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WLF Urges Fifth Circuit to Reject Class Certification Built on Junk Science

(*Earl v. The Boeing Co.*)

“Left to stand, the district court’s watered-down approach to the reliability of contested expert evidence would dramatically lower the bar for class certification.”

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief with the U.S. Court of Appeals for the Fifth Circuit, urging it not to permit plaintiffs to obtain class certification on the basis of unreliable expert evidence.

The case arises from a putative class action against The Boeing Company and Southwest Airlines following two tragic overseas accidents involving Boeing’s 737 MAX 8 airplane. Unaffected by those tragedies, eleven named plaintiffs now seek billions of dollars under Civil RICO on behalf of a global class of every person who paid, directly or indirectly, for a ticket on more than a thousand Southwest or American Airlines routes over an 18-month period. The district court certified four classes comprising 200,000,000 claims after determining that the plaintiffs’ lone damages expert could ultimately “fix” demonstrable flaws in his conjoint survey as evidence of classwide damages.

But, as WLF’s brief argues, a district court may not certify any class without first resolving whether the plaintiffs have introduced reliable evidence, including expert testimony, of classwide injury and damages. The district court violated that rule here by allowing the plaintiffs’ deeply flawed damages model to serve as the basis for class certification. Indeed, the plaintiffs’ expert offered an analysis so riddled with defects that he ultimately offered to rework it later. Yet over Boeing’s and Southwest’s objections, the district court accepted the expert’s “anomalous result[s]” because he had “a viable plan to fix the underlying issue” sometime in the future. As WLF makes clear, that decision to punt on reliability at the class-certification stage lacks any legal or logical support and warrants reversal.

Celebrating its 45th 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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