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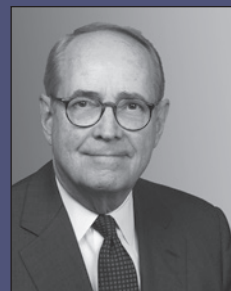


Washington
Legal
Foundation

Annual Report

Established 1977

“This dynamic organization is a prominent force in both judicial and regulatory arenas, promoting economic growth and allowing free enterprise to prosper. If you share my beliefs that our country’s ability to compete in the world economy should not be hindered by excessive regulation and unreasonable court decisions, I encourage you to join WLF in defending free enterprise.”



**The Honorable
Dick Thornburgh**

K&L Gates LLP

Chairman, WLF Legal Policy
Advisory Board

Advocate for Freedom and Justice

At Washington Legal Foundation, we believe that our fundamental freedoms must not be eroded by the difficult times in which we live. Our compelling mission is to protect

and defend the liberties that define our American spirit. Founded in 1977, WLF is more committed than ever to advocating for a sound free-market economy, a commonsense legal system, a limited and accountable government, individual and business civil liberties, and the rule of law. WLF uses an effective three-pronged strategy to maintain our role as the nation's most effective public interest law firm and policy center. WLF **LITIGATES** precedent-setting issues before the courts and regulatory agencies; **PUBLISHES** and distributes timely and influential legal studies; and **COMMUNICATES** free-enterprise principles to millions of Americans through media briefings, public education campaigns, editorials, and our blog, The WLF Legal Pulse.

To our Friends and Supporters

Washington Legal Foundation began our 38th year of fighting to keep free enterprise free in 2014. Each year, the activists, regulators, and trial lawyers devise new ways to chip away at economic liberty and the rule of law. But each year WLF rises to the challenge of fending off their attacks. Let us share some of our recent successes with you.

As you will learn inside, WLF won important U.S. Supreme Court victories in *American Broadcasting Cos. et al. v. Aereo*, *Dart Cherokee Basin Operating Co. v. Owens*, *Halliburton v. Erica P. John Fund*, and *Utility Air Regulatory Group v. EPA*. WLF is also representing 39 Members of Congress as *amici curiae* in an important ongoing Clean Water Act case in the Third Circuit Court of Appeals. WLF's brief articulates the crucial separation of powers principles at stake in the dispute.

Elsewhere this past year, WLF's position prevailed in the New York Court of Appeals, the Arkansas Supreme Court, the First Circuit, the Ninth Circuit, and the DC Circuit, among other courts. Look inside to see the truly national scope of WLF's litigation docket.

WLF continued its longstanding policy of filing amicus briefs in support of cert petitions. Many organizations avoid these briefs because it is much easier to tout involvement in cases the Supreme Court already agreed to hear. But WLF believes amicus briefs can often make the biggest difference at the front end, by convincing the Court to decide a particular matter—such as *ONEOK v. Learjet*. We also know that drawing attention to a key Foreign Corrupt Practices Act case like *Esquenazi v. US* or

to a problematic class-certification case like *Whirlpool v. Glazer* helps shape the Court's docket in the long run even if the Court denies cert this time.

WLF's formal comments filed with federal regulatory agencies made a significant impact this past year too. Our comments on proxy advisory services to the SEC led to agency staff issuing guidance in June that partially responded to our criticisms. Our comments and testimony to the federal rules advisory committee also helped advance important new Federal Rules of Civil Procedure, particularly regarding e-discovery. Our comments to the USDA on school lunch nutrition regulations uniquely pointed out the severe First Amendment problems with its proposed limits on advertising in schools.

Similarly, our comments to FDA on “added sugars” were the only ones to flag key First Amendment compelled speech concerns. In addition, WLF's social media criticism of the FDA on issues ranging from its handling of meningitis B vaccine approvals to its ridiculous aborted attempt to regulate brewers' spent grains hit home. The vaccine piece even drew a direct reply from FDA protesting that the agency is working as fast as it can—proof positive that regulators pay heed to WLF.

On the publications front in 2014, WLF's distinguished roster of authors included former judges Michael McConnell of the Tenth Circuit, Rebecca Love Kourlis of the Colorado Supreme Court, and Peggy Ableman of the Delaware Superior Court; Attorney Gen. Derek Schmidt and former Attorney Gen. Rob McKenna; SEC Commissioner Dan Gallagher, FTC Commissioner Maureen Ohlhausen, and former CPSC Commissioner Nancy Nord. These authors and many others provided firsthand perspective on a host of regulatory and statutory controversies.

WLF's litigation and publication activities once again covered a wide range of topics. WLF is not simply a tort reform group, not exclusively a product liability organization, not only a civil

liberties association. Because WLF is all of these things and much more, we can pivot to emerging issues and target our resources where they can do the most good in promoting free markets. With federal regulatory agencies in overdrive like never before, markets and consumers need reliable and effective free enterprise legal advocacy. WLF will go wherever we need to and tackle whatever subject we must to advance the cause of economic liberty.

WLF's communications efforts enjoyed a banner year as well. WLF published op-eds in the San Francisco Chronicle opposing Alameda County's drug take-back program and the New Hampshire Union Leader criticizing that state's MTBE lawsuit. Our blog posts explaining why the Court should grant certiorari or not dismiss cases like *ONEOK v. Learjet* and *Dart Cherokee Basin v. Owens* received wide coverage in the Supreme Court media. Our running commentary on the series of Argentine debt cases before the Supreme Court and lower courts received extensive coverage in the financial and Argentine press.

We deeply appreciate those allies whose support makes WLF's unique and valuable work possible. We express particular gratitude to The Honorable Dick Thornburgh, our Legal Policy Advisory

Board Chairman, as well as to our entire Board for their sage advice, shared determination, and valued encouragement. We mourn the passing of longtime board members Robert Strauss and Tommy Boggs, and we welcome Larry Thompson, Jay Stephens, and Attorney General Tim Fox to the Board.

Since 1977, WLF has served as America's foremost free enterprise public interest law firm and policy advocate. While 2014 marked another successful year for WLF, we realize that progress requires perseverance. Without your generous support, WLF's litigation, publications, and educational communications efforts would not enjoy the reach or credibility they do. You provide us with the resources necessary to sustain the mission of keeping free enterprise free. Our friends continue to be impressed by how much we achieve within our limited budget.

On behalf of everyone here, thank you for putting your faith in WLF for nearly four decades. Rest assured that WLF will continue to defend the values of free enterprise, limited and accountable government, individual liberty, and the rule of law. We are privileged to serve the public interest by advocating these values in the courts, federal agencies, and the public square. Gratefully and proudly, we present the accomplishments detailed in this 2014 annual report.



A handwritten signature in cursive script that reads "Constance Claffey Larcher".

Constance Claffey Larcher
President and Chief Executive Officer



A handwritten signature in cursive script that reads "Markham S. Chenoweth".

Markham S. Chenoweth
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We applaud the law firms and professionals who offered their expertise as pro bono attorneys and authors in 2014.

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Publishing

WLF's Legal Studies Division is the preeminent publisher of timely and persuasive legal analyses.

These papers do more than inform government officials, business leaders, the legal community, and the public about issues vital to the fundamental rights of every American. They tip the scales in favor of maintaining those rights.

Enterprising Legal Advocacy

Successful advocacy for a legal and regulatory environment that fosters free enterprise requires the dissemination and steady reinforcement of ideas to those who influence and make law. WLF's legal studies deliver timely information and principled analysis in a variety of distinct, effective publication formats that inform decision makers' choices. Unlike a traditional "think tank," we feature the expertise of independent legal professionals, who author our publications on a strictly pro bono basis. This approach allows WLF to focus resources on putting these intellectual tools in the right hands.

Our publications, which advance economic liberty, individual rights, limited and accountable government, and the rule of law, cover an expanse of legal issue areas, including:

- Administrative procedure
- Antitrust and consumer protection
- Arbitration rights
- Asbestos and toxic torts
- Business civil liberties and criminal liability
- Civil justice reform
- Class action litigation
- Commercial speech
- Communications and information technology
- Discovery process and procedure
- Employment law
- Environmental regulation and enforcement
- Expert evidence and junk science
- Food, drugs and medical devices
- Foreign Corrupt Practices Act

Thousands of decision makers and top legal minds across the country rely on our biweekly publications for the most insightful analysis of timely legal issues.

- Government contracting and False Claims Act
- Health care
- Insurance
- Intellectual property
- National security
- Occupational safety and health
- Product liability and safety
- Punitive damages
- Securities and corporate governance

WLF's legal studies collection surpassed 2,400 papers in 2014. The quality, variety, and specialized expertise of our pro bono authors significantly enhance the credibility and impact of these papers. Among the nearly 2,100 different writers WLF has been honored to enlist are federal and state judges, regulators, and elected officials; law firm partners and associates; eminent legal scholars; corporate executives; and in-house counsel. The publications populate our searchable online catalog, many are available on the Lexis/Nexis® database, and our authors complement WLF's distribution with their own extensive marketing wherever possible. WLF articles are often reprinted in industry publications, professional organization and trade association newsletters, and other third-party outlets.

Our 2014 publications not only touched upon the subject areas listed above, but they also led and responded to some of the most critical legal debates of the year. For instance, with the swarm of litigation imposing an ever-persistent drag on financial resources, American businesses continued to pursue efficient lawsuit deterrents and defenses. Several WLF Legal Backgrounders explained how

business defendants can utilize a watershed 2014 U.S. Supreme Court decision, *Daimler v. Bauman*, to argue that a court lacks personal jurisdiction to entertain the lawsuit.

A WLF Conversations With paper, which featured former U.S. Attorney General Dick Thornburgh and a former Colorado Supreme Court justice, examined new federal rules that could reduce the time and cost of the pre-trial discovery process. Finally, numerous publications, such as "Ascertainability Becoming Higher Hurdle in Consumer Class Action Certification," spotlighted innovative procedural arguments that are increasingly effective in federal court.

Another focus area for WLF papers in 2014 was the troubling, symbiotic relationship between professional legal activists and government regulators. For instance, several publications, including one by Kansas Attorney General Derek Schmidt (*Opposing EPA's "Sue and Settle" Strategy: Maintaining a Role for States in the Federal Rulemaking Process*), discussed the "sue-and-settle" phenomenon. There, a special interest group sues a government agency, which in turn settles the case (without input from other affected parties, such as state officials and regulated businesses) on terms favorable to the suing group's agenda. In a WLF Working Paper, Commissioner Daniel Gallagher of the Securities and Exchange Commission questioned the influential role of ideologically-driven "proxy advisory services" and the outsized impact they have on public company corporate governance.

For a complete list of 2014 publications, see pages 26-29.

Publications in eight distinct formats are marketed to diverse audiences ranging from business leaders to members of Congress and the media.

Counsel's Advisory

Expert testimony to support a claim for "stigma damages" must meet high evidentiary standards. To do so, an expert's opinion must be based on reliable data, free from unsupported assumptions, and lacking analytical gaps.

Legal Opinion Letter

Alabama's highest court embraced a theory of liability rejected by most state and federal judges who have considered it, injecting the judiciary into a policy debate that should be addressed by the legislative branch.

Counsel's Advisory

Vol. 22 No. 5 October 10, 2014



TEXAS SUPREME COURT HEIGHTENS EVIDENTIARY BAR FOR "STIGMA DAMAGES"

by Mark R. Ter Molen and Sarah E. Reynolds

In a recent decision involving damages for environmental contamination, the Texas Supreme Court reversed a jury award because the plaintiff failed to meet the high standard for establishing loss of market value—and the even higher standard for "stigma" damages associated with environmental contamination of real property in the absence of a sale of the underlying property. The decision in *Houston Unlimited, Inc. Metal Processing v. Mel Acres Ranch* highlights the impropriety of permitting stigma damages when a plaintiff fails to ground expert testimony regarding damages on established and clear principles.

Cattle ranch Mel Acres sued a neighboring metal-processing facility, Houston Unlimited, for market value loss for chemical contamination allegedly caused by the plant. The ranch owner's expert testified that the stigma accompanying the contamination reduced the value of the plaintiff's property—although the ranch had not been put up for sale. The jury found Houston Unlimited liable and awarded the ranch owner approximately \$350,000 in damages. Despite a dissent criticizing the damages testimony of the ranch owner's expert, the Texas Court of Appeals affirmed.

In focusing on the legal sufficiency of the ranch owner's evidence of damages, the Texas Supreme Court found the evidence in the record inadequate to prove that the contamination diminished the fair-market value of the property. While the Court did not categorically reject the expert's "percentage-reduction-in-value" approach, it found that the "manner in which" the expert "used the approach here is fatally flawed" in three ways:

Unreliable Data. The Court found that "the facts on which [the expert] relied" for her calculations "do not actually support her" opinions. The expert's data, it said, were "not temporally connected to the contamination," and the Court held that "[w]hen the facts support several possible conclusions, only some of which support the expert's conclusions, the expert must explain to the fact finder why those conclusions are superior based on verifiable evidence, not simply the expert's opinion."

Unsupported Assumptions. While noting that when competing "evidence conflicts, it is the province of the jury to determine which evidence to credit," the Court asserted that "if the record contains no evidence supporting an expert's material factual assumptions, or if such assumptions are contrary to conclusively proven facts, opinion testimony founded on those assumptions is not competent evidence."

In this case, the ranch owner's expert based her opinion on the assumption that the "diminutions she found for [the comparable properties] were 100 percent attributable to contamination that occurred." Accepting *arguendo* that diminution occurred, the Court noted that the expert "did not attempt to establish

Mark R. Ter Molen is a partner, and Sarah E. Reynolds is an associate, in the Chicago office of the law firm Mayer Brown LLP. Mr. Ter Molen is co-chair of the firm's Environmental Litigation group.

Legal Opinion Letter

Vol. 23 No. 10 September 12, 2014



WYETH V. WEEKS, REDUX: WILL ALABAMA COURT'S DECISION REMAIN AN OUTLIER OR SPARK A REWRITE OF PRODUCT LIABILITY LAW?

by John J. Park, Jr.

In January 2013, the Alabama Supreme Court released its initial decision in *Wyeth, Inc. v. Weeks*, holding that brand-name drug manufacturers can be held liable for the generic drug maker's allegedly defective warnings of the dangers associated with use of the brand-name drug.¹ A WLF *Legal Opinion Letter* published the following month noted that the Alabama decision was an outlier; it joined only one California appellate court and a federal district court in Vermont, while more than 70 court decisions, including four from federal courts of appeals, had gone the other way.²

On August 15, 2014, that court doubled down, releasing a substituted opinion that denied rehearing.³ The Court claimed that it was not "plow[ing] new ground" or "creat[ing] a heretofore unknown field of tort law that has been referred to as 'innovator liability.'"⁴ Nonetheless, its decision still has the effect of "using a name brand manufacturer's statements about its own product as a basis for liability for injuries caused by other manufacturers' products."⁵ That is something Alabama has not done before, and its decision remains an outlier.⁶

On rehearing, Chief Justice Moore and Justice Parker joined Justice Murdock in dissent.⁷ Chief Justice Moore objected to answering the question at all, and Justice Parker wrote that it was not Alabama's responsibility to change its "bedrock legal principles."⁸

Justice Murdock again criticized the majority's equation of foreseeability with duty, explaining that foreseeability, standing alone, is not enough. In tort law, we understand that, when a manufacturer puts a product into the marketplace, it stands behind it and answers for its safety. But Ford doesn't answer for the safety of Chevrolets because the Chevy is not a Ford product. The *Weeks* majority threatens to make Pfizer answer for the safety of the generic version of Reglan.

The *Weeks* majority reasoned that federal regulations require the generic maker to use the brand-name manufacturer's warning. If that warning is defective, the brand-name manufacturer is responsible for its content,

¹ 2013 Ala. LEXIS 2, *59 (Ala. Jan. 17, 2013).

² Victor E. Schwartz, Phil Goldberg & Cary Silverman, *Warning: Alabama Court's Blame-Shifting Pharma Decision Will Have Serious Side Effects*, WLF LEGAL OPINION LETTER, Feb. 8, 2013, available at http://www.wlf.org/upload/legalstudies/legalopinionletter/02-08-2013SchwartzGoldbergSilverman_LegalOpinionLetter.pdf.

³ *Wyeth, Inc. v. Weeks*, Case No. 1:10-cv-602 (Ala. Aug. 15, 2014), available at <http://freepdfhosting.com/a84f20b6c.pdf> (hereinafter "*Weeks II*").

⁴ *Id.*, slip op. at 6, n. 2.

⁵ See *Foster v. American Home Products, Inc.*, 29 F.3d 165, 170 (4th Cir. 1994).

⁶ As Associate Justice Murdock observed in his dissent, since the Alabama Supreme Court's original 2013 decision, "another dozen or more decisions on this issue by federal courts around the country, including decisions by four federal courts of appeals, two of them weighing in for the first time" have gone the other way. *Weeks II*, slip op. at 130 (Murdock, J., dissenting).

⁷ Chief Justice Moore was not on the Court in January 2013, *Weeks II*, slip op. at 75 (Moore, C.J., dissenting), and Justice Parker was in the majority.

⁸ *Weeks II*, slip op. at 83 (Parker, J., dissenting).

John J. Park, Jr. is of counsel to the Atlanta office of the law firm Strickland Brockington Lewis LLP and was Deputy Attorney General for the State of Alabama from 1995 to 2006.

FDA's "ADDED SUGARS" LABELING MANDATE RAISES FIRST AND FOURTH AMENDMENT CONCERNS

by Richard L. Frank and Bruce A. Silverglade

The Food and Drug Administration ("FDA" or "the Agency") is mulling over comments on proposed regulations that modify the Nutrition Facts label found on practically all food packages. One addition to the label FDA has proposed is the disclosure of the amount of sugar processors add to packaged foods. That mandate implicates other requirements, such as the preparation of extensive records and the need to provide those records to FDA inspectors. If finalized, violations of the added sugars mandate could result in seizures and criminal penalties. As this LEGAL BACKGROUNDER discusses below, these requirements expose FDA's proposed rule to First and Fourth Amendment challenges.

First Amendment Concerns—the First and Second Prongs of the Supreme Court's *Central Hudson* Test

As the Washington Legal Foundation (WLF) pointed out in comments filed with FDA, the U.S. Supreme Court has recognized that the First Amendment protects not only the freedom of speech, but also the freedom not to speak.¹ FDA's proposed requirements raise serious First Amendment concerns. Under the Supreme Court's test set forth in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*,² courts, as a threshold matter, consider whether the commercial speech concerns an unlawful activity or is inherently misleading. If not, *Central Hudson* then requires the government to prove that it has a substantial interest in requiring the disclosure of the amount of sugars added by food processors.

Every nutrient currently required to be listed on the Nutrition Facts label has a Daily Reference Intake (DRI) set by the National Academy of Sciences, Institute of Medicine (IOM), based on a diet-disease relationship. Here, however, FDA concedes that "U.S. consensus reports have determined that inadequate evidence exists to support the direct contribution of added sugars to obesity or heart disease."³ FDA further admits that there is no chemical difference between naturally occurring sugars in foods and sugars added to foods,⁴ (total "Sugars" content is already required to be disclosed on the label).⁵ In addition, the U.S. *Dietary Guidelines for Americans* (2010) "state that added sugars do not contribute to weight gain more than any other source of calories."⁶ Thus, the Agency's tentative decision to differentiate between the total amount of sugars in a food and the amount which are added during processing is highly questionable.

FDA attempts to justify its proposed regulations by stating that the labeling requirement is part of an effort to inform consumers about the nutrient density of foods, e.g. certain foods contain more essential nutrients per calorie than others. But FDA admits that there is insufficient science to support the development of a Daily Value

¹ Comments of the Washington Legal Foundation, Docket FDA-2012-N-1210; RIN 0910-AF22, (Aug. 1, 2014) citing, *Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Wooley v. Maynard*, 430 U.S. 705, 713-15 (1977).

² 447 U.S. 557, at 566 (1980).

³ 79 Fed. Reg. 11880 at 11904 (Mar. 3, 2014).

⁴ *Id.* at 11903.

⁵ 21 CFR § 101.9.

⁶ 79 Fed. Reg. at 11904.

Richard L. Frank is a Founding Principal, and Bruce A. Silverglade is a Principal, with the law firm Olsson Frank Weeda Terman Matz PC.

Legal Backgrounder

The FDA's proposed "added sugars" labeling mandate fails to meet the Supreme Court's *Central Hudson* test for regulating commercial speech, and its enforcement mechanism may run afoul of Fourth Amendment prohibitions on unreasonable searches and seizures.

Washington Legal Foundation

On the Merits:

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

NOEL CANNING, ET AL.,

Respondents.

No. 12-1281

U.S. Supreme Court

Oral Argument: January 13, 2014

Questions Presented: Whether the President's recess-appointment power may be exercised during a recess that occurs within a session of the Senate, or is instead limited to recesses that occur between enumerated sessions of the Senate; whether the President's recess-appointment power may be exercised to fill vacancies that exist during a recess, or is instead limited to vacancies that first arose during that recess; and whether the President's recess-appointment power may be exercised when the Senate is convening every three days in pro forma sessions.

Summary of the Case: The National Labor Relations Board (NLRB) ruled that Noel Canning, a soft-drink bottling company in Yakima, Washington, had committed unfair labor practices under federal law. At the time of the NLRB's ruling, three of its members had been appointed by President Obama under the Recess Appointments Clause. Noel Canning subsequently challenged the NLRB's ruling on the basis that its membership was constitutionally deficient by failing to satisfy the requirements of the Recess Appointment Clause. The U.S. Court of Appeals for the D.C. Circuit agreed, holding that the President can only make a "recess appointment" when the Senate is out of town in the interval between its annual sessions, and that the only vacancies subject to recess appointments are vacancies that arise during the annual recess. Because the President's NLRB appointments did not satisfy either of these requirements, the appointments were unconstitutional and the NLRB lacked a quorum when it issued its ruling against Noel Canning.

On The Merits:
Judgment for Petitioner
Michael W. McConnell
Stanford Law School

The Recess Appointments Clause states that "[t]he President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session." U.S. Const. art. II, § 2, cl. 3. The appointments at issue here fail for three independent reasons.

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Conversations With...

Autumn 2014


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Why Transparency Is Imperative in Litigating Asbestos Liability Claims

The Honorable Dick Thornburgh
 The Honorable Peggy L. Ableman

In this edition of Washington Legal Foundation's CONVERSATIONS WITH, former Attorney General of the United States and Pennsylvania Governor Dick Thornburgh discusses the need for increased transparency in the asbestos litigation process with former Delaware Superior Court Judge Peggy L. Ableman. Judge Ableman draws upon her nearly thirty years of experience as a state trial judge and her work as Special Counsel to the law firm McCarter & English LLP to explain how some lawyers' manipulation of the asbestos bankruptcy claims process undermines judicial integrity and courts' ability to make injured plaintiffs whole. The conversation will also focus on recent judicial actions that have exposed plaintiffs' fraudulent withholding of evidence, ongoing state and federal legislative efforts to require greater transparency in asbestos bankruptcy trusts, and what more judges can do to help.

Governor Thornburgh: Since asbestos bankruptcy trusts are central to this conversation, can you explain what these entities are and why they were created?

Judge Ableman: Now entering its fourth decade, asbestos litigation is the nation's longest running mass tort, with filings against asbestos manufacturers beginning in the early 1970s. Originally, and for many years, companies that manufactured asbestos-containing thermal insulation were among the principal targets of tort litigation. Their products were "friable" and far more

toxic than chrysotile asbestos. As many of these manufacturers and suppliers sustained crushing losses, and saw their assets exhausted due to the sheer magnitude and volume of judgments against them, they were forced to file bankruptcy.

By the end of 2011, at least 96 companies with asbestos-related liabilities had declared bankruptcy. Through the bankruptcy process, entities that played a significant role in causing asbestos-related disease have been able to channel their asbestos liabilities into trusts pursuant to § 524(g) of the Bankruptcy Code, thereby insulating themselves from such claims in perpetuity. More than 60 trusts have been established to collectively form a \$36.8 billion privately-funded asbestos personal injury compensation system that operates parallel to, but wholly independent from, the civil tort system.

Governor Thornburgh: If those manufacturers and suppliers with the most direct connection to asbestos are the ones funding the trusts, why are so many lawsuits still being filed in state and federal courts?

Judge Ableman: Interestingly, plaintiffs' attorneys recognized early on that the trust payments would be unlikely to provide the windfall compensation that a jury verdict from a sympathetic jury would be inclined to award, especially to victims of the deadliest of asbestos-related diseases, mesothelioma.

The bankruptcies of most of the major raw material providers and product



Dick Thornburgh
K&L Gates LLP



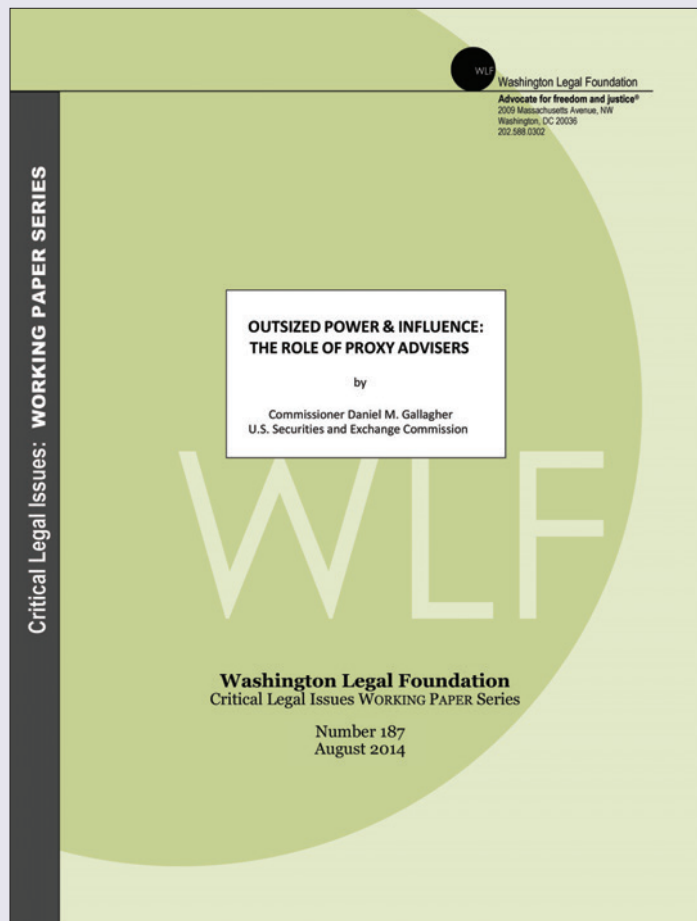
Peggy L. Ableman
McCarter & English LLP

On the Merits

Two constitutional law scholars debate the merits of a case before the U.S. Supreme Court involving the President's power to make recess appointments during a break within a session of the Senate.

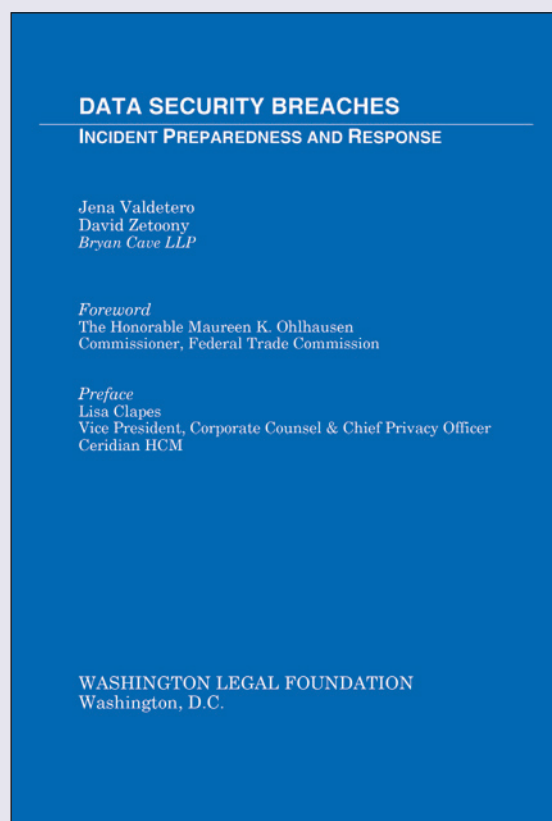
Conversations With

Some lawyers' manipulation of the asbestos bankruptcy claims process undermines judicial integrity and courts' ability to make injured plaintiffs whole. Such manipulation calls for increased transparency in the process.



Working Paper

A sitting SEC Commissioner explains the evolution of entities that advise institutional investors on how they should vote on public company proxies, why such advisers can foment conflicts of interest, and what the Commission is doing, and should do further, to address possible abuses.



Monograph

Provides in-house counsel and other key personnel a concise, plain-language guide on the continuous process of securing consumer data and preparing for incident response.



Contemporary Legal Notes

A compelling case can be made for Supreme Court review of lower court decisions that allow state-law “public nuisance” environmental suits to be brought against manufacturing facilities that operate within the limits of their federal emissions permits.

Eating Away Our Freedoms

Washington Legal Foundation's Eating Away Our Freedoms project is enjoying its third full year of targeted, determined advocacy and education aimed at defending and advancing one of Americans' most profound liberties: the freedom to choose what we consume. Rather than trust people to make dietary decisions for themselves and for their kids, legal activists and regulators want control over the information we use to make choices, and thus seek to influence what we eat and drink through regulation, punitive taxation, lawsuits, and media demonization.

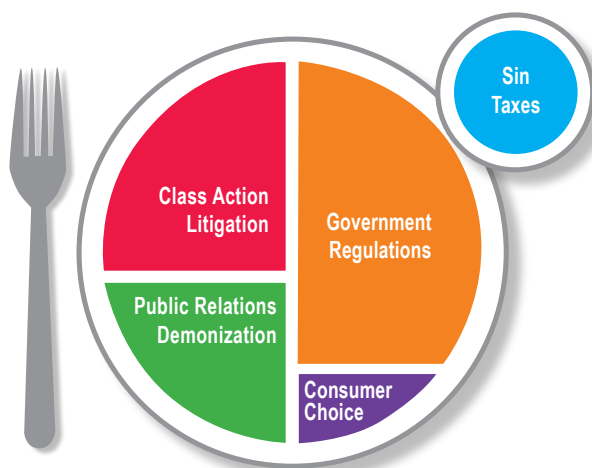
WLF initiated this project with the publication of a full-color advocacy ad in The New York Times and the establishment of a dedicated website, www.EatingAwayOurFreedoms.org. We leveraged our publishing, litigation, and communications capabilities to further the project's goals. In addition, WLF maintains a specific Twitter feed, [@FreeFoodChoices](https://twitter.com/FreeFoodChoices), to push out EatingAwayOurFreedoms.org website content and other project-related materials, as well as to interact directly with supporters and critics.

Operating under the mantle of "public health," activists and their allies in government forcefully pursued their paternalistic agenda at the municipal, state, and federal levels in 2014. WLF amicus briefs supported the suit that overturned New York City's soda serving size restrictions. Our publications and The WLF Legal Pulse blog posts provided intellectual ammunition for legal challenges to state mandatory "biotech food" labeling laws.

WLF was the only organization to formally comment on the constitutionality of proposed federal regulations to ban advertising of disfavored food products in public schools and mandate a new "added sugar" line to the ubiquitous "nutrition facts" food label. We also continued our aggressive monitoring and criticism of class actions aimed at federally-regulated food labels, and we were the sole public interest group to file an amicus brief supporting the defendant yogurt maker in the key federal appeals court case *Kane v. Chobani*.

Other than some of the targeted businesses and their trade associations, no established advocates have been countering activists' coordinated attacks and standing up for the public interest in protecting food freedoms. Through Eating Away Our Freedoms, WLF fills that void, providing timely information and insightful analysis that both elevates and balances the debate over this vital American freedom.

The *Real* Nutritional Guidelines



Paternalistic plaintiffs' lawyers, government officials, and professional activists are pecking away at consumers' freedom of choice. They think we can't manage our own lives, and through lawsuits, regulations, and taxes, they want to make our food choices for us — while profiting handsomely in the process. If we let these *New Prohibitionists* eat off our plates today, what other personal freedoms will they target tomorrow?

**Help us defend consumer choice at
EatingAwayOurFreedoms.org**



Washington Legal Foundation
Advocate for Freedom and Justice®

2009 Massachusetts Ave. NW
Washington, DC 20036

wlf.org

LITIGATING • PUBLISHING • EDUCATIONAL MEDIA CAMPAIGNS

Litigating

Our litigation team, with the help of scores of prestigious law firms nationwide, rigorously monitors cases, actions, and proceedings that threaten the fundamental rights of hard-working Americans and the integrity of the country's legal system. When the plaintiffs' bar or government agencies interfere with those rights in a manner we deem unwarranted, WLF's litigation team does not hesitate to challenge them in court.

Working Toward a Balanced Judiciary

WLF serves as a thoughtful counterweight to the shrill voices of activists and the plaintiffs' bar that are heard whenever free enterprise issues arise in the courts and regulatory agencies. Our team shapes legal policy through aggressive litigation and advocacy at all levels of the judiciary.

Our Team

- Litigates original actions and files amicus curiae briefs.
- Files citizen petitions and position papers with government agencies.
- Testifies before congressional committees and government agencies on proposed changes in the law and its administration.
- Reduces, through our Investor Protection Program (IPP), the damage done by attorneys' excessive contingency fees, punitive damages, frivolous lawsuits, and other litigation abuses.
- Opposes the criminalization of free enterprise by government agency enforcement.
- Files reform proposals with state supreme courts and bar associations to promote ethical conduct among lawyers.
- Lodges disciplinary complaints against federal and state judges in judicial misconduct cases.

We also work closely with the corporate legal community, developing public-interest legal strategies for trying complex cases, preparing counsel for appellate and U.S. Supreme Court oral arguments, and providing valuable briefs and reports.

Our Legal Academic Fellowship Program enables law students to apply the basic principles they learn in the classroom, while exposing them to a pro-free enterprise perspective on policymaking. By helping to train aspiring lawyers, WLF prevents the creation of adverse public policy before it has a chance to negatively impact the American legal system.

Each year, several talented law students research, write, and publish articles that investigate the interrelationship of law and our free enterprise system. Former WLF fellows have pursued influential careers in the White House, the Department of Justice, the FBI, congressional committees, U.S. Attorneys' offices, the federal judiciary, major law firms, and corporate law departments.

Keeping Government Accountable

In 2014, WLF participated in over 80 court cases and regulatory proceedings, including 25 before the U.S. Supreme Court. We maintain a commitment to holding government bureaucrats accountable in agencies such as the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), the Occupational Safety and Health Administration (OSHA), and the Securities and Exchange Commission (SEC).

As part of our oversight of federal regulatory agencies, we closely monitor proposed redundant regulations that are published in the Federal

Register. When proposed regulations appear to exceed an agency's mandate, we enter the administrative fray in support of free-enterprise principles. We also won't hesitate to use the Freedom of Information Act where necessary to obtain government documents that demonstrate bureaucratic excess.

Regulatory agencies devote countless hours to micromanaging the day-to-day activities of the industries they are assigned to regulate. Unfortunately, the ones who often get lost in the shuffle are consumers who depend on the products made by the regulated industries. In the health care field, those consumers include patients who often are not fully capable of caring for themselves.

WLF litigators have placed a special focus on helping patients whose interests are being overlooked while regulators dedicate their energies to overseeing the work of the private industry. WLF has, on several occasions, gone to court to ensure that bureaucrats are not needlessly denying patients access to vital health care information. We support the rights of veterans who have to battle the federal bureaucracy to obtain disability benefits. We have also championed the cause of patients who seek access to promising experimental drugs and have no other effective treatment options available to them.

IN THE
Supreme Court of the United States

AMERICAN BROADCASTING COMPANIES, INC., ET AL.,

Petitioners,

v.

AEREO, INC., F/K/A BAMBOO LABS, INC.,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

BRIEF OF WASHINGTON LEGAL FOUNDATION
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS

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March 3, 2014

American Broadcasting Cos. v. Aereo, Inc.
Protecting Copyrights

In this Supreme Court case, an internet-based subscription service claimed that it was entitled to retransmit broadcast signals of the major television networks (and charge its customers for its services) without paying any fee for doing so. In a victory for WLF, the Supreme Court held Aereo's actions constituted a "public performance" of others' copyrighted programming and thus violated federal copyright law. WLF argued that the exclusive right of "public performance" is among the most economically important rights that federal law grants to copyright holders.

***New York Statewide Coalition v.
NYC Dept. of Health***

Curbing Nanny State Administrative Overreach
at the Local Level

The New York State Court of Appeals, NY's highest court, struck down a controversial effort by the New York City Department of Health and Mental Hygiene's Board of Health (and championed by former Mayor Bloomberg) to ban all large sugary beverages—those containing more than 25 calories per 8 fluid ounces and that exceed 16 ounces in size. WLF filed an amicus curiae brief in the case charging that the Board of Health, in enacting the soda ban, exceeded its administrative authority by attempting to exercise legislative power that properly belongs to the New York City Council. WLF's win vindicated separation of powers principles when the court held that the Board of Health exceeded the scope of its authority and declared the soda ban invalid.

COURT OF APPEALS
STATE OF NEW YORK

NEW YORK STATEWIDE COALITION OF HISPANIC CHAMBERS OF COMMERCE;
THE NEW YORK KOREAN-AMERICAN GROCERS ASSOCIATION; SOFT DRINK
AND BREWERY WORKERS UNION, LOCAL 812; INTERNATIONAL BROTHERHOOD
OF TEAMSTERS; THE NATIONAL RESTAURANT ASSOCIATION; THE NATIONAL
ASSOCIATION OF THEATRE OWNERS OF NEW YORK STATE; and THE AMERICAN
BEVERAGE ASSOCIATION,

Plaintiffs-Petitioners-Respondents,

For a Judgment Pursuant to Article 78 and 30 of the Civil Practice Law and Rules,

-against-

Appeal No.: 2013-00291

THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE; THE
NEW YORK CITY BOARD OF HEALTH and DR. THOMAS FARLEY, in his Official
Capacity as Commissioner of the New York City Department of Health and Mental Hygiene,

Defendants-Respondents-Appellants.

BRIEF OF WASHINGTON LEGAL FOUNDATION
AND ALLIED EDUCATIONAL FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFFS-PETITIONERS-RESPONDENTS

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Counsel for Amici Curiae

April 24, 2014

CA Nos. 13-56306

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MARGALIT CORBER, *et al.*,
Plaintiffs-Appellees,

v.

McKESSON CORPORATION, *et al.*,
Defendants-Appellants.
Appellant, Xanodyne Pharmaceuticals, Inc.

**On Appeal from the United States District Court
for the Central District of California
No. CV 12-9986-PSG
(Honorable Philip S. Gutierrez)**

**BRIEF OF WASHINGTON LEGAL FOUNDATION
AS AMICUS CURIAE IN SUPPORT OF APPELLANT'S
PETITION FOR REHEARING *EN BANC***

Richard A. Samp
Cory L. Andrews
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October 18, 2013

Corber v. Xanodyne Pharmaceuticals, Inc.
Defending Removal to Federal Court Under CAFA

Defendants in this case (comprising numerous drug manufacturers) sought to remove product liability lawsuits filed against them from state to federal court under the Class Action Fairness Act of 2005. The trial court and the initial Ninth Circuit panel had allowed plaintiffs' counsel to evade CAFA and defeat removal by strategically limiting the number of plaintiffs in each lawsuit to fewer than 100 (the statute's minimum for qualifying as a "mass action" subject to removal). The U.S. Court of Appeals for the Ninth Circuit, sitting en banc, reversed those decisions and upheld the right of out-of-state defendants to remove lawsuits involving numerous plaintiffs. The decision marked a victory for WLF, which had urged the court to rehear the case en banc and filed a brief arguing that the trial court's remand decision and the original panel decision were inconsistent with CAFA. The appeals court agreed with WLF that removal was warranted because plaintiffs asked the state courts to coordinate their lawsuits "for all purposes."

"The Washington Legal Foundation is one of the preeminent Supreme Court advocacy organizations in America."

Neal Katyal, Hogan Lovells LLP
Former Acting Solicitor General of the United States

***Ortho-McNeil-Janssen Pharmaceuticals,
Inc. v. State of Arkansas***

Reining in State False Claims Acts and Deceptive
Trade Practices Acts

WLF prevailed when the Arkansas Supreme Court overturned a \$1.2 billion civil penalty imposed by Arkansas based on claims that a drug manufacturer included inadequate risk information on the label for one of its products. The court agreed with WLF that the manufacturer did not violate Arkansas's False Claims Act when it distributed a prescription drug whose labeling was later amended by FDA to require additional health warnings. The court also overturned the trial court's finding that the manufacturer violated the Arkansas Deceptive Trade Practices Act when it sent a letter to Arkansas doctors expressing its views regarding the safety of Risperdal, the drug in question. In light of its decision, the court did not reach another issue raised by WLF: that the First Amendment bars Arkansas from imposing liability based on truthful statements.

BEFORE THE ARKANSAS SUPREME COURT

ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC.,
f/k/a JANSSEN PHARMACEUTICA, INC.
and/or JANSSEN, LP; and
JOHNSON & JOHNSON, INC.
Appellants

VS. NO. 12-1058

STATE OF ARKANSAS, *ex rel.*
DUSTIN McDANIEL, Attorney General,
Appellee

On Appeal from the Circuit Court of Pulaski County
Honorable Timothy D. Fox, Circuit Judge

BRIEF OF WASHINGTON LEGAL FOUNDATION
AND ALLIED EDUCATIONAL FOUNDATION
AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS

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April 4, 2013

Counsel for *Amici Curiae*

*“WLF is the single most important advocate for free
enterprise principles in the U.S. Supreme Court.”*

Thomas C. Goldstein, Goldstein & Russell PC

IN THE
United States Court of Appeals
FOR THE THIRD CIRCUIT

AMERICAN FARM BUREAU FEDERATION, *et al.*,

Plaintiffs-Appellants,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Pennsylvania
Case No. 11-cv-00067 (Hon. Sylvia H. Rambo)

**BRIEF OF 39 BIPARTISAN MEMBERS OF CONGRESS AND
WASHINGTON LEGAL FOUNDATION AS AMICI CURIAE
IN SUPPORT OF APPELLANTS, URGING REVERSAL**

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Counsel for Amici Curiae

American Farm Bureau Federation v. EPA

Opposing EPA's Clean Water Act Power Grab

The Clean Water Act accords States the principal role in cleaning up the nation's waterways, with the federal Environmental Protection Agency playing a back-up role. This case pending in the U.S. Court of Appeals for the Third Circuit concerns EPA's attempt to increase its jurisdiction significantly. EPA is attempting to micromanage efforts to clean up the Chesapeake Bay by imposing massive new restrictions on land use in the six-state Bay area. In a brief filed on behalf of 39 Members of Congress challenging EPA's conduct, WLF argues that EPA is exceeding powers delegated to it and violating Congress' desire for state primacy as expressed in the CWA.

IN THE
Supreme Court of the United States

JOHN L. YATES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

**BRIEF OF WASHINGTON LEGAL FOUNDATION
AS AMICUS CURIAE
IN SUPPORT OF PETITIONER**

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July 7, 2014

Yates v. United States

Insisting on Fair Notice of Criminal Laws

This pending Supreme Court case involves a commercial fisherman who sought to avoid a small civil fine by throwing undersized fish back into the sea after being cited for the infraction. Federal prosecutors convicted him for violating the Sarbanes-Oxley Act's "anti-shredding" provision, which provides for up to 20 years' imprisonment. The statute, adopted in the wake of the Enron accounting scandal, prohibits destruction of "any record, document, or tangible object" with the intent to obstruct the administration of any matter within the jurisdiction of the United States. WLF's brief in support of Mr. Yates argues that the statute does not provide individuals with adequate warning that fish fall within the definition of "tangible objects" and should be deemed void for vagueness when applied outside the document-preservation context.

Select Litigation

Utility Air Regulatory Group v. EPA

Opposing EPA's Clean Air Act Power Grab

The U.S. Supreme Court rejected the Environmental Protection Agency's controversial attempt to rewrite the Clean Air Act's statutory emission thresholds via the agency's so-called tailoring rule. EPA had sought to expand regulation of greenhouse gases in the wake of the Court's earlier decision in *Massachusetts v. EPA*, but WLF's brief argued that EPA improperly seized on the Court's narrow earlier ruling to enhance the agency's regulatory authority. Agreeing with WLF that EPA interpreted the *Massachusetts* precedent too aggressively, the Court struck down the tailoring rule and held that EPA may not rewrite emissions thresholds contained in the statute. Although WLF would like to have seen the Court cut back even further on EPA's power grab, the partial victory nonetheless established real constraints on whose emissions EPA may regulate.

Halliburton Co. v. Erica P. John Fund, Inc.

Fighting Certification of Securities Class Actions

Public companies routinely get sued for securities fraud whenever their stock prices dip, and they are essentially forced to settle even frivolous suits once (as usually happens) a case is certified as a class action. This Supreme Court decision will make obtaining class certification in such cases more difficult for plaintiffs' lawyers, by allowing defendants to rebut the "fraud on the market" presumption at the class certification stage. In a unanimous opinion tracking remarkably closely to the arguments put forward successfully by WLF, the Court held that defendants may introduce evidence to rebut the presumption that all stockholders rely on every company statement in making their purchases by showing, for example, that the allegedly false statement had no impact on the stock price. The Court declined Halliburton's request to abolish the presumption altogether.

ONEOK, Inc. v. Learjet, Inc.

Upholding Federal Preemption of State Regulation

The federal government regulates wholesale pricing for natural gas under the Natural Gas Act. Federal regulation makes sense because most natural gas is shipped interstate before use and a national market exists. However, some states

"I am very grateful for WLF's commitment to shaping the development of important areas of securities law, including in the Omnicare case, in which the U.S. Supreme Court will determine the standards for judging the truth of opinions."

Douglas W. Greene, Shareholder, Lane Powell PC

and private plaintiffs are attempting to regulate retail pricing under state antitrust law in ways that would interfere with federal regulation of wholesale prices. If such suits are permitted—as the Ninth Circuit ruling below would allow—natural gas producers could be held liable for hundreds of millions of dollars in damages for not meeting conflicting state standards of conduct. Although the case is still pending, WLF believes our amicus brief in support of certiorari helped convince the Supreme Court to hear the case. WLF’s merits brief argues that the federal statute preempts regulation via private lawsuit under state antitrust laws.

Dart Cherokee Basin Operating Co. v. Owens
Defending Removal to Federal Court
Under CAFA

This case marked a significant victory for WLF. Federal law generally grants out-of-state defendants who are sued in state court the right to remove lawsuits against them to federal court. This right is extremely important to defendants, who believe state courts are often biased in favor of in-state plaintiffs. Lower federal courts tend to resist removal, and 10 of the 11 regional circuit courts of appeal had endorsed an extra-statutory presumption against removal. In this case, the federal district court remanded the case back to state court because the defendant did not initially provide evidence in support of removal, which federal law does not require defendants to provide up front. Not only did the U.S. Supreme Court vindicate the out-of-state defendant’s right to remove this lawsuit, but it also repudiated the lower court’s presumption against removal—a point largely ignored by the parties and on which WLF’s amicus brief focused. In a 5-4 decision, Justice Ginsburg wrote for the Court that where a defendant seeks removal under the Class

Action Fairness Act of 2005, no antiremoval presumption applies. As a result of this decision, future defendants will have an easier time removing CAFA cases to federal court, and the federal presumption against removal in other contexts was undermined as well.

FTC v. Wyndham Hotels & Resorts, LLC
Opposing Overreach by the Federal Trade
Commission

Numerous companies have experienced major data breaches in the last several years, caused by computer hackers seeking access to credit card information of the companies’ customers. But instead of recognizing those companies as victims themselves, the Federal Trade Commission often has seen fit to charge them with engaging in “unfair trade practices” by failing to do a better job of preventing data breaches. Most companies have caved in to FTC demands (and have entered into settlement agreements), but Wyndham Hotels has decided to fight the charges. WLF filed a brief in support of Wyndham in this case pending in the U.S. Court of Appeals for the Third Circuit. WLF’s brief argues that Congress has not given the FTC the authority to regulate the actions taken by companies to prevent data breaches.

Communicating

WLF's Civic Communications Program equips champions of free enterprise with the scholarly, timely, and pertinent information in print and online that they need to become effective advocates.

We believe that knowledge empowers citizens nationwide to recognize and respond to threats to their individual liberties.

Our Civic Communications Program not only supports and complements WLF litigation and publishing initiatives; it stands on its own as an effective instrument for advancing our public interest mission. The variety and flexibility of WLF's communications tools permit us to respond rapidly to fast-moving legal policy developments and participate in quickly emerging discussions, or strategically shape longer-term debates.

WLF Programming

In our M.J. Murdock Center for Free Enterprise media facility, WLF hosts timely, informative Media Briefing and Web Seminar programs on current legal issues to educate key decision makers and opinion leaders. Installments of both programs are broadcast live through WLF's website, and are then conveniently offered as on-demand video files in our webcasting archive.

“WLF plays a critical role in shaping the Supreme Court’s docket and supporting free enterprise.”

Allyson N. Ho, Co-Chair of Appellate Practice,
Morgan, Lewis & Bockius LLP

In 2014, WLF continued its decades-long practice of assessing the U.S. Supreme Court's free-enterprise docket with three different Media Briefing programs. WLF timed the events to correspond with the beginning of the Court's term in October, the term's mid-point in February, and its completion in June. Those three briefings featured 12 different appellate advocates and scholars, many of whom had cases before the Court. Additionally, speakers for our two Media Briefings on government and private efforts to deter frivolous patent litigation included CEOs of private enterprises and senior attorneys from the Federal Trade Commission.

Our Web Seminar programs educated viewers on a variety of diverse topics, such as effective issue advocacy at the EPA and the future of a self-reporting program for food additives at FDA. Another program featured Bloomberg BusinessWeek senior editor Paul Barrett discussing the broader implications of an ongoing fraud suit against the lawyer who stage-managed multi-billion dollar litigation against Chevron in Ecuador.

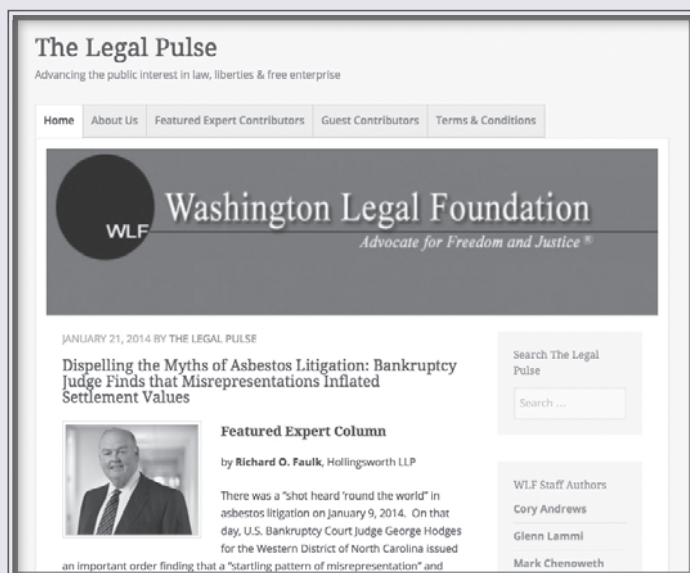
Media Outreach

WLF and its attorneys work to shape the public's understanding and opinion of high-profile cases and legal matters through communications with print and broadcast media, the placement of op-eds, and other targeted outreach. In 2014, WLF published an op-ed in the San Francisco Chronicle spotlighting Alameda County's cost-shifting medicine disposal program, which at the time was the subject of a suit in the U.S. Court of Appeals for the Ninth Circuit and will be appealed to the U.S. Supreme Court in 2015. Also, in support of our participation in a challenge by creditors to Argentina's foreign debt default, WLF's Chief Counsel spoke with scores of U.S. and foreign reporters, including one interview for an extensive BBC piece.

WLF Advocacy and Outreach through Social Media

Legal and policy issues can emerge and debates advance today at a very rapid pace. To be an effective advocate for free-enterprise principles, WLF must not only deploy its traditional educational and advocacy tools, but also communicate its message in a timely, highly targeted fashion online and via social media.

The WLF Legal Pulse blog (wlflegalpulse.com) publishes regular contributions from WLF attorneys and facilitates the participation of private practitioners, academics, law students, and others as guest contributors. In 2014, we published 130 substantive blog commentaries, 42 of which were authored pro bono by guest contributors.



Among those guest contributors, we are honored by the involvement of six attorneys from major law firms who write regularly for the blog on specific issues. We acknowledge these “Featured Expert Contributors” below:

- Mark Botti, Squire Patton Boggs (US) LLP (Antitrust—DOJ)
- Samuel B. Boxerman, Sidley Austin LLP (Environmental Law and Policy)
- Frank Cruz-Alvarez, Shook, Hardy & Bacon LLP (Civil Justice/Class Actions)
- Richard O. Faulk, Hollingsworth LLP (Complex Serial and Mass Tort Litigation)
- Jeffri A. Kaminski, Venable LLP (Intellectual Property—Patents)
- Andrea Agathoklis Murino, Wilson Sonsini Goodrich & Rosati (Antitrust—FTC)

WLF continued its blog publishing relationship with Forbes magazine in 2014. Forbes.com maintains a contributor site within its network of blogs for WLF attorneys’ commentaries (Forbes.com/sites/wlf). The site exposes each staff-authored post to Forbes.com’s vast readership and exponentially increases the appearance of our online advocacy in web searches, thereby further impacting legal debates.

The WLF Legal Pulse and the Forbes.com sites allow WLF to sharpen and further publicize arguments made in WLF briefs, revisit topics introduced in WLF publications and programs, and offer timely updates on developments related to past WLF activities. For instance, in 2014, we published a series of commentaries on Argentina’s refusal to pay certain owners of its foreign debt, and the litigation that arose from the conflict. WLF had filed amicus briefs in one of the cases. Our blog and Forbes.com allowed us to further influence the debate and inform media coverage. Posts on the Argentine debt debate collectively attracted over 10,000 readers.

Speakers

When an amicus brief filed in one of WLF's October Term 2014 Supreme Court cases, *Dart Cherokee Basin Operating Co. v. Owens*, urged the justices to dismiss the matter on obscure procedural grounds, WLF provided counterarguments on its blog sites. References to the post by prominent websites like SCOTUSblog and How Appealing drove hundreds of readers to The WLF Legal Pulse.

WLF's blog and its Forbes.com site also offer a platform to weigh in on time-sensitive legal and regulatory developments. When a deadly strain of meningitis B struck two college campuses and the schools had to look overseas for a vaccine, WLF blog posts criticized the federal drug approval process for slowing down release of a domestic countermeasure. A senior FDA official defended the agency's actions in a 1,000-word comment to our Forbes.com posting. In another widely read and referenced series of posts, a WLF attorney characterized comments on "food addiction" by a high-ranking White House spokesperson in an interview broadcast to millions of public-school students as reflective of the federal government's effort to demonize disfavored foods and relieve people of personal responsibility for a perceived rise in obesity.

Additionally, WLF has built a presence on Twitter with its @WashLglFndt feed. The feed has attracted a steadily growing, influential list of followers, who learn about new publications, briefs, regulatory filings, blog posts, and programs. It also affords WLF unique opportunities to interact with thought leaders and broadcast its message to non-traditional audiences. Finally, WLF maintains a channel on YouTube, where we post educational "Legally Brief" videos and recordings of our webcast Media Briefings and Web Seminars.

David A. Balto, Law Offices of David A. Balto PLLC

Paul M. Barrett, Bloomberg BusinessWeek

Keith Bergelt, Open Invention Network

Alex Brill, American Enterprise Institute

Mark S. Davies, Orrick, Herrington & Sutcliffe LLP

Robert P. Davis, Venable LLP

Jonathan L. Diesenhaus, Hogan Lovells US LLP

Melvin S. Drozen, Keller and Heckman LLP

John P. Elwood, Vinson & Elkins LLP

Thomas L. Ewing, Avancept LLC

Meir Feder, Jones Day

Peter S. Glaser, Troutman Sanders LLP

Thomas C. Goldstein, Goldstein & Russell PC

Eric Grannon, White & Case LLP

Dan Himmelfarb, Mayer Brown LLP

Allyson N. Ho, Morgan, Lewis & Bockius LLP

Kevin Jakel, Unified Patents, Inc.

Daryl L. Joseffer, King & Spalding LLP

Jonathan S. Kanter, Cadwalader, Wickersham & Taft LLP

Coleen Klasmeier, Sidley Austin LLP

Eric G. Lasker, Hollingsworth LLP

Geoffrey M. Levitt, Pfizer, Inc.

Suzanne Munck, Federal Trade Commission

Andrea Agathoklis Murino, Wilson Sonsini Goodrich & Rosati

Erin E. Murphy, Bancroft PLLC

Ralph G. Neas, The Generic Pharmaceutical Association

Evangelia C. Pelonis, Keller and Heckman LLP

Andrew J. Pincus, Mayer Brown LLP

Jeffrey A. Rosen, Kirkland & Ellis LLP

Jan Rybnicek, Federal Trade Commission

Richard A. Samp, Washington Legal Foundation

Richard G. Stoll, Foley & Lardner LLP

Shirley Cassin Woodward, Wilmer Cutler Pickering Hale & Dorr LLP

Informing the Media

Targeted and broad-based, our Civic Communications Program hosts Media Briefings on current legal issues to educate key decision makers and opinion leaders. As an essential element of our outreach strategy, these briefings are routinely moderated by the Honorable Dick Thornburgh and feature leading legal authorities addressing a wide variety of timely topics. Participating speakers donate their time and expertise to discuss legal reform, clean air regulation, national security, white collar crime, the U.S. Supreme Court, food and drug regulation, criminalization of free enterprise, and other topics.

WASHINGTON LEGAL FOUNDATION MEDIA BRIEFING SERIES

THE U.S. SUPREME COURT: PREVIEWING THE OCTOBER 2014 TERM

Moderated by
Eric Grannon
White & Case LLP

Featuring
John P. Elwood
Vinson & Elkins LLP

Allyson N. Ho
Morgan, Lewis & Bockius LLP

Shirley Cassin Woodward
WilmerHale

Join Us:

M.J. Murdock Center for Free Enterprise
Washington Legal Foundation
2009 Massachusetts Avenue, N.W.

Wednesday, October 1, 2014
1:30-2:45 p.m. EDT

If you can't attend in person,
watch the live broadcast online
Free registration at www.wlf.org

RSVPs appreciated by
Tuesday, September 30
glammi@wlf.org
202.588.0302

 Washington Legal Foundation
Advocate for freedom and justice®

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David A. Balto
Law Offices of David A. Balto PLLC
Former Policy Director, FTC Bureau of Competition

Robert P. Davis
Venable LLP
Former Attorney Advisor, FTC Chairman Leibowitz

Andrea Agathoklos Murino
Wilson Sonsini Goodrich & Rosati
Former Attorney Advisor, FTC Chairman Kovacic

Jan Rybnicek
Attorney Advisor, FTC Commissioner Wright

Join Us:

M.J. Murdock Center for Free Enterprise
Washington Legal Foundation
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DON'T REST ON YOUR WRITTEN COMMENTS: PURSUIT OF SUCCESSFUL EPA ADVOCACY

Live Webcast

Monday, June 16, 2014

1:00 p.m. — 2:00 p.m. EDT

To effectively shape rulemaking at today's Environmental Protection Agency, lawyers must go well beyond the filing of expertly crafted comments. Viewers will benefit from Mr. Stoll's three decades of EPA advocacy and learn how to adroitly advance their interests both before and after official comments have been filed. He will also discuss "sub-regulatory" guidance from the agency, how to pursue it, and how to put it to good use.

Featuring

Richard G. Stoll

Partner, Foley & Lardner LLP
Author, *Effective EPA Advocacy*

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WASHINGTON LEGAL FOUNDATION WEB SEMINAR SERIES

THE FUTURE OF FDA'S "GRAS" DESIGNATION IN AN ERA OF INCREASED SCRUTINY

Live Webcast

Thursday, July 10, 2014

10:00 a.m. — 11:00 a.m. EDT

Featuring

Melvin S. Drozen

Partner, Keller and Heckman LLP

Evangelia C. Pelonis

Counsel, Keller and Heckman LLP

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Beginning in 2010 with a Government Accountability Office report, the self-determined generally-regarded as safe ("GRAS") approach and FDA's administration of the program have endured increased criticism. Fueled by public concern over food safety, public interest activists and charitable foundations have intensified this criticism. Is there any real basis for these concerns? Our speakers will provide some background on the GRAS program, explore these developments, and discuss whether FDA's approach on partially hydrogenated oils could further complicate matters.

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WASHINGTON LEGAL FOUNDATION WEB SEMINAR SERIES

AGUINDA V. CHEVRON: THE REMARKABLE RISE AND FALL OF A STAGE-MANAGED LITIGATION AND PR CRUSADE

Live Webcast

Friday, September 26, 2014

10:00 a.m. — 11:00 a.m. EDT

An attorney for indigenous South Americans thought he had crafted a new model for executing legal insurgencies at the global level. But the tactics he utilized to win a \$19 billion judgment from Chevron in an Ecuadorian courtroom exposed him, his clients, and others to racketeering charges. Our speakers will assess how the suit's downfall will impact plaintiffs' and defendants' strategies in future mass litigation and what influence the scandal may have on public and judicial perceptions of such legal actions. They will also discuss the RICO case's impending appeal in the Second Circuit.

Featuring

Paul M. Barrett

Assistant Managing Editor,
Bloomberg Businessweek
Author, *Law of the Jungle*

Eric G. Lasker

Hollingsworth LLP
Counsel, *Venacio Aguasanta Arias v. Dynacorp*

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Legal Studies Publications

ADMINISTRATIVE PROCEDURE

D.C. Circuit Shuts Down Another Federal Regulatory “Switcheroo”

By **Lawrence S. Ebner**, McKenna Long & Aldridge LLP

ANTITRUST & CONSUMER PROTECTION

“Unfair Methods of Competition”: The Legislative Intent Underlying Section 5 of the FTC Act

By **William Kolasky**, Hughes Hubbard & Reed LLP; foreword by **A. Douglas Melamed**, Stanford Law School

Blocked Shipping Alliance Reveals Modest Improvement in Chinese Antitrust Review Transparency

By **Noah A. Brumfield** and **Yi Ying**, White & Case LLP

ON THE MERITS: *Maple v. Costco Wholesale Corp.*

By **Jeffrey B. Margulies**, Norton Rose Fulbright LLP, and **Shirish Gupta, Esq.**, Flashpoint

The Perils of State-Sanctioned Private Regulation: A Case Study from the Healthcare Marketplace

By **Professor Joanna M. Shepherd**, Emory University School of Law

Proposed Change to Mexican Antitrust Law: Erecting a Barrier to Competition?

By **John Roberti**, Allen & Overy LLP, and **Meytal McCoy**, Mayer Brown LLP

Forced Separation: What Happens When DOJ Dissolves a Consummated Merger?

By **George L. Paul**, White & Case LLP

ASBESTOS & TOXIC TORTS

Why Transparency Is Imperative When Litigating Asbestos Liability Claims

Featuring **The Hon. Dick Thornburgh**, K&L Gates LLP with **The Hon. Peggy L. Ableman**, McCarter & English LLP

Texas Supreme Court Rejects “Any Exposure” Causation in Asbestos Litigation

By **Eric G. Lasker** and **Richard O. Faulk**, Hollingsworth LLP

State Courts Move to Dismiss “Every Exposure” Liability Theory in Asbestos Lawsuits

By **Nicholas P. Vari** and **Michael J. Ross**, K&L Gates LLP

New York High Court Should Keep “Stream of Commerce” Tort Rule

By **Mark A. Behrens** and **Virginia R. Knapp Dorell**, Shook, Hardy & Bacon LLP

CIVIL JUSTICE REFORM

New York High Court Rejects Medical Monitoring Claims in Absence of Physical Injury

By **Richard O. Faulk**, Hollingsworth LLP

“Cy Pres” Awards: Is the End Near for a Legal Remedy with No Basis in Law?

By **James M. Beck** and **Rachel B. Weil**, Reed Smith LLP

Texas Supreme Court Heightens Evidentiary Bar for “Stigma Damages”

By **Mark R. Ter Molen** and **Sarah E. Reynolds**, Mayer Brown LLP

No Rational Basis for Florida High Court’s Nullification of Statutory Noneconomic Damages Cap

By **William W. Large**, Florida Justice Reform Institute

***CTS Corp. v. Waldburger*: How Will Judges and State Lawmakers Respond to High Court's Statute of Repose Ruling?**

By **Daniel M. Steinway**, Baker Botts LLP

CLASS ACTION LITIGATION

Ascertainability Becoming Higher Hurdle in Consumer Class Action Certification

By **Jeffrey B. Margulies** and **Stephanie A. Stroup**, Norton Rose Fulbright LLP

High Court's *Cert* Denial Foments Greater Confusion over Removal of Mass Actions under Federal Law

By **Heather A. Pigman** and **John M. Kalas**, Hollingsworth LLP

The Other *Shoe* Drops on General Jurisdiction: Making the Most of Supreme Court's *Bauman* & *Goodyear* Rulings

By **James M. Beck** and **Michelle Lyu Cheng**, Reed Smith LLP

Supreme Court's *Daimler* Decision Makes it a Good Year for General Jurisdiction Clarity

By **Professor Mark Moller**, DePaul University College of Law

COMMERCIAL SPEECH

Mandated Labeling for Genetically Engineered Foods: Vermont's Legislation Implicates the First Amendment

By **Robert Hahn** and **John Dillard**, Olsson Frank Weeda Terman Matz PC

COMMUNICATIONS & INFORMATION TECHNOLOGY LAW

Issuer Banks and Data Breach Lawsuits: A New Wave Of Litigation?

By **Philip M. Busman** and **John M. Kalas**, Hollingsworth LLP

Data Security Breaches: Incident Preparedness and Response

By **Jena Valdetero** and **David Zetoon**, Bryan Cave LLP. Foreword by **Commissioner Maureen K. Ohlhausen**, Federal Trade Commission; Introduction by **Lisa Clapes**, Ceridian HCM

Targeting Harm from a Breach: Plaintiffs' Lawyers Get Creative in Data Privacy Suits

By **Robert M. McKenna** and **Scott Lindlaw**, Orrick, Herrington & Sutcliffe LLP

CORPORATE CRIMINAL LIABILITY

Will Courts Embrace DOJ's New Definition of Willfulness for False Statement Prosecutions?

By **Scott A. Coffina**, Drinker Biddle & Reath LLP

DISCOVERY PROCESS & PROCEDURE

Curbs for Costly Discovery?: Federal Rules Reform Aims at Electronic Document Burdens

By **Tony Rospert** and **Rob Ware**, Thompson Hine LLP

Proposed Amendments to Federal Discovery Rules

Featuring **The Hon. Dick Thornburgh**, K&L Gates LLP, with **The Hon. Rebecca Love Kourlis**, Institute for the Advancement of the American Legal System, and **John J. Jablonski**, Goldberg Segalla

EMPLOYMENT LAW

New Jersey Supreme Court Set to Rule on Definition of "Independent Contractor"

By **Mark E. Tabakman**, Fox Rothschild LLP

Redefining "Employer": How the NLRB Plans to Treat Separate Companies as One

By **Michael J. Lotito** and **Missy Parry**, Littler Mendelson PC

EEOC's Limits on Criminal Background Checks: Bad Policy Based on "Completely Unreliable" Data

By **Frank C. Morris, Jr.** and **Brian Steinbach**,
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High Court Extends Federal Whistleblower Protection to Public Companies' Private Contractors

By **Donn C. Meindertsma** and **Ryan T. Scharnell**,
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ON THE MERITS: *NLRB v. Noel Canning*

By **The Hon. Michael W. McConnell**, Stanford Law School, and **Sidney S. Rosdeitcher**, Paul, Weiss, Rifkind, Wharton & Garrison LLP

ENVIRONMENTAL REGULATION & ENFORCEMENT

Federal Clean Air Act Preemption of Public Nuisance Claims: The Case for Supreme Court Resolution

By **Donald W. Fowler** and **Richard O. Faulk**,
Hollingsworth LLP

Opposing EPA's "Sue and Settle" Strategy: Maintaining a Role for States in the Federal Rulemaking Process

By **Attorney General Derek Schmidt**,
the State of Kansas

***Shell v. U.S.*: Court Holds Government to its World War II-Era "Grand Bargain" with Aviation Gas Refiners**

By **Christopher H. Marraro**, Baker Hostetler LLP

ON THE MERITS: *CTS Corporation v. Waldburger*

By **Professor Scott R. Bauries**, University of Kentucky College of Law, and **Professor Michael Burger**, Roger Williams University School of Law

Federal Government Crossfire: Fix the "Catch-22" Businesses Face from Conflicting Agency Demands

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Are EPA and the Army Corps Navigating New Waters with their Controversial Proposal?

By **Sarah A. Slack** and **Catherine M. Basic**, Foley & Lardner LLP

Is EPA Ignoring Clean Air Act Mandate to Analyze Impact of Regulations on Jobs?

By **Professor Mark Latham**, Vermont Law School, and **Victor E. Schwartz** and **Christopher E. Appel**, Shook, Hardy & Bacon LLP

EXPERT EVIDENCE & JUNK SCIENCE

Appeals Court Confirms Expert Testimony Must Offer Scientific Proof of Causation, Not a Hypothesis

By **Carl J. Summers**, Mayer Brown LLP

Law Leading Science: The Ninth Circuit Makes a *Messick* of Differential Diagnosis

By **Matthew A. Reed**, Sedgwick LLP

Sixth Circuit Slams the Door on Federal Agency's Unreliable, Result-Oriented Expert Testimony

By **Evan M. Tager**, **Miriam R. Nemetz**, and **Carl J. Summers**, Mayer Brown LLP

Ninth Circuit Expands *Daubert* Gatekeeper Role for Both Trial and Appellate Courts

By **Evan M. Tager** and **Carl J. Summers**,
Mayer Brown LLP

FOOD, DRUG & MEDICAL DEVICE

FDA's "Added Sugars" Labeling Mandate Raises First and Fourth Amendment Concerns

By **Richard L. Frank** and **Bruce A. Silverglade**,
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When Is Food "Unlawful" or Not "Merchantable"?: Court Ruling Further Confounds Labeling Suit Defendants

By **James D. Smith** and **Sara Ahmed**,
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Effective Tactics for Opposing Certification from Recent Food Labeling Class Actions
By **Philip M. Busman, Robert E. Johnston,** and **Julia R. Milewski,** Hollingsworth LLP

Federal Courts in California Split Over Standing to Sue for “Unlawful” Food Labeling
By **William H. Dance,** Tucker Ellis LLP

GOVERNMENT CONTRACTING & FALSE CLAIMS ACT

ON THE MERITS: *Kellogg Brown & Root Services v. U.S. ex rel. Carter*

By **Douglas W. Baruch,** Fried, Frank, Harris, Shriver & Jacobson LLP, and **Robert L. Vogel,** Vogel, Slade & Goldstein, LLP

Court’s Ruling on “First-To-File” Bar Creates Circuit Split on Key False Claims Act Issue
By **Douglas W. Baruch, John T. Boese,** and **Jennifer M. Wollenberg,** Fried, Frank, Harris, Shriver & Jacobson LLP

Circuit Court Affirms High Pleading Standard for “Induced” False Claims *Qui Tam* Actions
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INSURANCE LAW

Regulating International Insurance Companies: A “Camel’s Nose” for Federal Regulation?
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INTELLECTUAL PROPERTY

Judicial Patent Reform?: The Supreme Court Could Have Major Impact with Five Cases this Term
By **Michael A. Sartori, Ph.D.** and **Tamatane J. Aga,** Venable LLP

PRODUCT LIABILITY & SAFETY

Iowa High Court Exposes Pharma “Innovator Liability” for What it Is: Deep-Pocket Jurisprudence
By **Victor E. Schwartz** and **Phil Goldberg,** Shook, Hardy & Bacon LLP

***Wyeth v. Weeks*, Redux: Will Alabama Court’s Decision Remain an Outlier or Spark a Rewrite of Product Liability Law?**
By **John J. Park, Jr.,** Strickland Brockington Lewis LLP

Upsetting the Confidentiality Balance?: CPSC Proposes Revisions to Its Section 6(b) Information Disclosure Regime
By **Cheryl A. Falvey** and **Natalia R. Medley,** Crowell & Moring LLP

Why CPSC Should Voluntarily Recall Its New Voluntary Recall Proposal
By **Former Commissioner Nancy Nord,** Consumer Product Safety Commission

PUNITIVE DAMAGES

Punitive Damages Imposed to Punish Overseas Conduct Are Constitutionally Suspect
By **Eric Boorstin,** Horvitz & Levy LLP

SECURITIES & CORPORATE GOVERNANCE

Outsized Power & Influence: The Role of Proxy Advisers
By **Commissioner Daniel M. Gallagher,** Securities and Exchange Commission

Is Delaware High Court Ruling an Ace for Merging Companies Served with Shareholder Suits?
By **Greg Brower** and **Casey Perkins,** Snell & Wilmer LLP

SEC “Gag Orders”: Does Settling in Silence Advance the Public Interest?
By **Gary S. Matsko,** Davis, Malm & D’Agostine, PC

Litigation and Regulatory Reform

Washington Legal Foundation litigates at every level of the judicial system, from local courts to the U.S. Supreme Court. WLF also regularly initiates, or intervenes in, administrative proceedings to promote regulatory reform. WLF participated in over 80 court cases and regulatory proceedings in 2014. Briefs and regulatory comments filed by WLF are available on our website at www.wlf.org.

Accenture, LLP v. Wellogix, Inc.

U.S. Supreme Court
Supporting exclusion of junk science from courtrooms

al Bahlul v. United States

U.S. Court of Appeals for the D.C. Circuit
Supporting use of military commissions to try suspected terrorists

Allstate Ins. Co. v. Jacobsen

U.S. Supreme Court
Opposing certification of unwieldy class actions

American Broadcasting Cos. v. Aereo, Inc.

U.S. Supreme Court
Supporting copyright protection for broadcasters

American Farm Bureau Fed'n v. Environmental Protection Agency

U.S. Court of Appeals for the Third Circuit
Opposing EPA takeover of States' role in Clean Water Act enforcement

Anthony v. Georgia Gulf Lake Charles, LLC

Louisiana Supreme Court
Opposing junk science in the courtroom

Asahi Kasei Pharma Corp. v. Actelion Ltd.

California Supreme Court
Limiting speculative damages for future lost profits

BP Exploration & Production, Inc. v. Lake Eugenie Land & Development, Inc.

U.S. Supreme Court
Limiting compensation for uninjured plaintiffs

Chevron Corp. v. Donziger

U.S. Court of Appeals for the Second Circuit
Supporting right to challenge fraudulent court judgments

Corber v. Xanodyne Pharmaceuticals, Inc.

U.S. Court of Appeals for the Ninth Circuit
Supporting right to remove "mass actions" to federal court

Dart Cherokee Basin Operating Co. v. Owens

U.S. Supreme Court
Opposing adoption of a presumption against removal rights

Esquenazi v. United States

U.S. Supreme Court
Opposing unwarranted prosecutions under Foreign Corrupt Practices Act

Evertson v. United States

U.S. Supreme Court
Seeking to overturn criminal conviction for alleged environmental law violation

Exxon Mobil Corp. v. City of New York

U.S. Supreme Court
Opposing tort claims for use of MTBE in gasoline

Federal Trade Commission v. Wyndham Hotels & Resorts, LLC
U.S. Court of Appeals for the Third Circuit
Opposing FTC regulation of data security policies

First Nat'l Bank of Wahoo v. Charvat
U.S. Supreme Court
Limiting lawsuits by uninjured plaintiffs

Galderma Labs., L.P. v. Tolmar, Inc.
U.S. Court of Appeals for the Federal Circuit
Opposing shifting burden of proof to patentee in certain patent infringement cases

Halliburton Co. v. Erica P. John Fund, Inc.
U.S. Supreme Court
Opposing fraud-on-the-market securities fraud litigation

In re Cipro I & II
California Supreme Court
Opposing antitrust liability for settling patent infringement lawsuits

In re Deepwater Horizon
U.S. Court of Appeals for the Fifth Circuit
Supporting disqualification of conflicted court administrator

In re Genzyme Corp. Securities Litig.
U.S. Court of Appeals for the First Circuit
Urging strict application of “intent to deceive” requirement in securities fraud cases

In re Johnson & Johnson
U.S. Court of Appeals for the Tenth Circuit
Supporting right to remove “mass actions” to federal court

In re New York City Asbestos Litigation
Supreme Court of New York
Urging deferral of punitive damages claims in asbestos litigation

Kane v. Chobani, Inc.
U.S. Court of Appeals for the Ninth Circuit
Opposing frivolous food mislabeling claims

King v. Burwell
U.S. Supreme Court
Opposing administration’s interpretation of Affordable Care Act subsidies

Medtronic, Inc. v. Stengel
U.S. Supreme Court
Supporting federal preemption of tort claims involving complex medical devices

Mingo Logan Coal Co. v. Environmental Protection Agency
U.S. Supreme Court
Opposing EPA authority to revoke Clean Water Act permits many years after issuance

Mississippi ex rel. Hood v. AU Optronics Corp.
U.S. Supreme Court
Supporting right to remove class action suits to federal court

Nat'l Assoc. of Tobacco Outlets, Inc. v. City of New York
U.S. District Court for the Southern District of New York
Opposing ban on product promotional practices

NML Capital, Ltd. v. Republic of Argentina
U.S. Supreme Court
Supporting power of bondholders to enforce contractual rights against foreign sovereigns

Norse Energy Corp. USA v. Town of Dryden
New York Court of Appeals
Supporting preemption of local government efforts to prohibit fracking

NY Statewide Coalition v. NYC Dep’t of Health and Mental Hygiene

New York Court of Appeals

Opposing ban on sale of large sugary drinks

Omnicare, Inc. v. Laborers District Council

U.S. Supreme Court

Supporting limitations on liability for statements of opinion

ONEOK, Inc. v. LearJet, Inc.

U.S. Supreme Court

Supporting preemption of state antitrust suits by Natural Gas Act

Ortho-McNeil-Janssen Pharms., Inc. v. State of Arkansas

Arkansas Supreme Court

Supporting First Amendment rights of manufacturers to speak about their products

Paul v. State Farm Mutual Auto. Ins. Co.

U.S. Court of Appeals for the Sixth Circuit

Supporting enforcement of insurance subrogation rights

Perez v. Mortgage Bankers Ass’n

U.S. Supreme Court

Requiring federal agencies to comply with rulemaking procedures

Pharmaceutical Research & Mfrs. of America v. Alameda County

U.S. Court of Appeals for the Ninth Circuit

Opposing efforts by local governments to regulate interstate commerce

Prevor v. Food and Drug Administration

U.S. District Court for District of Columbia

Opposing arbitrary FDA product-classification rules

Purdue Pharma L.P. v. U.S. ex rel. May

U.S. Supreme Court

Supporting limitations on liability under False Claims Act

R.J. Reynolds Tobacco Co. v. Brown

U.S. Supreme Court

Supporting procedural fairness in tort lawsuits

Ross v. Federal Trade Commission

U.S. Supreme Court

Opposing FTC actions in excess of statutory authority

Sears, Roebuck & Co. v. Butler

U.S. Supreme Court

Opposing certification of unwieldy class actions

Texas Dep’t of Housing and Cmty. Affairs v. The Inclusive Communities Project, Inc.

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Supporting reasonable limitations on Fair Housing Act

United States v. Apple, Inc.

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Opposing unwarranted antitrust enforcement

United States v. Philip Morris USA, Inc.

U.S. Court of Appeals for the D.C. Circuit

Opposing compelled commercial speech

Utility Air Regulatory Group v. Environmental Protection Agency

U.S. Supreme Court

Opposing EPA efforts to regulate “greenhouse” gases

Yates v. United States

U.S. Supreme Court

Opposing overcriminalization of federal civil infractions

In re: Advisory Committee on Civil Rules

Supporting reform of rules governing discovery in federal civil suits

In re: Dep’t of Agriculture

Opposing restrictions on food advertising at schools

In re: Centers for Medicare and Medicaid Services

Opposing restrictions on dissemination of medical texts

In re: Consumer Financial Protection Bureau

Opposing CFPB efforts to restrict enforcement of arbitration agreements

In re: Environmental Protection Agency

Opposing expanded definition of “waters of the U.S.”

In re: Environmental Protection Agency

Opposing new restrictions on carbon dioxide emissions

In re: Environmental Protection Agency

Opposing changes in guidelines governing enforcement of “disparate impact” regulations

In re: Environmental Protection Agency

Opposing proposed imposition of federal reporting requirements on fracking chemicals

In re: European Union—Health and Consumers Directorate

Opposing proposal that would restrict rights of tobacco companies to speak truthfully

In re: Federal Trade Commission

Urging antitrust investigation of patent “trolls”

In re: Financial Crimes Enforcement Network

Opposing increased customer “due diligence” requirements

In re: Fish and Wildlife Service

Opposing expanded land-use restrictions to protect endangered species

In re: Food and Drug Administration

Challenging the constitutionality of several proposed mandates for the Nutrition Facts food label, including the specification of “added sugars”

In re: Food and Drug Administration

Supporting compensation claims by biologic manufacturers for government “taking” of intellectual property rights

In re: Food and Drug Administration

Urging withdrawal of FDA guidance on reporting medical device malfunctions

In re: Food and Drug Administration

Urging revision of product classification rules for eye washes

In re: Food and Drug Administration

Opposing elimination of rule barring suits against generic drug companies

In re: Food and Drug Administration

Opposing IND requirement for basic food research

In re: Food and Drug Administration

Opposing limitations on social media promotion of drugs

In re: Food and Drug Administration

Opposing FDA's overly expansive definition of "promotional" material

In re: Food and Drug Administration

Supporting data collection efforts for direct-to-consumer ads

In re: Food and Drug Administration

Opposing FDA restrictions on distributing medical texts and journals

In re: Food and Drug Administration

Opposing draft guidance on reports to FDA for safety-related device changes

In re: Food and Drug Administration

Urging FDA to grant reforms to 510(k) process proposed by Minn. Med. Device Assoc.

In re: Food and Drug Administration

Opposing draft guidance regarding reclassification of drugs and devices

In re: Food and Drug Administration

Opposing FDA plan to prohibit virtually all outdoor tobacco advertising

In re: Department of Health and Human Services

Urging reasonable enforcement of Sunshine Act reporting requirements

In re: Department of Health and Human Services

Opposing expanded authority for exclusion from federal programs

In re: Ireland Department of Health

Opposing proposal that would restrict rights of tobacco companies to speak truthfully

In re: New York State Dept. of Environmental Conservation

Urging state to lift moratorium on fracking within New York

In re: Occupational Safety and Health Administration

Opposing rule to increase tracking of workplace injuries and illnesses and publicize them

In re: Securities and Exchange Commission

Opposing rules governing "conflict minerals" reporting requirements

In re: Securities and Exchange Commission

Urging revision of proxy solicitation rules

In re: U.S. Sentencing Commission

Urging commission to grant sentencing credit for antitrust compliance programs

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Counsel's Advisory

Vol. 22 No. 5 October 10, 2014

TEXAS SUPREME COURT HEIGHTENS EVIDENCE

by Mark R.

Legal Background

Vol. 29 No. 24 September 26, 2014

FDA's "Aspartame" Labeling Mandate Raises First Amendment Issues

by Richard L.

Legal Opinion Letter

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WYETH V. LEAKS

by John J. P.

Conversations With...

Autumn 2014

Why Transparency Is Imperative in Litigation

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On the Merits:

DATA SECURITY BREACHES INCIDENT PREPAREDNESS AND RESPONSE

Jena Valdetero
David Zetony
Bryan Cave LLP

Foreword
The Honorable Maureen K. Ohlhausen
Commissioner, Federal Trade Commission

Preface
Lisa Clapes
Vice President, Corporate Counsel & Chief Privacy Officer
Ceridian HCM

On The Merits:
Judgment for Petitioners
Michael W. McCarty
Stanford Law School

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Washington, D.C.

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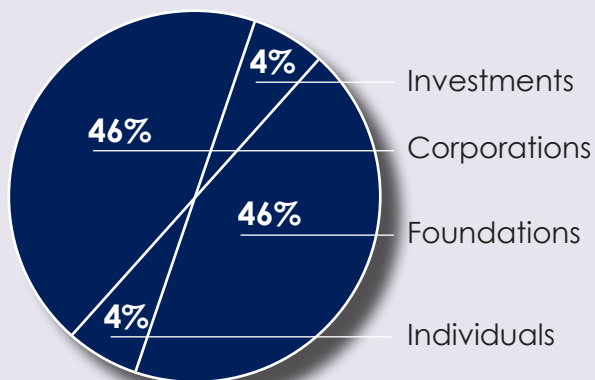
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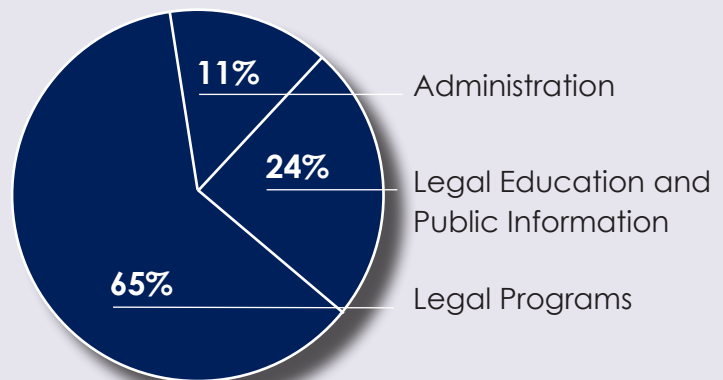
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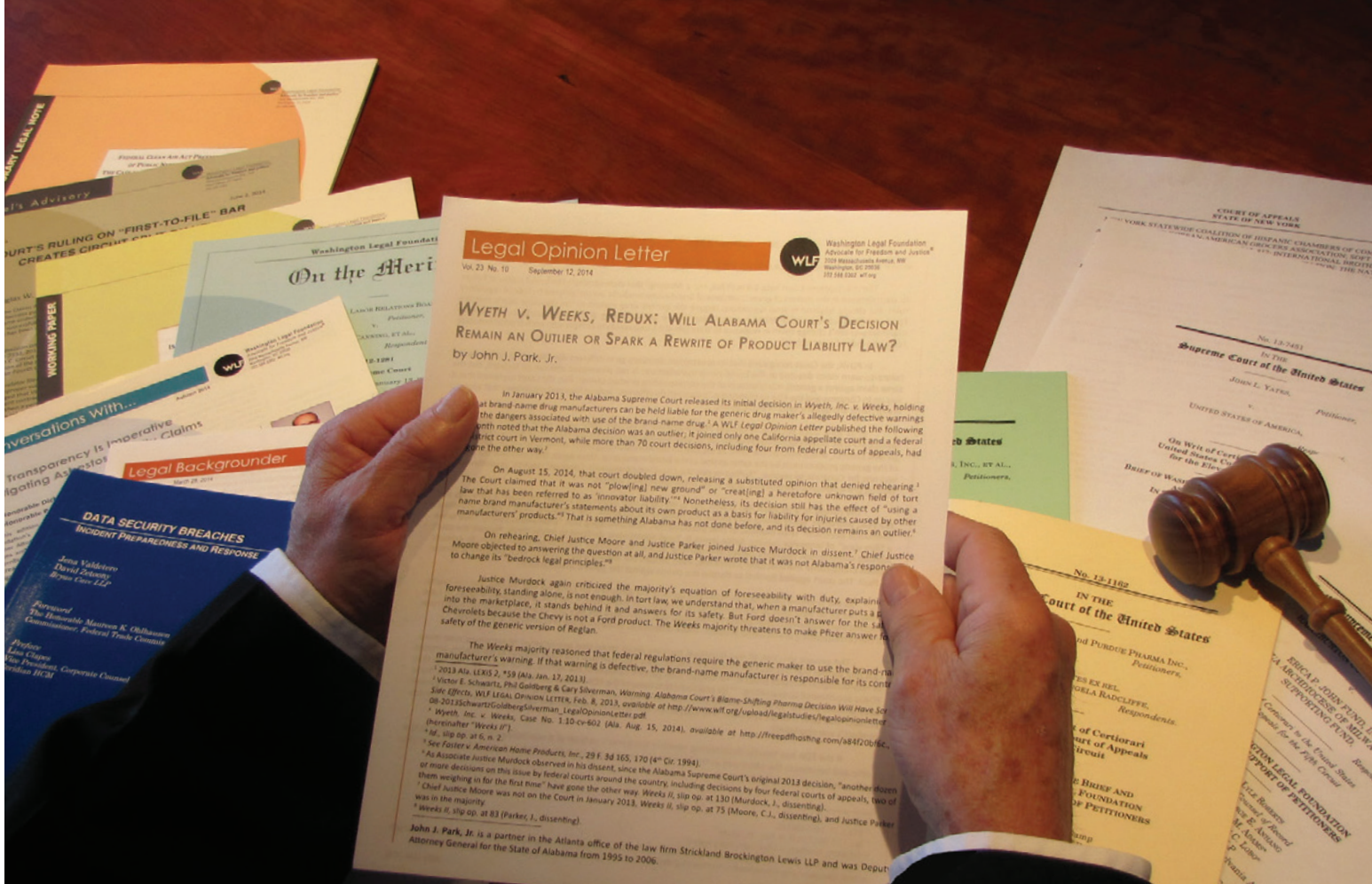
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