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WLF Asks High Court to Put a Stop to Lower Courts' Admitting Unreliable Expert Testimony

(*Accenture, LLP v. Wellogix, Inc.*)

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WASHINGTON, DC—The Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to review, and ultimately overturn, a federal jury’s nearly \$50 million eye-popping award against Accenture, LLC for the alleged misappropriation of a trade secret. The trial court erred by allowing a software expert to testify on financial matters far outside the realm of his expertise.

The case raises a fundamental question under *Daubert v. Merrell Dow Pharmaceuticals* and its progeny, as well as under Federal Rule of Evidence 702: Once a witness is “qualified” as an expert, can the trial judge delegate to the jury the important task of determining whether the expert’s testimony is reliable and based on sufficient facts?

In its amicus brief in support of discretionary review, WLF argues that this case is part of a growing and disturbing trend in which courts are not heeding *Daubert*’s and Rule 702’s gatekeeping requirements. Unreliable expert testimony is reaching jurors under the flawed rationale that defects go to the weight of the evidence, not its admissibility. The Supreme Court needs to arrest this trend now because, as the Court has noted, purported experts can unduly influence juries and failing to screen out unreliable expert testimony risks widespread miscarriages of justice.

Upon filing its brief, WLF issued this statement by Senior Litigation Counsel Cory Andrews: “Federal Rule of Evidence 702 was adopted in 2000 to implement the U.S. Supreme Court’s so-called *Daubert* trilogy of expert evidence admissibility rulings from the 1990’s. Unfortunately, even 14 years later, too many lower court judges have yet to fall in line with the idea that reliability of expert testimony is not for juries to decide. Unless the Supreme Court takes the *Accenture* case, or one like it, and reiterates the gatekeeping obligation of federal trial court judges, we will continue to see miscarriages of justice like the one that took place in this case based on the admission of unreliable expert testimony.”

WLF is a public interest law and policy center that devotes a substantial portion of its resources to promoting tort reform and reining in excessive litigation, including runaway jury verdicts.

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