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## **COURT URGED TO BAR FORUM SHOPPING BY CLASS-ACTION ATTORNEYS (*Farmer v. Monsanto Corp.*)**

The Washington Legal Foundation today urged the South Carolina Court of Appeals to prevent out-of-state plaintiffs from using South Carolina courts as a forum for filing unwarranted class actions against national companies.

In a brief filed in *Farmer v. Monsanto Corp.*, 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. WLF argued that such suits are essentially untriable and are prohibited by South Carolina law. The trial court ruled in this case that the nationwide class action should be permitted to go forward; WLF's brief asks that that ruling be overturned.

"If the lower court decision is affirmed, South Carolina risks becoming a haven for plaintiffs' lawyers seeking to extort funds from deep-pocketed corporations," WLF Chief Counsel Richard Samp said after filing WLF's brief. "Nationwide class actions are virtually never appropriate in mass tort actions, in which the evidence varies widely from plaintiff to plaintiff and thus would render any trial unwieldy; yet if such class actions are certified, the pressure on the defendant to settle is overwhelming, regardless of the merits of the plaintiffs' claims," Samp said.

The case involves genetically modified cotton seed developed by Monsanto Corp. and sold to farmers in South Carolina and elsewhere. The two named plaintiffs are South Carolina farmers who claim that seed sold to them for the 1999 planting season was defective. They filed suit in South Carolina state court, seeking to recover alleged economic damages. They seek to represent a nationwide class, consisting of all farmers nationwide who bought the Monsanto cotton seed in 1999.

The issue before the court is whether out-of-state farmers are permitted to sue out-of-state corporations in South Carolina state courts, where the farmers' cause of action did not arise in South Carolina and the farmers did not have any other connection with the State. WLF argues that a South Carolina statute known as the "Door Closing Statute" bars such suits.

The Door Closing Statute is a law intended to preserve the resources of the South Carolina judiciary by closing the courthouse door to disputes having very little connection to the State. The statute provides that foreign corporations (*i.e.*, corporations whose place of incorporation and principal place of business are outside the State) may not be sued in South Carolina courts by

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citizens of other States, unless the case arose in South Carolina.

In its brief, WLF argued that the Door Closing Statute prohibits nationwide class actions against foreign corporations in South Carolina courts. WLF argued that the two South Carolina farmers who are plaintiffs (Robert Farmer and Harry Bell) should be free to sue Monsanto in South Carolina courts, and could even seek to sue on behalf of all other South Carolina cotton farmers. But, WLF argued, the Door Closing Statute does not permit them to sue on behalf of a nationwide class of cotton farmers, because any claims that non-South Carolina farmers may have against Monsanto bear no relationship whatsoever to South Carolina.

WLF argued that it was particularly important that the Door Closing Statute be interpreted as prohibiting nationwide class actions against foreign corporations, because Rule 23 (the South Carolina rule governing class actions) is far broader than similar rules in other states and in federal courts. Because of that broader rule, nationwide class actions that would likely be barred in other jurisdictions might well be held permissible under South Carolina's more liberal class action rule. Thus, WLF argued, South Carolina is likely to become a magnet for abusive nationwide class actions unless the Door Closing Statute is deemed applicable to this case.

WLF is a nonprofit public interest law and policy center with supporters in all 50 states, including many in South 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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