

Tobacco Manufacturer Wins Dismissal and New Trial of \$20,000,000 Punitive Damages Verdict in Smoker's Wrongful Death Lawsuit

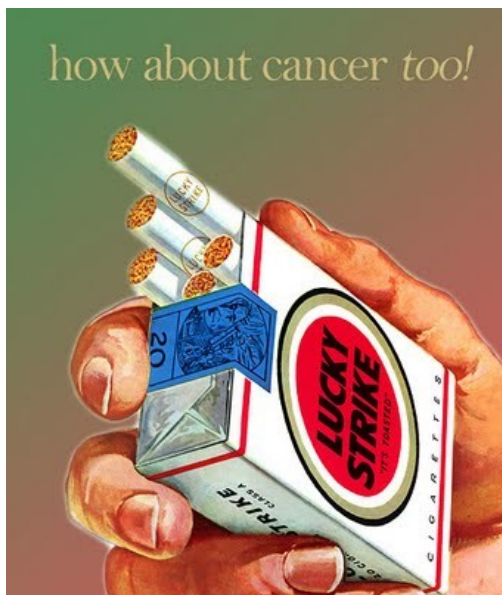
Posted on October 4, 2009 by [John Hochfelder](#)

The purpose of punitive damages in personal injury lawsuits is to act as a punishment to the offensive defendant and as a deterrent or warning to others. They are awarded in addition to the plaintiff's compensatory damages (i.e., pain and suffering, loss of earnings and medical expenses); however, they are only available when a defendant's conduct has a high degree of moral culpability and manifests a conscious or reckless disregard for the rights of others.

Punitive damages are controversial. For example, **Ted Frank at Overlawyered** discusses the issues surrounding tax deductions for punitive damage payments [here](#) and law school professors **Edward Cheng (Brooklyn)** and **Albert Yoon (Toronto)** discuss their unpredictability at **TortsProf Blog** [here](#).

The most recent appellate court decision in New York to deal with punitive damages is **Frankson v. Brown & Williamson Tobacco Corp.**, a smoker's wrongful death lawsuit, in which the decedent's estate was awarded **\$20,000,000 in punitive damages**. That award was vacated this week and a new trial ordered.

It all began in 1954, when Harry Frankson, then 13 years old, started smoking unfiltered **Lucky Strike cigarettes**. Within a year, he was up to a pack a day. After 44 years, he died of lung cancer. There was never a question as to what caused his death – cigarette smoking – but when on July 24, 2000 his widow sued the cigarette maker and others, there was a big question as to whether anyone but Harry bore responsibility for his own death.



After a trial in Brooklyn, New York, the jury on December 18, 2003 found that both Harry and the defendants were at fault (50% each) and that his estate was entitled to **compensatory damages of**

\$350,000 (\$150,000 pre-death pain and suffering, \$200,000 widow's loss of services) before apportionment for comparative fault.

Two weeks later, after a separate hearing, the **same jury found defendants liable for punitive damages in the sum of \$20,000,000**. They based their award on their conclusion that the defendants had wantonly, recklessly, maliciously and fraudulently concealed the health risks of smoking (until 1969 when government warnings became the law).

In a post-trial decision, [here](#), the judge found that the 57 to 1 ratio of punitive damages to compensatory damages was neither sensible nor fair and that \$5,000,000 (a 14 to 1 ratio) was far more fitting and fair.

Defendants appealed, arguing that the reduced \$5,000,000 punitive damages figure was still unfair, indeed constitutionally impermissible, and that the jury was not properly instructed that it could not award punitive damages to punish the defendants for harm to smokers other than Mr. Frankson. The appellate court, [here](#), rejected the defendants' arguments and upheld the \$5,000,000 punitive damages award.

Then, the United States Supreme Court ruled in 2007 in [Phillip Morris USA v. Williams](#) that the 14th Amendment's **due process clause forbids a state from using punitive damages to punish a defendant for injury that it inflicts on non-parties**. That's just what the defendants complained of in Frankson – that the trial judge refused their request to instruct the jury that they could not impose punitive damages for injuries to anyone other than the plaintiff Mr. Frankson. Reaction to this decision, though, was mixed, with some who favor curtailing punitive damages wondering whether the high court judges were finding laws in the constitution that simply do not exist (e.g., **Point of Law**, [here](#)).



Plaintiff's attorney in [Frankson v. Brown & Williamson Tobacco Corp.](#) had argued at trial (improperly as the appellate court later ruled) that the jury should send a message not just to the defendants but to corporate America, that the tobacco industry knew it would expose millions of people to carcinogens resulting in lung cancer and death and that the defendants caused not just Mr. Frankson's death but also the deaths of thousands of others.

So now **this case will go back to the trial court for a new hearing on punitive damages**. This time the jury will be given proper instructions and specifically told that it may not impose punitive damages for injuries to anyone other than Mr. Frankson.

Inside Information:

- The U.S. Supreme court has addressed the issue of punitive damages several times in recent years, expressing its displeasure with the unpredictability of such awards.
- In another case decided after the Frankson trial, **Exxon Shipping Co. v. Baker** (2008), the high court reiterated that its declaration in **State Farm v. Campbell** (2003) that no more than a single-digit ratio of punitive to compensatory damages (i.e., 1 to 1) is constitutional in all but the most exceptional cases. Anything higher than that, the court suggested, would violate the due process clause which prohibits the imposition of grossly excessive or arbitrary punishments on a civil lawsuit defendant.
- The high court's suggested formula would leave the Frankson estate with only \$350,000 in punitive damages to go with the \$350,000 of compensatory damages.

We will follow the Frankson case as it reaches trial again and we will follow our nation's highest court as it revisits the issue of punitive damages and their constitutional limits.