

PUBLIC JUSTICE 2009 TRIAL LAWYER OF THE YEAR AWARD FINALIST

Case: *Williams v. Philip Morris*

Counsel: William A. Gaylord, Ray Thomas, James S. Coon, Charles S. Tauman, Richard Daynard, Cliff Douglas, Robert S. Peck, Maureen Leonard, and Kathryn Clarke

HOLDING PHILIP MORRIS ACCOUNTABLE

Williams v. Philip Morris

A school janitor named Jesse Williams died of lung cancer in 1997 after smoking Marlboros for almost 50 years. His wife, Mayola, said he had one dying wish: to make cigarette companies stop lying about the health problems of smokers. Thanks to a “band of brothers” of Oregon trial lawyers, Mr. Williams’ dying wish was fulfilled.

After 12 years, one jury trial, four state court appeals, and three U.S. Supreme Court appeals, four Portland, Oregon, trial lawyers – **William A. Gaylord** of Gaylord Eyerman Bradley, P.C.; **Ray Thomas** and **James S. Coon** of Swanson Thomas & Coon; and **Charles S. Tauman** of Charles S. Tauman, P.C.; two national consultants – **Richard Daynard** of the Tobacco Litigation Project at Northeastern University School of Law in Boston; and **Cliff Douglas** of the University of Michigan School of Public Health in Ann Arbor; and three appellate lawyers – **Robert S. Peck** of the Center for Constitutional Litigation in Washington, D.C.; and Portland attorneys **Maureen Leonard** and **Kathryn Clarke**, successfully concluded *Williams v. Philip Morris*, the largest verdict ever affirmed against a tobacco company in favor of a smoker’s family. As a result, Williams is entitled to a jury award of \$80 million plus nine percent interest annually from 1999.

In 1997, Gaylord’s team filed Williams’ suit against Philip Morris in Oregon state court in Portland, alleging fraud and negligence in her husband’s death. At the time, no individual claim for death or injury based on the hazards of smoking or the fraud of the tobacco industry had ever succeeded. Philip Morris vowed it would never pay the Williams estate a penny.

Gaylord’s team tried the case for five weeks in 1999, with four lawyers on Williams’s side facing off against 23 Philip Morris defense lawyers. Gaylord’s trial team argued that Philip Morris had deceived the late Jesse Williams into believing that his addiction to cigarettes was not life-threatening. They presented mountains of evidence showing that Philip Morris had engaged in a conspiracy to misrepresent the dangers of smoking, going so far as to hire joke writers to foment anti-lawyer sentiments and enhance the skepticism of jurors in tobacco cases.

The team’s strategy worked. The jury awarded Williams \$800,000 in non-economic compensatory damages and \$21,485.50 in economic damages for wrongful death. The jury also awarded \$79.5 million in punitive damages against Philip Morris. The impact was huge. Before Philip Morris tried another case, it removed from its web site all of its fraudulent denials of smoking’s health hazards and the addictiveness of nicotine, admitting these facts for the first time after 45 years of denials.

But the trial lawyers’ work was only just beginning. The trial judge reduced the non-economic damages to \$500,000 pursuant to a cap on wrongful death damages. In addition, the court

reduced the punitive damages award to \$32 million. Both parties appealed. Gaylord and his colleagues persuaded the Oregon Court of Appeals to fully reinstate the jury award, and the Oregon Supreme Court declined to review that decision.

The tobacco behemoth dug in its heels and petitioned the U.S. Supreme Court. The Court granted review and sent the case back to the Oregon Court of Appeals for further proceedings consistent with *State Farm v. Campbell*, which addressed constitutional limitations on punitive damages under the due process clause of the Fourteenth Amendment.

Gaylord's legal team won the next two rounds when they persuaded the Oregon Court of Appeals, and then the Oregon Supreme Court, to reaffirm the entire award. Again, in 2007, the U.S. Supreme Court granted review and remanded the case back to the Oregon Supreme Court, noting that the due process clause precludes punitive damages for injuries inflicted on third parties or "strangers to the litigation."

Once again, Gaylord and his colleagues persuaded the Oregon Supreme Court to reaffirm the award in its entirety, successfully arguing that the jury instruction Philip Morris had offered misstated Oregon law. The U.S. Supreme Court took the case for the third and final time, asked for briefs, held oral arguments, and then issued a *per curiam* ruling on March 31, 2009, dismissing the *writ of certiorari* as improvidently granted. This made the Oregon Supreme Court's affirmance of the damages award final.

Through sheer tenacity and skill, Gaylord's team secured affirmance, at every level of court, of a punitive damages award that is 97 times the size of the compensatory award. By the end, Gaylord's team had persuaded the U.S. Supreme Court to pass up three opportunities to rule that the award was excessive.

Philip Morris paid 40 percent of the judgment on April 3, 2009, but has sued the State of Oregon to cancel the 60 percent share that would be directed to the Crime Victim's Assistance Fund by statute, claiming that it violates the national master settlement agreement between the states and the tobacco industry. Thus, the work of Gaylord's team continues.

Williams v. Philips Morris sends an unmistakable message to the tobacco industry, but has implications beyond that sector. For those who ever doubted, this case shows that – with skillful and tenacious trial lawyers – the widow of a school janitor can take on one of the wealthiest and most powerful corporations in America and win. The victory achieved also demonstrates that large punitive damages awards may still be available when necessary to punish reprehensible conduct. ■