

PRESS RELEASE

For Immediate Release

For more information, contact:

Vicki Bendure, APR

540-687-3360 | 202-374-9259 c | vicki@bendurepr.com

**DRI –*The Voice of the Defense Bar* Files Amicus Brief in
U.S. Supreme Court Case *United States Steel Corp., et al. v. Milward***

Defense Bar Supports Defendants’ Petition for Certiorari

CHICAGO – (Oct. 11, 2011) – DRI – *The Voice of the Defense Bar* filed an amicus curiae brief in the United States Supreme Court case of *United States Steel Corp., et al. v. Milward*. In its brief DRI argues against a reversed decision and reinstatement of the case by the U.S. Court of Appeals for the First Circuit, in that it conflicts with approaches taken in several other circuits, which position it well for Supreme Court review.

This case is of significant importance to DRI’s members and clients because numerous plaintiffs in toxic tort and product liability litigation have relied on experts who employ “differential diagnosis” or similar methodologies in an attempt to lend the imprimatur of scientific “judgment” to mere hypotheses. The First Circuit’s position potentially applies to any situation in which the cause of the plaintiff’s harm is not known to science, but science has not ruled out that it could be caused by the accused product or conduct.

In this case the plaintiff, Brian Milward, alleged that he contracted a rare form of cancer, acute promyelocytic leukemia (APL), through exposure to benzene or benzene contaminants. The plaintiff’s expert acknowledged that science has not determined what causes or can cause APL, but opined that, based on his own “judgment,” the “weight of evidence” supported a conclusion that APL could be caused by benzene exposure. After a four-day hearing, the district court excluded the expert testimony as unreliable under *Daubert* and *Joiner*, finding that it amounted to no more than a plausible hypothesis. The U.S. Court of Appeals for the First Circuit reversed and reinstated the case, holding that it was an abuse discretion to exclude this evidence as possible causation.

“This case is an unusually good vehicle for Supreme Court review because the First Circuit reversed a thorough and considered district court decision excluding the evidence as unreliable,” explained Scott Smith, chair of DRI’s amicus committee. “The First Circuit’s decision undercuts the district court’s important ‘gatekeeping’ role in deciding what ‘scientific’ evidence on critical issues such as causation is sufficiently reliable to allow a case to go to jury,” Smith continued.

The DRI brief is authored by Sidley Austin lawyers Carter G. Phillips, Jonathan F. Cohn, Erin D. McArthur and Timothy E. Kapshandy. The brief is available in its entirety at www.dri.org.

About DRI – *The Voice of the Defense Bar*

DRI – *The Voice of the Defense Bar* is an international organization of defense attorneys and corporate counsel that is recognized as a thought leader and an advocate for the defense bar at the national and state level, as well as in Europe. With more than 22,000 members, DRI provides members and their clients with access to world-class education, legal resources and numerous marketing and networking opportunities that facilitate career and law firm growth. For more information log on to www.dri.org.

###