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## Fifth Circuit Rejects Certification of No-Injury Class Action

(*Earl v. The Boeing Co.*)

**“Today’s decision confirms that a class member who lacks an actual injury cannot proceed with (or get carried along in) a lawsuit in federal court.”**

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

WASHINGTON, DC—The U.S. Court of Appeals for the Fifth Circuit today reversed a class certification order in a case where plaintiffs failed to plausibly allege any cognizable injury in fact. The decision was a victory for Washington Legal Foundation (WLF), which had filed an *amicus curiae* brief with the court urging reversal.

The case arose 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 sought 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 million claims after determining that the plaintiffs’ lone damages expert could ultimately “fix” demonstrable flaws in his conjoint survey as evidence of class-wide damages.

But as WLF’s brief argued, and the Fifth Circuit ultimately agreed, a district court may not certify any class without first resolving whether the plaintiffs have introduced reliable evidence of class-wide injury and damages. Here the Fifth Circuit panel concluded that “the plaintiffs in this suit have not plausibly alleged that they’re any worse off financially” because defendants kept flying the MAX 8 during the class period. And because they alleged no concrete injury, the plaintiffs lacked standing to sue in federal court.

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