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WLF Urges High Court to Reverse Florida Decisions Depriving Defendants of Product Liability Defenses

(R.J. Reynolds Tobacco Co. v. Brown; R.J. Reynolds Tobacco Co. v. Walker)

“Florida has imposed massive liability on businesses in a series of tort suits without ever requiring the plaintiffs to demonstrate that the defendants acted wrongfully toward them. The courts’ ... desire for manageability does not justify running roughshod over a defendant’s due process rights.”—Rich Samp, WLF Chief Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) this week asked the U.S. Supreme Court to review and reverse two decisions from Florida that keep the nation’s major cigarette manufacturers from defending themselves fairly. In its brief urging review of decisions from a Florida state court (*Brown*) and from the U.S. Court of Appeals for the Eleventh Circuit (*Walker*), WLF charges that the courts conducted these product liability lawsuits in a manner that violates the federal constitutional right of defendants to due process of law.

Both cases arise out of an abortive effort to try all product liability claims by Florida smokers in a single class action. That case lasted several years until the Florida Supreme Court (in its *Engle* decision) decertified the class in 2006 on the ground that issues of fact could not be litigated on a class-wide basis. But the *Engle* court also held that smokers bringing future individual product liability actions could use a finding made by the class-action jury: cigarette manufacturers in at least some instances acted negligently in marketing a “defective” product.

Thousands of Florida smokers filed individual claims against tobacco companies in the wake of *Engle*. The *Brown* and *Walker* courts determined that the jury’s verdict in the decertified class action precluded the defendant in these two cases from denying that it acted wrongly in marketing its cigarettes to these plaintiffs. But as the defendant points out, the class-action jury held merely that the companies acted wrongly at some unspecified times over the past 50 years. WLF’s brief argues that it denies the defendant’s due process rights to refuse to permit it to defend itself against charges that it acted tortiously with respect to these particular plaintiffs.

After filing its brief, WLF issued a statement by Chief Counsel Richard Samp as follows: “Florida has imposed massive liability on businesses in a series of tort suits without ever requiring the plaintiffs to demonstrate that the defendants acted wrongfully. The courts explained that they were trying to make cases more manageable. But a desire for manageability does not justify running roughshod over a defendant’s due process rights. To date only a small fraction of the *Engle* claims have come to trial, yet liability awards already exceed \$450 million.”

WLF is a public interest law firm and policy center that regularly litigates in support of business civil liberties, like the 14th Amendment right not to be deprived of property without due process.

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