

**FOR IMMEDIATE RELEASE****November 3, 2005**

COURT URGED TO END EXPANSION OF CIVIL RICO CLAIMS

(Bank of China v. NBM, No. 03-1559)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to halt the seemingly endless expansion of civil lawsuits brought under RICO (the acronym for the federal Racketeer Influenced and Corrupt Organizations Act).

In a brief filed in *Bank of China, New York Branch v. NBM L.L.C.*, WLF argued that plaintiffs should not be able to recover in a civil RICO action unless they can demonstrate that they "reasonably relied" on the defendant's alleged fraudulent misrepresentations. WLF argued that reliance has always been an element of common-law fraud actions and should be required in RICO actions as well.

"We are concerned that the reflexive invocation of RICO by civil litigants engaged in otherwise garden-variety commercial disputes does violence to the original purpose of RICO and unnecessarily burdens our federal judicial system," WLF Chief Counsel Richard Samp said after filing WLF's brief. "Congress adopted RICO as a tool to fight organized crime. It was not meant as an every-day tool for litigants hoping to take advantage of RICO's generous treble-damage and attorney fee provisions," Samp said.

The case involves loans made by the Bank of China to various individuals and firms involved in currency trading. The Bank alleges that in order to obtain the loans, the defendants submitted false financial information. The defendants responded that the Bank's employees and officers were fully aware of their precarious financial position and did not rely on any of the false financial information in making the loans. Instead, they alleged, the Bank made the loans because it wanted to earn the millions of dollars in fees and interest generated by the loans and was willing to assume the known risks that the loans would not be repaid if the defendants' companies failed -- which they eventually did.

At trial, the district judge told the jury that it could find in favor of the Bank on its RICO claims without finding that the Bank relied on any misrepresentations made by the defendants. The jury then awarded \$35 million in damages, an amount that was trebled to \$105 million under RICO. The appeals court reversed and ordered a new trial, finding that the district court erred by allowing recovery even in the absence of reliance on the alleged misrepresentations. In June, the Supreme Court agreed to review the appeals court decision.

In its brief urging that the appeals court decision be affirmed, WLF argued that when (as here) a RICO claim is predicated on alleged violations of the federal mail fraud and wire fraud statutes, proof of reliance is a necessary element of the plaintiffs' burden of establishing that the defendant's misrepresentation was the "proximate cause" of the plaintiff's injuries. WLF argued that if a civil RICO plaintiff acts with knowledge that representations being made to him are false, it is difficult to understand how those representations can be said to be the cause -- proximate or otherwise -- of subsequent injuries. The same is true if the plaintiff does not know that the representations are false but would have acted as he did regardless whether those representations had been made, WLF said. WLF argued that in the absence of any plausible explanation from the Bank regarding how proximate cause could be proven except through proof of reasonable reliance, there can be no basis for allowing juries to determine whether proximate cause exists in cases in which there is no evidence of reliance.

WLF also argued that abuse of civil RICO by plaintiffs' lawyers will increase dramatically if courts do away with the reliance requirement. WLF argued that virtually all product liability suits, and many securities fraud suits, routinely will be filed as RICO actions if the court of appeals decision is overturned. WLF argued that in the absence of a reliance requirement, defendants will be forced to settle even the most doubtful RICO claims rather than risk being hit with a large judgment.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to promoting civil justice reform, including efforts to rein in overly expansive theories of tort liability.

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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.