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WLF Month in Review

This WLF Litigation Division feature highlights WLF's court and regulatory filings, as well as decisions issued in response to WLF's filings. In this edition, we list **October 2024** filings and results.

New Filings

- WLF asks the U.S. Supreme Court to take up a California appeals court decision that misconstrues the Federal Arbitration Act's saving clause. (*Comcast Cable Communications v. Ramsey*)
- WLF asks the Supreme Court to bar federal agencies from pulling regulatory bait-and-switches. (*FDA v. Wages & White Lion Investments, LLC*)

Decisions

- The Third Circuit confirms that federal trial courts lack Article III jurisdiction to enforce nonfinal orders from dismissed agency proceedings. (*Gulden v. ExxonMobil*) ***victory***
- The Supreme Court declines an opportunity to clarify the scope of the False Claims Act's public-disclosure bar. (*Valeant Pharmaceuticals Int'l v. United States ex rel. Silbersher*)
- The Supreme Court agrees to hear an important case about proximate cause and aiding-and-abetting liability. (*Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*) ***victory***

Upcoming in November

The U.S. Supreme Court will hear oral arguments in four cases in which WLF filed amicus briefs:

- *Wisconsin Bell v. U.S. ex rel. Heath* - November 4
- *E.M.D. Sales v. Carrera* - November 5
- *Facebook v. Amalgamated Bank* - November 6
- *NVIDIA Corp. v. E. Ohman J:or Fonder AB* - November 13

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 asks the U.S. Supreme Court to take up a California appeals court decision that misconstrues the Federal Arbitration Act's saving clause.
Comcast Cable Communications v. Ramsey

On October 28, WLF asked the Supreme Court to review, and ultimately to reverse, a California appeals court decision that sidesteps the Federal Arbitration Act. In *McGill v. Citibank*, the California Supreme Court held that an arbitration clause may not extinguish a party's right to seek injunctive relief for the public at large. The California Court of Appeal recently held that this "*McGill* rule" is not preempted by the FAA. In urging the Supreme Court to take up that question, WLF's amicus brief explains why the FAA preempts a state rule whose only purpose is to serve as a tool for striking down arbitration clauses.

WLF asks the Supreme Court to bar federal agencies from pulling regulatory bait-and-switches.
FDA v. Wages & White Lion Investments, LLC

On October 10, WLF urged the Supreme Court to affirm a Fifth Circuit holding that the Food and Drug Administration could not advise companies they need not include information in applications and then deny those applications for failing to include that very information. WLF's brief argues that this regulatory bait-and-switch violates the respondents' due-process rights. The brief also details how FDA's denial orders are arbitrary and capricious because FDA did not consider certain evidence. Finally, the brief explains why FDA's action could harm Americans' health.

DECISIONS

The Third Circuit confirms that federal trial courts lack Article III jurisdiction to enforce nonfinal orders from dismissed agency proceedings.
Gulden v. ExxonMobil

On October 15, the Third Circuit affirmed the dismissal of a suit by two former Exxon employees to enforce a preliminary order by OSHA. The decision was a victory for WLF, which joined the U.S. Chamber of Commerce, the Association of American Railroads, and the National Manufacturers Association on an amicus brief drafted by David Morrell, Jacqueline Holmes, and Ryan Proctor of Jones Day. The Third Circuit held that the district court lacked Article III jurisdiction to act on non-final orders from dismissed administrative proceedings.

The Supreme Court declines an opportunity to clarify the scope of the False Claims Act's public-disclosure bar.
Valeant Pharmaceuticals Int'l v. United States ex rel. Silbersher

On October 7, the Supreme Court declined to review a Ninth Circuit decision that allowed an opportunistic qui tam bounty hunter to evade the False Claims Act's public-disclosure bar. The denial of certiorari was a setback for WLF, which filed an amicus brief urging review. WLF's brief explained

that the Ninth Circuit's holding flouted the FCA's text and purpose, split sharply from other circuits on two vital questions of law, and cried out for Supreme Court review.

The Supreme Court agrees to hear an important case about proximate cause and aiding-and-abetting liability.
Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos

On October 4, the Supreme Court agreed to hear an important case about proximate cause and aiding-and-abetting liability. This was a victory for WLF, which filed a brief supporting the cert petition. Splitting from other courts of appeals and state courts of last resort, the First Circuit held that Mexico could sue firearms manufacturers for allegedly causing the drug-cartel violence in Mexico. WLF's brief explained why the First Circuit's decision conflicts with Supreme Court precedent on proximate cause and violates the firearms manufacturers' due-process rights. The brief also detailed the problems with the First Circuit's aiding-and-abetting holding.