

**Armand Fontaine, Individually and as Personal Representative of the Estate of Barbara
Ellen Fontaine v. Phillip Morris USA Inc.**

SJC-13778

Whether the defendant is entitled to a new trial, rather than a remittitur, on the ground that jury's award of one billion dollars in punitive damages was motivated by passion and prejudice; whether the remitted award, which is seven times the amount of compensatory damages, is constitutionally excessive and should be reduced. Whether a trial judge must impose safeguards to prevent an excessive punitive damages award, namely, (1) a requirement that a punitive damages award must be supported by clear and convincing evidence, as the appellant contends is required in a majority of States outside Massachusetts, and (2) bifurcation of the trial to separate the assessment of the amount of punitive damages from the other issues in the case. Whether the jury should have been instructed that the warnings mandated by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq. (Labeling Act), are adequate as a matter of law to warn consumers, including the plaintiff's decedent, about the risks of smoking, where there was evidence that the defendant failed to give warnings beyond those mandated by Congress and used advertising that undermined those warnings; whether such evidence was improperly admitted at trial because the Labeling Act preempts the imposition of liability for failure to include additional or more clearly stated warnings.