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## WLF Urges Ninth Circuit to Reverse Class Certification in Unwieldy Civil-RICO Case

*(Painters Fund v. Takeda Pharmaceutical Co.)*

**“The trial court’s certification order transforms the class action from a procedural device aimed at avoiding the inefficiencies of deciding the same claims repeatedly into a tool for altering the parties’ substantive rights.”**

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

WASHINGTON, DC— Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit to reverse a federal trial-court’s certification order in an unwieldy class action.

The case arises from a civil-RICO suit by third-party payers and others to recover treble their prescription costs for Actos, an FDA-approved diabetes drug. The plaintiffs do not allege any personal injury from Actos; nor do they claim that Actos failed to satisfactorily treat diabetes. Instead they contend that, due to Takeda’s alleged fraud, the FDA failed for a time to warn doctors of an increased risk of bladder cancer for certain Actos users. Had the true facts been known sooner, the plaintiffs claim, doctors would have written fewer Actos prescriptions and the plaintiffs would have incurred fewer costs for Actos.

To certify a class, Rule 23 requires plaintiffs to be able to prove their case through common evidence, not individualized inquiries. As WLF’s amicus brief makes clear, the plaintiffs’ key evidentiary problem is how to distinguish those Actos prescriptions that *would have been* written despite a risk disclosure from those that *would not have been written* because of that disclosure. But making that distinction requires an individualized inquiry into the medical factors relevant to each patient’s prescription. Class certification is never appropriate where, as here, individualized questions will predominate over common ones.

*Celebrating its 47th 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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