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**SUPREME COURT REVERSES \$79.5 MILLION
PUNITIVE DAMAGES AWARD TO SMOKER**
(Philip Morris USA v. Williams)

In a victory for the Washington Legal Foundation (WLF), the Supreme Court, in a 5-4 decision, reversed an Oregon Supreme Court ruling that upheld an \$79.5 punitive damages award to the widow of a lifelong smoker. The High Court ruled that the jury instructions were flawed and violated the Due Process rights of Philip Morris because the trial court allowed the jury to punish Philip Morris for possible injuries to nonparties rather than focusing on the harm to the plaintiff in the case. The case was sent back to the Oregon Supreme Court for its reconsideration, which may include ordering a new trial. This decision will benefit businesses who are sued for punitive damages and whose product or service affects many consumers.

In *Philip Morris USA v. Williams*, Jesse Williams began smoking as a young man when he joined the army in the 1950s. Throughout his life, Williams was repeatedly warned by family and others, as well as by the warnings on the cigarette packages, of the dangers associated with smoking cigarettes. After his death, his wife sued Philip Morris claiming that it knew or should have known its cigarettes were addictive and caused cancer, and misrepresented to her husband through public statements about the dangers of cancer associated with smoking. The plaintiff's attorney exhorted the jury to punish Philip Morris not only for the injury to Mr. Williams, but also for harms to the thousands of other Oregonians who are smokers, regardless of the extent of their injuries, if any, and regardless of their reasons for continuing to smoke. The jury awarded compensatory damages of approximately \$800,000 (as well as finding that the smoker was equally responsible for his medical injuries), and imposed a punitive damages award of \$79.5 million, which was approximately 100 times the amount of compensatory damages.

WLF argued in its brief, filed on behalf of itself and the Allied Education Foundation, that under recent Supreme Court decisions, the jury should have been instructed not to consider alleged harms to other persons for the conduct of the defendant; otherwise, the case would effectively be transformed into a class action without any of the procedural protections afforded defendants in those cases.

Justice Breyer, writing for the Court, agreed with WLF's arguments. He stated that if harm to nonparties could be considered in assessing the amount of punitive damages, "it would add a near standardless dimension to the punitive damages equation."

He noted that the jury "would be left to speculate" as to cause, circumstances, and nature of the injuries suffered by nonparties. The Court further stated that its prior punitive damages decisions permitted the jury to consider possible or potential harm only to the *plaintiff*, in addition to his actual injuries, in assessing punitive damages, but not to punish for the harm or risk of harm to nonparties.

However, the Court did acknowledge that harm to nonparties for the conduct of the defendant could be considered by the jury in determining the reprehensibility of the conduct, a factor to consider in deciding whether to impose any punitive damages at all and the amount to be assessed. Accordingly, the impact of the ruling may be limited if the jury could, in effect, disguise its assessment of punitive damages by basing it on the reprehensibility of the defendant's conduct as opposed to punishing the defendant directly for harm to nonparties. Nevertheless, the Court stressed the importance of making sure, through the use of proper jury instructions, that the jury does not impose punitive damages for improper reasons.

Depending upon the outcome of the case on remand, a large punitive damages award may still be appealed yet again to the Supreme Court on the grounds that the ratio between any punitive damages award and the compensatory damages is excessive. The Court has suggested in its prior decisions that a ratio of punitive damages to compensatory damages should not exceed nine to one. Accordingly, a punitive damages award of \$8 million, rather than the approximately \$80 million actually awarded, would seem to be the outer limit. The excessiveness issue was not decided by the Court in this case because it may be a moot point, depending upon the amount of the award on remand.

Joining Justice Breyer in the majority were Chief Justice Roberts and Justices Kennedy, Souter, and Alito. Dissenting were Justices Stevens, Thomas, Ginsburg, and Scalia.

WLF's brief was filed with the *pro bono* assistance of Arvin Maskin and Konrad L. Cailteux, partners in the New York firm of Weil, Gotshal & Manges, LLP, and associate David R. Singh.

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