

[Products Liability Law Daily Wrap Up, PREEMPTION—TOBACCO PRODUCTS—11th Cir.: Eleventh Circuit agrees to rehear *Engle* preemption decision, \(Jan. 25, 2016\)](#)

Products Liability Law Daily Wrap Up

[Click to open document in a browser](#)

By Susan Lasser, J.D.

The U.S. Court of Appeals for the Eleventh Circuit has agreed to rehear *en banc* a panel decision finding that strict liability and negligence claims brought on behalf of a deceased smoker against two cigarette manufacturers were preempted by federal law. The appellate panel's ruling reversed a \$2.75 million jury verdict after it concluded that while the State of Florida can enforce duties on cigarette manufacturers to protect the health, safety, and welfare of its citizens, the state cannot enforce a duty, as it has through the jury findings in [*Engle v. Liggett Group, Inc.*](#), 945 So. 2d 1246 (Fla. 2006), that is premised on the theory that all cigarettes are inherently defective and that every cigarette sale is an inherently negligent act. The result of granting rehearing *en banc*, is that the appellate court's earlier opinion and judgment are vacated ([*Graham v. R.J. Reynolds Tobacco Co.*](#), January 21, 2016, *per curiam*).

Eleventh Circuit panel's decision. In finding preemption in its earlier ruling, the Eleventh Circuit panel said that it considered the matter under the subcategory of conflict preemption—obstacle preemption—and found that the legal duties underpinning the decedent's spouse's strict-liability and negligence claims, as based on the *Engle* findings, impermissibly stood as an obstacle to the achievement of federal objectives—*i.e.*, regulating, but not banning, the sale of cigarettes (see *Products Liability Law Daily*, April 9, 2015, [analysis](#)). The panel concluded that certain aspects of the *Engle* litigation compelled its conclusion that *Engle* strict-liability and negligence claims have imposed a duty on all cigarette manufacturers that they breached every time they placed a cigarette on the market, and that such a duty operated as a ban on cigarettes, which was not intended by Congress. Further, the panel said that as a result of the interplay between the Florida Supreme Court's interpretations of the *Engle* findings and the strictures of due process, the necessary basis for the decedent's spouse's *Engle*-progeny strict liability and negligence claims was that all cigarettes sold during the class period were defective as a matter of law. Thus, the duties imposed by the state law claims as hinged to the *Engle* findings, which the appellate panel found had been interpreted by the Florida courts "to possess unprecedented breadth," conflicted with the clear purpose of Congress—regulating, not banning cigarettes. Therefore, the Eleventh Circuit panel held that the state law claims were preempted by federal law.

The case is No. [3-14590-AA](#).

Attorneys: Elizabeth Joan Cabraser (Lieff Cabraser Heimann & Bernstein, LLP) for Earl E. Graham. Gregory G. Katsas (Jones Day) for R.J. Reynolds Tobacco Co.

Companies: R.J. Reynolds Tobacco Co.

Cases: CourtDecisions PreemptionNews TobaccoProductsNews AlabamaNews FloridaNews GeorgiaNews