

**March 27, 2013**

HIGH COURT DECERTIFIES MASSIVE CLASS ACTION LAWSUIT

(Comcast Corp. v. Behrend)
United States Supreme Court

The U.S. Supreme Court today overturned a controversial lower-court decision that certified a class action against the cable television provider Comcast. The decision was a victory for the Washington Legal Foundation, which filed a brief in the case urging decertification.

In its brief, WLF argued that the plaintiffs failed to establish that the case could manageably be tried as a class action. On the required element of money damages, WLF argued that the plaintiffs failed to provide reliable evidence that common issues of fact and law predominated over individual issues—an absolute prerequisite for certification of a class action. WLF's brief was filed on its own behalf and on behalf of its clients: the Allied Educational Foundation (AEF) and the International Association of Defense Counsel (IADC).

The case arose from a suit filed by six cable subscribers in the Philadelphia area who claimed that Comcast violated federal antitrust laws. The trial court had certified the plaintiffs as representatives of a class of all Comcast cable television subscribers from the 650 franchise areas that comprise the entire Philadelphia market. A federal district court in Pennsylvania certified the class more than five years ago. A divided panel of the U.S. Court of Appeals for the Third Circuit affirmed the certification order in 2011.

“There is little doubt that the only reason the plaintiffs’ lawyers sought class certification in this case was to coerce the defendant into settling without regard to the merits of the plaintiffs’ claims,” said WLF Senior Litigation Counsel Cory Andrews following the Supreme Court’s ruling. “Class actions of this magnitude are virtually never appropriate because they could never be brought to trial; yet they serve the purposes of the plaintiffs’ bar by imposing tremendous settlement pressure on defendants,” Andrews said.

In its brief, WLF argued that no justification exists for applying a lesser reliability standard for evidence at class certification than at any other point in the litigation. WLF was particularly critical of the trial court’s decision to avoid evaluating the plaintiffs’ expert’s methodology at the certification stage because such an inquiry “overlapped with the merits.” WLF explained in its brief that the Court squarely rejected that very

approach to class certification in its decision in *Wal-Mart v. Dukes*. Such an approach is not only inefficient and illogical, WLF argued, but it also threatens to harm absent class members.

WLF also emphasized the crucial role that certification decisions play in the outcome of high-stakes class-action litigation. Empirical research demonstrates that litigation costs make it very difficult for the party who loses the class certification decision to continue with the litigation—with the result that erroneous certification decisions are effectively unreviewable. In light of that concern, WLF urged the Supreme Court to adopt a clear rule that would encourage district judges to grant certification motions only after first determining the admissibility of evidence relied on by plaintiffs to prove that the requirements of Rule 23 have been satisfied.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending economic liberty, free enterprise, and a limited and accountable government.

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For further information, contact WLF Senior Counsel Cory Andrews, 202-588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.