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WLF Urges Court to Overturn Plaintiff-Friendly Presumption in Securities Class Action Cases

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

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WASHINGTON, DC—The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to overturn or substantially modify its 25-year-old fraud-on-the-market presumption. The practical effect of that presumption has been to ease securities class action certifications and force defendants to settle such cases without regard to merit. WLF’s brief supported overturning class certification in a long-running securities lawsuit against Halliburton.

In a stock fraud lawsuit, a plaintiff must establish that he purchased a corporation’s stock in reliance on the defendant company’s misrepresentation. Under the Supreme Court’s fraud-on-the-market precedent, the price of widely-traded corporate stock is presumed to reflect every statement made by the corporation (misleading or not). In addition, everyone who buys stock at the market price is presumed in turn to have relied on the fairness of the market price—and thus on the accuracy of all a corporation’s public statements.

If reliance had to be proven on a plaintiff-by-plaintiff basis, class certification would be impractical and impermissible because individual issues of fact would overwhelm class-wide issues. But the presumption of reliance created by the fraud-on-the-market theory allows plaintiffs’ lawyers to certify virtually all securities fraud class action cases. Class actions cost so much to defend that companies are liable to settle even meritless cases for substantial sums.

WLF believes that the 1988 precedent should be overruled because research demonstrates that even short-term stock prices fluctuate widely and many investors buy stock precisely because they believe a stock is *not* accurately priced. WLF’s brief argued alternatively that, at the very least, the Court ought to permit defendants to introduce evidence at the class certification stage of the litigation that any alleged misrepresentations did not inflate the market price. WLF’s brief was written with substantial *pro bono* assistance from Lyle Roberts of Cooley LLP.

After filing its petition, WLF issued the following statement by Chief Counsel Richard Samp: “The Supreme Court opened the floodgates to securities class action lawsuits 25 years ago when it created a presumption that every shareholder relies on every statement made by a publicly traded company. But experience has shown that markets simply do not work that way. Fairness requires permitting defendants to rebut the presumption—and thereby defeat class certification—by introducing evidence that any alleged misrepresentation had no impact on stock price.”

WLF is a public interest law firm and policy center that litigates against lawsuit abuse in order to ensure that unwarranted lawsuits do not drive up costs for all consumers.

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