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IN THE SUPREME COURT OF FLORIDA

JOAN SCHOEFF, etc.,

Petitioner,

v. Case No.: SC15-2233
L.T. No.: 4D13-1765

R.J. REYNOLDS TOBACCO CO.,

Respondent.

PETITIONER'S MOTION FOR ATTORNEY'S FEES

Petitioner Joan Schoeff, as personal representative of the estate of James Edward Schoeff, moves for an award of appellate attorney's fees against Respondent R.J. Reynolds Tobacco Company ("RJR") and states as follows:

1. Mrs. Schoeff served RJR with a valid proposal for settlement under section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442, on January 20, 2010, to resolve all of Mrs. Schoeff's claims against RJR for $350,000. (**Exhibit A**.) RJR did not accept the foregoing proposal.

2. After a jury trial, the trial court ultimately entered judgment against RJR for a total of $37,875,000. (**Exhibit B**.)

3. Mrs. Schoeff retained the undersigned attorneys to defend against RJR's appeal of this judgment, and she is obligated to pay them appellate attorney's fees.

4. The district court has already affirmed the compensatory damage award below, which is $7,875,000 and already takes into account the comparative fault finding. RJR has not sought further review. Thus, regardless of the outcome of this proceeding, Mrs. Schoeff is guaranteed to end the day with a judgment that is more than twenty-five percent greater than her proposal for settlement, which entitles her to attorney's fees at the trial level under section 768.79(1), Florida Statutes.

5. Because she is entitled to attorney's fees at the trial level pursuant to section 768.79, she is also entitled to recover appellate fees so long as she prevails in this proceeding before this Court. § 59.46, Fla. Stat.; *Mark C. Arnold Constr. Co. v. Nat'l Lumber Brokers, Inc.*, 642 So. 2d 576, 576 (Fla. 1st DCA 1994).

6. In its response to Mrs. Schoeff's motion for appellate attorney's fees in the district court, RJR agreed it would be required to pay her fees if (1) she either (a) prevailed in the appeal in whole or (b) prevailed in part and ultimately recovers a judgment that exceeds her settlement proposal by more than 25% and (2) she "establishes that the amount she seeks is reasonable after a full consideration of the evidence" by the trial court. (**Exhibit C**.) The district court granted the motion on those conditions. (**Exhibit D**.)

WHEREFORE, in the event the Court rules in Mrs. Schoeff's favor on the merits, the Court should order RJR to pay Mrs. Schoeff her appellate attorney's

fees for this proceeding in an amount to be determined by the trial court on remand unless the parties resolve the amount between them.

Respectfully submitted,

/s/ John S. Mills

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following counsel for Respondent R.J. Reynolds Tobacco Company by email this 10th day of October, 2016:

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/s/ John S. Mills
Attorney

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA.

COMPLEX CIVIL DIVISION
CASE NO. 08-80000 (19)

JUDGE JEFFREY E. STREITFELD

IN RE: *ENGLE* PROGENY CASES
TOBACCO LITIGATION

Pertains to: *JOAN SCHOEFF SPOLZINO, Personal Representative of the ESTATE OF JAMES EDWARD SCHOEFF*
v. R.J. Reynolds Tobacco Company, et al.
Case No: 08-22608 (19)

PROPOSAL FOR SETTLEMENT TO DEFENDANT,
R. J. REYNOLDS TOBACCO COMPANY, PURSUANT TO RULE 1.442,
FLORIDA RULES OF CIVIL PROCEDURE AND §768.79, FLORIDA STATUTES

Plaintiff, JOAN SCHOEFF SPOLZINO, Personal Representative of the ESTATE OF JAMES EDWARD SCHOEFF, by and through undersigned counsel, states that at least ninety (90) days have passed since the commencement of this action, and there are at least forty-five (45) days remaining before the date set for trial or the first day of the docket on which this case is set for trial, whichever is earlier.

THEREFORE, Plaintiff hereby serves this Proposal for Settlement pursuant to Florida Rule of Civil Procedure 1.442 and F.S. 768.79. This proposal for settlement must be accepted in writing, within thirty (30) days or it shall be deemed rejected. The Proposal for Settlement is as follows:

1. **PARTY MAKING PROPOSAL:** Plaintiff, JOAN SCHOEFF SPOLZINO, Personal Representative of the ESTATE OF JAMES EDWARD SCHOEFF.

Exhibit A

2. **PARTY TO WHOM THE PROPOSAL IS BEING MADE:** R.J. Reynolds Tobacco Company.

3. **CLAIMS THE PROPOSAL ATTEMPTS TO RESOLVE:** All issues and claims for damages asserted against the Defendant, R.J. Reynolds Tobacco Company.

4. **TOTAL AMOUNT OF PROPOSAL:** Plaintiff proposes to resolve all claims for damages against Defendant, R. J. Reynolds Tobacco Company, in exchange for payment by or on behalf of Defendant the sum of **THREE HUNDRED FIFTY THOUSAND DOLLARS ($350,000.00), inclusive of all attorney's fees and costs**.

A. **NON-MONETARY TERMS OF PROPOSAL, IF ANY:** None.

B. **AMOUNT PROPOSED TO SETTLE CLAIM FOR PUNITIVE DAMAGES, IF ANY:** None.

5. **SERVICE AND FILING:** This proposal shall be served on the party to whom it is made through counsel, but shall not be filed unless necessary to enforce the provisions of Rule 1.442.

6. **WITHDRAWAL:** This proposal may be withdrawn in writing provided the written withdrawal is delivered before a written acceptance is delivered. Once withdrawn, this Proposal is void.

7. **ACCEPTANCE AND REJECTION:** This Proposal shall be deemed by the Plaintiff to be rejected unless accepted by delivery of a written notice of acceptance within thirty (30) days after service of the Proposal. The provisions of Florida Rule of Civil Procedure 1.090(e) do not apply to this Proposal. No oral communications shall constitute an acceptance, rejection or counteroffer of this Proposal.

8. **CONSEQUENCES OF REJECTION:** In the event this proposal is rejected, the Defendant(s) is/are subject to sanctions, including, but not limited to, those as outlined in Rules 1.442(g) and (h) of the Florida Rules of Civil Procedure, Fla. Stat. 768.79 and any other relief Plaintiff is entitled to as a matter of law and which the Court deems just and proper.

9. **GOOD-FAITH:** This Proposal is being submitted with the knowledge, understanding, and consent of the Plaintiff making this Proposal.

I HEREBY CERTIFY that a true and correct copy of the foregoing Proposal for Settlement was served upon Defendant's attorneys:

Eric L. Lundt, Esquire
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Stephanie E. Parker, Esquire
John Fachet Yarber, Esquire
John Michael Walker, Esquire
Jones Day
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by certified mail, return receipt requested, this 20th day of January, 2010.

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Attorney for Plaintiff

In the Circuit Court of the 17th Judicial Circuit
In and for Broward County, Florida
Circuit Civil Division

Joan Schoeff, as Personal
Representative of the Estate of
James Edward Schoeff,

Plaintiff,

vs. Case No.: 08-022608 (19)

R.J. Reynolds Tobacco Company,

Defendant.
_____/

FINAL JUDGMENT

Pursuant to the verdict rendered in this action,

IT IS ADJUDGED that Plaintiff Joan Schoeff, individually and as Personal Representative of the Estate of James Edward Schoef, 9280 N.W. 9th Court, Plantation, FL 33324, shall recover from Defendant R.J. Reynolds Tobacco Company, 401 North Main Street, Winston-Salem, NC 27101, the total of $37,875,000.00, that shall bear interest at the statutory rate of 4.75%, for which sum let execution issue, divided as follows:

> Plaintiff Joan Schoeff, individually, 9280 N.W. 9th Court, Plantation, FL 33324, recovers from Defendant R.J. Reynolds Tobacco Company, 401 North Main Street, Winston-Salem, NC 27101, the sum of $7,875,000.00 in compensatory damages, that shall bear interest at the statutory rate of 4.75%, for which sum let execution issue.
>
> Plaintiff Joan Schoeff, as Personal Representative of the Estate of James Edward Schoef, 9280 N.W. 9th Court, Plantation, FL 33324, recovers from Defendant R.J. Reynolds Tobacco Company, 401 North Main Street, Winston-Salem, NC 27101, the sum of $30,000,000.00 in punitive damages, that shall bear interest at the statutory rate of 4.75%, for which sum let execution issue.

The Court reserves jurisdiction to award costs and attorneys' fees.

ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, on this 8th day of April, 2013.

/s/ Judge Jack Tuter

_____
Judge Jack Tuter

Copies to All Counsel

Exhibit B

E-Copy Received Aug 11, 2014 12:17 PM

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FOURTH DISTRICT

CASE NO. 4D13-1765

R.J. REYNOLDS TOBACCO
COMPANY,

Appellant,

v.

JOAN SCHOEFF, as Personal
Representative of the Estate of JAMES
EDWARD SCHOEFF, deceased,

Appellee.
_____/

APPELLANT'S RESPONSE TO APPELLEE'S
MOTION FOR APPELLATE ATTORNEYS' FEES

Appellant/Defendant/Cross-Appellee R.J. Reynolds Tobacco Company responds to Plaintiff/Appellee/Cross-Appellant's Motion for Appellate Attorney's Fees and states:

As Plaintiff partially concedes here,[1] an award of appellate attorneys' fees is contingent on: (1) her prevailing on this appeal; or (2) if she does not prevail entirely, that she recovers a judgment that exceeds her settlement proposal by more than 25%; and (3) establishes that the amount she seeks is reasonable after a full

[1] Plaintiff asserts that she is entitled to appellate attorneys' fees only if "the judgment is affirmed or, if reversed, judgment is ultimately entered against RJR for an amount twenty-five percent greater than the offer of settlement." *See* Mot. for Appellate Att'y's Fees ¶ 5.

Exhibit C

consideration of the evidence. *See, e.g.*, *State Farm Fire* & *Cas. Co.* v. *Rembrandt Mobile Diagnostics, Inc.*, 93 So. 3d 1161, 1162 (Fla. 4th DCA 2012) (successful party on appeal was entitled to a conditional award of appellate attorney's fees under the proposal for settlement statute "if the proposal for settlement statute ultimately is satisfied"); *Hall* v. *Lexington Ins. Co.*, 895 So. 2d 1161, 1164 (Fla. 4th DCA 2005) (conditionally granting a motion for appellate fees made by the party prevailing on appeal based upon the trial court determining that party's entitlement to fees under section 768.79, Florida Statutes); *Attorneys' Title Ins. Fund, Inc.* v. *Gorka*, 989 So. 2d 1210, 1212 (Fla. 2d DCA 2008) (successful appellee's motion for appellate attorney's fees pursuant to its proposal for settlement conditioned on it establishing in the trial court "entitlement to attorney's fees pursuant to section 768.79 and rule 1.442"), *approved on other grounds*, 36 So. 3d 646 (Fla. 2010).

Reynolds therefore requests that this Court make any award of attorneys' fees contingent upon these potential future events occurring before the trial court. Reynolds reserves the right to raise any and all defenses at the appropriate time.

Respectfully submitted,

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R.J. Reynolds Tobacco Company

CERTIFICATE OF SERVICE

I certify that on August 11, 2014, a copy of this response was e-filed with the Court and e-mailed to:

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/s/ Eric L. Lundt
Attorney for R.J. Reynolds Tobacco Company

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

November 04, 2015

CASE NO.: 4D13-1765
L.T. No.: CACE08022608

R.J. REYNOLDS TOBACCO CO. v. JOAN SCHOEFF, ETC.

Appellant / Petitioner(s) Appellee / Respondent(s)

BY ORDER OF THE COURT: **AMENDED**

ORDERED that the appellee/cross-appellant's July 30, 2014 motion for attorney's fees is granted conditioned on the trial court determining that appellee/cross-appellant is the prevailing party and, if so, setting the amount of the attorney's fees to be awarded for this appellate case. If a motion for rehearing is filed in this court, then services rendered in connection with the filing of the motion, including but not limited to preparation of a responsive pleading, shall be taken into account in computing the amount of the fee.

Served:

cc: Robert C. Weill
Eric L. Lundt
Gordon James
Charles Richard Allan Morse
Robert S. Glazier
Alejandro Alvarez
Courtney Rebecca Brewer
Laurie J. Briggs
Clerk Broward
Gary M. Paige
John S. Mills
Gregory George Katsas
Theron Hardee Bass

lc

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

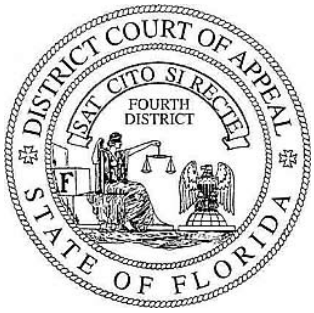

Exhibit D