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## WLF Asks Eleventh Circuit to Reject Sui Generis Florida Preclusion Rules that Deprive Defendants of Due Process

(*Graham v. R.J. Reynolds Tobacco Co. et al.*)

**“[I]n the name of litigation efficiency, Florida’s supreme court invented novel preclusion rules that have, to date, imposed more than \$900 million in liability on businesses in a series of state and federal tort suits—without ever requiring the plaintiffs to demonstrate that the defendants acted wrongfully against them.”**

**—Cory Andrews, WLF Senior Litigation Counsel**

WASHINGTON, DC—Washington Legal Foundation today asked the *en banc* U.S. Court of Appeals for the Eleventh Circuit to reverse a district court decision that, in misplaced deference to rulings by the Florida Supreme Court, permitted the plaintiff to establish defendants’ liability without proving the essential elements of negligence or strict liability—and without establishing that those elements were actually decided in plaintiff’s favor in any prior proceeding. In its *amicus* brief urging reversal of the judgment below, WLF charges that the district court’s application of Florida preclusion law in this instance violated the defendants’ federal constitutional right to due process of law.

The case arises out of an abortive effort more than a decade ago to try all tort claims by Florida smokers in a single class action. That case lasted several years until the Florida Supreme Court (in its *Engle* decision) decertified the class in 2006 on the ground that issues of fact could not be litigated on a class-wide basis. But the *Engle* court also held that smokers bringing future individual tort suits could take advantage of a finding made by the class-action jury—namely that cigarette manufacturers in at least some instances acted negligently in marketing a “defective” product.

Thousands of Florida smokers filed individual claims against tobacco companies in *Engle*’s wake. In the *Graham* case, the district court determined that the jury’s verdict in the decertified class action precluded the defendants from denying that they acted wrongly in marketing and selling cigarettes to Mr. Graham’s deceased wife. WLF’s brief argues that it denies due process to refuse to permit the defendants here to counter charges that they acted tortiously with respect to this particular plaintiff.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “No mere desire for efficiency can ever justify running roughshod over defendants’ due process rights. Yet in the name of litigation efficiency, Florida’s supreme court invented novel preclusion rules that have, to date, imposed more than \$900 million in liability on businesses in a series of state and federal tort suits—without ever requiring the plaintiffs to demonstrate that the defendants acted wrongfully against them.”

WLF is a national, public-interest law firm and policy center that regularly litigates to ensure that litigants receive due process of law in state and federal courts.

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