

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT  
IN HILLSBOROUGH COUNTY, FLORIDA  
CIRCUIT CIVIL**

IN RE: *ENGLE* PROGENY CASES  
TOBACCO LITIGATION

Case No. 05-11472

*Pertains To: Hargroves, Walter*

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Division K

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S AMENDED MOTION REQUESTING  
USE OF A JUROR QUESTIONNAIRE**

Defendant's motion and its proposed questionnaire violate Florida law. Contrary to Defendant's assertion, its proposed juror questionnaire complicates the jury selection process and lengthens the time spent in voir dire. It is also a poorly disguised attempt to both profile the prospective jurors and precondition them to the potential issues in the trial. As such, Defendant's amended motion should be denied.

Defendant asks this Court to use a juror questionnaire which deviates from the form approved by the Florida Supreme Court, and codified in Florida Rules of Civil Procedure Form 1.984. However, nowhere in its motion does Defendant cite the rule of civil procedure which governs the use (or change) of the juror questionnaire.<sup>1</sup> Florida Rule of Civil Procedure 1.431(a) authorizes a trial court to use a juror questionnaire, but the only questionnaire permitted is the form approved by the Florida Supreme Court, which is Form 1.984. Rule 1.431(a) does not authorize a trial court to craft its own questionnaire.

Instead of advising this Court of this binding rule of procedure, Defendant cataloged a series of cases in which trial courts have used a jury questionnaire. But, Defendant neglected to advise this Court that numerous courts have denied this identical motion where the plaintiff has

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<sup>1</sup> Florida Rule of Professional Conduct 4-3.3(a)(1) prohibits lawyers from making false statements of law.

not agreed. Order Denying Defendants' Motion Requesting Use of a Juror Questionnaire, *Piendle v. R.J. Reynolds Tobacco Co., et al.*, Case No. 502008CA038777MBAJ (15th Cir. Palm Beach County, June 30th, 2010) (**Exhibit A**); Order on Case Specific Motions and Motions Not Covered by Omnibus Order, *Soffer v. R.J. Reynolds Tobacco Co.*, Case No. 01-2007-CA-5192 (13th Cir., June 6th 2010) (**Exhibit B**); Omnibus Order on Motions in Limine "Generic" to *Engle Tobacco Litigation*, (8th Cir. Alachua County, Jan. 22, 2010) (**Exhibit C**, ¶ 32). In each case, the plaintiff informed the trial court that rule 1.431(a) governed Defendant's request and that the requested questionnaire could not be used over the plaintiff's objection. Nonetheless, Defendant now files the exact same motion, and again fails to advise a court of the controlling rule of procedure and excludes any opposing authority.<sup>2</sup>

The misrepresentations do not end there. On page 4 of its motion, Defendant represents that, in *Florida Rules of Civil Procedure*, 967 So. 2d 178 (Fla. 2007), the Florida Supreme Court stated, "Florida recognizes that 'pre-voir dire questionnaires are desirable and beneficial.'" The Florida Supreme Court did not say that. In the decision, the Florida Supreme Court was reviewing recommendations by the Jury Innovations Committee. The quote excerpted by Defendant was said by the committee, not the Florida Supreme Court.

More than that, the committee, which made the statement relied upon by Defendant, did not advocate the type of questionnaire which Defendant requests here. Defendant requests an intensely case-specific and long questionnaire. The committee advocated, instead, questionnaires regarding the venire member backgrounds.

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<sup>2</sup> Florida Rule of Professional Conduct 4-3.3(a)(1) requires lawyers to correct previously made false statements of law.

Therefore, there is no authority which permits this Court to give any questionnaire other than the one found at Form 1.984.

Even if there were, the questionnaire Defendant seeks would be inappropriate. A review of the questions proposed demonstrates that Defendant is attempting to obtain information to “profile” prospective members of the jury in an effort to gain an insight into which jurors might be best for its defensive positions. Such questions include cigarette usage, whether they “enjoy smoking,” whether they were addicted to cigarettes, attempts to “quit” smoking, whether older smokers began smoking before they were aware of the risks of smoking, and whether older smokers only continued to smoke because they were addicted by the time they learned of the risks of smoking. The offensive and intrusive questions go on *ad infinitum* and demonstrate Defendant’s true purpose.


Finally, Defendant’s anecdotal claim that its detailed questionnaire will save time and promote judicial efficiency is speculative, at best. For example, Defendant’s questionnaire was used in a recent *Engle* progeny trial before Judge Terrell in Escambia County. The voir dire took nine days, and ultimately resulted in a mistrial for juror misconduct. When the trial commenced again, no questionnaire was allowed and jury selection took two days and a few additional hours.

WHEREFORE, Mrs. Hargroves asks this Court to deny Defendant’s request for a juror questionnaire which deviates from Florida Rule of Civil Procedure 1.431(a) and Florida Rule of Civil Procedure Form 1.984.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by electronic mail to Benjamin H. Hill, III ([bhh@hwhlaw.com](mailto:bhh@hwhlaw.com)), Troy A. Fuhrman ([tfuhrman@hwhlaw.com](mailto:tfuhrman@hwhlaw.com))

and R. Craig Mayfield ([cmayfield@hwhlaw.com](mailto:cmayfield@hwhlaw.com)), Hill, Ward, Henderson, P.A., 101 E. Kennedy Blvd., Suite 3700, Post Office Box 2231, Tampa, Florida 33601 and Stephanie E. Parker ([separker@jonesday.com](mailto:separker@jonesday.com)), John F. Yarber ([jyarber@jonesday.com](mailto:jyarber@jonesday.com)), and John M. Walker ([jmwalker@jonesday.com](mailto:jmwalker@jonesday.com)), Jones Day, 1420 Peachtree Street, N.E., Suite 800, Atlanta, Georgia 30309 this <sup>10</sup>~~9~~ day of August 2010.



STEVEN L. BRANNOCK  
Florida Bar: 319651  
CELENE H. HUMPHRIES  
Florida Bar: 884881  
TYLER K. PITCHFORD  
Florida Bar: 54679  
BRANNOCK & HUMPHRIES  
400 North Ashley Drive, Suite 1100  
Tampa, Florida 33602  
Tel: (813) 223-4300  
Fax: (813) 262-0604

and

HOWARD M. ACOSTA  
Florida Bar: 274089  
LAW OFFICES OF HOWARD M. ACOSTA  
300 First Avenue N.  
St. Petersburg, Florida 33701  
Tel: (727) 894-4469  
Fax: (727) 823-7608

and

KENT WHITTEMORE  
Florida Bar: 166049  
1 Beach Drive SE, Suite 205  
St. Petersburg, Florida 33701  
Tel: (727) 821-8752  
Fax: (727) 821-8324

and

BRUCE DENSON  
Florida Bar: 18880

700 Central Avenue, Suite 500  
St. Petersburg, Florida 33701  
Tel: (727) 896-7000  
Fax: (727) 895-4162

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

MARGARET E. PIENDLE, Personal  
Representative of the ESTATE OF  
CHARLES WILLIAM PIENDLE,

CASE NO: 502008CA038777MBAJ

Plaintiff,

v.

R. J. REYNOLDS TOBACCO  
COMPANY, et al.,

Defendants.

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**ORDER DENYING DEFENDANTS' MOTION REQUESTING  
USE OF A JUROR QUESTIONNAIRE**

**THIS CAUSE** came before the Court on June 30, 2010 upon Defendants' Motion for Use of a Juror Questionnaire. This Court, having reviewed the court file, the Motion, the opposition, heard argument of counsel and being otherwise fully advised in the premises, finds the following:

Defendants R.J. Reynolds Tobacco Co. and Philip Morris USA, Inc. request that the Court allow the parties to submit detailed questionnaires to all prospective jurors in this case as part of voir dire. Plaintiff opposes the motion on the grounds that no juror questionnaire is authorized except for that provided for in Florida Rule of Civil Procedure 1.983.

To assist in voir dire examination at trial, any court may direct the clerk to furnish prospective jurors selected for service with a questionnaire *in the form approved by the supreme court*. Fla. R. Civ. P. 1.431(a)(2) (emphasis added). The parties have the right to examine jurors *orally* on their voir dire. Fla. R. Civ. P. 1.431(b) (emphasis added). The Fourth District Court of Appeal has noted that Rule 1.431(a) is intended as a timesaving measure to assist in determining whether a juror is *qualified* to serve, but that it does not assist the lawyers in determining whether a juror could be *fair and impartial* in the particular case being tried. *Sisto v. Aetna Cas. & Sur. Co.*, 689 So. 2d 438 (Fla. 4th DCA 1997) (emphasis in original). The Fourth District Court of Appeal has also previously held that it was an abuse of the trial court's discretion and a departure from the essential requirements of law to use a jury questionnaire containing thirty-six questions

Exhibit A

regarding juror's politics, religion, social views, hobbies, and other areas of inquiry. *State v. Thayer*, 528 So. 2d 67 (Fla. 4th DCA 1988). Neither the applicable rules of procedure nor case law provides that the Court has the authority use a questionnaire other than that provided for by the Florida Supreme Court in Rule 1.983 over a party's objection. Accordingly, it is

**ORDERED AND ADJUDGED** that Defendants' Motion for Use of a Juror Questionnaire is **DENIED**; however, if the parties are able to stipulate to the use of an agreed proposed juror questionnaire, then the parties may move for reconsideration.

**DONE AND ORDERED** in Chambers in West Palm Beach, Palm Beach County, Florida this 30<sup>th</sup> day of June, 2010.

  
ROBIN ROSENBERG  
Circuit Judge

CC:  
See attached service list

SERVICE LIST

David J. Sales (FBN 794732)  
F. Gregory Barnhart (FBN 217220)  
SEARCY DENNEY SCAROLA BARNHART &  
SHIPLEY, P.A.  
2139 Palm Beach Lakes Blvd.  
West Palm Beach, FL 33409  
e-mail: [djs@searcy.com](mailto:djs@searcy.com)  
e-mail: [FGB@searcy.com](mailto:FGB@searcy.com)  
Phone: 561-686-6300  
Fax: 561-478-0754  
Counsel for *Plaintiff*

John P. Wiederhold (FBN 125670)  
WIEDERHOLD & MOSES, P.A.  
560 Village Blvd., Suite 240  
West Palm Beach, FL 33402  
e-mail: [jwiederhold@wmrfla.com](mailto:jwiederhold@wmrfla.com)  
Phone: 561-615-6775  
Fax: 561-615-7225  
And

John F. Yarber (FBN 0688932)  
JONES DAY  
1420 Peachtree Street, N.E., Suite 800  
Atlanta, GA 30309-3053  
e-mail: [jyarber@jonesday.com](mailto:jyarber@jonesday.com)  
Phone: 404-521-3939  
Fax: 404-581-8330  
Counsel for *R.J. Reynolds Tobacco Company*

Kelly A. Luther (FBN: 870780)  
KASOWITZ BENSON TORRES & FRIEDMAN,  
LLP  
1441 Brickell Avenue, Suite 1420  
Miami, FL 33131  
e-mail: [kluther@kasowitz.com](mailto:kluther@kasowitz.com)  
Phone: 305-377-1666  
Fax: 305-675-2218  
Counsel for *Liggett Group LLC*  
and *Vector Group Ltd.*

Eileen Tilghman Moss (FBN 570524)  
Stacey A. Koch (FBN 0091472)  
SHOOK, HARDY & BACON, L.L.P.  
201 South Biscayne Blvd., Suite 2400  
Miami, FL 33131  
e-mail: [elmos@shb.com](mailto:elmos@shb.com)  
Phone: 305-358-5171  
Fax: 305-358-7470  
And

Stephen J. Krigbaum (FBN 978019)  
Joseph Ianno, Jr. (FBN 655351)  
CARLTON FIELDS, P.A.  
CityPlace Tower  
525 Okeechobee Blvd., Suite 1200  
West Palm Beach, FL 33401  
e-mail: [skrigbaum@carltonfields.com](mailto:skrigbaum@carltonfields.com)  
Phone: 561-659-7070  
Fax: 561-659-7368  
And

Sandra Giannone Ezell  
BOWMAN AND BROOKE, LLP  
1111 East Main Street, Suite 2100  
Richmond, VA 23219  
e-mail: [sandra.ezell@bowmanandbrooke.com](mailto:sandra.ezell@bowmanandbrooke.com)  
Phone: 804-649-8200  
Fax: 804-649-1762  
Counsel for *Philip Morris USA Inc.*

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT  
IN ALACHUA COUNTY, FLORIDA  
CIVIL DIVISION J**

**LUCILLE RUTH SOFFER as Personal Representative  
for the Estate of MAURICE BENSON SOFFER,**

**Case No.: 01-2007-CA-5192**

**Plaintiff,**

**vs.**

**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,  
a foreign corporation; PHILIP MORRIS – USA, INC.,  
a foreign corporation; LORILLARD TOBACCO  
COMPANY, a foreign corporation; 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.), a foreign corporation,**

**Defendants.**

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**ORDER ON CASE SPECIFIC MOTIONS AND MOTIONS NOT COVERED  
BY OMNIBUS ORDER**

These motions came before the court upon motions which are case specific and motions not covered by the joint Omnibus Order on Parties "Generic" Motions in Limine and the Oder in Response to Defendant's Motion for Clarification of "Omnibus" Order. After reviewing the motions and considering the argument by counsel, it is adjudged:

The following motions are denied:

1. Defendant's Motion for Summary Judgment on Plaintiff's Punitive Damages Claim.
2. Defendant's Motion for Summary Judgment on Plaintiff's Claims for Fraudulent Concealment and Conspiracy to Commit Fraud by Concealment.
3. Defendant's Motion Requesting Use of a Juror Questionnaire.

**Exhibit B**

4. Defendant's Motion to Preclude Argument or Comment at Trial Regarding Defendant's Supposed Failure to "Take Responsibility" or "Apologize" to Plaintiff. The court will entertain objections to such argument if appropriate at trial.
5. Defendant's Motion to Preclude Argument or Comment Regarding the Absence of Corporate Representatives at Trial.
6. Defendant's Motion to Exclude Evidence of the 1994 Congressional Testimony of Defendant's Executive Officer.
7. Defendant's Motion to Exclude Evidence Relating to Merrel Dow Pharmaceuticals and Nicorette Chewing Gum.
8. Defendant's Motion to Preclude the Opinions and Testimony of Plaintiff's "Generic" Experts.
9. Defendant's Motion to Exclude Evidence Concerning the Use of Ammonia Compounds in Cigarettes.
10. Defendant's Motion to Exclude Evidence of Alleged Tortious Conduct Occurring After Mr. Soffer Quit Smoking.
11. Defendant's Motion to Exclude the "Hippo" Studies and Tentative Hypothesis of Nicotine Addiction.
12. Plaintiff's Request for Frye Hearing.

The following motions are granted in whole or as described below:

1. Defendant's Motion to Preclude References to Defendant's Resources unless and until the jury determines that punitive damages should be awarded.

2. Defendant's Motion to Exclude "Death in the West" from Evidence as to the entire film being introduced into evidence. However, this does not preclude introduction of portions of the film if otherwise admissible.
3. Defendant's Motion to Preclude Plaintiff From Introducing Certain Hearsay Statements contrary to the Florida Evidence Code.
4. Defendant's Motion to Exclude Lay Opinion Testimony on Addiction.
5. Defendant's Motion to Exclude Expert Testimony of Dr. Howard Abel and Debra Freeman, M.D. to the extent either expert attempts to testify outside their area of expertise.
6. Plaintiff's Motion to Exclude Evidence or Comment Concerning Alleged Prior Bad Acts of Decedent, Decedent's Reputation for Veracity.

**DONE and ORDERED** in Chambers in Gainesville, Alachua County, Florida this 6th day of June, 2010.



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**HONORABLE ROBERT E. ROUNDTREE**  
Circuit Court Judge

Cc:

DAVID J. SALES, ESQUIRE  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409

J. W. PRICHARD, JR., ESQ.  
ROBERT B. PARRISH, ESQ.  
501 West Bay Street  
Jacksonville, FL 32202

STEPHANIE E. PARKER, ESQ.  
JOHN F. YARBER, ESQ.  
JOHN M. WALKER, ESQ.  
1420 Peachtree Street, N.E.  
Suite 800  
Atlanta, GA 30309-3053

DANA G. BRADFORD, II, ESQ.  
50 N. Laura Street, Suite 2600  
Jacksonville, FL 32202

GEORGE R. COE, ESQ.  
MARCY N. LYNCH, ESQ.  
KAREN C. DYER, ESQ.  
121 South Orange Avenue, Suite 840  
Orlando, FL 32801

JAMES B. MURPHY, JR., ESQ.  
C. RYAN JONES, ESQ.  
100 North Tampa Street, Suite 2900  
Tampa, FL 33602

JOHN A. DeVAULT, III, ESQ.  
PATRICK P. COLL, ESQ.  
101 E. Adams Street  
Jacksonville, FL 32202

KELLY ANNE LUTHER, ESQ.  
2 South Biscayne Boulevard  
One Biscayne Tower, Suite 2650  
Miami, FL 33131

LAWRENCE V. ASHE, ESQ.  
100 S.E. Second Street  
Miami, Florida 33131

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA

AMANDA JEAN HALL, as Personal  
Representative for the Estate of  
ARTHUR L. HALL, SR., deceased,

CASE NUMBER: 01-2007-CA-5098  
DIVISION: "J"

Plaintiffs,

v.

R.J. REYNOLDS TOBACCO  
COMPANY, etc., et al,

Defendants.

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and

LYANTIE TOWNSEND, as Personal  
Representative for the Estate of  
FRANK TOWNSEND, deceased,

CASE NUMBER: 01-2008-CA-3978  
DIVISION: "K"

Plaintiffs,

v.

R.J. REYNOLDS TOBACCO  
COMPANY, etc., et al,

Defendants.

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**OMNIBUS ORDER ON MOTIONS IN LIMINE "GENERIC" TO ENGLE TOBACCO  
LITIGATION**

THIS CAUSE came before the Court on the voluminous motions in limine filed by the parties and the opposing parties' responses thereto. Similar, if not identical, motions were filed in each of the above styled cases. The motions considered in this omnibus order all appear to be

generic to the *Engle* progeny cases of tobacco litigation and are not case specific as to any party. Therefore, both civil divisions of the Alachua County circuit court considered these motions and have entered this omnibus order accordingly.

After reviewing the submissions of the parties and portions of the Court file as appropriate, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Defendants' Motion for Forty-Eight Hours Advance Notice of Witnesses and Exhibits Prior to Presentation at Trial and For Daily Evidentiary Hearings Prior to Seating of Jury is denied. However, the parties are instructed to give as much advance notice of witnesses and exhibits as is practical but, in any event, at least overnight notice. The pretrial order in this case requires that all exhibits are to be exchanged before pretrial and that all objections including motions in limine and objections to exhibits must be heard before pretrial conference. As such there is no need for evidentiary hearings on exhibits each morning.

2. Defendant's Motion in Limine to Exclude Evidence and References to Additives or Ingredients is denied.

3. Defendant's Motion in Limine to Preclude Expert Testimony Regarding the Meaning or Intent of Company Documents is granted except as may be necessary to put documents in context and testimony as to historical, complex, scientific or medical documents if adequate predicate is shown for the expert's opinion.

4. Defendant's Motion in Limine to Preclude Reference to Defense Law Firms is denied except that any specific reference to a particular law firm or Attorney shall be redacted from the document before introduction into evidence and no reference to any specific law firm or

attorney shall be made by Plaintiff's counsel or any witness.

5. Defendant's Motion in Limine to Exclude any Improper Reference to or Use of Its Website is denied except as to any reference of third party links on Defendant's Website.

6. Defendant's Motion in Limine to Exclude Evidence of the Decedent's Pain and Suffering is denied subject to a limiting instruction to the jury that no claim is being made for Decedent's pain and suffering.

7. Defendant's Motion in Limine to Exclude Evidence and Argument Related to Pre-Empted Theories of Liability is denied.

8. Defendant's Motion in Limine to Exclude All Evidence of or References to Defendant's Pretrial Fact Investigation is denied except that Plaintiff shall not argue that Defendant's pretrial fact investigation was part of a global harassment strategy or policy.

9. Defendant's Motion in Limine to Exclude any Evidence Regarding the Number of Deaths Caused by Smoking, the Development of the Modern Cigarette, and the Evolution of the Scientific Consensus that Smoking Causes Disease is denied.

10. Defendant's Motion in Limine to Exclude Evidence of Public Statements about the Health Risks of Smoking that Decedent Never Read or Heard is denied.

11. Defendant's Motion in Limine to Exclude any Reference of or Reference to Warning Labels Used Outside the United States and Warning Labels Voluntarily Adopted by Liggett is granted as to any labels used outside of the United States during and after 1990 and any labels Voluntarily used by Liggett beginning in 1997.

12. Defendant's Motion in Limine to Exclude Evidence Regarding and References to

Advocacy Efforts is denied.

13. Defendant's Motion in Limine to Exclude Speculative Testimony is denied as framed, however, the parties are reminded that the Florida Rules of Evidence apply to all trials conducted in the Eighth Judicial Circuit of Florida.

14. Defendant's Motion in Limine to Preclude Plaintiff from Requesting an Excessive Amount of Punitive Damages is denied. Punitive damages claims will be conducted as mandated by Florida Statutes.

15. Defendant's Motion in Limine to Prohibit Plaintiff from Making Certain Improper Statements is granted in part and denied in part. The motion is granted to the extent that Plaintiff shall make no statement which misstates the burden of proof, suggests that the jury should return a verdict against Defendant because it is a corporation or make argument or statements in opening beyond the scope of anticipated evidence. Otherwise, the motion is denied.

16. Defendant's Motion for Phased Trial is denied.

17. Defendant's Motion to Exclude Certain Evidence from any Punitive Damages Phase is granted to the extent it seeks to prohibit the introduction into evidence or argument regarding any of the *Engle* punitive damages findings, otherwise the motion is denied.

18. Defendant's Motion in Limine Regarding the Use of the *Engle* Phase I Findings is denied. In this case, Plaintiff is making a claim that Plaintiff or Plaintiff's decedent is a Florida resident who, as of November 21, 1996, suffered or died from diseases or medical conditions caused by addiction to cigarettes that contain nicotine. Therefore, Plaintiff is bringing the claim as an *Engle* class member. In the trial of this case, the jury will be advised of the *Engle* Phase I

findings during jury selection, opening and closing statements, and Plaintiff's case-in-chief. The jury will be instructed that they are to accept these findings as fact. There will be no "bifurcated" preliminary trial on the issue of Plaintiff's class membership. The Court presumes that in this and all purported *Engle* progeny cases in this jurisdiction that unless Defendants have moved for and obtained summary judgment on the issue of class membership, Plaintiff must at least have evidence sufficient to establish a *prima facie* case that Plaintiff meets the criteria of class membership. The jury will ultimately determine if Plaintiff or Plaintiff's decedent is a class member. All motions in limine seeking to prohibit reference to the *Engle* Phase I findings during any stage of the trial are denied. All motions for a bifurcated or preliminary trial on the issue of class membership are also denied.

19. Defendant's Motion for Procedures Pursuant to *Philip Morris USA v. Williams* is denied, however, the parties are directed to jointly craft an adequate jury instruction which appropriately explains the law regarding what the jury may consider in the punitive damages phase of the trial, if any.

20. Defendant's Motion in Limine to Preclude Plaintiff's Counsel from Referring to *Engle* or the *Engle* findings During Voir Dire is denied.

21. Defendant's Motion in Limine to Preclude Reading of the *Engle* Phase I Findings to the Jury and for Other Relief is denied.

22. Defendant's Motion in Limine to Preclude the Testimony of Robert Proctor, Ph.D. Due to His Misconduct is denied.

23. Defendant's Motion in Limine to Preclude Dr. Robert Proctor from Testifying on

Matters Related to Cigarette Design is granted to the extent it seeks to prohibit testimony beyond the expertise of Dr. Proctor.

24. Defendant's Motion in Limine to Exclude Non-Expert Testimony Regarding the Alleged Cause of Decedent's Injuries, Death or Addiction is granted except as to those matters actually perceived by or within the personal knowledge of the witness or statements by the decedent if admissible.

25. Defendant's Motion in Limine to Exclude All Evidence of or References to Underage Smoking or Alleged Youth Marketing is granted in part and denied in part. Plaintiff shall not introduce into evidence or make argument regarding this issue in the causation portion of the trial unless a proper predicate has been established showing that this activity is in some way was relevant to Plaintiff's or Plaintiff's Decedent's, as the case may be, smoking. It is denied as to any punitive damage portion of the trial.

26. Defendant's Motion in Limine to Exclude Evidence of Defendant's Profits, Financial Status or Wealth is granted as to the causation portion of the trial with the exception that certain historical evidence such as advertising budgets and sales volumes are not precluded if otherwise relevant and admissible. It is denied as to any punitive damages portion of the trial.

27. Defendant's Motion in Limine to Exclude Evidence of Net Worth and Other Financial Information is granted as to the causation portion of the trial. It is denied as to any punitive damages portion of the trial.

28. Defendant's Motion in Limine to Preclude Argument that it Has Been Found Guilty of or Liable for Conspiracy is granted with the exception that Plaintiff is free to reference

the *Engle* jury's finding in 5 and 5a of the *Engle* verdict in jury selection and opening and closing statements.

29. Defendant's Motion in Limine to Exclude Certain Documents and Evidence is denied.

30. Defendant's Motion in Limine to Exclude Evidence of the 1994 Congressional Testimony of R.J. Reynolds Tobacco Company's Executive Officers is denied.

31. Defendant's Motion to Exclude any Reference to Certain Documents Authored by Dr. Claude E. Teague is denied.

32. Defendant's Motion Requesting Use of a Juror Questionnaire is denied.

33. Plaintiff's Motion in Limine to Preclude Argument and Testimony Suggesting Plaintiff's Failure to Preserve Evidence is granted except that Defendant and or its experts may argue that the lack of records goes to the weight of the evidence.

34. Plaintiff's Motion in Limine to Preclude Argument and Testimony Alleging Fabre Defendants is granted by agreement.

35. Plaintiff's Motion in Limine to Prevent Defendant's Expert Witnesses from Commenting on the Evidence is granted to the extent any expert attempts to opine what the decedent knew or his state of mind about the dangers of smoking when testifying about what information concerning the risks of smoking was in the public domain. Otherwise the motion is denied.

36. Plaintiff's Motion in Limine to Preclude Argument and Testimony Distancing RJR from its Predecessors' Conduct as framed is denied without prejudice to renew this motion

at the pretrial conference.

37. Plaintiff's Motion in Limine to Preclude Introduction of Plaintiff's Complaint in into Evidence is granted by agreement as it relates to the entire Complaint or Amended Complain. The court reserves ruling on any specific portion of any complaint or amended complaint that Defendant might seek to introduce into evidence.

38. Plaintiff's Motion in Limine to Preclude Gratuitous References to Subjective Terminology Including "Choice" and "Enjoyment" is granted unless and until a sufficient predicate has been established showing the witness is competent to testify regarding Decedent's choice or enjoyment. However, this shall not preclude any evidence constituting admissions of the Decedent.

39. Plaintiff's Motion in Limine to Preclude Argument and Testimony Regarding Volusia County Order Directed to Robert Proctor, Ph.D. is granted.

40. Plaintiff's Motion in Limine to Preclude Defense Counsel from Requesting Expert Witnesses to Cite to Literature to Bolster Their Testimony is granted as to any direct testimony elicited by defense counsel.

41. Plaintiff's Motion in Limine Regarding Defendant's Trial Exhibits is granted to the extent is requests compliance with the pretrial order. Defendants shall submit a list of exhibits it "intends" to introduce at trial. The parties are directed to pare down their exhibits to the smallest number of exhibits as is reasonably practicable.

42. Plaintiff's Motion in Limine to Preclude any Evidence or Argument Regarding Plaintiff's Awareness or Lack of Awareness of the Potential Health Risk of Smoking and the

Surgeon General's Warning Labels Regarding Smoking Cigarettes is denied.

43. Plaintiff's Motion in Limine to Prevent Improper Argument Regarding the Sale of a Legal Product is granted.

44. Plaintiff's Motion in Limine to Preclude any Argument or Testimony Regarding Whether any Witnesses Believed Frank Townsend was Responsible or Partially Responsible for His Own Death is granted.

45. Plaintiff's Motion in Limine Concerning Evidence on the Number of Smokers Who Have Successfully Quit Smoking is granted as to any smokers who quit after 1995. Otherwise the motion is denied.

46. Plaintiff's Motion in Limine to Preclude any Evidence or Argument How Plaintiff Chose Her Law Firm to Represent Her is granted.

47. Plaintiff's Motion in Limine to Preclude Mention of Collateral Sources is granted. Any collateral source matters will be handled post trial.

48. Plaintiff's Motion in Limine to Prevent any Testimony or Evidence Regarding the Cigarette Use of Others is denied without prejudice to be raised on a witness by witness basis at trial if appropriate.

49. Plaintiff's Motion in Limine to Preclude any Evidence or Argument Regarding When Plaintiff Decided to File a Lawsuit or Insinuation that Plaintiff Delayed in Filing Suit is granted.

50. Plaintiff's Motion in Limine to Preclude any Reference or Evidence or Argument Regarding Plaintiff or Frank Townsend Applying for Social Security Disability, Receiving Social

Security Disability Benefits, or Being Declared Totally Disabled by Social Security is granted.

51. Plaintiff's Motion in Limine to Preclude any Reference or Evidence Regarding Frank Townsend's Receipt of Medicare Benefits is granted.

52. Plaintiff's Motion in Limine to Preclude any Argument or Testimony Regarding the Religious Affiliation of Plaintiff or Frank Townsend or Whether They Attended Church is granted.

53. Plaintiff's Motion in Limine to Exclude Evidence or Reference to Plaintiff Receiving Life Insurance Benefits or Pension Benefits After Frank Townsend's Death is granted.

54. Plaintiff's Motion to Prevent Defendant's Expert, Dr. James R. Sharp, from testifying as to Frank Townsend's State of Mind is granted.

55. Plaintiff's Motion in Limine to Preclude any Argument or Testimony Regarding Plaintiff's Intended Use of Any Monetary Award from a Jury and/or Plaintiff's Motivation in Bringing the Lawsuit is granted.

56. Plaintiff's Motion in Limine to Preclude any Evidence or Argument Regarding Worker's Compensation Injuries or the Receipt of Worker's Compensation Benefits by Plaintiff or Frank Townsend is granted.

57. Plaintiff's Motion in Limine to Prevent Defendant from Introducing Evidence that the State of Florida Collects Sales Tax on the Sale of Tobacco Products is granted.

58. Plaintiff's Motion in Limine to Preclude any Evidence or Argument Regarding Plaintiff's Receipt of Benefits from the *Engle* Trust Fund is granted.

59. Plaintiff's Motion in Limine to Preclude any Argument or Testimony Regarding

Friends of Frank Townsend and Plaintiff Dying of Lung Cancer is granted as to any friend diagnosed with cancer after Frank Townsend died.

60. Plaintiff's Motion in Limine to Preclude Argument and Testimony Suggesting "Lifestyle Choices" by Plaintiff is denied.

61. Plaintiff's Motion to Exclude Evidence, Comment and/or Argument Regarding Frank Townsend's Pathology Materials and Radiology Film is granted except that Defendant and or its experts may argue that the lack of these materials goes to the weight of the evidence.

62. Defendant's Motion in Limine to Exclude Documents Made Public in 1998 by the Commerce Committee of the U.S. House of Representatives, Then Chaired by Rep. Thomas Bliley is denied.

It is the intent of the undersigned judges that this order shall apply to all *Engle* progeny cases to the extent any motions in limine are filed requesting the same relief. A copy of this order shall be filed in all *Engle* progeny cases.

**DONE and ORDERED** in Chambers in Gainesville, Alachua County, Florida this 22<sup>nd</sup> day of January, 2010.

  
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**TOBY S. MONACO**  
Circuit Judge

  
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**ROBERT E. ROUNDTREE, JR.**  
Circuit Judge

**I HEREBY CERTIFY** that copies have been furnished by hand delivery or U.S. Mail on January 22, 2010, to the following:

J. W. PRICHARD, JR., ESQ.  
ROBERT B. PARRISH, ESQ.  
501 West Bay Street  
Jacksonville, FL 32202

STEPHANIE E. PARKER, ESQ.  
JOHN F. YARBER, ESQ.  
JOHN M. WALKER, ESQ.  
1420 Peachtree Street, N.E.  
Suite 800  
Atlanta, GA 30309-3053  
Attorneys for Defendant R. J. Reynolds

GREGORY D. PRYSOCK, ESQ.  
76 S. Laura Street, Suite 1100  
Jacksonville, Florida 32202

DAWN M. VALLENJOS-NICHOLS, ESQ.  
2814 SW 13<sup>th</sup> Street  
Gainesville, Florida 32608

JUNIUS C. MCELVEEN, JR., ESQ.  
51 Louisiana Ave., NW  
Washington, DC 20001-2113