

[Products Liability Law Daily Wrap Up, TOP STORY—TOBACCO PRODUCTS—Fla. App.: Punitive damages award against tobacco manufacturer reversed and remanded for further proceedings, \(Feb. 12, 2019\)](#)

Products Liability Law Daily Wrap Up

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By Kathleen Bianco, J.D.

The manifestation of smoking-related injuries does not represent the accrual of a cause of action for wrongful death arising from those injuries for *Engle* class members.

A \$5-million punitive damages award in a 2007 wrongful death action against a tobacco manufacturer based upon Florida's pre-1999 punitive damages statute was reversed and remanded for further proceedings by Florida's Fifth District Court of Appeal. In reaching this conclusion, the appellate court held, in opposition to three other district courts of appeal, that wrongful death actions accrued on the date of death, not on the date of manifestation of smoking-related diseases or conditions, even in *Engle*-progeny cases. Accordingly, the punitive damages statute in effect at the time of the decedent's death in 2007 applied ([R.J. Reynolds Tobacco Co. v. Sheffield](#), February 8, 2019, Edwards, J.).

The decedent, a former smoker, initially had been diagnosed with lung cancer in 1994. At that time, he underwent treatment which purportedly cured him of this first cancer. In 2003 and 2006, he was again diagnosed with lung cancer and, in 2007, he passed away. His widow, the personal representative of his estate, filed a wrongful death action seeking compensatory and punitive damages against several tobacco companies, including R.J. Reynolds Tobacco Co., based on her claim that the decedent's death had been caused by his smoking the tobacco companies' addictive and harmful cigarettes. The complaint alleged that the decedent was a member of the *Engle* class and asserted claims for negligence, strict liability, fraud by concealment, and conspiracy to commit fraud.

Following a trial, the jury found R.J. Reynolds liable and awarded \$1.8 million in compensatory damages and \$5 million in punitive damages. R.J. Reynolds challenged the punitive damages award, arguing that the trial court had erred in applying the pre-1999 punitive damages statute to the action. Prior to, during, and following the trial, the tobacco company contended that the punitive damages issue should have been governed by the 1999 version of the punitive damages statute, which would have given the tobacco company an opportunity to avoid punitive damages completely because the 1999 statute modified the law by potentially barring punitive damages awards against a defendant if punitive damages were previously awarded "in any action alleging harm from the same act or single course of conduct."

**Applicability of punitive damages statute.** The clear and unambiguous language of section 768.73(5) of the 1999 Florida statute governing punitive damages states: "The provisions of this section shall be applied to all causes of action arising after the effective date of this act." While the parties all agreed that the statute's language was clear and did not require further interpretation, the case focused upon when the estate's wrongful death cause of action had accrued. The tobacco company asserted that the wrongful death action accrued on the date of death, while the estate argued that the accrual of the action in *Engle*-progeny cases related back to when the class member manifested smoking-related illnesses. The trial court agreed with the estate and fell in line with three other district courts of appeal which have concluded in other actions that the "manifestation" sufficient to be an *Engle* class member constituted the accrual of the estate's cause of action, resulting in the cause of action accruing in 1994 and thus subject to the pre-1999 punitive damages statute.

**Manifestation v. accrual.** After reviewing the other district courts of appeal decisions cited by the estate in support of its conclusion that the pre-1999 punitive damages statute applied, the appellate court in this action rejected the conclusions reached by its fellow courts, finding instead that the manifestation requirements needed for *Engle* class membership were irrelevant to determining when a claim accrued and were at odds with a prior ruling by the Florida Supreme Court, which found the accrual of a cause of action to be irrelevant in the determination of *Engle* class membership.

The court further rejected the assertion that the estate's wrongful death claim related back to the date that the class-action suit was filed. While courts have allowed personal injury complaints to be amended to assert wrongful death claims following the injured party's death, the wrongful death action relates back to the date on which the related personal injury complaint was filed for statute of limitations purposes. In this case, the relation-back doctrine was inapplicable because the decedent never filed a personal injury complaint. The very first action in this matter was the wrongful death claim filed in 2007.

Having determined that it did not agree with the reasons asserted by the other courts for applying the pre-1999 punitive damages statute to *Engle*-progeny actions, the appellate panel affirmed the compensatory damages award, reversed the punitive damages award, and remanded for further proceedings regarding punitive damages.

**Dissenting opinion.** One justice dissented, asserting that he would have affirmed the punitive damages award based on the fact that the decedent could have filed a personal injury claim prior to 1999.

The case is No. [5D17-2521](#).

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Companies: R.J. Reynolds Tobacco Co.

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