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## COURT URGED TO OVERTURN \$23 MILLION PUNITIVE DAMAGE AWARD

*(Rhyne v. Kmart Corp.)*

Last week the Washington Legal Foundation (WLF) filed a brief with the North Carolina Appeals, urging the court to overturn a \$23 million punitive damage award imposed on Kmart Corporation.

This case stems from a fight between a married couple and two security guards hired by Kmart. The couple sued the guards and Kmart for various injuries. At trial the jury found Kmart liable and awarded the plaintiffs approximately \$19,000 in compensatory damages. During the punitive damages phase of the proceedings, the plaintiffs' attorney argued that Kmart should be assessed punitive damages because of its unwillingness to voluntarily turn over certain documents during discovery. Despite the judge's admonition that this argument landed plaintiffs' counsel on "perilous ground," the jury was allowed to base its deliberations on this discovery-related conduct. The jury awarded \$23,000,000 in punitive damages to the plaintiffs, an amount more than 1,000 times the actual damages in the case. Conceding that he was bound by a state punitive damages cap, the judge reduced that award to \$500,000. The plaintiffs appealed the judge's decision, arguing that the statutory cap violated the state constitution and asking the court to restore the original award of \$23 million. Kmart cross-appealed, challenging the legality of imposing punitive damages based on discovery-related conduct and claiming that the original award, if restored, would violate its rights under the federal constitution.

In its brief filed with the court, WLF raised three arguments. First, it argued that, no matter how the court of appeals resolves the plaintiffs' challenge to the state punitive damages cap, Kmart's federal claim retains its vitality. That claim is premised on the U.S. Supreme Court's determination that a "grossly excessive" punitive damage award infringes a defendant's right to due process of law under the Fourteenth Amendment to the U.S. Constitution. WLF asserted that an award of \$23,000,000 in punitive damages on the record of this case manifestly violates that principle. Second, WLF demonstrated that Kmart's federal claim stands independent of any state constitutional challenge raised by the plaintiffs. WLF cautioned that even if the court of appeals were to strike down the North Carolina punitive damage cap as unconstitutional under *state* law, Kmart's *federal* constitutional claim raised in defense of the original punitive damage award would prevent the court from

automatically restoring that award if it is "grossly excessive." Third, WLF pointed out that a decision restoring the \$23 million award on any ground would deny Kmart's federal constitutional rights and that, consequently, the U.S. Supreme Court would ultimately retain jurisdiction to review and reverse that award.

"Outrageous punitive damage awards like the one in this case injure consumers and businesses alike," said Shawn Gunnarson, WLF's Senior Counsel for Litigation Affairs. "We trust that the North Carolina Court of Appeals will affirm the General Assembly's authority to limit such awards and reverse the unwarranted verdict against Kmart."

The Washington Legal Foundation is a public interest law and policy center with supporters in all fifty states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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