**IN THE SUPREME COURT OF FLORIDA**

AMANDA JEAN HALL, etc.,

Petitioner,

v.

Case No. SC11-1611
L.T. No. 1D10-2820

R.J. REYNOLDS TOBACCO CO.,

Respondent.

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## AGREED MOTION TO DETERMINE CONFIDENTIALITY OF COURT RECORD

Petitioner Amanda Jean Hall, pursuant to Florida Rule of Judicial Administration 2.420, moves this Court for an order: (1) determining the confidentiality of (a) the attachment to the Petitioner's Response in Opposition to Suggestion of Mootness, filed with this Court on June 12, 2012, and (b) Exhibit E to the Petitioner's Request for Judicial Notice, filed with this Court on June 25, 2012; (2) directing the Clerk to seal the original attachment and exhibit; and (3) substituting a redacted version of the attachment to the Response in Opposition to Suggestion of Mootness (attached to this motion as **Appendix Tab 1**) and a redacted version of Exhibit E to the Request for Judicial Notice (**Appendix Tab 2**), and states as follows:

1. Petitioner filed a Response in Opposition to Suggestion of Mootness with this Court on June 12, 2012. That response included as an attachment a pleading filed with the trial court by R.J. Reynolds Tobacco Company in another case, *Clay v. R.J. Reynolds Tobacco Company*, Case No. 2008 CA 3020.

2. Petitioner also filed a Request for Judicial Notice on June 25, 2012, that had the same pleading attached as Exhibit E.

3. That pleading, Reynolds' Motion to Confirm Stay of Execution, in turn had attached to it a letter from counsel for Ms. Clay to counsel for Reynolds and its co-defendant in that case, Liggett Group LLC. The letter, dated May 25, 2012, requests that Defendants pay the judgment in her case, including the judgment amount, interest, trial level attorney's fees and costs, and appellate attorney's fees and costs. The undersigned counsel received a copy of the pleading with the attachment in the course of his appellate representation of Ms. Clay.

4. The letter contains details of confidential agreements between the parties therein relating to the resolution of the amount of trial level attorney's fees and costs. The letter also contains information relevant to negotiations between the parties as to the amount of appellate attorney's fees and costs, should Ms. Clay ultimately prevail in the litigation. Both the fact and the substance of those agreements were to remain confidential between the parties.

5. When the confidential nature of this information was brought to Reynolds' attention by trial counsel for Ms. Clay, Reynolds promptly filed a motion to determine confidentiality in the trial court. The trial court granted the motion, ordered the original attachment sealed, and allowed a redacted version to be substituted in the public record. (**Appendix Tab 3.**)

6. Upon discovering that the undersigned counsel had made the same oversight in attaching the original version to the documents filed in this case, counsel for Reynolds advised the undersigned of the issue and requested that the undersigned promptly file this motion. The undersigned should have realized his mistake earlier, accepts responsibility for this unintentional oversight, and hereby apologizes to Reynolds, Ms. Clay, and this Court for having to devote its resources to this issue.

7. Petitioner therefore requests that the original Attachment to the Response to Suggestion of Mootness and Exhibit E to the Request for Judicial Notice be sealed by the Clerk and the new versions of these materials attached in the Appendix, which redact the confidential information relating to the confidential agreements and negotiations, be replaced in the Court record.

8. Petitioner respectfully submits that the relief requested herein is authorized by Florida Rule of Judicial Administration 2.420(c)(9)(A)(i), which provides for the confidential treatment of court records in order to prevent the

"serious and imminent threat to the fair, impartial and orderly administration of justice,'' as well as Rule 2.420(c)(9)(A)(iii), which justifies confidential treatment to "protect a compelling governmental interest." The protection of confidential information in negotiations to resolve an issue in an *Engle* progeny case is critical to ensuring that such negotiations are not discouraged in the future. The relief requested in this Motion ensures that all relevant confidential information will be redacted but the letter which comprises the exhibit and attachment will otherwise remain public record. While the letter remains relevant to this proceeding for the reasons previously stated, the confidential information has no bearing on any issue in this case.

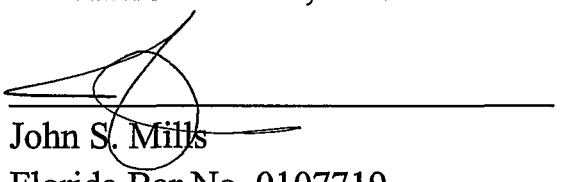
9. Pursuant to Florida Rule of Judicial Administration 2.420(e)(1), Petitioner through undersigned counsel certifies that this motion is made in good faith and is supported by a sound factual and legal basis. Petitioner has consulted with Jeffrey A. Yarbrough, counsel for Respondent, R.J. Reynolds Tobacco Co., who agrees to the granting of this Motion and to the relief requested in this Motion.

WHEREFORE, Petitioner respectfully requests that this Court enter an order (1) determining the confidentiality of (a) the Attachment to the Response in Opposition to Suggestion of Mootness and (b) Exhibit E to Petitioner's Request for Judicial Notice; (2) directing the Clerk to seal the originals of these items; and (3) substituting the redacted versions of the confidential material located at Appendix

Tab 1 for the Attachment to Response in Opposition to Suggestion of Mootness and at Appendix Tab 2 for Exhibit E to the Request for Judicial Notice.

Respectfully submitted,

THE MILLS FIRM, P.A.



John S. Mills
Florida Bar No. 0107719
203 North Gadsden Street, Suite 1A
Tallahassee, Florida 32301
(850) 765-0897 Telephone
(850) 270-2474 Facsimile

Attorneys for Amanda Jean Hall

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons by e-mail[1] this 11th day of July, 2012:

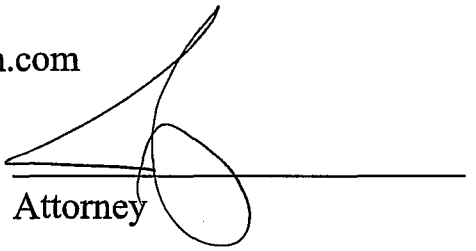
Counsel for R.J. Reynolds Tobacco Co.
Robert B. Parrish – rbp@mppkj.com
David C. Reeves – dcreeves@mppkj.com
Jeffrey A. Yarbrough – jyarbrough@mppkj.com
Karen Fitzpatrick – kfitzpatrick@mppkj.com
Lynn Scott – ldscott@mppkj.com
Elliot H. Scherker – scherkere@gtlaw.com
Julissa Rodriguez – rodriguezju@gtlaw.com
Gregory G. Katsas – ggkatsas@jonesday.com
Charles R.A. Morse – cramorse@jonesday.com

[1] The parties have agreed to accept service by email at the email addresses listed above in lieu of U.S. Mail and have further agreed that electronic service will be deemed service by mail for purposes of Fla. R. App. 9.420(e).

Counsel for Attorney General
Louis F. Hubener – lou.hubener@myfloridalegal.com
Rachel Nordby – rachel.nordby@myfloridalegal.com

Counsel for *Engle* Plaintiff Amici
Steven L. Brannock – sbrannock@bhappeals.com
Celene H. Humphries – chumphries@bhappeals.com
Christopher V. Carlyle – ccarlyle@appellatelawfirm.com
Lincoln J. Connolly – ljc@rbrlaw.com
Robert S. Glazier – glazier@fla-law.com
Christopher J. Lynch – clynch@hunterwilliamslaw.com
Joel S. Perwin – jperwin@perwinlaw.com
Richard B. Rosenthal – rbr@rosenthalappeals.com
Bard D. Rockenbach – bdr@flappellatelaw.com
David J. Sales – david@salesappeals.com
Matthew D. Schultz – mschultz@levinlaw.com

Counsel for American Tort Reform Association et al. Amici
George N. Meros – gmeros@gray-robinson.com
Charles Burns Upton II – cb.upton@gray-robinson.com



## APPENDIX INDEX

**IN THE SUPREME COURT OF FLORIDA**

AMANDA JEAN HALL, etc.,

Petitioner,

v.

Case No. SC11-1611
L.T. No. 1D10-2820

R.J. REYNOLDS TOBACCO CO.,

Respondent.

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**ATTACHMENT TO RESPONSE IN OPPOSITION TO SUGGESTION OF MOOTNESS**

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**ESCAMBIA COUNTY, FLORIDA**
**CIVIL DIVISION**

FINNA A. CLAY, as Personal Representative of the Estate of Janie Mae Clay, Deceased,

Plaintiff,

v. CASE NO. 2008 CA 3020

R.J. REYNOLDS TOBACCO COMPANY, et al.,

Defendants.
_____/

**DEFENDANT'S MOTION TO CONFIRM STAY OF EXECUTION**

Defendant R.J. Reynolds Tobacco Company respectfully moves this Court to confirm that the stay of execution on the judgment in this case that Reynolds obtained by filing a supersedeas bond with the clerk of the Florida Supreme Court in accordance with the Florida bond statute, § 569.23, Florida Statutes, remains in place. On the afternoon of Friday, May 25, just before the Memorial Day long weekend, Plaintiff's counsel sent Reynolds a letter demanding payment of the judgment and threatening to take steps to execute against Reynolds' bond if payment is not received by June 1. Plaintiff made this threat despite knowing that Reynolds' time to file a petition for certiorari in the Supreme Court of the United States has not run, and that Reynolds has filed the bond required under § 569.23(3)(b) to stay execution pending certiorari review.

Plaintiff concedes that Reynolds had properly secured a stay under the Florida bond statute pending the completion of its appeals in the Florida appellate courts.

Plaintiff further concedes that Reynolds has done everything necessary under the Florida bond statute to secure a stay that will become effective when and if it files a petition for certiorari. Nonetheless, Plaintiff contends that the Florida bond statute affords Reynolds no protection from execution between those two stages of the appellate process, while Reynolds considers its certiorari options and prepares any petition. For the reasons set out below, Plaintiff is wrong. The Florida bond statute does not contain such an arbitrary and inexplicable coverage gap. A gap of that kind would render the stay meaningless during United States Supreme Court review that even the Plaintiff agrees the statute provides.

## BACKGROUND

### A. The Statutory Bond Cap

In 1995, the State of Florida sued several major United States cigarette manufacturers, including R.J. Reynolds Tobacco Company, for billions of dollars of healthcare costs allegedly paid by the State and attributable to smoking. Fla. Senate Staff Analysis, S.B. 2198, Apr. 23, 2009, at 2 ("2009 Staff Analysis"). Reynolds and three other companies settled with the State in 1997. *Id.* The ensuing Florida Settlement Agreement (FSA) obligates those companies to pay the State about $13 billion over 25 years. *Id.* The State will receive additional payments in perpetuity. *Id.*; *see* Fla. Senate Staff Analysis, S.B. 2826, Apr. 18, 2003, at 2 ("2003 Staff Analysis"). These payments fund various important public programs throughout the State. *See* § 569.21, Fla. Stat. (2011).

The *Engle* litigation has prompted the Legislature to adopt three bond-cap statutes designed to prevent adverse judgments from disrupting the State's FSA revenue stream while the appellate process is still running its course. *See* § 768.733(1), Fla. Stat. (enacted in 2000); § 569.23(2), Fla. Stat. (2003); § 569.23(3), Fla. Stat. (2009). As explained in detail below, each of those statutes provides for a continuous stay of execution upon posting of adequate security through the completion of all appellate review, including certiorari review by the Supreme Court of the United States. The most recent of these statutes, which is directly at issue here, responds to the threat posed by the aggregate impact of numerous individual judgments following the decertification of the *Engle* class action. *See Engle v. Liggett Grp.., Inc.*, 945 So. 2d 1246 (Fla. 2006). Given the extent of the ensuing *Engle* progeny litigation, the Legislature realized that, even if no individual judgment would likely threaten FSA payments, the *Engle* progeny litigation as a whole could do so. *See* 2009 Senate Staff Analysis at 5 (FSA signatories could "have to post supersedeas bonds in up to 3,000 separate [*Engle* progeny] cases that could cumulatively total billions of dollars"); *see also* 2009 House Staff Analysis at 3.

In response to that threat, the Legislature enacted the bond statute at issue here, which is codified at § 569.23(3).[1] Section 569.23(3) applies "[i]n civil actions against a signatory, or a successor, parent, or affiliate of a signatory, to [an FSA] brought by or on behalf of persons who claim or have been determined to be members of a former class

[1] This Court rejected a constitutional challenge to § 569.23(3) at a hearing in this very case on January 4, 2011. The First District Court of Appeal affirmed. *See Clay v. R.J. Reynolds Tobacco Co.*, No. 1D10-5544 (Fla. 1st DCA July 15, 2011). The Florida Supreme Court has granted jurisdiction to consider the constitutional question. *See Hall v. R.J. Reynolds Tobacco Co.*, No. SC11-1611 (Fla.).

that was decertified in whole or in part." § 569.23(3)(a)(1), Fla. Stat. As is indicated by the title of the act creating it, § 569.23(3) "prescrib[es] the security necessary to stay execution of judgments pending appeal in actions by certain former class action members against signatories to a tobacco settlement agreement and related entities." 2009 Fla. Sess. Law Serv. Ch. 2009-188 (C.S.S.B. 2198) (WEST). Importantly, § 569.23(3)(c) provides that the plaintiff cannot make a claim against the prescribed security "unless an appellant fails to pay a judgment . . . within 30 days after the judgment becomes final." That subsection further provides that "a judgment is 'final' following the completion of all appeals or discretionary appellate reviews, including reviews by the United States Supreme Court." *Id.*

In terms of the amount of security required to obtain a stay pending appeal, § 569.23(3) creates different bonding requirements depending on the stage of appellate review of an *Engle* progeny judgment. Section 569.23(3)(a) sets the amount of security required to obtain a stay of execution "during the pendency of all appeals or discretionary appellate reviews of such judgment in Florida courts." *Id.* The amount "is equal to the lesser of the amount of the judgment to be stayed or the amount of security per judgment required based on the following tiers of judgments" determined by a sliding scale keyed to the number of judgments on appeal at any given time. *Id.* § 569.23(3)(a)(2).

Section 569.23(3)(b) in turn sets the amount of security required to obtain a stay of execution once appeals in the Florida courts have been exhausted and through completion of review by the United States Supreme Court. It provides that

> if there is no appeal or discretionary appellate review pending in a Florida court and an appellant exercises its right to seek discretionary appellate review outside of Florida courts, including a review by the United States Supreme Court, the trial court shall automatically stay the execution of the judgment in any such action during the pendency of the appeal, upon provision of security as required in this paragraph.

§569.23(3)(b)(1), Fla. Stat. The amount to continue the stay at this stage is "equal to the lesser of the amount of the judgment to be stayed or three times the security required to stay the execution of a judgment during all appellate review in Florida courts." *Id.* § 569.23(3)(b)(2).

**B. Procedural History in this Case**

On September 20, 2010, this Court entered judgment against Reynolds for $19,098,166.28. See Final Judgment (Ex. A). Pursuant to § 569.23(3)(a)(2), Reynolds posted a $4,669,966.85 bond with the Florida Supreme Court on October 21, 2010. *See* Florida Supreme Court, "Tobacco Legislation Appeals Bond Posted," *available at* http://www.floridasupremecourt.org/clerk/tobaccoBonds/TAB_Appeals-Bonds%20Posted011911.pdf. The First DCA affirmed this Court's judgment and then, on April 4, 2012, denied Reynolds' motion for rehearing. To continue its stay under the statute, Reynolds promptly filed a $14,009,900.55 bond, pursuant to § 569.23(3)(b)(2), on April 23, 2012. Its stay thus perfected, Reynolds is now considering whether to file a petition for certiorari in the United States Supreme Court, which is presently due on July 3, 2012. *See* U.S. Sup. Ct. R. 13.1.[2]

[2] "For good cause," Reynolds can receive an extension "for a period not exceeding 60 days." U.S. Sup. Ct. R. 13.5.

On May 25, 2012, Plaintiff's counsel wrote a letter demanding immediate payment of the judgment. *See* Demand Letter (Ex. B). In that letter, Plaintiff asserts that no stay applies because Florida appellate proceedings have run their course, but Reynolds has not yet filed any petition for certiorari. *See id.* at 2. Plaintiff threatens that, if payment is not received by June 1, 2012, she will "begin executing on the judgment starting with the bond." *Id.*

Reynolds therefore moves this Court to confirm that the stay of execution remains in place until 30 days after any proceedings in the Supreme Court of the United States have run their course.

## ARGUMENT

### I. BY STATUTE, THE EXECUTION OF THE JUDGMENT IS STAYED DURING THE PERIOD TO PETITION TO THE U.S. SUPREME COURT

The Florida Legislature created a bonding process that allows *Engle* progeny defendants to obtain a seamless stay through the end of the entire appellate process, including not only direct appeals in the Florida appellate courts, but also certiorari review in the United States Supreme Court. That conclusion follows from the governing statutory text, the purpose of the statute, and the canon against surplusage.

#### A. The Statutory Text Establishes that Reynolds Is Entitled to a Continuous Stay Through Disposition of a Petition for Certiorari

The text and structure of § 569.23(3) direct that the stays obtained under the statute last continuously until the end of all appellate review, including review by the Supreme Court of the United States.

### 1. Section 569.23(3)(c) Supports A Continuous Stay

Under § 569.23(3)(c), Plaintiff cannot bring her threatened claim against the bond until "30 days after the judgment becomes final." And the judgment does not become "final" until "the completion of all appeals . . . , including reviews by the United States Supreme Court." *Id.*[3] In other words, Reynolds' bond continues to stay the judgment, and is not subject to execution, until all appellate review – including certiorari review by the United States Supreme Court – is complete. This case is not final within the statute's meaning.

### 2. Sections 569.23(3)(a) & (b) Support A Continuous Stay

Sections 569.23(3)(a) & (b) —the provisions governing the bond amount that an *Engle* progeny defendant must post during each stage of the appellate process—confirm that Reynolds' stay is continuous through completion of all appellate review.

Section 569.23(3)(a)(1) provides for a stay "during the pendency of all appeals or discretionary appellate reviews of such judgment in Florida courts." Section 569.23(3)(b)(1) in turn provides for a stay "if there is no appeal or discretionary appellate review pending in a Florida court and an appellant exercises its right to seek discretionary appellate review outside of Florida courts, including a review by the United States Supreme Court."

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[3] The full text of § 569.23(3)(c), Fla. Stat. provides as follows:

> A claim may not be made against the security provided by an appellant unless an appellant fails to pay a judgment . . . within 30 days after the judgment becomes final. For purposes of this subsection, a judgment is 'final' following the completion of all appeals or discretionary appellate reviews, including reviews by the United States Supreme Court.

It is settled law that "[a] subsection of a statute cannot be read in isolation." *Lamar Outdoor Adver. —Lakeland v. Fla. Dep't of Transp.*, 17 So. 3d 799, 802 (Fla. 1st DCA 2009). Rather, "it must be read 'within the context of the entire section in order to ascertain legislative intent for the provision' and each statute 'must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts.'" *Id.* (quoting *Fla. Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1265 (Fla. 2008)). Read together, subsections (3)(a) and (3)(b) make clear that the Legislature intended to provide *Engle* progeny defendants with a seamless stay through the completion of the entire appellate process. In other words, § 569.23(3)(b) picks up where § 569.23(3)(a) leaves off.

### 3. Other Statutes That Are *In Pari Materia* Support A Continuous Stay

Two other statutes relating to stays of judgments enacted in response to *Engle* reinforce the conclusion that § 569.23(3) creates a continuous stay.

First, § 569.23(2), a 2003 bond cap likewise enacted in response to *Engle*, creates a continuous stay throughout all levels of appellate review:

> In any civil action involving a signatory, or a successor, parent, or affiliate of a signatory, to a tobacco settlement agreement, the security to be furnished *during the pendency of all appeals or discretionary appellate reviews, including reviews by the United States Supreme Court*, of any judgment in such litigation . . . shall not exceed $100 million for all appellants collectively, regardless of the total value of the judgment.

§ 569.23(2), Fla. Stat. (emphasis added). This statute must be read as *in pari materia* with respect to § 569.23(3). As the Florida Supreme Court has explained, "statutes which relate to the same or to a closely related subject or object are regarded as *in pari materia*

and should be construed together and compared with each other." *Ferguson v. State,* 377 So. 2d 709, 710 (Fla. 1979); *see also Katherine's Bay, LLC v. Fagan,* No. 1D10-939, 2010 WL 5072509, at *8 (Fla. 1st DCA Dec. 14, 2010) ("Another rule of construction . . . is that all provisions on related subjects be read *in pari materia.*"). Like § 569.23(3), § 569.23(2) applies to civil judgments against the FSA signatories or related corporate entities. And the motivation for the two bond caps was identical—concern about the threat to the FSA revenue stream from the cumulative "cost of dozens of individual lawsuits and class action suits." 2003 Senate Staff Analysis at 3.

The same is true regarding the 2000 bond cap, § 768.733, Florida Statutes, which likewise was passed in response to *Engle* but applies to all defendants subject to punitive damages in class actions. This bond cap was a direct response to concerns that a class-wide punitive-damages judgment in *Engle* would be un-bondable and thus would impair the *Engle* defendants' ability to make FSA payments prior to the completion of appellate review. *See* H.R. Final Analysis of CS/HB 1721 (2000) Staff Analysis at 4 (final July 13, 2000) ("there is concern by some that the companies may declare bankruptcy and default on their obligations"). Section § 768.733 provides that "[i]n any civil action that is brought as a certified class action, the trial court, upon the posting of a bond or equivalent surety as provided in this section, shall stay the execution of any judgment or portion thereof, entered on account of punitive damages *pending completion of any appellate review* of the judgment." § 768.733(1), Fla. Stat. (emphasis added). "Pending" means "throughout the continuance of" or "while awaiting." Black's Law Dictionary (9th ed.

2009).[4] This statute as well thus creates a seamless stay throughout the continuance or while awaiting the completion of all appeals.

There is no plausible basis for creating a gap in stay coverage under § 569.23(3), despite the seamless coverage under the two other *Engle*-related bond caps.

### B. Plaintiff's Proposed Gap in the Stay Is Inconsistent with the Purpose of the Statute

Plaintiff's proposed interpretation of § 569.23(3) also would undermine the purpose of the statute—protecting the immense amount of public revenues to which Florida is entitled under the FSAs. This purpose is best effectuated if the statute's language is construed, consistent with its terms, as providing a stay of execution until all appellate review is complete.

"The intent of the legislature is the polestar of statutory construction." *E.A.R. v. State*, 4 So. 3d 614, 629 (Fla. 2009). Moreover, "[i]t is well settled that in construing a statute the court should consider its history, evil to be corrected, the intention of the law-making body, subject regulated and the object to be obtained." *Englewood Water Dist. v. Tate*, 334 So. 2d 626, 628 (Fla. 1st DCA 1976) (citing *Smith v. Ryan*, 39 So. 2d 281 (Fla. 1949)). As discussed above, § 569.23(3) was enacted after the Florida Legislature determined that multiple large individual judgments against Reynolds and the other FSA signatories could become un-bondable in the aggregate, threaten the signatories' financial viability, and thereby jeopardize future FSA payments. Section 569.23(3) promotes

[4] *See also* Oxford English Dictionary—Compact Edition 2119 (1971) (defining "pending" as "hanging in suspense, suspended, not decided" and "remaining undecided, awaiting decision or settlement"); Random House Webster's Unabridged Dictionary (2d ed. 2001) (defining pending as "while awaiting; until," "in the period before the decision or conclusion of; during," and "remaining undecided; awaiting decision or settlement; unfinished").

Florida's substantive interest in the FSA revenue stream by limiting the amount of security necessary to stay execution of a judgment not yet final on appeal. That purpose would be undermined if § 569.23(3) were interpreted so that its stay would disappear during the middle of the appellate process, after review in the state system but before certiorari review. There is no reason that the Legislature, seeking to lower the otherwise applicable bonding requirements, and expressly extending the statutory stay through the completion of certiorari review in the United States Supreme Court, would have wanted the stay to lapse between state and federal appellate review.

### C. Under Plaintiff's Interpretation, the Stay While a Petition for Certiorari is Pending Would Be Rendered Meaningless

Finally, Plaintiff's interpretation of § 569.23(3) would lead to an absurd result and effectively render a portion of the statute meaningless. "It is a basic tenet of statutory construction that statutes will not be interpreted so as to yield an absurd result." *Wollard v. Lloyd's & Cos. of Lloyd's*, 439 So. 2d 217, 219 (Fla. 1983); *see also Whitehead v Tyndall Fed. Credit Union*, 46 So. 2d 1033, 1036 (Fla. 1st DCA 2010) ("'A basic tenet of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences.'" (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984))). Moreover, Florida courts "are compelled by well-established norms of statutory construction to choose that interpretation of statutes and rules which renders their provisions meaningful. Statutory interpretations that render statutory provisions superfluous are, and should be, disfavored." *Hawkins v. Ford Motor Co.*, 748 So. 2d 993, 1000 (Fla. 1999) (internal quotations omitted).

Under Plaintiff's view of the statute, the stay of execution of a judgment would disappear while a defendant was preparing its petition for certiorari, during which time the plaintiff could execute on the judgment. Then, under § 569.23(3)(b), the stay would spring back into effect after the filing of the petition. But after the plaintiff has collected the judgment, of course, the defendant has no use for a stay. Thus, under Plaintiff's reading, § 569.23(3)(b) would be rendered effectively meaningless. The Legislature surely did not intend such a strange and inexplicable result.

## II. IN THE ALTERNATIVE, THIS COURT SHOULD GRANT A STAY UNDER RULE 1.550(B) PENDING REYNOLDS' FILING OF A PETITION FOR A WRIT OF CERTIORARI

If this Court were to find that §569.23(3) creates a gap in its stay between state court and federal court review, the Court should exercise its authority under Florida Rule of Civil Procedure 1.550(b) to fill that gap. Rule 1.550(b) provides that "[t]he court before which an execution or other process based on a final judgment is returnable may stay such execution or other process and suspend proceedings thereon for good cause on motion and notice to all adverse parties." Here, good cause exists for a temporary stay to allow Reynolds to prepare and determine whether to file a potential petition for a writ of certiorari. There can be no dispute that if Reynolds files a petition, then it will have a stay of execution through completion of review by the United States Supreme Court and any further appellate review, if any. Protection of a party for a brief period while it perfects a stay has long been recognized as "good cause" for a 1.550(b) stay. *See also Campbell v. Jones*, 648 So. 2d 208, 208 n.1 (Fla. 3d DCA 1994) ("We note that Fla. R. Civ. P. 1.550(b) has been described as a vehicle for protecting a judgment debtor '*briefly*

*while he perfects his appeal and obtains supersedeas.*'" (emphasis in original) (quoting *Barnett v. Barnett Bank of Jacksonville, N.A.*, 338 So. 2d 888, 889 (Fla. 1st DCA 1976))); *Chapman v. Rose*, 295 So. 2d 667, 669 (Fla. 2d DCA 1974) (noting that "[i]t goes without saying that a supersedeas bond cannot instantly be obtained" and holding that appellant would have been entitled to temporary stay under Rule 1.550(b)).

## CONCLUSION

For the foregoing reasons, Reynolds respectfully asks the Court to confirm that, pursuant to the bond cap statute, a stay of execution of the judgment presently remains in place and will remain in place through the completion of any certiorari review by the United States Supreme Court. In the alternative, Reynolds requests a stay of execution under Rule 1.550(b) until the due date for its U.S. Supreme Court certiorari petition.

LARRY HILL
Florida Bar Number 173908
CHARLES F. BEALL, JR.
Florida Bar Number 66494
**MOORE, HILL & WESTMORELAND, P.A.**
220 West Garden Street
9th Floor, SunTrust Tower
Post Office Box 13290
Pensacola, Florida 32591-3290
Telephone: (850) 434-3541
Facsimile: (850) 435-7899
*Attorneys for Defendant-Appellant*
*R.J. Reynolds Tobacco Company*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing was furnished to the following by electronic delivery and United States mail this 31st day of May, 2012:

*Attorneys for Plaintiff*
James W. Gustafson, Esquire
William A. Norton, Esquire
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
The Towle House
517 North Calhoun Street
Tallahassee, FL 32301

*Attorneys for Plaintiff*
T. Hardee Bass, Esquire
Laurie Briggs, Esquire
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409

*Attorneys for Liggett Group L.L.C.*
Kelly Anne Luther, Esquire
KASOWITZ, BENSON, TORRES &
FRIEDMAN, LLP
1441 Brickell Avenue, Suite 1420
Miami, FL 33131

LARRY HILL

# EXHIBIT A

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT, IN AND FOR ESCAMBIA COUNTY, FLORIDA

CASE NO.: 2007-CA-3020

FINNA CLAY, etc,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO CO. et al.,

Defendants.

_____/

**FINAL JUDGMENT**

IT IS HEREBY Ordered and Adjudged as follows:

1. That the Plaintiff FINNA CLAY, as personal representative of the Estate of Janie May Clay, and on behalf of all survivors, hereby recovers from the Defendant R.J. REYNOLDS TOBACCO COMPANY, 401 N. Main Street, Winston-Salem, North Carolina, 27102, the sum of $19,098,166.28 allocated among the estate and survivors as follows:

| | |
|---|---|
| Estate of Janie May Clay<br>Finna Clay, Pers. Rep.<br>1025 Sable Dr., Apt. B<br>Pensacola, FL 32514 | $17,004,166.28 |
| Teddy Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $1,194,000.00 |
| Jane Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $450,000.00 |
| Larry Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $450,000.00 |

FOR ALL OF WHICH LET EXECUTION ISSUE.

2. That the Plaintiff FINNA CLAY, as personal representative of the Estate of Janie May Clay, and on behalf of all survivors, hereby recovers from the Defendant LIGGETT GROUP, LLC, 100 Maple Lane, Mebane, NC 27302, the sum of $1,349,694.38 allocated among the estate and survivors as follows:

| | |
|---|---|
| Estate of Janie May Clay<br>Finna Clay, Pers. Rep.<br>1025 Sable Dr., Apt. B<br>Pensacola, FL 32514 | $1,000,694.38 |
| Teddy Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $199,000.00 |
| Jane Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $75,000.00 |
| Larry Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $75,000.00 |

FOR ALL OF WHICH LET EXECUTION ISSUE.

3. This judgment shall bear interest at the rate of 6%.

DONE AND ORDERED in Chambers this 20th day of September, 2010.

/S/ TERRY TERRELL

Terry David Terrell,
Circuit Judge

Copies furnished to:

David J. Sales, Esq.
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Counsel for Plaintiff

William A. Norton, Esq.
Searcy Denney Scarola
Barnhart & Shipley, P.A.
Towle House, 517 N. Calhoun St.
Tallahassee, FL 32301
Counsel for Plaintiff

Larry Hill, Esq.
Moore, Hill & Westmoreland, PA
Sun Trust Tower, 9th Floor
220 West Garden Street
Pensacola, FL 32503
Counsel for R.J. Reynolds Tobacco Co.

Stephanie E. Parker, Esq.
John Michael Walker, Esq.
John Yarber, Esq.
Jones Day
1420 Peachtree Street, NE, Suite 800
Atlanta, GA 30309-3939
Counsel for R.J. Reynolds Tobacco Co.

Kelly Anne Luther, Esq.
Kasowitz Benson Torres & Friedman, LLP
1441 Brickell Avenue, Suite 1420
Miami, FL 33131
Counsel for Liggett Group LLC

Michael P. Rosenstein, Esq.
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019
Counsel for Liggett Group LLC

John S. Mills, Esq.
The Mills Firm
One Independent Drive, Suite 1700
Jacksonville, FL 32202
Counsel for Plaintiff

Harold K. Gordon, Esquire
Jones Day
222 East 41st Street
New York, NY 10017-6702

Emily C. Baker, Esquire
Jones Day
1420 Peachtree Street NE, Suite 800
Atlanta, GA 30309-3053

Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Counsel for Plaintiff

# EXHIBIT B

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
Attorneys at Law

TALLAHASSEE OFFICE:
THE TOWLE HOUSE
517 NORTH CALHOUN STREET
TALLAHASSEE, FL 32301-1231
(850) 224-7600
1-888-549-7011

WEST PALM BEACH OFFICE:
2139 PALM BEACH LAKES BLVD.
WEST PALM BEACH, FLORIDA 33409
P.O. BOX 3626
WEST PALM BEACH, FLORIDA 33402
(561) 686-6300
1-800-780-8607
1-800-220-7006 Spanish

ATTORNEYS AT LAW:
ROSALYN SIA BAKER-BARNES
*K. GREGORY BARNHART
T. HARDEE BASS, III
LAURIE J. BRIGGS
BRIAN R. DENNEY
BRENDA S. FULMER
MARIANO GARCIA
JAMES W. GUSTAFSON, JR.
JACK P. HILL
DAVID K. KELLEY, JR.
CAMERON M. KENNEDY
WILLIAM B. KING[1]
DARRYL L. LEWIS[1]
*WILLIAM A. NORTON
PATRICK E. QUINLAN*
EDWARD V. RICCI
*JOHN SCAROLA
*CHRISTIAN D. SEARCY
*JOHN A. SHIPLEY III
CHRISTOPHER K. SPEED[2][3]
BRIAN P. SULLIVAN[3][4]
KAREN E. TERRY
*C. CALVIN WARRINER III

OF COUNSEL
*EARL L. DENNEY, JR.*

SHAREHOLDERS
*BOARD CERTIFIED

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VINCENT L. LEONARD, JR.
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ROBERT W. PITCHER
MARK P. PONCY
KATHLEEN SIMON
STEVE M. SMITH
BONNIE S. STARK
WALTER A. STEIN

May 25, 2012

John Yarber, Esquire
Jones Day
1420 Peachtree Street, N.E.
Suite 800
Atlanta, GA 30309

Larry Hill, Esquire
Moore, Hill & Westmoreland, PA
Sun Trust Tower, 9th Floor
220 West Garden Street
Pensacola, FL 32503

Kelly Anne Luther, Esquire
Kasowitz Benson Torres & Friedman, LLP
1441 Brickell Avenue, Suite 1420
Mianli, FL 33131

RE: Clay v. R.J. Reynolds Tobacco Company and Liggett Group, LLC

Dear Counsel:

This letter is to demand payment of the judgment in the Clay case plus interest, previously negotiated trial attorney's fees and costs plus the agreed-upon interest, and appellate fees and costs. I address each item separately.

**Payment of Judgment Is Due Now**

Your clients' obligation to pay the judgment and attorney's fees in the Clay case is past due. If we do not receive payment by June 1, 2012, we will begin executing on the judgment, starting with the bonds.

We recognize that your clients have posted new bonds and apparently believe they are entitled to an automatic stay of the judgment until they have exhausted review in the

Supreme Court of the United States. But that is not the case here. Even under the generous terms of section 569.23, Florida Statutes. That statute states, in relevant part:

> In any action subject to this subsection, if there is no appeal or discretionary appellate review pending in a Florida court and an appellant ***exercises its right*** to seek discretionary appellate review outside of Florida courts, including a review by the United States Supreme Court, the trial court shall automatically stay the execution of the judgment in any such action during the pendency of the appeal, upon provision of security as required in this paragraph.

§ 569.23(b)1 (emphasis added).

By its plain terms, the statute only applies when a tobacco defendant "exercises" its right to seek review in the Supreme Court of the United States. The way to exercise one's right to review in that court is to file a petition for writ of certiorari. Since none has been filed, RJR and Liggett are not exercising that right. While they may be contemplating filing one down the line, the statute does not provide for a stay while the defendants consider or contemplate whether to do so.

**Total Due on the Judgment With Interest**

The amount that RJR will owe on the judgment as of June 1, 2012, is $21,071,560.54. The principal amount of the judgment is $19,098,166.28. As of June 1, 629 days will have passed since entry of judgment. The interest rate is six percent. Thus, as of June 1, $1,973,394.26 in interest will have accrued. The per diem amount is $3,139.42 ($3,130.85 in 2012 because it is a leap year), so RJR may deduct $3,130.85 for each day before June 1 that it tenders payment.

The amount that Liggett will owe on the judgment as of June 1, 2012, is $1,486,510.80. The principal amount of the judgment is $1,349,694.38. As of June 1, 629 days will have passed since entry of judgment. The interest rate is six percent. Thus, as of June 1, $139,462.56 in interest will have accrued. The per diem amount is $221.87 ($221.26 in 2012 because it is a leap year), so Liggett may deduct $221.26 for each day before June 1that it tenders payment.

We understand that in other recent cases, cigarette manufacturers disagreed that the interest rate remains at rate set forth in the Judgment. I trust that won't be an issue here.

**Total Due for Agreed Fees and Interest**

Under the April 14, 2011 Agreement, RJR is to pay [redacted] in trial level attorney's fees and costs for those fees and costs incurred up to April 14, 2011. The

interest on those fees and costs is six percent. Thus, as of June 1, [redacted] in interest will have accrued on that amount. The per diem amount is [redacted] ([redacted] in 2012 because it is a leap year), so RJR may deduct [redacted] for each day before June 1 that it tenders payment. As of June 1, the total amount due under that April 14, 2011 Agreement will be [redacted]

Under the April 14, 2011 Agreement, Liggett is to pay [redacted] in trial level attorney's fees and costs incurred up to April 14, 2011. The interest rate on those fees and costs is six percent. Thus, as of June 1, [redacted] in interest will have accrued on that amount. The per diem amount is [redacted] ([redacted] in 2012 because it is a leap year), so Liggett may deduct [redacted] for each day before June 1 that it tenders payment. As of June 1, the total amount due under that April 14, 2011 Agreement will be [redacted].

**Additional Fees and Costs**

Finally, Mrs. Clay is also entitled to her appellate attorney's fees and costs and any trial level fees and costs incurred since the April 14, 2011 Agreement. To date, those fees total [redacted]. This reflects [redacted] in post-Agreement fees incurred by Searcy Denney, as well as [redacted] incurred by the Mills Firm (233.1 hours by John Mills at [redacted]/hour, 111.0 hours by Greg Philo at [redacted]/hour, 110.9 hours by paralegal Elizabeth Rahwan at [redacted]/hour, and 1.3 hours by a law clerk at [redacted]/hour), and [redacted] incurred by David J. Sales, P.A. (29.3 hours at [redacted]/hour). Post-Agreement costs to date total [redacted]

If further proceedings are required to collect on the judgment or argue over issues like the stay or interest, that amount will only rise. Absent agreement to the above post-Agreement fees and costs, we will have to file a motion to determine the amount of fees and costs owed and will have to set the deposition of your clients' corporate representative to discover the hours and rate for fees they have paid their lawyers.

We look forward to receiving full payment by June 1. If you have any questions, please do not hesitate to call.

Yours truly,

JAMES W. GUSTAFSON, JR.

JWG/jbc

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**ESCAMBIA COUNTY, FLORIDA**
**CIVIL DIVISION**

FINNA A. CLAY, as Personal Representative of the Estate of Janie Mae Clay, Deceased,

Plaintiff,

v. CASE NO. 2008 CA 3020

R.J. REYNOLDS TOBACCO COMPANY, et al.,

Defendants.
_____/

**DEFENDANT'S MOTION TO CONFIRM STAY OF EXECUTION**

Defendant R.J. Reynolds Tobacco Company respectfully moves this Court to confirm that the stay of execution on the judgment in this case that Reynolds obtained by filing a supersedeas bond with the clerk of the Florida Supreme Court in accordance with the Florida bond statute, § 569.23, Florida Statutes, remains in place. On the afternoon of Friday, May 25, just before the Memorial Day long weekend, Plaintiff's counsel sent Reynolds a letter demanding payment of the judgment and threatening to take steps to execute against Reynolds' bond if payment is not received by June 1. Plaintiff made this threat despite knowing that Reynolds' time to file a petition for certiorari in the Supreme Court of the United States has not run, and that Reynolds has filed the bond required under § 569.23(3)(b) to stay execution pending certiorari review.

Plaintiff concedes that Reynolds had properly secured a stay under the Florida bond statute pending the completion of its appeals in the Florida appellate courts.

Plaintiff further concedes that Reynolds has done everything necessary under the Florida bond statute to secure a stay that will become effective when and if it files a petition for certiorari. Nonetheless, Plaintiff contends that the Florida bond statute affords Reynolds no protection from execution between those two stages of the appellate process, while Reynolds considers its certiorari options and prepares any petition. For the reasons set out below, Plaintiff is wrong. The Florida bond statute does not contain such an arbitrary and inexplicable coverage gap. A gap of that kind would render the stay meaningless during United States Supreme Court review that even the Plaintiff agrees the statute provides.

## BACKGROUND

### A. The Statutory Bond Cap

In 1995, the State of Florida sued several major United States cigarette manufacturers, including R.J. Reynolds Tobacco Company, for billions of dollars of healthcare costs allegedly paid by the State and attributable to smoking. Fla. Senate Staff Analysis, S.B. 2198, Apr. 23, 2009, at 2 ("2009 Staff Analysis"). Reynolds and three other companies settled with the State in 1997. *Id.* The ensuing Florida Settlement Agreement (FSA) obligates those companies to pay the State about $13 billion over 25 years. *Id.* The State will receive additional payments in perpetuity. *Id.*; *see* Fla. Senate Staff Analysis, S.B. 2826, Apr. 18, 2003, at 2 ("2003 Staff Analysis"). These payments fund various important public programs throughout the State. *See* § 569.21, Fla. Stat. (2011).

The *Engle* litigation has prompted the Legislature to adopt three bond-cap statutes designed to prevent adverse judgments from disrupting the State's FSA revenue stream while the appellate process is still running its course. *See* § 768.733(1), Fla. Stat. (enacted in 2000); § 569.23(2), Fla. Stat. (2003); § 569.23(3), Fla. Stat. (2009). As explained in detail below, each of those statutes provides for a continuous stay of execution upon posting of adequate security through the completion of all appellate review, including certiorari review by the Supreme Court of the United States. The most recent of these statutes, which is directly at issue here, responds to the threat posed by the aggregate impact of numerous individual judgments following the decertification of the *Engle* class action. *See Engle v. Liggett Grp.., Inc.*, 945 So. 2d 1246 (Fla. 2006). Given the extent of the ensuing *Engle* progeny litigation, the Legislature realized that, even if no individual judgment would likely threaten FSA payments, the *Engle* progeny litigation as a whole could do so. *See* 2009 Senate Staff Analysis at 5 (FSA signatories could "have to post supersedeas bonds in up to 3,000 separate [*Engle* progeny] cases that could cumulatively total billions of dollars"); *see also* 2009 House Staff Analysis at 3.

In response to that threat, the Legislature enacted the bond statute at issue here, which is codified at § 569.23(3).[1] Section 569.23(3) applies "[i]n civil actions against a signatory, or a successor, parent, or affiliate of a signatory, to [an FSA] brought by or on behalf of persons who claim or have been determined to be members of a former class

[1] This Court rejected a constitutional challenge to § 569.23(3) at a hearing in this very case on January 4, 2011. The First District Court of Appeal affirmed. *See Clay v. R.J. Reynolds Tobacco Co.*, No. 1D10-5544 (Fla. 1st DCA July 15, 2011). The Florida Supreme Court has granted jurisdiction to consider the constitutional question. *See Hall v. R.J. Reynolds Tobacco Co.*, No. SC11-1611 (Fla.).

that was decertified in whole or in part." § 569.23(3)(a)(1), Fla. Stat. As is indicated by the title of the act creating it, § 569.23(3) "prescrib[es] the security necessary to stay execution of judgments pending appeal in actions by certain former class action members against signatories to a tobacco settlement agreement and related entities." 2009 Fla. Sess. Law Serv. Ch. 2009-188 (C.S.S.B. 2198) (WEST). Importantly, § 569.23(3)(c) provides that the plaintiff cannot make a claim against the prescribed security "unless an appellant fails to pay a judgment . . . within 30 days after the judgment becomes final." That subsection further provides that "a judgment is 'final' following the completion of all appeals or discretionary appellate reviews, including reviews by the United States Supreme Court." *Id.*

In terms of the amount of security required to obtain a stay pending appeal, § 569.23(3) creates different bonding requirements depending on the stage of appellate review of an *Engle* progeny judgment. Section 569.23(3)(a) sets the amount of security required to obtain a stay of execution "during the pendency of all appeals or discretionary appellate reviews of such judgment in Florida courts." *Id.* The amount "is equal to the lesser of the amount of the judgment to be stayed or the amount of security per judgment required based on the following tiers of judgments" determined by a sliding scale keyed to the number of judgments on appeal at any given time. *Id.* § 569.23(3)(a)(2).

Section 569.23(3)(b) in turn sets the amount of security required to obtain a stay of execution once appeals in the Florida courts have been exhausted and through completion of review by the United States Supreme Court. It provides that

> if there is no appeal or discretionary appellate review pending in a Florida court and an appellant exercises its right to seek discretionary appellate review outside of Florida courts, including a review by the United States Supreme Court, the trial court shall automatically stay the execution of the judgment in any such action during the pendency of the appeal, upon provision of security as required in this paragraph.

§569.23(3)(b)(1), Fla. Stat. The amount to continue the stay at this stage is "equal to the lesser of the amount of the judgment to be stayed or three times the security required to stay the execution of a judgment during all appellate review in Florida courts." *Id.* § 569.23(3)(b)(2).

**B. Procedural History in this Case**

On September 20, 2010, this Court entered judgment against Reynolds for $19,098,166.28. See Final Judgment (Ex. A). Pursuant to § 569.23(3)(a)(2), Reynolds posted a $4,669,966.85 bond with the Florida Supreme Court on October 21, 2010. *See* Florida Supreme Court, "Tobacco Legislation Appeals Bond Posted," *available at* http://www.floridasupremecourt.org/clerk/tobaccoBonds/TAB_Appeals-Bonds%20Posted011911.pdf. The First DCA affirmed this Court's judgment and then, on April 4, 2012, denied Reynolds' motion for rehearing. To continue its stay under the statute, Reynolds promptly filed a $14,009,900.55 bond, pursuant to § 569.23(3)(b)(2), on April 23, 2012. Its stay thus perfected, Reynolds is now considering whether to file a petition for certiorari in the United States Supreme Court, which is presently due on July 3, 2012. *See* U.S. Sup. Ct. R. 13.1.[2]

[2] "For good cause," Reynolds can receive an extension "for a period not exceeding 60 days." U.S. Sup. Ct. R. 13.5.

On May 25, 2012, Plaintiff's counsel wrote a letter demanding immediate payment of the judgment. *See* Demand Letter (Ex. B). In that letter, Plaintiff asserts that no stay applies because Florida appellate proceedings have run their course, but Reynolds has not yet filed any petition for certiorari. *See id.* at 2. Plaintiff threatens that, if payment is not received by June 1, 2012, she will "begin executing on the judgment starting with the bond." *Id.*

Reynolds therefore moves this Court to confirm that the stay of execution remains in place until 30 days after any proceedings in the Supreme Court of the United States have run their course.

## ARGUMENT

### I. BY STATUTE, THE EXECUTION OF THE JUDGMENT IS STAYED DURING THE PERIOD TO PETITION TO THE U.S. SUPREME COURT

The Florida Legislature created a bonding process that allows *Engle* progeny defendants to obtain a seamless stay through the end of the entire appellate process, including not only direct appeals in the Florida appellate courts, but also certiorari review in the United States Supreme Court. That conclusion follows from the governing statutory text, the purpose of the statute, and the canon against surplusage.

#### A. The Statutory Text Establishes that Reynolds Is Entitled to a Continuous Stay Through Disposition of a Petition for Certiorari

The text and structure of § 569.23(3) direct that the stays obtained under the statute last continuously until the end of all appellate review, including review by the Supreme Court of the United States.

### 1. Section 569.23(3)(c) Supports A Continuous Stay

Under § 569.23(3)(c), Plaintiff cannot bring her threatened claim against the bond until "30 days after the judgment becomes final." And the judgment does not become "final" until "the completion of all appeals . . . , including reviews by the United States Supreme Court." *Id.*[3] In other words, Reynolds' bond continues to stay the judgment, and is not subject to execution, until all appellate review – including certiorari review by the United States Supreme Court – is complete. This case is not final within the statute's meaning.

### 2. Sections 569.23(3)(a) & (b) Support A Continuous Stay

Sections 569.23(3)(a) & (b) —the provisions governing the bond amount that an *Engle* progeny defendant must post during each stage of the appellate process—confirm that Reynolds' stay is continuous through completion of all appellate review.

Section 569.23(3)(a)(1) provides for a stay "during the pendency of all appeals or discretionary appellate reviews of such judgment in Florida courts." Section 569.23(3)(b)(1) in turn provides for a stay "if there is no appeal or discretionary appellate review pending in a Florida court and an appellant exercises its right to seek discretionary appellate review outside of Florida courts, including a review by the United States Supreme Court."

---

[3] The full text of § 569.23(3)(c), Fla. Stat. provides as follows:

> A claim may not be made against the security provided by an appellant unless an appellant fails to pay a judgment . . . within 30 days after the judgment becomes final. For purposes of this subsection, a judgment is 'final' following the completion of all appeals or discretionary appellate reviews, including reviews by the United States Supreme Court.

It is settled law that "[a] subsection of a statute cannot be read in isolation." *Lamar Outdoor Adver. —Lakeland v. Fla. Dep't of Transp.*, 17 So. 3d 799, 802 (Fla. 1st DCA 2009). Rather, "it must be read 'within the context of the entire section in order to ascertain legislative intent for the provision' and each statute 'must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts.'" *Id.* (quoting *Fla. Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1265 (Fla. 2008)). Read together, subsections (3)(a) and (3)(b) make clear that the Legislature intended to provide *Engle* progeny defendants with a seamless stay through the completion of the entire appellate process. In other words, § 569.23(3)(b) picks up where § 569.23(3)(a) leaves off.

### 3. Other Statutes That Are *In Pari Materia* Support A Continuous Stay

Two other statutes relating to stays of judgments enacted in response to *Engle* reinforce the conclusion that § 569.23(3) creates a continuous stay.

First, § 569.23(2), a 2003 bond cap likewise enacted in response to *Engle*, creates a continuous stay throughout all levels of appellate review:

> In any civil action involving a signatory, or a successor, parent, or affiliate of a signatory, to a tobacco settlement agreement, the security to be furnished *during the pendency of all appeals or discretionary appellate reviews, including reviews by the United States Supreme Court*, of any judgment in such litigation . . . shall not exceed $100 million for all appellants collectively, regardless of the total value of the judgment.

§ 569.23(2), Fla. Stat. (emphasis added). This statute must be read as *in pari materia* with respect to § 569.23(3). As the Florida Supreme Court has explained, "statutes which relate to the same or to a closely related subject or object are regarded as *in pari materia*

and should be construed together and compared with each other." *Ferguson v. State,* 377 So. 2d 709, 710 (Fla. 1979); *see also Katherine's Bay, LLC v. Fagan*, No. 1D10-939, 2010 WL 5072509, at *8 (Fla. 1st DCA Dec. 14, 2010) ("Another rule of construction . . . is that all provisions on related subjects be read *in pari materia*."). Like § 569.23(3), § 569.23(2) applies to civil judgments against the FSA signatories or related corporate entities. And the motivation for the two bond caps was identical—concern about the threat to the FSA revenue stream from the cumulative "cost of dozens of individual lawsuits and class action suits." 2003 Senate Staff Analysis at 3.

The same is true regarding the 2000 bond cap, § 768.733, Florida Statutes, which likewise was passed in response to *Engle* but applies to all defendants subject to punitive damages in class actions. This bond cap was a direct response to concerns that a class-wide punitive-damages judgment in *Engle* would be un-bondable and thus would impair the *Engle* defendants' ability to make FSA payments prior to the completion of appellate review. *See* H.R. Final Analysis of CS/HB 1721 (2000) Staff Analysis at 4 (final July 13, 2000) ("there is concern by some that the companies may declare bankruptcy and default on their obligations"). Section § 768.733 provides that "[i]n any civil action that is brought as a certified class action, the trial court, upon the posting of a bond or equivalent surety as provided in this section, shall stay the execution of any judgment or portion thereof, entered on account of punitive damages *pending completion of any appellate review* of the judgment." § 768.733(1), Fla. Stat. (emphasis added). "Pending" means "throughout the continuance of" or "while awaiting." Black's Law Dictionary (9th ed.

2009).[4] This statute as well thus creates a seamless stay throughout the continuance or while awaiting the completion of all appeals.

There is no plausible basis for creating a gap in stay coverage under § 569.23(3), despite the seamless coverage under the two other *Engle*-related bond caps.

### B. Plaintiff's Proposed Gap in the Stay Is Inconsistent with the Purpose of the Statute

Plaintiff's proposed interpretation of § 569.23(3) also would undermine the purpose of the statute—protecting the immense amount of public revenues to which Florida is entitled under the FSAs. This purpose is best effectuated if the statute's language is construed, consistent with its terms, as providing a stay of execution until all appellate review is complete.

"The intent of the legislature is the polestar of statutory construction." *E.A.R. v. State*, 4 So. 3d 614, 629 (Fla. 2009). Moreover, "[i]t is well settled that in construing a statute the court should consider its history, evil to be corrected, the intention of the law-making body, subject regulated and the object to be obtained." *Englewood Water Dist. v. Tate*, 334 So. 2d 626, 628 (Fla. 1st DCA 1976) (citing *Smith v. Ryan*, 39 So. 2d 281 (Fla. 1949)). As discussed above, § 569.23(3) was enacted after the Florida Legislature determined that multiple large individual judgments against Reynolds and the other FSA signatories could become un-bondable in the aggregate, threaten the signatories' financial viability, and thereby jeopardize future FSA payments. Section 569.23(3) promotes

[4] *See also* Oxford English Dictionary—Compact Edition 2119 (1971) (defining "pending" as "hanging in suspense, suspended, not decided" and "remaining undecided, awaiting decision or settlement"); Random House Webster's Unabridged Dictionary (2d ed. 2001) (defining pending as "while awaiting; until," "in the period before the decision or conclusion of; during," and "remaining undecided; awaiting decision or settlement; unfinished").

Florida's substantive interest in the FSA revenue stream by limiting the amount of security necessary to stay execution of a judgment not yet final on appeal. That purpose would be undermined if § 569.23(3) were interpreted so that its stay would disappear during the middle of the appellate process, after review in the state system but before certiorari review. There is no reason that the Legislature, seeking to lower the otherwise applicable bonding requirements, and expressly extending the statutory stay through the completion of certiorari review in the United States Supreme Court, would have wanted the stay to lapse between state and federal appellate review.

### C. Under Plaintiff's Interpretation, the Stay While a Petition for Certiorari is Pending Would Be Rendered Meaningless

Finally, Plaintiff's interpretation of § 569.23(3) would lead to an absurd result and effectively render a portion of the statute meaningless. "It is a basic tenet of statutory construction that statutes will not be interpreted so as to yield an absurd result." *Wollard v. Lloyd's & Cos. of Lloyd's*, 439 So. 2d 217, 219 (Fla. 1983); *see also Whitehead v Tyndall Fed. Credit Union*, 46 So. 2d 1033, 1036 (Fla. 1st DCA 2010) ("'A basic tenet of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences.'" (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984))). Moreover, Florida courts "are compelled by well-established norms of statutory construction to choose that interpretation of statutes and rules which renders their provisions meaningful. Statutory interpretations that render statutory provisions superfluous are, and should be, disfavored." *Hawkins v. Ford Motor Co.*, 748 So. 2d 993, 1000 (Fla. 1999) (internal quotations omitted).

Under Plaintiff's view of the statute, the stay of execution of a judgment would disappear while a defendant was preparing its petition for certiorari, during which time the plaintiff could execute on the judgment. Then, under § 569.23(3)(b), the stay would spring back into effect after the filing of the petition. But after the plaintiff has collected the judgment, of course, the defendant has no use for a stay. Thus, under Plaintiff's reading, § 569.23(3)(b) would be rendered effectively meaningless. The Legislature surely did not intend such a strange and inexplicable result.

## II. IN THE ALTERNATIVE, THIS COURT SHOULD GRANT A STAY UNDER RULE 1.550(B) PENDING REYNOLDS' FILING OF A PETITION FOR A WRIT OF CERTIORARI

If this Court were to find that §569.23(3) creates a gap in its stay between state court and federal court review, the Court should exercise its authority under Florida Rule of Civil Procedure 1.550(b) to fill that gap. Rule 1.550(b) provides that "[t]he court before which an execution or other process based on a final judgment is returnable may stay such execution or other process and suspend proceedings thereon for good cause on motion and notice to all adverse parties." Here, good cause exists for a temporary stay to allow Reynolds to prepare and determine whether to file a potential petition for a writ of certiorari. There can be no dispute that if Reynolds files a petition, then it will have a stay of execution through completion of review by the United States Supreme Court and any further appellate review, if any. Protection of a party for a brief period while it perfects a stay has long been recognized as "good cause" for a 1.550(b) stay. *See also Campbell v. Jones*, 648 So. 2d 208, 208 n.1 (Fla. 3d DCA 1994) ("We note that Fla. R. Civ. P. 1.550(b) has been described as a vehicle for protecting a judgment debtor '*briefly*

*while he perfects his appeal and obtains supersedeas.*'" (emphasis in original) (quoting *Barnett v. Barnett Bank of Jacksonville, N.A.*, 338 So. 2d 888, 889 (Fla. 1st DCA 1976)); *Chapman v. Rose*, 295 So. 2d 667, 669 (Fla. 2d DCA 1974) (noting that "[i]t goes without saying that a supersedeas bond cannot instantly be obtained" and holding that appellant would have been entitled to temporary stay under Rule 1.550(b)).

## CONCLUSION

For the foregoing reasons, Reynolds respectfully asks the Court to confirm that, pursuant to the bond cap statute, a stay of execution of the judgment presently remains in place and will remain in place through the completion of any certiorari review by the United States Supreme Court. In the alternative, Reynolds requests a stay of execution under Rule 1.550(b) until the due date for its U.S. Supreme Court certiorari petition.

LARRY HILL
Florida Bar Number 173908
CHARLES F. BEALL, JR.
Florida Bar Number 66494
**MOORE, HILL & WESTMORELAND, P.A.**
220 West Garden Street
9th Floor, SunTrust Tower
Post Office Box 13290
Pensacola, Florida 32591-3290
Telephone: (850) 434-3541
Facsimile: (850) 435-7899
*Attorneys for Defendant-Appellant*
*R.J. Reynolds Tobacco Company*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing was furnished to the following by electronic delivery and United States mail this 31st day of May, 2012:

*Attorneys for Plaintiff*
James W. Gustafson, Esquire
William A. Norton, Esquire
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
The Towle House
517 North Calhoun Street
Tallahassee, FL 32301

*Attorneys for Plaintiff*
T. Hardee Bass, Esquire
Laurie Briggs, Esquire
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409

*Attorneys for Liggett Group L.L.C.*
Kelly Anne Luther, Esquire
KASOWITZ, BENSON, TORRES &
FRIEDMAN, LLP
1441 Brickell Avenue, Suite 1420
Miami, FL 33131

LARRY HILL

# EXHIBIT A

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT, IN AND FOR ESCAMBIA COUNTY, FLORIDA

CASE NO.: 2007-CA-3020

FINNA CLAY, etc,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO CO. et al.,

Defendants.

_____/

**FINAL JUDGMENT**

IT IS HEREBY Ordered and Adjudged as follows:

1. That the Plaintiff FINNA CLAY, as personal representative of the Estate of Janie May Clay, and on behalf of all survivors, hereby recovers from the Defendant R.J. REYNOLDS TOBACCO COMPANY, 401 N. Main Street, Winston-Salem, North Carolina, 27102, the sum of $19,098,166.28 allocated among the estate and survivors as follows:

| | |
|---|---|
| Estate of Janie May Clay<br>Finna Clay, Pers. Rep.<br>1025 Sable Dr., Apt. B<br>Pensacola, FL 32514 | $17,004,166.28 |
| Teddy Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $1,194,000.00 |
| Jane Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $450,000.00 |
| Larry Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $450,000.00 |

FOR ALL OF WHICH LET EXECUTION ISSUE.

2. That the Plaintiff FINNA CLAY, as personal representative of the Estate of Janie May Clay, and on behalf of all survivors, hereby recovers from the Defendant LIGGETT GROUP, LLC, 100 Maple Lane, Mebane, NC 27302, the sum of $1,349,694.38 allocated among the estate and survivors as follows:

| | |
|---|---|
| Estate of Janie May Clay<br>Finna Clay, Pers. Rep.<br>1025 Sable Dr., Apt. B<br>Pensacola, FL 32514 | $1,000,694.38 |
| Teddy Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $199,000.00 |
| Jane Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $75,000.00 |
| Larry Clay<br>61 Callaway Street<br>Cantonment, FL 32533 | $75,000.00 |

FOR ALL OF WHICH LET EXECUTION ISSUE.

3. This judgment shall bear interest at the rate of 6%.

DONE AND ORDERED in Chambers this 20th day of September, 2010.

/S/ TERRY TERRELL

Terry David Terrell,
Circuit Judge

Copies furnished to:

David J. Sales, Esq.
Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Counsel for Plaintiff

William A. Norton, Esq.
Searcy Denney Scarola
Barnhart & Shipley, P.A.
Towle House, 517 N. Calhoun St.
Tallahassee, FL 32301
Counsel for Plaintiff

Larry Hill, Esq.
Moore, Hill & Westmoreland, PA
Sun Trust Tower, 9th Floor
220 West Garden Street
Pensacola, FL 32503
Counsel for R.J. Reynolds Tobacco Co.

Stephanie E. Parker, Esq.
John Michael Walker, Esq.
John Yarber, Esq.
Jones Day
1420 Peachtree Street, NE, Suite 800
Atlanta, GA 30309-3939
Counsel for R.J. Reynolds Tobacco Co.

Kelly Anne Luther, Esq.
Kasowitz Benson Torres & Friedman, LLP
1441 Brickell Avenue, Suite 1420
Miami, FL 33131
Counsel for Liggett Group LLC

Michael P. Rosenstein, Esq.
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019
Counsel for Liggett Group LLC

John S. Mills, Esq.
The Mills Firm
One Independent Drive, Suite 1700
Jacksonville, FL 32202
Counsel for Plaintiff

Harold K. Gordon, Esquire
Jones Day
222 East 41st Street
New York, NY 10017-6702

Emily C. Baker, Esquire
Jones Day
1420 Peachtree Street NE, Suite 800
Atlanta, GA 30309-3053

Searcy Denney Scarola
Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Counsel for Plaintiff

# EXHIBIT B

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
Attorneys at Law

TALLAHASSEE OFFICE:
THE TOWLE HOUSE
517 NORTH CALHOUN STREET
TALLAHASSEE, FL 32301-1231
(850) 224-7600
1-888-549-7011

WEST PALM BEACH OFFICE:
2139 PALM BEACH LAKES BLVD.
WEST PALM BEACH, FLORIDA 33409
P.O. BOX 3626
WEST PALM BEACH, FLORIDA 33402
(561) 686-6300
1-800-780-8607
1-800-220-7006 Spanish

ATTORNEYS AT LAW:
ROSALYN BIA BAKER-BARNES
*R. GREGORY BARNHART
T. HARDEE BASS, III
LAURIE J. BRIGGS
BRIAN R. DENNEY
BRENDA S. FULMER
MARIANO GARCIA
JAMES W. GUSTAFSON, JR.
JACK P. HILL
DAVID K. KELLEY, JR.
CAMERON M. KENNEDY
WILLIAM B. KING[1]
DARRYL L. LEWIS[1]
*WILLIAM A. NORTON
PATRICK E. QUINLAN*
EDWARD V. RICCI
*JOHN SCAROLA
*CHRISTIAN D. SEARCY
*JOHN A. SHIPLEY III
CHRISTOPHER K. SPEED[2]
BRIAN P. SULLIVAN[3,4]
KAREN E. TERRY
*C. CALVIN WARRINER III

OF COUNSEL
*EARL L. DENNEY, JR.[5]

SHAREHOLDERS
*BOARD CERTIFIED

ALSO ADMITTED
[1] KENTUCKY
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VIVIAN AYAN-TEJEDA
RANDY M. DUFRESNE
DAVID W. GILMORE
JOHN C. HOPKINS
DIANA B. JIMENEZ
DEBORAH M. KNAPP
VINCENT L. LEONARD, JR.
JAMES PETER LOVE
ROBERT W. PITCHER
MARK P. PONCY
KATHLEEN SIMON
STEVE M. SMITH
BONNIE S. STARK
WALTER A. STEIN

May 25, 2012

John Yarber, Esquire
Jones Day
1420 Peachtree Street, N.E.
Suite 800
Atlanta, GA 30309

Larry Hill, Esquire
Moore, Hill & Westmoreland, PA
Sun Trust Tower, 9th Floor
220 West Garden Street
Pensacola, FL 32503

Kelly Anne Luther, Esquire
Kasowitz Benson Torres & Friedman, LLP
1441 Brickell Avenue, Suite 1420
Mianli, FL 33131

RE: Clay v. R.J. Reynolds Tobacco Company and Liggett Group, LLC

Dear Counsel:

This letter is to demand payment of the judgment in the Clay case plus interest, previously negotiated trial attorney's fees and costs plus the agreed-upon interest, and appellate fees and costs. I address each item separately.

**Payment of Judgment Is Due Now**

Your clients' obligation to pay the judgment and attorney's fees in the Clay case is past due. If we do not receive payment by June 1, 2012, we will begin executing on the judgment, starting with the bonds.

We recognize that your clients have posted new bonds and apparently believe they are entitled to an automatic stay of the judgment until they have exhausted review in the

Supreme Court of the United States. But that is not the case here. Even under the generous terms of section 569.23, Florida Statutes. That statute states, in relevant part:

> In any action subject to this subsection, if there is no appeal or discretionary appellate review pending in a Florida court and an appellant ***exercises its right*** to seek discretionary appellate review outside of Florida courts, including a review by the United States Supreme Court, the trial court shall automatically stay the execution of the judgment in any such action during the pendency of the appeal, upon provision of security as required in this paragraph.

§ 569.23(b)1 (emphasis added).

By its plain terms, the statute only applies when a tobacco defendant "exercises" its right to seek review in the Supreme Court of the United States. The way to exercise one's right to review in that court is to file a petition for writ of certiorari. Since none has been filed, RJR and Liggett are not exercising that right. While they may be contemplating filing one down the line, the statute does not provide for a stay while the defendants consider or contemplate whether to do so.

**Total Due on the Judgment With Interest**

The amount that RJR will owe on the judgment as of June 1, 2012, is $21,071,560.54. The principal amount of the judgment is $19,098,166.28. As of June 1, 629 days will have passed since entry of judgment. The interest rate is six percent. Thus, as of June 1, $1,973,394.26 in interest will have accrued. The per diem amount is $3,139.42 ($3,130.85 in 2012 because it is a leap year), so RJR may deduct $3,130.85 for each day before June 1 that it tenders payment.

The amount that Liggett will owe on the judgment as of June 1, 2012, is $1,486,510.80. The principal amount of the judgment is $1,349,694.38. As of June 1, 629 days will have passed since entry of judgment. The interest rate is six percent. Thus, as of June 1, $139,462.56 in interest will have accrued. The per diem amount is $221.87 ($221.26 in 2012 because it is a leap year), so Liggett may deduct $221.26 for each day before June 1that it tenders payment.

We understand that in other recent cases, cigarette manufacturers disagreed that the interest rate remains at rate set forth in the Judgment. I trust that won't be an issue here.

**Total Due for Agreed Fees and Interest**

Under the April 14, 2011 Agreement, RJR is to pay [redacted] in trial level attorney's fees and costs for those fees and costs incurred up to April 14, 2011. The

interest on those fees and costs is six percent. Thus, as of June 1, [redacted] in interest will have accrued on that amount. The per diem amount is [redacted] ([redacted] in 2012 because it is a leap year), so RJR may deduct [redacted] for each day before June 1 that it tenders payment. As of June 1, the total amount due under that April 14, 2011 Agreement will be [redacted]

Under the April 14, 2011 Agreement, Liggett is to pay [redacted] in trial level attorney's fees and costs incurred up to April 14, 2011. The interest rate on those fees and costs is six percent. Thus, as of June 1, [redacted] in interest will have accrued on that amount. The per diem amount is [redacted] ([redacted] in 2012 because it is a leap year), so Liggett may deduct [redacted] for each day before June 1 that it tenders payment. As of June 1, the total amount due under that April 14, 2011 Agreement will be [redacted].

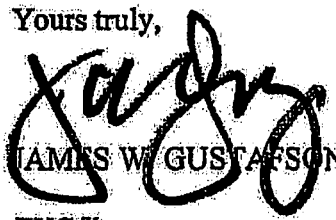
**Additional Fees and Costs**

Finally, Mrs. Clay is also entitled to her appellate attorney's fees and costs and any trial level fees and costs incurred since the April 14, 2011 Agreement. To date, those fees total [redacted]. This reflects [redacted] in post-Agreement fees incurred by Searcy Denney, as well as [redacted] incurred by the Mills Firm (233.1 hours by John Mills at [redacted]/hour, 111.0 hours by Greg Philo at [redacted]/hour, 110.9 hours by paralegal Elizabeth Rahwan at [redacted]/hour, and 1.3 hours by a law clerk at [redacted]/hour), and [redacted] incurred by David J. Sales, P.A. (29.3 hours at [redacted]/hour). Post-Agreement costs to date total [redacted]

If further proceedings are required to collect on the judgment or argue over issues like the stay or interest, that amount will only rise. Absent agreement to the above post-Agreement fees and costs, we will have to file a motion to determine the amount of fees and costs owed and will have to set the deposition of your clients' corporate representative to discover the hours and rate for fees they have paid their lawyers.

We look forward to receiving full payment by June 1. If you have any questions, please do not hesitate to call.

Yours truly,



JAMES W. GUSTAFSON, JR.

JWG/jbc

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**ESCAMBIA COUNTY, FLORIDA**
**CIVIL DIVISION**

FINNA A. CLAY, as Personal Representative of the Estate of Janie Mae Clay, Deceased,

Plaintiff,

v. CASE NO. 2007 CA 3020

R.J. REYNOLDS TOBACCO COMPANY, et al.,

Defendants.

_____/

**ORDER DETERMINING CONFIDENTIALITY OF COURT RECORD PURSUANT TO FLA. R. JUD. ADMIN. 2.420**

**THIS MATTER** is before the Court on Defendant R. J. Reynolds Tobacco Company's Agreed Motion Pursuant to Fla. R. Jud. Admin. 2.420 to Determine Confidentiality of Court Record. This Court finds as follows:

1. This case is a wrongful death action brought by Plaintiff Finna A. Clay against Defendants R.J. Reynolds Tobacco Company and Liggett Group L.L.C., one of the so-called "progeny" cases arising from the Florida Supreme Court's decision *in Engle v. Liggett Group, Inc.*, 945 So.2d 1246 (Fla. 2006).

2. Exhibit B to Defendant R.J. Reynolds Tobacco Company's Motion to Confirm Stay of Execution, filed with this Court on May 31, 2012, contains

information that is confidential and exempt from public disclosure, pursuant to Florida Rule of Judicial Administration 2.420(c)(9)(A)(i) and (A)(iii), for the reasons set forth in Defendant's Agreed Motion Pursuant to Fla. R. Jud. Admin. 2.420 to Determine Confidentiality of Court Record ("Defendant's Rule 2.420 Motion").

3. No party's name is determined to be confidential in this matter.

4. The progress docket and similar documents in this matter are not determined to be confidential in this matter.

5. The document attached as Exhibit B to Defendant's Motion to Confirm Stay of Execution, a letter from Plaintiff's counsel to Defendant's counsel dated May 25, 2012, contains information related to a confidential, interlocutory negotiations and the agreements of the parties to resolve one of the issues in this matter; the redacted version of that letter, attached as Exhibit 1 to Defendant's Rule 2.420 Motion, removes the confidential portions of said Exhibit B.

6. The parties hereto and their counsel of record, all Court personnel, and all personnel of the Clerk, are authorized to view the unredacted version of said Exhibit B.

7. There are no affected non-parties to the motion. The parties agreed to the relief requested in Defendant's Rule 2.420 Motion and a hearing on same was not conducted by this Court.

8. There are no less restrictive measures available to protect the parties' interests and the interests of the State than substitution on the record of a redacted Exhibit B, as requested in Defendant's Rule 2.420 Motion, and this Order is no broader than necessary to protect these interests.

**WHEREFORE**, having considered Defendant R.J. Reynolds Tobacco Company's Agreed Motion Pursuant to Fla. R. Jud. Admin. 2.420 to Determine Confidentiality of Court Record, and otherwise being fully advised in the premises, the Court hereby **GRANTS** said Motion, and it is hereby

**ORDERED** that the Clerk of the Circuit Court is hereby directed to remove said Exhibit B to Defendant R.J. Reynolds Tobacco Company's Motion to Confirm Stay of Execution, filed with this Court on May 31, 2012, from the Court record and to place it under seal in the Clerk's office, and to replace it on the Court record with the redacted version of same attached to this Order (Exhibit 1 to Defendant's Rule 2.420 Motion);

It is further **ORDERED** that, within 10 days of the date of this Order, the Clerk of the Circuit Court shall post a copy of this Order in a prominent place in

the Escambia County Courthouse and on the Clerk's website for a period of not less than 30 days, in order to provide public notice of same; and

It is further **ORDERED** that the Clerk of the Circuit Court is directed to retain the original version of said Exhibit B under seal until further Order of this Court; and that the parties hereto, their counsel of record, all Court personnel and all personnel of the Clerk of the Circuit Court, are authorized to view said Exhibit B while under seal.

**DONE AND ORDERED** in Chambers, at Escambia County Courthouse, this 05th day of June, 2012.

/s/ TERRY TERRELL

CIRCUIT COURT JUDGE

Copies to: Clerk of the Circuit Court
All Counsel of Record