

FOLEY & LARDNER

Fear and Loathing in Legalville: You - The Professional - As A Witness

Randall S. Rapp
Foley & Lardner - Chicago
(312) 755-2506
rrapp@foleylaw.com

Chicago Section AIHA

November 9, 1999

Issued by the
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DANIEL JONES,

Plaintiff,
v.

MEGA CORPORATION,

Defendant.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 99 C 1343

Judge Rebecca B. Pallmeyer

TO: Robert D. Salk
Salk Technology, Inc.
728 W. Jackson Blvd #1212
Chicago, Illinois 60661

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify in the above case.

PLACE OF DEPOSITION	DATE AND TIME
FOLEY & LARDNER, 330 N. Wabash, Suite 3300, Chicago, Illinois	December 15, 1999
	10:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects). Any and all documents retained in any way to your company(ies) for professional services by Mega Corporation for the years 1997 and 1998.

PLACE	DATE AND TIME
FOLEY & LARDNER, 330 N. Wabash, Suite 3300, Chicago, Illinois	December 15, 1999
	10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following processes at the date and time specified below.

PROCESS	DATE AND TIME

Any organization or person to this subpoena is subpoenaed for the taking of a deposition shall designate under oath officers, directors, or managing agents, or other persons who cannot so testify on its behalf, and may set forth, for each person designated, the reasons why the person will not testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICE (FEDERAL JUDICIAL DISTRICT OR CLERK OF DISTRICT COURT) OR ATTORNEY FOR PLAINTIFF OR DEFENDANT	DATE
Attorney for Daniel Jones	November 4, 1999

ISSUING OFFICE (FEDERAL JUDICIAL DISTRICT OR CLERK OF DISTRICT COURT) OR ATTORNEY FOR PLAINTIFF OR DEFENDANT	DATE
Reedell S. Sapp (312) 755-1900	November 4, 1999

202.75.1

(See Rule 45 Federal Rules of Civil Procedure Para C & D on Reverse)

* If venue is pending in district other than district of issuance, venue district under case number.

Forums For Testimony

- ◆ Lawsuit
 - ❖ Deposition
 - ❖ Trial
 - ❖ Pretrial Hearings
- ◆ Arbitration
- ◆ Administrative Hearings
- ◆ Legislative Hearings

What Kind of Witness

- ◆ Occurrence

- ◆ Opinion

- ❖ Non-expert opinions
- ❖ Expert opinions

Federal Rule of Evidence 701

- ◆ If the witness is not testifying as an expert, the witness testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness testimony or the determination of a fact in issue.

Expert Witness

- ◆ Purpose for Retaining Experts
- ◆ Reports
- ◆ Attorney-Client Privilege Issues
- ◆ Science v. Junk Science

Federal Rule of Evidence

- ◆ Rule 702
- ◆ If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.
- ◆ Rule 703
- ◆ The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Foundation for Expert Testimony

- ◆ Federal Court gatekeeping requirement:

The objective of that requirement is to ensure the reliability and relevancy of expert testimony. It is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.

Daubert v. Merrell Dow Pharmaceuticals, Inc. 113 S.
Ct. 2786 (1993)

Foundation for Expert Testimony

Reliability proceedings. Kumho Tire Company Ltd. v. Carmichael, 119 S. Ct. 1167 (1999)

On July 6, 1993, the 5-year old right rear tire on Carmichael's minivan blows out and the van overturns - one death and survivors badly injured. Carmichael and the survivors sued Kumho, the tire manufacturer.

Case depended on Dennis Carlson, Jr., ME, with 10 years work at Michelin America, Inc. Carlson testified that the tire blew out because of a manufacturing defect.

The trial court had to decide whether this particular expert had sufficient specialized knowledge to assist the jurors in deciding the particular issues in the case.

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TO: Robert D. Salk
Salk Technology, Inc.
728 W. Jackson Blvd #1212
Chicago, Illinois 60661

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case. [redacted]

PLACE OF TESTIMONY [redacted]	COURTROOM [redacted]
	EXTRA CONDITIONS [redacted]

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify in the above case. [redacted]

PLACE OF DEPOSITION FOLEY & LARDNER, 330 N. Wabash, Suite 3300, Chicago, Illinois [redacted]	EXTRA CONDITIONS December 15, 1999 10:00 a.m.
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PLACE FOLEY & LARDNER, 330 N. Wabash, Suite 3300, Chicago, Illinois [redacted]	EXTRA CONDITIONS December 15, 1999 10:00 a.m.
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☐ YOU ARE COMMANDED to permit inspection of the following processes at the date and time specified below. [redacted]

PROCESS [redacted]	EXTRA CONDITIONS [redacted]
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ISSUING OFFICE (FEDERAL JUDGE OR CLERK) (FEDERAL JUDGE OR CLERK FOR DEPOSITION) Aurora for David Jones	DATE November 4, 1999
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ISSUING OFFICE (FEDERAL JUDGE OR CLERK) (FEDERAL JUDGE OR CLERK FOR DEPOSITION)

Reedell S. Bapp
(312) 755-1900

Foley & Lardner
330 N. Wabash, Suite 3300
Chicago, Illinois 60611

202.15.1

(See Rule 45 Federal Rules of Civil Procedure Para C & D on Reverse)

* If cause is pending in district other than district of issuance, state district under case number.

How Your Testimony Can Be Used

- ◆ Evidence
- ◆ Impeachment
- ◆ Negotiations
- ◆ Motions

Technology and The Witness

- ◆ Court reporters
- ◆ Realtime reporting
- ◆ Videotaping
- ◆ Courtroom/trial presentations
 - ❖ Evidence
 - ❖ Demonstrative evidence
 - ❖ Presentation

Preparation

- ◆ Should you call a lawyer?
- ◆ Do you review documents?
- ◆ Do you take notes?
- ◆ What do you do to prepare physically?
- ◆ What do you wear?

The Do's and Don't's for Testifying

- ◆ Do not assume
- ◆ Do not be argumentative
- ◆ Do not guess
- ◆ Do not fall victim to the friendliness of opposing counsel

The Do's and Don't's for Testifying

- ◆ Do not reveal communications between you and your attorneys
- ◆ Do not volunteer information, except
- ◆ Do not expand on yes , no , I don t recall or I don t know

The Do's and Don't's for Testifying

- ◆ Do not let opposing counsel put words in your mouth
- ◆ Do pause before answering
- ◆ Do answer questions audibly and orally

The Do's and Don't's for Testifying

- ◆ Do be willing to admit uncertainty on minor points
- ◆ Do review documents thoroughly
- ◆ Do listen
- ◆ Do answer questions truthfully

Instructions

Chicago Section AIHA

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M. Stephens

East Lyme, Connecticut.

Q. As you heard, I'm Randy --
Randall Rapp, and I represent Pioneer.

If, during the course of today's
questioning, I ask you a question that you do
not understand, I would ask you to stop me and
ask me to restate it in a way that you do
understand. Okay?

A. Uh-huh.

Q. I'm sorry. One of the other
rules is you have to answer "yes" or "no" --

A. Yes, I understand.

Q. -- or verbally. The reporter
cannot get down an "uh-huh" or a nonverbal
response.

If you need a break today, let me
or your attorney know, and after we finish the
question/answer we're involved with, we'll
take a break.

And if you find the previous
answer needs any clarification or correction,
feel free to ask me to return to that, and
let's correct it.

Do you understand all that?



MARS COMPUTER REPORTING, LLC
40 Woodbine Drive • Param, NJ 07652

Dubay: NJ 908 641 0750
732-727-7713 • Fax 732-727-7714
e-mail: mcr@mar.com

Instructions: Oral Answers

- ◆ Q. All your responses must be oral, OK?
What school did you go to?
- ◆ A. Oral.

OBJECTIONS

Chicago Section AIHA

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1 Do you recall that?

2 A. You pointed out it was twice.

3 Q. Well, it was in fact more than -- it
4 was several times, was it not?

5 MR. RAPP: Objection. Leading.
6 Foundation.

7 MR. BROWN: Objection. Vague.

8 A. I don't recall.

9 Q. Well, you recall a line called PH1?

10 A. Yes.

11 MR. VAN DYKE: Objection. Leading.

12 Q. PH2?

13 MR. RAPP: Objection. Foundation.

14 A. Beyond that I was more immersed in my
15 project, so I don't recall specifically those.

16 Q. Do you recall CB2?

17 A. No.

18 MR. VAN DYKE: Objection. Leading.
19 Objection to form. It's beyond the scope.

20 Q. You don't recall Met-1?

21 MR. VAN DYKE: Objection. Leading.
22 Objection to form. Beyond the scope.

23 MR. O'SHAUGHNESSY: Objection. Asked
24 and answered.

25 A. I do recall Met-1.

The End

- ◆ Q. Doctor, before you performed the autopsy, did you check for a pulse?
- ◆ A. No.
- ◆ Q. Did you check for blood pressure?
- ◆ A. No.
- ◆ Q. Did you check for breathing?
- ◆ A. No.
- ◆ Q. So, then it is possible that the patient was alive when you began the autopsy?
- ◆ A. No.
- ◆ Q. How can you be so sure, Doctor?
- ◆ A. Because his brain was sitting on my desk in a jar.
- ◆ Q. But could the patient have still been alive nevertheless?
- ◆ A. It is possible that he could have been alive and practicing law somewhere.