WLF Washington Legal Foundation
Advocate for freedom and justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302

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CALIFORNIA HIGH COURT BLOCKS PUNITIVE AWARD OF "DISGORGEMENT"

(*Johnson v. Ford Motor Co.*)

The Supreme Court of California today rejected a $10 million punitive damages award in a consumer fraud case, ruling that the trial court had erred by basing the award on the disgorgement of all profits earned by the defendant during its alleged wrongful conduct against consumers who were not involved in the case. The ruling was a victory for the Washington Legal Foundation, which had filed a brief opposing the punitive damages award.

The lawsuit was filed under California's Song-Beverly Consumer Warranty Act, which requires various disclosures to car buyers and requires various remedies for consumers who experience persistent trouble with a newly-purchased car. The dealer in the case was found to have significantly misrepresented the repair record of a used Ford Taurus. The purchasers of the car brought suit and settled with the dealer, but went to trial against Ford Motor Co. The purchasers argued that Ford had saved between $6 million and $10 million per year in California by providing customers with discounts on trade-ins rather than buying back defective cars. At trial, the jury awarded compensatory damages of $17,811.60 as well as the $10 million punitive award.

On appeal, the Court of Appeal of California, Fifth Appellate District, found that the trial court had failed to assess the punitive award properly under the guidelines established by the U.S. Supreme Court to protect the due process rights of defendants. The plaintiffs sought review in the state's High Court.

In today's decision, the Supreme Court held that the plaintiffs had failed to justify the $10 million punitive award. While declining to decide "whether a plaintiff could ever, consistent with due process, justify the size of an award on a total profits basis," the Court found the plaintiffs had, in any event, not proven the amount of profits at issue. The Court stated that the plaintiffs had engaged in speculation in assuming that all of the incidents in which Ford gave discounts to dissatisfied customers represented viable cases under the Song-Beverly law. The Court further stated that the plaintiffs' argument was improperly speculative in assuming that all of the discounts reflected fraudulent concealment on Ford's part. The Court remanded the case to the appeals court for further consideration of evidence regarding Ford's practices.

Susan Liebeler of Malibu, California represented WLF as local counsel in the case on a *pro bono* basis.

WLF is a public interest law and policy center with supporters nationwide. It has frequently litigated in opposition to excessive punitive damages awards. It has appeared as *amicus curiae* in all major punitive damages cases before the U.S. Supreme Court in recent years, and has also filed briefs in California and other State courts addressing the constitutionality of punitive damages awards. WLF filed a brief in a companion case to *Johnson v. Ford Motor Co.*, the punitive damages case *Simon v. San Paolo Bank U.S. Holding Co.* In addition, WLF has sought to educate policymakers about punitive damages issues through numerous policy papers published by its Legal Studies Division.

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WLF's brief is posted on its web site, http://www.wlf.org. For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302.