

## **8th Circuit Clarifies Admissibility of Medical Differential Diagnosis Testimony Under Daubert**

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On June 8, 2014, the 8<sup>th</sup> Circuit reversed a lower court ruling excluding medical causation testimony under Daubert in *Johnson v. Mead Johnson & Co.* In doing so, the 8<sup>th</sup> Circuit clarified the trial court's role in determining admissibility of medical differential diagnosis testimony under Daubert, finding the medical testimony admissible even though it failed to conclusively rule out some other potential sources of infection.

Johnson sued Mead & Johnson, the maker of Enfamil, claiming that his baby had suffered brain damage from a *C. sak* infection allegedly contracted from contaminated formula. Johnson presented 3 medical causation experts who used a differential diagnosis to conclude that the formula was the most likely source of the infection. In doing so, the experts had done a genetic test which matched the strain of bacteria found in the plaintiff's baby to a strain found in other infants who were known to have ingested the same formula.

On defendant's motion, the trial court excluded the testimony of all of the experts under Daubert, finding that the experts had not used reliable methodologies in failing to reliably rule out other causes of the *C. sak* contamination.

The 8<sup>th</sup> circuit reversed, finding that the experts had reliably "ruled in" the formula as a potential cause of the *C. sak* infection, thus the underlying premise of the claim was scientifically valid. The court further reasoned that "experts are not required to rule out all possible causes when performing the differential etiology analysis," and that "a differential expert opinion can be reliable even 'with less than full information.'" The 8<sup>th</sup> Circuit instead found that these factors went to weight and not admissibility, and that the expert testimony was "within the range where experts might reasonably differ."

It will be interesting to see if this case is extended beyond the medical causation realm into other areas of causation testimony.

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