Press Release

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COURT URGED TO LIMIT USE OF CLASS ACTION SUITS

(General Electric Capital Corp. v. Thiessen)

The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to impose stricter limits on the certification of class action lawsuits in the federal courts.

In a brief filed in *General Electric Capital Corp. v. Thiessen,* WLF argued that lower courts are certifying class actions too freely, with the result that defendants are compelled to settle claims, even when they believe the cases lack merit. WLF filed the brief on behalf of itself and the National Association of Manufacturers.

In *Thiessen*, a federal appeals court certified as a class action a case brought by an employee who alleges that he was denied promotions because of his age, in violation of the Age Discrimination in Employment Act ("ADEA"). WLF's brief asked the Supreme Court to review that decision. WLF argued that an employment discrimination claim in which the plaintiff seeks an award of compensatory and punitive damages is virtually never appropriate for class action status, because the plaintiff's claim is likely to turn on facts that are unique to his circumstances. WLF noted that class action suits (in which the plaintiff sues on behalf of a class of individuals who are similarly situated to him) generally are not supposed to be certified unless issues common to members of the class "predominate" over any issues affecting only individual members.

"WLF is very concerned by the proliferation of class action lawsuits being filed in federal and state courts and the inhibiting effect that such suits can have on the development and expansion of business," WLF Chief Counsel Richard Samp said after filing WLF's brief. "The lower court decision, if allowed to stand, will exacerbate that trend by encouraging efforts to certify inappropriate, unwieldy classes that render the underlying lawsuits untriable," Samp said.

The plaintiff in this case alleges that GE Capital maintains a "pattern or practice" of

discriminating against competent, older management employees who are thought to be blocking the advancement of younger, more promising employees. The plaintiff sought to include as plaintiffs 30 other older management employees who allegedly were subject to the same "pattern or practice" of discrimination. The trial court refused to certify the plaintiff class, finding that the plaintiff had not met the "predominance" requirement -- the issues of fact and law common to all plaintiffs did not predominate over issues applicable to individual employees.

The U.S. Court of Appeals for the Tenth Circuit in Denver reversed. It held that the case should be certified as a class or collective action on behalf of all 30 employees. The court said that the case should be divided into two stages, with the only issue in the first stage being whether GE Capital maintains a "pattern or practice" of discriminating against older employees. If the trial court determines that such a "pattern or practice" exists, it could then hold separate trials for each of the 30 plaintiffs to determine whether he/she was a victim of that "pattern or practice" and, if so, whether he/she is entitled to an award of compensatory or punitive damages, the appeals court held.

In its brief asking the Supreme Court to review the case, WLF argued that certifying the case as a class action will not serve any of the purposes the class action device was intended to serve -- in particular, the conservation of judicial resources. WLF noted that the same jury would be required to decide factual issues for each of the 30 plaintiffs, meaning that a single jury might end up having to sit for more than a year. WLF also argued that even the first stage of the trial contemplated by the appeals court (the determination of whether the employer maintains a "pattern or practice" of age discrimination) is likely to be extremely unwieldy: evidence regarding the actual treatment of each of the 30 plaintiffs would have to be considered, because it would be highly relevant to the determination of whether the employer maintained a practice of discrimination against older employees.

WLF argued that employment discrimination claims are virtually never appropriate for class action treatment when the chief plaintiff is seeking an award of compensatory and punitive damages (rather than mere equitable relief, such as reinstatement) or asks for a jury trial. Before 1991 plaintiffs were generally limited to obtaining equitable relief in most types of employment discrimination cases. The Civil Rights Act of 1991 made damages, including punitive damages, available to most plaintiffs for the first time. WLF argued that while employment discrimination class actions may have been appropriate in some cases prior to 1991, they no longer are today due to the availability of damage awards, the propriety of which varies widely from plaintiff to plaintiff. WLF argued that many plaintiff seek class action status not because they believe that the class action will lead to efficient consideration of outstanding issues, but because they hope to use class certification as a means of extracting a larger settlement from the defendant.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to efforts designed to protect the economic and civil liberties of individuals and businesses.

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