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State Supreme Courts

TUESDAY, DECEMBER 06, 2011 2:16:00 PM

Calif. SC upholds \$13.8 million award against Philip Morris

BY JESSICA M. KARMASEK

SACRAMENTO, Calif. (Legal Newsline) - The California Supreme Court has declined to review a state appeals court's decision upholding a \$13.8 million punitive damages award to a woman who died of lung cancer.

Betty Bullock smoked cigarettes manufactured by Philip Morris USA Inc. for 45 years from 1956, when she was 17, until she was diagnosed with lung cancer in 2001.

Bullock testified that she smoked Philip Morris' Marlboro brand of cigarettes until 1966 and then switched to its Benson & Hedges brand. She died in February 2003.

Following a jury trial, Jodie Bullock was awarded \$13.8 million in punitive damages -- 16 times the compensatory damages award of \$850,000.

Philip Morris argued the award was barred by res judicata as a result of the Master Settlement Agreement with tobacco companies in 1998.

That year, the nation's leading cigarette manufacturers signed the agreement with 46 states, five U.S. territories and the District of Columbia.

Only Minnesota, Florida, Texas and Mississippi did not join in the MSA, each reaching their own agreements.

Under the MSA, the states settled their Medicaid lawsuits against the tobacco industry for recovery of their tobacco-related health care costs, and exempted the companies from private tort liability regarding harm caused by tobacco use.

In return, the companies agreed to stop certain marketing practices and to make payments to the states to compensate them for some of the medical costs of caring for those with smoking-related illnesses.

Philip Morris, which argued the award was "unconstitutionally excessive," also challenged the award of prejudgment interest from the date of the verdict.

In August, the California Court of Appeal, Second Appellate District, Division Three, affirmed the \$13.8 million award, concluding each of the company's arguments was "without merit."

While the U.S. Supreme Court has said that the ratio of punitive damages to compensatory damages should be low, or close to one-to-one, when compensatory damages are substantial, the appeals court in this case held that \$850,000 is not substantial.

"We believe that the extreme reprehensibility of Philip Morris's misconduct, including the vast scale and profitability of its course of misconduct, and its financial condition justify the \$13.8 million punitive damages award against Philip Morris. Our conclusion is the same regardless of whether the ratio of



Croskey



Kitching

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damages award against Philip Morris. Our conclusion is the same regardless of whether the ratio of 16 to one can be said to significantly exceed a single-digit ratio, so we need not decide that question," Justice H. Walter Croskey wrote for the majority.

"We do not mean to suggest that 16 to one would be an appropriate ratio in another case involving extreme reprehensibility or to establish any kind of presumption, but merely conclude based on the facts in this case, that the \$13.8 million punitive damages award is reasonable, not arbitrary, and does not offend due process."

Justice Patti S. Kitching dissented, saying the company's financial condition was "irrelevant" to the issue of whether a compensatory award is "small" or "substantial."

The Washington Legal Foundation, a public interest law and policy center, called the state Supreme Court's Nov. 30 decision not to review the appeals court's ruling a "setback."

WLF had filed a brief in the case urging the Court to review and overturn the punitive damages award.

In its brief, WLF argued that the appeals court improperly relied on Philip Morris' financial condition in deciding to overcome the U.S. Supreme Court's presumption that a punitive damages award exceeding a single-digit ratio to compensatory damages violates the Due Process Clause of the 14th Amendment.

The case, WLF fears, will have a major impact on the assessment of punitive damages against other industries in California.

"Contrary to the Court of Appeal's decision below, corporate wealth simply cannot justify an otherwise unconstitutional punitive damages award," WLF Senior Litigation Counsel Cory Andrews said in October.

"In fact, corporate wealth is without doubt the least relevant and most inappropriate factor to consider when reviewing the fairness of a punitive damages award."

The California decision isn't the only ruling to target the cigarette maker as of late.

On Friday, the Oregon Supreme Court ordered Philip Morris to pay the state of Oregon 60 percent of a \$79.5 million punitive damages award, plus interest, in a 14-year-old case against the company.

As a result of that case and the Bullock case, Altria Group Inc. announced late Friday that Philip Morris, its operating subsidiary, is recording a fourth-quarter pre-tax charge of \$62 million related to the judgments in cases, as well as incurring about \$57 million in interest costs related to the cases.

From Legal Newsline: Reach Jessica Karmasek by email at jessica@legalnewsline.com.

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