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August 8, 2018

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WLF Asks Supreme Court to Enforce Class-Action Settlement Against State Government

(GlaxoSmithKline LLC v. State of Louisiana)

“Louisiana seeks a second bite at the apple. It participated as a class member in the settlement of class-wide claims in a federal antitrust lawsuit. State officials should not now be permitted to seek further recovery by filing identical claims in state court.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review (and ultimately overturn) an appeals court decision that would undermine class-wide settlements by permitting plaintiff States to file copycat lawsuits despite benefitting from the prior class settlement. In a brief filed in *GlaxoSmithKline LLC v. State of Louisiana*, WLF argues that plaintiffs 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 filed against a drug company in connection with its marketing of an allergy-relief medication. The lawsuit alleged, on behalf of a class consisting of users 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 all members of the class (which was 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 were provided 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 largely *identical* lawsuit against the drug company in Louisiana state court, seeking substantial additional damages. The U.S. Court of Appeals for the Third Circuit refused to issue an injunction against 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 notes that 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.

Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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