Legal Opinion Letter

Washington Legal Foundation
Advocate for freedom and justice®
2009 Massachusetts Ave., NW
Washington, D.C. 20036
202.588.0302

Vol. 13 No. 10 April 25, 2003

SHOCKING STATE JURY AWARD HIGHLIGHTS DEEP FLAWS IN CIVIL JUSTICE SYSTEM

by
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Late last year, a California jury issued a watershed verdict when it awarded a single plaintiff $28 billion in punitive damages against Philip Morris Inc. for smoking-related injuries. While the size of the award is quite remarkable, it is perhaps all the more significant because over-the-top verdicts are predictable in a system where jurors are given little direction for when and how to award punitive damages. Whatever one may think about cigarette manufacturers or Philip Morris, this case demands attention because it so clearly demonstrates the capriciousness of our current punitive damages system and serves as a warning to any current or potential corporate defendant.

In *Bullock v. Philip Morris*, Los Angeles County Superior Court Case No. BC249171, a smoker diagnosed with lung cancer asserted claims against Philip Morris, alleging that the company fraudulently denied the health risks and addictive nature of smoking, and targeted youth with its advertising and marketing over the several decades during which the plaintiff smoked. At trial, Philip Morris acknowledged that smoking causes fatal diseases and is addictive, but noted that the plaintiff had done little to show she ever heard or relied on the company's statements she presented.

The plaintiff's punitive damages case then sought to encourage the jury to punish Philip Morris for much more. For example, the plaintiff argued the company should be punished for *all* illnesses that result from tobacco use, irrespective of any correlation to the company's allegedly wrongful statements about tobacco health risks and addictive nature. The plaintiff also pointed not only to other Californians allegedly harmed by tobacco products, but also emphasized the numbers of smokers nationwide. And finally, the plaintiff encouraged the jury to award an extreme amount of punitive damages, asking for $6.6 to $20 billion, and suggested that the jury need not pay heed to even vague instructions that directed it to limit any punitive award to an amount bearing a "reasonable relationship" to plaintiff's harm.

The extra-territorial, industrywide message had its desired effect. The jury awarded $850,000 in compensatory damages, and 33,000 times more than that — $28 billion — in punitive damages, or $1 million for each of 28,000 deaths the plaintiff attributed to tobacco use. Although the trial judge reduced the award to $28 million, the amount of the original award as well as the tactics used by plaintiff to get there strongly

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suggest that the only appropriate remedy was an entire new trial, rather than just a reduction in the punitive damage award. The case is now on appeal, with the plaintiff seeking to have the original punitive damages amount reinstated.

Due process under the federal Constitution requires reasonableness in punitive damage awards. *BMW of N. America, Inc. v. Gore*, 718 U.S. 559 (1996); *see also Neal v. Farmers Ins. Exch.*, 21 Cal. 3d 910, 928 (1978). Instead of punitive damages bearing a "reasonable relationship" to the $850,000 compensatory damage award, the jury's punitive damage award was 33,000 times that amount. Even without any bright-line rule setting maximum ratios between compensatory and punitive damages, the ratio in *Bullock* was so excessive, it could not stand. And, even the reduced punitive damage award of $28 million is 33 times the amount of compensatory damages, a ratio that exceeds the single digit ratios the United States Supreme Court has suggested are at "the line" of constitutional propriety. *State Farm Mut. Auto. Ins. Co. v. Campbell*, ___U.S. ___, 2003 WL 1791206, *11 (U.S. Apr. 7, 2003) (No. 01-1289).

The *Bullock* punitive award is not the first time Philip Morris has paid for this conduct. Rather, the same conduct has formed the basis of numerous other smoking-related lawsuits and supported other very large punitive damage awards. These include *Henley v. Philip Morris Inc.*, 93 Cal. App. 4th 824 (2001), in which the jury's $51.5 million punitive award was reduced by the trial court to $26.5 million, and *Boeken v. Philip Morris Inc.*, in which the jury's $3 billion punitive award was reduced to $106 million. And these will not be the last of such cases either, as the plaintiff's attorney in *Bullock* has packaged this evidence in a litigation kit he calls "Tobacco Trial in a Box."

In addition, several state attorneys general also sued the company based on this conduct, and that litigation resulted in a Master Settlement Agreement requiring hundreds of billions of dollars in payments, including approximately $20.5 million to California. The agreement also restrains Philip Morris' conduct with regard to targeting youth with advertising or marketing, and prohibits Philip Morris from suppressing research on the health effects of tobacco or making misrepresentations of fact regarding the health risks of tobacco.

Yet despite all of this litigation, each time a jury is asked to impose punitive damages, it examines Philip Morris' conduct afresh, and imposes its own punishment without regard to any previously-imposed or possible future punitive damages awards. This sort of over-deterrence stretches the constitutional limits on punitive awards, overlooking the checks that should exist when a defendant's cumulative punishment goes beyond any rational deterrent purpose. Once again, the Supreme Court has signaled that this kind of multiple punishment for the same conduct, particularly where it extends to activities or injuries occurring outside the state where the litigation is pending, goes beyond constitutional bounds. *State Farm Mut. Auto. Ins. Co. v. Campbell*, ___U.S. ___, 2003 WL 1791206, *9 (U.S. Apr. 7, 2003).

Moreover, it is unclear that any punitive damage award would be necessary to deter future misconduct by Philip Morris. Plaintiff's evidence related mostly to positions taken by the company years or even decades ago regarding the relationship between smoking and disease, and whether smoking is addictive. But most recently — including at trial — the company has acknowledged that smoking causes fatal diseases and is addictive. And to the extent any additional enforcement is needed, the Master Settlement Agreement between Philip Morris and several states' attorneys general provides an additional policing mechanism to ensure good behavior.

Campbell and *Gore* make clear that constitutional protections enforced post-trial and on appeal may provide some measure of relief against excessive punitive awards. But those constitutional standards are not always applied with the same rigor in all courtrooms, and they may not provide clear enough standards to properly limit the scope of the evidence or jury arguments that are relied on to produce awards of the magnitude in *Bullock*. Some articles reporting on the *Bullock* case have suggested that record-setting punitive verdicts like this one reflect juror anger over recent corporate scandals like those surrounding Enron and Worldcom. Whatever the motivations, courts must do more at the front end to ensure that jurors are applying well-defined criteria to appropriate arguments. Otherwise, corporate defendants will continue to face unchecked, multiple punishments for the same wrongful conduct. No matter how large or profitable the defendant, this is not an appropriate end result for a fair and unbiased system of justice.

ISBN 1056 3059