

THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 13-1
(Court Administration)

ADMINISTRATIVE ORDER
NO. 13-03

IN RE: DISPOSITION OF TOBACCO
CASES

WHEREAS, the tobacco class action lawsuit in *Engle v. Liggett Group, Inc., et al.*, 95 So. 2d 1246 (Fla. 2006), was brought by “citizens and residents, and their survivors who suffered, presently suffer or who have died from diseases and medical conditions caused by their addiction to cigarettes that contain nicotine;” and

WHEREAS, the *Engle* lawsuit was divided into three phases, to wit: (a) in Phase I, the jury adjudicated common issues of liability and causation for all class members and the entitlement of the class to punitive damages, (b) in Phase II, the same jury determined the individual class representatives’ entitlement to and amount of compensatory damages, and determined a lump sum punitive damages award to be assessed in favor of the class as a whole, and (c) in Phase III, new juries were to decide the individual liability and compensatory damages claims for each class member; and

WHEREAS, however, subsequent to Phase II, the Florida Supreme Court decertified the class; but, it held, inter alia, that former *Engle* plaintiffs could bring actions within one (1) year of its decision, and that certain *Engle* Phase I findings would have *res judicata* effect in the individual actions; and

WHEREAS, during the pendency of the *Engle* appeals, administrative memoranda and procedures were adopted in this Circuit regarding individual tobacco cases (“Tobacco Cases”) that allowed such cases to remain open and not be dismissed either under a “nfe” (no further effort) order or for “lop” (lack of prosecution); and

WHEREAS, a significant number of Tobacco Cases were individually filed in the Eleventh Judicial Circuit, most of which have not been brought to trial and still remain open as pending matters, yet there has been little or no case activity in connection therewith, presumably due to certain outstanding issues on appeal; and

WHEREAS, in *Phillip Morris USA, Inc. v. Douglas*, 110 So. 3d 419 (Fla. 2013), the Supreme Court of Florida holdings settled issues that were common amongst the *Engle* litigants, to include, inter alia (1) common class action liability findings had *res judicata* effect on individual class plaintiffs’ individual damages actions; (2) giving *res*

judicata effect to common class liability findings did not constitute an arbitrary deprivation of tobacco companies' property; (3) res judicata, rather than issue preclusion, applied to individual class action plaintiffs' damages claims; and (4) judgment in *Engle* Phase I class action trial was a final judgment, for purposes of res judicata effect; and

WHEREAS, given the longevity of the pending Tobacco Cases, and in view of the *Douglas* holdings, it has been determined that the remaining issues in the Tobacco Cases will be adjudicated in the manner prescribed by the Rules of Civil Procedure; and

WHEREAS, it has been furthered determined that the aforementioned administrative memoranda and procedures will be of no force and effect with the execution of this Administrative Order;

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the Eleventh Judicial Circuit of Florida, under Rule 2.215, Judicial Administration Rules, it is hereby **ORDERED**:

1. After one (1) year of the effective date of this Administrative Order, those pending Tobacco Cases in the Eleventh Judicial Circuit will either be dismissed for "lack of prosecution" (commonly referred to as "fwopped") or remain open and adjudicated in the manner prescribed by the Rules of Civil Procedure.
2. Any administrative memoranda or procedures in conflict with this Administrative Order are held for naught and are of no force and effect.

This Administrative Order shall be effective immediately upon execution.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this 9th day of July, 2013.

**BERTILA SOTO, CHIEF JUDGE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA**