



FOR IMMEDIATE RELEASE

June 13, 2017

Media Contact: Grace Galvin | ggalvin@wlf.org | 202-588-0302

## WLF Asks Appeals Court to Rein in Abusive RICO Suits Against Drug and Medical Device Companies

*(Sidney Hillman Health Center of Rochester v. Abbott Laboratories)*

**“The reflexive invocation of RICO by civil litigants engaged in garden-variety commercial disputes does violence to the law’s original purpose and unnecessarily burdens our federal judicial system. The Seventh Circuit should call a halt to the inappropriate use of this statute, which was enacted to fight organized crime, not to enrich the plaintiffs’ bar.”**

**—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—Washington Legal Foundation yesterday asked the U.S. Court of Appeals for the Seventh Circuit in Chicago to require dismissal of lawsuits seeking RICO damages, when the plaintiff lacks a direct relationship with the defendant and thus cannot prove that the defendant directly caused plaintiff’s injuries. RICO, the Racketeer Influenced and Corrupt Organizations Act, is the federal anti-racketeering law. WLF’s brief filed in *Sidney Hillman Health Center v. Abbott Laboratories* argues that a plaintiff cannot demonstrate the requisite “proximate cause,” demanded of all RICO plaintiffs, if his theory of causation is too attenuated; *e.g.*, if any damages depend on the actions of intermediaries not under the defendant’s control.

The case involves an effort by several health insurance third-party payers (TPPs) to recover payments they made to their customers reimbursing the cost of Depakote, an FDA-approved drug prescribed to the customers by their doctors. The TPPs contend that Depakote’s manufacturer promoted certain off-label uses for the drug, even though it allegedly lacked medical studies adequately demonstrating Depakote’s safety and efficacy for those uses. They contend that had the true facts been known, doctors would have written fewer Depakote prescriptions and thus the TPPs would have faced lower reimbursement expenses. Importantly, the TPPs do not allege that any of their customers were injured as a result of Depakote use.

WLF’s brief argues that the TPPs cannot satisfy RICO’s proximate-cause requirement because they lack a direct relationship with the drug manufacturer. It contends that any damages suffered by the TPPs depended on the intervening actions of doctors, who may or may not have relied on the manufacturer’s alleged misrepresentations when they chose to prescribe Depakote for their patients. Congress adopted RICO as a tool in fighting organized crime; WLF argues that the TPPs are attempting to expand RICO’s scope well beyond anything envisioned by Congress. WLF’s brief also asserts that RICO suits of this sort—in which reputable manufacturers are accused of “racketeering” and face potentially massive treble-damage awards—are likely to chill the dissemination of truthful and valuable medical information.

*Celebrating its 40th 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.*