Washington Legal Foundation
Advocate for Freedom and Justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302 wlf.org

February 1, 2023

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 **January 2023** filings and results.

New Filings

- WLF asks the Supreme Court to clarify that an immediate appeal as of right under the FAA from a district court's refusal to compel arbitration automatically stays litigation pending the appeal. (***Coinbase v. Bielski***)
- WLF urges the Supreme Court to confirm that Section 230 of the Communications Decency Act immunizes interactive computer service providers from liability for third-party content. (***Gonzalez v. Google***)

Decisions

- The Third Circuit rejects a bankruptcy petition by a Johnson & Johnson affiliate for failure to prove "financial distress." (***In re LTL Management, LLC***)
- The Third Circuit rejects a federal agency's attempt to exercise broad extra-statutory authority that Congress never gave it. (***AstraZeneca Pharms. v. HHS***) **victory**
- The Supreme Court dismisses as improvidently granted an important case about the attorney-client privilege. (***In re Grand Jury***)
- The Florida Supreme Court clarifies the limits Florida law imposes on punitive damages awards in wrongful death actions. (***Coates v. R.J. Reynolds Tobacco Co.***) **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.

WLF Legal Staff Contacts

Cory Andrews
General Counsel | Vice President of Litigation
candrews@wlf.org

John Masslon II
Senior Litigation Counsel
jmasslon@wlf.org

Glenn Lammi
Executive Director | Vice President of Legal Studies
glammi@wlf.org

NEW FILINGS

WLF asks the Supreme Court to clarify that an immediate appeal as of right under the FAA from a district court's refusal to compel arbitration automatically stays litigation pending the appeal.
Coinbase v. Bielski

On January 27, WLF urged the Supreme Court to reverse a Ninth Circuit decision that forces a company to proceed with costly and burdensome litigation while its arbitrability appeal is pending. As WLF explains in its amicus brief, the intolerable risk of bearing that burden upends the core policies animating the Federal Arbitration Act (FAA). Under the FAA, when a district court refuses to compel arbitration as the parties agreed, Section 16 allows an immediate appeal as of right from that decision. In its amicus brief urging reversal, WLF argues that Section 16 makes sense only if an interlocutory appeal from the trial court's refusal to compel arbitration automatically stays litigation in the district court. Congress never would have granted defendants the right to an immediate appeal if it had contemplated that litigation would continue apace while the appeal was pending. On the contrary, Congress crafted Section 16 against the background principle that an appeal divests a district court of jurisdiction over the case being appealed. And Congress recognized that the main virtues of arbitration—avoiding the cost and burden of litigation—would be lost if the case proceeds simultaneously in litigation and appeal only to be ultimately decided in arbitration.

WLF urges the Supreme Court to confirm that Section 230 of the Communications Decency Act immunizes interactive computer service providers from liability for third-party content.
Gonzalez v. Google

On January 17, WLF filed an amicus brief urging the Supreme Court to confirm that Section 230 protects interactive computer services from claims based on third-party content. Lower courts have coalesced around an interpretation of Section 230 barring suits against websites like YouTube for content uploaded by third parties. As WLF's brief explains, this interpretation is the only one supported by Section 230's plain language. WLF's brief also describes why allowing Section 230 to preempt state-law claims violates neither the clear-statement rule nor federalism principles.

DECISONS

The Third Circuit rejects a bankruptcy petition by a Johnson & Johnson affiliate for failure to prove "financial distress."
In re LTL Management, LLC

On January 30, the Third Circuit reversed a bankruptcy court's decision that Chapter 11 is the optimal means for redressing harms alleged against Johnson & Johnson by a group of talc personal-injury claimants. The case arose 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 LTL, WLF emphasized the real-world benefit of allowing companies to address liabilities through corporate restructuring and bankruptcy rather than through the mass-tort system. But in a setback for WLF, the Third Circuit ultimately dismissed LTL's bankruptcy petition because, in its estimation, LTL was not actually in "financial distress" as the bankruptcy code requires.

The Third Circuit rejects a federal agency's attempt to exercise broad extra-statutory authority that Congress never gave it.
AstraZeneca Pharms. v. HHS

On January 30, the Third Circuit rejected the Health Resources Services Administration's (HRSA) claim under the 340B Program to broad regulatory authority that Congress never gave it. The appeal arose from a suit by prescription-drug manufacturer AstraZeneca against HRSA, challenging the agency's recent enforcement action under the 340B Program. As the Third Circuit rightly concluded, HRSA's recent regulatory overreach has no statutory support. "Congress never said that drug makers must deliver discounted Section 340B drugs to an unlimited number of contract pharmacies," the court announced. "So by trying to enforce that supposed requirement, the government overstepped the statute's bounds." The court's opinion largely tracks statutory arguments found in WLF's amicus brief, which accused HRSA of trying to unilaterally transform the 340B Program from "a sensible cost-saving measure" into "a constitutionally dubious wealth-transfer scheme."

The Supreme Court dismisses as improvidently granted an important case about the attorney-client privilege.
In re Grand Jury

On January 23, the Supreme Court dismissed as improvidently granted an important case about the attorney-client privilege. This news was disappointing for WLF, which filed an amicus brief supporting the petitioner. The Ninth Circuit held that a document containing legal advice is not privileged if the primary purpose of the document is to provide tax advice. WLF's amicus brief explained how this rule would cause companies to curtail internal investigations. And rather than object to the Ninth Circuit's rule without providing an alternative, WLF's brief gave two alternatives that better protect the attorney-client privilege. The brief also argued that even if the holding is limited to tax advice, it exemplifies tax exceptionalism, which the Court has recently rejected.

The Florida Supreme Court clarifies the limits Florida law imposes on punitive damages awards in wrongful death actions.
Coates v. R.J. Reynolds Tobacco Co.

On January 5, the Florida Supreme Court provided much-needed guidance to lower Florida courts on how to evaluate punitive damages awards in wrongful death actions. The court held that the trial court's $16 million punitive damages award bore no reasonable relation to the amount of damages proved and the injury suffered under Florida law. The decision was a victory for WLF, which filed an amicus brief in the case. The case arose from a wrongful death action against R.J. Reynolds Tobacco Company. After awarding the plaintiff $150,000 solely on her design-defect claim, the jury awarded her a staggering $16 million in punitive damages. That award produced an eye-popping 106:1 punitive-to-compensatory ratio. The Florida statutes require a punitive damages award in a wrongful death action to bear a reasonable relation to the amount of damages proved and the injury suffered by the statutory beneficiaries. According to the Florida high court, the trial court's outsized award flunked that test. Because the appeal could be resolved on a statutory basis alone, the court declined to further analyze the issue as a matter of Florida or federal constitutional law.

