

About *Daubert*:

Information on Federal Rules of Evidence

What is the *Daubert* standard?

The *Daubert* standard provides a process for a United States federal court judge to evaluate the credibility of expert witnesses whose statements would be presented to a jury at trial. The U.S. Supreme Court requires that trial courts act as important “gatekeepers” of the science so that unreliable expert testimony is not presented to jurors.

What is the process for ensuring the *Daubert* standard is met?

- When a case goes to trial, the plaintiff or defendant (the parties bringing or defending against the claim) may select experts to testify on topics related to the lawsuit.
- Each side must demonstrate that its experts have the qualifications to reliably and credibly testify on an issue. The experts write an “expert report” detailing their conclusions.
- The opposing side may question the expert about his or her report at what is called a deposition.
- Based on the expert report and deposition, the opposing side may ask the judge to exclude some or all of the expert’s proposed testimony.
- The judge can make this determination by asking the parties to outline their position in legal briefs. The judge may also preside over what is called a *Daubert* hearing – a “mini trial” where the potential expert is questioned by both sides.
- After the hearing, the judge decides whether the expert may testify at trial, may testify but with some limitations, or is not allowed to testify.
- This process ensures that juries do not hear unreliable testimony from a person presented as an expert.

What standards does the judge use to evaluate whether a witness is allowed to testify?

Under the *Daubert* standard, experts must be **qualified**, and their testimony must be both **reliable** and **relevant**. All experts – not just scientists – must meet this standard to testify.

- Experts must be **Qualified** to testify based on their knowledge, skill, experience, training, or education.
- Expert testimony must be **Reliable**, primarily measured by five factors:
 - 1) Has the expert’s theory or method been tested by other scientists? Can it be tested?
 - 2) Has the theory been subject to “peer review” by other experts in the field?
 - 3) Is there a chance that the theory could produce a false result or has a high rate of error?
 - 4) Are there standards to control how the method works, to ensure consistency?
 - 5) Has the theory been generally accepted within the scientific community, or is it a fringe opinion?
- Expert testimony must be **Relevant** to case arguments and help the jury understand the evidence or make a decision. Judges do not want to waste time or confuse the jury with information that has nothing to do with the case.
- Additionally, the courts consider whether the expert’s theory involves speculation, the length of time the expert has held his or her opinion, and whether the expert considered alternative explanations before forming their opinion.

How does this relate to the talc federal multi-district litigation (MDL)?

Johnson & Johnson has submitted *Daubert* motions asking the judge in the talc federal MDL to exclude many of the plaintiff “expert witnesses” because their testimony on the issue of whether talc causes ovarian cancer is unreliable.

In July 2019, the judge held a multi-day *Daubert* hearing, where some of these experts testified and were cross-examined by the opposing side. On October 7, 2019 Johnson & Johnson and the plaintiffs filed post-hearing briefs.

The judge will use the hearings and post-hearing briefs to determine whether the experts’ theories meet the necessary *Daubert* standards.

The timing of the decision is at the discretion of the judge.