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Brian Beckcom uses expert witness challenges on a regular basis in his maritime law practice.

Daubert can be a plaintiff's best friend

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By William Cresenzo

Daubert motions to disqualify scientific expert witnesses have become a staple in many defense attorneys' war chests, but Brian Beckcom, who specializes in plaintiff maritime personal injury cases, believes that Daubert is "a gun that kicks as hard as it shoots."

"As a plaintiff's lawyer, my philosophical preference is to let the jury decide the issues, but with the Daubert/Robinson line of cases, defense lawyers challenge plaintiffs' experts in a significant percentage of cases," Beckcom said.

In *Daubert v. Merrell Dow*, 509 U.S. 579 (1993), the U.S. Supreme Court held that judges should function as gatekeepers to determine whether expert testimony is reliable. *E.I. Du Pont de Nemours and Co. Inc. v. Robinson*, 923 S.W.2d 549 (1995), applied the Daubert ruling to Texas state courts.

Beckcom used a Daubert ruling in a recent maritime case that settled for \$1,495,000. In *St. Cyr v. Aramark US Offshore Services Inc.* (VerdictSearch Texas, vol. 6, iss. 26, June 26, 2006), the plaintiff, a maintenance worker on an offshore oil rig, fell down a stairwell on a crew boat and injured his back. But he also sought compensation for nerve damage that was caused by an infection resulting from back surgery.

The Brief on Brian Beckcom

Education: B.A., Texas A&M University; J.D. University of Texas School of Law

Personal: Beckcom is a sixth-generation Texan.

Professional: Beckcom started his own law practice with partner Vuk Vujasinovic when he was 28-years-old.

Aramark, the company that employed St. Cyr, contended his infection was due to a lack of cleanliness at the hospital where he was treated. To prove its case Aramark called a public health doctor as an expert, who was prepared to testify that the hospital suffered from a high rate of infection.

However, Beckcom wasn't going to let

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the public health doctor go through without a challenge.

"It's not enough just to say, that this is a lousy hospital," Beckcom said. Under Daubert, the party calling the expert has to show, "that it's a breach of the standard of care if the hospital had an infection rate greater than, 'X'."

"And then you have to show it caused the injury," Beckcom said.

Cursory assertions that the higher rate of infection caused the plaintiff's injury didn't help the defense; its expert was disqualified.

Beckcom acknowledges that his Daubert challenges don't always work. He said that he makes a Daubert motion in about 50 percent of his cases, and is successful in about 10 to 15 percent of those challenges.

Then there are the lost challenges that don't turn out so badly. In the case of *Singleton v. Southpoint Consolidated LP*, (VerdictSearch Texas, vol. 6, iss. 36, Sept. 18, 2006), Beckcom's orthopedic surgeon testified that his client had to have back surgery because of a work injury. The defense presented a non-board certified physical therapist who disputed those findings. Beckcom made a Daubert challenge and lost.

"It turned out to be better for us because the jury hated the guy," Beckcom said. "Sometimes, if the experts are really poor, you are better off letting the jury reach conclusions of their own."