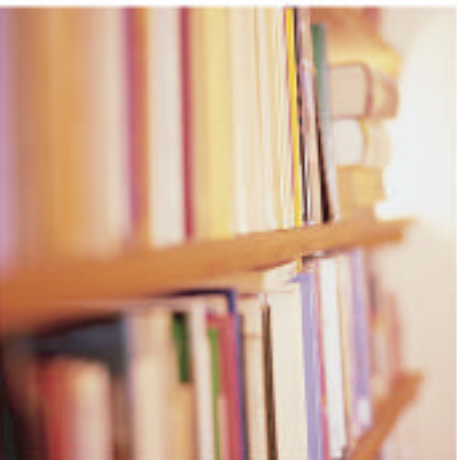




Elevated Standards of Proof and Pleading: Daubert



James Langenfeld



The Future of Private Antitrust Enforcement

AAI, Washington D.C.

Dec 10, 1007



Admissibility Rates for Daubert Challenges

Criminologists/Forensics .847

Appraisers .800

Chemists .722

Hydrologists .667

Statisticians .647

Metallurgists .600

Accountants/Economists .598

Admiralty Experts .556

Aviation Experts .500

Fire Experts .478

Physicians .463

Engineers .390

Accident Reconstructionists .387

Psychologists/Psychiatrists .371

Attorneys .333

Marketing Experts .333

Nurses .333

Toxicologists .308

Polygraphers .121



Admissibility of Accountants/Economists in Antitrust Cases

Case (Final Decisions)

Admissibility

Concord Boat Corp. v. Brunswick Corp. (2000)

Admissibility reversed

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc. (2002)

Appeal Granted, class certification affirmed

Lantec, Inc. v. Novell, Inc. (2002)

Exclusion affirmed

Berlyn, Inc. v. Gazette Newspapers, Inc. (2003)

Exclusion affirmed

Williamson Oil Co. v. Philip Morris USA (2003)

Exclusion affirmed

Conwood Co., L.P. v. U.S. Tobacco Co. (2003)

Admissibility affirmed

Craftsmen Limousine, Inc. v. Ford Motor Co. (2004)

Admissibility reversed

LePage's, Inc. v. 3M (2004)

Admissibility affirmed

El Aguila Food Prods., Inc. v. Gruma Corp. (2005)

Exclusions affirmed

Champagne Metals v. Ken-Mac Metals, Inc. (2006)

Exclusion affirmed

Admissibility Rate 30%

Challenges to Plaintiff's Accountant/Economist: 100%