Filing # 48029855 E-Filed 10/25/2016 08:57:18 AM

RECEIVED, 10/25/2016 08:58:29 AM, Clerk, Supreme Court

SUPREME COURT OF FLORIDA

NO. SC15-2233

JOAN SCHOEFF, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF JAMES SCHOEFF,

Petitioner,

v.

R.J. REYNOLDS TOBACCO COMPANY,

Respondent.
_____/

Lower Tribunal Nos.:
4D13-1765
08-022608 CACE 19

RESPONDENT R.J. REYNOLDS TOBACCO COMPANY'S
RESPONSE TO PETITIONER'S MOTION FOR ATTORNEY'S FEES

Respondent R.J. Reynolds Tobacco Company responds to Petitioner's Motion for Attorney's Fees by stating that an award of appellate attorney's fees to Petitioner is contingent on her being the prevailing party in this proceeding,[1] proving that her proposal for settlement satisfies the requirements of section 768.79, Florida Statutes and Florida Rule of Civil Procedure 1.442, and establishing that the amount she seeks is reasonable after a full 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

[1]Petitioner concedes this point. She asserts that she is entitled to appellate attorneys' fees "so long as she prevails in this proceeding before this Court." Motion at 2 ¶ 5.

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 attorney's fees contingent upon these potential future events occurring. Reynolds reserves the right to raise any and all defenses at the appropriate time.

Respectfully submitted,

/s/ Eric L. Lundt

Eric L. Lundt, FBN 0861715
eric.lundt@sedgwicklaw.com
david.saltares@sedgwicklaw.com
(secondary)
Robert C. Weill, FBN 009962
robert.weill@sedgwicklaw.com
SEDGWICK LLP
2 S. Biscayne Blvd., Ste. 1500
Miami, FL 33131
Telephone: (305) 670-4777
Fax: (877) 540-6951

Gregory G. Katsas
Florida Bar No. 89091
ggkatsas@jonesday.com
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-3939
Fax: (202) 626-1700

Counsel for Respondent R.J. Reynolds Tobacco Company

CERTIFICATE OF SERVICE

I certify that on October 25, 2016, this motion was e-filed with the Court and a copy was e-mailed to:

John S. Mills
Courtney Brewer
The Mills Firm, P.A.
203 North Gadsden Street, Suite 1A
Tallahassee, FL 32301
jmills@mills-appeals.com
cbrewer@mills-appeals.com
service@mills-appeals.com
Counsel for Petitioner

Robert S. Glazier, Esq.
Law Office of Robert S. Glazier
540 Brickell Key Drive, Suite C-1
Miami, FL 33131
glazier@fla-law.com
Counsel for Petitioner

Alex Alvarez, Esq.
The Alvarez Law Firm
355 Palermo Avenue
Coral Gables, FL 33134
alex@integrityforjustice.com
maria@integrityforjustice.com
lisa@integrityforjustice.com
phillip.holden@integrityforjustice.com
Counsel for Petitioner

Gary M. Paige, Esq.
Gordon & Doner, P.A.
1961 N.W. 150th Avenue
Suite 201
Pembroke Pines, FL 33028
garyp216@aol.com
Counsel for Petitioner

Laurie J. Briggs, Esq.
T. Hardee Bass III, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
tobacco@searcylaw.com
Counsel for Petitioner

Celene H. Humphries, Esq.
Maegen P. Luka, Esq.
Thomas J. Seider, Esq.
Brannock & Humphries
1111 W. Cass Street, Suite 200
Tampa, Florida 33606
Counsel for Amicus Curiae Engle Plaintiffs' Firms

Gary Farmer, Sr.
Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.
425 North Andrews Ave., Ste. 2
Fort Lauderdale, FL 33301
farmergm@att.net
iris@pathtojustice.com
steve@pathtojustice.com
Counsel for Amicus Curiae Florida Justice Association

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