Daubert Standard For Expert Testimony Almost Applied In California

The standard for admitting expert scientific testimony in a federal trial under the Federal Rules of Civil Procedure was established in the case of *Daubert v. Merrell Dow Pharmaceutical* (US Supreme Court, 6/28/93), then extended to all expert testimony, not just scientific evidence, in later cases. The *Daubert* standard held that the Federal courts have a gatekeeping role to play with respect to admission of expert testimony to ensure that such testimony "rests on a reliable foundation and is relevant to the task at hand" and that the inquiry is to be flexible based on the case at hand.

Applying the *Daubert* standard, the 10th Circuit Court of Appeals recently overruled a District Court ruling that permitted an expert to testify in a product liability case involving a seatbelt buckle and an automobile rollover accident that left a front seat passenger a quadriplegic. *Hoffmann v. Ford Motor Company* (8/16/2012)

The 10th Circuit held in *Hoffmann* that the trial court failed to properly exercise its gatekeeping role to ensure that the expert testimony was reliable and relevant because the testimony at issue reported on tests that demonstrated seatbelt buckles unlatching in laboratory conditions, which was not the same as demonstrating that the seatbelt buckle in the accident at hand would also have unlatched. Specifically, "citing a lack of rollover crash test data, he [the expert] compared his results to data from planar crash tests – ones conducted on only the horizontal plane."

As the court stated in analyzing the expert testimony in light of *Daubert*:

there was no scientific link between Good's tests results and those accelerations present or likely to have been present on Erica's buckle in the subject accident.

The Supreme Court of California recently ruled on the admissibility of expert testimony in a case that interpreted the California Evidence Code, reaching a conclusion similar in many respects to the federal standards in *Daubert*. [*Sargon Enterprises v. Univ. of Southern California* (11/26/2012)]

Sargon involved a lost profits claim by the inventor of a dental implant who contracted with the defendant to do clinical tests on the product. In *Sargon*, the Court noted that:

Under California Evidence Code sections 801, subdivision (b), and 802, the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative.

Applying these rules, the expert testimony in *Sargon* as to lost profits was considered too speculative in nature because it was based on speculation of a hypothetical market share that would have been achieved if the testing had been completed, rather than market share the plaintiff had actually achieved.

Based on *Sargon*, California has all but adopted the federal *Daubert* standard, while not expressly taking that position, as the case further clarifies the gatekeeping function to be exercised by state courts to exclude certain expert testimony.