

Supreme Court Imposes Limits on Punitive Damages Awards

JENNIFER KELLY AND CANDACE MOREY

Fenwick
FENWICK & WEST LLP

On February 20, 2007, Philip Morris won temporary reprieve when the Supreme Court vacated a jury award of \$79.5 million in punitive damages to the widow of a deceased smoker, Jesse Williams. The Court held that the award, which was based at least in part on the jury's desire to punish Philip Morris for harm its products inflicted on *other smokers*, not just on Williams, violated the Due Process Clause of the Fourteenth Amendment. *Philip Morris USA v. Williams*, 549 U.S. ____ (2007) (No. 05-1256, February 20, 2007) (slip op. at 1). The ruling sends the case back to the Oregon Supreme Court for reconsideration. Notably, however, the Court did not decide the issue most pressing for business: whether the nearly 100-to-1 ratio of punitive to compensatory damages was "grossly excessive."

Williams's widow filed suit in Oregon for negligence and deceit against Philip Morris, alleging that Williams smoked in significant part because Philip Morris led him to believe that it was safe. The jury found Philip Morris and Williams (who had smoked for 42 years) equally negligent for his death, but also that Philip Morris engaged in deceit in the form of systemic, widespread fraud. The jury awarded \$821,000 in compensatory damages for the negligence and fraud claims, plus \$79.5 million in punitive damages for the fraud claim alone. The trial court found the punitive damages award "excessive" and reduced it to \$32 million. The Court of Appeals reinstated the \$79.5 million punitive damages award, and the Oregon Supreme Court affirmed.

The Court vacated the award and announced a new rule of punitive damages: a jury may not use a punitive damages award to punish a defendant directly for harm caused to strangers to the litigation. *Id.* at 5. To permit punishment for injuries to nonparty victims would deny the defendant an opportunity to defend against those alleged harms and would add a "near standardless dimension to the punitive damages equation," magnifying the risks of arbitrariness, uncertainty, and lack of notice which are the hallmark Due Process concerns in punitive damages cases. *Id.* at 5-6. The Oregon Supreme Court's authorization of the punitive damages award was premised, at least in part, on punishing Philip Morris for harms visited on nonparties. *See id.* at 9.

Accordingly, the Supreme Court held that the award violated the Due Process Clause of the Constitution.

On the other hand, the Court confirmed that a plaintiff *may* introduce evidence of harm to nonparties in order to demonstrate that the defendant's conduct was particularly reprehensible. Reprehensibility is the first "guidepost" courts consider in reviewing whether a punitive damages award is grossly excessive, and indeed is the most important indicium of the reasonableness of such an award. *State Farm Mutual Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003). Thus, it was proper for the jury to consider harms to other people based on Philip Morris's campaign to hide the adverse health effects of smoking—though only when determining what the reasonable relationship is between the punitive award and harm to the plaintiff.

The Court noted the inherent practical problem resulting from application of two rules: "How can we know whether a jury, in taking account of harm caused others under the rubric of reprehensibility, also seeks to punish the defendant for having caused injury to others?"

The Majority answered that courts must implement adequate *procedural* limitations in addition to limiting amounts forbidden as "grossly excessive." *Philip Morris*, 549 U.S. ____ (slip op. at 5). Thus, in cases in which evidence of harm to nonparties is introduced, some protection (*i.e.*, an appropriate jury instruction, such as the instruction Philip Morris requested) is required to ensure that juries are simply determining reprehensibility and not also punishing for harm caused to strangers. *Id.* at 8, 9.

The ruling was not as sweeping as Philip Morris hoped, however, as the Court did not determine if the award was "grossly excessive" under the three "guideposts" for assessing the reasonableness of punitive damages. In particular, the second "guidepost" looks at the ratio between the harm to the plaintiff and the punitive damages award. Here, punitive damages were nearly 100 times more than the compensatory damages awarded in the case, and many in business were looking for the Court to entrench as

a bright-line rule that “few awards exceeding a single-digit ratio between punitive and compensatory damages [] will satisfy due process.” *Campbell*, 538 U.S. at 425. With the Court’s ruling focused on procedural safeguards, rather than substantive caps on jury verdicts, the practical import of the case may be limited.

The opinion is at: <http://www.supremecourtus.gov/opinions/06pdf/05-1256.pdf>

Jennifer Kelly, Senior Associate, Litigation Group
jkelly@fenwick.com, 415.875.2426

Candace Morey, Associate, Litigation Group
cmorey@fenwick.com, 415.875.2408

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