

LITIGATION ALERT

SUPREME COURT VACATES AWARD OF PUNITIVE DAMAGES AND ENSURES CONTINUED CONSTITUTIONAL SCRUTINY OF PUNITIVE DAMAGE AWARDS



On February 20, 2007, the U.S. Supreme Court issued its decision in *Philip Morris USA v. Williams*¹ vacating a punitive damages award of \$79.5 million dollars and remanding the case to the Supreme Court of Oregon for further proceedings. In vacating the award, the Court held that the Due Process Clause of the 14th Amendment does not permit a jury to base a punitive damages award, in whole or in part, upon its desire to punish the defendant for harms to persons who are not parties to the litigation. The Court also held that a jury may consider harms to persons who are not parties to determine the reprehensibility of a defendant's conduct.

The *Philip Morris* decision is also significant because the decision marks the first time the Court has addressed punitive damages since the passing of former Chief Justice Rehnquist and the retirement of Justice O'Connor, both of whom consistently opposed large punitive damage awards. Based upon the alignment of the Court's two new members (Chief Justice Roberts and Justice Alito) with the majority, it appears that, at least for now, companies who face potential punitive damages liability will find encouragement in the Court's continued imposition of constitutional limits on punitive damages awards.

BACKGROUND

The *Philip Morris* case arose from the death of Jesse Williams, a Portland janitor who smoked at least two packs of Marlboros every day for 45 years and died of lung cancer in 1996. Mr. Williams' estate asserted claims of negligence and deceit against Philip Morris, the manufacturer of Marlboro cigarettes. A jury found that Mr. Williams' death was caused by smoking, that Mr. Williams smoked in significant part because he thought it was safe to do so, and that Philip Morris knowingly and falsely led Mr. Williams to believe that this was so. With respect to the claim for deceit, the jury awarded compensatory damages of approximately \$821,000 and punitive damages of \$79.5 million.

¹ Thomas C. Goldstein, who heads Akin Gump's Supreme Court practice, was a consultant to Philip Morris USA in its preparations for oral argument.

After an appeals process that included a remand of the matter by the Supreme Court to the Oregon courts, the Supreme Court granted review to consider (1) whether the Oregon courts had permitted Philip Morris to be punished for harming nonparty victims and (2) whether the Oregon courts had disregarded the constitutional requirement that punitive damages be reasonably related to the plaintiff's harm. In reaching its decision, however, the Court only ruled on the first issue and avoided any discussion or analysis of whether the punitive damages award was constitutionally excessive. Thus, it remains to be seen how the addition of Chief Justice Roberts and Justice Alito will ultimately affect the Court's consideration of that fundamental question because those Justices have not yet spoken on the issue.

OVERVIEW

The Supreme Court has long held that punitive damages may properly be imposed to further a state's legitimate interests in punishing unlawful conduct and deterring its repetition. Nonetheless, the Supreme Court has also held that the Due Process Clause of the 14th Amendment imposes certain procedural and substantive limits on the power of states to impose punitive damages on tortfeasors.

In *Philip Morris*, the Court dealt only with a procedural aspect of punitive damages. According to the Court, a jury may hear evidence of harm to others to show that a company's conduct was reprehensible, which could increase the punitive damages award. But, the Court also made clear that a "jury may go no further than this and use a punitive damages verdict to punish a defendant directly on account of harms it is alleged to have visited on nonparties." According to the majority opinion, permitting a jury to punish a defendant for harms to nonparties would implicate the fundamental due process concerns that gave rise to the constitutional scrutiny of punitive damage awards – risks of arbitrariness, uncertainty and lack of notice.

The Court, however, failed to draw a clear line between the impermissible consideration of harm to others and the permissible use of the same facts to determine the "reprehensibility" of the defendant's conduct. For this reason, the actual impact of the *Philip Morris* decision remains uncertain and dependent on the protections adopted by the lower courts in later cases.

CONTACT INFORMATION

If you have questions about the effect of the Supreme Court's decision, please contact:

Rex S. Heinke	310.229.1030	rheinke@akingump.com	Los Angeles
Thomas C. Goldstein	202.887.4060	tgoldstein@akingump.com	Washington
Troy D. Cahill	202.887.4574	tcahill@akingump.com	Washington

Austin	Beijing	Dallas	Dubai	Houston	London	Los Angeles	Moscow
New York	Philadelphia	San Antonio	San Francisco	Silicon Valley	Taipei	Washington, D.C.	