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## CALIFORNIA SUPREME COURT DENIES REVIEW IN SECURITIES CASE (*Roskind v. Morgan Stanley Dean Witter & Co.*)

The California Supreme Court declined last week to review a lower court decision holding that the federal Securities and Exchange Act does not preempt California's unfair competition law. In this case, the California Court of Appeal, First Appellate District, held that the Securities and Exchange Act, which provides for "the establishment of a national market system for securities," 15 U.S.C. § 78 k-1(a)(2) (1994), and under which broker-dealers are comprehensively regulated, did not preempt an unfair trade practice claim brought under California law.

The state tort claim alleged that the manner in which Morgan Stanley executed a securities transaction for a customer – by failing to obtain the best execution and by trading ahead of the customer – constituted a violation of California's Unfair Competition Law and a breach of fiduciary duty.

In its brief filed earlier this year, WLF had argued that the case warrants review by the California Supreme Court for four reasons: (i) the issue is highly important to securities consumers and to the securities industry; (ii) the case involves the contours of federal preemption, a critical and recurring issue of federal constitutional law; (iii) the decision of the Court of Appeal is in conflict with a decision of the Court of Appeal, Second District; and (iv) the Court of Appeal's decision in this case was erroneous, particularly in light of two United States Supreme Court decisions that have been issued since the decision of the Court of Appeal, namely, *Geier v. American Honda Motor Co.*, and *Crosby v. National Foreign Trade Council*. WLF had filed briefs in both of those cases.

It is anticipated that Morgan Stanley will file a petition for writ of certiorari with the U.S. Supreme Court later this year. WLF will continue to monitor the case and to participate in further proceedings as appropriate.

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