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WLF Urges Wisconsin Supreme Court To Clarify Standard for Admission of Expert Evidence

(*Vanderventer v. Hyundai*)

“The Wisconsin Supreme Court needs to offer guidance to lower courts on how to ensure the reliability of expert evidence.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the Supreme Court of Wisconsin to hear an appeal in a case about how lower courts should evaluate the reliability of proposed expert testimony.

The case arises from a car accident in which a driver traveling 40 miles per hour rear-ended a Hyundai Elantra. The Elantra’s passengers suffered no injuries. But the driver, who had an undiagnosed spinal cord condition, was paralyzed. He and his wife sued Hyundai alleging that the Elantra’s seat design was defective and caused his injuries. Two experts testified for the plaintiffs at trial. The biomechanics expert did not test his novel theory and the medical expert had no biomechanics expertise. Still, the jury awarded over \$32 million in damages and the Wisconsin Court of Appeals affirmed. Hyundai now seeks the Supreme Court of Wisconsin’s review.

In its *amicus* brief supporting the petition, WLF argues that the lower courts have continued to ignore Wisconsin’s 2011 tort-reform law. That bill brought Wisconsin law in line with the federal *Daubert* standard for the admission of expert evidence. Yet the trial court in this case erroneously held that the flaws in the experts’ methodologies went to the weight of the experts’ testimony and not its admissibility. As WLF’s brief shows, this is a misapplication of the *Daubert* standard.

WLF’s brief also explains that experts may testify on an issue only if they are qualified as an expert in that field. Here, the plaintiffs’ medical expert was allowed to testify as a biomechanics expert despite his lack of qualifications in that field. Finally, WLF’s brief explains that *Daubert* requires applying reliable methodology to the facts of a case. Here, the plaintiffs’ expert conducted no testing, which is the only reliable methodology to test a novel theory. The brief was filed with the generous pro bono assistance of Matthew M. Fernholz of Cramer, Multahauf & Hammes LLP.

Celebrating its 45th 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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