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COURT CURBS EXPANSION OF CIVIL RICO CLAIMS

(*Rotella v. Wood*, No. 98-986)

The Supreme Court issued a decision today that may signal the beginning of an effort to rein in the seemingly endless expansion of civil lawsuits brought under RICO (the federal Racketeer Influenced and Corrupt Organizations Act).

The decision in *Rotella v. Wood* was a victory for the Washington Legal Foundation (WLF), which had filed a brief in the case urging the Court to halt such expansion. WLF asserted in its brief that Congress adopted RICO as a tool to be used in fighting organized crime, but that RICO is now being used primarily by plaintiffs' lawyers in everyday fraud cases brought against respected and legitimate businesses. WLF argued that strict limits ought to be placed on the right of a commercial litigant to brand its courtroom opponent as a "racketeer"; in particular, litigants should not be permitted to raise such claims many years after the business transaction giving rise to the dispute.

"RICO includes several powerful tools designed to combat organized crime, most prominently a provision giving plaintiffs the right to recover three times their actual damages as well as attorney fees," said WLF Chief Counsel Richard A. Samp following the Court's decision. "But when abused -- as here -- by plaintiffs' lawyers in run-of-the-mill commercial disputes, RICO's treble damages provision results in deep-pocketed companies being bludgeoned into unwarranted settlements," Samp said.

The case before the Supreme Court involved a malpractice claim raised by a Texas man against several doctors. They treated him while he was a patient at a psychiatric hospital for 16 months in 1985-86. He now claims that the doctors improperly recommended that he remain hospitalized for reasons unrelated to his psychiatric condition; he alleges that his hospitalization was extended solely to justify higher fees.

The issue before the Supreme Court was whether the patient's suit was barred by RICO's four-year statute of limitations. The patient contended that the four-year statute of limitations did not begin to run until he became aware of the alleged improper motivation for his hospitalization. Because he claimed not to have learned of the improper

motivation until 1994 (eight years after his release), the patient contended that the statute of limitations did not begin to run until 1994 -- and thus his 1997 suit was filed in time.

In its brief supporting of the doctors, WLF argued that the four-year limitations period began to run as soon as the patient knew that he was injured (i.e., that he had been hospitalized) and that the doctors were responsible for his "injury." Under that rule, the patient forfeited the right to sue his doctors under RICO in 1990.

The Supreme Court agreed with WLF and dismissed the suit on statute of limitations grounds. The Court agreed with WLF's argument that the rule espoused by the patient's lawyer would expand potential RICO liability to an unwarranted degree -- it would totally eviscerate the concept of a statute of limitations in RICO cases and would permit plaintiffs to dredge up decades-old claims that would otherwise be time-barred.

The Court declined, however, to decide the precise date on which the statute of limitations should begin to run in RICO cases. As a result of today's decision, the only two possibilities are that it begins to run on the day the injury occurs, or that it begins to run on the day the plaintiff becomes aware of his injury. Because the plaintiff in this case became aware of his injury eleven years before he filed suit, his suit was barred under either rule -- and thus the Court did not have to choose between the two.

The Court noted that statutes of limitations serve important societal values. Although affording plaintiffs what Congress deems a reasonable time to present their claims, statutes of limitations protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.

WLF filed the brief on behalf of itself and the Allied Educational Foundation. The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to promoting civil justice reform, including efforts to rein in overly expansive theories of tort liability.

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