



### Best's Insurance Law Podcast

#### [Planning Your Defense: How Experts Can Counter Plaintiff PowerPoint Strategies - Episode #210](#)

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**Hosted by:** John Czuba, Managing Editor

**Guest Expert:** Dr. Janine McCartney of [HHC Safety Engineering Services and HHC Safety Consulting Services, Corporation](#)

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**John Czuba:** Welcome to Best's Insurance Law Podcast, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, managing editor of *Best's Insurance Professional Resources*. We're pleased to have with us today Dr. Janine McCartney of [HHC Safety Engineering Services and HHC Safety Consulting Services, Corporation](#) of Wilmington, Delaware, and with an office in Houston, Texas as well.

The companies provide safety consulting, safety engineering, consulting, and expert witness services to law firms and the insurance industry. Dr. McCartney is a senior safety engineer and expert witness. She has a certified safety professional and a construction health and safety technician designation with 30 years experience in safety.

Her professional career has spanned over 40 years in private and government service with OSHA consultation. Dr. McCartney has worked in the oil and gas industry and in the pipeline and construction industry as a regulatory expert.

In safety, she worked her way up from safety representative to the safety manager, to safety officer two to manager, and then to an expert. She has extensive OSHA policies knowledge and has technical and historical knowledge in construction, telecommunication, utilities, manufacturing, food processing, distribution, oil and gas exploration and production, and property management.

Dr. McCartney is also an editor of "Science Direct, Heliyon" and "Data in Brief" and an editor and reviewer of "Science of the Total Environment". She also works as an expert and consultant on a day to day basis. Dr. McCartney, we're very pleased to have you with us again today.

**Janine McCartney:** Thank you, John. Thank you for the opportunity to provide this podcast.

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**John:** Today's discussion is centering on new PowerPoint strategies used by plaintiff attorneys and what an expert should anticipate. Dr. McCartney, for our first question today, what new PowerPoint strategies are plaintiff attorneys using?

**Janine:** Thank you, John. That's an excellent question. Based on my experience for the year 2023, plaintiff's attorneys have begun using PowerPoint slides and expert depositions that are pre-made with statements that the expert has allegedly stated or written. Most of the time, the statement is inaccurate.

I have only seen plaintiff's attorneys use this trial and deposition strategy. The pre-made PowerPoint has a picture of the expert with their name and a statement that may be true or untrue. The statement may come from an expert report or something the attorney has made up on their own.

The picture of the expert could be obtained from anywhere. It could come from the expert's website, advertising, or their driver's license. To get a better idea of what the PowerPoint slide looks like. The expert's picture is positioned on the upper left side of the PowerPoint, and their name is just to the center of the picture.

In the body of the PowerPoint, there is a statement that the expert allegedly made. Most of the time, the statement is false. Another tactic is in the body of the PowerPoint, there is a statement and the words true and false written underneath with lines to choose which is correct.

The expert cannot touch the slides in the deposition, and the plaintiff's attorney controls the PowerPoints and the use of the PowerPoints. This is particularly troubling because the expert does not vet the PowerPoint slide.

I have seen some PowerPoint slides that look like a wanted poster and something you would see on a post office wall or in a federal law enforcement wall of public enemy number one.

This is concerning because if the pre-made PowerPoint is admitted as a trial exhibit and deposition exhibit and allowed as a trial exhibit by the judge, the pre-made PowerPoint will potentially be prejudicial as the jury may think that the expert looks less than honest.

Additionally, the pictures of the plaintiff's attorneys may come from copyright protected material that belongs to the expert and the company they work for. One other note of concern for defense attorneys, I've seen these pre-made PowerPoint slides used on fact witnesses.

The picture used in the pre-made PowerPoint looks like it came from a driver's license picture or an employee ID picture.

**John:** Dr. McCartney, when an expert has these strategies directed at them, what's the impact on the expert?

**Janine:** The immediate impact, John, for the expert is that the deposition will be long, argumentative, and very unpleasant. Recently, I had about 160 pre-made slides directed at me in a deposition. The plaintiff's attorney took my copyright protected advertising picture and put the picture on a slide with my name and a pre-made statement.

The attorney did not enter the PowerPoint slides in the deposition as a deposition exhibit. This was very troubling. The questions asked of me in the deposition caused me to have to carefully analyze each statement, provide thoughtful answers to the question and the misstatements.

In addition, the plaintiff's attorney was attempting me to rush in my answers. When the time approached six hours and he was still not done with the slides, the attorney became unpleasant, argumentative, and started yelling at me. I did toe the line with each slide.

I did an excellent job in accurately reciting the actual statements in my report. I did not accept the pre-made PowerPoints. The deposition record is clear. It was a shock to encounter, but as I always over prepare for a deposition, I was certainly ready for this unpleasant six hours.

**John:** Dr. McCartney, what can be the outcome for the existing testimony expert on a case if the expert doesn't hold the line and correct the plaintiff's attorney's PowerPoint? What are the ramifications for the expert if they do not adequately defend their positions and opinions?

**Janine:** Those are great questions, John. The outcome for the existing testimony of the expert when the pre-made PowerPoint slides are used on them in a deposition, and the expert does not hold the line, is that the expert's opinion will be misconstrued.

The deposition testimony can be read at trial, and the expert can be questioned about the statement. At trial, the expert can be called a liar or the plaintiff's attorney can say, "See, even this expert agrees with my client." When, in fact, the expert certainly does not agree with the pre-made statements.

If the picture chosen by the plaintiff's attorney is unpleasant looking, the PowerPoint can make the expert look like their face is in a wanted poster.

**John:** Dr. McCartney, what type of energy and concentration does it take on the part of the expert to defend their positions and opinions in the case?

**Janine:** It takes enormous energy and concentration on the part of the expert to defend their opinions in a deposition when pre-made PowerPoint are used on them. Using pre point PowerPoints appear to be a continuation of the reptile manual tactics of plaintiff's attorney to behave outrageously at an expert deposition.

The expert will only be able to survive this type of deposition with these pre-made slides if they have adequately prepared for the deposition and can almost recite their report in their sleep. In order to deflect an untrue statement, the expert needs to know their report inside and out and be able to point to the actual statement in the report and rebut the PowerPoint slide.

**John:** Dr. McCartney, one final question. What can an expert do when the strategies are used on them?

**Janine:** First, when a plaintiff's attorney uses their pre-made PowerPoint slides at deposition, the expert should object for themselves and state that the plaintiff's attorney has taken their copyright protected materials, i.e., their picture and any other statements used by them without their consent and told that this is a violation of their company's copyright policy.



Before the deposition, the expert should discuss this with their retaining attorney. Ask what objections can be made when the plaintiff's attorney uses the expert's copyright protected material and photographs without their consent.

The most extreme action is for the retaining attorney to end the deposition and get a ruling from the judge about the pre-made PowerPoint slides. The expert witness can protect themselves from this tactic as well by them instituting a copyright policy and issuing a legal notice about misuse of their copyright protected materials.

The copyright policy and legal notice can be put on the expert's website so that there's no confusion about the ownership of the pictures and the copyright protected materials

**John:** Dr. McCartney, thanks so much for joining us today

**Janine:** Thank you, John.

**John:** You've just listened to Dr. Janine McCartney of HHC Safety Engineering Services and HHC Safety Consulting Services, Corporation with offices in Wilmington, Delaware, and Houston, Texas. Special thanks to today's producer, Frank Vowinkel.

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I'm John Czuba, and now this message.

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