Materials for American Inn of Court December 9, 2020 Virtual Presentation

King of the Courtroom – Expert Skills and the Trial of Joseph "Tiger King" Maldonado Passage

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TAB 1

Aaron H. Marks, P.C.

Partner / Litigation

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Practices

- Litigation
- Trials
- Securities, Shareholder & Derivative Litigation
- Real Estate
- Class Action Litigation
- Trade Secrets Litigation

Admissions & Qualifications

- New York

Education

- Emory University School of Law, J.D., 1993
  Editor, *Emory Law Journal*
- University of Pennsylvania, B.A.; B.S., 1990

> “ Brilliant and analytical — a real star
> *Chambers USA*

Aaron Marks is an accomplished trial lawyer focusing on complex commercial litigation relating to securities, financial products, real estate, entertainment, mass torts and trade secrets. He routinely ranks among the best trial lawyers and commercial litigators in the country by industry surveys. The prestigious *Chambers USA* describes Aaron as “outstanding,” “an amazing lawyer,” and as being an “excellent tactician,” “very effective and well prepared,” and “very understanding and sensitive to the needs of in-house counsel.” Aaron has also been designated a “litigation star” by *Benchmark Litigation*, and *The Legal 500 U.S.* recognizes Aaron among the U.S.'s 50 leading trial lawyers and commercial litigators and named him to the publication’s “ *Hall of Fame*.” Aaron was profiled by *The American Lawyer* magazine as one of the nation’s 50 most accomplished litigators under the age of 45.

Representative Matters

Aaron has been involved in the following representations:

- H.I.G. Capital and Lionbridge Technologies, Inc. in the defense of trade secret litigation brought by TransPerfect Global, Inc., arising from H.I.G. and Lionbridge’s participation as a bidder in the

auction sale of TransPerfect.

- Blackstone and affiliated funds in multi-jurisdictional litigation and arbitration concerning media conglomerate RCS Mediagroup's challenge to Blackstone's ownership of multiple commercial buildings in Milan.
- McCormick Foundation and Cantigny Foundation, in litigation concerning Tribune's 2007 leveraged buyout and subsequent bankruptcy. A trustee filed suit seeking to recover LBO proceeds from more than $1 billion from the Foundations. In April 2019, the SDNY rejected the trustee's efforts to pursue a constructive fraudulent transfer claim.
- National counsel for a private equity firm in multiple state attorneys general and class actions concerning allegations of usury and RICO conspiracy in connection with consumer lending businesses.
- Various companies in litigations in which bondholders assert that company transactions, including spin-offs, debt exchanges and intellectual property transfers, breached the company's credit agreements and/or indentures.
- Coach, the luxury fashion brand, in the defense of several putative class actions alleging the company used deceptive comparison pricing at the company's outlet stores.
- A large real estate private equity firm in multiple lawsuits and investigations relating to portfolio companies and other investment vehicles.
- A large hedge-fund administrator in a federal court action against a major software manufacturer for unfair competition and breach of contract.

Prior to joining Kirkland, Aaron was involved in the following representations:

- AMC Networks in the defense of a lawsuit brought by profit participants alleging, among other things, breach of contract, and seeking additional profit distributions from the AMC television series *The Walking Dead*.

- Peter Nygärd and the Nygärd Companies in multiple highly publicized defamation and other tort actions against Nygärd's nemesis, hedge fund manager Louis Bacon.
- National Australia Bank and Royal Park Investments, an entity created in connection with the Belgian State's sale of Fortis Bank to BNP Paribas, in three separate actions against Oppenheimer and its affiliates relating to defendants' misconduct as administrators of three structured finance vehicles, alleging damages of more than $2.5 billion.
- Hilton Worldwide in the defense of a trade secret misappropriation lawsuit brought by Hilton's competitor, Starwood Hotels & Resorts, and in a grand jury investigation conducted by the United States Attorney's Office (S.D.N.Y.), relating to the same underlying facts.
- MBIA, one of the world's largest monoline insurers, in litigation brought by 18 of the world's largest banks seeking to overturn MBIA's corporate restructuring which, with the approval of the New York Department of Insurance (now the Department of Financial Services), established a separate company for MBIA's municipal bond insurance business. After a several-week evidentiary proceeding, the New York Supreme Court ruled in favor of MBIA, upholding MBIA's restructuring.
- Purolite International, a specialty chemical manufacturer, in an action against competitor Thermax Ltd. (India) for misappropriation of trade secrets relating to formulae and production processes for ion-exchange resin. The case settled on the eve of trial with a $38 million payment by Thermax.
- Freescale Semiconductor in an expedited action by senior term lenders challenging Freescale's issuance of $1 billion of incremental term loans as barred by an occurrence of a material adverse change.
- Apollo Management and its portfolio company, Hexion Specialty Chemicals, in litigation arising from Hexion's proposed $15 billion merger with Huntsman Chemicals. Representation involved the prosecution of an expedited proceeding against Credit Suisse and Deutsche Bank to compel specific

performance of the banks' commitments to fund the acquisition. Successfully negotiated a settlement with Huntsman, bringing an end to one of the largest-ever battles over a leveraged buyout. *The Wall Street Journal* lauded the settlement as a "sweet deal" for Apollo and Hexion.

- Ernst & Young in a successful appeal and settlement of an accounting malpractice action brought by the creditors of CBI Holdings.
- Basic Element Company, a leading Russian industrial conglomerate, in the trial and appeal of securities fraud claims for insider trading and market manipulation against a major United States investment bank, stemming from the liquidation of a $1.5 billion stake in a Canadian auto parts manufacturer.
- Several of the nation's largest private-equity firms (Apollo Management, Bain Capital, Carlyle Group, Centerbridge Capital Partners, Clayton, Dubilier & Rice, Fortress Investment Group and TPG Capital) in disputes over acquisitions and acquisition financings for several large leveraged buyout transactions. These disputes involved the applicability of material adverse change clauses, post-merger insolvency, and specific performance of debt financing commitments. Most of these buyouts, including Home Depot Supply ($9 billion) and Harrah's Entertainment ($30 billion), funded and closed.
- BankUnited, Florida's largest bank, with respect to non-compete and trade secret lawsuits brought by Capital One.
- Safra National Bank in several arbitrations brought by clients alleging unsuitability and other claims regarding investment portfolios, and in a commercial fraud action brought by Bank of America.
- Cigarette manufacturer Liggett Group as lead trial counsel in 10 jury trials, including several in which Liggett was the sole defendant. One of the verdicts in favor of Liggett (returned in 90 minutes) is believed to be the fastest rendered jury verdict in the 60-year history of litigation against cigarette manufacturers. Also led Liggett's defense of the nine-month bench trial of the Department of Justice's RICO lawsuit against the tobacco

industry, with the court awarding judgment in Liggett's favor (whereas substantial relief was ordered against all of the other major cigarette manufacturers).

- Port Authority of New York and New Jersey as trial counsel in the trial concerning the Port Authority's alleged liability arising from the 1993 terrorist bombing of the World Trade Center. The New York Court of Appeals subsequently dismissed the action.
- Interstate Bakeries in litigation against certain lenders that balked on their commitment to provide financing to facilitate the company's exit from Chapter 11 bankruptcy.
- One of the nation's largest hotel owners in attorney general and putative class actions arising out of alleged consumer fraud, as well as ADA lawsuits as to certain of the owner's hotel properties.
- Real estate developers in litigation concerning ownership, financing disputes, and eminent domain.
- Professional athletes in disputes concerning promotional contracts, endorsement deals and use of performance-enhancing drugs.
- Video-game maker Take-Two Interactive Software in shareholder derivative actions arising out of alleged insider trading.

Prior Experience

Kasowitz Benson Torres LLP

Thought Leadership

Publications

"Defend Trade Secrets Act: Planning Ahead and Strategic Choices," *Corporate Counsel*, 2016.

"The Application of Foreign Law When Litigating a Forum Selection Clause," *New York Law Journal*, 2015.

Memberships & Affiliations

Faculty Member, Emory University Law School Trial Techniques Program

Board Member, New York American Inn of Court

Board Member, CaringKind

Elisha Barron

Associate

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ebarron@susmangodfrey.com

Overview

Elisha Barron has helped win over $1 Billion in jury verdicts and settlements. Ms. Barron represents plaintiffs and defendants through every stage of litigation in an array of complex commercial cases, including in intellectual property, antitrust, False Claims Act litigation, and general commercial litigation.

In a 12-month period in 2017-2018, Ms. Barron tried two cases to verdict before federal and state juries, and completed a AAA arbitration before a three-judge panel. Ms. Barron has experience in all key areas of pretrial and trial practice, including examining and cross-examining fact and expert witnesses at trial and arbitration, taking and defending fact and expert depositions, and briefing and arguing dispositive motions. Her national practice has included state- and federal-court actions from California to New York.

Ms. Barron, who was named a Rising Star by *New York Law Journal* in 2019 (ALM), has worked on the following representative matters at Susman Godfrey:

- Won a $706.2 Million jury verdict for client HouseCanary after a 6+ week jury trial in state court in San Antonio, Texas. The case involved claims against Title Source, an affiliate of Quicken Loans, for misappropriation of trade secrets, fraud, and breach of contract. Ms. Barron successfully argued a *Daubert* motion to admit the testimony of a key technical expert and examined that expert at trial, securing testimony pivotal to the jury's finding that HouseCanary's trade secrets had been misappropriated. Ms. Barron took and defended depositions of seven HouseCanary and Title Source witnesses before trial. This win was featured in *Law360's* How They Won It You can also read more about it here. The verdict was confirmed by the court in October 2018.
- Secured a $450 million settlement – one of the largest ever in the United States by a single whistleblower– in a landmark False Claims Act lawsuit against the Swiss drug manufacturer Novartis Pharmaceuticals Corporation. Ms. Barron deposed pharmacists and nurses across the country, securing key testimony which helped secure the award.
- Secured nearly $170 million in settlements before fees and expenses in the antitrust case *In re Animation Workers Antitrust Litigation* (N.D. Cal.) for a class of Hollywood animators and visual effects employees who accused several major movie studios of entering into an agreement not to "poach" each other's employees. The case contributed to Susman Godfrey being named 'Class Action Group of the Year' by *Law360*.
- Represented Personalized Media Communications in ongoing patent litigation to protect its patents on innovative technology for delivering programming content.
- Represented wearable fitness pioneer Jawbone in patent litigation against Fitbit in numerous

forums—two actions in the International Trade Commission and two actions in federal district court. Ms. Barron briefed and argued motions regarding the invalidity of Fitbit's patents, securing favorable rulings for Jawbone on several patents. Ms. Barron also argued at the federal court *Markman* hearing and secured a favorable claim constructions for Jawbone.

- Represented an individual in a confidential AAA arbitration against a former employer for discrimination, and secured a favorable settlement after Susman Godfrey presented her case to a three-judge panel. Ms. Barron examined two key fact witnesses, an expert witness, and conducted the only cross examination before settlement.

Ms. Barron also devotes significant time to pro bono matters, and in 2016 she received an award for outstanding pro bono service from the Legal Aid Society.

Before joining Susman Godfrey, Ms. Barron clerked for Judge Shira Scheindlin on the U.S. District Court for the Southern District of New York, and Judge José Cabranes on the U.S. Court of Appeals for the Second Circuit. She graduated from Yale University with a degree in History of Science and Medicine, and received her J.D., *cum laude*, from Harvard Law School, where she was an editor on the Journal on Legislation.

Education

- Yale University (B.A., History of Science and Medicine)
- Harvard Law School, *cum laude* (J.D)

Clerkship

Law Clerk to the Honorable Shira Ann Scheindlin, United States District Court for the Southern District of New York

Law Clerk to the Honorable José A. Cabranes, United States Court of Appeals for the Second Circuit

Honors and Distinctions

Named a Rising Star by *New York Law Journal* (ALM, 2019)

Recipient of the 2016 Pro Bono Publico Award for Outstanding Service to The Legal Aid Society

Articles Editor, Harvard Journal on Legislation

Dean's Scholar, Legal Research and Writing

Professional Associations and Memberships

New York State Bar

U.S. Court of Appeals for the Federal Circuit

U.S. District Court for the Southern District of New York

U.S. District Court for the Eastern District of New York

Member, American Inn of Court

Publications

Note, Federal Law Requires HPV Vaccine For Green-Card Applicants, 37 J. L. Med. Eth. 149 (2009).

Recent Development, The DREAM Act, 48 Harv. J. on Legis. 623 (Summer 2011).

Lauren F. Dayton

Lauren Dayton's practice focuses on complex civil litigation, appellate litigation, and white collar matters. She has represented plaintiffs and defendants in civil and criminal matters before state and federal courts. Prior to joining MoloLamken, Ms. Dayton clerked for the Honorable Steven M. Colloton of the United States Court of Appeals for the Eighth Circuit and for the Honorable Brian M. Cogan of the United States District Court for the Eastern District of New York.

She also worked as a summer associate at Sidley Austin LLP and as a summer law clerk at the United States Department of Justice in the Criminal Division, Fraud Section. Before law school, Ms. Dayton interned for the Honorable Jeffery P. Hopkins of the United States Bankruptcy Court for the Southern District of Ohio.

Representative Matters

- Represents investment manager in suit against Bolivarian Republic of Venezuela over bond default in SDNY
- Represents investment manager in two related suits against PDVSA and a PDVSA affiliate over unpaid debt instruments in SDNY
- Represents plaintiff and the proposed class in a putative consumer class action against major tech company in N.D. Cal.
- Represents Turkish entity in action to enforce ICSID arbitral award in SDNY
- Represents global financial institution in RMBS suit appeal in New York Court of Appeals
- Represents former employees of defense contractor in civil suit by the government against the defense contractor
- Represents interested-party regulator and its employees in a federal criminal trial in SDNY against some of the regulator's former employees and other individuals
- Represents plaintiff in §1983 excessive-force case against Rikers corrections officers in SDNY (pro bono)
- Represented federal regulator in Ninth Circuit appeals of bankruptcy court decision and regulator's declaratory orders involving division of authority between bankruptcy courts and regulator
- Represented municipality seeking certiorari on administrative law question before the U.S. Supreme Court
- Represented biopharmaceutical company in pair of Federal Circuit appeals of denials of preliminary injunctions

Clerkships

Law clerk to the Honorable Steven M. Colloton of the United States Court of Appeals for the Eighth Circuit

Law clerk to the Honorable Brian M. Cogan of the United States District Court for the Eastern District of New York

Education

University of Michigan Law School, J.D., *cum laude*

Order of the Coif

Managing Executive Editor, *Michigan Journal of Law Reform*

Saul L. Nadler Memorial Award

Wake Forest University, B.A., *summa cum laude*

Honors and Awards

New York Rising Star, *Super Lawyers*, 2020

Professional Affiliations

Federal Bar Council American Inn of Court, Member

New York American Inn of Court, Member

American Bar Council Litigation Section, Member

Supreme Court Historical Society, Member

LCLD Success in Law School, Mentor

Lauren F. Dayton

Representative Matters, *continued*

- Represented international asset manager and direct lender, as well as an indenture trustee, in trial over fraudulent-conveyance and tort claims and breaches of intercreditor agreement in U.S Bankruptcy Court for the District of Delaware, as well as parallel litigation in New York Supreme Court
- Represented business development corporation in SDNY suit to enjoin activist shareholder from illegally soliciting proxies in opposition to proposed merger
- Represented software and technology company in a patent appeal before the Federal Circuit
- Represented criminal defendant charged with possession of narcotics and possession of ammunition in SDNY
- Represented victim as a potential witness in attempted murder case in SDNY

News & Appearances

- *Judge Recommends Kyrgyzstan Pay Triple Daily Sanctions,* Law360 (Nov. 5, 2020)
- *Fed. Cir. Clears Amgen's Avastin Biosimilar in Notice Fight*, Law360 (July 6, 2020)
- *Fed. Circ. Won't Block Amgen's Herceptin Biosimilar*, Law360 (Mar. 6, 2020)
- *Kyrgyzstan Hit With Sanctions In $11.6M Arbitral Award Fight*, Law360 (Feb. 26, 2020)
- *9th Circ. Will Take On FERC-Bankruptcy Court Tussle*, Law360 (Sept. 18, 2019)
- *VirnetX Defends $600M Patent Win Over Apple At Fed. Circ.*, Law360 (Mar. 4, 2019)

Publications

The Importance of Purpose in Avoiding Unintentional Waiver of the Attorney-Client Privilege, Corporate Disputes (Jan.-March 2021) (with Gerald Meyer and Kenneth Notter)

Key Issues In Potential High Court Fraudulent Transfer Case, Law360 (Oct. 23, 2020) (with Justin Ellis)

4th Circ. Seems Leery Of Divestiture Order In Doormaker Case, Law360 (June 1, 2020 (with Lauren Weinstein)

Door Maker Merger Case May Transform Behavioral Remedies, Law 360 (Aug. 2, 2019) (with Lauren Weinstein)

Languages

French

Ari Ruben

Associate

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aruben@susmangodfrey.com

Overview

Ari Ruben joined Susman Godfrey after clerking for Judge Bruce M. Selya of the United States Court of Appeals for the First Circuit and for Judge Richard J. Sullivan, then of the United States District Court for the Southern District of New York. Before clerking, he practiced commercial litigation at another leading firm, where his team represented a life-settlement investor in a two-month bench trial in the Southern District of New York. Mr. Ruben graduated *cum laude* from both Harvard College and Harvard Law School.

Education

Harvard College (A.B., *cum laude* in History, 2008)

Harvard Law School (J.D., *cum laude*, 2014)

Clerkship

Law Clerk to the Honorable Bruce M. Selya, United States Court of Appeals for the First Circuit

Law Clerk to the Honorable Richard J. Sullivan, United States District Court for the Southern District of New York

Honors and Distinctions

Thomas T. Hoopes Prize, Harvard College

Dean’s Award for Community Leadership, Harvard Law School

Supervising Editor, *Harvard Journal on Legislation*

Professional Memberships

United States District Court for the Southern District of New York

United States District Court for the Eastern District of New York

New York State Bar

Massachusetts State Bar (Inactive)

Barrister, New York American Inn of Court

Member, Federal Bar Council

HOWARD MAGALIFF

Howard's primary objective is to protect his clients' business and legal interests. As a consultant to distressed companies, Howard helps his clients maximize recovery and return to profitability. Advising clients as they emerge from a temporary setback, he outlines the legal rights, obligations and options for proceeding and collaborates on a strategy to reposition and renew the company's performance going forward.

Howard's practice encompasses all facets of bankruptcy and restructuring. Clients and lawyers routinely bring him into cases that have stalled at a critical juncture because Howard has a track record of concluding matters efficiently and favorably. He is a seasoned commercial litigator with extensive first chair trial experience in federal district and state courts in a broad range of commercial and business matters including professional malpractice and insurance defense, construction, tax certiorari, partnership disputes and piercing the corporate veil. In bankruptcy court, Howard has litigated the settlement payment safe harbor for securities transactions, substantive consolidation, the applicability of the automatic stay to federal agencies, legal and accounting malpractice, unfinished business claims of a dissolved law firm and challenges to professional fees. He also handles appeals in state and federal court and has written the winning briefs for several landmark cases decided by the U.S. Court of Appeals for the Second Circuit.

Howard has represented domestic and international companies in a broad range of industries including the automotive, housing, real estate, energy, lumber, healthcare, restaurant, retail and electronics industries, and served as debtor's counsel in some of the largest and most well known cases including Enron, Chrysler, General Motors, NRG Energy, Allegiance Telecom, Ames Department Stores, Loehmann's, Guilford Mills, St. Vincent's Catholic Medical Centers, Frontier Airlines, Daewoo International (America) Corp., Delphi and Tower Automotive. He has represented creditor and equity security holder committees. Howard is a chapter 7 panel trustee in the Southern District of New York, and is regularly hired as special litigation counsel to other trustees. Before private practice, Howard worked as legislative counsel for a New York State senator and was associate general counsel for a regional bank. Howard enjoys teaching and lectures for professional associations and continuing education programs, and has been a regular panelist for the AIRA Financial Advisors' Toolbox for many years.

Howard is admitted to practice in New York and Connecticut, as well as in the Southern, Eastern and Northern Districts of New York, the District of Connecticut and the Eastern and Western Districts of Michigan. This gives him optimum flexibility to help his clients in the most appropriate venue. Howard is a longtime member of the American Bankruptcy Institute and the

Turnaround Management Association. He received a B.A. in 1981 from Binghamton University and a J.D. in 1984 from Boston University School of Law.

Howard lives with his wife and family in Ridgefield, Connecticut.

TODD PARKER

Todd is a founding partner of Parker Pohl LLP. He maintains a diverse practice representing businesses and individuals in a wide range of complex commercial and employment cases.

Prior to co-founding Parker Pohl LLP, Todd was a partner at a noted litigation boutique in New York City. Todd previously clerked for the Honorable Nicholas G. Garaufis in the United States District Court for the Eastern District of New York, and was a staff attorney for the Eighth Circuit Court of Appeals.

Each year from 2017 to 2020, Todd has been selected by Super Lawyers magazine as a top rated New York business litigation attorney. Each year from 2013-2016, Todd was selected by Super Lawyers magazine to the Rising Stars list, an honor limited to no more than 2.5 percent of the attorneys within New York.

Todd has published law review articles in the Saint Louis University Law Journal, the Duke Journal of Comparative & International Law, and the U.C. Davis Journal of International Law and Policy. His law review article The Freedom to Manifest Religious Belief: An Analysis of the Necessity Clauses of the ICCPR and the ECHR has been cited in amicus briefs filed in the United States Supreme Court and in the Constitutional Court of the Republic of Indonesia.

For more information about Parker Pohl LLP, please visit www.parkerpohl.com.

Kevin J. Quaratino, Esq.

Currently serves as a Judicial Clerk to the Honorable Andrea Masley of the New York State Supreme Court, Commercial Division, and is a contributor to the Fifth Edition of the treatise on Commercial Litigation in New York State Courts. Mr. Quaratino advises and assists Judge Masley at all stages of the multi-billion dollar litigation before the court. His experience includes disputes concerning shareholder derivative actions (applying New York and Delaware law), transactions arising out of dealings with commercial banks and other financial institutions or involving commercial real property, sales of securities, the Securities Act of 1933, employment agreements with restrictive covenants, commercial insurance coverage, trade secrets, intellectual property, defamation, disparagement, injurious falsehood and other business torts.

Prior to his clerkship in the Commercial Division, Mr. Quaratino clerked for the Honorable Eileen Rakower of the New York State Supreme Court. In addition to his commercial litigation experience, Mr. Quaratino is a commercial mediator with Part 146 approved training who has facilitated the resolution of numerous disputes. He is the author of the article "The Litigator's Guide To Sealing Documents In The Commercial Division." He currently serves on the Executive Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. Mr. Quaratino received his B.A. from Fordham College at Lincoln Center, and his J.D. from Fordham University School of Law. He will be joining Foley & Lardner LLP as a litigation associate in 2021.

David B. Schwartz

Senior Associate
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Norton Rose Fulbright US LLP
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David represents clients in various industries in complex commercial litigations in state and federal courts and domestic and international arbitration proceedings. He also advises clients on data privacy, information security, and cybersecurity issues.

Prior to attending law school, David worked as a regulatory medical writer at a pharmaceutical company.

Related services

- Litigation and disputes
- Data protection, privacy and cybersecurity
- International arbitration
- Aviation
- Bankruptcy, financial restructuring and insolvency

Key industry sectors

- Financial institutions
- Transport
- Technology and innovation

Education

JD, New York University School of Law, 2010

BA, History and Physics, Grinnell College, 2006

While in law school, David was a member of the Moot Court Board and a student advocate at the Unemployment Action Center.

David is admitted to practice in the state of New York, the Court of Appeals for the Second Circuit, and the United States District Court for the Southern, Eastern, and Western Districts of New York.

Representative experience

Commercial litigation

- Second-chaired two AAA arbitrations for a regional airline in disputes over a capacity purchase agreement

- Ongoing representation of the court-appointed receiver of an alleged Madoff "feeder fund" in state, federal district, bankruptcy, and appellate court litigation
- Drafted all substantive briefs and managed foreign law experts for foreign corporations enforcing a $50 million foreign arbitral award against alter egos of the award debtor in federal court
- Developed pre-litigation strategy and drafted all pleadings and briefs for a minority investor of a high frequency trading firm in derivative action
- Served on a trial team for LCIA arbitration representing a provider of financial transaction digital authentication with claims against a competitor for breach of contract and misappropriation of trade secrets
- Managed accelerated discovery for a major telecommunications company in its purchase of a regional sports network out of bankruptcy
- Represented multiple defendants in a federal court action brought by the Federal Trade Commission
- Represented a pharmaceutical company in an investor dispute regarding the validity of notes and warrants
- Negotiated settlements of fraudulent transfer and preference claims on behalf of an interior design firm
- Managed discovery in trademark, unfair competition and false advertising disputes in federal court
- Drafted a major telecommunications company's objection to the proposed "free and clear" sale of bankrupt debtors' patents that resulted in changing the terms of a multibillion dollar sale
- Represented a financial services firm against claims arising from employee misconduct
- Pro bono representation of a transgender youth in a civil rights action against the South Carolina DMV

Data privacy / Information Governance

- Managed data due diligence for a payments technology company's acquisition of a data analytics company
- Managed compliance and certification process for US-EU and US-Swiss Safe Harbor program for Fortune 500 pharmaceutical and payments technology companies
- Advised clients on global privacy and cybersecurity compliance strategy
- Drafted international records retention and preservation policies for Fortune 100 companies

Admissions

- New York State Bar

Rankings and recognitions

- New York Metro Rising Star, Business Litigation, *Thomson Reuters,* 2016 - 2020

TAB 2

New York Law Journal

TECHNIQUES FOR CROSS EXAMINING AN EXPERT WITNESS

By Ben Rubinowitz and Evan Torgan

There is little question that the cross examination of an expert can be both challenging and intimidating. Indeed, there are times when an expert witness has far more courtroom experience than the lawyer attempting to cross examine him. The attorney who begins a cross without a clear purpose and without thorough preparation is headed for disaster, but with a solid plan, proper preparation, and the use of appropriate techniques, the cross of an expert can go a long way to supporting a winning summation.

There are certain time-tested trial techniques that can be used by attorneys to cross examine an expert regardless of his field of expertise and regardless of his experience. Three effective techniques every attorney should develop and use when cross examining an expert include: controlling the witness, using the "voice of reason," and asking low risk open-ended questions.

TELL, DON'T ASK

The most fundamental technique an attorney must develop to effectively cross examine an expert is the ability to maintain control of the expert both through the types of questions asked as well as the way in which the questions are asked. Leading questions serve to limit the potential answers to the questions and force the witness to answer the question with one word — "yes" or "no." Technically, a leading question is one that suggests an answer or one that limits the universe of potential answers. An example of a leading question might be:

Q: Did you review the images from the MRI of November 2017?

Questions that begin with words such as Did, Were, Have, Had, Could, and Should all seek to limit the answer. Technically, responsive answers to these questions would require a response of either “Yes” or “No.” However, to maintain control it is often better to tell the witness the answer rather than ask the witness the question. The question: “Did you review the images from the MRI of November 2017 ” can be turned into a statement by telling the witness the answer and simply adding a tail at the end such as “correct,” “right,” “true,” or a similar word seeking affirmation.

Q: You never reviewed the images from the MRI of November 2017, true?

It is critical that when an attorney asks a leading question the attorney ensures the answer is responsive. To the extent the expert is nonresponsive or tries to offer an explanation the lawyer asking the question has three options. First, the lawyer can re-ask the question and change the tone of her voice while questioning.

Q: You never reviewed the images from the MRI of November 2017, true?

A: I reviewed the reports.

Q: My question was specific. You never reviewed the *images* from the MRI of November 2017, true?

By changing the tone in which the original question was asked and re-asking the question with appropriate emphasis on certain words the jury will quickly understand that the expert is being evasive. Second, to the extent the expert continues to evade the question an additional technique can be used. This technique allows the examiner to focus on what was not done to emphasize what was done. If executed properly, matters will only get worse for the expert:

Q: Let me try again, you never reviewed the images from the MRI of November 2017, true?

A: They were never provided to me.

Q: You never asked for the images, true?

Q: You never told defense counsel: I can’t offer an opinion without seeing the images, correct?

Q: Instead, you chose to offer your opinion without ever reviewing the images, true?

To the extent the expert still refuses to answer without explanation a third option is for the questioning attorney to object to the answer as non-responsive. Although the court should rule favorably, this option should only be used as a last resort since the court might, in its discretion, allow the answer to stand or allow the expert to explain.

FULL, FAIR, THOROUGH AND COMPLETE

Once the attorney has mastered the fundamentals for obtaining responsive answers, she can move on to techniques which will both minimize the effectiveness of the expert and serve to discredit him at the same time. To do this the attorney must do her homework before ever stepping foot in the courtroom. Review of background checks, articles written, experience in the field and prior testimony must be carefully studied. The report written for this specific case must not only be studied but it must be dissected. There are two areas of focus that must be carefully considered when dissecting the expert's report and opinion before starting the cross-examination: first, a review of what was done and second, and more importantly, a review of what was not done, not considered and not reviewed by the expert. By pointing out the "negatives" — that which was not done but should have been done, the attorney can take apart the expert's opinion one step at a time.

Imagine the scenario in which a student suffered burn injuries in a chemistry class during a demonstration conducted by his teacher. The plaintiff claimed that the teacher, after conducting the same demonstration moments before, poured methanol (a fuel) from a gallon jug into a dish containing nitrates that had previously been heated with fire. The methanol fumes caught fire, ignited the methanol in the jug and flame jetted outward severely burning the student who was seated in the front row. The plaintiff claimed that the smallest amount of methanol should have been used and at no time should a gallon jug of methanol have been brought into the classroom, let alone poured directly into the dish. An expert was called by the defense who offered his opinion

that there was no evidence that the teacher poured the methanol from the jug. That same expert opined that the teacher was not negligent in the manner in which she conducted the demonstration. Assume there was a police report which stated the teacher told a detective that she "poured methanol from a gallon jug." Needless to say, the police report was not mentioned by the defense expert during direct examination. Too often, in a scenario like this, the cross-examining attorney fails to properly set up the expert. Instead, the attorney goes right for the kill and misses the opportunity to develop the omission for maximum effect:

Q: The police report says the teacher stated she poured methanol from the jug, true?

Q: You never mentioned that, correct?

Although the cross-examining attorney was focused on the right issue, the point was lost. The better approach is for the attorney to take the time to explain why it is important for the expert to conduct a full, fair, thorough and complete investigation before ever rendering an expert opinion to the jury. Moreover, by establishing through the expert that the failure to conduct such an investigation would cast doubt on the integrity of his opinion the attorney can secure admissions that support her client's cause. To effectively make this point the attorney might start by asking "voice of reason" questions. These are questions that are so reasonable that if the witness dares to disagree or to answer with anything other than "yes" he will look foolish:

Q: Would it be fair to say that before coming to court and rendering your opinion you conducted a full evaluation (or investigation or analysis)?

Q: An evaluation that was fair?

Q: Certainly, your evaluation was thorough, true?

Q: And your evaluation was complete?

Clearly, these questions must be answered in the affirmative. Anything less would make the expert look silly:

Q: Are you telling this jury your evaluation was less than thorough?

Q: Are you suggesting that your review of this case was less than complete?

Once the original four questions are answered in the affirmative the attorney must go further with the set up and focus on the "negative" to enhance the line of attack:

Q: To the extent you failed to conduct a full evaluation before rendering your opinion, we can agree that would be improper, true?

Q: To the extent your evaluation was less than thorough that wouldn't be fair, correct?

Q: That wouldn't be in keeping with your own personal standards, true?

Q: To the extent you didn't conduct a complete evaluation that would be wrong, true?

Once these admissions are secured the attorney can continue the line of attack by focusing first on the importance of a thorough review and then pointing out what was not done but should have been done if the expert truly meant what he said in response to the set up questions:

Q: Before offering your opinion, you studied the record carefully, true?

Q: You reviewed all the reports?

Q: You reviewed the depositions?

Q: You reviewed the file in its entirety?

Q: To the extent you did not conduct a thorough and complete examination of the reports and depositions, you would agree your opinion might not be as valid as you would like, true?

Next, the jury must be reminded of the significant assertion offered by the expert in support of his opinion. But in asking this question the attorney should suggest, through her tone, that this point might be in doubt.

Q: During direct you testified to this jury that there was "no evidence" that the teacher poured methanol from the jug, true?

Q: That opinion was made after your thorough review of the depositions, correct?

Q: After your complete review of the reports, true?

Q: You would never make such a statement unless you believed it to be true, correct?

To emphasize the crucial point in the cross, emphasis must be placed on the document that was never reviewed.

Q: You are aware that the police conducted an investigation into the happening of this incident, true?

Q: You realize that the police immediately responded to the scene?

Q: You know that the police spoke to witnesses shortly after the event?

Q: At a time when memories were fresh?

Q: But you didn't review all the police reports, correct?

A: I thought I did.

Q: Would you agree that if you didn't review all of the police reports you might be willing to change your opinion depending upon the content of the report?

At this point the expert should be confronted with the report (which has already been marked for identification):

Q: Let's take a look at the report together. You never saw this report, did you?

Q: You never knew what it said?

Q: You never knew that the teacher admitted pouring methanol from the jug, right?

Q: Would you have liked to have that information before rendering your opinion to this jury? (offer the report in evidence).

Q: Taking a look at this report, read for the jury the highlighted portion.

A: "Teacher advised the undersigned detective that she poured methanol from a gallon jug."

The final point on this line of attack can be made in many ways:

Q: Can we agree you did not have all the information necessary to form your opinion?

Q: Are you now willing to change your opinion based on this report you never knew existed?

Q: Would you agree that report directly contradicts your opinion?

Q: Can we agree your review was less than thorough?

Q: Can we agree your opinion was not supported by all of the evidence?

By taking the time to explore whether the expert truly considered all relevant information and by focusing on what was not done, the attorney's questioning can go a long way to exposing an incomplete opinion and discrediting the opposing expert.

LOW RISK OPEN-ENDED QUESTIONS

It has long been taught and emphasized that an attorney should never ask an open-ended question while cross-examining a witness, let alone an expert witness. After all, one of the keys to success in cross-examining a witness is the ability to control that witness and limit the universe of answers he or she can give. There are times, however, when an examining attorney can get substantial mileage from asking a low risk open-ended question. These questions, as the name suggests, are open-ended questions where the examiner knows the answer and cannot be hurt.

Consider our example involving the expert who testified in connection with the chemistry demonstration that resulted in the student being severely burned. The trial has been proceeding for two weeks and the expert is called to offer his opinion that the teacher was not negligent. During cross, the examining attorney secures agreement from the expert that he conducted a full, fair, thorough and complete evaluation of the incident and to the extent he did anything less, it would be improper. Prior to the expert taking the stand, several witnesses testified about the happening of the incident and about the school's policies and procedures with respect to conducting demonstrations with chemicals. As the questioning proceeds it becomes apparent to the examining attorney that the expert is not fully familiar with the trial testimony that the jury has just heard. The examining attorney begins her questioning with low-risk open ended questions about the witnesses who have just testified:

Q: Who is John Katcher?

A: I don't know.

Q: Who is Raul Garcia?

A: I don't know.

Q: How about Gina Robinson?

A: I don't know.

While these questions make the point to the jury that the expert's review was not as complete as he claimed, the attorney can go further to drive the point home by working important testimony into the questions to further show the expert did not have a sound basis on which to ground his opinion. Assume John Katcher was a student in the classroom who was a witness to the event and saw the teacher pour the methanol from the jug:

Q: Before offering your opinion to this jury, would you want to know what the people who were actually in the classroom said happened?

Q: And the reason you say of course is because it would provide you with additional information with which to form your opinion.

Q: Who is John Katcher?

A: I don't know.

Q: Is he a teacher? A student?

Q: Do you have any idea what he would say about what happened in the classroom?

Q: I want you to assume Mr. Katcher testified that the teacher picked up a jug of methanol from under the counter, opened the lid and poured the methanol from the jug into the dish. Assuming this testimony to be true, is this information you would want to know before offering your opinion that the teacher acted appropriately?

Q: Why?

Q. And you certainly would have wanted to read that testimony, am I right?

The cross of an expert at first blush can be daunting even to the more experienced trial attorney. Many of the regular experts who are called to the stand have spent more time in court than most attorneys. Nevertheless, by mastering and utilizing these techniques to cross examine

experts, attorneys questioning an expert are well on their way to neutralizing the expert's testimony, rejecting it or, even better, forcing the expert to change his opinion.

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Peter J. Saghir, a partner at Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf, assisted in the preparation of this article.

TAB 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
GEORGIA ATLANTA DIVISION

CORECO JA'QAN PEARSON, VIKKI TOWNSEND CONSIGLIO, GLORIA KAY GODWIN, JAMES KENNETH CARROLL, CAROLYN HALL FISHER, CATHLEEN ALSTON LATHAM, and BRIAN JAY VAN GUNDY,

Plaintiffs,

v.

BRIAN KEMP, in his official capacity as Governor of Georgia, BRAD RAFFENSPERGER, in his official capacity as Secretary of State and Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a member of the Georgia State Election Board, REBECCA N. SULLIVAN, in her official capacity as a member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a member of the Georgia State Election Board, and ANH LE, in her official capacity as a member of the Georgia State Election Board,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04809-TCB

INTERVENORS' MOTION TO EXCLUDE TESTIMONY OF SHIVA AYYADURAI, RUSSELL JAMES RAMSLAND, JR., MATTHEW BRAYNARD, WILLIAM M. BRIGGS, RONALD WATKINS, BENJAMIN A. OVERHOLT, ERIC QUINNELL, S. STANLEY YOUNG, AND "SPYDER"

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I. INTRODUCTION

In an attempt to support their claims of a multi-national conspiracy to rig the results of the presidential election for President-Elect Joseph R. Biden, Jr.—which Plaintiffs allege was accomplished by methods ranging from "ballot stuffing" at voting machines via a hidden software algorithm to illegally processing tens of thousands of absentee ballots—Plaintiffs have filed multiple "expert" declarations and reports. But the individuals put forward by Plaintiffs as "experts" are wildly unqualified. For example, a former Trump staffer who has publicly stated that he is working hand in glove with the Trump campaign to get the election overturned and delivered to the President purports to offer a statistical analysis of election data despite having had no relevant training, skill, or experience. Others' grounding in their claimed areas of expertise is equally suspect. The analyses they offer rely on patently incomplete or faulty data. Over and over, the reports fail to disclose the methods employed by their authors, error rates, or even how underlying data was obtained. Where their methodology is discernable, Plaintiffs' "experts" regularly use methods that are not at all standard or trusted in the relevant field, and draw conclusions that are nothing more than speculation.[1]

[1] Some reports were attached as exhibits to the Complaint, while others are referenced in Plaintiffs' motion for temporary restraining order, and some are not

Plaintiffs attempt to use these unreliable reports written by unqualified individuals to seek extraordinary relief, including an order de-certifying the November 2020 election results and a declaration that Georgia's electoral college votes will be awarded to President Trump despite Georgia voters' clear decision choosing President-Elect Biden. None of these reports supports this relief, and none is sufficient to pass the *Daubert* standard for admissibility. All should be excluded.

II. LEGAL STANDARD

Courts may only admit expert testimony when "(1) the expert is qualified to testify regarding the subject of the testimony; (2) the expert's methodology is sufficiently reliable as determined by the sort of inquiry mandated in *Daubert* [*v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993)]; and (3) the expert's testimony will assist the trier of fact in understanding the evidence or determining a fact at issue." *Chapman v. Proctor & Gamble Distrib., LLC*, 766 F.3d 1296, 1304 (11th Cir. 2014) (quotation marks and citation omitted); *see also* Fed. R. Evid. 702. As proponents of the expert testimony at issue, Plaintiffs bear the burden to establish these requirements. *Chapman*, 766 F.3d at 1304.

An expert is qualified if they can testify competently regarding the matters

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referenced in any motion or pleading at all. It is therefore unclear which reports Plaintiffs plan to rely on in support of their motion for temporary restraining order; in any event, all should be excluded.

addressed by virtue of their education, training, experience, knowledge, or skill. *United States v. Frazier*, 387 F.3d 1244, 1260-61 (11th Cir. 2004). Where a proposed expert fails to demonstrate experience, training, or other qualifications in the field and that methodologies that they utilize to provide their opinion, they cannot be qualified as an expert. *Smith v. Ortho Pharm. Corp*., 770 F. Supp. 1561, 1566 (N.D. Ga. 1991).

In determining whether proffered expert testimony is reliable, courts consider whether: (1) the expert's methodology has been tested or is capable of being tested; (2) the theory or technique has been subjected to peer review and publication; (3) there is a known or potential error rate of the methodology; and (4) the technique has been generally accepted in the relevant scientific community. *United Fire & Cas. Co. v. Whirlpool Corp.*, 704 F.3d 1338, 1341 (11th Cir. 2013) (per curiam) (*citing Daubert*, 509 U.S. at 593-94). Failure to disclose the data or methodology that form the basis of an expert's conclusions warrants exclusion. *Robinson v. City of Montgomery*, Civil Action No. 2:01cv40-CSC, 2005 WL 6743206, at *3 (M.D. Ala. March 2, 2005).

Finally, and most fundamentally, the Court must ensure that the expert's testimony "is relevant to the task at hand." *Chapman*, 766 F.3d at 1306 (quotation marks and citation omitted). If the Court determines that the testimony is not

relevant, the Court should exclude even reliable expert testimony. *See Daubert*, 509 U.S. at 591; *United States v. Wilk*, 572 F.3d 1229, 1235 (11th Cir. 2009).

III. ARGUMENT

A. Ayyadurai is not qualified and fails to disclose his methods.

Shiva Ayyadurai is an engineer with training in mechanical engineering and biomedical engineering. He seeks to testify regarding voting patterns in certain Georgia counties. *See* Declaration of Shiva Ayyadurai, ("Ayyadurai Decl.") ECF No. 6-1, at ¶¶ 3, 15-17, 30. Ayyadurai, however, does not possess relevant education, experience or background to offer opinions on these topics and, even if he did, he fails to disclose his methodology.

Ayyadurai is not qualified to opine on voting behavior, projections, statistical analysis of ethnicity data in relation to voting behavior, or cumulative voting analysis. He has not been previously qualified to speak on these topics and his report identifies no education or experience that equips him to offer these opinions. Though Ayyadurai has degrees in engineering and computer science, applied mechanics, and systems biology, he does not explain how these credentials qualify him to offer the opinions at issue. *See Horton v. Maersk Line Ltd.*, 603 Fed. App'x 791, 798-99 (11th Cir. 2015) (finding witness unqualified to opine on corner casing defects even though witness knew how to repair corner casings). Ayyadurai claims

to be "an engineer" with "vast experience in engineering systems, pattern recognition, [and] mathematical and computational modeling and analysis." Ayyadurai Decl. at ¶ 2. His report, however, does not indicate how this "vast experience" qualifies him to testify about or analyze voting behavior. *See Horton*, 603 Fed. App'x at 798-99. Indeed, it appears this is the first time in his entire career that he has even contemplated these issues. His lack of qualifications alone warrants exclusion. *See, e.g.*, *Smith*, 770 F. Supp. at 1566; *Chapman*, 766 F.3d at 1313-14.

In addition, Ayyadurai's report is inadmissible because he fails to disclose the methods he used and, even if any method can be discerned, it is obviously unreliable. *McDowell v. Brown*, 392 F.3d 1283, 1298 (11th Cir 2004). Ayyadurai summarizes his conclusions as follows: (1) there are improbable vote pattern anomalies, including instances of "High Republicans, Low Trump" vote patterns in certain precincts; (2) in three counties the "only plausible explanation for the vote distribution was that President Trump received near zero Black votes," Ayyadurai Decl. at 27-28; and, (3) an unidentified "'weighted race' algorithm" transferred "approximately 48,000 votes from President Trump to Mr. Biden," *id*. at 28. As noted by Intervenor's Rebuttal Expert Jonathan Rodden, however, Ayyadurai "provides no indications about his data sources," "does not explain how he measures his variables," and "[h]is claims about race and ethnicity are, frankly,

inscrutable, and thus difficult to evaluate with data analysis." Report of Jonathan Rodden ("Rodden Rep.") at 24.[2]

For but one example, Ayyadurai summarizes demographic data from undisclosed sources purportedly related to the percentage of Republican-, Democratic-, and Independent-affiliated individuals within certain counties, as well as the "ethnic" makeup of those counties, again by percentage. Ayyadurai Decl. at ⁋⁋ 14-21. Ayyadurai then references graphs that he claims show that as the percentage of Republicans in certain precincts increases, the overall percentage of Republican votes for President Trump decreases. *See id.* at ⁋⁋ 15-21. He does not explain why this is problematic or how, as he also contends, these graphs show fraud. As Dr. Rodden notes, such a pattern is not surprising—and it certainly is not an indication of election fraud. *See* Rodden Rep. at 24-35. In fact, Ayyadurai's "phrase—'high Republican but low Trump'—describes something that we saw not only in Savannah, [Georgia], but in metro areas around Georgia and the United States: white metro-area voters who typically vote for Republican candidates continued to do so in down-ballot races, but a number of them voted for the

[2] Dr. Rodden is a tenured Professor of Political Science at Stanford University and the founder and director of the Stanford Spatial Social Science Lab. *See* Rodden Rep. He is an established expert on election data analysis and has appeared—and been credited—as an expert in numerous voting rights and election-related lawsuits and litigation across the country. Rodden Rep. at 3-6.

Democratic candidate in the presidential race." *Id.* at 30. Ayyadurai does not account for the explanation provided by Dr. Rodden, provide the methodology used to reach his conclusion or identify the source of his data.

The entirety of Ayyadurai's report suffers from the same flaws: a conspicuous failure to disclose the source(s) of the data relied on, how conclusions were reached, and what methodology, if any, underlies the opinions. *See, e.g.*, Ayyadurai Decl. ⁋⁋ 15(g)-(h), 16(g)-(h), 17(g)-(h) (failing to identify source or relevance of data as well as method underlying opinion); ⁋⁋ 30-31 (lacking reference to data source, explanation of algorithm or how votes were transferred from Trump to Biden); Rodden Rep. at 24, 32-35. The report fails to disclose enough about the methods employed or relied upon so that those methods can be reviewed, tested, duplicated, and verified. *See McDowell*, 392 F.3d at 1298. Reports that omit even a minimal disclosure of the underlying methods are inadmissible. *See Frazier*, 387 F.3d at 1260. Ayyadurai's declaration should be excluded. *Id.* at 1265 ("'[t]he court's gatekeeping function requires more than simply 'taking the expert's word for it.'").

B. Ramsland is not qualified and fails to disclose his methods.

Russell James Ramsland, Jr. offers opinions regarding whether the use of certain voting machines influenced the outcome of the 2020 presidential election in

Georgia. *See, e.g.*, Declaration of Russell James Ramsland, Jr. ("Ramsland Decl.") ECF No. 1-10, ¶ 8. Ramsland's report should be excluded: because Ramsland is not qualified as an expert and fails to disclose the information relied on and the methodology he (or others) utilized to reach his conclusions.

First, Ramsland is a businessman who lacks the qualifications necessary to offer expert opinion testimony on the impact, if any, on the 2020 presidential election from the use of certain voting machines. *See id.* at ¶ 2. In his declaration, Ramsland candidly admits his lack of relevant knowledge, education and experience stating that he "relied on [his current employer's] experts and resources," noting that his employer, "which provides a range of security services," "contract[s] with statisticians when needed," and employs a "wide variety of cyber and cyber forensic analysts as employees, consultants and contractors." *Id.* Ramsland does not disclose, however, who these unidentified "experts" are, which of them were utilized, the sources of data they relied upon, the manner in which they performed whatever work they might have done and in what way Ramsland, in turn, relied on that work to prepare his own report. *Id.*; *Bowers v. Norfolk S. Corp.*, 300 Fed. App'x 700, 703 (11th Cir. 2008).

Instead, Ramsland appears to be parroting analyses from other unidentified individuals who claim to possess expertise that he does not. This alone is more than

sufficient to exclude his report. *See Redmond v. City of East Point, Georgia*, No. 1:00-CV-2492-WEJ, 2004 WL 6060552, at *15 (N.D. Ga. Mar. 29, 2004) (noting that, under *Daubert*, "[a] scientist, however well credentialed he may be, is not permitted to be the mouthpiece of a scientist in a different specialty").

Even if Ramsland were qualified (and he assuredly is not), his report is inadmissible because it utterly fails to disclose the data or methodology he (or others) used, as well as the bases for his (or other's) analyses and conclusions. *See Frazier*, 387 F.3d at 1264-65. Indeed, the report can be searched in vain for Ramsland's data sources, the statistical analyses conducted, margins of error, or virtually *anything* that might suggest serious scholarly or expert analysis.

And, to the extent *any* methodology can be discerned from the scant information in the report, that methodology is unreliable. *McDowell*, 392 F.3d at 1298. The proffered opinions are therefore inadmissible. *See* Fed. R. Evid. 702.

For example, Ramsland references a "regression analysis" used to "develop a model/equation to predict in any county what percentage of vote could reasonably be expected to go to candidate Biden," noting that the model does a "good job" predicting Biden's percentage of votes in "most counties." Ramsland Decl. at ¶ 8. But Ramsland fails to describe that "regression analysis," or the "model/equation" developed from it. He is remarkably silent as to the inputs for the regression

analysis, the method itself, any assumptions, the predictive findings, and the error rate. He claims that the undescribed model does a "good job" predicting Biden's percentage of votes in "most counties," but nothing more is provide: How accurate is a "good job"? How many counties is "most counties"? This isn't even close to an appropriate or reliable statistical analysis.

Similarly, Ramsland concludes that, in counties that used certain voting machines or devices, candidate Biden "over-performed" beyond the expected results using the undisclosed predictive model, resulting in 123,725 votes in Georgia that are "statistically invalid." *Id.* at ¶ 10. He opines that Biden's "overperformance" is "**highly indicative (and 99.9% statistically significant) that something strange is occurring with the [voting] machines**." *Id.* at ¶ 11 (emphasis in original). Again, no details regarding these calculations—including how it was determined that the results are statistically significant or how statistical significance of "strangeness" might be measured—are disclosed. The exact type of "strangeness" at issue is left to the reader's imagination. Ramsland's other opinions suffer from the same issues. *See, e.g., id.* at ¶ 13 (failing to disclose data or explain method underlying plot purportedly showing widespread fraud); ¶¶ 15, 18-19 (estimating magnitude of "fraudulent[] and erroneous[]" vote attribution without providing data or explaining methodology).

Moreover, an examination of the possible methodologies underlying Ramsland's opinions reveal deep flaws. As noted in Dr. Rodden's rebuttal report, Ramsland relies on "idiosyncratic, non-standard statistical techniques" that are ill-suited for the analysis he attempts to conduct. Rodden Rep. at 36. Among the many identified by Dr. Rodden: (1) inappropriate reliance on a correlation that is driven primarily by cross-state variation; (2) failure to address causal inference problems including that Democratic leaning counties were more likely to adopt Dominion voting systems; and (3) failure to include fixed effects which is standard practice in the type of social science research Ramsland attempted. *Id*. at 36-43. In short, "the research design used in the Ramsland report is ill-equipped to detect differences in vote shares that are *caused* by use of particular voting systems." *Id*. at 46. The rebuttal report of Kenneth R. Mayer identifies additional errors including, for example, that the data Ramsland relies on from undisclosed sources does not match the actual data from the state. Report of Kenneth R. Mayer ("Mayer Rep.") at 4-5.[3]

Ramsland's failure to provide or even describe the methodology underlying his opinions as well as the lack of reliability in the methodology that can be

[3] Kenneth R. Mayer has a Ph.D. in political science from Yale University and is on the faculty of the political science department of the University of Wisconsin-Madison. Mayer Rep. at 2. He has authored articles on election administration and has been qualified as an expert in numerous matters. *Id.* at 2-3.

ascertained from his report mandate exclusion of Ramsland's testimony. *See, e.g.*, *McCorvey v. Baxter Healthcare Corp.*, 298 F.3d 1253, 1256 (11th Cir. 2002) (affirming exclusion of testimony where proffered expert did not test or consider alternatives); *McClain v. Metabolife Int'l, Inc.*, 401 F.3d 1233, 1240 (11th Cir. 2005) (determining it inappropriate to admit expert testimony that was "not support[ed] . . . with sufficient data or reliable principles" and did not "follow the basic methodology" used by experts in the relevant field).

C. Braynard is not qualified and his report does not utilize generally accepted methodology.

Nearly a week after filing their motion, on December 3, Plaintiffs filed a report from Matthew Braynard. Braynard seeks to offer opinions on the estimated number of Georgia voters: (1) who received an absentee ballot but did not request one; (2) who returned an absentee ballot but the state database reflects the voter as not having returned a ballot; (3) recorded as having voted but who deny voting; (4) who were not Georgia residents when they voted; (5) who were registered with a postal box disguised as a residential address; and (6) who voted in multiple states. Report of Matthew Braynard ("Braynard Rep.") ECF No. 45-1, at 7-10. Braynard, however, does not have the appropriate qualifications to opine on these topics, he does not follow standard methodology in the relevant scientific field, and the survey underlying several of his opinions is fatally flawed.

Braynard has a Bachelor of Business Administration and a Master of Fine Arts in "Writing." Braynard Rep. at Ex. 1. He has worked for, among others, the Republican National Committee and Donald J. Trump for President. *See id.* Braynard does not identify any education or experience in political science, statistics, or survey design, nor does he list any publications, research projects, or speaking engagements on those or any other subjects. He has not offered any expert testimony in court or deposition in the last four years, if ever. *Id.* at 4. While he has worked in the data analysis field, including in analysis of voter data, nothing in his resume indicates education, experience, or knowledge in survey design or statistical methods in social sciences. Because he lacks the requisite education, training, experience, knowledge, and skill to offer his opinions, his report should be excluded. *See, e.g.*, *Smith*, 770 F. Supp. at 1566; *Chapman*, 766 F.3d at 1313-14.

Even if Braynard could qualify as an expert in the relevant fields, his report is unreliable and therefore inadmissible. As more fully explained in the rebuttal report of Stephen Ansolabehere, "none of the[] claims meets scientific standards" in the appropriate field and Braynard has "no scientific basis for drawing any inferences or conclusions from the data presented."[4] Rebuttal Report of Stephen Ansolabehere

[4] Dr. Ansolabehere is the Frank G. Thompson Professor of Government in the Department of Government at Harvard University. Ansolabehere Rep. I at ¶ 10. His

Regarding Braynard ("Ansolabehere Rep. I") ¶ 3. Troublingly, none of Braynard's estimates are presented with a measure of statistical precision or uncertainty which is standard in the field. *Id.* at ¶¶ 17, 23. Measures of uncertainty such as standard errors, confidence intervals, or margins of error "are necessary for gauging how informative estimates are, and what inferences and conclusions may be drawn," and "[w]ithout such quantities it is impossible to draw statistical inferences from data." *Id.* at ¶¶ 22-23. Moreover, Braynard's conclusions are couched as having a "reasonable degree of scientific certainty," Braynard Rep. at 7-10, but that phrase is meaningless in scientific research. Ansolabehere Rep. I at ¶¶ 24-26. As Dr. Ansolabehere explains, errors in recordkeeping readily account for each of the claims made in Braynard's report. *See id.* at 30-33. Finally, the study on which several of Braynard's opinions rely is riddled with errors as more fully explained in Section III.D below. *See id.* at ¶¶ 34-68. Braynard's opinions should be excluded. *See McClain*, 401 F.3d at 1240 (determining it inappropriate to admit expert testimony that was "not supported with sufficient data or reliable principles" and did not "follow the basic methodology" used by experts in the relevant field).

areas of expertise include statistical methods in social sciences and survey research methods. *Id.* at ¶ 12.

D. Briggs' report is built on a faulty foundation and is not helpful.

Briggs has a Ph.D. in Statistics and considers himself a "statistical consultant." Declaration of William M. Briggs ("Briggs Decl.") ECF No. 1-1, at 3, 21. But his report, which purports to quantify the magnitude of "troublesome"[5] unreturned absentee ballots, is unreliable because, among other reasons, it rests entirely on faulty data collected by a fatally flawed survey and fails to account for a variety of unremarkable reasons for the existence of the so-called "troublesome" ballots. Additionally, Briggs' conclusion that there may have been "error[s] of some kind" for certain ballots does not assist the trier of fact in that Briggs does not conclude or even suggest that these purported "errors" had the possibility to change the result of the presidential election in Georgia.[6]

Briggs' report is based entirely on survey data from a survey performed by Braynard. *Id.* at 1. Briggs notes at the outset that his analysis "assume[s] survey respondents are representative and the data is accurate." *Id.* at 2. Briggs, however, offers no explanation as to why it is reasonable for him to assume the data is accurate

[5] Briggs categorizes an unreturned absentee ballot as "troublesome" if it is: (1) a ballot sent to a voter who did not request one, or (2) a voted ballot that was returned but not recorded. Briggs Rep. at 1.

[6] Briggs' report includes information relating to multiple states. Though there are errors in the survey methodology and data analysis for the other states, Intervenors focus only on issues relating to Briggs' analysis of Georgia ballots. *See, e.g.*, Ansolabehere Rep. II at ⁋⁋ 20-24, 63, 67-74.

or the sample size representative. *McDowell*, 392 F.3d at 1299 ("[S]omething doesn't become 'scientific knowledge' just because it's uttered by a scientist; nor can an expert's self-serving assertion that his conclusions were 'derived by the scientific method' be deemed conclusive." (citation omitted)).

As fully described in the Rebuttal Report of Stephen Ansolabehere Regarding Briggs ("Ansolabehere Rep. II"), Briggs' report is unreliable. First, the survey used to collect the data on which Briggs' opinions are based was flawed because, among other reasons, it allowed individuals other than the survey "target," individuals whose ballots were marked as unreturned, to answer survey questions. This error contaminates the data, "and is of sufficient magnitude to alter the results significantly." Ansolabehere Rep. II at ¶ 51. Second, Braynard's survey had an unacceptably low response rate. Braynard was only able to reach 0.4% of the individuals he sought to interview. *Id*. at ¶ 39. Put another way, 99.6% of the individuals targeted by the survey did not respond. *Id.* This is not an acceptable response rate. *Id*. at ¶ 41. Further compounding this issue, without information about the target population or the responding population, it is impossible to know whether the responding population is representative and therefore whether there is any scientific value to the survey. *Id.* at ¶ 42. Third, Briggs' report fails to account for unremarkable reasons, such as late arriving ballots, missing or mismatched signature

rejections, or spoiled or voided ballots, for why returned absentee ballots might not be recorded or counted. *Id.* at ¶ 58. These serious issues render the report unreliable and warrant its exclusion. *Chapman*, 766 F.3d at 1305-06 (finding a court "is free to 'conclude that there is simply too great an analytical gap between the data and the opinion proffered.'").

Finally, Briggs' report is not relevant to the question presented to the Court. Setting aside the problems with the data, Briggs does not opine regarding the exact nature of the "errors" or how any error would or even could have impacted the outcome of the election. Plaintiffs claim that "[t]ens of thousands of votes counted toward Vice President Biden's final tally were the product of illegality, and physical and computer-based fraud leading to 'outright ballot stuffing.'" Pl.'s Mot. for TRO, ECF No. 6, at 1. Briggs' report, however, does not speak to these issues and is therefore not helpful to the Court. The report should be disregarded on this ground as well. *See* Fed. R. Evid. 702(a).

E. Watkins is not qualified and his report rests entirely on speculation.

On December 1, Plaintiffs belatedly filed a declaration from Ronald Watkins. Watkins is a "network and information defense analyst and a network security engineer" with nine years of experience. Declaration of Ronald Watkins ("Watkins Decl.") ECF No. 31-1, at ¶ 5. He was the administrator of 8chan, an

anonymous online forum, and administered its successor forum, 8kun. Chris Francescani, *The men behind QAnon* (Sept. 22,2020), ABC NEWS, https://abcnews.go.com/Politics/men-qanon/story?id=73046374. Watkins seeks to provide testimony to "alert the public and let the world know the truth about actual voting tabulation software designed . . . to facilitate digital ballot stuffing." Watkins Decl. at ¶ 4. While the declaration is not labeled as an expert report (though Watkins claims he is an expert) and it is missing key components of an expert report (for example, Watkins' CV), to the extent Plaintiffs seek to offer Watkins as an expert in support of their motion, it should be excluded.

Plaintiffs present no evidence that Watkins is qualified to offer any opinion regarding election software. Watkins' stated experience—as a "network and information defense analyst and a network security engineer"—does not qualify him to offer testimony regarding purported vulnerabilities in voting systems. *See id.* at 5. Moreover, it is not clear whether Watkins has ever used or even examined the software at issue or whether he has any experience in election administration. Second, Watkins' opinions are not helpful. His declaration appears to consist entirely of unsupported speculation regarding purported vulnerabilities in election software based on a review of publicly available documents including user manuals. *See, e.g.*, *id.* at ¶¶ 6-13. If it wishes, the Court can review these public documents

itself; Watkins' speculation is not helpful. Such testimony should be disregarded. *See Frazier*, 387 F.3d at 1260; *see also Rider v. Sandoz Pharm. Corp.*, 295 F.3d 1194, 1202 (11th Cir. 2002) ("caution[ing courts] not to admit speculation, conjecture, or inference that cannot be supported by sound scientific principles").

F. Overholt discloses no relevant qualifications and his report contains serious errors.

Plaintiffs recently filed the Affidavit of Benjamin A. Overholt ("Overholt Aff."). Overholt seeks to offer opinions on whether "anomalies existed that could change the outcome of the presidential race in the 2020 General Election" based on a review of public data from the Georgia Secretary of State. Overholt Aff., ECF No. 45-3, at ¶ 4. As with many of the other proffered experts, Overholt provides only a cursory explanation of his credentials and his report is riddled with errors.

Overholt states that he has a Ph.D. in Applied Statistics and Research Methods, he is an "active federal civil servant" and has spent time reviewing "election results" for the Civil Rights Division of the Justice Department. *Id.* at ¶ 2. He does not further describe his education, experience or other credentials or how his prior work is similar or relates to, if at all, the work he performed for this matter. He does not appear to have any experience with Georgia elections or analyzing Georgia election data. The only other information that Overholt provides is his assertion that he is qualified "[b]ased on [his] experience and because of [his]

personal interest in the matter." *Id.* at ¶ 4. This is patently insufficient to qualify Overholt to offer opinions on whether there are "anomalies" in Georgia election data that could change the outcome of the 2020 presidential election, and his opinions should not be considered. *See, e.g.*, *Smith*, 770 F. Supp. at 1566; *Chapman*, 766 F.3d at 1313-14.

Even if the Court finds Overholt qualified, his affidavit contains serious errors. As Intervenor's rebuttal expert, Dr. Mayer, explains, "the claims made by . . . Overholt are unsupported and incorrect." Mayer Rep. at 1. Overholt does not know "even the basics of . . . election administration or how elections are actually conducted in Georgia or how election practices changed in 2020." *Id.* Moreover, Overholt's report contains "inaccurate definitions of crucial terms (such as what a 'spoiled' ballot is) make[s] completely unsubstantiated claims based on pure speculation and personal opinion, and reach[es] unsupported and incorrect inferences about what the data show." *Id.* For example, among other issues, Overholt's claim that there are 500,000 missing votes, is completely wrong. *See id.* at ¶ 20. There are, in fact, no missing votes, Overholt used the absentee voter request file for his analysis which is not a record of all individuals who voted in the 2020 election but instead is a record of all absentee ballot requests. Mayer Rep. at 9. This failure to understand the data being analyzed is a serious error and is one of many

examples demonstrating the unreliability of Overholt's report. *See* also, Mayer at 6-9. Overholt's report should be excluded. *See McClain*, 401 F.3d at 1240; *Rider*, 295 F.3d at 1202.

G. Quinnell and Young are not qualified and their declarations are unreliable.

The Court should exclude the declarations of Eric Quinnell and S. Stanley Young. Neither are qualified to offer opinions on voting patterns in Georgia, and, unsurprisingly, the opinions they do offer are not reliable. Two reports authored by Quinnell (the second in collaboration with S. Stanley Young) have been submitted in this matter. The first purports to analyze the results of the 2020 general election in Fulton County. Declaration of Eric Quinnell ("Quinnell Decl.") ECF No. 1-27. The second seeks to corroborate Quinnell's original findings. Declarations of Eric Quinnell and S. Stanley Young ("Quinnell/Young Decl.") ECF No. 45-2.

As pointed out by Intervenors' rebuttal expert Dr. Rodden, Quinnell's methodologies are nonsensical, and his data analysis is flawed and meaningless. Rodden Rep. at 7-8. Quinnell's novel opinion is that election results should display a normal distribution—a bell curve—and any departure from this indicates nefarious activity, such as voter fraud. Quinnell Decl. at ¶ 18. As Dr. Rodden explains, academically accepted literature dating back decades (as well as common sense) confirms that partisan preferences are not uniformly distributed. Rodden Rep. at 9-

11. More frequently—and simply digesting the news over the course of the last few decades would confirm—relevant social groups (such as young people, racial minorities, or college graduates) are clustered and it is typical to see skewed voting distributions. *Id*. at 11.

Quinnell's second report is equally flawed. In that report, Quinnell and Young sought to corroborate Quinnell's earlier findings and identify what they characterize as "anomalies in the voting patterns or new inferences that may explain some existing results." Quinnell/Young Decl. at ¶ 6. Primarily, they assert that their data shows that nearly all of the absentee ballots for Trump were received by November 4, while the vast majority of absentee votes for Biden were received on or after November 5, resulting in a distribution for Biden that "mathematically represents a peculiar, non-linear external constraint unexplainable and unrelated to the arrival and counting of absentee ballots." *Id*. at ¶ 13.

Rather than corroborate Quinnell's earlier report, the second report merely compounds its errors. As Dr. Rodden explains in detail in his supplemental report addressing the Quinnell/Young Declaration ("Rodden Supp. Rep."), the declaration utilizes unofficial data that may not reflect the running total of votes. Rodden Supp. Rep. at 3-4. The report is also riddled with numerous unexplained, unsubstantiated, and questionable assumptions built into their data and analysis (which, as before, is

not provided). Rodden Supp. Rep. at 4-7. In addition, the Quinnell/Young Declaration claims that there is a "pattern" that represents a worrying anomaly in voting patterns. Quinnell/Young Decl. at ¶ 6. But this is nonsense. As Dr. Rodden explains, this "pattern" they purportedly discovered, even if it did exist, is entirely consistent with *what could happen naturally* and is far from being anomalous. Rodden Supp. Rep. at 8-9. This is because, at a very high level, there are many precincts in Fulton County that are small and/or have very few absentee votes for Trump. *Id*. at 9-11.

In addition, Quinnell/Young make fundamental errors in their analysis. For instance, they note that "[a]ccording to the rules established in Georgia for the 2020 election, absentee ballots were allowed to be opened and counted for a full 3 weeks leading up to and including election day." Quinnell/Young Decl. at ¶ 20. But, as was widely reported, this is false; Georgia election workers were only permitted to open and scan—but not count—absentee ballots *15* days before election day.[7] In the analysis they conducted, where every day impacts the distribution, such a gross error speaks to the lack of familiarity with the subject matter. The Quinnell and Young

[7] *See, e.g.*, Mark Niesse, *Absentee ballots can begin to be opened, but not counted, in Georgia*, The Atlanta Journal-Constitution (Oct 19, 2020), https://www.ajc.com/politics/absentee-ballots-can-begin-to-be-opened-but-not-counted-in-georgia/BRBLHVUJOFHB5OEHAMZV34HPDA/.

declarations should be excluded.

H. It is impossible to assess the qualifications of the unnamed individual known as "Spyder" and his declaration consists of nothing more than speculation.

In support of their motion, Plaintiffs cite the "expert testimony" of an individual whose name is redacted but is referred to by Plaintiffs as "Spyder." *See* Mot. to File Under Seal, ECF 5 at 9. Spyder claims to be an "electronic intelligence analyst . . . with experience gathering SAM missile system electronic intelligence" and "extensive experience as a white hat hacker used by some of the top election specialists in the world." Declaration of "Spyder" ("Spyder Decl.") ECF No. 1-9, ¶ 2. Other than claiming to work for "top election specialists," Spyder does not disclose whether s/he has any experience with election administration or the companies, software and machines used by states to conduct elections. Because Spyder is not named, it is impossible to verify or even research what Spyder's credentials may be. On the record before the Court, Spyder cannot qualify as an expert given his/her lack of relevant education, training, experience, knowledge, and skill. *See, e.g.*, *Smith*, 770 F. Supp. at 1566.

Spyder's declaration should also be disregarded because it relies on nothing more than speculation and s/he uses no discernable methodology in reaching his/her conclusions. *See Frazier*, 387 F.3d at 1260; *see also Rider*, 295 F.3d at 1202; *Greater*

Hall Temple Church of God v. S. Mutual Church Ins. Co., 820 Fed. App'x 915, 919 (11th Cir. 2020). Following a dizzying array of screenshots, Spyder comes to the startling conclusion that "Dominion Voter Systems and Edison Research" were "accessible" and "compromised by rogue actors" and that these companies "intentionally provided access to their infrastructure in order to monitor and manipulate elections, including the most recent one in 2020." Spyder. Decl. ¶ 21. It does not appear that Spyder applied any methodology other than a series of online and other searches in reaching this conclusion which appears to rest entirely on speculation regarding purported security issues and connections between various individuals and entities. *See McClain*, 401 F.3d at 1240. And, in any event, s/he does not opine that any alleged interference changed or had the ability to change the trajectory of the election making his/her opinions unhelpful to the Court. *See Chapman*, 766 F.3d at 1304, 1306-07; Fed. R. Evid. 702(a). Spyder's declaration should not be considered.

IV. CONCLUSION

For the reasons set forth above, Intervenors respectfully request that the Court exclude these "experts" and their reports in their entirety.

Dated: December 5, 2020

Respectfully submitted,

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**Admitted Pro Hac Vice*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CORECO JA'QAN PEARSON, VIKKI TOWNSEND CONSIGLIO, GLORIA KAY GODWIN, JAMES KENNETH CARROLL, CAROLYN HALL FISHER, CATHLEEN ALSTON LATHAM, and BRIAN JAY VAN GUNDY, Plaintiffs, v. BRIAN KEMP, in his official capacity as Governor of Georgia, BRAD RAFFENSPERGER, in his official capacity as Secretary of State and Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a member of the Georgia State Election Board, REBECCA N. SULLIVAN, in her official capacity as a member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a member of the Georgia State Election Board, and ANH LE, in her official capacity as a member of the Georgia State Election Board, Defendants.	CIVIL ACTION FILE NO. 1:20-cv-04809-TCB

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: December 5, 2020.

Adam M. Sparks
Counsel for Intervenor-Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CORECO JA'QAN PEARSON, VIKKI TOWNSEND CONSIGLIO, GLORIA KAY GODWIN, JAMES KENNETH CARROLL, CAROLYN HALL FISHER, CATHLEEN ALSTON LATHAM, and BRIAN JAY VAN GUNDY, Plaintiffs, v. BRIAN KEMP, in his official capacity as Governor of Georgia, BRAD RAFFENSPERGER, in his official capacity as Secretary of State and Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a member of the Georgia State Election Board, REBECCA N. SULLIVAN, in her official capacity as a member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a member of the Georgia State Election Board, and ANH LE, in her official capacity as a member of the Georgia State Election Board, Defendants.	CIVIL ACTION FILE NO. 1:20-cv-04809-TCB

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: December 5, 2020.

Adam M. Sparks
Counsel for Intervenor-Defendants

TAB 4

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2020

(Argued: December 2, 2020 Decided: December 8, 2020)

Docket No. 19-2155

IN RE: MIRENA IUS LEVONORGESTREL-RELATED PRODUCTS LIABILITY LITIGATION (NO. II)

ABRA CONING, KAYLA TALLEY, TIFFANY HAUSNER, SHANE HAUSNER, SHELAIN COOPER, ALLISON SIMPSON, AMELIA HOLMAN MILES, JONATHAN MILES, JESSICA GUGLIELMO, MEGAN ROBINSON, KIMBERLY BLACK, CHAQUITA DUDLEY, KELLY RIEGEL-GREEN, DANISE HOFFMAN, JACQUELINE GOYENA, JANELLE PALLANSCH, BRITTANY GRECO, MISTY SOLOMON, DAPHNE HOUCK, HOLLY ALLEN, JENNIFER SANTIAGO, MELANIE HOWE, MISTY MCCANDLESS, ANGELA KLOPFENSTEIN, ADAM KLOPFENSTEIN, CATIE KESSLER, JACLYN SPETT, ABIGAIL MICHEL, CHERIE MCGEE, BRITTANY WILSON, BREANNA PIETERS, ELLEN BURNS, INDIVIDUALLY, DAVID BURNS, LAURA BURNS, WHITNEY WALKER, JESSICA WATSON, KARNA LYNNE PETTLON, AMBERLY BUCKNER, CARLEY HAMILTON, DANIELLA PAVELKA, ANDREA JOHNSON, CHRISTINA STEPHANIE ALBERTSON, ABIGAIL THIESING, AMANDA MASSIE, AMY EDWARDS, SHERRICKER RODGERS, ANNALISSA SANCHEZ, NICOLE VINCENT, LIANA ERB, SARAH MARIE WESSEL, KATIE MYERS, LATOYA S. THOMPSON, ASHLEY BABICH-ZACHARIAS, BETHANY VINCENT, WHITNEY MANCHEL WASHINGTON, LAUREN HARDWICK, BRITTANY S. SMITH, ELIZABETH HEAGY, BARBARA ANDERSON, SHAMARA VON LANE, CRYSTAL VAZQUEZ, BRITTANY COLLINS, ASHLEY NOBLES-HOBBS, SHAKARA

CARTER, MIRANDA GLEDHILL, MELISSA TOLBERT, DEVON MAHLSTEDT, DANIELLE ADAMS, LAUREN CARMAN, ANNA CONLEY, STEPHANIE DAWSON, ANDREA GEE, VICTORIA LEE, LACEY LANGSTON SANDERLIN, ASHLEY AMBER COCKRELL, SHAWNA LOUISE COOPER, MARYSSA REESE, CARNESHIA CASON, KASEY GARRISON, ASHLEY STEED, STEFFANIE MICHELLE DENNIS, JESSICA MARIE PETERSON, KASEY JACKSON, LESLIE MARIE COAPMAN, LATRICIA ANDERSON JOHNSON, MARY MARGARET COTTINGHAM, SHAMEKA M. BRIDGES, PETERSON BRIDGES, LATONYA HOSKIN, KRISTEN DENISE BRYAN, SAMANTHA LIFORD, CHRISTI UTLEY, JESSICA STANLEY, MACEY BEELER, NOELLE HICKEY, CRYSTAL TAYLOR, VALERIE TOWNSEND, ANDREA VEGA, AMANDA EVANS, BREANNA WILLIAMS, MANDY MITLYNG, LYSSA KIRK, MARSHA SAPP HANKINS, LEAH FACKRELL, TIARA MITCHELL, SIOBHAN SCHALL, KATHLEEN CHEEK, BILLY CHEEK, NICOLE HAMILL, KAREAMA PATTERSON, KYLARA BOOTH, DANIEL PARSONS, CHRISTA DIEHL, VANESSA BOURGOIN, DANIEL BOURGOIN, KARA STANLEY, TIFFANY SAWYER, CAITLYN ABOULBA, KEYSA ELLIS, MARIA AGUILAR, ELLEN BURNS, AS PERSONAL REPRESENTATIVE OR EXECUTRIX OR ADMINISTRATRIX OF THE ESTATE OF ANNE ALDEN BURNS, AMANDA CLARK, TAQUOYA KERYAWNA WILLIAMS, MARIA PITTS, HEATHER NICOLLE MCMULLAN, NICOLE LASSO, RANDI WHITE, HEATHER ONSUM STOOPS, JANEKA HAYNES, SHENEQUA PERDUE, RACHEL FREITAS, KATRINA EVERETT-CAREY, NAYELI JUAREZ-GARCIA, MELISSA FRANCES HALL, ELIZABETH ADAMS, SYLVIA GREER, NI'MATULLAH KING, MARIE SHIVER, SUSAN TOOMEY, MEGAN HARRIS, KATHRYN ASBEL, ASHLI GARNER, LISA VALLERY, BRITTANY NICOLE JAMES, SARA TESS SANBORN, ROBERT ZINN, KIMBERLY STIER, DEWAYNA DENILLE BROWN, LOIS MICHELLE PALMER, KELLI SALAZAR, JESSICA ROBERSON, STACY BRYAN, STEVEN BRYAN, REBECCA ELWOOD, AMBER HANSON, REBEKAH ROGERS, TESSA WATTS, SHEREE MITCHELL, LASHONDA ROBINS, MISTY REITZ, BERNESHA MEANS, SAMANTHA DAVIS, TAMATHA TUCKER-WHITAKER, MISTY COLEMAN-WOODS, SHARON CAIN, SHANNON WALKER, STEPHANIE SCHLUETER, KATHARINE WELLS, CYNTHIA GUNN, JESSICA HIXSON ROBINSON, JESSICA GARDNER, CATHERINE DIANNE BEITEL, CHRISTY NICOLE MCGREGOR, AMBER DARLENE PROUT, AMANDA LEEANN BARBER, ALETA BREK RICHARDS, ERICA SILVA, JOHN SILVA, III, AMY HODGE, JOANNA LYNN LUCERO, KELSEY RAMM, KATIE REBECCA LAWRENCE, KELLI BOYT ROWLAND, CANDICE SMALL, JADE A. LUDWIKOWSKI,

SHAHIRA OSMAN, NAQUASHA RISER, LAUREN ELIZABETH SINGLETON, JETTA ALLEN, JULIANA CATARINA HERNANDEZ, TIRZAH MARIE ELLET, KAYLA SCOTT, TOMEKA WILLIAMS-JAMES, COURTNEY TRENNEPOHL, TIFFANY COLLINS, STACY CAMINO, KATHLEEN FOX, CHANTHINIA WHITE, BRIANNA PETERS, DEVINA WILLIAMS, CHAVON PLANGE, SADIE MILLER, STEPHANIE SELLERS, FREDDREKIA BRADLEY, STARLA MCCOLLUM, LACEY HUBERT, ANAIS FORCIER, JENNIFER URE, RHONDA PEZZULLO, RACHAEL NIKL, ALECIA CONNER, KIMMI VESEY, DEANNA MOONEY, MARLENE MENDEZ, CIERA TURNER, TYSHEA MOTT, MELISSA POLOMSKY, HEATHER KURAMOTO, JESSICA BIHLER, LAMARA WALKER, CANDICE BAILEY, ALYSSA JOHNSON, KRISTIN CARRICO, GLORIBI PASTOR, CHANDRA BROWN, JULIA MEACHEM, SHAQUANDA MCMILLION, LAKEYSHIA TATE, ASHLEY MCLUCKIE, KATELYNN HAMMOND, DORETHA SMITH, LAUREN HOLLOBAUGH, GEMBELLE HORLACHER, KIMBERLY BURKHART, KIMBERLY MACAULAY, MARISOL MARCANO, ASHLYN HACKWORTH-WILLIAMS, NADINE KELLAM, JONEL EDWARDS, ELIZABETH MONTANARO, STEPHANIE BREWER, ANGELINE STANGER, JESSICA ROSELAND, JACOB ROSELAND, NICOLE ASKIN, CHRISTIE EPPERLY, TIFFANY MOSLEY, NICOLE CLARK, NAOMI WILSON, PORSCHE PATTERSON, NATASHKA MILLER, KAREN CREAR, STACIE HUFFER, LATOYA HUNT, LAUREN ROBERTS, BRITTANY THOMAS, AMBER HODA, CHRISTAL BAUGH, ARIN BOEHMER, JENNIFER DRAYTON, CHRISTINA HOLLAND, NIKIA BROWN, ALANA SIRMANS, ROSANNA KNUDSEN, MICHELLE MORGAN, MAUREEN GARRETT, NICOLE PARKER, CONSTANCE STEELE, AMANDA GOODLET, KIMBERLY HENAO, BRIANNA BLACKMAN, ANGELA NORRED, JESSIKA ALLEN, PATRICE RENEE FRANK, CHRISTINA REID, REVA MCDONALD, CASSANDRA N. JOHNSON, FAITH LAW, JERALYN WILEY, JEFKIDA JOHNSON-STINSON, JALISA CRAPO, STEPHANIE GRADY, SIMIN KASHANI, IEACHA JACKSON, ALEXANDRA HAINES, HEIDI THOMAS, LATOYA KENDRIX, SARAH ANNE MCLAUGHLIN, TIERRA HALL, JAMISHA DYER, AMY AMMONS, STEPHANIE ADAMS, ANDREA LUCERO, JESSICA LYNN SIMMONS, KRISTEN CAMPBELL, LAURA BRYAN, AIDA LOZADA, TABITHA LEE, AMANDA PICHLA, LATORIA WOODALL, BRITTANY WATKINS, ERENDIRA CUEVAS, LINDSEY ROSS, CRYSTAL COVERT, CATHERINA ANDRADE, KENDRA WICKWARE, KELLY CICHETTI, ASIA SHAKESPEARE, SAMANTHA STAATS, HALEY HENN, JENNIFER LEGASSIE, DESHONDA KNIGHT, TABITHA SAYLOR, ELIZABETH K. MOORE, SIERRA MOORE, TAMARA WHALIN, BRITTANY HARSCH, KRISTEN N.

CHANDLER, BARBARA NAPIER, STEPHANIE BENNETT, JESSICA KILBOURNE, DONISHA BISHOP, MARGARET BENDER, CHELSEA M. SAWYER, GUADALUPE PINEDA, SHA.DEBRA COLLIER, VALERIE ARTHUR, CHRISTY S. MURPHY, JESSICA HUPMAN, JENNIFER SAND-SHEQUEN, DANA Y. COOPER, JENNIFER GUZDEK, TRICIA PONICKI, TRACY D. GOULD, CORTNIE SHORT, DAVID RODRIGUEZ, JESSICA NIESLAWSKI, KARLA M. DUELLEY, NATALEE WILLIAMS, STEPHANIE BURT, PAULA C. GARCIA, JULIE NELSON, HEATHER BAKER, DAPHNE FRANKLIN, ANDREA MARTINEZ, ESHIA DAVIS, JUANITA FIGUEROA, DAWN BREEN, KINDRA NELSON, AMBER R. DRYDEN, ASHLEY PEARSON, MELISSA S. HOPKINS, MARQUITA WILLIAMS, JESSICA CASH, ELIZABETH BRYCE, NICOLE PERKINS, MARY WALKER, MADISON FOWLER, ALAINA DICE, TONI STREETER, CHEETARR JACKSON, APRIL ROBERTSON, KELSEY HARRIS, SIERRA RADDEN, MARQUSEY EVANS, DALIA JASSO, KAITLYN SKLENAR, STEPHANIE PELLETIER, SONYA RAMSEY, CHEYLO COLLADO, DETRA FERGUSON, ALISON ASHCROFT, JEANIE LASCELLES, LORI ANNALORA, STEPHANIE STOCKMAN, TIERRA JACKSON, AMBER OSTERMILLER-FORD, AMANDA STEVENS, KATHERINE SOTELO, TONI IVY, ERICKA JONES-GEORGE, DONNA RAWDON, PAULENA WHITE, STEPHANIE CLARK, JESSICA CROUSE, KATI VALENTINE, ANALYCIA SANCHEZ, ERICA SMITH, GABRIELLE HOFFMAN, SAMANTHA WILLIAMS, SHAQUETTA FELDER, CHARMINA LEWIS, TANIA KENT, MARQUISA JOHNSON, NICOLE JACKSON, EMILLIE HOPPER, KRISTY COLLINS, SAMANTHA ALLEN, SARA WASHBURN, STEPHANIE TREAT, KIMBERLY MCKINNEY, TANIQUA BLETCHER, CRYSTAL RODGERS, SANDY TATUM, TIFFANY DEBUSK, AMANDA CRITES, ANISHA LONGMIRE, BETH BURTON, KAY PAGE, SHAVONTE JOHNSON, JULIA FERGUSON, DESIREE SAENZ, TRISTYN ARIYAN, DODIE ARNOLD, KIMBERLY MOULTON, JOAN REDFIELD, REBECCA DURDEN, CAROLYN SUTTON, TYMEIKA BASKIN, LILLIE BATTLE-EASON, RACHELLE LILLY, ANGELA HENDERSON, BRITTANY SHUMPERT, DANIELLE WEHRLEY, NICHOLE HITCHCOCK, JAMIE O'BRYAN, MEGAN DEAN, JOANNA MOMOKO CLINE, SHARI HERNANDEZ, KATHERINE JACOBSEN, LINDSAY MILLER, ANGELA ROSE PADILLA, JASMAN AL-SHWAIYAT, CHESSICA MAUS, CHRISTINE WILSON, JAIMER PELLER, ARLENE CORDERO, JULIE GONZALEZ, JENNIFER HULL, WENDY BROWN, AMANDA WAITE, TANAZIA MCCANTS, ALEXANDRIA ESTRADA, ALEXIS WALTON, KAYLA OWENS, CORNEISHA FOSTER, ERIKA NACKE, BRIANA GARNER, ELIZABETH PAIGE, SHARLA BERNDT, KESHIA BARNETTE, DEVON

PINCKNEY, PORSCHE DAVIS, KHELEE SAWYER, DAFFNEY HICKS, ZEBERA LAUNIUS, CHARLA MYERS-PERKINS, WILMA F. MITCHELL, QUINEISHA JUDD, MOKEDA ALEXANDER, KENDRA HILL, VALIENCIA PARKER, DARNESIA FINKLEY, MARY NORTON, ASHLEY MANDOLINE, JESSICA WATSON, COURTNEY SMITH, SARA SUTPHIN, KELLY HARRIGAN, JACQUELINE SHERLEY-DOUGLAS, NICOLE SWEITZER, TONJA ABIAKAM, JENNIFER DRAUGHN, HATTIE HANSEN, KHADIJAH ROBINSON, TONI E. COLEMAN, BRANDY FLETCHER, ANDREA ROBINSON, BRIANA STILLS, ALICIA THAMES, JESSICA GRABILL, VIVIAN DAIGLE, KELLY REIS, LESLIE MARTIN, ANGELA ROBINSON, GINGER KUCHLER, KARLENA JENKS, TESS MORSE, TAMMI MILLER, TINA WEBBER, AMANDA HARVEY, LAUREN DONALDSON, CATHERINE KING, BRANDI GEDDINGS, BRIGITTE COCKCROFT, ANN EVERETT, PEGGY POSPICHEL, SHONTON L. BURTON, SHANEEN THOMPSON, NICOLE AMARO, MICHELLE WHITTED, TERI CARMICHEAL, LAURA GABRIEL, BRIANA MCCRANIE, HEATHER HEMBERGER, TAMI UNROE, CHARLENE GOMEZ, CHELSEA COULTER, ALIYA QUICK, ARIELLE CATRON, BRIDGET COBURN, ASHLEY ANTKOWIAK, KATIE LYNN ARABIE, JILL GENOVESI, STEPHANIE COEN, JULIE GARCIA, KAYLA FAULKNER, MELISSA SNOW, AISLYNN POUNDS, CORA CLEAR, KARRIE SHIELDS, CHRISTON FORE, KIMBERLY HAMILTON, SHUNIKA HEMINGWAY, CASSANDRA BECKER, DANYELL RUSSELL, ERICA OWENS, CATHERINE MARTINEZ, KIMBERLY GRANT, JACLYN HERALD, BROOKE BIRGE, TIFFANI DALTON, STACY BETH SWENTON, BRANDI CARROLL, ASHLEY RODRIGUEZ, KRISTIN ANDRICK, KERI RICE, STEFANIE THACKER, LAURA FRISBY, LINDSEY GRADY, BESS PATTERSON, ALYSTA ESPINAL, AISHA CUFFIE, EMILY COKRLIE, TAMMY SCHATZBERG, JAIME POWELL, SHELBY LUANN MCCAIN, MELISSA FUSCO, JANELL DAVIS, ALICIA RUFFIN, ANGELA KOLEBUCK UTZ, JENNIFER BAXTER, AIMEE GALLOWAY, TINA PERSONETTE, HANNAH RUTLEDGE, KATIE ARABIE, TONINA BARTLES, CATHERINE JENSEN, BRIANNA SMITH, SHANEKUA WATKINS, DESIREE LEMASTER, APRIL GALLOWAY, QUASHUNNA MILLER, RACHEL MCINTYRE, SUNDRIA CARROLL, DENISE FORD, VICTORIA KYAKUWA, SHANTELLA BROWN SANDERS, GRACE DIXON, CHANELL WINN, ASHA' ANA THOMAS, LINDSEY CADWELL, ROBIN COLEMAN, AMANDA SAILORS, LAURA BOYCE, MICHELLE THOMAS, LISA KUEHL, JERRY JANE WYNNE, CHYNEICE OLIVER, CYNTHIA MAURO, DANIELLE HOLT, ANDREA NOVAK, MICHELLE KAPLAN, LYCIA SLEDGE, QUANTASHIA MOSLEY-MORRIS, LATOYA

STEVENSON, DONNA HARRIS, KAYLA CLAYTON, SEDONA BLAKE, KAMILLE TURNBOW, CINDEL DOWNS, CANDICE ARNWINE, ALYXIS FELTUS, DEVON PARKER, KIERA MCCLENDON, CATHERINE GODFREY, KATIE DECKER, LATASHA MONET, EBONY RAY, CHARLES MONET, ANDREA EASTER, WHITNEY ROBERTS, SHANELLE HARRIS, JILL SNEED, JOY MYERS, KEONA BURTON, PAIGE OLSON, MARY JO TRACEY, TANISHA JONES, CHRISTINA RAY, LATARSHA PASCHAL, EMILY SPRINGER, RACHEL ELIZABETH SAMMONS, ERICA RODRIGUEZ, LARISSA WAY, MICHELLE VAETH, RIKKI SATTERFIELD, LEQUITA NEELY, TAMEKIA PERTEET, MELISSA MARTIN, NICHOLE THOMAS, ELIZABETH OLSON, KIMBERLY TAFFER, KAITLIN STRINGFELLOW, MAGAN WILLS, DAVID STRINGFELLOW, HOPE GAYLE, ALFREDA BOLDEN, SYLVIA HAGANS, LAVONDA LEWIS, JENNIFER SISSON, RICKEYA FREEMAN, CHANDRA MASON, CALLIE JORDAN, ROXANNE BENDICK, ASHLEY MCCUNE, COSETTE POSORSKI, OLUSHOLA WALKER, MICHELLE RUTHERFORD, NIJA JOHNSON, AMBER LARGE, TASHENA EASON, KHALILAH BOWENS, SARAH JENKINS, LEAH SOUTHARD, MAURISSA HARRIS, CLARITY PAVON-MOORE, NICOLE MAJOR, TANKIA RHODES, CARRIE THOMPSON, CARRIE THOMPSON, DYONCHE WILLIS, KIMBERLY BARROW, ADRIENNE SEUZENEAU, DAVITA ROBINSON, ROSEAN MOORE, JENNIFER DUCRE, MADONNA LYNN DUGAS, KALENA WILLIAMS, LARYNA LEWIS, MARIAN CALE, MARIAN CALE, JULIE SPENCER, GASHIA WILLIAMS, TYRUNSIA LOWE, SHANTRELL TALTON, ADRIAN CLARK, TONIA BLALOCK, ERICA WILLIAMS, SARAH HAFER, MEGAN MILLER, MONICA ANDERTON, KATOMIA MORRIS, MALKIA WOODWARD, JASMINE HOWARD, AUDREY JOINES, ANDRIA REED, KRYSTLE WOOD, AMANDA SANTORO, TRUEMEKA WALLACE, KENDRA PATTERSON, CHERYL DANIELLE BRODFEHRER, LATOYA GREEN, TAMMY MICHELLE HOUSE, SUZIE DANGERFIELD, SELENA IRVIN, LATOSHA LEWIS, MAGUILE SEYMOUR, ALECIA HENRY, CANDACE CROVETTO, GEORGIA FOSTER, KAQANTE BROWN, MAKEYTA ANDERSON, TACHICKA ROBINSON, TIERRA SLACK, JERICA SCHAFFER, KATRICE ROUSSELL, LAVONDA DAVENPORT, BRITNEY THOMPSON, LAUREN DAVREN, BONNIE CEDANO, DESHAUNNA JOHNSON, CHASSIDY FRUGE, KEISHA SEWARD, FALLON EVANS, NICOLE WHITE, KELLY CASNAVE, TYNA REESE, LORI HARTFORD, WILLETTE SMITH, BRANDI FAVORS, SHONTAE BLOUNT, JEVON BOGAN, SHADANA RELIFORD-PALMER, KATHLEEN MOLINA, L'TICIA SIAS, JESSICA OQUELI, ANITA LONG, JENNIFER LYNN CARR-AMONETT, CIARA HAYES, NADIA

BODY, ALINKIE JOSEPH, JULIE LAVIGNE, EBONEE RICHARDSON, ELIZABETH DAMRON, NEDRA BELL, NATASHA MANNING, ANITRA WADE, LESLIE BERRY, CARRIE BREAUX, JESSICA JETT, TRICHELLE HARRISON ROBINSON, SCHAMEKA SANTA CRUZE, ANNE GUILLOT, PATRICE WEBSTER, FELITA DOOLEY, TRASULA CLARK, SHANTELL FIELDS, ANGELINA SHARIDAN, TERRAINE ZENO, SHARON TOUPS, ALISHA SCUDDER, KAYTLIN RAINES, LESLEE DIAZ, EBONY TAYLOR, JILL JOHNSON, SHERRIE LEWIS, SHARISH DAVIS, MELINDA JOSEPH, BRIGETTE MORRIS, PAULA D'AMICO, LEONA JIMMERSON, JENNIFER GIBLIANT, QUINTELLA LANDRY, RENEE PILCHER, DELILAH PEREZ, LESLIE FATZ, LEIGH RODERICK, JERRELDA SANDERS, HAILEY SHELTON, CINDY N. BEST, KATHLEEN RENATA SEEGERS, NICHOLE HILLER, JENNIFER SULLIVAN, KELSEY JACKSON, KEMISHA WILDER, ANNE WILSON, QUIANA BRYANT, KIMBERLY DAVIS, HEATHER GARCIA, JESSICA FULLER, LATONYA HILLIARD, AMANDA WILSON, AMBER FENNELL, NAOMI WILLIAMS, KELLY KENNEDY, MELISSA DILOSA, KIMBERLY JACKSON, SHAWN AUGUST, KAREN FRANCIS, BETTY WEMPE, HEATHER CRUVER, SEQUILLA GARRETT, SHAMIKKI SHIPP, KATRINA STEVENSON, KEIONNE THOMPSON, DONISHA BUTLER, SHELIA SPEARMAN, DANIELLE SCHMIDT, ROBIN GUIDRY, KIA BARNES, AMBER BRUEGGERT, JASMINE BAYNHAM, MONIQUE DUNMILES, JOZZETTE RANDLE, ALEXIS GALLIEN, LISA CLANTON, JESSICA WHITE, INGRID BUSTOS, RHONDA DIAMOND, JODIE SWOFFER, CHELSEY BAUDOIN, DENISE ANCAR, TANIKA BRUMFIELD, MARY SMITH, ANGELL NAVARRE, EVE SIMS, DANIELLE BUTLER, KYONDRA ALBERT, ANDREA BRUNO, KEYSHARA ARMSTEAD, BRIDGETTE BLUNT, KASSANDRA HALSTEAD, LINDSAY BOONE, JERESA MORGAN, JAMIE WHITELY, BRAYANNE FORD, ROSE RAINEY, NORMA THOMAS, KIMBERLY LANDRY, KIMBERLY STEWART, TONYA ALLEN, ARRIELLE HUGHES, HILLERY THOMPSON, CIERA LAMB, CHELSEA MARIE BRYANT, TEXAS BLUNDELL, FLORA JORDAN, JESSICA JEFFERSON, SHEENA CHENEAU, CAROLINA ROMERO, JASMINE LEFORT, DORIONNE HUNTINGTON, JASMINE SHORT, MARY DORAN, CAROL JACKSON, TONIA ROUEGE, TAMIKA HYDE, EBONI SHAW, BRIANNE TRIGGER, CHELSEA VAN WERT, TANERA DALE-NAPPER, NICOLE LOWRY, CIERRA DENISE GARNER, GINA BAKER, AMANDA WOLTERS, AMANDA GARCIA, CRYSTAL BARLOW, CHRISTOPHER BARLOW, NATALIE STEVANUS, KATRENA WARR, BRENDA YEAROUT, MYLAH NWANKWO, CLARA ALLEN, ANGELA SCHNEIDER, JACQUELYN SEIFERT, TAMMIE WIRE, KEISHA CURRIE, DIANA LEONARD, CONICA

WINSTON, AMY CHOLEWINSKI, CARLA WALCOTT, VICTORIA HONPY, JAMI OLSON, DANIELLE KORTE, BRITTNEY M. GENTRY, JOSHUA GENTRY, KRISTA BURKE, SARAH BOETTGER, CARMEN MORALES, SABRINA BOISAUBIN, NORA MATA, JENNA TRUE, STEPHANIE BAKER, KATELYN TOWER, CHARLOTTE STRIBLING, HEIDI ROSENOW, BRITNEY MURPHY, HOPE GARCIA, ASHTON SILVIS, EMILIE SITZMAN, ROCHELL MYLES, ANJANET COLEMAN, SAMANTHA DARBY, KATE JENSEN, CIERA COLE, DENISE KEIDERLING, LISA FRAZIER, ERICKA TURNER, JASMIN THURMAN, KATIE SCHUBEL, KATHLEEN FRIZZELL, SHAKEEMA MOORE, JESSICA WEIN, JAYDE SEAFORD, JENA COOK, HOLLY JONES, KEISHA PIERCE, MELISSA LOVE, DESHERA MYERS, GRACEANN ROBINSON, SARAH OTTMAR, NICOLE NUNERY, ASHLEY DAVIS, LAURA DACUS, GLORIA FIELDS, APRIL JOHNSON, MARIA RODRIGUEZ, KATHLEENA HAYS, LISA SETTLE, TIFFANY FITCH, NICOLE MAZZANTI, WHITNEY HOMER, MEGAN ISHAM, DANICA HENDRICKS, MELINDA DOBSON, CHARLOTTE BROWN, MARY BURDETTE,

Plaintiffs-Appellants,

v.

BAYER PHARMA AG, BAYER OY, BAYER HEALTHCARE PHARMACEUTICALS INC.,

Defendants-Appellants.[*]

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Before:

SACK, CHIN, and LOHIER, *Circuit Judges*.

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[*] The Clerk of the Court is respectfully directed to amend the official caption to conform to the above.

Appeal from a judgment of the United States District Court for the Southern District of New York (Engelmayer, *J.*) granting summary judgment in favor of defendants-appellees dismissing plaintiffs-appellants' products liability claims after precluding, pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the opinions of plaintiffs-appellants' expert witnesses as to general causation.

AFFIRMED.

MAXWELL KENNERLY, Kennerly Loutey LLC, Elkins Park, Pennsylvania (Lawrence L. Jones II, Jones Ward PLC, Louisville, Kentucky, and Martin D. Crump, Davis & Crump, P.C., Gulfport, Mississippi, *on the brief*), *for Plaintiffs-Appellants*.

LISA S. BLATT (F. Lane Heard III, Matthew J. Greer, Kimberly Broecker, *on the* brief), Williams & Connolly LLP, Washington, D.C.; Paul W. Schmidt, Michael X. Imbroscio, Phyllis A. Jones, Covington & Burling LLP, New York, New York, and Washington, D.C.; Elmore James Shepherd, Shook, Hardy & Bacon, LLP, Houston, Texas; and Shayna S. Cook, Goldman Ismail Tomaselli Brennan & Baum LLP, Chicago, Illinois, *for Defendants-Appellees*.

PER CURIAM:

Plaintiffs-appellants ("plaintiffs") appeal the district court's judgment entered June 21, 2019, in favor of defendant-appellee Bayer Pharmaceuticals Inc. ("Bayer") and dismissing all claims. By opinion and order entered October 24, 2018, the district court granted Bayer's motion pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to exclude the testimony of all of plaintiffs' experts. *In re Mirena IUS Levonorgestrel-Related Prods. Liab. Litig.*, 341 F. Supp. 3d 213 (S.D.N.Y. 2018). By opinion and order entered June 11, 2019, the district court granted Bayer's motion for summary judgment on the ground that the remaining evidence was insufficient to establish general causation, or in other words, that plaintiffs failed to offer evidence to suggest that Bayer's product is capable of causing the type of injuries from which plaintiffs claim to suffer. *In re Mirena IUS Levonorgestrel-Related Prods. Liab. Litig.*, 387 F. Supp. 3d 323 (S.D.N.Y. 2019).

On appeal, plaintiffs argue that the district court improperly excluded the opinions of their experts on general causation, erred in granting summary judgment for Bayer, and denied plaintiffs their right to obtain and produce evidence in discovery. We reject plaintiffs' arguments, and for

substantially the reasons set forth in the district court's thorough opinions, we affirm its judgment.

BACKGROUND

The Mirena Intrauterine System ("Mirena") is a plastic T-shaped intrauterine device ("IUD"), manufactured by Bayer, that releases a synthetic steroid hormone called levonorgestrel ("LNG") into the uterus to prevent pregnancy. Plaintiffs are women from across the country who allege that they developed idiopathic intracranial hypertension ("IIH") as a result of using Mirena.[1] The Judicial Panel on Multidistrict Litigation ("JPML") consolidated plaintiffs' cases in the Southern District of New York for pretrial proceedings, where plaintiffs filed their consolidated amended complaint alleging negligence, manufacturing defect, design defect, failure to warn, breach of implied and express warranties, negligent misrepresentation, fraudulent misrepresentation, fraud, and state consumer fraud violations.

On June 21, 2017, the district court entered a scheduling order giving "priority" to the issue of "whether plaintiffs have admissible evidence sufficient

[1] IIH is known by multiple names, including pseudotumor cerebri ("PTC") and benign intracranial hypertension ("BIH").

to establish general causation of the harms alleged." S. App'x at 212. Accordingly, the district court scheduled a hearing pursuant to *Daubert*, "as to all expert evidence bearing on general causation." S. App'x at 214. The district court held its *Daubert* hearing April 9-11, 2018, at which plaintiffs and Bayer put forward seven and twelve expert witnesses, respectively, on the issue of general causation. Plaintiffs' experts were (1) Dr. Vincenzo Salpietro, (2) Dr. Conrad Johanson, (3) Dr. Philip Darney, (4) Dr. Lemuel Moyé, (5) Dr. James Wheeler, (6) Dr. Frederick Fraunfelder, and (7) Dr. Laura Plunkett.

On October 24, 2018, the district court issued its 156-page opinion and order granting Bayer's *Daubert* motion as to all of plaintiffs' experts and denying as moot plaintiffs' motion to preclude Bayer's experts.

Bayer then moved for summary judgment, arguing that without expert witnesses, plaintiffs had insufficient evidence to establish general causation. On June 11, 2019, the district court granted Bayer's summary judgment motion, and on June 21, 2019, entered judgment and closed all of the cases in the MDL. This appeal followed.

DISCUSSION

I. Standard of Review

We review a "district court's decision to admit or exclude expert testimony under a highly deferential abuse of discretion standard." *Zuchowicz v. United States*, 140 F.3d 381, 386 (2d Cir. 1998) (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 141 (1997)). "A decision to admit or exclude expert scientific testimony is not an abuse of discretion unless it is manifestly erroneous." *Amorgianos v. Nat'l R.R. Passenger Corp.*, 303 F.3d 256, 265 (2d Cir. 2002) (internal quotation marks omitted). "Significantly, the abuse of discretion standard 'applies as much to the trial court's decisions about *how to determine reliability* as to its ultimate conclusion.'" *Id.* (quoting *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999)). Thus, the trial judge has broad discretion in determining "what method is appropriate for evaluating reliability under the circumstances of each case." *Id.*

We review a grant of summary judgment *de novo*, "construing the facts in the light most favorable to the non-moving party and drawing all reasonable inferences in that party's favor." *Burns v. Martuscello*, 890 F.3d 77, 83 (2d Cir. 2018).

II. *Daubert*

Under Federal Rule of Evidence 702, lower courts perform a "gatekeeping" function and are charged with "the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Daubert*, 509 U.S. at 597. But while "Rule 702 sets forth specific criteria for the district court's consideration, the *Daubert* inquiry is fluid and will necessarily vary from case to case." *Amorgianos*, 303 F.3d at 266. Similarly, while the Court in *Daubert* identified four factors bearing on reliability that district courts may consider -- (1) whether a theory or technique "can be (and has been) tested"; (2) "whether the theory or technique has been subjected to peer review and publication"; (3) a technique's "known or potential rate of error," and "the existence and maintenance of standards controlling the technique's operation"; and (4) whether a particular technique or theory has gained "general acceptance" in the relevant scientific community, *Daubert*, 509 U.S. at 593-94 -- the Court cautioned that "[t]hese factors do not constitute . . . a 'definitive checklist or test.'" *Amorgianos*, 303 F.3d at 266 (quoting *Daubert*, 509 U.S. at 593). So long as "an expert's analysis [is] reliable at every step," it is admissible. *Id.* at 267.

Plaintiffs argue that the district court abused its discretion by (1) focusing on plaintiffs' experts' conclusions rather than their methodologies, (2) requiring the experts to back their opinions with published studies that definitively supported their conclusions, and (3) taking a "hard look" at the experts' methodology. Appellant Br. at 14-15. Each argument is rejected.

We start with plaintiffs' third argument: that the district court erred by taking a "hard look" at each expert's methodology. This argument is central to plaintiffs' appeal, as they argue the district court's analysis of each expert was too searching. But as noted, an expert's methodology must be reliable at every step of the way, and "[i]n deciding whether a step in an expert's analysis is unreliable, the district court should undertake a *rigorous examination* of the facts on which the expert relies, the method by which the expert draws an opinion from those facts, and how the expert applies the facts and methods to the case at hand." *Amorgianos*, 303 F.3d at 267 (emphasis added). Accordingly, not only was it appropriate for the district court to take a hard look at plaintiffs' experts' reports, the court was required to do so to ensure reliability.

Plaintiffs' contention that the district court impermissibly focused on plaintiffs' experts' conclusions instead of their methodologies is similarly

unavailing. The district court provided in-depth analysis of whether the experts applied their methodologies reliably. S. App'x at 52 (discussing in detail how Moyé's analysis "is flawed by serious methodological deficiencies"), 70-71 (explaining the "number of methodological flaws" with Plunkett's analysis), 84 (Wheeler's methodology was "flawed in multiple respects"), 102 (discussing the "hallmarks of unreliability" throughout Fraunfelder's analysis), 119, 121 (noting that Darney's report suffers from a broad overarching lapse of methodology and two speculative leaps rendering it unreliable), 139 ("infirmities precluding a finding of reliability as to three of the four steps" of Johanson's method), 149 (Salpietro's opinion "does not meet any of the *Daubert* criteria for reliability"). Plaintiffs may (and do) challenge whether the reliability analysis was correct, but plaintiffs have no basis to argue that the district court did not engage in a detailed analysis of their experts' methodologies.

Next, plaintiffs argue that the district court erred by requiring the experts to back their opinions with studies definitively supporting their conclusions. Even assuming the district court did impose such a requirement, it did not err in doing so. We have held that "[w]here an expert otherwise reliably utilizes scientific methods to reach a conclusion, lack of textual support may go

to the weight, not the admissibility of the expert's testimony." *Amorgianos*, 303 F.3d at 267 (internal quotation marks and citations omitted). In other words, an expert need not back his or her opinion with published studies that support his or her conclusion if he or she has utilized reliable scientific methods to reach that conclusion. But here, because the district court found that plaintiffs' experts did not "otherwise reliably utilize[] scientific methods," and the conclusions were not supported by other studies, the experts' reports were properly excluded. *Id.*; *see Joiner*, 522 U.S. at 146. Further, the court was well within its discretion to consider whether plaintiffs' experts' conclusions were generally accepted by the scientific community. The "general acceptance" of an expert's conclusion is one of the four enumerated considerations in *Daubert*, 509 U.S. at 594, and while a court need not consider the *Daubert* factors, it does not abuse its discretion in doing so.

In sum, the district court appropriately undertook a rigorous review of each of plaintiffs' experts, and based on that review reasonably found that the experts' methods were not sufficiently reliable and that their conclusions were not otherwise supported by the scientific community. Accordingly, the district court did not abuse its discretion in precluding the experts' conclusions.

III. Summary Judgment

We turn to whether the court correctly granted summary judgment in favor of Bayer. We conclude that it did, for we agree that no reasonable juror could find that it was more likely than not that general causation had been established based on plaintiffs' admissible evidence.

State law controls on the question of what evidence is necessary to prove an element of a state law claim, such as general causation. *See Amorgianos*, 303 F.3d at 268. The district court concluded that all fifty states "require some evidence of general causation in products liability cases involving complex products liability (or medical) issues." S. App'x at 175. This question was presented to us in a previous MDL regarding Mirena, and we affirmed the district court's holding to that effect there. *See Mirena MDL Plaintiffs v. Bayer HealthCare Pharms. Inc.* (*In re Mirena IUD Prods. Liability Litig. I*), 713 F. App'x 11, 15-16 (2d Cir. 2017) (summary order). Plaintiffs attack that conclusion from the previous Mirena IUD MDL case and the district court's holding below, but, as the district court noted and is still true now, plaintiffs have failed to point to any state that does not have a general causation requirement for the type of claims at issue here. Rather, plaintiffs argue that some states allow evidence on specific

causation before or in conjunction with the presentment of evidence on general causation, but that is a challenge to the way in which the district court managed the litigation -- which is discussed below -- not the substantive state law that the district court applied. Accordingly, we are not persuaded that the district court erred in holding that there is a general causation requirement across all states.

Alternatively, plaintiffs argue that even if they were required to satisfy a threshold general causation showing, their failure to do so was because the district court prevented them from obtaining and presenting such evidence. We also reject this argument.

"A district court has wide latitude to determine the scope of discovery, and we ordinarily defer to the discretion of district courts regarding discovery matters. A district court abuses its discretion only when the discovery is so limited as to affect a party's substantial rights." *Twinam v. Dow Chem. Co.* (*In re Agent Orange Prod. Liab. Litig.*), 517 F.3d 76, 103 (2d Cir. 2008) (internal quotation marks and alteration omitted). In other words, "[a] party must be afforded a meaningful opportunity to establish the facts necessary to support his claim." *Id.*

Plaintiffs first argue that the district court erred in granting Bayer's summary judgment motion for lack of evidence of general causation because the district court excluded all of their experts' reports instead of just portions of them. Plaintiffs therefore are suggesting that the testimony that they believe should have been carved out as admissible would have been sufficient to establish general causation. But plaintiffs have not explained which portions of their experts' reports should have been carved out as admissible (assuming, as the plaintiffs ask us to on this issue, that the district court's *Daubert* analysis was correct but warranted exclusion of only portions of their experts' reports) nor do they explain how those portions would have established general causation. We cannot credit a nonmovant's merely speculative assertion that some evidence that they have not specifically identified could have created a genuine dispute regarding general causation. *See DiStiso v. Cook*, 691 F.3d 226, 229-30 (2d Cir. 2012).

Plaintiffs next argue that the district court erred in precluding differential-diagnosis evidence, which they argue would have established that Mirena may have been the likely cause of their IIH.[2] But whether Mirena

[2] A differential diagnosis is "a patient-specific process of elimination that medical practitioners use to identify the 'most likely' cause of a set of signs and symptoms from

actually caused plaintiff's IIH is an issue of specific causation, not general causation, the latter of which concerns whether Mirena is even capable of causing IIH. *See Amorgianos*, 303 F.3d at 268. And while we have declined to adopt a bright-line rule that "a differential diagnosis *may never* provide a sufficient basis for an opinion as to general causation," we have explained that the "district judge has broad discretion in determining whether in a given case a differential diagnosis is enough by itself to support such an opinion." *Ruggiero*, 424 F.3d at 254. Here, plaintiffs failed to explain below or on appeal how "the rigor of differential diagnosis performed, the expert's training and experience, the type of illness or injury at issue, or some other case-specific circumstance" militates in favor of admitting that evidence to establish general causation. *Id.* Accordingly, the district court did not abuse its broad discretion in excluding differential-diagnosis evidence.

Plaintiffs also argue that the district court improperly precluded them from obtaining other general-causation discovery. But the district court did not abuse its broad discretion in managing discovery. After the parties notified the district court of numerous discovery disputes, the court issued rulings from

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a list of possible causes." *Ruggiero v. Warner-Lambert Co.*, 424 F.3d 249, 254 (2d Cir. 2005).

the bench ordering Bayer to produce millions of documents from more than fifty custodians. Forty-one of those custodians had been identified in the previous Mirena IUD MDL, but the court allowed plaintiffs to obtain documents from eleven new custodians. Despite plaintiffs' arguments to the contrary, the district court considered relevance and proportionality when resolving the discovery disputes. We conclude that the district court's thorough and well-reasoned discovery orders throughout the litigation were well within its wide discretion.

CONCLUSION

For the foregoing reasons, the district court's judgment is **AFFIRMED**.