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April 24, 2023

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WLF Asks Third Circuit Not To Dilute Its Robust Ascertainability Standard For Class Actions

(In re: Niaspan Antitrust Litigation)

“The Third Circuit’s ascertainability rule ensures that class actions are fair for litigants and manageable for the courts.”

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

WASHINGTON, DC—The U.S. Court of Appeals for the Third Circuit today affirmed a district court’s refusal to certify a class for which no administratively feasible way existed to identify class members. The decision was a victory for Washington Legal Foundation (WLF), which filed an amicus brief in the case urging affirmance.

The case arose out of a settlement agreement resolving patent-infringement litigation between the manufacturer of the brand-name drug Niaspan and a generic manufacturer. Plaintiffs filed suit under various state antitrust laws, alleging that the settlement agreement was anticompetitive. But the district court denied, on ascertainability grounds, the plaintiffs’ request to certify a class of all end-payors. The district court held that the plaintiffs had failed to provide a reliable and administratively feasible means of distinguishing between class members and other entities that are rightly excluded from the class.

In its amicus brief urging affirmance, WLF warned that that Plaintiffs’ lax approach to ascertainability would drastically lower the bar for class certification. In contrast, the Third Circuit’s robust ascertainability standard serves several vital interests. First, it eliminates heavy administrative burdens that are inconsistent with the efficiencies that Rule 23 requires in class actions. Second, it protects the opt-out rights of absent class members who have an interest in not having future claims diluted. And third, it safeguards defendants’ interests in paying only legitimate claims and ensuring that persons bound by a final judgment are clearly identifiable. Affirming the district court’s judgment today, the Third Circuit issued a sealed opinion pending the parties’ proposed redactions.

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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