

# CARLTON FIELDS

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**PRODUCTS LIABILITY PRACTICE GROUP  
FLORIDA CASE OF THE MONTH**

***Liggett Group Inc. v. Engle,*  
2003 WL 21180319 (Fla. 3d DCA, May 21, 2003)**

**SMOKERS' CLASS ACTION DECERTIFIED:  
APPEALS COURT OVERTURNS \$145 BILLION PUNITIVE DAMAGES AWARD**

The Third District Court of Appeal (Miami), in a strongly-worded 68-page ruling, held that smokers could not group themselves as a class in a single lawsuit against the tobacco manufacturers, overturned a \$145 billion punitive damages award, and heavily criticized the jury nullification tactics used by plaintiffs' counsel during trial. Carlton Fields represented defendant, R.J. Reynolds Tobacco Company at trial and on appeal.

In May 1994, six individual plaintiffs filed a class action suit in Miami-Dade County Circuit Court against the nation's largest tobacco companies seeking damages for injuries allegedly caused by smoking. All six alleged they were addicted to nicotine and had developed medical problems ranging from cancer to sore throats. Plaintiffs sought over \$100 billion in compensatory damages based on various theories including strict liability, negligence, breach of express and implied warranty, fraud and conspiracy. In October 1994, the trial court certified a national class of U.S. citizens and residents who at some point suffered from diseases or medical conditions caused by their addiction to cigarettes containing nicotine. The Third DCA eventually limited the class to Florida smokers.

In February 1998, the trial court issued its first trial plan, which contemplated a three-phase trial. Phase 1 consisted of a year-long trial on liability and entitlement to punitive damages. There, the jury returned a verdict for the class on all counts. Phase 2 covered the individual plaintiffs' (by now reduced to three) entitlement to compensatory damages and, thereafter, the jury would determine the lump-sum amount of punitive damages for the entire class. As to this phase, the jury awarded \$12.7 million in compensatory damages to the individual plaintiffs and \$145 billion in punitive damages to the entire class. Prior to the start of Phase 3, which was scheduled to decide the individual liability and compensatory damages claims for each class member (at that point estimated to be at least 700,000) as well as divide the \$145 billion equally among successful class members, the defendants appealed.

The Third DCA's ruling relied primarily on three grounds that, independently, justified reversal. First, the Court noted that smokers and their issues with the tobacco companies were too diverse to be grouped into a single claim. Thus, the smokers' claims could not satisfy Florida's standard for class certification that required predominance of common issues and superiority of class representation over other available methods. Second, the Court found the \$145 billion punitive damages award to be improper because: (1) the lower court awarded punitive damages without the necessary finding of liability and compensatory damages; (2) the \$145 billion award

was excessive under both state and federal law; (3) the Florida Settlement Agreement entered into by the State of Florida on behalf of its citizens in a prior lawsuit against the tobacco companies precluded plaintiffs from seeking punitive damages for similar misconduct. Third, the Court criticized plaintiffs' counsel's race-based appeals for jury nullification, which "juxtaposed conduct with genocide and slavery" and compared the "defendants' reliance on the laws...to positions taken by defenders of slavery and of the holocaust." Accordingly, the Third DCA reversed and remanded with instructions to decertify the class.

**Comments:** By eliminating class action status, the Third DCA acknowledged the individualized nature of smokers' suits, recognized the excessiveness of a \$145 billion punitive damages award, and remedied the prejudicial attorney misconduct that led to a "runaway jury". To qualify for class treatment, plaintiffs must have experienced similar injuries arising out of a common set of underlying facts. Given that Florida smokers — half of whom came to Florida after the age of 50 — used different brands and had varying medical conditions, class action treatment was simply unworkable. Consistent with a recent U.S. Supreme Court mandate that punitive damages should be based on the actual harm suffered by the plaintiff, the *Engle* Court recognized it was improper to "award[ ] the GNP of several European countries" without knowing what the individual harm was to the plaintiffs. *Engle* represents a significant victory for the tobacco companies and deals a harsh blow to plaintiff smokers who are now forced to proceed individually.

*For more information, call Carlton Fields' Products Liability Practice Group  
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