Daubert Case Outline: Fitz v. T6 Networks

This is a fictitious case designed to probe issues surrounding Daubert opinions. The setup is an allegation of trade secret misappropriation by T6 Networks of an algorithm developed by John Fitz.

Between 2000 and 2002 John Fitz, an engineer with Intel, worked on a new algorithm for fast packet switching in his off-hours. His calculations indicated that his new algorithm was substantially faster – up to ten times faster than the existing technology – but only for video streaming. To prove the advantages of the new algorithm for all packets he needed investors.

Initial meetings with the investors did not go very well. Investors were generally skeptical of Mr. Fitz's management skills (he'd never managed a team, let alone a company) and since his work was entirely on paper, they couldn't evaluate his claims of superior speed. Furthermore, Mr. Fitz was extremely cautious about divulging the details of his algorithm to anyone so investors had no way to validate his idea. As a result, Mr. Fitz received no investment offers.

Mr. Fitz approached a networking company – Bluefish – about funding. Bluefish offered Mr. Fitz a job with a $150,000 annual salary and options amounting to 1.5% of the company with the vesting of the options contingent on Mr. Fitz's continued employment and on Bluefish incorporating Mr. Fitz's algorithm into a commercial product. Mr. Fitz rejected this offer. However, Mr. Fitz managed to convince Bluefish's chief scientist, Mr. Goy to help him find investors.

During the first nine months of 2003, Fitz and Goy met several times a week to develop and refine a business plan and present it to investors. Fitz and Goy differed as to whether or not Mr. Goy ever knew the details of Mr. Fitz's algorithm. With Mr. Goy as part of the team, the investors were much more interested and Fitz and Goy received two investment proposals.

Fitz and Goy also met with Trevor Kai – the CEO of a startup named T6 Networks that had recently been funded by Kleiner, Perkins to do network security. Fitz, Goy and Kai met two times to discuss possible ways they could work together, but Mr. Kai was not convinced that Mr. Fitz was a good fit.

Mr. Fitz rejected the two investment proposals, and then Mr. Kai called Mr. Goy to offer him a role with T6 Networks for $150,000 annual salary and 2.5% of the shares of T6 vesting over four years. Mr. Goy accepted the offer and started work with T6 in January of 2004.

T6 Networks was a success and IPO'ed in 2010. When T6 went public, Mr. Fitz looked at its website and became convinced that the T6 product must have incorporated his proprietary algorithm. Mr. Fitz filed a claim for trade secret misappropriation and his attorneys hired John Doe to calculate damages for Mr. Fitz. Mr. Doe presented the following calculation of unjust enrichment damages:

- 1.5% of the value of T6 Networks based on the offer from Bluefish. In his deposition Mr. Doe stated that he hadn't actually reviewed the offer letter from Bluefish, couldn't verify its authenticity and was unaware of any terms in that offer other than the 1.5%

Or

- 50% of the value of Mr. Goy's options based on his application of the Nash Bargaining Solution to a hypothetical discussion between Mr. Goy and Mr. Fitz.