Press Release

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WLF Asks Supreme Court to Review California's Unconstitutional Price Controls on Insurance Rates

(Mercury Casualty Co. v. Jones)

"The decision below, by holding that regulated firms have no constitutional right to earn a 'fair rate of return,' sets a dangerous precedent that—if allowed to stand—will drive many vital businesses to the brink of failure."
—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation yesterday joined several other civil justice reform groups in asking the U.S. Supreme Court to review—and ultimately reverse—a decision of the California Court of Appeal that held that insurance firms subject to rate regulation have no constitutional right to earn a "fair rate of return."

The case arises out of Mercury Casualty Company's request for a variance from the prevailing regulatory maximum rate, which deprived the insurer a rate of return sufficient to attract capital investment. When the California Department of Insurance denied that request, Mercury sought judicial review. The trial court held that a maximum rate is not unconstitutionally confiscatory in the absence of "deep financial hardship," and the Court of Appeal affirmed, concluding that a "fair rate of return" standard simply does not exist.

That contention, WLF's brief argues, conflicts with more than 70 years of settled Supreme Court precedent, which has consistently held that the U.S. Constitution guarantees a regulated business the opportunity to earn enough revenue not only for operating expenses, but also to fairly compensate investors for the risks they have assumed. If a government-set rate is so low as to preclude payment of dividends sufficient to attract and retain capital investment, that rate goes beyond mere regulation and deprives the firm and its investors of constitutionally protected property interests.

WLF's brief urges the Court to grant review to resolve the intractable conflict between the California Court of Appeal and the U.S. Supreme Court. WLF also contends that the Court of Appeal's holding has ramifications for every company that does business subject to rate regulation—insurers, utilities, telecommunications providers, and others. As WLF's brief demonstrates, rational, profit-seeking firms cannot be expected to continue doing business under California's "deep financial hardship" standard.

WLF's *amicus curiae* brief was prepared with the assistance of Kathleen Sullivan, Cleland B. Welton II, and Derek L. Shaffer of Quinn Emanuel Urquhart & Sullivan LLP.

Celebrating its 40th year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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