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WLF Month in Review

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

New Filings

- WLF emphasizes the need for predictability and fairness in federal regulatory enforcement. (*Walmart, Inc. v. DEA*)
- WLF urges the Supreme Court to take history into account in deciding an important removal-jurisdiction case. (*BP plc v. Mayor and City Council of Baltimore*)
- WLF asks the Supreme Court to decide whether the Due Process Clause's limits on personal jurisdiction apply to the claims of unnamed plaintiffs. (*IQVIA, Inc. v. Florence Mussat, M.D., S.C.*)

Decisions

- The Supreme Court of Missouri declines to review a decision that improperly expands the jurisdictional reach of Missouri courts. (*Ingham v. Johnson & Johnson*)

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 emphasizes the need for predictability and fairness in federal regulatory enforcement.

Walmart, Inc. v. DEA

On November 30, 2020, WLF joined a coalition of leading business groups in an *amicus* brief asking a federal court to ensure that federal regulatory actions comport with the rule of law. Although no federal law or regulation requires a pharmacist to independently verify the medical justification for every drug prescription written by a licensed, practicing physician, Department of Justice (DOJ) and Drug Enforcement Agency (DEA) officials have recently threatened an enforcement action against pharmacies for filling allegedly “suspicious” prescriptions. In an *amicus* brief joined also by the U.S. Chamber of Commerce, the National Retail Federation, and the Retail Litigation Center, Inc., WLF argued that a federal agency’s power to regulate private conduct exists only as authorized by Congress and may be exercised only in a manner consistent with federal law. As a result, DOJ and DEA cannot use vague, sub-regulatory guidance as the basis for an enforcement action. WLF calls on the court to stop DOJ and DEA from enforcing non-binding guidance that lacks the force of law.

WLF urges the Supreme Court to take history into account in deciding an important removal-jurisdiction case.

BP plc v. Mayor and City Council of Baltimore

On November 23, 2020, WLF filed an *amicus* brief urging the Supreme Court to reverse the Fourth Circuit in an important removal-jurisdiction case. Although the Supreme Court’s 1996 *Yamaha* decision defined the word “order” for appellate-jurisdiction purposes, the Fourth Circuit held that definition does not apply in appeals from remand orders. As WLF’s brief shows, the Fourth Circuit’s ruling does not comport with the 230-year history of removal jurisdiction. The Founders gave federal courts constitutional jurisdiction over cases of national interest so that state judges amenable to local political interests do not decide important cases. Congress has reaffirmed this purpose several times over the past 60 years. By not reviewing all of the grounds for removal raised by the defendant energy companies, the Fourth Circuit disregarded Supreme Court precedent and the history of removal jurisdiction to avoid addressing important questions about climate-change litigation.

WLF asks the Supreme Court to decide whether the Due Process Clause’s limits on personal jurisdiction apply to the claims of unnamed plaintiffs.

IQVIA, Inc. v. Florence Mussat, M.D., S.C.

On November 16, 2020, WLF filed an *amicus* brief asking the Supreme Court to grant review in an important personal-jurisdiction case. Although the Supreme Court’s 2017 *Bristol-Myers* decision cut back on a court’s exercise of jurisdiction over out-of-state defendants, a Seventh Circuit panel held that *Bristol-Myers* does not apply in federal court. As WLF’s brief shows, the Seventh Circuit’s deeply flawed holding, if left to stand, would erode Supreme Court precedent, undermine uniform application of Federal Rule of Civil Procedure 4(k), and harm business as well as the judicial system. Highlighting the flaws in the appeals court’s analysis, WLF contends that review is needed to prevent the lower courts from transforming specific jurisdiction in a class action into “a loose and spurious form of general jurisdiction.” WLF’s *amicus* brief was joined by the U.S. Chamber of Commerce.

DECISIONS

The Supreme Court of Missouri declines to review a decision that improperly expands the jurisdictional reach of Missouri courts.

Ingham v. Johnson & Johnson

On November 3, 2020, the Supreme Court of Missouri declined to review a decision giving a Missouri court specific jurisdiction over the claims of 17 out-of-state plaintiffs—based solely on the defendant’s third-party business contacts in Missouri. A Missouri trial court jointly tried the claims of 22 plaintiffs from around the country. Each plaintiff alleged that using the defendant’s talcum powder caused her to develop cancer. The appeals court affirmed, holding that the defendant’s third-party contacts with a Missouri entity supplied Missouri courts with the needed jurisdictional hook—even though all relevant corporate decision-making about the defendant’s product occurred in New Jersey. The decision was a disappointment for WLF, which filed an *amicus curiae* brief in the Missouri high court urging review, WLF argued that the decision below, if left to stand, would allow suit virtually anywhere a company engages a third party as part of the manufacturing or distribution process. WLF’s brief was submitted with the *pro bono* assistance of Mark Sableman of Thompson Coburn LLP. WLF is closely monitoring the case for a likely certiorari petition to the U.S. Supreme Court.