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WLF Calls for Appeals Court to Uphold Defendants' Ability to Remove Mass Actions to Federal Court

(*Dunson v. Cordis Corp.*)

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—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today called on the U.S. Court of Appeals for the Ninth Circuit to uphold the right of defendants to remove lawsuits from state to federal court that involve 100 or more plaintiffs. In an *amicus* brief filed in *Dunson v. Cordis Corp.*, WLF argues that the federal district court’s decision remanding a massive products-liability suit back to state court violated the Class Action Fairness Act of 2005.

CAFA, as the federal law is known, permits removal of virtually all large class-action lawsuits to federal court. The district court held that the suit did not qualify as a “mass action” and thus was not subject to CAFA, but WLF’s brief explains that CAFA applies whenever a suit combines the claims of 100 or more plaintiffs and meets other statutory criteria not at issue here.

The case involves more than 300 individuals who claimed injury through use of a medical device (an IVC filter) manufactured by Cordis. CAFA permits defendants to remove most cases from state court to federal court if there are more than 100 plaintiffs. In an effort to defeat the defendant’s removal rights, the plaintiffs’ attorneys divvied up their 300 clients among 30 separate lawsuits filed in state court in Alameda County, CA, thereby ensuring that none of the suits exceeded CAFA’s 100-plaintiff threshold.

The plaintiffs thereafter filed a petition asking the state court to consolidate all of the cases before a single judge. When plaintiffs seek to consolidate their separate cases in a state court, they have in effect conceded that those cases constitute a ‘mass action,’ and Congress has decreed that mass actions belong in federal court.

After filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “The district court decision below frustrates the will of Congress that large class and ‘mass’ actions be removable to federal court as a means of ensuring that defendants can have their cases heard in an impartial forum.”

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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