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SUPREME COURT RULES AGAINST BROAD PRICE DISCRIMINATION THEORY

(*Volvo Trucks North America v. Reeder-Simco GMC, Inc.*)

The U.S. Supreme Court today rejected a broad interpretation of the Robinson-Patman Act, which prohibits certain forms of price discrimination in commercial transactions (such as transactions between manufacturers and retailers). The Justices accepted the position – supported by WLF in its brief – that a manufacturer is liable under the Act for alleged favoritism among dealers only if the dealers were in competition with one another.

The case involves an Arkansas truck dealer's claim that Volvo offered it excessive truck prices when the dealer was seeking contracts in competitive bidding situations. When a truck dealer bids on a contract, it requests a discount from the manufacturer on the trucks involved; the discount extended by the manufacturer often varies depending on the dealer's ultimate customer and its requirements. Here, the plaintiff contends that Volvo gave better discounts to other dealers who were bidding on different customers with different requirements. The plaintiff further argued that if Volvo had offered it the level of discounts offered other dealers on some other occasions, it would have won more competitive bids.

The court below, the U.S. Court of Appeals for the Eighth Circuit, ruled in a 2-1 decision that a truck dealer could bring suit for price discrimination under the Act based on transactions where it had not been competing against any other Volvo dealer. The jury had awarded the dealer damages of more than $1.3 million, along with damages of $513,750 under state law, although the sole transaction in which the dealer had competed against another Volvo dealer and lost to the other dealer involved only $30,000 in gross profits.

WLF's brief in the High Court argued that the appeals court's decision improperly expanded the Act in two ways. First, it disregarded the Act's requirement that the plaintiff must be a "purchaser" – that is, it must have actually purchased the product at a discriminatory price. In determining liability and damages, the court of appeals included many transactions in which the plaintiff truck dealer was an unsuccessful bidder and thus made no purchase from Volvo. Second, it failed to apply the Act's requirement of competitive injury, *i.e.*, that the plaintiff dealer must have suffered loss through the manufacturer giving preferential treatment to a competitor of the plaintiff. Finally, WLF noted that the Eighth Circuit's approach would actually work against competition by chilling competitive bidding.

WLF is a public interest law and policy center with supporters nationwide. WLF has frequently appeared as amicus in federal courts to address the proper scope of the antitrust laws. *See, e.g., Texaco v. Dagher* (Nos. 04-805 and 04-814); *Verizon Communs., Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004); *United States Tobacco Co. v. Conwood Co., cert. denied*, 123 S. Ct. 876 (2003); *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993); *In re Stock Exchanges Options Trading Antitrust Litig.*, 317 F.3d 134 (2d Cir. 2003). In addition to its brief on the merits in *Volvo Trucks*, WLF also filed a brief supporting the petition for certiorari in the case.

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For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.