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WLF to Ninth Circuit: Courts Must Assess Harm Before Certifying Classes

(Drake v. Bayer Healthcare LLC)

“This case exemplifies the growing abuse of the class action as a profit-driven litigation tool, rather than an efficient vehicle for remedying real harm.”

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the United States Court of Appeals for the Ninth Circuit to reaffirm that plaintiffs must show that all class members suffered actual harm before class certification.

Under Rule 23 of the Federal Rules of Civil Procedure, courts may certify a class action only if the claims share common legal elements capable of being established in one stroke. The plaintiffs in the case accused the defendants—manufacturers of multivitamins—of falsely labeling their products as “natural.” The district court certified the class without common evidence that every consumer was misled or harmed by that label. Because proving harm would require an individualized inquiry for each consumer, class certification was improper.

WLF’s brief supports reversal of the district court’s certification decision. It urges the Ninth Circuit to require compliance with constitutional, statutory, and Supreme Court requirements mandating common evidence of injury before class certification. Courts are seeing a surge in class actions challenging “natural” labels, even when the plaintiffs fail to show harm. These lawsuits primarily enrich attorneys, offering little relief to class members—many of whom suffered no harm. WLF’s brief warns that such cases undermine the legal system and encourage meritless litigation. These lawsuits drive up costs for consumers, as companies pass litigation expenses onto them through higher prices.

Celebrating its 48th 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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