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## **CALIFORNIA SUPREME COURT DENIES CLASS ACTION STATUS IN MEDICAL MONITORING CASE (*Lockheed Martin v. Superior Ct. of San Bernardino County*)**

The Washington Legal Foundation (WLF) scored a major victory when the Supreme Court of California upheld an appellate court's refusal to certify a case as a class action where the plaintiffs are suing for medical monitoring costs and punitive damages. In *Lockheed Martin Corp. v. Superior Court for San Bernardino County*, the plaintiffs sued Lockheed Martin and several other companies claiming that they were exposed to certain chemicals that allegedly had been disposed of since 1955. The suit did not seek any damages for injuries; rather, the plaintiffs sought damages for expenses related to medical monitoring because of their fears that they might be harmed in the future. The plaintiffs claimed that 50,000 to 100,000 residents may have been exposed to the chemicals, and that they needed medical monitoring to detect over 40 different medical conditions.

The trial court initially certified the class with respect to both the medical monitoring and punitive damages claim. The appellate court reversed, concluding that the individual issues raised by the plaintiffs clearly predominated over the common issues. On appeal to the California Supreme Court, WLF argued in its brief that class certification was not proper because the evidence did not support the conclusion that medical monitoring was a necessary response to the minimal exposure.

In its opinion, the California Supreme Court agreed with WLF and concluded that the plaintiffs did not provide sufficient evidence that the members of the class were exposed to equal dosage levels, and that they all faced a significant risk of serious disease; accordingly, these individual claims were too difficult to adjudicate in a class action setting. In addition, the Court discounted the testimony of the plaintiffs' medical experts who claimed that medical monitoring was necessary for everyone. The Court observed that the testimony given was "too qualified, tentative and conclusionary to constitute substantial evidence that plaintiffs, by adopting a liability theory that makes actual dosages and variations in individual response irrelevant, will be able to prove causation and damages by common evidence." The Court, however, made it clear that medical monitoring, in an appropriate case, may qualify as a class action remedy.

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