



**FEDERAL RULE OF EVIDENCE 702:  
A ONE-YEAR REVIEW AND STUDY OF DECISIONS IN 2020**

September 30, 2021

Kateland R. Jackson – Fellow, Lawyers for Civil Justice<sup>1</sup>  
Associate, Shook Hardy & Bacon L.L.P. (Washington, DC)

Andrew J. Trask  
Of Counsel, Shook Hardy & Bacon L.L.P. (Los Angeles)

---

<sup>1</sup> Lawyers for Civil Justice (“LCJ”) is a national coalition of corporations, law firms, and defense trial lawyer organizations that promotes excellence and fairness in the civil justice system to secure the just, speedy, and inexpensive determination of civil cases. LCJ Fellows are selected by LCJ’s Diversity and Young Lawyers Committee from LCJ’s corporate and law firm members as future leaders who offer diverse, unique, and fresh perspectives, and have a demonstrated interest in civil justice reform. Each LCJ Fellow serves a three-year term.

## Executive Summary

Lawyers for Civil Justice (“LCJ”) conducted a comprehensive research study examining all federal cases decided in 2020 that addressed the admissibility of expert testimony under Federal Rule of Evidence 702. The research focused on various objective factors, including:

- whether the court articulated a standard requiring the proponent of proffered expert evidence to show proof of admissibility by a “preponderance of the evidence”;
- whether the court held a hearing to determine admissibility;
- whether the court noted that a determination based on “weight” or “credibility” was distinct from the admissibility;
- whether the court indicated having doubts that the evidence was admissible;
- whether the proffered expert evidence was admitted, partially admitted, or denied; and
- whether the court decided multiple motions to exclude experts at the same time.

The research yielded the following results, among other findings:

- 1,059 federal opinions in 2020 addressed expert admissibility under Rule 702.
  - 35% (373) mention that the proponent bears the burden of proving admissibility by a preponderance of the evidence.
  - 65% (686) do not mention the proponent’s burden of proof or preponderance standard.
  - 13% (135) use language indicating a presumption of admissibility (e.g., Rule 702 has a “liberal thrust” favoring admission).
  - 6% (61) required a showing of admissibility by a preponderance of the evidence *and* stated a presumption favoring admissibility (“liberal thrust” standard).
- In 61% of federal judicial districts (57 of 93), courts split over whether to apply the preponderance standard when assessing admissibility. District splits exist in every federal appellate circuit. In one judicial district, conflict even arose between two judges assigned to the same case—one judge articulated the preponderance standard in deciding expert motions while the other did not.
- The evidence demonstrates the need for an amendment clarifying that the court must find Rule 702’s admissibility requirements to be established by a preponderance of the evidence prior to admitting expert evidence. This change would improve practice by reducing confusion and inconsistency in the federal courts.

# FEDERAL RULE OF EVIDENCE 702: A ONE-YEAR REVIEW AND STUDY OF CASE DECISIONS IN 2020

September 30, 2021

**Introduction:** LCJ examined and analyzed one year of federal court rulings on the admissibility of expert testimony to determine how courts are applying Rule 702.

**Methodology:** LCJ researchers identified more than 1,000 cases decided in 2020 on the issue of expert evidence admissibility. The researchers focused on cases in which the trial judge admitted, partially admitted, or denied expert testimony using an analysis under Federal Rule of Evidence 702, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), or both. The researchers eliminated cases in which the court did not make a decision on expert admission (i.e., cases only briefly mentioning Rule 702 or *Daubert*, or setting a hearing but not actually deciding admissibility). The researchers reviewed every remaining opinion, noting the following specific factors as individual data points:

- whether the court held a hearing to review the evidence;
- whether the court articulated a standard requiring the proponent of proffered expert evidence to show proof of admissibility by a “preponderance of the evidence”;
- whether the court noted that a determination based on “weight” or “credibility” was distinct from the admissibility;
- whether the court indicated having doubts that the evidence was admissible;
- whether the court noted that Rule 702 has a presumption or “liberal thrust” favoring admission of expert evidence;
- whether the proffered evidence was admitted, partially admitted, or denied; and
- whether the court decided multiple motions for exclusion at the same time.

**Results:** In 2020, there were 1,059 federal cases in which the trial judge admitted, partially admitted, or denied expert testimony. In approximately 35% of the cases (373), the trial judge required the proponent to prove the admissibility of the expert evidence by a preponderance of the evidence. *In almost two-thirds of the cases—65% (686 of 1059)—the trial judge did not mention the preponderance standard at all.* About 13% of the time (135 cases), the judge described the analysis under Rule 702 or *Daubert* as having a “liberal thrust,” employed a “liberal policy favoring admissibility,” or stated that “exclusion is the exception rather than the rule”—contrary

to the requirement of Rules 702 and 104(a) that the proponent must prove the admissibility of the proffered expert testimony by a preponderance of the evidence.

Courts were split over whether to mention the preponderance standard in at least 57 federal judicial districts, a number of which had the nation’s busiest dockets in 2020.<sup>2</sup> These intra-district splits occurred in federal appellate circuit. For example, the Western District of Texas applied the preponderance standard in nine cases, but either adopted a liberal admissibility standard or otherwise did not mention the preponderance standard in eight others. Similarly, the Southern District of New York applied the preponderance standard in twelve cases, failed to mention it in twenty-five cases, and followed a “liberal thrust” in thirteen cases. Even in the same case, two judges for the Southern District of New York articulated different standards when deciding the parties’ expert motions.<sup>3</sup> The Central District of California yielded similar results—six cases applying preponderance, twenty-seven cases not mentioning preponderance, and four following a “liberal thrust” approach.<sup>4</sup>

These results indicate that the most active federal courts disagree internally over the correct interpretation of Rule 702. Further, there can be dissimilar outcomes in substantially similar cases since testimony that is excluded by one court applying the preponderance standard of Rules 702 and 104(a) may be admitted by another applying a “liberal thrust” approach.<sup>5</sup>

Approximately 6% of decisions cite both the preponderance standard *and* a presumption favoring admissibility (a “liberal thrust” approach).<sup>6</sup> This is a remarkable finding given that these standards are inconsistent with each other. The preponderance standard establishes a minimum threshold the party putting forth expert evidence must meet. If the proponent fails to meet this threshold, or if the reasons for admitting and denying create a “tie,” the evidence is not admitted. In contrast, a presumption favoring admissibility under a “liberal thrust” approach does not hold the proponent of the evidence to a minimum proof threshold, leading to what some courts describe

---

<sup>2</sup> See U.S. District Courts – Combined Civil and Criminal Federal Court Management Statistics (Dec. 31, 2020), available at [https://www.uscourts.gov/sites/default/files/data\\_tables/fcms\\_na\\_distprofile1231.2020.pdf](https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile1231.2020.pdf).

<sup>3</sup> See *Financial Guar. Ins. Co. v. Putnam Advisory Co., LLC*, 2020 WL 4251229, at \*2 (S.D.N.Y. Feb. 19, 2020) (preponderance); 2020 WL 3582029, at \*1 (S.D.N.Y. July 1, 2020) (no preponderance).

<sup>4</sup> See Appendix A for a representative sample of cases from the research, disaggregated by federal judicial district, indicating whether the court mentioned the preponderance standard or not.

<sup>5</sup> See Mark A. Behrens & Andrew J. Trask, *The Rule of Science and the Rule of Law*, 49 Sw. U. L. Rev. 436, 452 (2021) (“The attractiveness of our nation as a place for investors to deploy their capital is diminished when lawsuit outcomes are unpredictable and divorced from mainstream science.”).

<sup>6</sup> See Appendix B for list of cases that cite both the preponderance standard and a presumption favoring admissibility.

as “shaky but admissible evidence.” And even if some proof is shown, “ties” result in admitting the evidence. This data point indicates that some federal courts are confused about the correct standard to apply, or even what the different standards mean.

Additionally, approximately 13% of cases (133 cases) addressed multiple motions for exclusion, some of which reflected different decisions regarding admission for different expert testimony. In 192 cases (18%), the trial judge specifically mentioned that the court conducted a “*Daubert* hearing” to assess the admissibility of testimony.<sup>7</sup>

**Conclusion:** Courts’ inconsistent application of the preponderance standard in 2020 cases demonstrates that Rule 702 is not applied the same way throughout the country, or even within the same federal circuit or judicial district. Further, the number of courts that acknowledge the preponderance standard but still adopt a “liberal thrust” favoring admissibility may reflect larger confusion among federal courts about how to apply Rule 702.

The evidence demonstrates the need for an amendment clarifying that Rule 702 requires courts to find that the rule’s admissibility requirements are established by a preponderance of the evidence prior to admitting expert evidence. This change would improve practice by reducing confusion and inconsistency in the federal courts.

---

<sup>7</sup> Since 2020 was a year in which, for public health reasons related to COVID-19, few hearings occurred, we note that the count of hearings included telephonic hearings and teleconferences.

## Appendix A

### **Federal Rule of Evidence 702 Cases by Judicial District Preponderance Standard Versus Non-Preponderance Approach**

#### **Central District of California**

*Sportspower Ltd. v. Crowntec Fitness Mfg. Ltd.*, 2020 WL 3213704, at \*2 (C.D. Cal. Feb. 3, 2020) (admits expert testimony; recognizing that “[t]he proponent of the expert carries the burden of proving admissibility” and that “[e]xpert testimony is admissible if the [expert] requirements are satisfied by a preponderance of the evidence”); *see also Starstone Nat’l Ins. Co. v. Indep. Cities Risk Mgmt. Auth.*, 2020 WL 6143608, at \*1 (C.D. Cal. Aug. 19, 2020).

\* \* \*

*Novoa v. GEO Group, Inc.*, 2020 WL 8514832, at \*1-2 (C.D. Cal. Dec. 18, 2020) (partially admits expert testimony; “[Rule] 702 should be applied consistent with the ‘liberal thrust’ of the Federal Rules and their ‘general approach of relaxing the traditional barriers’” to testimony.); *see also Renteria v. Ethicon Inc.*, 2020 WL 7414744, at \*3 (C.D. Cal. Nov. 18, 2020) (admits expert testimony; “[T]he inquiry into admissibility of expert opinion is a ‘flexible one,’ where ‘[s]haky but admissible evidence is to be attacked by cross examination, contrary evidence, and attention to the burden of proof, not exclusion.’... Rule 702 should be applied with a liberal thrust favoring admission.”).

#### **District of Arizona**

*United States ex rel. Scott v. Arizona Ctr. for Hematology & Oncology*, 2020 WL 2059926, at \*1, 4 (D. Ariz. Apr. 29, 2020) (admits expert testimony; “The proponent of expert testimony has the ultimate burden of showing, by a preponderance of the evidence, that the proposed testimony is admissible.”) (cleaned up); *see also Wood v. Provident Life & Accident Ins. Co.*, 2020 WL 7013949, at \*2 (D. Ariz. July 29, 2020).

\* \* \*

*Madsen v. City of Phoenix*, 2020 WL 5057652, at \*2 (D. Ariz. Apr. 27, 2020) (admits expert testimony; “Rule 702 should be applied with a liberal thrust favoring admission.”); *see also Toth Gray v. LG&M Holdings LLC*, 2020 WL 9074812, at \*2-3 (D. Ariz. Sept. 3, 2020).

#### **District of Colorado**

*Scott v. Antero Res. Corp.*, 2020 WL 1138473, at \*2-3 (D. Colo. Mar. 9, 2020) (admits expert testimony; “The proponent of the expert testimony bears the burden of proving the foundational requirements of Rule 702 by a preponderance of the evidence.”); *see also FidoTV Channel Inc. v. Inspirational Network*, 2020 WL 417586, at \*3 (D. Colo. Jan. 24, 2020).

\* \* \*

*Heatherman v. Ethicon Inc.*, 2020 WL 5798533, at \*2 (D. Colo. Sept. 29, 2020) (partially admits expert testimony; “A key but sometimes forgotten principle of Rule 702 and

*Daubert* is that Rule 702, both before and after *Daubert*, was intended to relax traditional barriers to admission of expert opinion testimony. Accordingly, courts are in agreement that Rule 702 mandates a liberal standard for the admissibility of expert testimony... [T]he rejection of expert testimony is the exception rather than the rule.”) (cleaned up); *see also Hutchison v. Walmart Inc.*, 2020 WL 9075067, at \*1 (D. Colo. Oct. 27, 2020) (limits testimony; “Rule 702 mandates a liberal standard for the admissibility of expert testimony.”).

### **District of Connecticut**

*Greco v. Broan-NuTone LLC*, 2020 WL 1044002, at \*5 (D. Conn. Mar. 4, 2020) (excludes expert testimony; “The party seeking to admit the witness bears the burden of demonstrating, by a preponderance of the evidence, that his or her testimony is admissible.”); *see also Floodbreak LLC v. Art Metal Indus. LLC*, 2020 WL 6060974, at \*2 (D. Conn. Oct. 13, 2020).

\* \* \*

*Armour Cap. Mgmt. LP v. SS&C Tech., Inc.*, 2020 WL 64297, at \*7-9 (D. Conn. Jan. 5, 2020) (partially admits expert testimony without preponderance because proposed expert “appears to be a qualified expert whose testimony may be helpful to the jury provided that he does not stray from the scope of his expertise”); *see also Ashley v. City of Bridgeport*, 473 F. Supp. 3d 41, 44-45 (D. Conn. July 22, 2020).

### **District of Delaware**

*Delaware State Univ. v. Thomas Co Inc.*, 2020 WL 6799605, at \*7 (D. Del. Nov. 19, 2020) (excludes expert testimony; “The party proffering the expert bears the burden of demonstrating that the expert’s opinion is reliable and fits the facts by a preponderance of the evidence.”).

\* \* \*

*Align Tech. Inc. v. 3Shape AS*, 2020 WL 5979353, at \*4 n.8 (D. Del. Oct. 8, 2020) (admits expert testimony; “[Rule] 702, which governs admissibility of expert testimony, embodies a ‘liberal policy of admissibility.’”); *see also Guardant Health Inc. v. Foundation Med. Inc.*, 2020 WL 6742965, at \*5 n.5 (D. Del. Nov. 17, 2020) (admits expert testimony; “Rule 702 embodies a ‘liberal policy of admissibility.’”).

### **District of the District of Columbia**

*United States ex rel. Morsell v. Symantec Corp.*, 2020 WL 1508904, at \*3-5 (D.D.C. Mar. 30, 2020) (partially admits expert testimony; “The burden is on the proponent of [expert] testimony to show by a preponderance of the evidence that the proffered expert witness is qualified, that his proposed testimony would be useful to the finder of fact, and that the testimony is reliable.”); *see also United States v. Harris*, 502 F. Supp. 3d 28, 33-34 (D.D.C. Nov. 4, 2020).

\* \* \*

*Pinkett v. Dr. Leonard's Healthcare Corp.*, 2020 WL 1536305, at \*6-7 (D.D.C. Mar. 31, 2020) (admits expert testimony because “[a]t this stage, given the ‘liberal thrust’ of the

Federal Rules, the Court finds that [the expert’s] testimony is admissible”; recognizing “the liberal thrust of the Federal Rules and their general approach of relaxing the traditional barriers to opinion testimony”) (cleaned up); *see also Phoenix Restoration Grp., Inc. v. Liberty Mut. Grp. Inc.*, 2020 WL 622152, \*3 (D.D.C. Feb. 10, 2020).

### **District of Maryland**

*Elkharroubi v. Six Flags Am., LP*, 2020 WL 1043304, at \*2-3 (D. Md. Mar. 4, 2020) (excludes expert testimony; “[T]he party seeking admission of the expert testimony bears the burden of establishing admissibility by a preponderance of the evidence.”) (cleaned up); *see also Holland Constr. Corp. v. Boxxuto Contracting Co.*, 2020 WL 4338883, at \*10 (D. Md. July 28, 2020).

\* \* \*

*Rice v. SalonCentric Inc.*, 2020 WL 42760, at \*3 (D. Md. Jan. 3, 2020) (partially admits expert testimony; acknowledging that the “Court’s inquiry into the reliability of an expert’s testimony is flexible,” such that “the court has broad latitude to consider whatever factors bearing on validity the court finds to be useful”); *see also Thibodeaux v. Sterling*, 2020 WL 5076004, at \*1-2 (D. Md. Aug. 26, 2020).

### **District of Minnesota**

*Johannessohn v. Polaris Ind., Inc.*, 450 F. Supp. 3d 931, 969 (D. Minn. Mar. 31, 2020) (admits expert testimony; “[T]he proponent of the expert testimony must show by a preponderance of the evidence both that the expert is qualified to render the opinion and that the methodology underlying his conclusions is scientifically valid.”) (cleaned up); *see also S. Minn. Beet Sugar Coop. v. Agri. Sys.*, 2020 WL 5105763, at \*3-4 (D. Minn. Aug. 31, 2020).

\* \* \*

*Hudock v. LG Elec. U.S.A., Inc.*, 2020 WL 2848180, at \*3 (D. Minn. June 2, 2020) (partially admits expert testimony; no Rule 702 analysis and includes no preponderance standard); *see also United States ex rel. Johnson v. Golden Gate Nat’l Senior Care, LLC*, 2020 WL 1942409, at \*3-4 (D. Minn. Apr. 22, 2020).

### **District of Nebraska**

*Byrd v. Union Pac. R.R. Co.*, 453 F. Supp. 3d 1260, 1265-67 (D. Neb. Apr. 13, 2020) (excludes expert testimony; “The party offering the challenged testimony bears the burden of establishing admissibility by a preponderance of the evidence.”); *see also Ranney v. Union Pac. R.R. Co.*, 2020 WL 3036200, at \*4-5 (D. Neb. June 5, 2020).

\* \* \*

*Bettisworth v. BNSF Ry. Co.*, 2020 WL 3498139, at \*9-10 (D. Neb. June 29, 2020) (admits expert testimony; “*Daubert* calls for the liberal admission of expert testimony.”); *see also Gruttemeyer v. Trans. Auth. of City of Omaha*, 2020 WL 974004, at \*2-3 (D. Neb. Feb. 28, 2020) (partially admits expert testimony without a preponderance showing).

## **District of Nevada**

*Brumer v. Gray*, 2020 WL 343798, at \*1-2 (D. Nev. Jan. 21, 2020) (excludes expert testimony because “Defendant ha[d] not shown by a preponderance of proof that [expert’s] statements are admissible under Rule 702”) (cleaned up).

\* \* \*

*Otto v. Refacciones Neumaticas La Paz*, 2020 WL 907560, at \*2 (D. Nev. Feb. 25, 2020) (excludes expert testimony; explaining that “Rule 702 is applied consistent with the liberal thrust of the Federal Rules and their general approach of relaxing the traditional barriers to opinion testimony”) (cleaned up); *see also V5 Tech., LLC v. Switch, Ltd.*, 501 F. Supp. 3d 960, 962-64 (D. Nev. Nov. 19, 2020).

## **District of New Jersey**

*Reilly v. Vivint Solar*, 2020 WL 3047546, at \*1-2 (D.N.J. June 8, 2020) (partially admits expert testimony; “The party offering the expert testimony bears the burden of establishing the existence of each factor by a preponderance of the evidence.”); *see also Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at \*3-4 (D.N.J. Jan. 31, 2020) (admits expert testimony; “The proponent of the expert testimony must prove these requirements by a preponderance of the evidence.”).

\* \* \*

*Florio v. Ryobi Techs. Inc.*, 2020 WL 5234924, at \*2 (D.N.J. Sept. 2, 2020) (excludes expert testimony; “Rule 702 demands a ‘flexible’ inquiry”; “Although expert testimony ‘can be both powerful and quite misleading because of the difficulty in evaluating it,’ I must apply Rule 702’s requirements in accordance with the Federal Rules’ ‘liberal thrust,’ erring on the side of admission”; “I well understand that the Rules of Evidence favor the admission of expert testimony... [yet] [e]ven under the liberal Federal Rules admission standard, [the] proposed ‘expert’ testimony is little more than inadmissible wool gathering.”) (cleaned up); *see also Nagy v. Outback Steakhouse*, 2020 WL 5105196, at \*1 (D.N.J. Aug. 31, 2020).

## **District of New Mexico**

*Salopek v. Zurich Am. Life Ins. Co.*, 2020 WL 6384250, at \* (D.N.M. Oct. 30, 2020) (excludes expert testimony; “As the proponent of the expert, Plaintiff bears the burden to establish by a preponderance of the evidence that the requirements for admissibility have been met.”); *see also Rawers v. United States*, 2020 WL 5658093, at \*8-10 (D.N.M. Sept. 23, 2020) (admits expert testimony; “The proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the pertinent admissibility requirements are met.”) (cleaned up).

\* \* \*

*Pepe v. Casa Blanca Inn & Suites LLC*, 2020 WL 5219391, at \*7-8 (D.N.M. Apr. 10, 2020) (admits expert testimony; “Rule 702 offers a liberal standard”); *see also Munoz v. FCA US LLC*, 495 F. Supp. 3d 1008, 1011 (D.N.M. Oct. 16, 2020) (admits expert testimony;

“*Daubert* provides a ‘flexible’ framework for courts to use in their roles as gatekeepers of expert testimony.”).

### **District of Puerto Rico**

*De Jesus v. Andres Reyes Burgos Inc.*, 2020 WL 5520642, at \*4 (D.P.R. Sept. 14, 2020) (admits expert testimony; “The proponent of the expert testimony... must establish admissibility by a preponderance of the evidence.”) (citing Fed. R. Evid. 702 advisory committee’s note to 2000 amendment (“[T]he admissibility of all expert testimony is governed by the principles of Rule 104(a). Under that Rule, the proponent has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the evidence.”)).

\* \* \*

*Romero v. Inspira Behavioral Care*, 2020 WL 402274, at \*1-2 (D.P.R. Jan. 23, 2020) (admits expert testimony; no clear standard for admitting evidence because “the Court’s analysis must be flexible, not rigid”); *see also Arroyo v. Doctor’s Ctr. Hosp. Bayamon, Inc.*, 2020 WL 4516012, at \*2-3 (D.P.R. Aug. 5, 2020).

### **District of South Carolina**

*Nobles v. DePuy Synthes Sales, Inc.*, 471 F. Supp. 3d 717, 722 (D.S.C. June 2, 2020) (excludes expert testimony; “The proponent of the expert testimony carries the burden to establish the admissibility of the testimony by a preponderance of the evidence.”); *see also Beard v. Palmetto Health*, 2020 WL 4698974, at \*2-3 (D.S.C. July 27, 2021) (admits expert testimony; “The party offering the expert testimony must establish its admissibility by a preponderance of proof.”).

\* \* \*

*In re Nelums*, 2020 WL 7249548, at \*5-6 (D.S.C. Mar. 17, 2020) (excludes expert testimony; “Ultimately, an expert’s testimony is admissible under Rule 702 if it rests on a reliable foundation and is relevant” without the proponent bearing any burden to prove admissibility.) (cleaned up); *see also Schaeffer v. Williams*, 2020 WL 833017, at \*1-2 (D.S.C. Feb. 20, 2020).

### **District of Utah**

*United States ex rel. Polukoff v. St. Mark’s Hosp.*, 2020 WL 3271044, at \*1-2 (D. Utah June 17, 2020) (admits expert testimony; “Preliminary questions concerning the qualification of a person to be a witness should be established by a preponderance of proof.”).

\* \* \*

*Wright v. Amazon.com Inc.*, 2020 WL 6204401, at \*3-4 (D. Utah Oct. 22, 2020) (excludes expert testimony; acknowledging that “[t]he proponent of expert testimony bears the burden of demonstrating’ that the expert is indeed qualified,” but not mentioning whether that burden requires a preponderance showing); *see also Tycz v. Am. Family Mut. Ins. Co.*, 2020 WL 5753303, at \*2 (D. Utah July 22, 2020).

### **District of Wyoming**

*Great N. Ins. Co. v. Grounded Tech.*, 2020 WL 3494103, at \*2 (D. Wyo. May 5, 2020) (partially admits expert testimony; “The proponent of the expert testimony bears the burden of proving the foundational requirements of Rule 702... by a preponderance of the evidence.”); *see also Silverthorn v. Killpack Trucking Inc.*, 2020 WL 8515055, at \*2-3 (D. Wyo. July 22, 2020).

\* \* \*

*Mountain v. United States*, 2020 WL 8571674, at \*6 (D. Wyo. Sept. 11, 2020) (partially admits expert testimony; recognizing “the liberal thrust of the Federal Rules of Evidence, [and] the flexible nature of the *Daubert* inquiry”) (cleaned up); *see also Garcia v. Wyoming*, 2020 WL 8575651, at \*1-2 (D. Wyo. Aug. 7, 2020).

### **Eastern District of Arkansas**

*Watkins v. Lawrence Cnty., Ark.*, 2020 WL 2544469, at \*1-2 (E.D. Ark. May 19, 2020) (admits expert testimony; “The proponent of the expert testimony has the burden of establishing by a preponderance of the evidence the admissibility of the expert’s testimony.”); *see also Meade v. Ethicon Inc.*, 2020 WL 6395814, at \*2-3 (E.D. Ark. Nov. 2, 2020).

\* \* \*

*Mitchell v. Union Pac. R.R. Com.*, 2020 WL 7379933, at \*1, \*6 (E.D. Ark. Jan. 7, 2020) (excludes expert testimony; court “assum[ed]” that expert’s opinion was relevant); *see also Fuller v. Ethicon Inc.*, 2020 WL 4043517, at \*3 (E.D. Ark. July 17, 2020).

### **Eastern District of Kentucky**

*Owens v. Ethicon, Inc.*, 2020 WL 1976642, at \*1-3 (E.D. Ky. Apr. 24, 2020) (partially admits expert testimony; “[U]nder *Daubert* and its progeny, a party proffering expert testimony must show by a preponderance of proof that the expert whose testimony is being offered... will testify to scientific knowledge that will assist the trier of fact in understanding and disposing of issues relevant to the case.”); *see also Boyer v. Shirley*, 2020 WL 6785940, at \*5 (E.D. Ky. Nov. 18, 2020).

\* \* \*

*J.B-K.-1 v. Sec’y of Kentucky Cabinet for Health & Family Servs.*, 462 F. Supp. 3d 724, 732-33 (E.D. Ky. May 28, 2020) (admits expert testimony; explaining that when it comes to admitting evidence, “the district court ultimately enjoys broad discretion”); *see also Burton v. Ethicon Inc.*, 2020 WL 5809992, at \*2 (E.D. Ky. Sept. 29, 2020) (partially admits expert testimony; “Determining whether expert testimony should be admitted requires a flexible inquiry and any doubts should be resolved in favor of admissibility.”) (cleaned up).

### **Eastern District of Louisiana**

*Adriatic Marine, LLC v. Harrington*, 2020 WL 748024, at \*5 (E.D. La. Feb. 14, 2020) (excludes expert testimony; “When expert testimony is challenged, the party seeking to present the testimony has the burden of proving, by a preponderance of the evidence, that

the testimony satisfies [Rule 702.]”); *see also Willow Bend Ventures, LLC v. Van Hook*, 2020 WL 2113607, at \*5-6 (E.D. La. May 4, 2020).

\* \* \*

*Henderson v. Atmos Energy*, 496 F. Supp. 3d 1011, 1015-18 (E.D. La. Oct. 21, 2020) (excludes expert testimony; acknowledging that “[w]hen expert testimony is challenged under Rule 702 and *Daubert*, the burden of proof rests with the party seeking to present the testimony,” but staying silent as to whether that burden requires preponderance of evidence) (cleaned up); *see also Collins v. Benton*, 470 F. Supp. 3d 596, 601-02 (E.D. La. July 2, 2020) (admits expert testimony; “The court’s inquiry into the reliability of expert testimony is flexible and fact-specific”; “As a general rule, questions relating to the bases and sources of an expert’s opinion affect the weight to be assigned that opinion rather than its admissibility.”) (cleaned up).

### **Eastern District of Michigan**

*AWGI, L.L.C. v. Atlas Trucking Co. L.L.C.*, 2020 WL 3546100, at \*10 (E.D. Mich. June 30, 2020) (admits expert testimony; “It is the proponent of the testimony that must establish its admissibility by a preponderance of proof.”); *see also Gould Elec. Inc. v. Livingston Cnty. Rd. Comm’n*, 2020 WL 6793335, at \*8 (E.D. Mich. Nov. 19, 2020).

\* \* \*

*Dean v. United States*, 2020 WL 3412264, at \*7 (E.D. Mich. June 22, 2020) (admits expert testimony; “Considering... the liberal standard for admission of expert testimony under Rule 702, the Court finds [the expert] qualified...”).

*Penn. Lumbermens Mut. Ins. Co. v. Precision Lawn Irrigation Inc.*, 2020 WL 8673131, at \*11 (E.D. Mich. Nov. 25, 2020) (admits expert testimony; no mention of preponderance standard when admitting expert evidence); *see also Frontczak v. City of Detroit*, 2020 WL 6479553, at \*1-2 (E.D. Mich. July 23, 2020).

### **Eastern District of Missouri**

*Refrig. Supplies Inc. v. Acadia Ins. Co.*, 507 F. Supp. 3d 1096, 1101-02 (E.D. Mo. Dec. 17, 2020) (admits expert testimony; “the party offering the expert testimony ‘must show by a preponderance of the evidence both that the expert is qualified to render the opinion and that the methodology underlying his conclusions is scientifically valid’”) (cleaned up); *see also Pitlyk v. Ethicon Inc.*, 478 F. Supp. 3d 784, 786-87 (E.D. Mo. Aug. 12, 2020).

\* \* \*

*Bayes v. Biomet Inc.*, 2020 WL 5095346, at \*5-6 (E.D. Mo. Aug. 28, 2020) (admits expert testimony; no discussion of the proponent’s burden or the preponderance standard); *see also Wallace v. Pharma Medica Rsch., Inc.*, 2020 WL 7624846, at \*1-2 (E.D. Mo. Dec. 22, 2020) (admits expert testimony; recognizing the “liberal admission of expert testimony”).

### **Eastern District of Pennsylvania**

*Maude v. City of Phila.*, 507 F. Supp. 3d 593, 599 (E.D. Pa. Dec. 15, 2020) (partially admits expert testimony; “The party offering the expert must prove each of [the Rule 702] requirements by a preponderance of the evidence.”); *see also Jacoby Donner PC v. Aristone Realty Capital LLC*, 2020 WL 5095499, at \*6 (E.D. Pa. Aug. 28, 2020).

\* \* \*

*In re Domestic Drywall Antitrust Litig.*, 2020 WL 1695434, at \*14-16 (E.D. Pa. Apr. 7, 2020) (partially admits expert testimony; recognizing that “in doubtful cases, Rule 702 favors admissibility”); *see also Robinson v. Fair Acres Geriatric Ctr.*, 2020 WL 1313721, at \*9 (E.D. Pa. Mar. 20, 2020).

### **Eastern District of Texas**

*Image Processing Techs., LLC v. Samsung Elec.*, 2020 WL 2499736, at \*2-3 (E.D. Tex. May 14, 2020) (admits expert testimony; “The burden is on the party offering the expert testimony to establish admissibility by a preponderance of the evidence.”); *see also Maxwell Ltd. v. Apple Inc.*, 2020 WL 8269548, at \*2-3 (E.D. Tex. Nov. 11, 2020) (partially admits experts testimony; “The proponent... must prove by a preponderance of the evidence that the testimony is reliable.”) (cleaned up).

\* \* \*

*Hale v. Denton Cnty.*, 2020 WL 4431860, at \*2 (E.D. Tex. July 31, 2020) (admits expert testimony; “[T]he decision to allow or exclude experts from testifying under *Daubert* is committed to the sound discretion of the district court,” and not based on the proponent’s burden of proof.); *see also Kumar v. Frisco Indep. Sch. Dist.*, 2020 WL 1503270, at \*2 (E.D. Tex. Mar. 27, 2020) (admits expert testimony; “[T]he *Daubert* framework is ‘a flexible one.’”).

### **Middle District of Florida**

*Pierce Mfg. v. E-One, Inc.*, 2020 WL 416268, at \*3 (M.D. Fla. Jan. 27, 2020) (admits expert testimony; “The party offering the expert has the burden of satisfying [expert admissibility] elements by a preponderance of the evidence.”) (cleaned up); *see also Santa Fe Surgery LLC v. Sentinel Ins. Co. Ltd.*, 2020 WL 6018871, at \*3-4 (M.D. Fla. Oct. 7, 2020).

\* \* \*

*Jackson v. United States*, 2020 WL 1665960, at \*3-4 (M.D. Fla. Apr. 3, 2020) (excludes expert testimony; no mention of a preponderance standard for admissibility); *see also Katsiafas v. C.R. Bard, Inc.*, 2020 WL 1808895, at \*2 (M.D. Fla. Apr. 9, 2020).

### **Middle District of Pennsylvania**

*Bardo v. Norfolk S. R.R. Co.*, 459 F. Supp. 3d 618, 623-25 (M.D. Pa. May 11, 2020) (excludes expert testimony; recognizing that the proponent “has the burden of establishing the reliability and admissibility of the expert’s testimony by a preponderance of the evidence”); *see also Stoud v. Susquehanna Cnty.*, 2020 WL 6047576, at \*5 (M.D. Pa. Oct. 13, 2020).

\* \* \*

*Penn v. Detweiler*, 2020 WL 1016203, at \*4 (M.D. Pa. Jan. 22, 2020) (partially admits expert testimony; “Rule 702 ‘has a liberal policy of admissibility.’”); *see also Hunter v. Kennedy*, 2020 WL 3980450, at \*7-8 (M.D. Pa. July 14, 2020) (partially admits expert testimony; no mention of an admissibility standard when assessing multiple motions to exclude); *Gorton v. Air & Liquid Sys. Corp.*, 2020 WL 4193649, at \*2-3 (M.D. Pa. July 21, 2020) (admits expert testimony; “As long as an expert’s scientific testimony rests upon ‘good grounds, based on what is known,’ it should be tested by the adversary process.”) (cleaned up).

### **Northern District of Alabama**

*Walker v. Ergon Trucking, Inc.*, 2020 WL 6537651, at \*2-4 (N.D. Ala. Apr. 23, 2020) (excludes expert testimony because proponent of expert testimony “has not shown by a preponderance of the evidence that [expert] is qualified to offer an opinion”).

\* \* \*

*Johnson v. ABF Freight Sys. Inc.*, 2020 WL 7320994, at \*1 (N.D. Ala. Dec. 11, 2020) (partially admits expert testimony; explaining that “[t]he party offering testimony from an expert must demonstrate that the anticipated testimony is admissible under Rule 702,” but failing to explain how) (cleaned up); *see also Dysart v. Trustmark Nat’l Bank*, 2020 WL 4815131, at \*1-2 (N.D. Ala. Aug. 19, 2020).

### **Northern District of California**

*United States v. Mercado*, 2020 WL 496069, at \*6 (N.D. Cal. Jan. 30, 2020) (excludes expert testimony; “The burden is on the proponent of the expert testimony to show, by a preponderance of the evidence, that the admissibility requirements are satisfied.”); *see also Contour IP Holding LLC v. GoPro Inc.*, 2020 WL 5106845, at \*3 (N.D. Cal. Aug. 31, 2020).

\* \* \*

*Sumotext Corp. v. Zoove, Inc.*, 2020 WL 533006, at \*9-10 (N.D. Cal. Feb. 3, 2020) (admits expert testimony; the court’s inquiry into expert reliability is “a flexible one”); *see also Snyder v. Bank of Am. N.A.*, 2020 WL 6462400, at \*2 (N.D. Cal. Nov. 3, 2020) (partially admits expert testimony; the admissibility inquiry is “a flexible one”); *In re Viagra and Cialis*, 424 F. Supp. 3d 781, 788-90 (N.D. Cal. Jan. 13, 2020) (admits expert testimony; recognizing “*Daubert*’s admonition that a district court should conduct the analysis ‘with a liberal thrust favoring admission.’”).

### **Northern District of Florida**

*Fernandez v. United States*, 2020 WL 3105925, at \*4-5 (N.D. Fla. June 4, 2020) (excludes expert testimony; “The party offering the purported expert has the burden of showing, by a preponderance of the evidence, that each of [the expert admissibility] requirements has been met.”) (cleaned up); *see also Arevalo v. Coloplast Corp.*, 2020 WL 3958505, at \*1-2 (N.D. Fla. July 7, 2020).

\* \* \*

*In re Deepwater Horizon Belos Cases*, 2020 WL 6689212, at \*1 (N.D. Fla. Nov. 4, 2020) (excludes expert testimony; no mention of any admissibility standard or burden of proof).

### **Northern District of Georgia**

*Dotson v. Am. Med. Sys., Inc.*, 2020 WL 2844738, at \*1-2 (N.D. Ga. Mar. 11, 2020) (admits expert testimony; “The burden of laying the proper foundation for the admission of the expert testimony is on the party offering the expert, and admissibility must be shown by a preponderance of the evidence.”); *see also Wind Logistics Prof. LLC v. Univ. Truckload*, 2020 WL 3411037, at \*2-3 (N.D. Ga. June 22, 2020) (admits expert testimony; “The party seeking to introduce expert testimony must establish, by a preponderance of the evidence, the factors set out in Rule 702.”).

\* \* \*

*In re Ethicon Prod. Liab. Litig.*, 2020 WL 9887625, at \*1-2 (N.D. Ga. Nov. 25, 2020) (partially admits expert testimony; “evidence should be admitted if it ‘rests on a reliable foundation’ and is ‘relevant to the task at hand’”); *see also Guinn v. Norfolk S. R.R. Co.*, 441 F. Supp. 3d 1319, 1326-27 (N.D. Ga. Aug. 5, 2020).

### **Northern District of Illinois**

*Couture v. Haworth, Inc.*, 2020 WL 70931, at \*6-7 (N.D. Ill. Jan. 7, 2020) (excludes expert testimony; “The burden is on the party seeking to admit the expert to show by a preponderance of the evidence that the expert meets the requirements of Rule 702 and *Daubert*.”); *see also Neurografix v. Brainlab Inc.*, 2020 WL 3643057, at \*1-2 (N.D. Ill. July 6, 2020).

\* \* \*

*Chicago Teachers Union v. Bd. of Educ.*, 2020 WL 914882, at \*1 (N.D. Ill. Feb. 25, 2020) (partially admits expert testimony; “The Rule 702 inquiry ‘is a flexible one...’ [and] ‘shaky’ expert testimony may be admissible.”) (cleaned up); *see also Kirk v. Clark Equip. Co.*, 2020 WL 5593750, at \*2 (N.D. Ill. Sept. 18, 2020).

### **Northern District of Indiana**

*Constructora Mi Casita v. NIBCO, Inc.*, 448 F. Supp. 3d 965, 970-72 (N.D. Ind. Mar. 24, 2020) (excludes expert testimony; “The proponent of expert testimony must establish its admissibility by a preponderance of the evidence.”); *see also Bordoni v. Forest River Inc.*, 2020 WL 7022485, at \*4 (N.D. Ind. Nov. 30, 2020).

\* \* \*

*Med. Protective Co. v. Am. Int'l Specialty Lines Ins. Co.*, 2020 WL 408462, at \*1-2 (N.D. Ind. Jan. 24, 2020) (partially admits expert testimony; “The reliability inquiry is fact-dependent and flexible”); *see also Smith v. Nexus RVs LLC*, 472 F. Supp. 3d 470, 475-77 (N.D. Ind. July 13, 2020).

### **Northern District of Iowa**

*Nicholson v. Biomet, Inc.*, 2020 WL 3399899, at \*3, \*5 (N.D. Iowa Mar. 6, 2020) (partially admits expert testimony; “To satisfy the reliability requirement, the party offering the expert testimony ‘must show by a preponderance of the evidence both that the expert is qualified to render the opinion and the methodology underlying his conclusions is scientifically valid.’”) (cleaned up).

\* \* \*

*Wessels v. Biomet Orthopedics, LLC*, 2020 WL 3421478, at \*4 (N.D. Iowa June 22, 2020) (partially admits expert testimony; “District courts have ‘broad discretion’ in determining the admissibility of expert testimony.”) (cleaned up); *see also Webb v. City of Waterloo*, 2020 WL 1159755, at \*2 (N.D. Iowa Mar. 10, 2020).

### **Northern District of New York**

*Guardino v. Alutiiq Diversified Servs., LLC*, 457 F. Supp. 3d 158, 161-62 (N.D.N.Y. Apr. 29, 2020) (admits expert testimony; “The party offering the testimony has the burden of establishing its admissibility by a preponderance of the evidence.”); *see also Durant v. U.S.*, 2020 WL 1274326, at \*5 (N.D.N.Y. Mar. 17, 2020).

\* \* \*

*Doe v. Colgate Univ.*, 457 F. Supp. 3d 164, 176 (N.D.N.Y. Apr. 30, 2020) (excludes expert testimony; no mention of preponderance); *see also Arruda v. C.R. Bard Inc.*, 2020 WL 4569436, at \*15-16 (N.D.N.Y. Aug. 6, 2020).

### **Northern District of Oklahoma**

*Perry v. Safeco Ins. Co. of Am.*, 2020 WL 1166085, at \*1-2 (N.D. Okla. Mar. 11, 2020) (excludes expert testimony; explaining that “the proponent of the testimony bears the burden of proving by a preponderance of the evidence that its witness’s opinions are both relevant and reliable”).

\* \* \*

*Teel v. United States*, 2020 WL 71254, at \*2-4 (N.D. Okl. Jan. 7, 2020) (admits expert testimony; acknowledging “the liberal thrust of the Federal Rules and their general approach of relaxing the traditional barriers” to testimony.); *see also Denton v. Nationstar Mortgage LLC*, 2020 WL 3261008, at \*1 (N.D. Okla. May 1, 2020) (partially admits expert testimony; “Under Rule 702, the district court must satisfy itself that the proposed expert testimony is both reliable and relevant,” although there is no stated requirement for the proponent to bear a burden of proof.); *Smith v. Am. Nat’l Prop. & Cas. Co.*, 2020 WL 7635436, at \*5 (N.D. Okla. Dec. 22, 2020).

### **Northern District of Texas**

*Bailon v. Landstar Ranger Inc.*, 2020 WL 7046852, at \*2-3 (N.D. Tex. Nov. 30, 2020) (excludes expert testimony; “The burden is on the proponent of the expert testimony to establish its admissibility by a preponderance of the evidence.”); *see also Nationwide Agribusiness Ins. Co. v. Deere & Co.*, 2020 WL 8768073, at \*4 (N.D. Tex. Oct. 23, 2020).

\* \* \*

*McCaleb v. Rely Transp. Inc.*, 2020 WL 8242164, at \*1 (N.D. Tex. Dec. 24, 2020) (admits expert testimony; noting that “under *Daubert* and [Rule] 702, a district court has broad discretion”); *see also Double Diamond Del., Inc. v. Homeland Ins. Co.*, 475 F. Supp. 3d 576, 577-78 (N.D. Tex. July 27, 2020).

### **Northern District of West Virginia**

*Wells v. Antero Res. Corp.*, 497 F. Supp. 3d 96, 98-99 (N.D. W.Va. Oct. 29, 2020) (excludes expert testimony; “The proponent of the expert testimony bears the burden of establishing its admissibility by a preponderance of the evidence.”).

\* \* \*

*Romeo v. Antero Res. Corp.*, 2020 WL 1430468, at \*2-3 (N.D. W.Va. Mar. 23, 2020) (admits expert testimony; “[T]he test of reliability is flexible and the law grants a district court the same broad latitude when it decides how to determine reliability as it enjoys in respect to its ultimate reliability determination.”).

### **Southern District of California**

*Parks v. Ethicon Inc.*, 2020 WL 6118774, at \*2-3 (S.D. Cal. Oct. 16, 2020) (admits expert testimony; “[T]he proponent [of the proposed expert] has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the evidence.”) (cleaned up); *see also Golden Eye Media USA Inc. v. Trolley Bags U.K. Ltd.*, 2020 WL 4559181, at \*1 (S.D. Cal. Aug. 6, 2020).

\* \* \*

*Stone Brewing Co., LLC v. Miller Coors LLC*, 2020 WL 907060, at \*2 (S.D. Cal. Feb. 25, 2020) (admits expert testimony; “The tests for admissibility in general, and reliability, are flexible.”); *see also Kurin, Inc. v. Magnolia Med. Techs., Inc.*, 473 F. Supp. 3d 1117, 1140-41 (S.D. Cal. July 20, 2020).

### **Southern District of Florida**

*Sunderland Mar. Ins. Co. v. C. Servs.*, 2020 WL 5545624, at \*1-2 (S.D. Fla. May 22, 2020) (excludes expert testimony; “A party who seeks to admit expert testimony bears the burden of laying the proper foundation for its admissibility by a preponderance of the evidence.”); *see also Gatearm Tech., Inc. v. Access Masters, LLC*, 2020 WL 6808670, at \*13-14 (S.D. Fla. Apr. 30, 2020).

\* \* \*

*Vision Power, LLC v. Midnight Express Power Boats*, 2020 WL 770547, at \*2-3 (S.D. Fla. Feb. 18, 2020) (admits expert testimony; no mention of a preponderance standard of proponent’s burden of proof).

### **Southern District of Georgia**

*Taylor v. USA King Trans., Inc.*, 2020 WL 1821014, at \*3-4 (S.D. Ga. Apr. 9, 2020) (admits expert testimony; “The proponent of the expert opinion bears the burden of

establishing qualification, reliability, and helpfulness by a preponderance of the evidence.”); *see also* *Whatley v. Hart*, 2020 WL 1441432, at \*9-10 (S.D. Ga. Mar. 13, 2020).

\* \* \*

*Kennedy v. Elec. Ins. Co.*, 2020 WL 1493935, at \*2 (S.D. Ga. Mar. 24, 2020) (admits expert testimony; not relying on the preponderance standard to admit); *see also* *Greater Hall Temple Church of God v. S. Mut. Church Ins. Co.*, 2020 WL 1809747, at \*5 (S.D. Ga. July 15, 2020).

### **Southern District of Indiana**

*Block v. Ethicon Inc.*, 2020 WL 6440516, at \*1 (S.D. Ind. Nov. 2, 2020) (partially admits expert testimony; “The proponent of expert testimony bears the burden of establishing admissibility by a preponderance of the evidence.”).

\* \* \*

*Senior Lifestyle Corp. v. Key Benefit Admins., Inc.*, 2020 WL 1905706, at \*1 (S.D. Ind. Apr. 17, 2020) (admits expert testimony; no mention of the preponderance standard); *see also* *Poer v. United States*, 2020 WL 1443197, at \*3-4 (S.D. Ind. Mar. 25, 2020).

### **Southern District of Iowa**

*Atos IT Solutions & Servs., Inc. v. ACT, Inc.*, 2020 WL 3399905, at \*1-2 (S.D. Iowa Jan. 22, 2020) (partially admits expert testimony; “The reliability requirement is satisfied if the proponent shows, by a preponderance of the evidence, both that the expert is qualified to render the opinion and that the methodology underlying his conclusions is scientifically valid.”).

\* \* \*

*Glenn Golden v. Stein*, 2020 WL 6487687, at \*1-4 (S.D. Iowa Oct. 5, 2020) (admits expert testimony; “[C]ases are legion that under *Daubert*, liberal admission is prevalent... and courts should resolve doubts regarding the usefulness of an expert’s testimony in favor of admissibility.”) (cleaned up).

### **Southern District of Mississippi**

*James v. Antarctic Mech. Servs., Inc.*, 2020 WL 1339640, at \*1-2 (S.D. Miss. Mar. 23, 2020) (admits expert testimony; “The party offering the expert bears the burden of establishing reliability by a preponderance of the evidence.”); *see also* *Am. Contractors Indem. Co. v. Reflectech, Inc.*, 2020 WL 1190474, at \*3 (S.D. Miss. Mar. 12, 2020).

\* \* \*

*Keyes v. Techtronic Indus. Factory Outlets Inc.*, 2020 WL 5592694, at \*1 (S.D. Miss. Aug. 4, 2020) (partially admits expert testimony; “[T]he decision to admit or exclude evidence is within the discretion of the trial court.”); *see also* *James v. Antarctic Mech. Servs., Inc.*, 2020 WL 1479090, at \*1 (S.D. Miss. Sept. 11, 2020).

### **Southern District of New York**

*Potter v. United States*, 2020 WL 2836440, at \*2-3 (S.D.N.Y. May 5, 2020) (excludes expert testimony; “The party seeking to introduce expert testimony ‘bears the burden of establishing its admissibility by a preponderance of the evidence.’”) (cleaned up); *see also Uretekologia De Mexico v. Uretek (USA), Inc.*, 434 F. Supp. 3d 517, 529-30 (S.D. Tex. Jan. 17, 2020).

\* \* \*

*Solid Oak Sketches, LLC v. 2K Games, Inc.*, 449 F. Supp. 3d 333, 350-51 (S.D.N.Y. Mar. 26, 2020) (admits expert testimony; “Rule 702 embodies a liberal standard of admissibility for expert opinions” rather than requiring a preponderance of evidence); *see also Conti v. Doe*, 2020 WL 6162104, at \*4-5 (S.D.N.Y. Oct. 21, 2020) (admits expert testimony; “It is a well-accepted principle that Rule 702 embodies a liberal standard of admissibility for expert opinions”; “[Admitting shaky testimony with a limiting instruction for the jury] avoids complete preclusion and better aligns with Rule 702’s ‘liberal standard of admissibility for expert opinions.’”) (cleaned up).

\*Notably, in one case in the Southern District of New York, two different judges relied on different standards when deciding expert motions. *See Financial Guar. Ins. Co. v. Putnam Advisory Co., LLC*, 2020 WL 4251229, at \*2 (S.D.N.Y. Feb. 19, 2020) (preponderance); 2020 WL 3582029, at \*1 (S.D.N.Y. July 1, 2020) (no preponderance).

### **Southern District of Ohio**

*In re EI du Pont de Nemours & Co.*, 2020 WL 278499, at \*5 (S.D. Ohio Jan. 19, 2020) (excludes expert testimony; “The burden is on the party proffering the expert report to demonstrate by a preponderance of proof that the opinions of their experts are admissible.”); *see also Cook v. Erie Ins. Co.*, 478 F. Supp. 3d 658, 662-63 (S.D. Ohio Aug. 11, 2020).

\* \* \*

*Hobart Corp. v. Dayton Power & Light Co.*, 2020 WL 614041, at \*2-3 (S.D. Ohio Feb. 10, 2020) (admits expert testimony; noting the court’s broad discretion to admit expert witness testimony); *see also Kondash v. Kia Motor Am.*, 2020 WL 5816228, at \*6-7 (S.D. Ohio Sept. 30, 2020).

### **Southern District of Texas**

*AmGuard Ins. Co. v. Lone Star Legal Aid*, 2020 WL 60247, at \*6-7 (S.D. Tex. Jan. 6, 2020) (partially admits expert testimony; “The party offering expert testimony has the burden to prove by a preponderance of the evidence that the proffered testimony satisfies the admissibility requirements of [Rule] 702.”); *see also Tijerina v. Isidro Guerra & Molano, Inc.*, 2020 WL 7632259, at \*7 (S.D. Tex. Dec. 22, 2020).

\* \* \*

*OneSubsea IP U.K. Ltd. v. FMC Techs. Inc.*, 2020 WL 7263266, at \*3-4 (S.D. Tex. Dec. 10, 2020) (excludes expert testimony; acknowledging the ability to put forth “shaky but

admissible evidence”); *see also Recif Res. LLC v. Juniper Capital Advisors LP*, 2020 WL 5623982, at \*1-2 (S.D. Tex. Sept. 18, 2020) (“shaky but admissible evidence”).

### **Western District of Arkansas**

*Ivory v. McCarthy*, 2020 WL 1159389, at \*1 (W.D. Ark. Mar. 10, 2020) (excludes expert testimony; “The proponent of the expert testimony has the burden of establishing by a preponderance of the evidence that the expert is qualified.”); *see also Archer v. Bond*, 2020 WL 4931397, at \*1 (W.D. Ark. Aug. 21, 2020).

\* \* \*

*Browne v. PAM Transp. Inc.*, 434 F. Supp. 3d 712, 717 (W.D. Ark. Jan. 17, 2020) (partially admits expert testimony; “The decision whether or not to admit [expert] testimony is ‘within the district court’s considerable discretion.’”) (cleaned up); *see also Elite Aviation Serv. LLC v. Ace Pools LLC*, 2020 WL 5513421, at \*1 (W.D. Ark. Sept. 14, 2020).

### **Western District of Kentucky**

*Commings v. Genie Indus., Inc.*, 2020 WL 1189937, at \*2-3 (W.D. Ky. Mar. 12, 2020) (admits expert testimony; “It is the proponent of the testimony that must establish its admissibility by a preponderance of proof.”).

\* \* \*

*Kentucky v. Marathon Pet Co.*, 464 F. Supp. 3d 880, 888-89 (W.D. Ky. June 1, 2020) (partially admits expert testimony; “*Daubert* provided a non-exclusive checklist for trial courts to consult in evaluating the reliability of expert testimony... Although the factors are not a ‘definitive checklist or test.’”) (cleaned up); *see also Schall v. Suzuki Motor of Am., Inc.*, 449 F. Supp. 3d 689, 693-94 (W.D. Ky. Mar. 27, 2020).

### **Western District of Louisiana**

*Terral River Serv. Inc. v. SCF Mar. Inc.*, 2020 WL 6827795, at \*2-3 (W.D. La. Nov. 11, 2020) (excludes expert testimony; “When faced with expert testimony, the court must determine at the outset if the proponent of the evidence has proven its admissibility by a preponderance of the evidence.”); *see also Magnolia Island Plantation LLC v. Lucky Family LLC*, 2020 WL 6833512, at \*1-2 (W.D. La. Nov. 20, 2020).

\* \* \*

*Allen v. Royal Trucking Co.*, 2020 WL 6822947, at \*1 (W.D. La. Nov. 2, 2020) (admits expert testimony; “[T]he rejection of expert testimony is the exception rather than the rule.”) (cleaned up); *see also Moore v. LaSalle Corr., Inc.*, 2020 WL 6389183, at \*9-10 (W.D. La. Oct. 30, 2020).

### **Western District of Michigan**

*Phillips v. Tricam Inds.*, 2020 WL 1816468, at \*7-9 (W.D. Mich. Feb. 20, 2020) (excludes expert testimony; “The proffering party bears the burden by preponderant evidence of establishing the foundational requirements for the admission of opinion testimony under Rule 702.”).

\* \* \*

*Wolverine World Wide, Inc. v. Am. Ins. Co.*, 2020 WL 8340139, at \*2 (W.D. Mich. Nov. 11, 2020) (excludes expert testimony; “Rule 702 is to be broadly interpreted based on whether the use of expert testimony will assist the trier of fact.”); *see also Stryker Corp. v. XL Ins. Am.*, 2020 WL 5588774, at \*3 (W.D. Mich. July 21, 2020).

### **Western District of Missouri**

*Monroe v. Freight All Kinds Inc.*, 2020 WL 6588352, at \*2 (W.D. Mo. Nov. 10, 2020) (partially admits expert testimony; “The proponent of the expert testimony must prove its admissibility by a preponderance of the evidence.”); *see also Lampton v. C.R. Bard, Inc.*, 2020 WL 7013356, at \*1 (W.D. Mo. Nov. 27, 2020).

\* \* \*

*BPS LLC v. Covington Specialty Ins. Co.*, 2020 WL 9218532, at \*1 (W.D. Mo. Aug. 26, 2020) (partially admits expert testimony; “Generally, doubts as to the usefulness of the testimony should be resolved in favor of admissibility.”); *see also S&H Farm Supply Inc. v. Bad Boy Inc.*, 2020 WL 5491313, at \*1-2 (W.D. Mo. Aug. 19, 2020) (partially admits expert testimony; recognizing that “Rule 702 is not a rule of exclusion”; “[C]ases are legion that, correctly, under *Daubert*, call for the liberal admission of expert testimony.”) (cleaned up).

### **Western District of New York**

*Sarkees v. E.I. DuPont de Nemours & Co.*, 2020 WL 906331, at \*11-13 (W.D.N.Y. Feb. 25, 2020) (admits expert testimony; “[The proponents] have to demonstrate by a preponderance of evidence that their opinions are reliable.”) (cleaned up).

\* \* \*

*United States v. Acquest Transit LLC*, 2020 WL 2933168, at \*6-7 (W.D.N.Y. June 3, 2020) (partially admits expert testimony; court’s gatekeeping role does not require a preponderance showing); *see also Amica Mut. Ins. Co. v. Electrolux Home Prods., Inc.*, 440 F. Supp. 3d 211, 216 (W.D.N.Y. Feb. 18, 2020).

### **Western District of North Carolina**

*Rhyne v. U.S. Steel Corp.*, 474 F. Supp. 3d 733, 750-51 (W.D.N.C. July 23, 2020) (partially admits expert testimony; “[Proponents] bear the burden of proving that [an expert] is qualified to give the offered opinions by a preponderance of proof.”).

\* \* \*

*Wiener v. Axa Equitable Life Ins. Co.*, 481 F. Supp. 3d 551, 558-60 (W.D.N.C. Aug. 24, 2020) (partially admits expert testimony; “The [admissibility] inquiry to be undertaken by the district court is a flexible one focusing on the principles and methodology employed by the expert, not the conclusions reached.”).

### **Western District of Pennsylvania**

*UPMC v. CBIZ, Inc.*, 2020 WL 2736691, at \*3 (W.D. Pa. May 26, 2020) (admits expert testimony; “The party offering the expert must prove each of [the Rule 702] requirements by a preponderance of the evidence.”); *see also Sherwin-Williams Co. v. PPG Indus. Inc.*, 2020 WL 8249014, at \*2-3 (W.D. Pa. Nov. 3, 2020).

\* \* \*

*Moultre v. Coloplast Corp.*, 2020 WL 1248913, at \*2-3 (W.D. Pa. Mar. 16, 2020) (partially admits expert testimony; acknowledging the “liberal thrust of the Federal Rules of Evidence”) (cleaned up); *see also Allied Erecting & Dismantling Co. Inc. v. United States Steel Corp.*, 2020 WL 4676351, at \*1 (W.D. Pa. Aug. 12, 2020).

### **Western District of Tennessee**

*Kines v. Ford Motor Co.*, 2020 WL 5217408, at \*2 (W.D. Tenn. June 29, 2020) (admits expert testimony; “The party proffering expert testimony bears the burden of establishing its admissibility by a preponderance of proof.”); *see also Flowers v. Troxel Co.*, 2020 WL 3525606, at \*1-2 (W.D. Tenn. Feb. 13, 2020).

\* \* \*

*Sheffield v. Int'l Paper Co.*, 2020 WL 1882906, at \*1 (W.D. Tenn. Feb. 26, 2020) (excludes expert testimony; describing the trial court’s discretion in deciding whether to admit expert testimony).

### **Western District of Texas**

*Gallagher v. Lucas*, 2020 WL 6385291, at \*1-2 (W.D. Tex. Oct. 30, 2020) (partially admits expert testimony; “The proponent need not prove that the expert’s testimony is correct, but she must prove by a preponderance of the evidence that the testimony is reliable.”); *see also Cantu v. Wayne Wilkens Trucking LLC*, 2020 WL 5948267, at \*1-2 (W.D. Tex. Oct. 7, 2020).

\* \* \*

*Spegele v. USAA Life Ins. Co.*, 336 FRD 537, at \*544-45 (W.D. Tex. Sept. 23, 2020) (admits expert testimony; no description of a preponderance standard); *see also Smith W. Tex. Props. Ltd. v. Allied Prop. & Cas. Ins. Co.*, 2020 WL 5521137, at \*1-2 (W.D. Tex. Aug. 21, 2020).

### **Western District of Virginia**

*United States v. Peterson*, 2020 WL 5039504, at \*4 (W.D. Va. Aug. 26, 2020) (partially admits expert testimony; “The proponent of expert testimony must establish the admissibility of th[e] testimony by a preponderance of the evidence.”)..

\* \* \*

*Lake v. Adams*, 2020 WL 1016352, at \*1 (W.D. Va. Mar. 2, 2020) (excludes expert testimony; “A district court enjoys broad latitude in determining the admissibility of expert testimony.”); *see also Mountain Valley Pipeline, LLC v. 185 Acres of Land*, 2020 WL 1067001, at \*3-5 (W.D. Va. Mar. 5, 2020).

## **Western District of Washington**

*Schladezky v. Doe*, 2020 WL 5910060, at \*2 (W.D. Wash. Oct. 10, 2020) (admits expert testimony; “The proponent of an expert’s testimony bears the burden of establishing by a preponderance of the evidence that the requirements for admissibility have been satisfied.”) (cleaned up); *see also USI Ins. Servs. Nat’l Inc. v. Ogden*, 2020 WL 4431500, at \*1-2 (W.D. Wash. July 31, 2020).

\* \* \*

*Bluetooth SIG, Inc. v. FCA US LLC*, 463 F. Supp. 3d 1169, 1181-82 (W.D. Wash. May 29, 2020) (admits expert testimony; acknowledging the acceptance of “[s]haky but admissible evidence”); *see also Coalview Centralia LLC v. TransAlta Centralia Mining LLC*, 2020 WL 5106720, at \*1 (W.D. Wash. Aug. 31, 2020).

## Appendix B

### Federal Rule of Evidence 702 Cases Employing Preponderance Standard and Presumption Favoring Admissibility

*Archer v. Bond*, 2020 WL 4931397, at \*1 (W.D. Ark. Aug. 21, 2020) (admits expert testimony; “The proponent of expert testimony has the burden of showing by a preponderance of the evidence that these requirements are satisfied, but Rule 702 favors admissibility if the testimony will assist the trier of fact, and doubts regarding whether an expert’s testimony will be useful should generally be resolved in favor of admissibility.”) (cleaned up).

*Balura v. Ethicon, Inc.*, 2020 WL 819293, \*6 (N.D.N.Y. Feb. 19, 2020) (partially admits expert testimony; “The proponent of expert testimony bears the burden of establishing the admissibility of such testimony by a preponderance of the evidence ... Overall, though, the rejection of expert testimony is the exception rather than the rule.”) (cleaned up).

*Bardo v. Norfolk S. Ry. Co.*, 459 F. Supp. 3d 618, 624 (M.D. Pa. 2020) (excludes expert testimony at summary judgment; “The proponent of the expert bears the burden of establishing the reliability and admissibility of the expert’s testimony by a preponderance of the evidence. Rule 702 has a liberal policy favoring admissibility.”) (cleaned up).

*Boatman v. Comcast of the S., L.P.*, 2020 WL 714146, at \*7 (E.D. Tenn. Feb. 12, 2020) (partly admits expert testimony; “A party must show, by a preponderance of proof, that the witness will testify in a manner that will ultimately assist the trier of fact in understanding and resolving the factual issues involved in the case” but “[e]xclusion is the exception rather than the rule.”) (cleaned up).

*Bobcar Media, LLC v. Aardvark Event Logistics, Inc.*, 2020 WL 1673687, at \*2 (S.D.N.Y. Apr. 6, 2020) (excludes expert testimony at summary judgment; “The proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the admissibility requirements of Rule 702 are satisfied. Although Rule 702 requires courts to serve an initial gatekeeping function to keep out ‘junk science,’ it is nonetheless a well-accepted principle that Rule 702 embodies a liberal standard of admissibility for expert opinions.”) (cleaned up).

*Boyle v. Union Pac. R.R. Co.*, 2020 WL 6204342, at \*4 (D. Neb. Oct. 22, 2020) (admits expert testimony; “To satisfy the reliability requirement, the party offering the expert testimony must show by a preponderance of the evidence that the methodology underlying the expert’s conclusions is scientifically valid” but “[c]ases are legion in the Eighth Circuit that call for the liberal admission of expert testimony.”).

*Browning v. Edmonson Cnty., Ky.*, 2020 WL 4718763, at \*16 (W.D. Ky. Aug. 13, 2020) (admits expert testimony; “It is the proponent of the testimony that must establish its admissibility by a preponderance of proof. That being said, any doubts regarding the admissibility of an expert’s testimony should be resolved in favor of admissibility.”).

*Castles v. Tricam Indus., Inc.*, 2020 WL 4569209, at \*2 (D.S.C. Mar. 27, 2020) (admits expert testimony; “First, courts should be mindful that Rule 702 was intended to liberalize the

introduction of relevant expert evidence and second courts must recognize that due to the difficulty of evaluating their testimony, experts witnesses have the potential to be both powerful and quite misleading. Regardless, the proponent of the expert testimony must establish its admissibility by a preponderance of proof.”) (cleaned up).

*Commins v. Genie Indus., Inc.*, 2020 WL 1189937, \*3 (W.D. Ky. Sept. 1, 2020) (admits expert testimony; “It is the proponent of the testimony that must establish its admissibility by a preponderance of proof. That being said, any doubts regarding the admissibility of an expert’s testimony should be resolved in favor of admissibility.”) (cleaned up).

*Cosby v. KPMG, LLP*, 2020 WL 3548653, at \*10 (E.D. Tenn. Jun. 29, 2020) (partially admits expert testimony; “A party must show, by a preponderance of proof, that the witness will testify in a manner that will ultimately assist the trier of fact in understanding and resolving the factual issues involved in the case” but “[e]xclusion is the exception, not the rule ...”) (cleaned up).

*Cox v. Callaway Cnty., Missouri*, 2020 WL 1669425, at \*1-2 (W.D. Mo. Apr. 2, 2020) (partially admits expert testimony; “Under Federal Rule of Evidence 702 and the guidance set forth in *Daubert*, expert testimony should be liberally admitted” including resolving doubts in favor of admissibility and favoring admissibility over exclusion, but “[t]he party seeking to admit expert testimony has the burden of establishing the admissibility of the experts’ testimony by a preponderance of the evidence.”) (cleaned up).

*Cyntec Co. Ltd. v. Chilisin Elecs. Corp.*, 2020 WL 5366319, at \*3 (N.D. Cal. Sep. 8, 2020) (partially admits expert testimony at summary judgment; “The proponent of expert testimony bears the burden of establishing by a preponderance of the evidence that the admissibility requirements are met,” but “there is a presumption of admissibility”).

*Dries v. Sprinkler, Inc.*, 2020 WL 7425602, at \*3 (W.D. Wash. Dec. 18, 2020) (admits expert testimony; “The proponent of expert testimony has the burden of establishing that the admissibility requirements are met by a preponderance of the evidence” but “Rule 702 should be applied with a liberal thrust favoring admission”) (cleaned up).

*Durant v. United States*, 2020 WL 1274326, at \*6 (N.D.N.Y. Mar. 17, 2020) (excludes expert evidence; “The proponent of expert testimony must establish its admissibility by a preponderance of the evidence” but “there should be a presumption of admissibility of evidence”).

*Estate of Freiwald v. Fatoki*, 2020 WL 6712467 (E.D. Wisc. Nov. 16, 2020) (admits expert testimony; “The proponent of the expert bears the burden of demonstrating that the expert’s testimony would satisfy the *Daubert* standard by a preponderance of the evidence. The rule on expert testimony is liberal, however, and doubts about the usefulness of an expert’s testimony are generally resolved in favor of admissibility.”) (cleaned up).

*Fair Isaac Corp. v. Fed. Ins. Co.*, 447 F. Supp. 3d 857, 869 (D. Minn. 2020) (partially admits expert testimony at summary judgment; “The proponent of expert testimony must prove its admissibility by a preponderance of the evidence” but “Rule 702 reflects an attempt to liberalize the rules governing the admission of expert testimony and favors admissibility over exclusion.”).

*Financial Guar. Ins. Co. v. Putnam Advisory Co., LLC*, 2020 WL 4251229, at \*2-3 (S.D.N.Y. Feb. 19, 2020) (partially admits expert testimony at summary judgment; “The proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the admissibility requirements of Rule 702 are satisfied” *but* “[b]ecause the federal rules emphasize liberalizing expert testimony, doubts about whether an expert’s testimony will be useful should generally be resolved in favor of admissibility”) (cleaned up).

*Gustafson v. BI-State Dev. Agency*, 2020 WL 409011, at \*1-2 (E.D. Mo. Jan. 24, 2020) (partially admits expert testimony; “The reliability requirement means that the party offering the expert testimony must show by a preponderance of the evidence both that the expert is qualified to render the opinion and that the methodology underlying his conclusions is scientifically valid” *but* “Rule 702’s requirements notwithstanding, courts should resolve doubts regarding the usefulness of an expert’s testimony in favor of admissibility”) (cleaned up).

*Hoekman v. Educ. Minn.*, 335 F.R.D. 219, 236 (D. Minn. 2020) (partially admits expert testimony at class certification; “The proponent of the expert testimony must show, by a preponderance of the evidence, that the expert is qualified to render the opinion offered, and that his or her methodology is scientifically valid” *but* “under *Daubert*, liberal admission of expert testimony is prevalent, and courts should resolve doubts regarding the usefulness of an expert’s testimony in favor of admissibility”) (cleaned up).

*Hughes v. C.R. Bard Inc.*, 2020 WL 9078128, at \*1 (W.D. Mo. Apr. 22, 2020) (admits expert testimony; “The party offering expert testimony must show by a preponderance of the evidence that the methodology underlying the expert’s conclusions is valid” *but* “[t]he standard for admission of expert testimony is a liberal one.”) (cleaned up).

*In re Davol C.R. Bard Mesh Prod. Liab. Litig.*, 2020 WL 6605612, at \*3 (S.D. Ohio Sep. 11, 2020) (partially admits expert testimony; “The burden is on the party proffering the expert testimony to demonstrate by a preponderance of proof that the opinions of their expert are admissible” *but* “[a]ny doubts regarding the admissibility of an expert’s testimony should be resolved in favor of admissibility”) (cleaned up).

*In re Davol C.R. Bard Mesh Prod. Liab. Litig.*, 2020 WL 6603389, at \*2 (S.D. Ohio Sep. 10, 2020) (partially admits expert testimony; “The burden is on the party proffering the expert testimony to demonstrate by a preponderance of proof that the opinions of their expert are admissible” *but* “[a]ny doubts regarding the admissibility of an expert’s testimony should be resolved in favor of admissibility”) (cleaned up).

*In re Davol C.R. Bard Mesh Prod Liab Litig.*, 2020 WL 6605542, at \*3 (S.D. Ohio Sep. 1, 2020) (partially admits expert testimony; “The burden is on the party proffering the expert testimony to demonstrate by a preponderance of proof that the opinions of their expert are admissible” *but* “[a]ny doubts regarding the admissibility of an expert’s testimony should be resolved in favor of admissibility”) (cleaned up).

*In re E.I. DuPont de Nemours & Co. C-8 Pers. Injury Litig.*, 2020 WL 278499, at \*5 (S.D. Ohio Jan. 19, 2020) (excludes expert testimony; “The burden is on the party proffering the

expert report to demonstrate by a preponderance of proof that the opinions of their experts are admissible” *but* “[a]ny doubts regarding the admissibility of an expert’s testimony should be resolved in favor of admissibility”).

*In re ResCap Liquidating Trust Litig.*, 432 F. Supp. 3d 902, 913 (D. Minn. 2020) (partially admits expert testimony; “proponents must demonstrate by a preponderance of evidence that the expert’s opinion is reliable” *but* “Courts generally support an attempt to liberalize the rules governing the admission of expert testimony, and favor admissibility over exclusion”).

*In re Suboxone Antitrust Litig.*, 2020 WL 6887885, at \*2 (E.D. Pa. Nov. 24, 2020) (partially admits expert testimony; “The party offering an expert must demonstrate, by a preponderance of the evidence, that the expert’s qualifications and opinions comply with Federal Rule of Evidence 702” *but* “Rule 702 has a liberal policy of admissibility and the rejection of expert testimony is the exception rather than the rule”).

*In re Term Commodities Cotton Futures Litig.*, 2020 WL 5849142, at \*11 (S.D.N.Y. Sep. 30, 2020) (partially admits expert testimony; “There is a presumption of admissibility of expert evidence and the rejection of expert testimony is the exception rather than the rule. However the proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the admissibility requirements of Rule 702 are satisfied.”) (cleaned up).

*Jayne v. City of Sioux Falls*, 2020 WL 2129599, at \*2-3 (D.S.D. May 5, 2020) (admits expert testimony; Rule 702 “clearly is one of admissibility rather than exclusion” *but* “the party offering the expert testimony must show by a preponderance of the evidence that the methodology underlying the expert’s conclusions is scientifically valid”) (cleaned up).

*Jorn v. Union Pac. R.R. Co.*, 2020 WL 6261693, at \*4-5 (D. Neb. Mar. 25, 2020) (admits expert testimony; “the party offering the expert testimony must show by a preponderance of the evidence that the methodology underlying the expert’s conclusions is scientifically valid” *but* “[c]ases are legion in the Eighth Circuit that call for the liberal admission of expert testimony”) (cleaned up).

*King v. Union Pac. R.R. Co.*, 2020 WL 3036073, at \*4-5 (D. Neb. Jun. 5, 2020) (admits expert testimony; “The proponent of expert testimony bears the burden of [proving] admissibility by a preponderance of the evidence” *but* “[c]ases are legion in the Eighth Circuit that call for the liberal admission of expert testimony”) (cleaned up).

*Krause v. Cnty. of Mohave*, 459 F. Supp. 3d 1258 (D. Ariz. 2020) (partially admits expert testimony; “Rule 702 should be applied consistent with the liberal thrust of the Federal Rules and their general approach of relaxing the traditional barriers to opinion testimony” *but* “[i]n applying the Rule, the district court acts as a gatekeeper and determines whether expert testimony has a reliable basis in the knowledge and experience of the relevant discipline by the preponderance of the evidence”) (cleaned up).

*Lampton v. C.R. Bard Inc.*, 2020 WL 7013356, at \*1 (W.D. Mo. Nov. 27, 2020) (admits expert testimony; “The party offering expert evidence must show by a preponderance of the evidence that the methodology underlying the expert’s conclusions is valid” *but* “[t]he standard for admission of expert testimony is a liberal one”) (cleaned up).

*Lancaster v. Ethicon, Inc.*, 2020 WL 819291, at \*5 (N.D.N.Y. Feb. 19, 2020) (partially admits expert testimony; “The proponent of the expert testimony bears the burden of establishing the admissibility of such testimony by a preponderance of the evidence” *but* “[o]verall, though, the rejection of expert testimony is the exception rather than the rule”).

*Langrell v. Union Pac. R.R. Co.*, 2020 WL 3037271, \*4, 6 (D. Neb. Jun. 5, 2020) (admits expert testimony; “The proponent of expert testimony bears the burden of [proving] admissibility by a preponderance of the evidence” *but* “[c]ases are legion in the Eighth Circuit that call for the liberal admission of expert testimony”) (cleaned up).

*Lemberger v. Union Pac. R.R. Co.*, 463 F. Supp. 3d 954, 961, 963 (D. Neb. 2020) (admits expert testimony; “The proponent of expert testimony bears the burden of [proving] admissibility by a preponderance of the evidence” *but* “[c]ases are legion in the Eighth Circuit that call for the liberal admission of expert testimony”) (cleaned up).

*Liberty Towers Philly LP v. Ulysses Asset Sub II LLC*, 2020 WL 3642483, at \*4 (E.D. Pa. Jul. 6, 2020) (partially admits expert testimony; “The party offering the expert testimony has the burden to show each threshold by a preponderance of the evidence” *but* “[w]ith a liberal approach toward admitting expert testimony, the rejection of expert testimony is the exception and not the rule”) (cleaned up).

*Mannacio v. LG Elecs. USA Inc.*, 2020 WL 4676285, at \*7 (D. Minn. Feb. 11, 2020) (partially admits expert testimony; “The proponent of the expert testimony must prove its admissibility by a preponderance of the evidence” *but* “[w]hen considering admissibility of expert witness [sic], the Court should resolve doubts regarding the usefulness of an expert’s testimony in favor of admissibility”) (cleaned up).

*Marchlewicz v. Bros. Xpress, Inc.*, 2020 WL 7319550, at \*2-3 (W.D. Tex. Dec. 10, 2020) (partially admits expert testimony; “The proponent need not prove that the expert’s testimony is correct, but she must prove by a preponderance of the evidence that the testimony is reliable” *but* “the rejection of expert testimony is the exception rather than the rule”) (cleaned up).

*Mason Dixon Contracting Inc. v. Allied Prop. & Cas. Ins. Co.*, 2020 WL 5995664, at \*5 (M.D. Fla. Jul. 31, 2020) (admits expert testimony; “The party offering the expert opinion bears the burden of establishing, by a preponderance of the evidence, the expert’s qualification, reliability, and helpfulness” *but* “[a]ccording to Rule 702’s Advisory Committee Notes on the 2000 Amendments, since *Daubert* was decided, the rejection of expert testimony is the exception rather than the rule”) (cleaned up).

*McBride v. Petulla*, 2020 WL 1032535, at \*2 (W.D. Pa. Mar. 3, 2020) (admits expert testimony; “The party offering the expert must prove each of these requirements by a preponderance of the evidence” *but* “[e]xclusion of expert testimony is the exception rather than the rule”).

*Meade v. Ethicon, Inc.*, 2020 WL 6395814, at \*2 (E.D. Ark. Nov. 2, 2020) (partially admits expert testimony; Rule 702 “is clearly one of admissibility rather than exclusion” *but* “[t]he proponent of expert testimony has the burden of establishing by a preponderance of the evidence the admissibility of the expert’s testimony”).

*Medical Soc’y of N.Y v. UnitedHealth Group, Inc.*, 2020 WL 1489800, at \*2 (S.D.N.Y. Mar. 26, 2020) (admits expert testimony; “The proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the admissibility requirements of Rule 702 are satisfied” *but* “it is nonetheless a well-accepted principle that Rule 702 embodies a liberal standard of admissibility for expert opinions”) (cleaned up).

*Mitchell v. Michael Weinig, Inc.*, 2020 WL 5798043, at \*20 (S.D. Ohio Sep. 29, 2020) (admits expert testimony; “The burden is on the party proffering the expert report and testimony to demonstrate by a preponderance of proof that the opinions of their experts are admissible” *but* “any doubts should be resolved in favor of admissibility”) (cleaned up).

*Mitsubishi Tanabe Pharma Corp. v. Sandoz Inc.*, 2020 WL 3169372, at \*2 (D.N.J. Jun. 15, 2020) (partially admits expert testimony; “The party offering the expert testimony bears the burden of establishing the existence of each matter by a preponderance of the evidence” *but* “Rule 702, however, has a liberal policy of admissibility”) (cleaned up).

*Monroe v. Freight All Kinds, Inc.*, 2020 WL 6588352, at \* (W.D. Mo. Nov. 10, 2020) (partially admits expert testimony; “The proponent of the expert testimony must prove its admissibility by a preponderance of the evidence” *but* “the Eighth Circuit has held that expert testimony should be liberally admitted”) (cleaned up).

*NAACP v. City of Myrtle Beach*, 2020 WL 7054437, at \*1-2 (D.S.C. Dec. 1, 2020) (admits expert testimony; “the proponent has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the evidence” *but* “Rule 702 was intended to liberalize the introduction of relevant expert evidence”) (cleaned up).

*Packard v. City of New York*, 2020 WL 1479016, at \*1, 3 (S.D.N.Y. Mar. 25, 2020) (partially admits expert testimony at summary judgment; “The proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the admissibility of Rule 702 are satisfied” *but* “[t]he liberal thrust of the Federal Rules of Evidence and their general approach of relaxing the traditional barriers to opinion testimony counsels in favor of admissibility”).

*Pityk v. Ethicon Inc.*, 2020 WL 8224837, at \*2 (E.D. Mo. Aug. 12, 2020) (admits expert testimony; ) (“The proponent of expert testimony must prove its admissibility by a preponderance of the evidence” *but* “the Eighth Circuit has held that expert testimony should be liberally admitted”) (cleaned up).

*Pityk v. Ethicon Inc.*, 478 F. Supp. 3d 784, 786-87 (E.D. Mo. 2020) (admits expert testimony; “The proponent of expert testimony must prove its admissibility by a preponderance of the evidence” *but* “the Eighth Circuit has held that expert testimony should be liberally admitted”) (cleaned up).

*Ranney v. Union Pac. R.R. Co.*, 2020 WL 3036200, at \*4-5 (D. Neb. Jun. 5, 2020) (admits expert testimony; “The proponent of expert testimony bears the burden of [proving] admissibility by a preponderance of the evidence” *but* “[c]ases are legion in the Eighth Circuit that call for the liberal admission of expert testimony”) (cleaned up).

*Rawers v. United States*, 2020 WL 5658093, at \*8-9 (D.N.M. Sep. 23, 2020) (admits expert testimony; “The proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the pertinent admissibility requirements are met” *but* “Courts should, under the Federal Rules of Evidence, liberally admit expert testimony”).

*Refrig. Supplies Inc. v. Acadia Ins. Co.*, 2020 WL 7397002, at \*3 (E.D. Mo. Dec. 17, 2020) (admits expert testimony; “the party offering the expert testimony must show by a preponderance of the evidence both that the expert is qualified to render the opinion and that the methodology underlying his conclusions is scientifically valid” *but* “[t]he rule is clearly one of admissibility rather than exclusion”).

*S. Minn. Beet Sugar Coop. v. Agri. Sys.*, 2020 WL 5105763, at \*3 (D. Minn. Aug. 31, 2020) (excludes expert testimony; “The proponent of expert testimony must prove its admissibility by a preponderance of the evidence” *but* “Rule 702 reflects an attempt to liberalize the rules governing the admission of expert testimony and favors admissibility over exclusion”) (cleaned up).

*Trice v. Napoli Shkolnik PLLC*, 2020 WL 4816377, at \*10-11 (D. Minn. Aug. 19, 2020) (partially admits expert testimony; “The proponent of the expert testimony bears the burden of showing by a preponderance of the evidence that the testimony is admissible” *but* “[r]ejection of expert testimony is the exception rather than the rule”) (cleaned up).

*United States v. Begay*, 497 F. Supp. 3d 1025, 1056 (D.N.M. 2020) (partially admits expert testimony; “The proponent of the expert testimony has the burden of establishing by a preponderance of the evidence that the pertinent admissibility requirements are met” *but* “Courts should, under the Federal Rules of Evidence, liberally admit expert testimony”).

*UPMC v. CBIZ, Inc.*, 2020 WL 2736691, at \*3 (W.D. Pa. May 26, 2020) (admits expert testimony; “The party offering the expert must prove each of these requirements by a preponderance of the evidence” *but* “[e]xclusion of expert testimony is the exception rather than the rule”) (cleaned up).

*Washam v. BNSF Ry. Co.*, 2020 WL 5880133 (E.D. Ark. Oct. 2, 2020) (partially admits expert testimony; “The rule is clearly one of admissibility rather than exclusion” *but* “[t]he proponent of the expert testimony has the burden of establishing by a preponderance of the evidence the admissibility of the expert’s testimony”) (cleaned up).

*Watkins v. Lawrence Cnty.*, 2020 WL 2544469, at \*1 (E.D. Ark. May 19, 2020) (admits expert testimony; Rule 702 “clearly is one of admissibility rather than exclusion” *but* “[t]he proponent of the expert testimony has the burden of establishing by a preponderance of the evidence the admissibility of the expert’s testimony”) (cleaned up).

*Wegmann v. Ethicon Inc.*, 2020 WL 5814475, at \*4 (E.D. Mo. Sep. 30, 2020) (partially admits expert testimony; “the party offering the expert testimony must show by a preponderance of the evidence both that the expert is qualified to render the opinion and that the methodology underlying his conclusions is scientifically sound” *but* “the Eighth Circuit has held that expert testimony should be liberally admitted”) (cleaned up).

*Wegmann v. Ethicon Inc.*, 2020 WL 5960923, at \*1 (E.D. Mo. Oct. 8, 2020) (partially admits expert testimony; “the party offering the expert testimony must show by a preponderance of the evidence both that the expert is qualified to render the opinion and that the methodology underlying his conclusions is scientifically sound” *but* “the Eighth Circuit has held that expert testimony should be liberally admitted”) (cleaned up).

*Wichterman v. City of Phila.*, 2020 WL 7488645 (E.D. Pa. Dec. 21, 2020) (partially admits expert testimony; “Rule 702 has a liberal policy of admissibility. As such, the rejection of expert testimony is the exception and not the rule” *but* “[t]he party offering the expert must establish each requirement by a preponderance of the evidence”) (cleaned up).