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## **WLF Urges Supreme Court to Reinstate Trial Judges' Gatekeeping Role in the Fourth Circuit** *(Union Carbide v. Sommerville)*

**“Allowing junk science in the guise of expert testimony to reach juries undermines the integrity of our federal justice system.”**

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to grant certiorari and reverse a decision by the U.S. Court of Appeals for the Fourth Circuit that flouts Federal Rule of Evidence 702's mandate for judges to ensure expert testimony's factual reliability. WLF contends that the Fourth Circuit's ruling revives a defunct pre-*Daubert* view of admissibility, eroding judicial gatekeeping and inviting unfair verdicts built on speculation.

The case arises from a class-action lawsuit in West Virginia federal court alleging that emissions of ethylene oxide from defendants' Kanawha County plant heightened cancer risks for nearby residents. Although no plaintiff has cancer, the suit sought damages to fund medical monitoring. The district court excluded plaintiffs' air-modeling expert for lacking a reliable factual basis for his opinion, then granted summary judgment to defendants and dismissed the case. On appeal, the Fourth Circuit reversed that ruling, holding that challenges to the factual basis of expert testimony go to weight rather than admissibility.

In its amicus brief urging Supreme Court review, WLF argues that Rule 702 requires district judges, not juries, to assess whether expert testimony rests on sufficient facts before admitting it. The Fourth Circuit's insistence that such challenges go only to weight threatens national uniformity under the Federal Rules of Evidence and opens the door to junk science in federal trials. WLF's brief shows that the decision below relies on a string of archaic precedents that are no longer good law.

*Celebrating its 49th 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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