



September 12, 2005

WLF URGES HIGH COURT NOT TO EXPAND JOINT VENTURES' ANTITRUST LIABILITY

(Texaco, Inc. v. Dagher, Shell Oil Co. v. Dagher, Nos. 04-805 and 04-814)

The Washington Legal Foundation (WLF) filed a brief today in the U.S. Supreme Court urging the Justices reverse an appeals court decision that found unlawful price-fixing where a joint venture merely sets the prices of its own products.

The litigation involves two joint ventures formed by Texaco and Shell Oil to take over the gasoline wholesaling and retailing operations of those companies in the United States. One joint venture (known as Motiva) operates in the Eastern U.S., the other (known as Equilon) in the West. The "Texaco" and "Shell" names continue to exist as separate brands under the control of the joint ventures. The court below, the U.S. Court of Appeals for the Ninth Circuit, ruled that the companies could be held liable for price-fixing under the Sherman Act because the joint ventures priced Texaco and Shell gasoline the same.

In its brief, WLF argued that Section 1 of the Sherman Act does not apply to the pricing decisions of a *bona fide* joint venture. WLF further argued that even if the Sherman Act does apply, the appeals court erred by evaluating the pricing decision under the so-called *per se* test of illegality rather than the rule of reason.

The cases are important to the business community because the Ninth Circuit's decision, by treating a *bona fide* joint venture as a cartel, creates the potential for antitrust liability for joint ventures and their managers in a variety of contexts. Sherman Act charges such as those in this case may carry criminal as well as civil penalties; managers can and do go to jail for price-fixing.

WLF is represented in the case on a *pro bono* basis by William J. Kolasky, a partner in the Washington, D.C. office of Wilmer Cutler Hale and Dorr LLP.

WLF is a public interest law and policy center with supporters nationwide. WLF filed a brief supporting the petition for certiorari in this litigation. As part of its mission to promote and defend free enterprise, WLF has frequently appeared as an *amicus* in the federal courts to argue against overly-sweeping interpretations of the antitrust laws. *See, e.g., Verizon Communications, Inc. v. Trinko, LLP*, 540 U.S. 398 (2004); *United States Tobacco Co. v. Conwood Co., cert. denied*, 123 S. Ct. 876 (2003); *In re Stock Exchanges Options Trading Antitrust Litig.*, 317 F.3d 134 (2d Cir. 2003).

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For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.