

2017 ARIAS-U.S. FALL CONFERENCE

THE GATEKEEPER: A PRACTICAL GUIDE TO RESOLVING EVIDENTARY DISPUTES AT HEARING

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HOW TO VOTE

NOW:

TYPE **22333** IN TEXT ADDRESS ("TO:")

TYPE **ARIAS1** IN TEXT MESSAGE

PUSH SEND

[YOU WILL RECEIVE CONFIRMATION]

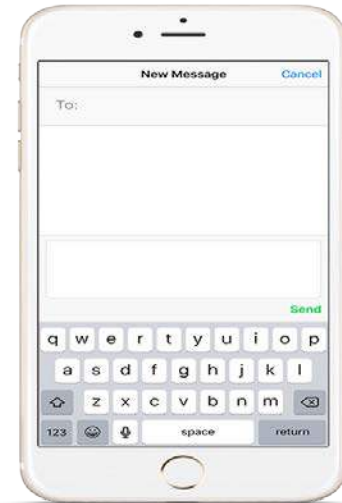
LATER:

WHEN **VOTE** SLIDE SHOWN,

YOU WILL SEE QUESTION ON PHONE

VOTE BY TYPING EITHER A OR B

PUSH SEND



In the Matter of the Arbitration Between WidgetKicks and ACME Insurance Company

Summary of Dispute



EVIDENTARY DISPUTE #1

Motion for Extension to Allow Rebuttal Testimony

- Panel accepted parties' estimated schedule
- At close of respondent's case, WidgetKicks seeks to introduce testimony of rebuttal witnesses
- Broker Justin Between (policy coverage) and Alotta Fortune (damages)
- WidgetKicks moves for extension



EVIDENTIARY DISPUTE #1

Motion for Extension to Allow Rebuttal Testimony

VOTE

Text A to vote for motion granted (extension allowed)

Text B to vote for motion denied (no extension)



EVIDENTARY DISPUTE #2

Motion for Extension for Temporarily Unavailable Witness

- Hollywood unable to appear, because wife undergoing emergency surgery
- WidgetKicks moves to proceed with the testimony of the other witnesses, but then adjourn hearing and reconvene for Hollywood's testimony and parties' closing arguments

EVIDENTIARY DISPUTE #2

Motion for Extension for Temporarily Unavailable Witness

VOTE

Text A to vote for motion granted (extension allowed)

Text B to vote for motion denied (no extension)

EVIDENTIARY DISPUTE #3

Objection to Telephone Provider Printout

- ACME coverage defense: “WidgetKicks failed to obtain ACME’s prior written consent to the payment purportedly made to terminate a Cyber Extortion Threat.”
- Exhibit: Printout from ACME’s Telephone Service Provider



Account Name: **ACME INSURANCE COMPANY**

Account number: **0918273645**

Phone: **800-CYBRCAL**

Phone log history for:

Dec. 31, 2016: *No Call(s)*

Jan. 01, 2017: *No Call(s)*

A large, light blue, semi-transparent watermark of the AT&T logo is positioned in the background of the document. It features the same globe icon and "AT&T" text as the logo at the top, but is much larger and lighter in color.

EVIDENTIARY DISPUTE #3

Objection to Telephone Provider Printout

VOTE

Text A to vote for objection sustained (exhibit excluded)

Text B to vote for objection overruled (exhibited admitted)

EVIDENTIARY DISPUTE #4

Objection to Handwritten Note

- In response to coverage defense, WidgetKicks asserts futility
- Exhibit: Handwritten Note by Patrick Pushover

1/2/17
9:25 got vm
10:02 got vm
11:54 got vm

EVIDENTIARY DISPUTE #4

Objection to Handwritten Note

VOTE

Text A to vote for objection sustained (exhibit excluded)

Text B to vote for objection overruled (exhibited admitted)

EVIDENTIARY DISPUTE #5

Objection to ACME Hotline Practice Testimony

ACME offers evidence that it would have undertaken a prompt review

Q: How are calls handled by the ACME Cyber Hotline?

A: ACME customer service representatives check voicemails every hour on the hour. Urgent messages are communicated immediately to an on-call supervisor, who returns any urgent call at once.

Q: Does an ACME on-call supervisor have authority to give written consent to payment by an insured in response to a Cyber Extortion Threat?

A: Yes.

Q: Was that practice in place at the ACME Cyber Hotline on December 31, 2016 and January 1, 2017?



EVIDENTIARY DISPUTE #5

Objection to ACME Hotline Practice Testimony

VOTE

Text A to vote for objection sustained (testimony excluded)

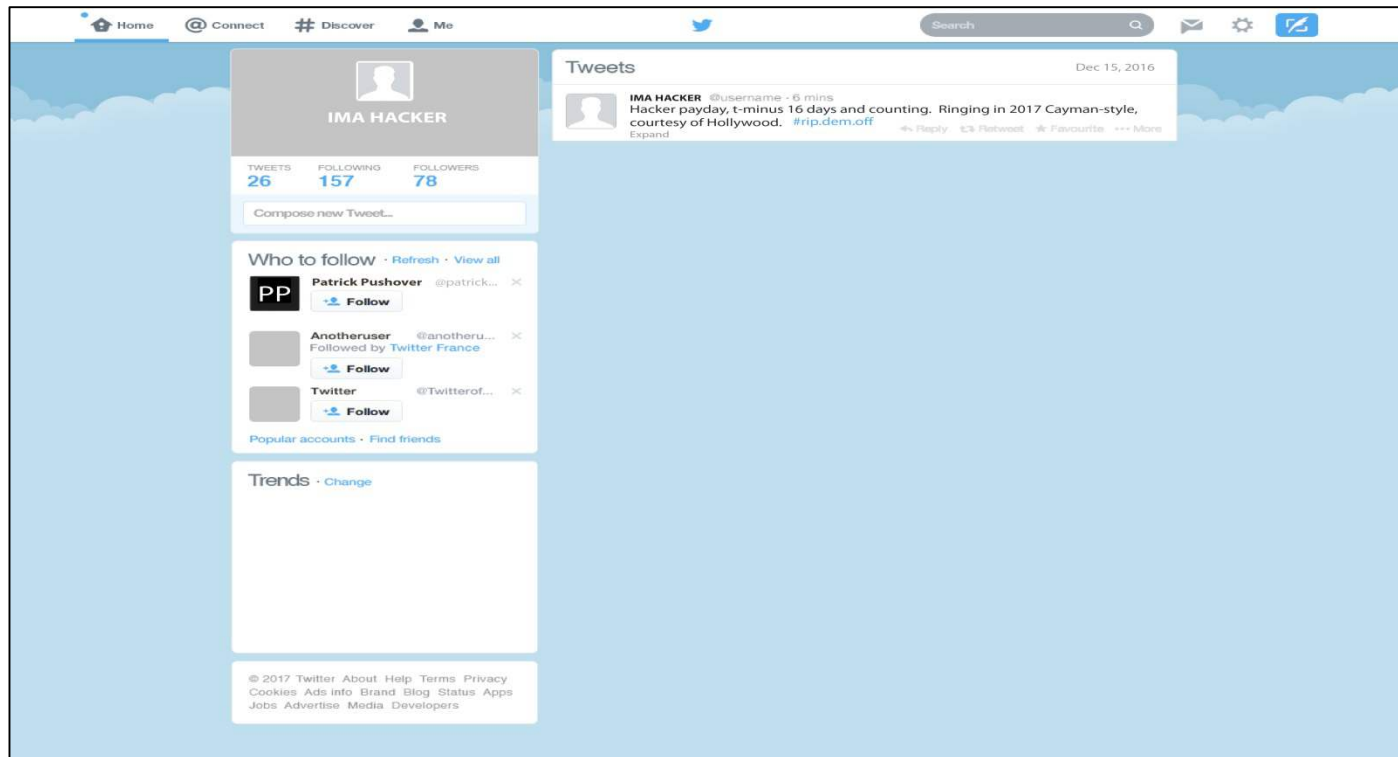
Text B to vote for objection overruled (testimony allowed)

EVIDENTIARY DISPUTE #6

Objection to Twitter Printout

- ACME coverage defense: “Any loss arises out of an intentional act or omission committed, approved, participated in, or acquiesced in by a current or former employee of WidgetKicks, and a current or former director, officer or principal of WidgetKicks knew or had reason to know of the intentional act or omission causing the loss prior to that intentional act or omission.”
- Exhibit: Twitter Printout





EVIDENTIARY DISPUTE #6

Objection to Twitter Printout

VOTE

Text A to vote for objection sustained (exhibit excluded)

Text B to vote for objection overruled (exhibited admitted)

EVIDENTIARY DISPUTE #7

Objection to Testimony About FBI Investigation

- Q: Do you have any other basis for asserting that Pushover had reason to know that Hacker was planning a cyber ransom attack on WidgetKicks?
- A: Yes. I talked to the FBI agent in charge of the investigation, the one hunting Hacker in the Cayman Islands. He said he had found a concierge who identified Hacker from a photo and had talked with Hacker at length.
- Q: What did the concierge tell the FBI?



EVIDENTIARY DISPUTE #7

Objection to Testimony About FBI Investigation

VOTE

Text A to vote for objection sustained (testimony excluded)

Text B to vote for objection overruled (testimony allowed)

EVIDENTIARY DISPUTE #8

Objection to Publicist Testimony

Expected Testimony of Publicist

- Alotta Fortune was personal branding powerhouse
- 2016 sales numbers would have been repeated if on-line store had been accessible
- No negative publicity yet from Terrick

Would corroborate Chase Hollywood testimony

EVIDENTIARY DISPUTE #8

Objection to Publicist Testimony

VOTE

Text A to vote for objection sustained (testimony excluded)

Text B to vote for objection overruled (testimony allowed)

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