



**July 7, 2006**

## **FLORIDA SUPREME COURT REJECTS \$145 BILLION CLASS ACTION AWARD**

*(Engle v. Liggett Group, Inc.)*

The Florida Supreme Court yesterday rebuffed efforts by plaintiffs' lawyers to reinstate a \$145 billion punitive damages judgment against the tobacco industry, awarded by a trial court to a class consisting of all Florida smokers who have contracted diseases caused by cigarettes. The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief on behalf of itself and the National Association of Manufacturers urging that the judgment, which had been reversed by an intermediate appellate court, not be reinstated.

The Florida Supreme Court agreed with WLF that the punitive damages award was improper because it had been entered without any determination that the approximately 700,000 plaintiffs had a valid basis for recovery. While a jury determined that tobacco companies had acted wrongfully in the manner in which they marketed their products, the court said that a determination of liability would have to await such factual determinations as whether the companies' conduct caused each plaintiff's injuries, whether that plaintiff relied on industry misstatements in deciding to smoke, the extent of each plaintiff's injuries, and the extent to which that plaintiff's own negligent conduct contributed to his or her injuries.

Moreover, the court said that such factual determinations are necessarily individualized and thus cannot be made on a class-wide basis -- thereby precluding further use of class action proceedings in this case. The court held that any Floridian claiming to have suffered pre-1997 injuries due to smoking would be permitted to file a separate suit and rely on the jury's determination of tobacco industry wrongdoing; but each such plaintiff would be required to demonstrate causation, reliance, comparative fault, and damages on an individualized basis.

The decision, if followed by courts in other states, will make it extremely difficult for plaintiffs' attorneys in future cases to win the right to try personal injury claims on a class-wide basis. Certification of massive plaintiff classes in personal injury cases has been a major problem for the business community; such certification makes it virtually impossible for businesses to defend themselves and forces them to enter into expensive settlements of even frivolous claims.

At least as important as decertification of the class was the Florida Supreme Court's decision to throw out the huge punitive damages award. The mere threat of such awards imposes additional settlement pressures on defendants and violates their due process rights by imposing punishment that bears no relation to the harm actually caused to individual plaintiffs.

The *Engle* case has been pending in the Florida courts since 1994. The plaintiffs are suing tobacco companies in tort, alleging strict liability, breach of warranty, fraud, and intentional infliction of emotional distress. The trial judge certified the case as a class action and permitted it to proceed to trial in several "phases." In Phase I, a jury determined that tobacco companies had acted wrongfully in marketing their products. In Phase II, a jury determined that several named plaintiffs (who purported to act as representatives of a class estimated to exceed 700,000 individuals) were entitled to recover damages, and that the remaining class members should divide a \$145 billion punitive damages award among themselves. The defendants appealed before the trial court could reach Phase III, which was intended to determine which class members could establish their right to recover. The court of appeals reversed the judgment in its entirety. In 2004, the Florida Supreme Court agreed to review the court of appeals's decision.

The Supreme Court agreed with WLF that the case could not proceed as a class action under the Florida Rules of Civil Procedure. WLF's brief had further argued that, contrary to the arguments of plaintiffs and their *amici*, the Florida class action rules do not contain a "public policy" exception; they do not allow lawsuits that otherwise fail to meet the requirements for class certification to be certified nonetheless on the basis of asserted public policy reasons.

In a minor victory for the plaintiffs' bar, the Court reinstated the jury verdicts for two of the identified class members. Also, by affirming the jury's classwide finding of tobacco industry misconduct, the Court somewhat lessened the burden of proof facing those pre-1997 plaintiffs who choose to go forward with tort claims on an individual basis. But all such plaintiffs will face significant hurdles in terms of establishing causation, reliance, damages, and comparative fault.

WLF is a public interest law and policy center with supporters nationwide. It has filed briefs in numerous cases involving the proper scope of class action litigation. NAM is the nation's largest industrial trade organization. It represents 14,000 member companies and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. NAM is actively involved in supporting class action reform in Congress.

\* \* \*

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its website, [www.wlf.org](http://www.wlf.org).