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WLF Urges Recognition of Nonresidents' Rights To Remove Cases to Federal Court Under CAFA

(In re Johnson & Johnson)

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The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Tenth Circuit to uphold the right of out-of-state defendants to remove lawsuits from state court to federal court when the suits involve numerous plaintiffs. In a brief filed in *In re Johnson & Johnson*, WLF argued that a district judge’s order remanding a massive product liability suit back to state court was inconsistent with the Class Action Fairness Act (CAFA), a 2005 federal law designed to permit removal of virtually all large class action and “mass action” lawsuits into federal court. WLF urged the appeals court to reverse the district court decision.

CAFA permits defendants to move most “mass actions”—cases with 100 or more plaintiffs that involve very large damage claims—from state court to federal court, which are generally deemed to harbor less prejudice against out-of-state corporate defendants. The plaintiffs’ bar has adopted numerous tactics designed to defeat CAFA removal rights, including (as in this case) dividing hundreds of virtually identical claims among several lawsuits, thereby ensuring that none of the suits meets CAFA’s 100-plaintiff minimum. WLF argued that Congress intended to permit CAFA removal whenever, as here, the total number of claims filed in coordinated legal proceedings before a single judge exceeds 100. It asserted that to permit plaintiffs’ to “game” the system by dividing their coordinated claims into small groups for the purpose of defeating CAFA removal would contravene Congress’s intent that large multi-plaintiff suits should be heard in federal court.

The case involves 650 product liability claims against Johnson & Johnson and its Ethicon, Inc. subsidiary; the plaintiffs contended that they suffered injuries from pelvic mesh surgical devices manufactured by Ethicon. After filing the petition, WLF issued the following statement by Chief Counsel Richard Samp:

“The plaintiffs’ bar should not be permitted to frustrate the will of Congress that large class and ‘mass’ actions be removable to federal court as a means of ensuring that out-of-state defendants can have their cases heard in an impartial forum. If a ‘mass action’ before a single judge has 100 or more plaintiffs, removal under CAFA is warranted. It should make no difference that attorneys have sought to ‘game’ the system by dividing their coordinated claims into groups of 100 or less.”

WLF is a public interest law firm and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to legal reform and reining in excessive litigation. A copy of its brief is posted on its website, www.wlf.org.

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