Court Refuses to Certify Investor Class Action

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BLG was successful on behalf of an investment dealer in the recent case Fisher v. Richardson GMP and Woodward wherein the Alberta Court of Queen's Bench refused to certify an investor class action.

The claim asserted that an investment advisor made unsuitable recommendations (largely in energy securities, some of which were private companies) and that the dealer failed to adequately supervise him. The court found that there was insufficient commonality among the class members to warrant a class proceeding and that the certification criteria in the Class Proceedings Act were not satisfied. The decision affirms the principle that while every client must receive suitable advice, suitability is an individual issue dependent on each client's particular circumstances and usually cannot be determined on a class-wide basis. The court found that there were in fact several "common issues", but that those issues were all "elementary" and their resolution at a common issues trial would not materially advance the Action. Individual assessments would still have been necessary even after a trial in order to determine whether any particular client had a compensable claim. The court concluded that a class action was not the preferable procedure to resolve these matters and that individual actions, test cases or multi-party proceedings would be better alternatives.

The decision provides valuable guidance for industry participants when assessing whether investment losses can form the basis of a class action.

By

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