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June 9, 2025

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Supreme Court to Clarify Materiality Standard in Securities Cases

(BDO USA, LLP v. New Eng. Carpenters Guar. Annu. Funds)

“The Second 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 & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review, and ultimately to overturn, a decision of the U.S. Court of Appeals for the Second 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 Robert Loeb, Edward Williams, and Gavin B. McGimpsey of Orrick Herrington & Sutcliffe LLP.

The case arises from plaintiffs’ claim that BDO’s certification of Public Company Accounting Oversight Board (PCAOB) compliance was false because, in a rush to complete its audit report, BDO employees allegedly skipped over certain auditing procedures. Yet the complaint also concedes that once BDO discovered the missing procedures, it promptly completed them. Thus, it is undisputed that the information presented to investors about AmTrust’s financial condition was unaffected by BDO’s alleged noncompliance with PCAOB standards. The district court promptly dismissed the complaint for failure to plead materiality. The Second Circuit reversed, however, insisting that an accounting firm’s certification of compliance with professional standards is *per se* material because it inherently communicates information investors are interested in knowing.

In its amicus brief urging review, WLF explained that the Second Circuit’s *per se* rule substantially dilutes the heightened pleading standard Congress enacted in the PSLRA. Congress enacted the PSLRA to stem the tide of baseless securities litigation. The Second Circuit’s *per se* rule guts the PSLRA’s heightened pleading standards and allows plaintiffs to survive a motion to dismiss by merely alleging that the outside auditor’s certificate of compliance was false. The decision below also creates uncertainty about the standard for materiality and incentivizes overly exhaustive disclosures that will not serve American businesses or the public.

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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