

No. 18A-182

IN THE
Supreme Court of the United States

PHILIP MORRIS USA INC.,

Petitioner,

v.

ELAINE JORDAN,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA FIRST DISTRICT COURT OF APPEAL

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE
ELEVENTH CIRCUIT:

Pursuant to this Court's Rule 13.5, Philip Morris USA Inc. ("PM USA") respectfully requests a 35-day extension of time, to and including October 26, 2018, within which to file a petition for a writ of certiorari to the Florida First District Court of Appeal.*

This is PM USA's second extension application in this case. The first application requested a 25-day extension of time because PM USA was evaluating whether to file a petition for a writ of certiorari in *Philip Morris USA Inc. v. Boatright*, 217 So. 3d 166

* Pursuant to this Court's Rule 29.6, undersigned counsel state that PM USA is a wholly owned subsidiary of Altria Group, Inc. No publicly held company owns 10% or more of Altria Group, Inc.'s stock.

(Fla. Dist. Ct. 2017), a case that raises the same due-process issue that is raised in this case regarding the preclusive effect of jury findings from the class action prospectively decertified in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006) (per curiam). PM USA explained that *Boatright* is a better vehicle for plenary review than this case because, unlike the *per curiam* affirmance issued by the Florida First District Court of Appeal in this case, the Florida Second District Court of Appeal in *Boatright* issued a written opinion affirming the judgment. PM USA further stated that, if it files a petition for a writ of certiorari in *Boatright*, it plans to file a petition in this case asking the Court to hold this case pending the Court's disposition of the petition in *Boatright*. On August 27, 2018, the Court entered an order granting PM USA's extension application and setting a new deadline of September 21, 2018, for the filing of a petition for a writ of certiorari.¹

PM USA is filing this second extension application because, last week, the U.S. Court of Appeals for the Eleventh Circuit issued a decision in a case that raises the same due-process issue presented in this case and in *Boatright*. See *Searcy v. R.J. Reynolds Tobacco Co.*, ___ F.3d ___, No. 13-15258, 2018 WL 4214594 (11th Cir. Sept. 5, 2018). In *Searcy*, an *Engle* progeny case tried in federal court that culminated in a judgment against PM USA and co-defendant R.J. Reynolds Tobacco Co., the Eleventh Circuit concluded that affording preclusive effect to the *Engle* jury's generalized findings

¹ This Court has jurisdiction to review the First District Court of Appeal's decision in this case under 28 U.S.C. § 1257(a). A copy of the First District's decision is attached hereto as Exhibit A; a copy of its order denying rehearing is attached as Exhibit B.

does not violate due process. The Eleventh Circuit nevertheless acknowledged that “multiple acts of concealment had been presented to the *Engle* jury, and their general finding did not indicate which acts of concealment may have underlain their finding versus which allegations of concealment they might have rejected,” which creates a “difficult[y]” in “determin[ing] whether the *Engle* jury’s basis for its general finding of concealment” was the same theory pursued by an individual *Engle* plaintiff. *Id.* at *7.

PM USA intends to file simultaneous petitions for a writ of certiorari in *Searcy* and *Boatright*, and has separately requested an extension of time to file the petition in *Boatright* until November 19, 2018. PM USA believes that this Court’s consideration of the due-process issue would be facilitated by the simultaneous filing of the petitions in *Searcy* and *Boatright*, which would enable the Court to consider the reasoning of the Florida state and federal courts at the same time and to receive a full picture of how the due-process issue is being treated by those courts. PM USA further intends to file a petition for a writ of certiorari asking this Court to hold this case pending its disposition of *Searcy* and *Boatright*.

An additional extension of time until October 26, 2018, to file the petition in this case is warranted to permit PM USA to take account of the recent decision in *Searcy* and to file the petition in this case as close in time as possible to the forthcoming petitions in *Searcy* and *Boatright*.

CONCLUSION

PM USA respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari by 35 days, to and including October 26, 2018.

Respectfully submitted.

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Counsel for Petitioner
Philip Morris USA Inc.

September 11, 2018

Exhibit A

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D15-5871

PHILIP MORRIS USA INC.,

Appellant,

v.

ELAINE JORDAN,

Appellee.

On appeal from the Circuit Court for Duval County.
Virginia Norton, Judge.

April 3, 2018

PER CURIAM.

AFFIRMED.

LEWIS, ROBERTS, and WINSOR, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

Geoffrey J. Michael and Daphne O'Connor of Arnold & Porter Kaye Scholer LLP, Washington, D.C., and Bonnie C. Daboll of Shook, Hardy & Bacon LLP, Tampa, for Appellant.

John S. Mills and Courtney Brewer of The Mills Firm, P.A., Tallahassee, and John S. Kalil of Law Offices of John S. Kalil, P.A., Jacksonville, for Appellee.

Exhibit B

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

May 29, 2018

CASE NO.: 1D15-5871

L.T. No.: 16-2013-CA-8903-XXXX-MA

Philip Morris USA Inc.

v.

Elaine Jordan

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion filed April 25, 2018, for rehearing is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

John S. Mills
Courtney Brewer
Geoffrey J. Michael
Bonnie C. Daboll
Daphne O'Connor

John S. Kalil
David B. Thorne
Leslie J Bryan
Walter L. Cofer

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KRISTINA SAMUELS, CLERK

