Center for Law and Public Policy

News Release

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DRI Files Amicus Brief Seeking U.S. Supreme Court Review in Combined Cases of *Sears, Roebuck and Co. v. Larry Butler, et al* and *Whirlpool Corporation v. Glazer, et al*

CHICAGO – (November 12, 2013)— DRI- The Voice of the Defense Bar has filed an amicus brief with the Supreme Court in the cases of *Sears, Roebuck, and Co. v. Butler, et al.* (13-430), and *Whirlpool Corporation v. Glazer, et al* (13-431). Petitioners Whirlpool and Sears both seek leave following opinions issued by the Sixth and Seventh Circuits affirming certification of class suits involving front-loading washing machines, despite the Supreme Court's grant, vacate, and remand orders to reconsider their prior opinions in light of *Comcast Corp. v. Behrend*, 133 S.Ct. 1426, 1433 (2013). That High Court action was consistent with a DRI amicus brief filed with the Supreme Court in Sears v. Butler in April of this year. DRI had also filed an amicus brief with the 6th Circuit in Whirlpool v. Glazer in 2012.

The DRI brief urges the Supreme Court to grant certiorari to clarify that courts must look to controlling state law before certifying a class suit under Federal Rule of Civil Procedure 23(b)(3)'s "predominance" requirement. The DRI brief argues that the *Glazer* and *Butler* courts failed to rigorously analyze the predominance requirement of Rule 23(b)(3) and affirmed certification of class action suits without examining controlling state law and, in the case of *Butler*, without undertaking a choice-of-law analysis. Had the *Glazer* and *Butler* courts properly exercised their duty under Rule 23(b)(3), DRI maintains, they would have necessarily concluded that common questions did not predominate under applicable state law.

In DRI's view, the Supreme Court's review is necessary to ensure that procedural rules, like Rule 23, are not interpreted so expansively that they override state tort principles that are supposed to govern. DRI further argues that the Sixth and Seventh Circuit's opinions undermine

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the delicate balance of our federalism, which recognizes the need for "sensitivity to the legitimate interests of both State and National Governments," and requires federal courts in diversity cases to defer to state substantive law in determining whether class treatment is the desired approach.

DRI brief authors Mary Massaron Ross and Hilary A. Ballentine of Plunkett Cooney, Bloomfield Hills, MI., are available for interview or for expert comment through DRI's Communications Office.

For the full text of the amicus brief, click here.

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About DRI – *The Voice of the Defense Bar*

For more than fifty years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log on to www.dri.org.