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Third Circuit *In re Zoloff* Decision Affirms Correct Application of *Daubert* Standard, in Victory for WLF

(*In re Zoloff Products Liability Litigation*)

“The plaintiff’s expert testimony in this case clearly failed to satisfy threshold reliability standards; the Third Circuit should be commended for affirming the district court’s well-reasoned decision to keep junk science out of the courtroom.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—The United States Court of Appeals for the Third Circuit issued a favorable decision today in the Multi-District Litigation case *In re Zoloff Products Liability Litigation*. It upheld the district court’s orders excluding unreliable expert testimony and granting summary judgment to Pfizer, the maker of Zoloff. Washington Legal Foundation had filed an *amicus* brief in support of the defendants, urging vindication of the district court’s excellent gatekeeping application of the *Daubert* standard for the admissibility of expert testimony.

This case involved 315 product liability claims against Pfizer alleging that Zoloff causes cardiac birth defects. The Plaintiffs’ Steering Committee (PSC) sought to establish causation with several experts, but the district court excluded much of this testimony before dismissing the case. The PSC appealed that dismissal, claiming that the district court created a new evidentiary standard requiring the replication of statistically significant results to establish a reliable causal connection between Zoloff and birth defects.

The Third Circuit’s unanimous decision concludes that the district court did not set such a legal standard, noting that the court inquired into other data-analysis techniques even after examining whether there were replicated significant results. It further held that the district court acted appropriately as the gatekeeper for expert witness testimony by making a “factual finding that teratologists generally require replication of significant results, and this factual finding did not prevent it from considering other evidence of reliability.”

The PSC also argued that the district court had abused its discretion in excluding Dr. Nicholas Jewell’s testimony. The Third Circuit concluded that it had not, after analyzing the center of this dispute: the reliability of Dr. Jewell’s methodology. While the appeals court deemed the techniques used for analysis reliable, it took issue with Dr. Jewell’s application of those techniques. “Dr. Jewell applied these techniques inconsistently, without explanation, to different subsets of the body of evidence... Conclusions drawn from such unreliable application are themselves questionable.”

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