News Release

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COURT ASKED TO CURB APPLICATION OF U.S. SECURITIES LAWS TO OVERSEAS CORPORATIONS

(*Morrison v. National Australia Bank Ltd.*)

The Washington Legal Foundation (WLF) filed a brief in the U.S. Court of Appeals for the Second Circuit urging it to affirm a ruling by the district court that United States securities laws do not have extraterritorial application to a foreign corporation. A decision in this case will have an impact on foreign corporations, especially those that have invested in U.S. businesses.

In *Morrison v. National Australia Bank Ltd* (NAB), plaintiff attorneys filed a securities-fraud class action lawsuit against an Australian company on behalf of foreign investors in U.S. federal court. They claim that just because NAB allegedly made misstatements relating to its U.S. business activities, federal securities laws are applicable to the foreign company. The U.S. District Court for the Southern District of New York dismissed the lawsuit, ruling that U.S. securities laws are not applicable to foreign corporations for conduct occurring outside the United States, and the plaintiffs appealed.

In its brief, WLF made three points as to why Australian and other non-United States individuals have no cause of action under section 10(b) of the Securities Exchange Act. First, WLF argued that NAB's alleged misleading disclosures was not U.S. conduct, and that the U.S. source of the alleged misinformation does not make U.S. law applicable to disclosures that occurred outside the U.S. Second, WLF further argued that there is a well established presumption, based on territorial principles of jurisdiction and international comity, that, unless otherwise made expressly clear, Congress does not intend for U.S. laws to apply to actions outside the territory of the United States. Third, a ruling that would provide a cause of action for non-U.S. investors for statements made by foreign companies merely because the alleged mis-information originated in the U.S. would greatly discourage foreign investment in U.S. businesses, making the foreign companies ripe targets for abusive securities class action lawsuits.

"This case is a prime example of how U.S. courts and laws are being used to adjudicate cases that are better suited for foreign courts and jurisdiction," said Paul Kamenar, WLF's Senior Executive Counsel.

WLF's brief was drafted with the *pro bono* assistance of Louis R. Cohen, Ali M. Stoeppelwerth, and Justin S. Rubin of the Washington, D.C. office of Wilmer Cutler Pickering Hale and Dorr LLP, and Daniel C. Richenthal of the firm's New York office.

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For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. WLF's brief is posted on its website at *www.wlf.org.*