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WLF Asks Supreme Court to Bar “Unfair Practices” Claims by Uninjured Plaintiffs

(Alcon Laboratories, Inc. v. Cottrell)

“A plaintiff lacks ‘standing’ to file suit in federal court if he cannot show that he was injured by the defendant’s allegedly unfair conduct. A consumer does not demonstrate injury simply by speculating that he might have paid less for a product had it been packaged differently.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) late yesterday urged the U.S. Supreme Court to review (and ultimately overturn) an appeals court decision that granted “standing” to sue to plaintiffs who complained that drug companies from which they purchased eye medications packaged their products unfairly. In a brief filed in *Alcon Laboratories, Inc. v. Cottrell*, WLF argues that plaintiffs cannot demonstrate that they suffered the requisite injury (necessary to establish standing) simply by speculating without factual support that they could have obtained the medications more cheaply had they been packaged differently.

The defendants manufacture prescription eye drops that are dispensed from FDA-approved bottles directly into patients’ eyes. The plaintiffs contend that the bottles’ tips are too large, so that a single drop dispenses much more medicine than any patient needs—thereby wasting considerable product. They claim that use of too-large bottle tips is an unfair business practice (in violation of state unfair-practices laws) and results in their having paid more per dose than if the bottles had been redesigned to dispense smaller drops.

WLF’s brief argues that the plaintiffs cannot demonstrate the requisite injury because they cannot demonstrate that they paid more for their medications than they would have paid had the bottles been redesigned to reduce the size of drops (thereby increasing the number of doses in each bottle). WLF argues that the plaintiffs’ claim is based on unfounded speculation that the manufacturers would not have raised the per-ounce price of their medications sold in redesigned bottles, when there is every reason to believe that the defendants would have exercised their right to increase prices to match the increase in the number of doses in each bottle. WLF asserts that injury claims are insufficient to establish standing when they are based on speculation about how independent actors would respond to hypothetical changed circumstances.

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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