

# Supreme Court of Florida

THURSDAY, DECEMBER 21, 2006

CASE NOS.: SC03-1856

Lower Tribunal Nos.: 3D00-3400

3D00-3206

3D00-3207

3D00-3208

3D00-3210

3D00-3212

3D00-3215

HOWARD A. ENGLE, M.D.,  
ET AL.

vs. LIGGETT GROUP, INC.,  
ET AL.

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Petitioner(s)

Respondent(s)

The motions for rehearing filed by the petitioners and Liggett Group, LLC., are hereby denied. Respondents' motion for rehearing is hereby granted in part and denied in part, and the opinion issued July 6, 2006, is hereby withdrawn. The opinion dated December 21, 2006, is issued in lieu thereof and has been revised as follows: The Court upholds the Phase I finding in favor of the Engle Class on Question 7 (breach of express warranty). However, the Court's determination that the fraud and misrepresentation finding in Question 4 cannot stand, necessarily invalidates the conspiracy to misrepresent finding in Question 5. The Court also corrects a misstatement regarding one of the jury's findings as to class representative Della Vecchia. The opinion has been revised on pages 4, 6, and 52-53, and these revisions are set forth in bold and strike-through below:

This same majority concludes that it was proper to allow the jury to make findings in Phase I on Questions 1 (general causation), 2(addiction of cigarettes), 3 (strict liability), 4(a) (fraud by concealment), ~~5(civil conspiracy-misrepresentation)~~, 5(a) (civil-conspiracy-concealment), 6 (breach of implied warranty), 7 (**breach of express warranty**), and 8 (negligence). Therefore, these findings in favor of the Engle Class can stand. The Court unanimously agrees that the nonspecific findings in favor

of the plaintiffs on Questions 4 (fraud and misrepresentation) and 9 (intentional infliction of emotional distress) are inadequate to allow a subsequent jury to consider individual questions of reliance and legal cause. Therefore, these findings cannot stand. **Because the finding in favor of the plaintiffs on Question 5 (civil conspiracy-misrepresentation) relies on the underlying tort of misrepresentation, this finding also cannot stand.**

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... The jury specifically found that her ~~conditions were~~ **lung disease** was caused by smoking. ...

....

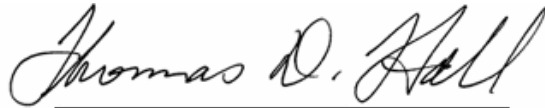
We approve the Phase I findings for the class as to Questions 1 (that smoking cigarettes causes aortic aneurysm, bladder cancer, cerebrovascular disease, cervical cancer, chronic obstructive pulmonary disease, coronary heart disease, esophageal cancer, kidney cancer, laryngeal cancer, lung cancer (specifically, 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), 2 (that nicotine in cigarettes is addictive), 3 (that the defendants placed cigarettes on the market that were defective and unreasonably dangerous), 4(a) (that the 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), ~~5 (that all of the defendants agreed to misrepresent information relating to the health effects of cigarettes or the addictive nature of cigarettes with the intention that smokers and the public would rely on this information to their detriment)~~, 5(a) (that the 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), 6 (that all of the defendants sold or supplied cigarettes that were defective), (7) **(that all of the defendants sold or supplied cigarettes that, at the time of sale or supply, did not conform to representations of fact made by said defendants)**, and 8 (that all of the defendants were negligent). Therefore, these findings in favor of the Engle Class can stand.

NO FURTHER MOTIONS FOR REHEARING WILL BE ENTERTAINED BY THIS COURT.

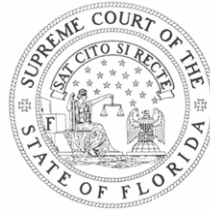
LEWIS, C.J., and ANSTEAD, PARIENTE, and QUINCE, JJ., concur.  
WELLS and BELL, JJ., would grant the motion of Liggett Group LLC and would grant the motion of the other respondents on all points.  
CANTERO, J., recused.

A True Copy

Test:



Thomas D. Hall  
Clerk, Supreme Court



jn

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