IN THE SUPREME COURT OF FLORIDA

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

Petitioner,

v.

R.J. REYNOLDS TOBACCO CO.,

Respondent.

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

ON REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL

AMICUS BRIEF OF THE *ENGLE* PLAINTIFFS' FIRMS IN SUPPORT OF PETITIONER

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

This brief is filed on behalf of several law firms who collectively represent thousands of *Engle* class members in their individual actions against the tobacco companies.[1] These clients, who are far too many to list individually, have a direct interest in this case because they will be severely and negatively affected if this Court deviates from its controlling precedent which recognizes an intentional tort exception to Florida's comparative fault statute. The conduct of all the *Engle* tobacco defendants is unprecedented in the history of our country. Yet, RJR seeks to hold the *Engle* progeny plaintiffs responsible for not doing a better job of avoiding the tobacco industry's intentionally tortious acts.

SUMMARY OF THE ARGUMENT

We will not duplicate the detailed substantive analysis provided by Petitioner, Jan Schoeff, as personal representative of the estate of James Schoeff,

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("Petitioner"). Instead, we undertake a review of the *Engle* progeny litigation to give context for considering RJR's request that this Court deviate from its existing case law and ignore the plain language of the comparative fault statute.

We make two points. First, unlike the *Engle* Defendants, *Engle* progeny plaintiffs have refrained from overreaching. The tobacco companies claim that the damages in all *Engle* cases must be reduced ***as a matter of law*** because these cases are at heart nothing more than a ***negligence action***, so that the intentional tort exception of the comparative fault statute ***never applies*** to *Engle* progeny cases. The *Engle* progeny plaintiffs have never made an opposing global claim to full damages. Instead, when a jury has found against them on the fraud counts, *Engle* plaintiffs have uniformly and consistently agreed to a comparative fault reduction.

Second, as to the alternative holding in *Schoeff*, the *Engle* amici explain that the so-called wavier arguments are nothing more than a proper argument in support of the fraud actions. Before the jury can ever reach the affirmative defense of comparative fault, plaintiffs must first bear their heavy burden of proving the case-in-chief. On the fraud counts, plaintiffs must prove that the fraud was a legal cause of injury. Here, Petitioner recognized that Mr. Schoeff's conduct was a contributing cause, but asserted that the intentional torts were nonetheless a legal cause of Mr. Schoeff's death. There is nothing wrong in that.

Next, we summarize parts of the *Engle* record previously considered by this Court to make clear that, even if we follow RJR's suggested framework and ask whether this action is at its core about an intentional tort, the answer is yes. We close by giving this Court context for an argument we anticipate will be repeated here by RJR—its claim that the punitive damages paid by RJR since this Court's 2006 decision have imposed a sufficient punishment for RJR's misconduct. RJR's own website makes clear that this could not be further from the truth.

ARGUMENT

Amici fully join in the detailed substantive analysis presented by the Petitioner. We file this amicus brief to give this Court context for considering RJR's request that this Court deviate from precedent and the statute.

I. The intentional tort exception to the comparative fault statute recognizes that a plaintiff's negligence cannot contribute to the defendant's intentional decisions.

To be clear, RJR wants this Court to decide that a plaintiff can be held responsible for not better avoiding a defendant's intentional misconduct. Florida law, however, is not so forgiving of intentional torts, which are different from negligence "not merely in degree but in the kind of fault…and in the social condemnation attached to it." *Merrill Crossings Assocs. v. McDonald*, 705 So. 2d 560, 563 (Fla. 1997). Thus, a party "guilty of fraud should not be permitted to use the law as his shield." *Besett v. Basnett*, 389 So. 2d 995, 998 (Fla. 1980). Here,

the jury found RJR liable for fraudulently concealing vital information from James Schoeff, and for conspiring with the other *Engle* tobacco company defendants to do so. RJR may not hide from this liability by claiming that Mr. Schoeff was too easily deceived. *See Stev-Mar, Inc. v. Matvejs*, 678 So. 2d 834, 837-38 (Fla. 3d DCA 1996) ("[T]he seller and real estate agent cannot extricate themselves from their intentional fraud on the theory that if only Buyer's attorney had done more work, Buyer's attorney would have discovered the fraud."). This is a simple enough concept, despite RJR's best efforts to complicate it. "Even a dog distinguishes between being stumbled over and being kicked." *See State v. Smith*, 638 So. 2d 509, 512 (Fla. 1994) (quoting Oliver Wendell Holmes, Jr., *The Common Law* 3 (1881)).

Importantly, *Engle* progeny plaintiffs have consistently recognized the converse throughout this litigation—the comparative fault defense ***does apply*** to the two product actions (negligence and strict liability). Unlike the *Engle* tobacco companies, *Engle* progeny plaintiffs have refrained from overreaching. The tobacco companies claim that the damages in all *Engle* cases must be reduced ***as a matter of law*** because these cases are at heart nothing more than a ***negligence action***, so that the intentional tort exception of the comparative fault statute ***never applies*** to *Engle* progeny cases. While some plaintiffs have responded that, in fact, these cases are at heart really ***intentional torts***, the *Engle* progeny plaintiffs have

never made an opposing global claim to full damages. Instead, when a jury has found against them on the fraud counts, *Engle* plaintiffs have consistently agreed to a comparative fault reduction. In fact, this reduction is common because, when plaintiffs do win at trial,[2] they often win only on the counts asserting negligence and strict liability (losing on the intentional tort counts). (App. B). One example is the case decided by this Court in *Philip Morris USA Inc. v. Douglas*, 110 So. 3d 419 (Fla. 2013). There, the plaintiff lost on the fraud counts and, therefore, agreed to a reduction of the damages by Charlotte Douglas's percentage of fault.

II. Regardless, the "core" of these cases is one of intentional conduct.

In any event, if we follow RJR's suggested framework and ask whether this action is, at its core, about an intentional tort, the answer is yes.[3] As the First District found in *R.J. Reynolds Tobacco Company v. Sury*, 118 So. 3d 849, 852 (Fla. 1st DCA 2013), the "allegations of the intentional torts and the proof of affirmative, calculated misrepresentations in the tobacco companies' advertising

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[2] In fact, *Engle* plaintiffs often do not win at trial. (App. A).

[3] The evidence presented to the *Engle* jury was comprehensively summarized by the *Engle* trial court in its Omnibus Final Judgment. *Engle v. R.J. Reynolds Tobacco Co.*, No. 94-08273, 2000 WL 33534572, at *2-4 (Fla. Cir. Ct. Nov. 6, 2000) ("Final Judgment"). Other courts hearing this same evidence have written comprehensively about Tobacco's 50-year conspiracy to hide the dangers of smoking cigarettes from the public. The most detailed by far is found at *United States v. Philip Morris USA Inc*., 449 F. Supp. 2d 1, (D.D.C. 2006), *affirmed*, 566 F.3d 1095, 1107 (D.C. Cir. 2009), *cert. denied*, 130 S.Ct. 3501 (U.S. 2010). The table of contents in the District Court's opinion provides an excellent summary of the scope of Tobacco's misconduct.

and other publications" made clear "that this action actually had at its core an intentional tort by someone." This was the sole issue in *Sury*. This Court denied review, as did the United States Supreme Court. *R.J. Reynolds Tobacco Co. v. Sury*, 134 So. 3d 449 (Fla. 2014); *R.J. Reynolds Tobacco Co. v. Sury*, 134 S. Ct. 2727 (2014). The Third District also rejected this same argument, issuing a per curiam affirmance in *R.J. Reynolds Tobacco Company v. Crawford*, 150 So. 3d 1159 (Fla. 3d DCA 2014), where plaintiff conceded that this issue was ripe for review. (Crawford IBR, pp.19-28; ABR, pp.23-32; RBR, pp.4-6).[4]

Those courts (and this Court previously) got it right. *Engle* progeny cases are nothing like a simple action for defective manufacturing, like an action for a defective brake system in a car. As one court explained, the evidence in this case was about the "frightfully inhumane, vile and unconscionable" actions of the Defendants. *Berger v. Philip Morris USA, Inc.*, 101 F. Supp. 3d 1228, 1239 (M.D. Fla. 2015); *see also R.J. Reynolds Tobacco Co. v. Townsend*, 90 So. 3d 307, 313 (Fla. 1st DCA 2012) ("The record…is replete with evidence of the decades-long, wanton and intentional conduct….").

The conduct of all the *Engle* tobacco defendants (including RJR) is unprecedented (and unmatched) in the history of our country. Beginning in the early 1900s, RJR and the other tobacco companies embarked on a corporate

[4] By separate motion, Amici requests judicial notice of the briefs filed in *R.J. Reynolds Tobacco Company v. Crawford*, Case No. 3D13-2909 (Fla. 3d DCA).

business model premised on knowingly and purposefully killing Americans. For more than 40 years, the *Engle* defendants dedicated themselves (and ***billions*** of dollars) to researching and designing cigarettes to significantly enhance the addictiveness of the nicotine drug that naturally exists in tobacco leaves (despite knowing long before the medical community that the carcinogens found in cigarette smoke cause illness and death). They took what was a harsh product that was difficult to inhale, and transformed it into a smooth smoking experience so that smokers would bring the nicotine deep into their lungs where it could best be absorbed into the body. They simultaneously highly engineered their product to accelerate the transport of nicotine to the brain where it takes hold and forces physiological changes upon the brain's neuronal chemistry, resulting in an addiction so strong that it is comparable to a heroin addiction. The result was thousands of design features that worked together to increase the likelihood of becoming addicted to the nicotine drug found in tobacco leaves.

The result was also the development and sale of a product that was extraordinarily dangerous because it caused smokers to bring dozens of cancer causing carcinogens deep into their lungs, where they are easily absorbed into the body. Still, one puff or occasional puffs of cigarette smoke is not enough. The exposure to the carcinogens is just too limited. The nicotine plays a pivotal role here too. The repetitive consumption of nicotine is simultaneously the key to a

consumer buying the product for decades and to a consumer dying decades later. In this way, the nicotine addiction and the cigarette carcinogens are a perfect storm, working together to cause disease.

This point is powerfully made by the stark increase in the prevalence of lung cancer that accompanied America's shift to smoking cigarettes. In the late 1800s and early 1900s (when tobacco consumption consisted of snuff, chew tobacco, cigars and pipe tobacco), lung cancer was one of the rarest of human diseases. That all changed in the 1920s and 1930s, which was about 10 to 15 years after manufactured cigarettes containing combustible tobacco became the predominant form of tobacco consumption. By the 1960s, lung cancer had become one of the most common causes of death. Once Americans began deeply inhaling tobacco smoke into their lungs for the intended rapid absorption of nicotine, the toxins in the smoke took hold, resulting in an epidemic of lung cancer.

When American doctors and the United States Surgeon General began suspecting cigarettes, the *Engle* defendants denied any possible connection and continued production with full knowledge that their product was killing people. Worse yet, the news of American deaths caused RJR and all of the other major American tobacco companies to meet in secret to manufacture a response. They invited representatives of a top public relations agency, and decided together to undertake a dishonest media campaign to discredit the medical community and

assure addicted American smokers (and future untapped, potential smokers) that there was no cause for alarm. This included false promises that they would research the safety of cigarettes at their own expense, just in case.

In the meantime, RJR introduced its filtered cigarette, Winston. While still maintaining that cigarettes are safe, RJR promoted Winston cigarettes as a safer alternative to unfiltered cigarettes, just in case. RJR claimed that, if there was something harmful in cigarette smoke, the "snowy white filter" would take it out. The response of the American public to this message was overwhelming, leading to Winston becoming the highest-selling cigarette on the market during that time. Unfortunately, RJR concealed from the American public that smokers of Winston filtered cigarettes actually ingest more tar and other carcinogens than those who smoke unfiltered cigarettes. Not only did RJR knowingly conceal this information, it intentionally designed its filtered Winston cigarettes this way to increase the dose of nicotine, which in turn promoted the addictiveness of cigarettes. The reason was the same as it always was—selling more cigarettes by making them more addictive. Plus, now RJR was able to give smokers a psychological crutch to continue smoking by convincing them that this more dangerous and addictive cigarette was actually safer.

The other *Engle* defendants quickly adopted this wildly successful deception. Through all of this, the media campaign of RJR and its co-conspirators

blanketed the American public, including advertisements (like radio, television, billboards, magazines, newspapers, comics), product placements in movies, sports sponsorships, and point of sale advertising. The payoff was huge. The tobacco companies' campaign of disinformation in the face of the growing evidence of health risks successfully provided the psychological crutch for addicted smokers to put off the pain of withdrawal. So, they kept buying more cigarettes.

Could there be more reprehensible conduct? Although they had promised as early as 1954 in their published Frank Statement to smokers that they would research the risks of smoking and would let Americans know immediately if smoking proved harmful, RJR and the other Tobacco companies did exactly the opposite. They spent billions assuring Americans that the risks were unproven, even when their own internal studies proved conclusively to the contrary. Indeed, these promises to reveal the truth continued for decades.

But, there's more. The tobacco industry targeted America's youth. In fact, they invested ***heavily*** in marketing that targeted youths. As their own previously confidential documents make clear, it was easy to get young people to try smoking with marketing that appealed to insecurities and the need to rebel. But, what these children and teenagers did not know is that the highly engineered cigarette is as addictive as heroine and, worse yet, that their young, developing brains are particularly susceptible to the physiological changes caused by the nicotine

cigarette. The result is that addiction sets in quickly and virtually guarantees it will be a monumental struggle to quit. Even more sickening (both literally and figuratively), the tobacco industry (including RJR) saw addicting young people as vital to the survival and prosperity of the industry. The industry knew that its product killed people—and dead smokers don't buy cigarettes. The tobacco companies went so far as to call these young people "replacement smokers" (for the ones who were dying off) and "crops" to be harvested.

This misconduct is unprecedented and unmatched in American history. *Sury* and the *Schoeff* dissent have the right of it: *Engle* cases are, at their core, about intentional misconduct.

III. RJR's waiver claim is fundamentally flawed.

The *Schoeff* court also adopted RJR's alternative argument: that Petitioner waived the inapplicability of comparative fault reduction because Petitioner admitted and accepted Mr. Schoeff's partial responsibility for any damages caused by his smoking related injury. The *Engle* Amici first provide some background for this issue.

Tobacco companies and *Engle* progeny plaintiffs have been at it for years, and the parties' approach to the cases has evolved with time. Before the *Engle* decision, Tobacco defendants routinely dropped their comparative fault defense shortly before trial, thereby effectuating a contributory negligence situation so that

juries would construe any fault they placed on the plaintiff as barring recovery from the Tobacco companies. *See*, *e.g.*, *PM USA, Inc. v. Arnitz*, 933 So. 2d 693, 695-96 (Fla. 2d DCA 2006). In *Arnitz*, a non-*Engle* Tobacco case, the Second District recognized the plaintiff's right to proactively plead comparative fault in order to avoid this defense strategy. *Id.* at 697-98; *see also Hartong v. Bernhart*, 128 So. 3d 858, 861-62 (Fla. 5th DCA 2013). As a result, the *Engle* progeny complaints affirmatively allege the smoker's own partial fault, in combination with the *Engle* defendants' conduct and product.

The Tobacco industry's response was to argue that proactively pleading comparative fault affirmatively waived the plaintiff's right to the full value of any damages awarded on the intentional torts. *See*, *e.g.*, *R.J. Reynolds Tobacco Co. v. Hiott*, 129 So. 3d 473, 477 (Fla. 1st DCA 2014). In response, *Engle* progeny plaintiffs did what Petitioner did here: they specifically excluded the intentional tort actions from this comparative fault allegation. Undeterred, the *Engle* Tobacco defendants tried twisting the standard jury instructions. They claimed that the following language was an affirmative representation to the jury that the damages would, in fact, be apportioned, even for the intentional tort actions (and, therefore, constituted waiver): "In determining the amount of damages, do not make any reduction because of the fault of the parties. The Court, in entering judgment, will make an appropriate reduction of the damages awarded." Fla. Std. Jury Instr. (Civ.)

502.5 (2013); Fla. Std. Jury Instr. (Civ.) Model Verdict Form 1 (2013); *see*, *e.g.*, *Hiott*, 129 So. 3d at 477.

The *Engle* defendants also claimed that comments by counsel for *Engle* plaintiffs somehow waived the clear language of Florida's comparative fault statute that creates an exception for damages caused by intentional misconduct. This argument was the basis of the *Schoeff* court's alternative holding. In addition to the persuasive arguments made by Petitioner, the *Engle* Amici point out that RJR ignores a critical fact—before the jury could ever reach the question of whether to apportion fault, *Engle* plaintiffs must first satisfy the heavy burden of proving causation on the case-in-chief.

According to RJR, a plaintiff can never acknowledge that the smoker's conduct (in failing to try hard enough and often enough to quit smoking) contributed to causing the smoker's illness and, in cases like this, ultimately the smoker's death. RJR's reason is that the smoker's conduct is relevant to the affirmative defense of comparative fault, and to the resulting apportionment of damages between the defendants and a plaintiff. So, if the plaintiff maintains that the defense of comparative fault does not apply to the two counts for intentional torts, the plaintiff must say so. Otherwise, the plaintiff's broad comments which recognize that the smoker's conduct was a contributing cause of the smoking

illnesses implicitly accept that the damages must be apportioned by that comparative fault.

This argument wholly misses the point. Before the jury can ever reach the question of whether to apportion fault, plaintiffs must first bear their heavy burden of proving causation on the case-in-chief. Specifically, on the two counts for intentional torts, plaintiffs must prove that the fraudulent conduct was a legal cause of the smoker's injury. In every single *Engle* case to go to trial to date, the defendants respond that it was the smoker's conduct (choosing to smoke for decades despite knowing the health risks) that caused the smoker to ingest enough carcinogens to become ill, not the defendants' fraudulent conduct. Petitioner had to respond to RJR's arguments head on, recognizing that Mr. Schoeff's conduct was a contributing cause, but asserting that RJR's fraudulent conduct (and the conduct of its co-conspirators) was nonetheless a legal cause of Mr. Schoeff's death. There is nothing wrong in that.

IV. RJR's profits continue to grow exponentially, undeterred by *Engle* progeny punitive damage awards.

The *Engle* Amici address the punitive damages award only to provide context for considering whether to uphold Petitioner's punitive damage award. An under current in the briefs filed by RJR in the Fourth District, and an explicit argument made by the *Engle* tobacco companies in other pending *Engle* progeny actions, is essentially the claim that the punitive damages awarded against RJR

since this Court's 2006 decision have imposed a sufficient punishment for RJR's misconduct. Indeed, the *Schoeff* court appears persuaded, referencing a couple of the larger punitive awards returned by other juries.

The *Engle* Amici respond only to address this limited point: RJR's profits have not suffered one bit; to the contrary, RJR has prospered so much that it has outpaced the majority of publicly traded corporations. We direct this Court to RJR's own investor reports, which brag about its astonishing, continued financial success. For example, the most recent quarterly report available on its website (first quarter of 2016), states:

- "RJR Tobacco's reported first-quarter **operating income increased 88.3 percent** from the prior-year quarter, to $1.11 billion." (p. 4) (emphasis added).

- "Adjusted first-quarter operating income was $1.12 billion, up 73.8 percent." (p. 4).

- "Adjusted first-quarter **operating margin increased 6.4 percentage** points from the prior-year quarter, to 46.5 percent, reflecting RJR Tobacco's improved mix of premium cigarette volume, which increased 12.0 percentage points to 70.6 percent." (p. 4) (emphasis added).

- "Reynolds American's first-quarter reported [**earnings per share**] of $2.49 **increased 591.7 percent** from the prior-year quarter, driven primarily by the gain on divestiture related to the sale of Natural American Spirit's business outside the U.S." (p. 5) (emphasis added).

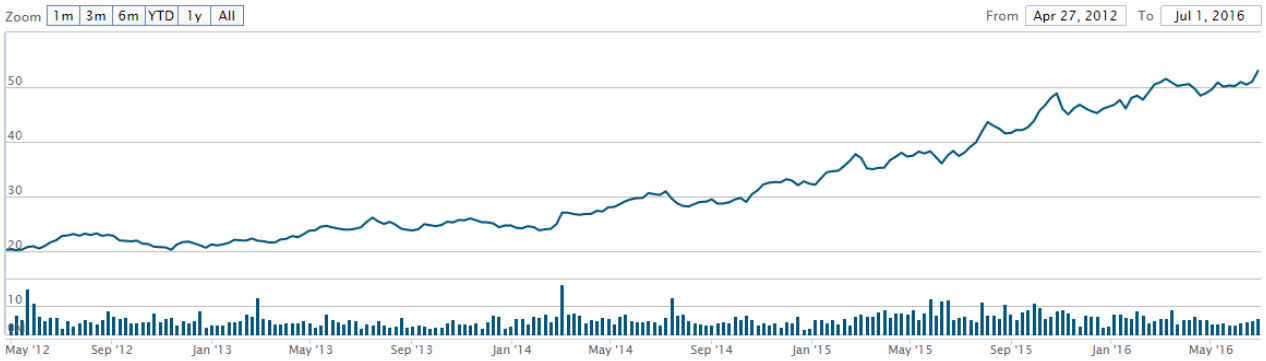
- "During the quarter, the company announced a 16.7 percent increase in the quarterly cash dividend, to an annualized $1.68 per share, in line with RAI's target dividend payout ratio of 75 percent." (p. 5).

RAI Press Release 1Q2016 (http://s2.q4cdn.com/129460998/files/doc_news/2016/2016-14-RAI-delivers-exceptional-1Q16-performance.pdf).

RJR's extraordinary financial success is also reflected in the extremely high value of its stock. The first *Engle* progeny punitive damage award was paid on April 27, 2012. Since then, the stock value of R.J. Reynolds' parent company, Reynolds American, Inc. (RAI), has increased exponentially. On April 27, 2012, RAI's stock price was $20.29. Four years later (at the end of the second quarter of 2016), it had increased to $53.73. That is an astonishing jump of nearly 165%. This chart documents the quarterly stock value increases following RJR's first payment of a punitive damage award:

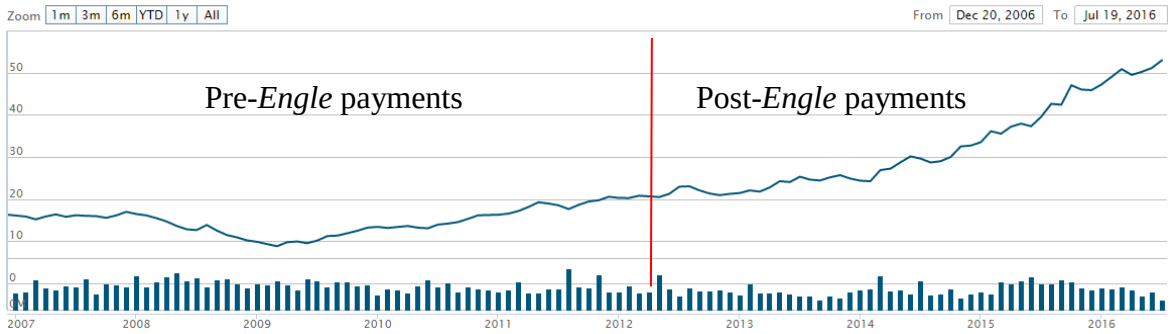
Date	**Stock Value**
4/27/2012	$20.29
7/2/2012	$22.76
10/1/2012	$21.73
1/2/2013	$21.44
4/1/2013	$22.23
7/1/2013	$24.40
10/1/2013	$24.61
1/2/2014	$24.64
4/1/2014	$26.84
7/1/2014	$30.15
10/1/2014	$29.36
1/2/2015	$31.91
4/1/2015	$35.16
7/1/2015	$37.79
10/1/2015	$43.63
1/4/2016	$45.20
4/1/2016	$50.33
7/1/2016	$53.73

That increase in value represented in graph form looks as follows:



(http://www.reynoldsamerican.com/Investors/stock-information/StockData/default.aspx).

In fact, RAI's stock has grown faster over the last four years when it has been paying punitive damages judgments in *Engle* progeny cases than it did in the years between this Court's 2006 *Engle* decision and the first punitive damages payment, as shown below:

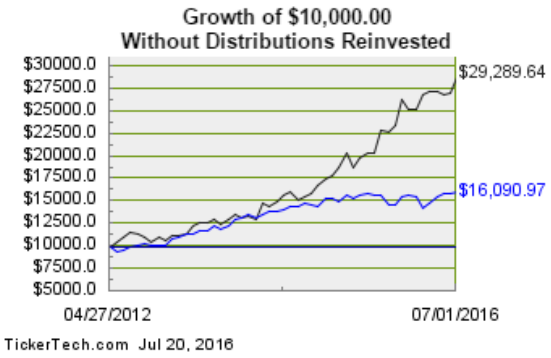


(http://www.reynoldsamerican.com/Investors/stock-information/StockData/default.aspx).[5]

[5] We recognize that the country experienced a recession shortly after this Court issued the *Engle* decision (starting around December 2007). *See* National Bureau

RJR's significant financial growth is made all the more clear by comparing RAI stock to various stock market indices: S&P 500, Nasdaq 100, and Dow 30. Investing $10,000 in RAI stock on April 27, 2012, would earn a net profit of $19,289.64 on July 1, 2016. That's a return of 192.88%! Not so for the S&P 500. The same $10,000 would have earned only about a third of the profit, $6,090.97, for a much smaller return of 61%. The comparison looks like this:

	RAI	SPY
Start date:	04/27/2012	04/27/2012
End date:	07/01/2016	07/01/2016
Start price/share:	$20.29	$140.39
End price/share:	$53.73	$209.92
Distributions collected/share:	$5.70	$16.01
Total return:	192.88%	60.93%
Average Annual Total Return:	29.31%	12.05%
Starting investment:	$10,000.00	$10,000.00
Ending investment:	$29,289.64	$16,090.97
Years:	4.18	4.18



RAI Investment Calculator compared to S&P 500 (http://www.reynoldsamerican.com/Investors/stock-information/Stock Data/default.aspx).

Investing $10,000 in the Dow 30 and the Nasdaq 100 would have yielded similar smaller returns of 47.60% and 67.82% respectively during this four year period. This chart documents RAI's substantial return compared to the meager return for Dow 30, with RAI earning $19,289.61 compared to the Dow 30 net profit of only $4,760.11:

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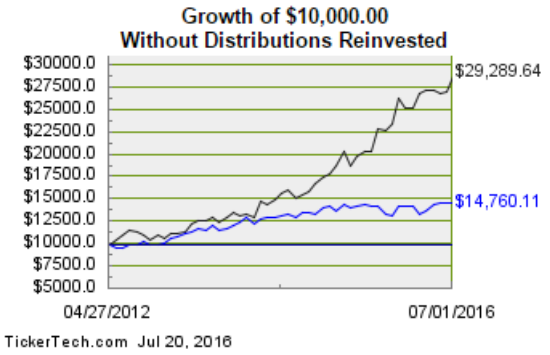
of Economic Research, US Business Cycle Expansions and Contractions, http://www.nber.org/cycles.html), But, that ended by around July 2009, long before RJR paid its first *Engle* progeny punitive damage award in April 2012. *Id.*

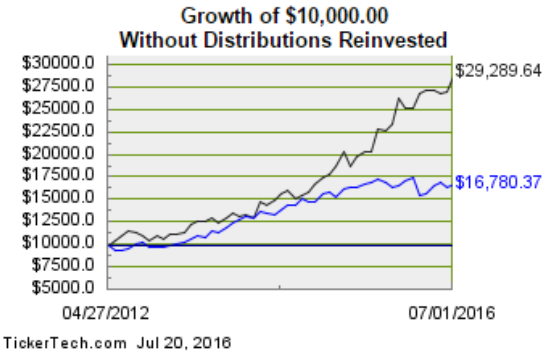
	RAI	DIA
Start date:	04/27/2012	04/27/2012
End date:	07/01/2016	07/01/2016
Start price/share:	$20.29	$132.00
End price/share:	$53.73	$179.31
Distributions collected/share:	$5.70	$15.53
Total return:	192.88%	47.60%
Average Annual Total Return:	29.31%	9.76%
Starting investment:	$10,000.00	$10,000.00
Ending investment:	$29,289.64	$14,760.11
Years:	4.18	4.18



RAI Investment Calculator compared to Dow 30 (http://www.reynoldsamerican.com/Investors/stock-information/Stock-Data/default.aspx).

Similarly, this chart documents the financial strength of RAI stock when compared to the Nasdaq 100 (earning only $6,000 on an investment of $10,000, compared to RAI's profit of $19,000 on the same $10,000 investment):

	RAI	QQQ
Start date:	04/27/2012	04/27/2012
End date:	07/01/2016	07/01/2016
Start price/share:	$20.29	$67.24
End price/share:	$53.73	$108.08
Distributions collected/share:	$5.70	$4.77
Total return:	192.88%	67.82%
Average Annual Total Return:	29.31%	13.18%
Starting investment:	$10,000.00	$10,000.00
Ending investment:	$29,289.64	$16,780.37
Years:	4.18	4.18



RAI Investment Calculator compared to Nasdaq 100 (http://www.reynoldsamerican.com/Investors/stock-information/Stock-Data/default.aspx).

All of these charts and investment calculations are found on RAI's website. RAI includes an investors' page, where it provides an investment calculator to

prove to potential investors that it is a thriving corporation which will yield continued increasing profits and corresponding stock value.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the Fourth District Court of Appeal in *Schoeff*.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to John S. Mills (jmills@mills-appeals.com; service@mills-appeals.com) and Courtney Brewer (cbrewer@mills-appeals.com), The Mills Firm, P.A., 203 N. Gadsden Street, Suite 1A, Tallahassee, Florida 32301; Alex Alvarez (alex@integrityforjustice.com), The Alvarez Law Firm, 355 Palermo Avenue, Coral Gables, Florida 33134; Gary M. Paige (garyp216@aol.com), Gordon &

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s/Celene H. Humphries
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

s/Celene H. Humphries
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