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WLF Asks Supreme Court to Rein in Constitutionally Excessive Punitive Damages

(Johnson & Johnson v. Ingham)

“The clear refusal of the Missouri courts to adhere to the Due Process Clause’s limits on punitive damages awards cannot go unchecked.”

—Cory Andrews, WLF General Counsel and Vice President of Litigation

WASHINGTON, DC—Today Washington Legal Foundation (WLF) asked the U.S. Supreme Court to review, and ultimately to overturn, a Missouri state court’s staggering \$2.1 billion punitive damages award against Johnson & Johnson.

In *Ingham v. Johnson & Johnson*, a Missouri trial court jointly tried the claims of 22 plaintiffs from around the country. Each plaintiff alleged that using the defendant’s talcum powder caused her to develop cancer. The jury calculated its \$2.1 billion punitive damages award by multiplying the defendant’s annual profits from talc sales by the number of years it allegedly sold talc while knowing it contained asbestos.

But that verdict, WLF argues in its *amicus* brief urging review, improperly punishes the defendant for a whole range of nationwide conduct, not just the harm to the plaintiffs. Nor, WLF contends, is it only the defendant’s due process rights that are harmed. Constitutionally excessive punitive damages awards also reduce the pool of available funds for all those plaintiffs who have yet to see their day in court. This creates a “tragedy of the commons,” by which early plaintiffs are incentivized to consume a defendant’s limited resources immediately, maximizing their own recovery, but depleting the resources available to compensate future plaintiffs.

WLF’s *amicus* brief was prepared with the pro bono assistance of Douglas Dunham, Ellen Quackenbos, Matthew Steinberg, and Theodore Yale at Dechert LLP.

Celebrating its 44th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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