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WLF Asks Third Circuit to Affirm Dismissal of ERISA Suit Over Health Plan Drug Prices (*Lewandowski v. Johnson & Johnson*)

“ERISA was written to encourage employers to offer benefits, not to punish them for delivering the coverage they promised.”

— 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 Third Circuit to affirm the dismissal of an Employee Retirement Income Security Act (ERISA) class action that challenges prescription drug prices inside a self-funded health plan. In its amicus brief, WLF contends that a participant who received every benefit her plan promised suffers no concrete injury from wishing one line item had cost less. The National Association of Manufacturers joined WLF on the brief.

The case arises from Ann Lewandowski’s suit alleging that Johnson & Johnson breached its ERISA fiduciary duties by failing to negotiate a harder bargain with its pharmacy benefit manager for certain generic drugs. She claims this conduct caused her roughly \$210 in excess out-of-pocket costs in a year when the plan spent more than \$200,000 on her medical and pharmacy care. The district court dismissed the claims for lack of Article III standing, holding that her claims were too speculative given the plan’s structure and the sponsor’s discretion over contribution rates.

In its amicus brief, WLF argues that Lewandowski received the full bundle of benefits her plan promised, so the price of any single drug inside that bundle cannot constitute a standalone pocketbook injury. WLF further explains that exposing plan sponsors to liability for every formulary pricing decision would impose a litigation tax that undermines ERISA’s core purpose of encouraging employers to offer coverage. WLF urges the Third Circuit to affirm the district court’s judgment and protect employers who sponsor self-funded health plans.

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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