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## COURT CRACKS DOWN ON MULTIPLE CLASS ACTIONS (*Epstein v. MCA Inc.*)

The U.S. Court of Appeals for the Ninth Circuit in San Francisco this week issued a decision that cracks down on plaintiffs' attorneys who seek to maintain more than one securities-law class-action lawsuit based on a single business transaction.

The decision is a victory for the Washington Legal Foundation (WLF), which filed a brief in the case asking that multiple suits be barred. WLF argued in its brief that when a corporation settles with one group of plaintiffs who purport to represent shareholders, another group of plaintiffs should not be permitted to extort additional settlement funds by claiming to represent the same shareholders.

"Lawsuits alleging securities law violations have been mushrooming in recent years; while such suits can provide a valuable policing function for the market, that value is being dwarfed by the tremendous costs being imposed on the business community in having to respond to what often are frivolous claims," WLF Chief Counsel Richard A. Samp said following the appeals court's ruling. "The Ninth Circuit's decision is a major step in the right direction; it will help to reduce the volume of unwarranted litigation," said Samp.

The Ninth Circuit proceedings were a continuation of a 1996 Supreme Court case, *Matsushita Electric v. Epstein*, in which the High Court ruled (as WLF had asked in a brief filed with the Court) that federal courts must respect class-action settlements in state courts, even when the state-court settlement purports to cover alleged violations of *federal* securities law. The Supreme Court remanded the case to the Ninth Circuit for determination of another issue raised by the plaintiffs in the federal suit: that they should not be bound by a settlement in Delaware state court because their interests were not adequately represented in the state-court proceedings.

In a 1997, the Ninth Circuit held that the plaintiffs should *not* be bound by the Delaware proceedings, even though the Delaware Supreme Court had explicitly determined that the plaintiffs in those proceedings had been adequately represented. The Ninth Circuit held that an "adequate representation" finding is *always* subject to collateral attack in a later class action. The court went on to find that the class of shareholders had not been adequately represented in the Delaware proceedings and thus

that the plaintiffs' lawyers purporting to represent the same group of shareholders should be permitted to proceed with their identical class-action claims.

In an unusual move, the Ninth Circuit agreed in January 1998 to reconsider its 1997 decision, and this week's decision overturns the 1997 decision. The appeals court held that proper respect for the Delaware courts required it to defer to the Delaware determination that the shareholders *had* been adequately represented in the Delaware courts. The Ninth Circuit held that shareholders who object to the terms of a proposed class settlement must either raise their objections with the court before which the settlement has been brought, or else opt out of the settlement. But they may not raise adequacy-of-representation claims in a separate proceeding.

The *Epstein* case arises from the 1990 takeover of MCA Inc. by Matsushita Electric Industrial Co. Some shareholders complained that Matsushita unfairly favored MCA insiders by paying more for the insiders' shares than was paid to other shareholders. Several class-action lawsuits were filed by shareholder groups, both in state court in Delaware and in federal court in California. Matsushita agreed to settle the Delaware class actions by paying \$2,000,000, to be split among all former MCA shareholders, in return for the release of all claims. None of the plaintiffs in the California cases objected to the Delaware settlement, and the Delaware courts approved the settlement as fair and reasonable.

The California plaintiffs then persuaded the Ninth Circuit in 1995 to refuse to give "full faith and credit" to the Delaware settlement judgment. The Ninth Circuit ruled that the Delaware courts lacked the power to release federal securities law claims; in February 1996, the Supreme Court reversed that decision. The case was remanded to the Ninth Circuit to determine whether the plaintiffs could avoid being bound by the Delaware judgment based on their claim that they were inadequately represented in the Delaware courts.

In urging the Ninth Circuit not to permit the plaintiffs to proceed with a second class action, WLF had argued that doing so would lead to an explosion in the number of securities law class actions. If a settlement on behalf of all shareholders is subject to being second-guessed in subsequent proceedings, then companies seeking to settle all claims likely will be forced to enter into multiple settlement agreements for every challenged transaction, WLF argued.

WLF is a nonprofit free-enterprise public interest law and policy center with supporters nationwide. It devotes a substantial portion of its resources to reforming the nation's tort system to ensure that the business community is not unnecessarily burdened by the costs of that system. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

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