

▪ A U.S. SUPREME COURT CASE UPDATE ▪

## PHILIP MORRIS USA v. WILLIAMS

Last week, a narrowly divided U.S. Supreme Court overturned a \$79.5 million punitive damage award against tobacco company Philip Morris. The following synopsis outlines the highlights of this closely watched case, *Philip Morris USA v. Williams*, which could impact the law of punitive damages in California.<sup>1</sup> This case represents the latest in a line of recent U.S. Supreme Court decisions establishing constitutional limits on punitive damage awards.<sup>2</sup>

In its 5-4 ruling, the court held that the U.S. Constitution's Due Process Clause prohibited the Oregon courts from upholding a punitive damage award that punished Philip Morris for harming victims who were not parties to the lawsuit.<sup>3</sup> However, the court did not determine whether the award was so excessive that it violated the Constitution. The decision was written by Justice Breyer, who was joined by Chief Justice Roberts and Justices Alito, Kennedy, and Souter. In dissent were Justices Ginsburg, Scalia, Stevens, and Thomas.

### BACKGROUND ON PUNITIVE DAMAGES

In general, damages are intended to compensate a plaintiff for injuries that were caused by the defendant's wrongful conduct; these damages are called "compensatory damages."<sup>4</sup> In some cases, additional (or punitive) damages may

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<sup>1</sup> *Philip Morris USA v. Williams*, No. 05-1256, 2007 U.S. LEXIS 1332 (2007).

<sup>2</sup> See, e.g., *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994).

<sup>3</sup> *Philip Morris*, 2007 U.S. LEXIS 1332, at \*6.

<sup>4</sup> 6 Witkin, Summary of Cal. Law Torts (10<sup>th</sup> ed.) Torts, Section 1559.

be awarded when a jury determines that the defendant has acted outrageously.<sup>5</sup> Under California law, punitive damages may be imposed to deter and punish a defendant in a civil action who has acted with oppression, fraud, or malice.<sup>6</sup>

Under the U.S. Supreme Court's decision in *State Farm Mut. Automobile Ins. Co. v. Campbell*, the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits punitive damage awards that impose "grossly excessive or arbitrary punishments" on defendants.<sup>7</sup> The Supreme Court has ruled that a court reviewing a jury's award of punitive damages must consider the following three "guideposts" in determining whether the award was grossly excessive: (1) the degree of reprehensibility of the defendant's misconduct, (2) the disparity between the punitive damages award and the actual or potential harm suffered by the plaintiff, and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.<sup>8</sup>

## FACTS OF THE CASE

In *Philip Morris USA v. Williams*, the widow of Jesse Williams, a heavy smoker who died from cancer, brought a lawsuit in Oregon state court against tobacco company Philip Morris alleging that the company acted fraudulently and negligently by leading Williams to believe that it was safe to smoke cigarettes.<sup>9</sup> The jury found that Williams' death was caused by smoking, both Philip Morris and Williams had acted negligently, and Philip Morris had engaged in fraud and deceit. It awarded compensatory damages of approximately \$821,000 and punitive damages of \$79.5 million.

The trial court found the punitive damage award "excessive" under the guideposts of *BMW of North America, Inc. v. Gore*, and reduced the punitive damage award to \$32 million.<sup>10</sup> In a later decision, the Oregon Court of Appeals

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<sup>5</sup> 6 Witkin, Summary of Cal. Law Torts (10<sup>th</sup> ed.) Torts, Section 1559.

<sup>6</sup> California Civil Code Section 3294(a).

<sup>7</sup> *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003).

<sup>8</sup> *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996). See also *State Farm Mut. Automobile Ins. Co.* at 418.

<sup>9</sup> *Philip Morris*, 2007 U.S. LEXIS 1332, at \*7. See also Cornell Law School, Legal Information Institute, "Supreme Court Oral Argument Previews," <http://chrome.law.cornell.edu/supct/cert/05-1256.html>.

<sup>10</sup> *Williams v. Philip Morris USA, Inc.*, 340 Ore. 35, 44 (2006).

reinstated the jury award of \$79.5 million;<sup>11</sup> this decision was upheld by the Oregon Supreme Court, which found that the \$79.5 million punitive damage award was not “grossly excessive,” given the Philip Morris company’s extraordinarily reprehensible conduct.<sup>12</sup>

## THE COURT’S RULING

The majority held that the punitive damage award in this case violated the Constitution’s Due Process Clause because the jurors improperly considered harm to other smokers when punishing Philip Morris and deciding on the amount of the award.<sup>13</sup> According to the court, an award like this amounts to a “taking” of property from the defendant without due process for several reasons.

For example, the Due Process Clause requires that a state provide an individual with the opportunity to defend against a charge before punishing him or her. But a defendant punished by a punitive damage award for injuring a nonparty victim does not have an opportunity to defend against the charge, the court said. Furthermore, the court stated that using an award to punish a defendant for injuring a nonparty victim would “add a near standardless dimension to the punitive damages equation”; the jury would be left to speculate on the number of nonparty victims and how seriously they were injured.<sup>14</sup>

Although jurors may consider harm to others when determining whether a defendant’s conduct was reprehensible, the court held they may not go further than this and use a punitive damage award to “punish a defendant directly on account of harms it is alleged to have visited on nonparties.”<sup>15</sup>

Because the court determined that the Oregon Supreme Court applied the incorrect constitutional standard, it remanded the case back to that court to apply the correct standard. The court noted that this could result in a new trial

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<sup>11</sup> *Williams v. Philip Morris, Inc.*, 182 Ore. App. 44, 72 (2002).

<sup>12</sup> *Williams v. Philip Morris USA, Inc.*, 340 Ore. 35, 63-64 (2006).

<sup>13</sup> *Philip Morris*, 2007 U.S. LEXIS 1332, at \*6. See also Tony Mauro, “\$79.5 Million Award to Smoker’s Widow Tossed,” *Recorder*, February 21, 2007.

<sup>14</sup> *Philip Morris*, 2007 U.S. LEXIS 1332, at \*13-14.

<sup>15</sup> *Id.* at \*16.

or a revised punitive damage award and, therefore, it declined to consider whether the \$79.5 million award was constitutionally “grossly excessive.”<sup>16</sup>

## THE DISSENTING OPINIONS

In his dissent, Justice Stevens expressed concern that the majority’s ruling imposed a new limit on a state’s power to impose punishment on a defendant in civil litigation.<sup>17</sup> Furthermore, he noted that by sanctioning the defendant for the “public harm” caused by the defendant’s conduct, punitive damages serve the purposes of retribution and deterrence.<sup>18</sup>

Justice Stevens also questioned the majority’s distinction that a jury may consider harm to nonparties when determining whether a defendant’s conduct was reprehensible, but may not take the same harm into account in order to punish the defendant directly. “This nuance eludes me,” he stated, “. . . A murderer who kills his victim by throwing a bomb that injures dozens of bystanders should be punished more severely than one who harms no one other than his intended victim.”<sup>19</sup> In this instance, a jury that increases a punitive damage award “because injuries to third parties enhanced the reprehensibility of the defendant’s conduct” is directly punishing the defendant for harm to nonparties.<sup>20</sup>

In Justice Ginsburg’s dissent, she argued that the Oregon Supreme Court properly followed the court’s prior decisions on punitive damage awards and the majority should have shown the state courts greater respect because they have “sought diligently to adhere to our changing, less than crystalline precedent.”<sup>21</sup> Justices Scalia and Thomas joined Ginsburg’s dissent, and Thomas separately wrote to reiterate his belief that the U.S. Constitution does not limit the size of punitive damage awards.<sup>22</sup>

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<sup>16</sup> *Philip Morris*, 2007 U.S. LEXIS 1332, at \*21.

<sup>17</sup> *Id.* at \*22.

<sup>18</sup> *Id.* at \*23-24.

<sup>19</sup> *Id.* at \*25.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at \*31. See also Linda Greenhouse, “Justices Overturn \$79.5 Million Tobacco Ruling,” *New York Times*, February 21, 2007.

<sup>22</sup> *Philip Morris*, 2007 U.S. LEXIS 1332, at \*26-27.

## IMPACT OF THE DECISION

Legal commentators have split on the impact of the court's ruling. Tort reform advocates argue that the decision is "a very helpful ruling for continuing to rein in punitive damages awards," and makes the harm incurred by third parties much less of a factor.<sup>23</sup> Plaintiffs' attorneys, on the other hand, take issue with the assertion that the decision was a significant win for business and argue that jurors can still consider evidence about a defendant's misconduct.<sup>24</sup>

The U.S. Supreme Court's decision will likely have an impact in California. For example, the California Supreme Court had postponed its review of a punitive damage award in the *Bullock v. Philip Morris* case while it awaited the U.S. Supreme Court's ruling in *Philip Morris USA v. Williams*. In *Bullock*, which involves an award of \$850,000 in compensatory damages and \$28 million in punitive damages, the California Supreme Court must address two issues:

- (1) Does a ratio of approximately 33-to-1 between punitive damages and compensatory damages violate due process?
- (2) Should the jury have been instructed that it could not impose punitive damages to punish the defendant for the effects of its conduct on third parties?<sup>25</sup>

The precise impact of the U.S. Supreme Court's decision in *Philip Morris v. Williams* on California's punitive damages law—and its effect on the dynamics of a jury's award of punitive damages—will likely become clearer over time. The ruling requires judges to ensure (for example, through jury instructions) that jurors take harm to others into account only to determine reprehensibility, not to punish. Some legal experts also point out that California law permits punitive damages to be imposed to punish—and deter—a defendant. The *Williams* ruling, however, does not discuss deterrence and instead focuses on whether a jury may punish for harm inflicted on others. The *Bullock* case could potentially give the California Supreme Court the opportunity to explain this deterrence factor in light of the *Williams* ruling.

—*Saskia Kim*

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<sup>23</sup> Brent Kendall, "Supreme Court Draws Line in Smoking Suit," *Daily Journal*, February 21, 2007.

<sup>24</sup> *Id.*

<sup>25</sup> See <http://appellatecases.courtinfo.ca.gov>.

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### **SASKIA KIM**

Since 2005, Saskia Kim has worked for the California Senate Office of Research as a policy consultant specializing in judiciary issues. Prior to that she was a counsel to the California Assembly Judiciary Committee and a legislative aide in the U.S. Congress. In 2006 she was awarded an Ian Axford Fellowship in Public Policy and was based at the Ministry of Justice in Wellington, New Zealand.