

IN THE EIGHTH JUDICIAL CIRCUIT, IN
AND FOR LEVY COUNTY, FLORIDA

CASE NO.:

DIANNE WEBB, Personal Representative of
the ESTATE OF JAMES CAYCE HORNER,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO COMPANY,
PHILLIP MORRIS—USA, INC.,
LORILLARD TOBACCO COMPANY,
LORILLARD, INC., LIGGETT GROUP,
LLC, (f/k/a Liggett Group, Inc., f/k/a Liggett
& Myers Tobacco Company) and VECTOR
GROUP, LTD., INC. (f/k/a Brooke Group,
Ltd.),

Defendant,

SEVERED THIRD AMENDED COMPLAINT

Plaintiff DIANNE WEBB, Personal Representative of the ESTATE OF JAMES CAYCE HORNER sues Defendants R.J. REYNOLDS TOBACCO COMPANY, PHILIP MORRIS—USA, INC., LORILLARD TOBACCO COMPANY, LORILLARD, INC., LIGGETT GROUP LLC, (f/k/a Liggett Group, Inc., f/k/a Liggett & Myers Tobacco Company) and VECTOR GROUP, LTD., INC. (f/k/a Brooke Group, Ltd.) and allege as follows:

1. Plaintiff is a member of the class of persons described by the Supreme Court of Florida in *Engle v. Liggett Group, Inc.*, 945 So.2d 1246 (Fla. 2006) (“*Engle*”). Plaintiff brings this action pursuant to *Engle*.

2. Plaintiff Dianne Webb is the Personal Representative of the Estate of James Cayce Horner. James Cayce Horner left one “survivor” within the meaning of Florida’s Wrongful Death Act, his child Diane Webb.

3. The Decedent herein James Cayce Horner is referred to as the “Decedent” or the “Smoker.”

4. Defendant Philip Morris—USA Inc. (“Philip Morris U.S.A.”) is a Virginia corporation that conducts business in the State of Florida, including Levy County, and did so during all times relevant to this action.

5. Defendant Lorillard Tobacco Company is a Delaware corporation that conducts business in the State of Florida, including Levy County, and did so during all times relevant to this action.

6. Defendant Lorillard, Inc. is a Delaware corporation that conducts business in the State of Florida, including Levy County, and did so during all times relevant to this action.

7. Defendant R.J. Reynolds Tobacco Company, individually and as successor by merger to Brown & Williamson Tobacco Corporation, individually and as successor by merger to The American Tobacco Company, is a North Carolina corporation that conducts business in the State of Florida, including Levy County, and did so during all times relevant to this action.

8. Defendant Liggett Group, LLC (“Liggett”) is a Delaware limited liability company that conducts business in the State of Florida, including Levy County, and did

so during all times relevant to this action. Liggett is a “citizen” of Florida for purposes of 28 U.S.C. §1331 because one or more of the members of Liggett is a “citizen” of Florida.

9. Defendant Vector Group, Ltd., Inc. (“Vector”) is a Delaware corporation that conducts business in the State of Florida and has its principal place of business in Miami, Dade County, Florida, making it a “citizen” of Florida for purposes of 28 U.S.C. §1331. Vector is the successor to Liggett or the alter ego of Liggett, such that Vector is ultimately or vicariously liable any judgment entered against Liggett herein. Vector and Liggett are also the successors to or alter egos of Liggett, Brooke Group, Ltd., Inc. and Brooke Group Holding, Inc., which were among the defendants in the *Engle* class action.

10. The Council for Tobacco Research U.S.A., Inc. (the “Council”) and the Tobacco Institute, Inc. (the “Institute”), at all times relevant to this action, were involved in promotion, lobbying, medical research, legislative and political activities or related ventures throughout Florida and the United States both in connection with and on behalf of the Defendants.

11. At all times relevant to this action, all Defendants manufactured and distributed tobacco products containing nicotine throughout Florida and the United States. The Defendants, including Vector, were and remain *Engle* defendants.

12. In *Engle*, the Florida Supreme Court approved certification for liability purposes of a class including all Florida citizens and residents, and their survivors, who have suffered, presently suffer, or who have died from diseases and medical conditions caused by their addiction to cigarettes that contain nicotine.

13. At all times relevant to this action, the Smoker was a Florida resident and citizen (1) who was addicted to, purchased, and smoked cigarettes containing nicotine that were designed, manufactured, advertised and marketed by one or more of the Defendants and (2) who did so in sufficient quantities and for a sufficient time period to cause injury in the form of diseases and medical conditions described herein.

14. The Florida Supreme Court decertified the *Engle* class because class-wide treatment of causation and damages was not feasible. The Florida Supreme Court expressly reserved to class members, including Plaintiff, the right to bring individual actions against Defendants for smoking-related injuries and damages, including punitive damages.

15. Less than one year has elapsed since the Florida Supreme Court's mandate issued. Therefore, this action is timely.

16. Because Plaintiff was an *Engle* class member, Plaintiff is entitled to the benefit of the Phase I findings and Plaintiff asserts and alleges those findings as conclusively established in this action as follows (¶¶17-24):

17. Smoking cigarettes causes aortic aneurysm, bladder cancer, cerebrovascular disease, cervical cancer, chronic obstructive pulmonary disease, coronary heart disease, esophageal cancer, kidney cancer, laryngeal cancer, lung cancer (specifically, adenocarcinoma, large cell carcinoma, small cell carcinoma, and squamous cell carcinoma), complications of pregnancy, oral cavity/tongue cancer, pancreatic cancer, peripheral vascular disease, pharyngeal cancer, and stomach cancer.

18. Nicotine in cigarettes is addictive.

19. Defendants placed cigarettes on the market that were defective and unreasonably dangerous.

20. Defendants concealed or omitted material information not otherwise known or available, knowing that the material was false or misleading or failed to disclose a material fact concerning the health effects or addictive nature of smoking cigarettes or both.

21. Defendants agreed to conceal or omit information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and the public would rely on this information to their detriment.

22. Defendants sold or supplied cigarettes that were defective.

23. Defendants sold or supplied cigarettes that, at the time of sale or supply, did not conform to representations of fact made by Defendants.

24. All Defendants were negligent.

25. The Smoker smoked cigarettes manufactured and sold by each and every one of the Defendants and their predecessors in interest. The cigarette brands smoked by the Smokers include but not limited to the following: The Smoker, James Cayce Horner, smoked: (a) Liggett and Vector (Chesterfield); (b) Philip Morris (Marlboro, English Ovals); (c) R. J. Reynolds (Pall Mall, Camel, Kool, Winston); (d) Lorillard (Kent) The Smoker suffered from and died due to one or more of the diseases and medical conditions described, including lung cancer, which was caused by his addiction to cigarettes that contain nicotine and each of which manifested during the class period.

26. The Smoker bears some measure of fault, but less than 100% of the applicable fault, for causing his respective smoking-related injuries. The Smoker's acts or omissions relating to the frequency and duration of his efforts to quit smoking were a partial proximate cause, in combination with the acts and omissions of Defendants, of his injuries. Plaintiff therefore seeks apportionment of fault and damages.

27. Venue is proper in this Circuit because, at all times material to this action, the Smoker either resided, suffered injuries or died in Levy County, Florida.

COUNT I: STRICT LIABILITY

28. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-27.

29. The *Engle* Phase I findings conclusively establish that the cigarettes sold and placed on the market by Defendants were defective and unreasonably dangerous.

30. As a proximate result of smoking the defective cigarettes sold and placed on the market by one or more Defendants, the Smoker died and his Estate is entitled to recover all damages specified in Florida's Wrongful Death.

COUNT II: FRAUD BY CONCEALMENT

31. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-27.

32. The *Engle* Phase I findings conclusively establish that Defendants concealed or omitted material information not otherwise known or available knowing that the material was false or misleading or failed to disclose a material fact concerning the health effects or addictive nature of smoking cigarettes or both.

33. The Defendants' actions constitute fraud.

34. As a proximate result of Defendants' fraud, the Smoker died and his Estate is entitled to recover all damages specified in Florida's Wrongful Death.

COUNT III: CONSPIRACY TO COMMIT FRAUD BY CONCEALMENT

35. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-27.

36. The *Engle* Phase I findings conclusively establish that Defendants, the Council, and the Institute, agreed to conceal or omit information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and the public would rely on this information to their detriment.

37. The Defendants' actions, and those of the Council and Institute, constitute a successful conspiracy to commit fraud.

38. As a proximate result of Defendants' conspiracy to commit fraud, the Smoker died and his Estate is entitled to recover all damages specified in Florida's Wrongful Death.

COUNT IV: NEGLIGENCE

39. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-27.

40. The *Engle* Phase I findings conclusively establish that the Defendants were negligent.

41. As a proximate result of the Defendants' negligence, the Smoker died and his Estate is entitled to recover all damages specified in Florida's Wrongful Death.

COUNT V – PUNITIVE DAMAGES

42. Plaintiff hereby realleges and incorporates the allegations contained in Paragraphs 1-27.

43. The foregoing allegations evince, and each Defendant engaged in, fraudulent, willful, wanton, and gross misconduct that: caused injury so gross and flagrant as to show a reckless disregard of human life or of the safety of persons exposed to the effects of such conduct, including Plaintiff and Plaintiff's decedent; showed such an entire lack of care that each Defendant must have been consciously indifferent to the consequences; showed such an entire lack of care that each Defendant must have wantonly or recklessly disregarded the safety and welfare of the public, including Plaintiff and Plaintiff's decedent; showed such reckless indifference to the rights of others, including Plaintiff and Plaintiff's decedent, as to be the equivalent to an intentional violation of those rights.

44. Defendants had actual knowledge of the wrongfulness of such conduct and the high probability that injury or damage to Plaintiff and Plaintiff's decedent would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in such injury and damage and the Defendants' conduct, jointly and severally, was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct, including Plaintiff and Plaintiff's decedent.

WHEREFORE, Plaintiff demands:

- trial by jury;

- judgment against each Defendant for an amount in excess of \$15,000;
- all damages available under the law, including punitive damages
- taxable costs; and
- interest as allowed by law.

For the Estate:

- loss of earnings, if any, of the Decedent from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest and loss of the prospective net accumulations, if any, of the Estate.
- medical and funeral expenses due to the Decedent's injury and death.

For Surviving Spouse:

- the value of lost support and services from the date of the Decedent's injury to his death, with interest, and future loss of support and services from the date of death and reduced to present value.
- loss of the Decedent's companionship and protection and for mental pain and suffering from the date of injury.

For Surviving Children:

- the value of lost support and services from the date of the Decedent's injury to his death, with interest, and future loss of support and services from the date of death and reduced to present value

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- lost parental companionship, instruction, and guidance and for mental pain and suffering in the past and in the future.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all counsel on the attached list, this 10th day of November, 2009.



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