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**COURT URGED TO PROTECT U.S. FIRMS
FROM SUITS OVER WORKING CONDITIONS
AT FIRMS FROM WHICH THEY BUY
(*Doe I v. Wal-Mart Stores, Inc.*)**

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Ninth Circuit in San Francisco to protect U.S. companies from lawsuits over working conditions, where the overseas plaintiffs do not work for the U.S. companies but rather work for companies that sell to the U.S. companies.

In a brief filed in *Doe I v. Wal-Mart Stores, Inc.*, WLF argued that businesses should be held responsible for working conditions at their own facilities, not at the facilities of other companies over which they have no control. WLF filed its brief on behalf of itself and the Allied Educational Foundation. WLF drafted its brief with the *pro bono* assistance of Michael A. Carvin and Daniel R. Volkmuth of the Washington, D.C. office of Jones Day.

"Exposing U.S. companies to liability based on overseas firms' working conditions would discourage international trade, thus increasing the costs of goods for American consumers," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Paradoxically, it would harm the very foreign workers who are bringing suit, because reduced foreign trade would reduce employment opportunities for foreign workers," Samp said.

The case was filed by individuals who are or were employed overseas by companies that sell inventory to Wal-Mart Stores, Inc. The plaintiffs are from China, Bangladesh, Indonesia, Swaziland, and Nicaragua. They allege that their employers have violated local labor laws, as well as international standards governing workplace rights. They claim, among other things, that their wages and benefits are lower than required by local law and that they are forced to work overtime without compensation.

Instead of suing their own employers, the plaintiffs filed suit against Wal-Mart, alleging breach of contract, negligence, and unjust enrichment. The plaintiffs note that Wal-Mart has announced that it polices its suppliers to make sure that the suppliers' treat their workers fairly. The plaintiffs contend that Wal-Mart has not lived up to its promises to ensure fair treatment and that they are entitled to sue Wal-Mart for failing to do so.

A federal district court in Los Angeles dismissed the case in 2007 on the grounds that the plaintiffs had failed to state a claim upon which relief could be granted. The plaintiffs appealed that decision to the Ninth Circuit.

In its brief urging the appeals court to affirm dismissal, WLF argued that the plaintiffs have not demonstrated that Wal-Mart ever entered into any sort of contractual relationship with them. While Wal-Mart should be commended for taking steps to improve the working conditions its suppliers' workers, the plaintiffs should take up any deficiencies with the suppliers themselves, WLF argued.

WLF's brief focused most closely on the plaintiffs' unjust enrichment theory. WLF argued that while Wal-Mart benefited by being able to purchase goods relatively inexpensively from overseas suppliers, any relationship between that benefit and injuries suffered by the plaintiffs is too attenuated to permit a finding of "unjust enrichment." WLF noted that there is no reason to think that the overseas employers would have paid higher wages even if Wal-Mart had agreed to pay more for the goods it purchased. Nor does a company do anything "unjust" when it seeks to purchase goods at the lowest available price, WLF argued.

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 tort reform.

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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.