



February 28, 2006

## SUPREME COURT LIMITS ANTITRUST LIABILITY OF JOINT VENTURES

*(Texaco, Inc. v. Dagher)*

The U.S. Supreme Court today reversed a lower court decision that held joint ventures liable for price-fixing on the basis that they had set the prices of their own products. The Washington Legal Foundation (WLF) had filed a brief opposing antitrust liability in the case.

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. In an 8-0 ruling (with Justice Alito not participating), the Court agreed that the pricing decisions in this case should not be treated as *per se* illegal.

The case is important to the business community because the Ninth Circuit's decision, by treating a *bona fide* joint venture as a cartel, created 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 was 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. In the Court's current Term, WLF also filed briefs in the antitrust cases *Texaco, Inc. v. Dagher* and *Volvo Trucks North America, Inc. v. Reeder-Simco GMC, Inc.*, in which the Justices also accepted WLF's positions. WLF had also filed a brief in the U.S. Supreme Court supporting the petition for certiorari in the *Texaco v. Dagher* case.

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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](http://www.wlf.org).