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To: Pearl Morton, Chief Counsel
Department of Administrative Hearings

From: Applicant

Date: July 30, 2015

Subject: Barker v Department of Administrative Hearings

Memorandum

The information that you have requested in the matter of Barker v Department of Administrative Hearings is located below

Introduction

The Department of Administrative Hearings is governed by the Colombia Public Employment Relations Act (CPERA). The interpretation of this act is very slim, so there will be many references to the National Labor Relations Act (NLRA). This act is the federal act that governs very similar matters as the CPERA. Since the CPERA has not been defined in cases as much as the NLRA, courts look to what the NLRA has decided as a persuasive means to decide its cases. In *Roginson*, a Colombia Court of Appeals case, the court stated that the CPERA is modeled after the NLRA and has imbibed the underlying federal policy. *Roginson v Colombia Public Employment Relations Board* (Col. C. App. 1978). The court goes on to say that even in instances where the CPERA does not contain a provision, the NRLA is where it looks for comparable interpretation. Throughout this memo both will be referenced mainly the NRLA, and if there is a

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similar section to the one of the NRLA that will be mentioned with the relevant section of the CPERA.

1. This Issue here is whether or not the Department interfered with Ms. Barkers and the Unions rights to representation, by denying Ms. Barker the requested nformation before her investigatory interview.

Department of Administrative Hearings (DAH) may have violated the rights of Ms. Barker. Pursuant to Section 7 of the NRLA states that employees shall have the right to self organization, to form, to join, or assist labor organizations, to bargain collecively thorough representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities; the similar statute under the CPERA is Section 15. The court has interpreted this as meaning "The Act created the statutory right of an employee to union representation at any investigatory interview conducted by the employer that the employee reasonably fears may result in discipline." *Pacific Telephone and Telegraph v National Labor Relations Board*. However, Section 8(a)(1) provides that it is a violation to compel an employee to appear unassisted at an interview which may put his job security in jeopardy. "The securing of information as to the subject matter and conference is no less within the scope of that right; without that information the ability of the representative to give aid is diminished. Id. The employer only needs to give the employee the opportunity to become familiar with the circumstances. Id.

Here, Ms. Barker was sent a memo informing her of a disiplinary hearing that she was to attend. When she was given the memo it stated that she the investigatory interview was in regards to her conduct. In the memo there was not a statement that was given to Ms. Barker about why she was subject to an investigatory interview. In order for Ms. Barker to be able to appropriately prepare for the meeting she should have at least been given a "general statement as to the subject matter" so that when she met with her representative

they would be able to adequately prepare for the interview. The facts do not state what occurred during the interview, but after the interview, Ms. Barker was fired. Because she was not given the information about the investigatory interview, she was deprived of the opportunity for her and her representative to adequately prepare. Because she was deprived of that opportunity, DAH will likely be in violation pursuant to NRLA Section 7 and Section 8(a)(1); or pursuant to CPERA Section 15 and Section 19(a), if it is interpreted the same.

Conclusion

DAH has violated Ms. Barker's rights to be informed before her investigatory interview. DAH should make it a point to ensure that it gives future violators at least a general statement of the proceedings so that they can adequately prepare with their representatives.

2. This issue here is whether or not DAH is violation by applying a blanket policy prohibiting Ms. Barker from speaking to anyone except her representative about the subject matter of the interview

DAH may be in violation with its blanket confidentiality policy. Pursuant to Section 7 (rule stated above) and Section 8(a)(1) (rule stated above), employees have the right to engage in concerted activities. If an employer disciplines an employee due to concerted activities, it is a violation of Section 8a1. In order to justify a prohibition on employee discussion of ongoing investigations, an employer must show that it has a legitimate business justification that outweighs employees' Section 7 rights. *Banner Health*. No legitimate and substantial justification, however, exists where an employer routinely prohibits employees from discussing matters under investigation. *Id.*

Here, on DAH sent the policy within the memo stating that "all investigations of employee misconduct, the employee under investigation shall not discuss the potential disciplinary matter with any other employee other than their representative." Conf. Memo. Since this memo states that this is the policy for all

employees under investigation for misconduct, this policy is one that is used for all employees and is not catered to specific situations. With just this information DAH would be considered in violation. During the interview, the policy was repeated, and when the representative asked about the subject matter, list of questions, or nature of the charges, Ms. Isreal stated that the it would become evident from the line of questioning, again denying information about the interview.

However, DAH can argue that it had received employee complaints. One of the employees that complained stated that Ms. Barker threatened her, which is the reason she took so long in reporting the issue. DAH also obtained incriminating information from Ms. Barkers computer in regards to activity that she had been committing while employed, including faking sick, in cohorts with other employees that worked for her persoal court reporting company, etc.

"[Company's] burden to determine if in any given investigation witness needed proteciton, evidence was in danger of being destroyed, testimony was in danger of being fabricated, or there was a need to prevent a cover-up. *Banner*. With this information DAH can argue that had it let Ms. Barker in, or if it had given her a specialized policy or confidentiality statement, she may have known what was going on and the risk was higher that information would be destoryed and potentially other employees would be harmed. Also in HR managers email to the Supervisor he stated his fear of fabrication, alterations, destruction, or concealment of evidence. Manager-Supervisor Memo(pg8). However, because the confidentiality statement is a blanket policy, is what hurts DAH. There is no reason good enough, according the *Banner*, that would justify a blankey policy prohibiting this sort of conduct. However, if DAH can prove to the court that blanket policy was necessary and their was not another alternative means, the court may be persuaded. But there would not be a valid reason for not informing Ms. Barker of the subject of the interview right before the meeting.

Conclusion

This violation is a little more in the middle. DAH may be in violation because

blanket policy's are essentially prohibited in restricting an employees right to concert and upon arriving at the meeting she was still denied the information as to the subject matter. However, if DAH can show that even though it may have violated Ms. Barkers rights to concert pursuant to section 7 of the NRLA and section 15 of the CPERA, it is justified because it needed to protect other employees, and ensure that Ms. Barker did not attempt to destruct valuable information, i.e. emails to and from other employees, and separate work records. By maintaining and applying the policy for this violation will make the DAH subject to violations, so it may be best to get rid of this policy, at least to show board that it is non existent.

3. This issue is whether or not Ms. Barker will be granted the remedies sought

DAH is more than likely not liable to Ms. Barker for any of the remedies sought, however if it is determined to be in violation of sections in part 1, it may be subject to the consequences of CPERA Section 19. Each will be analyzed separately.

Pursuant to NRLA Section 10(c), no order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if such individual was suspended or discharged for cause. In other words, if an employee is discharged there must be a reason why or the employer will owe the employee back pay. Here, Ms. Barkers supervisor attempted to catch up on the work that she had fell behind on. Both co-workers and her superiors complained about her work ethic and her failure to complete work in a timely manner. While at her desk, the supervisor found unrelated work at the desk, and on the same files on her work computer. He also found emails to outside partys in regards to "Barker Court Reporting Services." There were also emails to another employee who was new that had slacked as well regarding work of the same services. When Ms. Barker was given her dismissal notice, it stated that she had been absent 16 times, and

each time she had been performing work for Barker Services. Overall, through its investigation DAH determined that Ms. Barker should be fired for her dishonesty and theft of state resources. The use of state resources was proven by the supervisor coming across the physical copies of transcriptions and the transcribed depositions on the computer. She is charged with doing that during her work time and using her job equipment do these things. Since, there are no facts as to whether or not Ms. Barker admitted to the charges during the meeting, it is more than likely that Ms. Barker was charged for cause since she was fired for theft and the use of the state resources and that the DAH had more than enough investigatory information to back up this charge, and ultimate dismissal.

Pursuant to Section 19.5 the Board is given the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action as will effectuate the policies of this chapter. In other words, if there is a violation the board will determine what the punishment is for the violation. In Colombia, the company, after violating the sections policies, was required to post an appendix for 30 days informing other members of the workplace of the violation, and had to also notify the board of its compliance with the order. *Colombia State Employees Association v Colombia Department of Mental Health*. If DAH is found to be in violation of any of the CPERA policies, then the board may subject it to posting an appendix stating its violation to the other members of the work community. It is not likely the board will try to make DAH pay Ms. Barker back pay since she was for cause.

Conclusion

It is likely that DAH will not be required to pay Ms. Barker back pay since it can most likely prove that her charge for theft and for dishonesty during her employment can be backed up with substantial evidence that was obtained during an investigation. Because the information can be proved, she will be determined to be fired for cause and DAH will not owe back pay. However, DAH

has still violated some of the board policies and is therefore subject to the discipline that it may impose. The only relevant discipline in these matters that has been determined is either back pay, which we determined DAH will not be liable for, and the posting of an appendix posted to the work community of the violations committed for 30 days.

Question #1 Final Word Count = 2023

END OF EXAM

1)

To: Christopher Schroeder

From: Applicant

Date: July 28, 2015

Subject: Wilson v. Belton Company, Inc.

Memorandum of Points and Authorities in Reply to Wilson's Opposition

I. THE COURT SHOULD GRANT THE BELTON'S SUMMARY JUDGMENT MOTION

If there is a triable issue of material fact as to *causation* based on exposure to asbestos for which a given defendant is responsible if the evidence would allow a reasonable trier of fact to find that it is more likely than not that (1) the plaintiff was exposed to asbestos for which the defendant was responsible and (2) the exposure operated as a substantial factor in bringing the injury. *Norris v Crane*. This determination is must be in the light most favorable to the plaintiff. This plaintiff in its efforts in opposing the motion for summary judgment has failed to that Belton is responsible for Plaintiffs injuries.

Summary judgment was previously considered a disfavored remedy, summary judgment is now recognized as a particularly suitable means to test the sufficiency of an opponents case and to avoid a meaningful wasteless trial. *Andrews v Foster*. The plaintiff is using a former decision for the summary

judgment being disfavored, it is now a more favorable cause of action than it was when it was considered disfavored. Plaintiffs MSJ pg 16.

A. There is not a triable issue of material fact as to causation based on negligent insulation at Martinville powerhouse.

Here, in its motion the plaintiff attempts to correct the way it portrayed its language during the discovery process. The plaintiff restates that Wilson was exposed to very heavy dust, as a result of negligent insulation work at Martinville, involving the rip out of insulation that he was exposed to on approximately seven occasions that each exposure lasted 2-12 weeks. The dust reasonably inferred to be asbestos. Plaintiffs Memo Points. The plaintiff argument fails here because he fails to expressly implicate that Belton was the cause of the occurrences that occurred. The inference about the dust is not a reasonable inference if the materials that were used abided by the OSHA standards that were implemented 10 plus years after the Plaintiffs employment. Also most courts have found that the removal of gaskets is what causes the exposure of asbestos, which the Plaintiff does not mention in any way. *Andres v Foster; Norris*. Plaintiff also fails to show that in this case, more likely than not if he was exposed to the asbestos that it was the Beltons fault because he only restates what's in the interrogatory, which does not implicate Belton's involvement and does not credibly explain his contradiction.

The above test can also be satisfied through expert or non expert witness that shows more likely than not the defendant is responsible for the asbestos exposure. Here, Nye stated that boilers were commonly insulated with asbestos around 1966 (Nye Dec.), but he fails to address the fact that asbestos declined after 1972 due to the standards that OSHA required, and Plaintiff did not start working for Martin until 1985. Def. MSJ pg 8.

Exposure

Exposure to asbestos operates as a substantial factor in bringing about injury if it contributes significantly to the injury in light of such factors as the exposures length, frequency, proximity, and intensity. As stated in the initial Motion for summary judgment, Plaintiff stated that there were seven occasions where the asbestos was being removed, and that he would be anywhere from 45-50 feet away, and he would have to leave the site in order to not be exposed to the dust being emitted. Although there is a possibility that the amount of exposure that Plaintiff had to the dust being emitted from the place, he was not sure if it was asbestos, he only knew what was going on, but has not prof that asbestos was contained in the dust being emitted from the removal.

In *Norris*, the plaintiff sued for exposure to asbestos. He also worked for CG&E, but actually sued Crane the company that had boilers and pipes and gaskets on the navy ship. "A plaintiff must prove various material facts by a preponderance of the evidence." The plaintiff discussed that while he was in his sleeping quarters gaskets were being scraped and that released the asbestos fibers in to the air. He was also able to show that the exposure lead to cancer.

In this case the Plaintiff, state that dust came from the removal of boilers in vicinity, but does not mention anything about gaskets being removed, which is where it is contended that the asbestos is held.

The plaintiff faces an issue here also, because Rance identifies the structures, but does not identify Belton as the builder or designer of the ones located at this location. Rance Dec. He identifies them at Collins. Plaintiff also only recalls Beltons presence at Martinville, even though Belton may have been at Martinville, Plaintiff has not provided evidence that boilers located there beong to Belton.

Aerodynamic Properties

The aero dynamic properties of respirable asbestos fibers work in tandem with the

aerodynamic properties of the environment in which the find themselves.

Andrews. The court in *Andrews*, presumed that if it was small sealed room, respirable fibers would remain there indefinitely; and if it was a large open space the fibers would be released. Like in *Andrews*, the Plaintiff in this case did not identify in the most general terms the aerodynamic properties of the room or site he worked at. After mentioning it in our initial motion to dismiss the Plaintiff still did not respond to it by disclosing the site aerodynamic properties.

B. There is not a triable issue of material fact as to causation based on negligent insulation work at Collins powerhouse.

Causation rule stated above. The Plaintiff did not include the Collins site as one of exposure sites in his discovery responses. A declaration by a party in opposition to a summary judgment motion that contradicts prior statement by the party in discovery cannot raise a triable issue of material fact, **UNLESS** such a declaration may raise a triable issue of material fact even if it contradicts a prior discovery statement, if the party offers a credible explanation for the contradiction. *Visueta v GMC* Here, in *Wilson's* declaration, he does not address the contradiction, he mentions the number of boilers at both Collins and Martinville, but there is no explanation as to why the initial cause of action with both, and then during interrogatories there was a change. *Wilson Dec.* There is no credible explanation or any other explanation for that matter, so it does not fall within the exception, and since it does not fall within the exception. it is contradicted and it is not triable.

Also, Plaintiff states non-CC&E personnel, this does not automatically mean that it implicates Belton, unless specifically stated, Plaintiff could be implicating anyone that would be considered CC&E personnel. He may have been present in the vicinity when he saw raw bags of insulation being used, but he does not claim or cannot prove the party, or Belton was, responsible for that exposure or who was there with the bags. Plaintiff quoted Rance's declaration that he saw

Belton employees, but he was not sure if they were involved in building or designing new units being put in. Plaintiffs MSJ response.

Plaintiff is only able to prove through Rance, that Belton had designs and built structures at Collins. Rance Dec. However, when asked questions the plaintiff could only explicitly produce information for Martinville.

C. There is not a triable issue of material fact as to causation based on professionally negligent design or building of both the Collins powerhouse and the Martinville powerhouse.

A defendant moving for summary judgment need only challenge a claim clearly presented by the plaintiff. *Andrews v Foster*. To survive summary judgment a plaintiff must submit expert evidence identifying the standard of care and describing its breach. *Id.* The Plaintiff has submitted expert testimony only contending essentially that during the time frame the boilers were created they commonly contained asbestos. The expert did not submit evidence on how Belton could've harmed the plaintiff nor did the expert submit evidence of Belton's breach of care.

The Plaintiff (Wilson) also cannot specifically recall anytime where Belton was present. In *Andrews*, the plaintiff admitted that he did not possess any evidence that he was exposed to asbestos that the defendant was responsible for, and even though he could not evidence that information it was not totally fatal to his claim. In the interrogatories the plaintiff could not identify any evidence that relevant to proving exposure. The plaintiff also never worked with the products that he had his claim against. An expert in *Andrews* case stated that those condensers would not release asbestos during removal into the surrounding air, the removal of gaskets however would contaminate the surrounding air.

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Like in *Andrews*, the Plaintiff has not shown that he possesses any evidence that the defendant was responsible for. Even though that's not totally fatal, it is fatal to the Plaintiff in this case because his interrogatories could not back up his claims either. Plaintiff's arguments are speculative at best. He has no evidence that Belton's structures contained asbestos. He said he was in the area while employees that he assumed were Belton employees modified boilers and worked on outages, and sometimes ripped out insulation. Removing boilers and ripping out insulation is two different things. The Plaintiff does not have proof that it was Belton who removed the boilers or ripped out insulation, and he does not have proof that any insulation contained asbestos. He stated he recalled Belton watching workers perform tasks, but did not state that it was Belton performing tasks. The plaintiff contended that he was exposed by a list of products, and he did not mention Belton.

When asked about the claim of professional negligence and to provide proof, Belton stated that he made no such claim. RFP 37; Def. MSJ pg. 11-12. Belton did not combat the fact that the Plaintiff did not mention Collins in its complaint or that it may or may not have a valid claim as it relates to Collins. Belton just wants it to be clear that due to the interrogatories the plaintiff did not have or prove a cause of action and completely left out what it stated in its complaint as it relates to the Collins, again being contradictory, without the contradiction being cleared up in the appropriate document.

The plaintiff has not shown how Belton is responsible or connected to his injuries.

Plaintiff did not mention in his complaint that Belton was the designer or built the structures. However, Rance claimed to have personal knowledge of designs that Belton created in the early 1950s at Collins. Rance Dec. However he was not able to identify Martinville designs and building at Martinville. This presents a problem for Plaintiff because the Plaintiff information was more substantial in

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regards to Martinville, then was to Collins. Also, the designs that Rance viewed were from the 1950's, which again fails to reflect the changes made by OSHA in 1972 where asbestos widely declined due to health standards.

Plaintiff also only admitted that his claim against Belton was negligent insulation, which is different from negligent design or building.

Question #1 Final Word Count = 1879

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State Action

In order to violate the constitution, there must be action by the government or government actor. Actions by private individuals will not suffice to violate the constitution. In this case, the City Council has amended a rezoning ordinance. Since the City council, is a council from the City and City is apart of the State, there is State action here.

Standing

In order for one to challenge the validity of a statute they must have standing. Standing requires that there be an injury caused to the plaintiff, the defendant must have caused that injury, and the court can redress the injury.

1. Property Owner A

Standing

Property Owner A is injured because the court determined that his restaurant, which is large and popular, had no right of the continued use on the land and that the three months the statute gave the individuals was enough time for it to move in an orderly fashion. The city made this ruling that does not allow the Property A owner to continued use, and if the statute did not exist then the court would not rule that Property owner A would have to move. Therefore Property owner A does have standing.

Taking

A taking occurs when the state(city) takes or substantially burdens property, when this occurs the state must give just compensation. In this case, the court ruled that property owner a must move during the grace period, there was not payment offered and property owner a was told he had no right. Because this is property owner As property and the city is forcing him to move, this is a taking. The city would need to compensate him for taking his property from him.

Due Process

Procedural due process is the procedure the government must give before taking away life, liberty, or property. Here, Property owner a property was taken due to the amended ordinance. The city has to give him a chance to fight for his property. It must be determined property owner a interest in the procedure, the value of the procedure and the government interest in cost and efficiency. If the city is giving actions to determine whether or not people can keep their property, then they can give them the proper procedure in order to fight against their property being taken instead of the sole decision being based on one ruling where the property is taken away and the party is not given just compensation for it.

The court was incorrect in taking this property, especially without compensation.

Property Owner B

Standing

Here, Property owner is being injured because his property is being taken away, the city might argue that the land is undeveloped, but it was his land and he did studies engineering and marketing studies on them. The city is taking away the land, and if the ordinance didn't exist he would be able to continue to have his land. Here there is standing.

Taking

Rule above. Here, property owner b land is being taken away and was not entitled to relief. He had spend 1 mll on studies for the land. The city is not necessarily required to pay him back for the money he spent on the land, however, if the taking should occur, the city should pay him the reasonable market value for the land. Property owner can argue that his land is undeveloped and that he primarily uses for studies for marketing and engineering, so it should not fall within the ordinance. This is a good argument for property owner b because the land is undeveloped so the city does not know for what purpose

property owner b could eventually use it for. Therefore the city is in violation, and would need to give compensation.

The court was incorrect that property owner b was not entitled to compensation, he does not have to be paid the 1 mil back but he should receive compensation for not being able to use his property.

Property owner C

Standing

rule above. Here, property owner had a lot whose land dropped in value by 65%. The court did not take his property. It is unclear whether or not C has standing, because although his property value dropped, it is not clear if it is due to the ordinance. If it due to the ordinance then he does have standing, and even though the court did not consider this to be a taking that may not necessarily be true.

Taking

rule above. Even though they did not make C move off of his land the value dropped, if the value dropped because C was not able to use for its intended purpose then the city owes it just compensation. However, if it dropped just due to the economy or some other reason aside from the ordinance, then C will not be entitled to compensation since it was not the fault of the ordinance.

Whether or not the court ruled correctly in C not suffering a regulatory taking depends on why he suffered the property value drop. There are no facts to say if there was any development on his land, and whether or no the ordinance was the reason why the property value dropped. If the value dropped due to other business in the area, the court is not liable for that. The court would only be wrong if caused the property to drop in value, which given the facts, is not clear. So here, it depends, the court may or may not have been correct, it depends on the reason for the drop in property value.

Vague

A vague statute can be struck down if a reasonable person would not what to make of the law. Here this ordinance is vague because it prohibits commercial uses and requires existing uses to to cease. This is vague because it is not clear on commercial uses, B property was taken and his property was undeveloped, and he used it for research, however it fell under this statute and was affected by it. So does that mean that all fast food restaurants, hospitals, and anything not residential cannot exist on the block? Since it is not clear exactly what commercial uses are being regulated it can be struck down.

Overbroad

An overbroad statute will be struck down if it regulates more than what is necessary. The ordinance prohibits new and existing commercial uses, and is trying to make them non existent. Again this can include hospitals, police stations, anything not considered residential. This ordinance is therefore overbroad.

Prior Restraint

Prior restraint punishes activity before it occurs. This ordinance does not allow new commercial uses and existing uses on the block. Therefore it stops commercial activity before it exists, even though it may not be a problem that the ordinance believes commercial uses may cause.

Unfettered Discretion

This ordinance does say that a specific board denies or allows a property owner to stay on the land. But the city is taking property away without any clear standards how one can comply with keeping their property. There is no information that states the owners can change the whats on their land, or no standards to allow the landowners to use their if they were commercial and continued use. Even though all commercial uses were prohibited on the block, no standards were given as to what exactly would be considered commercial and

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in what was an individual could comply. Instead of just removing the owners from the land.

Scrutiny

When a city violates the constitution, it must meet certain levels of scrutiny to prove it is within its right. When it is a suspect class (dealing with race, ethnicity) or a fundamental right, the government must prove that there is a compelling interest that is narrowly tailored to the government's interest which is strict scrutiny. When it is dealing with gender or legitimacy it is intermediate scrutiny which requires that the government must have an important interest that is substantially related. And all other things fall under **rational basis** which is the actions are rationally related to legitimate government interest. Here, rational basis would apply. The challengers must prove that this is not rationally related to a legitimate government interest.

The city does have an interest in protecting kids from heavy traffic so that they are not harmed in anyway. However, this is not the least restrictive means possible for the city to achieve this end. The city can post signs and speed limits within the community if it's a major problem. If there are a huge amount of kids the city can encourage the parents to try to develop a park in the area. Meaning there are other ways to keep kids on the block safe, that does not require the taking of property. The property owners were given no other option and were essentially forced to move off of their land with no compensation. Although this is a legitimate interest, it is not the least restrictive means therefore the city is in violation and would need to find another way to regulate the area.

Question #3 Final Word Count = 1517

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1. Dicks Rights and Remedies Against

A closely held corporation usually one with few shareholders (SH) and whose SH usually serve on the board of directors and as officers for the corporation. When Online issued Jane shares instead of paying her salary that may have been a violation, since it should be vote to determine if those additional shares should be distributed, although there was an authorized 1000 shares, however it was approved by the board of directors (that she serves on) so there may not be a violation.

a. Jane

Jane is a shareholder, she serves on the board of directors, and she is also the CEO of Online, which makes her an officer. As a holder of all these positions she owes various duties to the corporation.

SH duties

Shareholders generally do not owe any duties, but majority shareholders generally do owe a duty to other shareholders to act reasonable. Since there are only 550 Online shares that have been distributed, Jane can be considered a majority SH since she and two other people hold the shares of the company and her 150 shares is the least amount of shares. However, because the company could not pay her salary it issue her an additional 50 shares, making her have 1/3 of the shares that were issued.

Board of Director (BOD) Duties

As a board of director, Jane has a duty of loyalty and care that she owes to the corporation.

Duty of loyalty

The duty of loyalty requires that the director not act in her own interest, and put the interest of the company above her own interest.

Duty of Care

The duty of care requires that the director act with the ordinary prudence of a reasonable person in a similar position in similar circumstances. J clearly did not do enough research before entering into the deal, as D knew that the company was underestimated. Meaning that the company was worth way more than what they agreed to allow LargeCo to buy its assets for. If J would have done the research before entering into the deal, or even consulted D as she should have since he is also a SH, then she would have known that the business was in good shape and worth more.

Officer duties

As an officer the same duties are owed to the corporation as listed above (duty of loyalty and duty of care.)

Business Judgment Rule

J may try to argue that she was doing what was in the best interests of the corporation. This rule states that the officer or director was doing what they reasonably believed was in the best interest of the company. And in this case J's argument will likely fail, J had only had a conversation with H's wife for a company that H's wife was a majority SH for and then told H to negotiate terms for an acquisition deal. She could not have reasonably believed that this was in the best interest of the company since no facts state that after she got off the phone she attempted to determine if it even was a good deal.

Self-Dealing

One cannot self-deal in transactions as related to the corporation. In this case, there is no information as to whether or not Jane specifically benefited from this deal in any way aside from the fact that it was a cash buy out so she would more than likely get a substantial amount of that figure.

Acquisition of Assets

When there is an acquisition of a portion of or all assets, all shareholders need to agree. Here, Jane talked to Harry's(H) wife about LargeCo, for which she was the majority SH. J told J to negotiate the terms of the deal. In order for this deal to be valid, Dick, Jane, and Sam would all need to agree on the acquisition.

When H created the terms, he only telephoned Jane and Sam, who then agreed on the opportunity, and H agreed to the offer.

Because D is a 1/3 SH of Online by owning 200 of the 600 issued shares, he is a majority SH and has the right to have a say so in the matter. Because this was done without him he can move to rescind the contract.

Quorum

A quorum should have been held where the shareholders could get together and the majority could vote on the matter.

Rescission

A rescission occurs when one wants to take away the contract for a reason. D can move to rescind the contract between Online and LargeCo.

File Suit

D can also choose to file a suit, since he has an issue with the other SH he can file either a derivative suit which would be on behalf of the corporation, or he can file a direct suit which would be on his behalf.

Derivative Suit

If he files a derivative suit, he can sue the SH on behalf of the corporation for their misconduct, and he can recover funds on behalf the corporation if successful. He can get reimbursement from the corporation for litigation costs. In order to file the suit, it requires him to be a shareholder at the time of the suit and to continue to be SH during the suit.

Direct Suit

He can file a suit on his on behalf in order to revoer for the other SH misconduct, without naming the corporation as a party.

Removal

D can have Jane removed for her violations against the corporation.

Jane has violated her duty of care, duty of loyalty as both a director and officer of the corporation, and is subject to removal as an officer, shareholder and director.

b. Sam

Sam is a 1/3 majority SH of Online, and he serves on the board of directors.

Shareholder Duties

rule above. Sam is in violation of this duty because as majority shareholder he is required to communicate with other SH about major decisions in regards to the corporation. In this case, H telephoned Sam and Jane and discussed a acquisition of assets with them and Sam agreed. He agreed that it was a good idea without any independent research, and therefore violated his SH duties.

BOD duties

As director Sam has certain duties to the company.

Duty of loyalty

rule above. Sam did not make a decision that was loyal to the corporation, he just received a phone call and went along with what he was informed about. Sam may argue that he did not violate any duties since all of the board of directors were in agreeance. Unfortunately for Sam that argument will fail since the SH are the ones that are required to make the decisions such as the acquisition, not the

board of directors. The board of directors is elected by the SH, so D would have needed to be apart of the decision in order to allow the acquisition to properly move forward.

Duty of Care

rule above. Sam did not do what one in a similar position would do. He should have called D and informed him of what was going on. A reasonably prudent person in the same circumstance would have known that a phone call conversation was not enough to allow this deal to move forward without all necessary parties involved.

Removal

D can seek to have S removed as a BOD and a SH.

File Suit

D can also file suit against S for his misconduct.

c. Harry

Harry serves on the board of directors and is also the general counsel for the corporation.

Board of Director Duties
same as above

Duty of care
same as above. Here, H allowed his wife the majority SH of LargeCo to talk to J about acquisition of the company. Then H made the negotiations for the acquisition, when he was offered a deal he informed to SH, who also serve as the BOD, about the million dollar cash buy out from which they all agreed, and he accepted the offer. A reasonable person in the same circumstance would

have known that all necessary parties need to be involved in order for the deal to be valid. H left D out of the phone call for whatever reason, who is a majority shareholder.

Duty of Loyalty

same as above. H did not act in the best interest of the corporation when he entered in to the agreement. Harry owned TechCo, who jointly ventured with LargeCo, and LargeCo had just acquired assets to Online two days before the joint venture. The venture was valued at 10 mil, since the acquisition happened a mere two days later it seems as if Online was the last piece of the puzzle in order for the two companies to join. Since H was the sole owner of TechCo, and he was the main person involved in negotiating and accepting the deal, he violated his duty of loyalty.

His duty as General Counsel will be addressed below.

Usurping

An officer, shareholder, director, cannot usurp an opportunity from the corporation, unless full disclosure was given. In this case, H did not inform the BOD or SH about the potential money that would be made after the acquisition, nor that he planned on venturing with LargeCo once the acquisition was complete. He will likely have be considered to usurped the opportunity from Online.

2. Hs Ethical Violations.

Duty of Competence

A lawyer has duty to its client to represent them with thoroughness, knowledge, preparation, and skill. Here, H was not competent to represent Online.

Duty of Loyalty

A lawyer has duty to be loyal to his clients and with the information that he has obtained. As a board of director and attorney for the company it would not be ok for H to use that information in order to further his opportunities. H was the owner of separate corporation that entered into a deal with Onlines acquirer that earned a substantial amount of money. H is in violation because he has a duty not to act in his own best interests in representation, but to act in the best interest of his client, Online, and that was not done here.

Conflict of interest

A lawyer has a conflict of interest when he cannot competently represent his client, or if a interest of the client interfere with his representation. Conflicts can come up with current clients, former clients, third parties etc. Here, H served as the general counsel for Online. He also served on the board of directors, this generally ok as long as the lawyer reasonable believes that he is able to represent the client without conflict. While serving as general counsel he negotiated a deal with LargeCo, discussed and agreed with the board of directors that it was a good deal, that LargeCo would acquire the assets of Online. Since his wife was the majority SH of this company this may be considered a conflict of interest since he may be doing what is best for the wife's company. Before entering the deal, H should have suggested that as online BOD they should seek the advice of separate counsel before entering in on the deal. After the acquisition we learn that H is the sole owner of another company that joins LargeCo, which is worth a 10 million dollar deal, this information should have been disclosed to members of online. They may have differently about the acquisition if they knew that there was a potential that 10 million would be made once online was apart of LargeCo. There is a definite conflict of interest.

Duty of Confidentiality

A lawyer has a duty not to reveal information in regards to the representation of their client. Under the MR, its ok if there may be financial harm, substantial bodily or death. In CA, only if there is substantially bodily harm or death, and the lawyer must attempt to convince the client not to move forward with committing the

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harm before revealing the information. Here, it can be inferred that H spoke with his wife and revealed information to her about online, in order for her and LargeCO to be interested in acquiring the company's assets. Therefore, H has likely violated this duty as well.

Self Dealing

A lawyer has duty not to get involved in activities that benefit him and harm his client because of the lawyer's actions. In this case, H again was apart that earned a substantial amount of money after the acquisition that his wife worked for and that the company he worked for jointly ventured with,

Question #2 Final Word Count = 2089

3)

Fourth Amendment

Under the Fourth Amendment, an individual can't be subject to an unreasonable searches or seizures and requires a warrant to search or seize by a neutral and detached magistrate. The fourth amendment protects persons, homes, their papers, and affects. In order to obtain a warrant an officer must have probable cause that a crime has or will occur. There are some exceptions to the warrant requirements: search incident to a lawful arrest; plain view; automobile exception; consent; exigent; stop and frisk. Here, the officer had a hunch that meth was being sold, but not enough for a warrant since a warrant requires probable cause, therefore to move forward he would either need a warrant or a warrant exception would need to apply.

State Action

A violation under the fourth amendment can only occur if there is a state action. Here a police officer(PO) was searching the house of Dora(D). Since police officers are government employees and is acting on behalf of the government in its official capacity, there is state action here.

Search

An unreasonable search occurs when a officer unlawfully invades the privacy of a person or their home. Here, an officer had a hunch drove to her home with a drug detection dog and and waited until she left. When He allowed the dog to go onto the curtilage of the home it was unlawful search not subject to any exceptions.

Reasonable Expectation of Privacy (REP)

A person has a reasonable expectation of privacy when they are in their home.

(1) Dog Detection

Generally, a dog sniff is not considered an intrusive means of obtaining illegal evidence in a public place. For instance if a cop brings a dog up to you to sniff your suitcase in the train station this would not be an overly intrusive way of violating an individual's privacy. In this case, the officer took the dog around to an individual's home to sniff around. Since it is not a public place this will likely be a violation, unless the officer had a warrant, or there was a warrant exception. As stated above the officer did not have a warrant, since he only had a hunch that is not enough for a magistrate to grant a warrant.

Warrant Exceptions

Search incident to lawful arrest is not applicable here because D was not arrested until after the officer obtained information. Consent is not applicable here since there was not one home the officer did not get explicit permission to search the home or to allow the dog to sniff around. Exigent circumstances do not exist since there is not a fleeing felon in this circumstance nor a hot pursuit. Of these no valid warrant exceptions apply.

Curtilage

The fourth amendment protects a person's home and the immediate area surrounding the home (curtilage), including the porch. This coverage does not extend to open fields behind the home, where there is not a reasonable expectation of privacy. Here, the police officer had the dog go on to the porch of the individual's home to sniff. This is an invasion of privacy because a police officer is not permitted to take a dog onto the porch of an individual without there

consent or without a valid warrant. Since a person has a reasonable expectation of privacy in their home, this is a violation and the dog detection reaction would be suppressed.

(2) The Small Box

Plain View

Plain view is another exception to the warrant requirement not mentioned above, under the plain view doctrine an officer can seize an item if he is at a lawful vantage point and it is immediately apparent that it is illegal.

REP

A person does not have a REP in anything that they make available for the public to see or a neighbor to see. It has been held that if an officer gets in a small aircraft and views over the property, there is not a reasonable expectation in whatever the officer sees from that vantage point. It has also been ok if an officer was in a neighbor's yard, and peered over a fence and saw illegal activity.

Here, the officer propped a ladder on the back of D's house and climbed to the top and peered in the second story window and noticed a small box that is used for materials in meth. In this case this will more than likely be a violation, the officer was still within the curtilage of the home, which is in violation of the fourth amendment without consent or a warrant. It would be different if the officer propped the ladder on the neighbor's home and saw into the window of D but he didn't he propped it on the back of D's home where she has a reasonable expectation of privacy.

The officer will likely argue that even though he propped the ladder on the back of the home the box was in plain view as he could see it through the window and was able to tell what it was. This argument will likely fail since it is required that

the officer be at lawful vantage point, and here the officer was not at a lawful vantage point. Also, the item was not readily apparent to determine what it was. The officer had to use binoculars to determine what the box was labeled. In past cases, using devices that are available to the general public in order to see or determine things is not a violation. Binoculars are available to the public, and it would be different if the officer was at a lawful vantage point, but again the officer propped the ladder on the back of the house, a protected area, and peered into a second story window.

The small box should be suppressed

(3) Overheard Conversation

If the above items are determined to be constitutional due to past rulings, it can be argued that the officer could have went and got a warrant since he sat and waited for D to come home as if he wanted to obtain more information.

Under the fourth amendment, it has been held unconstitutional when an officer violates one's reasonable expectation of privacy. In a past case, a recording device was put inside of a telephone booth, the use of the evidence obtained was unconstitutional since a person has a REP while in a phone booth. In another case, eavesdropping while in a public place was constitutional because what one exposes to the public can validly have a REP. Here, the officer crouched under a window to listen to D's telephone conversation where she told someone she would sell them several ounces of meth. When one is in their home, they do not expect someone to be listening at the window, it would be different if D's conversation was very loud and could be heard from the sidewalk, but O needed to be right under the window in order to hear the conversation. Although eavesdropping in certain situations has been held constitutional in the past in this

case it is a violation of Ds REP since O was right under the window at Ds house. In this case, the conversation should be suppressed as well.

Exclusionary Rule

Any evidence obtained in violation of the constitution will be excluded. When an unreasonable search or seizure occurs, any evidence obtained will be excluded. Its generally termed fruit of the poisonous tree which is evidence or statements that have a taint due to illegality and will be excluded.

Inevitable discovery

The officer could try to argue that with a warrant the information would have been found anyway but that will fail since he had time to get a warrant and never did, and a mere hunch is not enough to complete the violations that he did.

The conversation should be suppressed because the officer violated Ds fourth amendment rights.

Question #3 Final Word Count = 1328

END OF EXAM

4)

Community Property State

California is a community property (CP) state. The community economic marital begins at the beginning of marriage and ends at divorce, at the death of a spouse, or at a permanent separation with the intent not to reconcile. In a CP state all earnings, debts, and property acquired during the marriage are presumptively community property.

Separate Property

Separate property is any property that is acquired before the marriage, and any gift, inheritance, devise, bequest, etc. that is acquired during the marriage, and property acquired during a separation with the intent not to reconcile.

Tracing

Tracing allows something to be identified back to wherever the funds came from to purchase the item.

Wendy (W) and Henry (H) rights to:

a. Necklace

Source: H's Separate property (defined above)

Here, H bought this necklace for W as a gift. When he bought the gift he used funds from his inheritance. Since an inheritance is considered to be SP, and the funds came from the inheritance this is initially H's separate property. However when H gave it to W as a gift for her birthday it became W's separate property. H will argue that since he bought it with his funds that it is his SP. That is true at the outset, but that argument will likely fail since H gave it to W as a birthday gift.

Transmutation

Transmutation occurs when a piece of property is classified as one thing and purports to be classified as another. For instance, from CP to SP, or vis versa. In

this case, I believe, the property is will go from being Hs SP to Ws SP.

b. Car Accident Proceeds

Here, W was in an accident in 2012 where she commenced an action against the person responsible. She received the funds in 2014. In 2013, H moved away, therefore permanently separating from the community. When he separated from the community, thereafter anything acquired during the separation would be considered SP.

In order to determine whether the car accident proceeds are CP or SP we must look at what is intended to replace, or place. If it is intended to replace money loss during the marriage then it would be considered CP. However, if it is intended to compensate the spouse after the dissolution then it will be SP. At the time that W got the proceeds she was still working for the company, there is no indication that the car accident hindered her ability to work in anyway. Since H moved out with no clear intent to reconcile the marriage in 2013 that were separated. Since they were permanently separated in 2013, and W received her settlement in 2014, the settlement would be considered Ws SP.

c. Stock Option Profits

W's Stock Options

Source: CP

W started to work for Company in 2010, two years after the couple had married. She was given the option to exercise stock options in 2014. When she did exercise those options in 2014, she earned a profit of 80k. As stated above, all earnings during the marriage are considered CP. Although she was not able to obtain the option until 2014 the work that she put in required her to continue to be a good employee in order to obtain the stocks. Since the stocks were a part of the package for her company, it would be considered CP.

It is possible that stocks are also treated like, retirement benefits, so in that case,

H would get his share of the stocks for the time they were married against the time the stocks accrued. If the stocks accrued from the time she started working, and she obtained the job after she was working, he would still get about half of his share of the stocks.

Hs Municipal Bond

Source: SP

This bond was purchased with Hs separate property because he bought it with his inheritance, and the bond paid him 300 per month. This will be considered his SP.

2. Reimbursement for the Community

All debts incurred prior to the marriage become apart of the CP. If a spouse has child support payments prior to the marriage, the community is responsible for paying them unless the non paying spouse shields her earnings, by putting her money in a separate account. In that case, the child support payments would come from the community and from the spouse's SP who is responsible for the payments. If the spouse has money that can handle the payments on its own then that should be used to take care of the payments. In this case at the H & W were married that did not have any money saved. The facts do not say anything about accounts, but that they payments were coming from Hs salary. Since H had a job that means his jobs earning would be considered CP. At this point W did not have a job. When H inherited 100k in 2011, he should have used his SP funds in order to take care of the child support payments. He also recieved 300/month that could be used to go towards his child support payments.

At the time of dissolution, the community would be entitled to reimbursement from at least 2011 to 2013 when the permanently separated. So about the community should be remibursed about 24k from Hs SP.

2)

1. Property Interests

A fee simple subject to condition subsequent (FSSCS) is a defeasible fee with the possibility of lasting forever that leaves the right of reentry. The right of reentry has to be exercised in order to take place.

A fee simple determinable (FSD) is a defeasible fee with possibility of reverter. It has durational language like so long as, during, etc.

Joint Tenants

Joint tenants are tenants that have four unities: unity of title; unity of possession; unity of time; and unity of interest. In order for this to be created all four unities must exist with the specific language of joint tenants and rights of survivorship. At one tenant's death the other tenant(s) would take the land as a whole or portion depending on how many own JT.

Tenants in Common

Tenants in common is the default tenancy and only requires the unity of possession.

Oscar (O) Interest

O made a conveyance to Martha (M) and Lenny (L) as joint tenants with the right of survivorship. His conveyance is a little confusing so I will analyze both.

(FSSCS) Here, he gave the land to M and L and if they transferred Greenacre then it would be revert back to him. Before M died she transferred her interest,

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violating the condition, in order for O to retain his interest he would need to exercise his right of reentry, until he does so his interest is just there waiting for him.

(FSD) Here, As soon as M transferred here interest it reverted back to O, therefore he would own it in fee simple. Anything after the conveyance from M to P would be void, if it is fee simple determinable since it would automatically go back to O for the violation.

Lenny Interest

L and M were Joint tenants with the right of survivorship, at M's death L should have had the property as a whole. However, M sold here interest to P before she died.

Severance of JT

Since M sold her interest to P before her death, it severed the JT because the unities were broken. The unities require title at the same time; the same interest; possession at the same time; and receive it all at the same time. Here, since P obtained the interest from M before she died, the unities would not exist between L and P, therefore there is no JT. When a JT is severed it defaults to a tenancy in common. Therefore, unless O steps in, L and P are tenants in common.

Oust

L can attempt to oust the parties that have an interest in the land in order to keep the land as a whole. He would need to physical and obvious acts to do so.

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Partition

L can also seek the court to partition the land, since he intended to sale his interest, if he's afraid there will be property conflicts, and can seek for the court to divide the land up according to interest and he can go from there in selling his property.

Paul Interest

Same as above. P obtained his interest from M before her death, since he obtained that interest from her, he severed the JT and became a tenant in common with L.

Sally Interest

Term of Years

A term of years is a lease that has a specified ending date, and terminates automatically at the end of the term. Here, there was a written lease between P and S for a two year rental at \$500 per month. When the two years is up the lease ends and at that point unless the lease is renewed S must leave the premises, notice to vacate is not necessary, unless specified in the lease, since the lease is to end automatically at the end of the term.

Holdover Tenant/Tenancy at Sufferance

This kind of tenant is one that stays beyond the leasing period when it has ended. In order to remove the tenant, the landlord can seek to get the tenant evicted or ejected, or can accept rent from the tenant. The landlord cannot exercise self help, they must seek the court on getting the tenant evicted. Here, S's term ended and she continued to stay on the premises after the two year term ended. She was on the premises for three months before Paul confronted her about still being on the premises. They did not renew a lease but she

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remained on the premises.

Duty to Pay rent

A tenant has a duty to pay rent. By not paying rent S was in violation of her tenancy.

Periodic Tenancy

A periodic tenancy is one where a tenant pays a fee either month to month or year by year, and in order to terminate this type tenancy the tenant must have at least 30 days notice if its month to month, and 6 months notice if its year to year. Here, S stayed over lease period, and when no lease was agreed upon she continued to stay. She paid the money for the three months she missed and she also resumed paying monthly rent. More than likely since P continued to accept rent, this tenance turned into a periodic tenancy, and can be terminated by either party with proper notice.

Tenancy at Will

Is a tenancy where a tenant lives and can be told to leave at anytime or can leave at anytime. If this is determined to be a tenancy at will then either party can terminate the tenancy, and since there is no relevant lease, not termination notice is required.

Sally does not have interest in the land, however she is entitled to resume living on the land and can be terminated with proper notice, unless determined to be a tenancy at will.

Martha's Estate

M sold her interest in the land before she died, she severed the JT and would

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not have an interest, Therefore, Ms estate would not have an interest in the property.

2. Accounting and Contribution from P

Tenants are not liable to each other for rent, however if there is a tenant staying on the land then the one receiving the payment must share that with other co tenants. Also co tenants are responsible for taxes on the property.

Contribution

Contribution is where one party seeks for the other co tenant to contribute to expenses in regards to the land. Co tenants are responsible for taxes, but are not responsible to the other co tenant for improvements. Here, L paid all of the taxed on the land, he can seek contribution from P as the other co tenant of the property.

Reimbursement/Credit

L can also seek reimbursement or a credit for the amounts he has paid. P would also need to give L a portion of the rent proceeds since he rents to S. Again all of this is only possible if L and P are valid tenants in common and O does not have any interest.

Question #2 Final Word Count = 1178

1)

Subject Matter Jurisdiction

In order for a federal court to exercise jurisdiction over a case they must have both personal jurisdiction and there must be a federal question raised or there must be diversity jurisdiction. Federal question jurisdiction requires a party to bring a question in regards to the constitution, or other federal matter and it must be well plead in their complaint. Diversity jurisdiction requires every plaintiff to be from a different state than every defendant, and the amount in controversy must exceed 75,000 excluding all cost and expenses.

Personal Jurisdiction

A court has personal jurisdiction can exercise jurisdiction by in personam; in rem; and quasi in rem. In personam jurisdiction is jurisdiction over the person, in rem is jurisdiction over the property; and quasi in rem is kind of over property. Here, these matters involve a Patient(P), a Doctor(D), and a Valvco(V), so the court would attempt to exercise in personam jurisdiction.

In personam

In personam jurisdiction can be exercised over a person or corporation if they give consent; if they are domiciled in the forum; if there is a relevant long arm statute; or by showing up in court. In this case we need to look at the domicile. Here the action was brought in state court in State B, we have to determine if one of these is applicable in order for the court to have jurisdiction over the case.

Individual Domicile (P)

An individual's domicile is determined by where the person lives and intends to stay indefinitely. Here P is from state A, and had her heart valve implanted there. P collapsed in state B due to heart problems and decided to remain there indefinitely. Since P decided to remain in State B indefinitely for medical treatment, he can be determined to be domiciled in state B. However, one may argue that although he planned on staying indefinitely it is still only for medical treatment so when his medical treatment is done he will return to state A. That argument will likely fail since his intent is to stay in state B indefinitely, with no facts to the contrary.

Individual Domicile(D)

Same rule as above. Here, D lives in State, there are no facts that he intended to go elsewhere, so he is therefore domiciled in State A.

Corporation Domicile(V)

A corporation is domiciled in generally in two places. Wherever the corporation is incorporated, and wherever the corporation's principal place of business is, or nerve center, in other words where most of the corporation's management and activity occurs. Here, Valvco is incorporated in State C, and has its headquarters in State D. Therefore V, is domiciled in State C because that's where it is incorporated and in State D since that's where its HQ is, and it can be presumed that its headquarters is where most of its management and activity occurs.

Since none of the defendants are domiciled in State B where the action was brought, we can look at a long arm statute. The facts do not have an applicable long arm statute, but generally long arm statutes reach as far as the constitution will allow. In order to determine if they can be reached we have to look at

minimum contacts and due process.

1. D Motion to dismiss

Due Process

Due process would not be offended here

Minimum contacts

Minimum contacts requires that the contact with forum, does not offend substantial notions of fair play and substantial justice.

Foreseeability

This determines whether or not it was foreseeable being haled in court in the forum. Here D is from state A, and does not have any contacts with the forum. P lived in state A when he got the implant. Then he visited and ultimately moved to State B. It is not foreseeable that when P visited a state he would then move there, and file an action against D there. Therefore, it was not foreseeable that he would be haled into court there.

Purposeful Availment

This determines whether or not the individual or corporation used the state's roads, and other resources that would either consider them using the resources, or not using the resources. Here there is no indication, that D used any portion of the resources within the state B, because there are not facts that he went to the hospital there, or used the roads there, etc.

Relatedness

Fairness

This determines if it would be fair for D to travel State B in order to the matter. There are no facts to indicate that it would be unfair, however, it is not telling how far State B is from state A, and what it would do to D in having to take off time to travel to another state in order to litigate the matter.

Convenience

This is closely related to fairness, it may or may not be convenient, but if D is from state A and is forced to go to state B although he has no contacts it would not be very convenient.

State Interests

This determines the state's interest in protecting its citizens and litigating the matter. Here, the state may be interested in litigating the matter since P is from state B now.

Substantial Notions of Fair play and Substantial Justice

Specific Jurisdiction

Specific Jurisdiction occurs when the forum can exercise jurisdiction because a substantial portion of the claim arose there. This is tricky, here's why. The valve was implanted in State A, however, P collapsed in State B. The claim P is bringing is regarding the valve being defective, determined by him collapsing. Neither defendant was present in the forum.

The state court did act properly in granting D's motion to dismiss for lack of personal jurisdiction. However, if it is determined that because P collapsed in State B and that is what is considered the substantial portion of where the action arose then the court would be erroneous in granting the motion to dismiss, and could exercise jurisdiction over D.

2. *Vs motion to dismiss*

Minimum Contacts

Same as above.

Foreseeability

same as above. Here, it is not foreseeable that D would be brought in state court in B, it does not have sufficient contacts that would make it think it could be haled into court there because it is domiciled in two different states, and has done anything to be foreseeable. although it could be argued that if one is receiving treatment with the valve and the valve is distributed to doctors over, then it is foreseeable that it could be haled into court anywhere.

Purposeful availment

here, if V distributes its products within state b, then it may be held there. however there are no facts that state this.

Fairness

It may not be fair for V to travel to a different state in order to litigate this matter

since it is domiciled in two different states that do not include the forum.

It may have been proper for the court to deny the motion to dismiss. The determination is whether or not the court has specific jurisdiction in the determination of if P collapsing in state B counts as a substantial portion of where the claim arose.

3. Motion for remand

A motion for remand can be granted if it is improper for it to be in federal court. The defendant can remove the case to federal court if its proper there and could be brought there in the first place. If the court can exercise jurisdiction then it is proper to move it there.

In order to be proper in federal court the court must have both **Subject matter jurisdiction** and personal jurisdiction. SMJ is the courts competence to hear the case. It can be either federal question or diversity jurisdiction. federal question requires plaintiff to have brought have a FQ thorough well pleaded complaint which is not relevant here. Diversity jurisdiction requires that there is not one plaintiff from the same state as any defendant, and that the amount in controversy exceeds 75K

Amount in Controversy

Here, P is suing for 100K, since 100K is more than 75K the amount is satisfied.

Diversity

Domicile rule above. Here, all parties are diverse since P lives in B, D lives in A, and V is incorporated in C and HQ are in D. However, D may argue that P is

actually domiciled in A since that's where he lived and that's where the surgery was done, however, that argument will fail since P decided to stay in State B indefinitely, and with the intent to remain indefinitely at the time the case was filed there was complete diversity.

4. Summary Adjudication

Issue Preclusion occurs when an issue has previously been litigated against a defendant, I believe it requires the same defendant and the same plaintiff. In this case, the P filed a summary adjudication based on the previous case that had been filed against V, so since the other patient sued and received a final judgment I believe it would be irrelevant under this.

Collateral Estoppel

This occurs when an issue has been previously adjudicated, I believe P would be able to recover under this theory since the case has been previously adjudicated and final judgment was issued. However, although the valve was defectively made, D still negligently put it in and winning solely on the basis of the previous case is unfair to D. The court should not have granted the summary adjudication against D, and should have allowed for the case to move forward. The defective valve may not have been the cause of P collapsing, and the facts do not state that P and the other patient's conditions were similar or that the same thing happened to both of them. With that although defective it may not be the cause of P's injuries.