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In WLF Victory, Supreme Court Agrees to Review Decision that Granted Plaintiffs an Extra Appeal of Class-Certification Denial

(Microsoft Corp. v. Baker)

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—Cory Andrews, WLF Senior Litigation Counsel**

WASHINGTON, DC—The U.S. Supreme Court on Friday agreed to review a recent Ninth Circuit decision that effectively grants plaintiffs immediate appeal rights to which federal law does not entitle them. The decision marks a victory for Washington Legal Foundation, which filed an *amicus* brief in *Microsoft Corp. v. Baker*. WLF argued that permitting automatic immediate appeals from class-certification denials will encourage piecemeal appellate review of a single lawsuit, thereby undermining efficient adjudication and preventing the evenhanded administration of justice, because it would give plaintiffs—and *only* plaintiffs—one or more extra bites at the class-certification apple.

The case arose from a class-certification motion that the district court already denied and to which a panel of the Ninth Circuit already refused interlocutory appeal. Rather than try their individual claims and then contest the denial of class certification on post-trial appeal, plaintiffs stipulated to voluntary dismissal of their claims with prejudice, then immediately appealed the class-certification denial as part of their appeal from the dismissal. As WLF’s brief pointed out, the Third, Fourth, Seventh, Tenth, and Eleventh Circuits have all independently rejected appellate jurisdiction under such circumstances.

WLF argued that the statute governing appeals, 28 U.S.C. § 1291, strictly limits appeals to final decisions and that a pre-trial order denying class certification does not become “final” simply because plaintiffs strategically elect to dismiss their case with prejudice. WLF also contended that the Ninth Circuit’s holding subverts Rule 23(f), which permits an appeals court *at its sole discretion* to allow or deny interlocutory appeal (by either plaintiffs *or* defendants) from a class-certification order. WLF filed its brief on behalf of itself, the National Association of Manufacturers, and the International Association of Defense Counsel.

Upon learning of the certiorari grant, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “The Ninth Circuit’s holding not only deprives appeals courts of their discretion, but it also strategically favors plaintiffs over defendants—who could not invoke a right to immediate appeal by voluntarily dismissing a case. By granting review, the Supreme Court has taken the first crucial step necessary to vindicate Congress’s longstanding policy against multiple, piecemeal appeals.”

WLF is a national, public-interest law firm and policy center that regularly litigates in support of civil litigation fairness to ensure that unwarranted lawsuits do not drive up costs for all consumers.

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