



**For Immediate Release**

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**WLF URGES COURT TO RESTRICT PLAINTIFFS'  
LAWSUITS UNDER SARBANES-OXLEY**  
*(Neer v. Pelino)*

The Washington Legal Foundation (WLF) filed a brief with the U.S. Court of Appeals for the Third Circuit in Philadelphia yesterday urging the court to affirm a lower court decision that a private litigant does not have the right under Section 304 of the Sarbanes-Oxley Act (SOX) to sue officers and directors of a publicly traded company to disgorge bonuses and profits for alleged errors in the company's accounting statements filed with the Securities and Exchange Commission (SEC). Instead, WLF argued that Congress intended that only the SEC has the authority to enforce the penalty provision.

In *Neer v. Pelino*, a shareholder in Stonepath Group, Inc., filed a shareholder derivative lawsuit in federal court seeking to disgorge certain bonuses and profits from certain officers and directors of Stonepath for the company's benefit, because the company made a revision to a previously issued financial report. Under Section 304 of SOX, the SEC is empowered to impose a penalty on the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) of the company in the nature of a forfeiture of certain bonuses and profits. Section 304 also gives the SEC the discretion to withhold the imposition of a penalty or to modify it depending upon the circumstances of the accounting restatement. Nevertheless, the shareholder claims that Congress impliedly intended for shareholders to be able to file their own lawsuit against the officers to seek disgorgement.

WLF argued that Congress did not manifest any intent to allow private litigants to enforce the penalty provision and that to permit such suits would be contrary to sound public policy. In particular, enforcement of Section 304 would not be uniform and may cause officers to unfairly disgorge profits when their conduct was not blameworthy to avoid expensive lawsuits. In addition, since the disgorgement is required to be returned to the company and its shareholders, plaintiffs' attorney fees would be siphoned from the penalty imposed, whereas all the funds would be returned if the SEC imposed the penalty.

WLF's brief was filed with the *pro bono* assistance of partner James A. Meyers and associates James W. Deacon and Terry M. Thomas of the Washington, D.C., office of Orrick, Herrington & Sutcliffe LLP.

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For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. WLF's brief is posted on its website at [www.wlf.org](http://www.wlf.org).