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WLF Urges Third Circuit to Rehear En Banc Important Bankruptcy Case

(In re LTL Management, LLC)

“The panel decision fails to explain why the Third Circuit is splitting from the Fourth Circuit and does not fully consider the equitable considerations at issue.”

—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 rehear a case in which a three-judge panel reversed the Bankruptcy Court and held that Johnson & Johnson could not use Chapter 11 of the bankruptcy code to resolve tens of thousands of talc claims.

The case arises from a consolidated appeal by claimants who sought to have LTL’s Chapter 11 petition dismissed on the ground that it was not filed in good faith. But Texas law has long allowed companies like Johnson & Johnson to isolate liabilities into a new entity through divisional mergers. The bankruptcy court found that providing recovery in bankruptcy avoids the deadweight costs that plague the mass-tort system. A Third Circuit panel, however, reversed because it found that LTL was not in financial distress at the time it filed the petition.

In its amicus brief supporting LTL, WLF details how the Third Circuit’s ruling splits from well-established Fourth Circuit precedent. Despite over thirty years of case law supporting the Fourth Circuit’s rule, the Third Circuit panel spent no time explaining why it was announcing a different rule. This conflicts with the Third Circuit’s own precedent requiring it to consider decisions from other circuits when splitting from sister circuits. Even if the en banc court were to reach the same conclusion as the panel, an explanation for the split in authority would benefit both the bar and the public.

WLF’s brief also explains how the Third Circuit treated equitable considerations differently. In short, it gave significant weight to some equitable considerations but failed to give any weight to others. Specifically, it failed to weigh the impact that its rule would have on both current and future plaintiffs. Under the Third Circuit’s rule, many plaintiffs are far less likely to recover than they would be if LTL were permitted to proceed with its bankruptcy.

Celebrating its 46th 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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