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Supreme Court dismisses appeal in tobacco case with \$79.5 million verdict

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By [Warren Richey](#) | Staff writer of *The Christian Science Monitor*

WASHINGTON

After a 10-year court battle, the widow of a lifelong smoker will finally be able to collect her portion of a \$79.5 million punitive-damages award against tobacco company Philip Morris.

The development came Tuesday with a surprise announcement that the US Supreme Court had decided to dismiss the tobacco company's appeal without reaching any decision on pending issues.

The action left undisturbed an earlier decision by the Oregon Supreme Court upholding the award to Mayola Williams.

The case was considered one of the most important of the current term because it suggested the justices were headed into an unprecedented showdown with the Supreme Court of Oregon.

The Oregon court has previously upheld the \$79.5 million verdict. In contrast, the US Supreme Court has suggested that it might amount to excessive punishment.

Rather than address the excessive-damages issue itself, the US Supreme Court twice sent the case back to the Oregon courts. Both times, instead of reducing the verdict, the Oregon high court affirmed it. In early 2008, it did so by citing state law grounds beyond the scope of the US Supreme Court's remand order.

Some analysts viewed that action as open defiance of the US Supreme Court. Others defended the Oregon high court's approach. Regardless, the stage appeared set for judicial fireworks.

Until Tuesday.

Rather than a fiery exchange, *Philip Morris v. Mayola Williams* ended with a fizzle.

"The writ of certiorari is dismissed as improvidently granted," the court said in its one-line order.

Critics of the tobacco industry claimed victory since the dismissal left in place the large verdict against Philip Morris. Other analysts cautioned that it is impossible to know why the justices decided to dismiss the case three months after hearing oral arguments.

Ms. Williams's lawyer, Robert Peck, told the Associated Press the outcome suggests that larger punitive-damages awards are merited in cases where the underlying behavior is "sufficiently reprehensible."

Tobacco company officials disagreed. "Today's decision does not impact the court's earlier decisions on punitive damages," said Murray Garnick, associate general counsel at Altria, in a statement. Altria is the parent company to Philip Morris.

In 1999, an Oregon jury delivered a verdict in a case alleging that cigarette-maker Philip Morris engaged in a massive fraud against one of its best customers.

Williams said her late husband, Jesse, trusted the company when it played down warnings that cigarettes can be hazardous to your health. Mr. Williams smoked three packs a day until his lung-cancer diagnosis and death in 1997.

Philip Morris denied the fraud allegations. Lawyers for the company argued that the health hazards of cigarette smoking are widely known and that its customers accept those health risks when they purchase tobacco products.

In closing arguments, lawyers for Ms. Williams urged the Oregon jury to punish Philip Morris, not just on behalf of her husband, but for the thousands of other smokers duped or misled by the tobacco company.

Philip Morris lawyers responded by asking the trial judge to issue an instruction to the jury that any verdict be based on harms allegedly done to Mr. Williams, not to unidentified other smokers.

The judge declined to give the company's suggested instruction to the jury.

The jury found that Philip Morris had engaged in a fraud while marketing its cigarettes, and it assessed punitive damages of \$79.5 million. The jury also awarded compensatory damages to Ms. Williams of \$821,000.

Estimates are that with interest, the punitive-damages award now totals more than \$155 million.

The tobacco company has been urging the Supreme Court to strike down the \$79.5 million verdict as unconstitutionally excessive. But the justices are sharply split on the issue, and the high court declined to address the excessive punitive-damages question head on in the Williams case.

Instead, in 2007, the court took issue with the trial judge's refusal to give the jury instruction requested by Philip Morris.

The justices ruled that as a matter of constitutional law, jurors cannot directly punish a company for harm caused to other alleged victims who are not named parties in the lawsuit. The court then remanded the case back to the Oregon courts with instructions to "apply the standard we have set forth."

The majority justices suggested that application of the new constitutional standard "may lead to the need for a new trial, or a change in the level of the punitive damages award."

Rather than apply the new standard to the case, the Oregon Supreme Court upheld the \$79.5 million verdict. It did so on state-law grounds, thus bypassing the Supreme Court's instructions.

"There is little doubt that the Oregon Supreme Court engaged in procedural gamesmanship to sidestep constitutional limits on its powers that it doesn't like," said Richard Samp, chief counsel of the Washington Legal Foundation, in a statement. "[Tuesday's] action is disappointing because it allows the Oregon courts to get away with that sleight of hand."

Mr. Samp added, "Excessive punitive damages represent a grave threat to property rights and the ability of American businesses to compete in the world economy."

Edward Sweda of the Tobacco Products Liability Project praised the high court's dismissal. "I am especially delighted that the Williams family has finally achieved victory in its attempt to hold Philip Morris accountable in a court of law for its reprehensible misconduct," he said in a statement.

Various business groups in Oregon were hoping the US Supreme Court might provide solid answers and clear law on the punitive-damages issue.

"The disappointing thing from the standpoint of the associations that we represented in this is that we don't know why the court suddenly decided it was no longer interested in deciding the merits of the case," says Thomas Brown, a Portland lawyer who filed a friend-of-the-court brief on behalf of Associated Oregon Industries and other business groups.

For its part, the Oregon Supreme Court has seemed to address concerns about its ruling in the Philip Morris case. It did so in another punitive-damages case that was decided in March 2008.

In that case, *Goddard v. Farmers Insurance*, the Oregon court applied restraints established by the US Supreme Court in punitive-damages decisions issued in 1996 and 2003. The Oregon court said it was limiting punitive damages in the *Goddard* case to a 4-to-1 ratio of punitive damages to compensatory damages.

The court went on to say that such a single-digit ratio was almost always appropriate except in a few narrow circumstances such as the "extraordinarily reprehensible conduct" of Philip Morris in the Williams case.

It remains unclear precisely how much of the \$155 million Ms. Williams will receive. Under state law, 60 percent of the award is to be turned over to a state crime-victims fund.

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