WLF Washington Legal Foundation
effective advocate of free enterprise®
2009 Massachusetts Ave., NW
Washington, DC 20036
202.588.0302

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COURT ASKED TO BAR DISCLOSURE OF TRADE SECRET DOCUMENTS

(Frankl v. Goodyear Tire & Rubber Co.)

The Washington Legal Foundation (WLF) today asked the Superior Court of New Jersey not to order the public release of a company's trade secret documents based solely on the news media's argument that the public may have a strong interest in seeing the documents.

In a brief filed in *Frankl v. Goodyear Tire & Rubber Co.*, WLF argued that internal company documents are not fair game for public release simply because they have been made available to the opposing party in a lawsuit -- unless the documents become evidence in a public trial. WLF argued that to the extent that public safety requires the release of company documents, the release should be ordered by the appropriate government regulatory agency -- not at the behest of plaintiffs' attorneys who hope to use those documents to bring additional lawsuits.

WLF noted that parties to litigation routinely are granted access to the opposing party's internal documents, in order to assist in resolution of their dispute. WLF argued that if litigants fear that documents they make available to opposing parties will routinely be made public, they will become unwilling to cooperate in pre-trial document exchanges, and the entire litigation process will break down.

This case involves an effort by the news media to gain access to documents in a New Jersey tort suit in which the plaintiffs' relatives were killed in a 1997 automobile accident caused when one of the vehicle's tires (made by Goodyear) blew out. After suit was filed, the parties entered into a Confidentiality Agreement limiting the right of litigants to publicly disclose documents provided by the other side. But as soon as the plaintiffs' attorney received the requested documents, she asked the court to abrogate the Confidentiality Agreement. She has been joined in that request by several newspapers -- the Los Angeles Daily Journal and the Los Angeles Times -- and by CARS, a group that represents the interests of the plaintiff trial bar.

Goodyear has consented to public release of the great majority of documents it produced in response to the plaintiffs' requests. But it asserts that some of the documents should not be released because they contain valuable trade secret information regarding the manner in which its tires are manufactured.

WLF argued in its brief that the First Amendment provides no support for the newspapers' efforts to win the release of the documents. WLF argued that the First Amendment protects the right to speak, not the right to gain access to private records, even if the documents happen to come into the possession of a court in connection with litigation.

WLF also argued that the common law right of access to public records does not support release of documents in this case. WLF argued that the common law right of access is inapplicable to documents that are before the court only in connection with the discovery process. Only when the documents become part of a trial record should they be deemed "public records" and thus subject to disclosure to the general public, WLF argued.

The Goodyear trade secret documents at issue describe in detail the specifications and production methods for Goodyear tires. WLF noted that if the disputed documents are ordered released, their value as trade secrets will be destroyed. WLF argued that under those circumstances, the Fifth Amendment's Takings Clause would require compensation to Goodyear for that lost value.

WLF is a public interest law and policy center with members in all 50 states, including many in New Jersey. It devotes a significant part of its resources to promoting tort reform and protecting individuals and businesses from excessive government regulation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302.