

STATES SHOULD NOT ADOPT *DAUBERT*

In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the U.S. Supreme Court created standards for the admissibility of expert testimony that require judges to scrutinize the reasoning and methodology behind an expert's conclusions to determine if the testimony is both relevant and scientifically valid and reliable.

***Daubert* places an impossible burden on judges.**

- Judges do not have the time to master all the diverse disciplines and subject matters that *Daubert* requires them to master, week in and week out. The courts are cluttered with cases and judges are pressed for time in every case.
- State judges are particularly ill-equipped to carry out *Daubert's* mandate. Facing declining budgets and limited staff, state court judges have even fewer resources than their federal counterparts.
- *Daubert* enormously increases the workload of judges. Under *Daubert*, a judge must hear detailed testimony on a scientific procedure used to obtain evidence and then must subjectively determine if the procedure was reliable and if the evidence was relevant.
- Judges lack the scientific training necessary to accurately determine whether expert testimony constitutes good science.
- Judges are no better able than juries to appraise proof offered as science and differentiate between valid science and junk science.

***Daubert* places an unreasonably heavy burden on plaintiffs.**

- Under *Daubert*, a plaintiff must not only establish an expert's qualifications, but must also convince a trial judge that the testimony supports a scientifically reliable conclusion based upon scientifically reliable data and that the conclusion fits the legal requirements for establishing causation.
- Because the plaintiff ordinarily has the burden of proof in tort litigation, *Daubert* has a disproportionate impact on plaintiffs.
- The burden on plaintiffs is particularly acute in products liability litigation because satisfying the *Daubert* factors often requires the construction and testing of an alternative design, which the plaintiff might not be able to afford.

***Daubert* increases the time and expense of litigation.**

- *Daubert* allows litigants to impose huge burdens on the judicial system by filing needless motions asserting that the other side's expert testimony is inadmissible.
- The complex factual inquiry required by *Daubert* forces courts to conduct multi-day and even multi-week evidentiary "*Daubert* hearings", which are time-consuming and costly.
- These hearings require each trial judge to review several factors in any case involving disputed expert testimony to determine the reliability of the expert's techniques, experience, observation, methodology, and conclusions.
- *Daubert* challenges limit a trial court's time for the actual trial.
- *Daubert* requires judges to spend a great deal of time reviewing memoranda, publications, and data, thus making them unavailable to try other cases for a significant amount of time.

***Daubert* severely impinges on the right to trial by jury.**

- *Daubert* places too much power in the hands of the trial judge, whose rulings excluding expert opinions may deprive a plaintiff of redress at the hands of a jury.

- Under the U.S. Constitution, the jury has the right to decide questions of fact by determining the credibility of witnesses and the weight of evidence.
- *Daubert* takes this role away from the jury and assigns it to the judge, who is empowered to exclude the testimony of qualified witnesses if the judge concludes there is not a valid connection between the testimony and the pertinent inquiry.

***Daubert* results in less justice.**

- Judges applying *Daubert* may be excluding the testimony of well-regarded experts and throwing out good evidence offered by civil claimants.
- Under *Daubert*, the jury might not hear evidence that is competent and relevant.
- The expense of satisfying *Daubert* is so great that recovery will be denied for deserving products liability plaintiffs who cannot afford to conduct testing to meet the reliability standards, thus permitting unsafe products to remain on the market.

The adoption of *Daubert* is unnecessary

- Under the test established in *Frye v. United States*, 293 F. 1913 (D.C. Cir. 1923), expert testimony is admissible if the scientific techniques used by the expert are generally accepted in the scientific community.
- *Frye* saves trial judges time because the only testimony that must be heard by the judge in deciding admissibility is whether the scientific community has accepted the procedure.
- The *Frye* test ensures that scientific evidence will meet a minimum level of reliability without placing an impossible burden on judges and plaintiffs.