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# Williams v. Phillip Morris

## *Annotated Presentation*

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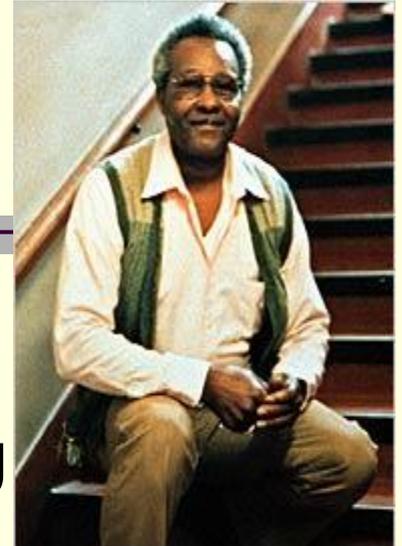
**JOHN STERNE**

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# Facts

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- For 47-years Jesse Williams smoked Philip Morris cigarettes, primarily its Marlboro brand, eventually developing a habit of smoking three packs a day.
- Jesse Williams was highly addicted to cigarettes both physically and mentally. He spent half his waking hours smoking.
- At the urging of his wife and children, Jesse Williams made several attempts to stop smoking. Each time he failed.



# Facts

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- When his family told him that cigarettes were dangerous to his health, he replied, “*The cigarette companies would not sell them if they were dangerous.*” When one of his sons tried to get him to read articles about the threats of smoking, he responded by finding public assertions that smoking cigarettes was harmless.
- When Williams discovered he had inoperable lung cancer he felt deceived, stating “*Those darn cigarette people finally did it, they were lying all the time.*”
- Jesse Williams died six months after his diagnosis.

**Clarity** is achieved by making complicated or abstract information meaningful by providing examples, illustrations, analogies, or metaphors.



s, brought this **tort\*** case against **and\*\*\*** claiming that a 40-year of the tobacco industry undercut of smoking.

s had known for most of the last s, and nevertheless, tried to n that there were legitimate reasons to doubt the hazards of smoking.

- At trial, the jury ruled in favor of Mayola Williams on both counts of negligence and fraud.

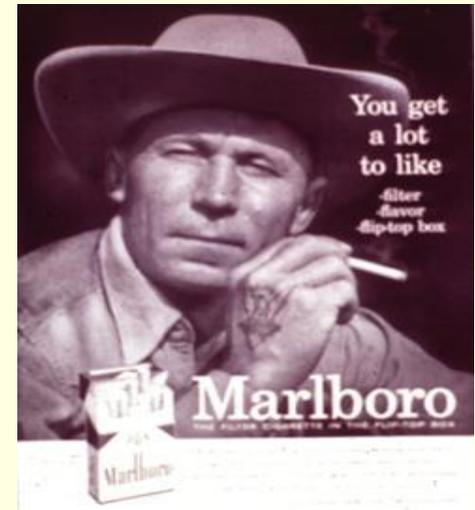
**\*Tort:** a wrongful act that results in injury to another's person, property, reputation, or the like, and for which the injured party is entitled to compensation

**\*\*Negligence:** Failure to exercise the care that a reasonably prudent person would exercise in like circumstances.

**\*\*\*Fraud:** Deception of another person to obtain money or property.

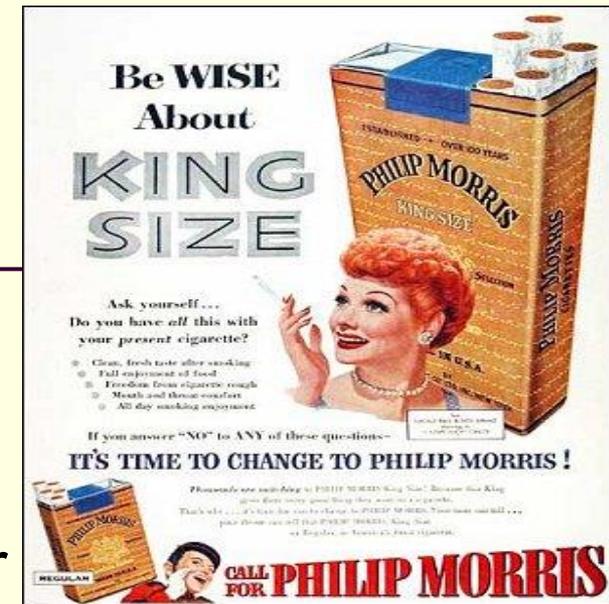
# Facts

- As to the negligence claim, the jury ruled that Jesse Williams and Philip Morris shared fifty-fifty responsibility and declined to award any damages.
- As to the fraud claim the jury ruled, “Philip Morris and the tobacco industry intended to deceive smokers like Williams, and it did in fact deceive him.” Furthermore, the jury found that Philip Morris’s public relations campaign had precisely the effect Philip Morris intended to have and that it affected large numbers of tobacco consumers in Oregon other than Williams.



# Fact

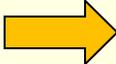
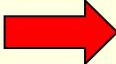
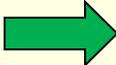
- The jury concluded that between the 1950s and the 1990s, Philip Morris developed and promoted an extensive campaign to counter the effects of negative scientific information on smoking cigarettes. Philip Morris did not directly refute the scientific information that cigarettes were linked to lung cancer as well as other health risks; rather tried to find ways to create doubts about it. For example, in the 1950s-1960s Philip Morris's officials told the public that they would "stop business tomorrow" if they believed that its products were harmful.



# Facts

For **Describing specific details of a concept adds**  
***PRECISION***

**Compensatory damage is** is an amount of money that the court believes will restore a person to the position they were in before the defendant's conduct caused injury. This includes. . .

-  ■ Money for past, present and future medical expenses.
-  ■ Money for past, present and future lost wages.
-  ■ Money for pain and suffering the plaintiff may have gone through.

Correctly introducing the parties,

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## Procedural history details. . .

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1<sup>st</sup>. When motion was initiated

■ The jury's award did not stand. The judge reduced the  
2<sup>nd</sup>. Trial Courts finding 10,000. The trial court  
also concluded that the \$79.5 million punitive damage

3<sup>rd</sup>. Basis of appeal "standards,"  
reducing the punitive damages to \$32 million.

4<sup>th</sup>. Appellate Court ruling

■ Both Williams and Philip Morris appealed to the  
Oregon State

5<sup>th</sup>. Foundation of appeal

6<sup>th</sup>. Supreme Court decision

# Point of View

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## Mayola Williams:

- From Mayola Williams' point of view Philip Morris had been convicted of perpetuating one of the longest lasting fraud campaigns in American History.
- Moreover Mayola Williams believes Philip Morris shares a significant responsibility for the loss of her husband, their children's loss of a father, their grandchildren's loss of a loving grandfather, and that the \$79.5 million award would be a small price to pay in comparison to her family's grief.

# Point



The plaintiff and defendants points of view are only two pieces of a much larger pie. **Breadth** refers to the ability to see beyond one's self in order to recognize multiple views. For example, how might we view a case from an economic, political, environmental, moral, religious, conservative, or liberal point of view.



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# Point of View

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## Tobacco Industry:



### *Depth*

Adding interesting (relevant) details from outside the text book such as facts, figures, articles, or statistics are good strategies you could use to, not only add depth, but also credibility.

expenditures on tobacco products in the United States were estimated to be \$88.8 billion in 2005, of which \$82 billion was spent on **cigarettes**.

# Point of View

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- According to the Hoover corporation, a corporate analyst firm, the total reported company revenue for the five largest cigarette companies were as follows: Altria Group Inc. (parent company of Philip Morris USA), \$10.4 billion [2005]; Reynolds American Inc., \$1.2 billion [2006]; Loews Corporation (parent company of Carolina Group which owns Lorillard), \$2.49 billion [2006]; Houchens Industries (parent company of Commonwealth Brands), \$2.36 billion [2005]; and Vector Group Ltd. (parent company of Liggett), \$52.4 million [2005].

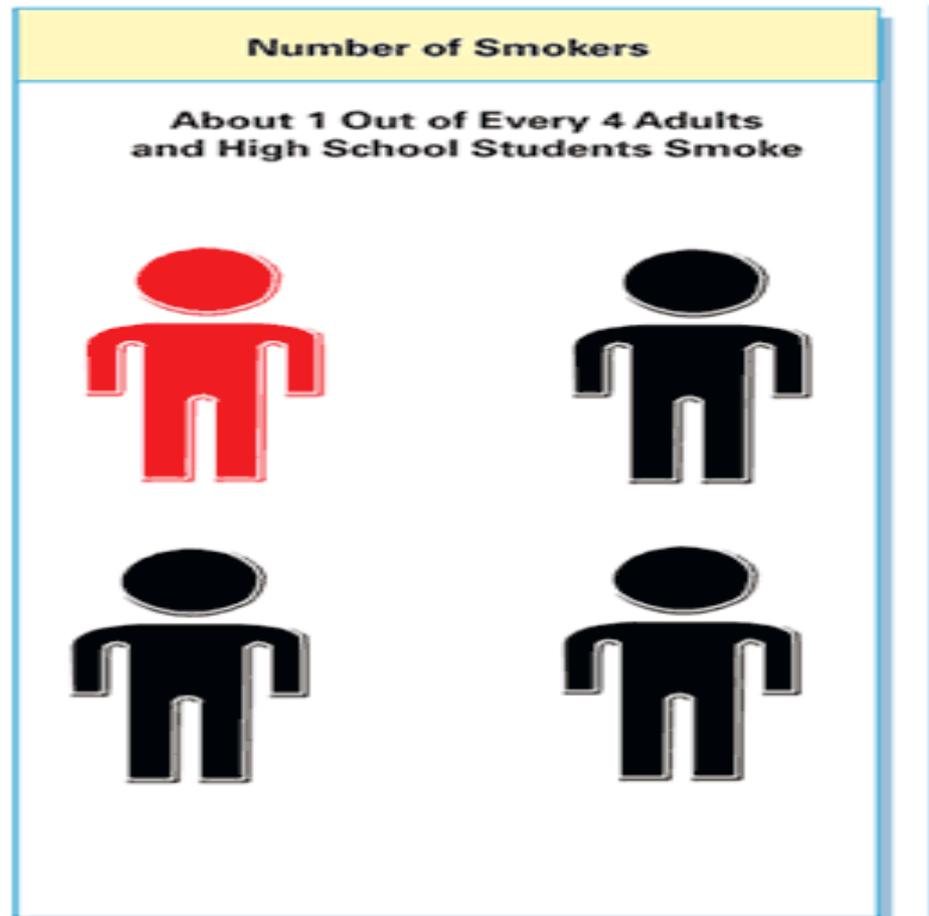
# Point of View

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- Hoover also reported that Altria Group Inc. ranked 20th, Loews 145th, and Reynolds American Inc. 280th, on the Fortune 500 list of the largest corporations in the United States in 2006.
- Certainly these companies are very interested in the outcome of this case, and are hoping the courts rule that punitive damages in excess of the 9-to-1 ratio are deemed unconstitutional.

# Point of Views

## Social Costs



# Point of Views

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- Diseases caused by smoking

- Cancer



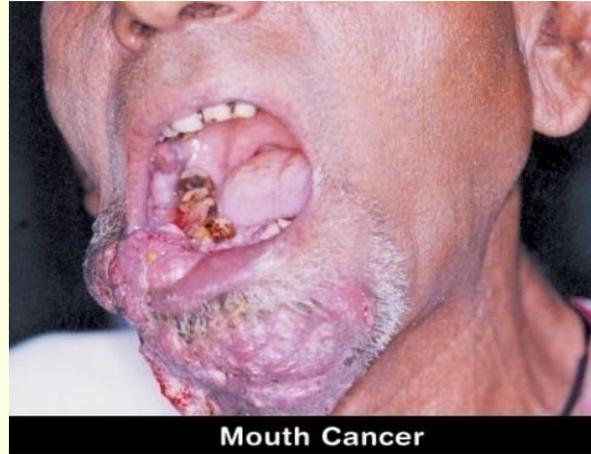
- Periodontitis



# Point of Views

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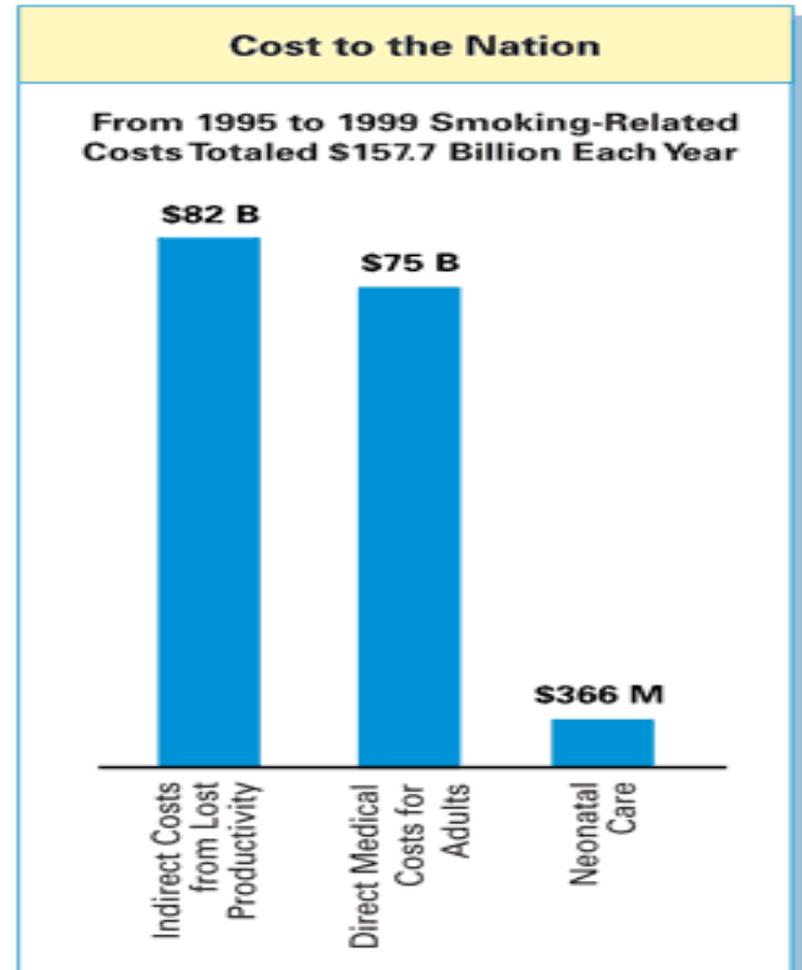
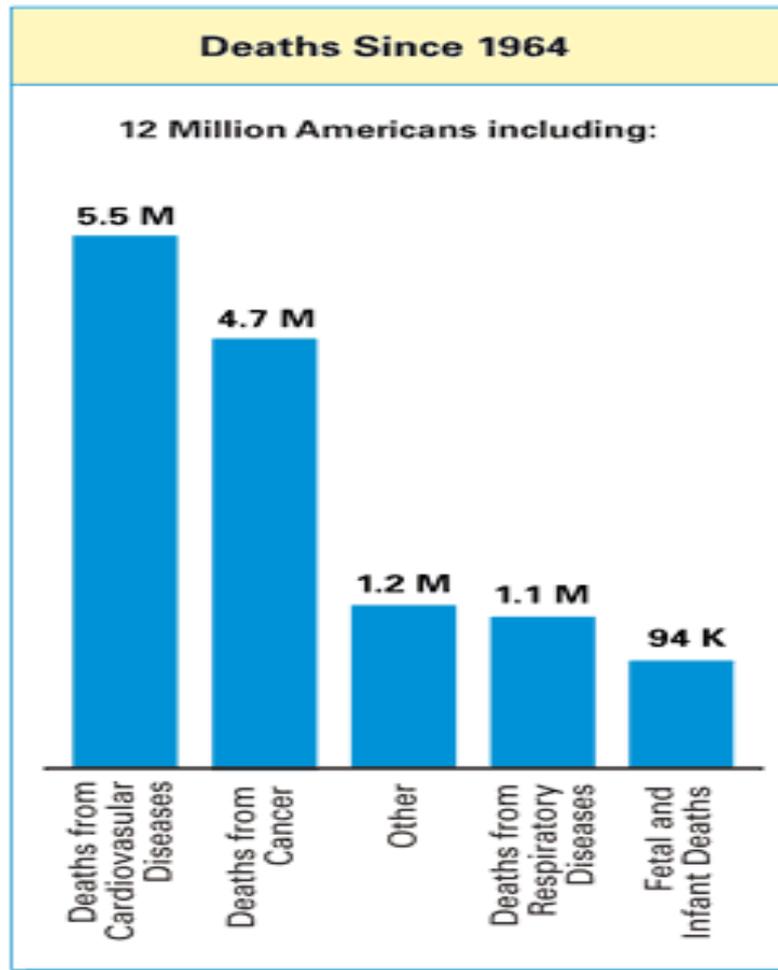
- Mouth cancer



- Throat cancer



# Point of Views



**Relevance** must be demonstrated in points of view by connecting the differing perspectives with the arguments, concepts, or class as a whole.

Plaintiff

Defendant

Industrial

Social

Judicial

You must show five points of view.

# Facts

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## Oregon Court of Appeals:

- The Oregon Court of Appeals reversed the trial courts ruling which lowered punitive damages, and reinstated the \$79.5 million award.
- Philip Morris appealed to the Oregon Supreme Court where the court denied review.

# Facts

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## United States Supreme Court:

- Philip Morris appealed to the Supreme Court who granted certiorari, vacated the Oregon Court of Appeals judgment, and remanded the case to the Oregon State Supreme Court to reconsider the amount of punitive damages in light of a precedent case *Gore v. BMW of North America Inc.*
- It is with the Oregon Supreme Court that we examine the issue and come to a conclusion.

# Issue

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Are the punitive damages assessed in this case unconstitutionally excessive in violation of the Due Process Clause of the Fourteenth Amendment?

**Relevance** is achieved by staying *focused* on the issue related to the chapter the case is in.

# Concepts

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There are two important concepts which direct the outcome of this case:

- **1st.** The Fourteenth Amendment section 1 which states, “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any State deprive any person of life, liberty, or property, without due process of law***; nor deny to any person within its jurisdiction the equal protection of the laws.

# Concepts...

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- The Due Process Clause ensures that before depriving anyone of liberty or property, the government must go through procedures which ensure deprivation is fair, which leads us to our second concept.
- **2nd.** To determine whether punitive damages in this case are fair and in compliance with the Fourteenth Amendment this court must turn to the precedent setting case Gore v. BMW of North America, Inc. where the Supreme Court sets forth three factors or sign posts to make this determination.

# Concepts

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- ***First guide post:*** A court must consider the degree of reprehensibility of the defendant's conduct:

To determine the reprehensibility a court must judge whether the harm was physical rather than economic; whether the behavior shows an indifference to or a reckless disregard of the health or safety of others; whether the conduct involved repeated actions or was an isolated incident; and whether the harm resulted from intentional malice, trickery, or deceit, or mere accident.

# Concepts

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- ***Second guide post:*** The court must consider the ratio to the compensatory damages awarded (actual or potential harm inflicted on the plaintiff).

In determining the amount of punitive damages the Supreme Court cautions that for 700-years legislatures have authorized double, triple or quadruple sanctions and that in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process.

- ***Third guide post:*** The court must consider the comparison between the punitive damages award and comparable civil or criminal penalties that could be imposed for comparable misconduct.

# Interpretation

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## First Guide Post

In the first guide post set forth in *Gore vs. BMW* the Oregon Supreme court ruled that, “There can be no dispute that Philip Morris's conduct was ***extraordinarily*** reprehensible. Philip Morris knew that smoking caused serious and sometimes fatal disease, but it nevertheless spread ***false*** or ***misleading*** information to suggest to the public that doubts remained about that issue. It ***deliberately*** did so to keep smokers smoking, knowing that it was putting the smokers' health and lives at risk, and it continued to do so for nearly half a century.”

# Interpretation

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Furthermore the court ruled, “The harm to Williams was ***physical*** -- lung cancer cost Williams his life. Philip Morris showed ***indifference*** to and ***reckless disregard*** for the safety not just of Williams, but of countless other Oregonians, when it ***knowingly spread false or misleading information*** to keep smokers smoking. Philip Morris's actions were ***no isolated incident***, but a carefully calculated program spanning decades.”

# Interpretation

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## Second Guide Post

- For the second guide posts, the Oregon State Supreme court ruled that the requirement had not been met, the ratio substantially exceeds the single-digit ratio (9:1) that courts have traditionally applied.
- However the Justices note, “The Gore guide posts are not bright-line tests, there are no rigid benchmarks that a punitive damages award may not surpass. The guide posts are only that -- guide posts.”

# Interpretation

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## ■ Third Guide Post

Regarding the third guide post, the justices discover that, “Philip Morris's actions, under the criminal statutes in place at the beginning of its scheme in 1954, would have constituted manslaughter. Today, its actions would constitute at least second-degree manslaughter, a Class B felony. Corporations that commit a felony of any class may be fined up to \$50,000, or required to pay up to twice the amount that the corporation gained by committing the offense.”

# Conclusion

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- The justices conclude that the third guidepost, like the first, supports a very significant punitive damage award.
- The Supreme Court of Oregon ruled that because of such extreme and outrageous circumstances the \$79.5 million punitive damage awarded by the jury satisfied the Fourteenth Amendment's Due Process Clause and was reinstated.

# Point of View

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## Justice Scalia and Justice Ginsburg

**Logical** reasoning includes all six elements of thought. However, there is no specified order the elements must follow.

other products to benefit, there must be uniform rules. Corporations and their insurers try to assess risk and make business plans to depend on some measure of predictability when it comes to future cases. When should they settle? When should they go to trial? How much should they pay in settlement? Businesses have a more difficult time operating with unpredictable changes.

# Related Cases

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## ■ Exxon

The Ninth Circuit has ruled that \$5 billion in punitive damages levied against Exxon for the 1989 Valdez oil spill was unconstitutionally excessive. The court noted that while punitive damages were deemed appropriate, due to the company's reckless conduct in giving command of an oil tanker to a known alcoholic, the \$5 billion amount awarded was unjust. The court explained that it was not a fair apportionment of Exxon's reprehensible conduct, was excessively greater than the compensatory damages awarded by the jury, and was excessively greater than other fines for similar misconduct. Exxon now needs to pay \$2.5 billion, however it has been appealed and the case will be heard sometime in 2008.

# Related Cases

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- **BMW of North America, Inc. v. Gore**

The plaintiff, Dr. Ira Gore, bought a new BMW, and later discovered that the vehicle had been repainted before he bought it. Defendant BMW revealed that their policy was to sell damaged cars as new if the damage could be fixed for less than 3 % of the cost of the car. Dr. Gore sued, and an Alabama jury awarded \$4,000 in compensatory damages (lost value of the car) and \$4 million in punitive damages, which was later reduced to \$2 million by the Alabama Supreme Court.

# Related Cases

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## ■ State Farm Auto Ins. v. Campbell

Curtis Campbell was responsible for a crash permanently disabling Todd Ospital and killing Robert Slusher. Campbell was sued by both families. Lawyers for Slusher and Ospital's family asked State Farm to settle for the limit of Campbell's policy, but the company refused. Campbell and his wife sued State Farm for bad faith and fraud, saying the company had a long pattern of "deliberately deceiving and cheating its customers." Jury found that the insurance company had grossly mistreated its policyholder and awarded punitive damages of \$145 million.

# Facts

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- This case was not resolved by the Oregon Supreme Court. Philip Morris appealed to the U.S. Supreme Court again who granted certiorari.
- Philip Morris argued that the large punitive damage award was in part the jury's desire to punish them for harming all Oregonians which amounts to taking of property without due process.
- In 2007 the Supreme Court ruled in favor of Philip Morris, holding that the jury could not punish for harm caused to others.

# Facts

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- The supreme court vacated and remanded the case back to the Oregon Supreme Court for either a new trial or a change in punitive damages on the basis the court did not apply the appropriate constitutional standard when considering Philip Morris' appeal.
- The Supreme court would not rule whether or not the punitive damages were excessive. The Oregon Supreme Court will hear the case in 2008.

# Earnings and Dividends per Share



The **significance** standard relates to the implications and consequences.

- **Implications** are the potential effects that logically follow from a certain line of thinking. When working on your presentation you should be thinking of potential reasons why this case is important. *How could this case effect us economically, socially, personally, etc?*

- **Consequences** are changes that occur directly because of outcome of the case. When working on your presentation you should be aware of what changes (procedures, policies, business practices) are made due to the outcome of your case.

# Implication

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This represents a successful attack on the largest public health epidemic of our times and evidence that the tobacco industry is vulnerable. It has even caused Philip Morris' and its competitors to break the industry stonewall by acknowledging publicly that cigarettes cause health hazards. Not that they are a "risk factor," not that "evidence tends to show," not "some scientist believe," no "cigarettes may contribute to health problems" but *cigarettes cause health problems.*" The importance of this case has many levels. It can be a road map for other trial lawyers to follow to help their clients hold the tobacco companies accountable.

Yet, perhaps most important, it fulfilled Jesse Williams' dying wish to expose the lies of the tobacco company and compensated a family that lost a loving husband, father, and grandfather.

## ***GENERAL INTEREST STANDARD***

Finding clever ways to illustrate, display, or perform your presentations along with speaking clearly (varying tone, pitch, and pace) will earn you the general interest standard points.

***Organization and efficiency*** is the ability to create a presentation that flows. In essence you are telling a story therefore it should *read* like a story. Avoid redundancy and over utilization of print that will bog down the presentation. No one wants death by power point.

# Hey, Big Tobacco!

# Butt Out of Oregon

They are spreading lies on TV.  
They are hurting Oregon's kids.



# Group Strategies

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- There are three common ways in which you can organize groups, each of which has benefits and risks. Most groups combine these strategies.

# *Divide and delegate*

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- This strategy works best when tasks are parceled out to make best use of the special talents of each member. Personally I found that many international students excelled at putting the power-point together, while older students, with more life experience, did well writing the points of view and implications. Perhaps there are others that are skilled in research and can find statistics or related cases. This strategy crucially depends on each member finishing the task on time. If one fails, than all fail.

# *Work side by side*

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- This strategy works well with a small, tightly knit group. Completing an assignment using this strategy allows each person to fully grasp the process and information as a whole. To follow this strategy, members must be tolerant with one another. Too often, the most confident person ignores the ideas of others, dominates the process, and blocks progress.

# *Take turns*

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- In this strategy once all the data has been gathered and an outline agreed on, each person takes turns drafting and revising, so that a text slowly evolves toward a final version. This strategy works best when differences among members complement rather than contradict on another. This approach runs two risks. First, the final draft might stray from one interest to another. Second, you can lose track of who has revised what version of a draft.