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WLF Asks Fifth Circuit to Reverse Waiver Ruling That Rewards Strategic Pleading Around Arbitration (*Servicios Ojeda, C.A. v. Chevron Corporation*)

“A nonsignatory cannot waive an arbitration right the plaintiff has not yet conferred.”

— Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Fifth Circuit to reverse a district-court order holding that Chevron waived its right to arbitrate. In its amicus brief, WLF contends that the court charged Chevron with waiving a right that did not yet exist and created a template for plaintiffs in future cases to evade arbitration.

The case stems from a Venezuelan oil-services provider’s suit against Chevron affiliates for unpaid work. Neither affiliate signed the master agreement that contained the arbitration clause. Servicios mentioned the agreement only in passing for nearly ten months. Only after motions to dismiss did it claim its alleged promise rested on signing that agreement, which prompted Chevron to seek a stay pending arbitration. The district court found waiver based on the complaint’s early mentions and Chevron’s ordinary litigation responses.

In its amicus brief, WLF argues that a nonsignatory’s right to arbitrate arises only when the plaintiff’s claim depends on the contract. Until that moment, there is no right to waive. Urging reversal, WLF contends that the decision below rewards strategic pleading, punishes businesses for contracting through subsidiaries, and conflicts with ordinary waiver principles and the Federal Arbitration Act.

Celebrating its 49th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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