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COURT DECLINES TO REVIEW DECISION BARRING PRODUCT LIABILITY DEFENSES

(Philip Morris USA Inc. v. Campbell)
(R.J. Reynolds Tobacco Co. v. Martin)

The U.S. Supreme Court yesterday declined without explanation to review Florida state court decisions that prevent the nation's major cigarette manufacturers from defending themselves against charges that they acted wrongfully in marketing their products.

The one-sentence order declining review was a setback for the Washington Legal Foundation (WLF), which filed a brief filed in support of two petitions for review filed with the Supreme Court – *Philip Morris USA Inc. v. Campbell* and *R.J. Reynolds Tobacco Co. v. Martin*. WLF charged that the Florida court are conducting product liability lawsuits in a manner that violates the federal constitutional due process rights of defendants. WLF argued that the U.S. Constitution requires state courts to apply their procedural rules in a consistent manner. If those rules would permit other defendants to defend themselves fully against tort claims, then Florida must afford those same procedural protections to tobacco companies, WLF argued.

WLF has pledged to support further efforts to obtain U.S. Supreme Court review of the Florida tobacco litigation.

“Florida has imposed massive liability on the defendants in a series of tort suits without ever requiring the plaintiffs to demonstrate that the defendants acted wrongfully,” said WLF Chief Counsel Richard Samp following yesterday’s decision. “The Florida courts explained their decision to waive individualized evidentiary requirements as a ‘pragmatic’ decision designed to make the thousands of pending product liability cases more manageable. But a desire for manageability does not justify running roughshod over a defendant’s due process rights,” Samp said.

The cases arise in the aftermath of an abortive effort to try all of the product liability claims in a single class-action trial. The trial court initially certified a class consisting of all smokers nationwide who had suffered an illness due to smoking. The class was later limited to Florida smokers. Early phases of the trial had gone on for more than a year when an appeal of the class certification order finally reached the Florida Supreme Court. That court ruled in its 2006 *Engle* decision that continuing the case as a

class action was “not feasible because individualized issues such as legal causation, comparative fault, and damages predominate.” In other words, the court did not believe that a single jury could make meaningful factual determinations that would be applicable to each of the thousands of class members. But the court left open the possibility that some of the factual findings already made by the class action jury could be used in the subsequent lawsuits brought by individual smokers.

The lower Florida courts have taken that suggestion and run with it. They noted that the class action jury made a factual finding that each of the major tobacco companies sold cigarettes that were defectively designed and marketed. They interpreted that finding to mean that *every* cigarette sold by the defendants was defective (even though the evidence is clear that the jury was never asked to specify which brands of cigarettes were defective and which of the class plaintiffs’ numerous alternative liability theories it accepted as having been proven). Accordingly, the lower Florida courts applied the doctrine of “issue preclusion” to prevent tobacco companies, in subsequent suits filed by each individual smoker, from denying that the specific products sold to each smoker were defective. By stacking the deck against tobacco companies in this manner, the result has been over \$375 million in adverse judgments in the small number of “*Engle* progeny” cases decided to date, with thousands of other *Engle* progeny cases still awaiting trial.

In its brief urging the U.S. Supreme Court to grant review, WLF argued that the Florida courts have applied their “issue preclusion” rules in a highly unorthodox manner. The Due Process Clause of the U.S. Constitution bars state courts from departing from their normal procedural rules in such a radical manner, WLF asserted. Quoting a recent Supreme Court decision, WLF argued, “Adherence to traditional judicial procedures protects against arbitrary and inaccurate adjudication and thereby provides assurances that litigants will receive due process of law.”

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to promoting tort reform and reining in excessive litigation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF’s brief is posted on its web site, www.wlf.org.