

## Press Room

[Press Releases](#)

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### Spotlights

- [African-American Directory](#)
- [Department of Justice Tobacco Lawsuit](#)
- [Engle Trial](#)

## Philip Morris U.S.A. Is Preparing To Vigorously Appeal Boeken Case

**NEW YORK , August 22, 2001** - Philip Morris U.S.A. will mount an aggressive appeal in a case involving a sick smoker in which the trial judge reduced the jury's punitive damages verdict from \$3 billion to \$100 million. By agreeing to the judge's reduction, plaintiff Richard Boeken has now cleared the way for the company to initiate its formal appeal of the entire verdict.

On August 9, Los Angeles County Superior Court Judge Charles W. McCoy denied the company's request to overturn the verdict and gave the plaintiff the option of either agreeing to the reduced punitive award or having the issue of punitive damages retried. He formally agreed to the judge's reduction this week, which sets the stage for the case to move to the appellate courts.

Company officials consider the \$100 million award grossly excessive, and both unprecedented and unconstitutional under California and federal law. The company also pointed out that, as provided for under law, no payment would be made to Mr. Boeken during the course of the appeal, a process that often takes several years.

"We are optimistic that the appellate courts will conclude, after reviewing the record and the numerous prejudicial errors made by the trial Court, that Mr. Boeken is entitled to no damages. Our appeal will request a complete reversal and retrial on multiple grounds, not the least of which was the passion and prejudice the jury displayed in reaching its verdict," said William S. Ohlemeyer, Philip Morris vice president and associate general counsel.

Ohlemeyer noted that the additional grounds requiring reversal or a new trial include the Court's improper exclusion of evidence relating to Mr. Boeken's credibility, improper admission of evidence relating to the adequacy of the health warnings mandated by federal law and erroneous instruction of the jury on key issues.

"The Court compounded these legal errors by failing to set the verdict aside, or, at a minimum, reducing the punitive damage award enough to bring it in line with California and federal law," said Ohlemeyer.

Ohlemeyer noted that no California appellate court, in a published opinion, has ever upheld a punitive damage award greater than \$25 million. In cases where compensatory damages exceed \$1 million, no California appellate court, in a published opinion, has ever approved punitive damages greater than three times the amount of the compensatory damages.

In addition, the U.S. Supreme Court has indicated that punitive damage awards that are four times greater than compensatory damages awards may be "close to the [constitutional] line" of what is a reasonable relationship between compensatory and punitive damages.

The jury on June 6 awarded Mr. Boeken, who has cancer, \$5.54 million in compensatory damages. Even with Judge McCoy's reduction of the punitive award to \$100 million, the ratio of punitive damages to compensatory damages would still be an impermissible 18 to 1.

Ohlemeyer said the company's appeal will focus on "errors made during the course of the trial," and noted "the Court prevented the jury from hearing key evidence about the plaintiff and then gave jurors inaccurate instructions about the law they must follow in reaching a verdict.

"For example, the Court refused to allow the jury to hear testimony that Mr. Boeken was convicted of felony wire fraud in 1993," said Ohlemeyer. "That evidence goes to the very heart of whether his testimony and allegations in this case were truthful, and keeping it from the jury prevented the jury from hearing all the evidence necessary to decide whether Mr. Boeken's claims were believable."

Ohlemeyer said knowledge of that conviction may have helped the jury gauge Mr. Boeken's truthfulness when he testified in his depositions that he somehow missed the avalanche of information in the media about the health risks of smoking; that in almost 35 years of smoking, until December 2000, he never read the warnings; and that although his doctor advised him to quit smoking, he did not conclude from that advice that smoking had serious health risks.

Ohlemeyer said "it's simply not believable that anyone living in America for the past 40 years could testify under oath that they were unaware of the risks of smoking. For these and a multitude of other reasons, this verdict should be reversed."

Mr. Boeken also had claimed he was deceived by Philip Morris U.S.A. about the risks of smoking, but he presented no evidence at trial that he ever relied, directly or indirectly, on anything the company said or did regarding the health effects or the addictive nature of smoking. Under California law, such proof is an essential element of a fraud claim.

After the trial, in an effort to counter that lack of evidence, his lawyer revised his theory of "reliance" and conceded the Mr. Boeken did not rely on any specific Philip Morris U.S.A. statement or action. However, he said, his client instead was deceived by the company's general cigarette advertising and imagery, which he sought to prove by "inferences" drawn from unspecified "circumstantial" evidence.

"Courts nationwide – and California is certainly no exception – understandably and rightly require a great deal more for proving fraud.

"We are optimistic that once the appellate court strips away the passion and prejudice and correctly applies California and federal law, it should rule in favor of Philip Morris U.S.A. and reverse this verdict," Ohlemeyer said.

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