

Member Newsletter

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President's Message »

“AAIMCo – Maybe We Are in the Transmission Business!”

Facemasks. Mask mandates. Vaccinations. Travel restrictions. Cancellations.

What a year 2021 has been!

As we hope that the contagion becomes a distant memory in our rearview mirrors, with optimism and fortitude we gathered in late October at The Republic Hotel in San Diego for our Annual Conference. Practically every professional organization grappled with similar attendance challenges in 2021 and many cancelled their events altogether. We were determined to meet so long as we could do so safely. That resolve paid off. Despite attendance being predictably lower due to health concerns and travel complications, what the Conference lacked in quantity was more than made up for by its quality.

Over three days, AAIMCo packed much substantive content into the program, featuring a menu of presentations which delivered subject matter insights -- all pertaining to the arenas of insurance, risk and practice management. In addition, we had two spectacular dining experiences and it was gratifying to renew old acquaintances and make new ones.

As gratifying as it was to gather together again, times were occasionally tinged with a bittersweet flavor. Since we last gathered in Charleston, South Carolina, 2021 brought not only a continuation of Covid but sadness from the passing of two dear members, Tom Braniff and Russ Taylor.

Tom was a “Founding Father” of AAIMCo, instrumental in its formation and survival during a crucial phase. His widow, Wendy, joined us in San Diego.

Russ Taylor was the human Swiss Army knife, managing the organization's finances and all things with regard to our cornerstone event, the Annual Conference. Perhaps more importantly, both were terrific guys, who forged lasting relationships with those they touched.

As Joni Mitchell sang, “Don't it always seem to go/That you don't know what you got `til it's gone.” The passing of these two individuals left a massive open footprint and void in our organization, which Team AAIMCo pitched in to fill.

While neither Tom nor Russ were absent, they were on our minds. They were with us in spirit and that their professionalism in the organization that they created and sustained are parts of their respective legacies. But that's not all. Their legacies include the deep relationships that they forged, their empathy, kindness and dedication to the founding principles of our organization.



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Kudos in particular to immediate Past President Kevin Hromas, who steered us through unprecedented turbulent waters. Ditto to Mary LaPorte with regard to myriad aspects of Conference planning and execution and to Scott Bushnell, who graciously stepped into the role of AAIMCo Treasurer.

Looking ahead to 2022, we return to an annual springtime Conference schedule and will meet at the Higgins in New Orleans, May 5-7h. Please mark your calendars and save the dates. We look forward to robust attendance and another interesting menu of topics that will inform, entertain and help all our insurance consultants and expert witnesses boost their practices. Brent Winans will be crafting the program Agenda and is already receiving many interesting ideas for presentations. If you have an interest and willingness to present, please make that known to Brent.

As the leadership baton passed to me from Kevin Hromas, one of my aims is to work with the Board, seeking ways to add value to AAIMCo membership. The cornerstone value lies in our Annual Conference and the relationships flowing from that event. The challenge is adding value for the other 51 weeks of the year. We will seek ways to enhance our newsletters to add substantive value and other “deliverables” that enhance the annual investment in AAIMCo membership.

Many folks outside of our organization hear “AAIMCo” and – perhaps with a chuckle -- think that we work with automobile transmissions. That’s understandable. In recent years, I’ve become used to explaining the name of our organization.

Though we don’t deal with cars, in a sense we are in the transmission business. We transmit knowledge, practice tips, insights, occasional business referrals and relationship value between and amongst ourselves.

Such transmission of empathy and technical acumen is – as Martha Stewart says – “A good thing”!

Let’s stay in that aspect “transmission” business, work together to grow AAIMCo and continue its legacy of excellence!

Kevin M. Dunley



Membership Report »

Greetings and Wishing You the Happiest of Holiday Seasons!

I am taking a moment to introduce myself as your new membership chair, in addition to presenting an extremely impressive slate of new members. I joined AAIMCO five years ago and found the sheer experience of the group to be somewhat intimidating. However, some-odd conferences and forum discussions later, I have discovered a group that holds extraordinary insights, mountains of educational data and practical experiences that simply can't be replicated with many professional groups. It is my sincere pleasure to serve AAIMCO in the membership chair capacity.

Going forward, we will seek to diversify and bring as many different voices to the table as possible. If you have suggestions for new members, or any suggestions in general, please feel free to call, text, or e-mail me.

And now, on to our notable and extraordinary new members! If you have a chance, send an e-mail welcoming them to our group! Thanks so much, Danette Leonhardi

Amy Johnson, J.D.



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Rick Hammond provided Amy Johnson as a reference on his AAIMCO application. As Brent spoke to Amy about Rick's application and AAIMCO, she was very interested in joining also. It was not two weeks later that her application came through.

She is a highly experienced coverage attorney who loves doing work as an expert witness and mediator. She hopes to expand and increase her mediator/expert witness work. She is a partner at HeplerBroom and joined HeplerBroom in January 2018. Prior to that she was the Director of Property & Casualty Claims at RLI Insurance for over 13 years, and managed the company's bad faith/extra-contractual litigation for both property and casualty, from November 2004 to March 2017. Before that she was a coverage and appellate attorney with Pretzel & Stouffer in Chicago, from April 1998 till October 2004.



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Rick was referred to AAIMCO by Chantal Roberts after they became acquainted on LinkedIn.

He was a full time practicing attorney for many years, leading a group of lawyers that focused on coverage and bad faith cases. He served as an expert on a case for the first time about 15 years ago, and he had grown the expert witness portion of his work to about 50% of his practice before the pandemic prompted him to leave his law practice and focus full time on consulting and expert witness work. His expert witness practice is 80-90% on bad faith and claims handling, mostly in the P&C arena. The balance relates to underwriting, producer liability, life and health insurance, and regulatory issues.

In addition to his legal experience, Rick brings a rich insurance background. He was an all lines producer at one time, mostly on the life and health side. He was a property claims examiner for Allstate, a state insurance regulator, and the executive director for a national insurance trade association. He is a CLU, and while he is not a CPCU, he has taught the insurance law section of CPCU. He is an adjunct professor on insurance law at the Loyola University Chicago Law School.

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Lezlee was referred to AAIMCO by Dirk Beamer, who also gave her a glowing reference. Dirk is the General Counsel for the National Association of Professional Allstate Agents (NAPAA), and Lezlee had been a board member for several years.

She started her Allstate agency from scratch in 2004 and grew it to over \$6 million in revenue in less than 12 years. She sold the agency in June of 2021 because she knew she wanted to take her career in a different direction. She had started doing fee based risk management consulting in 2019, and presently she spends 90% of her time doing fee based consulting and expert witness work, mostly in the area of insurance agent E&O. She is also a licensed public adjuster and spends about 10% of her time doing contract work with a public adjusting firm. She is a very active person and volunteers actively in the organizations she joins.

Chris McAtee, CEPA



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Chris became a Professional Member in October of 2020, but his profile was inadvertently left off of the following newsletter. Sorry, Chris!

Chris started INS Capital Group (ICG) when he saw a need for a quality, professional advisory firm to assist small to mid-size business owners in the insurance industry with M&A and capital raising activities. Chris has spent his entire career in the insurance industry focusing on mergers, acquisitions, agency valuations and financing options for agents. Prior to founding ICG, Chris worked nearly 10 years with the largest insurance lender in the country, serving in the capacity of Sales Manager and Vice President. Chris has overseen more than \$500M in transactions exclusively in the insurance industry for deals ranging in value from \$1M - \$30M.

100% of what Chris does with clients is fee based. He does not provide loans or financing to agents, but he does serve as a broker between insurance agencies and banks, helping agencies to negotiate the most favorable financing rates and terms.

Michael Stroman



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Mike says he had known Tom Braniff and Russ Taylor for almost 40 years. Both were references for Mike and provided wholehearted endorsement for his membership.

He entered the insurance industry in 1980 and has worked for insurance carriers, brokers and agents, gaining experience in virtually all areas of the ownership and management of insurance agencies. Now Mike and his firm work with insurance agency owners on a variety of issues including mergers and acquisitions, sales management and training, and general advisory consulting. He also serves as an expert witness.

His main motivation for joining AAIMCO is to have a group of people he can associate with who have similar interests and who can be colleagues. "It gets lonely out there." Mike says that Tom was a true mentor and a constant advocate for AAIMCO, and Russ was the catalyst that led him to join when he did. "Russ called me and told me I needed to join."

Dr. Brenda Wells, Ph.D., CPCU, AAI, CRIS



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Brenda was recommend to AAIMCO by Chantal Roberts, who became acquainted with her through DRI. Brenda has been in the insurance field for over 30 years. She started teaching college in 1989, and in 2009 she moved to ECU to build a new risk management and insurance program.

While she spends the great majority of her time teaching at ECU, she spends about 10% of her time teaching and consulting with insurance professionals and serving as an expert witness. She looks to grow her consulting practice in the future, which is what leads her to AAIMCO.



Treasurer's Report »

I have prepared the following report and financial statements on an accrual basis in accordance with United States Generally Accepted Accounting Principals ("US GAAP"). These financial statements have not been reviewed or audited by an independent accounting firm. I have compiled the information contained in these financial statements from previous year's financial statements, bank account records, invoices and receipts obtained during the past 6 months. Substantially all of the notes that would be included in a formal financial reporting have been omitted from this report. The purpose of this report is to inform the Board of Directors and General Membership at large of the financial condition of AAIMCo.

Current Signs of Financial Health of AAIMCo.

As of the writing of this report, AAIMCo has approximately \$70,049 in current bank accounts. This balance includes deduction for operating costs and conference related fees of approximately \$17,723. It is my estimation the approximately \$25,000 of additional conference fees will be incurred by the end of the conference. Deducting anticipated conference fees from the bank balances results in approximately \$25,000 in the bank accounts.

Our usual annual membership dues and conference fees range from \$14,000 to \$19,000 annually based on previous years' experience. Our annual operating expenses range from approximately \$7,000 to \$10,000. This indicates that our operating capital for 2022 should adequately cover the expenses that will be incurred.

Balance Sheet

The current year balance sheet as of September 2021 shows assets of \$86,480.24, liabilities of \$17,574.32 giving a net current assets of \$68,905.92. Net current assets are a financial measure of the ability of the current assets of business to cover the current liabilities of the entity. Our net current assets position indicates the association is in good financial health.

Income Statement

The current year income statement shows net revenue from membership and conference fees of \$39,187, which is substantially higher than previous years. Our expenses incurred through September 30, 2021, total \$19,642 leaving a Net Income of \$19,545.

Subtracting the anticipated conference fees from the current net income results in approximately \$5,000 of net income post conference. I anticipate that our total net income by the end of the year to approach \$0.

Conclusion

In my opinion the financial health of the AAIMCo association is in good order. We should have adequate capital to fund the organization's operations and conference for 2022.

Respectfully submitted,



Scott E. Bushnell, CPA, CFF
AAIMCo Treasurer



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Treasurer's Report »



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Proforma Income Statement October 2020 through September 2021

<u>Description</u>	<u>Total</u>
Revenue	
Membership Dues/Conference Fees	\$39,187.00
Subtotal	\$39,187.00
Expenses	
Conference fees	\$12,219.53
Administrative Fees	1,297.63
Executive Director	4,964.88
Insurance	780.00
Web Services	380.00
Subtotal	\$19,642.04
Net Income	\$19,544.96



Member Spotlight »

Damian J. Arguello, ARM, JD

In *The Last Samurai*, Tom Cruise's character is told that a rebel samurai lord believes that his rebellion against the Emperor actually serves the Emperor by keeping Japan from losing its identity in the process of adopting Western technology and customs. Similarly, as a policyholder attorney, I believe my conflicts with insurance companies serve the insurance industry. How can that be?

Well, thanks to creative arguments policyholder lawyers made for coverage for pollution losses, shareholder derivative lawsuits, construction defect actions, and hacking incidents, the industry created new products specifically designed to cover those exposures. I truly love the insurance industry and believe that its risk-spreading is crucial to facilitate modern commerce. Every time I sue an insurance company for not covering a loss, I believe I help the industry deliver on its promise to protect policyholders.

My story begins with my ancestors, of course! In the 1700s, one of my maternal ancestors received a land grant from the King of Spain in what is now northern New Mexico, before the U.S. acquired it at the signing of the Treaty of Guadalupe Hidalgo. Eventually, most of the land was sold off but one of my hardy cousins still lives on what's left of it. My father is mostly Navajo and Apache, with some Mexican heritage. Like my mother, he was born in northern New Mexico. My ancestors didn't cross the border – the border crossed them!

My parents grew up extremely poor. Mom talks of pulling water from the river to bathe. Dad has memories of his mom stuffing newspaper into the cracks between the boards in the shack where they lived. The Great Depression prompted my parents' families to migrate to Denver in search of work.

My parents knew each other as adolescents. However, my maternal grandfather hated the city and before WWII he left to become the foreman on a ranch in Longmont, north of Denver.

In 1947, my father enlisted in the Army at age 16. He felt honor-bound to serve because his older brother had served in Germany, losing a leg to a shell. Dad spent two years in the Army and then returned to Denver. There, he chanced upon my Mom in Denver, when she was visiting a cousin. They were both engaged to other people but that all changed, obviously!

My insurance career begins with my eldest brother, who enlisted in the Army during the Vietnam War and volunteered for infantry. The Army, in its infinite wisdom, made



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him a company clerk in Germany, because he could type, a rare skill for a man in those days. After finishing his enlistment, he got a clerical job at an Allstate agency. He eventually made his way to CNA Insurance Companies.

Along the way, he recruited my older sister into the industry, where she eventually became an adjuster at CNA. In turn, in 1986 after I graduated from high school, she got me a summer job at CNA working for the underwriting and ratings groups. I alternately researched Dun & Bradstreet ratings for commercial applicants and manually assembled policies in the basement where all the forms were stored.

In my sophomore year, I went to work as a runner for an insurance defense law firm, “running” to court to deliver filings. Then I got promoted into the firm’s accounting group, where I transcribed the attorneys’ handwritten timeslips into the firm’s computer to generate bills. Attorneys didn’t have their own computers at that time. I learned a ton about insurance and practicing law.

After graduating in 1990, I was hired as a claims assistant in Crawford & Company’s Denver office. This was a clerical job helping adjusters until an adjuster vacancy occurred, and I was promoted. I remember that day clearly: my supervisor escorted me to my office, showed me a cabinet full of claim files, and told me to get to it! So, I dutifully reviewed every file start to finish. I leaned heavily on the attorneys on my litigated files for training. Three months later, I was finally sent to Crawford’s adjuster school in Atlanta. My roommate (a property adjuster from Raleigh, NC) and I used our \$15 per diem to buy beer for girls. Oh yeah, we also learned how to handle claims.

In 1992, CNA recruited me to be a work comp adjuster in its Denver office. After a couple of years, the claims manager called me in for a meeting. I was told that CNA was going to “reengineer” its claims processes, starting with work comp. Each office had to delegate someone for the reengineering team, and I was that someone.

So, about 25 work comp adjusters from around the country gathered at “Big Red” (the brick-red skyscraper housing CNA’s Chicago headquarters) with the EVPs of Claims and Services and the McKinsey consultants and hammered out a set of best practices. From there, we spent about six months traveling the country, reviewing claims files against these best practices and calculating savings that would have been achieved if they’d been followed.

Afterwards, we worked in Chicago with the McKinsey consultants to evaluate the file review results and develop pilot programs. I was part of the litigation reduction pilot in the NYC branch in Melville. Those jaded NYC adjusters were certain we’d never reduce attorney representation rates in their files but we did it! Turns out, if you communicate clearly with claimants and treat them with respect, they don’t lawyer up nearly as often. Who knew!

After the pilots were done, we presented our results and recommendations to the EVPs. We showed that increased training, smaller claim loads, and treating claimants with respect would deliver dramatic savings. We were thanked and told that management had hoped we would show them how to reduce headcount.

I was disillusioned and left the project in 1995. I was assigned to CNA’s small work comp claims office in Albuquerque. I stayed only a few months before I was recruited by Talbot Agency (later acquired by Hub International), a multi-state independent agency headquartered there, to be its claims manager,

tasked with shepherding large commercial claims through the process, intervening in coverage issues and other claim disputes, and helping reduce reserves, experience mods, etc.

Talbot was growing rapidly around the Western U.S. through acquisition of other agencies, and was acquiring errors & omissions problems in the process. Since many of these E&O issues first surfaced during the claims process, it was natural that I began to work with the agency's inhouse counsel, CFO, and parent company (Safeco) to address them. We also decided to reengineer the agency's processes to increase consistency among the various offices and reduce E&O exposure.

In 2001, I decided to go to law school. I was advocating for policyholders already and figured I should be "official." I enrolled in the University of Denver Sturm College of Law night program and kept working at Talbot in the day. I received Chancellor's Scholarship based on my LSAT scores and my commitment to represent insurance consumers upon graduation. I made Law Review and, on graduation in 2004, joined Davis Graham & Stubbs, a venerable Denver law firm with 160 lawyers.

At DGS, I worked in the environmental group. My goal was to be an environmental attorney, an interest I picked up at Talbot advocating for insureds whose claims were denied because of the pollution exclusion. However, as the only lawyer in the firm with real-world insurance experience, I was quickly tapped to be the firm's insurance practitioner. Mostly, I handled coverage issues related to construction, pollution, asbestos, directors & officers, securities, and a whole range of commercial insurance issues. Occasionally, I also represented insurers and agents/brokers but mostly I was a commercial policyholder attorney.

In 2016, I left DGS to join a boutique insurance coverage litigation firm, Levin Sitcoff. I continued representing policyholders there but it wasn't a good fit because I liked to work with insurance brokers and policyholders on prospective coverage advisement and the firm had sued most of the Colorado insurance producers.

So, in 2017, I founded Colorado Insurance Law Center, intending to represent policyholders much as I had before. That year, I was asked to be an expert for the first time, on an insurance producer liability matter. I loved it! Today, most of my work is expert witness or consulting, with only 20%-30% being legal work.

I also love teaching. I first started teaching at CNA in 1994 during the reengineering project. In 2005, I helped develop and teach the National Alliance legal Ruble. I also taught E&O prevention courses for several organizations. Currently, I'm an adjunct professor of insurance law at the University of Denver Sturm College of Law and the University of Colorado School of Law.

I was thrilled when Kevin Hromas and Brent Winans reached out and invited me to join AAIMCO in 2019. I have learned so much from my AAIMCO colleagues in the short time I've been a member.

When I'm not slaving away on insurance issues, I spend time with my partner, Victoria, and my 12 year-old son, Mateo, who wants to be an aeronautical engineer. I also enjoy skiing, hiking, watching soccer, boxing, and hockey, and driving my Mercedes SLK convertible through the mountains at slightly excessive speed. I love cars, and have owned 22 in my lifetime (so far).

Spotlight Article ▶

Proposed Changes to Federal Rules of Evidence could Affect AAIMCo Members

By : Damian J. Arguello

On April 30, 2021, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States (“Committee”) met and unanimously approved proposed changes to several Federal Rules of Evidence, including Rule 702. As you know, Rule 702 governs the admissibility of expert witness testimony in federal courts, and has been adopted verbatim or in substance by the majority of state court evidentiary rules regimes.

Currently, Rule 702 reads:

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:

- (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 has reliably applied the principles and methods to the facts of the case.

A redline of the proposed changes to Rule 702 is below, with deletions lined through and new verbiage in blue:

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 has demonstrated by a preponderance of the evidence 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 has reliably applied~~ **expert’s opinion reflects a reliable application of** the principles and methods to the facts of the case.



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The proposed changes, while appearing minor, could have significant consequences for expert witnesses and the attorneys and parties who hire them.

The proposed changes originated at a Symposium on forensic experts and the Daubert case held at Boston College School of Law in October 2017. Afterwards, a Subcommittee on Rule 702 was appointed to consider possible treatment of forensic experts and a question on the weight/admissibility of evidence. The Rule 702 Subcommittee expressed interest in amending Rule 702 to address the problem of forensic experts overstating results not supportable by the methodology employed, particularly in criminal cases.

The Committee thus favored a slight change to Rule 702(d) to emphasize that the court must focus on both (1) the expert's methodology and (2) the expert's opinion to find that the opinion proceeds from a reliable application of the methodology. The Committee Note explains: "A testifying expert's opinion must stay within the bounds of what can be concluded by a reliable application of the expert's basis and methodology."

Additionally, the Committee believes that many trial courts aren't properly serving as gatekeepers excluding unhelpful or unreliable expert testimony. The Committee cited the fact that many trial courts have concluded that the reliability requirements in Rule 702(b) and (d) (that the expert has relied on sufficient facts or data and has reliably applied a reliable methodology) are questions of weight, not admissibility, and that expert testimony is presumed to be admissible. The Committee reasoned that these conclusions potentially misstate Rule 702, because its admissibility requirements must be met by a preponderance of the evidence. The Committee determined that some courts have found expert testimony admissible even though the proponent has not satisfied the Rule 702(b) and (d) requirements by a preponderance of the evidence, as implicitly required by F.R.E. 104(a). Therefore, it approved expressly adding the preponderance standard to Rule 702.

Whether the changes to Rule 702 are necessary and curative of problems, or will unnecessarily and unfairly result in the exclusion of expert witness testimony, depends on the perspective. Susan Steinman, the senior director of policy and senior counsel at the American Association for Justice (the national plaintiff's bar) contends that the proposed changes "threaten[] to replace Daubert as the standard for admissibility of expert testimony with a new, restrictive version that would dramatically increase the authority of the court and usurp the role of the jury." (<https://www.law360.com/articles/1408127/rule-702-proposal-would-overly-restrict-expert-testimony>)

Specifically, Steinman argues, Rule 702 will become "a vehicle for the judge to weigh the conclusions of the expert, rather than focusing on the reliability of the expert's methodology. . . It casts the court into the role of weighing the evidence, while also diminishing the role of the jury. This

proposed change drifts far from addressing the original problem of forensic expert testimony in the criminal context.”

Steinman also claims the changes will disproportionately affect plaintiffs, who would have the burden of qualifying an expert offering opinions on multiple topics, some of which aren't elicited until cross-examination. It will also generate more appellate litigation, with the burden falling more heavily on small-dollar cases, she says, “hindering the ability of injured plaintiffs to pursue relief in a ‘just, speedy and inexpensive’ determination of their cases, as Federal Rule of Civil Procedure 1 dictates.”

Conversely, the defense bar feels the changes are necessary to weed out “junk” science: One defense firm’s blog post states, “If adopted as proposed, the amendments should help curb the admissibility of ill-founded expert testimony that is cloaked in the guise of reliable science. It is not enough that an expert can cite well established methodologies in forming his or her opinion. Courts will need to analyze whether the expert actually reliably applied that methodology and the facts on which the opinion is based in coming to the expert's conclusion. Given the excessive weight jurors frequently give expert testimony, ensuring the opinion is reliable is critical. Junk conclusions, like junk science, have no place in the courtroom. And while this may ultimately increase the cost of litigation when more expert challenges are filed and the opinion's proponent is forced to prove that the testimony is more likely reliable than not, those costs are outweighed by the overall benefit to the justice system. Further, it may also reduce forum shopping if the changes bring more consistency across the Circuits on expert admissibility rulings. Time will tell.” (<https://www.frantzward.com/news-blog/august-2021-1/will-the-proposed-amendments-to-evidence-rule-702>)

The Committee emphasized in response to questions that none of the admissibility requirements in the Evidence Rules are triggered without an objection being lodged and that amended Rule 702 would not require findings by the trial judge to admit expert opinion testimony without an objection by the opponent.

So, what does this mean for AAIMCO members? It’s possible that federal and state judges will view the amended Rule and associated comments as an admonishment to step up their gate-keeping activities and exclude more testimony. Given that possibility, AAIMCO members would be well served to step up their game by more clearly connecting the methodology to the opinions and explicitly stating their methodology within their reports. Additionally, the AAIMCO board is considering whether to comment by the February 16, 2022 deadline for public commentary and/or testify at the Advisory Committee on Evidence Rules public hearing conducted virtually via Microsoft Teams on January 21, 2022.

Annual Conference 2021 San Diego, California »









