

***MAYER, BROWN, ROWE & MAW LLP'S***  
***SUPREME COURT DOCKET REPORT***  
**MAY 30, 2006**

Today the Supreme Court granted certiorari in one case of interest to the business community. Absent extensions, which are likely, amicus briefs in support of the petitioner will be due on July 14, 2006, and amicus briefs in support of the respondent will be due on August 18, 2006.

***Punitive Damages.*** In *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), the Supreme Court held that the Due Process Clause of the Fourteenth Amendment imposes substantive limits on the amount of punitive damages that may be imposed in a given case. The Supreme Court further set forth three “guideposts” to determine whether a punitive damages award is unconstitutionally excessive: the degree of reprehensibility of the defendant’s misconduct; the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *State Farm*, 538 U.S. at 418.

The Supreme Court today granted certiorari in *Philip Morris USA v. Williams*, No. 05-1256, to address (1) whether, in reviewing a jury’s award of punitive damages, an appellate court’s conclusion that a defendant’s conduct was highly reprehensible and analogous to a crime can “override” the constitutional requirement that punitive damages be reasonably related to the plaintiff’s harm; and (2) whether due process permits a jury to punish a defendant for the effects of its conduct on non-parties.

The case arises out of the claim by a widow of a smoker that Philip Morris defrauded him into believing that cigarettes are not harmful to health. The jury found Philip Morris liable, awarding \$821,485 in compensatory damages and \$79.5 million in punitive damages. The former amount was reduced by the trial court to \$500,000 pursuant to Oregon’s statutory cap. In the decision below, reported at 127 P.3d 1165, the Oregon Supreme Court upheld the \$79.5 million punitive award. In so concluding, it held that the trial court did not err in refusing to instruct the jury that, “[a]though [it could] consider the extent of harm suffered by others in determining what the reasonable relationship is, [it could] not [] punish the defendant for the impact of its alleged misconduct on other persons, who could bring lawsuits of their own.” 127 P.3d at 1175-1176. Furthermore, applying the three guideposts set forth in *BMW* and *State Farm*, the Oregon Supreme Court held that the amount of punitive damages comported with due process, even though the ratio between the amount of punitive damages and the amount of compensatory damages “substantially exceed[ed] the single-digit ratio (9:1) that the Court has said ordinarily will apply,” because “the other two guideposts—reprehensibility and comparable sanctions—can provide a basis for overriding the concern that may arise from a double-digit ratio.” 127 P.3d at 1181.

## *Supreme Court Docket Report*

The two issues that the Supreme Court has agreed to review are of considerable significance to the business community. The question whether a court's subjective finding of high reprehensibility can "override" the more objective requirement of a reasonable relationship between punitive and compensatory damages is one that arises with regularity in business cases. Similarly, the question whether a jury may punish a defendant for harms to non-parties arises in a wide range of cases including in the product-liability, insurance bad faith, Fair Credit Reporting Act, and environmental contexts.

Mayer Brown Rowe & Maw LLP is counsel of record for petitioner Philip Morris USA in this case. This marks the fourth punitive damages case in which Mayer Brown has represented a business defendant in the Supreme Court. Any questions about the case should be directed to Andy Frey (212-506-2635) in our New York office.

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On May 22, 2006, the Supreme Court invited the Solicitor General to file a brief expressing the views of the United States in the following case of interest to the business community:

*Watson v. Philip Morris Cos., Inc.*, No. 05-1284. The question presented is under what circumstances a defendant is a "person acting under a federal officer" for the purposes of removal under 28 U.S.C. § 1442(a)(1), and in particular whether removal under Section 1442(a)(1) is proper when the defendant is being sued for actions that were subject to the direction, control, and supervision of federal officials carrying out official federal functions under federal law.

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**MAYER, BROWN, ROWE & MAW LLP WORLDWIDE**

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**BERLIN**  
Dorotheenstrasse 35  
10117 Berlin  
Germany  
+49.30.2061.3090

**FRANKFURT**  
Bockenheimer Landstrasse 98-100  
D-60323 Frankfurt/Main  
Germany  
+49.69.79.41.00

**PALO ALTO**  
Two Palo Alto Square  
3000 El Camino Square, Suite 300  
Palo Alto, California 94306-2112  
650.331.2000

**BRUSSELS**  
Square de Meeus 35  
B1000 Brussels, Belgium  
+322.502.5517

**HOUSTON**  
700 Louisiana Street, Suite 3600  
Houston, Texas 77002-2730  
713.221.1651

**PARIS**  
41 Avenue Hoche  
75008 Paris, France  
+33.1.53.53.43.43

**CHARLOTTE**  
214 North Tryon Street, Suite 3800  
Charlotte, North Carolina 28202  
704.444.3500

**LONDON**  
11 Pilgrim Street  
London EC4V 6RW  
+44.0.20.7248.4282

**WASHINGTON**  
1909 K Street, N.W.  
Washington, D.C. 20006-1101  
202.263.3000

**CHICAGO**  
71 S. Wacker Drive  
32nd Floor  
Chicago, Illinois 60606-4637  
312.782.0600

**LOS ANGELES**  
350 South Grand Avenue  
25th Floor  
Los Angeles, California 90071-1503  
213.229.9500

**INDEPENDENT MEXICO CITY  
CORRESPONDENT**  
Jáuregui, Navarrete y Nader, S.C.  
Abogados Torre Arcos  
Paseo de los Tamarindos No. 400-B  
Floors 7, 8 and 9  
Col. Bosques de las Lomas  
05120 Mexico, D.F.  
+5255.5.267.45.00

**COLOGNE**  
Kaiser-Wilhelm-Ring 27-29  
50672 Cologne, Germany  
+49.221.577.1100

**NEW YORK**  
1675 Broadway  
New York, New York 10019-5820  
212.506.2500