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WLF Urges Appeals Court to Bar Nationwide Class Actions by Uninjured Plaintiffs

(In re Asacol Antitrust Litig.)

“A named plaintiff in a purported class action lacks standing to sue if he has not been injured by the defendant’s alleged wrongdoing. He should not be permitted to piggy-back onto the standing of absent class members who allegedly were injured.”
—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) late yesterday called on the U.S. Court of Appeals for the First Circuit in Boston to overturn a district court’s certification of a virtually nationwide class action involving antitrust claims against a pharmaceutical manufacturer. In a brief filed in *In re Asacol Antitrust Litigation*, WLF argued that class certification was particularly objectionable because the four named plaintiffs lack standing to raise the vast majority of the 26 claims included in their lawsuit.

The lawsuit focuses on the marketing of Asacol, an FDA-approved drug for ulcerative colitis. The plaintiffs—four union-sponsored health-benefits plans—assert that the manufacturer violated the antitrust laws of 26 different States by taking allegedly anticompetitive measures designed to thwart generic competition. But the plaintiffs only paid for Asacol drug purchases in four of those States, and they concede that they were not injured by the alleged violations of antitrust laws in the other 22 States. The district court nonetheless certified the four plaintiffs as the representatives of a class consisting of all purchasers and end-payors in any of the 26 States; it held that the plaintiffs’ claim that they suffered *some* injury was sufficient to establish their standing to assert all 26 claims.

WLF’s brief argued that a plaintiff must separately demonstrate standing for each of the causes of action he asserts, a demonstration that requires him to show that he suffered an injury fairly traceable to the defendant’s violation of the law at issue. It is not sufficient to show that an injury was incurred by a third party that the plaintiff wishes to add to his class action. WLF noted that Article III of the Constitution bars federal courts from exercising jurisdiction over a claim when, as here, the plaintiff cannot establish his standing. The brief argued that the district court’s certification of a 26-State class action dramatically expands the judicial power by assigning to the courts the authority to enforce state statutes in contexts far removed from what has traditionally been understood to constitute an adversarial judicial proceeding.

Celebrating its 41st 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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