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March 2, 2020

Rebecca A. Womeldorf, Secretary
 Committee on Rules of Practice and Procedure
 Administrative Office of the United States Courts
 One Columbus Circle, NE
 Washington, D.C. 20544

**Re: Amending Federal Rule of Evidence 702 to Clarify Courts’
 “Gatekeeping” Obligation**

Dear Ms. Womeldorf:

The National Association of Mutual Insurance Companies ("NAMIC") respectfully offers these comments to the Advisory Committee on Evidence Rules ("Committee"), which is entrusted with the essential task of ensuring the Federal Rules of Evidence ("FRE") are fair, plainly understood, and uniformly applied.

NAMIC is the largest and most diverse national property/casualty insurance trade and political advocacy association in the United States. Its 1,400 member companies write all lines of property/casualty insurance business and include small, single-state, regional, and national carriers accounting for 50 percent of the automobile/ homeowners' market and 31 percent of the business insurance market. NAMIC has been advocating for a strong and vibrant insurance industry since its inception in 1895.

In our own capacity and representing the legal officers of our member companies that are frequently engaged with the American civil justice system, we represent stakeholders who rely on the federal courts to be a just forum for the resolution of legal disputes on the merits.

We compliment the Committee on its diligence in evaluating practices under Rule 702, but we are concerned that, contrary to the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny, some courts may not sufficiently fulfilled their obligation to fully execute or enforce their requirement to ensure the role of expert witnesses:

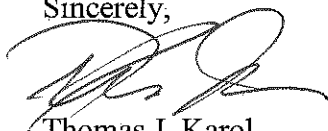
In a growing number of cases, there appear to be courts deferring their responsibility to determine that a proposed expert's opinions have the requisite scientific support by first ensuring that the testimony is the product of reliable principles and methods and is reliably applied. Other courts seem to presume, rather than require the establishment of, expert's qualifications, opinions and methodologies.

We support the Committee's general caution about amendments that clarify rather than change standards; address problems of adherence to, rather than understanding of, the rule; and affect the development of legal principles in a way perhaps better left to case law.

We do respectfully suggest that the Committee consider amendments to Rule 702 that would remedy the potential inconsistency in practice by clarifying that the proponent of an expert's testimony bears the burden of establishing its admissibility, by demonstrating to the presiding judge the sufficiency of the basis and reliability of the expert's methodology and its application. Further, the court should not permit an expert to assert a degree of confidence in an opinion that is not itself derived from sufficient facts and reliable methods.

Thank you for your consideration.

Sincerely,



Thomas J. Karol
General Counsel Federal
National Association of Mutual Insurance Companies.