

PROCEDURES FOR "DAUBERT"¹ TYPE HEARINGS

Hearings to determine the admissibility of opinion testimony on experts must be heard prior to the pretrial and can be time consuming. By statutory definition these hearings will be evidentiary in nature. Testimony will probably be required.² Accordingly, sufficient hearing time will have to be set aside within the court's docket, and once set will not be continued. ALL HEARINGS OF THIS NATURE MUST BE SCHEDULED AND HEARD AT LEAST 45 DAYS PRIOR TO THE PRETRIAL. The following procedures apply:

Once the detailed motion has been filed and served on opposing counsel, counsel must meet and confer. A certification of the meeting pursuant to this order must be filed before, or no later than, the Notice of Hearing.

(1) If the matter is not resolved at the meet and confer, the attorneys will discuss and provide to the Court the following:³

- (a) a list of the experts that will be the subject of the hearing
- (b) a copy of the detailed resume or CV of each witness
- (c) the specific subject matter about which the witness is expected to testify
- (d) each opinion the expert is expected to provide at trial about which there is a concern
- (e) the basis of each opinion including the facts and data relied upon
- (f) the principles and/or methods used to arrive at those opinions
- (g) a good faith estimate by each party of the time each will need for their presentation as well as an estimate of the total amount of time needed for the

¹ *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

² Video conferenced testimony can be utilized if coordinated with other counsel and approved by the Court.

³ If the attorneys cannot agree, the attorney challenging the expert will provide a list of the opinions that they expect the expert to provide and about which they object. The proponent of the expert will provide the information set forth above as to each of those expert opinions.

entire hearing. (Counsel are reminded that hearing time is limited and estimates should be as accurate as possible)

- (2) Each party shall provide the opposing counsel and the Court a list of any witnesses to be called at the Daubert hearing and a short summary of their expected testimony and relevance to the issue before the Court.
- (3) If a court reporter is to be obtained by either party, the party obtaining the court reporter should notify opposing counsel and the court that she/he is obtaining a court reporter.
- (4) Coordinate a hearing time and location with the judicial assistant and opposing counsel. Depending on the number of people to be present, the JA will determine if the courtroom or the hearing room is appropriate.
- (5) Memorandums in support of, or in opposition to, the motion must be filed, exchanged and a hard copy delivered to the judge's chambers not later than 3 business days before the scheduled hearing. Case law not provided to the Court in advance of the hearing will not be reviewed prior to ruling.
- (6) Once a ruling is announced an order must be prepared and submitted to the Court and opposing counsel within three business days of the announced ruling. Opposing counsel shall have three additional business days to object and submit a revised proposed order if appropriate. Lack of response will be deemed a consent to the form of the proposed order submitted. The proposed orders must contain only the findings and ruling of the Court as announced.