Press Release

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WLF Urges Utah Supreme Court to Exempt Implanted Medical Devices from Strict Products Liability

(*Burningham v. Wright Medical Group*)

> **"The public has a substantial interest in the availability and affordability of potentially life-altering medical devices. Allowing courts to decide the fate of devices that pose inherent, unavoidable risks will harm manufacturers and consumers alike."**
> **—Marc Robertson, WLF Staff Attorney**

WASHINGTON, DC—Washington Legal Foundation filed an *amicus curiae* brief with the Utah Supreme Court today, urging the court to adopt an exception to strict products-liability for implanted medical devices that it has long applied to prescription drugs.

In *Burningham v. Wright Medical Group*, the Utah Supreme Court will answer a Certified Question from the United States District Court for the District of Utah of whether implanted medical devices fall under the "unavoidably unsafe" exception to strict products liability in design defect claims recognized in Comment k to Section 402A of the Restatement (Second) of Torts.

The Utah Supreme Court applied Comment k to prescription drugs in its 1991 *Grundberg v. Upjohn Co.* decision, thus deeming that category of products unavoidably unsafe. The court reasoned that prescription drugs merit such legal protection because of their unique characteristics. Each patient can react to prescription drugs differently, making it impossible to develop a product that is completely without risk. But there is a great public interest in the availability and affordability of these potentially life-saving products. Implanted medical devices pose similar risks even when used as intended, but like prescription drugs, the benefits they provide outweigh those risks.

The Food and Drug Administration (FDA) thoroughly analyzes implanted medical devices' risks and benefits when clearing the products for public release. Further, doctors prescribe devices on an individual, case-by-case basis. If the Utah Supreme Court refuses to consider medical devices as "unavoidably unsafe," juries will step into the shoes of FDA and patients' physicians.

Strict products-liability litigation alleging defective design could force manufacturers to cease production or alternatively to increase prices and pass those costs on to consumers. The public suffers, WLF argues in its brief, when medical devices become unavailable or unaffordable.

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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