



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

Special Session Legal Reforms Fact Sheet

Expert Opinion (*Daubert*)

- In 1993, the United States Supreme Court issued a monumental decision in the case of *Daubert v. Merrell Dow Pharmaceuticals*.
- The *Daubert* standards/principles articulated by the Court put an end to unreliable, unfounded expert testimony in the federal courts, and, subsequently, the courts of 30 states.
- This legislation would adopt the *Daubert* standards/principles for cases tried in Wisconsin courts. Under this legislation, testimony of experts is limited to testimony that:
 - Is based on sufficient facts or data.
 - Is the product of reliable principles and methods.
 - Is based on the application of those principles and methods to the facts of the case.
- Currently, Wisconsin courts have lax rules regarding the admissibility of expert testimony. Once a witness is qualified as an expert, the jury decides reliability and the only challenge is by cross examination.
- Under *Daubert*, the jury gets to decide factual disputes after evidence is admitted pursuant to the rules of evidence.
- Permitting a jury to hear a credible witness testify about unreliable, invalid science does not assist the truth finding function.

The following are key points in support of passage of these changes:

- The standards incorporated in the bill are in effect in the federal system and 30 states.
- Expert opinion admitted into evidence under this bill would be reliable and based on a sound, analytical method.
- Such evidence would be required to be presented by a genuine expert.
- Adoption of this bill will prevent forum shopping; i.e. will discourage cases of questionable merit from being brought in Wisconsin because of weaker expert opinion evidence standards.
- Adoption of this bill will help to prevent overburdening Wisconsin state courts with cases based on “junk science.”