

DRILLING DOWN TO THE DETAILS MAKES THE COMPLEX CLEAR

When one of California's largest oil producers sued their client for \$34 million, attorneys Nicholas Cipiti and Tom Scully used trial graphics from Litigation Insights to explain the geological fundamentals and common sense logic of their defense case.

At first glance, the charges didn't seem unreasonable: the plaintiff alleged that the defendant, its much smaller, local competitor, had drilled oil wells too close to its active wells, causing the plaintiff's wells to dry up.

The circumstances seemed causal and definitive. And to make a tough case tougher, the plaintiff's lead attorney sat on its board. He was connected, invested and highly motivated to deliver a successful result.

Tom Scully and Nicholas Cipiti of Walsworth - WFBM, LLP, knew the personal and professional nature of the prosecution would create one level of difficulty, but the technical facts of the case added a whole other layer of complexity.

"The plaintiff's wells just happened to dry up as our client began drilling and there was no geographical or geological basis for the two to be connected," said Scully. "But we had to prove they were not connected and the superb illustrations and graphics from Litigation Insights helped us do just that."

"There were several complicated concepts we needed the jury to understand," said Cipiti. "We needed the jury to appreciate the science, geology, distance between the wells, and the timing of various key events. Working closely with Litigation Insights, we developed diagrams, maps, and time lines that showed why the claims being asserted defied the laws of physics, nature, and gravity. The graphics gave the jury the tools they needed to intelligently decide who was right."

Trial graphics were just one part of the engagement. Scully and Cipiti also relied on Litigation Insights for jury selection strategy and peremptory challenge recommendations. The total defense team partnership was able to turn a challenging lawsuit into a win.

JURY MEMBER DE-SELECTION – NOT SELECTION – IS THE KEY

With each side in a lawsuit receiving limited peremptory strikes, those strikes must be used wisely. Good jury pool candidates, those that can maintain neutrality and be conscientious about their responsibility are often easy to identify. Those with hidden or personal biases are the ones that can have out-sized influence and cause unpredictable swings in jury sentiment.



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– Nicholas Cipiti, Partner, Walsworth - WFBM, LLP

"We started with clear profiles of who we did and did not want on our jury and then we designed questions to help us find our best candidates and our riskiest candidates," said Scully. "Jill Leibold and the Litigation Insights team were with us every step of the way during voir dire, giving us real time recommendations and guidance on challenges."

Prospective jurors' social media accounts have become rich sources for data and insights on how a potential juror is likely to view a case. For instance, past work history, volunteer activities, and a pattern of social media comments provide clues on political leanings and socioeconomic attitudes.

Mining these sources, Litigation Insights consultants were able to make solid appraisals of potential jurors. After viewing the qualitative and quantitative results from Litigation Insights, Scully was impressed.

"It was fascinating to see where jurors stood on issues and how they were likely to react to certain approaches," said Scully. "It's amazing how much you can learn from a well-designed questionnaire and their social media activity."



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THE COMMON SENSE DEFENSE

The plaintiff is much larger than the defendant and had compiled many studies, reports and calculations in support of its theory of how the defendant's drilling had damaged its wells. But there was much more to the story than that.

"The key was showing the timeline of our client's activity and when the plaintiff's wells dried up," said Scully. "Plus, the filler material our client used in drilling wouldn't have been able to travel the distance that the plaintiff claimed. The plaintiff's and defendant's wells were hundreds of yards apart."

Scully and Cipiti focused on a common sense approach – they kept the details simple and the focus on the facts. Graphics produced by Litigation Insights took jurors step-by-step through timelines as well as the geological and distance facts that separated the oil fields.

"This case was more like a science class on drilling," said Scully. "The Litigation Insights team created animations and graphics that showed how drilling was done, what happened underground, and then how simple geology and distance would have made it impossible for the our client's wells to interfere with the plaintiff's wells. They pulled all the details together perfectly."

"The best part is that the graphics worked," said Cipiti. "After an eight week trial, the jury had the clarity it needed to reach a defense verdict in less than a day of deliberations. From juror interviews, we learned that the jury had relied upon and understood our case because of the excellent graphics we used. Litigation Insights partnered with us not only in creating the trial graphics, but also helped us present a convincing, illustrative Opening Statement and Closing Argument. Because the jury was able to firmly grasp the technical details from the defense case, it was able to make the right call."

Adam Bloomberg is the managing director of the visual communications team at Litigation Insights. He said the challenge was made easier by clients who knew what they wanted and trusted the process.

"Nick (Cipiti) and Tom (Scully) designed a clear and convincing case and gave us the right amount of direction," said Bloomberg. "They let us do what we do best which is turn complex concepts into simple and understandable diagrams."

Scully also relied on Bloomberg and his presentation technology team to run the graphics in the courtroom during the trial, giving the defense team the reassurance they needed that the visuals would be shown according to plan.

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HOW TO CONTROL THE TRIAL ELEMENTS THAT YOU CAN CONTROL

1 PEREMPTORY CHALLENGES CAN BE USED MORE WISELY WITH SOCIAL MEDIA RESEARCH AND OTHER PUBLICLY AVAILABLE DATA THAT HELP DETERMINE POTENTIAL BIASES OR PREJUDICES IN A JURY POOL.

2 COMPLEX INFORMATION IS EASIER TO UNDERSTAND WITH VIDEOS, DIAGRAMS, DRAWINGS, PHOTOGRAPHS, AND OTHER VISUAL AIDS.

3 CONVINCING GRAPHICS CAN GUIDE JURORS, STEP-BY-STEP, TO A DESIRED RESULT USING VISUAL AND AUDITORY LEARNING PRINCIPLES.

