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## US court rules for Philip Morris on damage award

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WASHINGTON: A closely divided US Supreme Court on Tuesday overturned a \$US79.5 million (\$NZ114.9 million) punitive damages award won by the widow of a long-time smoker against Philip Morris.



**SMOKE CLEARED:** The US Supreme Court has overturned a multi-million dollar damages award won by the widow of a longtime smoker. By a 5-4 vote, the high court ruled the huge damages award was unconstitutional because it was intended to

punish the tobacco company for harming not just the plaintiff but other smokers as well.

The court ruled that the company, a unit of Altria Group, could not be punished for harm to other smokers in a case involving Mayola Williams, an Oregon woman whose husband died of lung cancer in 1997 after smoking for more than 40 years.

The case had been closely watched by business groups that wanted the court to impose new limits on punitive damages designed to punish and deter misconduct. The court last placed limits on such awards in 2003.

Legal experts said the ruling could have a big impact on other types of product liability cases, such as lawsuits against drug companies and automakers.

Businesses have long complained that punitive damages are skyrocketing out of control, can be arbitrary, and encourage frivolous lawsuits. Lawyers for those who have been injured defend big awards as a way to get companies to fix harmful product defects.

The ruling is "a victory for big business," said Anthony Sabino, a law professor at St John's University's College of Business in New York. "It puts a heavier burden on plaintiffs to make a strong case for large punitive damage awards."

Justice Stephen Breyer said for the court majority that Philip Morris could not be punished for the harm to those who were not parties in the lawsuit.

He said a punitive damages award based in part on a jury's desire to punish a defendant for harming those who are not parties to the lawsuit amounted to a taking of property from the defendant, violating constitutional due process rights.

Breyer said the Supreme Court did not address the question of whether the award in this case was constitutionally excessive.

Without taking on "that gorilla of a question," the court has nevertheless "drawn a line in the sand that may limit large awards in the future, by requiring juries to only consider injuries to plaintiffs in the

lawsuit," said Steve Benesh, managing partner for law firm Bracewell & Giuliani in Austin, Texas.

Philip Morris had challenged the punitive award as excessive and unfair punishment. But Robert Peck, the lawyer representing the smoker's wife, defended the award she won in her lawsuit for fraud and negligence.

Williams said her husband, a public school janitor in Portland who smoked as many as three packs a day of Marlboros made by Philip Morris, believed the decades of tobacco industry assurances that smoking did not pose a health threat.

In 1999, a jury awarded Williams \$US821,000 in compensatory damages, which was reduced under state law to \$US521,000, and \$US79.5 million in punitive damages. Only the punitive damages were at issue before the Supreme Court.

Philip Morris USA Associate General Counsel William Ohlemeyer said in a statement that Tuesday's ruling gives the company the opportunity "to fully and fairly defend itself in this and other cases." He said the decision ensures that juries "are punishing only for harm caused to the plaintiff, and not to strangers."

Peck was not immediately available to comment on the ruling.

Philip Morris, in its appeal, argued that the Oregon Supreme Court was wrong to rule that the jury can be permitted to punish the tobacco giant for harm suffered by every Oregonian who smoked its cigarettes.

Breyer agreed with the tobacco company's argument. He said the use of the correct standard in this case by the Oregon Supreme Court could lead to a new trial or a change in the level of the punitive damages award.

Donald Zakarin, head of the litigation department at law firm Pryor Cashman Sherman & Flynn LLP in New York, said the ruling might not have gone as far as corporate America - and in particular, Philip Morris - might have hoped. However, he said, "it is one further step, I believe, in clarifying and restricting the availability of punitive damages."

Joining Breyer in the majority were Chief Justice John Roberts and Justices Anthony Kennedy, David Souter and Samuel Alito.

Justices John Paul Stevens, Clarence Thomas, Antonin Scalia and Ruth Bader Ginsburg dissented. They said they would uphold the decision of the Oregon Supreme Court against Philip Morris.

Ginsburg in her dissent cited "abundant evidence" of the potential harm the company's conduct caused. Stevens said he saw no reason why a wrongdoer should not be punished for harming persons who are not parties before the court.

**BECKERMAN**  
PUBLIC RELATIONS