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WLF Discourages New Mexico Appeals Court from Infecting State's UPA with Judicial Activism

(*Arguedas v. Seawright*)

“If New Mexico courts permit plaintiffs’ attorneys to effectively rewrite the state’s consumer-protection law to allow for class-wide recovery of statutory damages, New Mexico consumers will suffer the most—in the form of lower wages and higher costs for goods and services.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation filed an *amicus* brief yesterday supporting the defendant in *Arguedas v. Seawright*, a class-action lawsuit in the New Mexico Court of Appeals. In submitting its brief, WLF aims to thwart Plaintiffs’ attorneys’ efforts to rewrite state law through litigation.

Three State Farm Mutual Automobile Insurance Co. auto policyholders brought this class-action lawsuit alleging that Garret Seawright, a State Farm insurance agent, violated New Mexico’s Unfair Practices Act (UPA) by not providing them with adequate information to make an informed decision on purchasing uninsured or unknown motorist (UM) coverage.

Under the UPA, anyone who has suffered a loss of money or property due to an unfair business practice may bring an action for actual damages. But, as WLF’s brief points out, these plaintiffs have lost neither money nor property. Since none of the plaintiffs suffered any actual damages because of their UM coverage status, WLF argues that they are not entitled to class-wide relief under the UPA.

The UPA also expressly limits class-wide recovery to *actual* damages, but the plaintiffs seek to recover *statutory* damages on a class-wide basis, relief that the trial court rightly denied. If the appeals court alters the statute, WLF argues that would violate the separation of powers under New Mexico’s constitution, undercut the state legislature’s public-policy goals, and impose unbearable liability on businesses throughout the state.

Under such a judicially created liability scheme, New Mexico courts would be inundated by class actions seeking to impose massive liability on New Mexico businesses for technical violations of the law that caused *de minimis* damages or—in many cases, such as this one—*none* at all.

Harold (“Hal”) D. Stratton, Jr. and Veronica C. Gonzales-Zamora of Brownstein Hyatt Farber Schreck, LLP provided valuable *pro bono* assistance to WLF in filing WLF’s *amicus* brief.

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.