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February 10, 2014

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WLF Persuades Ninth Circuit to Grant Rehearing on Removal of “Mass Actions” to Federal Court

(Romo v. Teva Pharmaceuticals USA, Inc.)

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WASHINGTON, DC—The U.S. Court of Appeals for the Ninth Circuit today vacated a September 2013 decision that virtually eliminated the right of out-of-state defendants to remove numerous-plaintiff lawsuits from state court to federal court. It ordered the case, *Romo v. Teva Pharmaceuticals USA, Inc.*, to be reargued before an 11-judge *en banc* panel on June 16, 2014.

The order marked a victory for WLF, which filed a brief last fall urging the court to rehear the case. WLF argued that the original decision, in which a panel voted 2-1 to remand a massive product liability suit back to state court, misapplied the Class Action Fairness Act (CAFA), a 2005 federal law designed to permit removal of such cases. The panel had held that the suit did not qualify as a “mass action” and was not subject to CAFA, but WLF argued that CAFA applies whenever a suit combines the claims of 100 or more plaintiffs. Even if the plaintiffs do not ask explicitly that all claims be “tried jointly,” WLF asserted that CAFA permits defendants to remove cases whenever (as here) the plaintiffs ask that claims be coordinated “for all purposes.”

The case involves the product liability claims of more than 1,500 individuals who claim to have suffered injuries after taking medications containing the active ingredient propoxyphene—a drug widely marketed in this country between 1957 and 2010. Nearly a dozen drug manufacturers and wholesalers are named defendants. CAFA permits defendants to remove cases from state court to federal court if there are more than 100 plaintiffs and certain other conditions are met. In an effort to defeat the defendants’ removal rights, the plaintiffs’ attorneys divided their 1,500 clients among 41 separate lawsuits filed in state court in California, thereby ensuring that no one suit exceeded CAFA’s 100-plaintiff threshold. The plaintiffs thereafter filed a petition asking the California court to coordinate the 41 ostensibly separate lawsuits “for all purposes.”

Following the Court’s rehearing order, WLF issued a statement by Chief Counsel Richard Samp: “The initial appeals court decision frustrated the will of Congress that large class and ‘mass’ actions be removable to federal court to ensure that out-of-state defendants can have their cases heard in an impartial forum. Had it been allowed to stand, the decision would have provided a roadmap for plaintiffs’ lawyers seeking to keep their lawsuits out of federal court.”

WLF is a public interest law firm and policy center that devotes a substantial portion of its resources to reining in excessive litigation. A copy of its brief is posted at www.wlf.org.

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