

Board Of Contributors: Tobacco Industry To Face The Music Soon



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"I meant what I said, and I said what I meant. An elephant's faithful, one hundred percent," Horton the Elephant said. I loved Horton as a kid, and my kids loved him, too. For some reason, over the past few years, whenever I pondered the cigarette industry's challenge to the Florida Supreme Court's Engle opinion, I found myself repeating the elephant's famous line from the Dr. Seuss book Horton Hatches the Egg. It is a silly book, and the elephant is a silly character. Clearly, most of us, including me, view the Supreme Court as an august and serious body. But the silliness of the industry's challenge evokes silly images.

And so, like Horton the Elephant, the Florida Supreme Court, in Philip Morris USA, Inc.v. Douglas, No. SC12-617 (Fla. 2013), made it clear that it meant what it said in

Engle v. Liggett Group, Inc., 945 So.2d 1246 (Fla. 2006).

The Engle opinion, issued in 2006, was supposed to end the issue, finding that the major American tobacco companies were guilty of negligence, strict liability for a defective and inherently dangerous product, cigarettes, fraud and concealment regarding the harmful effects of cigarette smoking, and conspiracy to defraud and conceal from the American people the adverse health effects of smoking.

Furthermore, the Engle decision was supposed to end the issue of whether cigarettes containing nicotine are addictive and whether cigarette smoking causes a host of human diseases, including lung cancer, emphysema, copd, esophageal cancer and throat cancer. After the Engle decision, individual plaintiffs who were able to prove to a jury that they were members of the Engle class were entitled to damages from a jury.

Notwithstanding the Engle decision, the tobacco industry spent years and exorbitant amounts of money asserting that Engle did not mean what it said, that there was no res judicata effect, and that individual members of the Engle class should not be entitled to the findings announced by the Florida Supreme Court. The cigarette industry argued that the Florida Supreme Court did not mean to say res judicata when it said res judicata.

So, with unlimited resources, the cigarette manufacturers collectively challenged case after case, verdict after verdict. Last year, in Douglas, the Florida Supreme Court agreed to accept jurisdiction to hear and re-decide the issue.

In its March 14 ruling, the Florida Supreme Court reiterated what it said the first time around six years prior: The Engle jury findings have conclusive effect, res judicata effect, and therefore the issues are decided for the Engle class. Once a plaintiff demonstrates that he or she was addicted to cigarettes containing nicotine and that the plaintiff developed a smoking related illness as a result, the plaintiff is entitled to recover damages from the defendant as determined by a jury.

Endless pages of paper, and large amounts of hot air, have been expended in this exercise. But in the end, we are back to the beginning. The Florida Supreme Court meant what is said, and it said what it meant: the cigarette manufacturers are, as a matter of law, guilty of negligence, strict liability, fraud and conspiracy to commit fraud. Also, cigarettes containing nicotine are addictive and cigarettes cause a host of human diseases, including lung cancer, emphysema and copd.

The Florida Supreme Court also held that there was no violation of due process. The cigarette makers had abundant due process throughout a trial that lasted almost two years in Engle to fight and deny these issues. And in every Engle progeny trial, they get weeks to relitigate issues relating to personal choice, comparative fault and causation. And when each trial is finished, they get access to Florida's appellate courts and the Florida Supreme Court. No defendant in the history of Florida jurisprudence has received anywhere close to the amount of due process that the cigarette manufacturers have received in Engle and its progeny.

In the coming months, the cigarette manufacturers will seek review yet again, this time in the U.S. Supreme Court. We will wait and see, but it appears the cigarette industry has exhausted its use of the court system and has extracted as much due process as anyone could ever imagine. Soon big tobacco's cigarette makers will have to face the music, own up to their history of fraud, deceit, and destruction, and pay their victims for this colossal episode of malfeasance.

We are on the precipice of justice in these cases. It is an exciting time.

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