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## Ninth Circuit Rejects Class Certification in Multi-District Tuna Price-Fixing Case

*(In re Packaged Tuna Antitrust Litigation)*

**“Without first determining the number of uninjured parties in the proposed class, the district court could not possibly know whether predominance is satisfied.”**

—Cory Andrews, WLF General Counsel and Vice President of Litigation

WASHINGTON, DC—The U.S. Court of Appeals for the Ninth Circuit today reversed a class-certification order in an appeal from an important multi-district antitrust case in which predominance was premised on an averaging of the alleged harm suffered by the class members. The decision was welcome news for Washington Legal Foundation (WLF), which filed an *amicus* brief in the case urging reversal.

Pressing price-fixing claims on behalf of three classes of purchasers of packaged tuna, the plaintiffs had to establish that common issues “predominate” within each class. The plaintiffs convinced the trial court to find such predominance, and grant class certification, based on an averaging of the alleged anticompetitive overcharges suffered within each proposed class.

Although agreeing in principle that statistical or “representative” evidence—finding class-wide impact based on averaging assumptions and pooled transaction data—can be used to establish predominance, the Ninth Circuit held that the district court abused its discretion when it failed to resolve disputed questions of fact necessary to find predominance. The panel vacated the district court’s certification order and remanded for the district court to determine the number of uninjured parties in the proposed class.

WLF’s *amicus* brief in the case had argued against the adoption of this averaging technique. To have standing to sue under Article III of the Constitution, WLF reminded the court, a plaintiff must have suffered an injury in fact. Averaging a class’s damages may improperly hide the fact that many class members have no injury.

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