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WLF Urges Supreme Court to Clarify Disclosure Limits of “Fraud-on-the-Market” Theory *(Johnson & Johnson v. San Diego Cnty. Employees Retirement Ass’n)*

“Allowing ‘new signals’ from stale information to support class certification threatens to unleash a wave of abusive securities fraud litigation.”

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to grant review and head off deepening confusion over the scope of disclosure requirements under federal securities law. WLF contends that the U.S. Court of Appeals for the Third Circuit erred by permitting repackaged public information to establish price impact as a “new signal” to the market under the *Basic* presumption, undermining the doctrine’s efficient-market foundation. WLF’s brief was prepared with pro bono assistance from Lyle Roberts and Billy Marsh of A&O Shearman.

The case arises from a securities-fraud class action alleging that Johnson & Johnson made misleading statements. Plaintiffs pointed to later stock price drops following disclosures consisting of a news article summarizing public information, a jury verdict, and a law firm press release—all based on facts already known to the market. The district court certified the class, and the Third Circuit affirmed, holding that such disclosures need not contain genuinely new information to be actionable so long as they communicated a “new signal.”

In its amicus brief, WLF argues that the ruling below contradicts the Supreme Court’s precedents in *Basic* and *Goldman Sachs*, creates a circuit split with the First, Second, Fourth, and Eleventh Circuits, and risks injecting confusion into loss causation and class-period determinations. The decision also threatens to fuel meritless event-driven securities lawsuits and exert immense settlement pressure on public companies.

Celebrating its 49th 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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