



October 3, 2007

COURT DECLINES TO POLICE IMPROPER USE OF CLASS ACTION CERTIFICATION

(R.J. Reynolds Tobacco Co. v. Engle, No. 06-1440)

The U.S. Supreme Court this week declined to review a Florida Supreme Court decision that upheld the certification of a plaintiff class of over 700,000 smokers, even though the claims of the class members have no more than a handful of factual and legal issues in common. The Court's one-sentence order declining review was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case, *R.J. Reynolds Tobacco Co. v. Engle*, urging the Court to grant review.

WLF's brief argued that the certification decision denies the defendants a meaningful opportunity to contest class members' claims that their injuries were caused by defendants' allegedly wrongful conduct. WLF also argued that most of the claims are barred by federal law.

"The decision below should not be allowed to stand, because it was the product of a seriously flawed proceeding," said WLF Chief Counsel Richard Samp after reviewing the Supreme Court's order. "Among other egregious errors, the trial court adopted a trial plan that ran roughshod over defendants' constitutional rights. It tolerated outrageous misconduct by counsel for the plaintiffs, misconduct apparently designed to persuade the jury to ignore the law in arriving at a verdict. It certified a massive plaintiff class, with little apparent regard for how the claims of individual class members could be adjudicated. It entered a bankrupting \$145 billion punitive damages judgment against the defendants in favor of the plaintiff class, even though the claims of 99.999% of the class members had not yet been decided. Although the Florida Supreme Court overturned the punitive damages award, it upheld virtually all of the jury's findings in favor of the plaintiff class and ordered that they be given preclusive effect in subsequent trials, even though those generalized findings cannot be tied in a meaningful manner to any single class member. Something has gone seriously wrong here; the case cries out for review," Samp said.

The case involves claims by a handful of smokers who allege that they suffered injury caused by their addiction to cigarettes. They assert that defendants (the major U.S. cigarette manufacturers) are responsible for their injuries because the defendants marketed defective products and because they allegedly misled the plaintiffs regarding the health risks of smoking. After certifying a massive plaintiff class, the trial court

conducted a Phase I trial that focused on so-called "common" issues related exclusively to the defendants' conduct. The plaintiffs introduced evidence of alleged misconduct that spanned several decades but that was not tied to the experiences of any single class member. At the conclusion of Phase I, the jury made general findings regarding several aspects of the defendants' conduct -- including that the defendants were negligent, sold cigarettes that were defective, and intentionally misled smokers regarding the health effects of smoking. The jury made no effort to specify which acts of the defendants -- among the thousands of acts covered by the plaintiffs' evidence -- were wrongful.

The Florida Supreme Court upheld the trial court's decision to certify the plaintiff class, albeit it stated that now that all "common" issues had been adjudicated, the claims of individual class members would have to proceed on a case-by-case basis. But in order to make the trial of those individual claims more efficient, the Florida Supreme Court stated that individual class members would be permitted -- in their subsequent trials -- to give preclusive effect to all of the Phase I jury's findings that the defendants' had acted wrongfully. In other words, the defendants would be barred from arguing that their conduct with relation to a given class member was not wrongful.

In its brief urging the Supreme Court to hear the case, WLF argued that the Florida Supreme Court's decision to prohibit the defendants from defending their conduct toward individual class members violated the defendants' due process rights. WLF argued that the Due Process Clause prohibits a state court from giving preclusive effect to a jury verdict when it is impossible to discern which of numerous alternative grounds formed the basis for the jury's finding of wrongful conduct. WLF argued that this case is typical of the manner in which state courts react when faced with large class actions; WLF argued that all too often the due process rights of defendants and absent class members are sacrificed in such proceedings in the name of efficiency.

WLF also argued that all of the plaintiffs' claims are preempted by a federal statute that prohibits states from attempting to regulate the labeling and marketing of cigarettes that are labeled and marketed in conformance with federal law. WLF argued that the lawsuit is essentially a challenge to the manner in which cigarettes have been marketed over the past 50 years and therefore is barred by federal law.

WLF is a public interest law and policy center with supporters in all 50 states. It 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.