Press Release

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WLF Asks Supreme Court to Clarify Pleading Threshold for Federal Antitrust Conspiracies

(Black & Decker (U.S.), Inc. v. SD3, LLC and SawStop LLC)

"This case serves as a prime example of why the Supreme Court in *Twombly* imposed a much-needed 'plausibility' requirement on complaints in federal court—to eliminate the risk of wasteful, protracted litigation in a case where there should be no liability."—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today asked the U.S. Supreme Court to review, and ultimately reverse, a recent Fourth Circuit decision that would permit an antitrust complaint to withstand a motion to dismiss so long as it contains allegations—no matter how conclusory—that permit the mere inference of an anticompetitive conspiracy. WLF's brief was joined by the Allied Educational Foundation and the International Association of Defense Counsel.

In its *amicus* brief filed in *Black & Decker (U.S.), Inc. v. SD3, LLC.*, WLF argues that the appeals court's holding violates the Supreme Court's decision in *Bell Atlantic Corp. v. Twombly*, which clarified that where an equally plausible, non-conspiratorial "alternative explanation" exists for alleged parallel conduct, it is error to allow a complaint to go forward based on a mere inference that an unlawful agreement existed. Emphasizing the enormous uncertainty the decision below creates for the larger business community, WLF also contends that the decision undermines the free market by incentivizing unscrupulous competitors to use federal antitrust law to accomplish anticompetitive ends. Because antitrust litigation is particularly notorious for imposing extraordinary costs on defendants, WLF's brief argues that the enormous expense the defendants would incur to litigate this untenable suit through the discovery phase independently warrants the Court's scrutiny of the matter.

The case presents a question which has deeply divided federal courts of appeal: whether a plaintiff must plead facts that tend to exclude an innocent explanation for defendants' parallel conduct in order to state an antitrust claim under § 1 of the Sherman Act. The Fourth Circuit held that, despite failing to allege any facts that would tend to exclude legitimate business reasons individual defendants had for refusing to adopt SawStop's nascent table-saw technology, the complaint could withstand a motion to dismiss if it permits the inference of an anticompetitive conspiracy. The Third, Ninth, and Eleventh Circuits have all rejected this novel theory of antitrust pleading, as did the district court below.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: "This case serves as a prime example of why the Supreme Court in *Twombly* imposed a much-needed 'plausibility' requirement on complaints in federal court—to eliminate the risk of wasteful, protracted litigation in a case where there should be no liability. Just because you think you built a better mousetrap, that doesn't mean an antitrust conspiracy kept the world from beating a path to your door."

WLF is a national, public-interest law firm and policy center that regularly litigates to ensure application of the antitrust laws in a pro-competitive manner that promotes free enterprise.

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