

Press Release



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WLF Urges Third Circuit to Rehear Case Undermining Securities Fraud Defenses

(San Diego County Employees Retirement Ass'n v. Johnson & Johnson)

“The Third Circuit’s ruling weakens critical protections for defendants, risking a flood of meritless securities class actions.”

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Third Circuit to grant rehearing en banc to reconsider a decision upholding class certification in a securities fraud suit against Johnson & Johnson (J&J). WLF’s amicus brief contends that the panel’s ruling, which allows certification based on “new signals” from stale public information, undermines the Supreme Court’s *Goldman Sachs* decision and threatens to upend settled principles of federal securities law. WLF’s brief was prepared with generous pro bono support from Lyle Roberts, George Anhang, and Billy Marsh of A&O Shearman.

The case stems from a 2018 lawsuit alleging that J&J concealed asbestos in its talc products, causing a 10% stock price drop following a 2018 Reuters report. The U.S. District Court for the District of New Jersey certified the class, and a divided Third Circuit panel affirmed, rejecting J&J’s evidence that the disclosures lacked new corrective content. Judge Chung dissented from the panel’s opinion.

In its amicus brief, WLF argues that the panel majority’s decision distorts the *Basic* presumption by allowing reliance on “new signals” from disclosures of stale information, such as plaintiffs’ attorney advertising and press releases, eroding defendants’ ability to rebut price impact at certification. This ruling, WLF’s brief explains, risks expanding class periods, inflating liability, and encouraging abusive litigation, meriting en banc review to align with Supreme Court precedent and protect the securities market’s integrity.

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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