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WLF Implores Appeals Court to Enforce Class-Action Settlement Against State Government

(*In re: Flonase Antitrust Litigation*)

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WASHINGTON, DC—Washington Legal Foundation today called on the US Court of Appeals for the Third Circuit to overturn a trial-court decision that would undermine class-wide settlements by permitting plaintiff States to file copycat lawsuits despite benefitting from a settlement. WLF’s brief filed in *In re: Flonase Antitrust Litigation* argues that state governments are entitled to the same procedural protections afforded to other class members—no more and no less—and that the Constitution’s Eleventh Amendment does not protect States from being bound by class-action settlements. The National Association of Manufacturers joined WLF’s brief.

The case involves an antitrust class-action lawsuit filed against a drug company in connection with its marketing of the allergy-relief medication, Flonase. The lawsuit alleged, on behalf of a class consisting of purchasers of the medication, that the defendant improperly sought to delay FDA approval of generic competition. The parties entered into a class-wide settlement under which the defendant agreed to pay millions of dollars to the class (defined to include state governments). A federal district court approved the settlement, concluding that absent class members were adequately notified of the proposed settlement and had an opportunity to opt out.

Louisiana did not opt out; indeed, the evidence suggests that it collected \$183,000 from the settlement fund. Louisiana nonetheless later filed a nearly *identical* lawsuit against the drug company in Louisiana state court, seeking substantial additional damages. The federal district court refused to enjoin the copycat lawsuit, concluding that the Eleventh Amendment immunizes States from being bound by federal-court class actions. WLF argues that the Eleventh Amendment applies only to claims filed *against* a State and thus is not implicated here. WLF contends States are entitled to the same procedural rights afforded to all absent class members (including the right to opt out of the class) and that those rights were fully honored in this case.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “Louisiana is seeking a second bite at the apple. It participated as a class member in the settlement of class-wide claims in a federal antitrust lawsuit. Accordingly, state officials should not be permitted to seek further recovery by filing identical claims in state court. Unless defendants can be assured that every class plaintiff that does not opt out will be bound by a settlement, their willingness to enter into class-action settlements will be substantially reduced.”

WLF is a free-market, public-interest law firm and policy center that regularly advocates against excessive litigation, to ensure that unwarranted lawsuits do not drive up costs for all consumers.