Press Release

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WLF Asks U.S. Supreme Court to Honor Statutory Time Limit in Securities Fraud Case

(CalPERS v. ANZ Securities, Inc.)

"There is a cottage industry of plaintiffs' lawyers who specialize in urging larger shareholders to 'opt out' of securities class-action settlements at the last minute in order to extort bigger settlement shares for themselves after free riding on the efforts of class counsel. Allowing for the statute of repose to be tolled in cases like this one would just reward that sharp practice while reducing the settlement amounts for other class members and dragging out settlement negotiations."
— Mark Chenoweth, WLF General Counsel

WASHINGTON, DC—Washington Legal Foundation today asked the US Supreme Court to uphold a Second Circuit decision that properly applied the Securities Act's three-year statute of repose to dismiss an individual lawsuit filed too late by a party that opted out of a class action. In an *amicus* brief filed in *CalPERS v. ANZ Securities, Inc.*, WLF argues that the repose deadline protects both class members—especially smaller shareholders—as well as defendants in securities fraud cases, without creating significant burdens for larger investors or the courts.

The petitioner in this case, a large institutional investor, opted out of a securities fraud class action and filed an individual suit against ANZ Securities (and other respondents) after the three-year repose period passed. It had urged the trial and appellate courts to judicially override the statutory time limit, supposedly in order to protect class actions, safeguard shareholders, and prevent a flood of "protective" individual suits.

WLF's brief directly refutes the petitioner's claim that respect for the Securities Act's statute of repose will harm investors who participate in class actions. As the brief explains, investors can easily preserve their ability to file future individual claims by becoming non-lead named plaintiffs in a class action prior to the running of the time limit. Thus protective individual suits are not necessary. WLF's brief further argues that "equitably" tolling the statute of repose would hand large institutional investors substantial settlement leverage, to the detriment of smaller shareholders who comprise the vast majority of the class members. In order to truly protect the proper functioning of the class-action mechanism and ensure equitable treatment of all shareholders, the Supreme Court should enforce the statute of repose in this case.

Lyle Roberts, George E. Anhang, and Matthew Ezer of Cooley LLP provided substantial *pro bono* assistance to WLF in preparing this *amicus* brief.

Celebrating its 40th year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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