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Media Contact: Grace Galvin | ggalvin@wlf.org | 202-588-0302

WLF Pushes for Reliable Expert Evidence In Florida's Trial Courts

(*Delisle v. Crane Co.*)

“If the Florida Supreme Court excuses trial-court judges from the obligation to exclude unreliable expert evidence from the jury, it will undermine the Florida civil justice system’s ability to produce fair and just results.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—In an effort to ensure the most reliable standard for admitting expert evidence, Washington Legal Foundation filed an *amicus* brief yesterday in *Delisle v. Crane Co.*, an asbestos case in the Florida Supreme Court.

The plaintiff, Richard Delisle, claims that his exposure to asbestos contained in products manufactured by multiple defendants caused his mesothelioma. Mr. Delisle prevailed at trial after an expert witness was allowed to testify that each and every exposure to the defendants’ asbestos was a legal cause of his disease; the jury awarded him \$8 million. The appeals court reversed that decision, finding the plaintiff’s expert evidence unreliable under *Daubert*, an evidentiary standard that the overwhelming majority of states have adopted.

WLF asks the Florida Supreme Court to retain *Daubert* as the superior evidentiary standard over the deficient *Frye* test. While the *Frye* test examines only the methodology used by an expert witness, *Daubert* goes further by requiring judges to also look at the expert’s application of that methodology. WLF’s brief illustrates *Frye*’s deficiency with an example:

If an expert testifies that he relied on a randomized, controlled trial to establish causation but—in fact—he or she actually performed a simple coin toss (heads: causation, tails: no causation), *Frye* would permit that expert’s “scientific findings” to be admitted to the trier of fact.

Daubert is also superior, WLF’s brief explains, because it requires judges to examine the reliability of all expert evidence, not just evidence derived from “new or novel” methodologies. So long as expert evidence is derived from generally accepted techniques, *Frye* allows that evidence (including evidence that once may have been rejected as new or novel under *Frye*) to be admitted without any scrutiny of its reliability.

WLF believes that scientifically unreliable evidence is no evidence at all and argues that Florida trial-court judges must be allowed to uphold their gatekeeping obligation by applying the more thorough evaluation of the *Daubert* test.

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.