

EXERCISE**MOVING TO EXCLUDE AN EXPERT (DAUBERT MOTIONS)****Background**

You're on a litigation team. The lawsuit alleges that your client's product, an innovative car engine, was defective and caused injuries to the plaintiffs when the engines failed and their cars crashed. You've just finished expert depositions. Your team is planning to move to exclude the testimony of the plaintiff's expert, Olayemi Musa, pursuant to *Daubert*.

Ms. Musa is a professor of engineering at a reputable university with very little experience with car engines. She has a professional engineer license, but she has not worked as an engineer since 2001. She consults frequently in products liability cases for plaintiffs. Ms. Musa opined that the engines were defective, likely to combust, and susceptible to unusually quick degradation, causing the engines to fail and leading to accidents like the plaintiffs'. To support her opinion, she ran a lab test on the engine under conditions similar to those plaintiffs experienced.

Your expert, Mr. Johan Nilsson, opined that your product was not defective and instead that the accidents were caused by the plaintiffs' negligence and failure to keep the car in working condition. Mr. Nilsson also reviewed the test Ms. Musa conducted and believes that she didn't follow industry standards in conducting the test and that her approach was not generally accepted by others in their field. He believes Ms. Musa ignored data about the other parts of the plaintiffs' cars, which was important to the test, and that she characterized the degradation of the engines as "quick" when that was expected in the industry.

You're meeting this week to discuss the motion to exclude.

Instructions

Come prepared to discuss these questions:

- What arguments would you consider making in the motion? Why?
- What argument would you not make in the motion? Why?
- How would you organize the arguments?
- How would you use your expert in drafting the motion?