

IN THE DISTRICT COURT OF APPEAL  
FOURTH DISTRICT OF FLORIDA

STEPHEN TOGNOLI, as  
Personal Representative for the  
Estate of LYNDA TOGNOLI,

Appellant,

Case No. 4D16-224

v.

L.T. Case No. 2008-CV-045898

PHILIP MORRIS USA INC.,

Appellee.

FILED  
JOHN A. TOMASINO  
AUG - 2 2017

CLERK, SUPREME COURT  
BY

**NOTICE TO INVOKE DISCRETIONARY JURISDICTION**

NOTICE IS GIVEN that Petitioner, Stephen Tognoli, as Personal Representative for the Estate of Lynda Tognoli, invokes the discretionary jurisdiction of the Florida Supreme Court to review the decision of this Court rendered June 28, 2017.

The decision is within the discretionary “tag” jurisdiction of the Florida Supreme Court because it is a “citation PCA” to *Reynolds Tobacco Co. v. Schoeff*, 178 So. 3d 487 (Fla. 4th DCA 2015), which is currently pending review in the Florida Supreme Court, *Schoeff v. R.J. Reynolds Tobacco Co.*, SC15-2233, 2016 WL 3127698 (Fla. May 26, 2016). *See, e.g., Jollie v. State*, 404 So. 2d 418 (Fla. 1981) (“[A] district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court

continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction.”). Appellant therefore asks that this case be “tagged” to *Schoeff* to ensure the uniformity of decisions and so that Petitioner may benefit from the Supreme Court’s resolution of *Schoeff*.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. mail and email to Timothy E. Congrove ([SHBPMAttBroward@shb.com](mailto:SHBPMAttBroward@shb.com), [tcongrove@shb.com](mailto:tcongrove@shb.com)), Stacey E. Deere ([sdeere@shb.com](mailto:sdeere@shb.com)) and Scott D. Kaiser ([skaiser@shb.com](mailto:skaiser@shb.com)), Shook, Hardy & Bacon, LLP, 2555 Grand Blvd., Kansas City, Missouri 64108; J. Daniel Gardner ([SHBPMAttBroward@shb.com](mailto:SHBPMAttBroward@shb.com); [jgardner@shb.com](mailto:jgardner@shb.com)), Shook, Hardy & Bacon, LLP, 201 South Biscayne Blvd., Suite 3200, Miami, Florida 33131; Joseph M. Fasi II ([fasi@gwmlaw.com](mailto:fasi@gwmlaw.com), [wiza@gwmlaw.com](mailto:wiza@gwmlaw.com)), Gass Weber Mullins, LLC, 255 Aragon Avenue, Second Floor, Miami, Florida 33134; John P. Wunderli ([jwunderli@rqn.com](mailto:jwunderli@rqn.com)), Ray Quinney & Nebeker, P.C., 36 S. State Street, Suite 1400, Salt Lake City, Utah 84111; Peter M. Henk ([SHBPMAttBroward@shb.com](mailto:SHBPMAttBroward@shb.com); [phenk@sb.com](mailto:phenk@sb.com)), Shook, Hard & Bacon, LLP, 600 Travis Street, Suite 3400, Houston, TX 77002; Geoffrey J. Michael ([Geoffrey.Michael@aporter.com](mailto:Geoffrey.Michael@aporter.com)), Arnold & Porter LLP, 601 Massachusetts Avenue, NW, Washington, DC 20001 on this 26<sup>th</sup> day of July 2017.

ALEX ALVAREZ

  
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Attorneys for Appellant



**Brannock &  
Humphries**

Reply to: Tampa

July 31, 2017

Florida Supreme Court  
Attn: Clerk's Office  
500 South Duval Street  
Tallahassee, Florida 32399

Re: *Tognoli v. Philip Morris USA Inc.*, Case No. 4D16-224

Dear Sir/Madam,

Enclosed please find our firm's check for \$300 for the filing fee of a Notice to Invoke Discretionary Jurisdiction filed by Appellant, Stephen Tognoli, as Personal Representative for the Estate of Lynda Tognoli, in the Fourth District Court of Appeal, Case No. 4D16-224. A copy of the Notice to Invoke Discretionary Jurisdiction is enclosed for your review. If you have any questions, please let me know. Thank you.

Sincerely,

BRANNOCK & HUMPHRIES

Kelly Loeser, Legal Assistant

Enclosures

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