault and damages as to all claims not sounding in intentional tort: Count I (Strict Liability), Count II (Breach of Express Warranty), Count III (Breach of Implied Warranty), and Count VI (Negligence). Plaintiff does not seek apportionment with respect to her remaining claims.

#### **COUNT I - STRICT LIABILITY**

23. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-22.

24. With respect to smoking and health and the manufacture, marketing, and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that the cigarettes sold and placed on the market by Defendants were defective and unreasonably dangerous.

25. As a direct and proximate result of smoking Defendants' defective and unreasonably dangerous cigarettes, Decedent died.

26. Alternatively, as a direct and proximate result of smoking Defendants' defective and unreasonably dangerous cigarettes, Decedent was injured, but died of causes unrelated to smoking cigarettes.

#### **COUNT II - BREACH OF EXPRESS WARRANTY**

27. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-22.

28. With respect to smoking and health and the manufacture, marketing, and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that cigarettes sold and placed on the market by Defendants were defective and breached Defendants' express warranty.

29. As a direct and proximate result of the breach of express warranty by each Defendant, Decedent died.

30. Alternatively, as a direct and proximate result of the breach of express warranty by each Defendant, Decedent was injured, but died of causes unrelated to smoking cigarettes.

#### **COUNT III - BREACH OF IMPLIED WARRANTY**

31. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-22.

32. With respect to smoking and health and the manufacture, marketing, and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that Decedent was a foreseeable user of Defendants' products; at all times Decedent used the products in their intended manner; and the products were defective when transferred from Defendants, thereby breaching Defendants' implied warranty.

33. As a direct and proximate result of the breach of implied warranty by each Defendant, Decedent died.

34. Alternatively, as a direct and proximate result of the breach of implied warranty by each Defendant, Decedent was injured, but died of causes unrelated to smoking cigarettes.

#### **COUNT IV - CONSPIRACY TO COMMIT FRAUD BY CONCEALMENT**

35. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-21.

36. With respect to smoking and health and the manufacture, marketing, and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that Defendants, CTR, and TI, agreed to conceal or omit information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and the public would rely on this information to their detriment.

37. The concealed and omitted information set forth in the preceding paragraph was material information.

38. Defendants' actions and omissions, and those of CTR and TI, constitute a successful conspiracy to commit fraud.

39. As a direct and proximate result of the conspiracy to commit fraud by each Defendant, Decedent died.

40. Alternatively, as a direct and proximate result of the conspiracy to commit fraud by each Defendant, Decedent was injured, but died of causes unrelated to smoking cigarettes.

#### **COUNT V – FRAUD BY CONCEALMENT**

41. Plaintiff hereby realleges and incorporates the allegations contained in paragraph 1-21.

42. With respect to smoking and health and the manufacture, marketing, and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that Defendants concealed or omitted material information not otherwise known or available, knowing that the material was false or misleading, or failed to disclose a material fact concerning the health effects or addictive nature of smoking cigarettes or both.

43. Decedent relied on such information to his detriment.

44. Defendants' actions and omissions constitute fraud as a matter of law.

45. As a direct and proximate result of the fraud committed by each Defendant, Decedent died.

46. Alternatively, as a direct and proximate result of the fraud committed by each Defendant, Decedent was injured, but died of causes unrelated to smoking cigarettes.

#### **COUNT VI – NEGLIGENCE**

47. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-22.

48. With respect to smoking and health and the manufacture, marketing, and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that all Defendants were negligent.

49. As a direct and proximate result of the negligence by each Defendant, Decedent died.

50. Alternatively, as a direct and proximate result of the negligence by each Defendant, Decedent was injured, but died of causes unrelated to smoking cigarettes.

#### **COUNT VII – PUNITIVE DAMAGES**

51. Plaintiff hereby realleges and incorporates all allegations contained above except for paragraph 22.

52. The foregoing allegations evince Defendant, through its management level employees and corporate policies, engaged in fraudulent, willful, wanton, and gross misconduct that: was so gross and flagrant as to show a reckless disregard of human life or the safety of persons exposed to the effects of such conduct, including Plaintiff and Plaintiff's Decedent; showed an entire lack of care that Defendant must have been consciously indifferent to the consequences; showed an entire lack of care that Defendant must have wantonly or recklessly

disregarded the safety and welfare of the public; and showed such reckless indifference to the rights of others as to be equivalent to an intentional violation of those rights.

53. Defendant had actual knowledge of the wrongfulness of such conduct and the high probability that injury or damage to Plaintiff and Plaintiff's Decedent would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in such injury and damage and Defendant's conduct, jointly and severally, was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct, including Plaintiff and Plaintiff's Decedent.

54. As a proximate result of Defendant's conduct, Plaintiff and Plaintiff's Decedent were harmed.

WHEREFORE, for all of the above-listed Counts, Plaintiff demands (i) a trial by jury on all issues so triable, and (ii) judgment against Defendant for: (a) compensatory damages for all injuries and losses allowable under law; (b) punitive damages; (c) all recoverable costs of this action; (d) all legally recoverable interest; and (e) any other relief to which Plaintiff may be legally or equitably entitled.

Respectfully submitted this 2nd day of January, 2017.

/s/ Gregory D. Prysock, Esq.  
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