

Larson·King Client Alert: U.S. Supreme Court Further Limits Punitive Damage Awards: Decision Will Affect Submission of Punitive Case to the Jury

The U.S. Supreme Court has further limited punitive damage awards based upon the due process clause. In a 5-4 opinion filed on February 20, 2007, the Court explicitly held that a jury may not punish a defendant through a punitive award for harm inflicted on non-parties to the lawsuit. In addition, the Court addressed the procedure for implementing this limitation, stating that a state trial court should, upon request, provide assurances and authorize procedures to ensure that the jury does not award damages for harm inflicted on non-parties. *Philip Morris v. Williams*, 2007 WL 505781. This decision is certain to have an impact on how a punitive damage case is presented to a jury.

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.

In its opinion, the Supreme Court held that the federal due process clause forbids a state from using a punitive damage award to punish for harm inflicted on non-parties to the lawsuit. According to the Court, the due process clause prevents a state from punishing an individual without the individual being able to present every available defense, which would be impossible to do with respect to non-parties. Without this limitation, a plaintiff would be asking the jury to speculate on the number of victims and circumstances in which they were injured. The court noted that while evidence of harm to non-parties might be relevant to assess whether conduct was “reprehensible,” the jury could go no further and punish for harm to non-parties.

More importantly, however, the Court addressed the procedural aspects of implementing this limitation on the jury award. If requested, the state court is responsible for providing some form of protection against the risk that the jury will award punitive damages for harm inflicted on non-parties. The Court did not articulate how this was to be accomplished, but presumably, this may include jury instructions, limitation of certain evidence, crafting of the special verdict, and specific admonitions to the jury. While noting states have some flexibility in deciding the appropriate protection for the particular case, the Supreme Court charged state courts with the responsibility of ensuring the jury asks the “right question” and not authorizing procedures that create an “unreasonable and unnecessary risk” of jury confusion.

The Court’s decision is certain to have a significant impact on submission of the punitive damage case to the jury. Each state has different statutory or common law guidelines and procedures governing punitive damage claims. Some states have outright caps imposed by the court after a jury award is made. *See, e.g.*, V.T.C.A. § 41.008(b) (imposing cap on punitive damages for most cases under Texas law). Other states, like Oregon, have statutory guidelines

The content of this publication is intended for general information purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult legal counsel concerning your situation and any specific legal questions you may have.

for the award of punitive damages, which permit the jury or the court to consider, in awarding punitive damages, whether the defendant has already been punished in prior cases for similar conduct. *See, e.g.*, Minn.Stat. § 549.20, subd. 3 (award may consider all punishment likely to be imposed upon defendant for similarly situated persons, but under common law, this factor is typically applied by the court).

The Court's decision goes a step further, by requiring due process protection at the time that the case is submitted to a jury. Each individual state will need to weigh their current protections against the constitutional limitations espoused in the *Philip Morris* case, depending on the case. In addition, defendant must be careful to request such appropriate protections through jury instructions, special verdict forms, and evidence limitations, and to preserve error if such protections are denied.

For further information on the Philip Morris decision or counseling concerning its import, please contact Paula Duggan Vraa (the author of this alert) or any other attorney at Larson King at 651-312-6500.