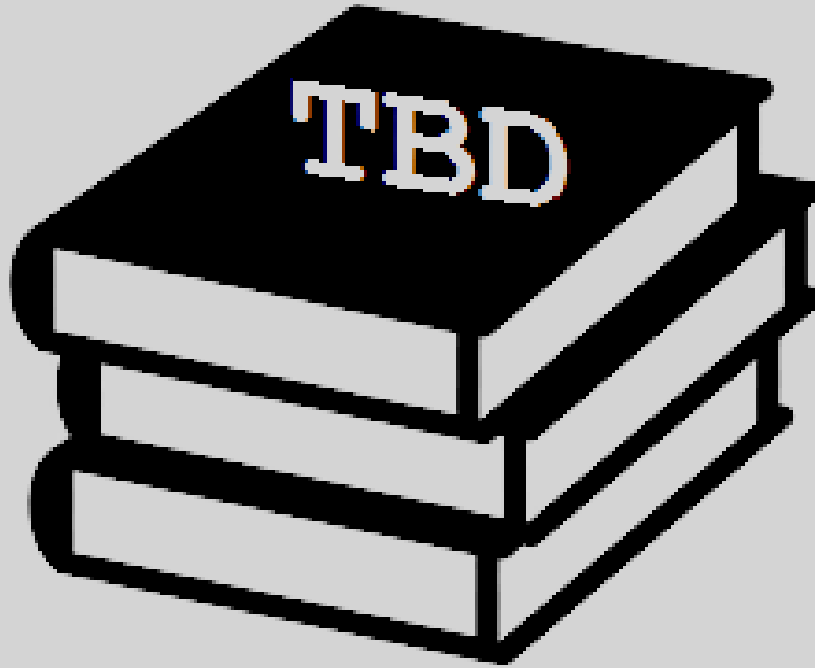


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Case No. SC13-1831 (Consolidated with Case No. SC13-1838)  
Fourth District Case Nos. 4D10-3606 & 4D10-5244 (Consolidated)

**IN THE SUPREME COURT  
STATE OF FLORIDA**

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PHILIP MORRIS USA INC., R.J. REYNOLDS TOBACCO CO., and LIGGETT GROUP LLC,  
*Defendants/Petitioners,*

v.

SHARON PUTNEY, as personal representative of the Estate of  
MARGOT PUTNEY, deceased,

*Plaintiff/Respondent.*

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ON DISCRETIONARY REVIEW FROM A DECISION  
OF THE FOURTH DISTRICT COURT OF APPEAL

---

**MOTION FOR CLARIFICATION OF PHILIP MORRIS USA INC.,  
R.J. REYNOLDS TOBACCO CO., AND LIGGETT GROUP LLC**

On February 1, 2016, this Court entered an order that “accept[ed] jurisdiction in these consolidated cases, summarily quash[e]d the decision being reviewed, and reinstate[d] the jury verdict in light of [the] decisions [in] *Philip Morris v. Russo*, 40 Fla. L. Weekly S186 (Fla. Apr. 2, 2015), and *Hess v. Philip Morris*, 40 Fla. L. Weekly S188 (Fla. Apr. 2, 2015).” Order of Feb. 1, 2016, at 1. Defendants Philip Morris USA Inc., R.J. Reynolds Tobacco Co., and Liggett Group LLC respectfully move for clarification as to whether this Court’s order “reinstates” the entirety of the “jury verdict” in this case—including the

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compensatory damages award that the Fourth District held to be excessive—or is instead limited to “reinstat[ing]” the conspiracy verdict, which the Fourth District set aside on the ground that the trial court erroneously struck Defendants’ statute-of-repose defense. Because the Court’s February 1 Order “reinstates the jury verdict” in light of the decisions in *Hess* and *Russo*, which address only the repose issue, this Court should make clear that its Order does not quash the Fourth District’s ruling that the trial court erred by denying Defendants’ motion for remittitur and does not reinstate the compensatory damages award. Such a clarification would be consistent with Plaintiff’s own concession that the Fourth District’s excessiveness analysis “is unaffected by the *Hess* and *Russo* decision[s].” Pl.’s Reply to Defs.’ Resp. to this Court’s Order to Show Cause at 1 (“Pl.’s Reply”).

## **BACKGROUND**

Plaintiff brought this *Engle* progeny action to recover for the death of her mother, Margot Putney. *Philip Morris USA Inc. v. Putney*, 117 So. 3d 798, 800 (Fla. 4th DCA 2013). Plaintiff alleged claims for strict liability, negligence, fraudulent concealment, and conspiracy to commit fraudulent concealment, and sought recovery for herself and her two siblings, all of whom were adults at the time of Ms. Putney’s death. *Id.* at 803.

The trial court granted summary judgment to Plaintiff on Defendants' statute-of-repose defense to the concealment and conspiracy claims. *Putney*, 117 So. 3d at 800. A jury thereafter found in Plaintiff's favor on her claims for strict liability, negligence, and conspiracy. *Id.* The jury awarded a total of \$15 million in non-economic compensatory damages: \$5 million each to Plaintiff and her two siblings. *Id.* The jury also awarded \$2.5 million in punitive damages against Philip Morris USA and \$2.5 million in punitive damages against R.J. Reynolds Tobacco Company. *Id.* The trial court denied Defendants' post-trial motion for remittitur of the compensatory damages award. *Id.*

On appeal, the Fourth District held that the trial court erred by failing to remit the compensatory damages award. *Putney*, 117 So. 3d at 803. Reviewing the "trial court's ruling on [the] motion for remittitur . . . for abuse of discretion," *id.* at 802, the court concluded that, while this evidence "may establish that [Ms. Putney's] adult children are entitled to a consortium award," the \$5 million "awards were excessive" under the particular facts of this case. *Id.* at 803. The court emphasized that Plaintiff and her siblings "were adults at the time of [Ms. Putney's] diagnosis and death," that "none of them testified that they lived with her or relied on her for support," and the awards here were "excessive compared to those in similar cases." *Id.*

Relying on its earlier decision in *Philip Morris USA Inc. v. Kayton*, 104 So. 3d 1145 (Fla. 4th DCA 2012), the Fourth District also held that the trial court erred by granting Plaintiff summary judgment on Defendants' statute-of-repose defense based on the preclusive effect of the *Engle* findings. *Putney*, 117 So. 3d at 803-04. The Fourth District remanded the case for further proceedings on Defendants' remittitur motion and a limited retrial on the question whether Plaintiff had proved the elements of her conspiracy claim within the twelve-year period established by the statute of repose. *Id.* at 804.

Both sides then invoked this Court's discretionary jurisdiction. Plaintiff sought this Court's "review to resolve conflicts regarding the review of an order denying a motion for remittitur and the applicability of the statute of repose to lawsuits brought by the members of the [*Engle*] class." Pet.'s Br. on Jurisdiction at 1 (No. SC13-1838). Defendants sought this Court's review of "the limited scope of the Fourth District's remand," which Defendants argued should have encompassed not only the statute-of-repose issue but also punitive damages. Br. of Jurisdiction of Petitioners Philip Morris USA Inc. and R.J. Reynolds Tobacco Company at 1 (No. SC13-1831).

On December 31, 2013, this Court consolidated the two cases and entered a stay pending the resolution of *Hess v. Philip Morris USA, Inc.*, No. SC12-2153, which raised the same statute-of-repose issue as Plaintiff's jurisdictional brief.

This Court decided *Hess* and a companion case, *Philip Morris USA, Inc. v. Russo*, No. SC12-1401, on April 2, 2015, and concluded in those opinions that “the *Engle* defendants are precluded as a matter of law from asserting the fraud statute of repose defense in *Engle*-progeny cases.” *Hess v. Philip Morris USA, Inc.*, 175 So. 3d 687, 698 (Fla. 2015); *see also Philip Morris USA, Inc. v. Russo*, 175 So. 3d 681, 686 (Fla. 2015) (same). In so doing, the Court rejected the interpretation of the statute of repose applied by the Fourth District in this case. *See Hess*, 175 So. 3d at 698; *Russo*, 175 So. 3d at 686.

On September 28, 2015, this Court directed Defendants to show cause “why this Court should not accept jurisdiction in this case, summarily quash the decision being reviewed, and remand for reconsideration in light of” *Russo* and *Hess*. Order of Sept. 28, 2015, at 1. In response, Defendants “acknowledge[d] that *Russo* and *Hess* control the statute-of-repose question in this case and that it would therefore be appropriate to accept jurisdiction, quash the Fourth District’s decision, and remand for reconsideration in light of those decisions.” Resp. of Philip Morris USA Inc., R.J. Reynolds Tobacco Co., and Liggett Group LLC to This Court’s Order to Show Cause at 1-2. In Plaintiff’s reply, she “agree[d] this is the appropriate resolution *for that particular issue*,” but emphasized that “the statute of repose was the secondary issue raised by Plaintiff” and that “[t]he primary issue on which Plaintiff seeks this Court’s review”—“the Fourth District’s holding that

reversed the trial court’s denial of Defendants’ motion for remittitur”—“is *unaffected* by the *Hess* and *Russo* decision[s].” Pl.’s Reply at 1-2 (emphases added). Plaintiff therefore asked the Court to “grant review on that issue” and to “issue[ ] [an] opinion” that resolved both the remittitur and repose questions. *Id.* at 3.

In the February 1 Order, the Court “accept[ed] jurisdiction in these consolidated cases, summarily quash[ed] the decision being reviewed, and reinstate[d] the jury verdict in light of [its] decisions” in *Russo* and *Hess*. Order of Feb. 1, 2016, at 1.

## **ARGUMENT**

Defendants respectfully submit that clarification is appropriate here to make clear that the Court did not intend in the February 1 Order to disturb the Fourth District’s ruling that the trial court erred when it denied Defendants’ motion for remittitur. That intention is implicit in the Order itself, which “reinstates the jury verdict in light of” *Russo* and *Hess*. As Plaintiff herself acknowledges, *Russo* and *Hess* simply have no bearing on the Fourth District’s remittitur ruling, which was “unaffected by the *Hess* and *Russo* decision[s].” Pl.’s Reply at 1. Nevertheless, the absence of an explicit reference to either the repose issue or the remittitur issue could cause confusion on remand regarding the scope of this Court’s February 1 Order.

Accordingly, Defendants request that the Court amend its February 1 Order to make clear that it does not “reinstate[ ] the jury verdict” with respect to the compensatory damages award that the Fourth District set aside as excessive. As Defendants explained at length in their Brief in Opposition to Jurisdiction, the Fourth District’s remittitur ruling does not warrant this Court’s review because it does not conflict with a decision of this Court or any other District Court of Appeal, and instead represents the application of the settled legal standard for remittitur to the particular facts of this case. *See Resps.’ Br. in Opp. to Juris.* at 5-10 (No. SC13-1838). Moreover, the reference to “reinstat[ing] the jury verdict” cannot plausibly be read as deciding the remittitur question without the benefit of briefing on the merits of that issue—especially because Plaintiff did not request summary reversal of the Fourth District’s remittitur ruling in her jurisdictional brief.

This Court should therefore make clear that Plaintiff’s petition for discretionary review is denied to the extent that it sought review of the Fourth District’s remittitur ruling and that the verdict is “reinstated” only with respect to the conspiracy verdict set aside by the Fourth District on statute-of-repose grounds.<sup>1</sup>

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<sup>1</sup> Alternatively, the Court should “remand for reconsideration” in light of *Hess* and *Russo*—rather than reinstating the jury’s verdict—and afford the Fourth



## CONCLUSION

The Court should clarify that its Order of February 1, 2016, does not quash the Fourth District's remittitur ruling or reinstate the jury's compensatory damages award.

Respectfully submitted,

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*Counsel for Petitioner*  
*Philip Morris USA Inc.*

FEBRUARY 3, 2016

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District the opportunity to consider the implications of those decisions in the first instance. A remand for reconsideration would be consistent with the disposition that this Court proposed in its Order to Show Cause, which made no mention of reinstating the jury's verdict.

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## CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2016, I caused the foregoing Motion For Clarification Of Philip Morris USA Inc., R.J. Reynolds Tobacco Co., And Liggett Group LLC to be filed with this Court via the Court's e-filing portal and to be served by e-mail on the below listed individuals:

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