Press Release

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WLF Asks Eighth Circuit To Reject Causation-Free Tort Liability

(Bader Farms, Inc. v. BASF Corp.)

"Remove the element of causation from tort law and, so far as due process goes, all bets are off."
—Cory Andrews, WLF General Counsel and Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Eighth Circuit to reverse a federal trial-court ruling that imposes massive liability on corporate defendants without requiring the plaintiff to satisfy the bedrock tort element of causation. In an *amicus* brief in *Bader Farms v. BASF Corp.*, WLF argued that the trial court erred when it relieved the plaintiff of its burden, under Missouri law, to prove that the defendants' products were responsible for damage to the plaintiff's commercial peach orchards. WLF submitted its brief on behalf of itself and DRI-The Voice of the Defense Bar.

Under state and federal law, no herbicide may be sold unless the Environmental Protection Agency (EPA) approves it for use. Dicamba is an active ingredient in many federally and state-registered herbicides. It is unlawful to use a registered herbicide in a manner contrary to its label. Monsanto released dicamba-tolerant (DT) seeds for cotton in 2015 and for soybeans in 2016. These seeds had many benefits, including increased yield.

The plaintiff alleges that dicamba herbicide began damaging its peach orchards in 2015. But Monsanto never sold dicamba herbicide until 2017, when there were dozens of dicamba herbicides on the market. And in 2015 and 2016, BASF's only dicamba-based herbicide bore a label explicitly prohibiting the user, under penalty of law, from deploying it in over-the-top spraying of crops. Unable to prove that either defendant's herbicide ever landed on its peach trees, the plaintiff simply disclaimed that burden altogether. The district court agreed.

In its brief, WLF argues that the district court should have required the plaintiff to identify which herbicides, if any, landed on its peach trees. Removing this basic causation element, WLF contends, violates the Due Process Clause. Holding a manufacturer responsible for a specific harm simply because it makes the same category of product that allegedly caused the plaintiff's injury is fundamentally unfair. By the district court's logic, WLF explains, a fertilizer manufacturer might be liable if someone bought a rival manufacturer's fertilizer to make a bomb. An automaker might be liable to a remote plaintiff for harm caused by the reckless driver of another automobile make and model. The possibilities for abuse under the district court's proximate-cause rule would be endless, impacting every sector of the economy.

Celebrating its 44th 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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