

**March 4, 2003**

## **COURT REINS IN ABUSIVE CALIFORNIA UCL SUITS**

*(Korea Supply Co. v. Lockheed Martin Corp.)*

The California Supreme Court yesterday issued a decision that significantly reins in abusive lawsuits being filed in California by plaintiffs' lawyers under that State's Unfair Competition Law (UCL).

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *Korea Supply Co. v. Lockheed Martin Corp.* The court agreed with WLF that the California legislature adopted the UCL as a means of ensuring that victims of unfair or fraudulent business practices can recover their out-of-pocket losses, not as a means of permitting plaintiffs' lawyers to extort large settlements from legitimate businesses in cases where the plaintiff has suffered no real loss.

WLF's brief was drafted with the pro bono assistance of James C. Martin, Christina J. Imre, and Michael K. Brown of the Los Angeles law firm of Crosby, Heafey, Roach and May. WLF filed its brief on behalf of itself and the National Association of Independent Insurers.

"The UCL has been having an ever-widening, negative impact on the business community," said WLF Chief Counsel Richard A. Samp after reviewing the court's decision. "A law that was initially intended to protect consumers has now evolved into a vehicle promoting vexatious and harassing litigation that is costly to resolve. The California Supreme Court has rightly used this case to eliminate some of those excesses," Samp said.

The case arose as a result of an effort by the Republic of Korea to purchase a military radar system. The plaintiff was assisting one of the companies seeking to win the supply contract, but Korea awarded the contract to a subsidiary of Lockheed Martin instead. The plaintiff asserted that Lockheed Martin won the contract by using improper procurement methods. The plaintiff sued under the UCL, which prohibits unfair competition, including unlawful, unfair, and fraudulent business acts. The trial court dismissed the case for failing to state a claim under the UCL, but the California Court of Appeal reversed and reinstated the case. In its decision yesterday, the

California Supreme Court reversed and in the process made clear that remedies available under the UCL are quite limited.

The plaintiff asserted that it was entitled to sue under the UCL to require Lockheed Martin to disgorge all profits derived from the contract. The California Supreme Court rejected that assertion; it agreed with WLF that the UCL limits damages to restitution – recovery of any funds lost by the plaintiff as a result of the defendant’s allegedly unfair conduct. Because the plaintiff in this case had no out-of-pocket expenses as a result of Lockheed Martin’s alleged misconduct, the plaintiff is not entitled to any recovery under the UCL, the court held.

The court agreed with WLF that permitting the plaintiff to take from Lockheed all profits derived under the radar supply contract would create a windfall for the plaintiff. WLF had argued that by interpreting the UCL as permitting such windfalls, some California appellate courts had given plaintiffs’ lawyers all the incentive they needed to file harassing UCL suits against legitimate businesses, in the hope of sharing some of that windfall.

In a separate aspect of the case in which WLF has not been involved, the California Supreme Court also ruled that the plaintiff should be permitted to proceed against Lockheed Martin for alleged violation of the tort of interference with prospective economic advantage. Suits under that tort are far less worrisome to the business community than are UCL suits, because (unlike in a UCL suit) any plaintiff in a tort suit is required to meet strict evidentiary requirements, including a demonstration that the plaintiff’s injuries were proximately caused by the defendant’s misconduct.

WLF is a public interest law and policy center with supporters in all 50 states, including many in California. WLF devotes a significant portion of its resources to tort reform and efforts to rein in abusive litigation that seeks creation of new causes of action.

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