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October 16, 2017

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WLF Urges Second Circuit to Reverse Unduly Excessive Nine-Digit Civil Penalty

(*New York v. United Parcel Service*)

“The \$237 million civil penalty in this case is so unmoored from any conceivable notion of proportionality or harm that—even if the district court’s deeply flawed liability determinations survive the appeals court’s review—reversal is warranted based on the enormous size of the penalty alone.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation filed an *amicus* brief Friday, October 13, 2017, in the U.S. Court of Appeals for the Second Circuit urging reversal of a massive civil penalty in *New York v. United Parcel Service*.

The case arises from a 2015 suit against United Parcel Service (UPS) by the State and City of New York, alleging that the common carrier knowingly shipped untaxed cigarettes from Indian reservations to consumers in violation of state and federal law. Following a bench trial, the district court found that UPS had “constructive” knowledge of the transportation of cigarettes and was therefore liable.

Although earlier acknowledging that it was unable to calculate damages and penalties on the basis of the record before it, the district court went on to award the State and City a total monetary award of \$246,975,614—which included a staggering \$237.6 million in civil penalties. UPS has appealed from the district court’s liability findings as well as the court’s calculation and award of damages and penalties.

In its *amicus* brief urging reversal of the judgment below, WLF argues that the district court did not meaningfully consider whether the enormous nine-digit penalty was excessive under either federal common law standards or under the constitutional limits imposed by the Fifth and Eighth Amendments.

In particular, WLF argues that the penalty imposed on UPS—an amount more than 25 times greater than the \$9.4 million in damages (in the form of lost tax revenues) it determined that plaintiffs suffered as a result of UPS’s conduct—exceeds permissible limits under both federal common and the U.S. Constitution. A 25:1 ratio of penalties to actual damages (or any ratio much above 1:1) is impermissible under federal common law even when (unlike here) the defendant has acted maliciously with an intent to injure. Similarly, WLF’s brief demonstrates that such an outsized penalty violates the Due Process Clause and the Excessive Fines Clause because it is grossly disproportionate to the nature and amount of harm caused by the defendant’s conduct.

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.