

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 13-14590

D.C. Docket No. 3:09-cv-13602-MMH-JBT

EARL E. GRAHAM,
as PR of Faye Dale Graham, deceased,

Plaintiff - Appellee,

versus

R.J. REYNOLDS TOBACCO COMPANY,
individually and as successor by merger to the Brown and
Williamson Tobacco Corporation and The American Tobacco
Company,
PHILIP MORRIS USA, INC.,

Defendants - Appellants,

LORILLARD TOBACCO COMPANY, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Florida

Before TJOFLAT, Acting Chief Judge, HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JULIE CARNES, and JILL PRYOR, Circuit Judges.

BY THE COURT:

In an earlier order of this Court, we granted a petition for rehearing en banc in this case. After that order was issued, Chief Judge Carnes discovered that he may be recused and, in an abundance of caution to avoid any appearance of impropriety, he has recused himself from any participation in the decision of this case.

This court's earlier order granting rehearing en banc is therefore VACATED. As a majority of the judges of this Court in active service and eligible to hear it have voted in favor of granting rehearing en banc, it is ORDERED that this case will be reheard en banc. The panel's opinion is VACATED.