

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

KENNETH GLOGER, as Personal
Representative of the Estate of IRENE
GLOGER,

Plaintiff,

GENERAL JURISDICTION DIVISION

CASE NO: 11-23377-CA-21

JURY DEMAND

v.

R. J. REYNOLDS TOBACCO COMPANY,
individually and as successor by merger to
BROWN & WILLIAMSON USA, INC.,
individually and as successor by merger to
THE AMERICAN TOBACCO COMPANY,
a foreign corporation; LORILLARD
TOBACCO COMPANY, a foreign
corporation ; PHILIP MORRIS USA INC., 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.

_____ /

FIRST AMENDED COMPLAINT FOR DAMAGES

The Plaintiff, Kenneth Gloger, as Personal Representative of the Estate of Irene Gloger (the Decedent), sues the Defendants, R.J. Reynolds Tobacco Company (RJR), individually and as successor by merger to Brown & Williamson USA, Inc., individually and as successor by merger to The American Tobacco Company, a foreign corporation; Lorillard Tobacco Company (Lorillard), a foreign corporation; and, Philip Morris USA, Inc. (Philip Morris), a foreign corporation, and alleges as follows:

INTRODUCTION AND GENERAL ALLEGATIONS

1. This is an action for wrongful death brought by the Plaintiff against the Defendants seeking damages in accordance with the Supreme Court of Florida's class action decision and mandate in *Engle v. Liggett Group, Inc.*, 945 So.2d 1246, (Fla. 2006) (*Engle*). In approving the *Engle* Phase I class certification and trial, but ordering prospective class decertification, the Florida Supreme Court provided those who qualify for class member status the opportunity to complete unresolved individual damages claims. The Court held: "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(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."

2. The Supreme Court of Florida in *Engle* held that specified liability and general causation findings by the *Engle* jury did not need to be proved again as they shall be given *res judicata* effect.

3. The Plaintiff brings this action upon the limited remaining issues in dispute after the Supreme Court of Florida's decision in *Engle*: specific causation, compensatory damages, punitive damages, comparative fault and apportionment of damages.

4. In *Engle*, the Supreme Court of Florida approved—for liability purposes—certification of a class of all Florida citizens and residents (and their survivors) who, by November 30, 1996, had suffered or died from diseases or medical conditions caused by their addiction to cigarettes that contain nicotine.

5. The Supreme Court of Florida noted that the *Engle* class excluded the officers, directors and agents of the Defendants.

6. At all material times, the Decedent was a Florida citizen or resident who suffered and died from diseases and/or medical conditions caused by Decedent's addiction to cigarettes that contained nicotine; specifically, Irene Gloger smoked the following cigarette brands, including, but not limited to: Newport Menthol, Benson & Hedges Menthol, and Merit Menthol cigarettes.

7. The Plaintiff is a Florida citizen or resident.

8. The Decedent and survivors are not officers, directors or agents of the Defendants.

9. The Decedent and survivors have *Engle* class member status, and their claims are appropriately joined, for the reasons alleged in this complaint (including the common, fraudulent conspiracy count) and, specifically, because the Decedent suffered and died due to lung cancer, a disease caused by her addiction to the nicotine-containing cigarettes that she smoked.

10. The Supreme Court of Florida expressly reserved to *Engle* class members, including the Plaintiff and survivors, the right to bring individual actions against Defendants for smoking-related injuries and damages, including punitive damages.

11. The Supreme Court of Florida held that members of the *Engle* class had one year from the date that that court issued its mandate to file individual claims against the Defendants.

12. This action is timely because it is brought within one year of the Supreme Court of Florida's mandate in *Engle*; the originally joined plaintiffs in Case No. 08-01247 CA 27 have severed their claims with the Defendants' agreement that such severance would not render the claims untimely as to any of those plaintiffs.

13. The Plaintiff is seeking damages in excess of the Court's jurisdictional minimum.

14. Venue is proper in Miami-Dade County because the cause of action accrued in Miami-Dade County and/or one or more Defendants is a foreign corporation that has an agent or other representative in Miami-Dade County.

15. The Decedent died on November 22, 1996.

16. The Plaintiff is the Personal Representative of the Estate of Irene Gloger. His Letters of Administration are attached as Exhibit "A".

17. This action is brought on behalf of the Decedent's Estate and survivors. The potential beneficiaries of a recovery by the Plaintiff in this action and their relationship to the Decedent are as follows:

<u>Potential Beneficiary</u>	<u>Relationship</u>
KENNETH GLOGER	HUSBAND
MELISSA WEITZENFELD	DAUGHTER
RYAN GLOGER	SON

18. The Decedent's two surviving children were minors at the time of the Decedent's death.

19. Defendant Philip Morris is a Virginia corporation that conducts business in the State of Florida, including Miami-Dade County, and did so during all times relevant to this action.

20. Defendant Lorillard (which assumed the assets and liabilities of Lorillard, Inc.) is a Delaware corporation that conducts business in the State of Florida, including Miami-Dade County, and did so during all times relevant to this action.

21. Defendant RJR is a North Carolina corporation that conducts business in the State of Florida, including Miami-Dade County, and did so during all times relevant to this action.

22. The Decedent purchased, smoked, and was addicted to cigarette products containing nicotine that were the subject of *Engle*. The cigarette products containing nicotine were designed, manufactured, advertised, and marketed by the Defendants at all material times.

23. The Council for Tobacco Research U.S.A., Inc. (the Council) and the Tobacco Institute, Inc. (the Institute), at all times relevant to this action, were involved in promotion, lobbying, medical research, legislative, and political activities or related ventures throughout Florida and the United States both in connection with and on behalf of the Defendants.

24. The jury findings from Phase I of the *Engle* trial that were given *res judicata* effect by the Supreme Court of Florida include, but are not limited, to the following:

a. Smoking cigarettes causes aortic aneurysm, bladder cancer, cerebral vascular disease, cervical cancer, chronic obstructive pulmonary disease, coronary heart disease (including cardiovascular disease, hardening of the arteries, atherosclerosis, coronary artery disease and arteriosclerosis, angina, abnormal blood clotting, blood vessel damage, myocardial infarction (heart attack), 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.

b. Nicotine in cigarettes is addictive.

c. All Defendants placed cigarette on the market that were defective and unreasonably dangerous.

d. All 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.

e. All 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.

f. All Defendants sold or supplied cigarettes that were defective.

g. All Defendants sold or supplied cigarettes that, at the time of sale or supply, did not conform to representations of fact made by Defendants.

h. All Defendants were negligent.

25. The Plaintiff asserts the jury findings from the Phase I *Engle* trial that were given *res judicata* effect by the Supreme Court of Florida.

26. As a direct and proximate result of the Decedent's addiction to smoking the Defendants' cigarettes, the Decedent suffered bodily injury and died. The Defendants' cigarettes caused the Decedent to develop one or more cigarette-related diseases or medical conditions that resulted in or substantially contributed to the Decedent's death. The Plaintiff claims all damages allowed by the Florida Wrongful Death Act including the following: as a direct and proximate result of the Decedent's death, the Decedent's survivor(s) has/have and will suffer mental and emotional pain and suffering, has/have incurred medical and financial expenses, loss of the Decedent's love, affection, support, services, protection, companionship, instruction, guidance,

and funeral expenses. The Decedent's Estate has also suffered a loss of net accumulations, earnings, and medical and funeral expenses.

27. Alternatively, in the event one or more of the Defendants contend that the Decedent died of some cause unrelated to smoking cigarettes, the Plaintiff asserts a claim for survival damages pursuant to Section 46.021, Florida Statutes, as the Decedent suffered past physical and mental and emotional pain and suffering, loss of enjoyment of life and medical expense for care and treatment. During the period before the Decedent died and in conjunction with an alternative survival claim, the Plaintiff also asserts a loss of consortium claim and alleges as a direct and proximate result of the allegations contained in this Complaint, the Plaintiff or his Decedent spouse has suffered and will continue to suffer the loss of services, consortium, and care and comfort of the Decedent's society because of her injuries, disabilities and/or death, and has incurred expenses for medical treatment rendered to Decedent.

28. Additionally, whether part of a wrongful death or survival claim, the Decedent's cigarette-related illness(es) resulted in her sustaining aggravation of previously existing condition(s), physical pain and suffering, mental and emotional distress, and medical expense.

29. The Decedent bears some measure of fault, but less than 100% of the applicable fault, for causing her respective smoking-related injuries and death. The Decedent's acts or omissions relating to the frequency and duration of her efforts to quit smoking were a partial proximate cause, in combination with the acts and omissions of the Defendants, of her injuries. The Plaintiff therefore seeks apportionment of fault and damages between the Decedent's survivors and Estate, and each Defendant who is responsible for damages. The contributory or comparative negligence of the Decedent (the comparative fault) is an affirmative defense for which the Defendants have the burden of proof. However, comparative fault is not a valid

defense and does not apply to the counts that allege intentional torts, specifically, the counts for Fraudulent Concealment and Civil Conspiracy Fraud by Concealment alleged in this first amended complaint. The defense of comparative fault can apply, if at all, only to the counts of negligence and strict liability. Therefore, to the extent there is a jury finding of comparative fault of the Decedent, the Plaintiff seeks apportionment of the fault and damages, but only as to the counts for negligence and strict liability, and not those alleging intentional torts.

COUNT I— NEGLIGENCE

30. The Introduction and General Allegations above (paragraphs 1-29) are re-alleged and incorporated herein by reference.

31. With respect to smoking and health and the manufacture, marketing and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that the Defendants were negligent.

32. As a direct and proximate result of the Defendants' negligence, the Decedent was injured and died.

WHEREFORE, the Plaintiff hereby demands judgment against the Defendants, jointly and severally, for all damages allowed under Florida law, including without limitation all actual and compensatory damages, including mental, emotional and physical pain and suffering, punitive damages, costs and interest as applicable, and such other relief to which they may be legally and equitably entitled, or which this court deems fair and just and trial by jury of all issues so triable.

COUNT II— STRICT LIABILITY

33. The Introduction and General Allegations above (paragraphs 1-29) are re-alleged and incorporated herein by reference.

34. With respect to smoking and health and the manufacture, marketing and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that the cigarettes sold and placed on the market by the Defendants were defective and unreasonably dangerous.

35. As a direct and proximate result of the Defendants' defective and unreasonably dangerous cigarettes, the Decedent was injured and died.

WHEREFORE, the Plaintiff hereby demands judgment against the Defendants, jointly and severally, for all damages allowed under Florida law, including without limitation all actual and compensatory damages, including mental, emotional and physical pain and suffering, punitive damages, costs and interest as applicable, and such other relief to which they may be legally and equitably entitled, or which this court deems fair and just and trial by jury of all issues so triable.

COUNT III— FRAUDULENT CONCEALMENT

36. The Introduction and General Allegations above (paragraphs 1-29) are re-alleged and incorporated herein by reference.

37. With respect to smoking and health and the manufacture, marketing and sale of their cigarettes, the *Engle* Phase I findings conclusively establish 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 with the intention that smokers and the public would rely to their detriment.

38. As a direct and proximate result of the Defendants' fraudulent concealment, the Decedent was injured and died.

WHEREFORE, the Plaintiff hereby demands judgment against the Defendants, jointly and severally, for all damages allowed under Florida law, including without limitation all actual and compensatory damages, including mental, emotional and physical pain and suffering, punitive damages, costs and interest as applicable, and such other relief to which they may be legally and equitably entitled, or which this court deems fair and just and trial by jury of all issues so triable.

COUNT IV—CIVIL CONSPIRACY TO FRAUDULENTLY CONCEAL

39. The Introduction and General Allegations above (paragraphs 1-29) are re-alleged and incorporated herein by reference.

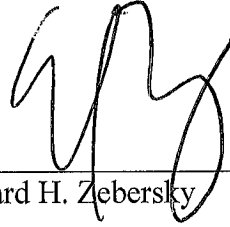
40. With respect to smoking and health and the manufacture, marketing and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that the Defendants, the Council, and the Institute agreed to conceal or omit information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and the public would rely on this information to their detriment.

41. As a direct and proximate result of the conspiracy to fraudulently conceal, the Decedent was injured and died.

WHEREFORE, the Plaintiff hereby demands judgment against the Defendants, jointly and severally, for all damages allowed under Florida law, including without limitation all actual and compensatory damages, including mental, emotional and physical pain and suffering, punitive damages, costs and interest as applicable, and such other relief to which they may be legally and equitably entitled, or which this court deems fair and just and trial by jury of all issues so triable.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all persons on the attached Service List, this 3rd day of October, 2014.



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Miami-Dade Case No. 11-23377 CA 21

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Exhibit A

IN THE CIRCUIT COURT FOR HILLSBOROUGH COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF
IRENE GLOGER,

File No. 07-3121
Division Probate Division

Deceased.

LETTERS OF ADMINISTRATION
(single personal representative)

TO ALL WHOM IT MAY CONCERN

WHEREAS, IRENE GLOGER, a resident of Hillsborough County, FL died on November 22, 1996, owning assets in the State of Florida, and

WHEREAS, KENNETH GLOGER has been appointed personal representative of the estate of the decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned circuit judge, declare KENNETH GLOGER duly qualified under the laws of the State of Florida to act as personal representative of the estate of IRENE GLOGER, deceased, with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

ORDERED on 17 Dec, 2007.

FILED
2007 DEC 18 PM 12:52
CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FL
PROBATE

[Signature]

Circuit Judge

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Copy to:
Kent G. Whittemore, Esq.

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN MY OFFICE AND THE SAME IS IN FULL FORCE AND EFFECT THIS 18 DAY OF December 2007

Personal Representative is prohibited from entering into any sale or contract without prior authorization by the probate court.



PAT FRANK
CLERK OF THE CIRCUIT COURT

BY *[Signature]* D.C.
AS DEPUTY CLERK