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October 15, 2025

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## **WLF Urges Massachusetts High Court to Require Clear and Convincing Evidence for Punitive Damages**

*(Fontaine v. Philip Morris USA Inc.)*

**“Punitive damages must rest on robust evidence and fair procedures to prevent juries from punishing defendants based on prejudice.”**

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the Massachusetts Supreme Judicial Court to hold that punitive damages awards require proof by clear and convincing evidence and, when requested, bifurcated trials. WLF joined the U.S. Chamber of Commerce on the brief, which was prepared by Mark C. Fleming of Wilmer Hale.

The case arises from a lawsuit by the estate of Barbara Ellen Fontaine, alleging that smoking Philip Morris’s cigarettes caused her fatal lung cancer. A Middlesex County jury awarded the estate a \$1 billion punitive damages verdict. The trial court rejected Philip Morris’s request for a clear-and-convincing evidence standard and a bifurcated trial, prompting this appeal to address what procedural protections are required to ensure due process.

The amicus brief contends that added due-process safeguards are essential to prevent excessive, prejudice-driven verdicts. Amici argue that a heightened clear-and-convincing evidence standard, as required in most states, along with trial bifurcation, would prevent juries from being swayed by irrelevant wealth or misconduct evidence during the liability phase. The brief urges the court to adopt these standards to promote fairness and consistency.

*Celebrating its 48th 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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