

Larson•King Client Alert: U.S. Supreme Court Considers Additional Limits on Punitive Damage Awards

Only three years after placing due process limitations on punitive damage awards, the U.S. Supreme Court agreed to hear another case that may further expand those limitations. In *Philip Morris USA, Inc. v. Williams*, No. 05-1256, set for oral argument on October 31, 2006, the Supreme Court will address whether federal due process permits a jury to punish a defendant for the effect of its conduct on non-parties -- as opposed to the effect on the named plaintiff alone.

In the *Philip Morris* case, the widow of smoker Jesse Williams sued Philip Morris for negligence and fraud in Oregon state court. The Oregon trial court rejected a jury instruction proposed by Philip Morris that stated punitive damages could not “punish the defendant for the impact of its alleged misconduct *on other persons, who may bring lawsuits of their own* in which other juries can resolve their claims and award punitive damages for those harmed.” (Emphasis added.) The jury ultimately awarded \$800,000 in compensatory damages and \$79.5 million in punitive damages. The Oregon Supreme Court affirmed denial of the jury instruction, and the U.S. Supreme Court agreed to review the case.

Three years ago, the U.S. Supreme Court issued *State Farm v. Campbell*, directing “[e]xacting appellate review” of punitive damage awards and identifying three guideposts for weighing whether an award of punitive damages under state law violates the federal due process clause. 538 U.S. 414, 418-25 (degree of reprehensibility, disparity between actual harm and punitive award, and difference between punitive award and potential civil penalties). In *Campbell*, the court noted it would be rare to have more than a single-digit ratio (9:1) between compensatory damages and punitive damages. 538 U.S. at 425. The *Philip Morris* case may further define the standards and guidelines for reviewing punitive damages awards, by dictating appropriate factors and considerations for the jury in making such an award. There are two issues in *Philip Morris*: (1) whether the due process clause permits a jury to punish a defendant for the effect of its conduct on non-parties, and (2) whether criminal conduct can override the constitutional requirement that punitive damages be reasonably related to the plaintiff’s harm.

While it is too early to tell with any certainty, the *Philip Morris* decision could significantly impact punitive damage awards under Minnesota law. Punitive damages are governed by Minn. Stat. § 549.20, which lists a series of factors to be considered by the jury in connection with an award of punitive damages. One of the factors is the “total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct,” including past and future damage awards to other plaintiffs and criminal sanctions. Under current Minnesota law, this factor is typically applied by the trial court on a remittitur motion and not considered by a jury. See *Mrozka v. Archdiocese of St. Paul and Minneapolis*, 482 N.W.2d 806, 813 (Minn. Ct. App. 1992). The pending U.S. Supreme Court case could change the manner and method of submitting the punitive damage case to the jury for consideration in Minnesota law. Regardless of the ultimate outcome in *Philip Morris*, the issues raised highlight the importance of properly preserving an issue for appellate review by requesting appropriate jury instructions that accurately reflect the substance of the state law at issue.

For further information on the Philip Morris decision, please contact Paula Duggan Vraa, John Bjorkman, or Louise Dovre Bjorkman at 651-312-6500.

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