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WLF Asks Supreme Court to Review California Decision Imposing Causation-Free Tort Liability

(*ConAgra Grocery Products Co. v. The People of California*)

“Remove the element of causation from tort law and, so far as due process goes, all bets are off. A trial conducted heedless of causation proceeds by the Queen of Hearts’ rules: sentence first—verdict afterwards.”

—Corbin K. Barthold, WLF Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today urged the U.S. Supreme Court to review a California Court of Appeal ruling that imposes massive liability in the absence of the fundamental tort element of causation.

Lead paint used to be a common product. Lead was removed from paint around seventy years ago, as society discovered that lead-paint chips and dust are harmful. Many companies lawfully sold or advertised lead paint in California, and California’s homeowners are legally responsible for ensuring that remaining lead paint remains intact. Yet three companies—Sherwin-Williams, NL Industries (which once sold Dutch Boy paint), and ConAgra (which, the trial court held, is a successor to a paint company called W.P. Fuller & Co.)—have been ordered to pay hundreds of millions of dollars to find and abate every lead-paint hazard in every home in ten California jurisdictions—including Los Angeles, San Francisco, and Oakland—built before 1951.

Liability is based not on the companies’ having made or sold lead paint, but merely on their having advertised it—something none of them has done for many decades. The trial court imposed, and the Court of Appeal affirmed, liability even though the ten cities and counties could not identify a single lead-paint hazard caused by the companies’ advertisements. It was enough, the Court of Appeal held, that the companies had contributed to the presence of lead paint in general. The California Supreme Court denied review.

In its brief, WLF argues that the Court of Appeal should have required the cities and counties to identify which homes, if any, contain lead-paint hazards because of the companies’ advertisements. Removing this causation requirement, WLF contends, violates the Due Process Clause. Holding someone responsible for a widespread harm because he potentially created some undefined amount of it is fundamentally unfair. By the Court of Appeal’s logic, WLF notes, “someone who litters by Washington Square Arch has harmed ‘the community’s’ cleanliness and may be held responsible for every piece of mislaid trash in New York.”

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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