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July 14, 1999

**COURT URGED TO END EXPANSION
OF CIVIL RICO CLAIMS**
(Rotella v. Wood, No. 98-986)

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to halt the seemingly endless expansion of civil lawsuits brought under RICO (the acronym for the federal Racketeer Influenced and Corrupt Organizations Act).

In a brief filed in *Rotella v. Wood*, WLF asserted that Congress adopted RICO as a tool to be used in fighting organized crime, but that RICO is now being used primarily by plaintiffs' lawyers in everyday fraud cases brought against respected and legitimate businesses. WLF argued that strict limits ought to be placed on the right of a commercial litigant to brand its courtroom opponent as a "racketeer"; in particular, litigants should not be permitted to raise such claims many years after the business transaction giving rise to the dispute.

"RICO includes several powerful tools designed to combat organized crime, most prominently a provision giving plaintiffs the right to recover three times their actual damages as well as attorney fees," said WLF Chief Counsel Richard A. Samp after filing WLF's brief. "But when abused by plaintiffs' lawyers in run-of-the-mill commercial disputes, RICO's treble damages provision results in deep-pocketed companies being bludgeoned into unwarranted settlements," Samp said.

The case before the Supreme Court involves a malpractice claim raised by a Texas man against several doctors. They treated him while he was a patient at a psychiatric hospital for 16 months in 1985-86. He now claims that the doctors improperly recommended that he remain hospitalized for reasons unrelated to his psychiatric condition; he alleges that his hospitalization was extended solely to justify higher fees.

The issue before the Supreme Court is whether the patient's suit is barred by RICO's four-year statute of limitations. The patient contends that the four-year statute of limitations did not begin to run until he became aware of the alleged improper motivation for his hospitalization. Because he claims not to have learned of the

improper motivation until 1994 (eight years after his release), the patient contends that the statute of limitations did not begin to run until 1994 -- and thus his 1997 suit was timely filed.

In its brief in support of the doctors, WLF argued that the four-year limitations period began to run as soon as the patient knew that he was injured (i.e., that he had been hospitalized) and that the doctors were responsible for his "injury." Under that rule, the patient forfeited the right to sue his doctors under RICO in 1990. WLF argued that the rule espoused by the patient's lawyer would expand potential RICO liability to an unwarranted degree -- it would totally eviscerate the concept of a statute of limitations in RICO cases and would permit plaintiffs to dredge up decades-old claims that would otherwise be time-barred.

WLF argued that statutes of limitations serve important societal values. Although affording plaintiffs what Congress deems a reasonable time to present their claims, statutes of limitations protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise, WLF argued.

WLF filed the brief on behalf of itself and the Allied Educational Foundation. 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 efforts to rein in overly expansive theories of tort liability.

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