

The Sanchez Ruling and IH Data in Expert Witness Testimony



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Case History – Formaldehyde in a Luxury Apartment

- Large Property Management Firm
- Tenant Complaints of IAQ Problems
- Numerous Investigations
 - Both Management Firm and GHSC Found Formaldehyde, VOCs, and Mold
 - Other Prop 65 Chemicals Found
- Tenant Vacated, Filed Lawsuit
 - Management Company and Attorneys Were Awful to Tenant



The False Flag?

- **Defense Late on Expert Witness Submission**
 - Defense's Lab Data Was Not Favorable to Defense
- **Plaintiff Counsel Successfully Argues to Exclude Defense's Experts**
 - Case was on Contingency
 - Didn't want to take the time to Depose Defense's Experts!



Not the Trial of the Century...but...

- **Defense Invokes Sanchez Ruling Precedent**
- **Plaintiff Counsel Gets Lab Manager to Testify as a Substitute, But Judge Still Rules No IH Data!**
- **All IH Sampling Data Excluded as Hearsay!**
 - **All Hands Touching the Sample Must Testify**
 - **They Were Not Noticed So Cannot Testify**



“Theoretical Testimony”

- **Plaintiff Counsel Uses “What Ifs” for Expert Witness Testimony Instead of Actual Data**



The Case Outcome...

- **Jury Rules That Management Company is Responsible but Awards Only \$7000 to Plaintiff**
- **Post-Trial Jury Interviews:**
 - **Without Actual Data, They Felt Plaintiff was Possibly Trying to Scam Management Company**



So Now What?

- **Management Company Says Apartment is “All Good” Now**
 - They Won’t Share Results
 - Tenant Refuses to Reoccupy
 - GHSC Samples Still Show Formaldehyde
 - Management Trying to Evict Tenant and Recover Costs



But Wait, There's More...

- **Case is Being Appealed**
 - Argued Judge Ruled Wrong
 - Sampling Data Ordered by Prior Judge for Review by Court
- **Attorney Dropped Ball on Prop 65 Case**
- **Attorney may be Liable for Legal Malpractice**



What is an Expert Witness?

- A Person is Qualified to Testify as an Expert if he has Special Knowledge, Skill, Experience, Training or Education Sufficient to Qualify Him as an Expert on the Subject to Which his Testimony Relates
 - Evidence Code §720
 - Evidence Codes 801 and 802 Provide Further Definitions



What is the Sanchez Ruling?

- **California Supreme Court, People v. Sanchez, 2016**
 - Case involving Gang Related Enhancements to a Crime
 - Expert Stated Tattoo Was Evidence of Gang Activity
 - Prosecution Expert Testified on Defendant's Past Contact with Police
 - Prosecution Expert Had no Contact with Police or Defendant At Those Times
 - Court Ruled that the Expert's Opinion was Hearsay
- **"When Any Expert Relates to the Jury Case-Specific Out-of-Court Statements as True and Accurate to Support the Expert's Opinion, the Statements are Hearsay."**
 - Proper Authentication and Foundation for the Facts Must Be Rendered



Why Is This an Issue?

- **US Constitution 6th Amendment:**
 - **“The Accused Shall Enjoy the Right to be Confronted with the Witnesses Against Him”**
- **Courts Have Ruled Both Ways to Some Extent**
 - **Use of DNA Evidence was Accepted to Form an Opinion Without Lab Testimony**



Countering Sanchez

- **California Code, Evidence Code § 1271 “Business Records”**
 - Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:
 - The writing was made in the regular course of a business;
 - The writing was made at or near the time of the act, condition, or event;
 - The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
 - The sources of information and method and time of preparation were such as to indicate its trustworthiness.



Taggart Ruling

- ***Taggart* opinion – Motorcycle Helmet Case**
 - Drew The Distinction In Recognizing That Numerical Test Results Are Not Opinions But Are Instead "A Record Of An Act, Condition, Or Event"
 - Upper Court Affirmed The Trial Court Was "On The Right Track"



Example: Hospital Records

- If Property Authenticated, Are Considered Business Records
 - Must be Marked as Evidence and Admitted into Evidence
 - Source Must Be Proven as Reliable



Sanchez Stipulation

The Parties Waive The Right To Object On Hearsay Grounds To An Expert's Reciting Case-specific Facts, Including Opinions And Diagnoses, Contained Within Medical Records And Deposition Transcripts Reviewed By That Expert And Upon Which The Expert Bases His Or Her Opinions.



Conclusions

- **It's a Big Mess and Complicated**
 - Sanchez is applied very inconsistently
 - Room for Interpretation by the Judge
- **Attorneys Should be Prepared to Counter Sanchez Arguments**
 - **Include All That Touched The Sample On Witness Designation**

