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August 16, 2004

Mr. Charles L. Babcock
Jackson & Walker L.L.P.
1401 McKinney, Suite 1900
Houston, Texas 77010

Dear Chip:

I am enclosing herein chart showing action taken by the Supreme Court Advisory Committee on the three evidence matters considered at our last meeting.

Thanks.

Sincerely,


Gilbert I. Low

GIL:cc

cc: Ms. Lisa Hobbs
Rules Attorney
Supreme Court of Texas
P. O. Box 12248
Austin, TX 78711

Hon. Nathan L. Hecht, Justice
Supreme Court of Texas
P. O. Box 12248, Capitol Station
Austin, Texas 78711

**CHART SHOWING ACTION TAKEN
BY SUPREME COURT ADVISORY COMMITTEE
AT MEETING OF AUGUST 13, 2004**

RULE NO.	ACTION TAKEN BY SUPREME COURT ADVISORY COMMITTEE
705	Rule approved as attached.
407(B)	Rule approved as attached.
509 or 514 (new)	SBOT Administration of Rules of Evidence Committee rule adopted in principle with the Committee voting to refer the matter to be worked out between John Martin and the SBOT Evidence Committee leaders. Suggestions were made for consideration and suggestion was made for a footnote. Thereafter it will be decided whether this is a rule of evidence or a rule of discovery. Further to be considered is possible amendment of Rule 510 in view of the conflict between 510 and the health and safety code provisions.

PROPOSED CHANGE TO TEXAS RULE OF EVIDENCE 705.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) Disclosure of Facts and Data. The expert may testify in terms of opinion or inference and give the expert's reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. Subject to subparagraph (d) the expert may disclose on direct examination, or may be required to disclose on cross-examination, the underlying facts or data.

(b) Voir dire. Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be permitted to conduct a voir dire examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.

(c) Admissibility of opinion. If the court determines that the underlying facts or data do not provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.

(d) Balancing test; limiting instructions. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect. If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Notes and Comments

Comment to 1998 change: Paragraphs (b), (c) and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a voir dire examination into the qualifications of an expert.

Proposed additional comment: The changes to subparagraph (d) are based on the recent changes to Federal Rule of Evidence 703.

Proposed TRE 407 (b) Amendment

(b) Notification of Defect. Nothing in paragraph (a) shall require exclusion of an otherwise admissible written notification of a defect in a product, issued by the manufacturer of the product to any purchaser of the product, as "purchaser" is defined in Section 1.201, Tex. Bus. & Comm. Code.

Tex. Bus. & Comm Code §1.201

- (29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (30) "Purchaser" means a person that takes by purchase.