

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Earl E. Graham v. R.J. Reynolds Tobacco Company

811 F.3d 434 (11th Cir. 2016) · No. 13-14590 · Decided February 2, 2016

SUMMARY

The United States Court of Appeals for the Eleventh Circuit vacated its earlier order granting rehearing en banc after the chief judge recused himself. The court then ordered that the case be reheard en banc and vacated the panel's opinion.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Tjoflat; Hull; Marcus; Wilson; William Pryor; Martin; Jordan; Rosenbaum; Julie Carnes; Jill Pryor
JURISDICTION	Federal
DECIDED	February 2, 2016
DOCKET	13-14590
DISPOSITION	vacated
PROCEDURAL POSTURE	Per curiam en banc procedural order vacating the court's earlier order granting rehearing en banc, ordering the case reheard en banc, and vacating the panel's opinion.
PRECEDENTIAL VALUE	Published
PARTIES	R.J. Reynolds Tobacco Company, Philip Morris USA, Inc. v. Earl E. Graham, as PR of Faye Dale Graham, deceased

TOPICS

[appellate procedure](#) [appellate jurisdiction](#) [civil procedure](#)

PRACTICE AREAS

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QUESTIONS PRESENTED

- Whether the court should vacate its earlier order granting rehearing en banc after a judge recused himself.

2. Whether the case should be reheard en banc after a majority of the active-service judges eligible to hear the case voted in favor.
3. Whether the panel's opinion should be vacated.

HOLDINGS

1. The court vacated its earlier order granting rehearing en banc because Chief Judge Carnes may have been recused and recused himself to avoid any appearance of impropriety.
2. The case was ordered to be reheard en banc because a majority of the judges of the court in active service and eligible to hear it voted in favor, and the panel's opinion was vacated.

KEY QUOTATIONS

“As a majority of the judges of this Court in active service and eligible to hear it have voted in favor of granting rehearing en banc, it is ORDERED that this case will be reheard en banc.” (811 F.3d at 434)

FACTUAL BACKGROUND

The opinion concerns the procedural status of an appeal involving claims against tobacco companies. The court's ruling addresses only the composition and procedural posture of the appellate rehearing, not the underlying merits.

PROCEDURAL HISTORY

The Eleventh Circuit had previously granted rehearing en banc. After that order, Chief Judge Carnes determined that he might be recused and recused himself to avoid any appearance of impropriety. The court vacated its earlier rehearing order, then ordered rehearing en banc after a majority of eligible active-service judges voted in favor, and vacated the panel's opinion.

DISPOSITION

vacated

OPINION

PER CURIAM.

Case: 13-14590 Date Filed: 02/02/2016 Page: 1 of 2 [PUBLISH] IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT _____ No. 13-14590 _____ D.C. Docket No. 3:09-cv-13602-MMH-JBT EARL E. GRAHAM, as PR of Faye Dale Graham, deceased, Plaintiff - Appellee, versus R.J. REYNOLDS TOBACCO COMPANY, individually and as successor by merger to the Brown and Williamson Tobacco Corporation and The American Tobacco Company, PHILIP MORRIS USA, INC., Defendants - Appellants, LORILLARD TOBACCO COMPANY, et al., Defendants.

Case: 13-14590 Date Filed: 02/02/2016 Page: 2 of 2 _____ Appeal from the United States District Court for the Middle District of Florida _____ Before TJOFLET, Acting Chief Judge, HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JULIE CARNES, and JILL PRYOR, Circuit Judges. BY THE COURT: In an earlier order of this Court, we granted a petition for rehearing en banc in this case.

After that order was issued, Chief Judge Carnes discovered that he may be recused and, in an abundance of caution to avoid any appearance of impropriety, he has recused himself from any participation in the decision of this case. This court's earlier order granting rehearing en banc is therefore VACATED.

As a majority of the judges of this Court in active service and eligible to hear it have voted in favor of granting rehearing en banc, it is ORDERED that this case will be reheard en banc. The panel's opinion is VACATED. 2