

**FOR IMMEDIATE RELEASE****February 4, 2005**

WLF ASKS SUPREME COURT TO HEAR CASE ON PRICE DISCRIMINATION

(Volvo Trucks North America v. Reeder-Simco GMC, Inc., No. 04-905)

The Washington Legal Foundation (WLF) filed a brief today in the U.S. Supreme Court asking the Justices to review a lower court decision greatly expanding the scope of the Robinson-Patman Act, which prohibits certain forms of price discrimination in commercial transactions (such as transactions between manufacturers and retailers). WLF's brief argued that the decision of the U.S. Court of Appeals for the Eighth Circuit in the case should be reviewed because it created a conflict with other federal circuit courts regarding the interpretation of the Act and because it would ban pricing practices that are common and legitimate 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 – a Volvo truck dealer – 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 Eighth Circuit agreed and Volvo Trucks North America sought Supreme Court review of that decision.

WLF's brief argued that the 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, which other courts of appeals have held to mean that the plaintiff dealer must have suffered loss through the manufacturer giving preferential treatment to a competitor of the plaintiff. Here, in all but a handful of the transactions at issue, the plaintiff dealer was not bidding against another Volvo dealer. WLF's brief urged the Court to clarify the interpretation of the Robinson-Patman Act by granting review and addressing these issues.

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, petitions filed Dec. 14, 2004); *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).

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