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SUPREME COURT URGED TO DECIDE JOINT VENTURES' ANTITRUST LIABILITY

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

The Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to hear a case concerning the antitrust liability of joint ventures for deciding the prices of their own products.

The case 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 operates in the Eastern U.S., the other 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.

After the defendant companies sought review in the Supreme Court, the plaintiffs' attorneys argued that this is not a suitable case for addressing the application of the Sherman Act to joint ventures because Texaco and Shell retained partial control of the joint ventures at issue. In its brief, WLF argued that the case is a proper one for Supreme Court review. WLF noted that the Federal Trade Commission approved the formation of the joint ventures and that the factors cited by the plaintiffs are normal attributes of joint venture arrangements.

WLF's brief also observed that the issue is highly important 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 a public interest law and policy center with supporters nationwide. 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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