

Successful Adoption of Daubert in New Jersey

DRI, The Voice of the Defense Bar

08.22.2018

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McCarter & English partners and DRI members Edward Fanning and David Kott successfully argued for the adoption of the *Daubert* factor- based standard for the admissibility of expert testimony in all civil cases in New Jersey. Appearing before the New Jersey Supreme Court in the closely watched *In Re Accutane Litigation*, Fanning and Kott represented New Jersey's largest trade associations: the HealthCare Institute of New Jersey, the New Jersey Business & Industry Association, the Commerce & Industry Association of New Jersey, and the New Jersey State Chamber of Commerce. In a brief authored by both partners and argued by Fanning, McCarter urged the court to adopt the *Daubert* standard, arguing that the longstanding perception that New Jersey's rules for the admissibility of expert testimony were weaker than those in federal and other state courts made New Jersey a magnet for mass tort litigation. In a landmark decision finding that the plaintiffs' expert testimony alleging the acne treatment Accutane caused Crohn's disease was unreliable and based on flawed methodology, the New Jersey Supreme Court embraced the arguments made by McCarter by holding that New Jersey's rules of evidence will now include the factors developed under *Daubert* to assess the reliability of expert testimony in civil cases. A resounding win for Hoffman- La Roche, the ruling was also a broader victory for business and industry groups, including DRI, that had long urged the court to update its standard on the admissibility of expert evidence.