

[Products Liability Law Daily Wrap Up, DAMAGES—TOBACCO PRODUCTS—M.D. Fla.: No new trial for tobacco companies in Engle-progeny suit, \(Apr. 17, 2019\)](#)

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By David Yucht, J.D.

A decedent's smoking-related disease that manifested prior to the cut-off date for claims allowed for post cut-off claims. His estate was entitled to both survival and wrongful death damages.

A federal district court in Jacksonville, Florida, determined that the estate of a deceased smoker that made a showing that the decedent suffered from a smoking-related disease prior to the Engle class cut-off date for claims, could proceed against R.J. Reynolds and other cigarette manufacturers for injuries caused by nicotine addiction that surfaced post cut-off. The court also found that the estate was entitled to an award of survival damages for oral cancer in addition to an award for wrongful death damages due to lung cancer despite a Florida statute that could be read otherwise. Consequently, the court denied the companies' motion for judgment as a matter of law or, in the alternative, a new trial ([Harris v. R.J. Reynolds Tobacco Co.](#), April 15, 2019, Sargus, E.).

The estate of a deceased smoker sued R.J. Reynolds Tobacco Co., Philip Morris USA, Inc., and Lorillard Tobacco Co. for wrongful death and survival damages alleging that the decedent died from lung cancer that he contracted as a result of his addiction to the defendants' cigarettes. The estate also sought damages caused by other diseases, such as oral cavity cancer and heart disease, which the decedent suffered from but which did not contribute to his death. The estate based its claims on negligence, strict liability, and concealment. A federal jury returned a verdict that the decedent's lung cancer and death were caused by his addiction to cigarettes. The jury also determined that smoking did not cause his heart condition (which had manifested on or before the Engle cut-off date) but did cause his oral cancer (which had manifested after the cut-off date). The jury based its decision on theories of strict liability and negligence and threw out the concealment claims. The tobacco companies moved for judgment as a matter of law or, in the alternative, a new trial. They also moved to amend the judgment.

Engle. The court denied the manufacturers' motion for judgment as a matter of law or, alternatively, a new trial. The companies argued that the decedent was not eligible for relief based on the Florida Supreme Court's Engle III opinion (*Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006)) because the disease that manifested itself before the Engle cut-off date was heart disease, for which the jury found no causation, and not the oral cancer, for which the jury found causation. The court disagreed because the estate had made a showing that the decedent suffered from a smoking-related disease prior to the cut-off date (heart disease) and that his addiction to cigarettes was the cause of another tobacco-related disease (oral cancer).

Wrongful death, survival damages. The court also disagreed with the manufacturers' argument that the estate was not entitled to an award of survival damages for oral cancer in addition to an award for wrongful death damages due to lung cancer. The court determined that where a company's course of conduct causes two injuries to a decedent, one fatal and one not fatal, the decedent's estate should be awarded damages based on both the fatal injury as well as the nonfatal one. The court limited the reach of a Florida statute which prohibits estates from proceeding with wrongful death claims simultaneously with survival claims. This statute was determined to apply exclusively to matters in which decedents suffered only fatal injuries and were able to file claims for survival benefits prior to dying. In such cases, the estates were required to convert their lawsuits from survival claims to wrongful death claims and could not pursue both. The estates of those who suffered from both fatal and nonfatal injuries, however, are not prevented from pursuing both types of claims.

Other issues. The court re-affirmed that suits against cigarette companies based on nicotine addiction were not preempted by federal law. Also, the preclusive effect of the Florida Supreme Court's Engel decisions did not deprive the defendants of any due process rights, and the estate was entitled to use the preclusive effect of Engel to prove the conduct and defect elements of its negligence and strict liability claims. In addition, the manufacturers were not entitled to any set-off based on the collateral source rule because they failed to submit collateral source evidence. They were, however, entitled to an amended judgment to reflect the jury's determination of the decedent's comparative fault.

The case is No. [3:09-cv-13482](#).

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Companies: R.J. Reynolds Tobacco Co.; Philip Morris USA, Inc.; Lorillard Tobacco Co.; Liggett Group, LLC f/k/a Liggett Group, Inc.

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