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Eleventh Circuit strikes again, vacating class settlement for lack of standing

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Takeaway: We have written about Eleventh Circuit decisions on Article III standing and its relationship to the proper approval of a class action settlement. *See Eleventh Circuit holds that every class member must have standing for a class action settlement to be approved* (Aug. 22, 2022); *Eleventh Circuit grants en banc review to resolve controversial TCPA standing ruling* (March 23, 2023). The Eleventh Circuit added to this line of authority in *Williams v. Reckitt Benckiser LLC*, 65 F.4th 1243 (11th Cir. 2023), where it vacated a class action settlement approved by a district court that included injunctive relief as a material term, but where the lower court did not first determine that any named representative had standing to pursue injunctive relief.

Two basic principles guided the Eleventh Circuit's decision in *Williams*: (1) a plaintiff must demonstrate standing with respect to each claim of legal *relief*, whether for compensatory damages, injunctive relief, or otherwise; and (2) before certification of a class – including a class proposed for the purpose of approving a class action settlement – a district court must determine that at least one class representative has standing to assert each claim raised.

The district court in *Williams* approved a class settlement providing $8 million in monetary relief as well as injunctive relief to a settlement class of individuals who purchased Neuriva-brand "brain performance supplements" from Defendants Reckitt Benckiser LLC and RB Health (US) LLC (together, "RB"). 65 F.4th at 1247. After the consolidation of three separately-filed class actions in the Southern District of Florida, and before any motions practice or class action discovery had been completed, the parties agreed to a global settlement resolving all claims, including the class claims for compensatory and injunctive relief. *Id.*

Theodore Frank, an attorney and frequent class action objector, objected to the settlement, arguing "the parties inflated the perceived value of the Settlement by touting that RB would pay up to $8 million to Neuriva purchasers – knowing all the while that few Class members would complete the process of submitting claims to receive payment – and imposing changes to RB's marketing that would not benefit past purchasers of Neuriva and that were meaningless in any event," paving the way for "Plaintiffs' counsel to secure a disproportionately large fee award (some $2.9 million) while decreasing the overall payout required of RB." *Id.*

Reviewing the allegations of the consolidated class action complaint, the panel concluded the named plaintiffs lacked standing to pursue their claims for injunctive relief. Plaintiffs seeking injunctive relief, the panel noted, must establish that they are likely to suffer harm that is "actual or imminent" and not "conjectural or hypothetical." *Id.* Because the named plaintiffs alleged that the Neuriva brain performance supplements were "worthless," however, they did not and could not allege that they planned to buy Neuriva products in the future, and, therefore, could not demonstrate to any entitlement to

injunctive relief. *Id.* Therefore, the Court of Appeals reasoned, district court lacked jurisdiction to award injunctive relief in the form of changes in the way the RB advertised its Neuriva products. *Id.*; *see also id.* at 1256.

Accordingly, even though the class plaintiffs had standing to pursue claims for compensatory relief, the panel vacated the class settlement – which awarded both compensatory *and* injunctive relief – further instructing the district court to examine the class settlement based on (among other things) the requirement that the amount of attorneys' fees awarded be re-examined on fairness grounds based on the efficacy of the class settlement's "method of distributing relief to the class" and "whether the proposed attorneys' fees are disproportionately large compared to the amount of relief reasonably expected to be provided to the class." *Id.* at 1261.