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July 25, 2025

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

## WLF Urges Ninth Circuit to Grant En Banc Review in Actos Class Action

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

***“The panel’s ruling risks transforming class actions into tools for coercing settlements, undermining due process and the rule of law.”***

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit to grant en banc review and reverse a panel decision certifying a sprawling class action against Takeda Pharmaceutical. WLF contends that the panel’s ruling flouts Rule 23’s predominance requirement, threatening defendants’ due process rights.

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 suit alleges that Takeda’s fraud delayed FDA warnings about bladder cancer risks, causing more prescriptions to require reimbursement. The district court certified the class despite individualized issues in proving reliance, and a sharply divided panel affirmed, with the panel majority accepting untested statistical assumptions over rigorous analysis.

In its amicus brief, WLF argues that the panel’s decision conflicts with Supreme Court and Ninth Circuit precedent requiring a thorough predominance inquiry. By endorsing a flawed statistical model that fails to isolate causation, the panel undermines Rule 23’s gatekeeping function, risks a circuit split, and invites unmanageable litigation. WLF urges en banc review to restore Rule 23’s integrity, protect due process, and prevent class actions from becoming vehicles for coercive settlements.

*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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