

**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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**PETITIONER'S UNOPPOSED MOTION  
TO MODIFY DIRECTIONS TO CLERK OF LOWER TRIBUNAL**

The Petitioner Amanda Jean Hall moves the Court to modify its directions to the Clerk of the First District Court of Appeal and states:

1. By order dated January 23, 2012, the Court accepted jurisdiction in this case and directed as follows regarding the record:

The Clerk of the First District Court of Appeal shall file the original record which shall be properly indexed and paginated on or before March 23, 2012. The record shall include the briefs filed in the district court separately indexed.

The undersigned has confirmed with the clerks of the First District and this Court that their interpretation of this direction is that the Clerk of the First District must print up the entire electronic record from the trial court and transmit it along with the merits briefs without sending the motions and appendices filed in the First District. They further advised that this issue should be addressed by motion.

2. Respectfully, it would best serve the interests of judicial economy to substantially alter the Court's directions in this case because the materials in the record on appeal and the merits briefs are not relevant to this proceeding, but the relevant motion, response, and accompanying appendices filed in the district court are. The sole issue in this proceeding is the constitutionality of section 569.23(3), Florida Statutes (2010), which imposes an automatic stay pending appeal whenever a signatory to the tobacco settlement agreement with the State of Florida appeals a judgment entered against it in favor of a member of the class approved by this Court in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006).

3. The case below is just such an appeal, but the underlying record and merits briefs in that appeal do not appear relevant to the constitutional challenge to section 569.23(3). This issue was raised in this case through Ms. Hall's motion under Florida Rule of Appellate Procedure 9.310(f) asking the district court to review the trial court's ruling that the statute is constitutional. Because the materials relevant to this issue were all filed either in the district court or in the trial court after the record on appeal was complete, the actual record on appeal, which was compiled before the issue was raised in the trial court is irrelevant to these proceedings, as are the merits briefs on appeal. All of the relevant materials from the trial court were included in the appendices to the motion and opposition filed on the issue in the district court.

4. Accordingly, Ms. Hall respectfully submits that the Court should direct the Clerk of the First District to index, paginate, and transmit **only** the following items filed in the district court: (1) Appellee's Motion for Review of Stay Order filed May 20, 2011, and accompanying appendix; (2) Appellant's Opposition to Appellee's Motion for Review of Stay Order filed June 6, 2011, and accompanying appendix; and (3) Opinion on Motion for Review of Stay Order filed July 12, 2011, as corrected on August 3, 2011.

5. This request follows the spirit of Florida Rule of Appellate Procedure 9.200(a)(3), which allows an appellant to direct the clerk of the lower tribunal to exclude items that would normally be required to be included in the record and include items that would normally not be in the record on appeal. The requested relief will substantially reduce the tremendous burden the Clerk of the First District would otherwise face in printing out the 70 volumes and nearly 4,000 pages of trial court record that have been electronically filed in the district court plus the merits briefs and a DVD containing over 100,000 pages of the *Engle* record. It will also reduce the burdens on this Court's clerk in having to store and manage such a large record. Finally, it will reduce the costs to the parties to the extent the Clerk of the First District may charge a fee for preparing the record.

6. The undersigned counsel certifies that he has conferred with Elliott H. Scherker, Esq., counsel for Reynolds, and the Hon. Scott D. Makar, Solicitor

General on behalf of the Attorney General as intervenor, and that he is authorized to represent that Reynolds and the Attorney General do not oppose the requested relief subject to the right to move to supplement the record if they discover a relevant record item not included in the listed submissions.

WHEREFORE, the Court should modify its January 23, 2012, order to direct the Clerk of the First District to index, paginate, and transmit only the following documents: (1) Appellee's Motion for Review of Stay Order filed May 20, 2011, and accompanying appendix; (2) Appellant's Opposition to Appellee's Motion for Review of Stay Order filed June 6, 2011, and accompanying appendix; and (3) Opinion on Motion for Review of Stay Order filed July 12, 2011.

Respectfully submitted,

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## **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<sup>1</sup> this 30th day of January, 2012:

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<sup>1</sup> 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).

A copy is also being electronically filed with the Clerk of the First District Court of Appeal.

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John S. Mills