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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 **August 2022** filings and results.

New Filings

- WLF reminds the Third Circuit that bankruptcy offers fairer and more efficient recovery to present and future claimants than the mass-tort system. (***In re LTL Management, LLC***)
- WLF calls on California privacy regulators to justify their fanciful economic assumptions. (***In re Proposed California Privacy Rights Act Regulations***)
- WLF urges the Eleventh Circuit to affirm a decision setting aside a CDC order requiring that face masks be worn on all public transportation. (***Health Freedom Defense Fund v. Biden***)
- WLF asks the Sixth Circuit to rehear *en banc* a constitutional challenge to the FDIC's structure. (***Calcutt v. FDIC***)

Decisions

- California's First District Court of Appeal agrees to review a trial court ruling that advances a radical new theory of liability for drug manufacturers. (***Gilead Sciences, Inc. v. Superior Court***) *victory*
- The Ninth Circuit confirms that claimants under the Recovery Act are bound by their arbitration agreements under the FAA. (***Caremark v. Chickasaw Nation***) *victory*
- The Seventh Circuit affirms a federal trial court's dismissal of a meritless antitrust suit against pharmaceutical companies. (***UFCW Local 1500 Welfare Fund v. Abbvie***) *victory*

Litigation is the backbone of WLF's public-interest mission. We litigate nationally before state and federal courts and agencies. Our team, at times 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 General Counsel and Vice President of Litigation, Cory Andrews.

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NEW FILINGS

WLF reminds the Third Circuit that bankruptcy offers fairer and more efficient recovery to present and future claimants than the mass-tort system.
In re LTL Management, LLC

On August 22, WLF asked the Third Circuit to affirm a bankruptcy court's decision that Chapter 11 is the optimal means for redressing harms alleged by a group of talc personal-injury claimants against Johnson & Johnson. The case arises from a consolidated appeal by claimants who sought to have LTL's Chapter 11 petition dismissed on the ground that it was not filed in good faith. In its *amicus* brief supporting affirmance, WLF emphasized the real-world benefit of allowing companies to address liabilities through corporate restructuring and bankruptcy rather than through the mass-tort system. Not only is bankruptcy a more efficient system of recovery, but bankruptcy courts have more flexibility in fashioning relief to ensure equal and fairer treatment of current and future claimants.

WLF calls on California privacy regulators to justify their fanciful economic assumptions.
In re Proposed California Privacy Rights Act Regulations

On August 17, WLF filed a formal comment with the California Privacy Protection Agency (CPPA) on its recently proposed regulations under the California Privacy Rights Act. As part of the administrative process, CPPA submitted an Economic Impact Statement concluding that a typical business's cost to comply with the proposed regulations would be only $127.50. To justify that miniscule number, CPPA regulators insisted that the proposed regulations merely re-state the law while imposing no new compliance burdens on businesses. In painstaking detail, WLF's comment identifies more than 45 proposed economic burdens that go well beyond the existing statutory and regulatory rules. WLF thus calls on CPPA to bring its estimate of the proposed regulations' economic impact in line with reality. As WLF explains, regulated entities require a full and accurate estimate of each new compliance burden before they can meaningfully comment on the proposed regulations. WLF's comment was drafted with the pro bono assistance of David Zetoony and Andrea Maciejewski of Greenberg Traurig LLP.

WLF urges the Eleventh Circuit to affirm a decision setting aside a CDC order requiring that face masks be worn on all public transportation.
Health Freedom Defense Fund v. Biden

On August 8, WLF filed an *amicus* brief urging the Eleventh Circuit to affirm a decision setting aside an order from the Centers for Disease Control and Prevention requiring masks on public transportation. WLF's brief argues that the Constitution's structural protections do not disappear during emergencies. Because Congress has not given CDC the power to issue the mask mandate, the order violates separation-of-powers principles. The brief also explains why the order is arbitrary and capricious. Science has proven that mask mandates do not stop the spread of COVID-19.

WLF asks the Sixth Circuit to rehear *en banc* a constitutional challenge to the FDIC's structure.
Calcutt v. FDIC

On August 1, WLF filed an *amicus* brief urging the Sixth Circuit to rehear *en banc* a case in which the three-judge panel affirmed an FDIC order. The case raises an important question of administrative law. WLF's brief explains how the panel erred by affirming the FDIC despite holding that the FDIC's decision was infected with legal errors. The brief also describes how the panel's decision will allow unconstitutional agency structures to survive and will discourage administrative-law litigation in the Sixth Circuit.

DECISIONS

California's First District Court of Appeal agrees to review a trial court ruling that advances a radical new theory of liability for drug manufacturers.
Gilead Sciences, Inc. v. Superior Court

On August 19, California's First District Court of Appeal agreed to review a trial court ruling that advances a radical new theory of liability for manufacturers of non-defective prescription drugs. The decision was a victory for WLF, which filed an *amicus* brief contending that the trial court's theory of liability makes a hash of California tort law. Under longstanding principles governing product-based injuries, a concession that the product at issue is not defective should end the litigation. Eliminating the defect element from product-based claims would open the door to untethered liability and undermine product innovation. And because nothing in the trial court's decision limits this new tort theory to prescription drugs, the ruling invites a torrent of abusive lawsuits against the manufacturers of other beneficial and non-defective products as well.

The Ninth Circuit confirms that claimants under the Recovery Act are bound by their arbitration agreements under the FAA.
Caremark v. Chickasaw Nation

On August 9, the Ninth Circuit affirmed the District Court's order compelling arbitration of a Recovery Act claim. This was a victory for WLF, which filed an *amicus* brief in the case. The panel held that, under the contracts' delegation clauses, the arbitrator must decide the scope of the arbitration agreements. The panel also held that Congress's providing a federal cause of action does not exempt those claims from the FAA. These two holdings track the arguments made in WLF's *amicus* brief. As the parties bargained for arbitration, that is what the Ninth Circuit correctly ordered.

The Seventh Circuit affirms a federal trial court's dismissal of a meritless antitrust suit against pharmaceutical companies.
UFCW Local 1500 Welfare Fund v. Abbvie

On August 1, the Seventh Circuit affirmed the District Court's order dismissing a meritless antitrust case. This was a victory for WLF, which filed an *amicus* brief in the case. Rejecting the plaintiffs' novel antitrust liability theories, the Seventh Circuit held that global patent settlements do not violate Section 1 of the Sherman Act. This tracked WLF's *amicus* brief, which argued that the settlements advance the goals of both patent law and antitrust law. The Seventh Circuit also rejected the plaintiffs' Section 2 claims. As WLF's brief explained, imposing Section 2 liability for asserting patent claims would have stifled innovation.

