

March 7, 2001

## CLASS ACTION ATTORNEY WITHDRAWS MULTIMILLION DOLLAR FEE REQUEST

(*Wilson v. Massachusetts Mutual Ins. Co.*)

The Washington Legal Foundation (WLF) scored a victory last week when the plaintiffs' attorney in a major class action case withdrew his request for a multimillion dollar fee after WLF had filed formal objections with the court opposing the excessive fee. The attorney was seeking approximately \$8 million to settle a class action case where the class members were to receive no compensation whatsoever. In *Wilson v. Massachusetts Mutual Ins. Co.*, a Sante Fe, New Mexico lawyer filed suit in state court against the insurance company on behalf of policyholders claiming that the company failed to disclose fully the amount of additional payments charged when policyholders choose to pay their premium on a monthly, quarterly, or semi-annual basis rather than on an annual basis, and to disclose the effective interest rate for such additional payments.

Although the company denied any liability, it agreed to settle the case by making the disclosures in the future so that policyholders can better decide whether to pay their premiums in installments or on an annual basis. The company had also agreed not to oppose the attorney's request for an award of an attorney's fee of 1) \$5 million in cash; 2) \$250,000 annual annuity for 20 years; and 3) a \$3 million life insurance policy for the attorney. In addition, the lead plaintiff (an attorney himself) was to receive \$250,000 as an "incentive" payment for participating in the suit.

In its opposition to the fees, WLF, representing a policyholder, argued that the fees and payments were grossly excessive, particularly where the class members receive no compensation. WLF noted that even if the disclosures are made, policyholders may still elect to pay their premiums on a monthly or quarterly basis even if it is more expensive than paying a lump sum annual payment. WLF also cited other cases, such as *In re Synthroid*, where a federal court agreed with WLF and reduced an award of 25% of a settlement fund of \$86 million to 10% or \$8.6 million in fees, which is approximately the same amount of fees being sought in this case where the class receives nothing. WLF argued that at most, the attorney should be awarded no more than his hourly rate which WLF estimated should be less than \$350,000.

A hearing on the proposed settlement was scheduled to take place on February 26, 2001, but the attorney withdrew his request for fees in light of WLF's objections as well as those filed by other class members. It is expected that the attorney will negotiate

another fee and submit it to the court for its approval in the near future. WLF is prepared to file further objections at that time to any new fee request if it appears to be excessive. If the revised fee cannot be agreed upon between the attorney and the company, or if other provisions of the settlement are not agreed to, the case will be tried in court later this year. If the plaintiffs ultimately prevail at trial, WLF will have another opportunity to file objections with the court to the fee application.

WLF has been in the forefront of opposing excessive attorneys' fees in class action cases. In addition to WLF's victory in *In re Synthroid Marketing Litigation*, WLF opposed a similar fee request in *Vizcaino v. Microsoft*. In the *Microsoft* class action case, the federal district court in Seattle agreed with WLF and recently ordered the plaintiffs' attorneys to submit documentation of the time devoted to the case to determine the reasonableness of the fee request. WLF will have a further opportunity to respond to that submission in early April. WLF also filed objections to the attorneys' fee request in *In re American Family Publishers* in federal court in New Jersey. WLF intends to file further objections to attorneys' fee requests in other class action cases in conjunction with WLF's Economic Freedom Law Clinic at George Mason University School of Law.

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For further information, contact Paul D. Kamenar, WLF's Senior Executive Counsel at 202-588-0302.