

DAUBERT CHALLENGE STUDY

DR. JOHN R. DOE, PH.D.

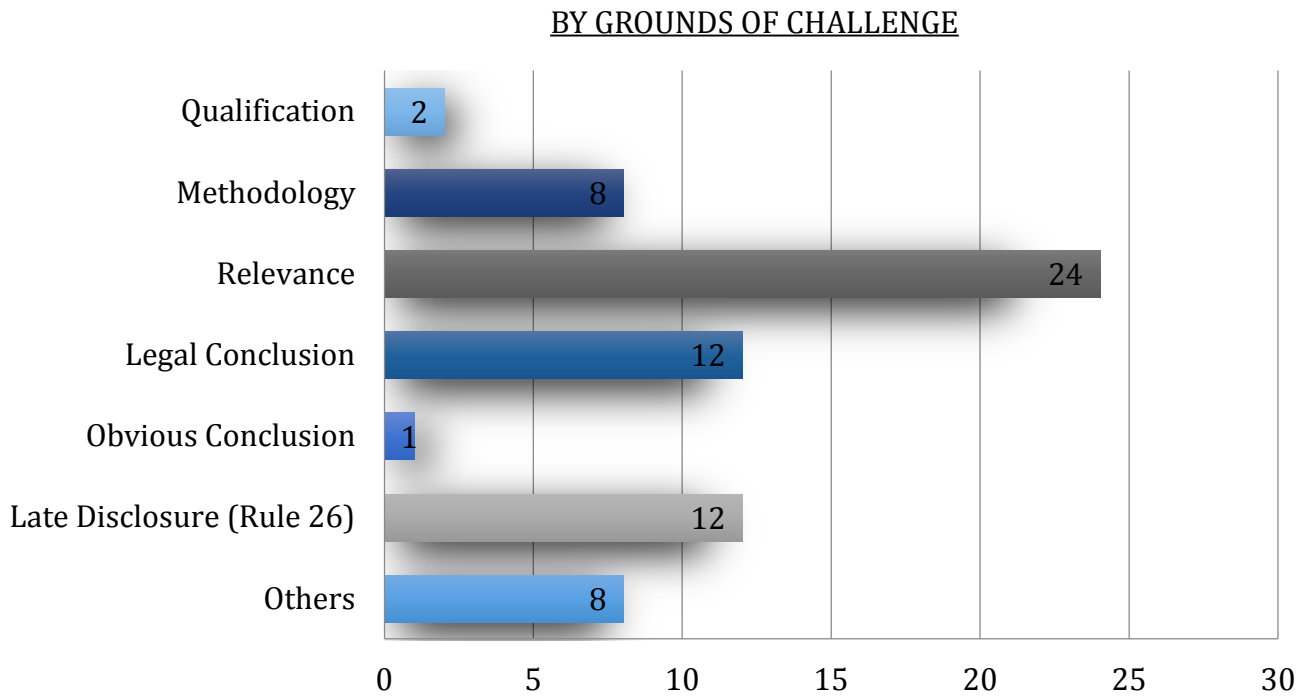
MARKETING EXPERT WITNESS

PREPARED ON APRIL 30, 2018

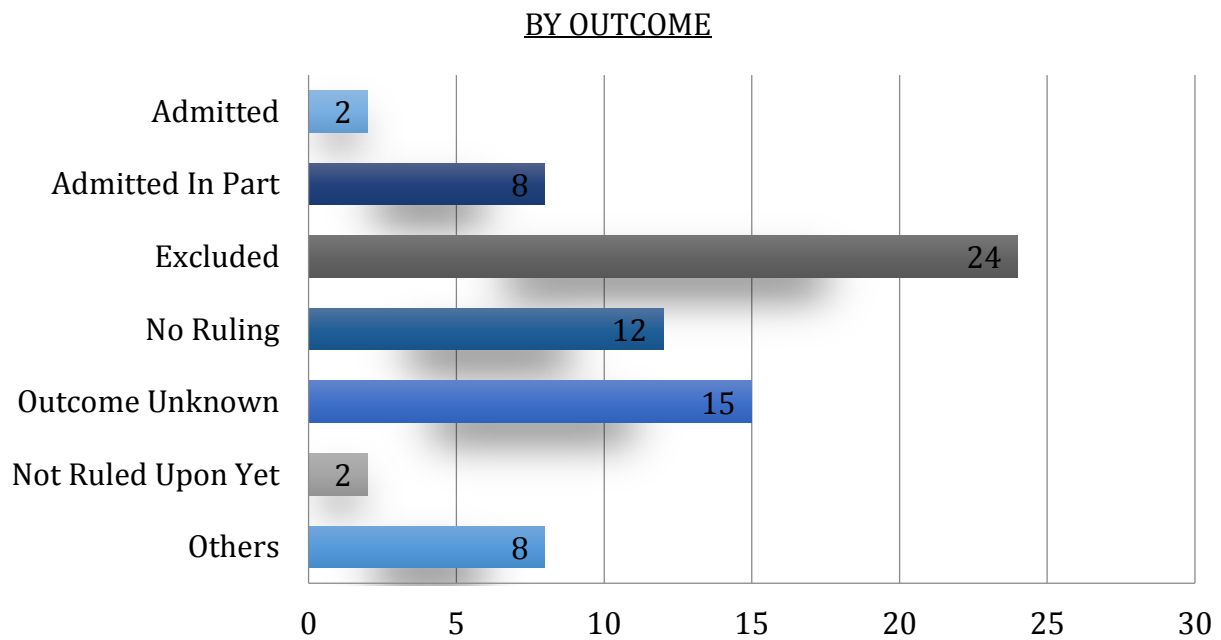
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GROUNDS OF CHALLENGE



CHALLENGE DISPOSITION



EXPERT CHALLENGES

This section provides references to an expert who has been cited or mentioned in case opinions (reported and unreported), briefs (where available), jury verdicts, dockets, and expert challenges for both state and federal courts. It is again noted that not every jurisdiction and every court makes their case law available, and this profile is limited as such.

Different search strings were run to ensure that all available cases and briefs are collected.

1. ((John w/2 Doe) w/100 Expert and (Professor or Psycholog! Or "Marketing" or "Damages Expert" or Econom! or "Product Management" or Analys! or Licensing)

The following legal databases were looked at during the preparation of this report:

1. Federal and State Cases Combined, Jury Verdicts and Settlements, Federal Agency Decisions, State Agency Decisions
2. Court Documents – Trial Filings, Appellate Briefs, Trial Orders, Dockets
3. PACER was searched to retrieve original documents, if available.
4. Google Scholar – Legal Opinion Search
5. Trial Smith

Availability of Supporting Documents: In the course of research, many relevant documents such as opinions, briefs, pleadings, deposition transcripts, motions to exclude, rulings, expert reports, expert CVs etc. are retrieved from various sources. These documents are divided into four categories:

1. Available for Download for no additional cost (These are mainly opinions for which no cost is incurred on the part of EWP.)
2. Available for Instant Delivery (These are documents which can be delivered within one business day after payment.) To know the cost of these documents and to order, click on **(Request Document)** next to the document to send an email with the relevant document title and the Case Caption.
3. These are documents which cannot be procured electronically and can be obtained only from the court. These documents do not have **(Request Document)** mentioned against them. To know how these documents can be procured, please send a mail to support@trialsmith.com with the relevant document title and the Case Caption.
4. TrialSmith Documents can be downloaded instantly from the TrialSmith database.

DIRECT CHALLENGES

This section includes reported, and numerous unreported cases from both state and federal jurisdictions where a “gatekeeping authority” has been cited or mentioned in a decision and the testifying expert’s methodology or qualifications have been challenged. Gatekeeping authority is defined as a seminal decision or rule of evidence that defines or interprets the standards for admissibility or expert witness testimony for the corresponding jurisdiction. This section includes results from over 165 gatekeeping authorities, including but not limited to *Daubert v. Merrell Dow*, *Frye v. United States*, and their progeny. Sources for unreported decisions include docket sheets, litigation reports, jury verdicts, and other online resources. Although care has been followed to gather this information, not all cases involving expert challenges are reported.

Testimony admitted in part and excluded in part.

Case Source:	Opinion, Trial Pleading, Docket
Case Caption:	Brighton Collectibles, Inc. v. Renaissance Group
Docket Number:	06-CV-1115, 306CV01584, 06 CV 01848
Case Cite(s):	2008 U.S. Dist. LEXIS 39707, 2006 Misc. Filings 1115; 2007 Misc. Filings LEXIS 4582; 2007 Misc. Filings LEXIS 4583, 2008 WL 2546408, 2008 WL 2546407, 2008 WL 2546426, 2008 WL 5455245, 2007 WL 7631415
Grounds of Challenge:	Methodology
Area of Law:	Trademark Law
Jurisdiction:	Federal
State:	California
Court Name:	United States District Court For The Southern District Of California
Retained By:	Plaintiff
Plaintiff’s Attorney(s):	Peter W Ross, Keith J Wesley , Marta B Almlı , Dreier Stein Kahan Browne Woods George LLP, Beverly Hills, CA; Steven W Winton, Winton and Larson, San Diego, CA
Defendant’s Attorney(s):	Jessica Marie Helliwell, Michelle M McCliman, Wang, Hartmann, Gibbs & Cauley, P.C., Newport Beach, CA
Judge(s):	Marilyn L. Huff
Date(s):	04/01/2009

Summary of Involvement: Doe was retained by the Plaintiff to provide expert analysis and testimony on surveys conducted regarding the public perception of Plaintiff's products and/or the likelihood that consumers will confuse Defendant's goods with Plaintiff's goods in the instant case. Defendant filed a motion in limine to exclude his testimony. The Court concluded that the Plaintiff had failed to establish that his testimony regarding lost sales satisfied the FRE- Rule 702 standard and failed to demonstrate that his testimony was "based on sufficient facts or data" or that it was "the product of reliable principles and methods" that had been applied "reliably" to the facts of this case. The Court concluded that the challenged portion of his proposed testimony was too speculative to merit admission and accordingly granted Defendant's motion to preclude Plaintiff from presenting his testimony that Plaintiff lost one customer transaction for each Langdon Leather product sold by Defendant. However, the Court declined to exclude his testimony in its entirety.

- Supporting Document(s):**
1. Expert Report of John Doe ([Request Document](#))
 2. Ralphs' Memorandum In Support Of Motion In Limine No. 4, To Exclude "Expert" Opinion Testimony ([Request Document](#))
 3. Defendant's Memorandum Of Points And Authorities In Support Of Its Motion For Summary Judgment ([Request Document](#))
 4. Order Regarding Motions In Limine: Finding As Moot Motion In Limine ([Request Document](#))
 5. Order Regarding Motions In Limine: Finding As Moot Motion In Limine ([Request Document](#))
 6. Brighton's Notice Of Motion To Amend Judgment To Include A Permanent Injunction; Memorandum Of Points And Authorities; Declaration In Support Thereof

Trial court did not allow the expert to testify; affirmed.

Case Source: Brief Bank

Case Caption: [Loughert vs. The Reagan Hospital And Medical Center](#)

Docket Number: 02588EDA9942

Case Cite(s): 1999 WL 033887609 (Pa.Super.); 1999 WL 033888608 (Pa.Super.)

Grounds of Challenge: Obvious Conclusion

Area of Law: Insurance Law

Jurisdiction: State

State: Pennsylvania

Court Name: Superior Court of Pennsylvania

Retained By: Plaintiff

Plaintiff's Attorney(s): Derek R. Lassiter, Klone & Specter, P.C.

Defendant's Attorney(s): Edward L. Stork, Esquire, Roland & Schlegel, P.C.

Judge(s): Marilyn L. Huff

Date(s): 04/01/2009

Summary of Involvement: Doe was retained by the Plaintiff as an expert. On appeal, the Plaintiff argued that the trial court erred in refusing to allow Doe to testify to the non-effectiveness of unsigned insurance policy. However, the judgment was affirmed.

Supporting Document(s):

1. Brief for Appellants ([Request Document](#))
2. Brief of Appellee ([Request Document](#))

Testimony unpersuasive.

Case Source: Opinion, Trial Order, Brief Bank

Case Caption: [Jenkins v. McCarthy](#)

Docket Number: B297993, BC 309975

Case Cite(s): 2009 Cal. App. Unpub. Lexis 9777, 2005 WL 7237970, 2005 WL 7237259, 2009 WL 5707527, 2009 WL 5555529

Grounds of Challenge: Methodology

Daubert Challenge Study on Dr. John R. Doe, Ph.D.

Area of Law: Business Laws

Jurisdiction: State

State: New York

Court Name: Court Of Appeal Of New York, Second Appellate District, Division Two

Retained By: Defendant

Plaintiff's Attorney(s): Not Applicable

Defendant's Attorney(s): Winston & Strawn, Rebecca Lawlor Calkins and Erin R. Ranahan

Judge(s): Ashmann-Gerst, J.; Boren, P. J., Doi Todd, J. concurred

Date(s): 02/27/2009

Summary of Involvement: Doe was retained by the Defendant as an expert in the instant case. The Court observed that Doe had admitted in his testimony that Plaintiff had failed to conduct any independent work and relied on the Defendant's testimony. The Court found his testimony unpersuasive.

Supporting Document(s):

1. Opinion dated 27th February 2009 ([Request Document](#))
2. Statement of Decision ([Request Document](#))
3. Expert Report of John Doe ([Request Document](#))

Testimony was improperly excluded at trial; outcome of appeal is unknown.

Case Source: Brief Bank

Case Caption: [Investments v. Del Curto](#)

Docket Number: B5555555

Case Cite(s): 2000 WL 555555, 2000 WL 111111, 1997 WL 222222

Grounds of Challenge: Qualification

Area of Law:	Business Law
Jurisdiction:	State
State:	New York
Court Name:	Court of Appeal, Second District, Division 5, New York
Retained By:	Defendant
Plaintiff's Attorney(s):	David M. Sine, Sanborn & Sine
Defendant's Attorney(s):	Neil Papiani
Judge(s):	Honorable Reginald A. Dunn
Date(s):	02/05/1987
Summary of Involvement:	Doe was retained by the Defendant as an expert in valuation. In the instant case, Defendant argued that the trial court had improperly excluded Doe's testimony. The outcome of appeal is unknown.
Supporting Document(s):	<ol style="list-style-type: none">1. Appellants' Supplemental Brief Regarding Prejudicial Effect of Trial Court's Exclusion of Expert (Request Document)2. Appellants' Reply Brief and Opposition to Respondents Cross-Appeal (Request Document)3. Respondents' Reply Brief and Cross-Appeal (Request Document)

Testimony rejected by the trial court; outcome of appeal is unknown.

Case Source:	Brief Bank
Case Caption:	Wetzel v. Gratzner
Docket Number:	G0666666
Case Cite(s):	2002 WL 555555
Grounds of Challenge:	Methodology

Area of Law: Labour Law

Jurisdiction: State

State: New York

Court Name: Court of Appeal, Fourth District, Division 3, New York

Retained By: Not Applicable

Plaintiff's Attorney(s): Not Applicable

Defendant's Attorney(s): Not Applicable

Judge(s): Honorable Kim G. Dunning

Date(s): 09/22/2002

Summary of Involvement: Doe was an independent appraiser in the instant case. Doe prepared a report on fair value which the trial court had rejected. The outcome of appeal is unknown.

Supporting Document(s): 1. Appellant's Opening Brief ([Request Document](#))

Testimony disregarded by arbitrator, affirmed at trial; outcome unknown on appeal.

Case Source: Brief Bank

Case Caption: [Todisco v. Cable](#)

Docket Number: G055555

Case Cite(s): 2000 WL 555555, 2000 WL 111111, 1997 WL 222222

Grounds of Challenge: Qualification

Area of Law: Negligence

Jurisdiction: State

State: New York

Court Name: Court of Appeal, Fourth District, Division 3, New York

Daubert Challenge Study on Dr. John R. Doe, Ph.D.

Retained By: Defendant

Plaintiff's Attorney(s): David M. Sine, Sanborn & Sine

Defendant's Attorney(s): Sylvia L. Paoli #55555, Paoli & Paoli, Inc.

Judge(s): Hon. Raymond Ikola

Date(s): 07/29/2000

Summary of Involvement: Doe was retained by the Defendant as an expert in accountancy. The arbitrator found his testimony credible but disregarded it at trial. The outcome of the appeal is unknown.

Supporting Document(s):

1. Appellant's Reply Brief ([Request Document](#))
2. Respondent's Brief ([Request Document](#))
3. Appellant's Opening Brief ([Request Document](#))

INDIRECT CHALLENGES

This section includes reported, and numerous unreported cases from both state and federal jurisdictions where the expert's testimony has been cited or mentioned in a decision and the testifying expert's testimony has been offered in support of, in response to, or in opposition to motion for summary judgment, class certification, preliminary injunction, motion for a new trial or judgment notwithstanding the verdict. Sources for unreported decisions include docket sheets, litigation reports, jury verdicts, and other online resources. Although care has been followed to gather this information, not all cases involving such indirect expert challenges are reported.

Testimony filed in support of motion for class certification; outcome unknown.

Case Source:	Docket
Case Caption:	Loughert v. Demetrius
Docket Number:	6:93cv254
Case Cite(s):	Not Applicable
Grounds of Challenge:	Others
Area of Law:	Insurance Law
Jurisdiction:	Federal
State:	Texas
Court Name:	US District Court for the Western District of Texas
Retained By:	Plaintiff
Plaintiff's Attorney(s):	John P. Germani, Richard D. Martemucci And Germani Martemucci Riggle
Defendant's Attorney(s):	Elizabeth A. Flynn, James F. Tucker, J. Tucker LLP
Judge(s):	S. Gonzalez-Villamil
Date(s):	08/01/2012
Summary of Involvement:	Doe was retained by the Plaintiff as an expert in the instant case. Plaintiff filed his testimony in support of its motion for class certification. The outcome of Plaintiff's motion for class certification is unknown.
Supporting Document(s):	1. Testimony of John Doe in support of Plaintiff's Motion for

Class Certification ([Request Document](#))

2. Reply and Response to Plaintiff's Motion for Class Certification by Doe ([Request Document](#))

Testimony insufficient to avoid grant of motion for preliminary injunction.

Case Source:	Opinion, Trial Order
Case Caption:	Mercy v. McCarthy
Docket Number:	B297955, BC 309970
Case Cite(s):	2009 Cal. App. Unpub. Lexis 9873; 2005 WL 7237955
Grounds of Challenge:	Others
Area of Law:	Products Liability
Jurisdiction:	State
State:	New York
Court Name:	Court Of Appeal Of New York, Second Appellate District, Division Two
Retained By:	Defendant
Plaintiff's Attorney(s):	David Caspi
Defendant's Attorney(s):	Robert McDonald
Judge(s):	William B. Stock
Date(s):	02/22/2002
Summary of Involvement:	Doe was retained by the Defendant as an expert in the instant case. Defendant filed his testimony in opposition to Plaintiff's motion for preliminary injunction. The Court granted Plaintiff's motion for preliminary injunction.
Supporting Document(s):	<ol style="list-style-type: none">1. Opinion dated February 22, 2002 (Request Document)2. Statement of Decision (Request Document)

3. Expert Report of John Doe ([Request Document](#))

Testimony sufficient to win grant of motion for judgment notwithstanding the verdict at trial; outcome of appeal is unknown.

Case Source:	Brief Bank
Case Caption:	Abreu v. CHP Corp.
Docket Number:	113660-06
Case Cite(s):	2010 WL 9615418; 2010 WL 9615423; 2010 WL 8425185
Grounds of Challenge:	Others
Area of Law:	Negligence
Jurisdiction:	State
State:	New York
Court Name:	Court of Appeal, Fourth District, Division 3, New York
Retained By:	Defendant
Plaintiff's Attorney(s):	Sandra L. Flushman
Defendant's Attorney(s):	Kenneth L. Thompson
Judge(s):	Robert Wooten
Date(s):	07/29/2001
Summary of Involvement:	Doe was retained by the Defendant as an expert in accountancy. According to the "Appellant's Reply Brief" it was stated that Defendant had cited his testimony in support of its motion for judgment notwithstanding the verdict. The trial court had granted Defendant's motion for judgment notwithstanding the verdict. The outcome of appeal is unknown.
Supporting Document(s):	<ol style="list-style-type: none">1. Appellant's Reply Brief (Request Document)2. Respondent's Brief (Request Document)

3. Appellant's Opening Brief ([Request Document](#))

Testimony sufficient to win grant of motion for summary judgment.

Case Source:	Opinion, Trial Pleading
Case Caption:	Lee v. Hendrick
Docket Number:	3:95cv1284
Case Cite(s):	2007 Misc. Filings LEXIS 4545; 2008 WL 2546302; 2008 WL 2546409
Grounds of Challenge:	Others
Area of Law:	Personal Injury
Jurisdiction:	Federal
State:	New York
Court Name:	United States District Court For The Southern District Of New York
Retained By:	Defendant
Plaintiff's Attorney(s):	Soberson Halley, Robert & Soberson, LLP, New York
Defendant's Attorney(s):	Marina L. Kaufman, Robert K. Luther
Judge(s):	Jill Barschi
Date(s):	04/01/2014
Summary of Involvement:	Doe was retained by the Defendant to provide expert analysis and testimony on surveys conducted regarding the public perception of Plaintiff's products and/or the likelihood that consumers will confuse Defendant's goods with Plaintiff's goods in the instant case. Defendant filed his testimony in support of its motion for summary judgment. The Court granted Defendant's motion for summary judgment.

- Supporting Document(s):**
1. Opinion dated April 01, 2014 ([Request Document](#))
 2. Ralphs' Memorandum In Support Of Motion For Summary Judgment ([Request Document](#))
 3. Defendant's Memorandum Of Points And Authorities In Support Of Its Motion For Summary Judgment ([Request Document](#))