

[Products Liability Law Daily Wrap Up, TOP STORY—SUPREME COURT: Tobacco plaintiff argues attorney’s ‘reprehensibility’ arguments were necessary, \(Jun. 21, 2017\)](#)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

The widow of a deceased smoker whose \$55-million punitive damages verdict was overturned by a Florida appellate court on the ground that her counsel’s arguments that the tobacco companies engaged in "reprehensible" conduct violated their right to a fair trial has asked the U.S. Supreme Court to review the decision, asserting that the appeals court’s ruling was inconsistent with the High Court’s punitive damages jurisprudence (*Calloway v. R.J. Reynolds Tobacco Co.*, Docket No. 16-1507, filed June 14, 2017).

The decedent had smoked up to three packs of cigarettes per day for many years. He was diagnosed in 1992 with bladder cancer and died of septic shock; his doctor connected his illnesses and death to his smoking. His widow brought suit against R.J. Reynolds, Philip Morris, Lorillard Tobacco, and Liggett Group. At trial, the defendants objected to a number of statements made by the wife’s attorney; the court sustained the objections and instructed the jury to disregard the statements. After finding that the decedent was a member of the *Engle* class and awarding about \$16 million in economic and non-economic damages to his widow and daughter, the jury awarded in Phase III of the trial about \$55 million in punitive damages, of which \$17.25 million was awarded against Reynolds. On appeal, the punitive damages award was overturned and a new trial was ordered because the appellate court found that the cumulative effect of the statements by the widow’s counsel was highly prejudicial to the tobacco companies, and the curative instructions by the trial court did not undue the prejudicial effect [see *Products Liability Law Daily’s* September 27, 2016 [analysis](#)]. The Florida Supreme Court declined to hear the widow’s appeal.

Question presented. Whether the en banc Florida Court of Appeals’ ruling prohibiting Plaintiff’s attorneys from arguing that the conduct of the Defendant tobacco companies was sufficiently reprehensible to warrant an award of punitive damages violates this Court’s precedents specifically requiring that plaintiffs demonstrate reprehensibility to support an award of punitive damages.

Petition. The petition asserted that the Florida appellate court’s decision was in conflict with the U.S. Supreme Court’s jurisprudence on punitive damages, which holds that a plaintiff seeking punitive damages is obligated to establish that a defendant’s conduct is sufficiently reprehensible as to justify punitive damages in addition to compensatory damages, and that the absence of aggravating factors associated with particularly reprehensible conduct makes a punitive damages award constitutionally suspect under the Fourteenth Amendment’s Due Process Clause.

The petition argued that the en banc majority did not opine on every comment it found improper, but merely highlighted a few examples it considered egregious, including arguments during opening and closing arguments that the tobacco companies’ "conduct was reprehensible." According to the petition, the "strong" language used by the widow’s counsel precisely mirrored the standards that the U.S. Supreme Court has stated should be used as the basis for a finding of reprehensibility.

The petition argued that review was additionally justified by the fact that the Florida appellate court’s ruling would impact thousands of pending cases in tobacco litigation in that state in which the punitive damages issue might arise. Finally, the petition asserted that the ruling was in conflict with "myriad" federal and state cases applying the U.S. Supreme Court’s reprehensibility standard in tobacco cases as well as in other contexts.

The petition is Docket No. [16-1507](#).

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Companies: R. J. Reynolds Tobacco Co.

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