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COURT ASKED TO PROVIDE CLOSER CHECK ON USE OF JUNK SCIENCE IN COURTS

(Ford Motor Co. v. Clay, No. 00-497)

The Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to require closer monitoring of the use of expert testimony in jury trials, to ensure that plaintiffs' lawyers are not permitted to use junk science to bolster tenuous tort claims against deep-pocketed defendants.

In a brief filed in *Ford Motor Co. v. Clay*, WLF asked the Supreme Court to review a product liability case in which a jury awarded \$17.5 million in damages, despite an admission by the only "expert" to testify for the Plaintiffs that he had never even tested the automobile he claimed was defective. WLF argued that parties should not be permitted to present their proposed expert testimony to the jury unless the trial judge has examined the witness and determined that the methodology employed is reasonably reliable.

"All too often, manufacturers are being hit with large verdicts in cases in which the only evidence that their product is defective amounts to nothing more than junk science," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Unless so-called experts can demonstrate that their conclusion that the product was defective is based on sound science or sound engineering principals, it is incumbent upon the trial judge to perform their gatekeeping function by keeping that kind of prejudicial evidence away from the jury," Samp said.

WLF noted that the Federal Rules of Evidence already require judges to exclude unreliable expert evidence from trial. The trouble is that many trial judges are not performing their gatekeeping function adequately, WLF argued. WLF's brief asked the Supreme Court to hear this case in order to mandate increased appellate review of trial judges who are not doing enough to exclude junk science.

This case involves a 1988 traffic accident in which a Ford Bronco II rolled over; there is considerable evidence that the driver was trying to commit suicide. The driver lived, but two unbelted passengers were ejected from the vehicle and died. The estates of the two decedents filed suit against Ford claiming that the Bronco II was defectively designed and that the alleged defect caused the rollover and the deaths.

The Plaintiffs' expert witness, an engineer who has worked full-time in recent years testifying on behalf of tort plaintiffs, testified that the Bronco II was defective principally because: (1) a rear stabilizing bar on the Bronco II causes it to oversteer; and (2) the front suspension on the Bronco II causes "jacking" (that is, the front of the vehicle will rise during a hard turn). However, the expert never attempted to test any Bronco II to see if it displayed the characteristics he hypothesized, nor did he seek to test a prototype vehicle lacking the allegedly defective design features to see whether the undesirable driving characteristics were eliminated.

Ford repeatedly asked the trial judge to exclude the testimony of the plaintiffs' proposed expert, on the ground that his failure to test his opinions rendered his testimony unreliable. The trial judge refused to exclude the evidence, but never explained why. By a 2-1 vote, the U.S. Court of Appeals for the Sixth Circuit in Cincinnati affirmed the jury verdict for the plaintiffs; the Sixth Circuit concluded that the trial court's decision to admit the plaintiffs' expert testimony was not an "abuse of discretion." Ford has asked the Supreme Court to review the Sixth Circuit's decision.

In its brief, WLF argued that trial courts should be required to provide a reasoned explanation regarding decisions to admit or deny expert testimony. WLF argued that in the absence of such a requirement, an appeals court cannot effectively review the trial court's decision, because the appeals court will not know the trial court's rationale for its decision. WLF noted that the federal circuit courts are split on this issue: the Sixth Circuit held in this case that trial courts are not required to explain their decisions, but the Tenth Circuit in Denver reached the opposite conclusion. WLF asked that the Supreme Court agree to hear this case in order to resolve the conflict between the Sixth Circuit and Tenth Circuit decisions.

WLF is a public interest law and policy center with members in all 50 states. It devotes a significant part of its resources to promoting tort reform and protecting individuals and businesses from excessive government regulation.

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