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COURT URGED TO BAR ILLEGAL ALIENS FROM RECOVERING FUTURE DAMAGES BASED ON U.S. RATES

(Paramount Citrus v. Superior Court)

The Washington Legal Foundation (WLF) yesterday urged the California Supreme Court to bar illegal aliens who are plaintiffs in personal injury lawsuits from recovering for future damages when those damages are dependent on the plaintiffs remaining illegally in the United States.

In a brief filed in *Paramount Citrus v. Superior Court*, WLF urged the court to intervene in a case in which the trial court has permitted the plaintiff to seek recovery for damages not yet incurred, and to base those damage claims on an assumption that he will remain in the United States for the remainder of his life. WLF argued that such damage claims should be limited to the amount of damages that would be incurred if the illegal alien returned to his native country.

This personal injury tort suit was filed by Ignacio Garcia, an illegal alien who was permanently disabled as a result of an automobile accident in California. Garcia filed a negligence action against Paramount Citrus, a company that owned the road on which the other vehicle was driving. He alleges that the accident would not have occurred if Paramount had maintained better warning signs on its road. A significant portion of his alleged damages consists of the costs of future life care over the next 50 years. Expert witnesses place the present value of the cost of that care at \$5.3 million if administered in the United States, or \$1.5 million if administered in his native Mexico.

The trial court denied Paramount's pre-trial motion to have all future damages claims (including lost wages and future life care) computed based on the assumption that Garcia returns to Mexico. The trial court ruled that even though Paramount demonstrated that Garcia is an illegal alien, it could not prevail on its future damages claim in the absence of evidence that Garcia's deportation was imminent. The California Court of Appeal denied Paramount's petition for review of that ruling. Paramount is now asking the California Supreme Court to review the decision.

In its brief in support of Paramount's petition, WLF argued that damage awards in tort actions should be based on an assumption that the plaintiff will obey the law. Because Garcia

is required by federal immigration law to leave the United States, WLF argued, any award for future damages should be calculated based on Garcia's presence in Mexico. WLF stated that Garcia would be fully compensated if awarded the costs of life care based on costs in Mexico, because the evidence indicated that the quality of care he would receive there would be equivalent to the care he would receive in the United States.

WLF also argued that the damages sanctioned by the trial court would undermine federal immigration policy by encouraging illegal immigrants to come to this country and to seek employment here; WLF noted that the U.S. Supreme Court endorsed that very policy argument in *Hoffman Plastic Compounds, Inc. v. NLRB*. WLF also argued that if Garcia were awarded \$5.3 million to cover the cost of 50 years of life care in this country, he could return to Mexico, receive comparable life care at a fraction of the cost, and pocket the \$3.8 million savings; WLF argued that awarding Garcia such a windfall would be inequitable.

WLF is a public interest law and policy center with supporters in all 50 States, including many in California. WLF devotes a significant portion of its resources to tort reform efforts and to ensuring the integrity of the American immigration system. WLF also filed a brief in support of Paramount Citrus when the case was in the court of appeals.

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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.