

New Jersey Expert Admissibility Standard: “Reconciled” with *Daubert*

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Product Liability and Mass Tort Defense

On August 1, 2018, the New Jersey Supreme Court issued a unanimous decision affirming a trial court’s exclusion of scientifically unfounded expert causation testimony in the Accutane litigation. The decision, which ends over 2,100 lawsuits against Hoffmann-La Roche Inc. and Roche Laboratories Inc. (“Roche”), represents the Supreme Court’s first statement on New Jersey expert standards in over a decade, and it provides substantial clarity on those standards. It is directly relevant to any New Jersey litigation involving scientific causation evidence. Covington partners [Paul Schmidt](#) and [Michael Imbroscio](#) briefed and argued the case for Roche, working with co-counsel at Peabody & Arnold; Shook, Hardy & Bacon; Gibbons; and Dughi, Hewit & Domalewski. The decision, *In re: Accutane Litigation*, No. A-25-17 (N.J. Aug. 1, 2018), is available [here](#).

The Accutane Litigation

The New Jersey Accutane litigation, which first began in 2005, includes thousands of lawsuits alleging that Roche’s acne medicine causes Crohn’s disease. After the plaintiffs in those cases retained a gastroenterologist from Mount Sinai and a statistician from Columbia University as causation experts, Roche moved to exclude their opinions as scientifically unreliable.

In February 2015, following a two-week evidentiary hearing, the trial court granted Roche’s motion. The Appellate Division reversed, applying a “relaxed standard” that permitted the plaintiffs’ “extremely well-qualified experts” to survive gatekeeping because they could devise “plausible scientific explanations” for rejecting adverse science. The New Jersey Supreme Court has now reversed the Appellate Division and reinstated the trial court ruling.

The New Jersey Supreme Court Decision:

The New Jersey Supreme Court unanimously held that the trial court properly excluded the testimony of the plaintiffs’ experts because they employed an unreliable methodology. The opinion has broad relevance in several regards.

First, the decision makes clear that, contrary to the “relaxed” standard applied by the Appellate Division, the existing New Jersey expert admissibility framework requires “rigorous” gatekeeping to determine “the validity of the expert’s reasoning and methodology.” Op. at 69. This “rigorous gatekeeping,” which requires trial courts to “assess both the methodology used by the expert to arrive at an opinion and the underlying data used in the formation of the opinion,” ensures that trial courts “advanc[e] the truth-seeking function of our system of justice, while still allowing for new or developing opinions on medical causation that may not yet have gained general acceptance.” Op. at 67-68, 79, 85.

Second, the Court stated that New Jersey's expert standards are substantially congruent with *Daubert* principles. See Op. at 80 ("Importantly, both our law and the *Daubert* trilogy are aligned in their general approach to a methodology-based test for reliability."). While stopping short of declaring New Jersey a full "*Daubert* jurisdiction," the Court found "little distinction between *Daubert*'s principles regarding expert testimony and our own," and formally adopted the *Daubert* reliability factors into New Jersey law. Op. at 5-6, 82-83.

Third, the Court's decision underscores that claimed expert credentials cannot overcome defects in an expert's methodology. Whereas the Appellate Division placed great deference on the plaintiff's "extremely well-qualified experts," the Court emphasized that the "experts' credentials were not in issue at any point" and that "[t]his case -- with its adversarial setting and full record -- provides the appropriate setting for illustrating how courts should evaluate the methodology of a credentialed expert when determining whether an opinion is based on scientifically sound reasoning." Op. at 6, 42 n.23.

Fourth, the Court provided broadly applicable guidelines to evaluate expert methodologies, including:

- whether the methodology is internally consistent, Op. at 76 (citing "[t]he many contradictions in the experts' methodology");
- whether the expert appropriately preferences stronger evidence over weaker evidence, Op. at 77 ("experts cannot selectively choose lower forms of evidence in the face of a large body of uniform epidemiological evidence");
- whether the expert opinions have been subject to peer review, Op. at 77; and
- whether the expert properly applies standards like the Bradford Hill criteria, instead of simply invoking them, Op. at 78.

Finally, contrary to the Appellate Division's view that a reviewing court owes "somewhat less deference to a trial court's determination" regarding expert testimony, the New Jersey Supreme Court reaffirmed that the abuse of discretion standard applies to a trial court's expert admissibility determinations. See Op. at 70 ("A reviewing court must apply an abuse of discretion standard to a trial court's determination, after a full Rule 104 hearing, to exclude expert testimony on unreliability grounds").

In short, the decision will have a broad impact in all New Jersey cases involving expert causation testimony.

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