

For Immediate Release

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Paper Assesses State Supreme Court Ruling on Class Action Abuse

Recent abuse of class action litigation rules has yielded an uneven jurisprudence. One of the most recent examples of such abuse is *Liggett v. Engle*, a class action suit filed by three Florida residents seeking damages for injuries allegedly incurred by cigarette smoking. As a new Washington Legal Foundation (WLF) WORKING PAPER discusses, *Engle* – while not an entirely definitive outcome – offer important lessons for defendants and judges faced with blatant class action abuse.

In ***Liggett Group v. Engle: Florida High Court's Imperfect Response to Class Action Abuse***, George Mason Law School professor Michael I. Krauss argues that while the Florida trial court's decision was flawed and in part detrimental to the plaintiffs, the most recent ruling by the Florida Supreme Court restores some optimism about the ability of defendants to prevail under the current state tort law regime.

Professor Krauss' paper begins by discussing both the conduct and decision of the trial court. He notes that the trial judge ran something of a "show trial," with plaintiffs' attorneys engaging in blatant demagoguery and race-baiting. Further, the author discusses the seeming disregard for even elemental tort law as evidenced by both the plaintiffs' attorneys and the trial judge himself. Specifically, Professor Krauss cites the following flaws in the decision: questionable class certification in which the alleged "class" was too highly individualized – including geographical diversity – to create a certifiable "class"; the improper imposition of punitive damages before liability has been established for the class; and the excessive punitive damages award itself which at \$145 billion was seventeen times the defendants' net worth and the largest punitive damage award in American legal history.

Professor Krauss continues his discussion by detailing the results of the appeal to Florida's Third District Court of Appeals. That court overturned the trial court's ruling on each issue. The paper briefly goes through the court's reasoning on class certification, the imposition of punitive damages before liability, and the plaintiffs' lawyers' conduct.

The author concludes this WLF paper by discussing the Florida Supreme Court's ruling, explaining how the Court sided with the defendants on several critical issues. First, Krauss notes that "The appellate court's reversal of the \$145 billion punitive damages award was unanimously upheld, as the award was excessive as a matter of law." Critically, the Court upheld the appellate court's ruling that the alleged "class" must be decertified. At the same time, Krauss notes, the Florida Court overturned the appellate court on other issues, finding that "it had been proper to allow the jury to make findings in Phase I of the trial." Thus, "because of these findings, individual plaintiffs who sue in the future...will not have to prove" a whole host of facts critical to a defense in individual lawsuits. The Florida high court additionally disagreed with the appeals court that the lawyers' race-baiting tactics required reversal of individual verdicts in favor of two of the plaintiffs. Finally, as Professor Krauss states, the final ruling leaves open the possibility of future class action lawsuits, albeit ones that are more focused and smaller in size.

Copies of this educational paper, WLF WORKING PAPER, Number 145 (March 2007), can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.

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