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## **SUPREME COURT RULES THAT POSTAL SERVICE MAY BE LIABLE FOR NEGLIGENT CONDUCT**

*(Dolan v. U.S. Postal Service)*

In a clear victory for the Washington Legal Foundation (WLF), the U.S. Supreme Court ruled yesterday that the United States Postal Service (USPS) is not immune from lawsuits under the Federal Tort Claims Act (FTCA) where postal employees' negligence causes physical injuries and property damage to the public. The Court agreed with WLF's argument that Congress did not provide USPS with such special immunity and thus, it should be held liable just as private carriers would be held liable for similar negligent conduct.

In *Dolan v. USPS*, the postal carrier delivered postal matter to Mrs. Dolan's home, and negligently left the mail and magazines piled on the porch by the front door where the occupant would likely step leaving the home instead of placing the mail in its usual receptacle. Mrs. Dolan slipped on the mail as she left her home and was severely injured. Her claim for compensation from the postal service, however, was rejected by the lower court based on an exception to the FTCA waiver of immunity which bars suits for the "loss, damage or negligent transmission of letters or postal matter." The U.S. Court of Appeals for the Third Circuit in Philadelphia held, contrary to a ruling by the Second Circuit in New York, that the USPS is immune from injuries caused by employees from the time they pick up the mail until it is delivered.

In its brief filed on behalf of itself and the Allied Educational Foundation (AEF), WLF vigorously argued that the immunity provided by Congress was limited only for damage, loss, or delay of the mail itself, not for physical injuries caused by postal employees. Such a broad reading would immunize USPS for accidents caused by postal vehicles transporting the mail, a result which Congress most certainly did not intend.

Justice Anthony Kennedy, writing the opinion for the Court, carefully parsed the statutory language in the FTCA, and concluded that the exemption for "negligent transmission" of the mail did not include injuries caused by postal employees. Rather, that term was limited to mail that was lost, misrouted, or damaged. Justice Kennedy also noted the anomalies that would otherwise occur if it ruled in favor of the Postal Service. For example, a pedestrian could sue the Postal Service if it was hit by the side-view mirror of a passing postal truck, but not by a sack of mail dangling from the same truck.

The Court also rejected the Postal Service's argument that it will be inundated with frivolous claims if the Court were to rule against it, stating that is a "risk shared by any business that makes home deliveries." Justice Clarence Thomas was the only dissenter. Justice Samuel Alito did not participate in the case which was argued last October.

"Because of this favorable ruling, the Postal Service will henceforth not enjoy any special immunity or unfair competitive advantage over private carriers for their negligent misconduct," said Paul Kamenar, WLF's Senior Executive Counsel. "The Postal Service has consistently abused its monopoly power in delivering the mail, and this case was just another example of that abuse," Kamenar added.

WLF's brief was filed with the *pro bono* assistance of Harold Krent, who is the Dean of Chicago-Kent College of Law.

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For information, contact Paul Kamenar, WLF Senior Executive Counsel, at 202-588-0302. WLF's brief is available on its website at [www.wlf.org](http://www.wlf.org).