



FOR IMMEDIATE RELEASE

September 4, 2014

Media Contact: Cory Andrews | 202-588-0302

WLF Asks High Court to Disallow Purported Class Members Who Suffered No Injury

(BP Exploration & Production Inc. v. Lake Eugenie Land & Development, Inc.)

“Defendants in *all* certified class actions now face a Hobson’s choice in which they must either proceed to trial and face ruinous liability—or proceed to settlement and have the terms essentially rewritten to require windfall payouts to thousands of uninjured claimants who do not belong in the class.”
—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to review, and ultimately overturn, two panel decisions of the U.S. Court of Appeals for the Fifth Circuit that would allow a certified class to include numerous members who never suffered an injury caused by the defendant.

In a brief filed in *BP Exploration & Production Inc. v. Lake Eugenie Land & Development, Inc.*, WLF argued that the decisions below, if allowed to stand, will harm absent class members by creating an intra-class conflict between those members who suffered legitimate injuries and those who suffered no injury. The Fifth Circuit’s decision would also harm class-action defendants, who now face the prospect of paying out large settlements without any assurance that those payments will strictly be limited to injured claimants (as bargained for in the settlement agreement), or proceeding to trial to face ruinous liability.

The case arises from two Fifth Circuit decisions that effectively held that a certified class may satisfy Federal Rule of Civil Procedure 23 and Article III of the Constitution even though the class includes myriad members who suffered no injury caused by the defendant and, in some cases, no injury whatsoever. In so doing, the appeals court upheld an interpretation of the parties’ settlement agreement whereby a Claims Administrator would compensate claimants “without regard to whether” those claimants suffered any injury caused by the defendant. The decisions deepen a widening circuit split on whether a class containing members who suffered no cognizable injury satisfies the requirements of Rule 23 and Article III.

Upon filing its brief, WLF issued this statement by Senior Litigation Counsel Cory Andrews: “The decisions below establish a terribly unfair precedent for defendants in *all* certified class actions; they now face a Hobson’s choice in which they must either proceed to trial and face ruinous liability—or proceed to settlement and have the terms essentially rewritten to require windfall payouts to thousands of uninjured claimants who do not belong in the class.”

WLF is a national, public-interest law firm and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to promoting civil justice reform and ending class-action lawsuit abuse.

###