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In WLF Victory, Ninth Circuit Upholds CAFA Right to Remove Cases to Federal Court

(Corber v. Xanodyne Pharmaceuticals, Inc.)

“Congress passed the Class Action Fairness Act to guarantee out-of-state defendants a federal forum when large class-action lawsuits are filed against them. Plaintiffs’ lawyers keep trying devious new strategies to prevent removal to federal court, but today’s decision goes a long way in preventing such gamesmanship.”—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The U.S. Court of Appeals for the Ninth Circuit today upheld the right of out-of-state defendants to remove lawsuits from state court to federal court when the suit involves numerous plaintiffs. The decision in *Corber v. Xanodyne Pharmaceuticals, Inc.* marked a victory for Washington Legal Foundation (WLF), whose *amicus* brief urged the court to uphold removal pursuant to the Class Action Fairness Act (CAFA), a 2005 federal law.

The Ninth Circuit, sitting *en banc*, ruled 9-2 that the case, filed against numerous drug companies that manufacture the painkiller propoxyphene, qualified as a “mass action” under CAFA. Plaintiffs’ counsel sought to prevent removal to federal court by dividing the 1,500 individual claimants across 40 separate lawsuits, each with fewer than 100 plaintiffs (CAFA’s minimum for a mass action). Reversing a 2013 appeals court panel, the court held that the 40 lawsuits became subject to removal when plaintiffs asked the state courts to coordinate their lawsuits “for all purposes.”

In response to the decision, WLF issued the following statement by Chief Counsel Rich Samp: “Congress passed the Class Action Fairness Act to guarantee out-of-state defendants a federal forum when large class-action lawsuits are filed against them. Plaintiffs’ lawyers keep trying devious new strategies to prevent removal to federal court, but today’s decision goes a long way in preventing such gamesmanship.”

WLF is a public interest law firm and policy center that devotes a substantial portion of its resources to civil justice reform, such as ending class-action lawsuit abuse, so that all litigants may receive a fair hearing.

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