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In Success for WLF, High Court Agrees to Decide Whether RICO Act Covers Overseas Conduct

(RJR Nabisco, Inc. v. The European Community)

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WASHINGTON, DC—Earlier today, the U.S. Supreme Court agreed to review a recent Second Circuit decision that further widens an existing circuit split on whether, and to what extent, the Racketeer Influenced and Corrupt Organizations Act (RICO) applies extraterritorially. The decision marked a victory for Washington Legal Foundation, which filed the only *amicus* brief in *RJR Nabisco, Inc. v. The European Community*. Urging certiorari, WLF cautioned the Court that the decision below drastically expands the reach of RICO civil liability by reading the statute to extend to foreign racketeering allegations, foreign enterprises, and foreign injuries.

As WLF’s brief demonstrates, RICO’s civil provisions provide for treble damages and recovery of all costs, including attorneys’ fees, to prevailing plaintiffs. As a result, civil RICO is uniquely prone to abuse, even when properly cabined to wholly domestic matters. WLF’s brief contends that allowing foreign litigants to bring what are otherwise ordinary foreign civil disputes into U.S. federal courts will dramatically increase the burden on the federal courts, impose higher litigation costs on multi-national businesses, and force defendants into coercive settlements. WLF argues further that the Second Circuit’s ruling is particularly troubling given the Court’s recent *Kiobel v. Royal Dutch Petroleum Co.* holding. Because that decision foreclosed bringing certain claims under the Alien Tort Statute, activist plaintiffs have strategically pivoted to civil RICO as a potential surrogate for litigating such claims.

WLF’s brief also criticizes the Second Circuit for adopting a novel interpretation of U.S. law that carries foreign policy consequences unintended by the political branches. Although plaintiffs in this case happen to be foreign sovereigns, private plaintiffs initiate most civil RICO litigation. If ill-considered decisions by U.S. courts blur the territorial limits of U.S. law, other nations may retaliate in kind—subjecting U.S. companies to similar actions brought by overseas plaintiffs in foreign courts.

Upon learning of the certiorari grant, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “Since RICO was first adopted in 1970 as a device for combating organized crime, activist attorneys have tried to transform it into a tool for both attacking the overseas conduct of American corporations and for second-guessing American foreign policy. By granting review, the Supreme Court has taken the first crucial step necessary to vindicate the venerable presumption against the extraterritorial application of domestic U.S. law.”

WLF is a free-market, public-interest law firm and policy center that regularly litigates to defend free enterprise and the rule of law from depredations like the extraterritorial application of U.S. law.