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WLF AND NAM URGE FLORIDA HIGH COURT TO REJECT \$145 BILLION CLASS ACTION (*Engle v. Liggett Group, Inc.*)

The Washington Legal Foundation (WLF) filed a brief today on behalf of itself and the National Association of Manufacturers (NAM) asking the Supreme Court of Florida to uphold a decision from the Third District Court of Appeals that decertified a class action brought on behalf of all Florida smokers who have contracted diseases caused by cigarettes. The plaintiffs are suing tobacco companies on the basis of strict liability, breach of warranty, fraud, and intentional infliction of emotional distress.

The trial judge in the case agreed with the plaintiffs' lawyers that the case could proceed as a class action although individualized issues predominate over issues common to the class, and thus rejected the defendants' motion to decertify the class. The trial judge has already entered a \$145 billion punitive damages award before completion of the trial. On appeal, plaintiffs argue that the appeals court's decertification order comes, in effect, too late and that class status should be granted for public policy reasons.

WLF's brief argues that the case cannot proceed as a class action under the Florida Rules of Civil Procedure. WLF noted that the defendants have raised the issue in a timely manner under the Florida rules because the appeal of a denial of decertification can await the entry of a final order – as was the case here. WLF's brief 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 for lawsuits that otherwise fail to meet the requirements for class certification to be certified nonetheless on the basis of asserted public policy reasons.

The brief pointed out that Florida's rules governing class actions cannot properly be amended through judicial interpretation in the context of a lawsuit. The Florida Supreme Court, which promulgates the civil procedure rules, has established a separate process for considering proposed rule amendments – a process that the plaintiffs' position, if upheld, would effectively bypass.

Rebecca O'Dell Townsend of the Tampa law firm of Haas, Dutton, Blackburn, Lewis & Longley, P.L., represented WLF and NAM as local counsel in the case on a *pro bono* basis.

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.

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, including *Matsushita Electric Industrial Co. v. Epstein*, 516 U.S. 367 (1996); *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429 (2000); and *Diamond Multimedia Systems v. Superior Court*, 19 Cal. 4th 1036 (1999), *cert. denied*, 527 U.S. 1003 (2000).

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