

May 16, 2001

SUPREME COURT RULES PUNITIVE DAMAGES ARE SUBJECT TO *DE NOVO* REVIEW

(*Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*)

In a major victory for the Washington Legal Foundation (WLF), the U.S. Supreme Court earlier this week reversed the U.S. Court of Appeals for the Ninth Circuit, and held that appellate courts must provide independent or *de novo* review of a trial court's determination of the excessiveness of punitive damages awarded by juries. The Court held that because punitive damages are private fines intended to punish the wrongdoer, both the Due Process Clause and the Excessive Fines Clause of the Eighth Amendment are implicated by such awards. Consequently, these questions of law should be reviewed *de novo* rather than on a less rigorous abuse-of-discretion standard that is typically used by appellate courts to review factual issues.

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, 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 90. The district court upheld the award as not being constitutionally excessive under the Supreme Court's 1996 landmark decision in *BMW v. Gore*, and the Ninth Circuit upheld the award giving it only a cursory review under the abuse-of-discretion standard.

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.

In an opinion for the Court written by Justice Stevens, the Court agreed with WLF's argument. The Court compared its role in reviewing the excessiveness of punitive damages to its review of other constitutional issues, such as the meaning of "probable cause" or "reasonable suspicion" in a particular case. In those cases, the independent review by the Court was deemed to be necessary in order to provide a uniform and clear

body of law that lower courts can apply with some predictability.

While the Court's holding focused on the proper legal standard of review, the Court nevertheless questioned the excessiveness of the particular punitive damages award in this case. In particular, the Court focused on the three criteria it had announced in *BMW v. Gore* in assessing the excessiveness of a punitive damages award: (1) the degree of the defendant's reprehensibility or culpability; (2) the relationship between the penalty and the harm to the victim caused by the defendant's actions; and (3) the sanctions imposed in other cases for comparable misconduct. The Court suggested that applying these principles to the facts of this case in a *de novo* fashion could very well have led the court of appeals to decide the issue differently than it did using the abuse-of-discretion standard.

The only dissent in the case was by Justice Ginsberg who felt that the Seventh Amendment's guarantee of a trial by jury would be usurped by *de novo* review by the court. However, as the majority noted, the award of punitive damages by the jury is not a finding of "fact," and thus, the jury's fact-finding role would not be implicated by *de novo* review of the constitutional issues. Justices Thomas and Scalia concurred in the case based upon the Supreme Court's precedent, but made it clear that in their view, there can never be a constitutionally excessive punitive damages award.

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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