

Products Liability Law Daily Wrap Up, TOP STORY—DAMAGES—TOBACCO PRODUCTS—Fla. Sup.: Florida high court clears way for punitive damage claims by Engle-progeny claimants, (Mar. 17, 2016)

By Pamela C. Maloney, J.D.

Following the decertification of the class action in *Engle v. Liggett Group, Inc.*, individual members of the *Engle* class are entitled to seek punitive damages under properly raised theories of strict liability or negligence in their individual lawsuits against Big Tobacco, the Florida Supreme Court ruled in response to a question certified by the First District Court of Appeal. In answering the question in the affirmative, the state high court quashed the First District's decision in *Soffer v. R.J. Reynolds Tobacco Co.* 106 So. 3d 456 (Fla. 1st DCA 2012), and approved the Second District's opinion in *Morris USA, Inc. v. Hallgren* [see *Products Liability Law Daily's* October 21, 2013 [analysis](#)], as to the issue of punitive damages. The court further disapproved the Third District's decision in *R.J. Reynolds v. Williams*, No. 3D12-2099, 39 Fla. L. Weekly D1863, and the Fourth District's resolution of the punitive damages issue in *R.J. Reynolds Tobacco Co. v. Ciccone* [see *Products Liability Law Daily's* August 15, 2015 [analysis](#)], 123 So. 3d at 616-17 (Fla. 4th DCA 2013) (*Soffer v. R.J. Reynolds Tobacco Co.*, March 17, 2016, Pariente, J.).

The widow of a smoker who died from lung cancer brought a wrongful death action against R.J. Reynolds Tobacco Company following the Florida Supreme Court's decision in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), decertifying the class and requiring class members to file individual actions within one year. Her complaint asserted causes of action for negligence, strict liability, fraud by concealment, and conspiracy to commit fraud, all of which had been pled in the *Engle* class litigation. Approximately one year prior to trial, the widow was allowed to amend her complaint to add a demand for punitive damages. R.J. Reynolds argued during the jury charge conference, and the trial court agreed, that punitive damages could be awarded only if the jury found in favor of the widow on her claims for fraudulent concealment or conspiracy and not for the strict liability or negligence claims. The jury found R.J. Reynolds liable on the strict liability and negligence claims but rejected the claim that the tobacco company's fraudulent concealment or conspiracy was a legal cause of the smoker's death, and therefore did not consider an award of punitive damages. The widow appealed, arguing that the trial court erred in instructing the jury that it was prohibited from awarding punitive damages on the strict liability and negligence counts. The First District affirmed.

Hallgren decision. The Second District disagreed with the First District's decision, holding that the unique nature of the *Engle* decision necessitated a finding that *Engle* progeny plaintiffs were permitted to seek punitive damages on their claims for strict liability and negligence. In so holding, the Second District point out that the *Engle* decision neither expressly nor impliedly expanded its res judicata parameters to limit progeny plaintiffs' ability to pursue the remedy of punitive damages. Recognizing that the First District had reached an opposite conclusion, it certified the question to the state supreme court.

Availability of punitive damages. Finding no legal or principled basis for denying *Engle* progeny plaintiffs the right to pursue punitive damages on all properly pleaded claims, the Florida Supreme Court answered the certified question in the affirmative, citing Judge Sleet's opinion in *Hallgren* which stated that "once the class's punitive damage award was reversed in *Engle* and each class member was required to seek punitive damages anew, progeny plaintiffs were free to assert any remedies available under the law."

The court provided three main reasons for its affirmative response. First, the *Engle* trial court's denial of the motion to amend the class action complaint to include a demand for punitive damages on the counts for negligence and strict liability was not based on the merits of the request but instead rested on the procedural posture of the case at that time. In essence, the *Engle* decision wiped the slate clean as it related to punitive damages and required each individual plaintiff to prove entitlement to punitive damages in his or her individual lawsuit. The decertification order was without prejudice for class members and res judicata effect was given only to specific Phase I common liability findings and had no effect on claims for punitive damages.

Second, neither the statute of limitations nor principles of equitable tolling barred a plaintiff from requesting

punitive damages on all properly pled counts. Claims for punitive damages were not separate, free-standing causes of action subject to a separate statute of limitations. Rather, a claim for punitive damages is dependent on the underlying cause of action and can be sought based on any properly pleaded cause of action that was filed in a timely manner.

Third, the legal standard for establishing entitlement to punitive damages—that is, that the plaintiff must prove by clear and convincing evidence that the conduct causing the damage was either “intentional” or “grossly negligent”—does not vary depending on the underlying legal theory.

After concluding that res judicata, waiver, and the relevant statute of limitations did not prevent the widow from seeking punitive damages, the court went on to reject R.J. Reynolds’ argument that it would be prejudiced by allowing punitive damages on the additional counts of strict liability and negligence. According to the court, the widow sought and was granted leave to amend her complaint to seek punitive damages on all counts more than one year prior to trial. Although R.J. Reynolds objected to the amendment, it did not contend that the widow was barred from requesting punitive damages on the strict liability and negligence counts until the eve of trial. Further, R.J. Reynolds made no assertion of surprise or prejudice until this appeal and failed to show how any differentiation as to the underlying claim adversely affected it

The case is No. SC13-139.

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Companies: R.J. Reynolds Tobacco Co.

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