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## COURT DECLINES OPPORTUNITY TO END EXPANSION OF CIVIL RICO CLAIMS

*(Bridge v. Phoenix Bond & Indemnity Co., No. 07-210)*

The U.S. Supreme Court this week took a pass on an opportunity to halt the seemingly endless expansion of civil lawsuits brought under RICO (the acronym for the federal Racketeer Influenced and Corrupt Organizations Act), ruling that any limits on RICO tort liability must come from Congress instead of the courts.

The Court's decision in *Bridge v. Phoenix Bond & Indemnity Co.* was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case in support of the defendant. WLF argued that plaintiffs should not be able to recover in a civil RICO action unless they can demonstrate that they "reasonably relied" on the defendant's alleged fraudulent misrepresentations. WLF argued that reliance has always been an element of common-law fraud actions and should be required in RICO actions as well.

The Court disagreed, finding no indication that Congress, when it adopted RICO and its broad proscriptions against fraud, intended to incorporate limitations traditionally imposed on fraud claims by the common law. In particular, the Court said that Congress did not specify that the plaintiff must show that he actually relied on the alleged fraud; he need only show his injuries arose due to *someone's* reliance.

"We are concerned that the reflexive invocation of RICO by civil litigants engaged in otherwise garden-variety commercial disputes does violence to the original purpose of RICO and unnecessarily burdens our federal judicial system," WLF Chief Counsel Richard Samp said after reviewing the Court's decision. "Congress adopted RICO as a tool to fight organized crime. It was not meant as an every-day tool for litigants hoping to take advantage of RICO's generous treble-damage and attorney fee provisions," Samp said.

The case involved rival bidders at auctions conducted by the Treasurer's Office in Cook County, Illinois, during which the County auctions off tax liens on real property whose owners have failed to pay property tax. One of the bidders, Phoenix Bond, filed suit against another group of bidders (Bridge), alleging that they had not followed auction rules and had made fraudulent statements to the Treasurer's Office regarding their bidding practices. Cook County apparently was not injured by the alleged misstatements; it received the same proceeds from the auctions that it would have received even in the absence of the misstatements. But Phoenix Bond alleges that *it* was injured by Bridge's misstatements: those misstatements allegedly resulted in more tax liens being awarded to Bridge and fewer being awarded to Phoenix Bond.

Phoenix Bond filed suit against Bridge under RICO; it alleged that Bridge had engaged in a "pattern" of "racketeering activity" -- consisting of mail fraud (apparently, some of the papers filed by Bridge in connection with its bids had been deposited in the U.S. Mail). Bridge argued that the suit failed to state a claim for relief under RICO; it argued that RICO requires a plaintiff alleging fraud to demonstrate that the plaintiff himself (not some third party, such as Cook County) relied on the defendants' fraudulent statements. The U.S. Supreme Court disagreed and permitted Phoenix Bond to proceed with its lawsuit.

In its brief supporting Bridge, WLF had argued that when (as here) a RICO claim is predicated on alleged violations of the federal mail fraud or wire fraud statutes, proof of reliance is a necessary element of the plaintiffs' burden of establishing that the defendant's misrepresentation was the "proximate cause" of the plaintiff's injuries. WLF argued that if a civil RICO plaintiff acts without having so relied, it is difficult to understand how those representations could be said to be the legal cause of subsequent injuries. WLF noted that reliance has always been an element of common law fraud, upon which Congress based the RICO cause of action.

WLF also argued that abuse of civil RICO by plaintiffs' lawyers would increase dramatically if courts did away with the reliance requirement. WLF argued that virtually all product liability suits, and many securities fraud suits, routinely would be filed as RICO actions if Phoenix Bond's right to proceed under RICO were affirmed. WLF argued that in the absence of a reliance requirement, defendants will be forced to settle even the most doubtful RICO claims rather than risk being hit with a large judgment. The Supreme Court responded to those policy arguments by stating that its ruling was compelled by the language of the RICO statute and that any relief would need to come from Congress.

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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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).