Press Release

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WLF Asks Pennsylvania High Court to Ensure Reliability of Expert Opinions in Toxic Tort Cases

(*Walsh v. BASF Corp.*)

> **"If the Pennsylvania Supreme Court excuses trial-court judges from the obligation to exclude unreliable expert evidence from the jury, it will undermine the Pennsylvania civil justice system's ability to produce fair and just results."**
> **—Cory Andrews, WLF Senior Litigation Counsel**

WASHINGTON, DC—Washington Legal Foundation (WLF) yesterday asked the Supreme Court of Pennsylvania to overturn a lower court's holding that trial courts may not act as "gatekeepers" to ensure the reliability of expert evidence by scrutinizing whether the scientific studies an expert purports to rely on actually support the expert's opinion. WLF filed its *amicus curiae* brief with substantial *pro bono* assistance from James M. Beck, an attorney with the Philadelphia office of Reed Smith LLP.

The case arises from a suit brought by survivors of Thomas Walsh, who was employed for forty year as a groundskeeper and golf-course superintendent at several golf courses in the Pittsburgh area. He died of leukemia in 2009. During his employment, Mr. Walsh often applied pesticides on the golf courses he cared for. His executor brought a wrongful death action against the manufacturers of various pesticides, alleging strict products liability and negligence. Given the plaintiffs' lack of reliable expert testimony identifying the pesticides as contributing factors in Mr. Walsh's death, the trial court granted judgment in favor of the manufacturers and sellers of more than 25 pesticides. On appeal, however, the Superior Court of Pennsylvania reversed. Among other things, it held that trial judges may not scrutinize the scientific data an expert purportedly relies on in forming an opinion.

In its brief in support of the defendants, WLF advances three main arguments. First, by second-guessing the trial court's carefully reasoned exclusion of expert evidence, the appeals court departed from Pennsylvania law's abuse-of-discretion standard. Second, by denying that Pennsylvania trial courts enjoy any "proper role" as gatekeepers of expert evidence, the appeals court's decision contravenes many Pennsylvania and nationwide precedents interpreting the *Frye* standard. Finally, WLF argues that by allowing causation opinions to be aggregated against multiple manufacturers, the decision below threatens to confuse juries and to impose baseless, industry-wide liability for alleged toxic exposures.

Celebrating its 42nd 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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