Press Release

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WLF Continues to Protect Incentives for Developing Lifesaving Drugs

(In re: Lipitor Marketing, Sales Practices and Products Liability Litigation)

"Because the plaintiffs' expert evidence in this case failed to satisfy threshold reliability standards, the appeals court should affirm the district court's well-reasoned decision to keep junk science out of the courtroom."
—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Continuing its longstanding efforts to promote reliable expert testimony, Washington Legal Foundation filed an *amicus curiae* brief Friday, July 7 in *In re: Lipitor (Atorvastatin Calcium) Marketing, Sales Practices and Products Liability Litigation* supporting the Defendants-Appellees. This case is pending in the United States Court of Appeals for the Fourth Circuit after the Hon. Richard M. Gergel granted defendants summary judgment in the district court.

More than 3,000 plaintiffs allege that their physician-prescribed use of Lipitor caused them to develop Type-2 diabetes in this Multi-District Litigation (MDL). Lipitor is a popular FDA-approved treatment for high cholesterol and helps reduce the risk of stroke, heart attack, and other cardiovascular injuries.

The plaintiffs were unable to survive summary judgment without reliable expert evidence demonstrating an association between Lipitor and diabetes. On appeal, WLF contends that Judge Gergel acted appropriately as a gatekeeper of reliability and excluded the plaintiffs' expert testimony under *Daubert* and Federal Rule of Evidence 702. While he excluded all seven of the plaintiffs' experts, the plaintiffs are only contesting the exclusion of three of those experts on appeal. WLF's brief argues that the district court acted well within its discretion in excluding this expert testimony, without which the plaintiffs did not and cannot establish causation.

WLF's brief focuses on the importance of maintaining a clear threshold for the reliability of expert evidence. WLF argues that maintaining this threshold protects patients:

> Permitting a flimsy, unscientific "association" to serve as the basis for imposing massive tort liability on drug manufacturers would undoubtedly disincentivize the continued development of lifesaving drugs. Absent clearly enforced thresholds for the reliability of expert evidence on causation, drug manufacturers facing unwarranted liability would be forced either to raise prices significantly or to exit the market altogether—reducing access to vitally important, FDA-approved therapies. In such a litigious climate, it is the patients who rely on such lifesaving drugs who would suffer the most.

Celebrating its 40th year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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