

Press Release

Washington Legal Foundation

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2009 Massachusetts Ave., NW

Washington, D.C. 20036

202.588.0302

FOR IMMEDIATE RELEASE

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COURT URGED TO REIN IN NATIONWIDE CLASS ACTION SUITS *(Stetser v. TAP Pharmaceutical Products Inc.)*

The Washington Legal Foundation (WLF) this week urged the North Carolina Court of Appeals to limit the certification of nationwide class action lawsuits, in which the plaintiff seeks to sue on behalf of himself and every similarly situated person throughout the nation.

In a brief filed in *Stetser v. TAP Pharmaceutical Products Inc.*, WLF argued that plaintiffs' lawyers often bring such nationwide class actions as a means of coercing a settlement, without regard to the merits of the suits. Such suits tend to be totally unmanageable, because class members will often have widely varying damages claims, and different sets of laws often apply to class members from different states.

The trial judge in this case tried to avoid those unmanageability problems by decreeing that all claims would be judged under North Carolina law, the state in which the suit was filed. WLF argued that applying North Carolina law violated the due process rights of the vast majority of litigants who had no connection with North Carolina and that even the defendants (which are headquartered in other States) had no more than minimal contacts with North Carolina. WLF argued that each class member's claim must be governed by the law of his home state since class members come from all 50 states. WLF argued that the class should be decertified because any trial involving the application of the laws of all 50 states would be too cumbersome.

The case involves claims brought by three North Carolina citizens who purchased the drug Lupron, which is manufactured and distributed by TAP Pharmaceutical Products Inc. and Abbott Laboratories. The Plaintiffs allege that TAP and Abbott have artificially inflated the listed Average Wholesale Price (AWP) for Lupron, thereby increasing the amount Plaintiffs (and their insurers) paid for Lupron to their health care providers. The

Plaintiffs allege the Defendants' conduct violated North Carolina consumer protection laws. Also included as Defendants are several other drug companies alleged to have conspired with TAP and Abbott to raise Lupron's retail price, including Johnson & Johnson. The Defendants have appealed the trial judge's decision to certify a nationwide class action on behalf of the thousands of consumers alleged to have paid an inflated price for Lupron, and to apply North Carolina law to the claims of all class members.

In its brief, WLF argued that the Fourteenth Amendment's Due Process Clause prohibits a state's law from governing resolution of litigation unless the State has a meaningful connection to the parties' claims. WLF noted that the Defendants were not even parties to the sales transactions involving class members, and that those transactions took place almost exclusively at the local level. Virtually none of the plaintiffs who purchased Lupron have had any connection with North Carolina.

WLF stated that it is understandable why judges would like to apply a single state's law to the claims of all class members -- applying one law to everyone makes a case far more manageable. But such manageability concerns are not sufficient reason to ignore constitutional limitations on the application of a state's laws to transactions having no connection with the state, WLF argued. The solution is to avoid certification of massive class actions which serve the interests of no one other than plaintiffs' lawyers seeking to coerce unwarranted settlements, WLF argued.

WLF is a public interest law and policy center with supporters in all 50 states, including many in North Carolina. It devotes a significant portion of its resources to advancing the interests of the free-enterprise system and to ensuring that economic development is not impeded by excessive litigation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. WLF's brief can be viewed on its web site, www.wlf.org.