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June 12, 2018

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In WLF Victory, Fourth Circuit's *Lipitor* Decision Affirms Correct Application of *Daubert* Standard

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

“Because the plaintiffs’ expert evidence in this case failed to satisfy basic threshold-reliability standards, the Fourth 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 U.S. Court of Appeals for the Fourth Circuit today issued its long-awaited decision in *In re: Lipitor (Atorvastatin Calcium) Marketing, Sales Practices and Products Liability Litigation*. The appeals court upheld the Multi-District Litigation (MDL) court’s orders excluding the plaintiffs’ unreliable expert testimony and granting summary judgment to Pfizer, the maker of Lipitor. The decision was a victory for the Washington Legal Foundation (WLF), which filed an *amicus* brief in support of Pfizer urging vindication of the district court’s rigorous application of *Daubert*’s gatekeeping standard for ensuring reliable evidence.

Lipitor is a popular FDA-approved treatment for high cholesterol that helps reduce the risk of stroke, heart attack, and other cardiovascular injuries. The MDL involved more than 3,000 plaintiffs who alleged that their physician-prescribed use of Lipitor caused them to develop Type-2 diabetes. Finding that the plaintiffs’ experts failed to demonstrate any association between Lipitor and diabetes, the district judge excluded the plaintiffs’ expert testimony under *Daubert* and Federal Rule of Evidence 702. Though all seven of the plaintiffs’ experts were excluded, the plaintiffs contested on appeal the exclusion of only three of those experts.

In its brief, WLF argued that the district court acted well within its discretion in excluding the plaintiff’s scientifically flimsy expert opinions and that, without such expert testimony, the plaintiffs could not establish causation. Today, the unanimous Fourth Circuit panel agreed, holding that the district court discharged its gatekeeping duties “meticulously and thoughtfully throughout the litigation, including performing careful review of the many expert reports, affording experts the opportunity to amend and revise those reports to ensure their opinions were fully considered, and, after ultimately excluding much of the plaintiffs’ expert testimony, allowing them to come forward with any additional evidence that could salvage what remained of their cases before rendering a final decision.”

Celebrating its 41st 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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