

[Products Liability Law Daily Wrap Up, TOP STORY—TOBACCO PRODUCTS—Fla. Sup. Ct.: Intentional tort exception to comparative fault applies to *Engle* progeny cases, \(Dec. 15, 2017\)](#)

Products Liability Law Daily Wrap Up

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

By Georgia D. Koutouzos, J.D.

Florida's comparative fault statute does not apply to *Engle v. Liggett Group, Inc.* progeny cases against tobacco companies in which the jury finds for the plaintiff on intentional tort claims, the state's highest court instructed, ruling that a \$10.5-million compensatory damages award to the widow of a deceased cigarette smoker was not subject to reduction because the jury had determined that the decedent was 25-percent at fault for his illness and death. Rejecting a state appellate panel's contrary determination, the Florida Supreme Court also held that the widow's \$30-million punitive damages was not unconstitutionally excessive ([*Schoeff v. R.J. Reynolds Tobacco Co.*](#), December 14, 2017, Quince, P.).

A deceased smoker's widow filed suit against R.J. Reynolds Tobacco Co. (RJR) asserting membership in the so-called *Engle* class of plaintiffs whose loved ones had died from lung cancer caused by addiction to cigarettes. In her suit, the spouse alleged causes of action for strict liability, fraud by concealment, conspiracy to commit fraud by concealment, negligence, and gross negligence. Admitting that her deceased husband shared some fault for his smoking-related injuries, the widow's complaint represented that she would seek apportionment of fault on her causes of action for negligence and strict liability, but not with respect to her intentional torts claims.

The jury in the case ultimately found that the decedent had been addicted to nicotine, that his addiction was a legal cause of his lung cancer and subsequent death, and that the negligence of RJR as well as the defective and unreasonably dangerous cigarettes manufactured by the tobacco company were a legal cause of the decedent's ailment/death. The jury allocated the decedent's comparative fault for his injuries at 25 percent, awarded the widow \$10.5 million in compensatory damages, and found that punitive damages were warranted. In the second phase of the trial, the jury awarded the widow \$30 million in punitive damages despite her counsel's request that the award be \$25 million and no more.

RJR filed a motion seeking a reduction of the compensatory damages to reflect the comparative fault assigned by the jury to the decedent. The trial court granted the motion, ruling that the widow had waived her argument regarding comparative fault based on her counsel's representations to the jury. Alternatively, the trial court found that even if the widow had not waived her argument, the intentional tort exception to Florida's comparative fault statute would not apply because her action was a products liability lawsuit at its core.

RJR appealed the trial court's decision, after which a state appellate panel affirmed the 25-percent reduction in the widow's compensatory damages award and concluded that the \$30-million punitive damages award was unconstitutionally excessive [see *Products Liability Law Daily's* November 5, 2015 [analysis](#)]. The widow sought and was granted review of the appeals court's decision on the basis that it conflicted with an earlier decision rendered by a panel in another of the state's appellate districts upholding the entire compensatory damages award in a similar *Engle* progeny case despite the tobacco companies' argument that the deceased smoker's representative had waived a jury award of unreduced damages [see *Products Liability Law Daily's* June 25, 2013 [analysis](#)].

Intentional tort exception and waiver thereof. The plain language of Florida's comparative fault statute is unequivocal: the statute applies to an enumerated albeit not exhaustive list of negligence claims, but it does not apply to any action based on an intentional tort. However, because compensatory damages in *Engle* progeny cases cannot be allocated among the intentional tort and simple negligence claims, any reduction of damages

in those cases necessarily would affect the damages arising from intentional torts in derogation of the statute's intentional torts exception.

This interpretation is supported by both the relevant provision's legislative history and by comparative-fault case precedent within the state; therefore, because the jury in the case at bar found in favor of the widow on her intentional tort claims against RJR, her compensatory damages award could not be reduced unless she had waived the intentional tort exception. In that regard, the widow's complaint stated that she would seek apportionment based on comparative fault "on the counts for negligence and strict liability; however not with respect to the counts constituting intentional torts as pled in this action." As such, the trial court abused its discretion in finding that the widow had waived the intentional tort exception.

Excessiveness of punitive damages award. Furthermore, although the \$30-million award to the widow was among the highest *Engle* progeny punitive damages awards, it nevertheless fell within a three-to-one ratio when compared to the \$10.5-million compensatory damages award. Given the ratios in other cases, the ratio of punitive to compensatory damages in the instant litigation was not unconstitutionally excessive. Accordingly, the appellate panel's excessiveness determination was reversed. In addition, because the trial court did not abuse its discretion in denying RJR's motion for remittitur, the appellate panel erred by ordering a remittitur or a new trial.

The case is No. [SC15-2233](#).

Attorneys: John S. Mills (The Mills Firm, P.A) for Joan Schoeff. Donald B. Ayer (Jones Day) and Robert C. Weill (GrayRobinson, P.A.) for R.J. Reynolds Tobacco Co.

Companies: R.J. Reynolds Tobacco Co.

MainStory: TopStory DamagesNews TobaccoProductsNews FloridaNews