

California Court of Appeal Reverses Class Certification in *Pfizer Inc. v. Galfano*

July 14, 2006

Washington, DC—In an important decision for businesses and advertisers that do business in California, the California Court of Appeal has reversed a trial court's certification of a class action lawsuit on the grounds that the certification violated a voter-approved requirement that lawsuits may only be brought on behalf of parties that have suffered injury. Wiley Rein & Fielding partners John E. Barry and Bert W. Rein and associates William S. Consovoy and Thomas R. McCarthy filed an *amici curiae* brief in the case on behalf of the U.S. Chamber of Commerce, the Association of National Advertisers, Inc. and the Coalition for Healthcare Communication urging the result reached by the Court of Appeal.

In 2004, California voters approved Proposition 64, which amended California's Unfair Competition Law to require that actions may be commenced and maintained in the name of a private citizen only if the putative plaintiff "has suffered injury in fact and has lost money or property as a result of such unfair competition." The amendment also banned private citizens from filing representative actions on behalf of the public. In *Galfano*, the trial court certified a class action suit against Pfizer notwithstanding that the class representative made no showing that each member of the class had suffered actual economic injury.

Mr. Barry said of the decision, "The California Court of Appeal's July 11, 2006 decision in *Galfano* refusing to certify a class action unless all members of the class have suffered injury in fact is an important victory for companies and advertisers that do business in California, because it upholds the clear intent of the California citizens who voted to curb abusive litigation tactics when they approved Proposition 64, and it vindicates the common sense principle that

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private lawsuits should be maintained only in the names of parties that claim to have suffered actual injury.”

WRF’s *amici curiae* brief argued that the trial court’s ruling ignored the plain letter and intent of Proposition 64. WRF argued separately that the trial court’s decision should be reversed on the ground that the trial court’s construction of the Unfair Competition Law violated both the First Amendment to the U.S. Constitution and the Free Speech Clause of the California Constitution.

In reversing the trial court’s ruling, the Court of Appeal held that the trial court’s construction of Proposition 64 ignored the prohibition on private actions for general public benefit and improperly extended class membership to individuals who had not suffered injury in fact and could not maintain claims on their own. Because the court decided the case on the statutory grounds urged by Pfizer and its supporting *amici*, it did not reach the First Amendment issues raised by the trial court’s troubling construction.

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