

# SUPREME COURT OF THE UNITED STATES

## Syllabus

DAUBERT et ux., individually and as guardians and litem for DAUBERT, et al. v. MERRELL DOW PHARMACEUTICALS, INC.

certiorari to the united states court of appeals for  
the ninth circuit

No. 92-102. Argued March 30, 1993 -- Decided June 28, 1993

Petitioners, two minor children and their parents, alleged in their suit against respondent that the children's serious birth defects had been caused by the mothers' prenatal ingestion of Bendectin, a prescription drug marketed by respondent. The District Court granted respondent summary judgment based on a well credentialed expert's affidavit concluding, upon reviewing the extensive published scientific literature on the subject, that maternal use of Bendectin has not been shown to be a risk factor for human birth defects. Although petitioners had responded with the testimony of eight other well credentialed experts, who based their conclusion that Bendectin can cause birth defects on animal studies, chemical structure analyses, and the unpublished "reanalysis" of previously published human statistical studies, the court determined that this evidence did not meet the applicable "general acceptance" standard for the admission of expert testimony. The Court of Appeals agreed and affirmed, citing *Frye v. United States*, 54 App. D. C. 46, 47, 293 F. 1013, 1014, for the rule that expert opinion based on a scientific technique is inadmissible unless the technique is "generally accepted" as reliable in the relevant scientific community.

*Held:* The Federal Rules of Evidence, not *Frye*, provide the standard for admitting expert scientific testimony in a federal trial. Pp. 4-17.

(a) *Frye's* "general acceptance" test was superseded by the Rules' adoption. The Rules occupy the field, *United States v. Abel*, [469 U.S. 45](#), 49, and, although the common law of evidence may serve as an aid to their application, *id.*, at 51-52, respondent's assertion that they somehow assimilated *Frye* is unconvincing. Nothing in the Rules as a whole or in the text and drafting history of Rule 702, which specifically governs expert testimony, gives any indication that "general acceptance" is a necessary precondition to the admissibility of scientific evidence. Moreover, such a rigid standard would be at odds with the Rules' liberal thrust and their general approach of relaxing the traditional barriers to "opinion" testimony. Pp. 4-8.

(b) The Rules--especially Rule 702--place appropriate limits on the admissibility of purportedly scientific evidence by assigning to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. The reliability standard is established by Rule 702's requirement that an expert's testimony pertain to "scientific . . . knowledge," since the adjective "scientific" implies a grounding in science's methods and procedures, while the word "knowledge" connotes a body of known facts or of ideas inferred from such facts or accepted as true on good grounds. The Rule's requirement that the testimony "assist the trier of fact to understand the evidence or to determine a fact in issue" goes primarily to relevance by demanding a valid scientific connection to the pertinent inquiry as a precondition to admissibility. Pp. 9-12.

(c) Faced with a proffer of expert scientific testimony under Rule 702, the trial judge, pursuant to Rule 104(a), must make a preliminary assessment of whether the testimony's underlying reasoning or methodology is scientifically valid and properly can be applied to the facts at issue. Many considerations will bear on the inquiry, including whether the theory or technique in question can be (and has been) tested, whether it has been subjected to peer review and publication, its known or potential error rate, and the existence and maintenance of standards controlling its operation, and whether it has attracted widespread acceptance within a relevant scientific community. The inquiry is a flexible one, and its focus must be solely on principles and methodology, not on the conclusions that they generate. Throughout, the judge should also be mindful of other applicable Rules. Pp. 12-15.

(d) Cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof, rather than wholesale exclusion under an uncompromising "general acceptance" standard, is the appropriate means by which evidence based on valid principles may be challenged. That even limited screening by the trial judge, on occasion, will prevent the jury from hearing of authentic scientific breakthroughs is simply a consequence of the fact that the Rules are not designed to seek cosmic understanding but, rather, to resolve legal disputes. Pp. 15-17.

951 F. 2d 1128, vacated and remanded.

Blackmun, J., delivered the opinion for a unanimous Court with respect to Parts I and II-A, and the opinion of the Court with respect to Parts II-B, II-C, III, and IV, in which White, O'Connor, Scalia, Kennedy, Souter, and Thomas, JJ., joined. Rehnquist, C. J., filed an opinion concurring in part and dissenting in part, in which Stevens, J., joined.

## U.S. SUPREME COURT FURTHER RESTRICTS "JUNK SCIENCE"

by Bruce Flushman

In 1993, the U.S. Supreme Court established standards for determining whether scientific expert testimony may be admitted as evidence in trials. In *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993), the Court called on trial judges to act as "gatekeepers" to ensure that scientific experts' opinions are both reliable and relevant. The Court set out some factors, known as the "Daubert test," for making this determination, including: testing, peer review, error rates, and acceptability in the relevant scientific community. After the Court's decision, controversy remained whether the Daubert test applied only to scientific experts or, as well, to other technical experts who are not scientists. The answer is important because in many cases, particularly in natural resources and environmental suits, litigants offer testimony from both types of experts.

In *Kumho Tire Company, Ltd. v. Carmichael*, 99 DAR 2645 (March 23, 1999), the Court resolved the controversy in favor of extending the Daubert rule to all expert testimony. The case arose out of a tire blowout which led to a fatal accident. The car owners sued the tire manufacturer and others claiming the tire was defective. The owners' case was built upon the testimony of an expert in tire failure analysis. The expert was highly qualified, having worked for Michelin Tire Company for many years. The basis for his testimony was largely that experience and his visual inspection of the tire. At trial, the tire manufacturer challenged the expert's testimony arguing that the court should apply the Daubert test to exclude the testimony of this non-scientific, but technically qualified, expert. The trial court agreed and, after thoroughly reviewing the expert's testimony, held it not reliable. On appeal, the circuit court disagreed, holding that Daubert was limited to cases in which an expert relies on the application of scientific principles, rather than on skill and experience.

The Supreme Court upheld the trial court's decision, ruling that the Daubert rule applies to all expert testimony, no matter whether scientific or technical. But the Court also instructed that while the Daubert test may be used in judging the reliability of non-scientific technical testimony, it should be flexibly applied. That is, not all elements of the test will be useful in every case. According to the Court, the test provides the trial judge "considerable leeway" in determining the reliability of expert testimony.

The *Kumho Tire* decision eliminates the uncertainty that federal courts will automatically consider non-scientific technical expert's testimony without first testing such evidence for reliability. Application of the Daubert test to such testimony should subject such testimony to heightened scrutiny and thereby eliminate result-oriented, untested, or unreliable expert testimony.