

IN THE CIRCUIT COURT FOR THE 17TH  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

COMPLEX CIVIL DIVISION

CASE NO. 08-80000 (19)

IN RE: *ENGLE* PROGENY CASES  
TOBACCO LITIGATION

*Pertains To:*

***Martin, Stanley: Case No. 07-36440 (19)***

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**SECOND AMENDED COMPLAINT**

Plaintiff STANLEY MARTIN, as Personal Representative of the Estate of Carole Martin (“Martin”) sues Defendants R.J. REYNOLDS TOBACCO COMPANY, PHILIP MORRIS USA INC., LORILLARD, INC., LORILLARD TOBACCO COMPANY, LIGGETT GROUP LLC, (f/k/a Liggett Group, Inc., f/k/a Liggett & Myers Tobacco Company) and VECTOR GROUP, LTD., INC. (f/k/a Brooke Group, Ltd.) and allege as follows:

1. This is a complaint against Defendants seeking 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).
2. The Plaintiff’s claims are in excess of this Court’s jurisdictional amounts.
3. Venue is proper in Broward County, Florida.
4. This is an action pursuant to Florida’s Wrongful Death Act for seeking wrongful death damages, or alternatively, pursuant to Section 46.021, *Florida Statutes* seeking survival damages action (including compensatory and punitive damages for intentional and non-intentional torts) and filed in accordance with the Florida Supreme Court’s decision in *Engle v.*

*Liggett Group, Inc.*, 945 So.2d 1246, (Fla. 2006), *Philip Morris USA Inc. v. Douglas*, 110 So. 3d 419 (Fla. 2013) and *Soffer v. R.J. Reynolds Tobacco Company*, 187 So. 3d 1219 (Fla. 2016).

5. At all times material to this action, decedent, CAROLE MARTIN, was a resident and citizen of Florida.

6. At all times material to this action, STANLEY MARTIN is the surviving spouse of CAROLE MARTIN.

7. STANLEY MARTIN is the duly appointed Personal Representative of the Estate of CAROLE MARTIN, deceased, and brings this suit for and on behalf of the Estate of CAROLE MARTIN and Survivors.

8. Defendant Philip Morris USA, Inc. (“Philip Morris”) is a Virginia corporation that conducts business in every county within the State of Florida and did so during all times relevant to this action. Defendant Philip Morris may be served with process through its registered agent: CT Corporation System, 1200 S. Pine Island Road, Plantation, FL 33324.

9. Defendant Lorillard Tobacco Company is a Delaware corporation that conducts business in every county within the State of Florida and did so during all times relevant to this action. Defendant Lorillard Tobacco Company may be served with process through its registered agent: The Prentice-Hall Corporation System, Inc., 1201 Hays Street, Suite 105, Tallahassee, FL 32301.

10. Defendant Lorillard, Inc., is a Delaware corporation that conducted business in every county within the State of Florida during all times relevant to this action. Defendant Lorillard, Inc., may be served with process through the registered agent for Lorillard Tobacco Company: The Prentice-Hall Corporation System, Inc., 1201 Hays Street, Suite 105, Tallahassee, FL 32301.

11. Defendant R.J. Reynolds Tobacco Company (“RJR”), 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 every county within the State of Florida and did so during all times relevant to this action. Defendant RJR may be served with process through its registered agent: Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301-2525.

12. Defendant Liggett Group, LLC (f/k/a Liggett Group, Inc., f/k/a Brooke Group Ltd., Inc., f/k/a Liggett & Myers Tobacco Company) (“Liggett”) is a Delaware corporation that conducts business in every county within the State of Florida and did so during all times relevant to this action.

13. Defendant Vector Group Ltd., Inc. (f/k/a Brooke Group, Ltd., Inc.) (“Vector”) is a Delaware corporation that conducts business in every county within the State of Florida and did so at all times relevant to this action. Defendant Vector may be served with process through its registered agent: CT Corporation System, 1200 S. Pine Island Road, Plantation, FL 33324.

14. Defendant Vector has its principal place of business in Miami, Dade County, Florida, making it a Florida citizen for purposes of federal diversity jurisdiction.

15. Defendant Liggett Group, LLC, has one or more Florida citizens as a member, making it a Florida citizen for purposes of federal diversity jurisdiction.

16. The following entities, among others, were defendants in the *Engle* class action: Liggett Group, Inc., Brooke Group, Ltd., Inc. (“Brooke Group Ltd.”), and Brooke Group Holding, Inc. (“Brooke Group Holding”)

17. On July 7, 1999, after a lengthy jury trial in “Phase I” of the *Engle* case, the jury found Liggett Group, Inc., and Brooke Group Ltd., liable to the class, exposing them to

substantial judgments for compensatory and punitive damages.

18. Later in 1999, Liggett Group, Inc. and Brooke Group Ltd., reorganized Brooke Group Ltd., which involved the creation of several new holding companies, multiple mergers, acquisitions, and the shuffling of Brooke Group Ltd.'s assets, including Liggett.

19. This sham reorganization established Vector as the parent of Brooke Group Holding, and Liggett (now known as Liggett Group, LLC—the Defendant in the referenced action).

20. The management, officers, directors, personnel, location of operation, assets, liabilities, business operations, and stockholders of Brooke Group Ltd., remained the same when its name changed to Vector; nominal consideration was involved in the reorganization; the vast majority of Liggett's revenues continue to be diverted to Vector to fund Vector's cigarette operations; and Bennett S. LeBow, through Vector, continued after the reorganization to exercise unilateral control over the assets of Brooke Group Ltd., and Brooke Group Holding. (including the asset Liggett), as he had with the predecessor entities

21. Defendant Vector is the successor to the original cigarette manufacturer Liggett, which changed its name to "Brooke Group Ltd., Inc." Vector is a successor to Brooke Group Ltd., as a mere continuation of Brooke Group Ltd., and Liggett and by way of de facto merger with Brooke Group Ltd. Vector also is a successor to Brooke Group Holding.

22. Defendant Vector is but *Engle* Defendant Brooke Ltd. (f/k/a Liggett Group, Inc., f/k/a Liggett & Myers, Inc., f/k/a Liggett & Myers Tobacco Co.) by another name.

23. Defendant Vector exercises such control over Liggett that Liggett is a mere instrumentality and/or alter ego of Vector.

24. Defendant Vector exercises such control over Liggett that Liggett is the agent of

Vector and manifests no separate corporate interests of its own. Vector acknowledges Liggett as its agent for purposes including, but not limited to, the sale, marketing, and distribution of tobacco products. Liggett has accepted by act and word to be Defendant Vector's agent, and has acquiesced in the control exercised over it by Defendant Vector.

25. Vector further exercises control over Liggett by virtue of its formation of Liggett Vector Brands, Inc., a company controlled by Defendant Vector, which now has taken over the sales and marketing of both Vector Tobacco, Inc., and Liggett.

26. The Council for Tobacco Research U.S.A., Inc. (the "Council") and the Tobacco Institute, Inc. (the "Institute"), 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 the Defendants.

27. At all times relevant to this action, all Defendants manufactured and distributed tobacco products containing nicotine throughout Florida and the United States. The Defendants, including Vector and Liggett, were and remain *Engle* defendants.

28. 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.

29. At all times relevant to this action, Plaintiff was a Florida resident and citizen (1) who was addicted to, purchased, and smoked cigarettes containing nicotine that were designed, manufactured, advertised and marketed by one or more of the Defendants and (2) who did so in sufficient quantities and for a sufficient time period to cause injury in the form of diseases and medical conditions. Based upon the knowledge and recollection of the Plaintiff, he purchased

and smoked cigarettes designed, manufactured, advertised, and marketed by all of the Defendants at all material times.

30. The Florida Supreme Court decertified the *Engle* class because class-wide treatment of causation and damages was not feasible. The Florida Supreme Court expressly reserved to class members, including Plaintiffs, the right to bring individual actions against Defendants for smoking-related injuries and damages, including punitive damages.

31. Less than one year has elapsed since the Florida Supreme Court's mandate issued. Therefore, this action is timely.

32. Because Plaintiff's decedent is an *Engle* class member, Plaintiff is entitled to the benefit of the Phase I findings and Plaintiff asserts and alleges those findings as conclusively established in this action as follows:

33. Smoking cigarettes causes aortic aneurysm, bladder cancer, cerebrovascular disease, cervical cancer, chronic obstructive pulmonary disease, coronary heart disease, 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.

34. Nicotine in cigarettes is addictive.

35. Defendants placed cigarettes on the market that were defective and unreasonably dangerous.

36. 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.

37. 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.

38. Defendants sold or supplied cigarettes that were defective.

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

40. All Defendants were negligent.

41. As a direct and proximate result of smoking cigarettes manufactured and sold by one or more Defendants, Plaintiff's decedent suffered from one or more of the diseases and medical conditions described, including, but not limited to heart disease, COPD and lung cancer, which was caused by her addiction to cigarettes that contain nicotine and which heart disease and COPD manifested during the class period.

#### **COUNT I: STRICT LIABILITY**

42. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1- 41.

43. The *Engle* Phase I findings conclusively establish that the cigarettes sold and placed on the market by Defendants were defective and unreasonably dangerous.

44. As a proximate result of smoking the defective cigarettes sold by one or more Defendants, CAROLE MARTIN suffered severe and permanent bodily injury; resulting pain and suffering; permanent and total disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; the expense of hospital, medical, and nursing care and treatment; loss of earnings; and loss of ability to earn money. Alternatively, as a proximate result of smoking the Defendants' defective cigarettes, CAROLE MARTIN died.

## **COUNT II: FRAUD BY CONCEALMENT**

45. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-41.

46. 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.

47. Because the information already has been deemed material, the reliance element of fraud by concealment is satisfied as a matter of law.

48. Each Defendant's acts and omissions, and all of them, constitute fraud as a matter of law.

49. As a proximate result of the Defendants' fraud, CAROLE MARTIN has suffered severe and permanent bodily injury; resulting pain and suffering; permanent and total disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; the expense of hospital, medical, and nursing care and treatment; loss of earnings; and loss of ability to earn money. Alternatively, as a proximate result of Defendants' respective fraud, CAROLE MARTIN died.

## **COUNT III: CONSPIRACY TO COMMIT FRAUD BY CONCEALMENT**

50. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1- 41.

51. The *Engle* Phase I findings conclusively establish that Defendants, the Council, and the Institute, 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.

52. The concealed and omitted information described in the preceding paragraph was material information.

53. Plaintiff's decedent relied to her detriment upon the concealment and omission of such information.

54. Each Defendant's acts and omissions, and those of the Council and Institute, and all of them, constitute a successful conspiracy to commit fraud.

55. As a proximate result of the Defendants' conspiracy to commit fraud, CAROLE MARTIN suffered severe and permanent bodily injury; resulting pain and suffering; permanent and total disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; the expense of hospital, medical, and nursing care and treatment; loss of earnings; and loss of ability to earn money. Alternatively, as a proximate result of Defendants' respective fraud by concealment, CAROLE MARTIN died.

#### **COUNT IV: NEGLIGENCE**

56. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1- 41.

57. The *Engle* Phase I findings conclusively establish that the Defendants were negligent.

58. As a proximate result of the Defendants' negligence, CAROLE MARTIN suffered severe and permanent bodily injury; resulting pain and suffering; permanent and total disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; the expense of hospital, medical, and nursing care and treatment; loss of earnings; and loss of ability to earn money. Alternatively, as a proximate result of Defendants' respective negligence, CAROLE MARTIN died.

**COUNT V: BREACH OF EXPRESS WARRANTY**

59. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1- 41.

60. The *Engle* Phase I findings conclusively establish that all of the Defendants breached an express warranty; that is, Defendants sold or supplied cigarettes that, at the time of sale or supply, did not conform to representations of fact made by Defendants.

61. Defendants' products were not safe or reasonably suitable and fit for the uses advertised by Defendants to the public, including Plaintiffs.

62. As a proximate result of the Defendants' respective breaches, CAROLE MARTIN died.

**COUNT VI: BREACH OF IMPLIED WARRANTY**

63. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1- 41.

64. The *Engle* Phase I findings conclusively establish that all of the Defendants breached an implied warranty; that is, Plaintiffs were a foreseeable user of the Defendants' products; at all times Plaintiff used the products in their intended manner; and the products were defective when transferred from Defendants.

65. As a proximate result of the Defendants' respective breaches, breaches, CAROLE MARTIN died.

**COUNT VII – PUNITIVE DAMAGES FOR INTENTIONAL TORTS**

66. All allegations above are re-alleged and incorporated by reference herein and Plaintiff further alleges:

67. At all times material hereto, Defendants had actual knowledge of the wrongfulness of their conduct and the high probability that injury or damage to the decedent would result, and despite that knowledge, intentionally pursued their course of conduct. Defendants' conduct was so reckless or wanting in care that it constituted disregard or indifference to the life, safety, or rights of the decedent, and Defendants actively and knowingly participated in such conduct, and/or their officers, directors, or managers knowingly condoned, ratified, or consented to such conduct.

68. Furthermore, pursuant to the Florida Supreme Court's ruling in *Engle v. Liggett Group, Inc., et al.*, the following issues have been held to be *res judicata* in any class member's subsequent individual trial:

- a. That smoking cigarettes causes aortic aneurysm, bladder cancer, cerebrovascular disease, cervical cancer, chronic obstructive pulmonary disease, coronary heart disease, 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. That nicotine in cigarettes is addictive,
- c. That the defendants placed cigarettes on the market that were defective and unreasonably dangerous
- d. That the 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,
- e. That the 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. That all of the defendants sold or supplied cigarettes that were defective
- g. That all of the defendants sold or supplied cigarettes that, at the time of sale or supply, did not conform to representations of fact made by said defendants

h. That all of the defendants were negligent.

69. Standing alone, these *res judicata* findings would be sufficient to support an award for punitive damages. However, in addition, Plaintiff has made a reasonable showing by evidence in the record or through a proffer or evidence to this Court that would provide a reasonable basis for recovery of punitive damages, and therefore is entitled to claim these damages pursuant to Fla. Stat. § 768.72.

70. As a proximate result of this conduct, decedent was severely injured and/or died.

**COUNT VIII – PUNITIVE DAMAGES FOR WILLFUL,  
WANTON AND RECKLESS MISCONDUCT**

71. All allegations above are re-alleged and incorporated by reference herein and Plaintiff further alleges:

72. At all times material hereto, Defendants had actual knowledge of the wrongfulness of their conduct and the high probability that injury or damage to the decedent would result, and despite that knowledge, intentionally pursued their course of conduct. Defendants' conduct was so reckless or wanting in care that it constituted disregard or indifference to the life, safety, or rights of the decedent, and Defendants actively and knowingly participated in such conduct, and/or their officers, directors, or managers knowingly condoned, ratified, or consented to such conduct.

73. Furthermore, pursuant to the Florida Supreme Court's ruling in *Engle v. Liggett Group, Inc., et al.*, the following issues have been held to be *res judicata* in any class member's subsequent individual trial:

- a. That smoking cigarettes causes aortic aneurysm, bladder cancer, cerebrovascular disease, cervical cancer, chronic obstructive pulmonary disease, coronary heart disease, 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. That nicotine in cigarettes is addictive,
- c. That the defendants placed cigarettes on the market that were defective and unreasonably dangerous
- d. That the 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,
- e. That the 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. That all of the defendants sold or supplied cigarettes that were defective
- g. That all of the defendants sold or supplied cigarettes that, at the time of sale or supply, did not conform to representations of fact made by said defendants
- h. That all of the defendants were negligent.

74. Standing alone, these *res judicata* findings would be sufficient to support an award for punitive damages. However, in addition, Plaintiff has made a reasonable showing by evidence in the record or through a proffer or evidence to this Court that would provide a reasonable basis for recovery of punitive damages, and therefore is entitled to claim these damages pursuant to Fla. Stat. § 768.72.

75. As a proximate result of this conduct, decedent was severely injured and/or died.

#### **PRAYER FOR RELIEF**

WHEREFORE, for the above-listed counts Plaintiff demands (i) a jury trial on all issues so triable and (ii) judgment against each Defendant and every one of them for damages pursuant to Florida's Wrongful Death Act including, but not limited to: (a) funeral expenses of the

decedent; (b) medical and hospital expenses of the decedent caused by smoking Defendants' products; (c) loss of the decedent's net accumulations, which would otherwise have been acquired; (d) losses of the survivors including STANLEY MARTIN, including (1) mental and emotional anguish, (2) medical, funeral and other expenses incurred, and (3) loss of the decedent's love, affection, support, services, protection, companionship, instruction; (e) punitive damages for all injuries and losses described above for both intentional and non-intentional torts (f) all recoverable costs of this action; (g) all legally recoverable interest; and (h) any other relief to which Plaintiff may be legally or equitably entitled.

WHEREFORE, for the above-listed counts, decedent's Personal Representative demands (i) a jury trial on all issues so triable and (ii) judgment against each Defendant and every one of them for all survival damages pursuant to Section 46.021, *Florida Statutes*, which damages include all that decedent could have recovered prior to her death, specifically including, but not limited to: (a) lost wages and earning capacity; (b) all medical and funeral expenses incurred; (c) loss of enjoyment of life, mental anguish, and pain and suffering; (d) damages for the aggravation of any previously existing condition; (e) punitive damages for all injuries and losses described above for both intentional and non-intentional torts (f) damages for loss of consortium and companionship; (g) all recoverable costs of this action; (h) all legally recoverable interest; and (i) any other relief to which the Personal Representative may be legally or equitably entitled, respectively.

Respectfully submitted this 1st day of June, 2016.

/s Eric S. Rosen, Esq.  
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