





ARIAS•U.S. 2021 Fall Conference

Nov 2-3, 2021 | New York, NY



Find Us On:  



Visual Argument

Jack Baughman & Jesse Stevenson

November 2, 2021

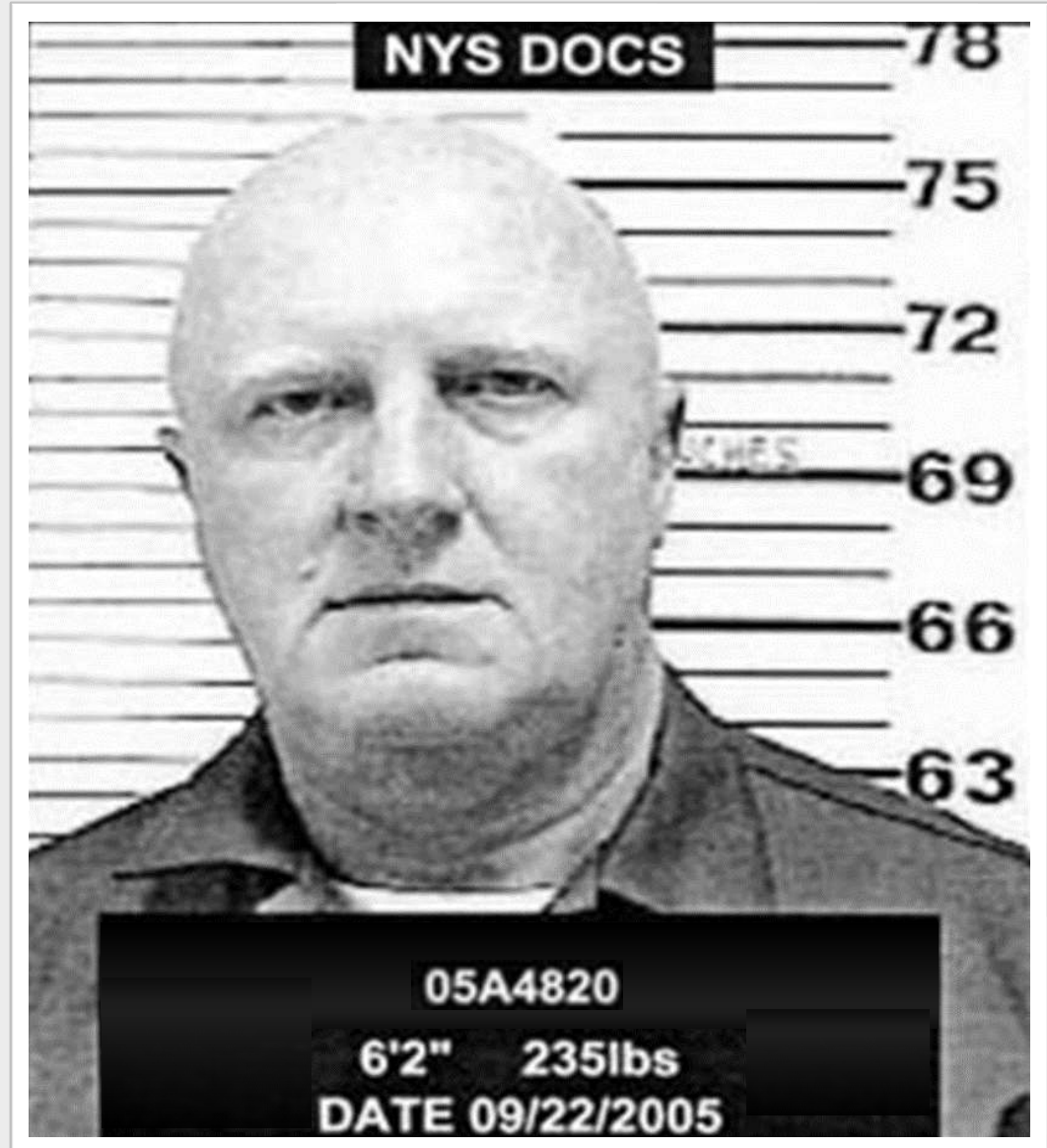


Find Us On:  

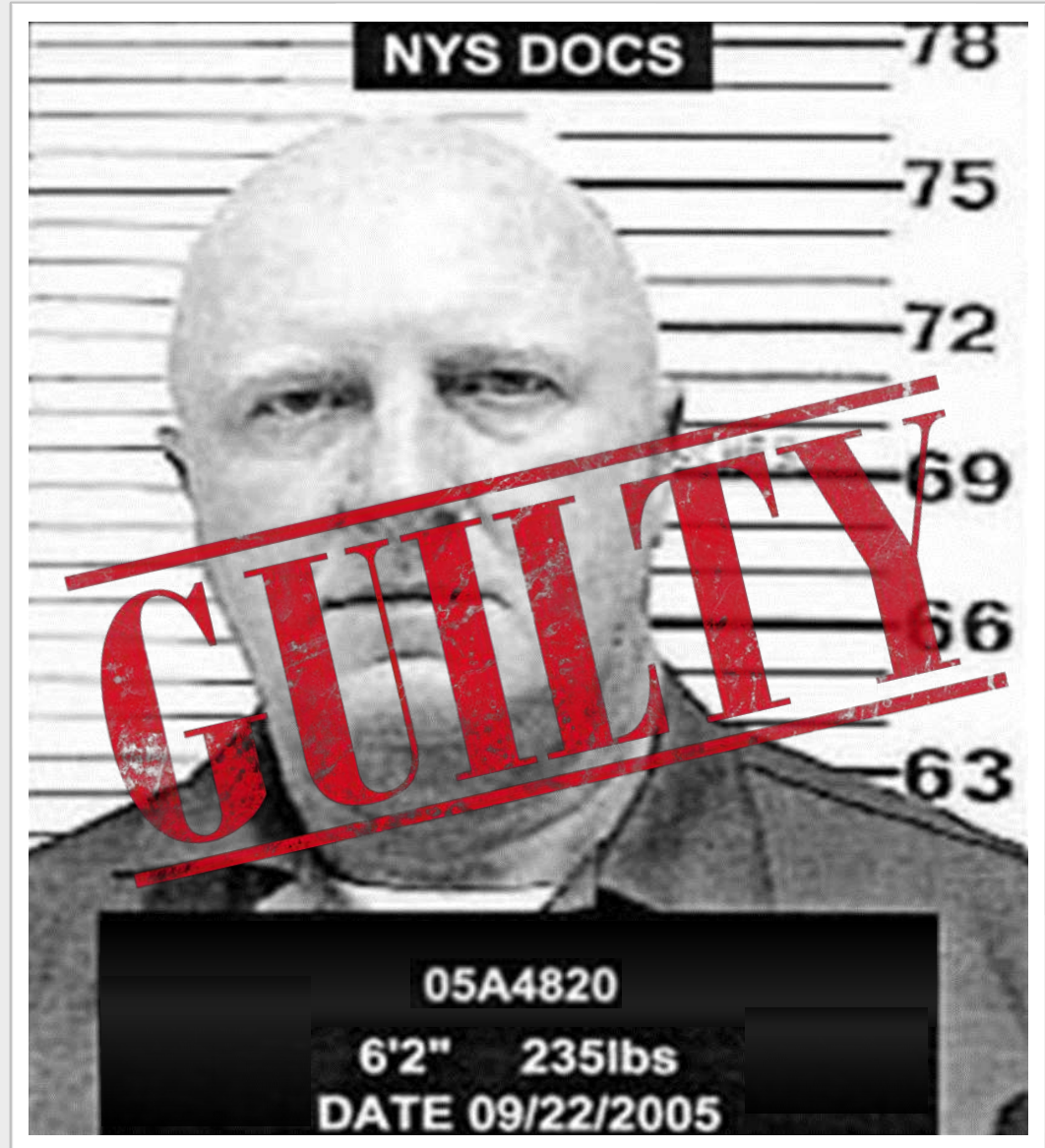
**How Do You Feel
About This Man?**



**How Do You Feel
About This Man?**



**How Do You Feel
About This Man?**



Tap Into Emotions and Feelings

Arias U.S. 2021 Fall Conference



I've learned that people will forget
what you said, people will forget
what you did, but **people will never
forget how you made them feel.**

Maya Angelou

American Poet

Understanding Visual Argument

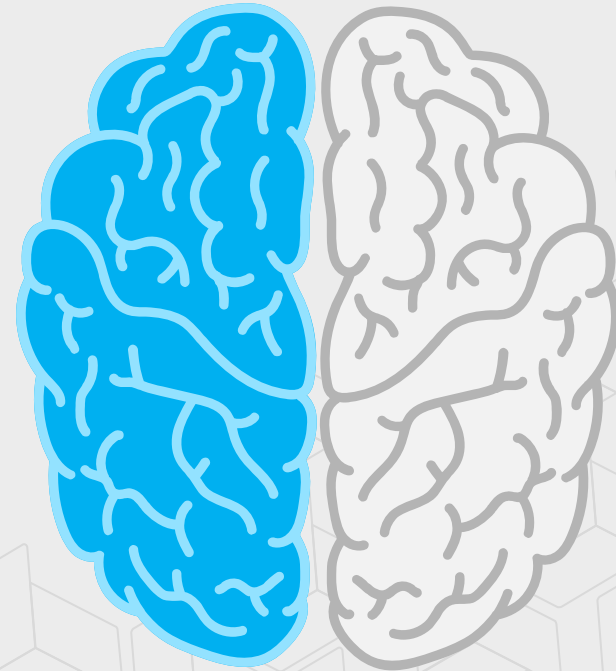
Arias U.S. 2021 Fall Conference

Vision Is Our Primary Sense

70% of all our sensory receptors are in our **eyes**



50% of our brain is involved in **visual processing**



Do You React the Same Way?

Cat









Do You React the Same Way?

Dog



Visual Communication Differs From Written



Immediate?		
Emotional?		
Real?		

Visual Communication Is **Immediate**



VS



Visual Communication Is **Emotional**

Acme's Oil Spills Will Have Lasting Effects on the Environment



Visual Communication Is **Real**

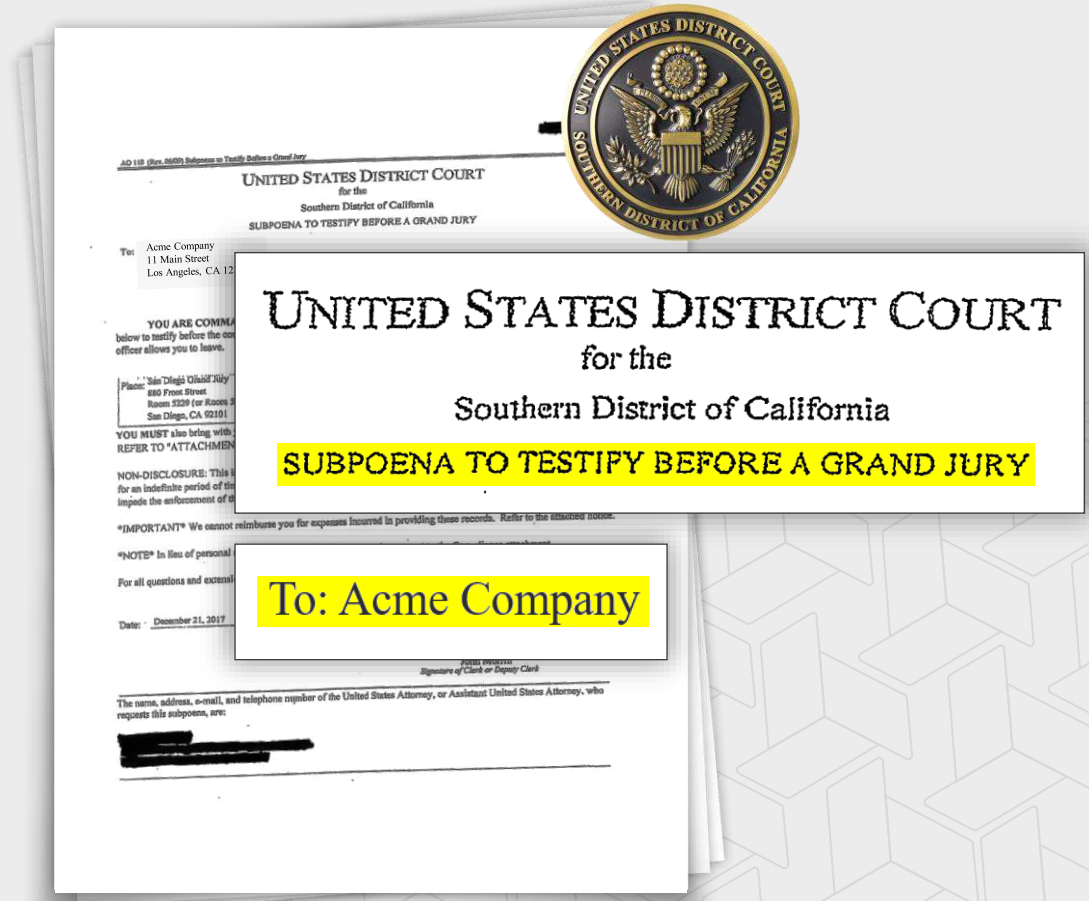


A grand jury subpoena was issued to Acme Company

Visual Communication Is Real



A grand jury subpoena was issued to Acme Company



Visual Argument Works on Judges, Jurors, Arbitrators and Regulators

JURORS

REGULATORS



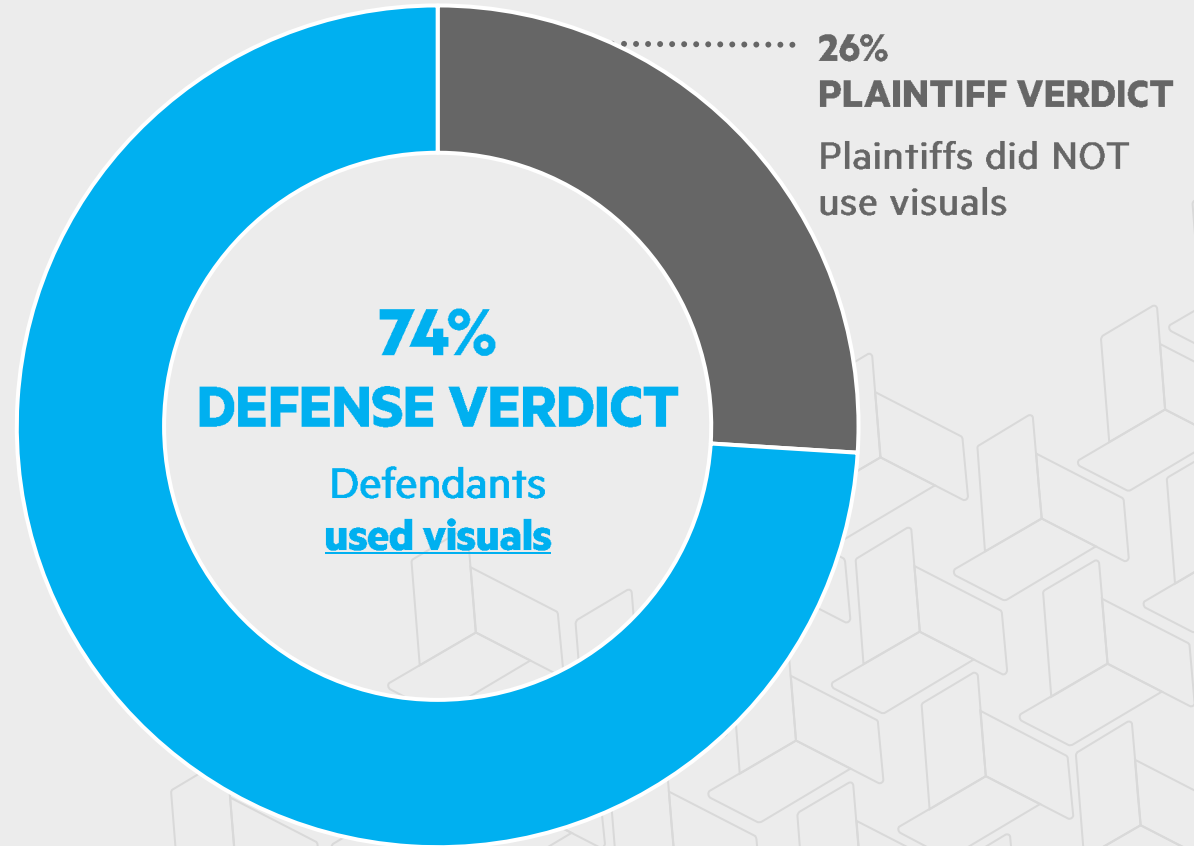
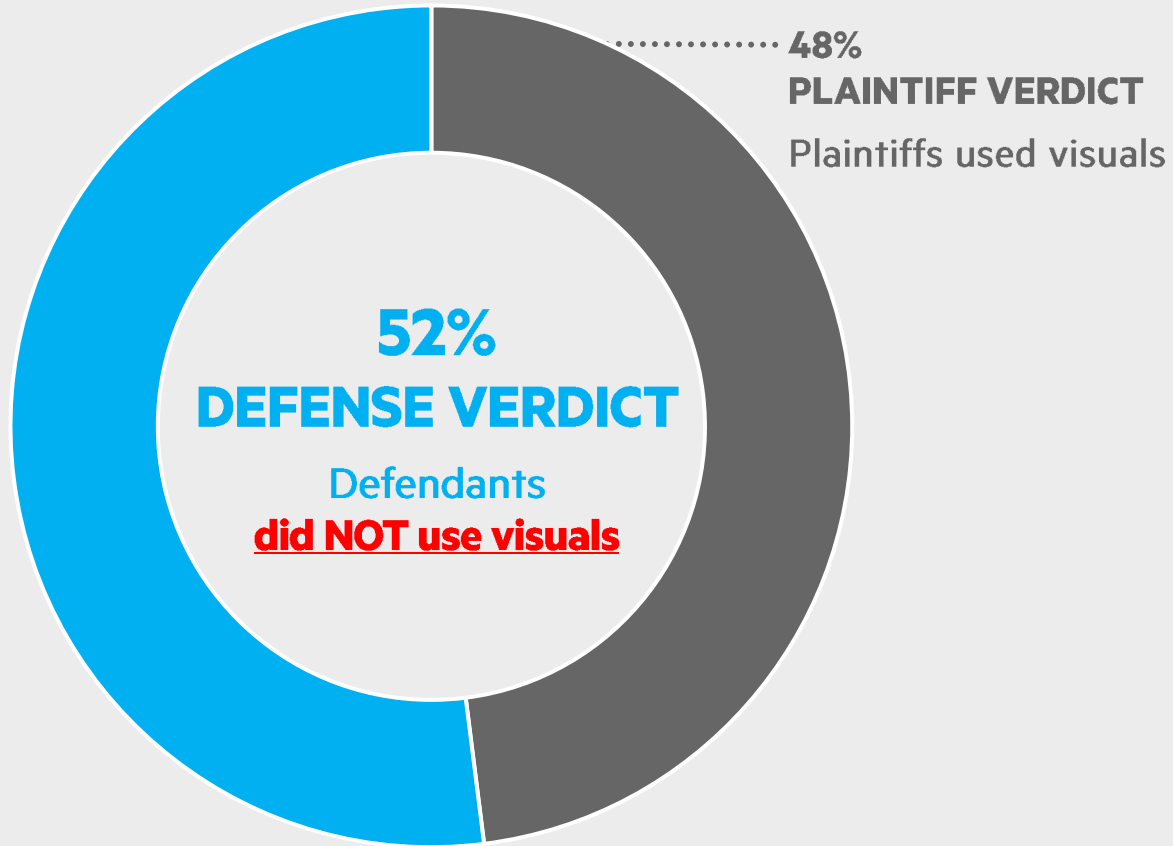
JUDGE

ARBITRATORS

Visual Argument Works

Arias U.S. 2021 Fall Conference

Visual Argument Works



Judges Make Visual Arguments Too: Clothing or Safety Equipment?

In the
United States Court of Appeals
For the **Seventh Circuit**

Nos. 10-1821, 10-1866

CLIFTON SANDIFER, *et al.*,

*Plaintiffs-Appellees/
Cross-Appellants,*

v.

UNITED STATES STEEL CORPORATION,

*Defendant-Appellant/
Cross-Appellee.*

Appeals from the United States District Court
for the Northern District of Indiana, Hammond Division.
No. 2:07-cv-00443-RLM-PRC—Robert L. Miller, Jr., *Judge.*

ARGUED FEBRUARY 15, 2012—DECIDED MAY 8, 2012

Before POSNER, FLAUM, and MANION, *Circuit Judges.*

POSNER, *Circuit Judge.* These appeals arise out of a class action (technically a “collective action,” as it is brought pursuant to 29 U.S.C. § 216(b), a part of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et seq.*, rather than pursuant to Fed. R. Civ. P. 23) on behalf of 800 former and current hourly workers at U.S. Steel’s steel

Judge Richard Posner

Opinion: Sandifer v. United States Steel Corporation
NOS: Fair Labor Standards Act
Seventh Circuit (2012)



Clothing or Safety Equipment?

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United States Court of Appeals
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CLIFTON SANDIFER, *et al.*,

*Plaintiffs-Appellees/
Cross-Appellants.*

UNITED STATES ST

Appeals
for the Norther
No. 2:07-cv-004

ARGUED FEBR

the chin, and the neck). These work clothes are in the record, and since a picture is worth a thousand words, here is a photograph of a man modeling the clothes:

Before POSNER, FLAUM, and MANION, *Circuit Judges*.

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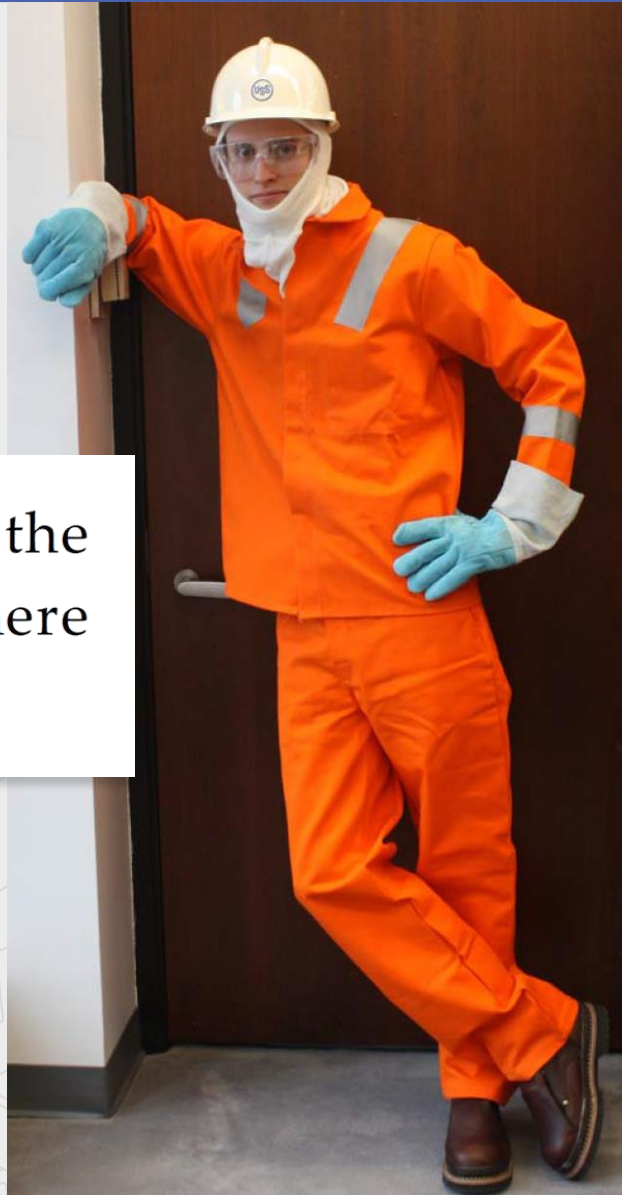
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Clothing or Safety Equipment?

Judge Posner's Law Clerk »

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Door to Judge Posner’s Chambers »



Clothing or Safety Equipment?



Justice Ruth Bader Ginsburg

Sandifer v. U.S. Steel Corporation
Supreme Court of the United States
Oral Argument, November 4, 2013

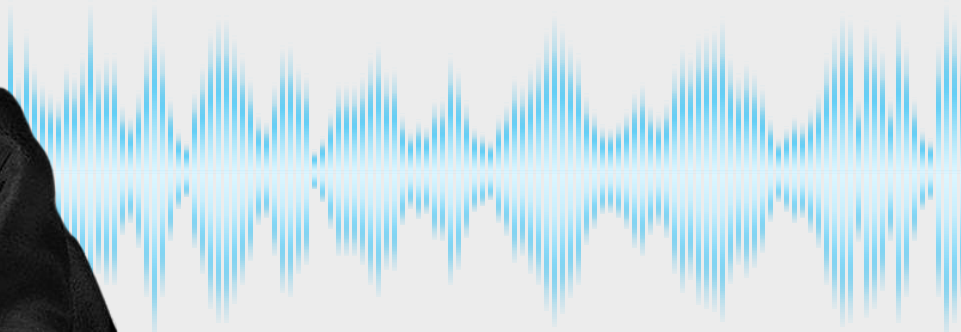


Clothing or Safety Equipment?



Justice Ruth Bader Ginsburg

Sandifer v. U.S. Steel Corporation
Supreme Court of the United States
Oral Argument, November 4, 2013



Sandifer v. United States Steel Corp., 678 F. 3d 590 (2013) Affirmed.



Apple Inc. v. Samsung Electronics Co., LTD

What have you been told? [The case is about copying]

Technical Patents

Design Patents

The collage displays several patent documents from the Apple v. Samsung litigation. On the left, there are technical patents such as US 7,469,381 B2 (Apple) and US 7,864,163 B2 (Samsung), which describe methods for scrolling and document translation. In the center and right, there are design patents (US D618,677 S and US D594,839 S) that include perspective views and top-down views of mobile devices, along with their respective abstracts and claims. The documents are layered and slightly offset, creating a sense of depth and showing the volume of legal filings in the case.

How Do You React?



What do you **see**?

What do you **feel**?

What **associations** come to mind?

How Do You React?



What do you see?

The phones look the same

What do you feel?

What associations come to mind?

How Do You React?



What do you see?

The phones look the same

What do you feel?

Indignation?

What associations come to mind?

How Do You React?



What do you see?

The phones look the same

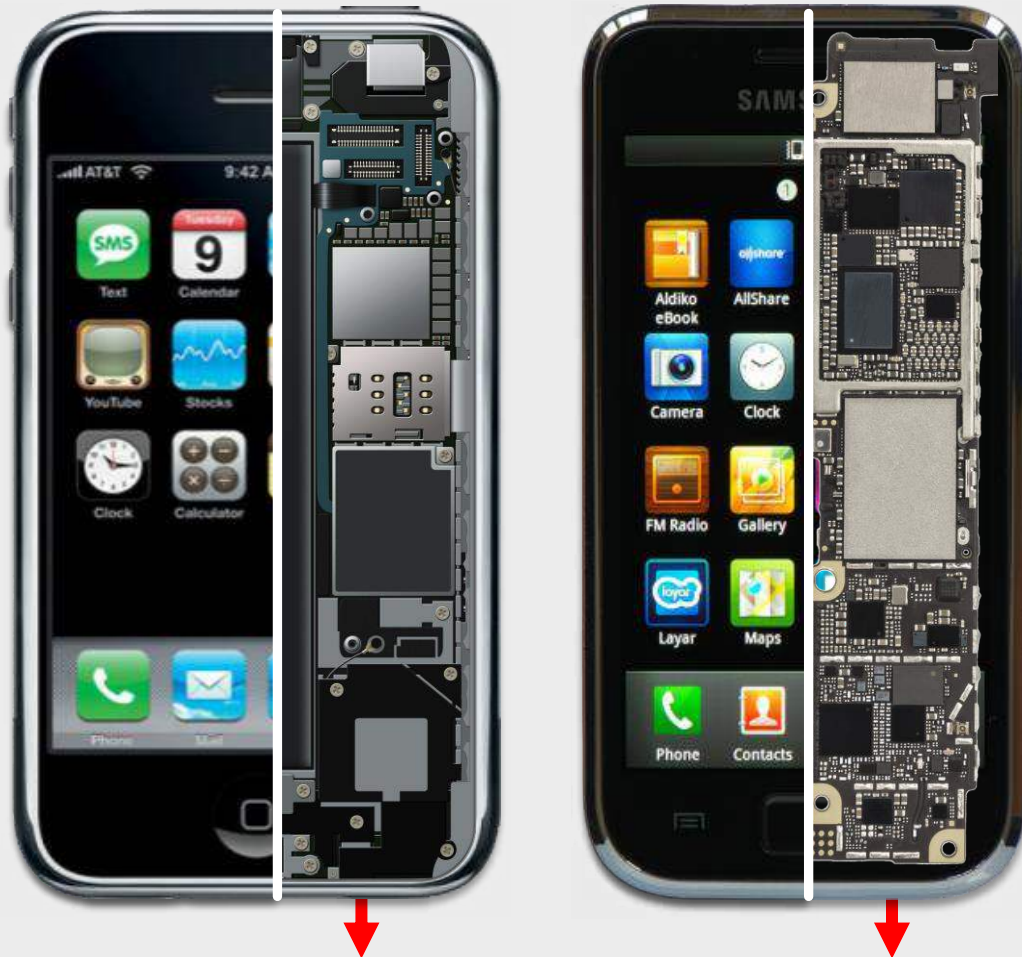
What do you feel?

Indignation?

What associations come to mind?

Cheaters and copycats

How Do You React?



What if the claims also relate to what you cannot see?

What do you see?

The phones look the same

What do you feel?

Indignation?

What associations come to mind?

Cheaters and copycats

Apple Inc. v. Samsung Electronics Co., LTD

The New York Times

“Jury Awards \$1 Billion to Apple
in Samsung Patent Case”

– *The New York Times*, 5/12/2012

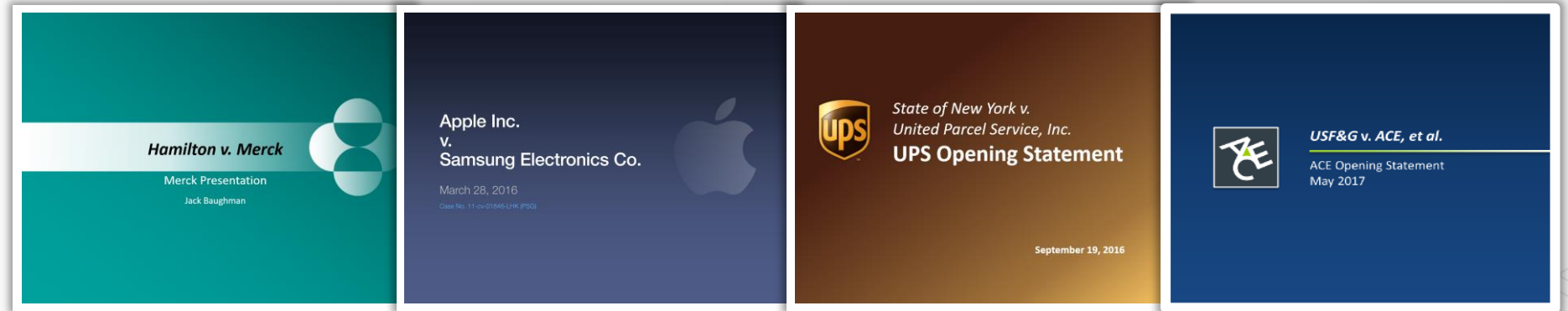


Visual Argument Basic Techniques

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Align With Your Client's Colors and Style

**ALIGN WITH
YOUR CLIENT**



**CONSISTENCY &
REPETITION**

color scheme

typography

highlighting

graphics style

Consistent Look and Feel



USF&G v. ACE, et al.

ACE Opening Statement
May 2017

Consistent Look and Feel

Key Players



Consistent Look and Feel

The Duty to Defend



- An insurance company has a duty to defend people covered by a policy
- It must hire a lawyer to defend people covered by the policy if they get sued
- This applies **even if** there is only the **potential** that the claim is covered

Wrongful Refusal to Defend = Bad Faith



Consistent Look and Feel

A Key Question



When billing ACE for a portion of the \$987.5 million settlement, was it objectively reasonable to allocate zero dollars to the bad faith claims?

NO



Color

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Color Imparts Meaning



(remember, color psychology is different across cultures)

Color Psychology



What Do These Colors Suggest?

From: Globex
To: Acme
Subject: status with lenders

We should meet soon to discuss your progress with the

Sed ut perspiciatis unde omnis iste natus error sit voluptatem accusantium doloremque laudantium, totam rem aperiam, eaque ipsa quae ab illo inventore veritatis et quasi architecto aeternum

Nemo enim ipsam voluptatem quia voluptas sit aspernatur aut odit doloribus, sed quia consequuntur magni dolores eos qui ratione voluptatem sequi nesciunt. Neque porro quisquam est qui dolorem ipsum quia dolor sit amet, consectetur, adipisci velit, sed quia non numquam eiusmodi tempora incidunt ut labore et dolore magnam aliquam quaerat voluptatem. Ut enim ad minima veniam, quis nostrum exercitationem ullam corporis suscipit laboriosam, nisi ut aliquid ex ea commodi consequatur? Quis autem vel eum iure reprehenderit qui de ea molestiae consequatur, vel illum qui dolorem eum fugiat?

Thank you.

John Smith

GLOBEX COMPANY

From: jsmith@pharmico.com
To: sjones@pharmico.com
Subject: status with lenders

We got the results from Phase III of clinical trials.

Pharmico had knowledge

What Do These Colors Suggest?

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Sed ut perspiciatis unde omnis iste natus error sit voluptatem accusantium doloremque laetitia, totam rem aperiam, eaque ipsa quae ab illo inventore veritatis et quasi architecto

Nemo enim ipsam voluptatem quia voluptas sit aspernatur aut odit doloribus, sed quia consequuntur magni dolores eos qui ratione voluptatem sequi nesciunt. Neque porro quisquam est, qui dolorem ipsum quia dolor sit amet, consectetur, adipisci velit, sed quia non numquam eiusmodi tempora incidunt ut labore et dolore magnam aliquam quaerat voluptatem. Ut enim ad minima veniam, quis nostrum exercitationem ullam corporis suscipit laboriosam, nisi ut aliquid ex ea commodi consequatur? Quis autem vel eum iure reprehenderit qui de ea molestiae consequatur, vel illum qui dolorem eum fugiat?

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Sed ut perspiciatis unde omnis iste natus error sit voluptatem accusantium doloremque laetitia, totam rem aperiam, eaque ipsa quae ab illo inventore veritatis et quasi architecto

Nemo enim ipsam voluptatem quia voluptas sit aspernatur aut odit doloribus, sed quia consequuntur magni dolores eos qui ratione voluptatem sequi nesciunt. Neque porro quisquam est, qui dolorem ipsum quia dolor sit amet, consectetur, adipisci velit, sed quia non numquam eiusmodi tempora incidunt ut labore et dolore magnam aliquam quaerat voluptatem. Ut enim ad minima veniam, quis nostrum exercitationem ullam corporis suscipit laboriosam, nisi ut aliquid ex ea commodi consequatur? Quis autem vel eum iure reprehenderit qui de ea molestiae consequatur, vel illum qui dolorem eum fugiat?

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Orientation

Arias U.S. 2021 Fall Conference

Orientation



UP
is good

Orientation



UP
is good



DOWN
is bad

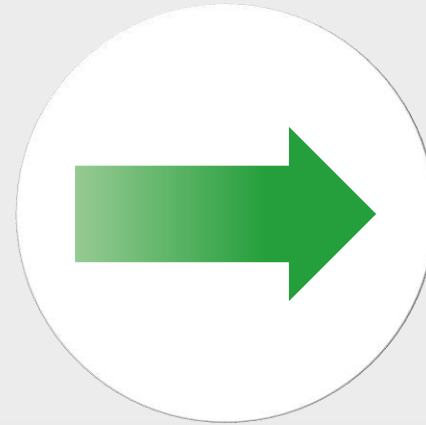
Orientation



UP
is good



DOWN
is bad



MOVING RIGHT
is progress

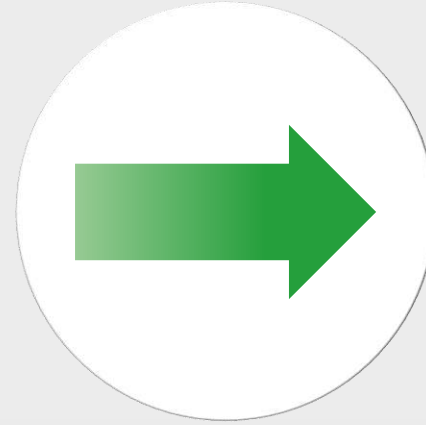
Orientation



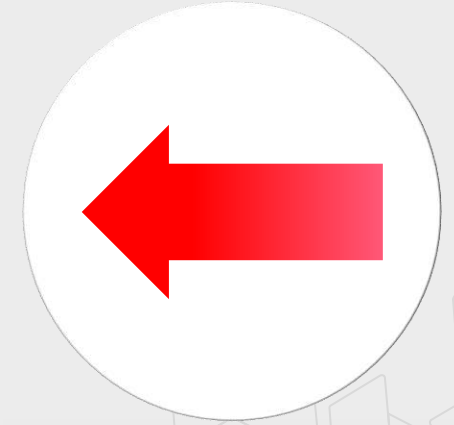
UP
is good



DOWN
is bad



MOVING RIGHT
is progress



MOVING LEFT
is going backwards

Fixing Improper Orientation



Fixing Improper Orientation



Fixing Improper Orientation

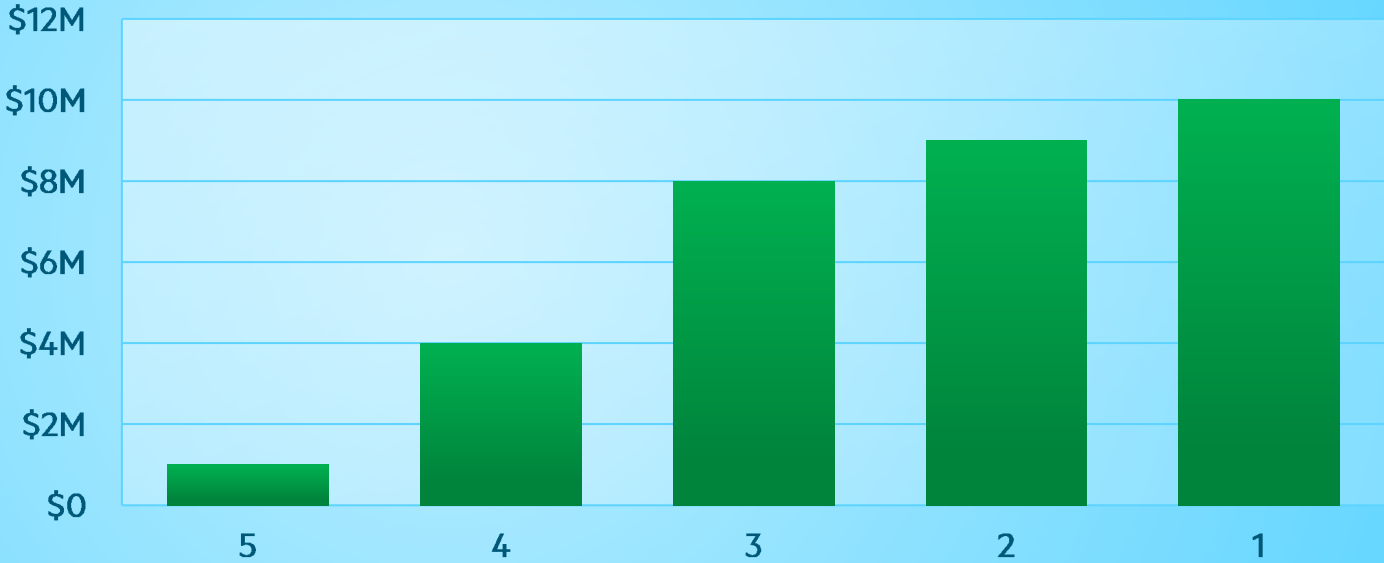


Fixing Improper Orientation

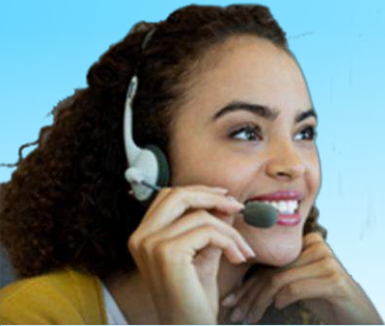


**Responsive
Customer Service**

Argo Sales Increase

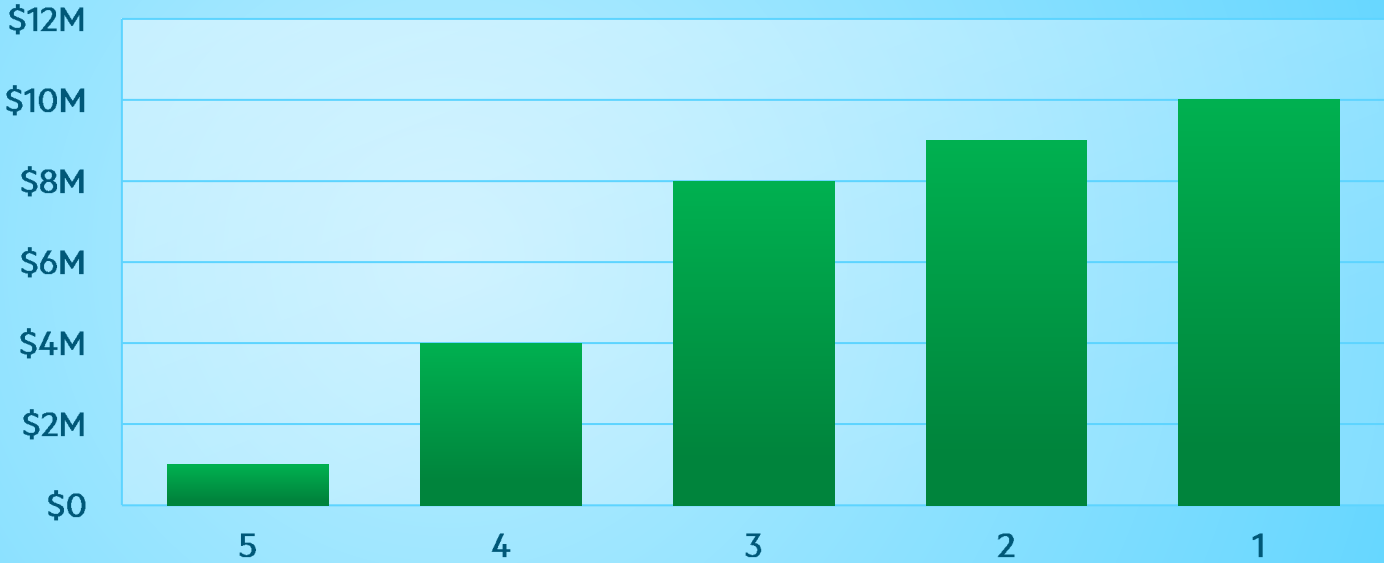


Fixing Improper Orientation



**Responsive
Customer Service**

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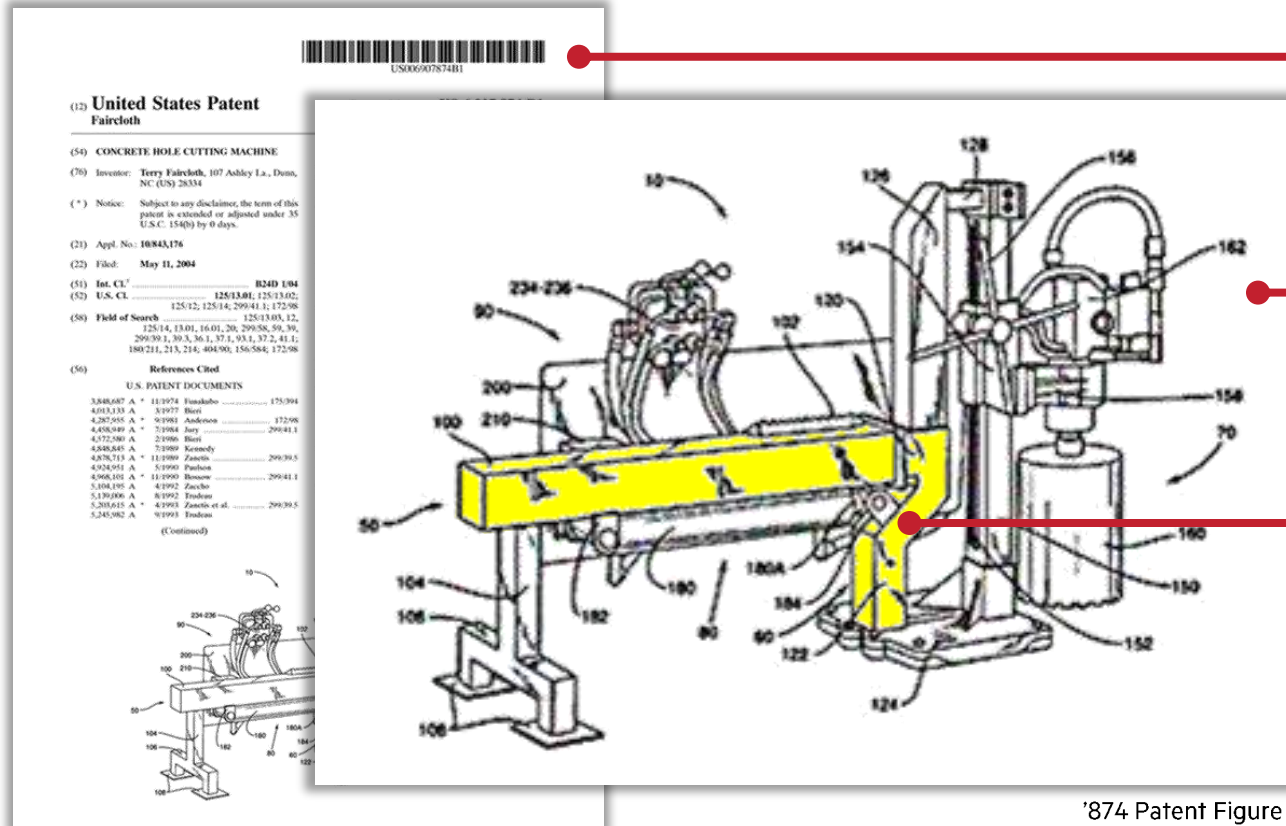


Documents

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The Anatomy of a Callout

The '874 Patent



Scanned Image

“Callout”

Highlighting

'874 Patent Figure 1

Source

Example of a Callout

Parmalat's "Brazen" Fraud

Fake Logo — Bank of America
New York Branch

Addressed to Auditors — Grant Thornton Spa
Largo Augusto, 7
20122 MILANO, ITALY

Text Typed in by Parmalat — Dear Sir/Madam
We have received your request for audit purposes information concerning account balances and securities.
1. As of the close of business on December 31, 2002:

Account Type	Account Name	Account Balance
Demand Deposit	Borlat Financing Corp	USD \$336,812,328.64 CR
Autoliquid Account	Borlat Financing Corp	

2. As of the close of business on December 31, 2002, our records indicate the following Securities Deposit balance(s):

Account Type	Account Name	Account Balance
Securities Deposit	Borlat Financing Corp	EUR €2,811,000,000.00
Securities Deposit	Borlat Financing Corp	

3. As of the close of business on December 31, 2002:

Trade Finance	Customer Name	Account Balance
	N/A	USD \$849,000,000.00

This information is for your CONFIDENTIAL use and assumed by Bank of America or its officers to the accuracy or completeness of this information. No representation is made as to any other relationship the subject may have with other Bank of America offices.
Sincerely,
Fake Signature — *Agnes Belgrave*
Agnes Belgrave

March 6, 2003

\$336 Million in Cash

€2.8 Billion in Securities Account

\$849 Million in Securities Account

P 01464804

Use Visual Cues for Clarity

Bank Never Knew About Acme's Restructuring Plans

From: Lamba, Parish
To: Keegan, Charles
Sent: 4/2/2009
Subject: Term Sheets
Attached: 2009.04.01_TermSheets.pdf

Charles -- since Acme may just take a default and not restructure its loans, here is what we are thinking on the term sheets and our deal with senior lenders. This term sheet outlines the general terms upon which Bank LLP and its affiliates and Drakes Bank will negotiate an agreement.

I think this is a good start but am concerned that part 2 may turn off some of the senior lenders. Would like to know your thoughts on this.

Thanks.

Parish Lamba
Bank Company

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II. Proposed Capital Structure

	Outstanding	Pro-Forma
Founder Common Stock	467	34
Series A	23	678
Employee Reserve	383	0
Totals	973	712

DEX0099

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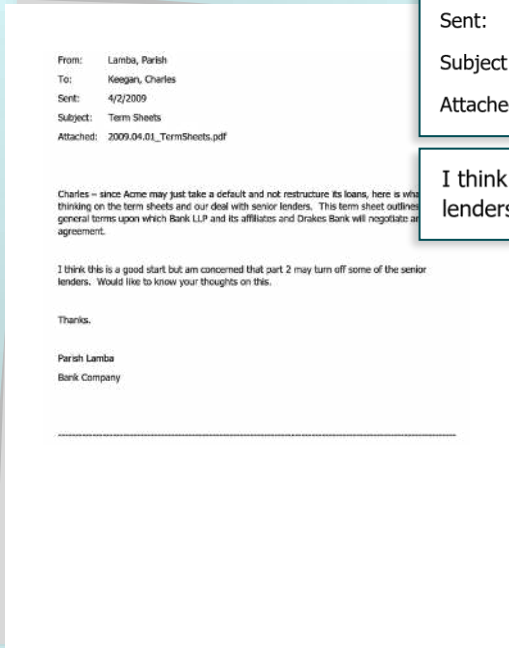
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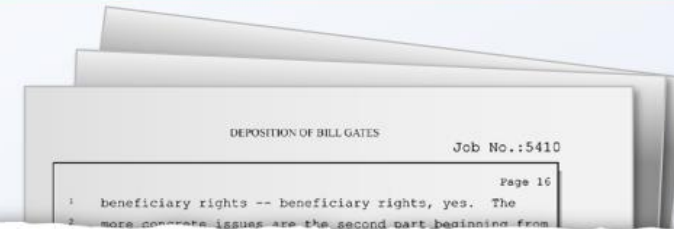
Deposition Transcripts

Deposition of Bill Gates



Bill Gates Testimony

8/12/1998



Q. ...and when you said in your June 23, 1996, e-mail, quote, I have two key goals in investing in the apple relationship, closed quote, you were talking about yourself personally; is that correct?

A. Yeah. When I say `investing in the apple relationship,' **that means spending time with apple and growing the relationship.**

Keals Reporting
713.224.6865

h:\01\18-8717-4255-8-76-095\08\0818

Transcripts: Wrong Way

Plaintiff Has No Ownership Interest in Either Property

Joseph Silvio, May 13, 2014, Trial Tr. 5:1-6, 6:17-20

Silvio - Cross/Baughman 5

1 Q Does the State contend that any of the areas
2 at Bayway qualify as public land in any way?
3 A No.
4 Q Does it contend that any of the areas at
5 Bayonne qualify as public land in any way?
6 A No.

7 MR. BAUGHMAN: Okay. Now, if we could put up
8 the definition of the Spill Act. I guess we never
9 resolved the issue of which one to use, so Mr. --

10 MR. KANNER: If we could use the original
11 one, that would be fine.

12 MR. BAUGHMAN: I'm agreeing. Mr. Ferguson .

13 THE COURT: This is the 4103?

14 MR. BAUGHMAN: Yes. Put up 4103.

15 MR. FERGUSON : (Complies.)

16 BY MR. BAUGHMAN:

17 Q Page seven.

18 A I -- I don't know if I -- it must be here
19 somewhere.

20 Q I'll hand out a copy. Mr. Sacco.

21 A Oh, thank you.

22 Q No, this is -- we're not using that.

23 A We're good.

24 Q And I just want to look at the definition of
25 natural resources in the statute. Do you see it, sir?

Silvio - Cross 186

1 Answer: We would for settlement working with
2 cooperative responsible parties generally use a
3 delineation to a remedial standard instead of a
4 predischage condition.

5 Do you see that?

6 A Yes.

7 Q That was your testimony in the MTBE case?

8 A It was, and I think it's pretty much consistent
9 with what I've been saying.

10 Q Okay. Now, let me talk about one specific
11 type of case.

12 MR. BAUGHMAN: You can take that down,
13 Mr. Stevenson.

14 Q Now, in this case, the DEP is basing claims
15 on contamination in soil, correct?

16 A Soil or sediment.

17 Q And prior to this case, the DEP had never
18 pursued a claim relating to soil contamination,
19 correct?

20 A I don't recall any. We've pursued many claims
21 with regard to sediment contamination. Remember,
22 wetlands are sediment.

23 Q Let me show you, then, your deposition in
24 this case, December 7th, 2005, deposition transcript
25 68, page 68, line 15. You were asked a question:

Transcripts: The Correct Way

Plaintiff Has No Ownership Interest in Either Property

Joseph Silvio, May 13, 2014, Trial Tr. 5:1-6, 6:17-20



Insert photo

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19 correct?
20 A I don't recall any. We've pursued many claims
21 with regard to sediment contamination. Remember,
22 wetlands are sediment.

Type out text

Transcripts: The Correct Way

Plaintiff Has No Ownership Interest in Either Property



Joseph Silvio
NJ DEP

May 13, 2014
Trial Tr. 5:1-6, 6:17-20

Q. Does the State contend that any of the areas at Bayway qualify as public land in any way?

A. No.

Q. Does it contend that any of the areas at Bayonne qualify as public land in any way?

A. No.

Q. And prior to this case, the DEP had never pursued a claim relating to soil contamination, correct?

A. I don't recall any.

Comparing Transcripts

No Title Insurance = No Deal



Mitch Lam
Director
01/15/14
305:15-25

Bank I

Q. ... did anyone ever tell you that the restructuring with Acme would be impossible because of the title insurance issue?

A. **Nobody had to tell us. We knew that without title insurance, we were not going to be able to close this.**



Justin Neuhaus
Director
11/22/13
70:21-74:5

Bank II

Q. ... What was your title insurance policy?

A. **All real estate loans are to be supported with title insurance.**



Juliana Paige
Vice President
03/19/14
131:17-21

Bank III

Q. ... Would the bank have agreed to consummate a restructuring of any loan on property that was **not covered by title insurance**?

A. **I don't believe so, no.**

Timelines

Arias U.S. 2021 Fall Conference

Timelines Are Important

Every

Case

Can

Use

a

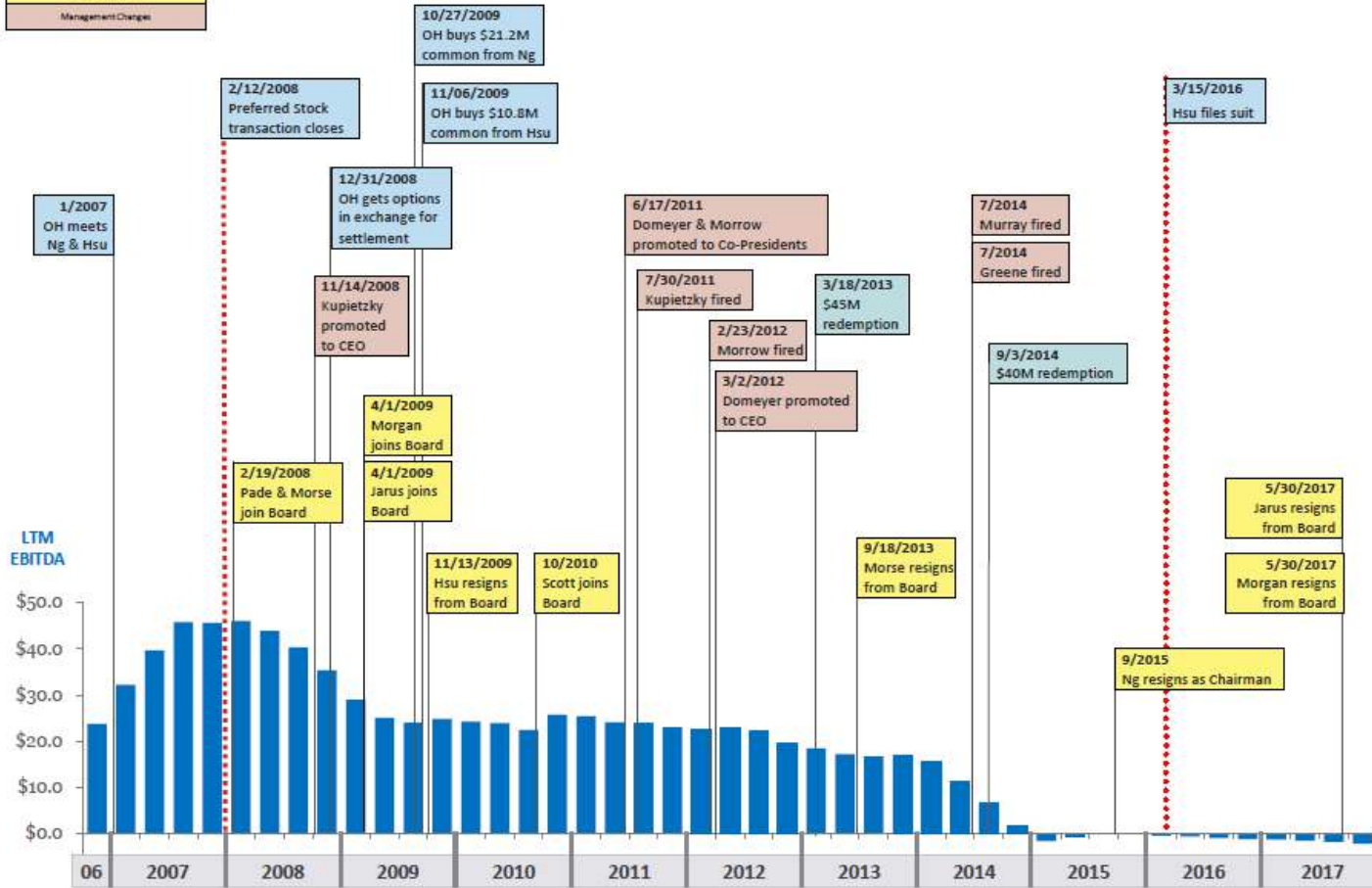
Good

Timeline

Beware of Overly Complicated Timelines

COLOR KEY

OH Investment/Transactions
Board Changes
Management Changes



Timelines Should Make a Clear Point

Samsung Copied Apple

SAMSUNG PRODUCTS BEFORE IPHONE



I700
March 2004



2005



APPLE IPHONE ANNOUNCED
January 9, 2007



2007

SAMSUNG PRODUCTS AFTER IPHONE



Galaxy S 19000
June 2010

2009



Galaxy S II SGH-I777
October 2011

2010

2011

2004

Use Timelines to Walk through Your Evidence

Terra Firma Was Consistently Targeting a Bid Price of 265p – May 17



May 2007

Sunday

Bid Price 265p

17 May 2007

Attached is the latest model.

Friday

Saturday

5

12

19

26

Per share price (p) 265.00

Terra Firma Capital Partners Confidential

Project Dice

Transaction Assumptions (Millions, unless noted) Financing case: DB; Incl. Publishing Acq.

	Sources	Uses	Convertible bond calculation	
Per share price (p)	265.00		Principal (\$)	243.3
Premium to current	8%	New Equity £1,733	\$. £	1,595.7
Premium to 52-wk high (14.9%)		Senior Bank		£152.5
FD Shares		Debt retirement		£1,425.0
Equity value				107.0
Net Debt				(152)
Minority Interest				
Enterprise Value / 2006				19.3
EV / 2007				2.05
EV / 2008				

Share premium		Mezzanine		-Equity bridge costs		Weighted Exercise price	
Bid Share price	265.00	Proceeds from RM		Stamp Duty		Fully Diluted Shares Outstanding	
Current share price	248.25	Proceeds from Publishing				Basic shares	800.0
Premium	7.61%	Cash	40	Min cash	100	Shares from conversion	107.0
52-wk high	311.50	Total	£3,907	Total	£3,907	Shares from options exercise	19.3
		Equity Required	£1,733	Leverage	55.2%	Total FD shares	926.3
		TFCP II	392	Senior	12.25x		
		TFCP III	1061	Junior	0.00x	Net Debt - 2007E	
		Co-Investors	279	Mezz	0.00x	Total debt	1,327
		Total	£1,733	Total	12.25x	Cash	-
				Total leverage	2,135	Cash from options exercise	(40)
						Reduction of convertible	(152)
						Net debt	1,136

Returns	
Exit year - Music	2012
EBITDA multiple	7.5x
Exit year - Publishing	2012
EBITDA multiple	14.0x
Blended exit multiple	9.9x
IRR	11.13%
Cash Multiple	1.69x

Restructuring Impacts	
Transaction close	6/30/2007
Financing date	9/30/2007
£ : \$ (current)	1.5955
£ : € (current)	1.4609
Restructuring Costs	
2007 cash Cost of Restructuring	
2008 cash Cost of Restructuring	

Use Timelines to Walk through Your Evidence

Terra Firma Was Consistently Targeting a Bid Price of 265p – May 18



TERRA FIRMA CAPITAL PARTNERS LIMITED

(the "Company")

Minutes of a meeting of the Investment Advisory Committee of the Company

Held at Old Government House, St Ann's Place, St Peter Port,

Balliwick of Gosport, GY1 2NU

On Friday, 18 May 2007, at 08.00 Hours

TERRA FIRMA CAPITAL PARTNERS LIMITED
Minutes of a meeting of the Investment Advisory Committee of the Company
On Friday, 18 May 2007, at 08.00 Hours

indicative bid to the Dice Board at 265p/share

Henry Ford (via telephone)
Karen Dolenc (via telephone)
Henry Ford
Michael Hedegaard (via telephone)

Tom Quigley (via telephone)
Kirsten Randell
Stephen Seymour (via telephone)
Michael Slattery (via telephone)
Quentin Stewart
Francois van der Spuy (via telephone)
Julie Williamson

1 Chairman, Directors and Quorum

It was reported that notice of the meeting had been given to all members of the Investment Advisory Committee of the Company to whom notice of the meeting was required to be given pursuant to the articles of association of the Company.

Guy Hands took the chair, noted that a quorum was present and declared the meeting open.

2 Purpose of the Meeting

The Chairman reported that the purpose of the meeting was to consider proposals in connection with:

- a) Project Dice

Wednesday

Thursday

Friday

Saturday

2

3

4

5

27

28

29

terra firma

Project Dice

Presentation to the IAC

18 May 2007

18 May 2007

a bid of 265p

Use Timelines to Walk through Your Evidence

Terra Firma Was Consistently Targeting a Bid Price of 265p – May 20



	Wednesday	Thursday	Friday	Saturday
	2	3	4	5
27				
28				
29				

TERRA FIRMA CAPITAL PARTNERS LIMITED
(the "Company")
Minutes of a meeting of the Investment Advisory Committee of the Company
Held at 2 More London Riverside, London SE1 2AP
On Sunday 20 May at 10:00 hours

TERRA FIRMA CAPITAL PARTNERS LIMITED
Minutes of a meeting of the Investment Advisory Committee of the Company
On Sunday 20 May at 10:00 hours

offer for Dice at 265 pence per share

Francis van der Spuy (via telephone)
Quentin Stewart (via telephone)

1 Chairman, Directors and Quorum
It was reported that notice of the meeting had been given to all members of the Investment Advisory Committee of the Company to whom notice of the meeting was required to be given pursuant to the articles of association of the Company.
Guy Hands took the chair, noted that a quorum was present and declared the meeting open.

2 Purpose of the Meeting
The Chairman reported that the purpose of the meeting was to consider proposals in connection with:

a) Project Dice;

3 Project Dice
A memorandum and presentation dated 20 May 2007 was produced to the meeting, copies of which are attached to these minutes.
Francis van der Spuy confirmed that the pension's model assumes a charge for UK pension schemes of £50m upfront cash contribution and £120m upon exit for the German pension scheme funding £15m of the £30m deficit. In the run down case, the UK pension scheme is funded with £70m upfront and £20m p.a. for 5 years for a £170m total cash contribution. The

terra firma

Project Dice

Presentation to the IAC

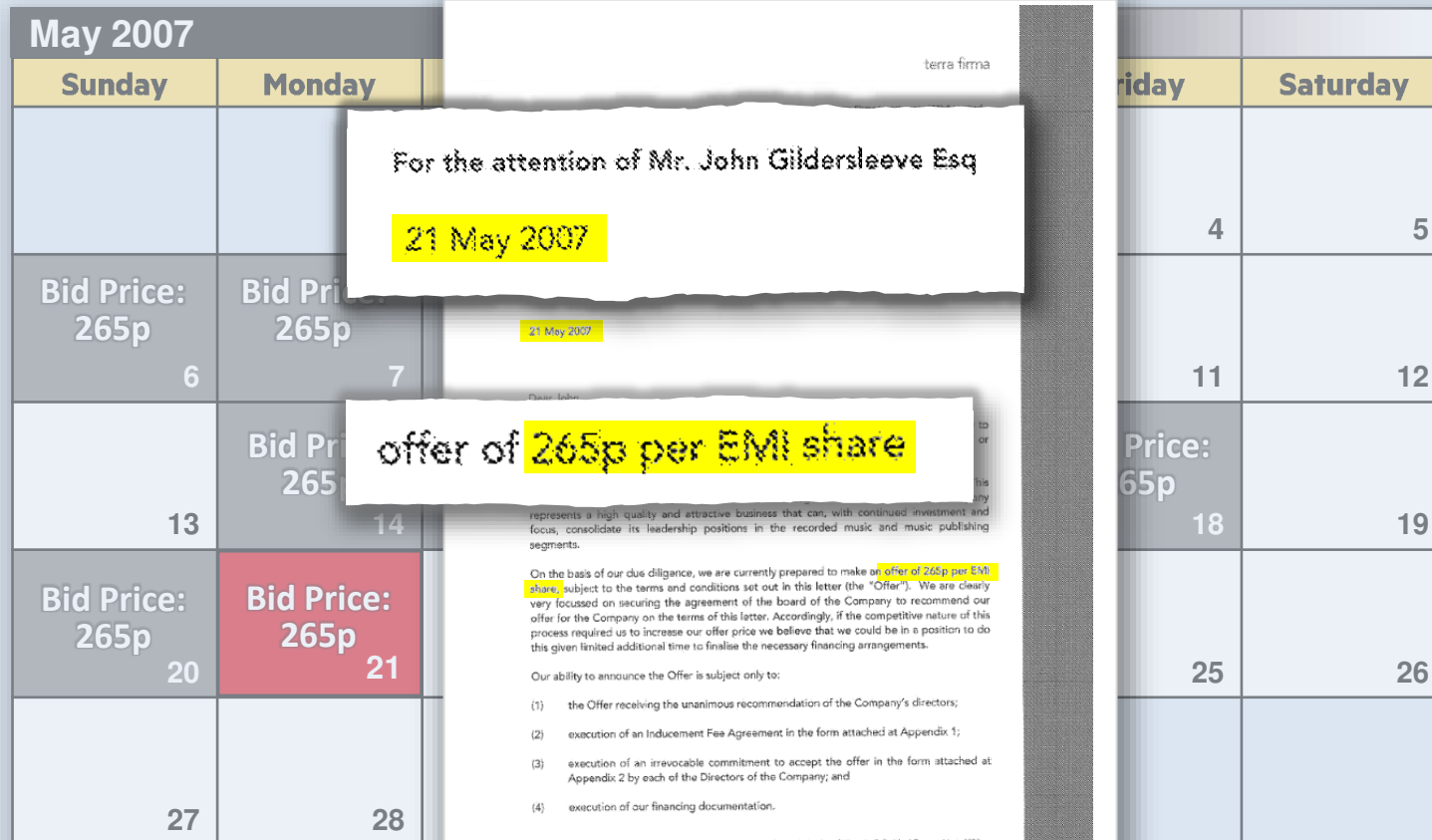
20 May 2007

20 May 2007

a bid of 265p

Use Timelines to Walk through Your Evidence

Terra Firma Was Consistently Targeting a Bid Price of 265p – May 21



Use Timelines to Walk through Your Evidence

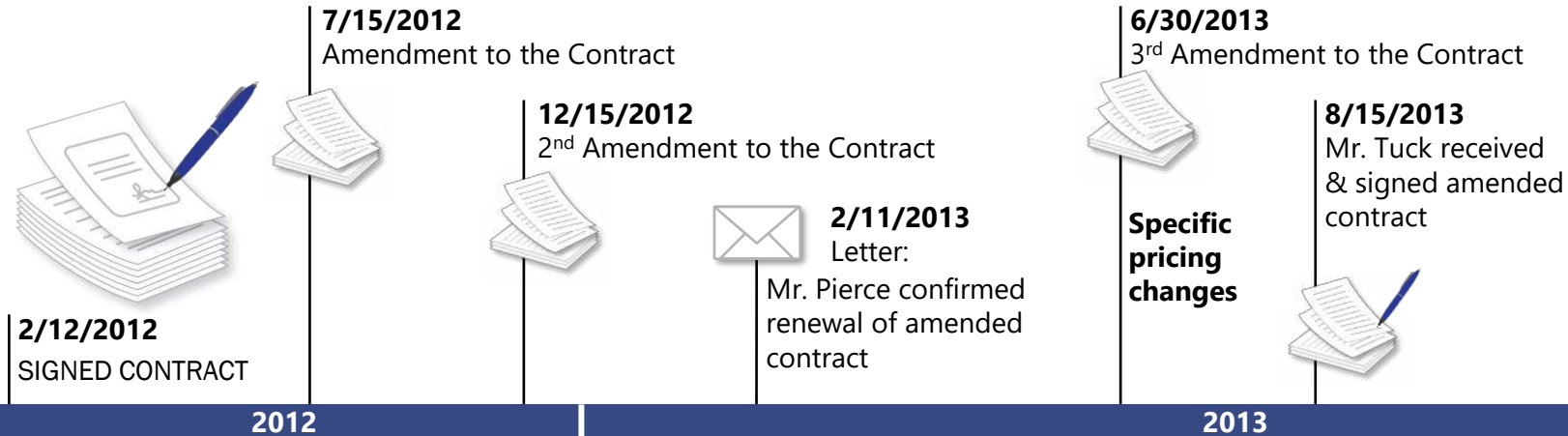
Terra Firma Was Consistently Targeting a Bid Price of 265p



May 2007						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
Bid Price: 265p 6	Bid Price: 265p 7	Bid Price: 265p 8	9	10	11	12
13	Bid Price: 265p 14	Bid Price: 265p 15	Bid Price: 265p 16	Bid Price: 265p 17	Bid Price: 265p 18	19
Bid Price: 265p 20	Bid Price: 265p 21	22	23	24	25	26
27	28	29	30	31		

Use a Bifurcated Timeline to Categorize Information

WHAT WE KNEW



10/27/2013



Official notice that the policy term has ended

The FIRST NOTICE of policy term change was the notice of term expiration



2012

2013

● **3/15/2012**
Internal meeting: concluded policy term was to be shortened



● **8/5/2012**
Phone conversation: Mr. Pierce & Ms. Smith discussed notifying client of term change



● **1/25/2013**
Internal memo: "Term length has changed"



● **5/12/2013**
Internal docs: "The term hidden within the 3rd amended contract is different than our client expects. I suggest a formal notification..."



● **7/18/2013**
Email: "...A formal notification should be made before signature..."

Ms. Smith sends official notice of policy term change

WHAT WE DIDN'T KNOW



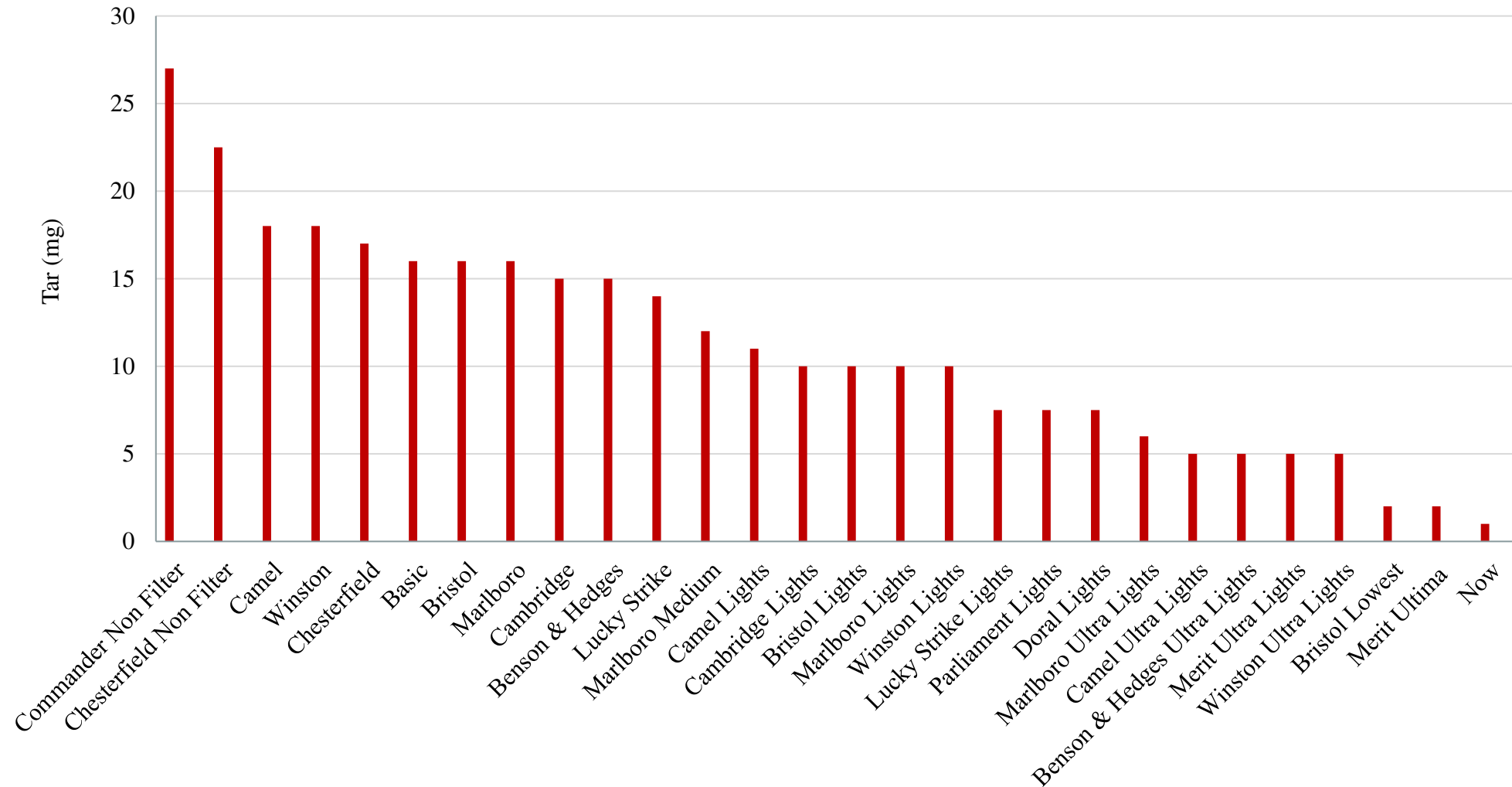
● **5/1/2013**
Email: "The Term length has changed, please notify client..."

Depicting Data

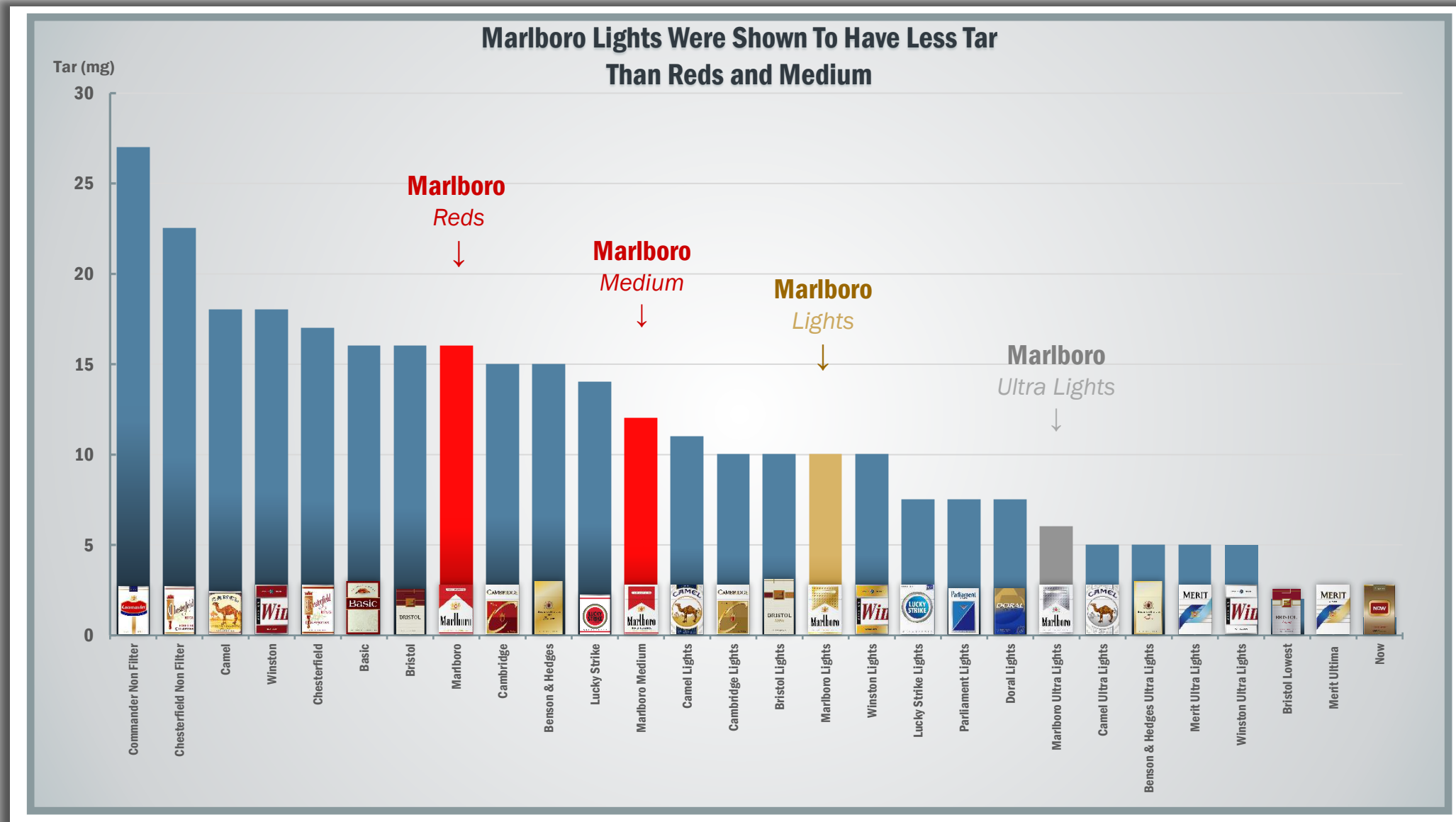
Arias U.S. 2021 Fall Conference

Improving the Presentation

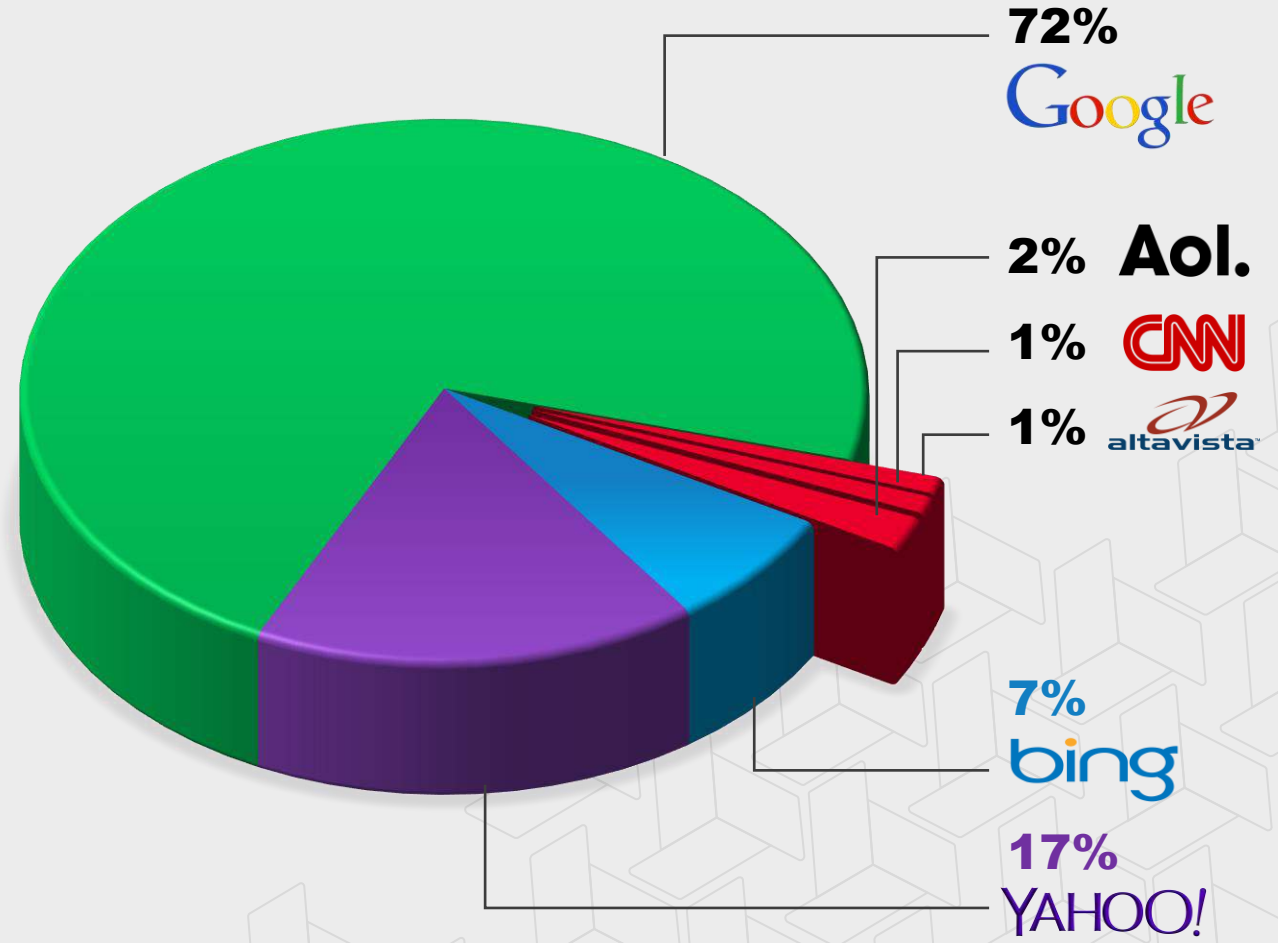
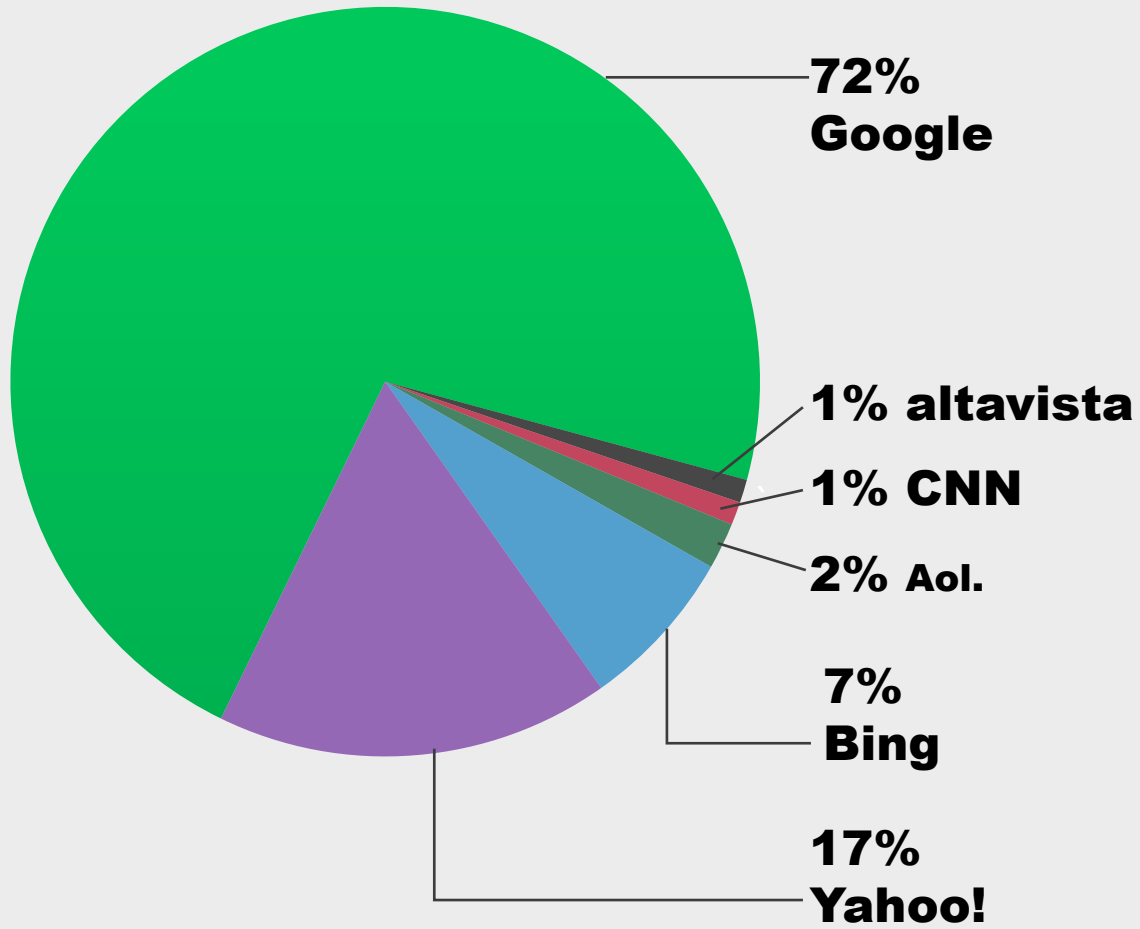
Tar Levels Observed in Cigarette Brands Available to Florida Consumers
During the Relevant Time Period



Improving the Presentation



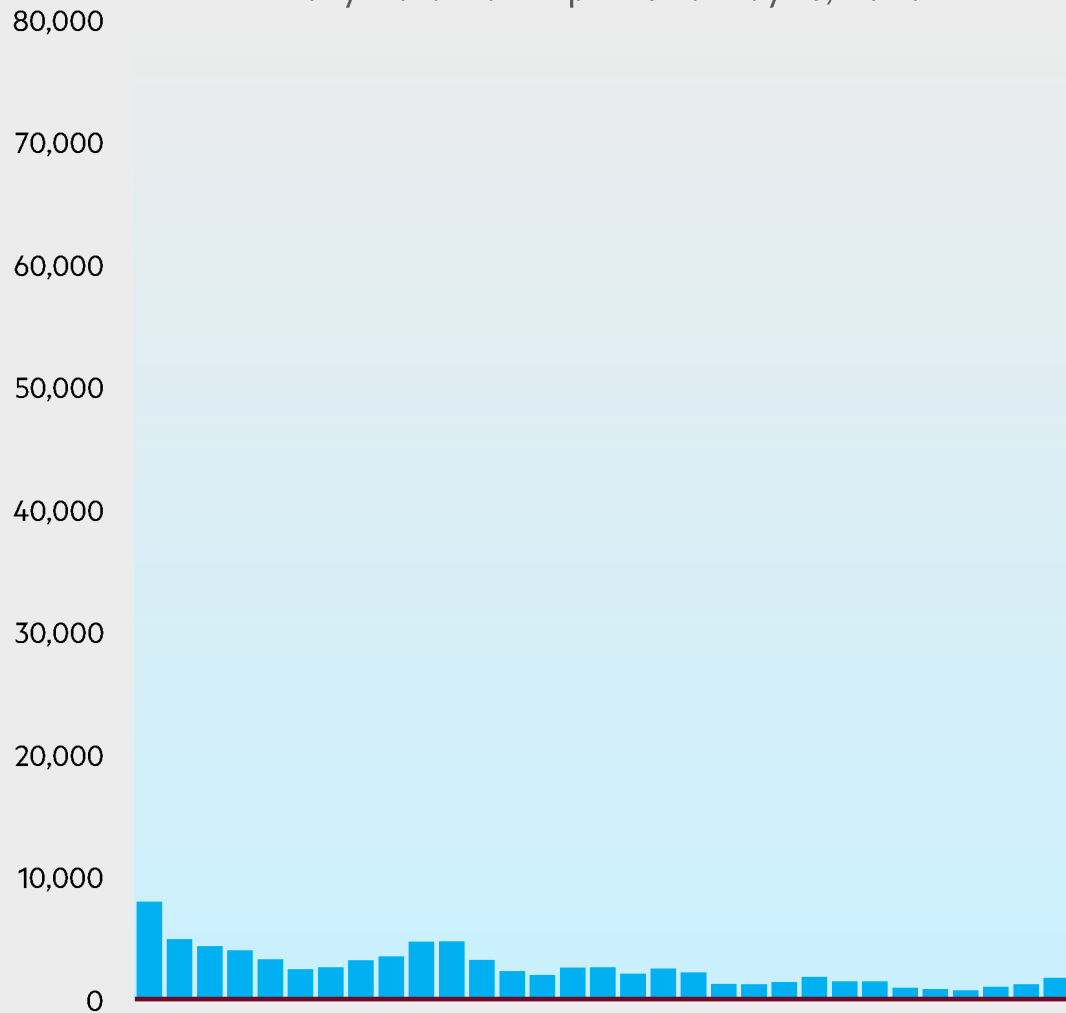
Depicting Proportion



Showing Statistics

COVID-19 Cases in New York City

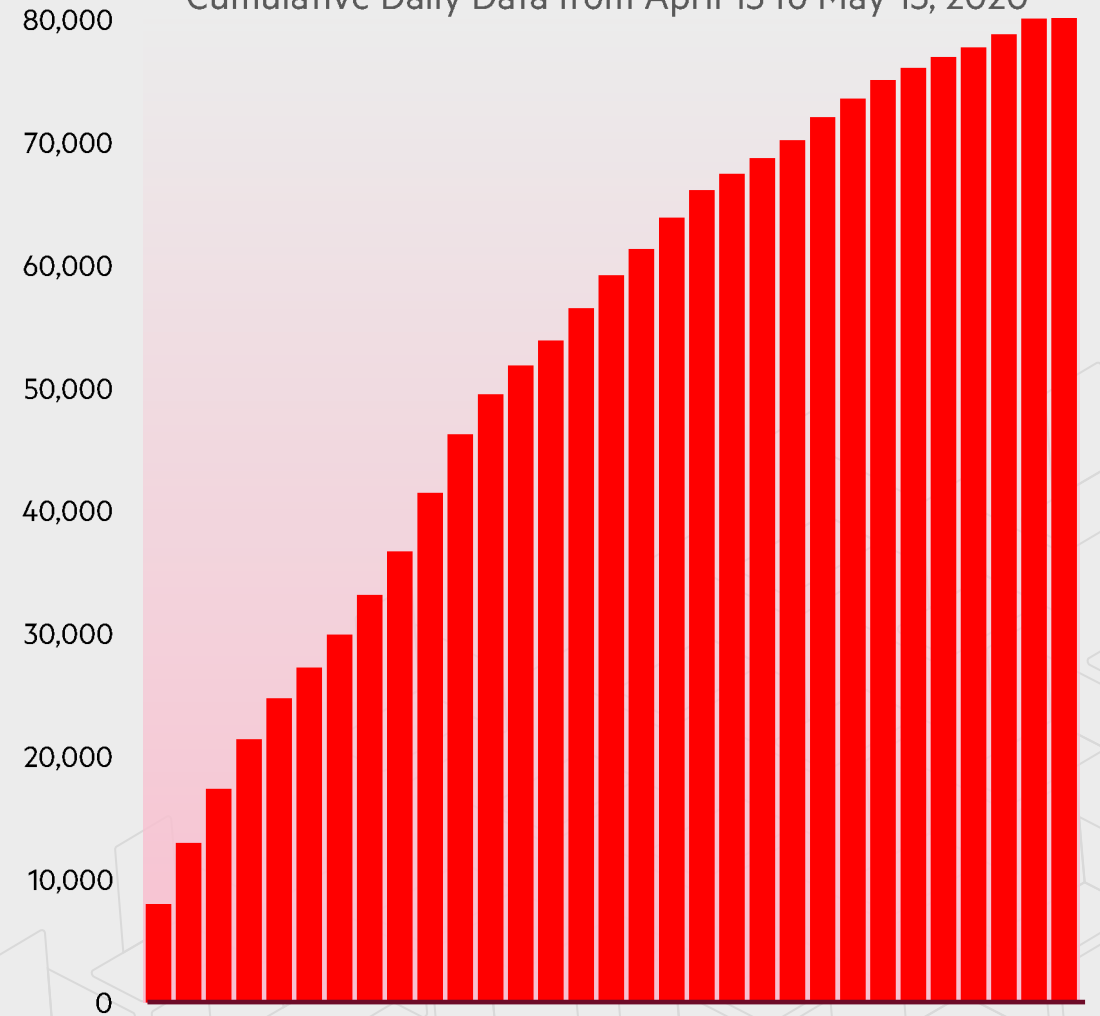
Daily Data from April 15 to May 15, 2020



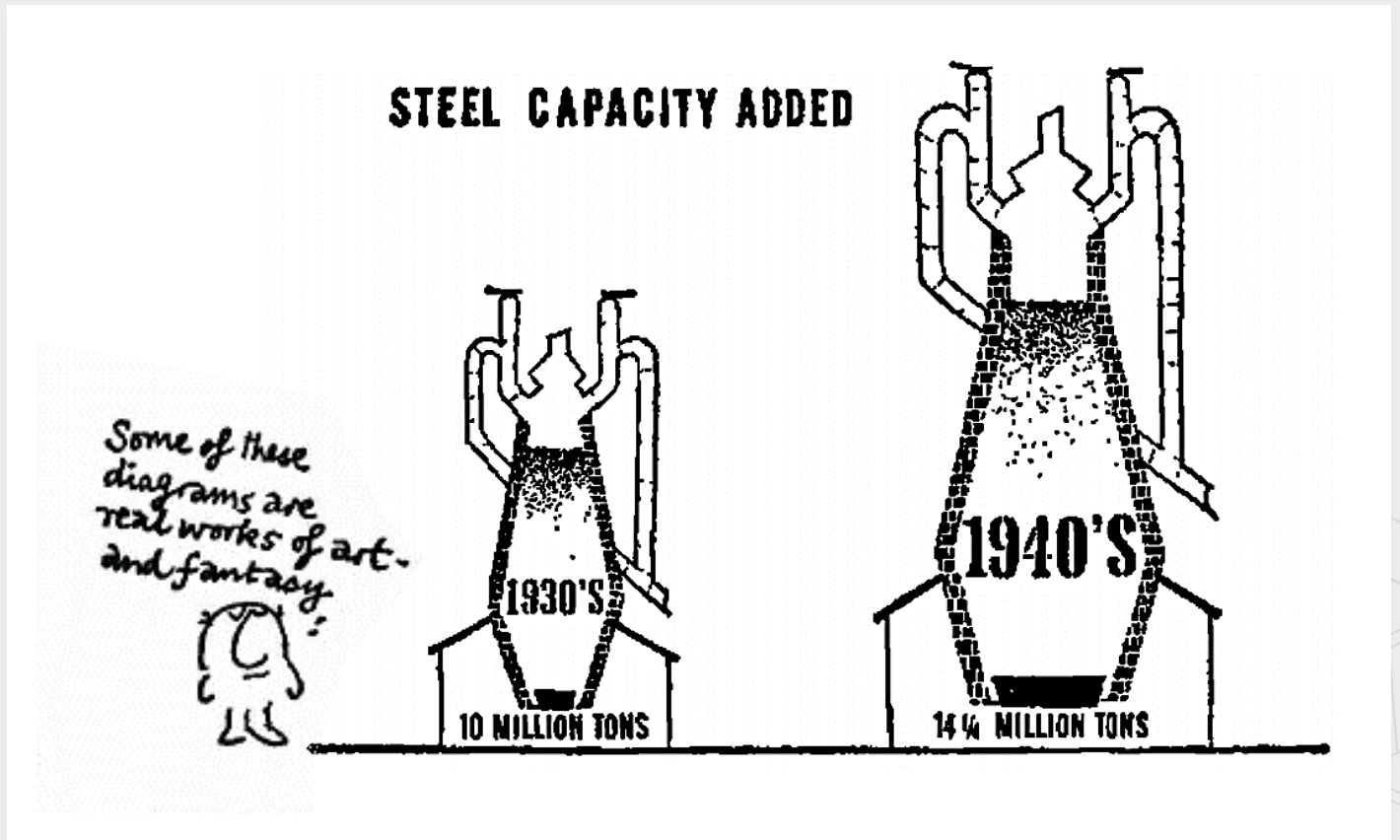
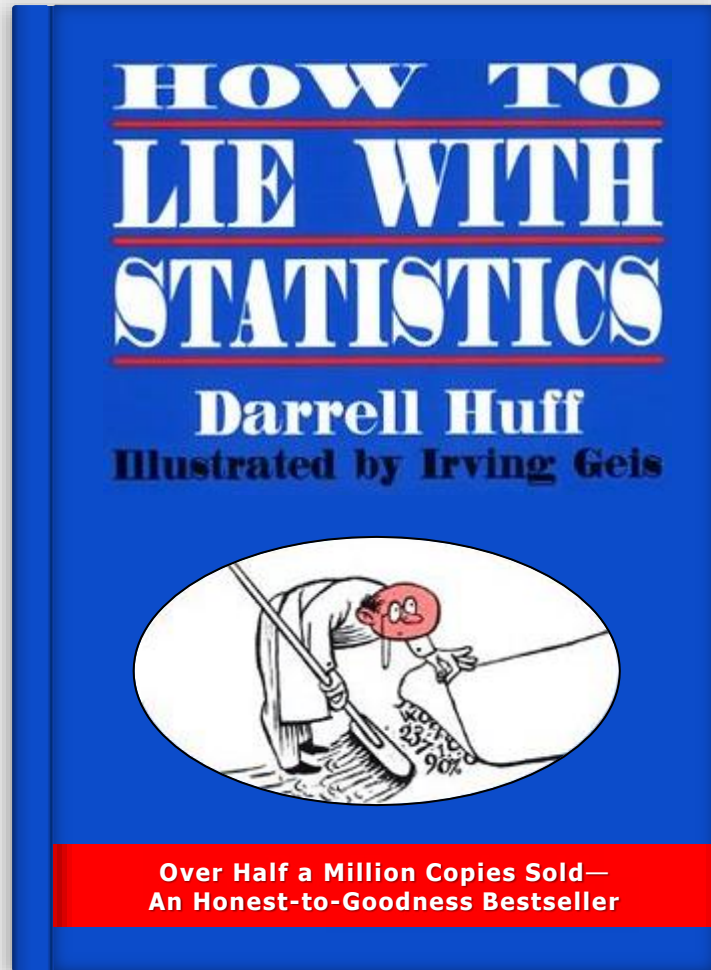
VS

COVID-19 Cases in New York City

Cumulative Daily Data from April 15 to May 15, 2020



Depicting Change



Depicting Change: A Real Example

This Fig Leaf Justification Inflated Acme's Claim by More Than \$2 Billion Dollars

From: Argo, Sanjay
Sent: Wednesday, September 17, 2008 6:27 PM
To: Darby, Jonathan; Franzen, George
Cc: Fenway, Stephen; Flipper, Scott; Lantham, Christopher
Subject: DRA claim increase by \$2.1 Bn

Chris estimates that this increases the claim for his business, from \$650mm to \$2.75Bn. Our net economic cost of replacing the trades would remain in the \$650mm range, though now possibly higher given current market conditions.

\$650 Million



Depicting Change: A Real Example

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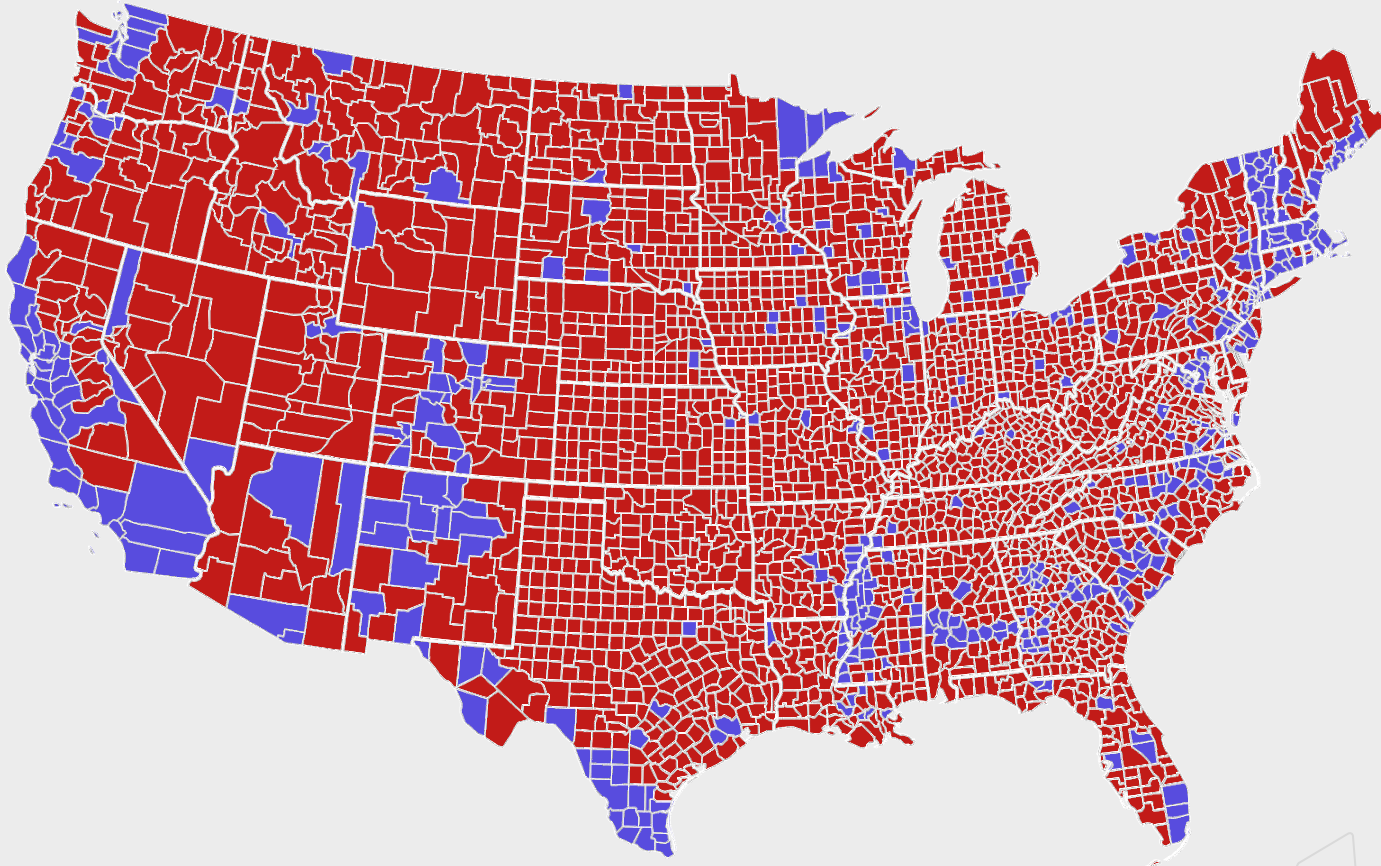
Chris estimates that this increases the claim for his business, from \$650mm to \$2.75Bn. Our net economic cost of replacing the trades would remain in the \$650mm range, though now possibly higher given current market conditions.



**\$2.75
Billion**

Beware of the County Trick

COUNTY RESULTS



POPULAR VOTE

65,844,610

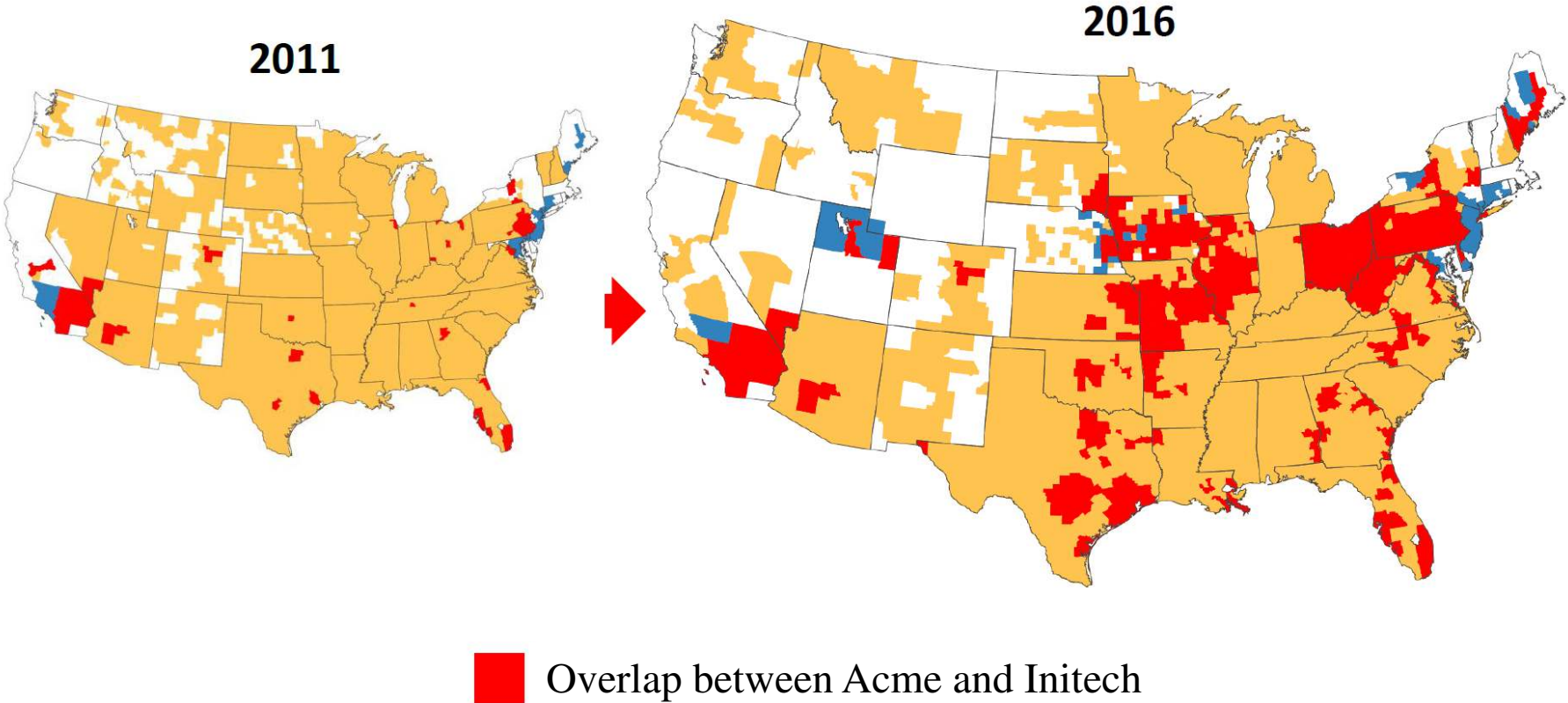


62,979,636



Depicting Change: A Real Example of the County Trick

Acme is a particularly aggressive competitor



Common Mistakes

Arias U.S. 2021 Fall Conference

What Is the Point?

July 26 Diversio: VA Houston, 2004

"Brand A" Retracting 3ml Syringe:

Drugs	"Brand A" WasteSpace
Influenza	0.185
Hepatitis B	0.185
Neupogen	0.185
Epogen	0.185
	0.185

Paid \$100 million on July 2, 2004,
& false cost calculator prepared
July 26, 2004

PX568-23:

20 - 25,000 units sold
using the .185 mL number -
- that BD knows is false.

BD leadership celebrates a
sale made by lying to the
United States government.

Prepared For: VA Houston, TX
Date: 7/26/2004

BD INTEGRA SYRINGE vs "BRAND A" RETRACTING SYRINGE WASTESPACE CALCULATOR

BD Integra 3ml Syringe				"Brand A" Retracting 3ml Syringe			
Drug	WasteSpace	Stock Volume (ml)	WasteSpace	Drug	WasteSpace	Stock Volume (ml)	WasteSpace
Influenza	0.185	3.0	0.555	Influenza	0.185	3.0	0.555
Hepatitis B	0.185	3.0	0.555	Hepatitis B	0.185	3.0	0.555
Neupogen	0.185	3.0	0.555	Neupogen	0.185	3.0	0.555
Epogen	0.185	3.0	0.555	Epogen	0.185	3.0	0.555
	0.185	3.0	0.555		0.185	3.0	0.555

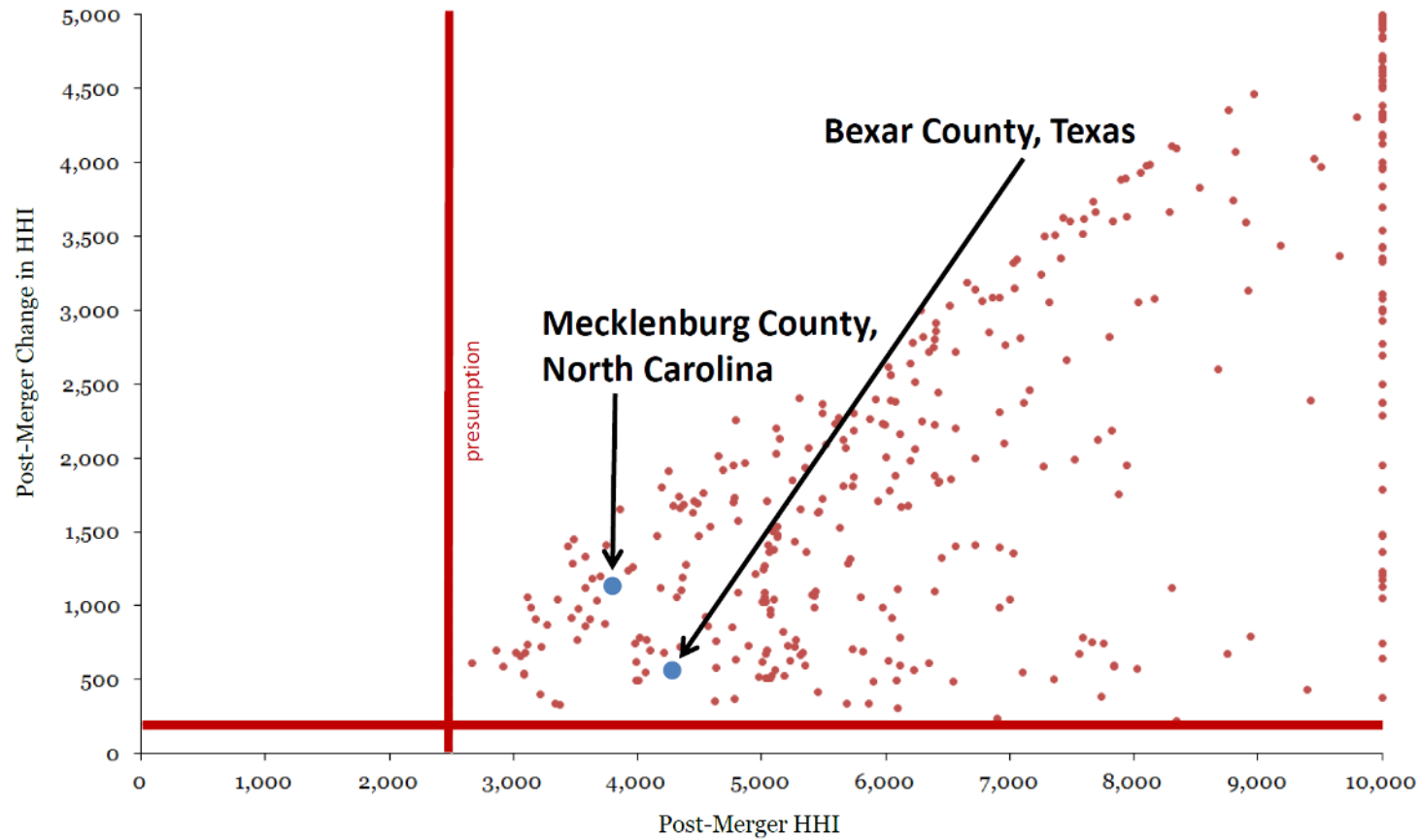
* Wastospace being performed using a BD Integra Syringe, 21G x 1.15"
 ** As labeled on multi-dose containers intended to hold a specific number of doses of a stated volume (USP Reference Standards: General Requirements, 2-1822)
 *** Increased cost of using Brand A or Brand B Retracting Syringe vs. BD Integra Syringe
 **** \$0.000 per 20g x 1 inch Integra Syringe 202175 at \$4.0000 each + \$0.175 syringe cost. Additional savings on syringes may be available over current brand.
 BD Integra Syringes are an FDA 510(k) device. First passing through August 31, 2008.

"Thanks for selling Government!" PX568-28

PX568 - 23

Too Much Explanation Required

The merger is presumptively unlawful



Medicare Advantage

Market Definition

Competitive Effects

PX0551, at Ex. 16
& Appendix I

57

The Image Does Not Support the Title

This Case Is About Hollywood Fraud



The Wall of Text

OVERVIEW

IMPORTANT TAKE AWAYS

Integer molestie odio eu purus commodo, vitae faucibus libero elementum.

- Curabitur elit leo, consequat in ullamcorper eu, tempor in nibh. Morbi ac urna nunc. Sed facilisis hendrerit efficitur. Maecenas egestas id sapien a volutpat. Nunc pellentesque, libero pulvinar sollicitudin molestie, tortor massa ullamcorper arcu, sit amet rhoncus nisl nunc nec erat. Fusce eu tempus mauris, eget posuere augue. Vestibulum ante ipsum primis in faucibus orci luctus et ultrices posuere cubilia curae; Suspendisse eu vestibulum ante, in maximus lorem.

Vestibulum nec sem ut erat porttitor mattis.

- Maecenas aliquam dapibus finibus. Duis eget magna accumsan quam lobortis blandit nec a mi. Vestibulum molestie, eros vel aliquet euismod, enim sapien tincidunt risus, sed eleifend odio risus ac tortor. Phasellus sit amet elit sed lacus aliquam tempor. In convallis nunc et rutrum egestas. Quisque blandit elit nisi, quis gravida orci cursus pretium. Morbi ornare sodales massa, interdum cursus arcu pretium et. Integer dignissim eros ligula.

Nullam consequat, felis sit amet vestibulum suscipit, nibh quam feugiat leo, eget gravida urna magna id odio.

- Interdum et malesuada fames ac ante ipsum primis in faucibus. Sed sit amet pellentesque purus, nec fermentum risus. Nunc vestibulum eget libero nec semper. Maecenas vel urna pulvinar, scelerisque odio ut, aliquet ex. Vestibulum eget augue consequat, suscipit massa ac, posuere massa. Nunc ut accumsan ante, a iaculis orci. Quisque rutrum enim at nisi molestie, eget semper sapien posuere.

Nulla non nisl sit amet ante posuere pellentesque et et sem.

- Nullam sit amet feugiat diam. Vivamus condimentum eros dolor, id vehicula libero sagittis in. Suspendisse lobortis mollis molestie. Praesent ultrices libero id nibh volutpat, vitae tristique velit finibus. Maecenas posuere eleifend nibh, quis fermentum nisi venenatis at. Nulla vestibulum hendrerit velit, at dignissim augue luctus ac. Ut vel commodo urna, facilisis commodo tortor. Suspendisse eu tincidunt ex.

Use of Historical Photographs

Arias U.S. 2021 Fall Conference

The Importance of Physical Modification

Plaintiff Ignored Extensive Evidence of Physical Modification Before Any Possible Discharge

January 21, 1908: View from Bruzzi Street



Plaintiff Ignored Extensive Evidence of Physical Modification Before Any Possible Discharge

View from Kanner Avenue

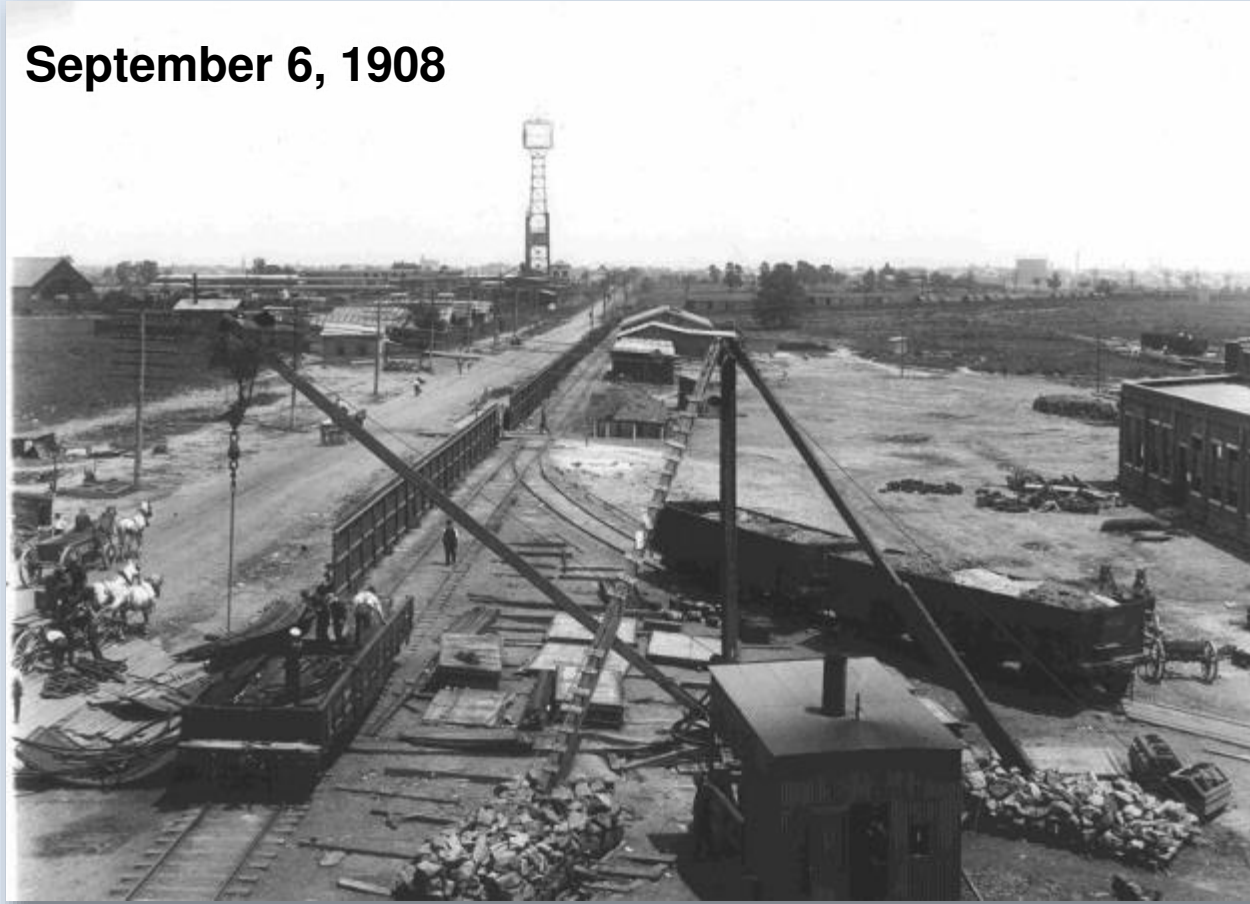
January 21, 1908



Plaintiff Ignored Extensive Evidence of Physical Modification Before Any Possible Discharge

View from Kanner Avenue

September 6, 1908



Use Diagramming for Complex Rules

Arias U.S. 2021 Fall Conference

NFL Catch Rule



OFFICIAL PLAYING RULES OF THE NATIONAL FOOTBALL LEAGUE



Roger Goodell, Commissioner

RULE 8 FORWARD PASS, BACKWARD PASS, FUMBLE

SECTION 1 FORWARD PASS

ARTICLE 1. DEFINITION. It is a forward pass if:

- the ball initially moves forward (to a point nearer the opponent's goal line) after leaving the passer's hand(s)
- the ball first strikes the ground, a player, an official, or anything else at a point that is nearer the opponent's goal line than the point at which the ball leaves the passer's hand(s).

Note: A ball that is intentionally fumbled and goes forward is a forward pass. A ball that is intentionally muffed, and goes forward or backward, is a batted ball (12-5-1-Note).

Item 1. Forward Movement of Hand. When a player is in control of the ball and is attempting to pass it forward, any intentional forward movement of his hand starts a forward pass.

- if, after intentional forward movement of his hand, contact by an opponent materially affects the passer, causing the ball to go backward, it is a forward pass, regardless of where the ball strikes the ground, a player, an official, or anything else.
- if, after an intentional forward movement of his hand, the passer loses possession of the ball during an attempt to bring it back toward his body, it is a fumble.
- if the passer loses possession of the ball while attempting to re-cock his arm, it is a fumble.

ARTICLE 2. LEGAL FORWARD PASS. The offensive team may make one forward pass from behind the line during each down. If the ball, whether in player possession or loose, crosses the line of scrimmage, a forward pass is not permissible, regardless of whether the ball returns behind the line of scrimmage before the pass is thrown.

Item 1. Illegal Passes. Any other forward pass by either team is illegal and is a foul by the passing team, including:

- A forward pass thrown when the passer is beyond the line of scrimmage.

Note: It is a forward pass from beyond the line of scrimmage if the passer's entire body and the ball are beyond the line of scrimmage when the ball is released, whether the passer is airborne or touching the ground. The penalty for a forward pass thrown from beyond the line is enforced from the spot where the ball is released.

- A second forward pass thrown from behind the line of scrimmage.
- A forward pass thrown after the ball has crossed the line of scrimmage and has returned behind it.
- A forward pass thrown after there has been a change of possession.

Item 2. Intercepted Illegal Pass. If an illegal pass is caught or intercepted, the ball may be advanced and the penalty declined.

Penalties:

- For a forward pass from beyond the line: Loss of down and five yards from the spot of the pass. See S.N. below.
- For a second forward pass from behind the line, or for a forward pass that was thrown after the ball returned behind the line: Loss of down and five yards from the previous spot.
- For a forward pass that is thrown after a change of possession: Loss of five yards from the spot of the pass.

Notes:

- Eligibility, pass interference, and intentional grounding rules apply when a forward pass is thrown from behind the line, regardless of whether the pass is an illegal forward pass. Eligibility, pass interference, and intentional grounding rules do not apply if a forward pass is thrown (a) from beyond the line, (b) on a Free Kick play, (c) on a Fair Catch kick play, or (d) after a change of possession.

- Roughing the passer rules apply on all passes (legal or illegal) thrown from behind the line of scrimmage (12-2-9). If a pass is thrown from beyond the line of scrimmage, unnecessary roughness may apply for action against the passer.
- When a distance penalty in Penalty (a) leaves the ball in advance of the necessary line to gain, it is first-and-10 for the offensive team.

- See 3-2-4 for the definition of team possession during a forward pass (a loose ball), or for when possession ends.

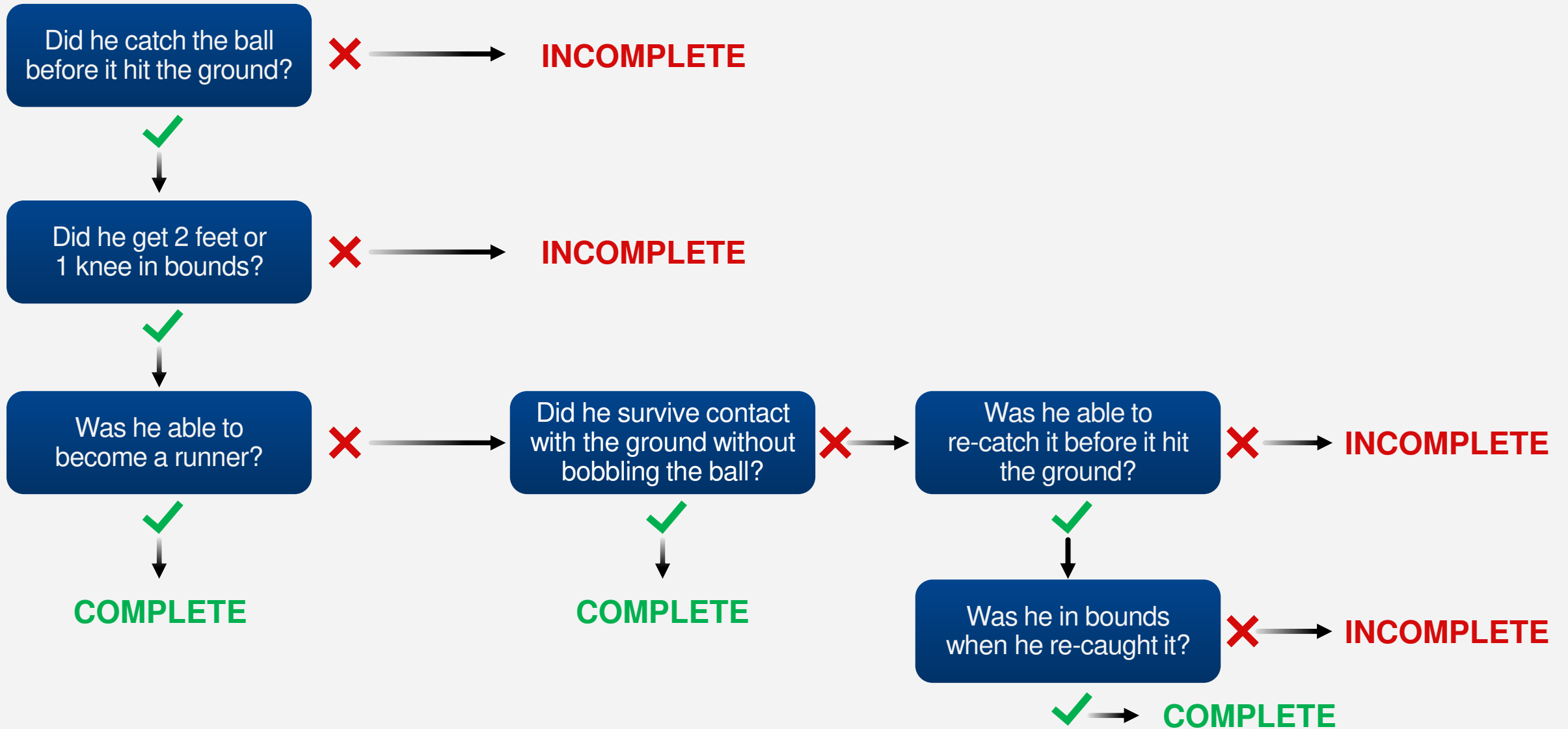
ARTICLE 3. COMPLETED OR INTERCEPTED PASS. A player who makes a catch may advance the ball. A forward pass is complete (by the offense) or intercepted (by the defense) in the field of play, at the sideline, or in the end zone if a player, who is inbounds:

- secures control of the ball in his hands or arms prior to the ball touching the ground; and
- touches the ground inbounds with both feet or with any part of his body other than his hands; and
- after (a) and (b) have been fulfilled, performs any act common to the game (e.g., tuck the ball away, extend it forward, take an additional step, turn upfield, or avoid or ward off an opponent), or he maintains control of the ball long enough to do so.

Notes:

- Movement of the ball does not automatically result in loss of control.
- If a player, who satisfied (a) and (b), but has not satisfied (c), contacts the ground and loses control of the ball, it is an incomplete pass if the ball hits the ground before he regains control, or if he regains control out of bounds.
- A receiver is considered a player in a delirious posture (See Rule 12, Section 2, Article 9) throughout the entire process of the catch and until the player is capable of avoiding or warding off the impending contact of an opponent.
- If a pass is caught simultaneously by two eligible opponents, and both players retain it, the ball belongs to the passers. It is not a simultaneous catch if a player gains control first and an opponent subsequently gains joint control. If the ball is muffed after simultaneous touching by two such players, all the players of the passing team become eligible to catch the loose ball.

NFL Catch Rule



Advanced Animation

Arias U.S. 2021 Fall Conference

Use Animation to Show How Words Work

The Jury Must Decide Where the Profit Share Belongs



ELA

"**Sublicensing Income**" means income received by Licensee under or on account of Sublicenses. Sublicensing Income includes income received including but not limited to **license issue fees, milestone payments,** and the like but specifically excludes **royalties on the sale** or distribution of Licensed Products or the practice of Licensed Methods.

ACA Revenue Streams

License Fee

Regulatory
Milestones

Sales
Milestones

Profit Share

Royalties



Sublicensing Income



Not Sublicensing Income

Use Animation to Show How Words Work

The Jury Must Decide Where the Profit Share Belongs



ELA

"**Sublicensing Income**" means income received by Licensee under or on account of Sublicenses. Sublicensing Income includes income received including but not limited to **license issue fees, milestone payments,** and the like but specifically excludes **royalties on the sale** or distribution of Licensed Products or the practice of Licensed Methods.

ACA Revenue Streams

Profit Share



Sublicensing Income



Not Sublicensing Income

Use Animation to Show How Words Work

A Key Question to Decide



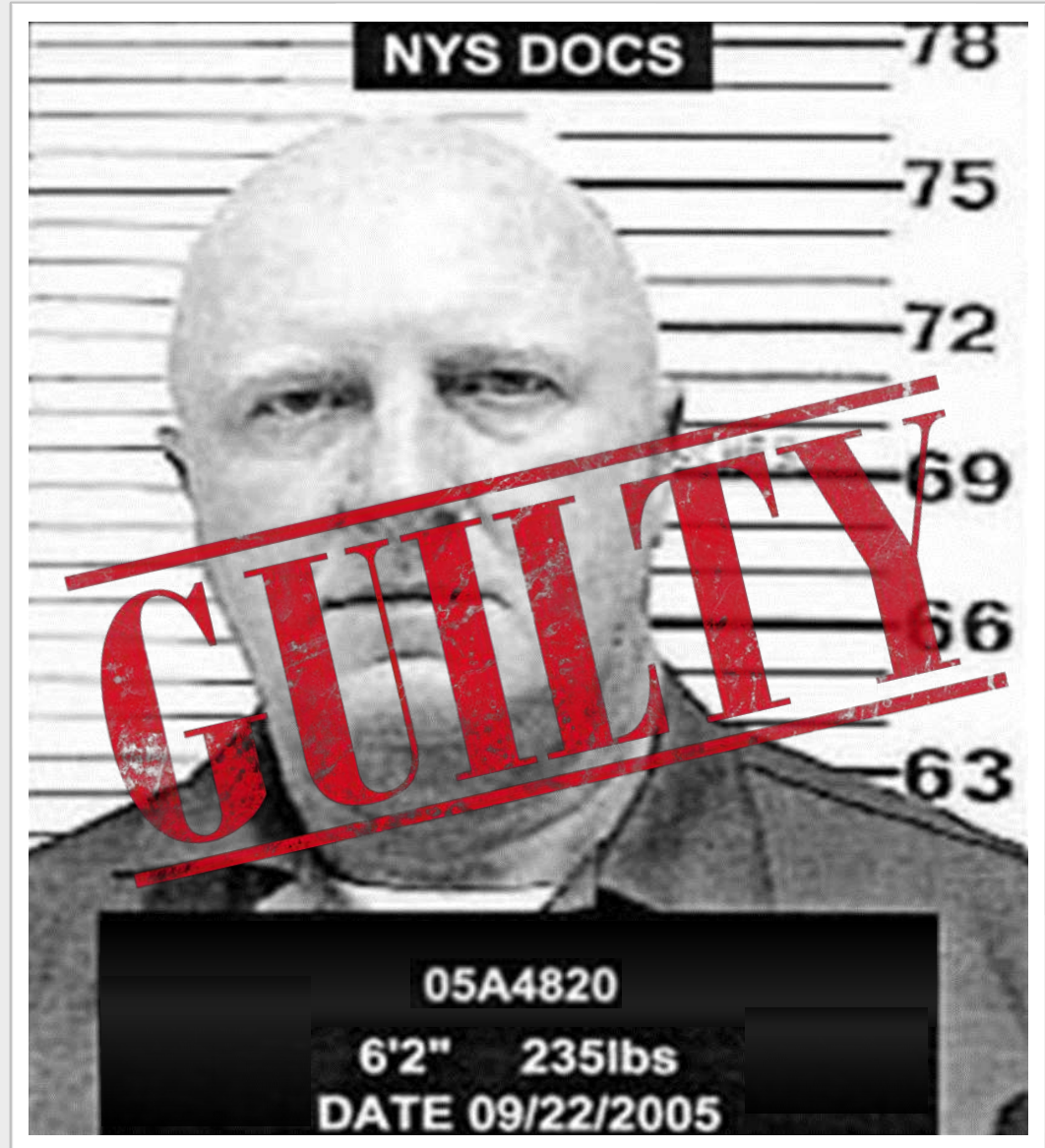
**Did the parties intend Medico's
share of profits under the ACA
to be "Sublicensing Income"
under the ELA?**

NO

Visual Argument and the Law

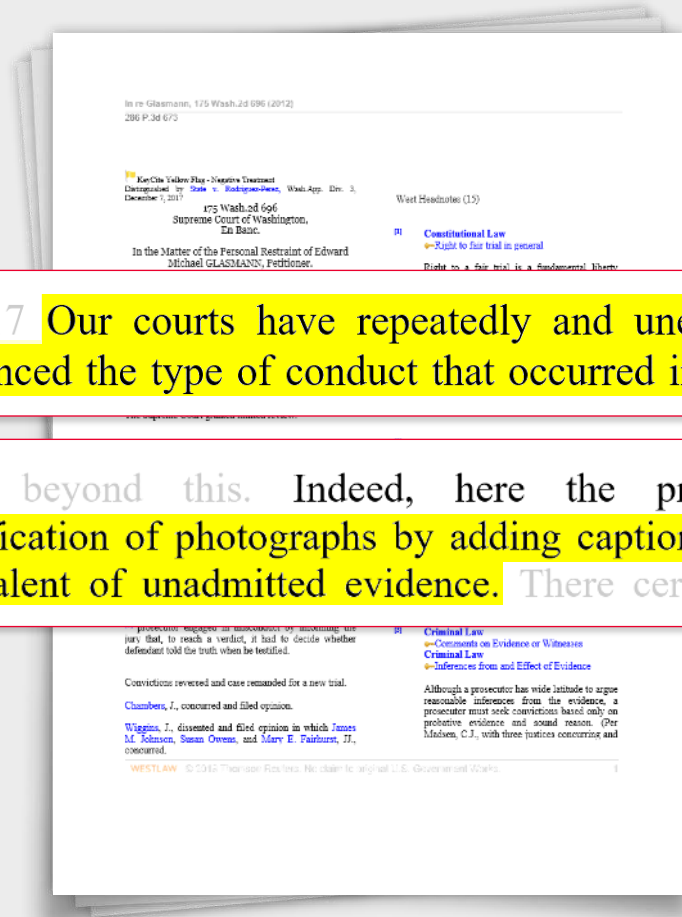
Arias U.S. 2021 Fall Conference

**How Do You Feel
About This Man?**



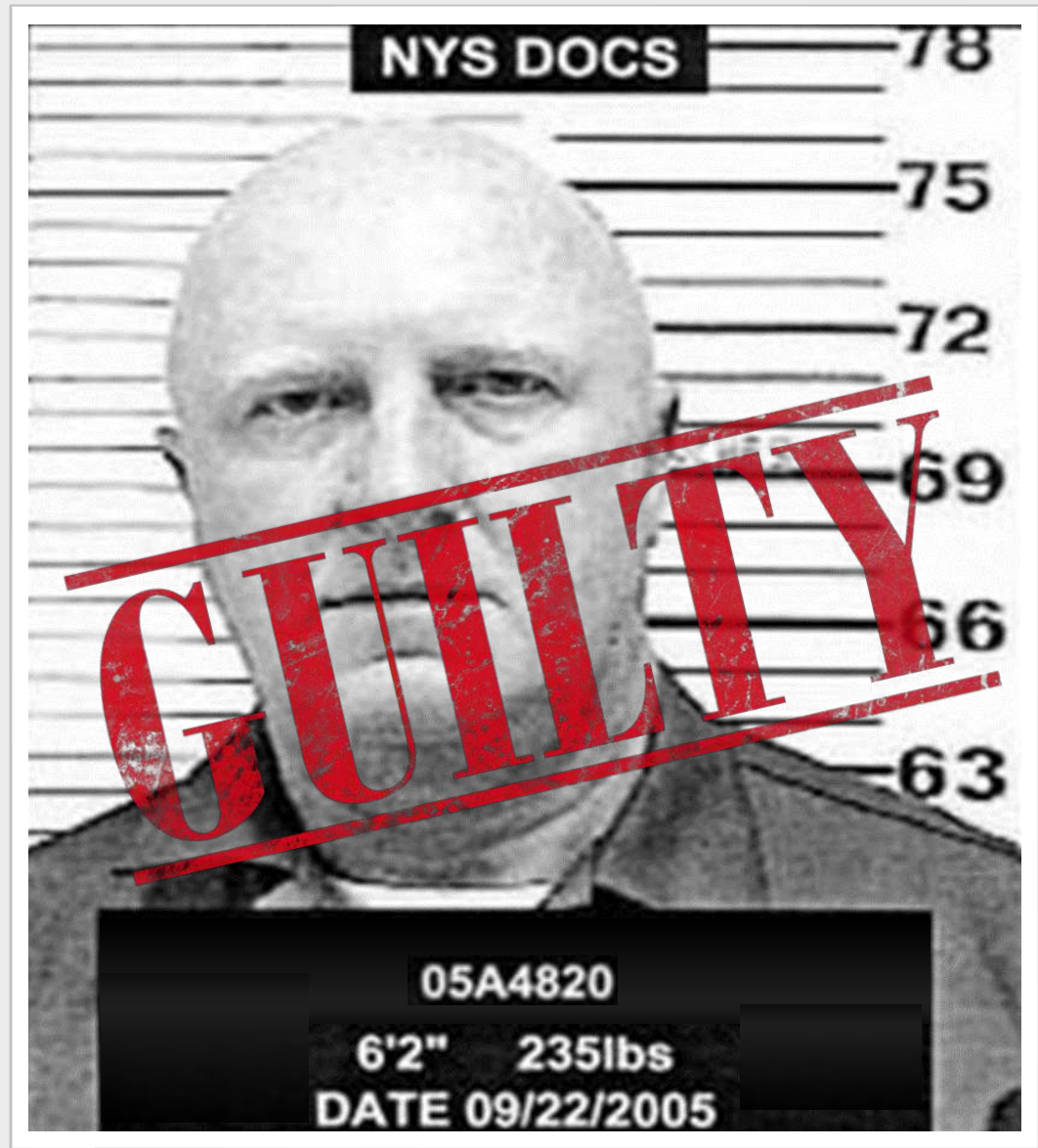
In re Glasmann

WA Supreme Court (2012)



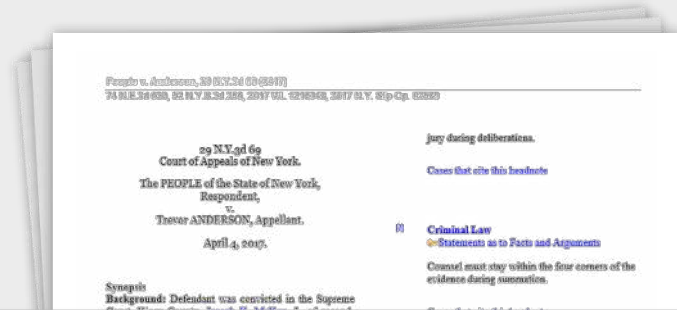
[5] ¶ 17 Our courts have repeatedly and unequivocally denounced the type of conduct that occurred in this case.

*706 beyond this. Indeed, here the prosecutor's modification of photographs by adding captions was the equivalent of unadmitted evidence. There certainly was

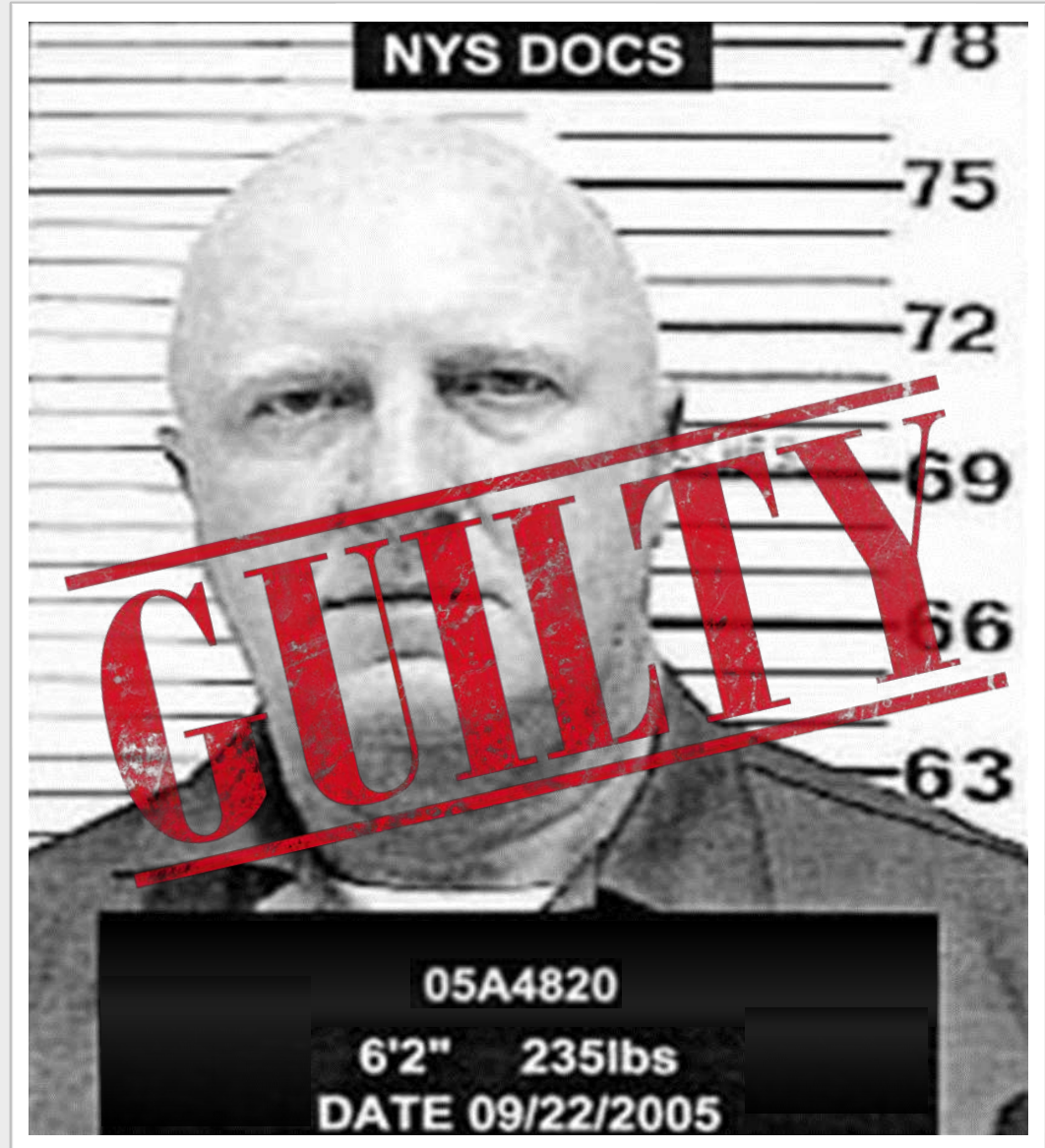
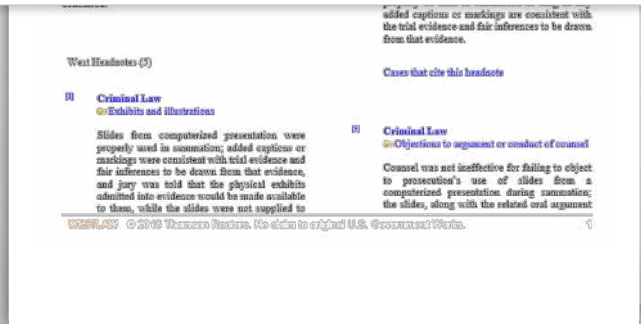


People v. Anderson

NY Court of Appeals (2017)



evaluated in the same manner as an oral statement. If an attorney can point to an exhibit in the courtroom and verbally make an argument, that exhibit and argument may also be displayed to the jury, so long as there is a



The Rules of Evidence

Rule 402

Only relevant evidence is admissible

Rule 1006

Permits the use of a summary, chart, or calculation

Rule 403

The court may exclude relevant evidence if its probative value is substantially outweighed by unfair prejudice, confusing the issues, misleading the jury

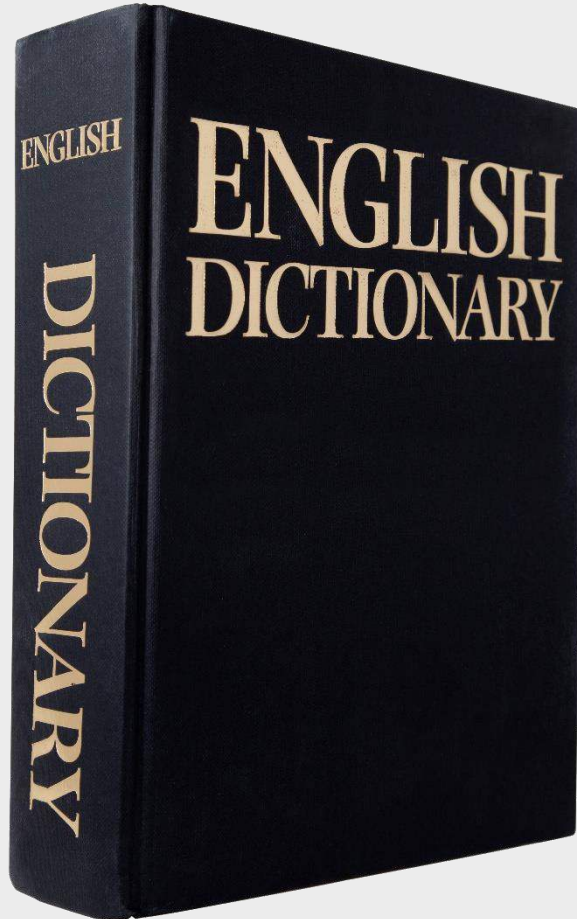
The Model Rules of Professional Conduct

Rule 3.3(a)(1)	“A lawyer shall not knowingly make a false statement of fact or law to a tribunal . . .”
Rule 3.3(a)(3)	“A lawyer shall not knowingly offer evidence that the lawyer knows to be false.”
Rule 3.4(b)	“A lawyer shall not falsify evidence . . .”
Rule 4.1(a)	“In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.”
Rule 8.4(c)	“It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

Final Notes

Arias U.S. 2021 Fall Conference

Disclaimer



dis·claim·er (dis'klāmər/) *noun*

1. a statement that denies something, especially responsibility.

"the novel carries the usual disclaimer about the characters bearing no relation to living persons"

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Teammates

