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April 30, 2026

Via E-Mail (Comments.Mailbox@njcourts.gov)

Acting Administrative Director Michael J. Blee, J.A.D.
 Administrative Office of the Courts
 Attn: Evidence Rules Committee Report on NJRE 702
 Hughes Justice Complex; P.O. Box 037
 Trenton, New Jersey 08625-0037

Re: Comment on the Mid-Year Report of the Supreme Court Committee
 on the Rules of Evidence on N.J.R.E. 702
 Comments Due: April 30, 2026

Dear Director Blee:

We write on behalf of Travelers Staff Counsel to comment on the March 2026 Mid-Cycle Report of the Supreme Court Committee on the Rules of Evidence (the "Committee") regarding N.J.R.E. 702. Travelers defends thousands of New Jersey civil matters each year through its staff

counsel offices – everything from routine auto cases to complex commercial, construction, products liability, and catastrophic-injury litigation – and expert testimony is implicated in nearly all of them. We therefore have a substantial and continuing interest in the standard governing the admission of expert proofs in New Jersey courts and in the predictability with which that standard is applied.

For the reasons set forth below, Travelers respectfully urges the Supreme Court to reject the Committee’s recommendation and to amend N.J.R.E. 702 to mirror the language of Federal Rule of Evidence 702 as revised effective December 1, 2023. We agree with and adopted the position set out in the New Jersey Defense Association’s April 17, 2026 comment letter, and we write separately to add the perspective of the carrier’s side which has not yet been part of the comment record.

I. The Committee’s 16-5 Vote Itself Confirms That N.J.R.E. 702 Is Not Functioning as a Settled Rule of Decision.

The recommendation against amendment passed by a 16-5 vote, but the Report itself acknowledges that “all members of the bar, including trial and appellate judges and practitioners, would benefit from additional training on how to interpret and apply N.J.R.E. 702.” That is a striking concession. If the rule needs to be taught to the bench and bar to be applied correctly, the by definition it is not functioning as the clear, settled standard the Court envisioned in *In re Accutane Litigation*, 234 N.J. 340 (2018), and *State v. Olenowski*, 253 N.J. 133 (2023). Rules of evidence should be self-executing; this one is not.

As the NJDA points out, two of the sixteen majority members would have gone further and made N.J.R.E. 702 *more* stringent than FRE 702. Properly understood, then, sixteen of twenty-one members favored some textual revision. The five-vote count against amendment understates the actual

division on the Committee, and the Committee's deliberations themselves are powerful evidence that clarification is overdue.

II. Inconsistent Application of N.J.R.E. 702 Imposes Concrete, Quantifiable Costs on Insurers, Policyholders, and the Civil Justice System.

The Committee's Report is largely a doctrinal one. From our perspective, the practical stakes are just as important. When the same expert proffer—whether on biomechanics, accident reconstruction, life-care planning, engineering, vocational disability, or future medical needs—can be admitted in one vicinage and excluded in another based on differing judicial conceptions of the gatekeeping role, several measurable harms follow:

- **Settlement valuations become unmoored from merits.** Reserve setting, mediation strategy, and trial-versus-settle analyses depend on a defensible read of whether challenged expert testimony will reach the jury. When the answer turns on the assigned judge rather than the methodology, valuations widen and settlements skew upward to account for admissibility risk. Meritorious defenses end up paying a tax that has nothing to do with the underlying claim.
- **Litigation costs multiply.** Without a uniform reliability standard, defendants brief and re-brief the same threshold issues case after case and routinely retain rebuttal experts solely to address the possibility that an unreliable opinion will be admitted. Those costs land on New Jersey policyholders in the form of premiums.
- **Forum and judge shopping are incentivized.** Where a rule's application is perceived to vary, sophisticated litigants will—and do—plan filings accordingly. A uniform, text-based standard reduces that distortion.
- **Trial courts are deprived of meaningful appellate guidance.** As the Committee acknowledges, expert-admissibility rulings are seldom reported and even less frequently appealed in civil matters that overwhelmingly settle. The case law applying *Accutane* is thinner than it looks. A revised rule's text would supply the guidance that case-by-case adjudication has not.

None of these are abstract concerns. They are the day-to-day operating environment in which Travelers, and every other carrier writing risks in this State, prices coverage and resolves claims. The current rule's opacity translates directly into cost for New Jersey consumers.

III. Recent Appellate Authority Confirms That Trial Courts Continue to Misapply N.J.R.E. 702.

The Report observes that “several members disagreed with the premise that our trial courts struggled in exercising their gatekeeping authority.” Respectfully, the record says otherwise. As the NJDA highlights, the Appellate Division in *State v. Lee*, No. A-3125-22, 2025 WL 1009307 (N.J. Super. Ct. App. Div. Apr. 4, 2025), reversed because the trial court “erred by not conducting an N.J.R.E. 104 hearing and considering the reliability of the fingerprint analysis evidence under *Daubert* and N.J.R.E. 702.” *Id.* at 1. The panel flagged “an overarching concern that the court’s analysis failed to sufficiently adhere to the *Daubert* standard and the principles set forth by our Supreme Court in *Olenowski* and *Accutane*.” *Id.* at 8. The New Jersey Supreme Court granted certification on September 16, 2025.

Lee is not an outlier. It is a published illustration that, even after *Accutane* and *Olenowski*, trial courts still default to historical-acceptance reasoning instead of the methodology-based reliability analysis the Court has prescribed. The same pattern recurs in civil practice on a weekly basis. Most of it never reaches the Appellate Division because the cases settle first.

IV. Adopting the Text of FRE 702 Is Faithful to *Accutane*, Not a Departure From It.

The main concern in the Report is that aligning N.J.R.E. 702 with FRE 702 would, by inference, drag in federal case law that conflicts with *Accutane*. Three points address that concern.

First, the December 1, 2023 amendments to FRE 702 codify two propositions that are already New Jersey law: (i) the proponent of expert testimony bears the burden of demonstrating admissibility by a preponderance of the evidence, and (ii) the expert’s opinion must reflect a *reliable application* of reliable principles to the facts of the case. Both line up squarely with *Accutane*’s focus on methodology and reasoning, 234 N.J. at 389-99, and with *Olenowski*’s reliability analysis, 253 N.J. at 152-54. Addressing FRE 702’s text changes nothing substantive about how a New Jersey judge should analyze expert testimony today.

Second, *Accutane* itself disclaimed wholesale adoption of federal case law applying FRE 702. 234 N.J. at 383. The Committee’s concern that adopting FRE 702’s text would silently overrule *Accutane* is easily addressed. An explanatory comment to the amended rule, of the kind the NJDA proposes, can state plainly that prior New Jersey precedent—including *Accutane*, *Olenowski*, and their progeny—remains controlling and that federal case law is not incorporated by reference. That is a familiar mechanism in this Court’s practice and resolves the principal objection identified by the Committee.

Third, the empirical premise underlying the 2023 amendment to FRE 702— that lower courts had drifted from the rule’s text and were treating reliability as a question of “weight rather than admissibility”—is the very same concern that animated *Accutane*. See David E. Bernstein & Eric G. Lasker, Defending Daubert: It’s Time to Amend Federal Rule of Evidence 702, 57 Wm. & Mary L. Rev. 1, 26-36 (2015); see also Mark A. Behrens & Andrew J. Trask, Federal Rule of Evidence 702: A History and Guide to the 2023 Amendments Governing Expert Evidence, 12 Tex. A&M L. Rev. 44, 52, 54 (2024). New Jersey is not exempt from the same drift, and *Lee* is the proof.

V. A Uniform Federal-Style Rule Promotes Cross-Jurisdictional Consistency in Multistate Litigation.

Travelers, like every national carrier, regularly defends matters in which the same expert is retained, the same methodology is challenged, and the same product, vehicle, or medical condition is in dispute across multiple jurisdictions. The overwhelming majority of states and the federal courts now apply some form of *Daubert*-style analysis. New Jersey's textually different rule, even when it reaches the same result, invites unnecessary briefing over which standard governs in coordinated multidistrict and multistate matters and creates the false impression that New Jersey is a comparatively permissive forum for marginal expert proffers. Aligning the text of N.J.R.E. 702 with FRE 702 eliminates that confusion without altering the substantive standard the Court has already articulated.

VI. Conclusion.

The Committee's deeply divided vote, its acknowledgement that more training is required, and the steady stream of appellate corrections together show that N.J.R.E. 702 is not currently functioning as a clear, uniformly applied standard. The fix is straightforward: adopt the text of FRE 702 as revised in 2023 and accompany it with a comment confirming that *Accutane*, *Olenowski*, and other New Jersey precedent remain controlling. Doing so will sharpen the gatekeeping function the Court has consistently demanded, reduce inconsistent results across vicinages, and lower the unnecessary litigation costs ultimately borne by New Jersey policyholders.

We thank the Committee and the Court for the opportunity to be heard on a question of significant importance to the administration of civil justice in this State.

Respectfully submitted,


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