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EDITORIAL

Assessing the Damages

The Supreme Court has been struggling to address the thorny question of when, if ever, punitive damages become so large that they violate the Constitution. The court made a good start when it laid down guidelines on when punitive damages are excessive. But eventually, it went too far. Today, it hears arguments in a case that offers a perfect opportunity to pull back to a more reasonable position.

The case involves Philip Morris's challenge to damages awarded to the widow of a smoker who died of lung cancer. An Oregon jury awarded Jesse Williams's widow, Mayola Williams, more than $821,000 in actual damages, and $79.5 million in punitive damages. Mrs. Williams said Philip Morris had engaged in 40 years of publicity to undercut concerns about cigarettes, even though it knew for most or all of that time that smoking was deadly.

The Oregon Supreme Court upheld the punitive damages award. The court said the conduct that Philip Morris was charged with "would have kept many Oregonians smoking past the point when they would otherwise have quit." It said the company's "deceit thus would, naturally and inevitably, lead to significant injury or death."

The Supreme Court has already indicated that at some point punitive damages become so large that they violate due process. But it has done a poor job of identifying that point. Originally, it laid down some reasonable factors for lower courts to consider, including how reprehensible they considered the defendant's conduct. But in 2003, the court put forth the dubious proposition that punitive damages should generally be in a "single digit" ratio to actual damages — so with actual damages of, say, $100,000, punitive damages should be under $1 million.

Constitutional principles can seldom be boiled down to a formula, and it is difficult to see why the court should rein in juries so tightly. The purpose of punitive damages is, the Supreme Court has noted, "punishing unlawful conduct and deterring its repetition." In cases of extremely bad conduct, particularly when a defendant is large and willful, a bigger award may be necessary. In this case, $79.5 million does not strike us as unreasonable. Nor do we see any basis for holding that this jury verdict, affirmed in a thoughtful decision by Oregon's highest court, is a denial of Philip Morris's due process rights.

A final problem with the Supreme Court's rule of thumb on punitive damages is that it has been far less restrictive when it comes to punishing people. In 2003, the court held that California did not violate the ban on cruel and unusual punishment when it sentenced a man under its three-strikes law to 50 years for a theft of $153.53 worth of videotapes. That is a far more disproportionate punishment than Philip Morris got, for far less offensive conduct.