

## Products Liability Law Daily Wrap Up, TOP STORY—TOBACCO

### PRODUCTS—Fla. App.: \$12.3M punitive damages award upheld in smoker's wrongful-death suit, (Sept. 18, 2017)

Products Liability Law Daily Wrap Up

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By Georgia D. Koutouzos, J.D.

A Florida trial court properly awarded \$12.36 million in punitive damages related to conspiracy and concealment claims against a major tobacco company in a wrongful-death lawsuit on behalf of a cigarette smoker who had died from lung cancer, an appellate panel in that state determined. In so ruling, the appeals court held that Florida's 1999 statutory cap on punitive damages did not apply to the case and that the trial court did not err in awarding interest accruing from the date of the original final judgment (*R.J. Reynolds Tobacco Co. v. Evers*, September 15, 2017, Morris, R.).

The representative of a Florida woman who had died from lung cancer in 2007 sued R.J. Reynolds Tobacco Co., alleging that the decedent was a member of the class-action suit in *Engle v. Liggett Group, Inc.*, which had been filed on behalf of all Florida residents who, as of November 21, 1996, suffered or had died from diseases caused by an addiction to cigarettes. Although the representative's amended complaint alleged claims of negligence, strict liability, fraudulent concealment, and conspiracy to commit fraudulent concealment, the trial court ruled before trial that punitive damages only could be sought on her claims of concealment and conspiracy.

In bifurcated proceedings, the jury determined in the first phase that the decedent's representative was entitled to recover on all her claims and awarded her \$2.95 million in noneconomic compensatory damages. At the end of the trial's second phase, the jury awarded \$12.36 million in punitive damages as they related to the conspiracy and concealment claims, but the trial court directed a verdict in the tobacco company's favor on those two claims and vacated the punitive damages award. The trial court also reduced the compensatory damages award by several hundred thousand dollars to reflect the jury's allocation of comparative fault.

The directed verdict was reversed and remanded on appeal, however [see *Products Liability Law Daily*'s November 13, 2015 [analysis](#)], after which the decedent's representative moved for entry of judgment in the full amount of the jury's compensatory and punitive damages amounts. R.J. Reynolds opposed the motion, arguing that Florida's 1999 statutory cap on punitive damages applied to the case. Ultimately, the trial court entered a second amended final judgment awarding the original compensatory and punitive damages award amounts, after which the decedent's representative filed a subsequent motion to amend and the trial court awarded interest accruing from the date of the original final judgment.

The tobacco company appealed once more, this time asserting that: (1) the punitive damages award should have been capped at three times the compensatory damages award as per the 1999 statute; (2) even under the 1995 version of the statute, the decedent's representative failed to meet her burden of establishing by clear and convincing evidence that the award was not excessive in light of the facts and circumstances presented to the jury; and (3) the trial court erred in awarding interest on the judgment from the date of the original final judgment rather than the second amended final judgment.

**Applicable punitive damages cap.** The trial court properly applied the 1995 version of Florida's statutory limit on punitive damages in products liability and negligence actions (the 1999 statute limits punitive damages to three times the amount of compensatory damages or \$500,000, whichever is greater). For an action to qualify as an *Engle*-progeny case, a decedent's symptoms of a tobacco-related disease or medical condition had to have manifested by November 21, 1996. In the instant case, the representative's amended complaint alleged that the decedent had suffered from or been diagnosed with one or more of the diseases enumerated in *Engle* on or

before November 21, 1996. And there was no dispute that the jury determined that the decedent was a member of the *Engle* class.

While the instant case had not been filed until after the decedent's death in 2007, her representative's right to do so was based on the decedent's status as a member of the above-mentioned class, i.e., the decedent's manifestation of a tobacco-related disease or medical condition had occurred prior to November 21, 1996. Accordingly, because the decedent's representative was entitled to the res judicata effect of the *Engle* class, her cause of action was not controlled by the 1999 amendment to the punitive damages statute. Indeed, the application of the amended statute to her claims would impair those substantive rights.

**Excessiveness of award.** As for R.J. Reynolds' argument that even under the 1995 version of the statute there was a three-to-one cap that could not be exceeded unless the decedent's representative established by clear and convincing evidence that the award was not excessive in light of the facts and circumstances presented to the jury and that she had failed to meet that burden, the tobacco company's argument was procedurally barred. Even if that claim was properly addressed on the merits, however, the company was not entitled to relief.

Because the trial court had the trial record before it—including testimony that linked R.J. Reynolds' conduct to the harm suffered by the decedent—and based on the trial court's acknowledgement that it had reviewed the record and had not limited itself to consideration of the *Engle* findings, the appeals court could not find that no reasonable judge would have reached the same conclusion as the trial judge in the case at bar. Nor could it be concluded that the punitive damages award was so excessive as to violate due process where the award clearly had been based on the facts and circumstances of the tobacco company's conduct and the harm to the decedent. Consequently, the trial court properly determined that the punitive damages award was not excessive under the 1995 version of the cap on punitive damages and that clear and convincing evidence supported a punitive damages award in excess of the statutory cap.

**Interest on the judgment.** The trial court properly awarded interest accruing from the date of the original judgment. Although the appeals court had "reversed" the original final judgment in the earlier appeal, the effect of the action was to reverse the directed verdict on the concealment and conspiracy claims, reinstate the jury verdicts on those claims, and reinstate the punitive damages award (which was tied only to those two claims). In so ruling, the appellate panel declined to address certain issues related to the punitive damages award because they had not yet been addressed by the trial court due to the entry of the directed verdict (which nullified the punitive damages award).

The tobacco company asserted that those "certain issues" were the arguments concerning the applicability of the statutory cap and the reduction for comparative fault. Notably, those issues only related to the amount of the final judgment. While the trial court had to decide whether the damage awards were subject to reduction based either on comparative fault or due to a statutory cap, the underlying jury verdicts—entered in favor of the decedent's representative—were not disturbed.

As such, even if R.J. Reynolds had prevailed on the comparative fault and statutory cap arguments below, the only difference between the original final judgment and the second amended final judgment would have been the amount of the award. The fact that the appellate panel had used the word "reversed" in the prior appeal was not dispositive because the reversal only extended to the amount of the award and otherwise amounted to an affirmance in all other respects.

The case is [No. 2D16-1603](#).

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Companies: R.J. Reynolds Tobacco Co.

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