



For Immediate Release

January 19, 2007

WLF URGES COURT TO REJECT NOVEL THEORY OF CORPORATE LIABILITY

(In re: Dynex Capital Inc. Securities Litigation)

The Washington Legal Foundation (WLF) filed a brief with the U.S. Court of Appeals for the Second Circuit this week, urging it to reverse a lower court ruling that found that a corporation can be held liable in a securities class action case based on the collective knowledge of corporate employees, regardless of their position or role in making any alleged misstatements about the company's financial matters. If the lower court opinion is upheld, it will expose many businesses to abusive class action lawsuits and be contrary to the pleading requirements that Congress intended to apply in securities litigation.

In the *Dynex* case, a securities class action was filed against Dynex and several individual officers claiming that the company misrepresented the quality of the bonds that it issued to investors. The district court dismissed the case against the individual officers, finding that the plaintiffs did not sufficiently plead knowledge, or "scienter," on the part of the individuals. Nevertheless, the court held that the company itself can be held liable based on the collective knowledge of any and all employees of the company. In effect, the court imposed strict liability on the corporation, even though no employee was identified as having the intent to make any false statement.

In its brief, WLF argued that this "collective scienter" theory is contrary to the common law and decisions of other courts which require specific allegations of intent or scienter in a complaint against individuals because a corporation, by definition, is a fictional entity and cannot be personified. In addition, WLF argued that this broad theory of corporate liability conflicts with the pleading requirements of the Private Securities Litigation Reform Act (PLSRA) enacted by Congress in 1995.

WLF's brief was drafted with the *pro bono* assistance of Lyle Roberts, partner in the Washington, D.C. office of LeBoeuf, Lamb, Greene & MacRae, LLP; John Letteri, counsel to the firm; and associates Lisa Keenan, Ilona Coleman-Lange, and Rachel Wolkinson.

* * *

For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. WLF's brief can be obtained from its website at www.wlf.org.