

## **APPENDIX**

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**APPENDIX A**

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**PHILIP MORRIS USA INC., Appellant,**

**v.**

**Vickie MCKEEVER, as Personal  
Representative of the Estate of Theodore  
McKeever, Appellee.**

**No. 4D15-2493**

District Court of Appeal of Florida,  
Fourth District.

[ January 4, 2017 ]

Appeal from the Circuit Court for the Seventeenth  
Judicial Circuit, Broward County; John J. Murphy III,  
Judge; L.T. Case No. 2010CV037561 (19).

Geoffrey J. Michael of Arnold & Porter LLP,  
Washington, DC, and Geri Howell of Shook, Hardy &  
Bacon LLP, Miami, for appellant.

John S. Mills and Courtney Brewer of The Mills  
Firm, P.A., Tallahassee, and Robert W. Kelley, Todd  
R. McPharlin and Eric S. Rosen of Kelley Uustal, PLC,  
Fort Lauderdale, for appellee.

Per Curiam.

In this *Engle*<sup>1</sup> progeny case that was tried as a survival action, Philip Morris USA, Inc., appeals a final judgment awarding Vickie McKeever, the personal representative of the estate of her late husband, Theodore McKeever, \$5,798,170.45 in compensatory damages (including \$2 million for loss of consortium) and \$11,625,000 in punitive damages. We affirm on all issues except appellant's argument that it is entitled to a reduction in the compensatory damages award in proportion to Mr. McKeever's share of fault. On this issue, we reverse. *See R.J. Reynolds Tobacco Co. v. Schoeff*, 178 So.3d 487 (Fla. 4th DCA 2015), *rev. granted*, No. SC15-2233, 2016 WL 3127698 (Fla. 2016).

We also briefly address appellant's due process and preemption arguments. As appellant acknowledges, there is binding case law rejecting appellant's arguments that due process precluded giving the *Engle* findings preclusive effect and that the plaintiff's strict liability and negligence claims were preempted by federal law. *See Philip Morris USA, Inc., v. Douglas*, 110 So.3d 419 (Fla. 2013); *R.J. Reynolds Tobacco Co. v. Marotta*, 182 So.3d 829 (Fla. 4th DCA 2016), *rev. granted*, No. SC16-218, 2016 WL 934971 (Fla. 2016). We affirm on these issues, but note that appellant wishes to preserve these arguments for possible further review.

*Affirmed in part and Reversed in part.*

Taylor, Levine and Conner, JJ., concur.

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<sup>1</sup> *Engle v. Liggett Group, Inc.*, 945 So.2d 1246 (Fla. 2006).

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**APPENDIX B**

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**Supreme Court of Florida**

MONDAY, JUNE 25, 2018

**CASE NO.: SC17-160**

Lower Tribunal No(s).:

4D15-2493;

062010CA037561AXXXCE

PHILIP MORRIS USA, vs. VICKIE  
INC. MCKEEVER, ETC.

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Petitioner(s)

Respondent(s)

This Court declines to exercise jurisdiction in this case because *R.J. Reynolds Tobacco Co. v. Marotta*, 214 So. 3d 590 (Fla. 2017), and *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294 (Fla. 2017), are controlling.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

It is so ordered.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE,  
CANADY, POLSTON, and LAWSON, JJ., concur.

A True Copy

Test:

4a

/s/ John A. Tomasino

John A. Tomasino  
Clerk, Supreme Court



db

Served:

ROBERT W. KELLEY

ALEX ALVAREZ

ERIC S. ROSEN

GERI ELAINE HOWELL

PETER MICHAEL HENK

JOHN S. MILLS

COURTNEY BREWER

TODD R. MCPHARLIN

GEOFFREY J. MICHAEL

HON. LONN WEISSBLUM, CLERK

HON. JOHN JOSEPH MURPHY, III, JUDGE

HON. BRENDA D. FORMAN, CLERK

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**APPENDIX C**

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**Supreme Court of Florida**

MONDAY, JUNE 25, 2018

**CASE NO.: SC17-198**

Lower Tribunal No(s).:

4D15-2493;

062010CA037561AXXXCE

VICKIE MCKEEVER,   vs.   PHILIP MORRIS  
ETC.                           USA, INC.

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Petitioner(s)

Respondent(s)

This Court declines to exercise jurisdiction in this case because *R.J. Reynolds Tobacco Co. v. Marotta*, 214 So. 3d 590 (Fla. 2017), and *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294 (Fla. 2017), are controlling.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

It is so ordered.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE,  
CANADY, POLSTON, and LAWSON, JJ., concur.

A True Copy

Test:

6a

/s/ John A. Tomasino  
John A. Tomasino  
Clerk, Supreme Court



db

Served:

ERIC S. ROSEN  
JONATHAN L. STERN  
ALEX ALVAREZ  
JOHN S. MILLS  
COURTNEY BREWER  
HILDY M. SASTRE  
GERI ELAINE HOWELL  
PETER MICHAEL HENK  
TODD R. MCPHARLIN  
GEOFFREY J. MICHAEL  
KIMBERLY WALD  
ROBERT W. KELLEY  
HON. BRENDA D. FORMAN, CLERK  
HON. LONN WEISSBLUM, CLERK  
HON. JOHN JOSEPH MURPHY, III, JUDGE

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**APPENDIX D**

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**Supreme Court of Florida**

TUESDAY, OCTOBER 23, 2018

**CASE NO.: SC17-198**

Lower Tribunal No(s):

4D15-2493;

062010CA037561AXXXCE

VICKIE MCKEEVER, vs. PHILIP MORRIS  
ETC. USA, INC.

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Petitioner(s)

Respondent(s)

The motion for rehearing is hereby granted. This Court accepts jurisdiction in this case, summarily quashes the decision under review, and remands to the Fourth District Court of Appeal with instructions that this case be further remanded for the reinstatement of the jury verdict in light of our decision in *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294 (Fla. 2017).

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE,  
POLSTON, LABARGA, and LAWSON, JJ., concur.

A True Copy

Test:



/s/ John A. Tomasino  
John A. Tomasino  
Clerk, Supreme Court



lc  
Served:

ERIC S. ROSEN  
ALEX ALVAREZ  
COURTNEY BREWER  
TODD R. MCPHARLIN  
GERI ELAINE HOWELL  
GEOFFREY J. MICHAEL  
HON. BRENDA D. FORMAN, CLERK  
HON. JOHN JOSEPH MURPHY, III, JUDGE  
HON. LONN WEISSBLUM, CLERK

JOHN S. MILLS  
JONATHAN L. STERN  
HILDY M. SASTRE  
PETER MICHAEL HENK  
KIMBERLY WALD  
ROBERT W. KELLEY