

Recent Cases Involving Expert Witnesses

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3 Best Resources

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- Harvey Brown & Melissa Davis, *Eight Gates for Expert Witnesses: Fifteen Years Later*, 52 Hous. L. Rev. 1 (2014)
- David F. Johnson, *Appellate Issues Regarding the Admission or Exclusion of Expert Testimony in Texas*, 52 S. Tex. L. Rev. 153, 156 (2010)
- 2 Steven Goode, Olin Guy Wellborn III & M. Michael Sharlot, *Guide to the Texas Rules of Evidence* §702

6 Robinson/Havner Factors

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- (1) the extent to which the theory has been or can be tested;
- (2) the extent to which the technique relies upon the subjective interpretation of the expert;
- (3) whether the theory has been subjected to peer review and/or publication;
- (4) the technique's potential rate of error;
- (5) whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and
- (6) the non-judicial uses which have been made of the theory or technique.

E.I. DuPont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 557 (Tex. 1995)

Coastal Transp. Co. v. Crown Cent. Petroleum, 136 S.W.3d 227, 233 (Tex. 2004)

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- We therefore conclude that when a reliability challenge requires the court to evaluate the underlying methodology, technique, or foundational data used by the expert, an objection must be timely made so that the trial court has the opportunity to conduct this analysis. However, when the challenge is restricted to the face of the record for example, when expert testimony is speculative or conclusory on its face then a party may challenge the legal sufficiency of the evidence even in the absence of any objection to its admissibility.

Where Are We Now?

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- The Texas Supreme Court treats expert testimony as conclusory or speculative, such that no objection is necessary to preserve error, when (1) the expert fails to provide any explanation or predicate for her opinion; (2) the explanation the expert provides for her opinion suffers from too great an “analytical gap”; (3) the explanation is predicated on facts, data, or assumptions that do not actually support the expert's explanation or that are not supported by the evidence; (4) the expert's explanation is at such a general level that it offers no meaningful information to the jury to enable it to review the reliability of the opinion; and (5) in the context of causation opinions, the expert fails to rule out other plausible causes or explain why the theory of causation adopted by the expert is superior to other plausible theories of causation.
- Harvey Brown & Melissa Davis, *Eight Gates for Expert Witnesses: Fifteen Years Later*, 52 Hous. L. Rev. 1, 67-68 (2014)

A Sixth Category?

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- (6) Absence of Sufficient Testing
- *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 911 (Tex. 2004)

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"Expert Testimony Update"