



PROGRAM MATERIALS

Program #29133

September 24, 2019

Effective Use of Exhibits and Demonstratives at Trial

**Copyright ©2019 by Michael Ginsberg, Esq. and Thomas
Jackson, Esq.(ret), Jones Day
All Rights Reserved.
Licensed to Celesq®, Inc.**

Celesq® AttorneysEd Center
www.celesq.com

5301 North Federal Highway, Suite 180, Boca Raton, FL 33487
Phone 561-241-1919 Fax 561-241-1969

Timed Agenda

Effective Use of Exhibits and Demonstratives at Trial

September 24, 2019

- | | | |
|------|--|------------|
| I. | Introduction | 5 mins |
| II. | Why use exhibits? | 3-5 mins |
| | a. Types of exhibits | |
| III. | Evidentiary Exhibits? | 15-18 mins |
| | a. Pretrial Pointers | |
| | b. Use of Exhibit at Trial | |
| | c. Common Grounds for Objections | |
| | d. Key questions for business records, phone calls
and general principles | |
| IV. | Demonstrative Exhibits | 15-20 mins |
| | a. Trial court has broad discretion | |
| | b. Summary chart or a pedagogical chart | |
| | c. Fairness and prejudice | |
| | d. Substantial similarity for demonstrations | |
| | e. Introduction of a Demonstrative | |
| | f. Use of exhibit | |
| | g. Guidelines for Demonstrative Exhibits and
Tricks to Avoid | |
| V. | General Thoughts About Visual Exhibits | 10-12 mins |
| | a. Persuasive power | |
| | b. Lots of choices | |
| | c. Ways to enhance | |
| | d. Power Point Mistakes | |
| | e. Issues with Charts | |
| | f. Practical pointer for demonstrative exhibits | |
| VI. | Parts of trial to use Exhibits/Examples | 13-16 mins |
| | a. Opening | |
| | i. Photographs | |
| | ii. Organizational Chart | |
| | iii. Physical Evidence | |
| | iv. Pedagogical | |
| | v. Deposition Excerpts | |
| | vi. Timelines | |
| | b. Direct Examination | |
| | c. Cross Examination | |
| | d. Closing | |

VII. Concluding Thoughts

2 mins.

ONE FIRM
WORLDWIDE®

JONES
DAY®

EFFECTIVE USE OF EXHIBITS AND DEMONSTRATIVES AT TRIAL



OVERVIEW OF PROGRAM

- Role in Trial
 - Show the scene
 - Confirm or contradict testimony
- Evidentiary v. Demonstrative
- Basis for Admission/Objection
- Pre-Admission/Motions in limine
- Examples

THE “WHY” OF EXHIBITS

- Some of your jurors, and likely a majority of them, are visual learners—they learn by seeing better than by hearing.
- The old saying, “A picture is worth a thousand words” applies in spades to trials.
- People retain only 14 – 33% of information presented purely through auditory means.
- They retain 85% when the information is also presented visually.
- After three days, we retain only 10% of verbally presented information but 65% of information presented both verbally and visually.*

*The presenters are grateful to their former colleague, Kerri Ruttenberg, for her extensive treatment of trial exhibits in *Images with Impact: Design and Use of Winning Trial Visuals*, ABA 2017

EVIDENTIARY V. DEMONSTRATIVE

- Evidentiary
 - Contains information that proves a fact
 - Real evidence – the defective product for example
- Demonstrative
 - Helps the witness explain his testimony
 - Photograph, chart, graph, models, etc.

EVIDENTIARY EXHIBITS

EVIDENTIARY EXHIBITS – PRE-TRIAL POINTERS

- Prepare the basis for admission
- Determine proper timing for use
 - Opening or later
 - Witness (if more than one choice)
 - Timing in case theme presentation
- Make a list before the Exhibit List
 - Part of a trial plan
 - Make sure you know why you want to get an exhibit admitted
 - Make sure you refine the list to those that matter
- Make a list of the key questions to admissibility if not pre-admitted or stipulated

EVIDENTIARY EXHIBITS – PRE-TRIAL POINTERS

- Make sure the exhibit makes the point you want to make
- Make sure you know how your opponent can use the exhibit
- Pay attention to the details
 - Make sure the exhibits are present and useable
 - Make sure the witness is familiar with the exhibits
- Be prepared to modify demonstrative exhibits to respond to criticism
- Scout the courtroom to make sure you know where and how to show exhibits

COMMON STEPS FOR USE OF AN EXHIBIT AT TRIAL

- Mark the exhibit
- Ask to approach
 - Unless already in front of witness
- Make sure you have copies for Court/Clerk/Reporter
- Present to the witness and ask about exhibit to establish relevance and admissibility
- Offer into evidence
- Publish to jury with permission of Court, only after admitted

COMMON GROUNDS FOR OBJECTIONS

COMMON GROUNDS FOR OBJECTIONS

- Relevance
 - Fed. R. Evid. 401, 402
- Authenticity
 - Fed. R. Evid. 901, 902
- Original Document
 - Fed. R. Evid. 1002
- Hearsay
 - Fed. R. Evid. 801, 802, 803
- Prejudice, confusion, waste of time
 - Fed. R. Evid. 403

RELEVANCE

- **Rule 401. Test for Relevant Evidence**
- Evidence is relevant if:
- **(a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and
- **(b)** the fact is of consequence in determining the action.

RELEVANCE

- **Rule 402. General Admissibility of Relevant Evidence**
- Relevant evidence is admissible unless any of the following provides otherwise:
 - the United States Constitution;
 - a federal statute;
 - these rules; or
 - other rules prescribed by the Supreme Court.
- Irrelevant evidence is not admissible.

AUTHENTICITY

- **Rule 901. Authenticating or Identifying Evidence**
- **(a) In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.
- **(b) Examples.** The following are examples only — not a complete list — of evidence that satisfies the requirement:
 - **(1) *Testimony of a Witness with Knowledge.*** Testimony that an item is what it is claimed to be.
 - **(2) *Nonexpert Opinion About Handwriting.*** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.
 - **(3) *Comparison by an Expert Witness or the Trier of Fact.*** A comparison with an authenticated specimen by an expert witness or the trier of fact.
 - **(4) *Distinctive Characteristics and the Like.*** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.
 - **(5) *Opinion About a Voice.*** An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

AUTHENTICITY

- **(6) Evidence About a Telephone Conversation.** For a telephone conversation, evidence that a call was made to the number assigned at the time to:
 - **(A)** a particular person, if circumstances, including self-identification, show that the person answering was the one called; or
 - **(B)** a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.
- **(7) Evidence About Public Records.** Evidence that:
 - **(A)** a document was recorded or filed in a public office as authorized by law; or
 - **(B)** a purported public record or statement is from the office where items of this kind are kept.

AUTHENTICITY

- **(8) Evidence About Ancient Documents or Data Compilations.** For a document or data compilation, evidence that it:
 - **(A)** is in a condition that creates no suspicion about its authenticity;
 - **(B)** was in a place where, if authentic, it would likely be; and
 - **(C)** is at least 20 years old when offered.
- **(9) Evidence About a Process or System.** Evidence describing a process or system and showing that it produces an accurate result.
- **(10) Methods Provided by a Statute or Rule.** Any method of authentication or identification allowed by a federal statute or a rule prescribed by the Supreme Court.

AUTHENTICITY

- **Rule 902. Evidence That Is Self-Authenticating**

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

- **(1) *Domestic Public Documents That Are Sealed and Signed.*** A document that bears:
 - **(A)** a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and
 - **(B)** a signature purporting to be an execution or attestation.
- **(2) *Domestic Public Documents That Are Not Sealed but Are Signed and Certified.*** A document that bears no seal
 - **(A)** it bears the signature of an officer or employee of an entity named in [Rule 902\(1\)\(A\)](#); and
 - **(B)** another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.

AUTHENTICITY

- **(3) Foreign Public Documents.** A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:
 - **(A)** order that it be treated as presumptively authentic without final certification; or
 - **(B)** allow it to be evidenced by an attested summary with or without final certification.
- **(4) Certified Copies of Public Records.** A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by:
 - **(A)** the custodian or another person authorized to make the certification; or
 - **(B)** a certificate that complies with Rule [902\(1\)](#), [\(2\)](#), or [\(3\)](#), a federal statute, or a rule prescribed by the Supreme Court.
- **(5) Official Publications.** A book, pamphlet, or other publication purporting to be issued by a public authority.
- **(6) Newspapers and Periodicals.** Printed material purporting to be a newspaper or periodical.
- **(7) Trade Inscriptions and the Like.** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

AUTHENTICITY

- **(8) Acknowledged Documents.** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.
- **(9) Commercial Paper and Related Documents.** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.
- **(10) Presumptions Under a Federal Statute.** A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.
- **(11) Certified Domestic Records of a Regularly Conducted Activity.** The original or a copy of a domestic record that meets the requirements of [Rule 803\(6\)](#)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.
- **(12) Certified Foreign Records of a Regularly Conducted Activity.** In a civil case, the original or a copy of a foreign record that meets the requirements of [Rule 902\(11\)](#), modified as follows: the certification, rather than complying with a federal statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of [Rule 902\(11\)](#).

HEARSAY

- **Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay**
- The following definitions apply under this article:
- **(a) Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- **(b) Declarant.** “Declarant” means the person who made the statement.
- **(c) Hearsay.** “Hearsay” means a statement that:
 - **(1)** the declarant does not make while testifying at the current trial or hearing; and
 - **(2)** a party offers in evidence to prove the truth of the matter asserted in the statement.
- **(d) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:
 - **(1) A Declarant-Witness’s Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
 - **(A)** is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
 - **(B)** is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
 - **(C)** identifies a person as someone the declarant perceived earlier.

HEARSAY

- **(2) *An Opposing Party's Statement.*** The statement is offered against an opposing party and:
 - **(A)** was made by the party in an individual or representative capacity;
 - **(B)** is one the party manifested that it adopted or believed to be true;
 - **(C)** was made by a person whom the party authorized to make a statement on the subject;
 - **(D)** was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
 - **(E)** was made by the party's coconspirator during and in furtherance of the conspiracy.
- The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

HEARSAY

- **Rule 802. The Rule Against Hearsay**

Hearsay is not admissible unless any of the following provides otherwise:

- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

HEARSAY

- **Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness**
- The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
- **(1) *Present Sense Impression.*** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
- **(2) *Excited Utterance.*** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
- **(3) *Then-Existing Mental, Emotional, or Physical Condition.*** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

HEARSAY

- **(4) *Statement Made for Medical Diagnosis or Treatment.*** A statement that:
 - **(A)** is made for — and is reasonably pertinent to — medical diagnosis or treatment; and
 - **(B)** describes medical history; past or present symptoms or sensations; their inception; or their general cause.
- **(5) *Recorded Recollection.*** A record that:
 - **(A)** is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
 - **(B)** was made or adopted by the witness when the matter was fresh in the witness's memory; and
 - **(C)** accurately reflects the witness's knowledge.
 - If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

HEARSAY

- **(6) *Records of a Regularly Conducted Activity.*** A record of an act, event, condition, opinion, or diagnosis if:
 - **(A)** the record was made at or near the time by — or from information transmitted by — someone with knowledge;
 - **(B)** the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
 - **(C)** making the record was a regular practice of that activity;
 - **(D)** all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with [Rule 902\(11\)](#) or (12) or with a statute permitting certification; and
 - **(E)** neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.
- **(7) *Absence of a Record of a Regularly Conducted Activity.*** Evidence that a matter is not included in a record described in paragraph (6) if:
 - **(A)** the evidence is admitted to prove that the matter did not occur or exist;
 - **(B)** a record was regularly kept for a matter of that kind; and
 - **(C)** neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

HEARSAY

- **(8) Public Records.** A record or statement of a public office if:
 - **(A)** it sets out:
 - **(i)** the office's activities;
 - **(ii)** a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or
 - **(iii)** in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
 - **(B)** neither the source of information nor other circumstances indicate a lack of trustworthiness.
- **(9) Public Records of Vital Statistics.** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.
- **(10) Absence of a Public Record.** Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:
 - **(A)** the record or statement does not exist; or
 - **(B)** a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

HEARSAY

- **(11) *Records of Religious Organizations Concerning Personal or Family History.*** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.
- **(12) *Certificates of Marriage, Baptism, and Similar Ceremonies.*** A statement of fact contained in a certificate:
 - **(A)** made by a person who is authorized by a religious organization or by law to perform the act certified;
 - **(B)** attesting that the person performed a marriage or similar ceremony or administered a sacrament; and
 - **(C)** purporting to have been issued at the time of the act or within a reasonable time after it.

HEARSAY

- **(13) *Family Records*.** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.
- **(14) *Records of Documents That Affect an Interest in Property*.** The record of a document that purports to establish or affect an interest in property if:
 - **(A)** the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;
 - **(B)** the record is kept in a public office; and
 - **(C)** a statute authorizes recording documents of that kind in that office.

HEARSAY

- **(15) *Statements in Documents That Affect an Interest in Property.*** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.
- **(16) *Statements in Ancient Documents.*** A statement in a document that is at least 20 years old and whose authenticity is established.
- **(17) *Market Reports and Similar Commercial Publications.*** Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

HEARSAY

- **(18) *Statements in Learned Treatises, Periodicals, or Pamphlets.*** A statement contained in a treatise, periodical, or pamphlet if:
 - **(A)** the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
 - **(B)** the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.
 - If admitted, the statement may be read into evidence but not received as an exhibit.
- **(19) *Reputation Concerning Personal or Family History.*** A reputation among a person's family by blood, adoption, or marriage — or among a person's associates or in the community — concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

HEARSAY

- **(20) Reputation Concerning Boundaries or General History.** A reputation in a community — arising before the controversy — concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.
- **(21) Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.
- **(22) Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:
 - **(A)** the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
 - **(B)** the conviction was for a crime punishable by death or by imprisonment for more than a year;
 - **(C)** the evidence is admitted to prove any fact essential to the judgment; and
 - **(D)** when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.
- The pendency of an appeal may be shown but does not affect admissibility.

HEARSAY

- **(23) *Judgments Involving Personal, Family, or General History, or a Boundary.*** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:
 - **(A)** was essential to the judgment; and
 - **(B)** could be proved by evidence of reputation.
- **(24) [*Other Exceptions* .]** [Transferred to Rule 807.]



PREJUDICIAL

- **Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons**

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

COMMON WAYS TO ADMIT EXHIBITS

KEY QUESTIONS FOR A BUSINESS RECORD

- Federal Rule of Evidence 803(6):
 - Was the record made at or near the event by someone with knowledge of the event?;
 - Was the record kept in the course of a regularly conducted activity of the business?;
 - Was it the regular practice of the business to make the record;
 - Are you the custodian of the record, or the author, or someone else with knowledge?
 - Do you have any reason to doubt that the record is not what it purports to be? [If pressed]

EXAMPLE OF INTRODUCING A PHONE LOG

- Policy to make a record of phone conversations?
- Why?
- Universally done?
- When are they created? By whom?
- What happens to the record after made?
- Was this policy in effect on date of log in question?
- Then, turn to legal admissibility

EXAMPLE OF INTRODUCING A PHONE LOG

- Show what has been marked as Exhibit ____
- What is it?
- What is the date? Does your name appear?
- Did you prepare? Did you have knowledge of the contents recorded here?
- When?
- Was it prepared in the ordinary course of business of your company?

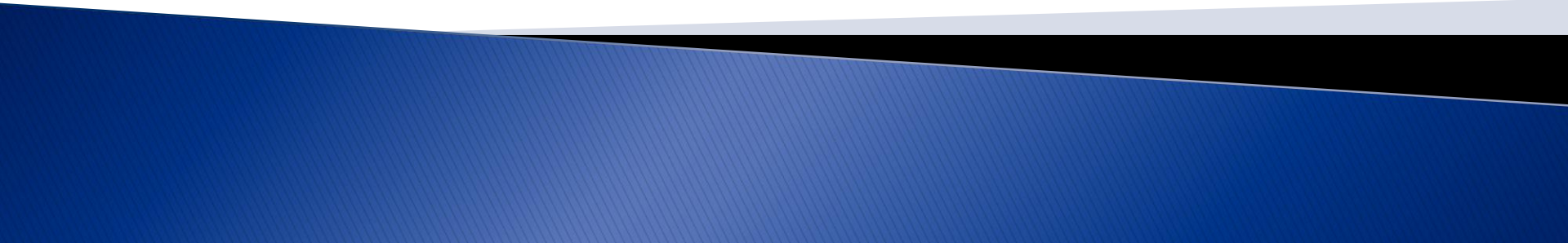
EXAMPLE OF ADMITTING A TAPE RECORDING

- Heard Mr. X's voice before?
- How often?
- How are you familiar with Mr. X's voice?
- Have you heard recording marked as Exhibit ____?
- Do you recognize the voice on Exhibit ____?
- Whose voice is it?

WHEN IN DOUBT

- Remember that the keys to getting an exhibit admitted are:
 - Witness is familiar with the document
 - Witness can authenticate it
 - Exhibit is what it claims to be (or represents what it claims to represent)
 - Exhibit is relevant to case

RULES FOR DEMONSTRATIVE EXHIBITS



RULE 611 – GOVERNS DEMONSTRATIVE EXHIBITS

- **(a) Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - **(1)** make those procedures effective for determining the truth;
 - **(2)** avoid wasting time; and
 - **(3)** protect witnesses from harassment or undue embarrassment.

U.S. V. WHITE, 737 F.3D 1121 (7TH CIR. 2013)

- “First, a party can introduce the information in a summary exhibit under Federal Rule of Evidence 1006, in order to “to prove the content of voluminous writings... that cannot be conveniently examined in court.” If admitted this way, the summary itself is substantive evidence — in part because the party is not obligated to introduce the underlying documents themselves. *See Janati*, 374 F.3d at 273; Fed. R.Evid. 1006.”
- “The other option is a pedagogical chart admitted pursuant to the court's “control over the mode ... [of] presenting evidence” under Federal Rule of Evidence 611(a). Rule 611(a) pedagogical summaries are meant to facilitate the presentation of evidence already in the record. These summaries are not substantive evidence — instead, the summaries are meant to aid the jury in its understanding of evidence that has already been admitted. *Janati*, 374 F.3d at 273.”

U.S. V. WHITE, 737 F.3D 1121 (7TH CIR. 2013)

- “For this reason, Rule 611(a) charts can be more one-sided in their presentation of the relevant information. For instance, such exhibits may “include witnesses’ conclusions or opinions,” or “reveal inferences drawn in a way that would assist the jury.” *Id.* Of course, admitting such pedagogical devices is within the district court’s discretion. And when the district court does admit a summary on the basis, it should instruct the jury that such summaries are not evidence and are meant only to aid the jury in its evaluation of other evidence.”

ROBINSON V. MISSOURI PACIFIC R. CO., 16 F.3D 1083 (10TH CIR1994)

- “Having determined that the district court did not abuse its discretion, we add some additional comment. Video animation adds a new and powerful evidentiary tool to the trial scene. McCormick's work on evidence observes that with respect to one party's staged reproduction of facts "not only is the danger that the jury may confuse art with reality particularly great, but the impressions generated by the evidence may prove particularly difficult to limit ..." 2 *McCormick on Evidence* 19 (4th ed. 1992) (footnote omitted). Because of its dramatic power, **trial judges should carefully and meticulously examine proposed animation evidence for proper foundation, relevancy and the potential for undue prejudice.** Normally, the trial judge should review the video outside of the jury's hearing. *Brandt v. French*, [638 F.2d 209](#), 212 (10th Cir.1981). Courts in appropriate circumstances may permit demonstrative use of audio or visual presentations which may assist the jury. *Datskow v. Teledyne Continental Motors Aircraft Prods.*, [826 F.Supp. 677](#) (W.D.N.Y.1993).”

FUSCO V. GENERAL MOTORS CORP., 13 F.3D 259 (1ST CIR. 1993)

- “The case law in this area is muddled, as one might expect, but the tendency of the court is to treat this class of demonstrative evidence more skeptically than would the lay juror. The concern lies not with use of tape or film (the issue would be largely the same if the jurors were taken to the test track for a live demonstration) but with the deliberate recreation of an event under staged conditions. Where that recreation could easily seem to resemble the actual occurrence, courts have feared that the jurors may be misled because they do not fully appreciate how variations in the surrounding conditions, as between the original occurrence and the staged event, can alter the outcome.”

FUSCO V. GENERAL MOTORS CORP., 13 F.3D 259 (1ST CIR. 1993)

- “[I]nstead, courts have created a doctrine, predating and now loosely appended to Rule 403, that **requires a foundational showing of substantial similarity in circumstances**. Cf. Daubert v. Merrell Dow Pharmaceuticals, Inc., --- U.S. ----, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993) (reliability requirement for expert testimony held implicit in Rule 702).”

INTRODUCTION OF A DEMONSTRATIVE EXHIBIT

- Witness confirms the accuracy of that being represented
 - Magic words; Fair and Accurate Representation
 - And, if necessary, add: at the time of the incident in question
- Witness confirms usefulness to explaining testimony to the jury

AND, NOW THE FUN BEGINS

- Once the Exhibit is In, how will you show it to the jury?
- Four basic choices:
 - Hard copy
 - Juror notebooks
 - Elmo
 - Display Board
 - Electronic display
- Each choice carries its own benefits and risks
- Think the method through in advance
- Anticipate the problems that can/will occur

GUIDELINES FOR DEMONSTRATIVE EXHIBITS

GUIDELINES FOR DEMONSTRATIVE EXHIBITS

- Make Comparisons
 - Always answer the question of compared to what?
 - Given time periods, competitors, recognized averages
 - The better the yardstick the more persuasive the chart
- Show Cause and Effect
 - Why did something happen?
- Don't Hide Other Effects
 - Easy to be flipped
- Graphic Should Tell one Story
 - Integrate Words, numbers, etc. to make one point
 - Make sure all demonstratives are consistent

GUIDELINES FOR DEMONSTRATIVE EXHIBITS

- Use Good Content
 - Information must be trustworthy
 - Show the mechanics of the complicated
 - Use images familiar to the audience
- Comparisons
 - Information must be side by side
- Don't be Afraid of Numbers
 - They help persuade

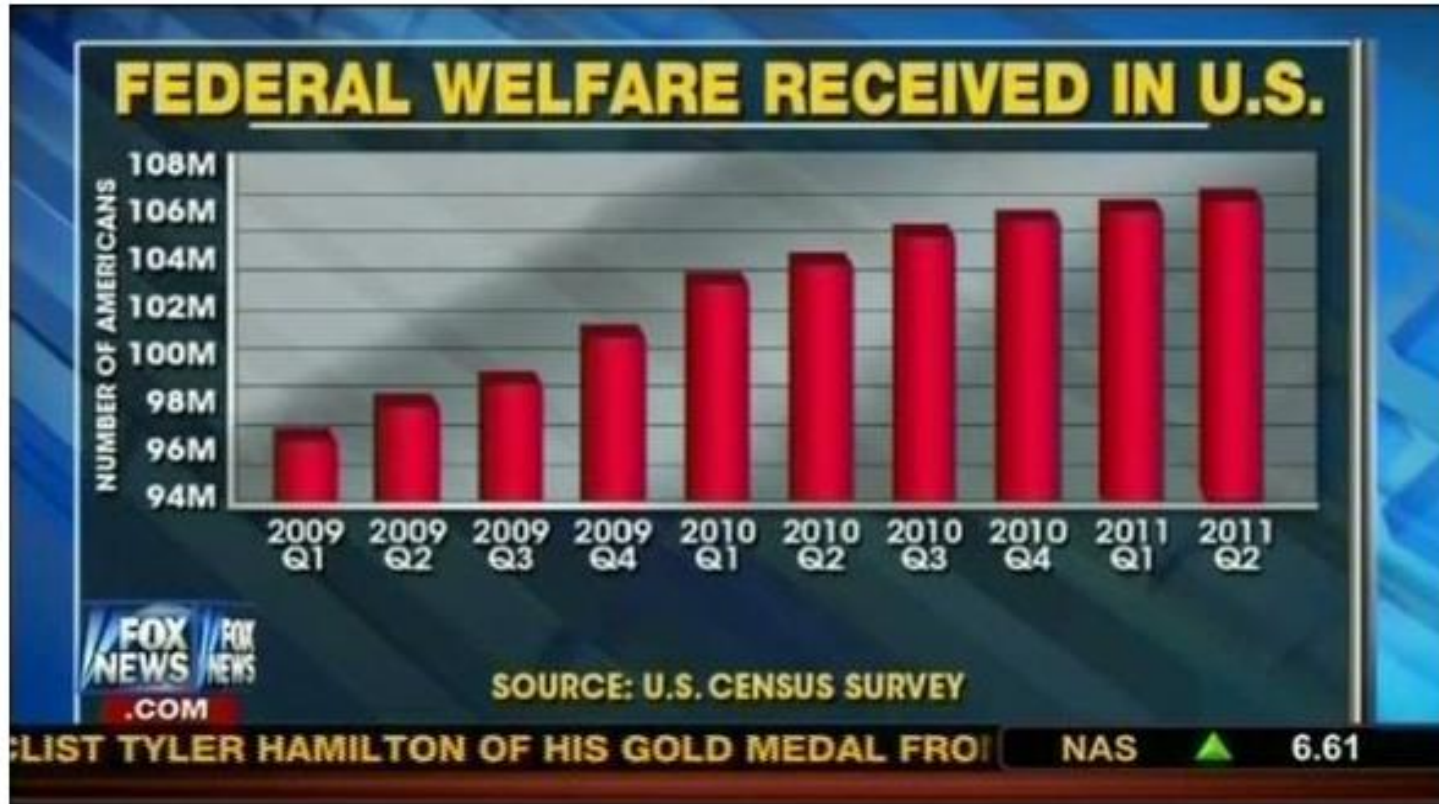
GUIDELINES FOR DEMONSTRATIVE EXHIBITS

- Be wary of colors
 - Use natural colors
- Trick it Up with animations and 3D
 - Only when necessary
- Do Not Overdo It
- Test Them

BE WARY OF THESE DEMONSTRATIVE TRICKS

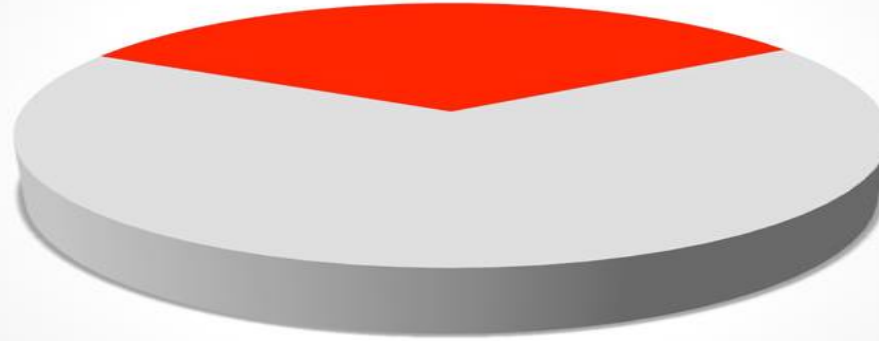
- Use of a slippery scale
 - Watch where the scale begins and ends
- Watch to see what is being compared to what
- Double check percentage increase claims
- Items look bigger when closer
- Misleading Imagery

THE SLIPPERY SCCALE

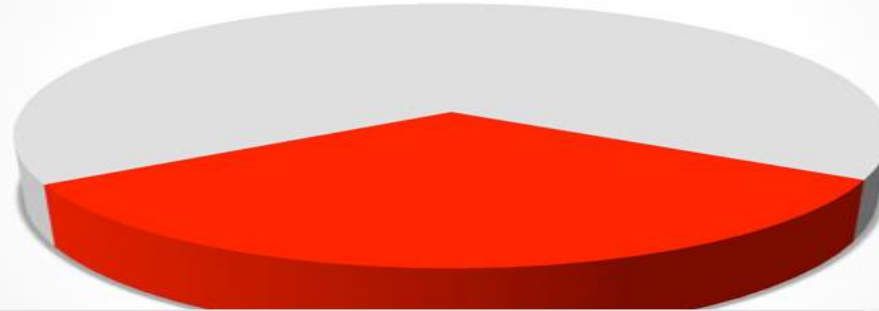


ITEMS ARE BIGGER WHEN CLOSER

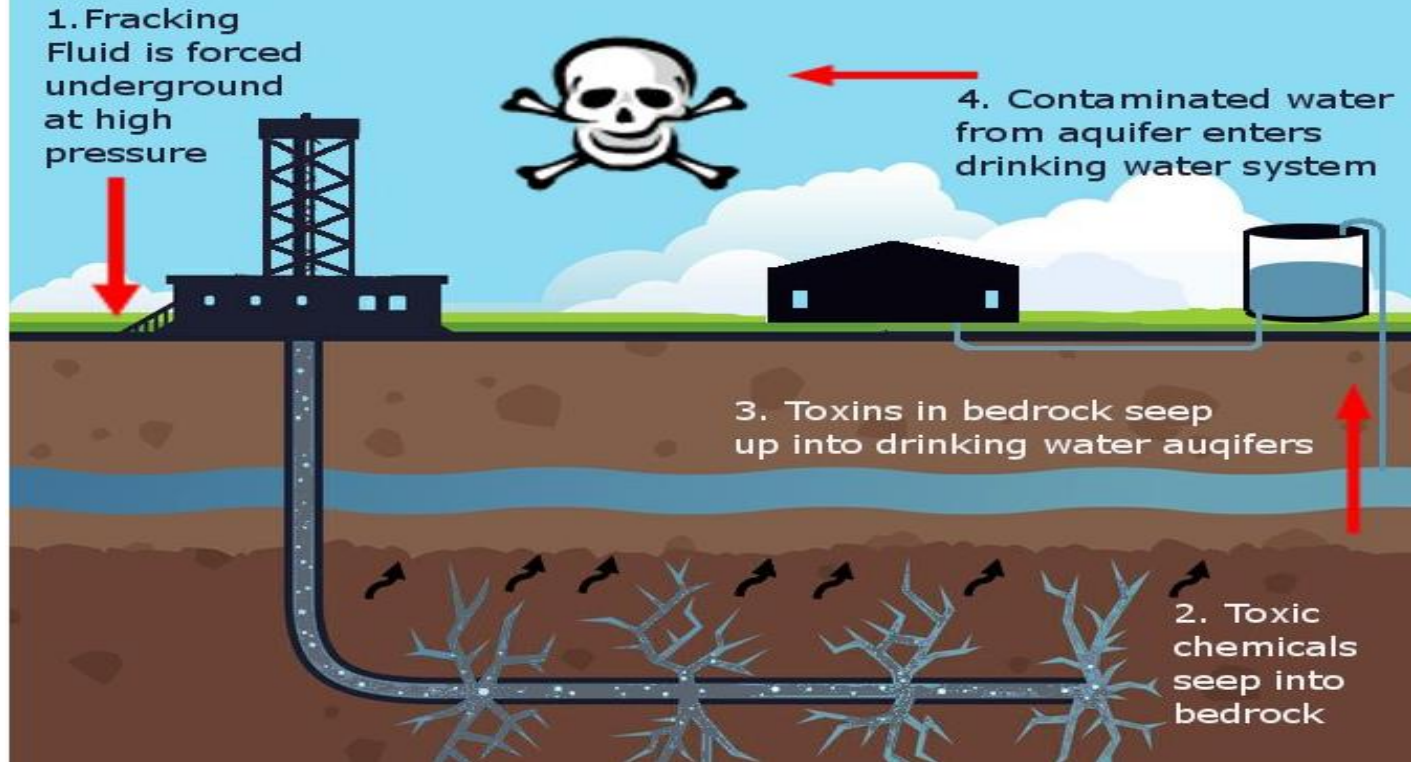
Defendant's Error Rate



Defendant's Error Rate



How Drinking Water gets Fracked



GENERAL THOUGHTS FOR DEMONSTRATIVE SLIDES

SOME GENERAL THOUGHTS ABOUT VISUALS

- We don't create visuals simply by typing the words we intend to speak.
- Think of the picture that comes to mind when you think about a trial theme.
- Avoid using text as a crutch.
- One concept per slide.
- Eliminate extraneous text.
- Make sure the text is legible.
- Build the text—and don't talk about something else or paraphrase.

TYPES OF VISUALS

- Text—with points building.
- Charts
- Graphs
- Photographs
- Timelines
- Maps
- Graphics, Drawings, and Diagrams.
- Recreations

PRELIMINARY THOUGHTS

- Use callouts and highlighting on key documents.
- Combine exhibits with other communication tools.
- Use exhibits and transcripts for comparison and context.
- Animation and simulations can enhance the story you're telling.
- Don't compete with motion.
- Don't overdo animation.

PRELIMINARY THOUGHTS – POWER POINT MISTAKES

- People read bullet points and do not listen
- Walls of text are incomprehensible
- Animation distracts from persuasion
- Don't turn on the audience
- Keep the slides current with the discussion

PRELIMINARY THOUGHTS -- CHARTS

- Right type of chart for the right point
- Clear and quickly understood
- One concept per chart
- Pie charts must total 100%
- Keys to charts are confusing
- Axis labels must be right side up

RULES ON USE OF EXHIBITS

- The court will require the pretrial exchange of exhibits to be used in opening statements.
- On direct examination, can't show (publish) an exhibit to the jury until the judge has admitted the exhibit and allowed it to be published.
- Rule 403—probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

OPENING STATEMENT

DURING OPENING

- Exchange slides with opposing counsel.
- Be certain that the exhibits and demonstratives you use will be admissible or allowed to be shown to the jury during trial.
- Use slides to assist your opening—but don't write out the presentation on the slides.
- Photographs are particularly effective—of the scene, of the parties and witnesses, of the key physical evidence in the case.
- Diagrams, street maps, demonstratives, flow charts.

Presenter to read NY Code

This code is required for all attorneys wishing to receive CLE credit in the state of NY and taking the program 'on-demand' at Celesq AttorneysEd Center either online or via CD

Please notate it carefully

The presenter will only be able to read the code twice and will not be able to repeat it or email it to you.

Thank you!

PHOTOGRAPHS





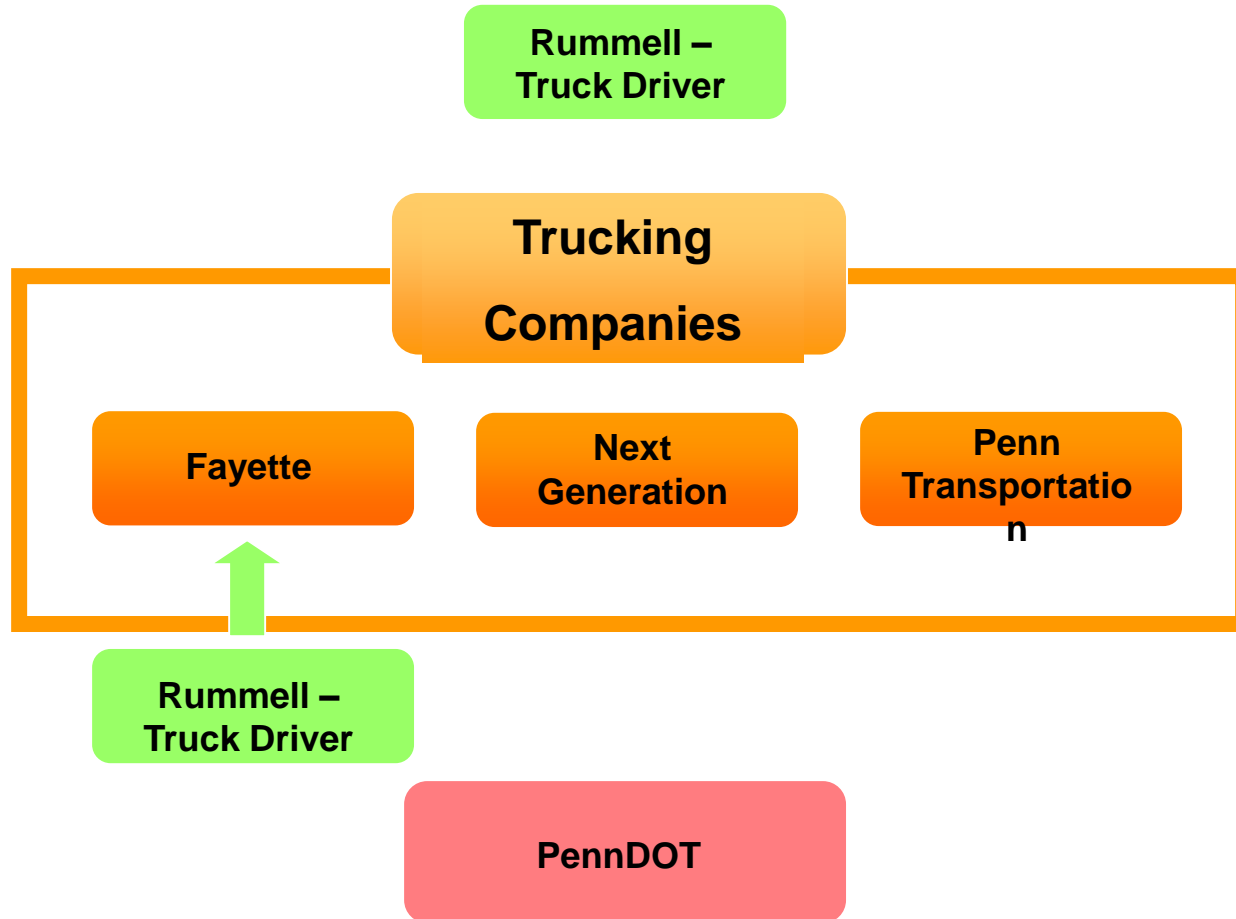


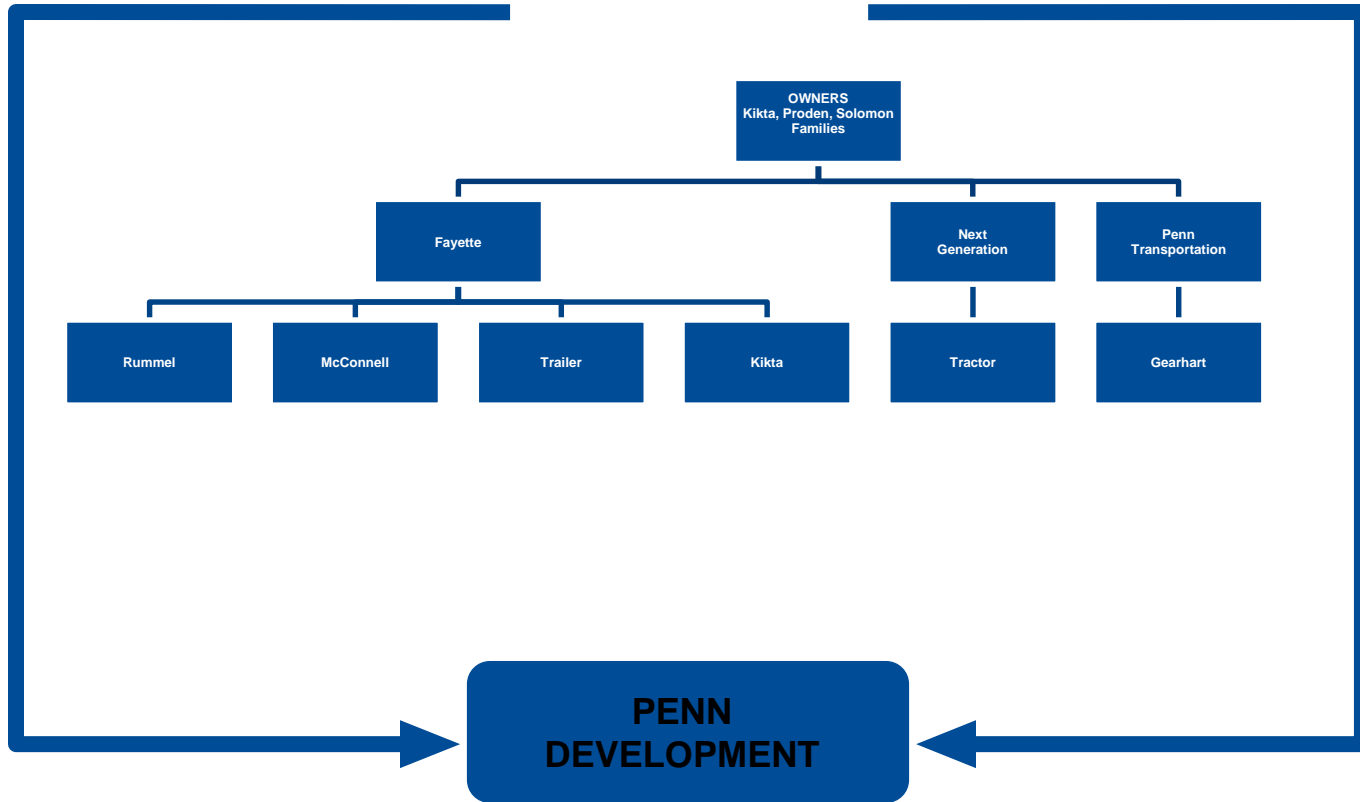




ORGANIZATIONAL CHARTS







PHYSICAL EVIDENCE

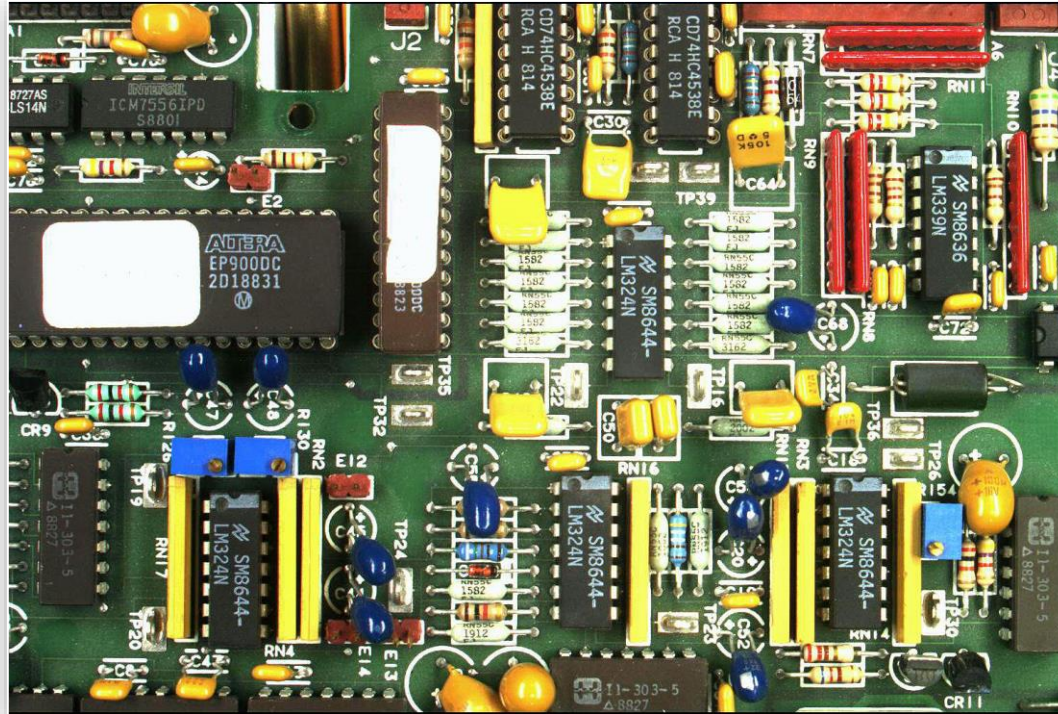


DEMONSTRATIVES

78



PCB BOARD



THE COURT'S CONSTRUCTION OF “COMPLIANT”

Exemplary Claim: '977 Claim 18

- 10 18. A semiconductor chip assembly comprising:
- (a) a semiconductor chip having a front surface and having contacts on said front surface;
 - (b) a plurality of terminals, at least some of said terminals overlying said front surface of said chip;
 - 15 (c) a layer of a compliant material disposed between said terminals and said chip and supporting at least some of said terminals above said front surface; and
 - (d) flexible leads interconnecting said terminals with said contacts on said chip so that said terminals are movable with respect to said contacts.

Court's Claim Construction

a layer that is appreciably compressible in a direction perpendicular to its surface.

DEPOSITION EXCERPTS

DEFENDANT KNEW “NOISE” WOULD AFFECT PCS SHAREHOLDERS’ DECISIONS

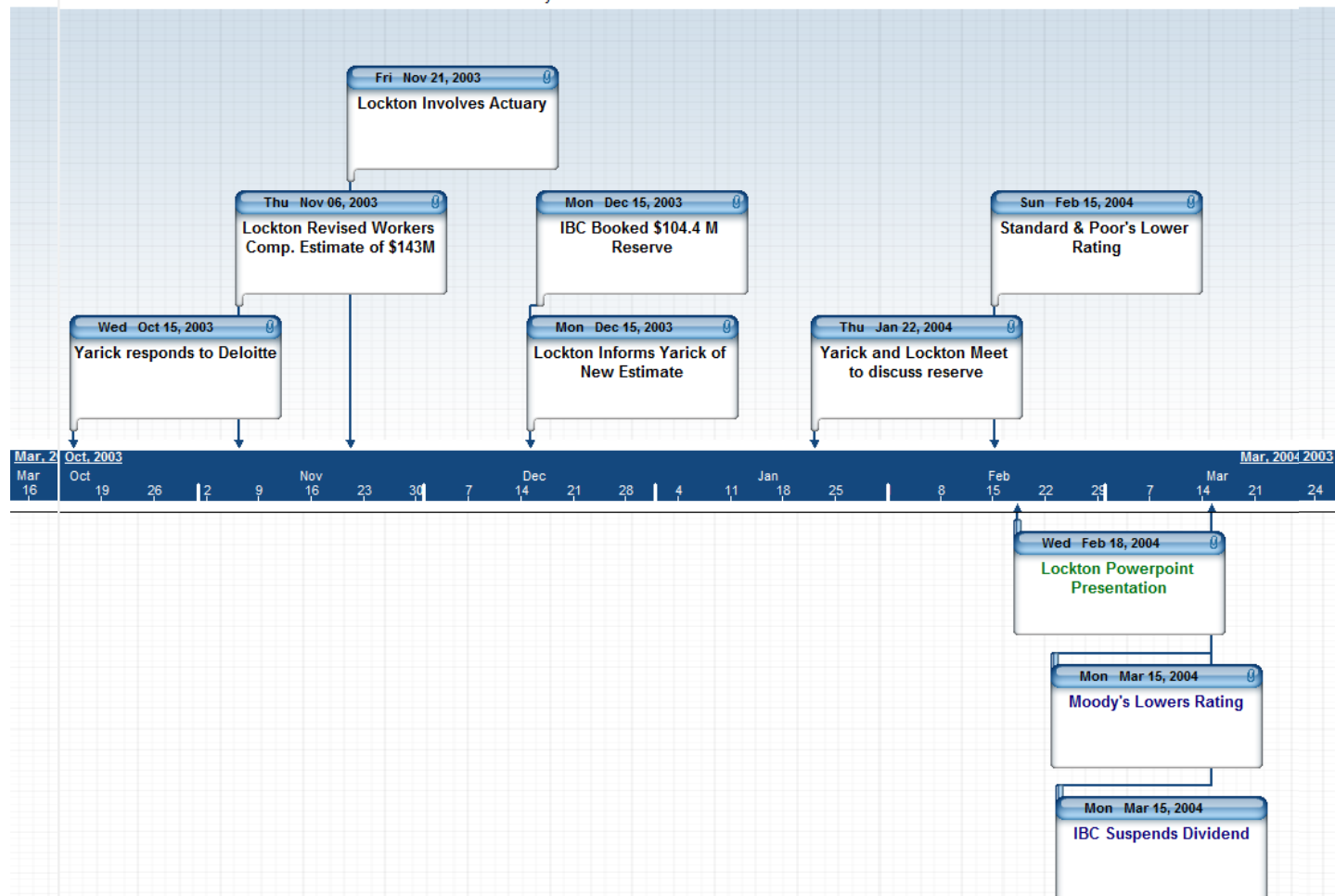


- A. So, yes, us getting in and Vale getting in would – would – would – would affect the existing players.
- Q. And it would affect their potential share value?
- A. Yes.
- Q. And therefore make them easier for you to acquire should you choose to do so?
- A. Should we choose to do so, yeah.

TIMELINES

Elsesser's Connection to the Reserve Dispute

Confirmed by Internal Investigation and SEC Decision Not to Sue



PITTSBURGH SITE TIMELINE - 1980

July 16, 1980

Steelers sells PATG,
including Pittsburgh Site, to
Bravo

Jan Feb Mar Apr May Jun Jul Aug Sept Oct Nov Dec

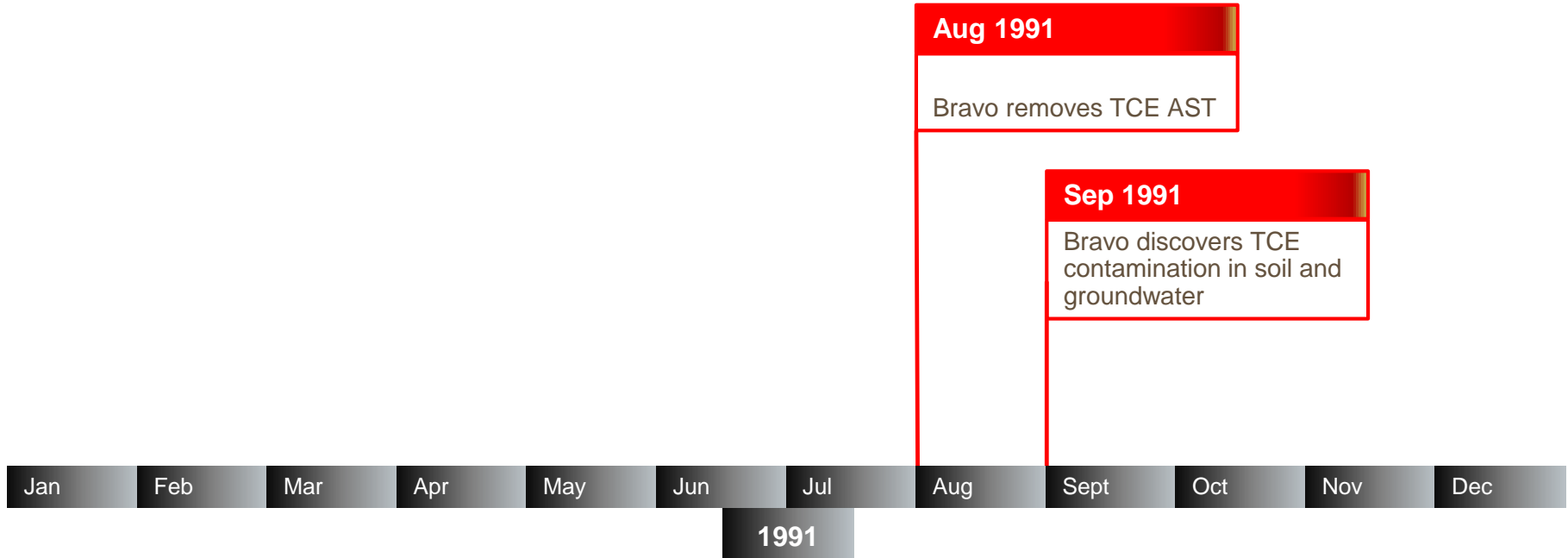
1980



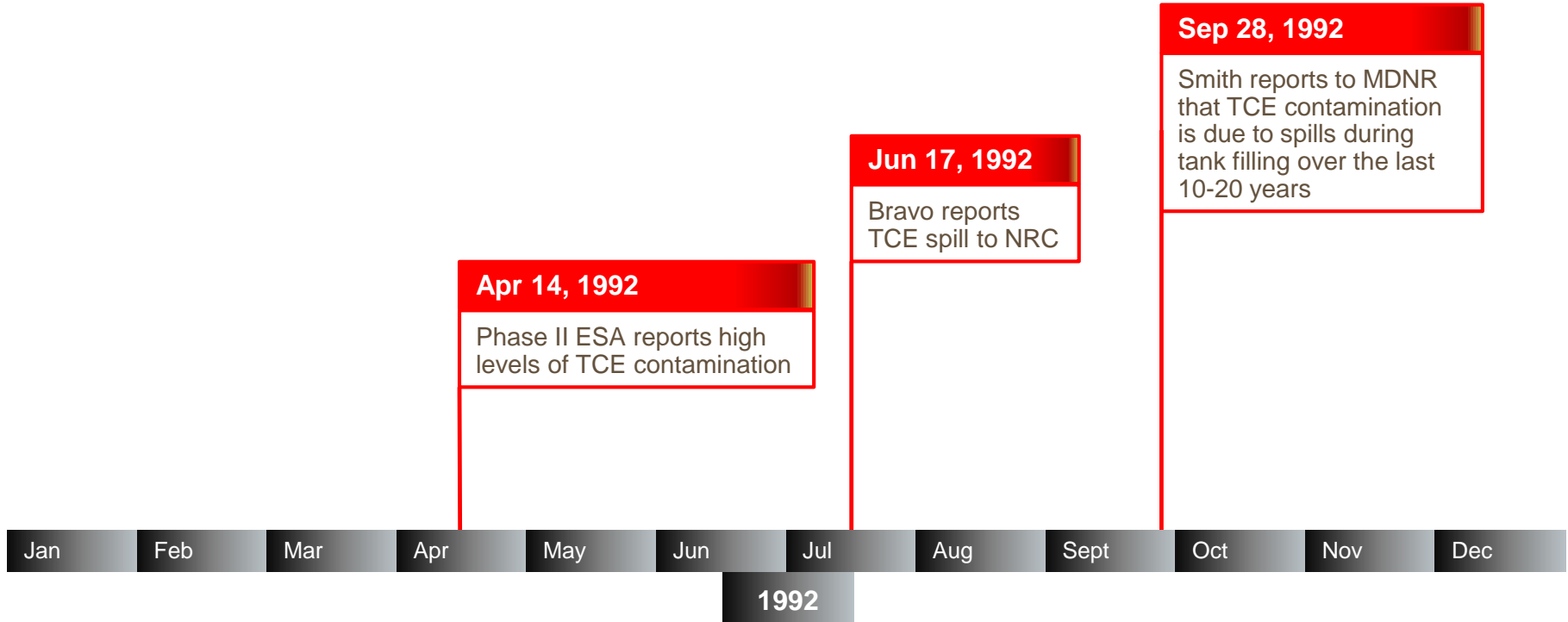
PITTSBURGH SITE TIMELINE – 1980 - 1991

11 years pass

PITTSBURGH SITE TIMELINE - 1991



PITTSBURGH SITE TIMELINE - 1992

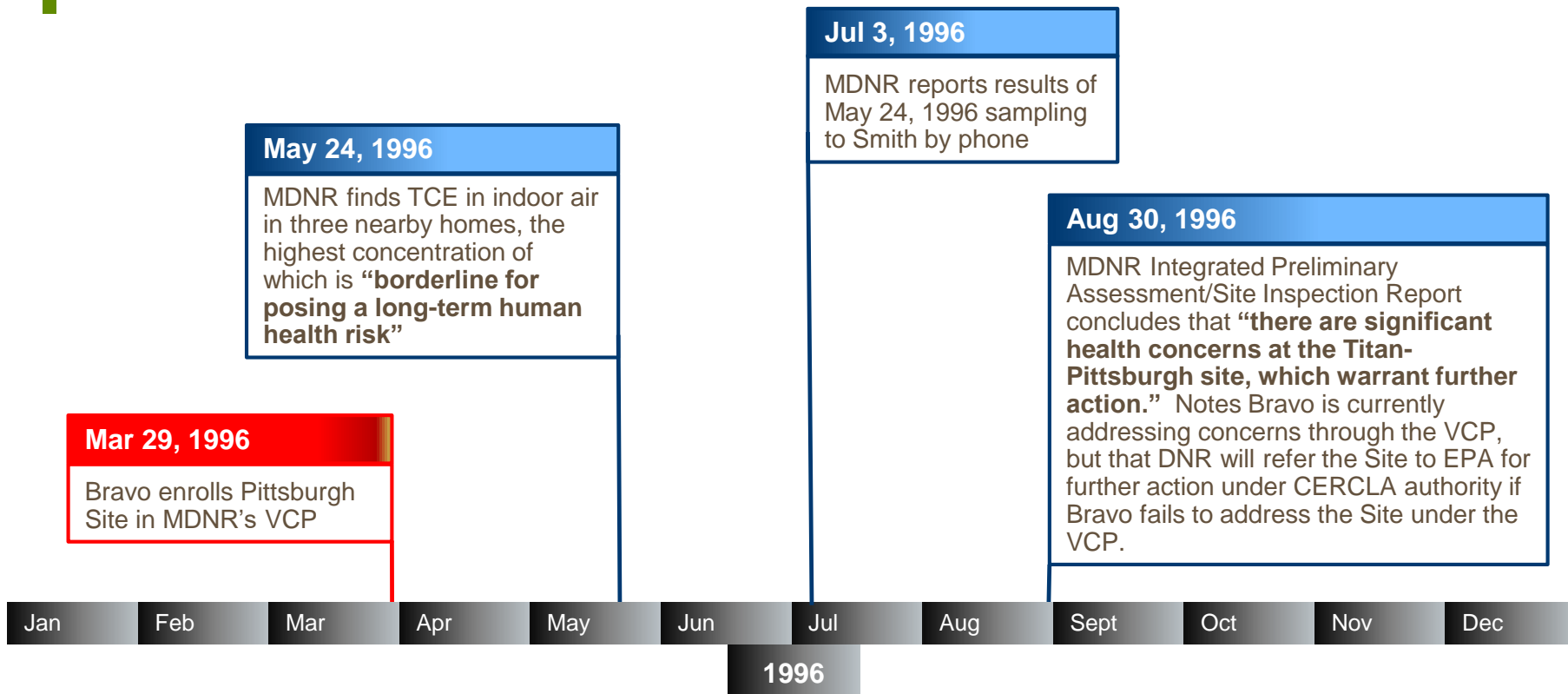




PITTSBURGH SITE TIMELINE – 1992 - 1996

4 years pass

PITTSBURGH SITE TIMELINE - 1996





PITTSBURGH SITE TIMELINE – 1996 - 2001

5 years pass

PITTSBURGH SITE TIMELINE - 2001

Jan 2, 2001

MDNR letter to Bravo states **remedial actions are necessary**, in part, because the groundwater **contaminant plume is continuing to expand and migrate offsite**, and TCE has been detected in a neighboring home. **MDNR requests that Bravo submit a remedial action plan within ninety days.**

Apr 3, 2001

MDNR letter states that Bravo “might better use financial resources by scaling back groundwater monitoring to a semiannual frequency and focusing the cost savings on an aggressive remediation approach to the site”

Jan Feb Mar Apr May Jun Jul Aug Sept Oct Nov Dec

2001



PITTSBURGH SITE TIMELINE – 2001 - 2005

4 years pass

PITTSBURGH SITE TIMELINE - 2005

2005

Bravo requests that remedial actions at the Pittsburgh Site be delayed while Bravo addresses a different site, and MDNR agrees

Jan Feb Mar Apr May Jun Jul Aug Sept Oct Nov Dec

2005



PITTSBURGH SITE TIMELINE – 2005 - 2010

5 years pass

PITTSBURGH SITE TIMELINE - 2010

Apr 6, 2010

MDNR letter requests remedial action plan within ninety days, nothing that:

- The decision to delay remediation at the Pittsburgh Site while Bravo addressed contamination at a different site was made at least five years ago, and progress towards a remedy at the other site is insufficient
- **“The purpose of the [VCP] is not indefinite monitoring without pursuing a remedy”**
- The Pittsburgh Site **“has very significant levels of contamination”** and **“the deep groundwater plume appears to be expanding,”** such that remedial action is needed

Jan Feb Mar Apr May Jun Jul Aug Sept Oct Nov Dec

2010

PITTSBURGH SITE TIMELINE - 2011

Feb 3, 2011

MDNR repeats request
for remedial action plan

Sep 13, 2011

Without ever performing any remedial action at the Pittsburgh Site, Bravo sells the Site to Cotton for \$150,000 and seeks to shift all environmental liabilities at the Site to Cotton without performing any due diligence

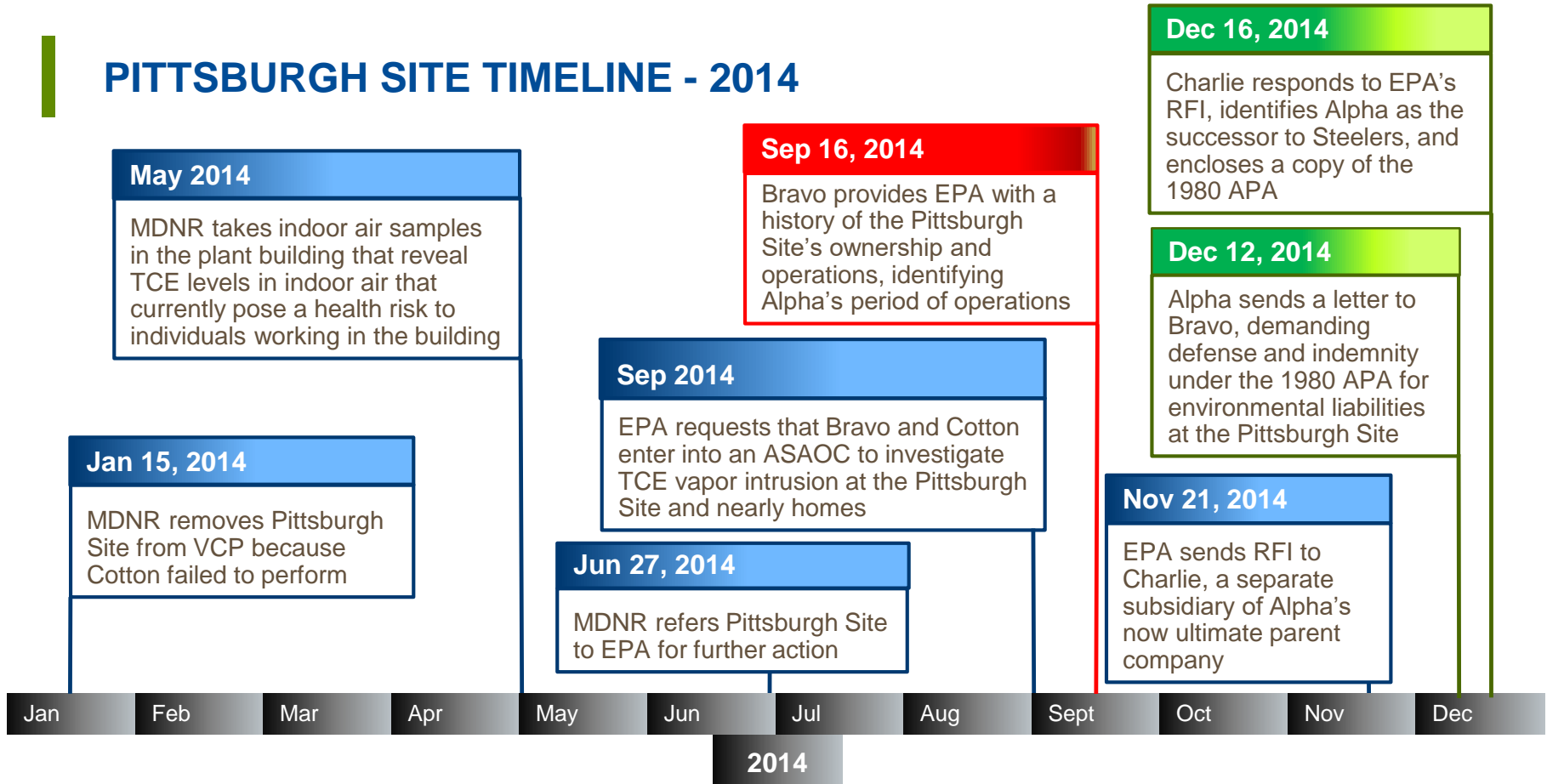
Jan Feb Mar Apr May Jun Jul Aug Sept Oct Nov Dec

2011

PITTSBURGH SITE TIMELINE -2012



PITTSBURGH SITE TIMELINE - 2014



PITTSBURGH SITE TIMELINE - 2015

Jan 12, 2015

Bravo's first correspondence to Alpha regarding the Pittsburgh Site - It is in response to Alpha's letter, and states Bravo did not assume any liability for the Pittsburgh Site under the 1980 APA

Feb 2, 2015

EPA sends RFI to Alpha

Feb 26, 2015

Alpha responds to EPA's RFI and encloses a copy of the 1980 APA

Nov 20, 2015

Bravo, Cotton, and EPA enter into VI ASAOC

Nov 12, 2015

Bravo and Cotton enter into Environmental Work and Indemnity Agreement, again shifting liability to Cotton

Jan

Feb

Mar

Apr

May

Jun

Jul

Aug

Sept

Oct

Nov

Dec

2015

DIRECT EXAMINATION

DURING DIRECT EXAMINATION OF LAY WITNESSES

- On direct examination, can't show (publish) an exhibit to the jury until the judge has admitted the exhibit and allowed it to be published.
- Witness must testify to the authenticity of the exhibit or correctness of the demonstrative before it can be used.
- Use the exhibit to illustrate the direct testimony.
- Use the exhibit to turn the witness into a teacher—out of the witness chair if possible.
- Build text slides as the witness testifies.

DURING DIRECT EXAMINATION OF LAY WITNESSES

- Use call outs to highlight text in documents.
- Trial Director allows you to do it on the fly. PowerPoint requires that the slides be prepared in advance.
- Documents without callouts are hard to read—and the risk is that the jury reads too much or too long, missing key testimony.

DURING DIRECT EXAMINATION OF LAY WITNESSES—SOME EXAMPLES

- Callouts in documents.

August 25, 2010: Denies Any Changes

Preliminary Results Year Ended June 2010




BHP Billiton Preliminary Results for
Year Ended June 2010



MR YOUNG: Hi, it's it's Paul Young from Deutsche Bank. Can I focus on the build versus buy strategy uh in Potash uhm and have the economics changed on Jansen because I see now that you have split Jansen on your project bubble chart into in a phase 1 and a phase 2. And I

Uhm so let me put it even more simply, I cannot go out tomorrow morning and decide to deploy \$40 billion of capex in the potash industry because I don't have the human resources to do that. Uhm, with respect to Jansen, I think that our team in Canada, Graham Kerr and the team there, uh have uh shed some uhm uh given some information of how we look at that. I mean, while we'll give you more information as we go ahead, we we're going as hard on that project as we can. The next phase for us, which is quite imminent, is to put the refrigeration plant on the surface and freeze the shaft. It's a single shaft location. Uhm, and, yes, the targeted lift on that single shaft – it's a twin shaft system, one is a production shaft and the other one is a support shaft, but that twin shaft, which it's always been, uh only one production shaft is targeted for eight million tons of product a year. And basically what you do is – and I'm going to describe it very generically, as you sink the shaft you open up your mining fronts, you build the surface plant in modules as the number of mining fronts open up. And as you ramp that up and, you know, Graham and the team there are going to try and – when we get to the approval point, try and ramp that up as quickly as possible. No changes. Perhaps one more question in Sydney and then I'm going to try and see if there's anybody else on the on the phones at this side.

No changes.

M-836P	Appl Id: H001602585	Permit No: 2003-105-12-07129
	COMMONWEALTH OF PENNSYLVANIA Special Hauling Permit Subject to all the conditions, restrictions and regulations prescribed by the Pennsylvania Dept. of Transportation (see in particular 87 PA Code/Chapter 170) and subject to the special conditions or restrictions set forth herein or attached hereto.	

Permit Office: 12-0 Date issued: 04/15/2003 Time issued: 2:34 PM	Motor Carrier Name and Address FAYETTE TRANSPORTATION SERV. INC. PO BOX 1081 UNIONTOWN PA 15401
Permit Type: SINGLE TRIP	Aest No: 33 FAYETTE TRANSPORTATION SERVICE

Move Information		
Move Begins: 04/15/2003	SPC Code: AZWF	Total Fees: 78.70
Move Ends: 04/21/2003	Meet PSP Date: N/A	Total Miles: 65
Move #: N/A		
Meet PSP at: N/A		
NATL Park Service Approval #: N/A		

Power and Drawn Units			
Unit #	Equipment Type	Registration/VIN	State # of Axles
1	P-TRUCK TRACTOR	AE68212	PA 4
2	D-SEMITRAILER	PT1871A	PA 4

Size Information			
Length	Ft. In.	Width	Ft. In.
Total Length: 00082	00	Total Width: 00011	11
Veh Only Len: 00000	00	Veh Only Width: 00000	00
Front Overhang: 00000	00	Rear Overhang: 00000	00
		(Zeros = not specified)	

CARROLL TOWNSHIP

ID:7244839549

APR 29'03 21:34 NO.002 P.14

M-836P	Appl Id: H001602565	Permit No: 2003-105-12-07129
		
<p align="center">COMMONWEALTH OF PENNSYLVANIA Special Hauling Permit</p>		
<p align="center"><small>Subject to all the conditions, restrictions and regulations prescribed by the Pennsylvania Dept. of Transportation (see in particular 57 Pa Code Chapter 178) and subject to the special conditions or restrictions set forth herein or attached hereto.</small></p>		
Authorized Routes	Outgoing Route - Loaded	
Lee Bert County	Travelling on Route	Dr BR Miles To Intersection
		11.82 BR0819

BR: 0088**Br Label: ON PASS 18.20 MI S FROM PA51**

9900 NO OTHER VEHICLE ON SAME BRIDGE SPAN WHILE CROSSING STRUCTURE(S). PILOT CAR(S) REQUIRED WHILE CROSSING STRUCTURE(S) - SEE REGULATION 178.10(13).

13 ALLEGHENY BR3071	North 0.99 BR3070 / BOGGS RD (R)
14 ALLEGHENY BR3070	East 0.00 3071

From/To Intersection Or Bridge Label	Restr Code	Route Analysis Restriction
BR: 0088 Br Label: ON PASS 18.20 MI S FROM PA51	9900	NO OTHER VEHICLE ON SAME BRIDGE SPAN WHILE CROSSING STRUCTURE(S). PILOT CAR(S) REQUIRED WHILE CROSSING STRUCTURE(S) - SEE REGULATION 178.10(13).
BR: 0022 Br Label: ON US22 0.08 MI W FROM EXIT 11 CAMPBELLS RUN RD	9902	STRADDLE LANE MARKING TO OCCUPY TWO LANES WHILE CROSSING STRUCTURE(S). PILOT CAR(S) REQUIRED WHILE CROSSING STRUCTURE(S) - SEE REGULATION 178.10(13).

BMI
BMI
BMI *bmi.com*
One Industrial Drive
Brookline, Massachusetts 02146
(800) BMI-2000 Fax (877) BMI-2222

July 1, YR -2

Dear Customer,

Below are our latest prices for Integrated Chip Platforms. Please note that our price increase is the lowest in the industry. We regret the increases, but higher costs for raw materials made them impossible to avoid.

PART NO.	PRICE PER GROSS
ICP-14	\$12,250.00
ICP-22	\$11,500.00
ICP-26	\$11,000.00
ICP-26A	\$11,100.00
ICP-36	\$10,800.00

We regret that we cannot accept telephone or e-mail orders.

BMI SELLS THESE PARTS IN LOTS OF ONE GROSS. SMALLER ORDERS WILL NOT BE ACCEPTED.

PAYMENT TERMS ARE CASH WITHIN SIXTY DAYS. A 2 PERCENT DISCOUNT (GOODS ONLY) IS GIVEN FOR PROMPT PAYMENT WITHIN THIRTY DAYS; 1.5 PERCENT PER MONTH IS CHARGED ON ACCOUNTS NOT PAID WITHIN SIXTY DAYS.

WE REGRET THAT WE CANNOT ACCEPT TELEPHONE OR E-MAIL ORDERS. PLEASE SEND YOUR WRITTEN ORDER BY FAX OR MAIL TO OUR NEAREST SALES OFFICE. FOR THE FAX NUMBER AND ADDRESS, CALL TOLL FREE (800) BMI-2000 OR VISIT OUR WEB SITE AT WWW.BMI.COM.

BMI APPRECIATES YOUR BUSINESS

DURING DIRECT EXAMINATION OF LAY WITNESSES—SOME EXAMPLES

- Callouts in documents.
- Deposition transcripts.

August 25, 2010: BHP Denies Any Changes

Preliminary Results Year Ended June 2010



BHP Billiton Preliminary Results for
Year Ended June 2010



MR YOUNG: Hi, it's it's Paul Young from Deutsche Bank. Can I focus on the build versus buy strategy uh in Potash uhm and have the economics changed on Jansen because I see now that you have split Jansen on your project bubble chart into a phase 1 and a phase 2. And I

Uhm so let me put it even more simply, I cannot go out tomorrow morning and decide to deploy \$40 billion of capex in the potash industry because I I don't have the human resources to do that. Uhm, with respect to Jansen, I think that our team in Canada, Graham Kerr and the team there, uh have uh shed some uhm uh given some information of how we look at that. I mean, while we'll give you more information as we go ahead. we we're going as hard on that project as we can. The next phase for us, which is quite imminent, is to put the refrigeration plant on the surface and freeze the shaft. It's a single shaft location. Uhm, and, yes, the targeted lift on that single shaft – it's a twin shaft system, one is a production shaft and the other one is a ah support shaft, but that twin shaft, which it's always been, uh only one production shaft is targeted for eight million tons of product a year. And basically what you do is – and I'm going to describe it very generically, as you sink the shaft you open up your mining fronts, you build the surface plant in modules as the number of mining fronts open up. And as you ramp that up and, you know, Graham and the team there are going to try and – when we get to the approval point, try and ramp that up as quickly as possible. No changes. Perhaps one more question in Sydney and then I'm going to try and see if there's anybody else on the on the phones at this side.

No changes.

DURING DIRECT EXAMINATION OF LAY WITNESSES—SOME EXAMPLES

- Callouts in documents.
- Deposition transcripts.
- Photographs.



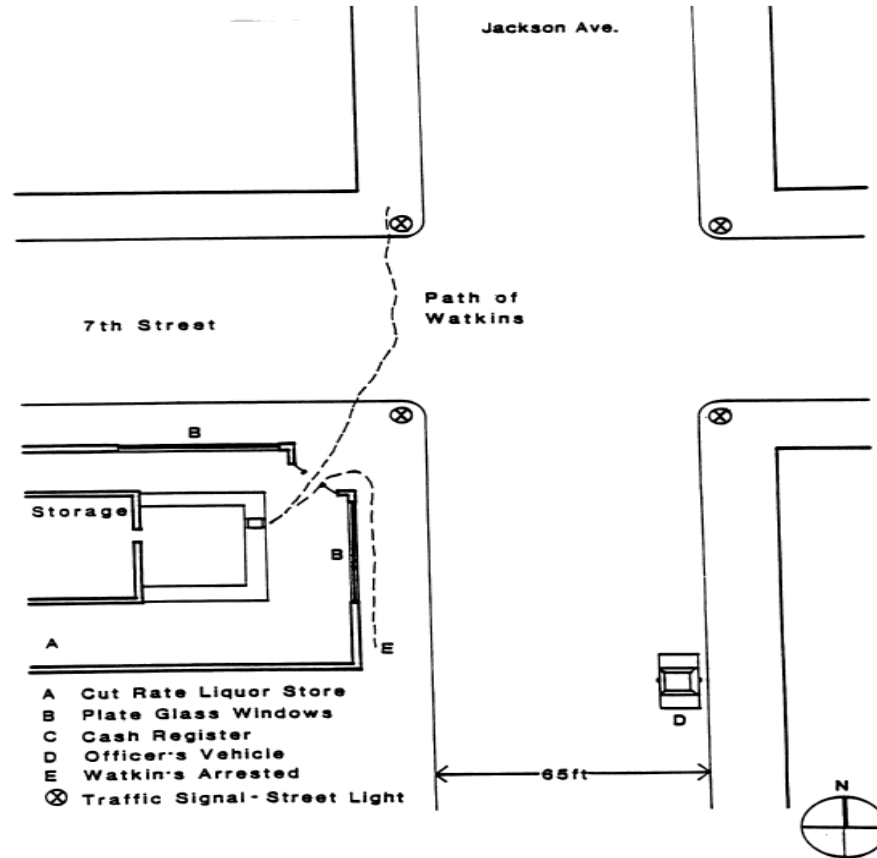
Figure 39
Closer View of the Damage on the Driver's Side





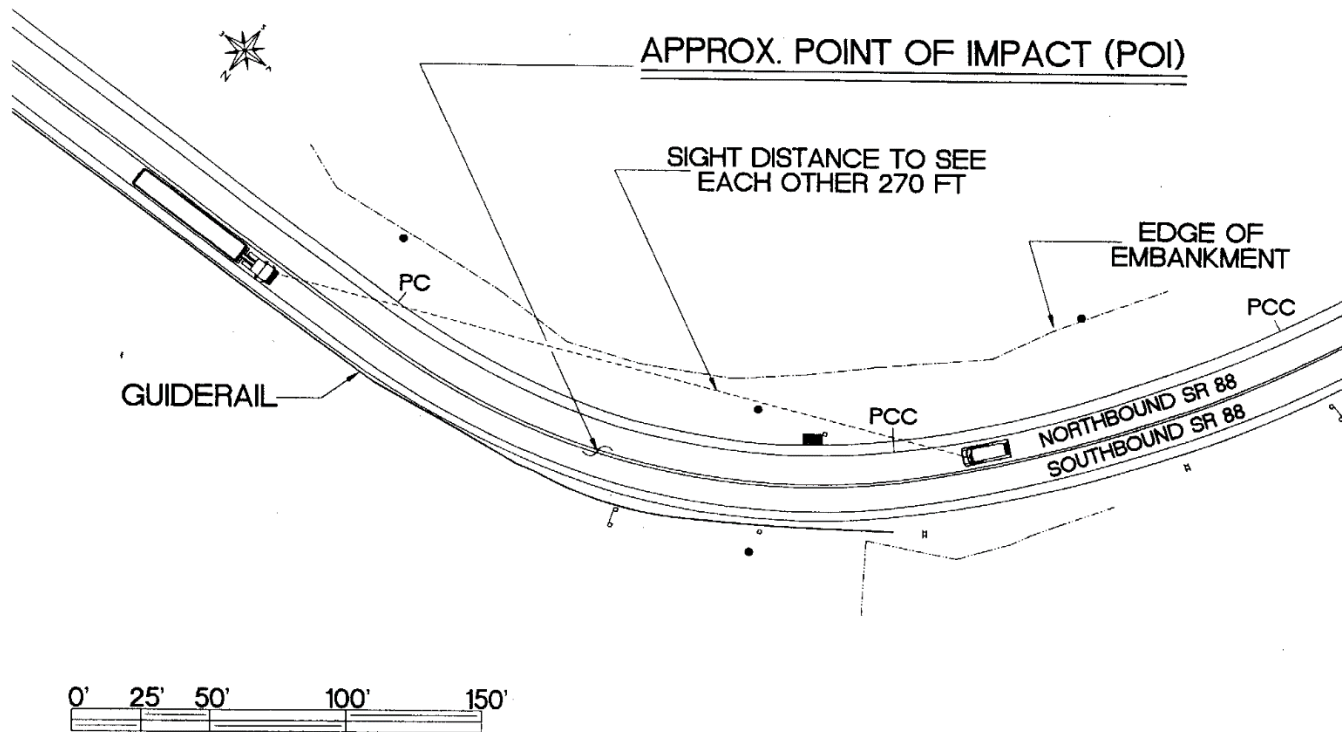
DURING DIRECT EXAMINATION OF LAY WITNESSES—SOME EXAMPLES

- Callouts in documents.
- Deposition transcripts.
- Photographs.
- Setting the Scene.

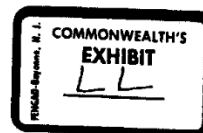


DURING DIRECT EXAMINATION OF EXPERT WITNESSES—SOME EXAMPLES

- Demonstratives to explain expert testimony.



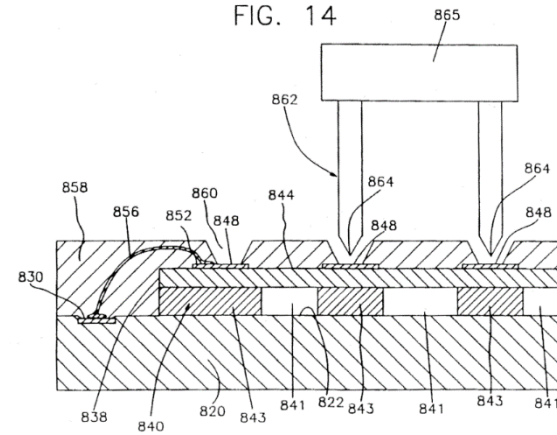
Sight distance to see each other, approx. 270 feet.



Compressibility or Compliance

stantially independently of the other terminals. Compliant layer **840** need only provide for sufficient downward movement of terminals **848** to accommodate tolerances in the components and test equipment by accomodating differences in vertical position between adjacent terminals and/or test probes. Typically, about **0.125 mm or less compliance is sufficient**. For example, complaint layer **840** may be about **0.2 mm thick**.

'977; 19:9-16



$$\frac{0.125 \text{ mm compliance}}{0.2 \text{ mm thickness}} = 62\% \text{ compressibility}$$

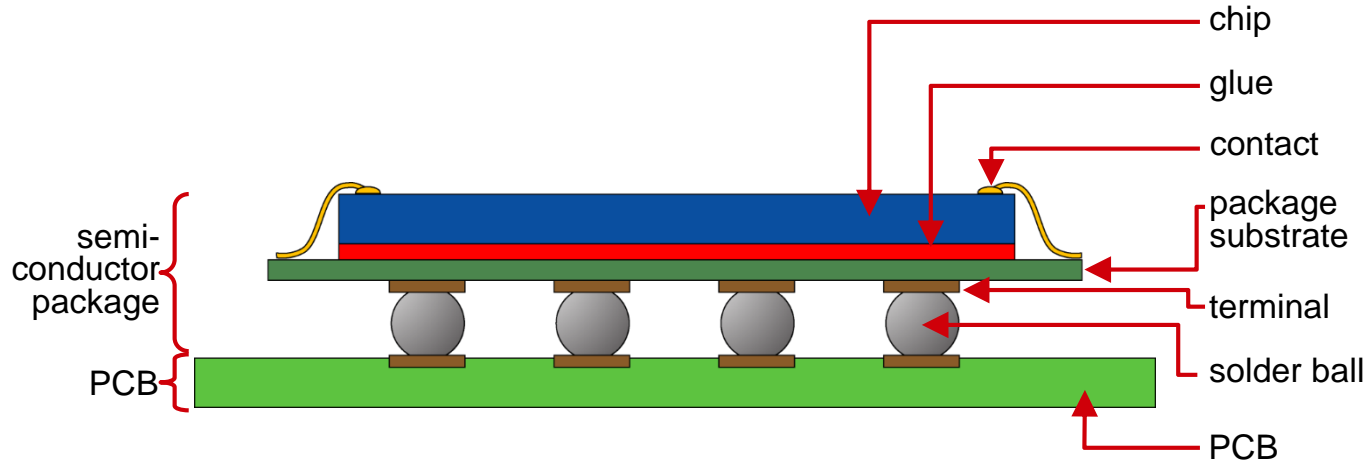
Tessera

≠

1-2% compressibility

Micron

Semiconductor Package (Without Encapsulant)



DURING DIRECT EXAMINATION OF EXPERT WITNESSES—SOME EXAMPLES

- Demonstratives to explain expert testimony.
- To summarize testimony.

Economic Loss
From the Death of Ricky LaPlace

\$650,000.00

*** From the expert testimony of Dr. Steven Klepper, Ph.D**

**DELAY IN REMEDIATION
ADDITIONAL COST
>\$8,000,000**

Exhibit 2

SUMMARY OF ORIGINAL BID WORKSHEETS
FOR ELECTRICAL SUBCONTRACT*

Direct Labor	\$ 880,000
Fringe Benefits at 15%	132,000
Total Labor Cost	<hr/> \$1,012,000
Overhead at 12% of Total Labor Cost	121,000
Material Cost	450,000
Other Direct Costs	50,000
Indirect Costs	57,000
Profit at 5%	85,000
Total Bid	<hr/> \$1,775,000

PLAINTIFF'S SUMMARY OF ADDITIONAL COSTS CLAIMED
(Prepared 7/20/2018 by Sanford & Co.)

Labor (including fringe benefits)		1,527,000
Actual labor incurred	\$2,579,000	
Less initial estimate	<u>(1,012,000)</u>	
Labor overrun	1,567,000	
Less labor for extra work due to plaintiff's mistakes	<u>(40,000)</u>	
<i>Amount claimed</i>	1,527,000	
Overhead		\$305,000
Jerry's overhead is calculated at 20% of labor costs		
20% of labor overrun	\$313,000	
Less 20% of labor for extra work due to plaintiff's mistakes	<u>(8,000)</u>	
<i>Amount claimed</i>	\$305,000	
Materials		\$400,000
Actual materials	\$900,000	
Less initial estimate	<u>(450,000)</u>	
Materials overrun	450,000	
Less cost of materials used in extra work due to plaintiff's mistakes	<u>(50,000)</u>	
<i>Amount claimed</i>	\$400,000	
Other Direct Costs		\$120,000
These are the costs for renting a warehouse near the job site for an extra 1,000 days (\$85,000) and the additional costs of hiring subcontractors to pump ground water from the job side (\$35,000).		
Indirect Costs		\$150,000
Costs of maintaining an office and project management at the job site for an extra 1,000 days.		

	<i>Total of Above Charges</i>	\$2,502,000
Lost Profits		\$125,000
Jerry's past experience has shown that normal pretax profits on similar jobs are 5% of the contract amount. The amount shown is 5% of the cost overruns set forth above.		
Total Costs		\$2,627,000
Less change orders already paid per changes in design specifications made by owner		<u>(200,000)</u>
	<i>Total Amount Claimed</i>	\$2,427,000

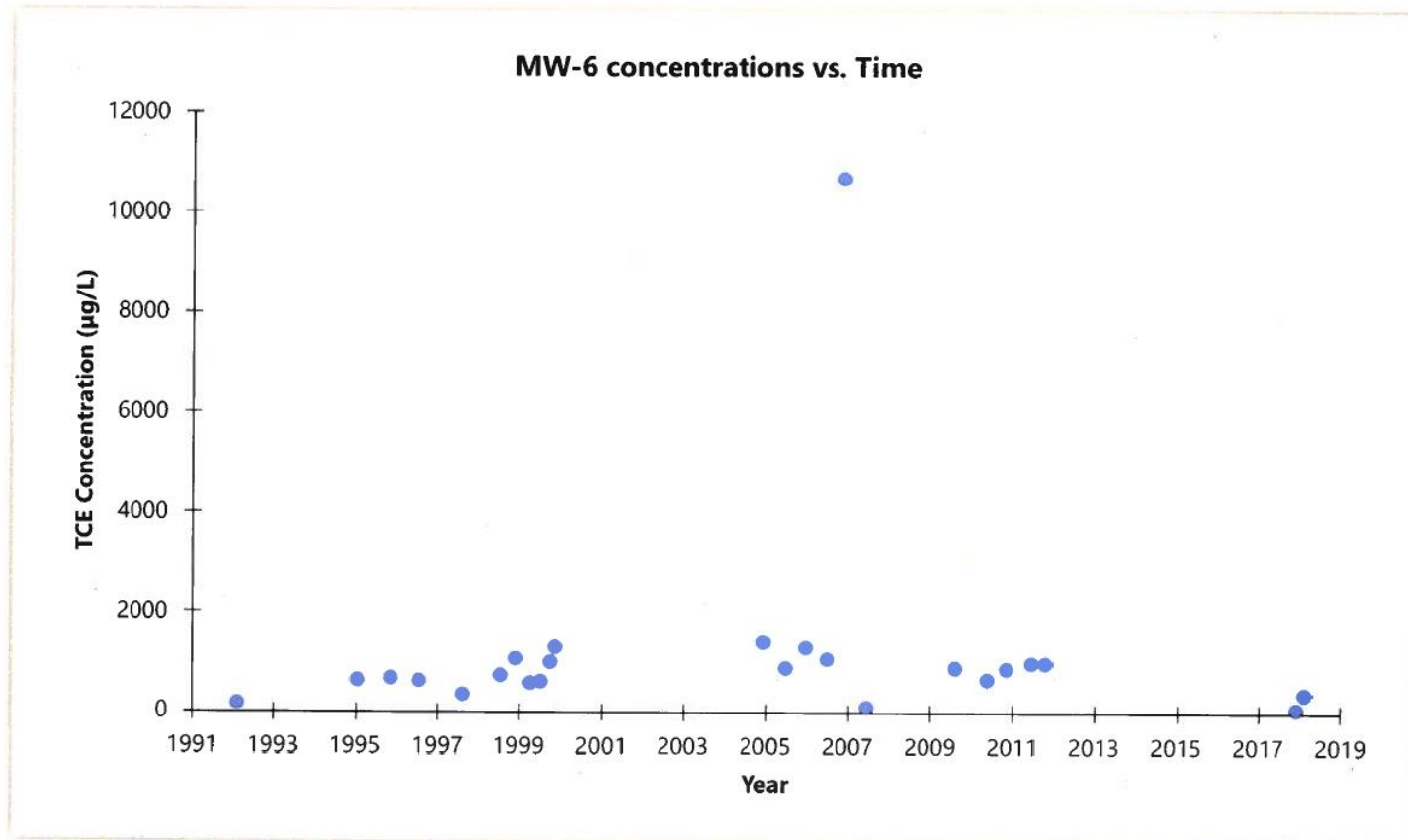
DEFENDANT'S EXPERT'S ANALYSIS OF PLAINTIFF'S CLAIM

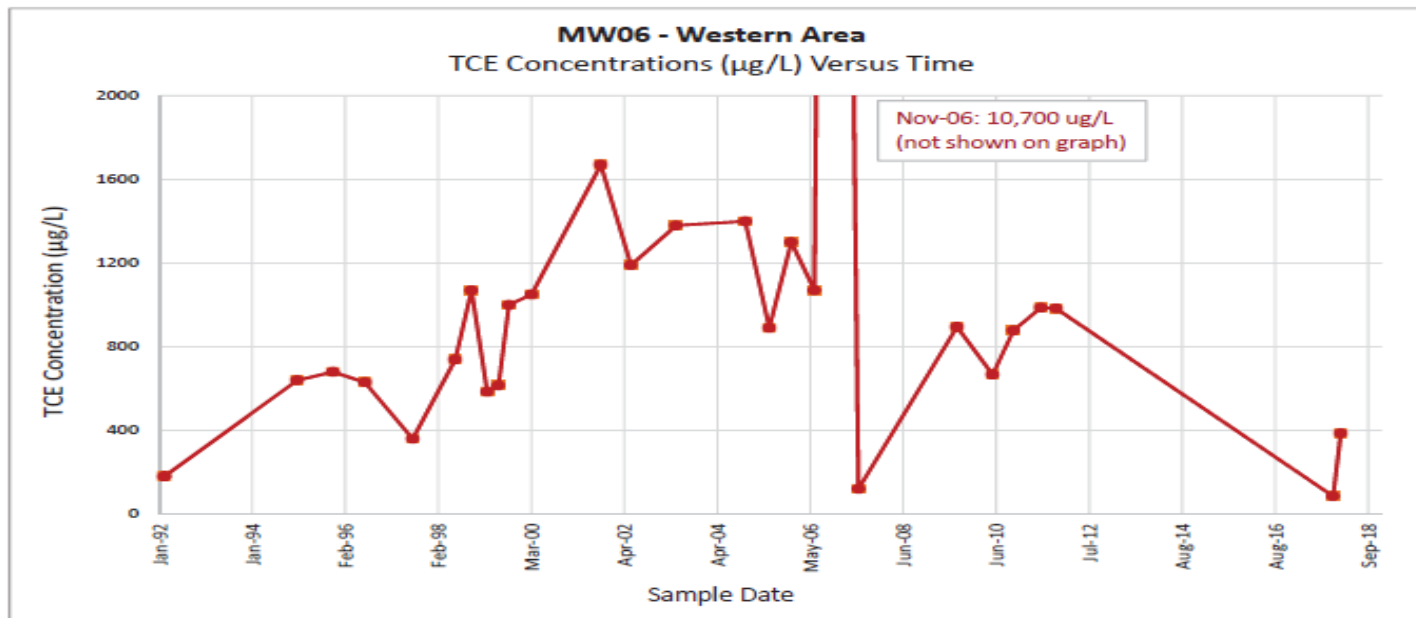
(Prepared 9/6/2018 by Madden & Co.)

	Plaintiff's Claim*	Analysis by Madden & Co.
Labor	\$1,527,000	\$450,000
Overhead	305,000	54,000
Materials	400,000	50,000
Other Direct Costs	120,000	—
Indirect Costs	150,000	—
Lost Profits	125,000	—
Total Costs	2,627,000	554,000
Less—Change Orders Already Paid	(200,000)	(200,000)
Amount Claimed	\$2,427,000	\$354,000

CROSS EXAMINATION

Berman Rebuttal





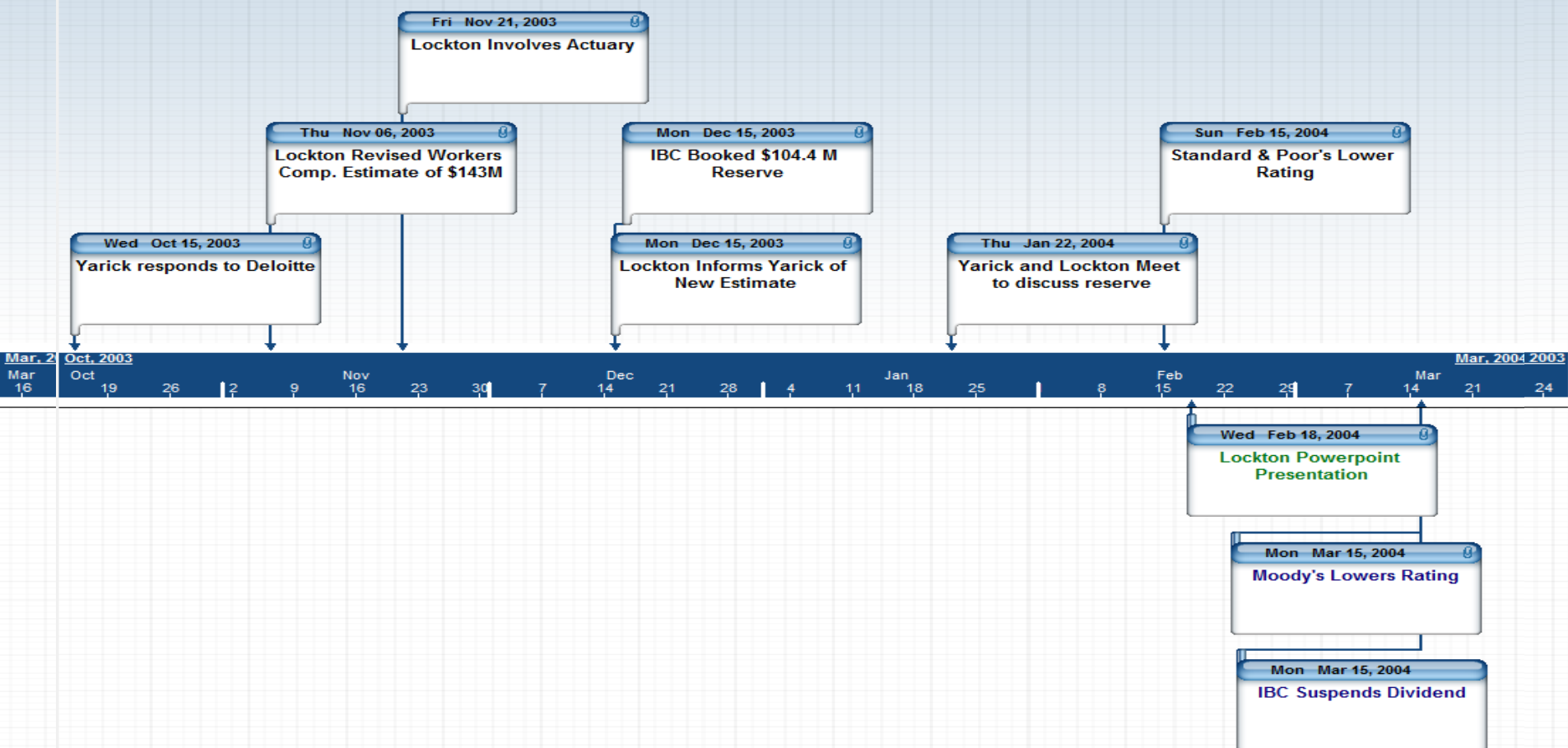
Notes:

1. See Attachment 3, Tables 3a and 3b for data sources.

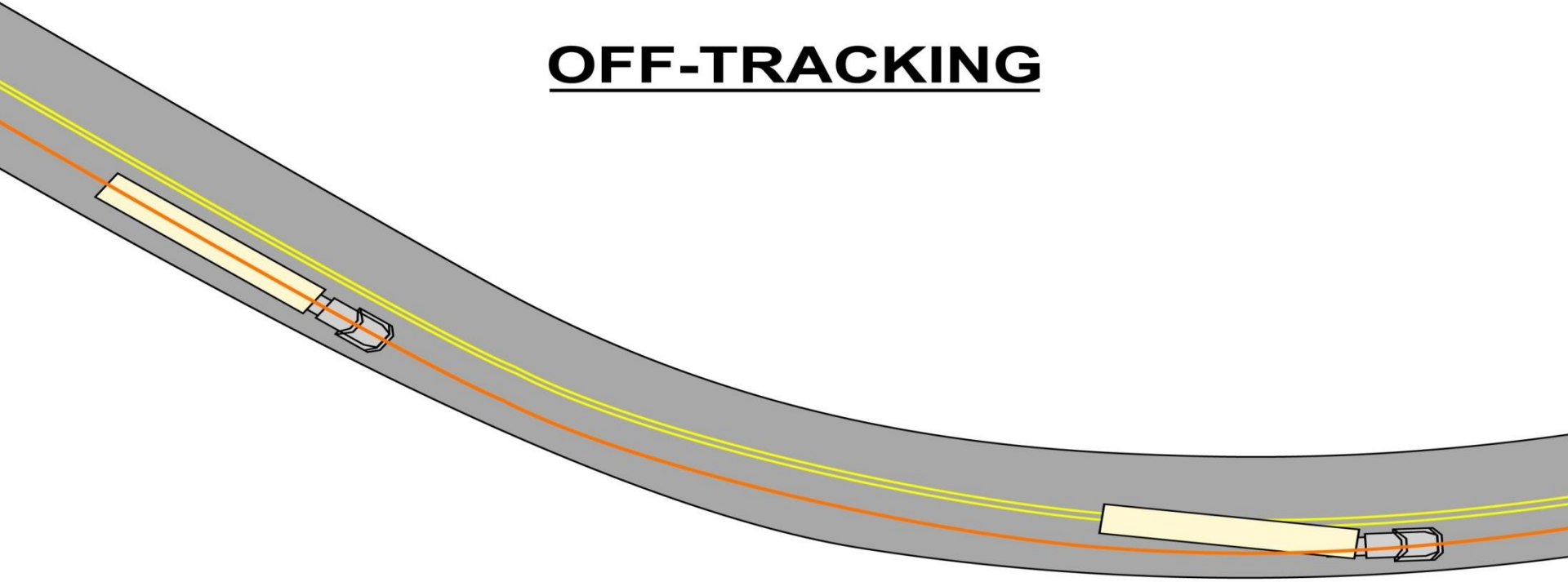
Example 6b: MW06 Western Area Former Toastmaster Facility Macon, Missouri	
Geosyntec consultants	
Washington, D.C.	Figure 6b
June 2018	

Elsesser's Connection to the Reserve Dispute

Confirmed by Internal Investigation and SEC Decision Not to Sue



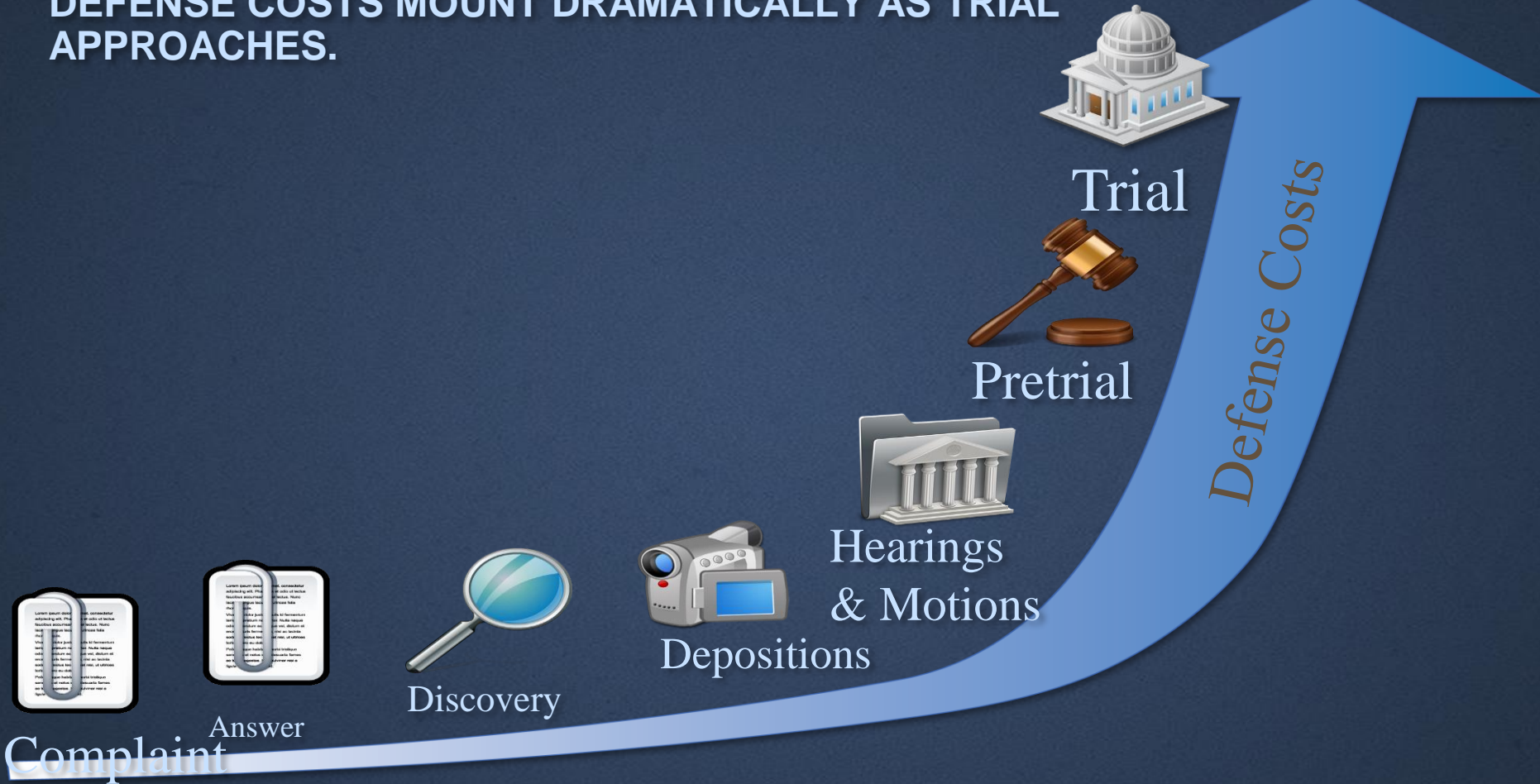
OFF-TRACKING



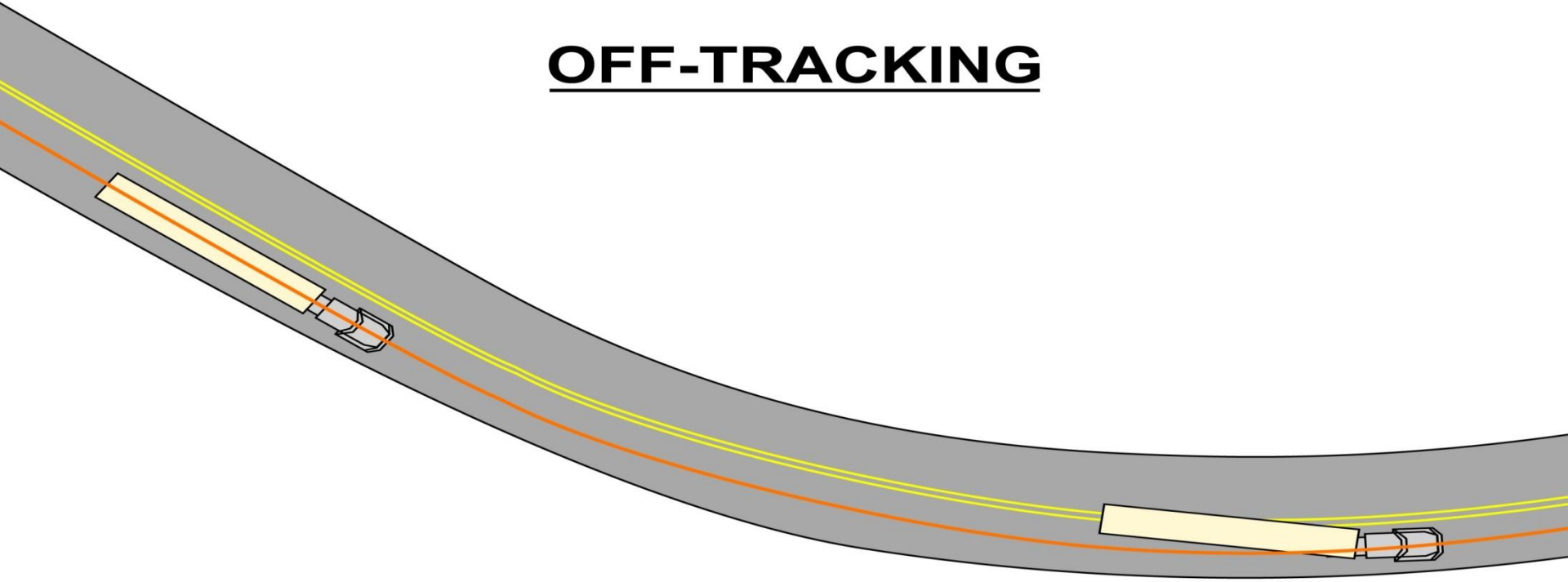
PATH TRACED BY CENTER OF STEERING AXLE

CLOSING

DEFENSE COSTS MOUNT DRAMATICALLY AS TRIAL APPROACHES.

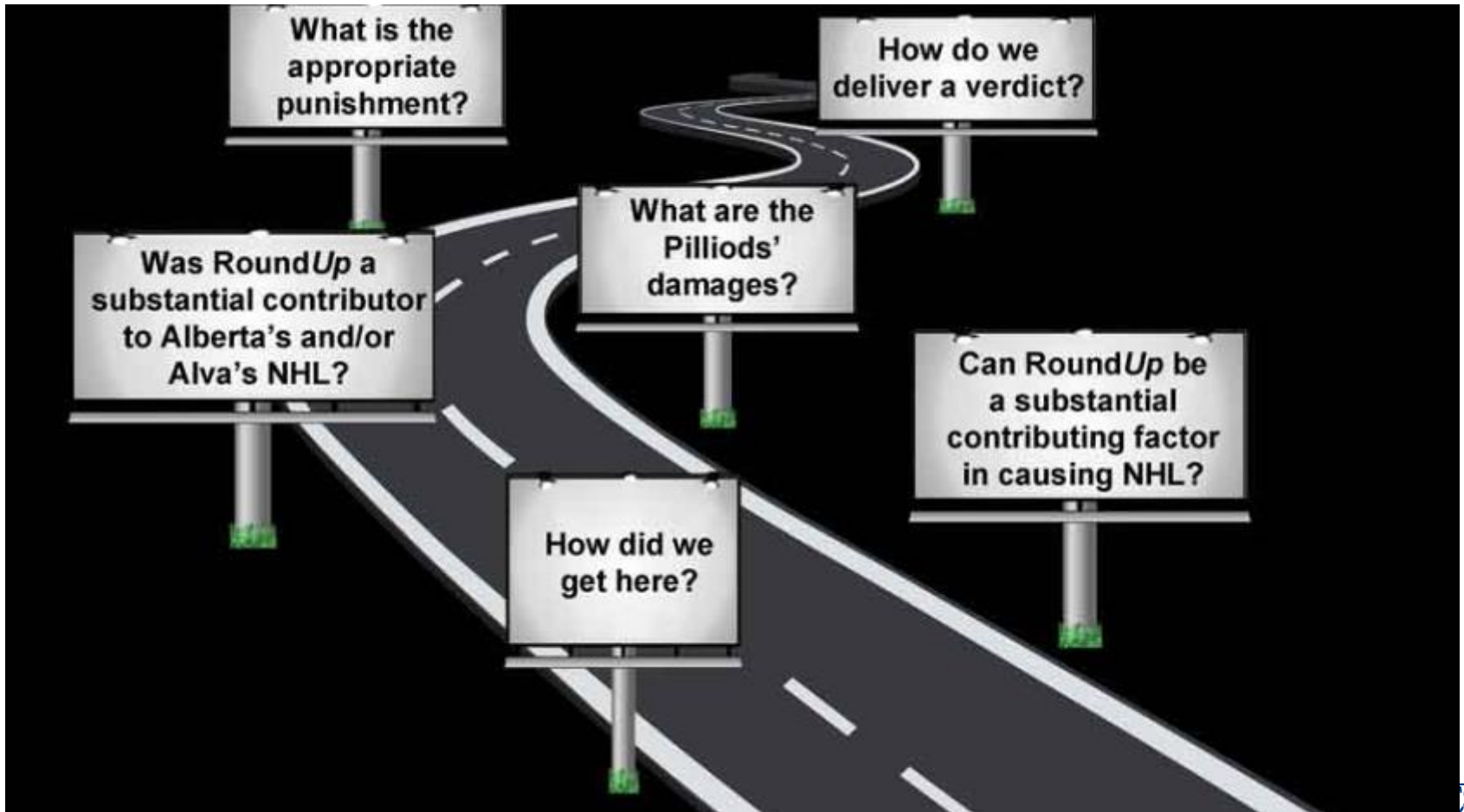


OFF-TRACKING



PATH TRACED BY CENTER OF STEERING AXLE

CLOSING SLIDES USED BY R. BRENT WISNER IN PILLIOD ROUNDUP TRIAL



How did we
get here?

45 years of deliberate disregard for consumer safety

IBT Scientific Fraud
Fabricating Science
Burying Studies
Using hazardous POEA
Refusing to Warn
Freedom to Operate (FTO)

How did we
get here?

45 years of deliberate disregard for consumer safety

IBT Scientific Fraud

1971

Monsanto
toxicologist, Paul
Wright, leaves
Monsanto and
begins working at
Industrial BioTest
Laboratories

Oct
1972

Dr. Wright
returns to
Monsanto

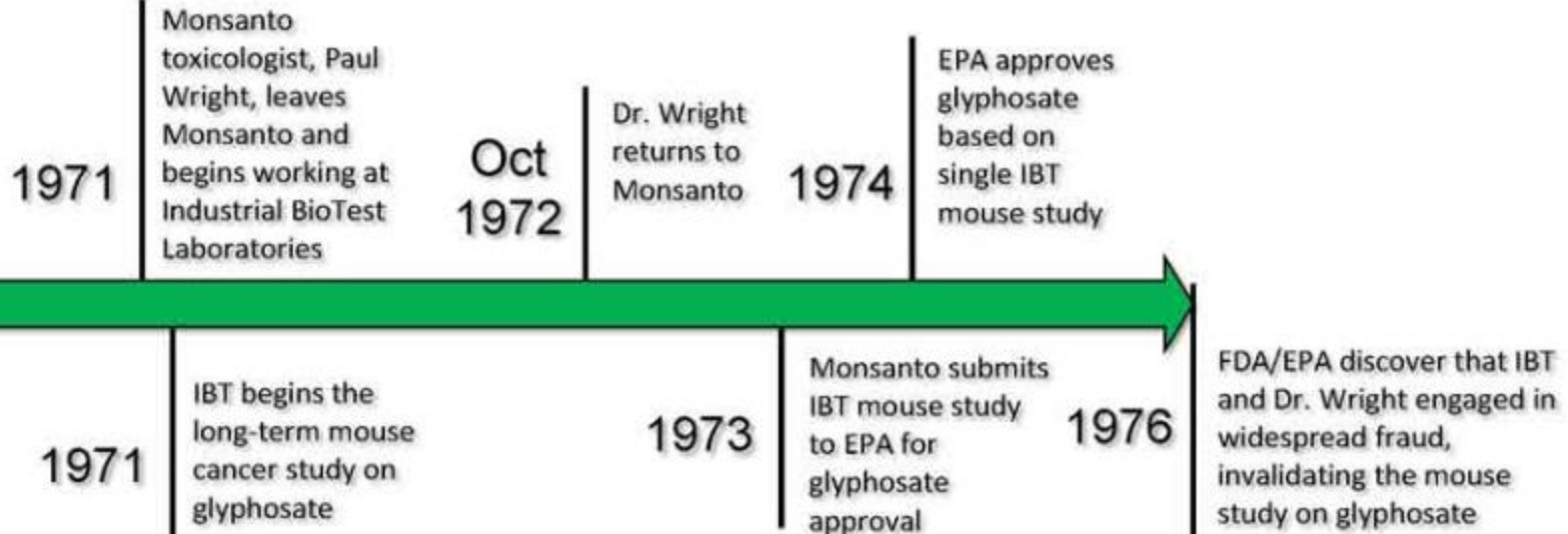
1971

IBT begins the
long-term mouse
cancer study on
glyphosate

How did we
get here?

45 years of deliberate disregard for consumer safety

IBT Scientific Fraud



How did we
get here?

45 years of deliberate disregard for consumer safety

IBT Scientific Fraud

**Monsanto Does not tell
consumers that it lacks a
valid cancer study.**

1982

Alva and Alberta Pilliod start
spraying RoundUp not
knowing that its approval
was based on fraud

1976

FDA/EPA discover that IBT
and Dr. Wright engaged in
widespread fraud,
invalidating the mouse
study on glyphosate

**Despite fraud revelations,
Monsanto keeps Roundup on
the market**

How did we
get here?

45 years of deliberate disregard for consumer safety

Burying Studies **The TNO Studies**



William Sawyer, PhD

Q. What does the TNO study show?

A. The TNO study is very interesting. It revealed a statistically and significantly higher rate of dermal absorption when actual Roundup was used as opposed to just pure glyphosate. And in this graphic, that 10 percent levels, because they use pure Roundup. And for the very reasons I talked about this morning, in terms of enhancing dermal absorption, there it is.

Q. Was that study completed?

A. It was terminated.

Q. And that was terminated after they had the results showing what?

A. 10 percent dermal absorption.

Can RoundUp be
a substantial
contributing factor
in causing NHL?

Preponderance of Evidence: 50.01%



"I'm not sure, but I think so."

Can RoundUp be
a substantial
contributing factor
in causing NHL?

Jury Instruction

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. **It does not have to be the only cause of the harm.** Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.