

COURT AGREES TO REVIEW CERTIFICATION OF PRODUCT LIABILITY CLASS ACTION

(Howland v. Purdue Pharma, L.P.)

The Ohio Supreme Court this week agreed to review a lower court's decision to certify as a class action a product liability suit brought by three individuals who claim they were injured due to their use of the defendant's pain-relief medication.

The decision to hear the case, *Howland v. Purdue Pharma*, was a victory for the Washington Legal Foundation (WLF), which filed a brief urging review. WLF argued that personal injury product liability suits are virtually never appropriate for class action treatment. WLF argued that in such suits, the claims of each class member are largely unique -- for example, each plaintiff must separately establish such elements of his/her tort claim as inadequacy of warning, reliance, causation, and damages. WLF argued that when, as here, individual issues of fact and law predominate over common issues of fact and law, class action treatment is never appropriate.

Now that the Ohio Supreme Court has agreed to hear the case, WLF has pledged to file a second brief, urging that the decision below be overturned.

"The only reason plaintiffs' lawyers seek class certification in these types of cases is that they know that certification imposes intense pressure on defendants to settle the suit without regard to its merits," said WLF Chief Counsel Richard Samp after reviewing the Ohio Supreme Court order. "Plaintiffs' lawyers know full well that unwieldy class actions of this sort are essentially untriable; this case well illustrates that abuse of the class action process is becoming an all-too-frequent occurrence," Samp said.

The case involves OxyContin, a powerful prescription pain reliever manufactured by Purdue Pharma and distributed by Abbott Laboratories. OxyContin is addictive and can be highly dangerous when abused by individuals who take the drug without careful

monitoring by their physicians. The plaintiffs are three OxyContin users who seek to hold Purdue Pharma and Abbott Laboratories responsible for injuries they allegedly suffered as a result of their use of the drug. The Ohio Court of Appeals recently affirmed a trial court order permitting the three to represent a class consisting of all Ohio residents who have been injured by OxyContin use/abuse or whose family members have suffered such injury.

In its brief, WLF asked the Ohio Supreme Court to review the court of appeals's decision. WLF argued that the vast majority of courts across the country have refused to certify class actions in personal injury product liability suits. WLF noted that those courts have refused to do so based on a conclusion that the plaintiffs have failed to meet the "predominance" requirement -- that is, a showing that common issues of fact and law predominate over individual issues of fact and law.

WLF argued that the claims against Purdue Pharma and Abbott Laboratories -- that they marketed OxyContin in an unsafe manner -- will have to be litigated on a individual-by-individual basis. For example, WLF noted, one of the plaintiffs has a lengthy history of drug addiction and admitted that (contrary to product instructions) she crushed and snorted her OxyContin in order to increase its potency. Another plaintiff admitted that when he first obtained OxyContin, he was simultaneously taking 19 other prescription medications from at least 12 doctors. WLF argued that such circumstances vary considerably from class member to class member and are highly relevant in determining whether a product manufacturer can be held liable for a class member's injury.

WLF also argued that the trial court's certification decision serves none of the purposes intended to be served by class actions. For example, class actions are intended to overcome the problem that small recoveries do not provide the incentive for an individual to bring a solo action prosecuting his or her rights. WLF argued that that is not a concern in this case; individuals who are injured (or die) due to OxyContin use are likely to have suffered large damages. Accordingly, individuals have all the incentive they need to bring suit on their own; indeed, a number of OxyContin users have filed individual suits in Ohio and elsewhere.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a substantial portion of its resources to promoting tort reform and reining in excessive litigation. In the past year, it has filed briefs in seven different courts, seeking to overturn inappropriate certification of class actions.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.