

## **STANDING ORDER ON CHALLENGES TO THE ADMISSIBILITY OF EXPERT TESTIMONY UNDER RULE 702 AND DAUBERT**

This Standing Order governs challenges to the admissibility of expert testimony pursuant to Rule 702 and the Supreme Court’s decisions in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999).

**General Procedures.** Any party may challenge the admissibility of expert testimony offered by another party. The party seeking to challenge the admissibility of expert testimony shall do so by motion, in accordance with any schedule set by the Court. In the motion, the moving party shall identify the specific opinion(s) that the movant seeks to exclude and the legal basis for exclusion, together with sufficient background information to provide context. The movant shall electronically file, in a searchable format, the relevant expert report(s) and, if the expert was deposed, the full transcript of the expert’s deposition.

**Legal Framework.** The parties should be familiar with the legal standard governing the admissibility of expert testimony in federal court. The following discussion is not intended to be an exhaustive discussion of the law, but instead seeks to remind the parties of certain guiding principles:

“Federal Rule of Evidence 702 governs the admissibility of expert testimony, as does the Supreme Court’s seminal case of *Daubert ...*” ; *United States v. Lupton*, 620 F.3d 790, 798 (7th Cir. 2010); *Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 705 (7th Cir. 2009)

“The proponent of the expert bears the burden of demonstrating that the expert’s testimony would satisfy the *Daubert* standard.” *Lewis*, 561 F.3d at 705 (citing Fed. R. Evid. 702 – Adv. Comm. Notes (“[T]he admissibility of all expert testimony is governed by the principles of Rule 104(a). Under that Rule, the proponent has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the evidence”)).

“The district court is responsible for acting as a gatekeeper to ensure that all admitted expert testimony satisfies [Rule 702’s] reliability and relevance requirements.” *Stollings v. Ryobi Techs, Inc.*, 725 F.3d 753, 765 (7th Cir. 2013) (citing *Daubert*, 509 U.S. at 592–93). “[T]he key to the gate is not the ultimate correctness of the expert’s conclusions. Instead, it is the soundness and care with which the expert arrived at her opinion: the inquiry must ‘focus ... solely on principles and methodology, not on the conclusions they generate.’” *Schultz v. Akzo Nobel Paints, LLC*, 721 F.3d 426, 431 (7th Cir. 2013) (citing *Daubert*, 509 U.S. at 595).

**Daubert Hearing.** The Court, upon request of a party or on its own, may conduct a *Daubert* hearing. See *United States v. Ozuna*, 561 F.3d 728, 737 (7th Cir. 2009) (district court has discretion over whether to conduct a *Daubert* hearing); *Lewis*, 561 F.3d at 704 (noting that “the district court may consider the admissibility of expert testimony *sua sponte*”). A *Daubert* hearing permits the parties to examine the challenged expert in open court to develop his or her testimony for purposes of evaluating its admissibility.

General Principles: The hearing shall be limited to the issues raised in the *Daubert* motion, unless the Court indicates otherwise. Although the expert at issue will testify, the hearing is not a forum to develop the expert’s testimony for any purpose other than evaluating its admissibility. The parties should avoid inquiry into undisputed issues of admissibility. The Court encourages the parties, where possible, to stipulate to any uncontested issues of admissibility, such as the expert’s qualifications, prior to the hearing. The proponent of the expert is responsible for procuring the expert’s attendance at the hearing.

Before the Hearing: One week prior to the hearing, the parties shall file a Joint Report stating whether any party intends to present testimony from any witness other than the expert at issue. The Court does not anticipate that the parties will present any witness other than the expert at issue. The Joint Report shall also include an exhibit list and copies of any exhibits that the parties intend to use at the hearing.

The Hearing: The hearing will proceed as follows, absent an order to the contrary:

- Opening Remarks (brief; if requested)
- Direct Examination (proponent)
- Cross Examination (movant)
- Re-Direct Examination (if requested)
- Re-Cross Examination (if requested)
- Closing Remarks (brief; if requested)

After the Hearing: The parties shall not file post-hearing briefs, unless ordered to do so by the Court.

**Amy J. St. Eve**