

**FOR IMMEDIATE RELEASE****May 19, 2005**

COURT URGED TO ALLOW NONRESIDENTS TO REMOVE CASES TO FEDERAL COURT

(Lincoln Property Co. v. Roche)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to overturn an appeals court decision that makes it much more difficult for out-of-state defendants to move their lawsuits from state court to federal court.

In a brief filed in *Lincoln Property Co. v. Roche*, WLF argued that the lower court improperly deemed the defendant corporation a citizen of the state in which it was being sued. As a result, the corporation was barred from "removing" the case to federal court, because parties generally may invoke the federal courts' "diversity jurisdiction" only when the plaintiffs and defendants are not citizens of the same state. WLF argued that the ability to remove a case to federal court often is crucial for obtaining a fair trial; corporations in particular often feel the need to move lawsuits to federal court, which are generally considered less hostile to out-of-state corporations than are state courts.

"The appeals court decision frustrates the will of Congress that cases of this sort be removable to federal court as a means of ensuring that out-of-state defendants can have their cases heard in an impartial forum," said WLF Chief Counsel Richard Samp after filing WLF's brief. "If allowed to stand, the decision could interfere with companies' ability to operate on a multi-state basis," Samp said.

The case is an action for damages allegedly sustained by two Virginia citizens as a result of toxic mold in their residential apartment. They sued their landlord (a Wisconsin citizen) and the parent corporation of the firm that managed their apartment complex. The parent corporation is a citizen of Texas. After suit was filed, the defendants removed the case from Virginia state court to federal district court; they claimed the right to do so on the basis of diversity of citizenship (the plaintiffs were Virginia citizens while the defendants were not). The district court entered judgment for the defendants (finding that they were not responsible for any damages suffered by the plaintiffs), and the plaintiffs appealed.

The U.S. Court of Appeals for the Fourth Circuit held that the case never should have been removed to federal court; it overturned the judgment and ordered the case returned to state court where the parties would start from scratch. The appeals court held that the Texas management company (Lincoln Property) was not the "real party in interest." Rather, the court held, the "real party in interest" was a Lincoln affiliate (a limited partnership by the name

of EQR), and thus diversity of citizenship should be determined based on the citizenship of EQR as well as Lincoln. The appeals court next noted that, for purposes of determining diversity of citizenship, a limited partnership is deemed a citizen of every state in which any one of its partners is a citizen. The court held that Lincoln had failed to provide sufficient information to demonstrate that none of EQR's limited partners were Virginia citizens. Accordingly, the appeals court ruled, the case had to be remanded to state court because Lincoln had failed to meet its burden of demonstrating the existence of diversity jurisdiction.

In its brief urging reversal, WLF argued that the appeals court's analysis was faulty in numerous respects. WLF argued, for example, that for purposes of determining diversity jurisdiction, it is never appropriate to take into account the citizenship of parties (such as EQR) who could have been named as defendants but were not.

But WLF devoted most of its brief to challenging the appeals court's statement that federal courts should very strictly construe the removal statutes and should always remand cases to state court whenever there is any serious doubt about the case's removability. WLF argued that the Supreme Court has never endorsed such a "presumption against removability," and that such a presumption undermines one of the central features of the federal system of government envisioned by the Framers of the Constitution: that federal courts be available to provide out-of-state litigants with an impartial judicial forum. WLF argued that those who view federal court removal jurisdiction as an affront to principles of federalism are simply uninformed about constitutional history.

Moreover, WLF argued, it is highly unlikely that state courts consider it an affront to their dignity to have one of their cases transferred to federal court at the behest of a defendant. Given the persistent plea by many state courts that their dockets are overcrowded, WLF argued that state courts are far more likely to get upset when federal courts, in an effort to relieve overcrowding on their own dockets, seek to remand large numbers of their cases back to state court.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to reforming the tort liability system.

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For further information, contact WLF Chief Counsel Richard Samp (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.