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WLF Urges Rehearing on Rights of Nonresidents To Remove Cases to Federal Court Under CAFA

(Romo v. Teva Pharmaceuticals USA, Inc.)

“The appeals court decision frustrates 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 allowed to stand, the decision will serve as a roadmap for plaintiffs’ lawyers seeking to keep their lawsuits out of federal court.” – Richard Samp, WLF Chief Counsel

WASHINGTON, DC— The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Ninth Circuit to uphold the right of out-of-state defendants to remove lawsuits from state court to federal court when the suit involves numerous plaintiffs. In a brief filed in *Romo v. Teva Pharmaceuticals USA, Inc.*, WLF argued that the 2-1 decision of a three-judge panel 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 rehear the case *en banc*.

The panel held that the suit did not qualify as a “mass action” and thus was not subject to CAFA, but WLF argued that Congress intended CAFA to apply whenever, as here, the suit combines the claims of 100 or more plaintiffs. Even if the plaintiffs do not ask explicitly that the claims of all plaintiffs be “tried jointly,” CAFA permits removal whenever (as here) the plaintiffs ask that the claims be coordinated “for all purposes,” WLF asserted.

The case involves the product liability claims of more than 1,500 individuals who claim to have suffered injuries after taking medications containing the active ingredient propoxyphene—a drug that was widely marketed in this country between 1957 and 2010. Named as defendants are nearly a dozen pharmaceutical manufacturers and wholesalers. CAFA permits defendants to move cases from state court to federal court if there are more than 100 plaintiffs and certain other conditions are met. In an effort to defeat the defendants’ removal rights, the plaintiffs’ attorneys divided their 1,500 clients among 41 separate lawsuits filed in state court in California, thereby ensuring that no one suit exceeded CAFA’s 100-plaintiff threshold. The plaintiffs thereafter filed a petition asking the California court to coordinate the 41 lawsuits “for all purposes.”

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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