Litigation Update

Washington Legal Foundation
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COURT RULES THAT ANTITRUST LAW IS INAPPLICABLE TO SECURITIES DEALERS

(In re: Stock Exchanges Options Trading Antitrust Litigation)

The U.S. Court of Appeals for the Second Circuit in New York City ruled this week that plaintiffs' attorneys should not be permitted to impose new restraints on the securities industry by bringing antitrust suits against the industry.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *In re: Stock Exchanges Options Trading Antitrust Litigation*. The court agreed with WLF that the securities industry is already fully regulated under the Securities Exchange Act of 1934 and other securities laws, and that Congress did not intend to permit another layer of regulation that would likely lead to conflicting rules.

The underlying suit, filed against every major options trading firm and every major securities exchange, alleged that agreements entered into by the defendants regarding industry practices have had anti-competitive effects. It is uncontested, however, that the defendants' practices are heavily regulated under federal securities laws and by rules established by the Securities and Exchange Commission (SEC), and the plaintiffs did not allege violations of those rules. The court agreed with WLF that when Congress adopted comprehensive securities laws, it intended thereby to displace any application of the antitrust laws to the securities industry.

The district court dismissed the case on that ground, and this week's decision affirmed the dismissal.

The court ruled against WLF on a secondary issue, however. WLF had also argued that the district court acted properly when it refused to enforce a tentative settlement agreement (entered into prior to the dismissal) between the plaintiffs and some of the defendants. WLF had argued that once the district court determined that it lacked jurisdiction to hear the antitrust claims, it lacked jurisdiction to take any other steps -- including such steps as enforcing a settlement agreement. The appeals court disagreed on this jurisdictional issue, and remanded the case to allow the district court to determine whether some of the parties had entered into a binding settlement agreement. The settling defendants will have an opportunity to argue that the settlement was never intended to remain in place if (as has occurred) the courts ruled that the antitrust laws generally should not be applied to securities transactions.

"We feel strongly that an important element in maintaining a limited government is ensuring that courts do not attempt to exert authority outside their areas of jurisdiction," WLF Chief Counsel Richard Samp said after reviewing the court's decision. "Federal judges must always be aware that theirs are courts of limited jurisdiction and they lack all power to rule on issues that have not explicitly been placed within their purview," Samp said.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a substantial portion of its resources to promoting tort reform and reining in excessive litigation.

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