

IN THE SUPREME COURT OF FLORIDA

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

Petitioner,

Case No. SC17-1398

v.

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

PHILIP MORRIS USA INC.,

Respondent.

**PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO THE
COURT'S SHOW CAUSE ORDER OF JANUARY 19, 2018**

Petitioner, Stephen Tognoli, as Personal Representative for the Estate of Lynda Tognoli, replies to the February 5, 2018, response filed by Respondent, Philip Morris USA, Inc. to the Court's January 19, 2018, show cause order to agree that *Schoeff* is controlling and, therefore, that this Court should accept jurisdiction, summarily quash the decision being reviewed, and remand to the Fourth District Court of Appeal for reconsideration in light of *Schoeff*.

In its response, Philip Morris nevertheless suggests that it seeks to preserve arguments that the application of this Court's decision in *Engle* violates principles of federal preemption and due process, and seek review in the U.S. Supreme Court. (Response at 2-3). This Court has already expressly rejected these same arguments in *R.J. Reynolds Tobacco Co. v. Marotta*, 214 So. 3d 590 (Fla. 2017), and *Philip*

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Morris USA, Inc. v. Douglas, 110 So. 3d 419 (Fla. 2013), respectively. Petitioners do not ask the Court to revisit those decisions, however, and there is no further judicial labor for this Court to perform beyond that required by *Schoeff*.

WHEREFORE, Respondent respectfully requests that the Court should accept jurisdiction, summarily quash the decision being reviewed, and remand to the Fourth District Court of Appeal for reconsideration in light of *Schoeff*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by email to Timothy E. Congrove (SHBPMAttBroward@shb.com; tcongrove@shb.com), Stacey E. Deere (sdeere@shb.com) and Scott D. Kaiser (skaiser@shb.com), Shook, Hardy & Bacon, LLP, 2555 Grand Blvd., Kansas City, Missouri 64108; J. Daniel Gardner (SHBPMAttBroward@shb.com; jgardner@shb.com), Shook, Hardy & Bacon, LLP, 201 South Biscayne Blvd., Suite 3200, Miami, Florida 33131; Joseph M. Fasi II (fasi@gwmlaw.com; wiza@gwmlaw.com), Gass Weber Mullins, LLC, 255 Aragon Avenue, Second Floor, Miami, Florida 33134; John P. Wunderli (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; phenk@sb.com), Shook, Hardy & Bacon, LLP, 600 Travis Street, Suite 3400, Houston, TX 77002; and

Geoffrey J. Michael (Geoffrey.Michael@aporter.com), Arnold & Porter LLP, 601 Massachusetts Avenue, NW, Washington, DC 20001 on this 15th day of February 2018.

ALEX ALVAREZ
Florida Bar No. 946346
THE ALVAREZ LAW FIRM
355 Palermo Avenue
Coral Gables, Florida 33134
Tel: (305) 444-7675
Fax: (305) 444-0075
Email:
alex.alvarez@integrityforjustice.com
philip.holden@integrityforjustice.com
kristian.toimil@integrityforjustice.com
maria@integrityforjustice.com

PHILIP FREIDIN
FREIDIN BROWN P.A.
Florida Bar No. 118519
One Biscayne Tower Building
2 South Biscayne Boulevard, Suite
3100
Miami, FL 33131
Tel: (305) 371-3666
Fax: (305) 371-6725
Email: pf@fblawyers.net
dd@fblawyers.net
pleadings@fblawyers.net

MARIA P. SPERANDO
Florida Bar No. 635080
LAW OFFICE OF MARIA P.
SPERANDO, P.A.
2682 SE Willoughby Blvd., Suite 201
Stuart, FL 34994
Tel: (772) 266-4631

/s/Celene H. Humphries
CELENE H. HUMPHRIES
Florida Bar No. 884881
MAEGEN PEEK LUKA
Florida Bar No. 549851
THOMAS J. SEIDER
Florida Bar No. 86238
BRANNOCK & HUMPHRIES
1111 W. Cass Street, Suite 200
Tampa, Florida 33606
Tel: (813) 223-4300
Fax: (813) 262-0604
Email: tobacco@BHappeals.com

RANDY ROSENBLUM
Florida Bar No. 983527
DOLAN, DOBRINSKY,
ROSENBLUM, LLP
2665 South Bayshore Drive
Suite 609
Miami, FL 33133
Tel: (305) 371-2692
Fax: (305) 371-2691
Email: rrosenblum@ddrlawyers.com
jross@ddrlawyers.com

Attorneys for Petitioner

Fax: (772) 266-4641

Email: Maria@sperandolaw.com