No. 23-55325

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TERRY SONNEVELDT, ESTHER WRIGHT SCHNEIDER, BRIAN HUME, JEAN LEVASSEUR, CHRISTOPHER LACASSE, TIM HALWAS, ERIN MATHENY, LEWIS DELVECCHIO, JON SOWARDS, LAWRENCE BOHANA, MONIKA BOHANA, DAVID DENNIS, AND JAQUELINE S. ASLAN,
Plaintiffs-Appellants,

v.

MAZDA MOTOR OF AMERICA, INC. d/b/a MAZDA NORTH AMERICAN OPERATIONS AND MAZDA MOTOR CORPORATION,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
JOSEPHINE L. STATON, DISTRICT JUDGE • CASE NO. 8:19-CV-1298-JLS-KES

MOTION OF LAWYERS FOR CIVIL JUSTICE FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF DEFENDANTS-APPELLEES

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MOTION OF LAWYERS FOR CIVIL JUSTICE FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF DEFENDANTS-APPELLEES

Under Federal Rule of Appellate Procedure 29(a)(3), Lawyers for Civil Justice (LCJ) respectfully requests leave to file a brief as amicus curiae in support of Defendants-Appellees Mazda Motor of America, Inc. and Mazda Motor Corporation (collectively, Mazda).[1] LCJ notified the parties of its intent to file an amicus brief. Mazda consented. Counsel for Plaintiffs-Appellants responded that they "take no position" with respect to whether or not LCJ could file an amicus brief. Given the lack of affirmative consent, LCJ is treating this as withholding of consent. LCJ therefore files this motion for leave to file the attached amicus brief, which should be granted for the following reasons.

1. LCJ is a national coalition of defense trial lawyer organizations, law firms, and corporations that promotes excellence and fairness in the civil justice system to secure the just, speedy, and inexpensive determination of civil cases. For over 35 years, LCJ has

[1] No party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and no other person except amicus curiae or its counsel contributed money to fund the preparation or submission of this brief.

advocated for procedural reforms that (1) promote balance in the civil justice system, (2) reduce the costs and burdens associated with litigation, and (3) advance predictability and efficiency in litigation. LCJ and its members have an interest in ensuring that the Federal Rules of Evidence are consistently interpreted across the nation, particularly with respect to the burden of production and the reliability criteria set forth in Rule 702.

Working through the Rules Enabling Act process, LCJ often urges proposals to reform aspects of the Federal Rules of Civil Procedure and Federal Rules of Evidence. LCJ has specific expertise on the meaning, history, and application of Federal Rule of Evidence 702, drawing on both its own efforts undertaken during the rulemaking process and the collective experience of its members who participate in litigation in the federal courts. LCJ has submitted several extensive comments, including original research, to the Judicial Conference Advisory Committee on Evidence Rules.

2. When the Court hears this case, the 2023 amendments to the Federal Rule of Evidence 702 should govern. The Supreme Court made this clear in its transmittal order to Congress under the Rules

Enabling Act: "The foregoing amendments to the Federal Rules of Evidence shall take effect on December 1, 2023, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending." S. Ct. Order, at 3 (Apr. 24, 2023), https://www.supremecourt.gov/orders/courtorders/frev23_5468.pdf.

Although it is the 2023 amendments to Rule 702 that control the outcome of this case, no party to this case has briefed this point. LCJ hopes to fill that void by the submission of its amicus brief. LCJ aims to "fulfill[ ] the classic role of amicus curiae by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Miller-Wohl Co. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982).

LCJ is especially adept to brief the Court about the evolution of Rule 702 because it was a key advocate for the 2023 amendments.[2]

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[2] *See* Lawyers for Civil Justice, *Clarity and Emphasis: The Committee's Proposed Rule 702 Amendment Would Provide Much-Needed Guidance About the Proper Standards for Admissibility of Expert Evidence and the Reliable Application of an Expert's Basis and Methodology* (Sept. 1, 2021), https://www.regulations.gov/comment/USC-RULES-EV-2021-0005-0007; Lawyers for Civil Justice, *Why*

* * *

Based on the foregoing reasons, Lawyers for Civil Justice respectfully requests that the Court grant leave to file the attached amicus brief.

November 6, 2023

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Loudermill *Speaks Louder than the Rule: A "DNA" Analysis of Rule 702 Case Law Shows that Courts Continue to Rely on Pre*-Daubert *Standards Without Understanding that the 2000 Amendment Changed the Law* (Oct. 20, 2020), https://www.uscourts.gov/sites/default/files/20-ev-y_suggestion_from_lawyers_for_civil_justice_-_rule_702_0.pdf; Lawyers for Civil Justice, *Federal Rule of Evidence 702: A One-Year Review and Study of Decisions in 2020* (Sept. 30, 2021), https://www.regulations.gov/comment/USC-RULES-EV-2021-0005-0008.

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AMICUS CURIAE BRIEF

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DISCLOSURE STATEMENT

The Lawyers for Civil Justice is a nonprofit trade association. Pursuant to Federal Rule of Appellate Procedure 26.1(a), there is no parent corporation or publicly held owner corporation to identify.

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INTEREST OF AMICUS CURIAE[1]

Lawyers for Civil Justice (LCJ) is a national coalition of defense trial lawyer organizations, law firms, and corporations that promotes excellence and fairness in the civil justice system to secure the just, speedy, and inexpensive determination of civil cases. For over 35 years, LCJ has advocated for procedural reforms that (1) promote balance in the civil justice system, (2) reduce the costs and burdens associated with litigation, and (3) advance predictability and efficiency in litigation. Working through the Rules Enabling Act process, LCJ often urges proposals to reform aspects of the Federal Rules of Civil Procedure and Federal Rules of Evidence.

LCJ has specific expertise on the meaning, history, and application of Federal Rule of Evidence 702, drawing on both its own efforts undertaken during the rulemaking process and the collective experience of its members who participate in litigation in the federal courts. LCJ has submitted several extensive comments, including

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[1] This brief is accompanied by a motion for leave to file. No party or party's counsel authored this brief in whole or in part. No party or party's counsel, and no person other than amicus, its members or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

original research, to the Judicial Conference Advisory Committee on Evidence Rules.[2] LCJ's analysis has identified widespread misunderstanding of Rule 702's requirements and purposeful shifting of the expert admissibility standard away from in the Rule's text.

LCJ and its members have an interest in ensuring that the Federal Rules of Evidence are consistently interpreted across the nation, particularly with respect to the burden of production and the reliability criteria set forth in Rule 702. That standard reflects the result of the Rules Enabling Act's rulemaking process and is the governing law.

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[2] *See, e.g.*, Lawyers for Civil Justice, *Clarity and Emphasis: The Committee's Proposed Rule 702 Amendment Would Provide Much-Needed Guidance About the Proper Standards for Admissibility of Expert Evidence and the Reliable Application of an Expert's Basis and Methodology* (Sept. 1, 2021), https://www.regulations.gov/comment/USC-RULES-EV-2021-0005-0007; Lawyers for Civil Justice, *Why* Loudermill *Speaks Louder than the Rule: A "DNA" Analysis of Rule 702 Case Law Shows that Courts Continue to Rely on Pre-*Daubert *Standards Without Understanding that the 2000 Amendment Changed the Law* (Oct. 20, 2020), https://www.uscourts.gov/sites/default/files/20-ev-y_suggestion_from_lawyers_for_civil_justice_-_rule_702_0.pdf; Lawyers for Civil Justice, *Federal Rule of Evidence 702: A One-Year Review and Study of Decisions in 2020* (Sept. 30, 2021), https://www.regulations.gov/comment/USC-RULES-EV-2021-0005-0008.

SUMMARY OF THE ARGUMENT

The district court concluded that the testimony of Plaintiffs' expert, Dr. Christopher White, must be excluded because he presented no testing or analysis that confirms his causation theory that the properties of hydrogenated acrylonitrile butadiene rubber (HNBR) used for the mechanical seal in Mazda vehicles cause water pump failures. The district court's careful analysis of White's research methodology and causation opinion is a faithful application of Federal Rule of Evidence 702.

1. For years, other district courts have ignored their gatekeeping responsibilities and allowed purported experts to present unreliable evidence to juries. This led the Supreme Court to instruct lower courts to exclude opinions supported only by the unvalidated subjective conclusions of the expert or where "there is simply too great an analytical gap between the data and the opinion proffered." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997); *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993). Under the Rules Enabling Act, these landmark rulings were codified into the 2000 amendments to Rule 702.

Unfortunately, many lower courts have continued to hold—and Plaintiffs here argue—that the critical questions of the sufficiency of an expert's basis for his testimony, and the application of the expert's methodology, are generally questions of weight and not admissibility. This is the wrong application of Rule 702. To fix these repeated judicial errors, the most recent amendments to Rule 702, effective in December 2023, clarify that the district court here did exactly what Rule 702 requires: assess if each admissibility requirement is established by a preponderance of the evidence before allowing presentation of the opinion testimony to the jury.

2. Under Rule 702, the gatekeeping function is assigned to the trial court. That's why the deferential abuse-of-discretion standard applies, and the district court should be reversed only if its decision was manifestly erroneous. *Claar v. Burlington N. R.R. Co.*, 29 F.3d 499, 500–01 (9th Cir. 1994). The district court diligently examined White's report and testimony and found too many analytical gaps that cannot be forgiven. So understood, Rule 702 requires White's testimony to be excluded. This Court should affirm.

ARGUMENT

I. The district court performed its gatekeeper role by keeping out unreliable expert testimony under Federal Rule of Evidence 702.

A. Unreliable expert testimony has long permeated the courts, prompting *Daubert* and amendments to Rule 702.

In the 1980s, "the courts were overrun with pseudo-science and fake expertise" because judges "typically applied a very lenient standard to the admissibility of expert testimony." Jim Hilbert, *The Disappointing History of Science in the Courtroom:* Frye*,* Daubert*, and the Ongoing Crisis of 'Junk Science' in Criminal Trials*, 71 Okla. L. Rev. 759, 759 n.3, 778 (2019). The situation got so out-of-hand that it prompted the creation of a presidential task force chaired by former Vice President Dan Quayle "to examine the perceived proliferation of unreliable expert testimony." *See id.* at 760 n.5. "[The] uncontrolled use of expert witnesses . . . . allowed 'junk science' to tarnish the legal process." Dan Quayle, *Civil Justice Reform*, 41 Am. U. L. Rev. 559, 565 (1992).

Then came the 1990s. In a trilogy of opinions on the admissibility of expert testimony, the Supreme Court stepped in to keep junk science

outside the courtroom door. *See Daubert*, 509 U.S. 579; *Joiner*, 522 U.S. 136; *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). Each was a landmark in its own right. And each defined the importance of trial judges performing their gatekeeper role to exclude misleading and unreliable expert opinion. *See United States v. Machado-Erazo*, 47 F.4th 721, 734 (D.C. Cir. 2018) (Rogers, J., concurring) (*Daubert* was "spawned by concerns about 'junk science' masquerading as science" (citing *Joiner*, 522 U.S. at 153 (concurrence of Stevens, J.))); *see also id.* (because of "[t]he heightened aura and weight to which a fact finder is likely to attach to expert testimony, as compared to lay testimony," a district court is duty-bound to fulfill its gatekeeper role).

Daubert tasks the trial court with the role of a "gatekeeper," which requires courts to make an independent determination that "any and all scientific testimony or evidence admitted [at trial] is not only relevant, but reliable." *Daubert*, 509 U.S. at 589. The goal of the Supreme Court's expert-testimony jurisprudence "is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field."

Kumho Tire, 526 U.S. at 152. In other words, for expert testimony to be admissible, the opinion must be reasonably based on good science. And if the court (as here) finds the gap between the science and the witness's conclusion too great, the opinion is inadmissible. *Joiner*, 522 U.S. at 146. An integral part of upholding a fair legal process is ensuring that courtroom proceedings are not tainted by unreliable evidence disguised as expert testimony. *See Legg v. Chopra*, 286 F.3d 286, 292 (6th Cir. 2002) ("Fed. R. Evid. 702 . . . is a gatekeeping measure designed to ensure 'fairness in administration' of the case.") (quoting Fed. R. Evid. 102).

B. Rule 702 governs the standard for expert admissibility.

In 2000, following rulemaking actions conducted under the Rules Enabling Act, the Supreme Court submitted to Congress the expert-witness standard in Rule 702. Order Amending the Federal Rules of Evidence, 529 U.S. 1189, 1195 (2000); *see* 28 U.S.C. §§ 2072(a)–(b). Thus, "[t]he admission of expert testimony is governed by Federal Rule of Evidence 702." *F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878, 888 (9th Cir. 2014).

Rule 702(b) mandates that opinion testimony must be "based on sufficient facts or data," and thus the court must decide the adequacy of an expert's factual foundation as a matter of admissibility. *See* Daniel J. Capra, *Memorandum to Advisory Comm. on Evidence Rules, Forensic Evidence,* Daubert *and Rule 702, in* Advisory Committee on Evidence Rules April 2018 Agenda Book 49, 90 (2018). Courts applying Rule 702 must decide whether the necessary elements for admission of opinion testimony—helpfulness to the jury, sufficient factual basis, use of reliable principles and methods, and reliable application of the methodology to the facts of the case—have been shown by a preponderance of the evidence. *See* Fed. R. Evid. 702 advisory committee's note to 2000 amendment ("[T]he proponent has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the evidence.").

The Advisory Committee on Evidence Rules intended the amendment of Rule 702 adopted in 2000 to put in place "a more rigorous and structured approach than some courts are currently employing." Hon. Fern M. Smith, *Report of the Advisory Committee on*

Evidence Rules, *in* Advisory Committee on Evidence Rules October 1999 Agenda Book 52, 58 (1999).

C. The district court carefully applied Rule 702 to exclude Dr. Christopher White's testimony.

True to Rule 702's mandate, the district court here carefully reviewed White's methodology and opinion and found them unreliable. On appeal, however, Plaintiffs mainly rely on *Kennedy v. Collagen Corp.*, 161 F.3d 1226 (9th Cir. 1998), and argue that the test under Rule 702 is "just whether [the expert's] testimony has substance such that it would be helpful to a jury" and "[d]isputes related to purported 'faults in an [expert's] use of [a particular] methodology, or lack of textual authority for his opinion, ***go to the weight, not the admissibility***, of his testimony.'" (AOB 22 (quoting *Kennedy*, 161 F.3d at 1231) (bracket insertions in original); *see id.* at 16, 18, 28, 30, 33, 35, 40.) Plaintiffs' approach is wrong for several reasons.

For starters, and as a preliminary matter, *Kennedy* was decided two years before the 2000 amendments. And under the Rules Enabling Act, once Rule 702 became effective it displaced conflicting authority. 28 U.S.C. § 2072(b). Thus, the "elements of Rule 702, not the caselaw, are the starting point for the requirements for admissibility." Thomas

D. Schroeder, *Toward a More Apparent Approach to Considering the Admission of Expert Testimony*, 95 Notre Dame L. Rev. 2039, 2060 (2020); *see BurnLounge, Inc.*, 753 F.3d at 888.

Plaintiffs' argument that Mazda's challenge to the sufficiency of factual basis for the expert's conclusion goes "to the weight, not the admissibility" of testimony is precisely the type of rubberstamping Rule 702 rejects. *See* Advisory Committee on Evidence Rules, *Committee Note Proposal* 228 (2022) ("[M]any courts have held that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a).").[3]

Nor did *Kennedy*, as Plaintiffs appear to suggest, dispense with the obligation to produce reliable evidence of causation and require the district court to turn a blind eye towards identified analytical gaps in the expert's methodology. (*See* AOB 18, 35.) Quite the opposite: *Kennedy* reaffirmed the Supreme Court's pronouncement in *Joiner* that expert evidence should be excluded if "there is simply too great an analytical gap between the data and the opinion proffered," *Joiner*, 522

[3] https://www.uscourts.gov/sites/default/files/2022_scotus_package_0.pdf

U.S. at 146. *Kennedy*, 161 F.3d at 1230 ("[T]he district court properly may exclude expert testimony if the court concludes too great an analytical gap exists.").

The main reason this Court in *Kennedy* reversed the grant of a *Daubert* motion and summary judgment is because the district court had failed to fully consider the record. 161 F.3d at 1227, 1230. In *Kennedy*, this Court determined that the testimony of the plaintiffs' expert was admissible under *Daubert* because the expert had "relied upon a wide variety of objective, verifiable evidence" to establish that the defendant's medical product caused autoimmune disorders. *Id.* at 1228. This evidence included: (1) a peer-reviewed article coauthored by the expert that supported his opinion, (2) other scientific publications and clinical studies establishing a link between the defendant's product and autoimmune diseases, and (3) testimony from one of the defendant's scientists validating the expert's methodology. *Id.* Nor was there any dispute in *Kennedy* over whether the expert had followed the accepted scientific methodology because the defense expert had validated that methodology. *Id.*

By contrast, Mazda has challenged the reliability of White's methods and opinions from the outset during the class certification stage. *Sonneveldt v. Mazda Motor of Am., Inc.*, No. 19-cv-01298, 2023 WL 2292600, at *7 (C.D. Cal. Feb. 23, 2023). White never had a sufficient factual basis to reach his conclusion that Mazda's design that uses HNBR for the mechanical seal is the "root cause" of water pump failures. As the district court properly found, White failed to show how "that HNBR does degrade faster and, as a consequence, performs worse in internal water pumps than it does in external water pumps—*i.e.*, that the water pumps in the Class Vehicles fail more frequently or earlier than external water pumps in comparable vehicles." *Id.* And "White has not analyzed the rate at which the Class Vehicles' water pumps fail prematurely, let alone compared that rate with failure rates for external water pumps." *Id.* He "does not explain how much higher this temperature will be in an internal water pump compared to an external water pump." *Id.* at *8 (emphasis omitted). "Nor does White offer any empirical data showing that the temperature of the coolant is in fact generally higher in internal water pumps than in external water pumps." *Id.*

Likewise, White did not "rule out other possible failure modes for the water pumps that he examined," yet blames the design's use of internal water pumps as the "root cause" of the pump failures. *Id.* at *9. White's inability to "rule out" other possible causes of the pump's failure renders his opinion the product of an unreliable methodology. White's theory and opinion are "purely hypothetical" and "speculati[ve]," and the district court was duty-bound to exclude it under Rule 702. *Sonneveldt*, 2023 WL 2292600, at *8, *11–12.

D. The 2023 amendment to Rule 702 confirms that the district court correctly applied the law.

For Rule 702 to preclude juries from hearing unreliable expert evidence, district courts must adhere to their gatekeeping function. Recently, however, the Judicial Conference Advisory Committee on Evidence Rules reported that it "has determined that in a fair number of cases, the courts have found expert testimony admissible even though the proponent has not satisfied the Rule 702(b) and (d) requirements by a preponderance of the evidence." Hon. Patrick J. Schiltz, *Report of the Advisory Committee on Evidence Rules*, *in* Committee on Rules of Practice & Procedure June 2021 Agenda Book 818, 823 (2021).

To address the trial courts' recurring abdications of their gatekeeping role, the Judicial Conference and the Advisory Committee on the Rules of Evidence proposed clarifying amendments to Rule 702 to the Supreme Court, which adopted the amendments and presented them to Congress. The 2023 amendments do not make substantive changes to Rule 702 but simply clarify the proper application of it. *Sardis v. Overhead Door Corp.*, 10 F.4th 268, 284 (4th Cir. 2021) (discussing Advisory Committee on Evidence Rule's analysis on the 2023 amendments to Rule 702 and concluding "[i]t clearly echoes the existing law on the issue"). These amendments will become effective on December 1, 2023, and Rule 702 will be amended in three key ways.

First, the amendments confirm that the court must rule on the admissibility of proffered expert testimony before allowing evidence to be shown to the trier of fact—this change emphasizes that such questions are not for the jury to decide.

Second, the amendments place the preponderance of the evidence standard within the text of Rule 702, requiring the proponent of expert evidence to "demonstrate[ ] to the court that it is more likely than not" that all the requirements of Rule 702 are satisfied. *See* Fed. R. Evid.

702, 2023 Amendment. This change makes clear the "preponderance standard applies to the three reliability-based requirements added in 2000." Fed. R. Evid. 702 advisory committee's note to 2023 amendment. The amendments clarify that an even-handed preponderance of proof test, and not some presumption favoring acceptance, must govern how judges determine the admissibility of an expert's testimony.

Third, Rule 702(d) is amended to emphasize that each expert opinion must "reflect a reliable application" of her principles and methods to the fact of the case. While this standard "does not require perfection," the Advisory Committee emphasized that an expert may not make claims that are "unsupported" by the expert's basis and methodology. Fed. R. Evid. 702 advisory committee's note to 2023 amendment.

When this Court hears this case, the 2023 amendments to Rule 702 should govern because these changes to the rule do not impose any new, specific procedures, but simply clarify the expert admissibility standard that has been in place at least since 2000. *See United States v. Morgan*, 376 F.3d 1002, 1012 (9th Cir. 2004) (where an amendment "clarif[ies] pre-existing law, rather than to alter it," the clarification

applies retroactively (citation omitted)); *Sardis*, 10 F.4th at 284. Indeed, in its transmittal order to Congress under the Rules Enabling Act, the Supreme Court made clear that these "amendments to the Federal Rules of Evidence shall take effect on December 1, 2023, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending." S. Ct. Order, at 3 (Apr. 24, 2023).[4] The 2023 amendments to Rule 702 confirm that the district court here properly exercised its gatekeeping role in keeping out unreliable expert testimony.

II. The district court did not abuse its discretion.

While the proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the admissibility requirements of Rule 702 are satisfied, *see Daubert*, 509 U.S. at 592 n.10, the district court is the ultimate "gatekeeper." *See* Fed. R. Evid. 104(a). The Federal Rules of Evidence assign to *the district court* "the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Daubert*, 509 U.S. at

[4] https://www.supremecourt.gov/orders/courtorders/frev23_5468.pdf

597. Precisely, then, the Supreme Court has held "that abuse of discretion is the appropriate standard" to "apply in reviewing a trial court's decision to admit or exclude expert testimony under *Daubert*." *Joiner*, 522 U.S. at 138–39.

Because the Federal Rules of Evidence delegate the gatekeeping function to the district court, this Court "owe[s] the [district] court's ruling '. . . deference'" and "may not second-guess its sound judgments." *Murray v. S. Route Mar. SA*, 870 F.3d 915, 923 (9th Cir. 2017); *Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187, 1191 (9th Cir. 2007) ("The district court's ruling is entitled to deference, even when the exclusion of expert testimony determines the outcome of a case.").

The district court did not abuse its discretion because it applied the correct legal framework to the facts in a manner that was neither illogical nor implausible nor contrary to the record. That is, it was well within the district court's discretion to fault White for not performing any reliable testing or analysis to confirm his causation theory that the properties of HNBR used for the mechanical seal in Mazda vehicles cause water pump failures. White's untested, subjective conclusions do not help the jury. "The abuse of discretion standard requires [this

Court] to uphold [the] district court['s] determination . . . ." *Kode v. Carlson*, 596 F.3d 608, 612 (9th Cir. 2010).

Finally, the trial court often is in the best position to evaluate the proffered testimony in the context of the entire case. *Hooper v. Lockheed Martin Corp.*, 688 F.3d 1037, 1053 (9th Cir. 2012). Rulings on the admissibility of expert testimony are based largely on helpfulness to the jury, *see United States v. Rahm*, 993 F.2d 1405, 1413 (9th Cir. 1993), which necessarily requires the exercise of discretion. So "even if [expert] testimony may assist the trier of fact," which is not the situation here, it's well established that "the trial court has broad discretion to admit or exclude it." *Hooper*, 688 F.3d at 1053 (alteration in original) (quoting *Beech Aircraft Corp. v. United States*, 51 F.3d 834, 842 (9th Cir. 1995)). Plaintiffs have failed to show that the district court manifestly erred, so its evidentiary ruling should not be disturbed.

CONCLUSION

This Court should confirm the proper use of Rule 702 by the district court, and the judgment below should be affirmed.

November 6, 2023

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By: /s/ Jason Y. Siu
Jason Y. Siu

Attorneys for Amicus Curiae
LAWYERS FOR CIVIL JUSTICE

STATEMENT OF RELATED CASES

There are currently no cases pending before this Court that are related to this action.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 23-55325

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Signature /s/ Jason Y. Siu **Date** November 6, 2023
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