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COURT DECLINES TO REIN IN NATIONWIDE CLASS ACTION SUITS *(Peterson v. BASF Corp.)*

The Minnesota Court of Appeals issued an opinion this week that declines to limit the certification of nationwide class action lawsuits (that is, suits in which a plaintiff seeks to sue on behalf not only of himself, but also of every similarly situated person throughout the nation). The decision was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case, *Peterson v. BASF Corp.* 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 appeals court declined to address WLF's argument. Rather, the court held that certification of the case as a nationwide class action had already been approved when the case reached the appeals court in a pre-trial appeal in 2000; the court held that the "law-of-the-case doctrine" prevented it from reconsidering that decision. WLF had argued that the prior decision was not binding because it had not addressed whether a single state's laws could constitutionally be applied to class members from all 50 states.

WLF has pledged to continue to support further appeals to the Minnesota Supreme Court and the U.S. Supreme Court.

The trial judge in this case had tried to avoid the problems of unmanageability inherent in any nationwide class action, by decreeing that all claims would be judged under New Jersey law, the state in which the defendant has its corporate headquarters. WLF argued that applying New Jersey law violated the due process rights of the vast majority of litigants who had no connection with New Jersey. WLF argued that each class member's claim must be governed by the law of his home state. WLF argued that the nationwide class should be decertified because any trial involving the application of the laws of all 50 states would be too cumbersome. The appeals court avoided those issues by invoking the law-of-the-case doctrine.

The case involves claims brought by a group of Minnesota farmers who complained that BASF was charging too much for one of its herbicides. They alleged that BASF's business practices, allegedly designed to maintain a high price, violated state consumer protection laws. The jury awarded them \$15 million in damages (later tripled to \$45 million under New Jersey law) on behalf of farmers nationwide who purchased the herbicide during a five-year period. BASF

appealed the verdict on numerous grounds, including the trial judge's decision to certify a nationwide class action.

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 BASF's herbicide sales activity took place almost exclusively at the local level. Moreover, sales of BASF's agricultural products were coordinated out of BASF's North Carolina office. Virtually none of the farmers who purchased the herbicide from BASF had any idea that BASF had a connection with New Jersey.

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.

Although the appeals court avoided WLF's arguments by invoking the law-of-the-case doctrine, one of the three judges on the panel made clear that he would have voted to overturn the judgment if he had not felt himself bound by the prior appeals court decision. In a special concurring opinion, Judge Anderson stated that "this dispute is a poster child for national class action reform." Noting the evidence in WLF's brief that the class members' contacts with New Jersey "were hardly overwhelming," he said that certification of a nationwide class action in cases of this sort was "fair neither to claimants nor defendants," and declared, "[I]t is long past time for national policy makers to address class action procedures."

WLF is a public interest law and policy center with supporters in all 50 states, including many in Minnesota. 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.