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WLF Asks Supreme Court to Protect Contract and Property Rights from Indiscriminate Interference

(American Economy Ins. Co. v. State of New York)

“The Constitution imposes strict limits on the authority of governments to retroactively impose substantial monetary liability on private entities. The Supreme Court must do more to ensure that those limits are enforced.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review (and ultimately strike down) a New York law that retroactively imposed a massive monetary obligation on insurance carriers to pay workers’ compensation benefits that they never agreed to pay under their insurance policies. In a brief filed in *American Economy Ins. Co. v. State of New York*, WLF argues that the statute violates several constitutional provisions designed to restrain government authority, including the Contracts Clause (which prohibits States from impairing contracts) and the Takings Clause (which prohibits governments from taking private property without just compensation).

At issue is who should pay New York workers’ compensation claims that first arose many years ago and suddenly resurface after lying dormant for years. Up until 2013, such claims were covered by a state fund that was financed by assessments imposed on New York employers. As those costs rose, employers convinced the New York legislature to pass legislation that shifted the costs from employers to their workers’ compensation insurance carriers. That shift presented no problem for carriers for 2014 and later years; they could simply increase premiums to cover their increased costs. But carriers face massive losses (estimated at \$1.1 to \$1.6 billion) on older policies, because the state-approved premiums for those older policies did not take account of the costs of claims that first arose during the policy period and yet may not emerge from dormancy for many years to come.

WLF’s brief argues that the 2013 amendment violates the Contracts Clause because it retroactively imposes liability on insurers on the basis of contracts entered into with the understanding that the insurers would *not* be liable for re-opened claims. WLF asserts that the amendment also violates the Takings Clause by imposing severe, retroactive financial obligations that interfere with insurers’ reasonable investment-backed expectations.

Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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