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# SUPREME COURT REVISITS CONSTITUTIONAL LIMITS ON PUNITIVE DAMAGES

by

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Punitive damages are once again on the U.S. Supreme Court's docket. On October 31, the Justices will hear arguments in *Philip Morris USA v. Williams*, a case that will likely provide the latest chapter in the Court's developing punitive damages jurisprudence.

In contrast to the Court's recent punitive damage decisions—*BMW v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003)—each of which involved commercial disputes—*Williams* is a personal injury case. As product manufacturers and other corporate defendants can attest from experience, the dangers of arbitrary and excessive punitive damage awards are heightened in such cases, as the presence of personal injury often leads courts to misapply the three due process guideposts—reprehensibility, ratio, and comparable penalties—that the Supreme Court has determined govern and limit punitive damage awards.

This case exemplifies the problem. Plaintiff Mayola Williams, the widow of a smoker, sued Philip Morris USA, asserting fraud and negligence claims in connection with the death of her husband from lung cancer. An Oregon jury awarded her \$821,485 in compensatory damages and \$79,500,000 in punitive damages—a ratio of nearly 100 to 1. After the Oregon courts upheld the award, the United States Supreme Court accepted the case for review, vacated the judgment, and remanded for reconsideration in light of its newly-issued decision in *State Farm*, which had clarified and strengthened the three due process guideposts. On remand, however, the Oregon courts again upheld the award, essentially ignoring the *State Farm* standards.

In the key portion of its analysis, the Oregon Supreme Court seemed to acknowledge that the ratio between actual damages and the punitive damage award was excessive, conceding that “the second *Gore* guidepost is not met” in that “[a]ll arguable versions of the ratios substantially exceed the single-digit ratio (9:1) that the [United States Supreme] Court has said ordinarily will apply in the usual case.” 127 P.3d at 1181. Nonetheless, the court explained, “the other two guideposts—reprehensibility and comparable sanctions—can provide a basis for overriding the concern that may arise from a double-digit ratio.” *Id.*

The court's holding that the ratio guidepost may be “overridden” any time a court concludes that the defendant acted with a high level of reprehensibility fundamentally misreads *State Farm* and *Gore*. The principle of proportionality—that a civil sanction must be reasonable and proportionate to the harm committed by the defendant—has a long pedigree in American constitutional and common law. In the context of punitive

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damages, the Supreme Court has repeatedly “endorsed the proposition that a comparison between the compensatory award and the punitive award is significant,” *Gore*, 517 U.S. at 581, most recently in *State Farm*, where the Court emphasized that “courts *must* ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered.” 538 U.S. at 426 (emphases added).

The Supreme Court has never suggested that the three due process guideposts are independent factors that may offset or trump one another, or that courts are free to come up with their own individual subjective balancing in every case. To the contrary, each guidepost operates separately to confine a punitive damage award to a constitutionally acceptable level that reflects fair notice of the severity of the penalty that may be imposed. Consequently, although reprehensibility may move the acceptable ratio within the established range of proportional damages, it does not render the ratio guidepost inapplicable.

The Oregon Supreme Court’s approach drains the due process guideposts of any constraining force. In this regard, the court’s decision to “construe all facts in favor of plaintiff, the party in whose favor the jury ruled,” 127 P.3d at 1177, is particularly misguided. This approach would permit a court, as the Oregon court did in this case, to defer to the plaintiff’s version of events, deem the defendant to have engaged in “highly reprehensible” conduct based on that skewed depiction, and then declare the ratio guidepost inapplicable. This is the equivalent of a presumption in favor of large punitive damages—the antithesis of “due process.”

The ratio guidepost is particularly important in product liability cases. Lawsuits alleging that a defective product harmed a consumer are a modern development that did not exist when the due process clause was applied to the states in the Fourteenth Amendment, and pose heightened dangers of arbitrary awards. Indeed, Justice O’Connor has singled out “the advent of product liability” as a reason for the “[r]ecent . . . explosion in the frequency and size of punitive damages awards.” *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 61-62 (1991).

Product liability cases often present tragic circumstances involving death or serious injury, and the risks that juror passion, prejudice or sympathy will result in an unwarranted punishment are particularly high. Compensatory damages in such cases are often substantial, and may include significant non-economic damage components for emotional distress or pain and suffering.

Moreover, because most products are mass-produced, plaintiffs’ attorneys almost always argue—as they did in this case—that the jury should use its verdict to impose punishments for other purchasers of the product, even when there is no evidence that those other purchasers have suffered any harm. Such arguments violate *State Farm*, which made clear that “[d]ue process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties’ hypothetical claims against a defendant under the guise of the reprehensibility analysis.” 538 U.S. at 423. That is because “[p]unishment on these bases creates the possibility of multiple punitive damages awards for the same conduct; for in the usual case nonparties are not bound by the judgment some other plaintiff obtains.” *Id.*

In this case, although Philip Morris had requested that the jury be instructed that punitive damages must bear a reasonable relationship to the plaintiff’s harm—and that it could not punish Philip Morris for conduct that harmed persons other than the plaintiff—the court refused. 127 P.3d at 1175-76. In *State Farm*, the Supreme Court held that juries *must* be instructed on the constitutionally-imposed territorial limitations on punitive damages. 538 U.S. at 422. An important question before the Court in *Williams* is whether juries should likewise be instructed on the constitutional requirement of proportionality and the prohibition on punishing for harm to a universe of parties not before the court.

As the Oregon Supreme Court’s ruling illustrates, many courts persist in misapplying *State Farm*, upholding awards that are grossly excessive and plainly unconstitutional. *Williams* is an excellent opportunity for the Court to clarify and strengthen the procedural and substantive limitations on punitive damages, and to ensure that lower courts stop refusing to obey the Constitution in evaluating and restricting punitive damage awards.