

FLORIDA SUPREME COURT

Hess v. Philip Morris USA, Inc.

Hess v. Philip Morris USA, Inc., 175 So. 3d 687 (Fla. 2015) · No. No. SC12–2153.

SUMMARY

The Florida Supreme Court held that the twelve-year statute of repose for fraud claims under section 95.031(2), Florida Statutes, runs from the defendant’s last act or omission constituting the fraud, not from the plaintiff’s detrimental reliance. In Engle-progeny tobacco litigation, the Phase I jury’s finding that the defendants committed fraudulent concealment after May 5, 1982, precludes them from asserting the statute of repose defense, and plaintiffs need not prove reliance within the repose period. The decision quashes the Fourth District’s contrary ruling and approves the Third District’s holding in Frazier, resolving a conflict among Florida district courts.

CASE DETAILS

COURT	Florida Supreme Court
WRITING FOR THE COURT	Quince; Labarga; Pariente; Lewis; Canady; Polston; Perry
JURISDICTION	Florida
DOCKET	No. SC12–2153.
DISPOSITION	quashed
PROCEDURAL POSTURE	Petition for review of a decision of the Fourth District Court of Appeal
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	published
PARTIES	Elaine Hess v. Philip Morris USA, Inc.

TOPICS

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PRACTICE AREAS

[Torts](#) [Products Liability](#) [Fraud](#)

QUESTIONS PRESENTED

- Whether an Engle-progeny plaintiff’s fraudulent concealment claim is barred by section 95.031(2), Florida Statutes, the statute of repose for fraud claims, because the jury found no evidence of the

smoker's reliance within the twelve-year repose period.

HOLDINGS

1. The defendant's last act or omission triggers Florida's fraud statute of repose; it is not necessary that the smoker relied during the twelve-year repose period. Therefore, the fraudulent concealment claim is not barred if there is evidence of the defendant's wrongful conduct within the repose period.

KEY QUOTATIONS

“we hold that the defendant's last act or omission triggers Florida's fraud statute of repose.” (698)

“we conclude that for statute of repose purposes it is not necessary that the smoker relied during the twelve-year repose period.” (698)

“statutes of repose 'run[] from the date of a discrete act on the part of the defendant without regard to when the cause of action accrued.'” (695)

“A statute of repose 'puts an outer limit on the right to bring a civil action. That limit is measured not from the date on which the claim accrues but instead from the date of the last culpable act or omission of the defendant.'” (696)

FACTUAL BACKGROUND

Stuart Hess began smoking in the 1950s at age 12 or 13, smoking one to two packs a day, later increasing to two to three packs. He smoked Benson & Hedges 100's soft pack cigarettes, manufactured by Philip Morris, about 95-99% of the time. He believed filtered cigarettes were safer and trusted cigarette companies. He attempted to quit in the mid-1970s but never succeeded. In February 1996, he was diagnosed with lung cancer and died. His wife, Elaine Hess, sued Philip Morris for fraudulent concealment, among other claims. The jury found that Mr. Hess relied on Philip Morris's omissions only before May 5, 1982, and that Philip Morris's conduct occurred both before and after that date. The statute of repose period was May 5, 1982 to May 5, 1994.

PROCEDURAL HISTORY

Elaine Hess, as surviving spouse and personal representative of Stuart Hess, filed a complaint against Philip Morris USA, Inc. in the Seventeenth Judicial Circuit, Broward County, asserting claims including fraudulent concealment. The trial court denied PM USA's motion for judgment as a matter of law on the fraudulent concealment claim based on the statute of repose. The Fourth District reversed, holding that the claim was barred because the jury found no reliance within the repose period. The Florida Supreme Court granted review.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The jury verdict is reinstated.

CASES CITED

- Engle v. Liggett Group, Inc., 945 So. 2d 1246 (Fla. 2006)
- Frazier v. Philip Morris USA Inc., 89 So. 3d 937 (Fla. 3d DCA 2012)
- Pulmosan Safety Equip. Corp. v. Barnes, 752 So. 2d 556 (Fla. 2000)
- Kush v. Lloyd, 616 So. 2d 415 (Fla. 1992)
- Diamond v. E.R. Squibb & Sons, Inc., 397 So. 2d 671 (Fla. 1981)
- Laschke v. Brown & Williamson Tobacco Corp., 766 So. 2d 1076 (Fla. 2d DCA 2000)
- McLeod v. Barber, 764 So. 2d 790 (Fla. 5th DCA 2000)
- Ambrose v. Catholic Soc. Servs., Inc., 736 So. 2d 146 (Fla. 5th DCA 1999)
- Philip Morris USA, Inc. v. Hess, 95 So. 3d 254 (Fla. 4th DCA 2012)
- R.J. Reynolds Tobacco Co. v. Martin, 53 So. 3d 1060 (Fla. 1st DCA 2010)
- Pino v. Bank of N.Y., 121 So. 3d 23 (Fla. 2013)
- Durden v. Am. Hosp. Supply Corp., 375 So. 2d 1096 (Fla. 3d DCA 1979)
- Tropical Coach Line, Inc. v. Carter, 121 So. 2d 779 (Fla. 1960)
- Baskerville-Donovan Eng'rs, Inc. v. Pensacola Exec. House Condo. Ass'n, Inc., 581 So. 2d 1301 (Fla. 1991)
- Silva v. Sw. Fla. Blood Bank, Inc., 601 So. 2d 1184 (Fla. 1992)
- R.J. Reynolds Tobacco Co. v. Engle, 672 So. 2d 39 (Fla. 3d DCA 1996)
- Philip Morris USA, Inc. v. Douglas, 110 So. 3d 419 (Fla. 2013)
- Johnston v. Hudlett, 32 So. 3d 700 (Fla. 4th DCA 2010)
- Doe v. Hillsborough Cnty. Hosp. Auth., 816 So. 2d 262 (Fla. 2d DCA 2002)
- Hough v. Menses, 95 So. 2d 410 (Fla. 1957)
- Merkle v. Robinson, 737 So. 2d 540 (Fla. 1999)
- Bauld v. J.A. Jones Constr. Co., 357 So. 2d 401 (Fla. 1978)
- Carr v. Broward Cnty., 505 So. 2d 568 (Fla. 4th DCA 1987), approved, 541 So. 2d 92 (Fla. 1989)
- Damiano v. McDaniel, 689 So. 2d 1059 (Fla. 1997)
- Nehme v. Smithkline Beecham Clinical Labs., Inc., 863 So. 2d 201 (Fla. 2003)
- CTS Corp. v. Waldburger, 134 S. Ct. 2175 (2014)
- Ma v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 597 F.3d 84 (2d Cir. 2010)
- Lorillard Tobacco Co. v. Alexander, 123 So. 3d 67 (Fla. 3d DCA 2013)
- Philip Morris USA, Inc. v. Hallgren, 124 So. 3d 350 (Fla. 2d DCA 2013)
- R.J. Reynolds Tobacco Co. v. Webb, 93 So. 3d 331 (Fla. 1st DCA 2012)
- R.J. Reynolds Tobacco Co. v. Hiott, 129 So. 3d 473 (Fla. 1st DCA 2014)
- Shepard v. Philip Morris Inc., 1998 WL 34064515 (M.D. Fla. 1998)
- Joy v. Brown & Williamson Tobacco Corp., 1998 WL 35229355 (M.D. Fla. 1998)
- Liggett Group Inc. v. Engle, 853 So. 2d 434 (Fla. 3d DCA 2003)
- Philip Morris USA Inc. v. Cohen, 102 So. 3d 11 (Fla. 4th DCA 2012)
- Philip Morris USA, Inc. v. Kayton, 104 So. 3d 1145 (Fla. 4th DCA 2012)

- Philip Morris USA, Inc. v. Naugle, 103 So. 3d 944 (Fla. 4th DCA 2012)

CITED IN

- Hess v. Philip Morris USA, Inc., Hess v. Philip Morris USA, Inc., 175 So. 3d 687 (Fla. 2015)

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