

Hectic Trial Schedule May Have Forced \$100M Engle Deal

By **Carolina Bolado**

Law360, Miami (February 25, 2015, 8:39 PM EST) -- The \$100 million settlement announced Wednesday resolving hundreds of Engle tobacco cases pending in Florida may have been the result of an aggressive trial schedule set by the federal judge overseeing the litigation, a stark contrast to the lack of coordination in cases at the state level.

Philip Morris USA Inc., R.J. Reynolds Tobacco Co. and Lorillard Tobacco Co. **inked a settlement** that clears out the more than 400 so-called Engle-progeny cases currently pending in Florida federal court that have not gone to verdict and are not on appeal, a number that represents about 10 percent of total pending cases.



Judge William Young

What got the parties to the negotiating table may have been the aggressive trial schedule set by U.S. District Judge William G. Young of the District of Massachusetts, according to Robert Nelson of Lieff Cabraser Heimann & Bernstein LLP, who helped negotiate the settlement for the plaintiffs.

Judge Young was appointed by the Eleventh Circuit to oversee and coordinate the hundreds of Engle progeny cases in the Florida federal courts, and he set an aggressive schedule and brought in judges from across the country to oversee the trials, according to Nelson.

"This was part of a comprehensive strategy really conceived by the court to push the cases aggressively and in so doing force as many trials as possible," Nelson said.

The cases stem from the landmark Engle v. Liggett Group Inc. class action against tobacco companies that was decertified in 2006 by the Florida Supreme Court.

Though the court decertified the class and overturned a \$145 billion verdict, the court allowed up to 700,000 people who could have won judgments to rely on the jury's findings to file suits of their own. These findings include conclusions that smoking causes certain diseases and that tobacco companies hid smoking's dangers. The individual suits have since yielded hundreds of millions of dollars in damages.

Nelson said that on Feb. 2, his team had four Engle trials going at the same time, and three more were set to start on Feb. 23. Under Judge Young's schedule, the federal docket would have been cleared of tobacco trials by the end of 2016.

"We just had trial after trial," Nelson said. "It was quite an extraordinary schedule that he set, and he was able to keep the commitment by getting other judges to help."

Sergio Campos, a professor at the University of Miami School of Law, said Judge Young has a reputation for being innovative and for working quickly.

"This is a particularly clever way to push the cases forward," Campos said. "By having an aggressive schedule, it takes away one power of the defendants, which is just to delay."

But even before the aggressive trial schedule was set, Judge Young implemented a number of procedures intended to winnow the number of cases. In addition, all of the cases were in a single federal district court, making it easier to coordinate a settlement.

Murray Garnick, a senior vice president and associate general counsel at Philip Morris' parent company Altria Group, said that the settlement is in the best interest of the company.

"We are pleased that we were able to work with Motley Rice LLC and Lieff Cabraser to put the federal Engle progeny trials behind us," Garnick said.

R.J. Reynolds' vice president and assistant general counsel Jeff Raborn said the agreement "presented a unique opportunity to essentially close out the federal docket."

An R.J. Reynolds spokesman told Law360 that the aggressive trial schedule set by Judge Young did not factor in to the company's desire to settle the federal cases.

All three tobacco companies say they will continue to vigorously defend the rest of the pending cases, which are meandering through the state court system. About 3,600 Engle progeny cases in state court are still awaiting resolution.

Micah Berman, a professor at Ohio State University Moritz College of Law, said Monday's settlement is significant and is a change from the tobacco companies' past practice of refusing to settle anything. But he cautioned against expecting a wave of settlements clearing out state court dockets.

"State court is a different ballgame, because you're talking about thousands of cases instead of hundreds of cases," Berman said. "It's much more difficult to pull off."

So far, there has not been much interest from the tobacco companies' side to resolve those cases out of court, according to Joseph Rice of Motley Rice, which was co-counsel for the plaintiffs with Lieff Cabraser on the settlement.

Rice, who represents a number of plaintiffs in state court Engle cases, said he has tried to start settlement talks for those cases without success.

"We offered to discuss coming up with some model and trying to contact the state court attorneys but the tobacco companies said they didn't have any interest," Rice said.

If the parties do decide to settle all or part of these cases, this deal could provide a sort of template for future settlements and how to calculate which plaintiffs should get money and how much, according to Dick Daynard, a professor at the Northeastern University School of Law.

The federal cases were an obvious group to settle, because they were brought by a single group of attorneys and were overseen by one judge, Daynard said. The state court cases would be a more complicated process, but they could look to both this settlement and the **\$110 million deal** Liggett Group LLC inked in 2013 to exit all Engle cases.

"It's going to be a little messier because there are more plaintiffs and more plaintiffs' attorneys involved, they've been filed in many more courts, and there hasn't been the weeding process that I think the federal cases may have pushed through," Daynard said.

--Editing by John Quinn and Patricia K. Cole.