



For Immediate Release

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SUPREME COURT URGED TO REQUIRE *DE NOVO* REVIEW OF PUNITIVE DAMAGES *(Cooper Industries, Inc. v. Leatherman Tool Group, Inc.)*

The Washington Legal Foundation (WLF) filed its brief with the Supreme Court yesterday urging it to reverse an opinion of the U.S. Court of Appeals for the Ninth Circuit that gave cursory appellate review of the imposition of excessive punitive damages. Instead, WLF argued that because excessive punitive damages violate the Due Process Clause, an appellate court must provide independent or *de novo* review of the trial court's ruling on the issue as several other circuit courts of appeals have done.

In this case, Leatherman Tool Group, a tool manufacturer, developed, and marketed a multi-function hand tool called a Pocket Survival Tool, but never received a patent for the device. Cooper Industries later developed a similar tool called ToolZall, but its marketing department used a modified copy of Leatherman's tool in its promotional literature. Leatherman filed an unfair competition and "trade dress" infringement action against Cooper. A jury awarded Leatherman \$50,000 in compensatory damages as well as \$4.5 million in punitive damages, an amount which exceeded the compensatory award by a factor of ninety. The district court upheld the award as not being constitutionally excessive under the Supreme Court's 1996 decision in *BMW v. Gore*, and the court of appeals upheld the award giving it only a cursory review.

WLF argued in its brief, along with WLF's client Allied Educational Foundation, that because the Supreme Court has ruled in other cases that an independent or full *de novo* review is required when reviewing lower court decisions involving the deprivation of other constitutional rights, that same standard of review should be used to review the constitutionality of excessive punitive damages awards.

WLF's brief was filed with the *pro bono* assistance of Arvin Maskin, Konrad L. Cailteux, and Joanne M. McLaren of the New York law firm of Weil, Gotshal & Manges.

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For further information, contact Paul D. Kamenar, WLF's Senior Executive Counsel, at 202-588-0302.