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May 13, 2003

CALIFORNIA SUPREME COURT URGED TO REVIEW CLASS ACTION SETTLEMENT

(In re Vitamin Cases/O'Keefe v. Philion)

The Washington Legal Foundation (WLF) today urged the California Supreme Court to review a settlement of a consumer class action that would award millions in fees to the plaintiffs' attorneys -- and no compensation to the class of consumers on whose behalf the suit was filed.

The lower court in the case, the Court of Appeal of California, First Appellate District, had ruled on April 3, 2003 that the settlement was proper. The complaints in the case, which was combined from multiple separate lawsuits, alleged price-fixing by seven vitamin manufacturers in the sale of vitamin pre-mixes and other bulk vitamin products used in the making of food products. One class, consisting of commercial purchasers of the vitamin materials, was to receive up to \$42 million. Another class, the consumer class, would have no opportunity to seek compensation of any kind. Instead, \$38 million would be paid "to charitable, governmental and non-profit organizations that promote the health and nutrition of consumer class members or otherwise further the purposes underlying the lawsuit." The plaintiffs' attorneys would receive an award of \$16 million in fees. A group of objecting class members argued unsuccessfully that the settlement's withholding of compensation from consumer victims is a violation of California law.

The California Supreme Court, like the U.S. Supreme Court, has the discretion to determine which lower court decisions it will review. In its filing in *O'Keefe v. Philion*, WLF supported the objecting class members by arguing that the California Supreme Court should hear the case. "If allowed to stand, this decision would effectively create a new distribution mechanism for class action settlements -- one that would deprive class members of any vestige of their right to compensation for the very injuries that were alleged as the basis of the suit," WLF stated in its filing. WLF's filing added that the new mechanism would prove attractive to those plaintiffs' lawyers who are most interested in a quick and administratively simple settlement, and a quick attorney fee, without regard to the wishes of the class.

WLF told the court that California statutory law and the California Supreme Court's decision in *California v. Levi Strauss & Co.*, 41 Cal. 3d 460 (Cal. 1986) both indicate that distributions of class action proceeds to charities and other third parties are permissible only after class members have had an opportunity to obtain compensation for their damages.

WLF is a public interest law and policy center with supporters in all 50 states. It has filed briefs in numerous cases regarding concerning class action fairness, including *Farmer v. Monsanto Corp.*, 2003 S.C. LEXIS 69 (S.C. April 7, 2003); *Ysbrand v. DaimlerChrysler Corp.*, pending before the Oklahoma Supreme Court; and *Gilchrist v. State Farm Mutual Automotive Ins. Co.*, pending before the U.S. Court of Appeals for the Eleventh Circuit. In a class action case pending before the U.S. District Court for the Southern District of New York, *In re Magazine Antitrust Litigation*, WLF is objecting to a proposed award of \$1.1 million in attorneys' fees where the class members would receive neither monetary nor in-kind compensation, a situation similar to the case before the California Supreme Court.

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For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.