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## COURT REINS IN NATIONWIDE CLASS ACTION SUITS

*(Stetser v. TAP Pharmaceutical Products Inc.)*

The North Carolina Court of Appeals issued an opinion this week that imposes strict limits on the certification of nationwide class action lawsuits, in which the plaintiff seeks to sue on behalf of himself and every similarly situated person throughout the nation.

The decision in *Stetser v. TAP Pharmaceutical Products Inc.* was a victory for the Washington Legal Foundation (WLF), which filed a brief urging that the certification of a nationwide class action be overturned in this case. WLF argued that plaintiffs' lawyers often bring such nationwide class actions as a means of coercing a settlement, without regard to the merits of the suits. Such suits tend to be totally unmanageable, because class members will often have widely varying damages claims, and different sets of laws often apply to class members from different states.

The trial judge in this case tried to avoid those unmanageability problems by decreeing that all claims would be judged under North Carolina law, the state in which the suit was filed. The court of appeals agreed with WLF that applying North Carolina law violated the due process rights of the vast majority of litigants who had no connection with North Carolina and that even the defendants (which are headquartered in other States) had no more than minimal contacts with North Carolina. The court also appeared to agree with WLF that each class member's claim must be governed by the law of his home state since class members come from all 50 states.

The court of appeals overturned the trial court's class certification order and directed the trial court to reconsider the issue both in light of due process issues and in light of the choice of law issues raised by a nationwide class action. The clear implication of the appeals court decision is that if the trial court chooses to certify any plaintiff class at all, the class must be limited to North Carolina residents.

The case involves claims brought by three North Carolina citizens who purchased the drug Lupron, which is manufactured and distributed by TAP Pharmaceutical Products Inc. and Abbott Laboratories. The Plaintiffs allege that TAP and Abbott have artificially

inflated the listed Average Wholesale Price (AWP) for Lupron, thereby increasing the amount Plaintiffs (and their insurers) paid for Lupron to their health care providers. The Plaintiffs allege the Defendants' conduct violated North Carolina consumer protection laws. Also included as Defendants are several other drug companies alleged to have conspired with TAP and Abbott to raise Lupron's retail price, including Johnson & Johnson. The Defendants appealed the trial judge's decision to certify a nationwide class action on behalf of the thousands of consumers alleged to have paid an inflated price for Lupron, and to apply North Carolina law to the claims of all class members. This week's ruling overturns that certification decision.

In its ruling, the appeals court held that the Fourteenth Amendment's Due Process Clause prohibits a state's law from governing resolution of litigation unless the State has a meaningful connection to the parties' claims. The court noted that the Defendants were not even parties to the sales transactions involving class members, and that those transactions took place almost exclusively at the local level. Virtually none of the plaintiffs who purchased Lupron have had any connection with North Carolina.

In its brief, WLF stated that it is understandable why judges would like to apply a single state's law to the claims of all class members -- applying one law to everyone makes a case far more manageable. But such manageability concerns are not sufficient reason to ignore constitutional limitations on the application of a state's laws to transactions having no connection with the state, WLF argued. The solution is to avoid certification of massive class actions which serve the interests of no one other than plaintiffs' lawyers seeking to coerce unwarranted settlements, WLF argued.

WLF is a public interest law and policy center with supporters in all 50 states, including many in North Carolina. It devotes a significant portion of its resources to advancing the interests of the free-enterprise system and to ensuring that economic development is not impeded by excessive litigation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. WLF's brief can be viewed on its web site, [www.wlf.org](http://www.wlf.org).