

Exhibit A

1

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*¹ progeny case that was
tried as a survival action, Philip Morris
USA, Inc., appeals a final judgment awarding
Vickie McKeever, the personal representa-
tive of the estate of her late husband,
Theodore McKeever, \$5,798,170.45 in com-
pensatory 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 enti-
tled 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 ap-
pellant 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 To-*
bacco Co. v. Marotta, 182 So.3d 829 (Fla.
4th DCA 2016), *rev. granted*, No. SC16-
218, 2016 WL 934971 (Fla. 2016). We af-
firm on these issues, but note that appellee
wishes to preserve these arguments
for possible further review.

Affirmed in part and Reversed in part.

Taylor, Levine and Conner, JJ., concur.



2

Geno Lewis HAWKINS, Petitioner,

v.

STATE of Florida, Respondent.

No. 1D15-0701.

District Court of Appeal of Florida,
First District.

Feb. 24, 2015.

Petition for Writ of Habeas Corpus—
Original Jurisdiction.

Geno Lewis Hawkins, pro se, Petitioner.

Pamela Jo Bondi, Attorney General, Tal-
ahassee, for Respondent.

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

Exhibit B

Supreme Court of Florida

MONDAY, JUNE 25, 2018

CASE NO.: SC17-160

Lower Tribunal No(s).:

4D15-2493;

062010CA037561AXXXCE

PHILIP MORRIS USA, INC.

vs. VICKIE MCKEEVER, ETC.

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:


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