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WLF Asks DC Circuit to Affirm Ruling Overturning FSOC's "Too Big to Fail" Designation of MetLife

(MetLife, Inc. v. Financial Stability Oversight Council)

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—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation late yesterday encouraged the U.S. Court of Appeals for the DC Circuit to uphold a district court decision that overturned an administrative ruling designating MetLife, Inc. as a “nonbank systemically important financial institution” (“SIFI”)—*i.e.*, “too big to fail.” In an *amicus curiae* brief filed in *MetLife, Inc. v. Financial Stability Oversight Council* (FSOC), WLF argues that FSOC’s designation decision violated MetLife’s Fifth Amendment right to due process of law and the constitutional separation of powers by failing to provide MetLife with a “meaningful” and fair hearing before making the designation. WLF’s brief was joined by the Allied Educational Foundation.

The result of FSOC’s designation is to subject MetLife—an insurance company that does not engage in any of the high-risk ventures that contributed to the 2008 financial collapse—to massive and costly new regulation. Indeed, in an effort to avoid some of that burden, MetLife announced in January 2016 that it is divesting the vast majority of its U.S. retail insurance operations. In March 2016, a U.S. district court overturned MetLife’s “too big to fail” designation, holding that FSOC had failed to adhere to the requirements of the Dodd-Frank Act and its own rules in making the designation. FSOC is appealing from that decision.

WLF’s brief argues for affirming the lower-court decision based on FSOC’s violation of MetLife’s due process rights. WLF notes, for example, that FSOC failed to disclose to MetLife, until after the designation hearing, many of the documents on which FSOC intended to rely. WLF also faults FSOC for failing to respect the separation of powers. Unlike the usual case with federal agency adjudication, the FSOC personnel involved here in investigating and proposing the designation of MetLife as a SIFI were also involved in making the final SIFI determination.

After filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “The Fifth Amendment’s Due Process Clause applies just as strongly to the operations of FSOC and other federal administrative agencies as it does to proceedings in federal court. It requires FSOC to operate in a procedurally fair manner, a requirement FSOC ignored in this instance. In particular, FSOC failed to afford MetLife an adequate opportunity to discover, in advance of a hearing, the evidence on which FSOC intended to rely in making its decision.”

WLF is a national, public-interest law firm and policy center that regularly advocates for requiring procedural fairness in proceedings conducted by federal administrative agencies.