

Press Release

Washington Legal Foundation

Advocate for freedom and justice®

2009 Massachusetts Ave., NW

Washington, D.C. 20036

202.588.0302

For Immediate Release

November 13, 2003

CALIFORNIA SUPREME COURT URGED TO REVERSE WINDFALL ATTORNEYS' FEES AWARD TO ACTIVISTS

(Graham v. Daimler Chrysler Corp.)

The Washington Legal Foundation (WLF) filed a brief in the California Supreme Court urging it to review and reverse a dangerous lower court decision that could subject all companies to costly activist litigation. The lower courts upheld a huge attorneys' fees award to a consumer group for filing a lawsuit against an automobile company because of an inadvertent misprint in the owner's manual about the towing capacity of the vehicle. Because the company began to change the misprint in the manual well before the suit was filed, and even offered to repurchase any vehicle, the activists' suit became moot, no relief was awarded, and the case was dismissed less than three weeks after it was filed. Nevertheless, the group was awarded almost \$800,000 simply for filing the lawsuit.

Although the underlying suit was quickly dismissed, the litigation over the award of fees took over three and half years. Approximately 90 percent of the fees awarded by the court to the group represented "fees on fees" -- the fees the activists expended to seek the award of the attorneys' fees they claim they were entitled to for filing the original short-lived complaint under the so-called "catalyst theory." Under that theory, courts have awarded attorneys' fees if the lawsuit helped to bring about corrective changes that otherwise would not have been made.

WLF argued in its brief that this judge-made catalyst theory has been rejected by the U.S. Supreme Court, and should also be rejected by California courts. Principles of fundamental fairness and sound public policy dictate that fees should not be awarded to a plaintiff who has received no relief from the court whatsoever. At a minimum, WLF argued that the Court should not award "fees on fees," otherwise, activists would engage in protracted litigation not to obtain relief for consumers, but to get large fee awards.

WLF's brief was filed with the *pro bono* assistance of Mark S. Pulliam, Jennifer F. Ziegau, Daniel P. Brunton, attorneys with the San Diego office of Latham & Watkins.

* * * * *

For further information, contact Paul Kamenar, WLF Senior Executive Counsel, at 202-588-0302.