

Business Insurance

High court vs. Oregon goes into third round

By MARK A. HOFMANN
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WASHINGTON—The U.S. Supreme Court will decide whether a state Supreme Court can ignore its directive to apply constitutional review to punitive damages awarded to the wife of a longtime smoker.

The nation's high court last week agreed to decide whether the Oregon Supreme Court was right or wrong when it did just that and upheld \$79.5 million in punitive damages awarded in Phillip Morris USA Inc. vs. Mayola Williams.

It is the third time the U.S. Supreme Court is taking up the closely watched case, a move praised by advocates of limiting punitive damages.

In a suit against Phillip Morris brought by Ms. Williams, an Oregon jury in 1999 awarded the widow of the longtime smoker \$821,000 in compensatory damages and \$79.5 million in punitive damages after her attorney asked jurors to consider other people harmed by cigarette smoking in Oregon over 40 years.

But based on its 2003 ruling in State Farm Mutual Insurance Co. vs. Curtis Campbell et ux., in which it said punitive damages that exceed single-digit multiples of compensatory damages are generally unacceptable, the U.S. high court in 2003 ordered the Oregon court to reconsider the \$79.5 million, which was nearly 100 times the amount awarded in compensatory damages. The Oregon Supreme Court disagreed, and upheld the \$79.5 million in punitive damages.

Last year, the U.S. high court overruled the Oregon court and told it to apply a due process standard to punitive damages award. Instead, the Oregon court examined whether Philip Morris sought to have jurors given an erroneous instruction under Oregon law. Finding that the tobacco company had done so, the Oregon court again upheld the award.

Philip Morris appealed, asking the U.S. Supreme Court to decide whether the Oregon court acted correctly by raising the erroneous jury instruction issue for the first time and to re-examine whether the punitive damage award passed constitutional muster.

Last week, the U.S. high court declined to take up the question of excessiveness, but did agree to review the jury instruction issue.

Advocates of limits on punitive damages, nonetheless, hailed the move.

"This is much more important than just a punitive damages case," said Quentin Riegel, vp-litigation for the National Assn. of Manufacturers in Washington. "The issue is whether a state court can disobey the U.S. Supreme Court's order remanding the case and decide the case on state law grounds."

"Not only did the Oregon court initially make a ruling that was unconstitutional, but then it made a ruling that ignored the decision by the Supreme Court," Mr. Riegel said. "Virtually any issue that can be resolved under state law that may have some federal question involved could be subject to the same procedure."

"This is really great news," said Robin Conrad, executive vp of the Washington-based National Chamber Litigation Center Inc., which handles litigation for the U.S. Chamber of Commerce. The court has sent a message to the lower courts that they can't thumb their noses at U.S. Supreme Court decisions."

"The issue of refusing to follow the court's mandate is a big issue," Ms. Conrad said. "It looked like the Oregon Supreme Court reached out to grab any reason not to follow what the Supreme Court said—and that was flagrant."

The attorney who argued Ms. Williams case before the high court disagreed.

"It's not a big deal," said Robert S. Peck, president of the Center for Constitutional Litigation P.C. in Washington. "I think that the case is going to have very little to say about punitive damages. Clearly what the court is interested in is whether Oregon was ignoring them or doing what courts are supposed to do—that is making sure they've considered the due process rights of not just one party, but of all parties," he said.

"Philip Morris labeled it defiance of the U.S. Supreme Court. We suggested (Oregon Supreme Court justices) were only doing what they were supposed to do," Mr. Peck said.

Glenn Lammi, chief counsel of the legal studies division at the **Washington Legal Foundation**, predicted the justices would back Philip Morris.

"It's rare for the Supreme Court to take up a case that they'd previously ruled," Mr. Lammi said. "The Oregon Supreme Court had basically done an end run around the Supreme Court. I can't imagine the court would take it to reverse itself and set aside two decades of precedent. Basically they're going to tell the Oregon Supreme Court, 'We meant it the first time. We mean it this time.'"

Phillip Morris USA Inc. vs. Mayola Williams, U.S. Supreme Court No. 07-1216.
