February 18, 2014

*Submitted electronically via Regulations.gov*

Committee on Rules of Practice and Procedure

Administrative Office of the United States Courts

One Columbus Circle

Washington, DC 20544

Re: Proposed Amendments to the Federal Rules of Civil Procedure

Dear Members of the Committee on Rules of Practice and Procedure:

These comments are submitted on behalf of the American Insurance Association (AIA), which represents approximately 300 major U.S. insurance companies that provide all lines of property-casualty insurance to consumers and businesses in the United States and around the world. Given their frequent and extensive involvement in litigation, both as direct parties and on behalf of their policyholders, AIA members have a strong interest in the adoption of fair and efficient rules governing civil procedure.

AIA strongly supports the proposed amendments to the Federal Rules of Civil Procedure as a thoughtful and targeted approach to streamlining many cumbersome and expensive aspects of the litigation process. Our comments will address the proposed amendments as they have been grouped in the 5/8/13 memorandum accompanying the rules package.

**I. Cooperation**

AIA believes that the proposed amendment of Rule 1 sets the proper tone for the amendments that follow. Creating an explicit expectation that the parties (and not just the court) should construe and administer the rules to secure the “just, speedy, and inexpensive” determination of every action and proceeding highlights the significance of those goals, and serves notice that the proposal will address serious concerns about inefficient and expensive procedures that have been exacerbated over time.

**II. Proportionality: Discovery Proposals**

AIA agrees with the observation in the 5/8/13 memorandum that “excessive discovery occurs in a worrisome number of cases, particularly those that are complex, involve high stakes, and generate contentious adversary behavior.” Accordingly, we support the general admonition in Rule 26(b)(1) that discovery must be “proportional to the needs of the case considering the amount in controversy, the importance of the issues at stake in the action, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” We also support the many specific amendments that implement this charge by reducing the presumptive number (and, where applicable, length) of depositions, interrogatories, production requests, and requests to admit. We believe all of the proposed limits are adequate because a court would be required to grant leave to exceed them where appropriate.

Given the complexities, burdens, and expenses of preserving vast quantities of information (which frequently results in innocent mistakes), AIA strongly supports amending Rule 37 to require a finding of willfulness or bad faith in order to impose sanctions or an adverse jury instruction for failure to preserve information subject to a discovery request. We agree with the observation in the 5/8/13 memorandum that “potential litigants who make reasonable efforts to satisfy their preservation responsibilities may do so with confidence that they will not be subjected to serious sanctions should information be lost despite those efforts.”

**III. Case Management Proposals**

AIA supports the proposed amendments to Rules 4 and 16, which would increase the effectiveness of judicial case management by (i) reducing the time to serve the summons and complaint; (ii) requiring judges to issue scheduling orders sooner; (iii) requiring counsel for the parties to meet in person to discuss significant issues; and (iv) permitting a court to order the parties to request a conference to discuss discovery issues prior to the filing of a discovery motion.  As with the other aspects of the rules package, these amendments should reduce both cost and delay without abridging any substantive rights.

AIA appreciates the Committee’s consideration of our comments. Should you have any questions, please contact me at (202) 828-7167 or [kstoller@aiadc.org](mailto:kstoller@aiadc.org).

Sincerely,



Kenneth A. Stoller

Assistant General Counsel