

**FOR IMMEDIATE RELEASE****August 15, 2012**

COURT URGED TO REIN IN ABUSIVE SECURITIES CLASS ACTIONS

(Amgen, Inc. v. Connecticut Retirement Plans and Trust Funds)

The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to curb abusive class action suits filed under the securities laws by refusing to certify plaintiff classes under a fraud-on-the-market theory when there is no evidence that the market was ever misled.

In a brief filed in *Amgen, Inc. v. Connecticut Retirement Plans and Trust Funds*, WLF argued that the district court's order certifying a class is a prime example of the all-too-frequent willingness of courts to certify inappropriate and unwieldy classes in cases alleging that a corporation provided misleading information to investors. WLF asserted that the decision to certify a class is often outcome-determinative because it creates enormous pressure on the defendants to settle the suit without regard to the underlying merits. The Ninth Circuit subsequently affirmed the district court's order. WLF's brief asked the Supreme Court to overturn that opinion.

"A class action is appropriate only when a large group of individuals have claims for which the operative facts and law are nearly identical for each plaintiff," said WLF Senior Counsel Cory Andrews after filing WLF's brief. "But where, as here, there can be no presumption that any shareholder relied on the alleged misrepresentation (and reliance would need to be proven on a plaintiff-by-plaintiff basis) no legitimate basis exists for certifying a plaintiff class," Andrews said.

The defendant in this suit, Amgen, Inc., is a leading biotechnology company whose products include two drugs widely used for the treatment of anemia. The plaintiff purchased Amgen stock between 2004 and 2007 and alleges that, during that period, Amgen issued misleading statements regarding the safety of the two products, thereby causing the price of Amgen's stock to be artificially inflated. The plaintiff alleges that when the "truth" was disclosed in 2007, the price of Amgen's stock fell. It seeks to represent a plaintiff class consisting of all investors who purchased Amgen stock during 2004-2007.

In a suit alleging stock fraud, the plaintiff must establish that he purchased the defendant corporation's stock in reliance on the corporation's misrepresentations. The Supreme Court has held that, under a "fraud-on-the-market" theory, reliance can sometimes be presumed in an open and developed market. But in the absence of such a

presumption of reliance, certification of a class consisting of all stock purchasers would never be appropriate, because individual issues of fact (*e.g.*, whether each shareholder relied on the alleged misrepresentation) would overwhelm common issues of fact. Federal court rules prohibit certification of a plaintiff class unless the plaintiff can demonstrate that common issues of fact “predominate.”

In its brief urging the Supreme Court to reverse the appeals court’s affirmance of class certification, WLF argued that the district court erred by not permitting Amgen an opportunity to demonstrate that a “presumption of reliance” was inappropriate in this case. WLF argued that stock fraud defendants should be permitted to challenge certification by demonstrating that “the market” never relied on the alleged misrepresentations because they were not material. WLF charged that the Ninth Circuit’s decision in this case was based on its incorrect assumption that a presumption of reliance is appropriate in virtually all cases involving widely traded securities. Because Amgen proffered to the court substantial evidence that the market was well aware throughout the 2004-2007 period of potential safety problems with the two Amgen products, WLF argued that any of the information released by Amgen (which the plaintiff alleges was misleading) did not affect the market price of Amgen stock.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In particular, WLF has appeared in numerous federal and state courts in cases raising securities law issues.

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For further information, contact WLF Senior Counsel Cory Andrews, 202-588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.