

Accountants as Expert Witnesses: A Primer on Meeting Daubert Challenges

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Accountants are often called to testify as expert witnesses in fraud trials or other legal disputes. Since *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), an increasing number of testifying experts have been subjected to challenges by opposing counsel in an attempt to prevent the experts from testifying. This article provides a background on the landmark case of *Daubert* and the related *Kumho Tire Company, Ltd. v. Patrick Carmichael* (1999) case, where the U.S. Supreme Court established standards for determining the admissibility of expert witness testimony. In addition, this article discusses a recent U.S. District Court case alleging tire failure, where defense counsel sought to exclude the plaintiff's expert witness from testifying under *Daubert*. In this decision, the plaintiff's expert witness was a nonscientific expert, as any accountant testifying as an expert would be classified. This decision supplies guidance about how to successfully meet *Daubert* challenges, which could be useful when an accountant is engaged to testify as an expert witness.

One axiom of fraud is "fraud is hidden" (Wells, 1998). By its very nature, fraud is concealed by the perpetrator in an attempt to avoid detection. Often, this concealment involves manipulation of the accounting records by the perpetrator, and depending upon the quality of the internal control system in place, it presents difficulty for investigators to determine the full extent of the fraud. Accountants – such as internal auditors, external auditors, or forensic auditors – play an important role by helping to unravel the fraud through their technical accounting knowledge and by helping the trier of fact to determine facts in issue. However, since *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), an increasing number of testifying experts in a variety of court cases have been challenged by opposing counsel in an attempt to prevent the experts from testifying. This article gives background information on the *Daubert* case and the related *Kumho Tire Company, Ltd. v. Patrick Carmichael* (1999) case, where the U.S. Supreme Court established standards for determining the admissibility of expert witness testimony. In addition, this article discusses qualifying an expert witness, explains the underlying foundation behind a *Daubert* challenge, and provides guidance on how to successfully meet these challenges.