



Washington Legal Foundation
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June 2, 2020

WLF Month in Review

This WLF Litigation Division feature highlights WLF's court and agency filings, as well as decisions issued in response to WLF's filings. In this edition, we list May 2020 filings and results.

New Filings

- WLF asks the Ninth Circuit to reverse an order that certifies a class in an antitrust suit based on an averaging of the alleged harm suffered by the class members. (*In re Packaged Tuna Antitrust Litigation*)
- WLF urges the Texas Supreme Court to vacate an appeals court decision that subjects a non-resident defendant to suit for claims unrelated to the defendant's Texas activities. (*Cessna Aircraft Co. v. Garcia*)
- WLF asks a federal district court to invalidate the Department of Labor's extra-statutory regime for trying discrimination claims against government contractors. (*Oracle America, Inc. v. Dep't of Labor*)

Decisions

- The Ninth Circuit remands an important climate-change lawsuit to the district court, directing it to reconsider whether it should have remanded the case to California state court. (*City of Oakland v. BP*)
- The *en banc* Seventh Circuit declines to reconsider whether *Bristol Myers Squibb's* due-process limits on personal jurisdiction apply to the claims of absent class members. (*Mussat v. IQVIA, Inc.*)

Litigation is the backbone of WLF's public-interest mission. We litigate nationally before state and federal courts and agencies. Our team, often with the *pro-bono* assistance of leading private attorneys, litigates original actions, files *amicus* briefs, participates in the regulatory process, and provides constitutional analysis before federal agencies and Congress.

If you become aware of a pending legal or regulatory matter in which WLF's unique public-interest participation would advance economic liberty, please contact WLF Vice President of Litigation, Cory Andrews.

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NEW FILINGS

WLF asks the Ninth Circuit to reverse an order that certifies a class in an antitrust suit based on an averaging of the alleged harm suffered by the class members.

In re Packaged Tuna Antitrust Litigation

On May 21, WLF filed an *amicus curiae* brief urging the Ninth Circuit to reverse an order that stands class certification on an averaging of the alleged harm suffered by the class members. The plaintiffs seek to press antitrust claims on behalf of three classes of purchasers of packaged tuna. To do so, they must establish that common issues “predominate” within each class. The plaintiffs convinced the trial court to find such predominance, and grant class certification, based on an averaging of the alleged anticompetitive overcharges suffered within each proposed class. WLF’s brief argues that the adoption of this averaging technique violated Article III, the Due Process Clause, the Rules Enabling Act, and the Rule 23(b)(3) predominance requirement itself.

WLF urges the Texas Supreme Court to vacate an appeals court decision that subjects a non-resident defendant to suit for claims unrelated to the defendant’s Texas activities.

Cessna Aircraft Co. v. Garcia

On May 11, WLF urged the Texas Supreme Court to overturn a lower court decision that would subject a nonresident defendant, Cessna Aircraft Company, to suit in a case in which the plaintiffs’ claims lack any connection to Texas. Following an airplane crash in Mexico, the plaintiffs allege that Cessna negligently designed, manufactured, and assembled the aircraft and its components—outside of Texas. Because the plaintiffs’ claims relate solely to Cessna’s out-of-state conduct, WLF argued that the plaintiffs’ claims failed to satisfy the constitutional requirement that they arise from Cessna’s Texas contacts. WLF filed its *amicus* brief with the *pro bono* assistance of Allyson Ho and Bradley Hubbard in the Dallas office of Gibson, Dunn & Crutcher LLP.

WLF asks a federal district court to invalidate the Department of Labor’s extra-statutory regime for trying discrimination claims against government contractors.

Oracle America, Inc. v. Dep’t of Labor

On May 1, WLF joined a coalition of leading business groups and nonprofits in urging a federal district court to invalidate the Department of Labor’s unusual regime for trying discrimination claims against government contractors. The case arises from a suit by Oracle, a leading technology company and government contractor, against the Labor Department’s Office of Federal Contract Compliance Programs (OFCCP). Under the agency’s current enforcement system, discrimination claims against government contractors are not prosecuted in federal court but rather by the OFCCP itself, which has assumed for itself the right to investigate, prosecute, and adjudicate discrimination claims against government contractors. As the *amicus* brief makes clear, however, no federal law authorizes the OFCCP’s extraordinary enforcement regime. In fact, Congress has expressly declined to give agencies, such as the EEOC, the broad and unfettered authority to investigate, prosecute, and adjudicate discrimination lawsuits entirely in-house. WLF’s *amicus* brief was drafted by Jeffrey M. Harris and Alexa R. Baltes of Consovoy McCarthy PLLC.

DECISIONS

The Ninth Circuit remands an important climate-change lawsuit to the district court, directing it to reconsider whether it should have remanded the case to California state court.

City of Oakland v. BP

On May 26, the Ninth Circuit remanded an important climate-change lawsuit to the district court, directing it to reconsider whether it should have remanded the case to California state court. The cities of San Francisco and Oakland sued five companies that produce oil and natural gas. The district court dismissed the cities' claims because (1) they are displaced by federal common law, (2) the Clean Air Act displaces any federal common-law claim directed at domestic fossil-fuel emissions, and (3) any federal common-law claim directed at foreign emissions interferes with the separation of powers and the nation's foreign policy. WLF filed an amicus brief urging the appeals court to affirm the district court's merits ruling. In its brief, WLF argued (1) that the cities cannot establish proximate cause and (2) that the Court should not deviate from the traditional proximate-cause rule.

The *en banc* Seventh Circuit declines to reconsider whether *Bristol Myers Squibb's* due-process limits on personal jurisdiction apply to the claims of absent class members.

Mussat v. IQVIA, Inc.

On May 14, the Seventh Circuit declined to rehear *en banc* an important personal-jurisdiction case. Although the Supreme Court's 2017 *Bristol-Myers* decision cut back on the federal courts' exercise of specific jurisdiction over out-of-state defendants, a Seventh Circuit panel held that *Bristol-Myers* does not apply in federal court. As WLF's brief argued, the panel's deeply flawed analysis contravened Supreme Court precedent and upended long-settled Seventh Circuit case law. Unfortunately, no active judge of the Seventh Circuit requested a vote on the petition, and all members of the original panel voted to deny rehearing.