

FOR IMMEDIATE RELEASE

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**SMALL BUSINESS RETAINS WLF IN
SUIT BROUGHT BY ENVIRONMENTAL GROUP**
(Citizens for a Clean Environment v. The Steel Co.)

The Washington Legal Foundation this week accepted a request from a small manufacturing firm in Chicago to represent the firm in a long-running suit filed against it by a large environmental group. After a multi-year legal battle in the lower courts, the U.S. Supreme Court last year dismissed the environmental group's suit as being without merit. WLF has now agreed to press the company's claim that it is entitled to recover the attorney fees it expended in defending against the meritless suit.

The attorney fee issue is of vital importance to companies and individuals faced with environmental litigation. Congress has adopted legislation providing that the "prevailing party" in environmental litigation should generally be entitled to recover its attorney fees from the losing party. Large environmental groups like Citizens for a Clean Environment (CBE) routinely win large fee awards whenever they prevail in a lawsuit. But some courts have held that the fee statute is not a two-way street -- they have denied fees to prevailing defendants except in those rare cases in which the defendant can demonstrate that the suit was utterly frivolous.

WLF will argue that the fee statute at issue (42 U.S.C. § 11046(f)) by its plain language places defendants on an equal footing with plaintiffs; the same presumption in favor of a fee award should apply regardless whether the prevailing party is the plaintiff or the defendant. WLF has pledged to pursue the issue all the way to the U.S. Supreme Court, if necessary.

WLF's client is The Steel Company, a small, marginally profitable steel manufacturer located in Chicago. It was sued in 1995 by CBE (a well-funded environmental group) under the Emergency Planning and Community Right-to-Know Act ("EPCRA"), a federal law that requires companies to report certain hazardous materials in their possession. It is uncontested that The Steel Company is in compliance with EPCRA and also was fully compliant at the time suit was filed. However, CBE alleged that at some points in the past, The Steel Company failed to file timely reports.

After three years of contentious litigation, the U.S. Supreme Court finally ruled

in 1998 that CBE never should have filed suit in the first place because it had not been injured by The Steel Company's alleged actions and thus lacked "standing" to sue. But by that time, The Steel Company had already incurred more than \$200,000 in attorney fees trying to defend itself.

The Steel Company then asked the federal district court in Chicago to order CBE to reimburse its fees. It was after the district court denied its motion that The Steel Company approached WLF about taking over legal work in the case. The Steel Company had exhausted its resources and had no funds to hire lawyers to pursue further appeals. WLF agreed to take on the case *pro bono* (at no cost) because of the important issues at stake.

"Unless courts become willing to award fees to prevailing defendants in environmental litigation, we will continue to see a proliferation of extortionate lawsuits being filed against the business community," WLF Chief Counsel Richard Samp said after signing on as lead counsel on behalf of The Steel Company. "As things now stand, defendants are forced into paying money to settle meritless suits because they know that the cost of defending the suits will exceed the costs of a quick settlement; environmental groups thus have every incentive to file meritless suits in hopes of obtaining quick settlements," Samp said.

WLF will file its initial brief on behalf of The Steel Company on August 17, 1999, in the U.S. Court of Appeals for the Seventh Circuit in Chicago. If the Seventh Circuit decides the case in WLF favor -- and rules that defendants are entitled as a matter of course to recover attorney fees when they prevail in environmental cases -- then it is almost certain that the Supreme Court will agree to hear CBE's appeal. Another appeals court (the Ninth Circuit) has already decided the issue against environmental defendants, and the Supreme Court would likely seek to resolve any conflicting appeals court decisions on the issue.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a considerable portion of its resources to defending the rights of business persons who have become the targets of unwarranted government regulation and excessive litigation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302.