

October 5, 2012

Honorable Jeffrey S. Sutton
Chair, Committee on Rules of Practice and Procedure
United States Court of Appeals
260 Joseph P. Kinneary U.S. Courthouse
85 Marconi Boulevard
Columbus, OH 43215

Honorable David G. Campbell
Chair, Civil Rules Advisory Committee
United States District Court
623 Sandra Day O'Connor U.S. Courthouse
401 West Washington Street
Phoenix, AZ 85003-2146

Dear Judges Sutton and Campbell:

As chief legal officers of American corporations, we too often witness the adverse impact that increasingly costly, burdensome, and inequitable U.S. litigation has on our companies' global competitiveness. The growing costs and burdens of litigation adversely impact access to the courts for all litigants. The American civil justice system is distressed and in need of bold reforms that will curb systemic excesses that typify our litigation portfolios. We are grateful for your focus on improving the Federal Rules of Civil Procedure to promote the "just, speedy and inexpensive determination of justice"; we urge you however to avoid marginal edits and instead to concentrate on fundamental changes that will reign in an inefficient and costly discovery system that threatens the foundation of the Federal Court civil justice system.

Meaningful rule amendments are necessary to provide guidance and consistency; otherwise we are forced to try to manage unpredictability, waste and risk of spoliation sanctions that result in non-merits based settlements, encourage parties to avoid the court system to resolve legitimate disputes, while increasing litigation budgets to the detriment of corporate growth and competitiveness with other legal systems that are more efficient and cost effective.

The complexities and costs associated with discovery and preservation hurt our businesses because of the need to expend costs for ineffective preservation and discovery activities. Additionally, our current system is economically inefficient; a party can seek unnecessarily broad discovery yet bear none of the costs and risks associated with the discovery requests. This creates incentives for inappropriate behavior that increases waste and inefficiency, even as it weakens our social structure and undermines the integrity of the judicial system. Our system should be designed to place the risk and the expected benefits on the appropriate party to balance these tensions.

We urge the Rules Committee to resist the temptation to pursue only modest amendments to the rules as a surrogate for meaningful reform. Although some of the amendments proposed

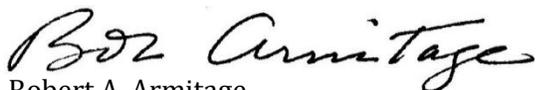
to date undoubtedly will be helpful, the core problems will not be alleviated without an immediate and meaningful shift in the discovery paradigm. Today, no American business and no litigant, faced with our court system's outdated, confusing and complex patchwork of vague and indeterminate standards can afford to have the meaningful reforms required to reduce the costs and burdens of modern litigation sidelined and supplanted by "small adjustments" unlikely to achieve consistency, uniformity and predictability.

As the "problem" of the proliferation of data continues to grow, lack of bold action will have greater and greater adverse consequences to our legal system. In our view, the focus must be on developing an interrelated package of bold, broad-based amendments that accomplish the following:

- (1) Refocus discovery, especially e-discovery, solely on relevant and material information that would support proof of a claim or defense
- (2) Develop bright-line standards governing preservation triggers and sanctions without creating new pre-litigation preservation duties that are inconsistent with federal authority and state common law
- (3) Deter runaway litigation costs with reasonable cost allocation rules premised on positive, cost benefit economic incentives

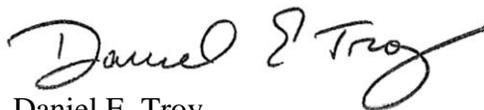
Meaningful amendments, such as those that have been proposed by Lawyers for Civil Justice and its members, will increase systemic efficiencies, reduce wasteful costs, eliminate unnecessary litigation, and also help address today's rapid technological changes so that the quality of justice will be improved. We look forward to working with you to help you better understand the impact of current practice on corporate litigants and we thank you for your consideration.

Respectfully,


Robert A. Armitage
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Jeffrey W. Jackson
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cc: Hon. John G. Koeltl, Hon. Paul W. Grimm