

RULE OF EVIDENCE 702 AND DAUBERT IN INDIANA: A ROADMAP TO THE ADMISSIBILITY OF EXPERT EVIDENCE IN FEDERAL AND STATE COURTS.

In this age of science, science should expect to find a warm welcome, perhaps a permanent home, in our courtrooms.

Justice Steven Breyer¹

The prosecution and defense of cases grows increasingly complex with each passing year due to constantly advancing innovations in science and technology. Ever more sophisticated technologies in transportation, computers, communication, and manufacturing, as well as complex man-made chemicals, and consumer products result in new types of personal injuries, economic losses, and property damage. Advances in medical diagnostic techniques, sophisticated computer modeling, and technological breakthroughs in scientific research and discovery yield ever more advanced and reliable analyses and tools for accurately and reliably pinpointing causes of actionable damages. Expert evidence has become an essential part of all but the simplest cases. Consequently, a firm understanding of Rule 702 and its requirements for admissibility of expert testimony, is a vital component of every litigator's practice.

Trial courts act as the evidentiary “gatekeepers,”² making sure that scientific and technical evidence meets standards of admissibility so that the trier of fact is not presented with junk science.³ But while the judge acts as the gatekeeper, properly excluding faulty scientific principles, unfounded opinions, and unreliable evidence, no judge can be an expert in all fields, nor is such their role. In most cases, the trial judge has very little experience with the particular scientific principles or technical concepts upon which the material issues of the case are to be resolved. Nor does the judge have time to become a learned expert in the scientific principles of each case. Thus it is the duty of counsel to educate the judge, and first to educate her self by way of experts, on the relevant scientific principles. The task of skillfully employing the use of experts, and defending against their improper use, requires counsel to be adept at navigating the precepts of the Rules of Evidence regarding expert testimony, to the end that only reliable expert evidence is admitted into the record, and junk science is checked at the courtroom door.

The admission of scientific and technical evidence implicates a number of evidentiary rules, most notably Rules 701 through 705. Rule 702 is the fundamental rule regarding the admissibility of technical and scientific evidence. This article focuses on the application of Rule 702 of the federal and Indiana Rules of Evidence, as applied by Indiana courts, both state and federal. The article compares Rule 702 under both sets of Rules while focusing principally on the state Rule 702, and concludes with an analysis of particular requirements pertaining to testimony of medical experts.

¹ REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 1 (2d Ed. 2000); available at <http://www.fjc.gov/> (last visited April 11, 2005).

² *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1997) is the seminal case on admissibility of expert testimony under Rule 702, describing the role of the court as the “gatekeeper” of scientific evidence.

³ *Doe v. Schults-Lewis Child and Family Serv., Inc.*, 718 N.E.2d 738, 750 (Ind. 1999).

I. The Rules generally.

Federal Rule 702 serves as the foundation of the Indiana Rule, however the Indiana Rule diverges somewhat from the federal Rule. Nonetheless, although the Rules are divergent in application, the end results of the application of the Rules by the courts are substantially similar. Federal Rule 702 provides in full:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Indiana Rule 702 provides in full:

(a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

(b) Expert scientific testimony is admissible only if the court is satisfied that the principles upon which the expert testimony rests are reliable.

The leading federal case analyzing and interpreting the mandates of Rule 702 is *Daubert v. Merrell Dow Pharmaceuticals*.⁴ The principles announced by the Supreme Court in *Daubert* govern admission of expert testimony in federal cases.⁵ While not controlling in state courts, *Daubert* and its progeny serve as a guide for Indiana courts in evaluating the admissibility of expert evidence.⁶

Under Rule 702 and *Daubert*, the trial judge serves as a “gatekeeper”, ensuring that all scientific and technical testimony or evidence is both reliable and relevant, and holding experts to opinions that are “within their proper scope.”⁷ In evaluating the reliability of expert testimony, the court performs a two-pronged analysis. First the court considers whether the expert is qualified to offer such testimony, then whether the expert has used reliable methodology in reaching her opinions and conclusions.⁸

Indiana courts serve the same function with respect to evaluating admissibility of expert scientific and technical evidence. “Rule 702 assigns to the trial court a gatekeeping function” of ensuring that an expert’s testimony both rests on a reliable

⁴ 509 U.S. 579 (1993).

⁵ *Smith v. Ford Motor Co.*, 215 F.3d 713, 717-18 (7th Cir., 2000).

⁶ *See, e.g. McGrew v. Indiana*, 682 N.E.2d 1289, 1290 (Ind. 1997).

⁷ *Smith*, 215 F.3d at 717-18.

⁸ *Id.*

foundation and is relevant to the task at hand.”⁹ Thus reliability, both of the expert’s qualifications and the opinions she expresses, are threshold issues for admissibility of scientific evidence.¹⁰

II. Reliability of experts – qualifications and credentials.

The first criterion for admissibility of expert evidence is reliability of the expert, that is, the expert must be qualified to render the proffered opinion. Before an expert is allowed to utter a word in court, the proponent of the expert must establish the expert is qualified to render not just an opinion in the abstract, but the specific opinion or conclusion to which the expert will testify.

Federal Rule 702 allows experts to be qualified based on “knowledge, skill, experience, training, or education.”¹¹ An expert’s qualifications need not stem from academic training alone, rather practical experience and training may serve as proper bases of expertise.¹² The trial judge must consider the full range of a proposed expert’s background including practical experience, academic and technical training, when determining if such witness is qualified to render a specific opinion.¹³ The key determination for qualification of an expert is the witness must have sufficient specialized expertise to render an opinion on the specific issue.¹⁴ That a witness is generally qualified to render opinions in a given area does not necessarily qualify the witness to render the specific opinion in the case. An expert’s competence in a general field must extend to the specific opinion being rendered.¹⁵ “Whether a witness is qualified as an expert can only be determined by comparing the area in which the witness has superior knowledge, skill, experience, or education with the subject matter of the witness’s testimony.”¹⁶ Thus, Rule 702 requires that the expert be qualified, not generally, or in the abstract, but with specific expertise to answer a specific question.¹⁷

Indiana’s Rule 702(a) represents an unmodified adoption of the federal Rule with respect to the qualifications of an expert witness, thus federal law is instructive.¹⁸ As with the federal Rule, a witness may be qualified as an expert based on any one or a combination of the factors enumerated in 702(a).¹⁹ Furthermore, an expert qualified in one field cannot offer opinions in another field absent a showing of competency in the other area as well.²⁰

⁹ See *PSI Energy, Inc. v. Home Ins. Co.*, 801 N.E.2d 705, 738 (Ind. Ct. App. 2004) (quotation and citation omitted).

¹⁰ *Id.*

¹¹ Fed. Rule of Evid. 702(a).

¹² See *Ty, Inc. v. Publications Int’l, Ltd.*, 2004 WL 2359250 (N.D. Ill. 2004).

¹³ *Smith*, 215 F.3d at 718.

¹⁴ See *Ty*, 2004 WL 2359250 at 5.

¹⁵ See *id.*, citing *Carroll v. Otis Elevator Co.*, 896 F.2d 210, 212 (7th Cir. 1990).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *Rogers v. Cosco, Inc.*, 737 N.E.2d 1158, 1168 (Ind. Ct. App. 2000).

¹⁹ See *Burnett v. State*, 815 N.E.2d 201, 204 (Ind. Ct. App. 2004).

²⁰ See *Lytle v. Ford Motor Co.*, 814 N.E.2d 301, 308 (Ind. Ct. App. 2004).

III. *Reliable foundation for expert's opinion.*

After the proponent of an expert has met her burden of showing that the expert is indeed qualified to render an opinion regarding the specific question or issue at hand, the proponent must prove that the expert's opinion is based on reliable methodology. Reliability of expert testimony is a threshold issue for an analysis of expert evidence under Rule 702.²¹ In deciding whether scientific evidence is reliable, the trial court must determine whether it appears sufficiently valid or, in other words, trustworthy, so that it assists the jury.²² Federal and Indiana Rules 702 bear the same requirement that the expert's opinion be based on a reliable foundation, however the specific language of the Rules, and the courts' analysis thereof, diverge on what is required to ensure that an expert's methodology is indeed reliable.

Daubert outlined four factors federal courts should use to analyze the reliability of an expert's testimony: 1) whether the technique has been or can be empirically tested; 2) whether the technique has been subjected to peer review and publication; 3) the known or potential rate of error, as well as the existence and maintenance of standards controlling the technique's operation; and 4) general acceptance within the relevant scientific community.²³ Rule 702 is flexible in recognizing not only that a witness may be qualified to render an opinion based on a combination of various educational and practical experiences, but also that an expert's opinion may be reliably based on well-recognized principles, unique never-before-seen methodology, or something in between.

Recognizing that litigation often gives rise to unique questions of science and technology, the test of an expert's methodology is flexible, so as to accommodate the unique necessities of litigation. All of the *Daubert* factors do not necessarily nor exclusively apply to every expert in every case.²⁴ While being flexible in its analysis, the court must nonetheless make certain the expert, "whether basing his 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."²⁵ An expert's methodology need not yield mathematical exactness, but it must provide a rational basis upon which to make a reasonable approximation.²⁶

Indiana Rule 702 reflects an attempt to liberalize, rather than constrict, the requirements for admissibility of expert scientific evidence.²⁷ Under Indiana Rule 702, the threshold question is whether the expert evidence is reliable.²⁸ Indiana courts analyze the reliability of an expert's methodology under Rule 702(b) using the principles announced in *Daubert* as a guide—"Daubert is helpful, but not controlling."²⁹ Rule

²¹ See *Wallace v. Meadow Acres Manufactured Hous., Inc.*, 730 N.E.2d 809, 813 (Ind. Ct. App. 2000).

²² See *id.*, citing *Daubert*, 509 U.S. at 590, n.9.

²³ *Daubert*, 509 U.S. at 593-94.

²⁴ See *Smith*, 215 F.3d at 719 and cases cited therein.

²⁵ See *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (2000).

²⁶ See *Ty*, 2004 WL 2359250 at 6.

²⁷ See *Sears Roebuck and Co. v. Manuilov*, 742 N.E.2d 453, 460 (Ind. 2001).

²⁸ See *Armstrong v. Cerestar USA, Inc.*, 775 N.E.2d 360, 367 (Ind. Ct. App. 2002).

²⁹ See *Carter v. State*, 766 N.E.2d 377, 381 (Ind. 2002).

702(b) differs from the federal Rule in its express requirement that expert testimony be based upon reliable scientific principles.³⁰

[W]hen faced with a proffer of expert scientific testimony, the court must make a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the facts in issue. Scientific knowledge admissible under Evidence Rule 702 connotes more than subjective belief or unsupported speculation. Consequently, expert testimony must be supported by appropriate validation or “good grounds” based on what is known in establishing a standard of evidentiary reliability.³¹

While there is no specific test or set of prongs that must be considered by a court in evaluating the reliability of an expert’s evidence, Indiana courts find the *Daubert* factors helpful in performing such analysis.³²

Generally, whether a theory or technique can be empirically tested is a key question to be resolved in determining whether that theory or technique constitutes scientific knowledge that will assist the trier of fact. Another relevant consideration is whether the theory or technique has been subjected to peer review and publication. Widespread acceptance can be an important factor in ruling whether particular evidence is admissible under Evidence Rule 702 and a technique that has attracted only minimal support may properly be viewed with skepticism.³³

The proponent of expert testimony based purely on professional experience rather than on scientific principles need only demonstrate the subject matter is related to some field beyond the knowledge of lay persons and the witness possess sufficient skill, knowledge, or expertise in the field to assist the trier of fact to understand the evidence or determine the fact in issue.³⁴ Where an expert relies on scientific principles, Rule 702(b) requires the proponent of the testimony to establish the scientific principles on which the testimony is based are reliable.³⁵

The courts recognize that as the scientific principles underlying an expert’s opinion become more advanced and complex, the foundation required to establish reliability necessarily becomes more advanced and complex as well.³⁶ Conversely, as the scientific principles forming the basis of an opinion become basic, so too does the

³⁰ See *McGrew v. State*, 682 N.E.2d 1289, 1290 (Ind. 1997).

³¹ *PSI Energy*, 801 N.E.2d at 739 (citations omitted).

³² *Id.*

³³ *Id.*

³⁴ See *Lytle*, 814 N.E.2d at 308-09 (finding expert’s theory regarding “inadvertent release” of seatbelt was purely speculative where expert’s testing of seatbelt latch by hand could not reliably replicate the types of forces involved in a collision and expert had no other support for such theory).

³⁵ *Id.*

³⁶ See *id.*, citing *McGrew v. State* at 1289-90.

foundation for establishing their reliability.³⁷ Furthermore, where underlying methodology has been accepted by other courts as reliable, reliability may be established by judicial notice.³⁸ Consequently, where an expert's opinion is based on methodology previously accepted by courts as reliable, the burden of establishing the reliability of the methodology is lessened.

Under both the federal and Indiana Rule, the trial court's task in ensuring that the basis of expert testimony is reliable is to ascertain whether the general principles involved in the subject matter of an expert's testimony are reliable, not to micromanage each subsidiary element of an expert's testimony within the subject.³⁹ The focus of the reliability test must be on the principles and methodology behind the opinion rather than on the conclusions generated.⁴⁰ Thus, once the court determines the expert's general methodology is based on reliable scientific principles and the testimony will assist the trier of fact, then the accuracy, consistency and credibility of an expert's opinions may properly be left to vigorous cross-examination, presentation of contrary evidence, argument of counsel, and resolution by the trier of fact.⁴¹

IV. Reliability – speculation and conjecture.

As with testimony by any witness, expert testimony that is based on speculation or conjecture is not admissible.⁴² In attempting to establish proximate causation, particularly with respect to medical causation, a party cannot rely on an expert's opinion that something is "possible" rather, the causative factor must be "probable." "A doctor's testimony that a certain thing is possible is no evidence at all. His opinion as to what is possible is no more valid than a jury's speculation as to what is or is not possible."⁴³ Nonetheless, experts may offer testimony regarding hypothetical situations so long as the testimony is based on reliable principles and will aid the trier of fact.⁴⁴

V. Relevance.

The federal and Indiana Rules' requirement that expert testimony be relevant are substantially identical in application. Indiana Rule 702(a), regarding relevancy, is an adoption of the federal rule, thus federal case law on relevancy is instructive to State courts.⁴⁵ Under the federal Rule, notwithstanding the reliability of an expert and her testimony, expert evidence may nonetheless be excluded if it is not relevant to the issues of the case. Expert testimony is relevant, and may be admitted only if it "will assist the

³⁷ *Id.*

³⁸ *See Burnett v. State*, 815 N.E.2d 201, 209 (Ind. Ct. App. 2004).

³⁹ *See Sears Roebuck*, 742 N.E.2d at 461.

⁴⁰ *See Rogers*, 737 N.E.2d at 1169.

⁴¹ *Id.*

⁴² *See Ammons v. Aramark Uniform Services, Inc.* 368 F.3d 809, 816 (7th Cir. 2004).

⁴³ *See Brannon v. Wilson*, 733 N.E.2d 1000, 1002 (Ind. Ct. App. 2000) (*citing Palace Bar, Inc. v. Fearnot*, 381 N.E.2d 858, 864 (Ind. 1978)).

⁴⁴ *See Smith*, 215 F.3d at 719.

⁴⁵ *See Rogers*, 737 N.E.2d at 1168.

trier of fact to understand the evidence or to determine a fact in issue.”⁴⁶ The expert need not have an opinion on an ultimate issue of fact, so long as her testimony assists the trier of fact with its analysis of any of the issues involved in the case.⁴⁷ Even where expert testimony only has marginal relevance to an issue, if the evidence “might be helpful to [the] fact-finder,” it is admissible.⁴⁸ Similarly, expert testimony need not go to complex issues either, so long as it is helpful to the jury.⁴⁹

Finally, the trial judge’s analysis under Rule 702 goes to admissibility, not credibility. The judge must ensure that expert testimony is reliable and relevant, to be admitted. Issues of weight and credibility of expert testimony are left to the trier-of-fact. “It is not the trial court’s role to decide whether an expert’s opinion is correct. The trial court is limited to determining whether expert testimony is pertinent to an issue in the case and whether the methodology underlying that testimony is sound.”⁵⁰ Doubts about the credibility of a witness or the correctness of his conclusions are left to cross-examination and consideration by the trier-of-fact, not on the question of admissibility.⁵¹

VI. Medical experts.

a. Medical causation.

Both federal and Indiana courts have established specific foundational requirements for admissibility of expert testimony offered to prove medical causation. Questions of medical causation are questions of science necessarily dependent upon testimony by physicians or surgeons with experience in the area.⁵²

Where the cause of an injury or ailment is neither objective in nature nor within the understanding of the lay person, but rather is a complicated medical question, expert medical testimony is required to connect the cause to the injury.⁵³ Although a plaintiff may testify regarding physical conditions that are within their personal knowledge, a lay person cannot testify as to the diagnosis of a medical condition that is outside the skill and knowledge of a lay witness.⁵⁴ “[W]ith regard to diagnosis, causes and effects of disease, and other matters of medical science, skill, and practice, knowledge of which is

⁴⁶ R. of Evid. 702 (federal and Indiana).

⁴⁷ See *Smith*, 215 F.3d at 718.

⁴⁸ See *Perez v. City of Batavia*, 2004 WL 2967153 (N.D. Ill., Nov. 2004).

⁴⁹ See, e.g. *Carroll*, 896 F.2d at 212 (admitting testimony from experimental psychologist that red emergency stop button on elevator was attractive to children).

⁵⁰ See *Kumho*, 526 U.S. at 159 (Scalia, J. concurring).

⁵¹ See *Ty*, 2004 WL 2359250 at 7-9.

⁵² See e.g., *Armstrong*, 775 N.E.2d at 368 (holding expert’s opinion as to cause of injury was unreliable where expert was not a medical health professional).

⁵³ See *Daub v. Daub*, 629 N.E.2d 873, 877-78 (Ind. Ct. App. 1994); see also *Morphew v. Morphew*, 419 N.E.2d 770, 777 (Ind. Ct. App. 1981) (plaintiff could not testify that she had “muscle disease,” medical expert testimony required as to diagnosis of leg problem) (superseded by statute on other grounds), see also *Hannan v. Pest Control Serv., Inc.*, 734 N.E.2d 674, 679 (Ind. Ct. App. 2000) (requiring expert medical evidence that exposure to pesticides caused plaintiffs’ injuries); *Turner v. Davis*, 699 N.E.2d 1217, 1220 (Ind. Ct. App. 1998) (testimony of medical expert required to diagnose cause of sleeping ailment).

⁵⁴ See *Morphew*, 419 N.E.2d at 777.

confined to those trained for the profession, opinions of lay or nonexpert witnesses are not competent evidence.”⁵⁵ Indiana law specifically requires expert testimony to prove causation in toxic tort cases.⁵⁶

A plaintiff’s self-assessment of injuries and temporal coincidence is insufficient, by itself, to prove causation. Expert medical testimony is required. Thus, while a lay witness may describe her symptoms and injuries, expert testimony is required to link the complex injuries to a cause. For example, in *Turner v. Davis*, the plaintiff allegedly suffered sleep problems caused by a car accident. The plaintiff described her sleep problems and introduced medical records that indicated she in fact suffered from a sleeping ailment.⁵⁷ The plaintiff offered no medical expert testimony linking her sleep ailment to the automobile collision, and her medical records lacked any opinion that the ailment was caused by the car accident. Thus, plaintiff’s only evidence linking her sleeping ailment to the car accident was her own testimony regarding the temporal relationship between the accident and the ailment. The court ruled that her lack of medical causation evidence linking the sleeping ailment to the car accident was insufficient to establish proof of causation.⁵⁸

Where a defendant in a summary judgment proceeding designates sufficient evidence to negate medical causation, the plaintiff must produce expert evidence that creates a genuine issue of fact in order to withstand summary judgment.⁵⁹ Where a plaintiff lacks medical causation evidence and the defendant designates evidence negating the proximate causation element of plaintiff’s negligence claim, summary judgment for the defendant is appropriate.⁶⁰ Expert evidence of medical causation is particularly important in toxic tort/exposure cases so that other causes and contributing factors can be ruled out. For example, in *Hannan v. Pest Control Services, Inc.*, the plaintiff sued a pesticide applicator alleging the applicator negligently applied pesticides to their home and exposure to the pesticides caused various injuries. The court determined expert medical causation evidence was necessary to sustain plaintiffs’ burden on the element of proximate cause.⁶¹ The plaintiffs offered numerous experts as to causation, but none were sufficient to create a genuine issue of fact. The court noted that the plaintiffs alleged, “multiple subjective symptoms such as headaches and nausea, which are associated with numerous common illnesses.”⁶² Plaintiffs’ experts lacked an analysis of the exposure levels or dose of the chemicals allegedly received, were unable to exclude other possible causes of the alleged symptoms, and failed to address the role plaintiffs’ pre-existing conditions may have played in causing the alleged injuries.⁶³

⁵⁵ *Id.* (quotations omitted); see also *Armstrong*, 775 N.E.2d at 366 (requiring opinion as to medical causation of a particular injury to be offered by physician or surgeon learned in such matters).

⁵⁶ See *Hannan*, 734 N.E.2d 674.

⁵⁷ See *Turner*, 699 N.E.2d at 1220.

⁵⁸ *Id.*

⁵⁹ See *Hannan*, 734 N.E.2d 674; see also *Coleman v. Charles Court, LLC*, 797 N.E.2d 775 (Ind. Ct. App. 2003) *reh’g denied*.

⁶⁰ *Id.*

⁶¹ See *id.* at 679.

⁶² *Id.* at 683.

⁶³ *Id.* at 682.

Finally, in determining plaintiffs' expert testimony was inadmissible to establish medical causation, the court noted:

None of the purported experts performed any testing that would rule out alternative causes of the plaintiffs' ailments. Such "differential diagnosis" testing is important in toxic tort cases so that other cause may be negated.⁶⁴

b. Affidavits of experts in support of summary judgment motions.

Expert witnesses are frequently called upon to offer opinions regarding material issues of the case, in the form of affidavits for summary judgment proceedings. The form and substance of such expert affidavits must comply with Rule 702 and Trial Rule 56(e)⁶⁵ which dictates certain requirements specific to summary judgment proceedings.⁶⁶

The proponent of expert testimony in summary judgment faces a lower burden than is required for admission of such testimony at trial with respect to Rule 702's requirement that the opinion be based on reliable methodology. As is necessary at trial, the affidavit must establish the expert meets the 702(a) requirements that the witness is credentialed, experienced, or otherwise qualified to testify as an expert with respect to the opinions advanced. However, for summary judgment, the affidavit is not required to establish the reliability of the scientific principles that form the basis of the opinion. Rather, the affidavit need only provide sufficient information to allow the court to "proceed with a reasonable amount of confidence that the principles used to form the opinion are reliable."⁶⁷ The Supreme Court stated such requirement is met by an affidavit that both sets forth the admissible facts and states the reasoning or methodology on which the opinion is based.⁶⁸ The affiant must connect her experience, the underlying facts, and her conclusions.⁶⁹

VII. Conclusion

Expert witnesses have become common elements of litigation, both in the prosecution and defense of cases, whether civil or criminal. In whatever type of case a lawyer may be involved, be it contract, personal injury, intellectual property, or other, expert testimony will likely be at least a small element of the case, whether for establishing medical causation, a reliable measure of future damages, or other facts requiring opinions on scientific or technical evidence. In order to successfully offer expert testimony or challenge the admission of such, the litigator must understand the ins

⁶⁴ *Id.*

⁶⁵ Ind. T.R. 56(E) provides in part, "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Fed. R. Civ. Pro. 56(e) contains identical language.

⁶⁶ *See Doe*, 718 N.E. 2d at 750.

⁶⁷ *Id.* at 751.

⁶⁸ *Id.*

⁶⁹ *See Thayer v. Vaughan*, 798 N.E.2d 249, 254 (Ind. Ct. App. 2003).

and out of Rule 702. Scientific evidence has indeed found a permanent home in the courts, as Justice Breyer suggested. Likewise, Rule 702 should find a permanent home in every litigator's practice.