

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JOHN B. CORR AND JOHN W. GRIGSBY,
Plaintiffs-Appellants,

v.

**METROPOLITAN WASHINGTON AIRPORTS
AUTHORITY,**
Defendant-Appellee.

2011-1501

Appeal from the United States District Court for the Eastern District of Virginia in case no. 11-CV-0389, Judge Anthony J. Trenga.

O R D E R

NEWMAN and DYK, *Circuit Judges.*

After this matter was assigned to a panel of which we are members, we discovered in the course of preparing for oral argument that we are, or may be, putative members of the as-yet uncertified plaintiff class, because we have, or may have, paid tolls on the Dulles Toll Road in Northern Virginia since May of 2005.

We have considered whether we should recuse ourselves from this case because of the possibility of class membership. However, after reviewing the thoughtful analyses of our colleagues on the Second and Ninth Circuits who have confronted similar situations, we believe recusal in this case would be inappropriate, especially given that the class is not yet certified and that it seems likely that many judges on this court would qualify as putative members of this potentially large class.

We conclude that the appropriate course is to renounce any financial interest that could arise from class membership. *See Suever v. Connell*, 681 F.3d 1064 (9th Cir. 2012) (Nelson, J.); *Stern v. Gambello*, 678 F.3d 797 (9th Cir. 2012) (Berzon, J.); *In re Literary Works*, 509 F.3d 136 (2nd Cir. 2007) (Walker, J.). Therefore, we (and in the case of Judge Dyk, his spouse) announce that we will forego any financial interests we may have in any future settlement or adjudication resulting in any payment to members of the class; will refuse to accept any future payments made to the members of the putative class; and waive any individual right to recover against the defendants on the underlying claims alleged in this matter.

FOR THE COURT

September 24, 2012

/s/ Jan Horbaly

Date

Clerk

cc: Robert J. Cynkar, Esq.
Stuart A. Raphael, Esq.