

## [Products Liability Law Daily Wrap Up, TOP STORY—TOBACCO PRODUCTS—M.D. Fla.: \\$27M awarded to smoker's estate in case against Philip Morris, \(Jan. 18, 2019\)](#)

Products Liability Law Daily Wrap Up

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By Susan Engstrom

Long-running *Engle*-progeny case comes to an end with final judgment.

More than four years after a jury had returned a \$27-million verdict in favor of a smoker in an *Engle*-progeny case against Philip Morris USA, Inc., a federal district court in Florida entered final judgment in favor of the smoker's estate in the amount of \$6,250,000 in compensatory damages and \$20,760,000.14 in punitive damages, plus post-judgment interest. The judgment follows a federal appellate panel's reinstatement of the jury's \$20.76-million punitive damages award, which the district court had vacated with respect to the smoker's fraudulent concealment and conspiracy claims (*Cote v. Philip Morris USA, Inc.*, January 16, 2019, Carr, J.).

**Procedural background.** The smoker, who developed chronic obstructive pulmonary disease (COPD) allegedly as a result of her 40-year addiction to the nicotine in cigarettes, had sued Philip Morris and a number of other big tobacco companies on theories of negligence, strict liability, fraudulent concealment, and conspiracy to conceal. After a trial, the jury returned a verdict for the smoker on all four theories, and found that Philip Morris was liable to her for \$6.25 million in [compensatory damages](#). Finding that the smoker was 40 percent at fault, the jury reduced her compensatory recovery to \$3.75 million. Based on jury instructions given at the end of the liability trial, the jury also awarded \$20.76 million in [punitive damages](#) on the smoker's fraudulent concealment and conspiracy-to-conceal claims [see *Products Liability Law Daily's* September 19, 2014 [analysis](#) for complete details]. Following the verdict, the trial court rejected Philip Morris's due process and federal preemption arguments in support of the company's motion for a new trial or remittitur. However, the court did find that the smoker's own testimony regarding peer pressure and personal preferences in her choice of brand and type of cigarettes negated a finding of detrimental reliance—a required element of her intentional tort claims. Based on that finding, the trial court granted Philip Morris's motion for judgment as a matter of law (JMOL) with respect to the fraudulent concealment and conspiracy-to-conceal claims and vacated the \$20.76-million punitive damages award [see *Products Liability Law Daily's* April 27, 2015 [analysis](#)].

Following a March 17, 2016 decision by the Florida Supreme Court setting forth the legal basis upon which *Engle*-progeny plaintiffs could seek punitive damages with respect to negligence and strict liability claims [see *Products Liability Law Daily's* March 17, 2016 [analysis](#)], the smoker filed a motion for relief from judgment, arguing that the trial court's jury instructions to the contrary constituted an error of law. In response, the trial court determined that an appeal—not the reinstatement of the punitive damages verdict—was the proper way to handle an error of law in jury instructions on punitive damages [see *Products Liability Law Daily's* August 11, 2016 [analysis](#)]. Philip Morris renewed its JMOL motion based on due process and preemption arguments and the smoker cross-appealed, arguing that the district court erred by granting JMOL in Philip Morris's favor as to fraudulent concealment and conspiracy to fraudulently conceal and by vacating the related punitive damages award.

**Eleventh Circuit decision.** According to the Eleventh Circuit, the smoker's testimony that peer pressure influenced her decision to start smoking and that her choice of cigarette brand and type were based on personal preference was insufficient to rebut an inference of detrimental reliance on the disinformation campaign waged by big tobacco companies to conceal the health hazards of smoking [see *Products Liability Law Daily's* November 28, 2018 [analysis](#)]. Thus, the appellate panel reversed the district court's decision to grant Philip

Morris's motion for judgment as a matter of law on the smoker's fraudulent concealment and conspiracy-to-conceal claims, and reinstated the jury's \$20.76-million punitive damages award.

**Final judgment.** In light of the jury verdicts and the Eleventh Circuit mandate, the district court, finding no just reason for delay, entered final judgment in the amount of \$27,010,000.14, plus post-judgment interest at the rate provided by 28 U.S.C. §1961, to the smoker's estate.

The case is No. [3:09-cv-14157](#).

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Companies: Philip Morris USA, Inc.; Liggett Group, LLC

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