

# Amended Rule 702 in 2025–26: Continuing the Embrace

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As discussed in *Amended Rule 702 in 2025: Circuit Courts Embrace the Changed Standard*, 40:12 WLF Legal Backgrounder (Oct. 8 2025), courts may not admit expert testimony unless the proponent proves all four subparts of Federal Rule of Evidence 702. The 2023 amendment to Rule 702 erased any doubt about that prerequisite to admission. And a consensus of federal appellate courts has reaffirmed that evidentiary requirement by applying amended Rule 702 as the Advisory Committee intended.

This supplement to *Amended Rule 702 in 2025* updates the support for that consensus, which now arguably includes ten federal circuits. With some variability, each consensus member has applied amended Rule 702 to affirm the exclusion of inadmissible opinions or reverse a judgment based on unreliable expert opinions. The Fifth, Seventh, Eighth, Ninth, and Tenth Circuits have strongly applied amended Rule 702 in manners generally consistent with the letter and purpose of amended Rule 702. Though favorable, decisions from other circuits include vestiges of erroneous, pre-2023 caselaw.

Opportunities for growing and strengthening that consensus abound, as more challenges to Rule 702 determinations make their way to the courts of appeal and district courts continue their efforts to meet bolstered expectations for diligent gatekeeping. If maintained, this momentum toward more exacting review of expert opinions will bring the judiciary closer to achieving the “ambitious” goal of the 2023 amendment “to change over twenty years of erroneous decisions” based on the “modest” changes made to the text of Rule 702. Mark Behrens & Andrew Trask, *Federal Rule of Evidence 702: A History and Guide to the 2023 Amendments Governing Expert Evidence*, 12 Tex. A&M L. Rev. 43, 48 (2024) (footnote omitted).

## **The Strongest Part of the Circuit Consensus Remains Relatively Sturdy**

Many federal appellate courts have explicitly ruled that, pursuant to amended Rule 702, the proponent of expert testimony must prove to the district court that it is more likely than not that, among other things, the proffered “testimony is based on sufficient facts or data” and “reflects a reliable application of the principles and methods to the facts of the case.” That is precisely what the Advisory Committee intended. Side bars appearing on the following pages cite the strongest support from those courts of appeals to date.

Of the courts that have most unequivocally embraced the 2023 correction of Rule 702, the Seventh Circuit has most recently applied those principles, with the most mixed results. In *Hillman v. Toro Co.*, 2026 WL 157664 (7th Cir. Jan. 21, 2026), the plaintiffs sought personal injury damages resulting from an allegedly defectively designed zero-radius-turn lawnmower. *Id.* at \*2. Where the district court expressly found that the

proffered opinions lacked, among other things, relevant testing data, the Seventh Circuit upheld those rulings. *Id.* at \*4 (seeing “no reason to disturb most of the district court’s exclusions” of plaintiffs’ expert opinions).

As part of *Hillman*, the Seventh Circuit did not defer to the district court with respect to one expert’s opinion that the absence of an independent mechanical brake rendered the plaintiffs’ mower defective. The district court never directly addressed the substance of that expert theory. *Id.* at \*5. The Seventh Circuit ruled that the commercial availability of zero-radius-turn lawnmowers with independent brakes (including a model manufactured by the defendant), as well as industry publications and patents discussing the importance of independent brakes to the safety of such mowers, provided a sufficient basis for the proffered brake opinions. *Id.* at \*5–6, \*7 (reversing the defense judgment to the extent “it was based on rejection of” that single, specific liability theory). Though not leading to an ideal result for the defense in *Hillman*, such closer judicial scrutiny of the data for an expert opinion more closely aligns the Seventh Circuit with amended Rule 702. See *Gilbert v. Lands’ End, Inc.*, 158 F.4th 839, 848 n.3 (7th Cir. 2025) (describing *Manpower, Inc. v. Insurance Co. of Pennsylvania*, 732 F.3d 796, 806 (7th Cir. 2013), which deferred to factfinders to evaluate expert data and conclusion quality).

The *Hillman* opinion sets the stage for *Zurbruggen v. Twin Hill Acquisition Co.*, No. 25-1963, another Seventh Circuit appeal implicating the amended Rule 702 standard. That appeal concerns the exclusion of expert opinions supporting ultimately

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**Third Circuit**

*Slatowski v. Sig Sauer, Inc.*,  
148 F.4th 132 (3d Cir. 2025)

**Fourth Circuit**

*United States v. Hudak*,  
156 F.4th 405 (4th Cir. 2025)  
*Sardis v. Overhead Door Corp.*,  
10 F.4th 268 (4th Cir. 2021)

**Fifth Circuit**

*Nairne v. Landry*,  
151 F.4th 666 (5th Cir. 2025)  
*Williams v. BP Exploration & Prod., Inc.*,  
143 F.4th 593 (5th Cir. 2025)  
*Harris v. FedEx Corp. Servs., Inc.*,  
92 F.4th 286 (5th Cir.), *cert. denied*,  
145 S. Ct. 168 (2024)

**Sixth Circuit**

*Martin v. Polaris, Inc.*,  
2025 WL 3094123 (6th Cir. Nov. 4, 2025)  
*Davis v. Sig Sauer, Inc.*,  
126 F.4th 1213 (6th Cir. 2025)  
*Baker v. Blackhawk Mining, LLC*,  
141 F.4th 760 (6th Cir. 2025)  
*Hill v. Med. Device Bus. Servs., Inc.*,  
2025 WL 1950300 (6th Cir. July 16, 2025)  
*In re Onglyza (Saxagliptin) & Kombiglyze  
(Saxagliptin & Metformin) Prods.  
Liab. Litig.*, 93 F.4th 339 (6th Cir. 2024)

**Seventh Circuit**

*Hillman v. Toro Co.*,  
2026 WL 157664 (7th Cir. Jan. 21, 2026)

**Eighth Circuit**

*Bliv, Inc. v. Charter Oak Fire Ins. Co.*,  
159 F.4th 539 (8th Cir. 2025)  
*Sprafka v. Med. Device Bus. Servs.,  
Inc.*, 139 F.4th 656 (8th Cir. 2025)

unsuccessful claims that personal injuries resulted from chemicals emitted by allegedly defective airline worker uniforms. *See Zurbriggen v. Twin Hill Acquisition Co.*, 2025 WL 1092973, at \*1, \*5, \*9, \*12 (N.D. Ill. Apr. 11, 2025) (ruling that plaintiffs’ physician/toxicology expert misused test data to classify certain chemicals “as irritants and sensitizers,” when those results “pointedly stopp[ed] short of suggesting that any caused a reaction”) (footnote omitted). The Seventh Circuit has scheduled oral arguments in *Zurbriggen* for February 13, 2026.

If the principles applied in *Hillman* hold, the Seventh Circuit will align most closely with the Fifth, Eighth, Ninth, and Tenth Circuits. As discussed on pages 2 to 5 of *Amended Rule 702 in 2025*, those circuits also sanction the application of amended Rule 702 as envisioned by the Advisory Committee. *Bliv, Inc. v. Charter Oak Fire Insurance Co.*, 159 F.4th 539 (8th Cir. 2025) reflects this trend. As part of that insurance coverage dispute,

the Eighth Circuit ruled that the “district court did not abuse its discretion in excluding” an opinion that hail caused the plaintiff’s claimed property damage (a potentially covered risk) where the expert relied on “incomplete information” and did not “consider or account for critical information” in ruling out alternative causes of the damage. *Id.* at 543–44.

The inclusion of circuits that some considered former “problem child[ren]” in this group of appellate courts most convincingly embracing amended Rule 702 reflects a welcomed trend. James Beck, *Running the Table – The Ten Best Prescription Drug/Medical Device Decisions of 2025*, Drug & Device Blog (Dec. 29, 2025) (describing Eighth and Ninth Circuits while lauding *Sprafka v. Medical Device Business Services, Inc.*, 139 F.4th 656 (8th Cir. 2025) and *Engilis v. Monsanto Co.*, 151 F.4th 1040 (9th Cir. 2025)). Even in the strongest circuits, the efforts to normalize the application of the amended Rule 702 standard remain ongoing. Compare, e.g., *In re M/V AET Excellence*, 2025 WL 3653552, at \*2–3, 5–6 (S.D. Tex. Dec. 17, 2025) (excluding proffered expert testimony for lack of reliable basis); *Lieberman v. Target Corp.*, 2025 WL 3062617, at \*6–8 (D. Ariz. Nov. 3, 2025) (same, expert failures to explain reasons for eliminating

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**Ninth Circuit**

*Jensen v. Camco Mfg., LLC*,  
2026 WL 64295 (9th Cir. Jan. 8, 2026)  
*Bulone v. Monsanto Co.*,  
2025 WL 2730843 (9th Cir. Sept. 25, 2025)  
*Engilis v. Monsanto Co.*,  
151 F.4th 1040 (9th Cir. 2025)

**Tenth Circuit**

*Herman v. Sig Sauer Inc.*,  
2025 WL 1672350 (10th Cir. June 13, 2025)

**Eleventh Circuit**

*Thelen v. Somatics, LLC*,  
156 F.4th 1115 (11th Cir. 2025)  
*4539 Pinetree LLC v. Certain Underwriters at Lloyd’s London*,  
2025 WL 1823127 (11th Cir. July 2, 2025)  
*Riley v. Tesla, Inc.*,  
2025 WL 881387 (11th Cir. Mar. 21, 2025)

**Federal Circuit**

*Jiaxing Super Lighting Elec. Appliance Co. v. CH Lighting Tech. Co.*,  
146 F.4th 1098 (Fed. Cir. 2025)  
*EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333  
(Fed. Cir.) (en banc), cert. denied,  
2025 WL 2949599 (2025)

alternative causes, to explain opinions, and to provide data to support alleged consequence of defendant employees' actions), *with, e.g., New Beginning Sanctuary v. City of Springfield*, 2026 WL 174475, at \*1 (W.D. Mo. Jan. 22, 2026) (applying pre-2023 version of Rule 702 to challenges to experts).

### **Though Supportive, the Remainder of the Circuit Consensus Carries Baggage**

Five additional federal circuits have provided solid support for the gatekeeping required by Rule 702, though remnants of the misguided principles prompting the 2023 amendment persist. *See Amended Rule 702 in 2025*, at 2–5.

For example, the Sixth Circuit has issued several favorable decisions applying amended Rule 702, while retaining at least one residual principle that the 2023 amendment should have eliminated. The decision in *Martin v. Polaris, Inc.*, 2025 WL 3094123 (6th Cir. Nov. 4, 2025) exemplifies this phenomenon. There, the court upheld the barring of an expert who attributed the plaintiff's personal injury damages to the design of a recreational off-highway vehicle and resulting defense judgment. The Sixth Circuit characterized the expert's methods—relying on certain “case-specific materials” and broadly considering “how people react to rollover accidents”—as falling “short of the testable, peer-reviewed, widely accepted scientific methodology we usually expect from experts.” *Id.* at \*5 (cleaned up). Yet, the Sixth Circuit also recycled the principle that the exclusion of expert opinions is the exception, not the rule. Though that sentiment arguably flows from the advisory committee note for the 2000 amendment to Rule 702, the 2023 amendment extinguished any presumption of admissibility. *See, e.g., Hon. Patrick Schiltz, Chair, Report of the Advisory Committee on Evidence Rules 6* (May 15, 2022) (describing court declarations “that expert testimony is presumed to be admissible” as misstating Rule 702), available at: [https://www.uscourts.gov/sites/default/files/evidence\\_rules\\_report\\_-\\_may\\_2022\\_o.pdf](https://www.uscourts.gov/sites/default/files/evidence_rules_report_-_may_2022_o.pdf) (last accessed: Jan. 27, 2026). Particularly as amended, Rule 702 makes plain that, “if the proponent does not meet” its burden, “the expert testimony is not admissible.” *Jensen v. Camco Mfg., LLC*, 2024 WL 4566781, at \*2 (D. Ariz. Oct. 24, 2024), *aff'd*, 2026 WL 64295 (9th Cir. Jan. 8, 2026) (affirming exclusion of causation expert opinions as not grounded in reliable principles and methods).

The recent denial of the petition for rehearing en banc in *Sommerville v. Union Carbide Corp.*, 149 F.4th 408 (4th Cir. 2025) made the Fourth Circuit a borderline consensus member with potentially discordant views about the different responsibilities of gatekeepers and fact-finders. Leading up to its August 18, 2025 *Sommerville* decision, the Fourth Circuit appeared well-positioned to approve the active gatekeeping demanded by amended Rule 702. *United States v. Hudak*, 156 F.4th 405, 409–10 (4th Cir. 2025) (focusing on “striking incongruence” between expert opinion and absence of necessary facts—an “analytical gap” that warranted exclusion by district court); *Amended Rule 702 in 2025*, at 6 (discussing how *Sardis v. Overhead Door Corp.*, 10 F.4th 268 (4th Cir. 2021) concluded that “Advisory Committee’s position” that courts had previously misapplied Rule 702 ‘clearly echoes the existing law on this issue’); *see Nease v. Ford Motor Co.*, 848 F.3d 219, 222, 230, 232–33 (4th Cir. 2017) (ruling that district “court abandoned its gatekeeping function” by admitting design defect opinion based, in part, on misconstrued

analysis for a different design and different vehicle than the one operated by the plaintiff at the time of the accident giving rise to claims).

The 2-to-1 *Sommerville* decision provided that a district court abused its discretion by, among other things, deciding “questions regarding the factual underpinnings of” the opinions of Dr. Ranajit Sahu—matters that the panel viewed as only affecting “the weight and credibility of the witness’ assessment.” *Sommerville*, 149 F.4th at 422, 423 (cleaned up); see *Amended Rule 702 in 2025*, at 6 (discussing *Sommerville*). The *Sommerville* majority insisted that district courts still can exclude expert opinions lacking sufficient support, stressing that its decision merely “underscore[d] that a district court may not exclude expert testimony based on (1) its *mere disagreement* with an expert’s choice of data or (2) its *own* assessment of the correctness of an expert’s opinions. *These* errors permeate the district court’s order excluding Dr. Sahu and dictate reversal.” *Sommerville*, 149 F.4th at 427 n.7 (internal citations omitted). Thus far, that insistence has not directly benefitted Fourth Circuit litigants challenging the admissibility of expert testimony.

A recent Federal Circuit decision similarly clouds its ongoing adherence to amended Rule 702. As discussed on page 2 of *Amended Rule 702 in 2025*, the Federal Circuit in *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333 (Fed. Cir. 2025) (en banc) (applying Fifth Circuit caselaw) positively discussed the 2023 amendment to Rule 702 and reversed a \$20+ million plaintiff’s judgment based on expert damages opinions lacking sufficient support. *Accord Jiaxing Super Lighting Elec. Appliance, Co. v. CH Lighting Tech. Co.*, 146 F.4th 1098, 1111 (Fed. Cir. 2025). By contrast, over a dissenting opinion invoking *EcoFactor*, the panel in *Barry v. DePuy Synthes Cos.*, 2026 WL 137113 (Fed. Cir. Jan. 20, 2026) recently reversed a defense judgment that the district court entered after excluding two experts’ opinions during trial in a patent infringement case. The district court excluded one plaintiff’s expert as impermissibly using a claim construction different from the one determined by the court for his opinions. *Id.* at \*5. On appeal, the Federal Circuit saw no “clear contradiction” between the court-adopted construction and the one used by the plaintiff’s expert and noted that the defense had not argued that the expert adopted a different construction during the expert’s in-court examination. *Id.* at \*8, \*9 (concluding that, “[a]t most,” cross-examination revealed a credibility dispute). The Federal Circuit similarly ruled that the district court erred by excluding the plaintiff’s survey expert, because the lower court did not “cite any actual evidence” “to support its conclusion that” the expert’s “survey, methods, and opinions render[ed] his testimony” inadmissible. *Id.* at \*11 & n.8 (describing flaws as cross-examination fodder and noting that even a defense expert “agreed with aspects of” the plaintiff’s survey expert’s testimony). The limited gatekeeping and broad fact-finder deference demonstrated in *Barry* (and *Sommerville*) harken back to previous, “incorrect,” and overturned holdings “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.” *EcoFactor, Inc.*, 137 F.4th at 339 (quoting Fed. R. Evid. 702 advisory committee’s note to 2023 amendment).

The Eleventh Circuit additionally has favorably applied amended Rule 702, while giving reason for pause. Multiple civil appeals have resulted in decisions affirming the exclusion of unreliable expert testimony. *Thelen v. Somatics, LLC*, 156 F.4th 1115, 1132

(11th Cir. 2025) (affirming exclusion of specific causation opinion riddled with failures to “evaluate alternative explanations” for cognitive decline claimed); *4539 Pinetree LLC v. Certain Underwriters at Lloyd’s London*, 2025 WL 1823127, at \*2 (11th Cir. July 2, 2025) (same, causation opinion lacking “evidence of the condition of the property prior to” hurricane that allegedly caused property damage claimed); *Riley v. Tesla, Inc.*, 2025 WL 881387, at \*1, \*7, \*8 (11th Cir. Mar. 21, 2025) (same, car design criticisms by battery expert who lacked sufficient facts and data, lacked any “generally accepted standard,” and lacked support from only relevant testing done).

As part of another appeal, however, the Eleventh Circuit applied “Rule 702’s familiar standards” to conclude that a district court “did not abuse its *Daubert* discretion” by admitting an expert opinion that a substance recovered from the criminal defendant was fentanyl. *United States v. Jackasal*, 2025 WL 2504420, at \*1, \*3 (11th Cir. Sept. 2, 2025). One can reasonably debate whether the Eleventh Circuit took a step backward in *Jackasal*: the criminal defendant’s primary argument—the district court solely focused on the general acceptance of the technique used for substance identification—understated the bases for the lower court’s ruling. *Id.* at \*2. The Eleventh Circuit also added that the defendant had provided no “reason to believe that” the expert’s methodology was “anything other than the ‘gold standard.’” *Id.* Any concern about backsliding in the Eleventh Circuit might dissipate once that court decides *Lang v. Sig Sauer, Inc.*, No. 25-10810, in which a handgun manufacturer challenges the foundation for expert opinions admitted as part of a product liability personal injury trial that resulted in a plaintiff’s judgment. *See Lang v. Sig Sauer, Inc.*, 766 F. Supp. 3d 1217 (N.D. Ga. 2025). The Eleventh Circuit has set oral argument in *Lang* for the week of February 23, 2026.

### **Second Circuit Considers Whether to Join the Consensus**

Forthcoming Second Circuit decisions should soon indicate whether that court of appeals will join the consensus supporting the active gatekeeping that the Advisory Committee reaffirmed with the 2023 amendment to Rule 702.

The closely monitored appeals as part of *In re: Acetaminophen - ASD-ADHD Products Liability Litigation* (Nos. 24-916, 24-2360, 24-1121) focus on the exclusion of expert opinions that acetaminophen use during pregnancy can cause autism spectrum disorders and/or attention deficit hyperactivity disorder. *See, e.g.*, Am. Tort Reform Ass’n, *Judicial Hellholes 2025–2026*, at 84 (2025) (discussing how district court “exemplified the gatekeeping role required under Rule 702 by excluding testimony from the plaintiffs’ experts and dismissing the litigation”). The Second Circuit panel’s focus on and inquiries about the gatekeeping required by amended Rule 702 during the November 17, 2025 oral arguments added even more attention to those appeals. *See, e.g.*, Lee Mickus, *Judges Carry Onus to Screen Expert Opinions before Juries*, Law360 (Dec. 22, 2025); Dan McKay, *2nd Cir. Questions Experts’ Rejection in Tylenol Autism Suits*, Law360 (Nov. 17, 2025).

The October 22, 2025 oral arguments in *Colwell v. Sig Sauer, Inc.*, No. 24-2724, likewise focused on, among other rulings, the exclusion of expert opinions. *See Colwell v. Sig Sauer, Inc.*, 2024 WL 4216047 (N.D.N.Y. Sept. 17, 2024). Multiple circuits have

favorably applied amended Rule 702 as part of appeals in similar claims arising from accidental firearm shootings and supported by inadmissible causation opinions. *Slatowski v. Sig Sauer, Inc.*, 148 F.4th 132, 138 (3d Cir. 2025) (affirming exclusion of expert causation opinions, but reversing granting of summary judgment where the plaintiff’s experts “may still testify that the gun’s design was defective” and “a lay juror can understand the rest—namely, what happened” on the day of the shooting); *Davis v. Sig Sauer, Inc.*, 126 F.4th 1213, 1226, 1234 (6th Cir. 2025) (similar); *Herman v. Sig Sauer Inc.*, 2025 WL 1672350, at \*6, \*8 (10th Cir. June 13, 2025) (affirming exclusion of causation opinions and entry of summary judgment). Those cases support the decision of the district court in *Colwell* to exclude the proffered expert opinions and arguably contradict the decision of the district court in *Lang* to rely on “vigorous[] cross-examin[ation]” by the defense and “careful[]” jury instructions to address similar weaknesses in comparable expert opinions. *Lang*, 766 F. Supp. 3d at 1229.

## Conclusion

Two years of federal appellate decisions have largely validated the years of study and advocacy that resulted in the 2023 amendment of Rule 702. With notable exceptions, courts of appeal applying amended Rule 702 have generally confirmed the tools available to and the nondelegable duty of district court judges to ensure that only reliable expert opinions reach fact-finders. And the Second Circuit might soon join that appellate court consensus. Opponents of fact- and/or data-deficient expert opinions nonetheless must remain diligent in using favorable decisions applying amended Rule 702, the bedrock principles supporting that amendment, and the lessons learned from proper applications of amended Rule 702 to embed rigorous gatekeeping of expert testimony into the American judicial system. Though stubborn obstacles and room for improvement undoubtedly exist, the progress to date suggests that continued persistence can move the judiciary closer to achieving the outsized goals for the textually understated 2023 amendment to Rule 702.