

A Picture is Worth a Thousand Words

*Using Visuals at Trials
and International Arbitrations*

Paul Briant



Michelle Schaffer



Mark Nash



James Haase



2024 IADC MID-YEAR CONFERENCE

IADC 2024 MID-YEAR CONFERENCE

"TIME"S THEY ARE A "CHANGE"N	YOU PUT YOUR GRAPHICS WHERE?!?	THINGS THAT MAKE YOU GO ____	3D OR NOT 3D THAT IS THE QUESTION	THAT'S WHAT MAKES THEM BEAUTIFUL	CLOSING TIME
\$200	\$200	\$200	\$200	\$200	\$200
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\$600	\$600	\$600	\$600	\$600	\$600
\$800	\$800	\$800	\$800	\$800	\$800
\$1000	\$1000	\$1000	\$1000	\$1000	\$1000

THAT'S WHAT MAKES THEM BEAUTIFUL · \$200

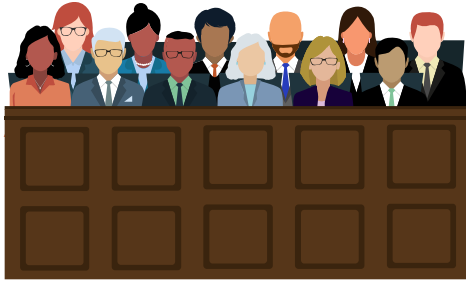
The most important determining factor
for every aesthetic choice you make for
every graphic developed.

THAT'S WHAT MAKES THEM BEAUTIFUL · \$200

What is your AUDIENCE?

Your Audience Effects Your Presentation Style

JURY



JUDGE



ARBITRATOR(S)

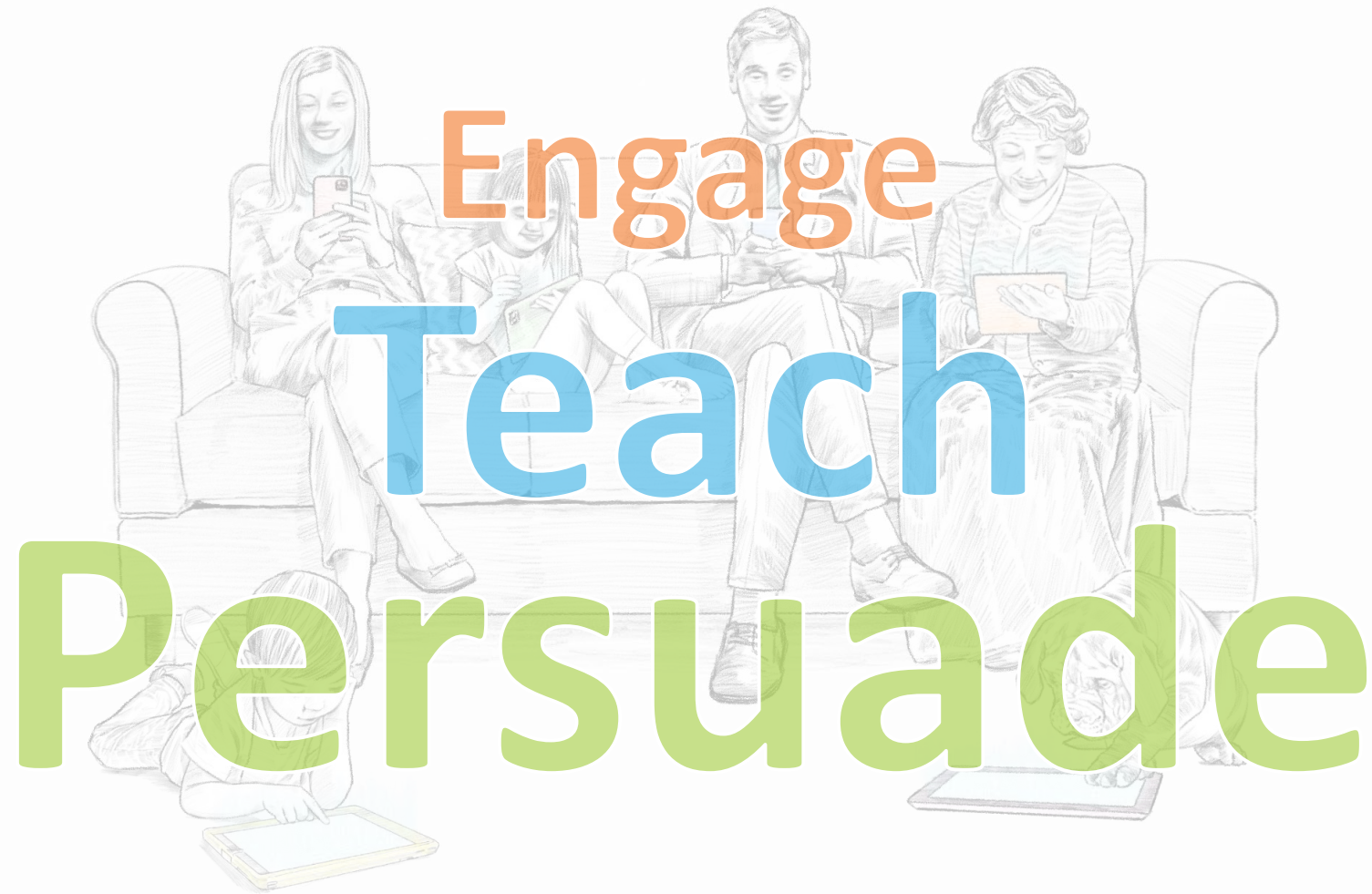


GOVERNMENT



IN-HOUSE COUNSEL





Widely Varying Approaches and Styles: Documents and Testimony

Ms. Ingles Was "Healing Well" At One Week Follow-Up

FDA

Rita Jain inquired as to where the Agency currently stood on their request for a label change. Christine Nguyen stated that FDA continues to believe a warning for VTE is warranted, but ACME's points deserve consideration. The Agency is currently working on a revised Warning text that takes into account the fact that the relationship of the two is unclear and that a direct causality link cannot be made at this time. The FDA will provide the updated Warning wording to ACME via email within the next 24 hours.

Respondent Seeks a Hardship Exception to Ever Paying the Award

Hydra v. Atlanta (2008)

"[T]he touchstone here must be unusually acute concerns with respect to the impact of the termination of the stay. This follows from the fact that the state has already committed under the ICSID Convention to compliance with awards rendered under the convention. There is no hardship exception to this obligation. There will necessarily be an impact on the state budget from the payment of the Award."

Evidence: Fair Market Value Determined By Market

Prof. Pound
Fair Market Value Expert

Q. Now, from an economic standpoint, is fair market value an objective value?

A. Yes.

Q. Why is that?

A. It doesn't depend on the subjective preferences of any particular buyer or seller. It's determined by the interaction of all the buyers and sellers in the marketplace.

Ms. Anderson's Pain At The Apex Is Not Related To Medical Device

Dr. Smith

Q. Dr. Smith, do you have an opinion about whether the pain at the apex of Mrs. Anderson's organ is related to the implant?

A. I think it has nothing to do with the implant at all.

Q. Why do you think that?

A. The implant is a one-centimeter incision and it is made at the opening of the organ. One centimeter back from the other organ. So a third of the inch back from the other organ.

There could be some inflammation around that area, but I wouldn't expect there to be any inflammation deep in the organ related to the device.

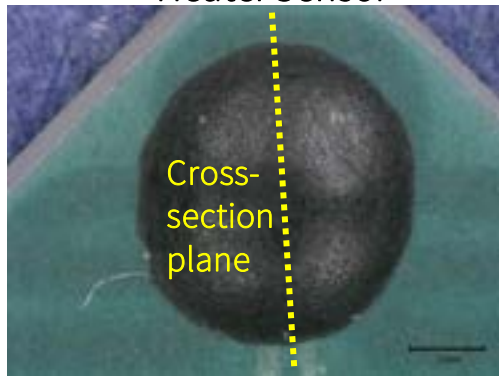
Dr. Evans Confirms that a Request for Help from ACME to BETA Would Have Been "Absurd"

Dr. Evans' Testimony

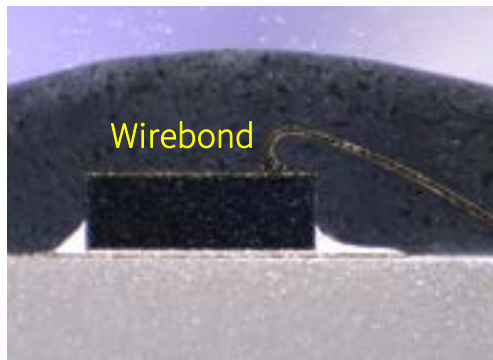
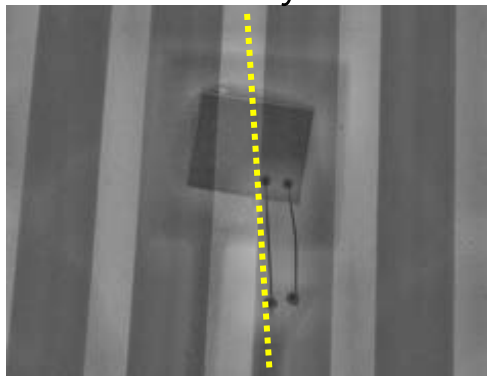
Q. The third day, he... would not be able to...
A. He would not be able to...
Q. He would not be able to...
A. He would not be able to...
Q. He would not be able to...
A. He would not be able to...

Wirebond Failure

Heater Sensor



X-Ray



Wirebond Failure



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\$800	\$800	\$800	\$800	\$800	\$800
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YOU PUT YOUR GRAPHICS WHERE?!? · \$1,000

Traditionally you would have to ZOOM all over the country for these very important Q&A sessions. After pandemic, you merely need to ZOOM.

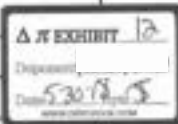
YOU PUT YOUR GRAPHICS WHERE?!? - \$1,000

What is a DEPOSITION?

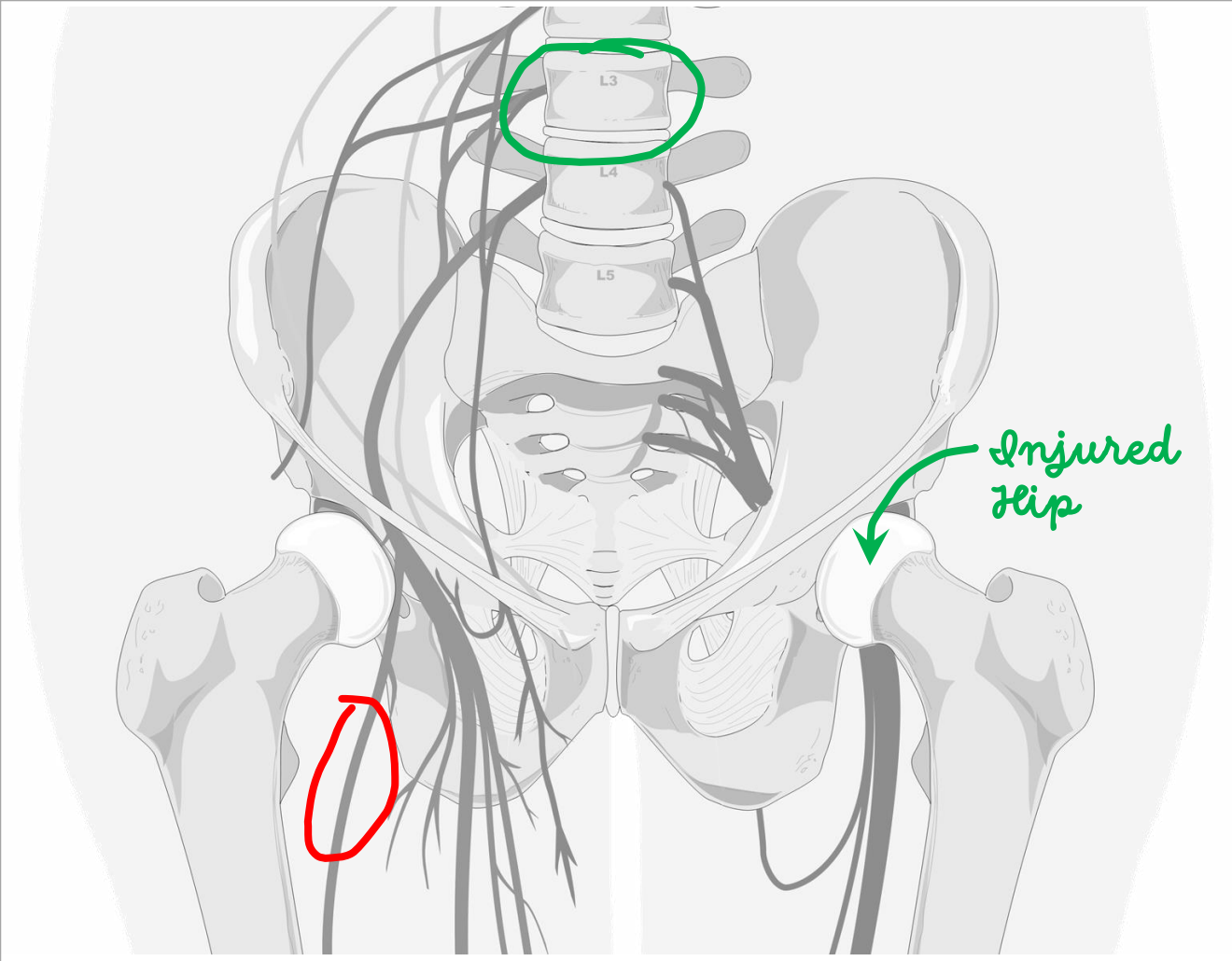
Expert Depositions

Potential Risks of Native Tissue and Implanted Material Surgeries

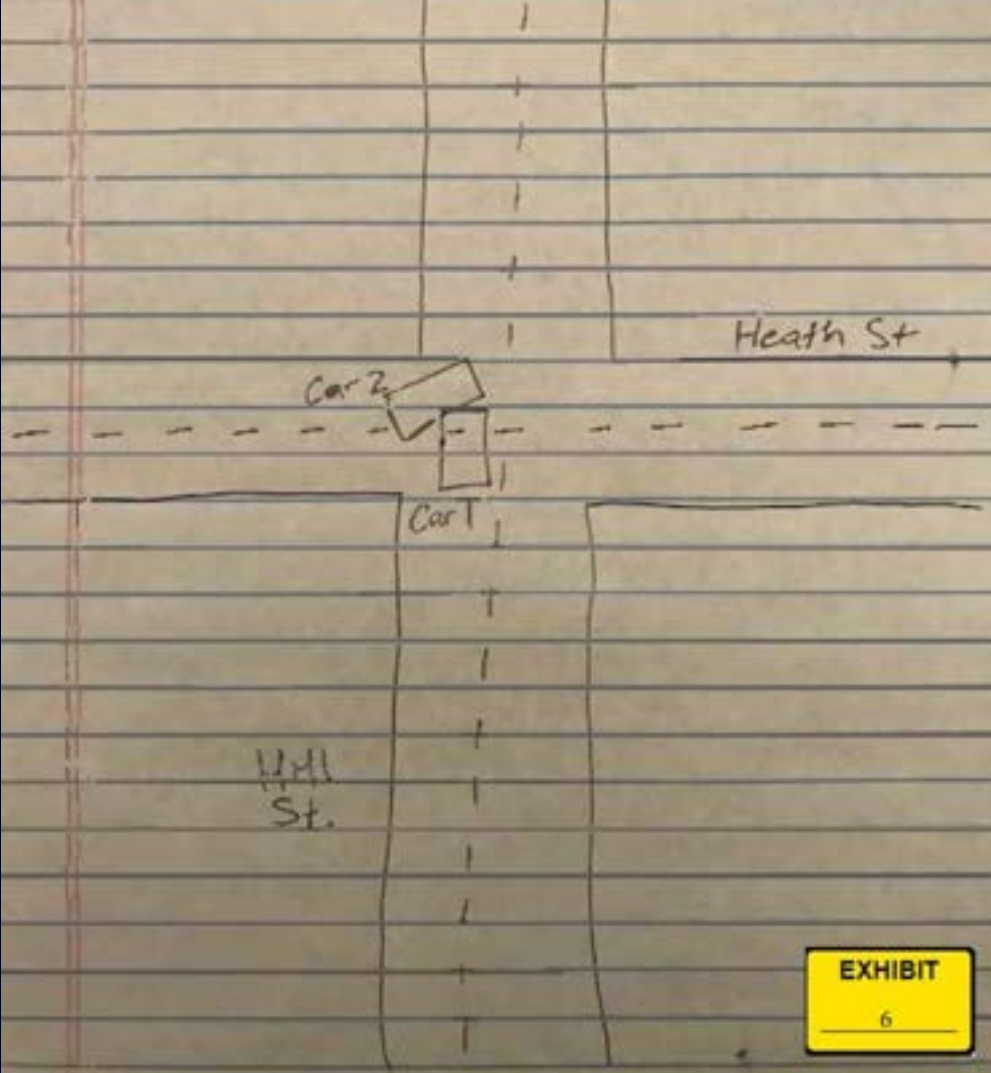
NO IMPLANTED MATERIAL	IMPLANTED MATERIAL
Acute and/or Chronic Pain with Activities	Acute and/or Chronic Pain with Activities
Acute and/or Chronic Pain	Acute and/or Chronic Pain
Organ Scarring	Organ Scarring
Infection	Infection
Urinary Problems (urinary frequency, urgency, dysuria, retention, or obstruction; incontinence)	Urinary Problems (urinary frequency, urgency, dysuria, retention, or obstruction; incontinence)
Organ / Nerve Damage	Organ / Nerve Damage
Bleeding	Bleeding
Wound Complications	Wound Complications
Inflammation	Inflammation
Fistula Formation	Fistula Formation
Neuromuscular Problems (in muscles, lower extremities, and/or abdominal area)	Neuromuscular Problems (in muscles, lower extremities, and/or abdominal area)
One or more surgeries to treat an adverse event	One or more surgeries to treat an adverse event
Recurrence or Failure	Recurrence or Failure
Foreign Body Response (sutures)	Foreign Body Response (mesh)
Erosion/Exposure/Extrusion (sutures)	Erosion/Exposure/Extrusion (mesh)
Contraction/Shrinkage of tissues	Contraction/Shrinkage of tissues



Expert Depositions



Expert
Depositions



Expert Depositions



Expert Depositions

As the Corporate
Representative of Corporation
X, you have not been
able to ~~identify~~ Review
a single impact test for
Product Y involving crash
dummies

True

False



Expert Depositions

COMPANY XYZ HAS NOT BEEN ABLE TO LOCATE A SINGLE IMPACT TEST
OF PRODUCT ABC INVOLVING CRASH DUMMIES

AGREE

DISAGREE

*BATES NO 13 IS A SPECIFICATION
THAT REQUIRES SKID TEST*



Expert Depositions

Figure 5: Percentage of registered vehicles with front crash prevention

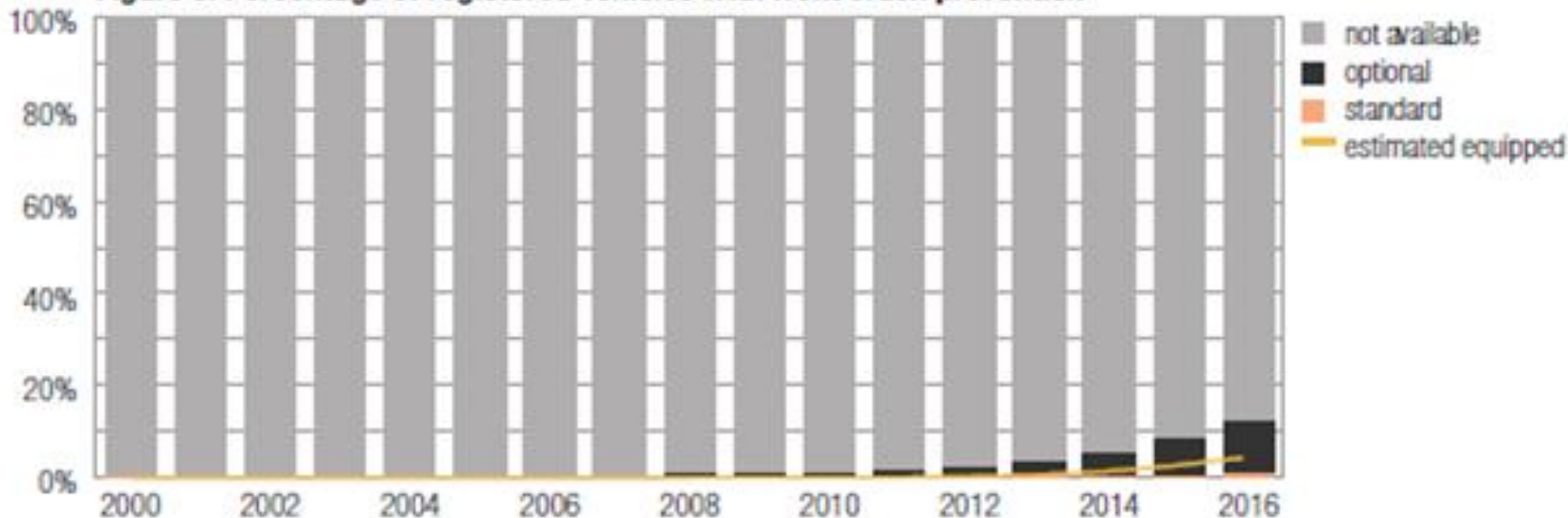


Figure 5 shows the percentage of registered vehicles by calendar year with either standard or optional front crash prevention. In 2006, front crash prevention had become standard on less than 1 percent and optional on less than 1 percent of registered vehicles. By 2016, front crash prevention was standard or optional on 12 percent of registered vehicles, but only 4.4 percent of registered vehicles were estimated to be equipped with the feature.

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\$800	\$800	\$800	\$800	\$800	\$800
\$1000		\$1000	\$1000	\$1000	\$1000

“TIME”S THEY ARE A “CHANGE”N · \$1,000

This rule was finally changed by the
Federal Judiciary Advisory Committee
while we all were still digesting our
turkey and stuffing ...
after more than five years of effort.

"TIME'S THEY ARE A "CHANGE"N - \$1,000

What is FEDERAL RULE OF EVIDENCE 702

(d) a person authorized by statute to be present.

(As amended Mar. 2, 1967, eff. Oct. 1, 1967; Apr. 25, 1968, eff. Nov. 1, 1968; Pub. L. 100-490, title VII, §7075(a), Nov. 18, 1988, 102 Stat. 4493; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2011, eff. Dec. 1, 2011.)

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

(As amended Mar. 2, 1967, eff. Oct. 1, 1967; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

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A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

(As amended Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

Rule 703. Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

(As amended Mar. 2, 1967, eff. Oct. 1, 1967; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

Rule 704. Opinion on an Ultimate Issue

(a) IN GENERAL.—NOT AUTOMATICALLY OBJECTIONABLE. An opinion is not objectionable just because it embraces an ultimate issue.

(b) EXCEPTION. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the

(As amended Mar. 3, 2007, eff. Dec. 1, 2007; Apr. 25, 2008, eff. Dec. 1, 2008; Pub. L. 110-405, 118th Cong., 2d Sess., Nov. 19, 2008, 122 Stat. 4905, Apr. 26, 2009, eff. Dec. 1, 2009; Apr. 26, 2011, eff. Dec. 1, 2011.)

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(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

(As amended Apr. 27, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

December 1, 2023

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if **the proponent demonstrates to the court that it is more likely than not that:**

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and **expert's opinion reflects a reliable application of**

(d) the ~~expert has reliably applied~~ the principles and methods to the facts of the case.

(As amended Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

(d) a witness not qualified by expertise to be present.

(As amended May 1, 2007, eff. Dec. 1, 2007; Apr. 23, 2008, eff. Nov. 1, 2008; Pub. L. 110-405, 118th Cong., 2d Sess., Nov. 18, 2008, 122 Stat. 3058, Apr. 25, 2009, eff. Dec. 1, 2009; Apr. 26, 2011, eff. Dec. 1, 2011.)

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- (d) the ~~expert has reliably applied~~ **expert's opinion reflects a reliable application of** the principles and methods to the facts of the case.

GOALS

- Eliminate judicial tendency of leaving the reliability determination to the jury.
- Reaffirm correct admissibility standard.
- Prevent “expert overstatement.”
- Ensure both the expert's methodology and conclusion(s) are considered in assessing admissibility.

(As amended Mar. 3, 2007, eff. Dec. 1, 2007; Apr. 25, 2008, eff. Nov. 1, 2008; Pub. L. 110-405, 118th Cong., 2d Sess., Nov. 18, 2008, 122 Stat. 3042, Apr. 25, 2009, eff. Dec. 1, 2009; Apr. 26, 2011, eff. Dec. 1, 2011.)

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EFFECTS

- Admissibility Standard is a preponderance of the evidence.
- Standard only relevant upon challenge to admissibility.
- Greater scrutiny by courts in assessing:
- Admissibility.
- Reasonability of the scope of the expert's opinion(s).

(d) a person authorized by statute to be present.

(As amended Mar. 3, 2007, eff. Dec. 1, 2007; Apr. 23, 2008, eff. Nov. 1, 2008; Pub. L. 110-405, 118th Cong., 2d Sess., Nov. 18, 2008, 122 Stat. 4915, Apr. 25, 2009, eff. Dec. 1, 2009; Apr. 26, 2011, eff. Dec. 1, 2011.)

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TIPS

- Ensure your expert drafts fulsome, detailed, and comprehensive reports.
- Understand that courts will be more receptive to challenges where Rule 702 deficiencies are evident.
- Prepare to demonstrate how the testimony meets the Rule's criteria.
- When making a challenge, focus argument on the deficiencies in the expert report and reliability.
- Remind judge of correct standard of admissibility.
- Remind judge that reliability should NOT be determined by the jury.

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		\$1000	\$1000	\$1000	\$1000

YOU PUT YOUR GRAPHICS WHERE?!? · \$200

Incredibly wordy documents not known for containing aesthetically impactful works of art. Also a kind of ____ case you might use to carry said documents.

YOU PUT YOUR GRAPHICS WHERE?!? · \$200

What is a BRIEF?

Mediation Brief

Ich bin ein Mediator und habe mich
für die Arbeit der Mediation entschieden.

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für die Arbeit der Mediation entschieden.

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[illegible]

Figure 1

[illegible]

Mediation Brief

1. What are the main components of the human body?
 The human body is composed of various organs and systems that work together to maintain life. The main components include the skeletal system (bones and joints), the muscular system (muscles), the circulatory system (heart and blood vessels), the respiratory system (lungs and trachea), the digestive system (stomach and intestines), the excretory system (kidneys and bladder), the reproductive system (ovaries and testes), and the nervous system (brain and nerves).

4. and above

[illegible]

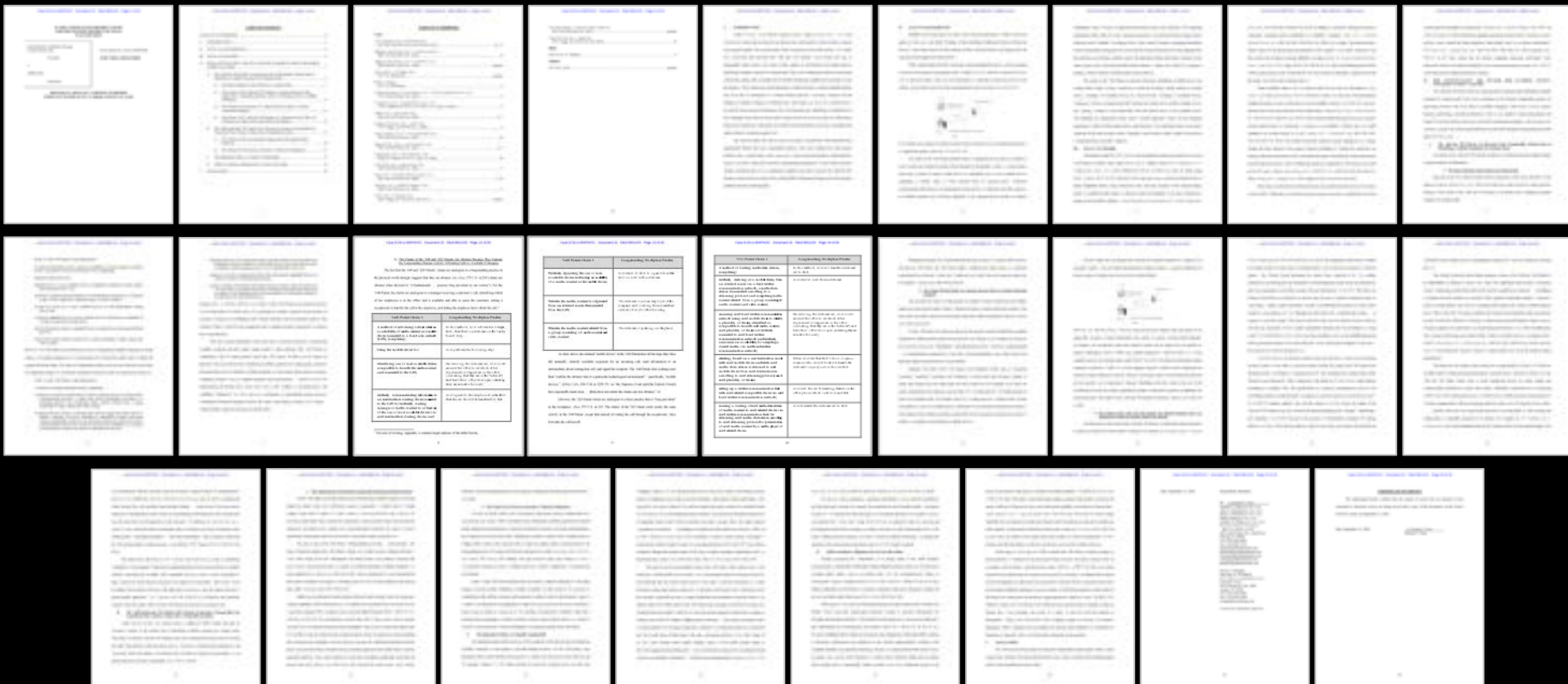
4

Party members must be aware of the fact that the party is not a

The image displays a 10x10 grid of 100 grayscale document pages. Each page contains different types of content, such as text, tables, and diagrams. The 4th row, 9th column image is highlighted with a red border.

An average of 1000 to 1500 people are in the area
 of the lake. The water is very shallow and the
 water is very clear. The water is very clear
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Motion To Dismiss



Motion To Dismiss

Case 6:23-cv-00479-DC Document 15 Filed 09/11/23 Page 14 of 26

'223 Patent Claim 1	Longstanding Workplace Practice
A method of routing media data stream, comprising:	In this method, Alice will transfer a customer call to Bob.
wirelessly receiving at a mobile device, from an external source via a local wireless communication network, a media data stream transmitted according to a streaming protocol and comprising media content selected from a group consisting of: audio content and video content;	Alice receives a call from a customer.
scanning said local wireless communication network using said mobile device to identify a plurality of devices, identified as compatible to handle said media content, said plurality of devices are wirelessly connected to said local wireless communication network and wirelessly announce an availability for accepting a routed media via said local wireless communication network;	On receiving the customer call, Alice looks around the office to see which of her experienced colleagues are in the office (indicating that they are in the "network") and have their office door open (indicating they are available for a call)
selecting, based on a user interaction made with said mobile device and while said media data stream is streamed to said mobile device from said external source according to said streaming protocol, one of said plurality of devices;	When Alice sees that Bob's door is open—someone who would be able to handle the customer's inquiry—Alice chooses Bob.
setting up a wireless communication link with said selected compatible device via said local wireless communication network;	Alice uses the call forwarding feature on the office phone which links Alice and Bob.
causing a routing of said media data stream of media content to said selected device via said wireless communication link for streaming said media data stream according to said streaming protocol for presentation of said media content by a media player of said selected device.	Alice forwards the customer call to Bob.

Alice receives a call from a customer.



Motion To Dismiss

Case 6:23-cv-00479-DC Document 15 Filed 09/11/23 Page 14 of 26

'223 Patent Claim 1	Longstanding Workplace Practice
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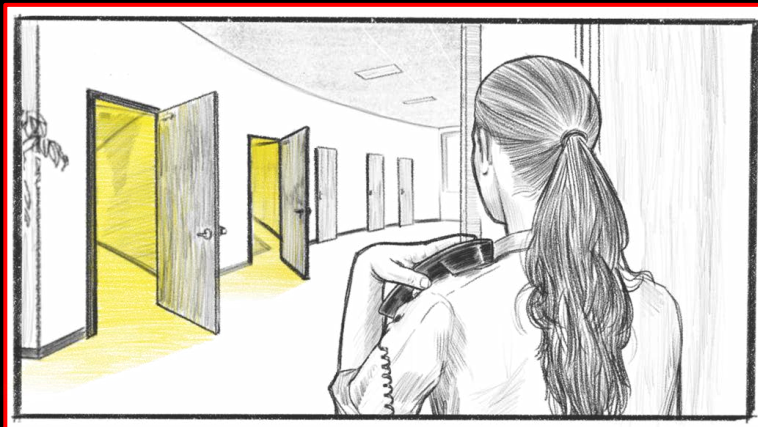


Motion To Dismiss

Case 6:23-cv-00479-DC Document 15 Filed 09/11/23 Page 14 of 26

'223 Patent Claim 1	Longstanding Workplace Practice
A method of routing media data stream, comprising:	In this method, Alice will transfer a customer call to Bob.
wirelessly receiving at a mobile device, from an external source via a local wireless communication network, a media data stream transmitted according to a streaming protocol and comprising media content selected from a group consisting of: audio content and video content;	Alice receives a call from a customer.
scanning said local wireless communication network using said mobile device to identify a plurality of devices, identified as compatible to handle said media content, said plurality of devices are wirelessly connected to said local wireless communication network and wirelessly announce an availability for accepting a routed media via said local wireless communication network;	On receiving the customer call, Alice looks around the office to see which of her experienced colleagues are in the office (indicating that they are in the "network") and have their office door open (indicating they are available for a call)
selecting, based on a user interaction made with said mobile device and while said media data stream is streamed to said mobile device from said external source according to said streaming protocol, one of said plurality of devices;	When Alice sees that Bob's door is open—someone who would be able to handle the customer's inquiry—Alice chooses Bob.
setting up a wireless communication link with said selected compatible device via said local wireless communication network;	Alice uses the call forwarding feature on the office phone which links Alice and Bob.
causing a routing of said media data stream of media content to said selected device via said wireless communication link for streaming said media data stream according to said streaming protocol for presentation of said media content by a media player of said selected device.	Alice forwards the customer call to Bob.

When Alice sees that Bob's door is open—someone who would be able to handle the customer's inquiry—Alice chooses Bob.

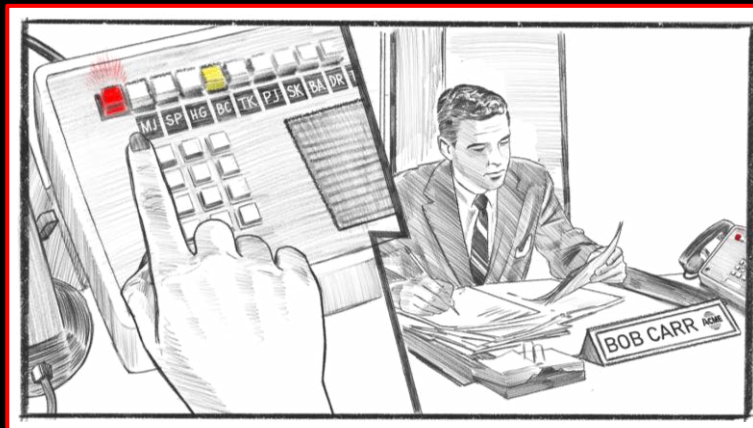


Motion To Dismiss

Case 6:23-cv-00479-DC Document 15 Filed 09/11/23 Page 14 of 26

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causing a routing of said media data stream of media content to said selected device via said wireless communication link for streaming said media data stream according to said streaming protocol for presentation of said media content by a media player of said selected device.	Alice forwards the customer call to Bob.

Alice uses the call forwarding feature on the office phone which links Alice and Bob.



Motion To Dismiss

Case 6:23-cv-00479-DC Document 15 Filed 09/11/23 Page 14 of 26

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Alice forwards the customer call to Bob.



Motion To Dismiss

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A method of routing media data stream, comprising:	In this method, Alice will transfer a customer call to Bob.
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setting up a wireless communication link with said selected compatible device via said local wireless communication network;	Alice uses the call forwarding feature on the office phone which links Alice and Bob.
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Example Figures from Expert Reports

Page of Math

Now I integrate both Eq. (17) and (18) once, subject to Eq. (19). This gives us the curvatures, as

$$\frac{d^2 u}{dx^2} = k_1 x + k_2 \quad (20)$$

and

$$\frac{d^2 w}{dx^2} = k_3 \cos \varphi + C_1 \quad (21)$$

where k_1 and C_1 are constants. Bending moment is proportional to curvature and is continuous at A, where $x = H$ and $x = 0$. Therefore, I deduce that

$$C_1 = k_1 H + k_2 \quad (22)$$

Now I integrate Eq. (20) and (21) once subject to Eq. (22). This gives us rotations as

$$\frac{du}{dx} = \frac{1}{2} k_1 x^2 + k_2 x \quad (23)$$

and

$$\frac{dw}{dx} = \frac{1}{2} k_3 x^2 \cos \varphi + (k_1 H + k_2) x + C_2 \quad (24)$$

where C_2 is another constant and I have used the zero rotation at the cap to eliminate the constant that would otherwise appear in Eq. (23). Rotation is continuous at A, so I deduce that

$$C_2 = \frac{1}{2} k_1 H^2 + k_2 H \quad (25)$$

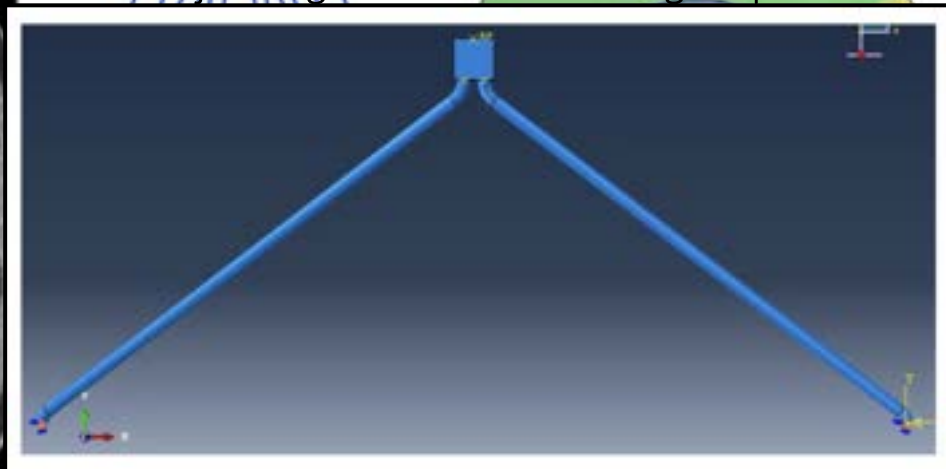
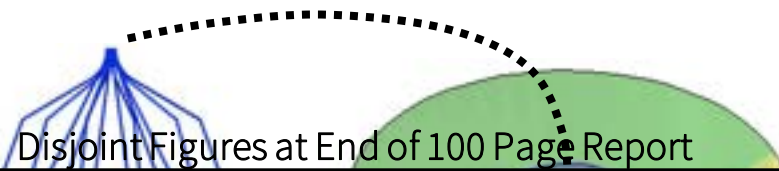
As a result, the rotation at B, where $x = L$ is, from Eq. (24)

$$\frac{dw(L)}{dx} = \frac{1}{2} k_3 L^2 \cos \varphi + (k_1 H + k_2) L + \frac{1}{2} k_1 H^2 + k_2 H \quad (26)$$

However, this is zero, so that

$$k_3 = -\frac{\frac{1}{2} L^2 \cos \varphi + H L + \frac{1}{2} H^2}{L + H} k_1 \quad (27)$$

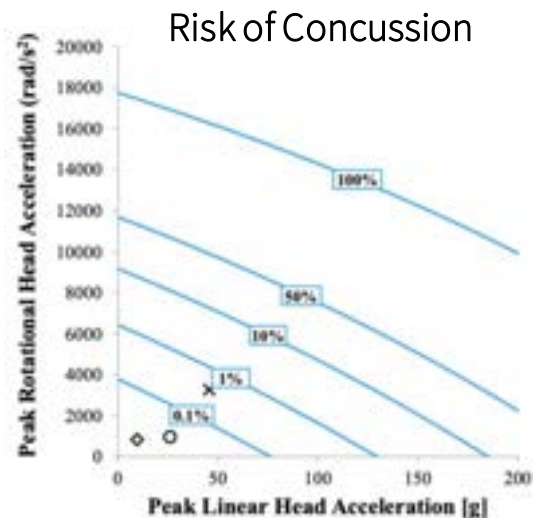
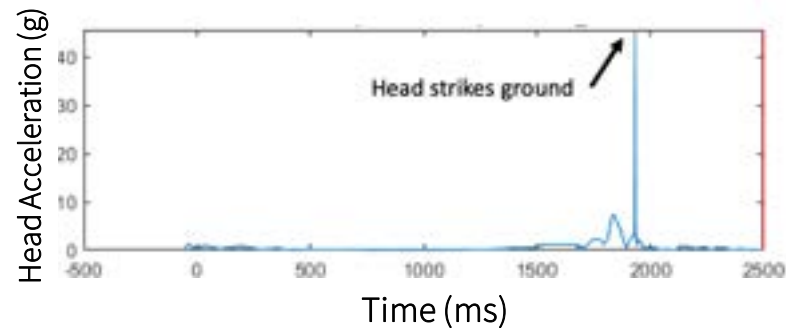
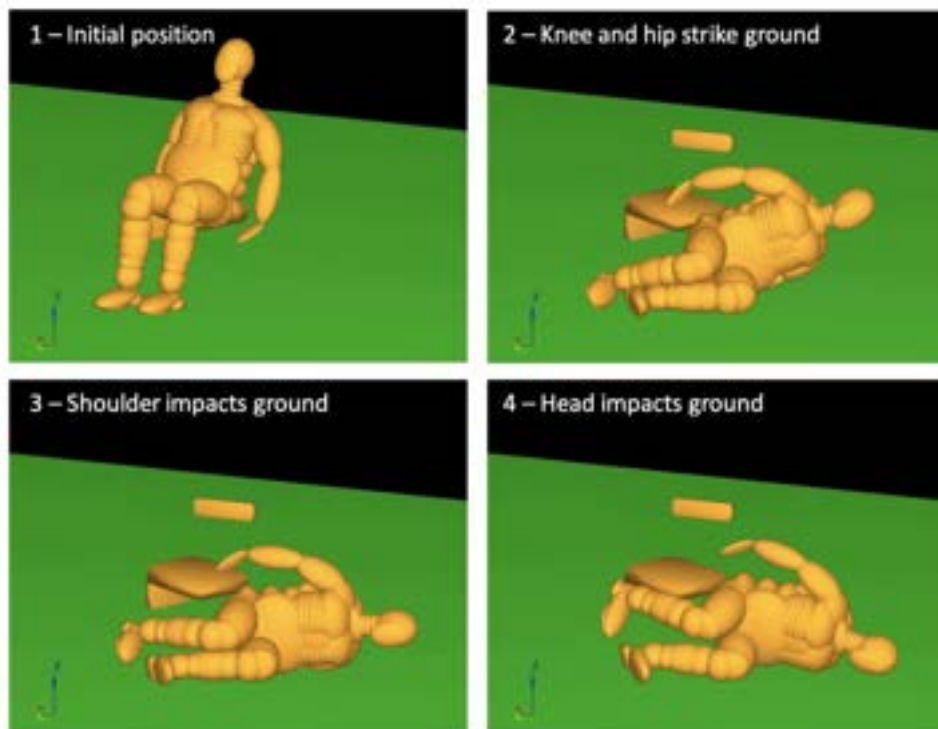
Now I integrate Eq. (23) and (24), subject to Eq. (25) and (27) to get



Surrounding
soft tissues

Vertebra

Example Figures from Expert Reports



IADC 2024 MID-YEAR CONFERENCE

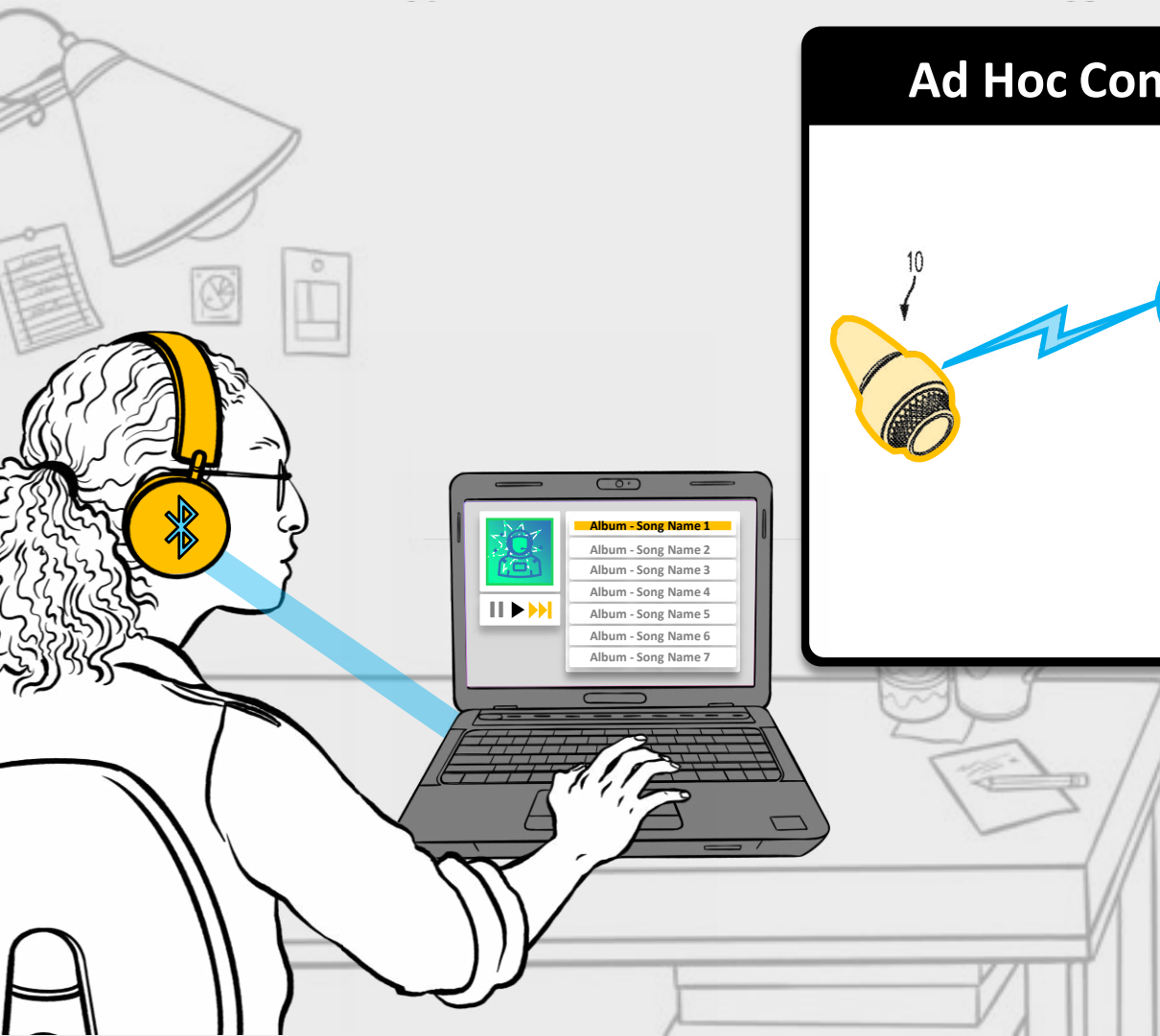
"TIME"S THEY ARE A "CHANGE"N	YOU PUT YOUR GRAPHICS WHERE?!?	THINGS THAT MAKE YOU GO ____	3D OR NOT 3D THAT IS THE QUESTION	THAT'S WHAT MAKES THEM BEAUTIFUL	CLOSING TIME
\$200		\$200	\$200		\$200
\$400	\$400	\$400	\$400	\$400	\$400
\$600	\$600	\$600	\$600	\$600	\$600
\$800	\$800	\$800	\$800	\$800	\$800
		\$1000	\$1000	\$1000	\$1000

THINGS THAT MAKE YOU GO ____ · \$400

The shapes and lines of diagrams may leave your judge saying “HUH”?, but if your tutorial is done well, you can make them go [OHHHHHHH].

THINGS THAT MAKE YOU GO ____ · \$400

What are patent figures?



Ad Hoc Connection (e.g., Bluetooth)

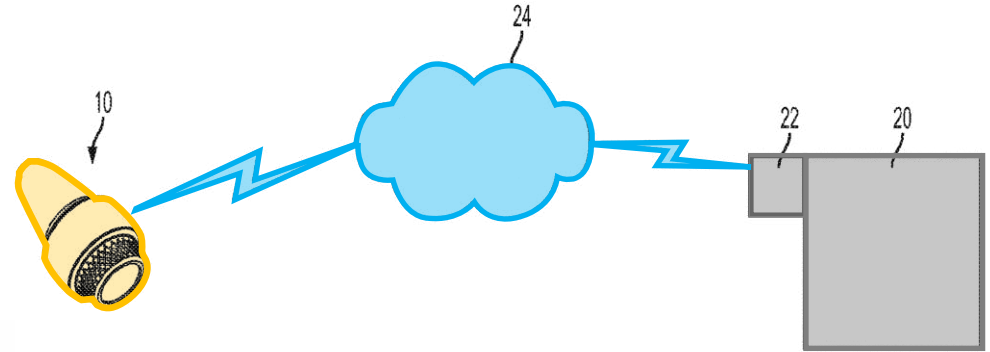
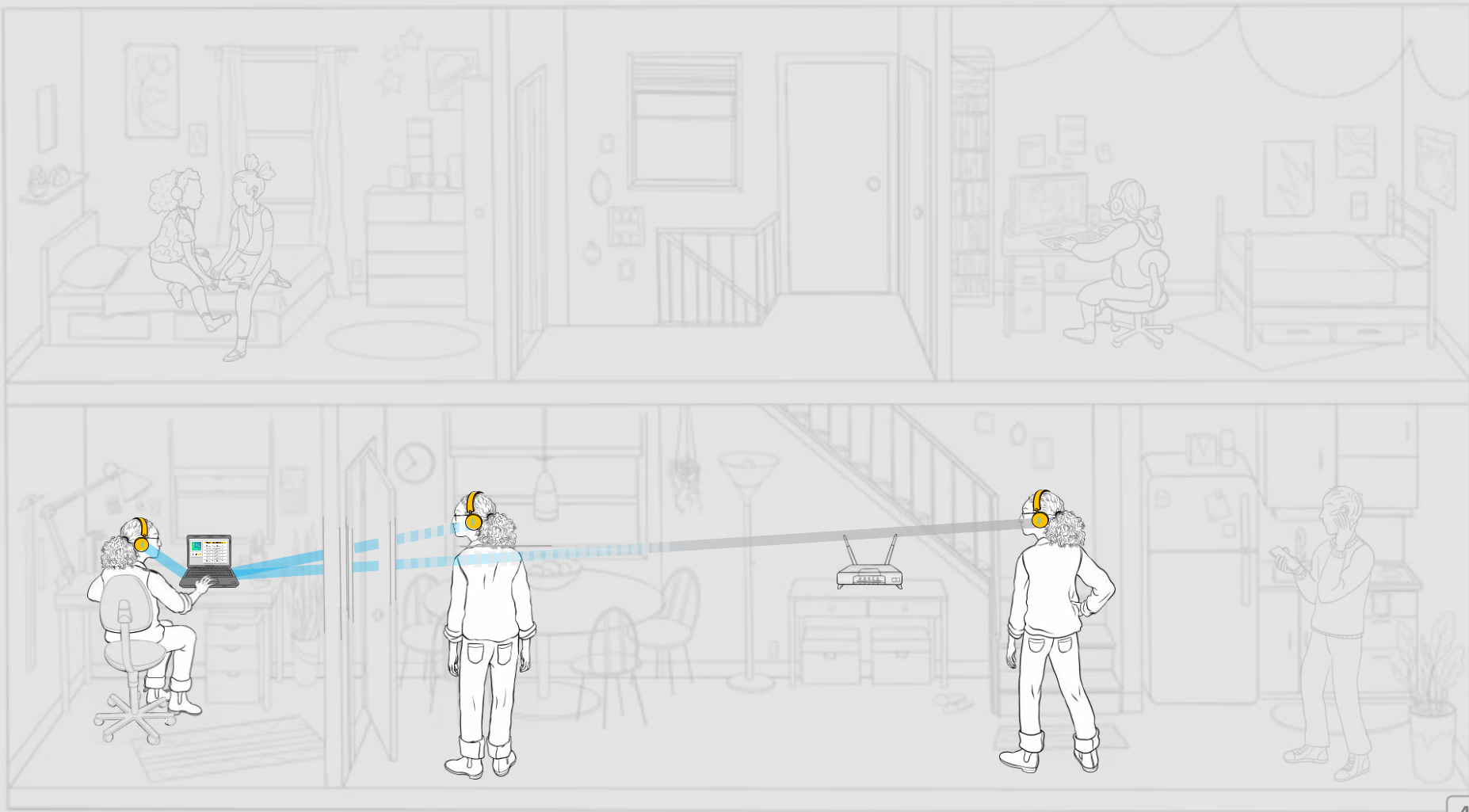


FIG. 2A



Ad Hoc Connection (e.g., Bluetooth)

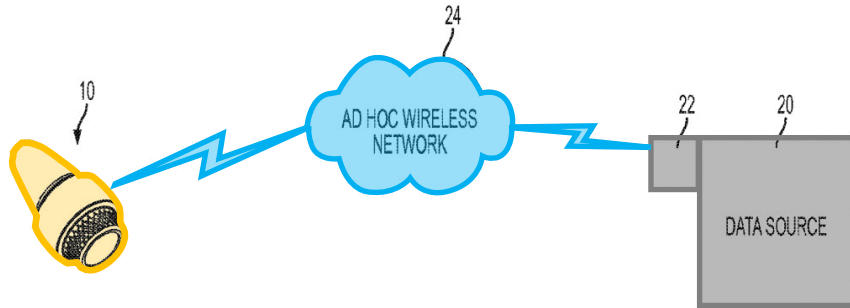


FIG. 2A

Infrastructure Connection (e.g., WiFi)

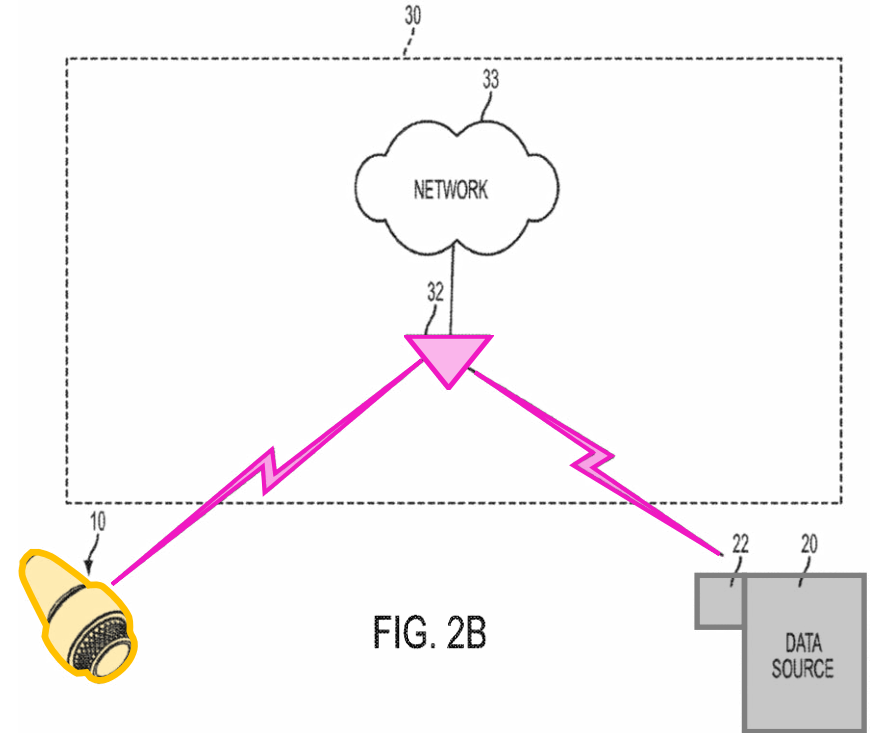
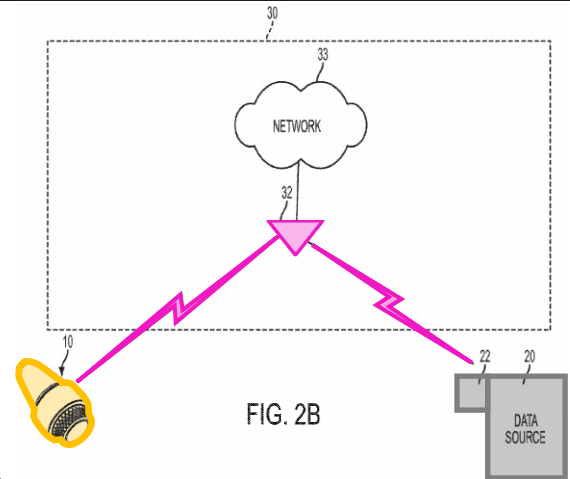
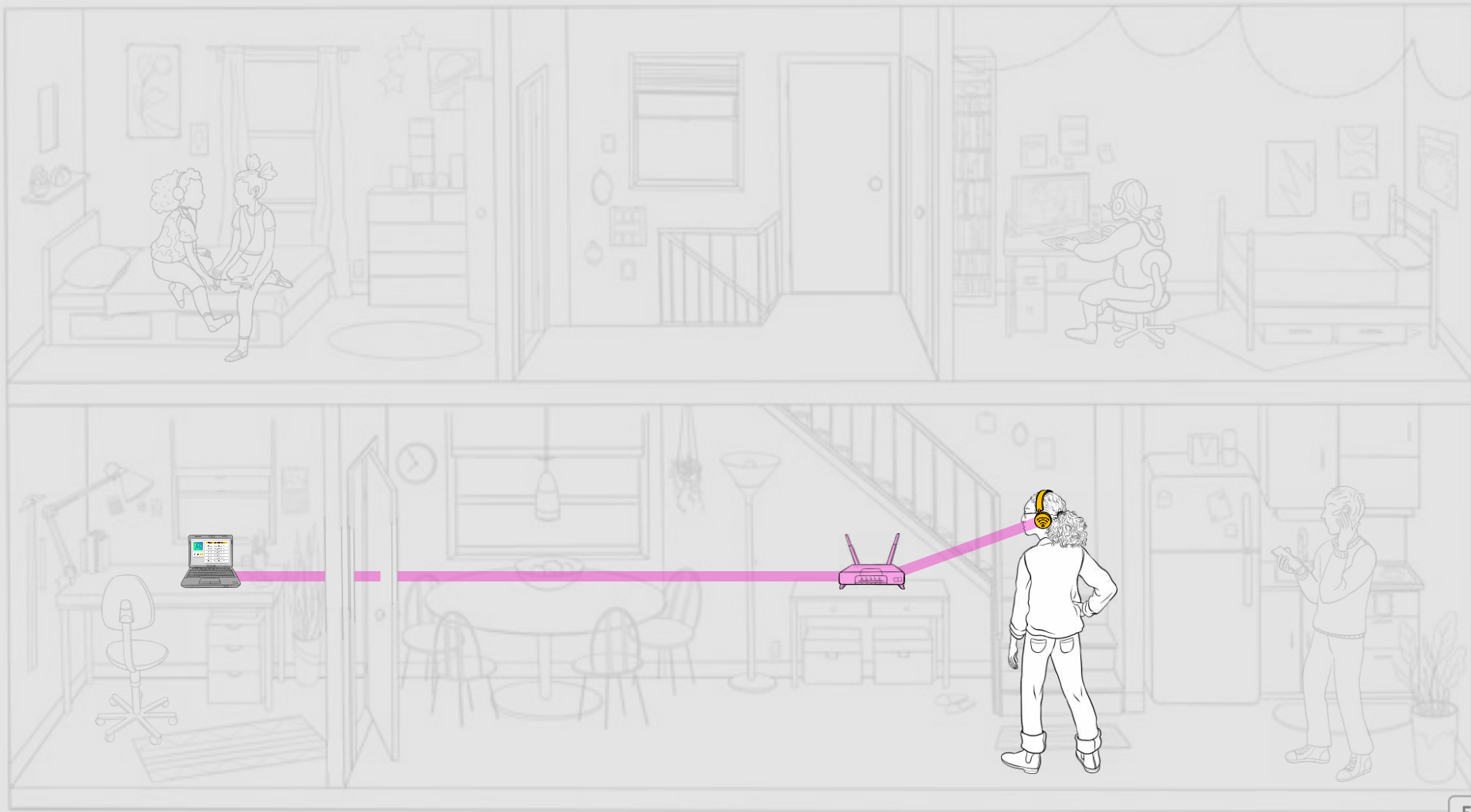


FIG. 2B

Infrastructure Connection (e.g., WiFi)





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"TIME"S THEY ARE A "CHANGE"N	YOU PUT YOUR GRAPHICS WHERE?!?	THINGS THAT MAKE YOU GO ____	3D OR NOT 3D THAT IS THE QUESTION	THAT'S WHAT MAKES THEM BEAUTIFUL	CLOSING TIME
\$200		\$200	\$200		\$200
\$400	\$400		\$400	\$400	\$400
\$600	\$600	\$600	\$600	\$600	\$600
\$800	\$800	\$800	\$800	\$800	\$800
		\$1000	\$1000	\$1000	\$1000

YOU PUT YOUR GRAPHICS WHERE?!? · \$800

When a football coach
is challenging a false start call,
you could say he is doing this.

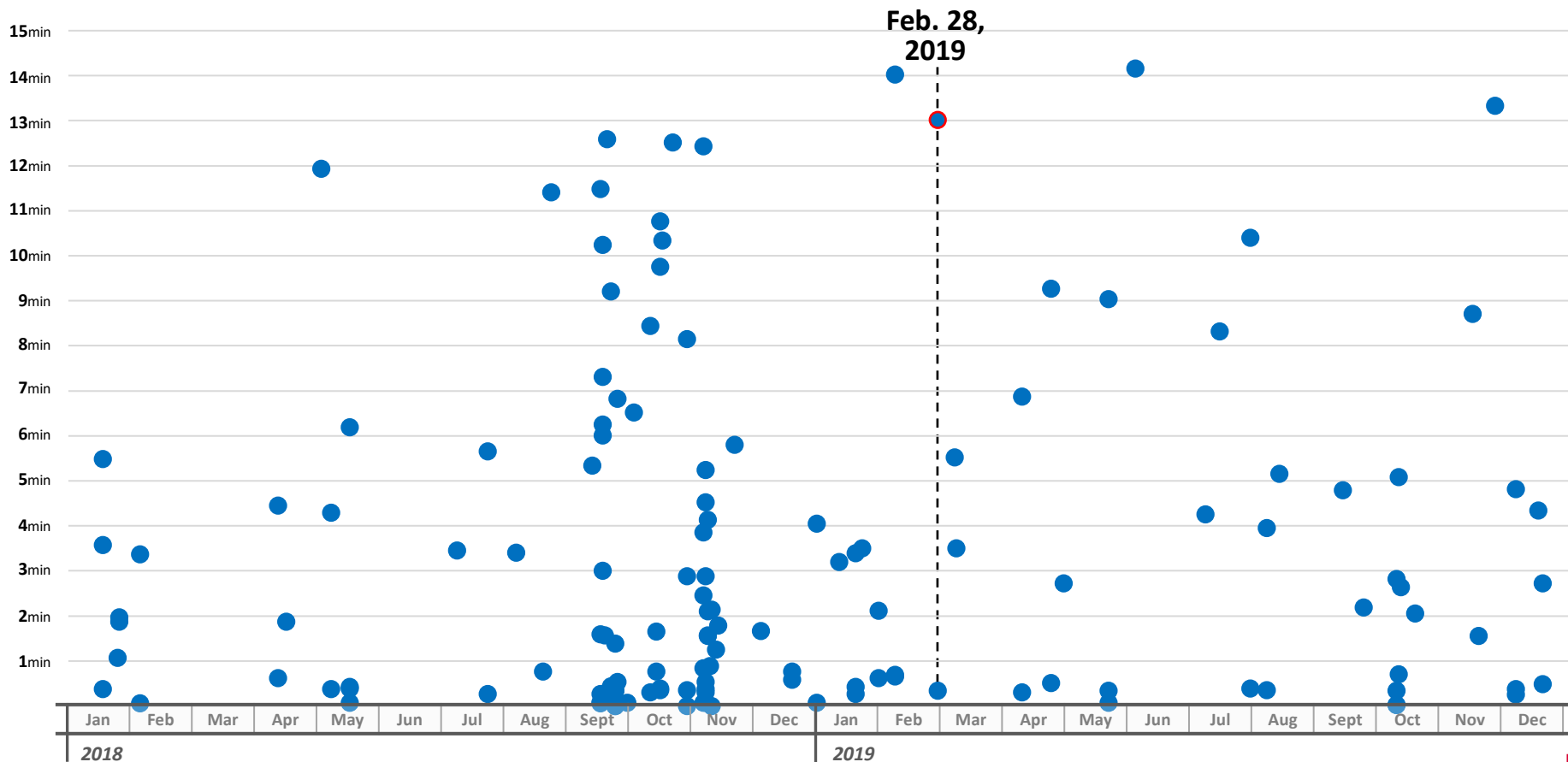
YOU PUT YOUR GRAPHICS WHERE?!? · \$800

What is “Arguing a motion”?

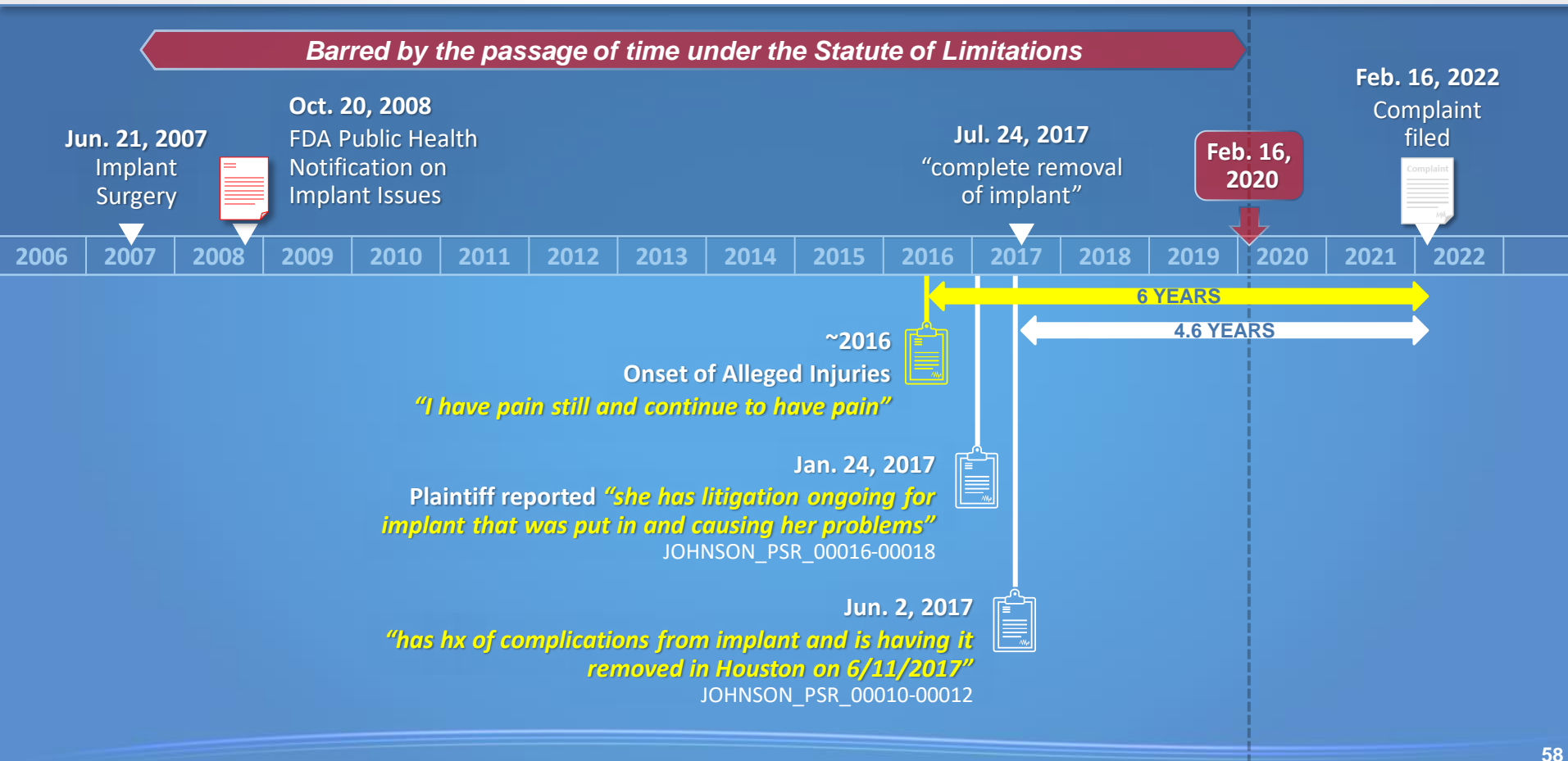
Plaintiff Has Not Pleaded The Elements of Its Claims

Deficiency	Intentional Misrepresentation	Negligent Misrepresentation	Professional Negligence	Aiding and Abetting [preempted]
Reliance				
Particularity				
Intent				
Duty				
Plausibility				

DISCOVERY HEARING - Calls between John Smith and Andrea Johnson



Statute of Limitations – History of Ms. Johnson’s Implant Key Events



CLAIM CONSTRUCTION HEARING

“residing entirely within an inner channel of the stent member”

“residing entirely within an inner channel of the stent member”

Plaintiff's Proposed Construction

is entirely within the length of
the inner channel of the stent
member

Defendant's Proposed Construction

all portions of the valve
means/valve are located
completely within the inner
channel of the stent such that no
portion of the valve means/valve
is even partially located outside
of the inner channel of the stent

Garrison Valve Extends Below Stent Member

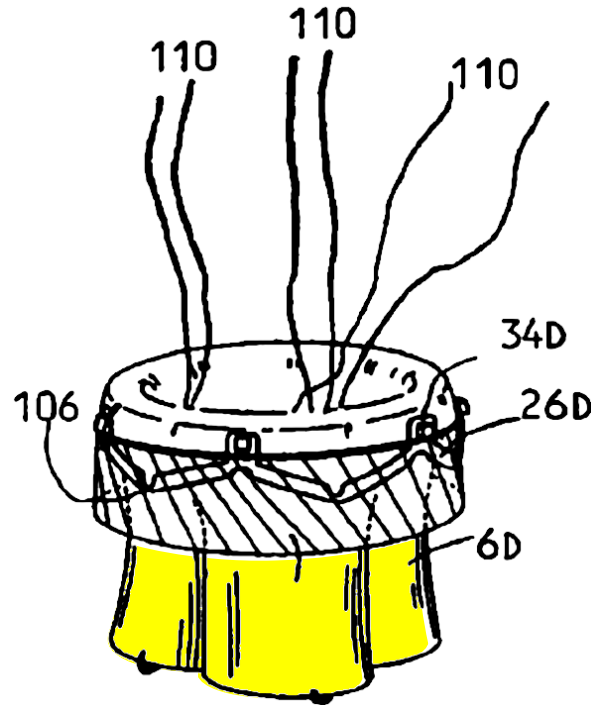


FIG. 35

'739 Prosecution History

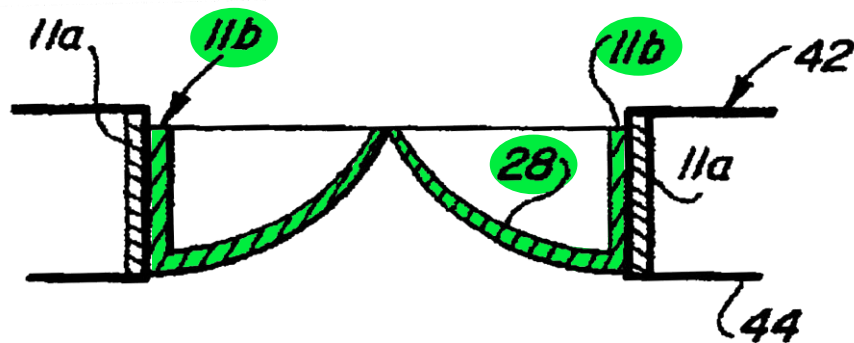


Fig. 10

Claims 34-38 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Bailey et al. (US 6,652,578 B2) in view of Crabbier (US 6,908,481 B2). Bailey discloses an assembly to treat a native heart valve, the assembly comprising: a prosthetic heart valve (figs.7-12) including a stent member (12) having an inner channel, the stent member (12) collapsible, expandable, and configured for transluminal percutaneous delivery (fig.20a-20i; col.63-67), wherein the stent member (12) includes a tubular structure away from a central portion that flares at both ends (42, 44) in a trumpet-like configuration (see fig.12a and 12b, wherein flanges 42 and 44 appear to be more trumpet shaped when placed in the body and surrounding the annulus, as opposed to the perpendicular shape in fig.7) and a valve means (11b+28) residing entirely within the inner channel of the stent member (see fig.10), the valve means including two to four individual leaflets (26) of tissue (biologically derived membranes col.8, lines 47-49; col.9, lines 20-25; col.5, lines 53-60), the valve means (11b+28) attached to a proximal portion of the stent member (as the valve means is attached along the majority of the inner surface of stent, 11b is coplanar with stent length . . .

Technology Tutorial

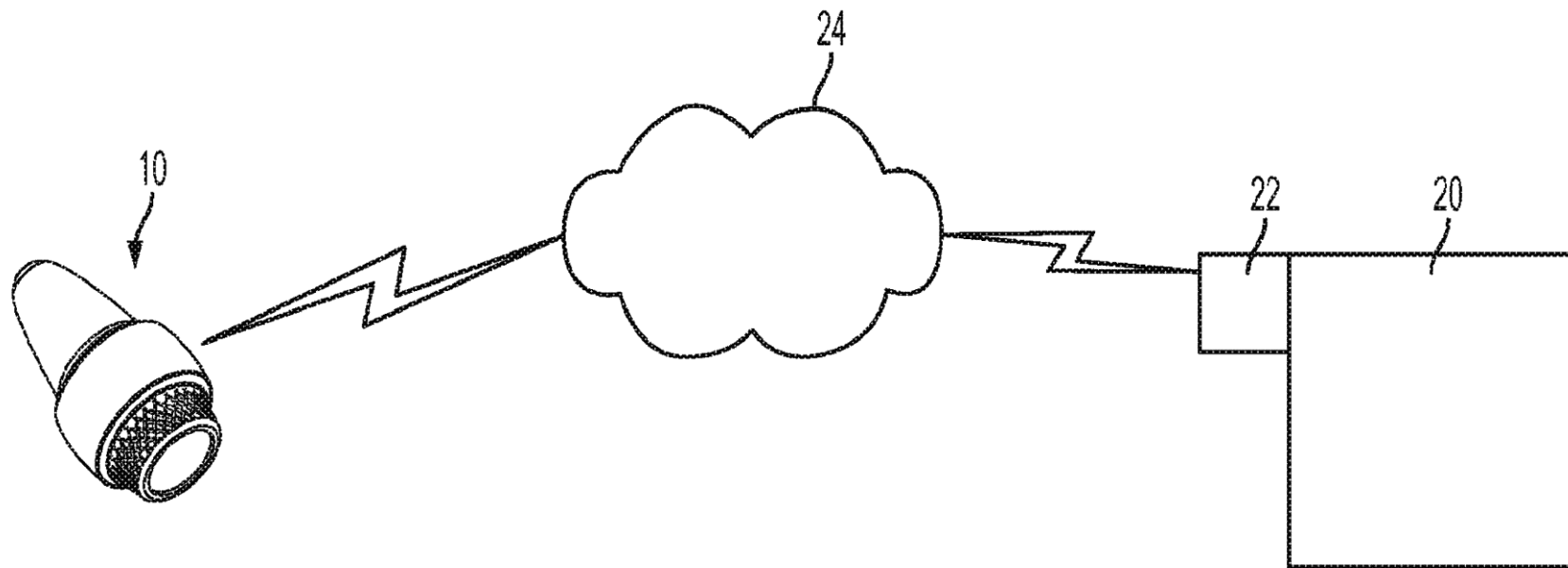


FIG. 2A

IADC 2024 MID-YEAR CONFERENCE

"TIME"S THEY ARE A "CHANGE"N	YOU PUT YOUR GRAPHICS WHERE?!?	THINGS THAT MAKE YOU GO ____	3D OR NOT 3D THAT IS THE QUESTION	THAT'S WHAT MAKES THEM BEAUTIFUL	CLOSING TIME
\$200		\$200	\$200		\$200
\$400	\$400		\$400	\$400	\$400
\$600	\$600	\$600	\$600	\$600	\$600
\$800		\$800	\$800	\$800	\$800
		\$1000	\$1000	\$1000	\$1000

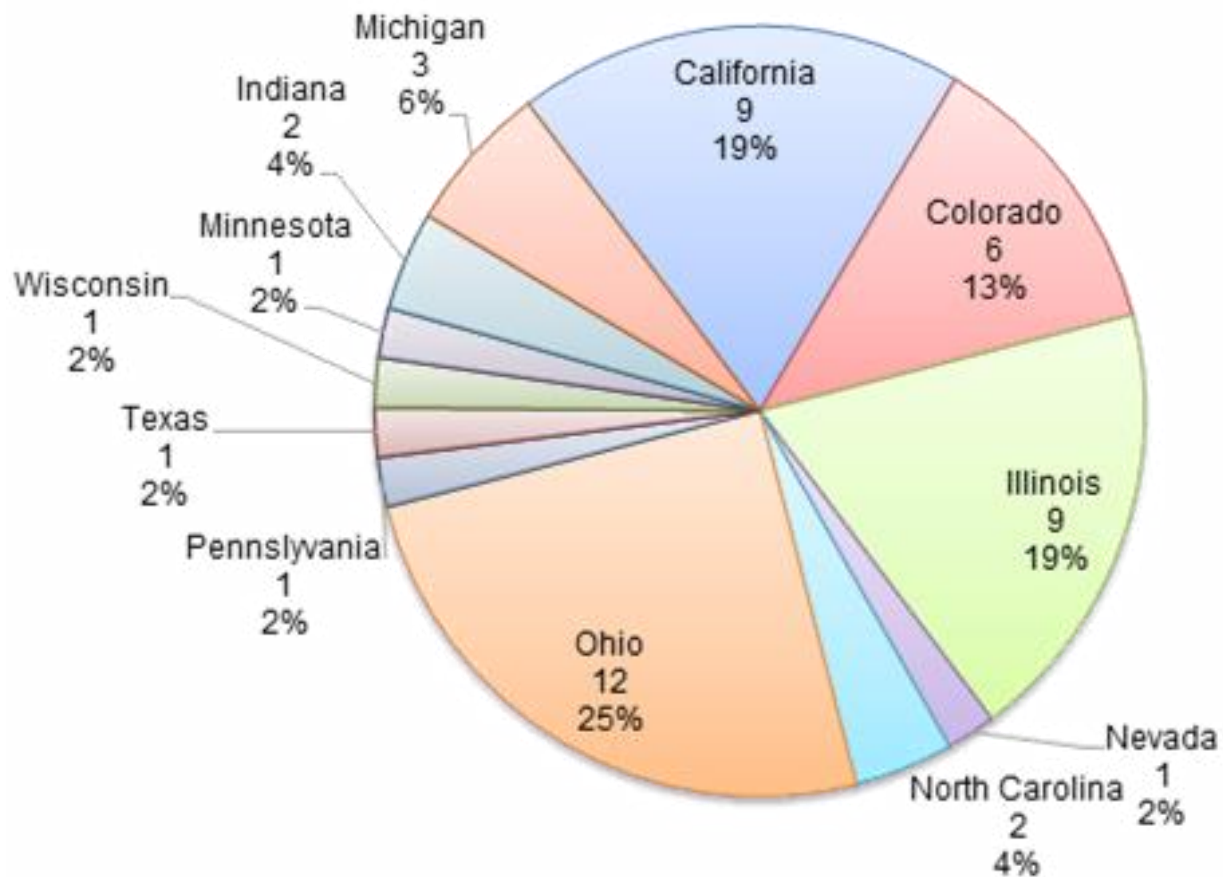
YOU PUT YOUR GRAPHICS WHERE?!? · \$400

A lot is on the line when presenting to these folks regarding the status of their litigation, or pitching your services to lead their litigation.

YOU PUT YOUR GRAPHICS WHERE?!? · \$400

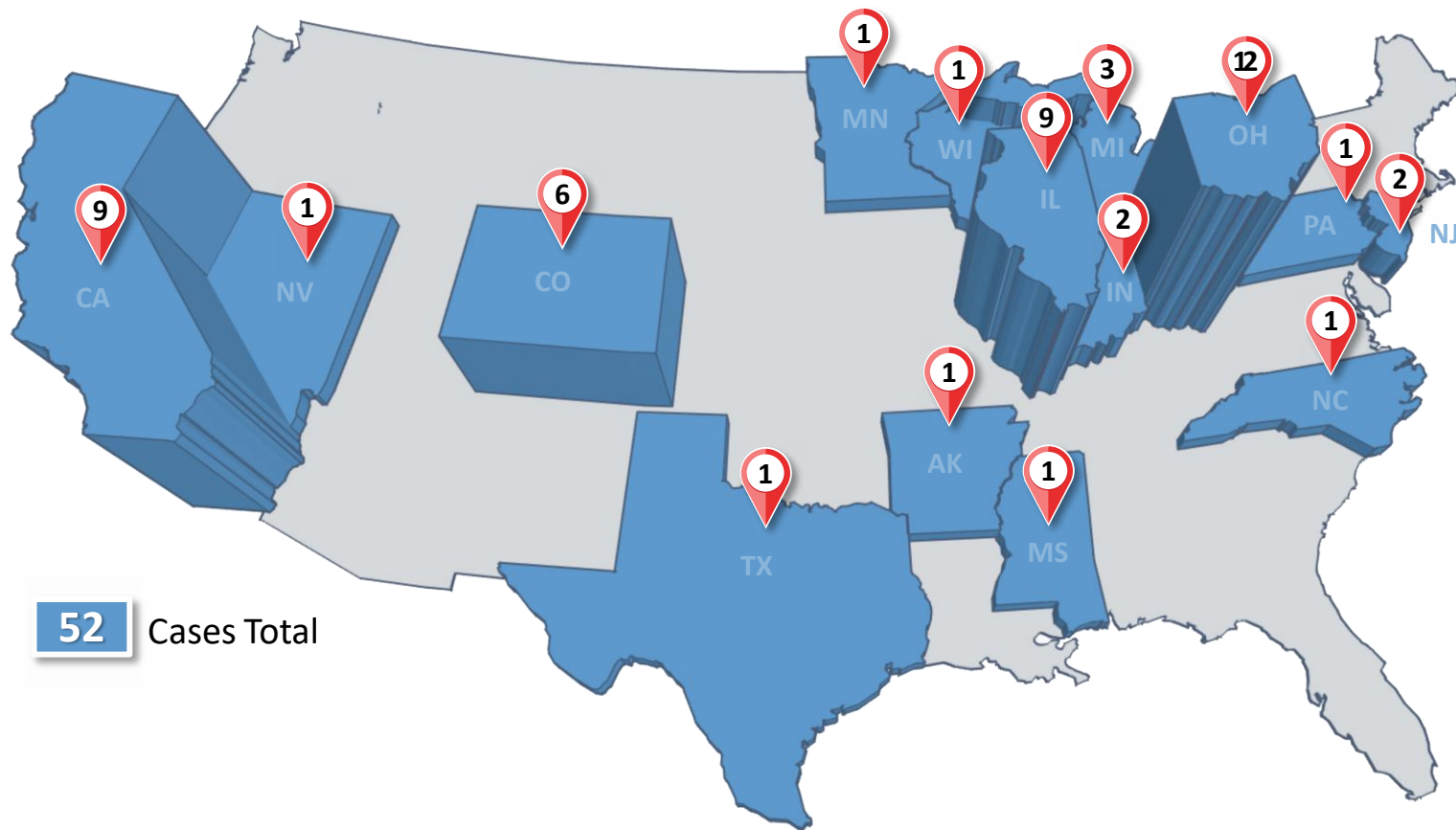
What are presentations to
corporate in-house counsel?

Number of "Actual Cash Value" Class Actions by Jurisdiction, Excluding Florida



National Trends: Number of Actual “Cash Value” Class Actions Against Any Carrier by Jurisdiction

(Excluding Florida)



IADC 2024 MID-YEAR CONFERENCE

"TIME"S THEY ARE A "CHANGE"N	YOU PUT YOUR GRAPHICS WHERE!?	THINGS THAT MAKE YOU GO ____	3D OR NOT 3D THAT IS THE QUESTION	THAT'S WHAT MAKES THEM BEAUTIFUL	CLOSING TIME
\$200		\$200	\$200		\$200
\$400			\$400	\$400	\$400
\$600	\$600	\$600	\$600	\$600	\$600
\$800		\$800	\$800	\$800	\$800
		\$1000	\$1000	\$1000	\$1000

THINGS THAT MAKE YOU GO ____ · \$200

Run out of these in an old west standoff
and you could find yourself dead.

Too many of these tiny objects
in your presentation can also make
your audience go *ZZZZZZzzzzzzzz*

THINGS THAT MAKE YOU GO ____ · \$200

What are BULLETS?

We Will Prove

1

ABC is a safe and effective medication approved by the FDA to treat HIV

2

ACME acted reasonably in developing TPA

3

ABC did not cause Mr. Johnson's alleged injuries, but it did save his life.

Overview of the Action

The timeline shows the sequence of events from 1978 to 2003:

- Apr. 1, 1983:** Class Action Filed (Yellow arrow pointing to "Classified")
- Feb. 1, 1990:** Class Cert. Granted (Blue arrow pointing to "Classified")

Key documents are listed below the timeline:

- Dec. 1, 1990:** Decree signed (Orange box)
- Dec. 1, 1991:** Decree signed (Orange box)
- Dec. 1, 1992:** Decree signed (Orange box)
- Dec. 1, 1993:** Decree signed (Orange box)
- Dec. 1, 1994:** Decree signed (Orange box)
- Dec. 1, 1995:** Decree signed (Orange box)
- Dec. 1, 1996:** Decree signed (Orange box)
- Dec. 1, 1997:** Decree signed (Orange box)
- Dec. 1, 1998:** Decree signed (Orange box)
- Dec. 1, 1999:** Decree signed (Orange box)
- Dec. 1, 2000:** Decree signed (Orange box)
- Dec. 1, 2001:** Decree signed (Orange box)
- Dec. 1, 2002:** Decree signed (Orange box)
- Dec. 1, 2003:** Decree signed (Orange box)

The diagram also includes icons for plaintiffs (two red stick figures) and defendants (two blue stick figures).

Plaintiffs are current employees that work at the Company that were employed selling the products before the legal issues came to light.

Overview of the Action

Based upon this theory, Plaintiffs' Class Action Complaint alleged the following claims against Defendants:

- ▶ **Breach of contract**
- ▶ **Fraud** (*Misrepresentation Theories*)
- ▶ **Negligent Interference**
- ▶ **Corrupt Organizations Act (COA)**

- Breach of contract
- Fraud (*Misrepresentation Theories*)
- Negligent Interference
- Corrupt Organizations Act (COA)

Overview of the Defense

Plaintiffs' Claims Were Nonsensical

Dec. 2002
 Aug. 2003

Plaintiffs' claims were nonsensical because we knew based on the Defendants' data that employees were paid more after the issuance of the two top sale orders in than they were previously.

2005 2006 2007 2008 2009 2010 2011 2012

Plaintiffs' curious employment history

Two Named Plaintiffs had left their jobs and returned to the Company only after filing the action

Aug. 2003 **Dec. 2003** Plaintiffs' claims were nonsensical because we knew based on the Defendants' data that employees were paid more after the issuance of the two stop sale orders in than they were previously.

Two Named Plaintiffs had left their jobs and returned to the Company only after filing the action

The diagram illustrates the timeline of the Enbridge case from 1997 to 2006. A horizontal timeline at the bottom is marked with years from 1997 to 2006. Above the timeline, key events are marked with boxes and connected to the timeline by lines:

- 1997:** Open & Close Class Action
- 1998:** Open & Close Class Action
- 2000:** Open & Close Class Action
- 2001:** Open & Close Class Action
- 2002:** Open & Close Class Action
- 2003:** Open & Close Class Action
- 2004:** Open & Close Class Action
- 2005:** Open & Close Class Action
- 2006:** Open & Close Class Action

Key events and court decisions are highlighted in boxes:

- Aug. 1, 2003:** The judge granted the motion to dismiss in its entirety.
- June 1, 2003:** The Complaint moved to dismiss the Consolidated Class Action Complaint in its entirety.
- June 1, 2004:** The court granted the motion to dismiss the Consolidated Class Action Complaint in its entirety.

A callout box points to the timeline between 2000 and 2001, stating: "The judge granted the motion to dismiss in its entirety. 'B[ecause each class contains at least one deficiency in the complaint.]'"

"[B]ecause each claim contains at least one deficiency in the complaint."

Jan. 4, 2005
The Company moved to dismiss the Consolidated Class Action Complaint in its entirety

[illegible]

The Company moved again to dismiss all of Plaintiffs' claims

Plaintiffs filed the First Amended Complaint pleading the same four causes of action and adding 75 pages and 10 employment law causes of action under the State law on behalf of a putative class of the Company employees in their State

Breach of Contract

a. Breach of Contract

Plaintiff contends that their breach of contract claim is not viable in light of the actual terms of the agreements they allege were violated. But in this case, where the Plaintiff, they argue dismissal should be without prejudice, in case "they uncover in discovery evidence of other contractual obligations between "Company" and the Plaintiff." **Id. This proposal is contrary to the purpose of Fed. Rule 36(e), which prevents unwarranted fishing expeditions premised on hazy claims.**

Plaintiffs concede that their breach of contract claim is not viable in light of the actual terms of the agreements they allege were violated. But in this case, where the Plaintiffs, they argue dismissal should be without prejudice, in case "they uncover in discovery evidence other contractual obligations between a Company and the Plaintiffs." *Id.* This proposal is contrary to the purpose of Rule 12(b)(6), which prevents unwarranted fishing expeditions premised on baseless claims.

COA

18 Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod
tempor incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam,
19 quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Duis
20 aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla
pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui
deserunt mollit anim id est laborum. Sed ut perspiciatis unde omnis iste natus
sit voluptatem accusantium doloremque laudantium, totam rem aperiam, eaque ipsa
21 quae ab illo inventore veritatis et quasi architecto beatae vitae dicta sunt explicabo. Nemo
22 ipsum voluptatem qua voluptate sit aspernatur aut odit aut fugit, et quia
23 consequuntur magni dolores eos qui ratione voluptatem sequi nesciunt.

Lorem ipsum or sit amet, consectetur adipiscing elit, sed do eiusmod
propter incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam, quis
autem exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Ut
in id re in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla
pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia
deserunt mollit anim id est laborum. Sed ut perspiciatis unde omnis iste natus error
consequatur accusantium doloremque laudantium, totam rem aperiam, eaque ipsa
quae ab illo inventore veritatis et quasi architecto beatae vitae dicta sunt explicabo. Nemo
autem id est in voluptatem quia voluptas sit aspernatur aut odit aut fugit, sed quia
consequatur magni dolores eos qui ratione voluptatem sequi nesciunt.

State Employment Law Claims




1. Failure to compensate for all hours worked
2. Failure to pay minimum wage
3. Failure to pay overtime wages
4. Failure to authorize, permit, and/or make available meal and rest periods
5. Failure to separately compensate commissioned employees for rest/break time and other nonproductive time
6. Waiting time penalties
7. Failure to provide itemized wage statements
8. Failure to reimburse for necessary business expenditure
9. Violation of State Unfair Competition Law

1. Failure to compensate for all hours worked
2. Failure to pay minimum wage
3. Failure to pay overtime wages
4. Failure to authorize, permit, and/or make available meal and rest periods
5. Failure to separately compensate commissioned employees for rest/break time and other nonproductive time
6. Waiting time penalties
7. Failure to provide itemized wage statements
8. Failure to reimburse for necessary business expenditures
9. Violation of State Unfair Competition Law

Three Tests

The Supreme Court has provided three alternative definitions for what it means for a person or entity to 'employ' someone

- 1 To exercise control over the wages, hours or working conditions, or
- 2 To suffer or permit to work, or
- 3 To engage, thereby creating a common law relationship.






The seal of the United States Supreme Court is visible in the background of the slide. It features an eagle with wings spread, holding an olive branch and arrows, with a shield on its chest. The words 'SUPREMACY' and 'JUSTICE' are inscribed on a ribbon held by the eagle. The seal is encircled by the words 'THE UNITED STATES OF AMERICA' and '1789'.

- 1 To exercise control over the wages, hours or working conditions, or
- 2 To suffer or permit to work, or
- 3 To engage, thereby creating a common law relationship.

Three Allegations

1. The Company paid the employees directly
2. The Company required certain training
3. The Company could order the stores to stop selling its products

"These allegations satisfy none of the three definitions of employment utilized by State courts." (*MTD at 1.*)

- 1  The Company paid the employees directly
- 2  The Company required certain training
- 3  The Company could order the stores to stop selling its products

"These allegations satisfy none of the three definitions of employment utilized by State courts." (*MTD* at 1.)

“Control” Test

Requires “power or authority to negotiate and set an employee’s rate of pay” (*MTD or 1*)

“The Company’s payment of additional compensation on top of the rate negotiated and set by the stores cannot meet this standard.” (*MTD or 1*)

“[T]he power to stop a retailer from selling one’s wares is not the same as the power to fire its employees or set their wages.” (*MTD or 1*)

"The Company's payment of additional compensation on top of the rate negotiated and set by the stores cannot meet this standard."
(*MTD* at 1.)

"[T]he power to stop a retailer from selling one's wares is not the same as the power to fire its employees or set their wages."
(*MTD at 1.*)

1

2

3

"Suffer or Permit" Test

Refers to a "defendant's knowledge of and failure to prevent the work from occurring" (*MTD at 1*)

Plaintiffs' "arguments are self-evidently deficient."
(*MTD at 1*)

Refers to a "defendant's knowledge of and failure to prevent the work from occurring" (*MTD at 1*)

Plaintiffs' "arguments are self-evidently deficient." (*MTD at 1.*)

Common Law Test

Requires control of “the manner and means of accomplishing the result desired” (*MTD* at 1.)

“The Company’s direct payments to employees and authority to stop sales of its own products do not implicate the “manner and means” by which Plaintiffs sold the products.” (*MTD* at 1.)

"The Company's direct payments to employees and authority to stop sales of its own products do not implicate the 'manner and means' by which Plaintiffs sold the products." (*MTD* at 1.)

Summary

Tortious Duty	Contractual Duty
Breach of contract	Dismissed with Prejudice
Corrupt Organizations Act	Dismissed with Prejudice
Negligent interference	Dismissed with Prejudice
Fraudulent misrepresentation	Dismissed with Prejudice
Fraudulent omission	Dismissed without Prejudice <small>Privity not satisfied, no contractual relationship</small>
Employment claims	Dismissed without Prejudice

Possibly have duty in actual employment relationship

- | | |
|------------------------------|-----------------------------|
| Breach of contract | Dismissed with Prejudice |
| Corrupt Organizations Act | Dismissed with Prejudice |
| Negligent interference | Dismissed with Prejudice |
| Fraudulent misrepresentation | Dismissed with Prejudice |
| Fraudulent omission | Dismissed without Prejudice |
| Employment claims | Dismissed without Prejudice |

The Score

US Capitol Building

Scoreboard:

BURY Points 5	TIME 0:00	HOME Defense 3
0	QTR 4	2



Key Lessons

Consider whether:

- 1 To attach the contract
- 2 The plaintiffs' harm resulted from the alleged fraud or the revelation of the alleged fraud
- 3 There are weaknesses that undermine all claims

To attach the contract

The plaintiffs' harm resulted from the alleged fraud or the revelation of the alleged fraud

There are weaknesses that undermine all claims

Overview of the Action

- ❖ Filed as two separate class actions on January 1, 2000 and April 1, 2000, which were later consolidated
- ❖ Filed 50-page Consolidated Class Action Complaint on January 1, 2002
- ❖ Plaintiffs are current employees that work at the Company that were employed selling the products before the legal issues came to light.

Overview of the Action



Plaintiffs are current employees that work at the Company that were employed selling the products before the legal issues came to light.



Breach of Contract

❖ A. Breach of Contract

- ❖ "Plaintiffs concede that their breach of contract claim is not viable in light of the actual terms of the agreements they allege were violated. But in this case, where the Plaintiffs, they argue dismissal should be without prejudice, in case "they uncover in discovery evidence of other contractual obligations between a Company and the Plaintiffs." *Id.* This proposal is contrary to the purpose of Rule 12(b)(6), which prevents unwarranted fishing expeditions premised on baseless claims."

Breach of Contract

a. Breach of Contract

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12 terms of the agreements they allege were violated. But in this case, where the Plaintiffs,
13 they argue dismissal should be without prejudice, in case "they uncover in discovery evidence of
14 other contractual obligations between a Company and the Plaintiffs." *Id.* This proposal is
15 contrary to the purpose of Rule 12(b)(6), which prevents unwarranted fishing expeditions
16 premised on baseless claims.

Three Tests

"[T]he Supreme Court has provided three alternative definitions for what it means for a person or entity to 'employ[]' someone:

- to exercise **control** over the wages, hours or working conditions, or
- suffer or permit** to work, or
- to engage, thereby creating a **common law** relationship." (MTD at 14-15.)

"Control" Test

- Requires "power or authority to negotiate and set an employee's rate of pay" (MTD at 1).

"Suffer or Permit" Test

- Refers to a "defendant's knowledge of and failure to prevent the work from occurring" (MTD at 1).

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"The Company's direct payments to employees and authority to

Three Tests

The Supreme Court has provided three alternative definitions for **what it means for a person or entity to 'employ' someone**

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To exercise control over the wages, hours or working conditions, or

2

To suffer or permit to work, or

3

To engage, thereby creating a common law relationship.



"Control" Test

Requires "power or authority to negotiate and set an employee's rate of pay" (MTD at 1).

"The Company's payment of additional compensation on top of the base wage and not by the same means as the base wage."

"[T]he power to stop a worker from selling one's wares to set the price, as the power to fire an employee or set their wages."

"Suffer or Permit" Test

Refers to a "defendant's knowledge of and failure to prevent the work from occurring" (MTD at 1).

Plaintiff's "arguments are self-evidently deficient."

Common Law Test

Requires control of "the manner and means of accomplishing the result desired" (MTD at 1).

"The Company's direct payments to employees and authority to stop sales of its own products do not implicate the 'manner and means' by which Plaintiffs sell its products." (MTD at 1).

The Score

Defendants, 2: Plaintiffs, 0

The Score



Corporate Summary Slide Example

- Leaking due to laser weld cracks
- Multiple crack origins suggest environmental stress cracking
- Source of degradation under investigation

Lid Cracking by CT Scan with Contrast

