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## WLF Urges Third Circuit To Require Named Plaintiffs To Establish Standing

*(Boley v. Universal Health Services)*

**“The District Court’s order failed to faithfully apply the Supreme Court’s *Thole* decision.”**

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Third Circuit to overturn a class-certification order on Article III standing grounds. In an *amicus* brief, WLF argues that the Third Circuit should properly apply the Supreme Court’s recent *Thole* decision and require named plaintiffs to establish standing before asserting claims for a class.

The case arises from a lawsuit against Employee Retirement Income Security Act fiduciaries. The plaintiffs argue that the fiduciaries paid excessive investment fees for thirty-seven different investment options that 401(k) participants invested in. Yet the named plaintiffs invested in only seven of the thirty-seven options. Still, the District Court certified a class of all 401(k) participants who invested in any of the thirty-seven options.

In its brief supporting the defendants, WLF argues that the District Court erred in certifying the class because the named plaintiffs lacked standing to assert claims about thirty of the investment options. In a near identical case involving pension plans, the Supreme Court held that plaintiffs have standing only if they suffered a financial injury because of an ERISA fiduciary’s mismanagement of plan assets. The named plaintiffs here did not suffer a financial injury stemming from the fees charged for investment options in which they did not participate.

WLF’s brief also explains why the District Court’s contrary analysis is unpersuasive. Just because plaintiffs have standing to assert some claims, they do not automatically have standing to bring related claims. And grouping multiple claims in a single count does not solve this jurisdictional problem. WLF therefore urges the Third Circuit to properly apply *Thole* and hold that the plaintiffs lacked Article III standing to bring some of their claims.

*Celebrating its 44th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

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