Press Release

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WLF Urges Second Circuit To Uphold Bar On Foreign Securities Suits

(*Banco Safra v. Samarco Mineracao*)

> **"Cases that involve a foreign sale between foreign parties of a foreign security belong in foreign courts."**
> —Corbin K. Barthold, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today filed an *amicus curiae* brief urging the Second Circuit to affirm the dismissal of a foreign securities suit.

The lawsuit at issue is what is often called a "foreign-cubed" lawsuit. It has a foreign plaintiff (a subsidiary of a Brazilian bank); it has foreign defendants (a Brazilian mining company and affiliated entities); and it involves foreign securities (corporate notes issued in Brazil). It is hard to bring a foreign-cubed securities-fraud suit in United States federal court. *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), holds that a plaintiff may typically do so only if the alleged fraud connects to a domestic securities transaction. The plaintiff here tried to show that the securities transactions it is suing over were domestic—were "made" in the United States. The district court did not see things that way, and it granted a motion to dismiss.

WLF's brief—submitted on behalf of both itself and the Allied Educational Foundation—urges the Second Circuit to affirm. The brief argues that this case is a straightforward application of *Morrison*. Although the plaintiff contends that money passed through domestic bank accounts, counterparties, and brokers, that's true of many transactions that are clearly foreign. "It is the rare case," observes *Morrison*, "that lacks *all* contact with the territory of the United States." The plaintiff never explains *how* domestic bank accounts, counterparties, or brokers participated in the transactions. Money may have simply boomeranged into, then out of, the United States during transactions between foreign entities. That is not enough to satisfy *Morrison*'s domestic-transaction test.

Celebrating its 43rd year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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