

'Setting the Standard': Analyzing the Delaware Supreme Court's Zantac Ruling on Expert Testimony Admissibility and the Potential Impact in the Delaware Courts

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Experts often assist the Delaware courts, including the Court of Chancery and the Superior Court Complex Commercial Litigation Division, in establishing damages and other areas of expertise. Recently, the Delaware Supreme Court's opinion, *In re Zantac (Ranitidine) Litigation*, issued a new twist to the typical standard on expert testimony admissibility.

The Delaware Supreme Court's Analysis

In general, expert testimony or opinion must be grounded in "scientific, technical or other specialized knowledge" that helps "the trier of fact to understand the evidence or to determine a fact in issue[.]"¹

In *Zantac*, the Delaware Supreme Court explained that, under Delaware Rules of Evidence (DRE) 702 and the seminal U.S. Supreme Court case, *Daubert*,² the proponent of an expert opinion must establish that "the opinion is based on sufficient facts or data and on dependable principles and methods that are reliably applied to the facts of the case."³

The Delaware Supreme Court also examined DRE 702's analogous federal rule, which was amended in 2023. After considering DRE 702, the court explained that the federal amendment did not change substance but rather made explicit that the proponents of expert testimony must prove "admissibility by a preponderance of the evidence." The purpose of this amendment was to discourage trial courts from deciding a challenge to expert testimony by applying a presumption of admissibility.

Ultimately, the Delaware Supreme Court applied this reasoning to reverse the lower court's decision. In the case below, approximately 75,000 plaintiffs — each diagnosed with one of 10 types of cancer — sought to present expert testimony that their ingestion of Zantac caused their disease.

The defendants disputed the reliability of the experts' methodologies on myriad grounds. But the lower court did not credit those arguments for several reasons, including because it:

- Considered "any argument regarding the experts' application of methodology as going to weight rather than admissibility."
- Concluded that Delaware law embraced a "'liberal thrust' or presumption favoring admissibility."

The Supreme Court held that by refusing to credit the defendants' arguments, the Superior Court had "abdicated its gatekeeping role[.]" passing "crucial questions of sufficiency and reliability" to the jury rather than resolving them itself. In short, the Supreme Court ruled that the plaintiffs failed to prove the admissibility of their experts' testimony by a preponderance of the evidence.

¹ D.R.E. 702(a).

² *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

³ *In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1143-44 (Del. 2025).

Application to Trial Courts

A potential consequence of the *Zantac* decision is that trial courts may shift in favor of granting more motions to exclude expert testimony. But its effect may be felt differently depending on the court overseeing the matter. Clearly, the *Zantac* ruling is most obviously applicable to the Superior Court because the Superior Court's gatekeeping function exists precisely to prevent juries from being exposed to unreliable expert evidence.

But what is the impact of *Zantac* in the Court of Chancery, which conducts only bench trials? At present, motions to exclude expert testimony in the Court of Chancery are often denied, on the theory that the court will assess the weight of the expert evidence after trial. And bench trials may be different enough from jury trials to render *Zantac* distinguishable in the Court of Chancery.

Whether *Zantac* takes hold in the Court of Chancery will likely depend on practical incentives as much as doctrine. The Court of Chancery described this very difference in the 2009 *Beard Research* opinion. There, it issued an expert admissibility ruling that provided that, "although it is critical in a jury trial for a court to exercise its gatekeeper function in advance of allowing an expert to testify, the importance of addressing issues raised under *Daubert* and

Rule 702 before an expert testifies is more attenuated in a bench trial."⁴

The court subsequently admitted the testimony, explaining that because it was a bench trial, the court could assess the proper weight to assign such testimony, especially upon hearing cross-examination.

Beard Research likely has staying power. Currently, something that approaches a presumption of admissibility for expert testimony survives in the Court of Chancery.⁵ And given that no Court of Chancery opinion has cited to *Zantac* in the months since its publication, *Beard Research* and its progeny will likely continue to govern expert testimony in the Court of Chancery.

In sum, while there's a possibility that *Zantac* may have the potential to influence the Court of Chancery's approach to assessing admissible expert testimony, it is more likely that *Zantac*'s effects will predominantly be felt in the Superior Court.

⁴ *Beard Rsch., Inc. v. Kates*, 2009 WL 7409282, at *7 (Del. Ch. Mar. 31, 2009).

⁵ See, e.g., *Fortis Advisors LLC v. Johnson & Johnson*, C.A. No. 2020-0881-LWW, trans. at 39-42 (Del. Ch. Jan. 8, 2024); *GB-SP Hldgs., LLC v. Walker*, C.A. No. 9413-VCF, trans. at 32 (Del. Ch. Jan. 4, 2022). But see *In re Columbia Pipeline Group, Inc. Merger Litig.*, 2022 WL 2902769, at *1-2, 6 (Del. Ch. July 14, 2022) (expert improperly presented some testimony as legal conclusions); *S'holder Representative Servs. LLC v. Alexion Pharms., Inc.*, C.A. No. 2020-1069-MTZ, at 2 (Del. Ch. June 26, 2023) (Order) (expert untimely disclosed).

Takeaways

- The Delaware Supreme Court's *Zantac* decision clarifies that the proponent of expert testimony must prove admissibility under D.R.E. 702 by a preponderance of the evidence, reflecting the 2023 amendments to the analogous federal rule and rejecting any presumption of admissibility.
- The Supreme Court reversed the Superior Court for failing to conduct its gatekeeping role, holding that trial judges must decide questions of the sufficiency and reliability of expert opinions rather than relegating them to questions of weight to be determined by the jury.
- The opinion implies a greater likelihood that motions to exclude unreliable expert testimony will be granted to prevent juries from hearing the testimony. This effect will be mostly felt in the Superior Court, including its Complex Commercial Litigation Division, where jury trials are common.
- By contrast, *Zantac*'s influence may be limited in the Court of Chancery because the Court does not have juries but instead conducts bench trials and often admits expert testimony and assigns it weight at or after trial.

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