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April 28, 2016

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## WLF Urges Supreme Court to Protect Confidential Information from Disclosure in Court Proceedings

*(FCA US LLC v. The Center for Auto Safety)*

**“The plaintiffs’ bar has been using the pre-trial discovery process inappropriately to force the public release of confidential business documents. ... The Supreme Court needs to step in to prevent the wholesale destruction of valuable intellectual property rights.”—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—Washington Legal Foundation today called on the U.S. Supreme Court to review and overturn a decision by the U.S. Court of Appeals for the Ninth Circuit that undermines the ability of companies engaged in litigation to prevent the disclosure of their confidential information. In a brief filed in *FCA US LLC v. The Center for Auto Safety*, WLF argues that the appeals court adopted an improperly stringent standard for determining whether the federal district court here could grant Chrysler’s request to keep its court records sealed.

Federal court rules grant parties to a lawsuit broad rights to inspect an opposing party’s records, in order to prepare their case for trial. If a party objects that it is being forced to turn over confidential information, judges routinely grant protective orders on a showing of “good cause” that prevent the recipient from publicly disclosing designated documents and require the recipient to return them when the lawsuit concludes. But if a confidential document is submitted to the court as an exhibit (at trial or in connection with a substantive pre-trial motion), a question arises as to whether the document becomes a “judicial record” that the public has a right to see.

The Ninth Circuit ruled that once a document is attached to a substantive motion a “strong” presumption of public access arises, and only “compelling reasons” can justify non-disclosure. WLF’s brief argues that the court’s decision conflicts with decisions both from the Supreme Court and from other federal appeals courts. Those other courts apply the familiar good cause standard, which is far less demanding. WLF also argues that the decision below will cause chaos in the pre-trial discovery process, because litigants will be far more likely to challenge document requests if they come to believe that protective orders will not prevent the public disclosure of confidential information contained in discovery material.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “The plaintiffs’ bar has been using the pre-trial discovery process inappropriately to force the public release of confidential business documents. The appeals court’s decision below abets those efforts by adopting an overly stringent standard for maintaining the confidentiality of documents obtained through pre-trial discovery. The Supreme Court needs to step in to prevent the wholesale destruction of valuable intellectual property rights.”

*WLF is a free-market, public-interest law firm and policy center that seeks to protect property rights, including intellectual property threatened by improper disclosure in court proceedings.*

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