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WLF Urges Supreme Court to Review Important Securities Case

(NVIDIA Corp. v. E. Ohman J:or Fonder AB)

“The Ninth Circuit’s opinion, if allowed to stand, would reopen the floodgates to the same litigation abuses that led Congress to enact the PSLRA’s heightened pleading standard in the first place.”

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

WASHINGTON, DC—Washington Legal Foundation (WLF) on Friday urged the U.S. Supreme Court to review, and ultimately to reverse, a sharply divided decision of the U.S. Court of Appeals for the Ninth Circuit that gutted the critical pleading requirements of the Private Securities Litigation Reform Act (PSLRA). WLF’s amicus brief was drafted with pro bono assistance from James N. Kramer, Daniel A. Rubens, and Jodie C. Liu of Orrick Herrington & Sutcliffe LLP. The National Association of Manufacturers joined WLF on the brief.

The case arises from plaintiffs’ claim that NVIDIA should have told investors that a substantial portion of its gaming revenue was derived from sales to cryptocurrency miners rather than gamers. But plaintiffs lacked any data showing that this was true, much less that NVIDIA’s executives knew it was true. So plaintiffs hired an expert to create data relying on undisclosed and unreliable assumptions, then asserted that NVIDIA’s executives should have known about this made-up data. Concluding that plaintiffs’ allegations did not plausibly state a claim under the PSLRA, the district court dismissed the suit, but a divided Ninth Circuit panel reversed.

In its amicus brief urging Supreme Court review, WLF explained why the Ninth Circuit’s reliance on plaintiffs’ hired-gun expert report to establish falsity and scienter breaks with decisions from other circuits. If left in place, the appeals court’s decision would create an easy roadmap for future plaintiffs to engage in the kind of fishing expeditions the PSLRA was supposed to end.

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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