

April 9, 2003

COURT BARS FORUM SHOPPING BY CLASS-ACTION ATTORNEYS

(Farmer v. Monsanto Corp.)

The South Carolina Supreme Court issued a decision this week that prevents plaintiffs' attorneys from using South Carolina courts as forums for filing unwarranted nationwide class actions against national companies.

The decision in *Farmer v. Monsanto Corp.* was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case urging the court to cut back on class actions. 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. The South Carolina Supreme Court agreed with WLF that such suits are prohibited by South Carolina law. The decision overturns a trial court ruling that permitted the case to go forward as a nationwide class action.

"If the lower court decision had been affirmed, South Carolina risked becoming a haven for plaintiffs' lawyers seeking to extort funds from deep-pocketed corporations," WLF Chief Counsel Richard Samp said after reviewing the decision. "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 sought to represent a nationwide class, consisting of all farmers nationwide who bought the Monsanto cotton seed in 1999.

The issue before the South Carolina Supreme Court was 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. The Supreme Court agreed with WLF 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 citizens of other States, unless the case arose in South Carolina.

The court held that the Door Closing Statute prohibits nationwide class actions against foreign corporations in South Carolina courts. The court held that the two South Carolina farmers who are plaintiffs (Robert Farmer and Harry Bell) are free to sue Monsanto in South Carolina courts, and can even seek to sue on behalf of all other South Carolina cotton farmers. But the court agreed with WLF that 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 have been held permissible under South Carolina's more liberal class action rule. Thus, WLF argued, South Carolina would likely become a magnet for abusive nationwide class actions unless the Door Closing Statute were 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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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.