

EXPERT EVIDENCE REPORT INDEX-SUMMARY

— Vol. 9, Nos 1-21, pp. 1-560
— Jan. 5 - Nov. 9, 2009

A

ADA *See* AMERICANS WITH DISABILITIES ACT (ADA)

ADEA *See* AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)

ADMISSIBILITY

Causation. *See* CAUSATION

Endangered species act violations, defense testimony of former zoo curator improperly barred (9th Cir.), 502

Medical causation. *See* MEDICAL CAUSATION
Methodology. *See* METHODOLOGY

Qualifications. *See* QUALIFICATIONS

Securities fraud, ethics training testimony admissible to show knowledge and intent (8th Cir.), 501

Sufficiency. *See* SUFFICIENCY

Testing. *See* TESTING

Videotape made by unidentified technician fails to satisfy authentication rule (Md.), 8

AFFIDAVITS

Airline passenger records, expert's affidavit faulty, EU Parliament member's suit against DHS dismissed (D.D.C.), 34

Case management, use and limitations of *Lone Pine* orders, Analysis & Perspective, 101

Electronic records, computer expert's affidavit cited in ordering county to try to recover deleted e-mails (Ohio), 6

Legal malpractice, attorney's affidavit of competency of own conduct set aside (Wyo.), 119

Medical malpractice

—Failure to file supporting affidavit requires dismissal of claim over fall in hospital (N.J. Super. Ct. App. Div.), 27

—Orthopedic specialist affidavit silent on license to practice information insufficient (Tenn. Ct. App.), 289

—Physician letters not in affidavit form not admissible as expert opinions (Mass. App. Ct.), 233

Motor vehicle design defects, conclusory affidavit insufficient (E.D. Mich.), 427

Product liability, affidavit may be used to cure unsworn expert report (8th Cir.), 416

Response to request by referring to previously provided medical records may be amended (Miss.), 332

AGE DISCRIMINATION

Studies, admission for failure to timely object to inadmissible state investigative study impermissible sanction (Mont.), 471

AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)

Firefighters, physical fitness test failure fails to raise triable issue (D. Ore.), 318

Navy employee failed to present statistical proof that new training program amounted to bias (11th Cir.), 38

AGRICULTURE *See also* FOOD

Product liability, "resistant" seeds in crop harm case, expert proof on meaning barred (D. Ariz.), 91

AIR TRANSPORTATION

Airline passenger records, expert's affidavit faulty, EU Parliament member's suit against DHS dismissed (D.D.C.), 34

China, airline crash suit allowed to move on basis of improved legal system (Cal. Ct. App.), 113

Pilot license revocation, positive drug test, estimates as to time detection possible not categorical pronouncements requiring inadmissibility (11th Cir.), 349

ALABAMA

Class actions, expert report based on benchmark amounts paid for uninsured health patients insufficient basis for certification (Ala.), 505

Legal malpractice, bank claiming out-of-state firm failed to meet standard of care requires expert proof (Ala.), 527

Medical malpractice, cervical epidural steroid injection as cause of paralysis, *res ipsa loquitur* may not be relied on (Ala.), 291

Zyprexa-caused diabetes, failure to warn, expert testimony linking weight gain sufficient to deny summary judgment (E.D.N.Y.), 475

AMERICANS WITH DISABILITIES ACT (ADA)

Hearing discrimination, UPS agrees to settlement requiring experts' panel to develop new standards for hard-of-hearing drivers (N.D. Cal.), 316

Reasonable accommodation, expert proof in conflict with plaintiff's testimony rejected (W.D. Mich.), 507

ANALYSIS & PERSPECTIVE

Accounting, forensic experts

—Fee recovery through criminal restitution, 194

—Securities, fair value, 298

Bankruptcy proceeding, attorney-client privilege re expert witnesses, 402

Case management, use and limitations of *Lone Pine* orders, 101

Causation, anecdotal expert proof in product liability litigation, 70

Costs of expert review, "quick peek" suggested as solution, 322

Discovery, data collection, need for consulting forensic experts, 533

E-discovery

—Automated search and retrieval tools, impact on need for experts, 459

—Criminal proceedings, key issues involved in electronically stored information, 268

—In-house re hired experts, pros and cons, 170

—Inadvertently produced documents, clawback agreements, 510

—Lawyers' responsibilities when hiring services, need for industry code of conduct, 375

—Wiping program discovery leads to spoilation of evidence adverse ruling, Analysis & Perspective, 433

Environment

—Damages, property value diminution due to toxic contamination, 129

—Diminished role of experts after *Burlington Northern & Santa Fe*, 350

Financial fraud and subprime litigation, role of expert in class certification and loss causation, 484

Lay witnesses, limiting testimony, 217

Online search for experts, 556

ANTITRUST

Class actions

—Baby products, expert used to show common evidence of price fixing injury (E.D. Pa.), 399

—Cigarettes, economist testimony on parallelism of price leads to reinstatement of class action (N.M. Ct. App.), 239

—Damages

—Calculations on lost sales and price differential excluded (W.D. Okla.), 33

—Econometric multiple regression analysis sufficient to establish class (D. Conn.), 166

—Pineapples, DOJ and FCC Horizontal Merger Guidelines, testimony failing to comply with guides and cherry picking of details rejected (S.D.N.Y.), 522

—Weight of conflicting proof integral, district court must resolve dispute before certifying (3d Cir.), 37

Damages

—Class actions. *See* Class actions, *this heading*
—Estimates, economist testimony relying on untested data from unknown source fails *Daubert* test (D. Del.), 451

Discovery, tobacco pricing data, protective order allowing plaintiff's experts access rejected (S.D.N.Y.), 53

Price fixing

—Methodology sufficiently reliable to allow consideration by jury (S.D. W. Va.), 213

—Statistical proof, econometric opinion not barred (N.D. Ga.), 119

APPAREL

Product safety and liability, flammability of bathrobe, expert evidence not required, suit fails to survive summary judgment (3d Cir.), 13

ARIZONA

Criminal procedure, IQ assessment requires defendant experts to conduct original testing (Ariz.), 520

Medical malpractice, expert witness standards statute not violation of separation of powers (Ariz.), 163

ARKANSAS

House fire, space heater, testimony inadmissible for lack of testing (8th Cir.), 57

Sound of car running over body, expert identification not required in criminal trial (Ark.), 38

ASBESTOS

Automobile brakes

—Experts not required to disprove defendant's hypotheses to carry burden of reliability and relevance (Del. Super. Ct.), 209

—Lack of epidemiological studies, researchers with 30 years experience link carcinogenic qualities of unrefined and refined chrysotile fibers (Del.), 454

Indoor air studies may be used by government in environmental crimes trial (D. Mont.), 94

Joint compound manufacturer, jury allocation of damages in multiproduct exposure case rejected (Cal. Ct. App.), 238

Paper mill dryer felts, scientific evidence on released particles relevant (N.J. Super. Ct. App. Div.), 430

Real property contamination class action, conflicting expert opinions required to be resolved pre-certification (Colo. Ct. App.), 397

Seaman's exposure

—Testimony based on assumption of exposure on particular ship insufficient to uphold verdict (N.D. Ohio), 211

—Third-party products, state law does not require warning of hazards (Cal. Ct. App.), 127

ATTORNEYS

Fees, former judge without specialized or technical knowledge testimony rejected as unhelpful (Ky. Ct. App.), 550

Ineffective assistance of counsel

—Failure of child molestation defendant's counsel to call interview expert not grounds for reversal of conviction (Ind. App.), 127

—Failure to call expert on child forensic interviews showing consistency as coaching not error (Ind. App.), 296

Legal malpractice

—Affidavit set aside as failing to show competency of attorney's own conduct (Wyo.), 119

—Selection and use of experts, key issues discussed at conference, 168

Physician-attorney testifying as necessary witness may not represent party (Tenn. Ct. App.), 227

Privileged communications. *See* PRIVILEGED COMMUNICATIONS; WORK PRODUCT

Qualifications of experts, patent lawyer lacking technical expertise may not testify on invalidity, noninfringement (Fed. Cir.), 30

ATTORNEYS—Contd.

Tax fraud, accountant's conviction set aside for failure of counsel to retain tax expert (N.D. Ill.), 373
Winning strategies for using experts, ABA conference, 243

ATTORNEYS' FEES

Medical malpractice

—Post-dismissal order seeking fees may appeal refusal to dismiss expert report (Tex.), 370
—Refusal to grant after dismissal of action for lack of expert report improper (Tex.), 370

AUTOMOBILES *See* MOTOR VEHICLES

B

BABIES *See* CHILDREN

Birth defects. *See* BIRTH DEFECTS

BANKRUPTCY

Attorney-client privilege re expert witnesses, Analysis & Perspective, 402
Valuation of redwood timber, conflicting opinions, assigning middle range value not abuse of discretion (5th Cir.), 529

BEHAVIORAL ASSESSMENT *See also*

MENTAL BEHAVIOR

Crime scene profiler observation too obvious to be expert testimony (N.J. Super. Ct. App.), 232
Emergency Medical Treatment and Active Labor Act, psychiatrist expert testimony on failure to stabilize mental condition before discharge sufficient to set aside summary judgment (6th Cir.), 238

BIAS

ADEA, Navy employee failed to present statistical proof that new training program amounted to bias (11th Cir.), 38
Criminal proceedings, competency hearing, impartial examination of experts' assessments satisfies fair hearing requirement (N.H.), 256
Disability benefits, medical review experts under contract to plan administrator have increased risk of bias (6th Cir.), 124
Discrimination. *See* DISCRIMINATION
Experts' testimony before administrative law judge not denial of due process (Tex. App.), 191
Product liability, subpoena of expert's tax return and financial records to show bias barred (M.D. Tenn.), 205

BIRTH DEFECTS

Birth-relate neurological disorders, intrauterine hypoxia-ischemia, pre-birth window as time injury probably occurred deemed speculative (Mich. Ct. App.), 312
Expert reports, Tex. 120-day limitation period relates to filing date of original petition (Tex. App.), 386
Obstetrician from Ariz. demonstrating familiarity standards of care should not have been excluded (N.C.), 261
Vacuum extraction caused subdural hematoma, physician knowledge and skills sufficient basis for testimony (Ind. App.), 344

BUILDING AND CONSTRUCTION

Formaldehyde emitting plywood, air quality expert allowed to testify on effects of exposure in confined spaces (M.D. Pa.), 215

C

CALIFORNIA

Airline crash suit allowed to move to China on basis of improved legal system (Cal. Ct. App.), 113

Asbestos

—Joint compound manufacturer, jury allocation of damages in multiproduct exposure case rejected (Cal. Ct. App.), 238
—Seaman's exposure, warning of hazards in third-party products not required (Cal. Ct. App.), 127
Dental malpractice, causation proof exceeding scope of deposition proper where opposing party on notice of possible use (Cal. Ct. App.), 92
Employment discrimination, proof of earnings if promoted allowed, testimony of likelihood of promotion excluded (Cal. Ct. App.), 235
Identity theft, ZIP codes from credit card payments, plaintiff making assertions over ease of theft never sought to be qualified (Cal. Ct. App.), 41
Medical malpractice, jury instructions on requirement of expert testimony for negligence finding proper (Cal. Ct. App.), 395
Psychiatrist owes no duty to relatives of individuals killed by patient (Cal. Ct. App.), 240
Signature falsification, jury instruction on culpability drawn from fabrication of evidence induces settlement (N.D. Cal.), 545
Work product, "root cause analysis" of injury protected (E.D. Tex.), 153

CARS *See* MOTOR VEHICLES

CAUSATION

Acetane
—MDL, hypotheses testimony on relationship to inflammatory bowel disease rejected (M.D. Fla.), 424
—Warning would not have prevented prescription (Fla. Dist. Ct. App.), 552
Asbestos. *See* ASBESTOS
Beryllium exposure suits, lack of admissible evidence leads to dismissal (5th Cir.), 55
Carbon monoxide poisoning
—Dangers of aftermarket muffler installation on minivan not so obvious as to support summary judgment (11th Cir.), 126
—Rental truck passengers, expert proof adequate to defeat summary judgment (M.D. Pa.), 58
Drycleaning, perchloroethylene exposure, testimony based on inadequate scientific data barred (7th Cir.), 336
Financial fraud and subprime litigation, role of expert in class certification and loss causation, Analysis & Perspective, 484
Fires. *See* FIRES
Flood damage caused by negligent road work, expert testimony not required (N.C.), 190
Hip implants, lack of evidence results in summary judgment (5th Cir.), 214
Hormone replacement therapy, breast cancer, failure to determine causation on individual and lack of generally accepted differential diagnosis fails *Frye* test (Minn. Ct. App.), 390
Hydrogen sulfide exposure induced brain injury, expert fails to link level of exposure to injury (D. Neb.), 425
Knee implants, methodological flaws in plaintiff's testimony result in summary judgment for maker (C.D. Ill.), 51
Medical causation. *See* MEDICAL CAUSATION
Mining radiation injuries, experts fail to prove "but-for" causation (10th Cir.), 455
Misidentification of newborn baby, emotional distress claim requires expert proof (Tenn. Ct. App.), 69
Mold exposure, treating physician testimony of humidity in apartment as cause of respiratory ailments sufficient to proceed to trial (N.J. Super. Ct. App. Div.), 525
Motor vehicle accidents. *See* MOTOR VEHICLES
Product liability litigation, anecdotal expert proof in, Analysis & Perspective, 70
Rust inhibitors and diesel exhaust, bladder cancer, expert opinion on cause of sailor's injuries unreliable (5th Cir.), 259

Securities

—Failure to distinguish between fraud and non-fraud causes of loss, exclusion of testimony affirmed (10th Cir.), 117
—Stock price drop, expert use of single event study insufficient to link revelation of questionable circulation practices to drop (5th Cir.), 415
Tugboat slip injury, inadequate training claim, expert fails to establish but-for causation (2nd Cir.), 290
Viagra, nonarteritic anterior ischemic optic neuropathy, discrepancies in key study lead to exclusion of testimony (D. Minn.), 450
Workers' compensation, expert proof required (Tenn.), 505

CHEMICALS

Benzene

—Epidemiological studies cited by expert need not show conclusive causation link (Neb.), 149
—Expert proof failed to establish exposure contributed to worker's leukemia (Tex. App.), 100
—Negligent closure of landfill, expert proof fails to show exposure caused leukemia (Tex.), 253
Beryllium exposure suits, lack of admissible evidence leads to dismissal (5th Cir.), 55
Contact lens solution, manufacturer's "root cause analysis" protected by work product rule (E.D. Tex.), 153
Contamination of property. *See* ENVIRONMENT
Drugs. *See* PHARMACEUTICALS
Drycleaning, perchloroethylene exposure, expert testimony based on inadequate scientific data barred (7th Cir.), 336
Formaldehyde emitting plywood, air quality expert may testify on effects of exposure in confined spaces (M.D. Pa.), 215
Fume inhalation, testimony based on medical history provided by plaintiffs warrants dismissal (La. Ct. App.), 59
Hexavalent chromium, blanket refusal of request to admit scientific evidence insufficient response (M.D. Ga.), 363
Hydrogen sulfide exposure, allergist testimony excluded (7th Cir.), 236
Organic chlorinated solvent exposure, brain dysfunction testimony based on inconsistent methodology deemed unreliable (W. Va. Ct.), 336
Patent infringement, wastewater treatment products, withholding results of key tests grounds for sanctions (Fed. Cir.), 181
Pesticides, toxic tort suits involving obvious risk of spraying in enclosed room do not require expert testimony (6th Cir.), 165
Propenyl chloride, smell loss, differential diagnoses standard deemed reliable, new standards announced (6th Cir.), 225
Rust inhibitors and diesel exhaust, bladder cancer, expert opinion on cause of sailor's injuries unreliable (5th Cir.), 259
Trichloroethylene, kidney cancer, medical group asked to recommend experts (Tenn. Cir. Ct.), 529

CHILDREN

Baby products, expert used to show common evidence of price fixing injury (E.D. Pa.), 399
Birth-relate injuries. *See* BIRTH DEFECTS
Child abuse, suppressed memory evidence, expert not required at summary judgment stage (Ind. App.), 306
Child custody, cultural neutrality reasons for placement of Native American child fails to negate expert witness requirement (R.I.), 396
Child molestation
—Ineffective assistance of counsel
— —Failure of defendant's counsel to call interview expert not ground for reversal of conviction (Ind. App.), 127
— —Failure to call expert on child forensic interviews showing consistency as coaching not error (Ind. App.), 296

CHILDREN —Contd.

Child molestation —Contd.

- Murder verdict, testimony on child molestation too speculative to support (Ind.), 338
- Missing kidney, expert proof not needed to infer negligence (Cal. Ct. App.), 100
- Toys and games, building block manufacturer fails on claim that competitor's promotion of its own blocks was false (W.D. Wash.), 10

CHINA

Airline crash suit allowed to move on basis of improved legal system (Cal. Ct. App.), 113

CIGARETTES See TOBACCO INDUSTRY

CLASS ACTIONS

- ABA Natl. Inst. on Class Actions conference scheduled, 457
- Accutane MDL, testimony relying on hypotheses on relationship to inflammatory bowel disease rejected (M.D. Fla.), 424
- Antitrust
 - Damages, econometric multiple regression analysis sufficient for certification purposes (D. Conn.), 166
 - Pineapples, DOJ and FCC Horizontal Merger Guidelines, testimony failing to comply with guides and cherry picking of details rejected (S.D.N.Y.), 522
 - Weight of conflicting proof integral, district court must resolve dispute before certification (3d Cir.), 37
- Asbestos contamination, conflicting expert opinions required to be resolved pre-certification (Colo. Ct. App.), 397
- Baby products, expert used to show common evidence of price fixing injury (E.D. Pa.), 399
- Certification, motor vehicle defects, expert report detailing type of vehicles experiencing shimmying relevant to numerosity and commonality issues (W.D. Pa.), 418
- Contact lens solution caused eye infection, ophthalmologist's theory not published or peer reviewed unreliable under *Daubert* (D.S.C.), 449
- Employment discrimination, statistical disputes between experts required to be resolved pre-certification (Minn. Ct. App.), 264
- Expert report based on benchmark amounts paid for uninsured health patients insufficient basis for certification of overpayment claims (Ala.), 505
- Financial fraud and subprime litigation, role of expert in certification, Analysis & Perspective, 484
- Fosamax, controlled epidemiological studies, lack of not fatal to expert opinion (S.D.N.Y.), 388; one expert excluded, case to proceed, 473
- Groundwater contamination, *Daubert* analysis not required at certification stage (M.D. Fla.), 526
- Health insurance
 - Expert report based on benchmark amounts paid for uninsured health patients insufficient basis for certification (Ala.), 505
 - Reimbursement practices, settlement agreement remanded for fairness hearing (N.J. Super. Ct. App. Div.), 214
- Neurotin
 - Off-label marketing, decertification based on nonexpert testimony challenged (Pa. Super. Ct.), 333
 - Suicide risk, general causation theory supported by FDA biological plausibility study (D. Mass.), 260; testimony use as common proof of causation faulted, 292
- Race discrimination, untimely preemptive rebuttal expert report not grounds for expanding scope of discovery (S.D. Ind.), 183
- Securities fraud
 - Bear Stearns investors' fiduciary duty, business judgment rule bars speculative opinions (N.Y. Sup. Ct.), 39
 - Failure to conduct economic evaluation of settlement (U.S., rev den), 242

- Stock price drop, expert use of single event study insufficient to link revelation of questionable circulation practices to drop (5th Cir.), 415
- Teflon exposure, population assumptions unacceptable, class certification rejected (D.N.J.), 35
- Tobacco industry
 - Antitrust, economist testimony on parallelism of price leads to reinstatement of action (N.M. Ct. App.), 239
 - Menthol cigarette dangers, expert report filed in Israeli class action, 257
- Viagra, nonarteritic anterior ischemic optic neuropathy, discrepancies in key study lead to exclusion of testimony (D. Minn.), 450
- Wage policies, reliance on averages fails to prove common impact, certification denied (N.D. Ill.), 503

CLOTHING See APPAREL

COLORADO

- Asbestos contamination, conflicting expert opinions required to be resolved before class action certification (Colo. Ct. App.), 397
 - Mining radiation injuries, experts fail to prove "but-for" causation (10th Cir.), 455
- ## COMPETENCY
- Court-appointed expert testimony more credible than defendant's experts (S.D. Fla.), 151
 - Impartial examination of experts' assessments satisfies fair hearing requirement (N.H.), 256
 - Mental capacity of criminal defendant, physician testimony improperly excluded (Tenn.), 58

COMPUTERS

- Computer animation of crime scene, police officer not qualified as expert on animated collages (Wis. Ct. App.), 310
- Computer Fraud and Abuse Act, cost of expert's pre-litigation search for evidence on computer of former employee not qualified loss (N.D. Ill.), 192
- Computer generated animation, challenge to use rejected (3d Cir.), 554
- Disk-wiping software, expert testimony on presence sufficient for adverse jury instruction (D. Colo.), 182
- E-discovery. See DISCOVERY
- Electronic records. See ELECTRONIC RECORDS
- Finding experts online, Analysis & Perspective, 554
- Nanotechnology, user development of *Daubert* strategy and liability defenses, Analysis & Perspective, 15
- Online newsgroup service's capacity to retain subscriber information, expert's reliance on client information requires exclusion (S.D.N.Y.), 68
- Pattern on hard drive may be defect rather than intentional wiping attempt, plaintiff expert's access denied (N.D. Ill.), 88
- Software patents infringement, lump-sum vs. royalty payment damages calculations, expert testimony citing other license agreements without establishing frequency of use fails to support award (Fed. Cir.), 477
- Transcript accuracy, showing of inaccuracy required to compel hard drive inspection by expert (Ohio), 255

CONFERENCES AND MEETINGS

- ABA annual meeting, 400
- ABA Legal Malpractice Conf., 243
- ABA, Natl. Inst. on Class Actions, 457
- Legal Malpractice and Risk Mgmt. Conf., 168
- University of Akron, 531

CONFIDENTIALITY

- Mental health records, disclosure to court-approved expert not waiver of rights (Pa. Super. Ct.), 181
- Privileged communications. See PRIVILEGED COMMUNICATIONS
- Work product. See WORK PRODUCT

CONFLICTING OPINIONS

- Bankruptcy, valuation of redwood timber, assigning middle range value not abuse of discretion (5th Cir.), 529
- Boating accident, definitive and fact-dependent testimony sufficient to overcome manufacture's expert (8th Cir.), 506
- Disability benefits, arbitrary and capricious standard of review applies (7th Cir.), 429

CONFLICTS OF INTEREST

- Bias. See BIAS
- Medical malpractice, physician-attorney testifying as necessary witness may not represent party (Tenn. Ct. App.), 227

CONFUSION

- Embezzlement, tax expert's testimony on ERISA plan properly excluded (5th Cir.), 116
- Patent infringement, meaning of claim term "tip," testimony need not be excluded (Fed. Cir.), 10

CONNECTICUT

- Medical malpractice, jury finding of no breach of standard of care, exclusion of expert causation testimony harmless error (Conn.), 235
- Premises security expert qualified to testify on railroad stairway security (Conn.), 308

COSTS See FEES

COUNSEL See ATTORNEYS

COURT-APPOINTED EXPERTS

- Competency hearing, testimony more credible than defendant's experts (S.D. Fla.), 151
- Lead-paint abatement experts, state liable for defendants' costs (R.I. Super. Ct.), 66
- Medical records confidentiality, disclosure of mental health records to expert not waiver of rights (Pa. Super. Ct.), 181
- Patent litigation, appointment justified in usually complex cases (Fed. Cir.), 164

CRIMINAL LAW AND PROCEDURE

- Accounting fees of forensic experts, recovery through criminal restitution, Analysis & Perspective, 194
- Asbestos, EPA on-site coordinator not qualified to testify on risk assessment, toxicology, or epidemiology (D. Mont), 188
- Bribery, congressman seeks additional time to name expert (E.D. Va.), 283
- Competency hearing, impartial examination of experts' assessments satisfies fair hearing requirement (N.H.), 256
- Computer animation, police officer not qualified as expert on animated collages (Wis. Ct. App.), 310
- Constructive possession of drugs, testimony improperly invaded jury's province, conviction reversed (N.J.), 98
- Dermatologists, expert testimony linking disfigurement to Medicare fraud, conviction upheld (11th Cir.), 295
- DNA testing. See DNA TESTING
- Drug trafficking. See also FORENSIC ANALYSIS
- Anticipatory rehabilitation of expert prejudiced defendant (Md.), 231
- Due process, improper admission of expert testimony deemed denial (7th Cir.), 210
- E-discovery, key issues involved in electronically stored information, Analysis & Perspective, 268
- Embezzlement, tax expert's testimony on ERISA plan properly excluded (5th Cir.), 116
- Foot prints, barefoot insole impression not sufficiently reliable (S.C.), 467
- Forensic analysis. See FORENSIC ANALYSIS
- Forensic document witness, *Daubert* hearing not required where judge aware of qualifications (9th Cir.), 528

CRIMINAL LAW AND PROCEDURE —Contd.

Hearsay evidence, reliance on defense psychologist testimony as basis for transferring case from adult to juvenile court erroneous (Wis. Ct. App.), 159
Homicide, 80 percent certainty as to cause of death sufficient to admit (Wis. Ct. App.), 288
“Incentivized witnesses” and wrongful convictions, testimony properly excluded from post-conviction hearing as “unscientific” (Ind. Ct. App.), 98
Ineffective assistance of counsel. *See* ATTORNEYS
Insider trading, exclusion of criminal defendant’s valuation testimony not improper (10th Cir.), 115
IQ assessment requires defendant experts to conduct original testing (Ariz.), 520
Killing of pregnant woman’s embryo, medical proof of early pregnancy not possible from mere observation, conviction rejected (Tex. Crim. App.), 39
Mental capacity of defendant, physician testimony improperly excluded (Tenn.), 58
Murder, testimony on child molestation too speculative (Ind.), 338
Polygraph evidence based on uncounseled stipulation not admissible (N.J.), 155
Rape, victim credibility, expert opinion rejected for absence of physical proof (N.C. Ct. App.), 474
Sanctions, defense expert testimony rejected for failure to provide conclusions in advance (Wis. Ct. App.), 421
Security camera recording of shooting, videotape made by unidentified technician fails to satisfy authentication rule (Md.), 8
Sex offenses. *See* SEX OFFENSES
Sound of car running over body, expert identification not required (Ark.), 38
Tax fraud, accountant’s conviction set aside for failure to retain tax expert (N.D. Ill.), 373
Transcript accuracy, showing of inaccuracy required to compel hard drive inspection by expert (Ohio), 255
Visual identification of controlled substance insufficiently reliable to be admitted (N.C. Ct. App.), 426

D

DAMAGES

Antitrust
—Calculations on lost sales and price differential excluded (W.D. Okla.), 33
—Econometric multiple regression analysis sufficient for class action certification (D. Conn.), 166
—Economist testimony relying on untested data from unknown source fails *Daubert* test (D. Del.), 451
Asbestos, joint compound manufacturer, jury allocation in multiproduct exposure case rejected (Cal. Ct. App.), 238
Malpractice, state compensatory fund may introduce expert testimony on preexisting risk of harm if relevant to establish amount (Ind.), 157
Mitigation, plaintiff’s own opinion of preexisting medical condition as preventing mitigation insufficient (N.D. Ill.), 266
Property value diminution due to toxic contamination, Analysis and Perspective, 129
Sex discrimination, expert required to testify on lost earnings and pension benefits (3d Cir.), 231
Software patents infringement, lump-sum vs. royalty payment damages calculations, expert testimony citing other license agreements without establishing frequency of use fails to support award (Fed. Cir.), 477
Wrongful birth, limits on post-majority expenses denied (D. Md.), 554

DAUBERT GUIDELINES AND ANALYSIS *See also* FORENSIC ANALYSIS

Antitrust, economist testimony on damages relying on untested data from unknown source deemed unreliable (D. Del.), 451

Asbestos

—Automobile brakes, experts need not disprove defendant’s hypotheses to carry burden of reliability and relevance (Del. Super. Ct.), 209
—Indoor air studies in environmental crimes trial proper (D. Mont.), 94
Chemical sensitivity claim fails to meet requirements (S.D.N.Y.), 40
Class actions, groundwater contamination, *Daubert* analysis not required at certification stage (M.D. Fla.), 526
Contact lens solution caused eye infection, ophthalmologist’s theory not published or peer reviewed unreliable under *Daubert* (D.S.C.), 449
Criminal law, forensic document witness, hearing not required where judge aware of qualifications (9th Cir.), 528
Evidence suppression hearings, *Daubert* analysis of handwriting expert’s qualifications not required (7th Cir.), 211
Ladder defect, testimony of engineer changing opinion not reliable (E.D.N.Y.), 523
Medical causation. *See* MEDICAL CAUSATION
Medical proof that taser caused injury did not meet standards (11th Cir.), 5
Nanotechnology, user development of strategy and liability defenses, Analysis & Perspective, 15
Poultry waste contamination, identification of unique signature not peer reviewed, expedited review of exclusion granted (10th Cir.), 31; microbial source tracking to identify DNA biomarker inadmissible as novel and untested, 285
Product liability, ladders, expert’s use of own test properly excluded (E.D. Tenn.), 91
Reliability, antitrust damages, calculations on lost sales and price differential excluded (W.D. Okla.), 33
Revolving doors, *Daubert* hearing not required before rejecting testimony of engineer failing to conduct independent tests and lacking knowledge of condition at time of accident (Del.), 308
Train ride induced thrombosis, reliance on Google search and CNN.com insufficient (9th Cir.), 158
Viagra, nonarteritic anterior ischemic optic neuropathy, discrepancies in key study lead to exclusion of testimony (D. Minn.), 450
Wrongful death, open heart surgery, subjective belief and unsupported speculation insufficient (E.D. Pa.), 452

DEFENSES

Nanotechnology, user development of *Daubert* strategy and liability defenses, Analysis & Perspective, 15

DELAWARE

Asbestos automobile brakes
—Experts need not disprove defendant’s hypotheses to carry burden of reliability and relevance (Del. Super. Ct.), 33
—Lack of epidemiological studies, researchers with 30 years experience link carcinogenic qualities of unrefined and refined chrysotile fibers (Del.), 454
Medical malpractice
—Catheterization procedure or stent, expert proof failed to link as cause of plaintiff’s injuries under Del. law (E.D. Pa.), 97
—Delayed treatment, lack of lost chance of survival proof results in dismissal (Del.), 507
Police officers required to be qualified as experts before testifying on identification of controlled substance (Del.), 179
Revolving doors, *Daubert* hearing not required before rejecting testimony of engineer failing to conduct independent tests and lacking knowledge of condition at time of accident (Del.), 308
Seroquel as cause of diabetes, differential diagnoses, failure to rule out other causes dooms testimony (Del. Super. Ct.), 309

Stock valuation, certificate of designation setting dissenting shareholder amounts makes expert proof irrelevant (Del. Ch.), 265

DENTAL MALPRACTICE

Causation proof exceeding scope of deposition proper where opposing party was on notice of possible use (Cal. Ct. App.), 92
Removal of wrong tooth, reasonable medical probability meets threshold (Tex. App.), 421

DEPOSITIONS

Product liability expert deposed in similar pending suit in different district required to submit (D. Colo.), 386

DESIGN DEFECTS

Motor vehicles. *See* MOTOR VEHICLES
Power wheelchairs, testimony lacking evidence of manufacturing process, inspection or testing insufficient for summary judgment (N.D.N.Y.), 498
Surgical shoulder chair, expert testimony following brief exam, failure to test, and failure to consult industry representatives unreliable (Mich. Ct. App.), 502

DIFFERENTIAL DIAGNOSIS *See* MEDICAL CAUSATION

DISABILITY BENEFITS

Conflicts of interest, medical review experts under contract to plan administrator have increased risk of bias (6th Cir.), 124
Conflicts opinions, memory loss, arbitrary and capricious standard of review applies (7th Cir.), 429
Peer review, administrator’s sole reliance on file reviews in rejecting benefits for alcoholic employee deemed abuse of discretion (W.D. Mich.), 67
Statistical proof, disability plan administrator improperly relied on expert’s valuation of participant’s stock options (E.D. Cal.), 12

DISABLED PERSONS *See* AMERICANS WITH DISABILITIES ACT (ADA)

DISCLOSURE *See also* CONFIDENTIALITY

Medical records. *See* MEDICAL RECORDS
Motor vehicle design defects, untimely disclosure of scientific basis for expert’s opinion leads to exclusion (11th Cir.), 156
Subject and summary of testimony, proposed federal rule would require, 43

DISCOVERY

Admissions, hexavalent chromium exposure, blanket refusal of request to admit scientific evidence insufficient response (M.D. Ga.), 363
Antitrust, tobacco pricing data, protective order allowing plaintiff’s experts access rejected (S.D.N.Y.), 53
Attorney-client privilege. *See* PRIVILEGED COMMUNICATIONS
Computers. *See* E-discovery, *this heading*
Contraceptives, ex parte communications with plaintiff’s experts barred (E.D. Mo.), 186
Costs, plaintiffs required to defray defendant’s expenses of deposing own expert in Australia (S.D.N.Y.), 151
Data collection, need for consulting forensic experts, Analysis & Perspective, 533
Dental malpractice, causation proof exceeding scope of deposition proper where opposing party on notice of possible use (Cal. Ct. App.), 92
Depositions, product liability expert deposed in similar pending suit in different district required to submit (D. Colo.), 386
E-discovery
—Automated search and retrieval tools, impact on need for experts, Analysis & Perspective, 245

DISCOVERY —Contd.

E-discovery —Contd.

- Criminal proceedings, key issues involved in electronically stored information, Analysis & Perspective, 268
- Digital forensic experts, certification and competency issues, Analysis & Perspective, 245
- Disk-wiping software, expert testimony on presence sufficient for adverse jury instruction (D. Colo.), 182
- In-house re hired expert use, pros and cons, Analysis & Perspective, 170
- Inadvertently produced documents, clawback agreements, Analysis & Perspective, 510
- Lawyers' responsibilities when hiring services, need for industry code of conduct, Analysis & Perspective, 375
- Pattern on hard drive may be defect rather than intentional wiping attempt, plaintiff expert's access denied (N.D. Ill.), 88
- Rummage through hard drive requires some showing that evidence is available and retrievable (Tex.), 442
- Special master review of computer hard drive for relevance, stay of lower court order granted pending review (Tex.), 497
- Transcript accuracy, showing of inaccuracy required to compel hard drive inspection by expert (Ohio), 255
- Use discussed, 531
- Wiping program discovery, spoliation of evidence adverse ruling inferred, Analysis & Perspective, 433
- Medical devices, hernia patches, FDA inspection report and internal reports barred (R.I. Super. Ct.), 282
- Medical malpractice
 - Cardiac surgery morbidity and mortality evidence barred (E.D. Pa.), 281
 - Peer review committee documents privileged (N.C. Ct. App.), 364
 - Sanctions, change in theory after discovery, testimony excluded (1st Cir.), 306
- Mental health records confidentiality, disclosure to court-approved expert not waiver of rights (Pa. Super. Ct.), 181
- Paxil, production of correspondence between researchers and manufacturer ordered (D. Mass.), 508
- Product liability, subpoena of expert's tax return and financial records to show bias barred (M.D. Tenn.), 205
- Race discrimination, untimely preemptive rebuttal expert report not grounds for expanding scope (S.D. Ind.), 183
- Sanctions
 - E-mail, lender's false claim computer hard drives were damaged (E.D. Tex.), 24
 - Internal litigation management database, disclosure by automaker to plaintiff improper sanction in product liability case (Fla. Dist. Ct.), 25
 - Patent infringement, wastewater treatment chemicals, withholding results of key tests grounds for sanctions (Fed. Cir.), 181
 - Systematic abuse by expert not grounds for dismissal (8th Cir.), 180
- Untimely expert evidence may be excluded at summary judgment (Tex.), 227
- Work product. *See* WORK PRODUCT

DISCRIMINATION

- ADA. *See* AMERICANS WITH DISABILITIES ACT (ADA)
- ADEA. *See* AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)
- Bias. *See* BIAS
- Damages mitigation, plaintiff's own opinion of preexisting medical condition as preventing insufficient (N.D. Ill.), 266
- Race. *See* RACE DISCRIMINATION
- Sex. *See* SEX DISCRIMINATION

DISTRICT OF COLUMBIA

- Lab drug analysis, admission without analyst testimony unconstitutional (D.C.), 395

DNA TESTING

- Bulletproof vest, results from testing must be turned over to criminal defendant (Wis. App. Ct.), 41
- Closing arguments, prosecutor's comment concerning Hollywood effect on jury expectations insufficient to require new trial (7th Cir.), 214
- Error rate data must be presented along with data supporting match with defendant (Vt.), 111
- Post-conviction testing, denial not violation of due process (U.S., aff), 347
- Poultry waste contamination, identification of unique signature not peer reviewed, expedited review of exclusion granted (10th Cir.), 31; microbial source tracking to identify DNA biomarker inadmissible as novel and untested (10th Cir.), 285
- Presence of criminal defendant in federal database, testimony did not lead to impermissible jury presumption defendant had criminal history (Ill.), 97
- Supervisor not performing analysis, testimony sufficient (Ind.), 507

DRUGS *See also* PHARMACEUTICALS

- Controlled substances
 - Constructive possession, testimony improperly invaded jury's province, conviction reversed (N.J.), 98
 - Drug trafficking, anticipatory rehabilitation prejudiced defendant (Md.), 231
 - Forensic lab analysts
 - Criminal defendant has right to cross-examination (rev), 345
 - Evidence without analyst testimony unconstitutional (D.C.), 395
 - Weight, expert not personally analyzing substances not allowed to testify (N.C. Ct. App.), 549
 - Medical malpractice, pharmacist may testify on standard of care for prescribing (8th Cir.), 394
 - Pilot license revocation, positive drug test, estimates as to time detection possible not categorical pronouncements requiring inadmissibility (11th Cir.), 349
 - Police officers required to be qualified as experts before testifying on identification of drug (Del.), 179
 - Warrantless search consent, evidence suppression hearings, handwriting expert not subject to *Daubert* analysis (7th Cir.), 98

DRUNK DRIVING

- Blood alcohol level tests, expert proof lacking chain of custody testimony not admissible (S.C.), 501

DUE PROCESS

- Biased experts, testimony before administrative law judge not denial (Tex. App.), 191
- DNA post-conviction testing, denial not violation of due process (U.S., aff), 347
- Improper admission of expert testimony deemed denial of (7th Cir.), 210

E

E-DISCOVERY *See* DISCOVERY

E-MAIL *See* ELECTRONIC RECORDS

ELECTRONIC RECORDS

- Authentication, expert not needed to testify on mechanical accuracy of computer (9th Cir.), 445
- Deleted e-mails, computer expert's affidavit cited in ordering county to make efforts to recover (Ohio), 6
- Discovery sanctions, lender's false claim that computer hard drives were damaged (E.D. Tex.), 24
- E-discovery. *See* DISCOVERY
- Judicial notice, Wikipedia insufficiently reliable to qualify (N.J. Super. Ct.), 257

- Online newsgroup service's capacity to retain subscriber information, expert's reliance on client information requires exclusion (S.D.N.Y.), 68
- Spoilation, ability to cross-examine expert, neutral jury instruction proper (N.H.), 206

ELECTRONIC RESOURCES

- Ed. Note: For a list of selected articles, BNA products, and Internet sources, see back page of each issue.*

EMOTIONAL DISTRESS

- Medical records disclosure, claim rejected for failure to provide expert proof (Iowa), 279
- Misidentification of newborn baby, expert proof required (Tenn. Ct. App.), 69

EMPLOYEE BENEFITS

- Disability. *See* DISABILITY BENEFITS

EMPLOYMENT DISCRIMINATION

- Age discrimination. *See* AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)
- Class actions, statistical disputes between experts required to be resolved pre-certification (Minn. Ct. App.), 264
- Damages, expert required to testify on lost earnings and pension benefits (3d Cir.), 231
- National origin discrimination, statistics failed to show police department more likely to discipline Latino officers than white employees (2d Cir.), 125
- Promotion denial, statistical proof of earnings if promoted allowed, testimony of likelihood of promotion excluded (Cal. Ct. App.), 235
- Race discrimination. *See* RACE DISCRIMINATION
- Sex discrimination. *See* SEX DISCRIMINATION

ENVIRONMENT

- Asbestos
 - Government may use indoor air studies in environmental crimes trial (D. Mont.), 94
 - Real property contamination, conflicting expert opinions required to be resolved before class action certification (Colo. Ct App.), 397
- CERCLA, diminished role of experts after *Burlington Northern & Santa Fe*, Analysis & Perspective, 350
- Class actions
 - Class Action Fairness Act local controversy exception, defendants deemed insignificant (N.D. Ind.), 553
 - Ground water contamination, *Daubert* analysis not required at certification stage (M.D. Fla.), 526
- Clean Air Act, misconduct of expert, payments for testimony concealed (S.D. Ind.), 23
- Formaldehyde emitting plywood, air quality expert allowed to testify on effects of exposure in confined spaces (M.D. Pa.), 215
- Future costs, estimate too speculative (3d Cir.), 291
- Ground water contamination
 - Class actions, *Daubert* analysis not required at certification stage (M.D. Fla.), 526
 - Hydrologist's testimony on third-party tests excluded as speculative (4th Cir.), 31
- Mold and respiratory illness
 - Causation, treating physician testimony of humidity in apartment as cause of respiratory ailments sufficient to proceed to trial (N.J. Super. Ct. App. Div.), 525
 - Frye* hearing leads to dismissal (N.Y. App. Div.), 34
- PCB contamination, golf course, failure to consider other possible sources renders opinion unreliable (D. Conn.), 368
- Poultry waste contamination, identification of unique signature not peer reviewed, expedited review of exclusion granted (10th Cir.), 31; microbial source tracking to identify DNA biomarker inadmissible as novel and untested (10th Cir.), 285
- Property value
 - Contamination claim, expert citing statistical proof sufficient to deny dismissal (N.D. Cal.), 446

ENVIRONMENT—Contd.

Property value—Contd.

- Diminution due to toxic contamination, Analysis and Perspective, 129
- Resource Conservation and Recovery Act
- Gasoline fumes, cleanup order denied for failure to show vapors presented imminent and substantial danger (E.D. Wis.), 417
- Lead contamination, expert report stating samples exceeding state hazardous threshold insufficient to prove imminent and substantial endangerment (2d Cir.), 416
- Superfund cost recovery, soil sample evidence barred for loss of evidence (D. Conn.), 280
- Toxic chemical releases, mere possibility not proof of accidental release (Cal. Ct. App.), 365
- Waste water
- Contaminated bilge water discharge, reasoning to best inference analysis inadmissible (3d Cir.), 287
- Treatment chemicals, patent infringement, withholding results of key tests grounds for sanctions (Fed. Cir.), 181

ERISA

- Denial of benefits, malocclusion correction surgery, testimony that surgery met necessary for adjunctive treatment requirement under state law sufficient to deny summary judgment (D. Or.), 457
- Disability benefits. *See* DISABILITY BENEFITS
- Embezzlement, tax expert's testimony on plan properly excluded (5th Cir.), 116
- Sex discrimination, expert must testify on lost pension benefits (3d Cir.), 231

ETHICS

- Medical malpractice, physician-attorney testifying as necessary witness may not represent party (Tenn. Ct. App.), 227

EVIDENCE

- Computer generated animation, challenge to use rejected (3d Cir.), 554
- Discovery. *See* DISCOVERY
- Electronic records. *See* ELECTRONIC RECORDS

EX PARTE COMMUNICATIONS

- Contraceptives, interviews of plaintiff's experts barred (E.D. Mo.), 186
- Fed.R.Civ. P. 26 proposed changes
- ABA meeting discussion, 400
- Text, 400

EXPERT LIABILITY *See* LIABILITY OF EXPERTS

EXPERT REPORTS

- Cigarettes, menthol dangers, report filed in Israeli class action, 257
- Class actions, engineering report detailing type of motor vehicles experiencing shimmying relevant to numerosity and commonality issues (W.D. Pa.), 418
- Environmental contamination, report stating samples exceeding state hazardous threshold insufficient to prove imminent and substantial endangerment (2d Cir.), 416
- Hospitals
- Bed defect claim deemed product liability action not requiring report (Tex.), 443
- Overpayment of claims statistics report based on benchmark amounts paid for uninsured patients insufficient basis for class certification (Ala.), 505
- Laser hair removal, negligence claim does not require report (Tex. App.), 185
- Medical malpractice
- Certificate of merit requirement unconstitutional (Wash.), 498
- Chiropractor not qualified to testify on causation (Tex. App.), 53

- Emergency medical treatment, state expert report rule does not apply to cases removed to federal court (S.D. Tex.), 11
- Emergency medicine, substantial training and experience sufficient to qualify (Tex. App.), 385
- Fair summary in compliance with statute, refusal to dismiss upheld (Tex. App.), 113
- Knee replacement, radiologist unable to demonstrate knowledge of surgery not qualified (Tex. App.), 453
- Knee surgery negligence claim, scalpel left in patient, *res ipsa loquitur* theory sufficient (Wash. Ct. App.), 499
- Licensed counselor deemed qualified health provider (Tex. App.), 469
- Negligent discharge, report containing series of repetitious and conclusory statement insufficient (Tex. App.), 418
- 120-day limitation period starts with filing date of original petition (Tex. App.), 386
- Order seeking attorneys' fees may appeal refusal of dismissal of report post dismissal (Tex.), 370
- Post-dismissal order seeking attorneys' fees may appeal refusal of dismissal of report (Tex.), 370
- Respondeat superior and statutory liability, vicarious liability claims need not provide separate report (Tex.), 206
- Sanctions for failure to file report survive nonsuit order (Tex.), 281
- Standard of care
- Separate reports required for each defendant (Tex. App.), 207
- Tex. statute only requires standard of proof (Tex. App.), 152
- Surgeon need not perform same procedure to testify as expert (Tex. App.), 228
- Timeliness of filing
- Filing 3 months after deadline excluded (9th Cir.), 187; (U.S., *rev sought*), 367
- Filing within 120 days of amended petition naming new doctor defendants proper (Tex. App.), 370
- Mailings, ordinary postal mail received before expiration of period meets requirements (Tex. App.), 470
- Mandamus unavailable to defendant to appeal extension for plaintiff to file (Tex.), 65
- Service of report prior to filing of claim improper (Tex. App.), 87
- Trial court may grant extension for revision of conclusory report on lumbar epidural (Tex.), 7
- Treating physician need not be qualified as expert (N.C. Ct. App.), 469
- MRI report by nontestifying radiologist relied upon by testifying physicians inadmissible without limiting jury instruction (N.J.), 123
- Nursing home neglect of patients, report required (Tex. App.), 256
- Okl. requires written report, 297
- Product liability
- Affidavit may be used to cure unsworn report (8th Cir.), 416
- Press brake safety guard testimony used reliable methodology and was helpful to jury (W.D. Pa.), 62
- Slip and fall claim not action requiring report (Tex. App.), 370
- Timeliness of filing
- Medical malpractice. *See* Medical malpractice, *this heading*
- Tex., claims against state-owned hospital require timely filing of reports under Medical Liability Act and Tort Claim Act (Tex. App.), 229
- Untimely incomplete reports properly excluded from trial over murder of Colombian union leaders (11th Cir.), 8
- Untimely preemptive rebuttal expert report not grounds for expanding scope (S.D. Ind.), 183
- Vena cava filter implant dislodged during MRI, lack of expert report dooms claim (E.D. Ky.), 229

EYEWITNESSES

- Summary judgment, electrical wire ignition of cooking oil, eyewitness testimony trumps expert opinion (N.C. Ct. App.), 398

F

FALSE ADVERTISING

- Children's building block manufacturer fails on claim that competitor's promotion of its own blocks was false (W.D. Wash.), 10

FARMING

- Product liability, "resistant" seeds in crop harm case, expert proof on meaning barred (D. Ariz.), 91

FEDERAL PREEMPTION *See* PREEMPTION

FEES

- Accounting fees of forensic experts, recovery through criminal restitution, Analysis and Perspective, 194
- Attorneys' fees, former judge without specialized or technical knowledge testimony rejected as unhelpful (Ky. Ct. App.), 550
- Computer Fraud and Abuse Act, cost of expert's pre-litigation search for evidence on computer of former employee not qualified loss (N.D. Ill.), 192
- Court-appointed experts, lead-paint abatement, state liable for defendants' costs (R.I. Super. Ct.), 66
- Depositions, plaintiffs must defray defendant's expenses of deposing plaintiff's expert in Australia (S.D.N.Y.), 151
- Excessive expert review costs, "quick peek" suggested as solution, Analysis & Perspective, 322
- Misconduct, payments for testimony concealed (S.D. Ind.), 23
- Supreme Court original jurisdiction cases, \$40 per day witness attendance fee applies (U.S., *aff.*), 163
- Withholding psychologist fee to give effect to earlier sanction in unrelated case improper (Mass.), 526

FIREARMS AND WEAPONS

- Certification of operability inadmissible without right to confront certificate maker (Mass. App. Ct.), 549
- Medical proof that taser caused injury did not meet standards (11th Cir.), 5
- Rifle explosion, gunsmith's testimony properly accepted as reliable (M.D. Fla.), 93

FIRES

- ADEA, firefighter physical fitness test failure fails to raise triable issue (D. Ore.), 318
- Causation
- Fire marshals not qualified as experts (4th Cir.), 32
- House fires, space heater as cause, testimony inadmissible for lack of testing (8th Cir.), 57
- Plumber's negligent pipe thawing, firefighter's opinion on probability grounded in facts improperly excluded (Mass. App. Ct.), 369
- Product liability
- Bathrobe, expert evidence not required, suit fails to survive summary judgment (3d Cir.), 13
- Portable fan, \$13.5M award attributed to experts (Pa. Ct. C. P.), 553

FLORIDA

- Discovery sanctions, disclosure by automaker of internal litigation management database to plaintiff improper sanction in product liability case (Fla. Dist. Ct.), 25

FOOD

- Antitrust, pineapple market, DOJ and FCC Horizontal Merger Guidelines, testimony failing to comply with guides and cherry picking of details rejected (S.D.N.Y.), 210
- Misbranded, improper admission of expert testimony deemed denial of due process (7th Cir.), 210

FOOD—Contd.

Poultry waste contamination, identification of unique signature not peer reviewed, expedited review of exclusion granted (10th Cir.), 31

FORENSIC ANALYSIS

Blood alcohol level tests, expert proof lacking chain of custody testimony not admissible (S.C.), 501

Controlled substances, expert not personally analyzing substances not allowed to testify (N.C. Ct. App.), 549

Criminal defendant has right to cross-examination (U.S., rev), 345

DNA testing. *See* DNA TESTING

E-discovery. *See* DISCOVERY

Evidence admission without analyst testimony unconstitutional (D.C.), 395

Fingerprint identification meets *Daubert* reliability test (10th Cir.), 427

Firearms, certification of operability inadmissible absent right to confront maker (Mass. App. Ct.), 549

Kan. law requiring justification to examine report author unconstitutional (Kan.), 551

Signature falsification, jury instruction on culpability drawn from fabrication of evidence induces settlement (N.D. Cal.), 545

FRAUD

Securities fraud. *See* SECURITIES FRAUD

FREEDOM OF INFORMATION

Airline passenger records, expert's affidavit faulty, EU Parliament member's suit against DHS dismissed (D.D.C.), 34

FRYE HEARINGS

Hormone therapy caused breast cancer, failure to determine causation on individual and lack of generally accepted differential diagnosis fails test (Minn. Ct. App.), 390

Mold and respiratory illness, suit dismissed after *Frye* hearing (N.Y. App. Div.), 34

ReMu contact lens solution caused corneal infection, extrapolation theory unreliable (N.Y. Sup. Ct.), 391

Vaccines, thimerosal-caused autism, epidemiologist's novel proof fails *Frye-Reed* generally accepted admissibility test (Md.), 307

G

GAMES *See* TOYS AND GAMES

GEORGIA

Jury instructions, medical malpractice, Rocky Mt. Spotted Fever, standard of care instructions misstated law (Ga.), 361

Medical malpractice, experience and practice of medical expert admissible (Ga.), 331

GOVERNMENT CONTRACTS

False claims, speculative evidence barred, other attacks go to weight, not admissibility (S.D.N.Y.), 60

GOVERNMENT EMPLOYEES

Employment discrimination, Navy employee failed to present statistical proof that new training program amounted to age discrimination (11th Cir.), 38

Police. *See* POLICE

Railroads, Federal Employees Liability Act, operation of train in defective manner alleged to cause herniated cervical disk, summary judgment denied (M.D. Tenn.), 66

H

HAWAII

Product liability, seat-belt defects, exclusion of testimony with differences as cumulative deemed error (Haw. Ct. App.), 441

HEALTH CARE

Class actions

—Reimbursement practices, settlement agreement remanded for fairness hearing (N.J. Super. Ct. App. Div.), 214

—Report based on benchmark amounts paid for uninsured health patients insufficient basis for certification (Ala.), 505

Disability benefits. *See* DISABILITY BENEFITS
Discrimination, emergency dispatch/response times in Latino neighborhoods, statistical differences improperly rejected (9th Cir.), 552

Hospitals. *See* HOSPITALS

Malpractice. *See* MEDICAL MALPRACTICE

Medical evidence. *See* MEDICAL CAUSATION

Medicare outlier inflated costs, RICO claims, expert opinion based on unknown amount of unlawful overcharges inadmissible as overly broad (11th Cir.), 472

Misidentification of newborn baby, emotional distress claim requires expert proof (Tenn. Ct. App.), 69

Nursing homes

—Neglect of patients, expert report required (Tex. App.), 256

—Patient's death, proof of negligence based on photos and records not speculative (Mo.), 56

HEARSAY EVIDENCE

Criminal proceedings, reliance on defense psychologist testimony as basis for transferring case from adult to juvenile court erroneous (Wis. Ct. App.), 159

HOSPITALS

Emergency Medical Treatment and Active Labor Act

—Expert testimony required to support premature release claim (E.D. Ky.), 446

—Psychiatrist expert testimony on failure to stabilize mental condition before discharge sufficient to set aside summary judgment (6th Cir.), 238

Expert reports

—Bed defect claim deemed product liability action not requiring report (Tex.), 443

—Overpayment class action, statistics report based on benchmark amounts paid for uninsured patients insufficient basis for certification (Ala.), 505

Patient admissions, physician allowed to testify on standard of care when patient requests specific doctor (Tex. App.), 447

Reimbursement rates, no due process right to cross-examine consulting state expert in administrative hearing (Idaho), 520

Suicide, wrongful death claim against psychiatric facility not malpractice requiring expert proof (Wis. Ct. App.), 283

I

IDAHO

Hospital reimbursement rates, no due process right to cross-examine consulting state expert in administrative hearing (Idaho), 520

Medical malpractice, alcohol abuse, saline replacement treatment, action dismissed for lack of evidence supporting expert opinion (Idaho), 372

ILLINOIS

Computers, pattern on hard drive may be defect rather than intentional wiping attempt, plaintiff expert's access denied (N.D. Ill.), 88

DNA, presence of criminal defendant in federal database, testimony did not lead to impermissible jury presumption defendant had criminal history (Ill.), 97

Medical malpractice, blood tests, duty of physician to order, trial judge improperly entered judgment notwithstanding verdict when testimony was adequate to support award (Ill. App. Ct.), 99

IMPARTIALITY *See* BIAS

INDIANA

Criminal law and procedure

—Child abuse, suppressed memory evidence, expert not required at summary judgment stage (Ind. App.), 306

—“Incentivized witnesses” and wrongful convictions, testimony properly excluded from post-conviction hearing as “unscientific” (Ind. Ct. App.), 98

—Ineffective assistance of counsel

— —Failure of child molestation defendant's counsel to call interview expert not ground for reversal of conviction (Ind. App.), 127

— —Failure to call expert on child forensic interviews to show consistency as coaching not error (Ind. App.), 296

Damages, state medical malpractice compensatory fund may introduce expert testimony on preexisting risk of harm if relevant to establish amount (Ind.), 157

DNA testing, testimony of supervisor not performing analysis sufficient (Ind.), 507

Medical causation, course of treatment, expert testimony may not challenge (Ind. Ct. App.), 160

Medical malpractice

—Brain surgery, testimony based on hypothetical insufficient (Ind. Ct. App.), 456

—Medical literature, anticoagulant caused brain injury, qualified expert allowed to rely on (Ind. Ct. App.), 550

Motor vehicle accidents, chiropractor unqualified to testify on surgeon's diagnoses (Ind. App. Ct.), 54

Murder verdict, testimony on child molestation too speculative to support (Ind.), 338

Physician knowledge and skills sufficient basis for testimony (Ind. App.), 344

Valuation of goodwill, opinion of experienced appraiser visiting business favored over CPA (Ind. App. Ct.), 429

INEFFECTIVE ASSISTANCE OF COUNSEL

See ATTORNEYS

INFANTS *See* CHILDREN

Birth defects. *See* BIRTH DEFECTS

INSURANCE

Disability benefits. *See* DISABILITY BENEFITS
Health insurance reimbursement practices, settlement agreement remanded for fairness hearing (N.J. Super. Ct. App. Div.), 214

INTERNATIONAL DEVELOPMENTS

Airline crash suit allowed to move to China on basis of improved legal system (Cal. Ct. App.), 113

Airline passenger records, expert's affidavit faulty, EU Parliament member's suit against Homeland Security Dept dismissed (D.D.C.), 34

INTERNET *See* COMPUTERS; ELECTRONIC RECORDS

IOWA

Emotional distress, medical records disclosure, claim rejected for failure to provide expert proof (Iowa), 279

J

JOB BIAS *See* EMPLOYMENT DISCRIMINATION

JUDICIAL NOTICE

Wikipedia insufficiently reliable to qualify (N.J. Super. Ct.), 257

JURISDICTION

Class Action Fairness Act local controversy exception, defendants fail to qualify (N.D. Ind.), 553

JURY TRIALS

Asbestos, joint compound manufacturer, jury allocation of damages in multiproduct exposure case rejected (Cal. Ct. App.), 238

Constructive possession of drugs, testimony improperly invaded jury's province, conviction reversed (N.J.), 98

DNA testing

- Presence of criminal defendant in federal database, testimony on did not lead to presumption defendant had criminal history (Ill.), 97
- Prosecutor's closing comment concerning Hollywood effect on jury expectations insufficient to require new trial (7th Cir.), 214

Expert opinions may be ignored (Tex. App.), 431

Finding of no breach of standard of care, exclusion of expert causation testimony harmless error (Conn.), 235

Human trafficking expert testimony usurped jury function (8th Cir.), 236

Instructions

- Disk-wiping software, expert testimony on presence sufficient for adverse jury instruction (D. Colo.), 182
- Medical malpractice
- Negligence finding requires expert testimony (Cal. Ct. App.), 395
- Rocky Mt. Spotted Fever, standard of care instructions misstated law (Ga.), 361
- MRI report by nontestifying radiologist relied upon by testifying physicians inadmissible without limiting instruction (N.J.), 123
- Res ipsa loquitur, testimony on common knowledge rejected for lack of foundation (N.J.), 383
- Signature falsification, instruction on culpability drawn from fabrication of evidence induces settlement (N.D. Cal.), 545
- Spoilation of electronic records, ability to cross-examine expert results in neutral instruction (N.H.), 182

Judgment notwithstanding verdict, trial judge improperly entered when testimony was adequate to support award (Ill. App. Ct.), 99

Winning strategies for using experts, ABA conference, 243

K

KANSAS

Forensic analysis, law requiring justification to examine report author unconstitutional (Kan.), 551

Medical malpractice, retired physician standard of care testimony properly admitted (Kan.), 305

KENTUCKY

Attorneys' fees, former judge without specialized or technical knowledge testimony rejected as unhelpful (Ky. Ct. App.), 550

L

LABELING

Accutane caused inflammatory bowel disease, warning would not have prevented prescription (Fla. Dist. Ct. App.), 552

Federal regulatory approval does not preempt state tort suit challenging adequacy (U.S.), 121

Tylenol, expert opinion on inadequacy of label rejected in light of overdose (Pa. Super. Ct.), 242

LABOR

Expert reports, untimely, incomplete reports properly excluded from trial over murder of Colombian union leaders (11th Cir.), 8

LADDERS *See* PRODUCT SAFETY AND LIABILITY

LAWN AND GARDEN EQUIPMENT

Mowers, removal of operator presence control lever, expert testimony on difficulty of removing device

and pry marks lead to summary judgment for defense (D. Mont.), 428

LAY TESTIMONY

Limiting, Analysis & Perspective, 217

Medical malpractice, negligence suit does not require expert, layman with experience sufficient (Okla. Ct. App.), 67

Undercover policy officer testimony of drug code words properly admitted as lay testimony (1st Cir.), 187

LEAD PAINT

Abatement experts appointed by court, state liable for defendants' costs (R.I. Super. Ct.), 66

LEGAL MALPRACTICE

Affidavit set aside as failing to show competency of attorney's own conduct (Wyo.), 119

Bank claiming out-of-state firm failed to meet standard of care requires expert proof (Ala.), 527

Patents, experience with application process insufficient to qualify as expert (E.D. Ky.), 422

Selection and use of experts, key issues discussed at conference, 168

LEGAL OPINIONS

Taxation, expert opinion properly excluded (9th Cir.), 155

LEGISLATION, FEDERAL

HR

—1260, Patent reform, House panelists urged to require judges to limit expert proof, 267

LIABILITY OF EXPERTS

Dental implants, expert adviser for manufacturer not liable for device defects (La. Ct. App.), 318

Misconduct, payments for testimony concealed (S.D. Ind.), 23

Plaintiff's expert previously retained by defendant disqualified (E.D. Pa.), 372

LOUISIANA

Dental implants, expert for manufacturer not liable for defects (La. Ct. App.), 318

Medical causation, chemical fume inhalation, testimony based on medical history provided by plaintiffs warrants dismissal (La. Ct. App.), 59

M

MAINE

Child sex abuse, palm crease expert properly linked hand in photo of child abuser and criminal defendant's hand (Me.), 85

MALPRACTICE

Legal. *See* LEGAL MALPRACTICE

Medical. *See* MEDICAL MALPRACTICE

MARITIME INDUSTRY

Asbestos, seaman's exposure

- Testimony based on assumption of exposure on particular ship insufficient to uphold verdict (N.D. Ohio), 211
- Third-party products, state law does not require warning of hazards (Cal. Ct. App.), 127

Rust inhibitors and diesel exhaust, bladder cancer, expert opinion on cause of sailor's injuries unreliable (5th Cir.), 259

Tugboats

- Lifting injury, NIOSH ergonomic lifting guidelines not admissible (W.D. Ky.), 343
- Rescue operations, officer claim of inadequate training, expert fails to establish but-for causation (2nd Cir.), 290

Waste water discharge violations, reasoning to best inference analysis inadmissible (3d Cir.), 287

MARYLAND

Drug trafficking, anticipatory rehabilitation of expert prejudiced defendant (Md.), 231

Drunk driving, horizontal gaze nystagmus test, state trooper not qualified as expert (Md.), 286

Qualifications, medical malpractice, 20 percent limit on time spent as expert strictly applied (Md.), 543

Vaccines, thimerosal-caused autism, epidemiologist's novel proof fails *Frye-Reed* generally accepted admissibility test (Md.), 307

Videotape made by unidentified technician fails to satisfy authentication rule (Md.), 8

Wrongful birth, limits on post-majority expenses denied (D. Md.), 554

MASSACHUSETTS

Ballistics, certification of gun operability inadmissible absent right to confront maker (Mass. App. Ct.), 549

Fees, withholding from psychologist to give effect to earlier sanction in unrelated case improper (Mass.), 526

Neurontin, suicide risk, general causation theory supported by FDA study deemed reliable (D. Mass.), 260; testimony use as common proof of causation faulted, 292

Physician letters not in affidavit form not admissible as expert opinions (Mass. App. Ct.), 233

Plumber pipe thawing as cause of house fire, firefighter's opinion on probability grounded in facts improperly excluded (Mass. App. Ct.), 369

MEDICAL CAUSATION

Benzene

—Epidemiological studies cited by expert need not show conclusive causation link (Neb.), 149

—Leukemia, expert proof failed to establish exposure contributed to (Tex. App.), 100

—Negligent closure of landfill, expert proof fails to show exposure caused leukemia (Tex.), 253

Catheterization procedure or stent, expert proof failed to link as cause of plaintiff's injuries under Del. law (E.D. Pa.), 97

Chemical fume inhalation, testimony based on medical history provided by plaintiffs warrants dismissal (La. Ct. App.), 59

Chiropractor not qualified to testify on causation in malpractice case (Tex. App.), 53

Course of treatment, expert testimony may not challenge (Ind. Ct. App.), 160

Dental malpractice, proof exceeding scope of deposition proper where opposing party on notice of possible use (Cal. Ct. App.), 92

Differential diagnoses

- Gas release as cause of injury, diagnosis properly performed (D.N.D.), 60
- Hormone replacement therapy caused breast cancer, failure to determine causation on individual and lack of generally accepted differential diagnosis fails *Frye* test (Minn. Ct. App.), 390
- New standards announced (6th Cir.), 225
- Premarin and Prempro hormone therapy, theory allowed in breast cancer claim (8th Cir.), 547
- Seroquel, diabetes, failure to rule out other causes dooms testimony (Del. Super. Ct.), 309

DPT vaccine as cause of seizures, treating physician testimony sufficient to establish logical sequence of cause and effect (Ct. App. Fed. Cir.), 339

Hydrogen sulfide exposure, allergist testimony excluded (7th Cir.), 236

Hysterectomy, obstetrician qualified to testify infection caused death (Tenn. Ct. App.), 212

Inaccurate medicine dosing cup, expert testimony of 20 to 30 percent inaccuracy not cause of 100 percent overdose (Ind.), 479

Jury finding of no breach of standard of care, exclusion of expert testimony harmless error (Conn.), 235

Laser hair removal, expert report not required for negligence claim (Tex. App.), 185

MEDICAL CAUSATION —Contd.

- Mold and respiratory illness, suit dismissed after *Frye* hearing (N.Y. App. Div.), 34
- Neurontin, suicide risk, general theory supported by FDA study deemed reliable (D. Mass.), 260; testimony use as common proof faulted, 292
- Nurse may qualify as expert (Pa.), 335
- Nursing home negligence, proof based on photos and records not speculative (Mo.), 56
- Pain pump, shoulder deterioration
 - Depositions, product liability expert deposed in similar pending suit in different district required to submit (D. Colo.), 386
 - Studies not based on controlled, randomized epidemiological studies deemed unreliable (S.D. Fla.), 340
- Pesticides, toxic tort suits involving obvious risk of spraying in enclosed room do not require expert testimony (6th Cir.), 165
- Pharmaceuticals. *See* PHARMACEUTICALS
- Stent implant procedure
 - Flawed causation proof leads to dismissal (E.D. Pa.), 61
 - Standard of care, failure to link to injury results in summary judgment (E.D. Pa.), 161
- Tasers, proof that weapon caused injury did not meet *Daubert* standards (11th Cir.), 5
- Timeliness, expert report filed 3 months after deadline excluded (9th Cir.), 187; (U.S. rev sought), 367
- Train ride induced thrombosis, expert relying on Google search and CNN.com to support opinion lacks expertise (9th Cir.), 158
- Treating physician not required to be designated as expert (N.C. Ct. App.), 234
- Tylenol, expert disavowing adequacy of label rejected in light of overdose (Pa. Super. Ct.), 242

MEDICAL DEVICES

- Birth-related neurological disorders, intrauterine hypoxia-ischemia, pre-birth period as time injury probably occurred deemed speculative (Mich. Ct. App.), 312
- Ghostwriting articles in medical journals, Grassley (R-Iowa) requests publications to disclose policies and practices, 373
- Hernia patches, discovery of FDA report on inspection of maker's facility and internal reports barred (R.I. Super. Ct.), 282
- Hip implants, lack of causation evidence results in summary judgment (5th Cir.), 214
- Hospital bed defect claim deemed product liability action not requiring expert report (Tex.), 443
- Knee implants
 - Expert reports, radiologist unable to demonstrate knowledge of surgery not qualified (Tex. App.), 453
 - Methodological flaws in plaintiff's causation testimony result in summary judgment for maker (C.D. Ill.), 51
- Pain pumps, shoulder deterioration
 - Depositions, product liability expert deposed in similar pending suit in different district required to submit (D. Colo.), 386
 - Studies not based on controlled, randomized epidemiological studies deemed unreliable (S.D. Fla.), 340
- Power wheelchair design defect, defense testimony lacking evidence of manufacturing process, inspection or testing insufficient for summary judgment (N.D.N.Y.), 498
- Stent implants
 - Flawed proof leads to dismissal (E.D. Pa.), 61
 - Standard of care, failure to link to injury results in summary judgment (E.D. Pa.), 161
- Vena cava filter implant dislodged during MRI, lack of expert report dooms claim (E.D. Ky.), 229

MEDICAL EXPERTS

- Causation. *See* MEDICAL CAUSATION
- Malpractice. *See* MEDICAL MALPRACTICE
- Reports. *See* EXPERT REPORTS

MEDICAL MALPRACTICE

- Affidavit sufficiency. *See* AFFIDAVITS
- Alcohol abuse, saline replacement treatment, action dismissed for lack of evidence supporting expert opinion (Idaho), 372
- Arizona law setting expert witness standards not violation of separation of powers (Ariz.), 163
- Biofeedback machine, expert testimony not required to prove use of ineffective device (Wash.), 315
- Blood tests, duty of physician to order, trial judge improperly entered judgment notwithstanding verdict when testimony was adequate to support award (Ill. App. Ct.), 99
- Brain surgery, testimony based on hypothetical insufficient (Ind. Ct. App.), 456
- Cardiac surgery morbidity and mortality evidence barred (E.D. Pa.), 281
- Catheterization procedure or stent, expert proof failed to link as cause of plaintiff's injuries under Del. law (E.D. Pa.), 97
- Cervical epidural steroid injection as cause of paralysis, *res ipsa loquitur* may not be relied on (Ala.), 291
- Child's missing kidney, expert proof not needed to infer negligence (Cal. Ct. App.), 100
- Damages, state compensatory fund may introduce expert testimony on preexisting risk of harm if relevant to establish amount (Ind.), 157
- Deadline extensions
 - Excusable neglect standard not applicable to untimely motions (Wis. Ct. App.), 184
 - Lumbar epidural procedure, court may grant time for conclusory expert report to be revised (Tex.), 7
- Delayed treatment, lack of lost chance of survival proof results in dismissal (Del.), 507
- Dental malpractice
 - Causation proof exceeding scope of deposition proper where opposing party was on notice of possible use (Cal. Ct. App.), 92
 - Removal of wrong tooth, reasonable medical probability meets threshold (Tex. App.), 421
- Discovery
 - Cardiac surgery morbidity and mortality evidence barred (E.D. Pa.), 281
 - Peer review committee documents privileged (N.C. Ct. App.), 364
 - Sanctions, change in theory after discovery, testimony excluded (1st Cir.), 306
- Drug overdose, neuropharmacologist lacks medical expertise in wrongful death claim (Tenn. Ct. App.), 548
- Emergency medical state report rule does not applicable to cases removed to federal court (S.D. Tex.), 11
- Experience and practice of medical expert admissible (Ga.), 331
- Expert certificate of merit requirement unconstitutional (Wash.), 498
- Expert reports. *See* EXPERT REPORTS
- Hysterectomy, obstetrician qualified to testify infection caused death (Tenn. Ct. App.), 212
- Jury finding of no breach of standard of care, exclusion of expert causation testimony harmless error (Conn.), 235
- Jury instructions
 - Negligence suits, expert testimony requirement proper (Cal. Ct. App.), 395
 - Rocky Mt. Spotted Fever, standard of care instructions misstated law (Ga.), 361
- Medical literature, anticoagulant caused brain injury, qualified expert allowed to rely on (Ind. Ct. App.), 550
- Negligence suits
 - Expert not required, layman with experience sufficient (Okla. Ct. App.), 67
 - Expert testimony requirement proper (Cal. Ct. App.), 67
- Nurse's unfamiliarity with locality bars testimony over fall from wheelchair (Tenn. Ct. App.), 35
- Oklahoma requires written report, 297

- Ordered exam establishes physician-patient relationship requiring expert proof of negligence claim (Tenn. Ct. App.), 364
- Patient admissions, physician allowed to testify on standard of care when patient requests specific doctor (Tex. App.), 447
- Pharmacist may testify on standard of care for prescribing controlled substance (8th Cir.), 394
- Physician knowledge and skills sufficient basis for testimony (Ind. App.), 344
- Qualifications of expert
 - Anesthesiologist, experience, education, and training sufficient to allow opinion on positioning and padding of patient during surgery (Tex. App.), 545
 - Chiropractor may not testify on causation (Tex. App.), 53
 - Frequency of testimony, 20 percent limit on time spent as expert strictly applied (Md.), 543
 - Locality rule, large metropolitan practice physician may testify on standards in small community (Tenn. Ct. App.), 524
 - Physician from Mo. excluded for not demonstrating familiarity with Tenn. (Tenn. Ct. App.), 93
 - Physician in drug case failed to demonstrate expertise on causation (Tex. App.), 112
 - Substitute doctor may testify in obstetrics case (Tex. App.), 26
- Res ipsa loquitur* jury instruction, testimony on common knowledge rejected for lack of foundation (N.J.), 383
- Retired physician standard of care testimony properly admitted (Kan.), 305
- Stent implant procedure
 - Catheterization procedure or stent, expert proof failed to link as cause of plaintiff's injuries under Del. law (E.D. Pa.), 97
 - Flawed causation proof leads to dismissal (E.D. Pa.), 61
 - Standard of care, failure to link to injury results in summary judgment (E.D. Pa.), 161
- Suicide, wrongful death claim against psychiatric facility not malpractice requiring expert proof (Wis. Ct. App.), 283
- Supplemental testimony modifying prior testimony properly rejected (Utah), 519
- Tenn. Medical Ass'n asked by judge to recommend experts (Tenn. Cir. Ct.), 529
- Tenn. standard of care law only addresses standard of proof (Tex. App.), 152
- Treating physician need not be qualified as expert (N.C. Ct. App.), 469

MEDICAL RECORDS

- Disclosure
 - Emotional distress, claim rejected for failure to provide expert proof (Iowa), 279
 - Mental health records to court-approved expert not waiver of rights (Pa. Super. Ct.), 181

MEDICINE *See* PHARMACEUTICALS

MENTAL BEHAVIOR

- Emergency Medical Treatment and Active Labor Act, psychiatrist expert testimony on failure to stabilize mental condition before discharge sufficient to set aside summary judgment (6th Cir.), 238
- Psychiatrist owes no duty to relatives of individuals killed by patient (Cal. Ct. App.), 240

METHODOLOGY *See also* DAUBERT GUIDELINES AND ANALYSIS

- Antitrust
 - Damages, calculations on lost sales and price differential excluded (W.D. Okla.), 33
 - Pineapple market, DOJ and FCC Horizontal Merger Guidelines, testimony failing to comply with guides and cherry picking of details rejected (S.D.N.Y.), 210

METHODOLOGY —Contd.

Antitrust —Contd.

—Price fixing, methodology sufficiently reliable to allow consideration by jury (S.D. W. Va.), 213

Asbestos automobile brakes, experts not required to disprove defendant's hypotheses to carry burden of reliability and relevance (Del. Super. Ct.), 33

Case management, use and limitations of *Lone Pine* orders, *Analysis & Perspective*, 101

Causation. *See* CAUSATION

Golf course, PCB contamination, failure to consider other possible sources renders opinion unreliable (D. Conn.), 368

Hydrologist's testimony on third-party tests showing ground water contamination excluded as speculative (4th Cir.), 31

Medical causation. *See* MEDICAL CAUSATION

Organic chlorinated solvent exposure caused brain dysfunction, testimony based on inconsistent methodology deemed unreliable (W. Va. Ct.), 336

Pain pump caused shoulder deterioration, studies not based on controlled, randomized epidemiological studies deemed unreliable (S.D. Fla.), 340

Product liability, press brake safety guard testimony deemed and reliable helpful to jury (W.D. Pa.), 62

Sex offender with sleep disorder, self-reported medical history improperly excluded (Tenn.), 56

Statistical proof. *See* STATISTICAL PROOF

Surgical shoulder chair, expert testimony following brief exam, failure to test, and failure to consult industry representatives unreliable (Mich. Ct. App.), 502

Teflon exposure, population assumptions unacceptable, class certification (D.N.J.), 35

Testing. *See* TESTING

Vaccines, thimerosal-caused autism, epidemiologist's novel proof fails *Frye-Reed* generally accepted admissibility test (Md.), 307

Wage policies, reliance on averages fails to prove common impact, class certification denied (N.D. Ill.), 503

Waste water discharge violations, reasoning to best inference analysis inadmissible (3d Cir.), 287

Zyprexa, expert repeatedly stretching the truth disqualified (E.D.N.Y.), 262

MICHIGAN

Design defects, surgical shoulder chair, expert testimony following brief exam, failure to test, and failure to consult industry representatives unreliable (Mich. Ct. App.), 502

Disability discrimination, reasonable accommodation, expert proof in conflict with plaintiff's testimony rejected (W.D. Mich.), 507

Medical malpractice, intrauterine hypoxia-ischemia, pre-birth timing as window injury probably occurred deemed speculative (Mich. Ct. App.), 312

Motor vehicle design defects, air bag deployment, affidavit citing alternative designs ad feasible and not providing risk-utility analysis insufficient (E.D. Mich.), 427

Pesticides, toxic tort suits involving obvious risk of spraying in enclosed room do not require expert testimony (6th Cir.), 165

MINNESOTA

Frye hearings, hormone replacement therapy caused breast cancer, failure to determine causation on individual and lack of generally accepted differential diagnosis fails test (Minn. Ct. App.), 390

Statistical proof, disputes between experts must be resolved before class certification (Minn. Ct. App.), 264

MISSOURI

Nursing home patient's death, proof of negligence based on photos and records not speculative (Mo.), 56

Workers' compensation, simple injury understandable to laymen, evidence to show percentage of disability attributable not required (Mo. Ct. App.), 28

MOLD

Respiratory illness, suit dismissed after *Frye* hearing (N.Y. App. Div.), 34

MONTANA

Age discrimination, admission of inadmissible state investigative study for failure to timely object deemed impermissible sanction (Mont.), 471

Libby asbestos site, EPA on-scene coordinator not qualified to testify on risk assessment, toxicology, or epidemiology (D. Mont), 188

Mowers, removal of operator presence control lever, expert testimony on difficulty of removing device and pry marks leads to summary judgment for defense (D. Mont.), 428

MOTOR VEHICLES

Asbestos brakes

—Experts not required to disprove defendant's hypotheses to carry burden of reliability and relevance (Del. Super. Ct.), 209

—Lack of epidemiological studies, researchers with 30 years experience link carcinogenic qualities of unrefined and refined chrysotile fibers (Del.), 454

Blood alcohol level tests, expert proof lacking chain of custody testimony not admissible (S.C.), 501

Carbon monoxide poisoning
—Dangers of aftermarket muffler installation on minivan not so obvious so as to support summary judgment (11th Cir.), 126

—Rental truck passengers, expert proof adequate to defeat summary judgment (M.D. Pa.), 58

Chiropractor unqualified to testify regarding surgeon's diagnoses in accident case (Ind. App. Ct.), 54

Design defects

—Acceleration and braking problems, rejected transient magnetic signal theory not intrinsically intertwined with circumstantial evidence theory for summary judgment purposes (N.Y. App. Div.), 295

—Air bag deployment, affidavit citing alternative designs ad feasible and not providing risk-utility analysis insufficient (E.D. Mich.), 427

—Class actions, expert report detailing type of vehicles experiencing shimmying relevant to numerosity and commonality issues (W.D. Pa.), 418

—Commercial trailers, safer alternative fails to meet risk-utility analysis (Tex.), 313

—Conclusory affidavit insufficient (E.D. Mich.), 427

—Seat-belt defects, exclusion of testimony with differences as cumulative deemed error (Haw. Ct. App.), 441

—Untimely disclosure of scientific basis for opinion leads to exclusion (11th Cir.), 156

Discovery sanctions, disclosure by automaker of internal litigation management database to plaintiff improper in product liability case (Fla. Dist. Ct.), 25

MRI report by nontestifying radiologist relied upon by testifying physicians inadmissible without limiting jury instruction (N.J.), 123

New York City taxicab hybrid incentive lease cap rules preempted by Energy Policy and Conservation Act (S.D.N.Y.), 332

Rollover accident, opinion testimony on use of seat belt and whether driver fell asleep by state trooper with accident investigation training and personal knowledge proper (Utah Ct. App.), 342

Truck's cargo area, opinion that it is common practice for passengers to ride in lacks "foundational facts" (N.Y. App. Div.), 9

N

NATIONAL ORIGIN DISCRIMINATION *See* EMPLOYMENT DISCRIMINATION

NEBRASKA

Benzene, epidemiological studies cited by expert need not show conclusive causation link (Neb.), 149

Failure to warn claims, user knowledge eliminates as proximate cause (D. Neb.), 425

NECESSITY

Attorneys' fees, former judge's testimony not involving complex or technical issues rejected as unhelpful (Ky. Ct. App.), 550

Biofeedback machine, expert testimony not required to prove use of ineffective device (Wash.), 315

Child abuse, suppressed memory evidence, expert not required at summary judgment stage (Ind. App.), 306

Child custody, cultural neutrality reasons for placement of Native American child fails to negate expert witness requirement (R.I.), 396

Child's missing kidney, expert proof not needed to infer (Cal. Ct. App.), 100

Computer-generated business records, expert not needed to testify on authenticity (9th Cir.), 445

Emergency Medical Treatment and Active Labor Act, expert testimony required to support premature release claim (E.D. Ky.), 446

Expert reports. *See* EXPERT REPORTS

Flood damage caused by road work, expert causation testimony not required (N.C.), 190

Ineffective assistance of counsel, failure of child molestation defendant's counsel to call interview expert not ground for reversal of conviction (Ind. App.), 127

Judgment notwithstanding verdict, medical malpractice trial judge improperly entered when testimony was adequate to support award (Ill. App. Ct.), 99

Knee surgery negligence claim, scalpel left in patient, res ipsa loquitur theory sufficient (Wash. Ct. App.), 499

Legal malpractice, bank claiming out-of-state firm failed to meet standard of care requires expert proof (Ala.), 527

Summary judgment, expert testimony available before proceeding may not be introduced later to support motion for reconsideration (E.D. Pa.), 319

Supervision of bodyguard, expert testimony not required when person with supervisory authority present (D.C. Cir.), 190

Workers' compensation, expert proof required (Tenn.), 505

NEGLIGENCE

Boating accident, definitive and fact-dependent testimony sufficient to overcome manufacturer's expert (8th Cir.), 506

Carbon monoxide poisoning

—Dangers of aftermarket muffler installation on minivan do not support summary judgment (11th Cir.), 126

—Rental truck passengers, expert proof adequate to defeat summary judgment (M.D. Pa.), 58

Child's missing kidney, expert proof not needed to infer negligence (Cal. Ct. App.), 100

Flood damage caused by negligent road work, expert causation testimony not required (N.C.), 190

Laser hair removal, expert report not required (Tex. App.), 185

Medical malpractice. *See* MEDICAL MALPRACTICE

Nursing homes

—Neglect of patients, expert report required (Tex. App.), 256

—Patient death, proof based on photos and records not speculative (Mo.), 56

Stent implant procedure, flawed causation proof leads to dismissal (E.D. Pa.), 61

Suicide, failure to search patient entering inpatient psychiatric facility not malpractice requiring expert proof (Wis. Ct. App.), 283

NEGLIGENCE —Contd.

Supervision of bodyguard, expert testimony not required when person with supervisory authority present (D.C. Cir.), 190

NEW HAMPSHIRE

Criminal proceedings, competency hearing, impartial examination of experts' assessments satisfies fair hearing requirement (N.H.), 256
Electronic records, spoliation, ability to cross-examine expert results in neutral jury instruction (N.H.), 206

NEW JERSEY

Asbestos, paper mill dryer felts, scientific evidence on released particles relevant (N.J. Super. Ct. App. Div.), 430
Criminal law and procedure
—Behavioral assessment, crime scene analyst observation too obvious to be expert testimony (N.J. Super. Ct. App.), 232
—Constructive possession of drugs, testimony improperly invaded jury's province, conviction reversed (N.J.), 98
—Polygraph evidence based on uncounseled stipulation not admissible (N.J.), 155
Expert reports, MRI report by nontestifying radiologist relied upon by testifying physicians inadmissible without limiting jury instruction (N.J.), 123
Health insurance reimbursement practices, settlement agreement remanded for fairness hearing (N.J. Super. Ct. App. Div.), 214
Judicial notice, Wikipedia insufficiently reliable to qualify (N.J. Super. Ct.), 257
Medical malpractice, res ipsa loquitur jury instruction, testimony on common knowledge rejected for lack of foundation (N.J.), 383
Mold exposure, treating physician testimony of humidity in apartment as cause of respiratory ailments sufficient to proceed to trial (N.J. Super. Ct. App. Div.), 525
Pharmaceuticals, Accutane, exclusion of statistical proof of adverse reactions erroneous (N.J. Super. Ct. App. Div.), 158

NEW MEXICO

Antitrust, cigarettes, economist testimony on parallelism of price leads to reinstatement of class action (N.M. Ct. App.), 239

NEW YORK

Design defects, power wheelchairs, defense testimony lacking evidence of manufacturing process, inspection or testing insufficient for summary judgment (N.D.N.Y.), 498
Mold and respiratory illness, suit dismissed after *Frye* hearing (N.Y. App. Div.), 34
Motor vehicle accidents
—Circumstantial evidence theory not intertwined with excluded electromagnetic signal theory (N.Y. App. Div.), 295
—Passengers riding in truck cargo area, opinion that it is common practice lacks "foundational facts" (N.Y. App. Div.), 9
New York City taxicab hybrid incentive lease cap rules preempted by Energy Policy and Conservation Act (S.D.N.Y.), 332
ReMu contact lens solution caused corneal infection, extrapolation theory unreliable (N.Y. Sup. Ct.), 391
Securities, Bear Stearns investors' fiduciary duty suit based on speculative opinions fails under business judgment rule (N.Y. Sup. Ct.), 39

NORTH CAROLINA

Criminal proceedings
—Controlled substances
—Forensic lab analysts, expert not personally analyzing substances not allowed to testify (N.C. Ct. App.), 549
—Visual identification insufficiently reliable to be admitted (N.C. Ct. App.), 426

—Rape, victim credibility, expert opinion rejected for absence of physical proof (N.C. Ct. App.), 474
Discovery, medical malpractice, peer review committee documents privileged (N.C. Ct. App.), 364
Eminent domain, replacement value, appraisers not limited to particular method (N.C. Ct. App.), 294
Medical malpractice, treating physician need not be qualified as expert (N.C. Ct. App.), 469
Negligent road work, flood damage suit not required to provide expert causation testimony (N.C.), 190
Physician qualifications
—Obstetricians, out of state doctor demonstrating familiarity with state standards of care should not have been excluded (N.C.), 261
—Treating physician need not be designated as expert (N.C. Ct. App.), 234
Summary judgment, electrical wire ignition of cooking oil, eyewitness testimony trumps expert opinion (N.C. Ct. App.), 398

O

OCCUPATIONAL SAFETY AND HEALTH

Benzene
—Epidemiological studies cited by expert need not show conclusive causation link (Neb.), 149
—Expert proof failed to establish exposure contributed to worker's leukemia (Tex. App.), 100

OHIO

Deleted e-mails, computer expert's affidavit cited in ordering county to make efforts to recover (Ohio), 6
Physician license revocation, pain management abuse, testimony from neurological re anesthesiology point irrelevant (Ohio Ct App.), 509

OIL AND GAS

Medical causation, toxic release from gas plant as cause of injury, differential diagnosis properly performed (D.N.D.), 60

OKLAHOMA

Medical malpractice, expert report mandate legislation signed by Governor, 297
Medical negligence suit does not require expert, layman with experience sufficient (Okla. Ct. App.), 67

OREGON

Denial of benefits, malocclusion correction surgery, testimony that surgery met necessary for adjunctive treatment requirement under state law sufficient to deny summary judgment (D. Or.), 457

P

PATENTS

Confusion, meaning of claim term "tip," testimony need not be excluded (Fed. Cir.), 10
Court-appointed experts, appointment justified in usually complex cases (Fed. Cir.), 164
Damages, software, lump-sum vs. royalty payment calculations, expert testimony citing other license agreements without establishing frequency of use fails to support award (Fed. Cir.), 477
Discovery abuses, infringement action, withholding results of key tests grounds for sanctions (Fed. Cir.), 181
Legal malpractice, experience with application process insufficient to qualify as expert (E.D. Ky.), 422
Pharmaceuticals, Ultracet, obviousness, expert testimony raises material facts (Fed. Cir.), 480
Qualifications of experts, patent lawyer lacking technical expertise may not testify on invalidity, noninfringement (Fed. Cir.), 30
Reform legislation, House panelists urged to require judges to limit expert proof, 267
Special masters handled cases less likely to be appealed, 216

PENALTIES See SANCTIONS

PENNSYLVANIA

Hazardous waste cleanup costs, estimate of future costs too speculative (3d Cir.), 291
Medical causation
—Nurse may qualify as expert (Pa.), 335
—Tylenol, expert disavowing adequacy of label rejected in light of overdose (Pa. Super. Ct.), 242
Medical records confidentiality, disclosure to court-approved expert not waiver of rights (Pa. Super. Ct.), 181
Railroad OSHA standards, expert proof not preempted by Railway Safety Act (Pa. Super. Ct.), 423

PENSIONS

Sex discrimination, expert required to testify on lost pension benefits (3d Cir.), 231

PHARMACEUTICALS

Accutane
—Exclusion of statistical proof of adverse reactions erroneous (N.J. Super. Ct. App. Div.), 158
—Inflammatory bowel disease, warning would not have prevented prescription (Fla. Dist. Ct. App.), 552
Childhood vaccines and autism, no link found in exhaustive review of expert proof (Fed. Cl.), 96
Contraceptives, ex parte interviews of plaintiff's experts barred (E.D. Mo.), 186
Etodolac contamination, wrongful death claim, reliance on single recall letter insufficient (E.D. Pa.), 311
Forensic analysis. See FORENSIC ANALYSIS
Fosamax
—Controlled epidemiological studies, lack of not fatal to expert opinion (S.D.N.Y.), 388; one expert excluded, case to proceed, 473
—Expert fees, plaintiffs required to defray defendant's expenses of deposing expert in Australia (S.D.N.Y.), 151
—Jaw degeneration failure to warn, expert evidence insufficient to support aggravation of osteonecrosis (S.D.N.Y.), 423
Ghostwriting articles in medical journals, Grassley (R-Iowa) requests publications to disclose policies and practices, 373
Labeling
—Accutane caused inflammatory bowel disease, warning would not have prevented prescription (Fla. Dist. Ct. App.), 552
—Federal regulatory approval does not preempt state tort suit challenging adequacy (U.S.), 121
—Tylenol, expert opinion on inadequacy of label rejected in light of overdose (Pa. Super. Ct.), 242
Methadone, neuropharmacologist lacks medical expertise in wrongful death claim (Tenn. Ct. App.), 548
MoistureLoc contact lens solution, ophthalmologist's theory on eye infection not published or peer reviewed unreliable under *Daubert* (D.S.C.), 449
Neurontin
—Off-label marketing, class decertification based on nonexpert testimony challenged (Pa. Super. Ct.), 333
—Suicide risk, general causation theory supported by FDA biological plausibility study (D. Mass.), 260; 292
Paxil, discovery, production of correspondence between researchers and manufacturer ordered (D. Mass.), 508
Pharmacist may testify on standard of care for prescribing controlled substance (8th Cir.), 394
Premarin and Prempro hormone therapy, differential diagnosis allowed in breast cancer claim (8th Cir.), 547
Prozac, denial of expert leads to motion for new scheduling order to allow for replacement (D.N.M.), 392

PHARMACEUTICALS —Contd.

Qualifications of expert, physician in medical malpractice suit failed to demonstrate expertise on causation (Tex. App.), 112

Remicade, link to pulmonary fibrosis, exclusion of proof proper (11th Cir.), 90

ReMu contact lens solution caused corneal infection, extrapolation theory unreliable (N.Y. Sup. Ct.), 391

Seroquel as cause of diabetes

—Differential diagnoses, failure to rule out other causes dooms testimony (Del. Super. Ct.), 309

—Failure to show causation results in summary judgment for maker (M.D. Fla.), 63

Ultract, patents, expert testimony raises material facts on obviousness (Fed. Cir.), 480

Viagra, nonarteritic anterior ischemic optic neuropathy, discrepancies in key study lead to exclusion of testimony (D. Minn.), 450

Zyprexa

—Diabetes, failure to warn, expert testimony linking weight gain sufficient to deny summary judgment (E.D.N.Y.), 475

—Expert repeatedly stretching the truth disqualified (E.D.N.Y.), 262

PHYSICIANS

Affidavits

—Orthopedic specialist affidavit silent on license to practice information insufficient (Tenn. Ct. App.), 289

—Physician letters not in affidavit form not admissible as expert opinions (Mass. App. Ct.), 233

Blood tests, duty of physician to order, trial judge improperly entered judgment notwithstanding verdict when testimony was adequate to support award (Ill. App. Ct.), 99

Dermatologists, expert testimony linking disfiguring injuries to Medicare fraud, conviction upheld (11th Cir.), 295

Emergency room standard of care, physician unqualified to testify (Tenn. Ct. App.), 289

Ghostwriting articles in medical journals, Grassley (R-Iowa) requests publications to disclose policies and practices, 373

Hydrogen sulfide exposure, allergist testimony excluded (7th Cir.), 236

Knowledge and skills sufficient basis for testimony (Ind. App.), 344

License revocation, pain management abuse, testimony from neurological re anesthesiology point irrelevant (Ohio Ct App.), 509

Medical literature, qualified expert allowed to rely on (Ind. Ct. App.), 550

MRI report by nontestifying radiologist relied upon by testifying physicians inadmissible without limiting jury instruction (N.J.), 123

Physician-attorney testifying as necessary witness may not represent party (Tenn. Ct. App.), 227

Qualifications

—Bypass surgery, emergency room and attending ICU physician not qualified to testify on formulation of ICU policy and procedure (Tex. App.), 520

—Drugs, physician failed to demonstrate expertise (Tex. App.), 112

—Familiarity with local law

— —Doctor from Mo. excluded for not demonstrating familiarity (Tenn. Ct. App.), 93

— —Obstetricians, doctor from Ariz. demonstrating familiarity standards of care should not have been excluded (N.C.), 261

—Treating physician need not be qualified as expert (N.C. Ct. App.), 469

Treating physician

—DPT vaccine as cause of seizures, testimony sufficient to establish logical sequence of cause and effect (Ct. App. Fed. Cir.), 339

—Expert designation not required (N.C. Ct. App.), 234

POLICE

Computer animation of crime scene, officer not

qualified as expert on animated collages (Wis. Ct. App.), 310

Drunk driving, horizontal gaze nystagmus test, state trooper not qualified as expert (Md.), 286

Motor vehicle rollover accident, opinion testimony on use of seat belt and whether driver fell asleep by state trooper with accident investigation training and personal knowledge proper (Utah Ct. App.), 342

National origin discrimination, statistics failed to show department more likely to discipline Latino officers than white employees (2d Cir.), 125

Tugboat rescue operations, officer claim of inadequate training, expert fails to establish but-for causation (2nd Cir.), 290

Undercover officer testimony of drug code words properly admitted as lay testimony (1st Cir.), 187

POOLS See SWIMMING POOLS AND SPAS

PREEMPTION

New York City taxicab hybrid incentive lease cap rules preempted by Energy Policy and Conservation Act (S.D.N.Y.), 332

Pharmaceuticals, federal regulatory approval does not preempt state tort suit challenging adequacy of drug labels (U.S.), 121

Railroad OSHA standards, expert proof not preempted by Railway Safety Act (Pa. Super. Ct.), 423

PRIVACY See also CONFIDENTIALITY

Airline passenger records, expert's affidavit faulty, EU Parliament member's suit against Homeland Security Dep't dismissed (D.D.C.), 34

Identity theft, ZIP codes from credit card payments, plaintiff making assertions over ease of theft never sought to be qualified (Cal. Ct. App.), 41

PRIVILEGED COMMUNICATIONS See also

WORK PRODUCT

Attorney-client privilege re expert witnesses, Analysis & Perspective, 402

Contact lens solution, manufacturer's "root cause analysis" protected (E.D. Tex.), 153

Ex parte communications. See EX PARTE COMMUNICATIONS

Internal litigation management database, automaker disclosure to plaintiff improper discovery sanction in product liability case (Fla. Dist. Ct.), 25

Medical malpractice, peer review committee documents privileged (N.C. Ct. App.), 364

PROCEDURE

Admissions, hexavalent chromium exposure, blanket refusal of request to admit scientific evidence insufficient response (M.D. Ga.), 363

Denial of expert leads to motion for new scheduling order to allow for replacement (D.N.M.), 392

Discovery. See DISCOVERY

Fed. R. Civ. P. 26, draft changes head to Judicial Conf. for review, 321

Patents, special masters handled cases less likely to be appealed, Analysis & Perspective, 216

Summary judgment, expert testimony available before proceeding may not be introduced later to support motion for reconsideration (E.D. Pa.), 319

PRODUCT SAFETY AND LIABILITY

Affidavit may be used to cure unsworn expert report (8th Cir.), 416

Causation, anecdotal expert proof in, Analysis & Perspective, 70

Computer animation demonstration of alternatives, challenge rejected (3d Cir.), 554

Flammability

—Bathrobe, expert evidence not required, suit fails to survive summary judgment (3d Cir.), 13

—Portable fan, \$13.5M award attributed to experts (Pa. Ct. C. P.), 553

Hospital bed defect, expert report not required (Tex.), 443

Inaccurate medicine dosing cup, expert testimony of 20 to 30 percent inaccuracy not cause of 100 percent overdose (Ind.), 479

Ladders

—Engineer not testing product and not qualified to testify on design, testimony excluded (E.D.N.Y.), 523

—Use of own test by expert properly excluded (E.D. Tenn.), 91

—Weight test, failure to perform does not warrant dismissal (7th Cir.), 116

Medical devices. See MEDICAL DEVICES

Mental capacity of criminal defendant, physician testimony improperly excluded (Tenn.), 58

Motor vehicles

—Design defects. See MOTOR VEHICLES

—Disclosure by automaker of internal litigation management database to plaintiff improper sanction (Fla. Dist. Ct.), 25

Mower design defect, operator presence control lever, expert testimony on difficulty of removing device and pry marks lead to summary judgment for defense (D. Mont.). See MEDICAL DEVICES

Nanotechnology, user development of *Daubert* strategy and liability defenses, Analysis & Perspective, 15

Pharmaceuticals. See PHARMACEUTICALS

Pool deck chair, untimely expert evidence may be excluded at summary judgment (Tex.), 227

Power wheelchair design defect claim, testimony lacking evidence of manufacturing process, inspection or testing insufficient for summary judgment (N.D.N.Y.), 498

Press brakes, safety guard testimony used reliable methodology and was helpful to jury (W.D. Pa.), 62

Qualifications, printing press defects, engineer who never worked in printing industry unqualified (2d Cir.), 90

Rifle explosion, gunsmith's testimony properly accepted as reliable (M.D. Fla.), 93

Seeds, definition of "resistant" in crop harm case, expert proof barred (D. Ariz.), 91

Subpoena of expert's tax return and financial records to show bias barred (M.D. Tenn.), 205

Teflon exposure, population assumptions unacceptable, class certification rejected (D.N.J.), 35

PSYCHIATRY See MENTAL BEHAVIOR

PUBLIC SAFETY OFFICERS

Firefighters. See FIRES

Police. See POLICE

Q

QUALIFICATIONS

Asbestos, EPA on-scene coordinator not qualified to testify on risk assessment, toxicology, or epidemiology (D. Mont), 188

Dogs and tracking handlers, reliability standards announced (S.C.), 260

Drunk driving, horizontal gaze nystagmus test, state trooper not qualified as expert (Md.), 286

Emergency room standard of care, physician unqualified to testify (Tenn. Ct. App.), 289

Evidence suppression hearings, handwriting experts, *Daubert* analysis not required (7th Cir.), 211

Fire marshals not qualified as experts on causation (4th Cir.), 32

Identity theft, ZIP codes from credit card payments, plaintiff making assertions over ease of theft never sought to be qualified (Cal. Ct. App.), 41

Medical malpractice

—Arizona law setting expert witness standards not violation of separation of powers (Ariz.), 163

—Drugs, physician failed to demonstrate expertise on causation (Tex. App.), 112

—Emergency medicine, physician with substantial training and experience qualified (Tex. App.), 385

QUALIFICATIONS —Contd.

Medical malpractice —Contd.

- Hysterectomy, obstetrician qualified to testify infection caused death (Tenn. Ct. App.), 212
- Knee replacement, radiologist unable to demonstrate knowledge of surgery not qualified to offer expert report (Tex. App.), 453
- Licensed counselor deemed qualified health provider under state law (Tex. App.), 469
- Locality rule, large metropolitan practice physician may testify on standards in small community (Tenn. Ct. App.), 524
- Mo. expert physician excluded for not demonstrating familiarity with Tenn. (Tenn. Ct. App.), 93
- Nurse may qualify as expert (Pa.), 335
- Obstetrics, doctor from Ariz. demonstrating familiarity with N.C. standard of care should not have been excluded (N.C.), 261
- Pharmacist may testify on standard of care for prescribing controlled substance (8th Cir.), 394
- Physician knowledge and skills sufficient basis for testimony (Ind. App.), 344
- Retired physician standard of care testimony properly admitted (Kan.), 305
- Surgeon need not perform same procedure to testify as expert (Tex. App.), 228
- Mental capacity of criminal defendant, physician improperly excluded (Tenn.), 58
- Mischaracterization as expert, systematic abuse of discovery by expert not grounds for dismissal (8th Cir.), 180
- Motor vehicle accidents, chiropractor unqualified to testify regarding surgeon's diagnoses (Ind. App. Ct.), 54
- Mountain bike races, expert not experienced in organizing, supervising or studying races not qualified to testify on standard of care (10th Cir.), 420
- Objection to expert must be brought within 21 days (Tex. App.), 88
- Patents
 - Infringement, lawyer lacking technical expertise may not testify on invalidity (Fed. Cir.), 30
 - Malpractice, experience with application process insufficient to qualify as expert (E.D. Ky.), 422
- Police
 - Crime scene computer animation, officer not qualified as expert on animated collages (Wis. Ct. App.), 310
 - Identification of controlled substances, officers required to be qualified as experts before testifying (Del.), 179
 - Undercover officer testimony of drug code words properly admitted as lay testimony (1st Cir.), 187
- Product liability, ladder fall, testimony of engineer not testing product and not qualified to testify on design excluded (E.D.N.Y.), 523
- Product liability, printing press defects, engineer who never worked in printing industry unqualified (2d Cir.), 90
- Stairway security, premises security expert qualified to testify on railroad property security (Conn.), 308
- Substitute doctor may testify in obstetrics malpractice case (Tex. App.), 26
- Train ride induced thrombosis, expert relying on Google search and CNN.com to support opinion lacks expertise (9th Cir.), 158

QUALIFICATIONS OF EXPERT

- Bypass surgery, emergency room and attending ICU physician not qualified to testify on formulation of ICU policy and procedure (Tex. App.), 520

R

RACE DISCRIMINATION

- Discovery, untimely preemptive rebuttal expert report not grounds for expanding scope (S.D. Ind.), 183

Statistical proof

- Disparate impact analysis failing to consider individual characteristics rejected (8th Cir.), 286
- Emergency dispatch/response times in Latino neighborhoods, rejection of neighborhood differences improper (9th Cir.), 552
- Promotion denial, school district pairing of white and black principals under affirmative action plan sufficient (8th Cir.), 481

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO) ACT

- Medicare outlier reimbursements, expert opinion based on unknown amount of unlawful overcharges inadmissible as overly broad (11th Cir.), 472

RADIATION EXPOSURE

- Mining and milling operations, experts fail to prove "but-for" causation (10th Cir.), 455

RAILROADS

- Federal Employees Liability Act, operation of train in defective manner alleged to cause herniated cervical disk, summary judgment denied (M.D. Tenn.), 66
- OSHA standards, expert proof not preempted by Railway Safety Act (Pa. Super. Ct.), 423
- Stairways, premises security expert qualified to testify on railroad property security (Conn.), 308
- Train ride induced thrombosis, expert relying on Google search and CNN.com to support opinion lacks expertise (9th Cir.), 158

REAL ESTATE

- Asbestos contamination, conflicting expert opinions required to be resolved before class action certification (Colo. Ct App.), 397
- PCB contamination, failure to consider other possible sources renders opinion unreliable (D. Conn.), 368
- Property value
 - Condemned property easement, income method of appraisal improperly excluded (Tex.), 366
 - Diminution due to toxic contamination, Analysis and Perspective, 129
 - Eminent domain, replacement value, appraisers not limited to particular method (N.C. Ct. App.), 294

RELIABILITY

- Antitrust damages, calculations on lost sales and price differential excluded (W.D. Okla.), 33
- Daubert guidelines. *See* DAUBERT GUIDELINES AND ANALYSIS
- Differential diagnosis standards. *See* MEDICAL CAUSATION
- Dogs and tracking handlers, standards announced (S.C.), 260
- General acceptance, palm crease expert properly linked hand in photo of child abuser and criminal defendant's hand (Me.), 85
- Rifle explosion, gunsmith's testimony properly accepted as reliable (M.D. Fla.), 93

REMOVAL JURISDICTION

- Airline crash suit allowed to move to China on basis of improved legal system (Cal. Ct. App.), 113
- Medical malpractice, state expert report rule does not apply to cases removed to federal court (S.D. Tex.), 11

REVOLVING DOORS

- Daubert* hearing not required before rejecting testimony of engineer failing to conduct independent tests and lacking knowledge of condition at time of accident (Del.), 308

RHODE ISLAND

- Child custody, cultural neutrality reasons for placement of Native American child fails to negate expert witness requirement (R.I.), 396
- Court-appointed experts, lead-paint abatement, state liable for defendants' costs (R.I. Super. Ct.), 66

RIGHT TO COUNSEL *See* ATTORNEYS

S

SANCTIONS

- Age discrimination, admission for failure to timely object to inadmissible state investigative study impermissible sanction (Mont.), 471
- Criminal defense expert testimony rejected for failure to provide conclusions in advance (Wis. Ct. App.), 421
- Discovery abuses
 - Internal litigation management database, disclosure by automaker to plaintiff improper in product liability case (Fla. Dist. Ct.), 25
 - Medical malpractice, change in theory after discovery, testimony excluded (1st Cir.), 306
 - Mischaracterization as expert, systematic abuse by expert not grounds for dismissal (8th Cir.), 180
 - Patent infringement, wastewater treatment chemicals, withholding results of key tests grounds for sanctions (Fed. Cir.), 181
- Disk-wiping software
 - Discovery leads to spoliation of evidence adverse ruling, Analysis & Perspective, 433
 - Expert testimony on presence sufficient for adverse jury instruction (D. Colo.), 182
- Electronic discovery, lender's false claim computer hard drives were damaged (E.D. Tex.), 24
- Fee withholding from psychologist to give effect to earlier sanction in unrelated case improper (Mass.), 526
- Medical malpractice, sanctions for failure to file report survive nonsuit order (Tex.), 281
- Superfund cost recovery, soil sample evidence barred for loss of samples and test data (D. Conn.), 280

SCIENTIFIC EVIDENCE

- Daubert standards. *See* DAUBERT GUIDELINES AND ANALYSIS
- Medical evidence. *See* MEDICAL CAUSATION

SECURITIES

- Fiduciary duty breach, Bear Stearns investors' suit based on speculative opinions barred under business judgment rule (N.Y. Sup. Ct.), 39
- Fraud. *See* SECURITIES FRAUD
- Loss causation
 - Failure to distinguish between fraud and non-fraud causes, exclusion of testimony affirmed (10th Cir.), 117
 - Financial fraud and subprime litigation, role of expert, Analysis & Perspective, 484
- Valuation evidence
 - Certificate of designation setting dissenting shareholder amounts makes expert proof irrelevant (Del. Ch.), 242
 - Fair value accounting by forensic experts, Analysis & Perspective, 298
 - Insider trading, exclusion of criminal defendant's valuation testimony proper (10th Cir.), 115
 - Settlements, failure to conduct economic evaluation (U.S., rev den), 242

SECURITIES FRAUD

- Class actions
 - Bear Stearns investors' fiduciary duty, business judgment rule bars speculative opinions (N.Y. Sup. Ct.), 39
 - Failure to conduct economic evaluation of settlement (U.S., rev den), 242
- Ethics training testimony admissible to show knowledge and intent (8th Cir.), 501
- Failure to distinguish between fraud and non-fraud causes of loss, exclusion of testimony affirmed (10th Cir.), 117
- Loss causation, role of expert, Analysis & Perspective, 484

SETTLEMENTS

ADA, hearing discrimination, experts panel to develop new standards for hard-of-hearing UPS drivers (N.D. Cal.), 316
Securities fraud class action, failure to conduct economic evaluation (U.S., rev den), 242

SEX DISCRIMINATION

Damages, expert must testify on lost earnings and pension benefits (3d Cir.), 231
Stereotypes, sociologist testimony properly excluded (1st Cir.), 210

SEX OFFENSES

Child molestation. *See* CHILDREN
Child sex abuse, palm crease expert properly linked hand in photo of child abuser and criminal defendant's hand (Me.), 85
Sleep disorder, offender's self-reported medical history improperly excluded (Tenn.), 56

SHIPS AND SHIPPING *See* MARITIME INDUSTRY

SLIP AND FALL INJURIES

Expert report not required (Tex. App.), 370
Safety mat placement, failure to articulate industry standard grounds for exclusion (10th Cir.), 367

SOFTWARE *See* COMPUTERS

SOUTH CAROLINA

Blood alcohol level tests, expert proof lacking chain of custody testimony not admissible (S.C.), 501
Contact lens solution caused eye infection, ophthalmologist's theory not published or peer reviewed unreliable under *Daubert* (D.S.C.), 449
Criminal proceedings, barefoot insole impression not sufficiently reliable (S.C.), 467
Dogs and tracking handlers, qualification set (S.C.), 260

SPOILATION

Electronic records
—Ability to cross-examine expert, neutral jury instruction proper (N.H.), 206
—Disc-wiping program discovery leads to adverse ruling, *Analysis & Perspective*, 433

STANDARDS OF REVIEW

Patent interference procedures, de novo review of new evidence required, deferential standard rejected (Fed. Cir.), 314

STATE AND LOCAL GOVERNMENT

Deleted e-mails, computer expert's affidavit cited in ordering county to try to recover (Ohio), 6
Firefighters. *See* FIRES
Police. *See* POLICE

STATISTICAL PROOF

Accutane, exclusion of proof of adverse reactions erroneous (N.J. Super. Ct. App. Div.), 158
Antitrust
—Damages, econometric multiple regression analysis sufficient to prove (D. Conn.), 166
—Price fixing, econometric opinion not barred (N.D. Ga.), 119
Class actions, expert report based on benchmark amounts paid for uninsured health patients insufficient basis for certification (Ala.), 505
Disability plan administrator improperly relied on expert's valuation of plan participant's stock options (E.D. Cal.), 12
Employment discrimination
—ADEA, Navy employee fails to show new training program amounted to discrimination (11th Cir.), 38
—Disputes between experts required must resolved before class certification (Minn. Ct. App.), 264

—Latino police officers, statistics failed to show department more likely to discipline than white employees (2d Cir.), 125
—Proof of earnings if promoted allowed, testimony of likelihood of promotion excluded (Cal. Ct. App.), 235
Environmental contamination claim, valuation expert citing statistical proof sufficient to deny dismissal (N.D. Cal.), 446
Executive compensation, formula for determining bonuses inconsistently applied by trial judge (7th Cir.), 126
Health insurance reimbursement practices, settlement agreement remanded for fairness hearing (N.J. Super. Ct. App. Div.), 214
Neurontin, suicide risk, general causation theory supported by FDA biological plausibility study (D. Mass.), 260; testimony use as common proof of causation faulted, 292
Race discrimination
—Disparate impact analysis failing to consider individual characteristics rejected (8th Cir.), 286
—Emergency dispatch/response times in Latino neighborhoods, rejection of differences between neighborhoods improper (9th Cir.), 552
—Promotion denial, school district pairing of white and black principals under affirmative action plan sufficient (8th Cir.), 481
Workers' compensation, simple injury understandable to laymen, evidence to show percentage of disability attributable not required (Mo. Ct. App.), 28

STATUTES OF LIMITATIONS *See generally* TIMELINESS

SUFFICIENCY

Boating accident, definitive and fact-dependent testimony sufficient to overcome manufacturer's expert (8th Cir.), 506
False claims, speculative evidence barred, other attacks go to weight, not admissibility (S.D.N.Y.), 60
Hearing loss, one-day test of noise level not sufficient to overturn award (Tenn.), 482
Legal malpractice, affidavit set aside as failing to show competency of attorney's own conduct (Wyo.), 119
Medical malpractice
—Blood tests, duty of physician to order, trial judge improperly entered judgment notwithstanding verdict (Ill. App. Ct.), 99
—Negligence suit does not require expert, layman with experience sufficient (Okla. Ct. App.), 67
—Stent implant procedure
—Flawed causation proof leads to dismissal (E.D. Pa.), 61
—Standard of care, failure to link to injury results in summary judgment (E.D. Pa.), 161
Railroads, Federal Employees Liability Act, operation of train in defective manner alleged to cause herniated cervical disk, summary judgment denied (M.D. Tenn.), 66

SUMMARY JUDGMENTS

Carbon monoxide poisoning
—Dangers of aftermarket muffler installation on minivan do not support summary judgment (11th Cir.), 126
—Rental truck passengers, expert proof defeats summary judgment (M.D. Pa.), 58
Child abuse, suppressed memory evidence, expert not required at summary judgment stage (Ind. App.), 306
Design defects, power wheelchairs, defense testimony lacking evidence of manufacturing process, inspection or testing insufficient for summary judgment (N.D.N.Y.), 498
Electrical wire ignition of cooking oil, eyewitness testimony trumps expert opinion (N.C. Ct. App.), 398

Environmental contamination, valuation expert citing statistical proof sufficient to deny dismissal (N.D. Cal.), 446
False advertising, building block manufacturer fails on claim that competitor's promotion of its own blocks was false (W.D. Wash.), 10
Medical causation
—Knee implants, methodological flaws in plaintiff's causation testimony result in summary judgment for maker (C.D. Ill.), 51
—Seroquel as cause of diabetes, failure to show causation results in summary judgment for maker (M.D. Fla.), 63
Patent infringement, Ultracet, obviousness, expert testimony raises material facts (Fed. Cir.), 480
Product safety and liability
—Flammability of bathrobe, expert evidence not required, but suit fails to survive summary judgment (3d Cir.), 13
—Inaccurate medicine dosing cup, expert testimony of 20 to 30 percent inaccuracy not cause of 100 percent overdose (Ind.), 479
Railroads, Federal Employees Liability Act, operation of train in defective manner alleged to cause herniated cervical disk, summary judgment denied (M.D. Tenn.), 66
Zyprexa-caused diabetes, failure to warn, expert testimony linking weight gain sufficient to deny summary judgment (E.D.N.Y.), 475

SUPPLEMENTAL TESTIMONY

Medical malpractice, new testimony modifying prior testimony properly rejected (Utah), 519

SUPREME COURT, U.S.

DNA post-conviction testing, denial not violation of due process (aff), 347
Expert reports, timeliness of filing (rev sought), 367
Forensic lab analysts, criminal defendant has right to cross-examination (rev), 345
Pharmaceuticals, federal regulatory approval does not preempt state tort suit challenging adequacy of labels (aff), 121
Valuation evidence, settlements, failure to conduct economic evaluation (rev den), 242
Witness fees, \$40 per day attendance fee applies to original jurisdiction cases (aff), 163

SURVEY PROOF

Debt collection, survey letters excluded (7th Cir.), 162

SWIMMING POOLS AND SPAS

Cleaning chemicals, smell loss, differential diagnoses standard deemed reliable, new standards announced (6th Cir.), 225
Deck chairs, untimely expert evidence may be excluded at summary judgment (Tex.), 227

T

TAXATION

Embezzlement, tax expert's testimony on ERISA plan properly excluded (5th Cir.), 116
Fraud, accountant's conviction set aside for failure of counsel to retain tax expert (N.D. Ill.), 373
Legal opinion properly excluded (9th Cir.), 155
Offers in compromise, favoring one appraiser's valuation over another not abuse of discretion (3d Cir.), 528
State agency with no expertise in differentiating computers, copiers, and faxes not entitled to deference (Wis. Ct. App.), 430
Subpoenas, expert's return and financial records barred from discovery to prove bias (M.D. Tenn.), 205

TENNESSEE

Emergency room standard of care, physician unqualified to testify (Tenn. Ct. App.), 289
Hearing loss, one-day test of noise level not sufficient to overturn award (Tenn.), 482

TENNESSEE —Contd.

Medical malpractice

- Drug overdose, neuropharmacologist lacks medical expertise (Tenn. Ct. App.), 548
- Hysterectomy, obstetrician qualified to testify infection caused death (Tenn. Ct. App.), 212
- Locality rule
- Large metropolitan practice physician may testify on standards in small community (Tenn. Ct. App.), 524
- Plastic surgery, familiarity with similar communities sufficient (Tenn. Ct. App.), 398
- Nurse's unfamiliarity with locality's standard of care bars testimony over fall from wheelchair (Tenn. Ct. App.), 35
- Ordered exam establishes physician-patient relationship requiring expert proof of negligence claim (Tenn. Ct. App.), 364
- Orthopedic specialist affidavit silent on license to practice information insufficient (Tenn. Ct. App.), 289
- Physician-attorney testifying as necessary witness may not represent party (Tenn. Ct. App.), 227
- Physician from Mo. excluded for not demonstrating familiarity with state law (Tenn. Ct. App.), 93
- Misidentification of newborn baby, emotional distress claim requires expert proof (Tenn. Ct. App.), 69
- Qualifications, mental capacity of criminal defendant, physician improperly excluded (Tenn.), 58
- Sex offender with sleep disorder, self-reported medical history improperly excluded (Tenn.), 56
- Workers' compensation, expert causation proof required (Tenn.), 505

TESTING

- ADEA, firefighter physical fitness test failure fails to raise triable issue (D. Ore.), 318
- Blood tests, duty of physician to order, trial judge improperly entered judgment notwithstanding verdict when testimony was adequate to support award (Ill. App. Ct.), 99
- Building block manufacturer's claim that competitor's promotion of its own blocks was false disproved by testing of blocks (W.D. Wash.), 10
- DNA. *See* DNA TESTING
- Ground water contamination, hydrologist's testimony on third-party tests excluded as speculative (4th Cir.), 31
- Hearing loss, one-day test of noise level not sufficient to overturn award (Tenn.), 482
- House fire, space heater, testimony inadmissible for lack of testing (8th Cir.), 57
- Ladders
- Use of own test by expert properly excluded (E.D. Tenn.), 91
- Weight test, failure to perform does not warrant dismissal (7th Cir.), 116
- Superfund cost recovery, soil sample evidence barred for loss of samples and test data (D. Conn.), 280

TEXAS

Benzene

- Leukemia, expert proof failed to establish exposure contributed to (Tex. App.), 100
- Negligent closure of landfill, expert proof fails to show exposure caused leukemia (Tex.), 253
- Biased experts, testimony before administrative law judge not denial of due process (Tex. App.), 191
- Condemned property easement, income method of appraisal improperly excluded (Tex.), 366
- Design defects, commercial trailers, safer alternative fails to meet risk-utility analysis (Tex.), 313
- Discovery
- E-discovery
- Rummage through hard drive requires some showing that evidence is available and retrievable (Tex.), 442
- Special master review of computer hard drive for relevance, stay of lower court order granted pending review (Tex.), 497

- Untimely expert evidence may be excluded at summary judgment (Tex.), 227
- Expert reports
- Fair summary in compliance with statute, refusal to dismiss upheld (Tex. App.), 113
- Hospital bed defect claim deemed product liability action not requiring report (Tex.), 443
- Medical malpractice
- Attorneys' fees, refusal to grant after dismissal of action for lack of expert report improper (Tex.), 370
- Emergency medicine, substantial training and experience sufficient to qualify (Tex. App.), 385
- Licensed counselor deemed qualified health provider (Tex. App.), 469
- Negligent discharge, report containing series of repetitious and conclusory statement insufficient (Tex. App.), 418
- Order seeking attorneys' fees may appeal refusal of dismissal of report post dismissal (Tex.), 370
- Respondeat superior and statutory liability, vicarious liability claims not required to provide separate report (Tex.), 206
- Sanctions for failure to file survive nonsuit order (Tex.), 281
- Standard of care, separate reports required for each defendant (Tex. App.), 207
- Timeliness. *See* Timeliness of filing, *this subheading*
- Nursing home neglect of patients, report required (Tex. App.), 256
- Slip and fall claim not action requiring report (Tex. App.), 370
- Timeliness of filing
- Filing within 120 days of amended petition naming new doctor defendants proper (Tex. App.), 370
- Mailings, ordinary postal mail received before expiration of period meets requirements (Tex. App.), 470
- Mandamus unavailable to defendant to appeal extension for plaintiff to file (Tex.), 65
- 120-day period relates to filing date of original petition (Tex. App.), 386
- Service of report prior to filing of claim improper (Tex. App.), 87
- Trial court may grant extension for revision of conclusory report (Tex.), 7
- Jury may disregard expert testimony (Tex. App.), 431
- Killing of pregnant woman's embryo, medical proof of early pregnancy not possible from mere observation, conviction rejected (Tex. Crim. App.), 39
- Laser hair removal, negligence claim does not require expert report (Tex. App.), 185
- Medical malpractice
- Chiropractor not qualified to testify on causation (Tex. App.), 53
- Dental malpractice, removal of wrong tooth, reasonable medical probability meets threshold (Tex. App.), 421
- Expert reports, sanctions for failure to file report survive nonsuit order (Tex.), 281
- Patient admissions, physician allowed to testify on standard of care when patient requests specific doctor (Tex. App.), 447
- Qualifications of expert. *See* Qualifications of expert, *this heading*
- State expert report rule does not apply to cases removed to federal court (S.D. Tex.), 11
- Substitute doctor qualified to testify in obstetrics case (Tex. App.), 26
- Surgeon need not perform same procedure to testify as expert (Tex. App.), 228
- Timeliness of reports. *See* Expert reports, *this heading*
- Qualifications of expert
- Anesthesiologist, experience, education, and training sufficient to allow opinion on positioning and padding of patient during surgery (Tex. App.), 545

- Bypass surgery, emergency room and attending ICU physician not qualified to testify on formulation of ICU policy and procedure (Tex. App.), 520
- Objection to expert must be brought within 21 days (Tex. App.), 88
- Pharmaceuticals, physician in medical malpractice suit failed to demonstrate expertise on causation (Tex. App.), 112

TIMELINESS

- Age discrimination, admission of inadmissible state investigative study for failure to timely object impermissible sanction (Mont.), 471
- Deadline extension for naming experts, excusable neglect standard not applicable to untimely motions (Wis. Ct. App.), 184
- Discovery, untimely expert evidence may be excluded at summary judgment (Tex.), 227
- Expert reports, timeliness of filing
- Filing 3 months after deadline excluded (9th Cir.), 187; (U.S. rev sought), 367
- Filing within 120 days of amended petition naming new doctor defendants proper (Tex. App.), 370
- Mailings, ordinary postal mail received before expiration of period meets requirements (Tex. App.), 470
- Mandamus unavailable to defendant to appeal extension for plaintiff to file (Tex.), 65
- Service of report prior to filing of claim improper (Tex. App.), 87
- State-owned hospital, claim against requires timely filing of reports under Medical Liability Act and Tort Claim Act (Tex. App.), 229
- Tex. 120-day period relates to filing date of original petition (Tex. App.), 386
- Trial court may grant extension for revision of conclusory report (Tex.), 7
- Untimely preemptive rebuttal report not grounds for expanding scope (S.D. Ind.), 183
- Qualifications of expert, objection must be brought within 21 days (Tex. App.), 88

TITLE VII *See* DISCRIMINATION

TOBACCO INDUSTRY

Antitrust

- Price fixing, economist testimony on parallelism of price leads to reinstatement of class action (N.M. Ct. App.), 239
- Pricing data, protective order allowing plaintiff's experts access rejected (S.D.N.Y.), 53
- Menthol cigarette dangers, expert report filed in Israeli class action, 257

TOXIC SUBSTANCES *See* CHEMICALS

Environment contamination. *See* ENVIRONMENT

TOYS AND GAMES

- False advertising, building block manufacturer fails on claim that competitor's promotion of its own blocks was false (W.D. Wash.), 10

TRADEMARKS

- Distinctiveness, expert testimony on history of Chippendales cuffs and collars not helpful (TTBA), 193

TRANSPORTATION

Air. *See* AIR TRANSPORTATION

Motor vehicles. *See* MOTOR VEHICLES

TREATISES

- Judicial notice, Wikipedia insufficiently reliable to qualify (N.J. Super. Ct.), 257

U

UTAH

- Medical malpractice, additional testimony modifying prior testimony properly rejected (Utah), 519

UTAH —Contd.

Motor vehicle rollover accident, opinion testimony on use of seat belt and whether driver fell asleep by state trooper with accident investigation training and personal knowledge proper (Utah Ct. App.), 342

V

VACCINES

DPT as cause of seizures, treating physician testimony sufficient to establish logical sequence of cause and effect (Ct. App. Fed. Cir.), 339

Thimerosal as cause of autism, epidemiologist's novel proof fails *Frye-Reed* generally accepted admissibility test (Md.), 307

VALUATION

Bankruptcy, conflicting opinions, assigning middle range value not abuse of discretion (5th Cir.), 529

VALUATION EVIDENCE

Business goodwill, opinion of experienced appraiser visiting business favored over CPA (Ind. App. Ct.), 429

Patent infringement damages, lump-sum vs. royalty payment calculations, expert testimony citing other license agreements without establishing frequency of software use fails to support award (Fed. Cir.), 477

Property value

—Condemned property easement, income method of appraisal improperly excluded (Tex.), 366

—Diminution due to toxic contamination, Analysis and Perspective, 129

—Eminent domain, replacement value, appraisers not limited to particular method (N.C. Ct. App.), 294

Securities

—Certificate of designation setting value for dissenting shareholders makes expert proof irrelevant (Del. Ch.), 265

—Fair value accounting by forensic experts, Analysis & Perspective, 298

—Insider trading, exclusion of criminal defendant's expert testimony was not improper (10th Cir.), 115

Statistical proof, disability plan administrator improperly relied on expert's valuation of plan participant's stock options (E.D. Cal.), 12

Tax liens, favoring one appraiser over another not abuse of discretion (3d Cir.), 528

VERMONT

DNA testing, error rate data must be presented along with data supporting match with defendant (Vt.), 111

VIDEOTAPES

Admissibility, recording made by unidentified technician fails to satisfy authentication rule (Md.), 8

W

WAGES AND SALARIES

Executive compensation, statistical formula for determining bonuses inconsistently applied by trial judge (7th Cir.), 126

Wage policies, reliance on averages fails to prove common impact, class certification denied (N.D. Ill.), 503

WAIVERS

Confidentiality, disclosure of mental health records to court-approved expert not waiver (Pa. Super. Ct.), 181

WARNINGS

Asbestos, seaman's exposure, warning of hazards in third-party products not required (Cal. Ct. App.), 127

WASHINGTON

Medical malpractice

—Expert certificate of merit requirement unconstitutional (Wash.), 498

—Knee surgery negligence claim, scalpel left in patient, *res ipsa loquitur* theory sufficient (Wash. Ct. App.), 499

WEAPONS See FIREARMS AND WEAPONS

WEST VIRGINIA

Toxic torts, organic chlorinated solvent exposure, brain dysfunction testimony based on inconsistent methodology deemed unreliable (W. Va. Ct.), 336

WISCONSIN

Computer animation of crime scene, police officer not qualified as expert on animated collages (Wis. Ct. App.), 310

DNA testing results from bulletproof vest must be

turned over to criminal defendant (Wis. App. Ct.), 41

Hearsay evidence, reliance on defense psychologist testimony as basis for transferring case from adult to juvenile court erroneous (Wis. Ct. App.), 159

Homicide, 80 percent certainty as to cause of death sufficient to admit (Wis. Ct. App.), 288

Medical malpractice, deadline extension for naming experts, excusable neglect standard not applicable to untimely motions (Wis. Ct. App.), 184

Sanctions, defense expert testimony rejected for failure to provide conclusions in advance (Wis. Ct. App.), 421

Suicide, wrongful death claim against psychiatric facility not malpractice requiring expert proof (Wis. Ct. App.), 283

Taxation, multifunction copiers, agency with no expertise in differentiating computers, copiers, and faxes, not entitled to deference (Wis. Ct. App.), 430

WORK PRODUCT See also PRIVILEGED COMMUNICATIONS

Contact lens solution, "root cause analysis" of injury protected (E.D. Tex.), 153

Draft reports, disclosures, and communications, proposed federal rule would extend protections, 43

Fed. R. Civ. P. 26, draft changes head to Judicial Conf. for review, 321

WORKERS' COMPENSATION

Expert causation proof required (Tenn.), 505

Simple injury understandable to laymen, statistical evidence to show percentage of disability attributable not required (Mo. Ct. App.), 28

WRONGFUL DEATH

Drug overdose, neuropharmacologist lacks medical expertise (Tenn. Ct. App.), 548

Emergency room standard of care, physician unqualified to testify (Tenn. Ct. App.), 289

Etodolac contamination, reliance on single recall letter insufficient (E.D. Pa.), 311

Psychiatrist owes no duty to relatives of individuals killed by patient (Cal. Ct. App.), 240

Suicide, claim against psychiatric facility not malpractice requiring expert proof (Wis. Ct. App.), 283

Wrongful death, open heart surgery, subjective belief and unsupported speculation insufficient (E.D. Pa.), 452

WYOMING

Legal malpractice, attorney's affidavit set aside as failing to show competency of own conduct (Wyo.), 119