

Significant Appellate Decision

**The United States Supreme Court Vacates
\$79.5 Million Punitive Damages Award**

In Philip Morris USA v. Williams, 549 U.S. ___, Slip Op. No. 05-1256 (Feb. 20, 2007), the United States Supreme Court vacated a \$79.5 million punitive damages judgment, holding that a punitive damages award which punishes a defendant for harm caused to individuals who were not parties to the underlying lawsuit is unconstitutional because it results in a taking of property from a defendant without due process.

The Court explained that a defendant has no meaningful opportunity to defend against non-party strangers to a lawsuit, when the defendant does not know who these strangers are, how many there are, how seriously they were injured, or under what circumstances the injuries occurred. Because a jury would be left to speculate regarding such non-party damages, any resulting verdict would necessarily implicate the fundamental due process concerns to which the Court's punitive damages cases refer - arbitrariness, uncertainty, and lack of notice.

Justice Breyer, speaking for the Court in a 5-4 decision, concluded that evidence of harm to others could be relevant to the "reprehensibility" of the defendant's conduct, a proper basis of punitive damages under BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996). However, "a jury may not . . . use a punitive damages verdict to punish a defendant directly on account of harms it is alleged to have visited on nonparties."

The Court held that states must have procedures to protect against juror confusion when considering evidence of harm to others. If you represent parties in cases that include claims for punitive damages, you need to consider how this decision will affect those claims and, in particular, how you will draft jury instructions that comply with the Supreme Court's new decision.

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