Press Release

Washington Legal Foundation
Advocate for Freedom and Justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302 wlf.org

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Media Contact: Mark Chenoweth | mchenoweth@wlf.org | 202-588-0302

WLF Asks Supreme Court to Overturn Ninth Circuit Decision Granting Plaintiffs Extra Appeals of Class Certification

(Microsoft Corp. v. Baker)

"Affording appeals-as-of-right to plaintiffs seeking class certification is not only contrary to … Congress's longstanding policy against multiple, piecemeal appeals, but it also undermines Rule 23(f), which permits immediate appeals … at the sole discretion of the appeals court."—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today asked the U.S. Supreme Court to review and reverse a decision of the U.S. Court of Appeals for the Ninth Circuit that effectively grants plaintiffs immediate appeal rights to which federal law does not entitle them. In its *amicus* brief filed in support of Microsoft's petition for certiorari in *Microsoft Corp. v. Baker*, WLF argues that permitting automatic immediate appeals will encourage multiple, piecemeal appeals from a single lawsuit and will undermine the evenhanded administration of justice by granting plaintiffs (and *only* plaintiffs) an extra bite or bites at the class-certification apple.

The case involves a class-certification motion that the district court already denied and for which a panel of the Ninth Circuit already refused interlocutory appeal. Rather than try their individual claims and then contest the denial of class certification on post-trial appeal, plaintiffs stipulated to dismissal of their claims with prejudice, then immediately appealed the class-certification denial as part of their appeal from the dismissal. As WLF's brief points out, the Third, Fourth, Seventh, Tenth, and Eleventh Circuits have all independently rejected appellate jurisdiction in such circumstances.

WLF argues that the statute governing appeals, 28 U.S.C. § 1291, strictly limits appeals to final decisions, and that a pre-trial order denying class certification does not become "final" simply because plaintiffs strategically elect to dismiss their case with prejudice. WLF also contends that the Ninth Circuit's holding subverts Rule 23(f), which permits an appeals court *at its sole discretion* to allow interlocutory appeal (by either plaintiffs or defendants) from a class-certification order. The Ninth Circuit's holding not only deprives appeals courts of their discretion, but it also favors plaintiffs over defendants—who cannot similarly invoke a right to immediate appeal via strategic dismissal.

WLF filed its brief on its own behalf and on behalf of the National Association of Manufacturers and the International Association of Defense Counsel. Upon filing, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: "Affording appeals-as-of-right to plaintiffs seeking class certification is not only contrary to 28 U.S.C. § 1291, which manifests Congress's longstanding policy against multiple, piecemeal appeals, but it also undermines Rule 23(f), which permits immediate appeals from class certification orders to proceed at the sole discretion of the appeals court."

WLF is a national, public-interest law firm and policy center that regularly litigates in support of civil justice reform to ensure that unwarranted lawsuits do not drive up costs for all consumers.

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