No. 25-1963

In the United States Court of Appeals
FOR THE SEVENTH CIRCUIT

THOR ZURBRIGGEN, DEAN CATAN, HALEY JOHNSON, LYNETTE CHESTER, *and* JOSEPH CATAN, *on behalf of themselves and all others similarly situated*, PLAINTIFFS-APPELLANTS,

v.

TWIN HILL ACQUISITION, INC., AMERICAN AIRLINES GROUP, INC., AMERICAN AIRLINES, INC., PSA AIRLINES, INC., ENVOY AIR, INC., *and* MI HUB, LTD., DEFENDANTS-APPELLEES.

On Appeal From The United States District Court
For The Northern District of Illinois, Eastern Division
Case No. 1:17-cv-5648
The Honorable John J. Tharp, Jr., District Judge

BRIEF OF *AMICUS CURIAE* LAWYERS FOR CIVIL JUSTICE IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 25-1963

Short Caption: Thor Zurbriggen, et al v. Twin Hill Acquisition, Inc., et al

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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Lawyers for Civil Justice

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Troutman Pepper Locke, LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Misha Tseytlin Date: 10/17/2025

Attorney's Printed Name: Misha Tseytlin

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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Attorney's Signature: /s/ Kevin M. LeRoy Date: 10/17/2025

Attorney's Printed Name: Kevin M. LeRoy

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

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Attorney's Printed Name: Carson A. Cox

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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N/A

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N/A

Attorney's Signature: /s/ Dylan J. DeWitt Date: 10/17/2025

Attorney's Printed Name: Dylan J. DeWitt

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes And Rules

Other Authorities

IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Amicus Lawyers for Civil Justice ("LCJ") is a national coalition comprising corporations, defense trial-lawyer organizations, and law firms that promotes excellence and fairness in the civil justice system.[2] Since 1987, LCJ has advocated for procedural-rule reforms that: (1) promote balance in the civil justice system; (2) reduce the costs and burdens of civil litigation; and (3) advance predictability and efficiency in litigation. LCJ often urges reforms to aspects of the Federal Rules of Evidence and the Federal Rules of Civil Procedure, and, as particularly relevant here, it has submitted several *amicus* briefs drawing upon its engagement in the federal rulemaking process pertaining to Federal Rule of Evidence 702, which Rule governs the admissibility of expert testimony.[3]

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[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amicus* Lawyers for Civil Justice certifies that no attorney for either party authored this brief in whole or in part. Only *amicus* and/or *amicus*'s undersigned counsel prepared this brief's content. No party or party's counsel contributed any money to *amicus* for purposes of preparing or submitting this brief, and no person or entity other than *amicus*, its members, and their counsel contributed money to fund the preparation or submission of this brief.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(D), Lawyers for Civil Justice states that all parties have consented to the filing of this amicus brief under Rule 29(a)(2).

[2] LCJ's members are listed under the "About" tab of LCJ's website. *About*, LCJ, available at https://www.lfcj.com/about (all webpages last accessed Oct. 17, 2025).

[3] *See, e.g.*, Br. of *Amici Curiae* Product Liability Advisory Council, Inc., LCJ, & the Chamber of Comm. of the United States of Am. in Supp. of Defs.-Appellees, *Burgener v. Syngenta AG*, No.24-1866, Dkt.36 (7th Cir. Oct. 1, 2024); Corr. Br. of Amicus Curiae LCJ in Supp. of Appellant, *EcoFactor, Inc. v. Google LLC*, No.23-1101, Dkt.152 (Fed. Cir. Dec. 2, 2024); Br. for Amicus Curiae LCJ in Supp. of Def.-Appellee Sig Sauer, Inc., *Colwell v. Sig Sauer, Inc.*, No.24-2724, Dkt.50.2 (2d Cir. May 19, 2025); Br. of Amicus Curiae LCJ in Supp. of Def.-Appellant Sig Sauer, Inc., *Lang v. Sig Sauer, Inc.*, No.25-10810, Dkt.37-2 (11th Cir. May 22, 2025); Br. of LCJ as Amicus Curiae in Supp. of the Nat'l Football League, Inc., *In re Nat'l Football League's "Sunday Ticket" Antitrust Litig.*, No.24-5493, Dkt.118.1 (9th Cir.

LCJ's involvement in the rulemaking process of the Judicial Conference Advisory Committee on Rules of Evidence ("Advisory Committee") for the 2023 amendments to Rule 702 gives LCJ expertise on Rule 702's meaning, history, and proper application. Throughout that process, LCJ provided extensive comments and original research to the Advisory Committee,[4] which unanimously recommended changes that LCJ had championed, resulting in an amended version of Rule 702 becoming effective on December 1, 2023. *See* Fed. R. Evid. 702.

In particular, LCJ submitted evidence and analyses demonstrating district courts' widespread misunderstanding and misapplication of Rule 702's admissibility requirements—including among district courts within this Circuit.[5] Indeed, although Rule 702, as amended in 2000, had superseded any other source of law—given that the U.S. Supreme Court adopted and enacted it under the Rules Enabling Act—LCJ identified many courts that had relied upon case law incompatible with Rule 702's

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June 17, 2025); Br. for LCJ as Amicus Curiae in Supp. of Defs.-Appellees, *Jensen v. Camco Mfg. LLC*, No.24-7092, Dkt.21.2 (9th Cir. July 21, 2025).

[4] *See, e.g.*, LCJ, *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*, Comment to the Advisory Committee on Evidence Rules (Sept. 1, 2021) (available at https://static1.squarespace.com/static/640b6c7e5b8934552d35ab05/t/64872bd8aa883f4ddeae6382/1686580184749/lcj_public_comment_on_rule_702_amendment_sept_1_2021.pdf); LCJ, *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*, Comment to the Advisory Committee on Evidence Rules and its Rule 702 Subcommittee (Oct. 20, 2020) (available at https://www.uscourts.gov/sites/default/files/20-ev-y_suggestion_from_lawyers_for_civil_justice_-_rule_702_0.pdf).

[5] *See, e.g.*, LCJ, *Clarity and Emphasis*, *supra*, at 3 n.8, 8 n.45 (collecting cases).

text to misapply the Rule's requirements, resulting in improper gatekeeping and the admission of unreliable expert testimony.[6] For example, many district courts: (1) failed to recognize that the sufficiency of an expert witness's factual basis for his or her opinion is an *admissibility* consideration for the district court under Rule 702, not a consideration of weight or credibility for the factfinder[7]; (2) applied too lenient a standard that presumes admissibility rather than the preponderance-of-the-evidence standard in Federal Rule of Evidence 104(a)[8]; and (3) failed to properly perform their essential gatekeeping role.[9] LCJ's advocacy for revisions to Rule 702—including the addition of an explicit textual reference to the district court as the decisionmaker on whether expert testimony is sufficiently reliable to be admitted—addressed these problems.[10]

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[6] *See generally* LCJ, *Clarity and Emphasis*, *supra*; LCJ, *Why Loudermill Speaks Louder than the Rule*, *supra*.

[7] *See, e.g.*, LCJ, *Clarity and Emphasis*, *supra*, at 2–7 (collecting cases); LCJ, *Why Loudermill Speaks Louder than the Rule*, *supra*, at 2–4 (collecting cases).

[8] *See* LCJ, *Clarity and Emphasis*, *supra*, at 5–6 & n.33–37 (collecting cases).

[9] *See* LCJ, *Why Loudermill Speaks Louder than the Rule*, *supra*, at 2–3 (collecting cases).

[10] *See, e.g.*, Mem. from Daniel J. Capra & Liesa L. Richter, Reporters, Advisory Committee on Evidence Rules, to Advisory Committee on Evidence Rules, *Possible Amendment to Rule 702* (Oct. 1, 2021), *in* Advisory Committee On Evidence Rules November 2021 Agenda Book 135, 138 (2021) ("LCJ's suggestion to reinsert a reference to the court has much to commend it. . . . Given the fact that the reason the rule is being amended is that some courts did not construe the 2000 amendment properly, it makes eminent sense to make it as explicit as possible.") (available at https://www.uscourts.gov/sites/default/files/advisory_committee_on_evidence_rules_agenda_book_november_202110-19_0.pdf).

The issues presented here implicate the core of LCJ's mission and, particularly, its work on Rule 702. The 2023 amendments to Rule 702 highlight the importance of the district court's gatekeeping role and clarify that the district court may only admit expert testimony if the proponent of that testimony satisfies Rule 702's enumerated admissibility criteria by a preponderance of the evidence. Fed. R. Evid. 702. But many litigants (like Plaintiffs here) and courts (including within this Circuit) have continued to misconstrue Rule 702's admissibility and burden-of-proof criteria.

For example, Plaintiffs here have argued that district courts have only a "limited gatekeeping function," that they should leave evaluation of "the factual underpinnings of the expert's analysis and the correctness of [their] conclusions" to the jury, and that they should favor admitting even "shaky" expert opinions because "traditional" trial tools like "cross-examination" and "instruction on the burden of proof" can adequately evaluate those opinions' reliability. *E.g.*, Br.22–25 (citing some of the very cases that LCJ flagged as inconsistent with Rule 702 in its submissions to the Advisory Committee). District courts in this Circuit have made similar errors. *See, e.g.*, *Gibson v. Chubb Nat'l Ins. Co.,* 734 F.Supp.3d 780, 789–90 (N.D. Ill. 2024); *Olson v. Gomez,* No.18-CV-2523, 2024 WL 3455066, at *4 (N.D. Ill. July 18, 2024); *Jenson v. Lowe's Home Centers, LLC,* No.1:22-cv-1100, 2024 WL 1340324, at *1 (S.D. Ind. Mar. 29, 2024); *McClain v. Ferguson*, No.4:21-CV-165, 2025 WL 1092598, at *2 (S.D. Ind. Apr. 11, 2025); *Hanafin v. Gen. Motors, LLC*, No.22 C 1408, 2025 WL 2380541, at *1–2 (N.D. Ill. Aug. 15, 2025); *Polycon Indus., Inc. v. R&B Plastics Mach., LLC*, No.2:19-CV-485, 2025 WL 906296, at *1–2 (N.D.

Ind. Mar. 26, 2025). Plaintiffs urge this Court to overturn the District Court below by invoking the same common misunderstandings that the Advisory Committee sought to correct with the 2023 amendments.

LCJ respectfully submits this *Amicus* Brief offering its experience and involvement in Rule 702's rulemaking process to the Court to explain that: (1) the Rule's plain text permits district courts to admit expert testimony *only* if the proponent demonstrates that the proffered testimony satisfies each of the Rule's enumerated criteria by a preponderance of the evidence, *infra* Part I.A; (2) that Plaintiffs' contrary arguments contravene the Rule's plain text, *including by embracing all the errors that the 2023 amendments were designed to correct*, *infra* Part I.B; and (3) that the District Court properly applied the Rule to exclude Plaintiffs' proffered, unreliable expert testimony, *infra* Part I.C. This Court affirming the District Court's careful analysis below as aligned with Rule 702's requirements, as amended in 2023, would provide important guidance to district courts and litigants alike throughout this Circuit: district courts, not juries, must evaluate the reliability of expert testimony by ensuring proponents of such evidence satisfy Rule 702's enumerated admissibility criteria by a preponderance of the evidence based on Rule 702's express language—not outdated case law that conflicts with it.

ARGUMENT

I. The District Court Correctly Applied Federal Rule Of Evidence 702, As Recently Amended In 2023, In Exercising Its Gatekeeping Role

Federal Rule of Evidence 702, as amended in 2023, makes clear that district courts must act as gatekeepers to ensure that expert testimony is admitted only when

the proponent demonstrates—by a preponderance of the evidence—that the testimony satisfies all four of the Rule's enumerated requirements. *Infra* Part I.A. The Supreme Court adopted the 2023 amendments, as unanimously recommended by the Advisory Committee, to correct widespread judicial misstatements of the Rule, particularly the mistaken notion that the sufficiency of an expert's factual basis and methodological application are issues of *weight* for the jury rather than of *admissibility* for the court. *Id.* The amendments reaffirmed that district courts can only admit expert testimony if the proponent demonstrates to the district court by a preponderance of the evidence that the proffered testimony satisfies the Rule's enumerated criteria. *Id.*

Plaintiffs' contrary position is untenable and embraces all of the errors that the 2023 amendments were designed to correct. *Infra* Part I.B. They ignore the text of the amended Rule and instead rely on outdated precedent that the 2023 amendments and recent federal appellate decisions have rejected. *Id.* Plaintiffs minimize the court's gatekeeping function, misstate the governing burden of proof, and urge a standard that would delegate admissibility determination to the jury—the very approach the amendments were intended to foreclose. *Id.*

By contrast, the District Court's ruling below properly undertook the required gatekeeping analysis, evaluated the sufficiency of the experts' bases and applications, and correctly found that Plaintiffs had failed to meet them. *Infra* Part I.C. Applying Rule 702 as amended, the District Court analyzed each of Plaintiffs' two experts' assumptions, data, and methodologies, and concluded that neither opinion was

grounded in reliable science or supported by sufficient evidence. *Id.* In doing so, the District Court exemplified the rigorous judicial screening that Rule 702 demands and ensured that only reliable, properly supported expert testimony could reach the jury. *Id.*

A. The 2023 Amendments To Rule 702 Emphasize That A District Court's Role Is To Make Admissibility Determinations To Ensure That Proponents Of Expert Testimony Satisfy The Rule's Enumerated Criteria By A Preponderance Of The Evidence

1. After The Supreme Court's Approval of the Amendment In 2023, Many District Courts Have Failed To Apply It.

In 2023, the Supreme Court approved amendments to Rule 702, clarifying the existing legal standard for the admissibility of expert testimony. The 2023 amendments: (1) added an express reference to "the court" to clarify that it is the court's duty to decide whether all four of Rule 702's enumerated admissibility criteria are satisfied, Fed. R. Evid. 702; (2) placed "the preponderance of the evidence standard" within the Rule's text both to clarify that the court must apply this standard in its review of all four enumerated admissibility criteria and to disclaim a presumption in favor of admissibility, Fed. R. Evid. 702 advisory committee's note to 2023 amendment; *see* Fed. R. Evid. 702 (providing the proponent must show "it is more likely than not" all four criteria are met); and (3) emphasized that the district court must ensure that the "expert's opinion reflects a reliable application of the principles and methods to the facts of the case," Fed. R. Evid. 702(d) (emphasis added), and "stay[s] within the bounds of what can be concluded from a reliable

application of the expert's basis and methodology," Fed. R. Evid. 702 advisory committee's note to 2023 amendment.

As amended in 2023, Rule 702 now provides as follows: "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702 (paragraph breaks altered).

The 2023 amendments were necessary because, as LCJ and others demonstrated through extensive evidence and analysis submitted to the Advisory Committee, district courts across the Nation had repeatedly misstated and misapplied Rule 702's requirements. *See* LCJ, *Clarity and Emphasis*, *supra*, at 7–8 & n.45 (collecting cases). The 2023 amendments "respond to the fact that many courts have declared that the [ ] requirements set forth in Rule 702[ ] . . . are questions of weight and not admissibility, and more broadly that expert testimony is presumed to be admissible." Hon. Patrick J. Schiltz, *Report of the Advisory Committee on Evidence Rules* (May 15, 2022), *in* Committee On Rules Of Practice & Procedure June 2022

Agenda Book 866, 871 (2022).[11] And district courts had "often" tasked juries with determining whether the requirements of Rule 702 are met, but that practice "is not appropriate." Minutes, Committee on Rules of Practice & Procedure, *Report of the Advisory Committee on Evidence Rules* (Jan. 5, 2021), *in* Advisory Committee On Evidence Rules April 2021 Agenda Book 36, 60 (2021).[12] Instead, Rule 702's "admissibility requirements must be established to *a court* by a *preponderance of the evidence*." Schiltz, Report of the Advisory Committee, *supra*, at 6 (emphases added). Clarification was therefore essential to correct these misunderstandings and restore fidelity to the Rule as it has stood since the 2000 amendments, and the Advisory Committee's Note to the 2023 amendments confirms that the revisions were not intended to "impose[ ] any new, specific procedures," but to "clarify and emphasize" those longstanding requirements. Fed. R. Evid. 702 advisory committee's note to 2023 amendment.

Courts of Appeals have addressed the 2023 amendments to Rule 702 and issued decisions faithfully applying the as-amended Rule, providing needed guidance to the district courts within their respective Circuits. For example, the Sixth Circuit explained that the amendments "were drafted to correct some court decisions incorrectly holding '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

[11] Available at https://www.uscourts.gov/sites/default/files/2022-06_standing_committee_agenda_book_final.pdf.

[12] Available at https://www.uscourts.gov/sites/default/files/advisory_committee_on_evidence_rules_-_agenda_book_spring_2021.pdf.

admissibility.'" *In re Onglyza (Saxagliptin) & Kombiglyze (Saxagliptin & Metformin) Prods. Liab. Litig.*, 93 F.4th 339, 348 n.7 (6th Cir. 2024) (quoting Fed. R. Evid. 702 advisory committee's note to 2023 amendment). Likewise, the Fifth Circuit emphasized that "the district court" cannot "abdicate[ ] its role as gatekeeper" under Rule 702, but must ensure that expert testimony has "a proper foundation." *Harris v. FedEx Corp. Servs., Inc.*, 92 F.4th 286, 303 (5th Cir. 2024); *see also Nairne v. Landry*, 151 F.4th 666, 697–98 (5th Cir. 2025).

Earlier this year, the *en banc* Federal Circuit recognized that the 2023 amendments "clarify that the proponent of expert testimony bears the burden of establishing its admissibility," "emphasize that an expert's opinion must stay within the bounds of a reliable application of the expert's basis and methodology," and stress that "[j]udicial gatekeeping is essential." *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333, 1339 (Fed. Cir. 2025) (en banc) (citations omitted); *id.* at 1345–46 (explaining the "district court fail[ed] to fulfill its responsibility as gatekeeper" by admitting expert testimony that "was not based on sufficient facts or data"). And, most recently, the Ninth Circuit acknowledged that, as amended, "Rule 702 requires a proponent of expert testimony to demonstrate each of the requirements of Rule 702 by a preponderance of the evidence" and that "[t]he district court cannot abdicate its role as gatekeeper, nor delegate that role to the jury." *Engilis v. Monsanto Co.*, 151 F.4th 1040, 1050 (9th Cir. 2025) (citation modified). Thus, "[p]roperly applied," "there is no presumption in favor of admission" and "'shaky' expert testimony, like any expert testimony, must still be 'admissible,' and this requires a determination by

the trial court that it satisfies the threshold requirements established by Rule 702." *Id.* at 1049–50 (citations omitted).

Unfortunately, some district courts in this Circuit have continued to misstate and misapply the Rule after the 2023 amendments, despite the amended Rule's plain text, the clear Advisory Committee's Note explaining the 2023 amendments' purpose, and the multiple Courts of Appeals decisions discussed above. *See, e.g.*, *Gibson*, 734 F. Supp. 3d at 789 (improperly stating that "questions relating to the bases and sources of an expert's opinion affect only the weight to be assigned that opinion rather than its admissibility" (citation omitted)); *Olson*, 2024 WL 3455066, at *4 (improperly stating that "the data the expert relied upon . . . is not a basis to exclude an opinion" and "the validity of [an expert's] underlying assumptions is something to be . . . determined by the jury, not the Court" (citation omitted)); *Jenson*, 2024 WL 1340324, at *1 (improperly stating that "the soundness of the factual underpinnings of the expert's analysis and the correctness of the expert's conclusions based on that analysis are factual matters to be determined by the trier of fact" (citation omitted)); *McClain*, 2025 WL 1092598, at *2 (improperly stating that the court has a "limited" role in assessing expert testimony, its "inquiry must focus . . . solely on principles and methodology, not on the conclusions they generate," and that "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the . . . appropriate means of attacking shaky but admissible evidence" (citation omitted)); *Hanafin*, 2025 WL 2380541, at *2 (improperly stating that the court's "only" role is to determine whether expert testimony "falls outside the range

where experts might reasonably differ" and that "[i]f an expert's principles and methodologies are reliable, then the way to attack 'shaky but admissible' evidence is through use of cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof – not exclusion" (citations omitted)); *Polycon Indus., Inc.*, 2025 WL 906296, at *2 (improperly stating that "[t]he rejection of expert testimony is the exception rather than the rule, and the trial court's role as gatekeeper is not intended to serve as a replacement for the adversary system" (citation omitted)). As far as LCJ is aware, this Court has not yet addressed Rule 702 after the 2023 amendments.[13]

This Court should provide similar guidance to the district courts within this Circuit on the proper interpretation of Rule 702, following the 2023 amendments.

2. Rule 702, As Amended In 2023, Establishes The Admissibility Standard For Expert Evidence And Reaffirms That The District Courts' Gatekeeping Role Is An Indispensable Judicial Function

The Supreme Court formally adopted the amended version of Rule 702, and it took effect on December 1, 2023, meaning that this version of the Rule itself—not *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), or any other case law—establishes the governing standard for the admissibility of expert testimony in

[13] *Richter v. Syngenta Crop Protection, LLC*, No.24-1865 (7th Cir. May 16, 2024) (argued Feb. 12, 2025), also pending before this Court, likewise raised the issue of the proper interpretation and application of Rule 702 after the 2023 amendments, as LCJ explained in an *amicus* brief submitted in that case along with other organizations, *see id.*, No.24-1865, Dkt.41 (Oct. 1, 2024). But this Court placed *Richter* in abeyance prior to issuing a published opinion per the *Richter* parties' joint request, given the parties' efforts to settle the matter. *Id.*, No.24-1865, Dkt.74 (Aug. 20, 2025).

federal courts. *See United States v. Parra*, 402 F.3d 752, 758 (7th Cir. 2005) ("At this point, Rule 702 has superseded *Daubert*[.]"); *Kansas City S. Ry. Co. v. Sny Island Levee Drainage Dist.*, 831 F.3d 892, 900 (7th Cir. 2016) (observing that litigants "should have paid more attention to Federal Rule of Evidence 702, which superseded *Daubert* many years ago"); *accord* Thomas D. Schroeder, *Toward a More Apparent Approach to Considering the Admission of Expert Testimony*, 95 Notre Dame L. Rev. 2039, 2060 (2020) ("[T]he elements of Rule 702, not the caselaw, are the starting point for the requirements for admissibility.").[14] Rule 702 is binding on federal courts under the Rules Enabling Act, 28 U.S.C. § 2072(a), which dictates that "[a]ll laws in conflict with [Rule 702] shall be of no further force or effect," *id.* § 2072(b). Thus, courts have no discretion to deviate from Rule 702's mandate that expert evidence be admitted only when the district court determines that the Rule's specific admissibility criteria are satisfied by a preponderance of the evidence. *Id.*; Fed. R. Evid. 702.

The Rule's plain language, as clarified by the 2023 amendments and the Advisory Committee's Note, articulates the admissibility standard that district courts must apply. Rule 702 provides that the proponent of expert opinion evidence must "demonstrate[ ] to the court that it is more likely than not that" all four enumerated admissibility criteria are met: (1) the expert's knowledge must "help the trier of fact to understand the evidence or to determine a fact in issue"; (2) the proffered testimony

[14] Judge Schroeder served as Chair of the Advisory Committee on Evidence Rules' Subcommittee on Rule 702 during the creation of the 2023 Amendments. *Id.* at 2039, n.a1.

must be "based on sufficient facts or data"; (3) the proffered testimony must be "the product of reliable principles and methods"; and (4) the expert's opinion must reflect "a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702. The Rule's text provides that "*the court*" itself must ensure that proponents demonstrate the criteria are met, *id.* (emphasis added), as "[i]t is not appropriate for these determinations to be punted to the jury," Committee on Rules of Practice & Procedure, Report of the Advisory Committee, *in* Advisory Committee On Evidence Rules April 2021 Agenda Book, *supra*, at 60. This standard does not permit any presumption in favor of admissibility; it sets a standard whereby the proponent of the evidence must satisfy the preponderance of the evidence standard—"more likely than not"—for each criterion. Fed. R. Evid. 702 (connecting the criteria with the conjunction "and"); *see generally* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 116–25 (2012) (describing the conjunctive/disjunctive canon). "This is the preponderance of the evidence standard that applies to most of the admissibility requirements set forth in the evidence rules." Fed. R. Evid. 702 advisory committee's note to 2023 amendment (citation omitted). In this way, the 2023 amendments reaffirm that district courts' gatekeeping responsibility is an "essential" judicial function, ensuring that juries hear only expert testimony grounded in sufficient data and reliable methodology. *Id.*

B. Plaintiffs' Contrary Position Is Inconsistent With Rule 702, As Amended, While Embracing All Of The Errors And Relying Upon Case Law Repudiated By The 2023 Amendments

In their Opening Brief, Plaintiffs incorrectly articulate the admissibility standard under Rule 702. *See* Br.22–25. In their view, under Rule 702, district courts play only a "limited gatekeeping function," focusing solely on an expert's methodology while leaving the "soundness of the factual underpinnings" and "the correctness of the expert's conclusions" to the jury, while further contending that even "shaky" evidence should be tested only through cross-examination and other trial tools. Br.23–25 (citations omitted). That articulation contravenes the text of Rule 702 as amended in 2023, conflicts with multiple Courts of Appeals decisions applying it, *and embraces all of the errors that the 2023 amendments were designed to correct*.

Plaintiffs do not "begin" their consideration of Rule 702 in their Opening Brief "with the [Rule's] text," as any proper analysis would require. *White v. United Airlines, Inc.*, 987 F.3d 616, 620 (7th Cir. 2021). Rather, they cite Rule 702 only *once* in their near-60-page Opening Brief—and, even then, only by quoting a fragment of subsection (a) of the Rule, while ignoring the Rule's other three enumerated admissibility criteria. Br.23. Plaintiffs also do not even mention the 2023 amendments to the Rule. Rather than discuss Rule 702's text, including as amended in 2023, Plaintiffs argue that *Daubert* and other case law alone set the admissibility standard. *See id.* at 22–25 (discussing "the *Daubert* standard"). But as explained above, Rule 702—including the 2023 amendments—supersedes *Daubert*. *Supra* pp.12–13. Thus, as federal courts across the Nation, including this Court, have

recognized, the text of Rule 702—not *Daubert* or any other case law—sets the standard for the admissibility of expert testimony. *See supra* pp.12–14; *Kansas City S. Ry. Co.*, 831 F.3d at 900; *Parra*, 402 F.3d at 758; *see also EcoFactor, Inc.*, 137 F.4th at 1338–40 ("[Rule] 702 governs the admissibility of expert testimony."); *Engilis*, 151 F.4th at 1047 (observing that amendments to Rule 702 have an "effect" on "existing precedent"); Oral Argument at 1:38, *Hillman v. Toro Co.*, No.24-2865 (7th Cir. Sept. 11, 2025) (Judge Easterbrook noting "that Rule 702 has been amended twice since *Daubert* to replace the Supreme Court standard with a new standard").[15]

Given that their arguments depend on ignoring the 2023 amendments, Plaintiffs unsurprisingly do not cite a *single* post-2023-amendment Rule 702 case in their Opening Brief. *See generally* Br.22–44. Instead, Plaintiffs rely only on outdated, pre-2023-amendment Rule 702 precedent to support the erroneous interpretation of the Rule that they have put forward. *See id*. Plaintiffs even recycle some of the very same interpretations that the Advisory Committee highlighted as misstatements of the Rule 702 standard when it adopted the 2023 amendments. *Compare, e.g.*, Br.23 (claiming "cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof" are the "appropriate means of attacking shaky but admissible evidence" (citation omitted)), *and id.* at 24–25 (calling court's "gatekeeping function" "limited" and stating court's inquiry should be limited to "determin[ing] whether the expert considered sufficient data to employ the

[15] Available at https://www.courtlistener.com/audio/100281/rebekah-hillman-v-toro-company/.

methodology"), *with* Fed. R. Evid. 702 advisory committee's note to 2023 amendment (observing that "many 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" and that "[t]hese rulings are an incorrect application of Rules 702 and 104(a)"), *and id.* (calling "gatekeeping" function "essential" and stating that courts must ensure "that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology"). And Plaintiffs also invoke one of the decisions that LCJ had flagged with the Advisory Committee during the 2023-amendment rulemaking process as a prime example of a court misconstruing Rule 702. *Compare* Br.21 (citing *Smith v. Ford Motor Co.*, 215 F.3d 713 (7th Cir. 2000)), *with* LCJ, *Clarity and Emphasis*, *supra*, at 7 (identifying *Smith*, 215 F.3d 713, as one of the "three most common sources of th[e] caselaw" that "led the Committee to amend the Rule").

Given Plaintiffs' failure to confront Rule 702's text, as amended in 2023, and the associated case law, Plaintiffs ultimately articulate an expert-admissibility standard that is legally wrong and embodies several of the errors that the 2023 amendments to the Rule 702 sought to correct.

First, Plaintiffs assert that a district court may not consider the "soundness of the factual underpinnings of the expert's analysis and the correctness of the expert's conclusions," leaving such matters to the jury. Br.23 (citation omitted). That contention is foreclosed by Rule 702's text, which requires the "court" to determine whether an expert's opinion rests on "sufficient facts or data" and "reflects a reliable

application of the principles and methods to the facts of the case." Fed. R. Evid. 702(b), (d). The 2023 amendments underscore that these are judicial admissibility determinations, not questions of "weight" for the jury, and the Advisory Committee emphasized that "[j]udicial gatekeeping is essential." Fed. R. Evid. 702 advisory committee's note to 2023 amendment. Federal appellate courts have likewise rejected this very misreading. *See In re Onglyza*, 93 F.4th at 348 n.7; *Harris*, 92 F.4th at 303; *Nairne*, 151 F.4th at 697–98; *EcoFactor, Inc.*, 137 F.4th at 1339–40; *Engilis*, 151 F.4th at 1049.

Second, Plaintiffs argue that courts should favor admissibility of even "shaky" expert testimony, so long as the expert used a reliable methodology. Br.23. That argument, too, is incompatible with the amended Rule, which imposes a "preponderance of the evidence" standard for each of the Rule's four criteria. Fed. R. Evid. 702 advisory committee's note to 2023 amendment. Rule 702 now makes explicit that "the proponent [must] demonstrate[ ] to the court that it is more likely than not" that the four enumerated criteria are satisfied—including that the expert's opinion rests on "sufficient facts or data" and "reflects a reliable application" of the expert's methods to the "facts of the case." Fed. R. Evid. 702. Thus, there is no presumption of admissibility. *See Engilis*, 151 F.4th at 1050.

Third, Plaintiffs contend that district courts play only a "limited gatekeeping function," Br.25, but that ignores both the text and purpose of Rule 702, including as amended in 2023. Rule 702 applies the district court's gatekeeping function to all four enumerated criteria, *supra* pp.13–14, and the "essential" nature of the "[j]udicial

gatekeeping" role was one of the principal purposes of the 2023 amendments, Fed. R. Evid. 702 advisory committee's note to 2023 amendment; Fed. R. Evid. 702; *see also* Capra & Richter, *Possible Amendment to Rule 702*, *in* Advisory Committee On Evidence Rules November 2021 Agenda Book, *supra* at 138. Thus, courts applying amended Rule 702 have correctly emphasized that "the importance of the gatekeeping function cannot be overstated," *Knight v. Avco Corp.*, No.4:21-CV-702, 2024 WL 3746269, at *6 (M.D. Pa. Aug. 9, 2024) (citation omitted), nor "abdicate[d]" by "[t]he district court" or "delegate[d] . . . to the jury," *Engilis*, 151 F.4th at 1050 (citations omitted; alterations omitted).

Finally, Plaintiffs argue that traditional trial methods—such as "cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof"—are sufficient to test expert reliability, Br.23 (citing *Daubert*, 509 U.S. at 596), but that is both a misreading of precedent and a specific position that the 2023 amendments were designed to correct. *Daubert* explained that traditional trial methods are "appropriate" for "attacking" expert evidence that the district court had determined to be "admissible," *Daubert*, 509 U.S. at 596, but the Court did not suggest that those methods were enough to conduct the gatekeeping analysis itself under Rule 702. As the Advisory Committee explained, courts must undertake the admissibility analysis under Rule 702 *before* permitting expert testimony to be heard by a jury. Fed. R. Evid. 702 advisory committee's note to 2023 amendment (rejecting "incorrect" rulings that delegated determinations of "the sufficiency of an expert's basis" and "the application of the expert's methodology" to the jury). Because "jurors

may be unable, due to lack of specialized knowledge, to evaluate meaningfully the reliability" of expert opinions, *id.*, and using traditional trial tools like "cross-examination alone is ineffective in revealing nuanced defects in expert opinion testimony," "the trial judge must act as a gatekeeper to ensure that unreliable opinions don't get to the jury *in the first place*," Minutes, Meeting of the Advisory Committee on Evidence Rules (May 3, 2019), *in* Advisory Committee on Rules of Evidence October 2019 Agenda Book 73, 95 (2019) (emphasis added).[16] Accordingly, Rule 702 now makes explicit that "the sufficiency of an expert's basis" and "the application of the expert's methodology," Fed. R. Evid. 702 advisory committee's note to 2023 amendment, are admissibility determinations for "the court," Fed. R. Evid. 702—not credibility or weight issues for the jury, *see, e.g.*, *Harris*, 92 F.4th at 303.

C. The District Court's Admissibility Analysis Below Correctly Adhered To Rule 702's Requirements, As Clarified By The 2023 Amendments

Below, the District Court properly followed the admissibility requirements of Rule 702, as clarified by the 2023 amendments, and appropriately concluded that the methodologies of Plaintiffs' two expert witnesses—Dr. Arch Carson and Dr. Peter Hauser—were insufficiently reliable to be admissible under Rule 702

As Defendants more fully explain in their Response Brief, this appeal arises from a lawsuit in the Northern District of Illinois, where American Airlines

[16] Available at https://www.uscourts.gov/sites/default/files/advisory_committee_on_rules_of_evidence_-_final_draft_agenda_book.pdf.

employees claim that American Airlines' introduction of new uniforms from clothing manufacturer Twin Hill allegedly caused them to suffer adverse symptoms. A-2 (explaining that Plaintiffs asserted tort claims and product-liability claims). To support their claims that the new uniforms caused them to suffer adverse symptoms, Plaintiffs submitted the testimony of two experts. *See* Br.22. The District Court properly excluded that expert testimony upon Defendants' motion to disqualify under Rule 702. A-9–10. As the District Court explained, Plaintiffs' "two experts who speak to the uniforms' defectiveness employ methodologies that are insufficiently reliable to be admitted under Federal Rule of Evidence 702, and the raw non-opinion evidence in the record cannot sustain an inference of defectiveness by itself." A-3.

In excluding Plaintiffs' two experts, the District Court correctly articulated the admissibility requirements of Rule 702, as amended, and then accurately and appropriately applied those requirements.

The District Court properly stated Rule 702's admissibility requirements and the burden of proof consistent with Rule 702's text, as amended, as well as the Advisory Committee's Note and recent federal decisions applying the amended Rule. *Compare* A-21–22, *with* Fed. R. Evid. 702, *and* Fed. R. Evid. 702 advisory committee's note to 2023 amendment; *see supra* pp.13–14. So the District Court expressly recognized that its "gatekeeping responsibility" was to "ensure" that expert testimony be admitted only if the proponent "first establish[es]"—"by a preponderance of the evidence"—that the testimony meets each of Rule 702's enumerated admissibility requirements. A-21 (citation omitted). That is what the 2023 amendments were

designed to emphasize: district courts, not juries, must determine that each enumerated criterion is met by a preponderance of the evidence "to ensure that any proffered expert testimony is both relevant and reliable." A-21; *see supra* pp.12–14 (citing, for example, *In re Onglyza*, 93 F.4th at 348 n.7; *Harris*, 92 F.4th at 303; *EcoFactor, Inc.*, 137 F.4th at 1339–40; *Engilis*, 151 F.4th at 1049.).

Then, consistent with its mandate under Rule 702, as amended, the District Court carefully evaluated the expert testimony of Plaintiffs' proffered experts and appropriately concluded that their methodologies were insufficiently reliable to be admissible under Rule 702. A-22–24; A-39–41. For example, the District Court appropriately excluded Dr. Carson's testimony as insufficiently reliable because he identified no specific chemical capable of triggering Plaintiffs' symptoms, failed to offer dose or exposure analysis, and relied on speculative assumptions rather than scientifically valid methods. A-22–24. Likewise, the District Court appropriately concluded that Dr. Hauser's textile-chemistry opinions were insufficiently reliable, as he did not connect his manufacturing-defect theory to reliable testing or accepted scientific principles. A-39–41. In sum, by holding that Plaintiffs' experts had not satisfied Rule 702's plain requirements, the District Court properly carried out its "gatekeeping responsibility to ensure that any proffered expert testimony is both relevant and reliable before it can be admitted," A-21 (citation omitted), thereby complying with Rule 702's instruction that "the court" determine whether "it is more likely than not" that the proffered expert testimony meets all four enumerated admissibility requirements, Fed. R. Evid. 702.

CONCLUSION

This Court should affirm the District Court's grant of Defendants' motions to exclude the testimony of Dr. Peter Hauser and Dr. Arch Carson, while also providing much needed corrective guidance to district courts and litigants alike in this Circuit on the proper interpretation and application of Rule 702, as amended in 2023.

Dated: October 17, 2025

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g), I certify the following:

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and Circuit Rule 29 because it contains 6,061 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32(b), and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionately spaced typeface using Microsoft Word in 12-point Century Schoolbook font.

Dated: October 17, 2025

/s/ Misha Tseytlin

MISHA TSEYTLIN

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October 2025, I filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated: October 17, 2025

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