



HOMESTEAD **EXPERTS**

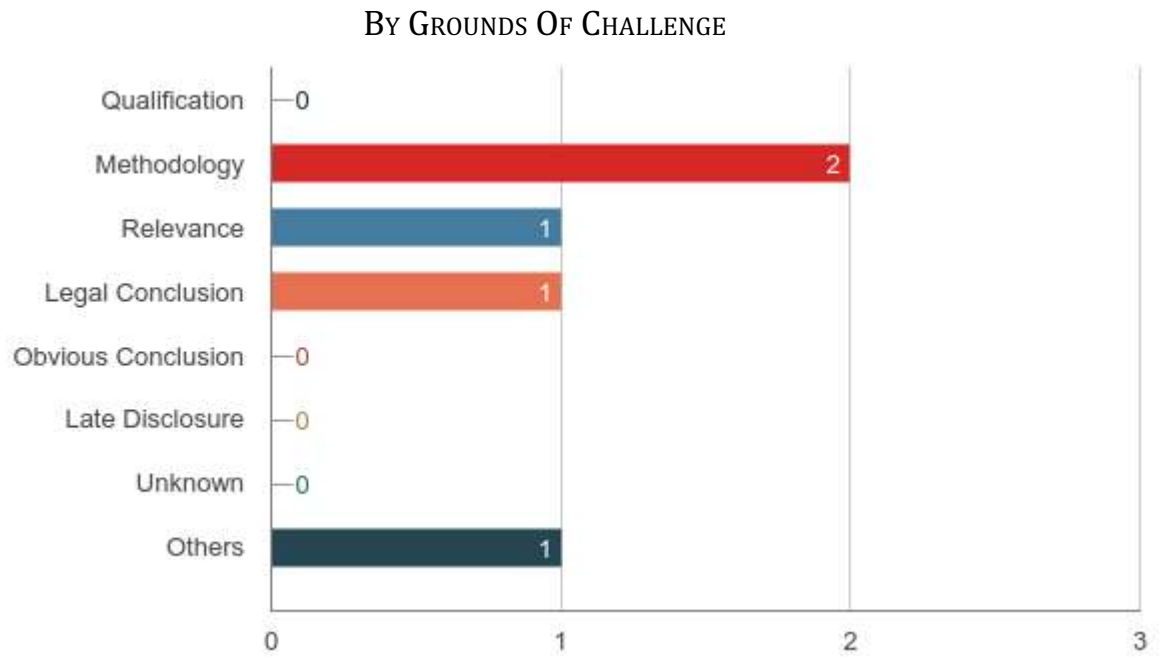
HOMESTEAD CHALLENGE STUDY

JAMES ROBERT **Smith**, M.D.,
F.A.C.S., F.I.C.S., F.A.A.N.S.

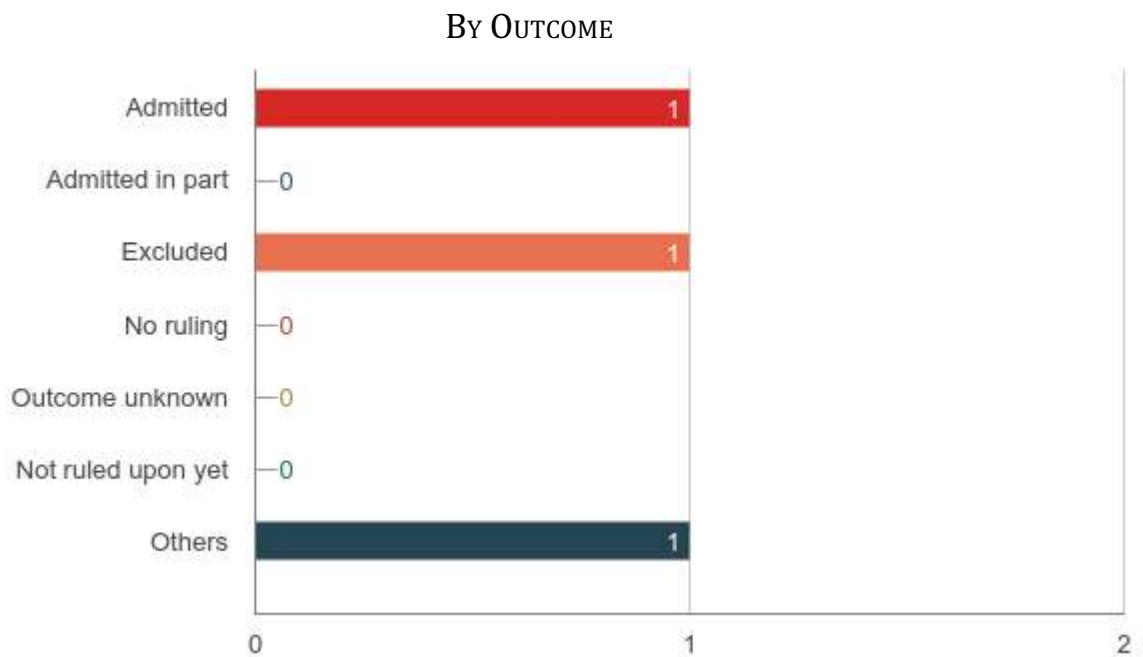
NEUROSURGERY EXPERT WITNESS

PREPARED ON AUGUST 12, 2022

Grounds Of Challenge



Challenge Disposition



EXPERT CHALLENGES

This section provides references to an expert who has been cited or mentioned in case opinions (reported and unreported), briefs (where available), jury verdicts, dockets, and expert challenges for both state and federal courts. It is again noted that not every jurisdiction and every court makes their case law available, and this profile is limited as such.

The following search string was run to ensure that all available cases and briefs are captured.

((Jim or James) w/2 **Smith**) w/100 (Expert or Neuro! or Surg!))

The following legal databases were looked at during the preparation of this report:

1. Federal and State Cases Combined, Jury Verdicts and Settlements, Federal Agency Decisions, State Agency Decisions
2. Court Documents – Trial Filings, Appellate Briefs, Trial Orders, Dockets
3. PACER was searched to retrieve original documents, if available.
4. Google Scholar – Legal Opinion Search

Availability of Supporting Documents

In the course of research, many relevant documents such as opinions, briefs, pleadings, deposition transcripts, motions to exclude, rulings, expert reports, expert CVs etc. are retrieved from various sources. These documents are divided into three categories:

1. Available for Download for no additional cost.
2. Available for Instant Delivery (These are documents which can be delivered within one business day after payment.) To know the cost of these documents and to order, click on **(Request Document)** next to the document to send an email with the relevant document title and the Case Caption.
3. These are documents which cannot be procured electronically and can be obtained only from the court. These documents do not have **(Request Document)** mentioned against them. To know how these documents can be procured, please send a mail to **info@expertwitnessprofler.com** with the relevant document title and the Case Caption.

DIRECT CHALLENGES

This section includes reported, and numerous unreported cases from both state and federal jurisdictions where a “gatekeeping authority” has been cited or mentioned in a decision and the testifying expert’s methodology or qualifications have been challenged. Gatekeeping authority is defined as a seminal decision or rule of evidence that defines or interprets the standards for admissibility or expert witness testimony for the corresponding jurisdiction. This section includes results from over 165 gatekeeping authorities, including but not limited to *Daubert v. Merrell Dow*, *Frye v. United States*, and their progeny. Sources for unreported decisions include docket sheets, litigation reports, jury verdicts, and other online resources. Although care has been followed to gather this information, not all cases involving expert challenges are reported.

Testimony properly found less credible by the WCJ; affirmed on appeal.

Case Source:	Opinion, State Agency Decision, Brief Bank
Case Caption:	Hopper V. Krevinec
Docket Number:	2009-WC-00206, 05 03529-J-2249, 05 03528-J-2248
Case Cite(s):	25 So. 3d 1112; 2010 Miss. App. LEXIS 27; 2007 MS Wrk. Comp. LEXIS 50; 2009 WL 6015744; 2009 WL 6015746
Grounds of Challenge:	Methodology
Area of Law:	Workers' Compensation
Jurisdiction:	State
State:	Mississippi
Court Name:	Court Of Appeals Of Mississippi, Mississippi Workers Compensation Commission, Supreme Court Of Mississippi
Retained By:	Plaintiff
Plaintiff's Attorney(s):	James Kenneth Wetzel
Defendant's Attorney(s):	Amy Lee Topik, Alison B. Baker
Judge(s):	L. Joseph Lee, Tyree Irving, Donna M. Barnes, Leslie D. King, William H. Myers, T. Kenneth Griffis, David M. Ishee, Larry E. Roberts, Virginia C. Carlton, James D. Maxwell, II
Date(s):	01/19/2010
Summary of Involvement:	The Appellate Court observed that “The Commission found that Dr. Smith's testimony was not reliable because it was based solely on Hopper's version of the events. The Commission also found Dr. Smith's testimony uncertain because he stated that Hopper “probably injured his disc on May 7, 2004, and then that one precipitating event when the sneeze happened finally sort of put him over the edge.” However, conflicting evidence was presented as to when the sneeze took place. Hopper stated that he had been at work for about twenty minutes on May 14 when he sneezed and the pain from

the May 7 injury was exacerbated. Tyson, Hopper's supervisor, testified that Hopper had related to him that he was injured while working on his personal vehicle at home. Also, the medical record from the hospital stated that the sneeze occurred at night with an onset of pain occurring the next morning. The Commission found that Hopper's claim was mainly supported by his own testimony, and Hopper's and Dr. **Smith's** testimonies were not as credible as that of Tyson and the medical records." The judgment was affirmed on appeal.

Supporting Document(s):

1. Opinion dated January 19, 2010 ([Request Document](#))
 2. State Agency Decision Dated September 14, 2007 ([Request Document](#))
 3. Brief Of Appellant Joseph Hopper
 4. Brief Of The Appellees
-

Testimony admitted; affirmed.

Case Source:	Opinion, Trial Pleading, Brief Bank
Case Caption:	United States V. Teel
Docket Number:	07-60897, 1:06-CR-00079
Case Cite(s):	299 Fed. Appx. 387; 2008 U.S. App. LEXIS 23438; 2008 WL 7909283; 2008 WL 7909284
Grounds of Challenge:	Methodology, Relevance, Legal Conclusion
Area of Law:	Criminal Law
Jurisdiction:	Federal
State:	Mississippi
Court Name:	United States Court Of Appeals For The Fifth Circuit, US District Court For The Southern District Of Mississippi
Retained By:	Plaintiff
Plaintiff's Attorney(s):	Not Mentioned
Defendant's Attorney(s):	James L. Davis, III
Judge(s):	Thomas M. Reavley, Edith Brown Clement, Edward C. Prado
Date(s):	11/13/2008
Summary of Involvement:	According to the decision dated November 13, 2008, it was stated that "Teel also challenges several evidentiary rulings by the district Court, including allowing Government witnesses to provide "legal opinions" regarding excessive force, and permitting a Government expert, Dr. James Smith , to testify beyond the scope of his pre-trial disclosure pursuant to Fed. R. Crim. P. 16. The evidence supporting Teel's conviction was overwhelming. Teel also offers nothing more than conclusory and speculative assertions of prejudice resulting from Dr. Smith's challenged testimony. We see no error, and the admission would have been harmless in any event." The judgment was affirmed.
Supporting Document(s):	1. Opinion dated November 13, 2008 (Request Document) 2. Appellee's Brief Filed By Appellee Usa. Disk Provided [Y/N]: Y Sufficient [Y/N]: Y [6071052-1] [07-60897] E/Res's Brief Ddl Satisfied. Reply Brief Due On 7/24/08 For Ryan Michael Teel

3. Appellant's Brief Filed By Appellant Ryan Michael Teel. Disk Provided [Y/N]: Y Sufficient [Y/N]: N (Certificate Of Interested Parties Needed/Requested From Attorney James Davis) [6025022-1]. [07-60897] A/Pet's Brief Ddl Satisfied. E/Res's Brief Due On 6/9/08 For USA. Sufficient Brief Due On 5/19/08 For Ryan Michael Teel
 4. Notice Note:Of Experts By USA As To Ryan Michael Teel, James Ricky Gaston, Daniel Evans, Karl W. Stolze ([Request Document](#))
 5. Brief Of Appellant Ryan Michael Teel
 6. Brief For The United States As Appellee
-

INDIRECT CHALLENGES

This section includes reported, and numerous unreported cases from both state and federal jurisdictions where the expert's testimony has been cited or mentioned in a decision and the testifying expert's testimony has been offered in support of, in response to, or in opposition to motion for summary judgment, class certification, preliminary injunction, motion for a new trial or judgment notwithstanding the verdict. Sources for unreported decisions include docket sheets, litigation reports, jury verdicts, and other online resources. Although care has been followed to gather this information, not all cases involving such indirect expert challenges are reported.

Testimony properly found insufficient to win grant of motion for a new trial; affirmed.

Case Source:	Opinion, Brief Bank
Case Caption:	Webster V. Kopyov
Docket Number:	B140976
Case Cite(s):	2002 Cal. App. Unpub. LEXIS 10045; 2001 WL 34144604
Grounds of Challenge:	Others
Area of Law:	Medical Malpractice
Jurisdiction:	State
State:	California
Court Name:	Court Of Appeal Of California, Second Appellate District, Division Two
Retained By:	Plaintiff
Plaintiff's Attorney(s):	Harney Law Offices, David T. Harney, John W. Streeter
Defendant's Attorney(s):	O'Flaherty, Cross & Ovando, Michael A. O'Flaherty, Kristen J. Heim; Lewis, D'Amato, Brisbois & Bisgaard And John J. Weber
Judge(s):	Roger W. Boren, Michael G. Nott
Date(s):	10/30/2002
Summary of Involvement:	According to the decision dated October 30, 2002, it was stated that "With respect to the surgical procedure itself, the evidence showed that Dr. Kopyov did not perform the surgery and that the only two surgeons who operated on Webster were licensed physicians, Drs. Jacques and Duma. At least three expert witnesses -- Dr. Laszlo Tamas, a neurosurgeon, Dr. Henry Pribram, a neuroradiologist, and Dr. Jean Lake, a neurologist, all testified that the surgery did not cause Webster's stroke because the stroke occurred too long after the surgery (two weeks) for there to be a casual connection and the location of the hemorrhage or stroke was not close enough to the location of the surgery. Appellants' own expert witness, Dr. James Smith , testified that Drs.

Jacques and Duma did not fall below the standard of care in performing the procedure, and that Webster's stroke could have been "a result of the procedure or just bad luck." It was further stated that "Appellants' entire argument in this regard seems to be that the jury should have believed their expert witnesses over respondents' expert witnesses. But the jury was not so obligated. A trier of fact is entitled to give more weight to the testimony of one witness over that of another. Respondents' experts testified that there was no causal connection between the surgery and the stroke because the stroke occurred too long after the surgery and the location of the hemorrhage or stroke was not close enough to the location of the surgery. Indeed, even appellants' own expert witness, Dr. James **Smith**, testified that Webster's stroke could have been "a result of the procedure or just bad luck." Thus, we find as a matter of law that appellants did not meet their burden of establishing that the trial Court abused its discretion in denying their motion for a new trial on the ground of insufficient evidence." The judgment was affirmed on appeal.

- Supporting Document(s):**
1. Opinion dated October 30, 2002 ([Request Document](#))
 2. Appellants Opening Brief
-