

A plaintiff sued a defendant over title to land on a riverbank. Changes in the water level over time were important to the plaintiff's case.

For 15 years, a commercial fisherman had kept a daily log of the water level at his dock on the riverbank opposite the land in order to forecast fishing conditions. The plaintiff hired a draftsman to graph the data from the fisherman's logs for use as a trial exhibit.

At trial, the fisherman testified to the care with which he had made the measurements and recorded them in his logs, which had been made available for the defendant's inspection. The draftsman then testified to the manner in which he had prepared the graphs.

With this foundation, are the graphs admissible?

- A. No, because they are hearsay not within any exception.
- B. No, because they violate the "best evidence" rule.
- C. Yes, as summaries of voluminous business records.
- D. Yes, as the draftsman's expert opinion of the water levels.

Explanation:

Summaries to prove content

(FRE 1006)

Proponent of writings, recordings, or photographs may use summary, chart, or calculation to prove contents if proponent establishes:

originals are voluminous & cannot be conveniently examined in court

originals would be admissible

originals or duplicates were made available for other parties to examine/copy *and*

summary is fair & accurate

FRE = Federal Rule of Evidence.

A party may offer a **summary** (or chart or calculation) to **prove the contents** of voluminous writings, recordings, or photographs if a **proper foundation** for admitting the summary is laid. This requires the summary's proponent to **establish** that:

the **originals are voluminous** and cannot be conveniently examined in court (eg, 15 years of daily logs)

the originals would be **admissible** (eg, the fisherman's logs are admissible [business records](#))

the originals or duplicates were **made available** to all parties **to examine and copy*** (as seen here) *and*

the **summary** is **fair and accurate** (as established by the fisherman's and draftsman's testimony).

Therefore, the graphs of the data from the fisherman's voluminous logs are admissible with this foundation.

*The examination and copying must occur at a reasonable time and place OR at trial in response to a court order.

(Choice A) Although the fisherman's daily logs are out-of-court writings that implicate the hearsay rule, they would be admissible under the business records hearsay exception. And the graphs summarizing this voluminous business data are also admissible because the proper foundation has been laid.

(Choice B) The "best evidence" rule requires that an original writing, recording, or photograph be produced in order to prove its contents. But summaries of voluminous information are excepted from this rule so long as the originals are made available for inspection to all parties (as seen here).

(Choice D) Expert testimony from a qualified person with specialized knowledge is admissible if that testimony is relevant to the litigated issue. But here, there is no indication

that the draftsman is an expert on measuring water levels merely because he graphed data from the fisherman's logs for use as a trial exhibit.

Educational objective:

The foundation for admitting a summary, chart, or calculation of voluminous content is laid when the proponent shows that (1) the voluminous content cannot be conveniently examined in court, (2) the originals would be admissible, (3) the content was made available to all parties, and (4) the summary is fair and accurate.

References

Fed. R. Evid. 1006 (summaries to prove content).

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