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COURT URGED TO PROVIDE MEANINGFUL RELIEF FOR SECURITIES LAW VIOLATIONS

(CSX Corp. v. The Children's Investment Fund)

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Second Circuit to authorize the award of meaningful relief to publicly owned companies that have demonstrated that corporate raiders have committed serious violations of the federal securities laws. WLF's court filing was made in connection with an ongoing fight for control of CSX Corp., one of the nation's largest railroads.

WLF filed its brief in *CSX Corp. v. The Children's Investment Fund Management (UK) LLP* on behalf of itself, the National Association of Manufacturers (NAM), and the Business Roundtable. NAM is the nation's largest industrial trade association. Business Roundtable is an association of chief executive officers of leading U.S. companies with \$4.5 trillion in annual revenues and nearly 10 million employees.

WLF argued that federal courts possess broad powers to redress violations of the securities laws. Those powers include the granting of equitable relief where appropriate to deter wrongdoing and to protect shareholders of publicly held companies, WLF argued.

"The district court declined to provide meaningful relief despite finding that the defendants engaged in deliberate and egregious violations of securities laws. We are concerned that if the district court decision is allowed to stand, groups seeking to exercise control over American corporations will have little or no incentive to abide by those laws," said WLF Chief Counsel Richard Samp after filing WLF's brief. "It cannot be the law that those who deliberately violate disclosure requirements should be allowed to retain the benefit of their misconduct -- to the detriment of the shareholders that the securities laws were intended to protect," Samp said.

The case arises in connection with efforts by two groups of hedge funds, one headed by The Children's Investment Fund Management (UK) LLP ("TCI") and the other headed by 3G Capital Partners Ltd. ("3G"), to gain control of CSX Corp. They conducted a proxy contest in connection with CSX's June 25, 2008 annual shareholders' meeting -- TCI and 3G seek five of the 12 seats on CSX's board and seek to amend CSX's by-laws. The final results of that contest will be released in the coming week.

TCI and 3G began accumulating financial stakes in CSX in late 2006. By February 2007, their combined stakes reached 15.5% of the company's market value. Under the Williams Act, any group that acquires a greater-than-5%-share in a publicly held company must report its holdings to the SEC within 10 days. TCI/3G made no such disclosure; the district court found that TCI/3G were in violation of the Williams Act throughout 2007 and that their misconduct was a deliberate effort to assist them in their efforts to take control of CSX. Keeping their holdings secret prevented a run-up in CSX's stock price and allowed them to buy additional shares at a reduced price.

TCI and 3G did not make a disclosure under the Williams Act until December 2007. By that time, they had purchased an additional 6.4% of the total CSX shares outstanding. In connection with their December 2007 Williams Act filing, TCI and 3G also disclosed that they intended to conduct a proxy contest to win seats of CSX's board of directors. As noted above, that contest occurred at the June 25, 2008 annual meeting of CSX's shareholders.

In June 2008, the district court found that TCI and 3G had flagrantly and deliberately violated the Williams Act. It also stated that if it had possessed the authority to grant CSX's request to enjoin TCI/3G from voting the 6.4% of CSX stock they obtained while in violation of the Williams Act, it would have done so. However, the court held, it lacked authority under the Williams Act to grant such relief.

In its Second Circuit brief, WLF argued that the federal courts do, in fact, possess the power to grant the requested injunctive relief. WLF argued that in the absence of an injunction, those CSX shareholders who do not share TCI's and 3G's vision for the company will suffer irreparable harm, because their position within the company has been weakened as a result of TCI's and 3G's illegal conduct.

WLF is a public interest law and policy center with members in all 50 states. Through its Investor Protection Project, WLF devotes a substantial portion of its resources to defending the rights of corporate shareholders.

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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.