



FOR IMMEDIATE RELEASE

August 4, 2023

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

## WLF Asks Supreme Court to Rein In Multi-District Litigation Abuse

*(E.I. du Pont de Nemours & Co. v. Abbott)*

**“Left in place, the Sixth Circuit’s holding would transform a neutral mechanism for efficiently resolving pre-trial issues into a cudgel that forces defendants to settle rather than face potentially crippling liability.”**

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an amicus brief with the U.S. Supreme Court urging it to review, and ultimately to overturn, a deeply flawed decision of the U.S. Court of Appeals for the Sixth Circuit in a multi-district litigation (MDL) proceeding. WLF’s brief was prepared with generous pro bono support from Jonathan Tam, Matthew Steinberg, and Allison Ozurovich of Dechert LLP.

The petition asks the Court to decide whether due process permits a district court overseeing an MDL to apply nonmutual offensive collateral estoppel to make the results of a handful of bellwether trials binding on every other pending or future case in the MDL. The district court here did just that, without any determination that the bellwethers were in fact representative of the MDL’s other cases. A sharply divided Sixth Circuit panel upheld that decision, which precluded E.I. du Pont de Nemours and Company (DuPont) from litigating the critical elements of duty, breach, and foreseeability in countless pending and future cases in a sprawling MDL—simply because DuPont had lost on those issues in three early “informational and nonbinding” trials.

In its brief, WLF criticized the panel majority for ignoring settled law establishing that mass torts implicate plaintiff-specific issues. This precludes courts from applying nonmutual offensive collateral estoppel in any toxic tort or products liability case—just as it precludes any such case from being resolved on a class-wide basis. WLF also emphasized that the Sixth Circuit’s approach blurs the line between class actions and MDLs by turning MDL bellwether trials into *de facto* class actions. This is particularly troubling, as class actions have largely been rejected in mass tort litigation—due to well-founded concerns that they prevent parties from attaining individualized justice.

*Celebrating its 46th 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.*

###