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WLF Asks Ninth Circuit To Grant Review In Prominent Antitrust Class Action

(In re HIV Antitrust Litigation)

“Certifying a class of purchasers who would lack standing to sue individually does violence to Article III and flouts the rule of law.”

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

WASHINGTON, DC—Yesterday Washington Legal Foundation (WLF) joined the National Association of Manufacturers and the Pharmaceutical Research and Manufacturers of America in urging the U.S. Court of Appeals for the Ninth Circuit to review, and ultimately to overturn, class certification orders that contravene settled law. The *amicus* brief was drafted by Philip Goldberg and Andrew Trask of Shook, Hardy & Bacon LLP.

The case arises from an antitrust action by plaintiffs seeking billions of dollars in damages on behalf of various classes alleging that defendant pharmaceutical companies improperly delayed generic competition. The district court certified three classes of end purchasers under the laws of 31 states, even though the named plaintiffs purchased products in only a handful of those states. As a result, the orders allow the named plaintiffs to bring claims for which they lack Article III standing. To make matters worse, the district court authorized the named plaintiffs to seek “umbrella damages” based on purchases of products sold not by the defendants, but by the defendants’ competitors.

In its *amicus* brief urging Rule 23(f) review, WLF argues that the district court’s clearly erroneous class certification orders improperly inflated the size and scope of the litigation. A named plaintiff alleging injury in a single state under that state’s laws lacks standing to sue on behalf of class members from thirty other states suing under those states’ laws. Yet the district court certified classes asserting claims in 31 states. What’s more, settled law makes clear that courts are not to certify classes based on the sales of products by the defendant’s arms-length competitors. Here, many class members who never bought products from the defendants should have been excluded from the class. Had those purchasers been excluded, the claims would not have been numerous enough to warrant class treatment.

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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