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July 25, 2019

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WLF Asks Supreme Court to Reverse Ninth Circuit, Uphold Defendants' Rights under CAFA

(Pfizer, Inc. v. Adamy)

“The lower court decisions frustrate the will of Congress that large class and ‘mass’ actions be removable to federal court as a means of ensuring that defendants can have their cases heard in an impartial forum. If allowed to stand, the decision will serve as a roadmap for plaintiffs’ lawyers seeking to keep their lawsuits out of federal court.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review (and ultimately overturn) a Ninth Circuit decision that makes it nearly impossible for defendants to remove “mass actions” to federal court. WLF’s *amicus curiae* brief argued that Congress adopted the Class Action Fairness Act of 2005 (CAFA) to ensure that state-court defendants would have the option of removing substantial, multi-plaintiff cases but that the appeals court’s decision unduly restricts CAFA’s application.

One of the prerequisites for a CAFA “mass action” is that it must involve at least 100 plaintiffs with largely similar claims. Plaintiffs’ lawyers responded to CAFA by adopting a tactic designed to evade the statute: they routinely file multiple suits raising identical claims in a single state court, but making sure to include 99 or fewer plaintiffs in each suit. They then “suggest” to the state court that the claims of the hundreds plaintiffs be coordinated by a single judge—all the while being careful not to file a formal motion for coordination. They resist removal petitions by arguing that CAFA is inapplicable if the claims are brought together at the behest of the state courts rather than in response to a formal motion from the plaintiffs.

The Ninth Circuit case involves more than 4,300 individuals from throughout the country who filed suit in California state court, claiming that use of the drug Lipitor caused them to develop Type II diabetes. Pfizer, Lipitor’s manufacturer, sought to remove the cases to federal court. But a district court remanded the cases to state court, ruling that the state courts acted on their own initiative in ordering the cases coordinated “for all purposes” before a single judge, and that CAFA only permits removal if it is the plaintiffs themselves who initiate coordination of 100+ cases. The Ninth Circuit issued an order allowing the district court remand decision to stand.

In its brief urging review, WLF argued that CAFA authorizes removal of mass actions without regard to whether the 100+ claims were brought together by the plaintiffs or by the courts. WLF asserted that Congress adopted CAFA to eliminate precisely the sort of “gamesmanship” being displayed by plaintiffs’ lawyers in this case.

Celebrating its 42nd year as America’s premier public-interest law firm and policy center, WLF’s mission is to preserve and defend America’s free-enterprise system by litigating, educating, and advocating for free-market principles, a limited and accountable government, individual and business civil liberties, and the rule of law.