



FOR IMMEDIATE RELEASE

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**WLF TO ARGUE BUSINESS CIVIL LIBERTIES
CASE IN COURT OF APPEALS
(*Riverdale Mills Corporation v. United States*)**

Next Tuesday, November 2, 2004, attorneys for the Washington Legal Foundation (WLF) will be arguing before the United States Court of Appeals for the First Circuit in Boston, Massachusetts to preserve its victory against Environmental Protection Agency (EPA) agents for violating the constitutional rights of a small business when they inspected and prosecuted a small business for alleged violations of the Clean Water Act.

WLF filed the lawsuit in late 2000 in federal court in Worcester, Massachusetts, on behalf of the Riverdale Mills Corporation (RMC) and its owner and president, James M. Knott, Sr., against the United States under the Federal Tort Claims Act for malicious prosecution of RMC and Knott for allegedly violating the Clean Water Act in late 1997. The complaint also named two EPA agents who were sued individually in a so-called "*Bivens*" action for violating RMC's and Knott's constitutional rights under the Fourth Amendment for conducting unlawful searches and seizures.

RMC, a small business located in Northbridge, Massachusetts, is an environmental award-winning, energy efficient facility that manufactures galvanized and plastic-coated welded steel wire mesh used for lobster traps, aquaculture, erosion control, and other purposes. WLF's complaint recounted EPA's malicious and selective criminal investigation and felony indictment against RMC and Knott for allegedly violating an EPA regulation by discharging rinsewater from RMC's facility on October 21, 1997 and November 7, 1997, with a pH level of less than 5.0 standard units, into the public sewer. Rainwater has a pH level of approximately 5.5 while black coffee has a pH of 5.0. A cola soft drink has pH level between 2 and 3. The sewer eventually reaches the Town of Northbridge's publicly owned treatment works (POTW).

There were no allegations by the EPA that the POTW was damaged in any way by RMC's rinsewater (which, by volume, was approximately eight percent of the amount RMC is allowed by EPA to discharge, and which accounts for less than two-tenths of one percent of the capacity of the POTW). Nor were there any allegations that RMC's rinsewater caused the POTW to violate any EPA regulations governing the POTW's discharge of rinsewater into the Blackstone River. Thus, even if there were violations of the pH levels as alleged by the EPA, they were technical infractions with no accompanying harm. In short, this was a classic case of overcriminalization by the EPA.

In the course of defending themselves against the unprecedented felony criminal charges for the alleged trivial infractions, Knott and RMC demanded that the government turn over the original log books of the EPA agents who took pH readings on October 21 and November 7, 1997. The log books revealed that a lawful pH reading of 7 taken during the initial inspection was altered so that the 7 was made to look like a 4, and that other 7s were altered to look like 2s. The pH readings taken by the EPA during the November 7, 1997 raid on RMC all show pH readings of 5 or above in compliance with EPA regulations where the public sewer line actually connects to RMC's discharge pipe.

Judge Gorton suppressed the evidence of pH readings of rinsewater taken on October 21, 1997, because EPA agents had violated RMC's and Knott's Fourth Amendment rights against unreasonable searches and seizures when it took tests and readings without any RMC employee present to witness the testing, as expressly required by Knott as a condition for the consensual search. A week before the scheduled trial in May 1999, all charges against RMC and Knott were suddenly dropped.

On July 27, 2000, the court granted RMC's and Knott's subsequent motion filed under the Hyde Amendment for reimbursement of attorneys' fees for defending what the court found to be a "vexatious" criminal prosecution. Judge Gorton described the November 7, 1997 raid by EPA agents on RMC as "*a virtual 'SWAT team' consisting of twenty-one EPA law enforcement officers and agents, many of whom were armed, [who] stormed the RMC facility to conduct pH samplings. They vigorously interrogated and videotaped employees causing them great distress and discomfort.*" EPA and the U.S. Attorney's Office had also issued a press release falsely branding Knott and RMC as water polluters, and boasting that Knott was facing six years in prison and \$1.5 million in fines. CBS's "60 Minutes" produced a featured segment about this case critical of EPA. Unfortunately, the court's fee award was reversed by the First Circuit on appeal, and WLF subsequently filed the civil suit against the EPA.

In March 2004, Judge Gorton denied the EPA's motions for summary judgment seeking dismissal of a malicious prosecution lawsuit against the EPA and claims against two EPA agents for violating a company's business civil liberties. The malicious prosecution trial was completed in early August 2004, but the EPA in the meantime sought an interlocutory appeal of the adverse *Bivens* ruling against the two EPA agents to the First Circuit. Arguing the case next Tuesday for WLF will be WLF Senior Executive Counsel Paul Kamenar. WLF has been working closely with attorney Warren G. Miller of Boston who represented Mr. Knott and RMC in the original criminal proceedings and malicious prosecution trial.

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