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HIGH COURT DECLINES TO BOLSTER APPEAL RIGHTS IN SECURITIES CASES

(*Kircher v. Putnam Funds Trust,* No. 05-409)

The U.S. Supreme Court held today that securities-law class action defendants do not have the right to appeal from rulings that keep securities class action cases in state courts rather than federal courts. The Court's decision in *Kircher v. Putnam Funds Trust* was a setback for the Washington Legal Foundation (WLF), which filed a brief urging the Court to recognize such a right of appeal.

The case arises from the Securities Litigation Uniform Standards Act of 1998, or SLUSA, in which Congress acted to curb abusive class action claims for securities fraud. Congress enacted SLUSA to make federal courts the exclusive venue for most securities fraud class action litigation involving nationally-traded securities.

The plaintiffs here filed securities class actions in Illinois state courts. The defendants, a group of mutual fund companies and other financial institutions, sought to have the cases removed to federal court as provided by SLUSA. The U.S. District Court for the Southern District of Illinois ruled that it had no jurisdiction and sent the claims back to state court. After the U.S. Court of Appeals for the Seventh Circuit reversed, the plaintiffs sought and obtained review in the U.S. Supreme Court, arguing that district court orders sending claims back to state court under SLUSA cannot be appealed.

The Supreme Court held that cases removed from state court to federal court under SLUSA are subject to the general rule, established by 28 U.S.C. 1447(d), that decisions remanding a case from federal court back to state court based on lack of federal subject matter jurisdiction are not appealable. The Court said that nothing in SLUSA indicated that Congress intended to create an exception to that rule.

A silver lining in the Court's decision is that it strongly suggested that the district court's remand order was incorrect as a matter of law, and that once the case returns to state court, the court probably should dismiss the underlying securities-law class action – because SLUSA bars such suits in state courts, even when the plaintiffs seek to raise a claim under state law instead of federal law.

In its brief, WLF had argued that denying a right of appeal in such cases would interfere with Congress's purpose in enacting SLUSA – namely, to funnel securities class actions into federal courts to prevent circumvention of the Private Securities Litigation

Reform Act of 1995. The brief noted that if remand orders such as the one in this case are non-appealable, then district court decisions that erroneously interpret SLUSA in an overly-narrow manner will always escape review.

W. Reece Bader, James A. Meyers, Diana L. Weiss, and Michael C. Tu of the Washington, D.C. office of Orrick, Herrington & Sutcliffe LLP drafted WLF's brief and represented WLF on a *pro bono* basis.

WLF is a nonprofit, nonpartisan public interest law and policy center based in Washington, D.C., with supporters nationwide. WLF engages in litigation and participates in administrative proceedings to defend free enterprise, individual rights, and a balanced civil justice system. To that end, WLF has frequently appeared in federal and state courts to address the proper scope of federal preemption. *See, e.g.*, *Merrill Lynch v. Dabit.* In addition, WLF frequently publishes policy papers and takes part in litigation and agency proceedings to promote and defend legal rules that protect employees, pensioners, and investors from stock losses caused by abusive securities litigation. Among WLF's recent papers on this topic are James Maloney, *Strict Standing Requirement For Securities Fraud Suits Upheld* (2005); Lyle Roberts & Paul Chalmers, *Lower Courts Will Determine Impact Of Supreme Court's Securities Fraud Suit Ruling* (2005); and Neil M. Gorsuch & Paul B. Matey, *Settlements In Securities Fraud Class Actions: Improving Investor Protection* (2005).

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For further information, contact WLF Chief Counsel Richard A. Samp, (202) 588-0302. A copy of the brief is posted on WLF's web site, www.wlf.org.