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**WLF ASKS CALIFORNIA HIGH COURT TO
UPHOLD OVERSIGHT OF EXPERT TESTIMONY**
(Aguilar v. ExxonMobil Corp, No. S132167)

The Washington Legal Foundation (WLF) filed a brief today in the California Supreme Court asking the Court to affirm an appeals court ruling that recognized the need for California trial judges to assess the testimony of expert witnesses for validity.

The proceeding in *Aguilar v. ExxonMobil Corp.*, also known as the “Lockheed Litigation Cases,” involves claims by former workers at a Lockheed aerospace plant that their exposure to five solvent chemicals in the workplace caused them to become sick with cancer. The plaintiffs seek to present an expert witness to testify that their cancer was, in fact, caused by those chemicals. The issue before the California Supreme Court is the admissibility of the testimony of that witness where none of the articles and other materials on which he relies demonstrates a link between the chemicals involved and cancer in humans.

In its brief, WLF argued that the decisions of the trial court and the Court of Appeal to exclude this testimony were proper. Under the California Evidence Code, trial judges must determine whether expert witness testimony is based on material “of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates.” Here, the evidence mainly relied upon by plaintiffs’ expert witness is a study reviewing other epidemiological studies. Those studies involved painters who potentially were exposed not only to the five chemicals at issue in this litigation, but more than 130 different chemicals and thousands of chemical compounds. The expert witness acknowledged that some of the other chemicals included in those studies were known carcinogens. The expert witness acknowledged that because the subjects were exposed to numerous chemical compounds, the study did not indicate whether any single chemical contributed to an increased risk of cancer. The expert witness also referred to other materials that failed to demonstrate an increased risk of cancer in humans.

Paul F. Utrecht of the San Francisco firm Zacks Utrecht & Leadbetter P.C. served as local counsel to WLF on a *pro bono* basis.

WLF is a public interest law and policy center based in Washington, D.C., with supporters nationwide. While WLF engages in litigation and administrative proceedings in a variety of areas, WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. To that end, WLF has appeared in all of the major U.S. Supreme Court cases in recent years concerning the gatekeeping function of federal judges with respect to the admission of expert testimony. In addition, WLF has sought to educate policymakers about issues related to expert testimony through numerous policy papers published by its Legal Studies Division. These include Ninette Byelich, *State High Court Rejects Daubert But Embraces Scientific Gatekeeping* (2004) and Prof. David E. Bernstein, *Disinterested in Daubert: State Courts Lag Behind In Opposing “Junk” Science* (2002).

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For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302. A copy of the brief is posted on WLF's web site, www.wlf.org.