The Florida Middle School Mock Trial Virtual Competition Packet

Jesse Jones v. Palm City

Developed by the D.C. Street Law Clinic at Georgetown University Law Center
and with permission revised for The Florida Law Related Education Association, Inc. by:

Stephen Renick, Esquire
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Dear Educator,

Thank you for your interest in the Middle School Mock Trial Competition co-sponsored by The Florida Law Related Education Association, Inc. and the Florida Association for Women Lawyers (FAWL). This mock trial program is tailored to meet the needs of middle school students and to take place within two or more class periods with the final product being a sixty-minute recorded trial simulation. Educators have the option of requesting an attorney volunteer to aid in conducting the mock trial and FAWL will do its best to fulfill those requests. Trials will be conducted and recorded in the classroom and submitted for judging as noted in the following directions. The trials will be judged in accordance with the attached rules utilizing the score sheet provided. Teachers should review the score sheet with students to prepare them for the judging requirements in the simulation. Projects must be submitted by March 26, 2018.

The winning team will be recognized in the FAWL, FLREA, and other appropriate newsletters and social media. Awards will be provided to the top three teams. Further details are included below.

The program objectives are as follows:
• Increase student understanding of and interest in the legal system;
• Generate interest in law-related careers; and
• Improve civic and literacy skills including critical thinking, public speaking, and legal reasoning.

Thank you for considering participating in the middle school mock trial program. The program will help you meet the seventh grade civics benchmark:
SS.7.C.2.6 Simulate the trial process and the role of juries in the administration of justice.
SS.7.C.3.10 Identify sources and types (civil, criminal, constitutional, military) of law.
SS.7.C.3.11 Diagram the levels, functions, and powers of courts at the state and federal levels.

Sincerely,

FLREA, Inc. & FAWL
Instructions

1. Read the **Virtual Middle School Mock Trial Rules of Competition** (enclosed) and sign the form acknowledging that you have read and understand the rules of competition.

2. As part of your civics or law instruction, differentiate between civil and criminal trials; trial and appellate courts; court procedures; and the role of the jury in the administration of justice. We recommend using the Steps of a Trial lesson provided on the Middle School Mock Trial page of the [www.flrea.org](http://www.flrea.org) website as well as other lessons from the free FLREA Civics Curriculum, outlined below. A supplementary vocabulary guide will also be provided. Thoroughly review the stipulations and jury instructions. For additional classroom materials, contact the Florida Law Related Education Association, Inc. at staff@flrea.org.

   a. **Suggested lessons:**
      i. Seeking the Source: Sources and Types of Law (Section 6 or Getting to the Point Benchmark SS.7.C.3.10)
      ii. Sorting Out the Courts: Levels, Functions, and Powers of Courts (Section 6 or Getting to the Point Benchmark SS.7.C.3.11)

3. Contact FLREA to request an attorney volunteer if needed at staff@flrea.org. Assign students to roles and work to prepare opening and closing arguments, develop questions for direct and cross examination, and practice the simulation. This project includes roles for attorneys, witnesses, jury members, the bailiff, etc. Your attorney coach, a local lawyer, or a county or circuit judge may serve as the presiding judge during your simulated trial.

4. After practicing the simulation, videotape the trial and post it to YouTube.com*. This video will serve as your entry into the Florida Middle School Mock Trial competition and will be assessed based on the attached rubric and score sheet to determine a winner. Videos are limited to **60 minutes** per Rule XV of the **Virtual Middle School Rules of Competition**.

   a. YouTube videos automatically upload as public videos. To learn how make your video private, view the following tutorial: [https://support.google.com/youtube/answer/157177?hl=en](https://support.google.com/youtube/answer/157177?hl=en) Instructions for sharing a private video are also provided at the link above.

5. **Submit the entry packet and YouTube video link via email to** [staff@flrea.org](mailto:staff@flrea.org) **by March 26, 2018**

6. A winner will be announced by April 27th, 2018.

**Checklist to Turn in Packet - send to** [staff@flrea.org](mailto:staff@flrea.org)

- Registration Form
- Student Release forms (to be completed by the guardian of each student)
- Link to the YouTube video
- Photo of Participants (Students, Teacher, and attorney/law student volunteers)
- Evaluation Form
I have read and understand the Virtual Middle School Mock Trial Rules of Competition as outlined in this competition packet.

Teacher Signature:__________________________________________

Sponsoring Teacher/Group Leader Information

Teacher: _________________________________________________________

Phone Number: _________________ Fax Number: ______________________

Preferred E-mail Address: __________________________________________

School Information

School: ____________________________________________________________________

Mailing Address: ___________________________________________________________________

City: ________________ State: Florida Zip: ____________ County: ____________

Phone Number: _________________ Fax Number: __________________________

Principal Name: ____________________________________________________________

Class/Student Information

Name of Class/Course or Club: ________________________________________________

Grade Level: __________________________________________________________________

Please attach a team roster with the name of the students and the role they will be playing.

Date of Trial: __________________________________________________________________

*All videos must be submitted by March 26, 2018
Parental Consent Form for Student Videos/Photographs

Student’s Name (PLEASE PRINT): ______________________________________________________

School Name (PLEASE PRINT): ______________________________________________________

Parent/Guardian’s Name (PLEASE PRINT): ____________________________________________

Your child has chosen or been chosen to participate in the Florida Middle School Mock Trial Virtual Competition. This competition requires that students be filmed in their classroom competing against one another and their faculty sponsor must upload the video to Youtube.com. Additionally, students will be featured in appropriate newsletter publications and social media platforms.

Please take a moment to let us know your preferences regarding our use of videos and/or photographs taken of your children while participating in this competition:

_____YES. I grant permission to my child’s faculty sponsor, _______________________________, and The Florida Law Related Education Association, Inc. to use and publish photos and videos of my child on Youtube.com and other social media platforms for competition related purposes only. I understand that YouTube’s privacy settings vary and the general public may be able to access the video of my child competing.

-OR-

_____NO. Please do NOT take or use any videos or photographs of my child. I understand that if I have checked this box my child cannot participate in the Florida Middle School Mock Trial Virtual Competition.

Parent/Guardian’s Signature:

______________________________________________________________________________

Date: __________________________
Any and all feedback is welcome from teachers, students, and participating attorneys. Feedback may also be emailed to staff@flea.org.

1. What were the most useful aspects of the program?

2. What were the least useful aspects of the program?

3. Do you have suggestions for future similar programs?
TRIAL OVERVIEW

I. The presiding judge will ask each side if they are ready for trial.

II. Presiding judge announces that all witnesses are assumed to be sworn.

III. Opening Statements - no objections allowed. No rebuttals allowed.

IV. Cases presented. All witnesses must be called per side.

V. Closing Statements - no objections allowed. Plaintiff/prosecution may reserve time for a rebuttal.

VI. No jury instructions need to be read at the conclusion of the trial.

VII. A total time of **60 minutes** will be allotted for the trial presentation. See Rule XV in the Virtual Middle School Rules of Competition.
Case Summary

Pleadings
Complaint
Answer
Stipulations

Witnesses and Affidavits
Witness/Exhibits Listing

Plaintiff Witnesses:
Affidavit, Jesse Jones
Affidavit, Olivia/Oliver Queen
Affidavit, Dr. Marcus Welby

Defense Witnesses:
Affidavit, Luke/Lucy Cage
Affidavit, Danny/Danielle Rand
Affidavit, Dr. Gregory/Gerta House

Exhibits
Exhibit A: Notice from Palm City Office of Public Utilities
Exhibit B: The Palm City Times News Article
Exhibit C: Palm City Office of Public Utilities Pindia Population in the Water System

Applicable Law
Jury Instructions
Jury Verdict Form
Case Summary

On September 16, 2016, 24-year-old Samuel Jones died of pindiatosis in connection with AIDS. Sam had AIDS for several months, but his health worsened after he drank water containing Pindia, a parasite found in the Palm City tap water. The numbers of this parasite had increased due to the poor condition of the city’s pipes. Palm City is located in the state of Florida, and has a population of 300,000 residents. Sam contracted HIV which developed into AIDS because of transfusions he received after an operation to remove his appendix.

The Palm City Council became aware of Pindia in October of 2013, while testing for difficult to detect protozoa and bacteria in the city’s water system. The city received special funding from the federal government, a one-time payment of $200,000, for this testing as part of a national survey of the quality of drinking water. After discovering the presence of Pindia, Palm City began testing the city’s water system twice a year. The population of the Pindia rose as the Palm City water pipes steadily deteriorated.

In June of 2016, the levels of Pindia rose above 300 per gallon of water, the federal threshold levels of minimal health risk. Because the numbers of Pindia continued to rise, on July 29, 2016, the Federal Water Safety Advisory (FWSA) required the City of Palm City to issue a boil water advisory to all of its residents. Additionally, the FWSA required the city to publish the warning in a locally-read newspaper. The City Council sent notice to the residents and published the warning on the back page of The Palm City Times, the local newspaper. The FWSA also issued emergency funds to the city to replace the most deteriorated section of the water system pipes. As a result, by August 2016, the level of Pindia had leveled off at 400 per gallon. Although 400 Pindia per gallon is a level safe for general public consumption, it poses a potentially serious health risk for those with weakened immune systems.

On September 1, 2016, the city began to flush the water system with chlorine, a chemical that kills Pindia. On September 15, the levels of Pindia had dropped to 278 Pindia per gallon, a level below the threshold level of minimal health risk. However, three people were proven to have died as a result of ingesting Pindia while it was at higher levels. Sam Jones is one of them.

Claims and Defenses

Jesse Jones, Sam’s parent, is suing Palm City under the alternative theories of strict liability and negligence. Mr./Mrs. Jones claims that the city is strictly liable for selling an unreasonably dangerous product to the public. In the alternative, Mr./Mrs. Jones is also claiming that the city was negligent in not flushing the pipes with chlorine before the levels of Pindia became a health risk and failing to provide adequate warning about Pindia’s potential fatal effect.

Palm City is arguing that the water was never unreasonably dangerous and therefore it should not be held strictly liable for selling it to the residents of Palm City. Additionally, the city asserts that it was not negligent in its handling of the presence of the Pindia parasite. The city claims it provided adequate information to the public about Pindia and that it took reasonable measures to prevent Pindia from becoming a serious health risk to the residents of Palm City.

Defendant denies liability. In the event that defendant is found liable, defendant claims that the estranged relationship of the deceased to his family does not warrant compensatory damages.
IN THE CIRCUIT COURT OF THE STATE OF FLORIDA
IN THE 25TH JUDICIAL CIRCUIT

JESSE JONES, on behalf of the
Estate of Sam Jones

Plaintiff

v.

THE CITY OF PALM CITY

Defendant

Case No: 16-54321

COMPLAINT

Comes now the Plaintiff, Jesse Jones, by and through undersigned counsel, and respectfully submits the following Complaint against The City of Palm City, and in support thereof, Plaintiff states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Jesse Jones is a citizen and resident of Palm City, located in Palm County, Florida.

2. Upon information and belief, Defendant, City of Palm City, is a sovereign governmental entity as defined by the Florida Statutes.

3. All required statutory notices and condition precedents to filing this Complaint have been performed by the Plaintiff.

4. Venue is proper in Palm County, State of Florida.

5. At all times material hereto, Sam Jones was a citizen of Palm City.

6. Pursuant to Florida Statutes, the Plaintiff, Jesse Jones, has standing to sue on behalf of the Estate of Sam Jones in this matter.

STATEMENT OF FACTS

7. At all times material hereto, the Defendant, Palm City, was responsible for and as part of their business supplied drinking water to its citizens, and the citizens paid a fee to the Defendant for said service.

8. At all times material hereto, Sam Jones was a citizen of Palm City.

9. In October 2013, the Defendant became aware that bacteria called Pindia existed in its water supply.

10. In June 2016, Pindia levels rose above 300 pindia per gallon (pgg) which is the federal threshold levels of minimal health risk.

11. In August 2016, the Pindia levels in Palm City reached 400 ppg.

12. The Defendant knew that Pindia in their water supply at 400 ppg would be harmful to those citizens with compromised immune systems.

13. Sam Jones died as a result of pindiatois.
FOR A FIRST CAUSE OF ACTION
(Negligence)

14. The allegations of Paragraph 1 through 13 are realleged and incorporated by this reference as if fully set forth herein.

15. The Defendant, Palm City owed all its citizens, including Sam Jones, a duty to exercise ordinary care to provide safe, drinkable water for all if its citizens.

16. The Defendant knew or, in the exercise of reasonable care, should have known that the drinking water provided to its citizens, specifically Sam Jones, was dangerous.

17. The Defendant breached its duty to exercise ordinary care by failing to provide safe drinking water to Sam Jones.

18. Specifically, the Defendant was negligent, reckless, and willful, in one or more of the following particulars, to wit:
   a. Failing to maintain its water pipes;
   b. failing to control the levels of Pindia in its water system; and
   c. operating their water system unreasonably and in an unsafe manner,
any or all of which were the direct and proximate cause of the injuries and damages suffered by Sam Jones.

19. As a direct and proximate result of the Defendant’s negligence, recklessness, and willfulness, Sam Jones ingested the contaminated water that ultimately led to the death of Sam Jones.

FOR A SECOND CAUSE OF ACTION
(Strict Products Liability)

20. The allegations of Paragraph 1 through 13 are realleged and incorporated by this reference as if fully set forth herein.

21. At all times mentioned in this complaint, the water provided by the Defendant, Palm City, to its citizens was defective as to design, manufacture, and warnings, causing the water to be in a dangerous and defective condition that made it unsafe for its intended consumption by the Plaintiff.

22. As a direct and proximate result of the defective and dangerous condition of water provided by the Defendant to Sam Jones as described above, injury was sustained by Sam Jones, specifically the death of Sam Jones.

WHEREFORE, the Plaintiff requests a judgment against the Defendant for actual and punitive damages as the jury deems appropriate.

The Specter Law Firm, LLC

Harvey Specter
Harvey Specter, Esquire Attorney for the Plaintiff
Post Office Box 112233
Palm City, Florida 29200 (555) 588-0987

Palm City, Florida December 18, 2016
NOW COME the Defendant the City of Palm City, by and through undersigned counsel, and hereby respond to the allegations of Plaintiff’s Complaint as follows:

FOR A FIRST DEFENSE

1. The allegations in Paragraph 1 of the Complaint are admitted, upon information and belief.

2. The allegations in Paragraph 2 of the Complaint are admitted.

3. The Defendant lacks the knowledge to admit or deny the allegations in Paragraph 3 of the Complaint.

4. The Defendant admits the allegations in Paragraph 4 of the Complaint.

5. The allegations in Paragraph 5 of the Complaint seek a legal conclusion and, therefore, no response is required. To the extent a response is required, the allegations are denied.

6. The allegations in Paragraph 6 of the Complaint seek a legal conclusion and, therefore, no response is required. To the extent a response is required, the allegations are denied.

7. To the extent the allegations in Paragraph 7 of the Complaint require a response, the allegations are denied.

8. The Defendant lacks the knowledge to admit or deny the allegations of this paragraph.

9. Denied, and Defendant demands strict proof thereof.

10. The allegations in Paragraph 10 of the Complaint seek a legal conclusion and, therefore, no response is required. To the extent a response is required, the allegations are denied.

11. To the extent the allegations in Paragraph 11 of the Complaint require a response, the allegations are denied.

12. Denied, and Defendant demands strict proof thereof.
13. To the extent the allegations in Paragraph 13 of the Complaint require a response, the allegations are
denied.


15. To the extent the allegations in Paragraph 15 of the Complaint require a response, the allegations are
denied.


17. Denied, and the Defendant demands strict proof thereof.


19. To the extent the allegations in Paragraph 19 of the Complaint require a response, the allegations
are denied.

20. Admitted.


22. Denied, and the Defendant demands strict proof thereof.

23. Each and every allegation in the Complaint not specifically admitted herein below, is denied

FIRST AFFIRMATIVE DEFENSE
(Sole Negligence of the Plaintiff)

i. Further answering the Complaint, the Defendants allege that any injuries or damages sustained by the Plaintiff were
due to and solely occasioned by the negligence of Sam Jones for consuming water he had actual or constructive
knowledge was harmful to his own health. Defendant pleads the sole negligence and sole recklessness of the
Plaintiff as a complete bar to this action.

SECOND AFFIRMATIVE DEFENSE
(Comparative Negligence – More than 50%)

ii. Further answering the Complaint, the Defendants allege that any injury and damage sustained by the Plaintiff was
caused by the negligence or willfulness of the Plaintiff combining, concurring, and contributing with the
negligence or willfulness, if any, on the part of the Defendant. Because the Plaintiff’s negligence or willfulness is
greater than the alleged negligence or willfulness of the Defendant, the Plaintiff is barred from recovery against the
Defendants.

THIRD AFFIRMATIVE DEFENSE
(Comparative Negligence – Less than 50%)

iii. Further answering the Complaint, the Defendant alleges that any injuries and damages sustained by the Plaintiff
were caused by the negligence or willfulness of the Plaintiff combining, concurring, and contributing with the
negligence or willfulness, if any, on the part of the Defendant. Therefore, the Court should reduce any recovery
awarded to the Plaintiff for the alleged injuries and damage based upon the percentage of negligence or
willfulness attributed to the Plaintiff.
FOURTH AFFIRMATIVE DEFENSE
(Assumption of the Risk)

iv. The Defendants allege that the Plaintiff assumed the risk of his/her ultimate injury by knowingly and voluntarily consuming water that may be harmful to his physical condition, and knew or should have known that such activity would likely result in significant injury to him/her, including death. The Defendant would further show that the death of Sam Jones should have been readily apparent based upon the warnings provided by the Defendant and that despite the apparent risk, Sam Jones voluntarily chose to take actions to place himself/herself in a position of potential danger, and the Defendant therefore pleads the Plaintiff’s assumption of the risk as a complete bar to Plaintiff’s recovery.

WHEREFORE, the Defendants prays for judgment from this Court in favor of the Defendants.

Michael Ross and Associates, PA

Mike Ross
Michael Ross, Esquire
Attorney for the Defendant Post Office Box 3423
Palm City, Florida 29200 (555) 777-0099

Palm City, Florida January 11, 2017
STIPULATIONS

The parties have stipulated to the following:

1. All sworn statements and exhibits are authentic. All witnesses are bound by their affidavits.

2. All witnesses are bound by the Statement of Stipulated Facts.

3. The parties stipulate that venue and jurisdiction is proper.

4. The parties stipulate that all conditions precedent have been fulfilled prior to filing this lawsuit.

5. This case is governed by the laws of the State of Florida. The parties are bound by the law set forth in the Jury Charges. The parties may not argue or present any statutory or case law other than what is cited in the case materials.

6. There are no defects in the pleadings. The Defendant has properly appeared and answered. The Court has jurisdiction over the parties.

7. All questions of fact are being submitted to the jury. Questions of law will be decided by the Court. No law may be argued other than what is contained in the Jury Charges in the Case Materials.

8. This case has been bifurcated. The only matter to be decided in this trial is liability. Damages will be decided at a later trial. The issue of entitlement to damages may be discussed, but **specific amount of damages shall not be discussed**.

9. All exhibits included in the Case Materials are authentic and are accurate copies of the originals. No objections to the authenticity of the exhibits will be entertained. The only exhibits to be used at the trial are those included in the case materials.

10. The signatures on the witness statements and all other documents are authentic and signed under oath by each witness.

11. No witness may be examined or cross-examined as to the contents of anything not included in the Case Materials. This includes, but is not limited to, information found on the internet, social media, books, magazines, and/or other publications.
WITNESS LIST

**Plaintiff:**
1. Jesse Jones
2. Oliver/Olivia Queen
3. Dr. Marcus/Marcia Welby

**Defense:**
1. Luke/Lucy Cage
2. Danny/Danielle Rand
3. Dr. Gregory/Gerta House

*Each team must call all three witnesses for their respective party.

**Witnesses may be male or female.

EXHIBIT LIST

Only the following physical evidence may be introduced at trial.

A. Notice from the Palm City Office of Public Utilities
B. The Palm City Times Article: Tap Water Advisory Issued
C. Palm City Office of Public Utilities: Pindia Population in the Water System
IN THE CIRCUIT COURT OF THE STATE OF FLORIDA
IN THE 25TH JUDICIAL CIRCUIT

JESSE JONES, on behalf of the

Estate of Sam Jones

Plaintiff

v.

THE CITY OF PALM CITY

Defendant

Case No: 16-54321

SWORN STATEMENT OF JESSE JONES

My name is Jesse Jones. I am forty-seven years old and I am currently Vice President of a consulting firm, Shannon and Totes, here in Palm City. My spouse, Terry, and I live in a quiet, suburban section of Palm City. Our children have all attended elementary and secondary schools in Palm City. I have three children: Tracey, age 17, James, age 14, and Sam, my oldest child, who would have turned 25 next month.

Sam was the light of my life. Terry and I were newlyweds barely out of college when we discovered that we were going to have a baby. At that time Terry was working only part-time and I was struggling at a small consulting firm. Somehow, we made it work. I had to work long hours during the week, but Terry and I made sure that we spent quality time with Sam on weekends. Because of our financial situation, Terry and I decided to wait to have more children until things changed. We focused on raising Sam, and for seven years he was our only child.

When Sam was about six, both Terry and I began to see a payoff in our hard work. I received a promotion and a significant increase in my salary. Since Sam was in school, Terry began to work longer hours. It was around this time that Terry and I had Tracey. When Tracey was born, Terry and I decided that it would not be fair for either one of us to have to sacrifice our promising careers. Therefore, we hired a babysitter to care for the children while we were at work. The children got along and performed very well in school.

Sam was extremely popular in high school and girls were always calling our house for him. Sam was a
varsity football and basketball player and a “B” student. He dated, but really had only two serious girlfriends while he was in high school.

When Sam was 16 years old, he developed some abdominal pains. At first, we thought it may be some food poisoning, but it became clear that the pain was something more serious so we took Sam to the hospital. The doctor told us his appendix burst, and would require immediate surgery. The doctors were quite concerned because he had lost so much blood. Before the surgery was over, Sam required two blood transfusions, and he survived the surgery. However, Sam just never seemed the same. In 2009, when Sam was 17, he sometimes appeared to be lethargic. I am anemic, which means I do not have enough iron in my blood. We all figured that was Sam's problem also. Sam went to the doctor to have his blood tested for anemia. The doctor suggested that since Sam did have a prior blood transfusion, in an abundance of caution, he should have his blood tested for HIV. The doctor said the risk of catching HIV from a blood transfusion is lower than the risk of getting killed by lightning. Sam agreed to be tested for HIV. Several weeks later, the doctor called Sam into the office to disclose the results of the test. When Sam came home from the doctor's office, I expected him to playfully complain about having to take iron tablets. Instead, I could tell by the look on his face that something was terribly wrong. Sam was anemic, but that, unfortunately, was the good news. When Sam told Terry and me that he was HIV positive, our world fell apart.

Looking back, we probably should have taken the family to counseling, but I suppose we felt that our family could overcome anything. We told Sam that we loved him and that we would give him all the support he needed. Once the news was out, Sam immediately lost his popularity. He was shunned by his so-called friends and teammates. Sam became reticent and introverted. He dropped off the athletic teams. However, Sam did maintain a B average. When he graduated from high school, he went off to Denoit University in Layhill, New York. He wanted to go to college somewhere far enough away that people didn't know him. We had limited contact with him after he left for college. He came home for holidays, but he was always very quiet, and he didn't really participate in family activities.

Sam graduated from college in 2014, at the age of 22, and got a job working for a newspaper in Palm City. In April of 2016, he was diagnosed with AIDS. He told us of his condition and he also told us that he was
quitting his job. We assumed that he wanted to travel the world or gain some other last chance life experiences.

Instead, Sam told us that he simply wanted to stay at home alone in his apartment. I was shocked. I insisted that he stay near us. We have a condominium, a one-room studio with a kitchenette, located about a block away from our house. Before offering it to Sam, we rented it out for $500 a month. Sam agreed to stay there so long as he could live alone. Despite everything, Sam always wanted to maintain his independence.

Sometime in June of 2016, Sam began to get closer to his friends and family. He went to the community play Tracey was in each of the three nights it ran. He attended James’ soccer games some Saturdays. Because he said that he needed private space, we rarely visited his apartment. Our last visit at Sam’s apartment was at the very end of July. He had lost weight, but aside from occasional weak spells, he really seemed just fine. In fact, during that last visit, Sam agreed to go with the family on a trip to Spain during winter vacation. I think that he was finally starting to come out of his shell.

I received a phone call from Danny/Danielle Rand, a counselor who worked at a local AIDS clinic. S/he called to tell me that Sam had stopped going to the clinic. Quite frankly I was happy. There were many times when Sam would come back from that clinic really depressed. I think that those people spent too much time talking about HIV and AIDS. I wanted Sam to concentrate on living and not on dying. Besides, Sam was taking renewed interest in his family, and that was all the support he needed.

It was the tap water that accelerated my son's death. I remember when this whole Pindia scare first occurred. Sometime during the fall of 2013, I remember seeing a report on water contamination on the news. I was nervous about the water's contamination because I was worried about my family’s health. The news report made it clear, however, that the water was safe for drinking. Since no one in the city was reported to have gotten sick from the water, I thought the "water scare" was just a political scare tactic until August of 2016, when I received the public notice in the mail. The notice said that drinking the tap water could make people with compromised immune systems, including but not limited to those with HIV or AIDS, very sick. I tried to call Sam and warn him, but the phone was busy and I was on my way to work. I had a lot on my mind that week. I was working on a huge proposal; I had to take James to a soccer championship in New York that weekend, and Tracey was at home with the flu. Then I completely forgot about the water report. I assumed that Sam heard
the report himself or that his doctor had told him. Anyway, I wasn’t worried because Sam always bought his water. When Sam was in college he became a health fanatic. He became a vegetarian and he said that he had decided to permanently switch over to bottled water because it tasted much better.

I am not sure whether Sam received or read the public notice. Although Sam received the Palm Times until his death, I doubt he saw the tap water advisory on the back page of the last section of the paper. This was front page news, not something to be hidden away in the community notices section of the paper that no one ever reads.

On September 13, 2016, I got the call that Sam had been taken to the hospital. We rushed over as soon as I heard just how sick Sam was. When we got to the hospital it was a horrible scene. Sam was hooked up to all of this equipment, and it was clear that he was not going to pull through. The doctors let the family in so that we could say our goodbyes, but Sam was unconscious at the time. I told him over and over how much we all loved him, but I will never know whether or not he heard me. I still can’t believe that my child is gone.

A week after Sam’s death, Dr. Welby told Terry and I that Sam’s death had been accelerated by a parasite in the tap water. I blame Palm City for the death of my son. They never should have allowed the water system to deteriorate to such a poor condition. If they had simply flushed the water system with chlorine, my son would be alive today! Moreover, the city did not take adequate steps to warn my son of the potential dangers of drinking the local tap water. It took valuable time away from Sam, and valuable time from my family that we could have spent with him for the remainder of his life.

Sworn and subscribed this 17th day of March 2017

Jesse Jones
IN THE CIRCUIT COURT OF THE STATE OF FLORIDA
IN THE 25TH JUDICIAL CIRCUIT

JESSE JONES, on behalf of the
Estate of Sam Jones

Case No: 16-54321

Plaintiff

v.

THE CITY OF PALM CITY

Defendant

SWORN STATEMENT OF OLIVER/OLIVIA QUEEN

My name is Oliver/Olivia Queen. I have worked for the Palm City Office Public Utilities department for about thirteen years now. I have a Bachelor’s of Science degree in Biology and a Master’s degree in Engineering. I am one of a team of about six public utilities employees that monitors the conditions of the city’s drinking water. I am the founder and president of the Palm City chapter of Nationalists Advocating Good Government (NAGG). NAGG is a national organization created by citizens concerned that their local and federal governments are doing little to protect their citizens. The organization has been in existence for seven years. I created the Palm City chapter five years ago, after running for a seat on Palm City Council. Today, there are sixty-eight active members of this chapter of NAGG.

I opened the local chapter of NAGG because I am concerned about the drinking water in Palm City. I want to be sure that these concerns get addressed one way or another. NAGG is concerned that the Palm City government ignores the needs of our citizens and instead focuses almost solely on politics and economics. The Palm City Research Institute claims to be interested in healthy drinking water, but its recommendations are weak. One of my campaign promises in my city council race was to cut off the city's funding for the Institute. With a limited city budget, we can't afford a research center.

The Federal Water Safety Advisory is a federal agency that monitors the safety of drinking water throughout the country. As a condition of granting the money to Palm City to conduct specialized tests for bacteria and parasites in the water system, the Federal Water Safety Advisory required a team of public
utility employees to take a week-long course taught by FWSA employees. Since I am one of the people who tests the water, I was selected to take this course. During the week, I learned various facts about Pindia including how to test for it, at which levels it becomes dangerous, and the symptoms and effects of ingesting large quantities of Pindia.

About two weeks after I completed the course, Palm City was approved by FWSA to receive funds to do a test for Pindia. On October 12, 2013, two weeks after the funding was approved, we tested the water for the presence of Pindia. When our findings were first reported, the Palm City Council was reluctant to do any increased monitoring of the water. However, our team of water testers presented a report about the potential health risks of Pindia if its levels become too high. On October 17, 2013, I recommended that the Council approve spending the money to flush the water pipes with chlorine as soon as the Pindia levels reached 250. That way, we could maintain control of the number of Pindia before it posed any health risk. This procedure costs about $600,000. Palm City Council Chair Luke/Lucy Cage discouraged council members from voting for this idea. S/he said that the bad taste of the water and the negative publicity that it would bring to the city would outweigh the positive effect of spending that much money for just a few people.

I was really upset by the council’s disregard for the health of its citizens. I thought that $600,000 was very little to pay to keep the citizens of this great city healthy. The next night I organized a NAGG meeting. The members of NAGG voted to focus on the government’s response to the Pindia issue. We felt that the response from our local council was inadequate. Instead of replacing water pipes or flushing them with chlorine, we were afraid that the council was going to wait until the situation became health threatening. From October 2013 through December 2013, the members of NAGG organized a city-wide educational campaign. We distributed flyers to citizens that stated that their local politicians were unconcerned about their health and more concerned about looking good to the public. NAGG also gave citizens the number of the Palm City Public Utilities Office and the information phone number for Palm City Council. We encouraged them to voice their concerns to their local politicians and to the public utilities office. The phone lines were flooded with concerned voting citizens.

After receiving this political pressure, Palm City Council realized that it had better pay attention to this
issue. Council members voted to increase the monitoring of the community water system from once to twice
per year. We were pleased with this small victory, but we were not satisfied. I suggested to NAGG that we
begin to write and call the Federal Water Safety Advisory about the problem. Because NAGG kept the
FWSA up to date on the problem, when the levels of Pindia began to reach health threatening levels, the
FWSA took action. It forced the city to issue a public advisory and to publish a warning in the newspaper.
The FWSA contacted the Office of Public Utilities, where I work, to write and send out the public advisory.
My supervisor had me write the language of the advisory.

Pindia was first discovered in the water system in October of 2013. After that, there was a clear upward
trend in the number of these parasites. It was not until September 1, 2016, almost three years later, that the
city flushed the pipes with chlorine. If it wasn’t for the efforts of my organization, NAGG, the city would
not have done anything. I hope the voters remember that the next time I run for a seat on Palm City Council!
Palm City tried to get by with fulfilling the bare minimum required by the FWSA, and look what
happened. The city claims that “only” 250 cases of reported illnesses were actually proven to be connected
to the tap water but that is still a lot of people!! Who knows how many more cases that went unreported or
misdiagnosed?!

Let’s not forget that Sam Jones was not the only person who died as a result of the Pindia in the drinking
water, there were two others that died as well. Perhaps three is an insignificant number to the politicians in
Palm City. All the victims were AIDS patients who were successfully surviving the effects of this
devastating disease until they drank water infested with Pindia.

Sworn and subscribed this 17th day of March 2017

 Oliver / Olivia Queen
Oliver/Olivia Queen
IN THE CIRCUIT COURT OF THE STATE OF FLORIDA
IN THE 25TH JUDICIAL CIRCUIT

JESSE JONES, on behalf of the
Estate of Sam Jones

Plaintiff

Case No: 16-54321

v.

THE CITY OF PALM CITY

Defendant

SWORN STATEMENT OF DR. MARCUS/MARCIA WELBY

My name is Dr. Marcus/Marcia Welby. I am head of the Department of Infectious Diseases at
Lincoln Presbyterian Hospital in Palm City. I received my medical degree from University of Palm City in
1991, and I also completed my residency in infectious diseases there. I have written a book on AIDS called
LIVING WITH AIDS. I specialize in infectious diseases, and for the past twelve years I have almost
exclusively treated HIV positive and AIDS patients.

Sam Jones' parents, Jesse and Terry, came to see me a little over two years ago. They said that their
son was HIV positive and that he was returning to the area after four years of college. They said that they
had heard that I was the best in my field and that they wanted to make sure that their son received the best
possible treatment for his condition. I made it very clear to the Joneses that my fee was rather high, but they
let me know in no uncertain terms that they would spare no expense in assuring that their son lived a life
that was as long and as healthy as possible. Over the last two and a half years, I have received approximately
$60,000 in payments from Mr. and Mrs. Jones. Today, I am being paid $2,000 to testify in court.

When Sam first came to see me in the summer of 2014, he had HIV, but he did not yet have full-
blown AIDS. HIV is the virus that breaks down the immune system. AIDS refers to a number of life-
threatening medical conditions that develop as a result of infection with HIV. In order to be diagnosed with
AIDS, the patient's T-lymphocyte helper cells (T-cells) count must fall below 200. The T-cells are
responsible for activating the immune system when your body has an infection. HIV destroys these cells so
that the immune system can’t fight off infections. Organisms such as yeasts, bacteria, and parasites that are usually kept at low levels by healthy immune systems can multiply and cause disease in an HIV infected individual. A healthy person’s T-cell count usually fluctuates between 600 and 1,600 T-cells in a cubic milliliter of blood. This count may fall below 600 for a variety of reasons, not all of which are related to HIV or AIDS. People with immune systems between 200 and 500 T-cell counts have some immune system protection but may develop minor infections. People with T-cell counts of 200 and below are severely immune-suppressed and are at high risk for developing life-threatening infections. When a HIV positive person’s T-cell count drop below 200, they are diagnosed with AIDS. When Sam first came to see me, his T-cell count would fluctuate between about 220 to 270. With the treatment I was providing we were able to maintain his T-cell count in that range for about two years.

Despite my vigorous treatment programs, Sam's luck changed in mid-April of 2016. At that time, Sam's T-cell count dropped to about 190. Sam officially had AIDS. When I gave Sam the news he was devastated. He kept asking me to tell him how long he had left. I made sure that he understood that even though he had AIDS, he could still maintain a healthy lifestyle for many years if he took care of himself. I told him that it was just very important that he took his medication, watched what he consumed, and avoided catching any illnesses that might weaken his immune system such as a cold, pneumonia or virus. Sam was young and in great physical shape. There was no reason to believe that he would not have lived many more years.

Sam caught pneumonia sometime at the end of May 2016. He was extremely sick and had to be hospitalized for about a week. I wanted to call his parents, but Sam told me that he would consider it a breach of doctor-patient confidentiality if I let them know how sick he was. I told him how foolish he was being, but I followed his wishes. Sam paid the hospital bills for this particular stay himself. By the time Sam got out of the hospital, his T-cell count was about ninety. I made sure that Sam came to my office or the hospital at least once or twice a week. In the beginning of July, however, Sam stopped coming to my office. I thought that perhaps he had switched doctors. I called him to see what was going on, but no one answered the phone. I also sent him notices reminding him to come visit. When I got no response, I assumed
that he had started seeing a doctor at an AIDS clinic he had once mentioned.

When the report on the Palm City water came out in the beginning of August, I notified most of my patients, by phone or during their visits, that they should either boil their tap water for a minute before consuming it, or that they should simply use bottled water. As I stated earlier, Sam did not answer the phone the two times my office tried to reach him, nor did he come in for his regularly scheduled visits. I knew that if he drank even a couple of glasses of the water, he could become extremely ill and could eventually die. Unfortunately, he was one of the few patients I could not reach.

On September 13, 2016, Sam was brought into the emergency room of Lincoln Presbyterian Hospital by an ambulance. He was extremely ill. Fortunately, I was on rotation at the time, and as his examining physician I was able to talk with him. I asked him a series of questions: whether he had been eating the foods I recommended, whether he had been taking his medicine, whether he had been avoiding exposure to conditions that could be detrimental to his weakened immune system, and whether he had been drinking purified water. He answered yes to all but the last question. I immediately requested that Sam's blood and stool be tested for a T-cell count and for the presence of Pindia. Sam had approximately 20 T-cells, and the tests came back positive for the presence of the parasite. I knew that in Sam's deteriorated condition, there was really nothing we could do for him except ease his pain. When his family arrived at the hospital, I explained the situation to them. Sam was unconscious at this time, due to a combination of the pain-killing drugs we had administered earlier and his impending demise. I could see the pain Sam's family was experiencing as they said their goodbyes to his unconscious body. Sam died three days later on September 16, 2016. After Sam's autopsy, I received a pathologist's report suggesting that Sam's death had likely been accelerated by the presence of Pindia.

In a healthy person the immune system prevents the Pindia parasite from having any permanent effect on the body. Usually, a healthy person will not be affected by Pindia. In the most severe cases, a normally healthy person will experience upset stomach, nausea, and watery diarrhea. But in the majority of cases, the immune system prevents the parasite from having any noticeable effect at all and the parasite is flushed out of the system within two weeks after being ingested.
The public health monitoring of outbreaks of Pindia infection is difficult for at least four reasons. First, many physicians are not aware that the diarrhea and other symptoms are from Pindia and not the flu, stomach virus or some other cause. Second, laboratories where samples are sent often do not test for Pindia when a doctor wants a stool sample tested for parasites. Third, few states include pindiatosis as a reportable condition. Fourth, as a result, there may have been many more outbreaks of pindiatosis than were reported.

When Sam was brought into the hospital, his T-cell count was in the low double digits. In other words, he had no protection from the parasite in his system. The parasite had free access to ravage his already weakened immune system. The introduction of this parasite into his body ultimately resulted in Sam's death.

Had Sam not consumed the Palm City tap water, he may have lived a longer life. It is impossible to say exactly how long. This would depend on whether he was exposed to any attack on his immune system and many other factors. The key for Sam was to avoid infections or any other attack on his immune system. However, near the time of his death, Sam’s immune system's defenses were virtually non-existent. Any attack on his immune system probably would have killed him.

Sworn and subscribed this 17th day of March 2017

Dr. Marcus/Marcia Welby
Dr. Marcus/Marcia Welby
IN THE CIRCUIT COURT OF THE STATE OF FLORIDA
IN THE 25TH JUDICIAL CIRCUIT

JESSE JONES, on behalf of the
Estate of Sam Jones

Case No: 16-54321

Plaintiff

v.

THE CITY OF PALM CITY

Defendant

SWORN STATEMENT OF LUKE/LUCY CAGE

My name is Luke/Lucy Cage and I have served as chair of the Palm City Council for five years. I am a resident of Palm City and I have been so for all forty-three years of my life. As a resident of Palm City, and the Chair of its Council, my primary concern has always been the well-being of the citizens of Palm City. I am deeply saddened for the Jones family's loss and my sympathies are with them. However, this tragedy is most definitely not Palm City's fault. Palm City took every reasonable precaution to prevent such a tragedy from occurring. Instead it is one person's unique vulnerabilities, and his failure to pay heed to numerous warnings, that has resulted in this misfortune.

In October 2013, as part of its annual survey, Palm City Public Utilities decided to use a new screening procedure to more accurately detect bacteria and parasites in the drinking water. We received special funding, a one-time contribution of $200,000, for this process from the federal government as part of a national survey on drinking water. As a result of using this procedure, Palm City Public Utilities detected the presence of the Pindia parasite in the Palm City’s water system.

The Palm City Council immediately consulted experts as to the significance of this information. We were told that Pindia parasites are found in many water systems throughout the country. Its presence is not a health problem unless its number goes above 300 Pindia per gallon of water. At this time, our levels were only half that, so we were not alarmed. However, we reported these findings in a statement issued to the media, because the members of Palm City Council believe in keeping the citizens well-informed. As a result of the statement we
issued and the overzealousness of an organization called NAGG, there was a huge uproar. Over seven thousand citizens flooded the Palm City Public Utilities Office with concerned questions, despite the fact that we had assured them in our statement that the water was completely safe for drinking. The numerous phone calls we received slowed down the normal functions of the Palm City Public Utilities office and ultimately cost the city over one hundred thousand dollars. This was quite a blow to our already financially weak city.

Because of the discovery of Pindia in our water, on October 30, 2013, the Council voted to increase the monitoring of the community water system to twice rather than once per year. Unfortunately, we could not receive any more federal funds for this process and were forced to dip into the city’s treasury. Although the increased monitoring of the water cost us $400,000 per year, the members of the Council agreed that the safety of our citizens was our first priority. The inspections revealed a small but steady increase in the levels of the Pindia parasite. This increase was largely due to the fact that the pipes through which the water runs were old and deteriorating. Unfortunately, Palm City did not, and still does not have the 100 million dollars necessary to replace the entire water pipe system.

In April 2014, the Council debated flushing the pipes with chlorine to kill the parasite. We decided not to do so because the parasite levels were still not threatening, and the chlorine would have made the water taste like a swimming pool. Also, without replacing the water pipes, the chlorine would be a temporary solution. It would cost us $600,000 a year to treat the entire water system with chlorine, and we would have had to go through this procedure every year. Therefore, flushing the pipes with chlorine at that time would have been an unnecessary expense that would have resulted in endless complaints. Additionally, we were aware that once the community realized that the pipes were being flushed with chlorine, they might wrongly suspect that the problem was far more dangerous than it actually was. We wanted to avoid unnecessary panic.

The Council’s decision not to add chlorine to the water was made during our yearly budget meeting. We had no extra or surplus funds to spend. Most council members were elected after promising no new taxes. Some had promised to reduce taxes. City revenues were 10% lower than expected in 2014 and 2015, so we had to make cuts in education, welfare benefits, and other health services. We did approve $7 million for a new sports arena, but that will bring in revenue, create many jobs, and will bring in millions of dollars of increased economic
development.

It was Oliver/Olivia Queen who brought the federal authorities into this matter. Queen is still upset over the fact that s/he was not elected to city council. Queen has been out to discredit the city council ever since the election. S/he is using the water situation to make a big name in politics. Queen brought the situation to the attention of the Federal Water Safety Advisory (FWSA). The FWSA began monitoring the Pindia levels on June 1, 2016. They concluded that Pindia population was increasing at a rapid rate, due to pipe deterioration. By the end of July 2016 the levels of Pindia were at 400 per gallon. The FWSA told us that this level was above the threshold, but that the water was still safe for the general population to drink. The FWSA also said that people with suppressed immune systems might experience a range of ill effects from drinking the water, ranging from mild discomfort to death. However, the FWSA emphasized that death was a very minute possibility. On July 29, 2016 the FWSA also required that we send a written public notice to all residents of Palm City and publish the report in the local newspaper.

There was one section of pipe that was particularly deteriorated and which had been the major cause of the increase in the Pindia population. On July 31, 2016, we received emergency federal funding of five million dollars to replace that section of pipe. By the time all of the pipe replacement work was finished on August 15, 2016, the number of parasites in the water had leveled off at 400. The population increase had slowed down considerably.

The Palm City Council eagerly obliged with all federal requirements. We immediately put together a public advisory, which was sent to every Palm City resident on August 1, 2016. The same day, we also published the notice in the community events section of The Palm City Times, the local newspaper. We didn't push for a front-page story because we did not want the community to panic about the situation. Making this report front page news would lead the community to believe that the problem was far more serious than it actually was. However, we did use the same language in the newspaper notice that was used in the Palm City public advisory issued to all Palm City residents. Despite the fact that we knew death was highly improbable, we emphasized "fatality" as a possibility in both written statements.

On August 15, 2016, the Council had an emergency meeting to decide how to further deal with the water
crisis. We decided to flush the pipes with chlorine, at a cost of $600,000. This process was initiated on September 1 and by September 15, 2016 the Pindia levels were at 278 Pindia per gallon. We were obviously concerned with the health of our residents, but we really did not think that anyone would die as a result of consuming the water. The only period of time I stopped drinking the Palm City tap water was when the pipes were being flushed with chlorine. I hated the taste. However, before then I drank water from the tap, and so did my family. If I had any reason to think that this water was dangerous, I certainly would not have allowed my spouse and two young children to drink the water.

The city residents reacted quite strongly, first to the advisory, and later, to the flushing of the water system with chlorine. Once again, the Office of Public Utilities was flooded with calls, about 700 in all (the Office of Public Utilities keeps records of public contacts). My Council colleagues and I were also barraged with calls from residents, whose reactions included anger, confusion, and concern. In all, about 1,300 calls were received by the Council. About 80% of the callers to the Office of Public Utilities and the Council were concerned about high levels of Pindia, and demanded safer water. However, the other 20% called to say that they did not want chlorine in the water.

Even the hospitals were hit by the panic. People who experienced any physical discomfort were rushing to the local hospitals, certain that they were sick from ingesting the parasite. There were only 250 cases that were actually confirmed to have been connected to the tap water. I think that of the 300,000 people who drink Palm City water every day, 250 illnesses are a relatively small number. Most of these 250 people experienced only stomach cramps and/or diarrhea, but nothing serious. Sam Jones, of course, was one of three people whose deaths were connected to the drinking of the tap water. However, all three of these people had AIDS, were already in severely weakened physical states, and very close to death.

I am saddened for their families and loved ones. The Palm City Council took every reasonable precaution to protect the community. In fact, we went far beyond the call of duty to keep our citizens safe and well-informed. I am very sorry that Sam died, but it was certainly not due to any lack of vigilance on our part. Palm City should
not be held responsible for an unreasonable ignorance of, or disregard for, publicized notices.

Sworn and subscribed this 17th
day of March 2017

Luke/Lucy Cage
Luke/Lucy Cage
My name is Danny/Danielle Rand. I am twenty five years old, and I am a volunteer peer counselor at "House of Friends," an AIDS clinic located in Palm City. I am HIV positive, and I have been working at this clinic since I was first diagnosed HIV positive at age eighteen. I lead support groups three times a week, one daytime session and two evening sessions. In making this statement, I have struggled with whether I am violating Sam’s confidentiality. However, my testimony is general common knowledge around the clinic. Also, I am not a professional therapist.

I first met Sam Jones in the summer of 2014. He had just moved back to the area after having spent the last four years in college somewhere in New York. He said that he lived in the neighborhood, and that he had passed the clinic several times before. I told him how happy I was that he came to the clinic, and I tried to make him as comfortable as possible. He was tense at first, but then he warmed up to me. Sam told me that he was HIV positive and that he really needed someone to talk to. I invited him to our counseling sessions and I told him that he should also take advantage of our government-subsidized medical care. He agreed to come to counseling, but he told me that he had ample medical coverage from his job.

For the first few weeks that Sam started coming to support groups, he did not participate in the discussions at all. I wasn't concerned, because that is normal behavior for a newcomer to the group. Even though Sam was silent, it seemed as though he was deeply affected by the discussions. I noticed that his eyes would mist up when people would discuss their families' reactions to the disease and how their lives have changed since
contracting HIV.

A few weeks later, Sam started sharing his own background during these counseling sessions. He told us that he was a real star before contracting HIV. He was a good student, a star athlete, and incredibly popular. He also told us that he was a very lonely kid back then. He said that his parents became really absorbed in their careers and then attempted to overcompensate by giving him material things. He said that he tried to get the attention he needed from home from his classmates, by scoring big on the field and being popular. He said that his whole identity was tied up in this superficial popularity. When everyone found out he was HIV positive, he not only lost his popularity, but he also lost his sense of identity. Sam told us that he tried to "find himself" in New York, but he just ended up becoming more confused and withdrawn. He said that it was hard for him to face the fact that he was sentenced to death.

All of the members of the group, myself included, worked to improve Sam's sense of self-worth. We let him know that he could still live a fulfilling life with HIV. I think that he was comforted by the fact that a couple of HIV positive people in the group had lived with HIV for over ten years without contracting AIDS. Sam's attitude really began to improve. He started talking more about his future, and he made several friends in the clinic.

When Sam was diagnosed with AIDS in April 2016, his new positive outlook on life did a complete turnaround. He quit his job at the newspaper, and he seldom came to the clinic. I tried to talk to Sam when he did come to the clinic. I told him that with today’s drugs, even people with full-blown AIDS can live for many years with the disease. I suggested that he keep coming to group counseling, but I also recommended private professional therapy to get him through this. Sam said that he could not afford private therapy. I suggested that Sam ask his parents for help. He refused. He said that it was hard enough for his parents to deal with his disease, and he didn’t want to add to their worries by telling them he needed therapy. I suggested that he bring his parents into the clinic so that we could explain the disease to them. Sam just smiled sadly and said "Yeah, right."

When Sam left the clinic that day, I knew that he was going downhill. He had completely cut himself off from all the friends he had made in the clinic. I asked him what was going on, and he said that he just couldn't
stand being around death. By the end of July, Sam had almost completely stopped coming to the clinic. The couple of times he did come, it seemed that he was there more for medical exams than for counseling. Sam said that he usually used a private doctor that his parents paid for. He came for treatment at the clinic occasionally, because he didn't want his parents to know how frequently he had to go to the doctor. He said that they would "freak out."

The beginning of August was about the time when the city issued an advisory about the hazards of the drinking water. We made sure that everyone who worked in and visited the clinic was aware of the potential hazards of drinking Palm City tap water. Although the city had issued an advisory and published a notice in the paper, we thought that the language in both of these items may have been difficult for the average person to understand. Therefore, we also created and posted fliers in the clinic about water safety. These fliers were pretty easy to spot and the language on them was simple. They were bright red and measured about 12"x 24". Since Sam hadn't been coming to the clinic, I tried to call him several times at his apartment to make sure he was up on the news. No one ever answered.

When no one answered the phone at Sam's house, I decided to call Sam's parents. I had their number because the patients at the clinic usually leave a number to call in case of emergency. When I called Sam's house, Jesse Jones answered. When I told him/her that Sam had stopped coming to clinic, s/he told me that s/he was glad. S/he said that it was about time Sam stop hanging around the dying and come back to live in the land of the living with "normal people". It was no wonder Sam was so depressed and confused. When I told Mr./Mrs. Jones how worried I was about Sam, s/he said in a cold tone, "I appreciate your concern, but Sam is my child, my concern, and I will take care of him." S/he told me that s/he had just visited Sam and he was perfectly alright. Then s/he cut me off in mid-sentence. "Good-bye," s/he said and hung up. I also couldn't go to Sam's apartment or send him a letter, because he left only his phone number, and not his address with the clinic. He was unlisted in the phone book and no one in the clinic had ever visited his apartment. Therefore, I just waited and hoped that Sam would come back to the clinic.

Sam did come back to clinic once in late August. Unfortunately, I was on vacation the week that he came. No one remembers whether or not Sam was told about the water situation. By mid-August everyone pretty
much assumed that everyone who visited the clinic was aware of the situation. When the news about the water was first reported, we had talked about it endlessly. We really went on a strong campaign to educate the HIV/AIDS community about the necessity of drinking purified water.

One thing I am sure of is that we kept the posters about tap water safety posted. Those posters were definitely up when Sam came into the clinic. It is possible that he didn't notice or read the posters. It is possible that he read the poster or already knew about the water situation, but that he just didn't want to fight to live anymore.

Sworn and subscribed this 17th day of March 2017

Danny / Danielle Rand

Danny/Danielle Rand
SWORN STATEMENT OF DR. GREGORY/GRETA HOUSE

My name is Gregory/Greta House. I am currently the Chair of the Biology Department of Palm City Research Institute. This is a research center funded by Palm City. I have a Ph.D. degree in biology from the University of Northern Maryland. I am a specialist in parasitology, a branch of biology dealing with parasites. I have been studying parasites that live in water for ten years now. One of the parasites I have studied is the Pindia parasite. This parasite lives in an aquatic environment and feeds on almost any organic material. I have written two articles on this parasite: *New Breakthroughs in Pindia Research*, and *Pindia: The Hidden Threat to Our Tap Water*. Both of these articles appeared in the *Journal of Drinking Water Safety*, the leading research publication on the topic of drinking water.

The Palm City water system is a perfect place for the Pindia parasite to thrive and flourish. The water system is over 75 years old and its pipes are decaying. The deterioration of the pipes provides places for organic material to build up. This organic material is food for the Pindia parasite to consume. As the deterioration increased, so did the food source for these parasites. As a result, the Pindia population rose with the increased deterioration of the pipes.

When Palm City first detected the presence of the parasite in the water system back in 2013, I was very pleased that the city immediately hired me as a consultant. After testing the content of the parasites in the water, I informed the city officials that the number of parasites was too small to cause concern. However, I also advised them that the levels of water should be monitored for any further increase in the Pindia levels. Current
techniques to detect Pindia in water are expensive and difficult to perform. Water samples are collected in special filters from all parts of the city. The filters are taken apart and their contents separated and studied in various ways. The whole process takes about a week and each test costs $200,000. As a result, water utilities do not routinely test for the parasite.

Based on my recommendations, the City Council promptly voted to monitor the water system for any increase in the parasite numbers on a regular basis, every six months. My institute does not conduct these tests, but we are paid to review the tests and check their accuracy and reliability. For scientific reliability, it is important for an independent institute like our Palm City Institute to check the results of the city labs.

Incidentally, I resent the attacks made on the Palm City Institute by Oliver/Olivia Queen in the city council race. The Institute gives status to Palm City and jobs to its residents. It's no surprise that Oliver/Olivia Queen lost the election, considering the extreme positions Queen took.

When the Palm City Council first approached me, I informed them that the public health effects of low levels of Pindia in treated water are unknown. However, I did inform the Council that once levels of the parasite reached 300 per gallon of water, a few members of the population might get Pindiatosis, an infection caused by Pindia. I explained that in people with normal immune systems, Pindiatosis remains in the body for only one to two weeks. The symptoms of this disease are: watery diarrhea associated with abdominal cramping, nausea, vomiting and fever. However, even at 300 parasites per gallon, very few members of the community would become ill. At levels of about 300 - 700 parasite per gallon, only those with weak and/or vulnerable immune systems are at risk. For these people, the effects of Pindia can be ongoing and life-threatening. For them, there is no effective treatment for infection.

Pindia levels can be controlled. The most cost-efficient way to dispose of the parasite would be to flush the pipes with chlorine. Unfortunately, chlorine affects the taste of the water, and, similar to the effects of the parasite, it can result in upset stomachs, nausea and diarrhea. On the other hand, chlorine would not adversely affect those with weak immune systems. It is clear that the Council had to weigh the potential effects of using chlorine against allowing the parasite to remain present in the water system. If the parasite levels remained below 300, it would not make sense to flush the water system with chlorine because the effects of the chlorine
would equal to, if not worse than that of the parasite.

Palm City vigilantly monitored the Pindia levels in the water. Unfortunately, deterioration of the water pipes caused the parasite to multiply at rates higher than anyone anticipated. Throughout this whole episode, the city council has acted very responsibly. They immediately educated themselves on the issue and have vigilantly monitored the levels of Pindia since its discovery in the tap water, even though it has cost the city well over a half million dollars. I think that the Palm City Council reacted responsibly to the Pindia problem. They made well thought-out decisions in the best interest of the city.

Other cities similar to Palm City in size, population and age of water systems, have acted similarly. For example, the City of Harbor Run monitors its water system four times each year, after it flushes its system with chlorine. Palm City flushes its water system every four months and monitors its water system shortly after each chlorine treatment. Since testing began in 2013, the Pindia level in each of those cities never exceeded 200 parts per gallon of water, according to the most recent Journal of Drinking Water Safety article on the subject.

Sworn and subscribed this 17th day of March 2017

Dr. Gregory/Greta House
Dr. Gregory/Greta House
Dear Customer:

**IMPORTANT NOTICE PLEASE READ!!!**

Water quality monitoring in June and July of 2016 has detected the Pindia parasite in the Palm City drinking water system in excess of the threshold level established by the Federal Water Safety Advisory. In accordance with federal law, the Office of Public Utilities is required to publish a notice in the newspaper and advise Palm City residents by mail.

Pindia parasites are ordinarily found in many water distribution systems and are characteristically found in older water distribution system. Pindia are generally not harmful and are naturally present in the environment. The Federal Water Safety Advisory sets national drinking water quality standards and has determined that the increased presence of Pindia in the Palm City water system is a possible health concern for some and a serious health concern for a few.

 Peoples with suppressed immune systems (for example, HIV, AIDS, transplant patients) are particularly susceptible to ill effects from drinking Palm City tap water. Ingestion of the water may lead to diarrhea, cramps, nausea and possibly jaundice, headaches and fatigue. In a very small minority of cases, the effects of the drinking water on a susceptible party may be fatal.

Palm City and the Federal Water Safety Advisory remind Palm City residents that no water system, public or private, can provide completely sterile drinking water. Residents with suppressed immune systems should contact their physicians immediately for health advice on measures to protect themselves. These measures could include boiling water for at least one minute before drinking, using bottled water, or using home treatment devices for extra protection. If these people are not taking such measures, they should avoid consumption of the water until the total Pindia violation has been addressed. All customers, however, may use tap water for domestic uses that do not involve its consumption.

Palm City is taking immediate action to remedy this unfortunate situation and will issue additional public notices if necessary. This public notice and all others will be issued to health providers that care for the residents in this area.
Tap Water Advisory Issued

Aug. 1, 2016 Palm City. The Council of Palm City met July 30, 2016 in a special session to discuss the recent findings of the Federal Water Safety Advisory. The FWSA sets national drinking water quality standards. In monitoring the Palm City drinking water system this summer, the FWSA has discovered the presence of a parasite known as Pindia.

Pindia, ordinarily found in many water distribution systems, particularly older systems, is said to be only a possible health concern for some and a serious health concern for a few. The FWSA advises that people with suppressed immune systems (HIV, AIDS, transplant patients) take the following measures to protect themselves: 1) boil water for at least one minute before drinking 2) use bottled water or 3) use home treatment devices for extra protection. They should avoid consumption of the water until the Pindia violation has been addressed.

The Office of the Director of Public Utilities has already issued one public notice. Palm City is taking immediate action to remedy this unfortunate situation and will issue additional public notices if necessary.

Library Closing

Palm City Public Library will be closed on Friday, August 2, and Saturday, August 3, to complete renovations. It will reopen on Monday, August 5.

Fire Safety Week

The Palm City Volunteer Fire Department will be conducting a series of seminars about home fire safety. Information will be provided on smoke alarm testing and fire extinguisher use just to start. For more information, call John Doe at (324) 555-1221.

Community Labor Day Picnic

The annual Labor Day Picnic will be held on Saturday, August 31, 2016 at the Palm City Fairgrounds. This year’s activities will include an egg toss, potato sack races, arcade games, a karaoke hour, and food, food, food! If you are interested in assisting with food preparation, or directing activities, please call Mrs. Jane Smith at (333) 555-3996.
Palm City Office of Public Utilities

Pindia Population in Water System

DATE (MONTH & YEAR)

# OF PARASITES PER GALLON

APPLICABLE LAW

Florida Standards Governing Negligence Actions

(A) To support a finding of negligence, a plaintiff must prove by a preponderance of the evidence that:

i) defendant owed plaintiff a duty of care;

ii) defendant breached that duty:

iii) defendant’s breach caused plaintiff’s injuries; and

iv) plaintiff suffered damages as a result.

(B) Comparative Negligence: In a negligence action, to assess damages, the finder of fact must:

i) Determine the percentage of fault attributable to each party; and

ii) Reduce the amount of the damages due the plaintiff by the percentage of fault attributed to the plaintiff.

iii) In an action for damages brought by any representative of an estate, who is also a parent of the deceased, the actions of both the deceased and the parent must be considered when applying the comparative negligence provisions.

Standard Governing Product Liability Actions

(A) Providers of products sold to the public may be held strictly liable for any injuries or harm caused by that product regardless of fault or intent of the seller of the product.

(B) To support a finding of strict liability, the plaintiff must prove by a preponderance of evidence that:

i) a product is unreasonably dangerous and

ii) a less dangerous alternative or modification was economically practical.

(C) A product is unreasonably dangerous if, at the time of sale, the product in its design and/or manufacture is dangerous beyond the expectation of the ordinary consumer.

(D) A plaintiff's failure to discover or guard against an unreasonably dangerous product is no defense to strict liability in this section. However, such a failure on the part of the plaintiff may reduce his or her recovery.
JURY INSTRUCTIONS

The Court hereby approves the following preliminary jury instructions in the above-captioned case. It notes the presentation of evidence at trial may warrant additional instructions, and it will consider those instructions at a later date.

A. Bifurcated Trial

The parties agree that the only issue to be decided is liability. If liability is found, the parties agree to have a separate hearing to decide damages. This means that you will decide only the liability in this trial, and you are not to consider the amount of award, if any.

B. The Jury: Finders of the Facts

Under our Constitution and Code of Laws, only you – the jury – can make the findings of fact in this case. I am not permitted to tell you how I feel about the evidence which has been presented. And, throughout this trial, I have intended to be fair and impartial toward each of the parties involved.

To determine the facts in this case, you will have to evaluate the credibility – or believability of witnesses. You are the sole judges of the credibility of the witnesses, and, in passing upon their credibility, you may take into consideration many things, such as:

1. How would you describe the appearance and manner of the witness on the stand, sometimes referred to as the demeanor of the witness?
2. Was the witness forthright or hesitant?
3. Was the witness' testimony consistent, or did it contain discrepancies?
4. What was the ability of the witness to know the facts about which he or she testified?
5. Did the witness have a cause or a reason to be biased and prejudiced in favor of the testimony he or she gave?
6. Was the testimony of the witness corroborated or made stronger by other testimony and evidence, or was it made weaker or impeached by such other testimony and evidence?

You can believe as much or as little of each witness' testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses – or just the opposite.

Of course, you do not determine the truth merely by counting the number of witnesses presented by each side. Throughout this process you have but one objective – to seek the truth, regardless of its source.

C. Circumstantial Evidence

There are two types of evidence generally presented during a trial – direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact in issue. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in the case in arriving at a verdict.

D. The Judge: Instructor of the Law

The same Constitution and laws which designate and make you the finders of the facts also make me the
instructor of the law. You must accept the law as I give it to you. If I am wrong, there is another place and time for that error to be corrected. But for now, you must accept the law as I give it to you – and I caution you that it does not mean what you think the law should be, but what I tell you it is.

E. Elements of a Cause of Action

To state a cause of action against a Defendant, the law requires a Plaintiff to set out in his or her complaint the essential claims which make up that Cause of Action. In his or her complaint, the Plaintiff in this action has set forth the essential claims of each cause of action, each of which is denied by the Defendant.

F. Defenses

In the Answer to the Plaintiff's Complaint, the Defendant has set forth various defenses.

The first defense is what is called a qualified general denial. By this defense, the Defendant admits the truthfulness of certain claims – such as the time and date of the occurrence – but denies each and every claim that would make the Defendant responsible for the Plaintiff's injuries. By doing this, the Defendant is placing upon the Plaintiff the burden of proving those necessary elements I told you about earlier.

In addition to this qualified general denial, the Defendant puts forth defenses to the particular Causes of Action. Those will be discussed with the specific Causes of Action.

G. Burden of Proof

The Plaintiff has the burden of proof on his or her cause of action. He or she must meet this burden by proving his or her claims by the preponderance – or the greater weight – of the evidence. So, what do we mean by the greater weight of the evidence? Simply this, imagine a traditional set of scales. When the case begins, the scales are even. After all the evidence has been presented, if the scales remain even or if they tip – ever so slightly – in favor of the other side, then the proponents will have failed to meet the burden of proof, and your verdict should be for the other side.

If, on the other hand, the scales tip – no matter how slightly – in favor of the proponents, then they will have met the burden of proof, and your verdict would be for the proponents.

Of course, there is no way to weigh evidence, except through the exercise of your good common sense and judgment. It is entirely a mental process – and the evidence you should give the most weight to is that which convinces you of its truth, regardless of the source from which it comes.

H. Impartial Jury

You have been sworn to give all parties in this case a fair and impartial trial, and when you have done so, you will have complied with your oath, and no one will have a right to criticize your verdict. You must not be influenced by opinions or expressions of opinion you may have heard outside of this courtroom, but rather should base your verdict only on the testimony of the sworn witnesses who took the stand, along with the other evidence.

You must not be swayed by caprice, passion, prejudice or improper sympathy for or against any of the parties in this case. Remember, you have no friends to reward or enemies to punish, and all parties are entitled to a fair and impartial trial at your hands.

I. The Elements of Negligence

This is an action in which the Plaintiff claims that has suffered injuries to his or her person for which the Defendant is responsible in damages.

There are three essential elements of the Plaintiff's cause of action. They are denied by the Defendant's answer.
Since the Plaintiff initiated and brought this lawsuit against the Defendant, the burden of proof is upon him or her to establish all three by the greater weight or preponderance of the evidence:

(1) That the Defendant was negligent or careless and/or reckless, or willful;

(2) That the Plaintiff was injured or damaged on his or her person or property or both; and

(3) That the Defendant's negligence or carelessness and/or recklessness, or willfulness, was the proximate cause of the Plaintiff's injuries.

J. Element – Negligence

What is negligence? Negligence is defined in the law as the absence of due care – the want or lack of due care or ordinary care. The word carelessness conveys the same idea as negligence. Those two terms are synonymous. Negligence is the breach of a duty of care owed to the plaintiff by the defendant. Negligence is the failure, by omission or commission, to exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or the failure to do what a person of ordinary prudence would have done under similar circumstances.

In determining whether a particular act is negligent, the test you apply is what a person of ordinary reason and prudence would do under those circumstances at that time and place.

It is incumbent upon the Plaintiff to prove that the Defendant was negligent in one or more of the particulars as alleged in the complaint. It is not required that the Plaintiff prove them all, but it is absolutely essential that the Plaintiff prove at least one. Otherwise, you would be required to find a verdict for the Defendant.

Negligence is a fact which, like any other fact in the case, must be proved. The mere happening of an accident, or the filing of a complaint, or the fact that damages have been sustained, raises no presumption of negligence. A surmise or conjecture that the defendant was negligent is not evidence thereof. The bare fact that an innocent party sustained injury or damage does not place any responsibility on another party unless you find that there was some act of negligence on the part of that party which caused the injury or damage.

If you find that the Plaintiff has proved the Defendant was negligent [and/or reckless, and/or willful], then your next inquiry would be whether the Plaintiff has proved that such negligence was the proximate cause of the injury or damage. Negligence is not actionable unless it proximately causes the Plaintiff's injuries. A Plaintiff may only recover for injuries proximately caused by the Defendant's negligence.

K. Element – Proximate Cause

Negligence is not actionable unless it proximately causes the Plaintiff's injuries. Proximate cause is the efficient or direct cause of an injury.

Proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the Plaintiff's injury would not have occurred “but for” the Defendant's negligence. Legal cause is proved by establishing foreseeability.

The touchstone of proximate cause in Florida is foreseeability. That is, foreseeability of some injury from a negligent act or omission is a prerequisite to its being a proximate cause of the injury for which recovery is sought. The test of foreseeability is whether some injury to another is the natural and probable consequence of the complained of act. The Defendant may be held liable for anything which appears to have been a natural and probable consequence of his or her negligence.

For an act to be a proximate cause of the injury, the injury must be a foreseeable consequence of the act. Foreseeability is not determined from hindsight, but rather from the Defendant's perspective at the time of the complained of act.

The law requires only reasonable foresight. When the injury complained of is not reasonably foreseeable in the exercise of due care, there is no liability. It is not necessary for a Plaintiff to demonstrate that the Defendant should
have foreseen the particular event which occurred but merely that the Defendant should have foreseen his or her negligence would probably cause injury to someone. Negligent conduct is the proximate cause of injury if that injury is within the scope of the foreseeable risks of the negligence.

While it is not necessary that the Defendant must have contemplated or could have anticipated the particular event which occurred, liability cannot rest on mere possibilities. The Defendant cannot be charged with that which is unpredictable or that which could not be expected to happen. A Plaintiff therefore proves legal cause by establishing that the injury in question occurred as a natural and probable consequence of the Defendant's negligence. In determining whether a consequence is one that is natural and probable, the Defendant's conduct must be viewed in the light of the attendant circumstances.

Proximate cause does not mean the sole cause. The Defendant's conduct can be a proximate cause if it was at least one of the direct, concurring causes of the injury.

The law defines proximate cause of an injury to be something that produces a natural chain of events which, in the end, brings about the injury. In other words, proximate cause is the direct cause, without which the injury would not have occurred. If the accident would have happened as a natural and probable consequence, even in the absence of the alleged breach, then the Plaintiff has failed to demonstrate proximate cause.

Further, where the cause of the Plaintiff's injury may be as reasonably attributed to an act for which the Defendant is not liable as to one for which he or she is liable, the Plaintiff has failed to carry the burden of establishing that his or her injuries were the proximate result of the Defendant's negligence.

L. Comparative Negligence – General Verdict Charge

Comparative negligence is the law in Florida. Under the doctrine of comparative negligence, the Plaintiff's negligence does not automatically bar recovery unless such negligence exceeds that of the Defendant. A Plaintiff in a negligence action may recover damages if his negligence is not greater than that of the Defendant. The amount of the Plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence.

You, the jury, must apportion fault between the Plaintiff and the Defendant in a negligence action. The Plaintiff may recover damages when his negligence is not greater than that of the Defendant. The Plaintiff's damages, however, are reduced in proportion to the amount of his or her negligence.

One of the Defenses interposed by the Defendant is that of comparative negligence. A Defendant, by his or her defense, in essence says this: Even if the jury should find that I was at fault, the Plaintiff was more at fault than I was and the fault of each of us combined and concurred with that of the other to act as the proximate cause of the accident and, without which, the accident would not have happened. In other words, it required the fault of each of us for the accident to have happened, but the Plaintiff was more at fault than I was.

The Plaintiff has the burden of proving the negligence and fault, if any, of a Defendant. A Defendant has the burden of proving the negligence and fault, if any, of the Plaintiff and the degree of such.

Where negligence has been established on the part of both the Defendant and the Plaintiff, then you must weigh or compare the respective contributions of each person to the occurrence. Considering the conduct of each person involved as a whole, you must determine whether one made a larger contribution than the other. In making this comparison, the degree of negligence attributable to a party is not to be measured solely by the character thereof, nor solely by the number of respects in which he is found to have been at fault. It is the conduct of a party considered as a whole which must be determined. That is to say, once it has been established that each has been at fault, it is then the jury's function to weigh their respective contributions to the result, which will, regardless of the nature of their acts or omissions, determine who made the larger contribution and to what extent it exceeds or is less than that of the other.

It is the conduct of the parties considered as a whole which is being measured by you in the form of a percentage.

If you find that the occurrence was proximately caused by negligence on the part of the Defendant and not by negligence on the part of the Plaintiff, then the Plaintiff is entitled to recover the full amount of any damages you
may find that he or she has sustained as a result of the occurrence.

If you find that the occurrence was proximately caused by the negligence of both the Plaintiff and the Defendant, then you must compare the percentages of that negligence. If the negligence of the Plaintiff is less than or equal to the negligence of the Defendant, then the Plaintiff is entitled to recover any damages which you may find that he or she has sustained as a result of the occurrence after you have reduced his damages in proportion to the degree of the Plaintiff's own negligence. On the other hand, if the Defendant was not negligent or if the negligence of the Defendant was less than the negligence of the Plaintiff, then the Plaintiff is not entitled to recover any damages. If you find the Plaintiff's negligence to be greater than that of the Defendant against whom recovery is sought, then the Plaintiff shall not recover and you will find for the Defendant.

Comparative negligence, if proven by the Defendant, can have one of two possible effects. First, comparative negligence will totally defeat a recovery by an injured Plaintiff if the negligence of the injured Plaintiff was greater than that of the Defendant. Another way of saying this is to say that a Plaintiff can recover only when his or her negligence, if any, is equal to or less than that of the Defendant. In order to prevent a verdict in favor of a Plaintiff injured by the negligence of a Defendant, the Defendant has the burden of proving by the greater weight or preponderance of the evidence that the Plaintiff was negligent and that the Plaintiff's negligence was greater than that of the Defendant.

The second possible effect of comparative negligence is that, if proven, it will reduce or partially defeat the Plaintiff's recovery. This applies when the Plaintiff's negligence is equal to or less than the negligence of the Defendant. Such a reduction is made when the Defendant proves, by the preponderance or greater weight of the evidence, that the Plaintiff was negligent but that the Plaintiff's negligence was equal to or less than the Defendant's negligence.

Please remember that the Plaintiff's negligence must have contributed proximately to his or her injury. If the negligence of the Plaintiff operated only remotely and not proximately to cause the injury, the Plaintiff is neither barred from recovery nor is his or her recovery reduced in any way.

M. Comparative Negligence – Sole Negligence of Plaintiff

If you conclude that the Plaintiff has established the first two elements of his or her case, then you must determine whether the Defendant has proved that the Plaintiff has failed to conduct himself/herself in accordance with the standard expected of him/her, and has thereby contributed to his/her own injury. It is the law of Florida that the sub-standard conduct of an injured person which contributes to his/her own injury will reduce his/her recovery, but will not bar it entirely unless you believe that conduct was the sole cause of the person's injury.

N. Comparative Negligence – Doctrine of Assumption of Risk

1. Elements:
   There are four requirements to establishing assumption of risk:
   
   (a) The Plaintiff must have knowledge of the facts constituting a dangerous condition;
   
   (b) The Plaintiff must know the condition is dangerous;
   
   (c) The Plaintiff must appreciate the nature and extent of the danger; and
   
   (d) The Plaintiff must voluntarily expose himself to the danger.

   The doctrine is predicated on the factual situation of a Defendant's acts alone creating the danger and causing the accident, with the Plaintiff's act being that of voluntarily exposing himself or herself to such an obvious danger with appreciation thereof which resulted in the injury. Assumption of risk may be implied from the Plaintiff's conduct.
IN THE CIRCUIT COURT OF THE STATE OF FLORIDA
IN THE 25TH JUDICIAL CIRCUIT

JESSE JONES, on behalf of the
Estate of Sam Jones
Plaintiff
v.

JURY VERDICT FORM

THE CITY OF PALM CITY
Defendant

We, the jury, find as follows:

1. Was the Defendant negligent?

   YES        NO

   If the answer to this question is “No”, please stop deliberating and sign the verdict form.

2. Did Defendant negligence proximately cause the Plaintiff’s injuries?

   YES        NO

   If the answer to this question is “No”, please stop deliberating and sign the verdict form.

3. Was the Plaintiff negligent?

   YES        NO

   If the answer to this question is “No”, please stop deliberating and sign the verdict form.

4. Did the Plaintiff’s negligence proximately cause her own injuries?

   YES        NO

   If the answer to this question is “NO”, please stop deliberating and sign the verdict form.

5. What percentage do you find that the Plaintiff and Defendant were respectively negligent (the total must equal 100%)?

   _______________ Plaintiff   _______________ Defendants

6. Is the Defendant consider a Seller of the water supply referenced in this matter?

   YES        NO

   If the answer to this question is “NO”, please stop deliberating and sign the verdict form.
7. Was the water supplied by the Defendant unreasonably dangerous?

YES  NO

If the answer to this question is “NO”, please stop deliberating, and sign the verdict form.

8. Was there a less dangerous alternative or modification to the water that was economically practical?

YES  NO

__________________________
Jury Foreperson Signature
Virtual Middle School Mock Trial
Rules of Competition

This program is a video competition where students from the same school will present both sides of the case in one trial (i.e. prosecution/plaintiff and defense are from the same school). After practicing the simulation, teams will record their trial and submit it by the designated due date for evaluation. The top three teams will be recognized from the submissions.

Rule I: Team Composition/Presentation

A. The competition is open to students currently enrolled in grades 6-8 in Florida schools. All students on a team, prosecution/plaintiff and defense/defendant, must be enrolled in the same school or members of a club at the same school. Each team must have a teacher sponsor.

B. Only one video per school will be accepted.

C. The video shall consist of at least twelve students from the same school to be used in any manner deemed appropriate by the teacher and coach, as long as the distribution of duties does not conflict with other competition rules. Roles include attorneys, witnesses, members of the jury, and other roles as determined by the teacher such as a bailiff.

D. Each school must present both sides of the case in one trial. (Prosecution/Plaintiff and Defense/Defendant).

E. Students of either gender may portray the role of any witness. The competition will strive to make roles gender neutral. However, some cases will warrant a specific gender role. In such cases, students of either gender may portray the role but the gender of the witness may not change from the case as presented.

F. Team Roster/"Roll" Call
   a) Teams should introduce themselves, their school and teacher/coaches at the beginning of the filming as well as their corresponding roles before beginning the trial begins.

Rule II: The Case

A. The case may contain any or all of the following stipulations: documents, narratives, exhibits, witness statements, etc.

B. The stipulations (and fact statements, if any) may not be disputed at the trial. Witness statements may not be altered.

C. All witnesses must be called.

Rule III: Trial Presentation

A. The trial proceedings will be governed by the Florida Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised at the trial. Questions or interpretations of these rules are within the discretion of the State Mock Trial Advisory Committee, whose decision is final.

B. Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection outside the scope of the problem. If, on cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness’ statement or affidavit and does not materially affect the witness’ testimony. Adding facts that are inconsistent with the witness statement or with the Stipulated Facts and which would be relevant with respect to any issue in the case is not permitted. Examples include, but are not limited to
a) Creating a physical or mental disability,

b) Giving a witness a criminal or bad record when none is suggested by the statements, (c) Creating facts which give a witness standing as an expert and;

c) Materially changing the witness' profession, character, and memory, mental or physical ability from the witness' statement by testifying to "recent changes."

d) If certain witnesses are stipulated to as experts, their expert qualifications may not be challenged or impeached by the opposing side. However, their testimony concerning the facts of the case may be challenged.

C. On direct examination, the witness is limited to the facts given. If a witness testifies in contradiction to the facts given in the witness statement, that testimony may be impeached on cross-examination by the opposition through the correct use of the affidavit. The procedure is outlined in the Rules of Evidence.

D. On cross-examination, no restrictions will be made on the witness or the cross examination, except that the answer must be responsive and the witness can be impeached. If the attorney who is cross-examining the witness asks a question, the answer to which is not contained in the stipulations or affidavit then the witness may respond to that question with any answer as long as the answer does not contradict or materially change the affidavit. If the answer by the witness is contrary to the stipulations or the affidavit, the cross examination attorney may impeach the witness.

E. Use of voir dire examination of a witness is not permitted.

Rule IV: Student Attorneys

A. Team members are to evenly divide their duties. During the video, each of the three attorneys for each side (Prosecution/Plaintiff and Defense/Defendant) will conduct one direct and one cross; in addition, one will present the opening statements and another will present closing arguments. In other words, the attorney duties for each team will be divided as follows: Opening Statements

a) Direct/Re-direct Examination of Witness #1
b) Direct/Re-direct Examination of Witness #2
c) Direct/Re-direct Examination of Witness #3
d) Cross/Re-cross Examination of Witness #1
e) Cross/Re-cross Examination of Witness #2
f) Cross/Re-cross Examination of Witness #3
g) Closing Arguments
h) Prosecution’s/Plaintiff’s optional closing rebuttal

B. Opening statements must be given by both sides at the beginning of the trial.

C. The attorney who will examine a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness on cross examination, and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

D. Each side must call the three witnesses listed in the case materials. Witnesses must be called only by their own side and examined by opposing counsel. Witnesses may not be recalled.

E. Attorneys may use notes in presenting their cases.

F. Witnesses are not permitted to use notes while testifying during the trial.

G. To permit judges to hear and see better, attorneys will stand during opening and closing statements, direct and cross-examinations, all objections, and whenever addressing the presiding judge. Students may move from the podium only with the permission of the presiding judge.

Rule V: Swearing of Witnesses

The presiding judge will indicate that all witnesses are assumed to be sworn.
Rule VI: Case Materials
Students may read other cases, materials, and articles in preparation for the mock trial. However, students may cite only the case materials given, and they may introduce into evidence only those documents given in the official packet. In addition, students may not use, even for demonstrative purposes, any materials that are not provided in the official packet.

Rule IX: Conduct/Attire
All participants are expected to demonstrate proper courtroom decorum and display collegial sportsmanlike conduct.

Rule XII: Jury Trial
For purposes of the competition, students will assume this is a jury trial. The presiding judge is the trial judge. Students should address the jury and the presiding judge.

Rule XV: Time Limits
A. A total of sixty minutes will be allotted for the entire trial.
B. Opening and closing statements should be no longer than 5 minutes per side.
   a. The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve one minute or less of the closing time for a rebuttal. Prosecution/Plaintiff must notify the judge before beginning closing argument if the rebuttal time is requested. The Prosecution’s/Plaintiff’s rebuttal is limited to the scope of the defense’s closing argument. Attorneys are not required to use the entire time allotted.

Rule XVI: Judging
A. The presiding judge may be the attorney coach or another local attorney or judge. Make sure they are aware of the rules prior to taping.
   a. Presiding judges can be selected from a range of community volunteers. The following is a list of suggestions: sitting judges, attorneys, teachers, mock trial coaches/teachers, or high school mock trial participants. Teachers should use their discretion when selecting a presiding judge. Teams are not being evaluated based on their presiding judge.
B. At no time during the filming of the trial may team sponsors or coaches communicate or consult with the students.

Rule XXIV: Eligibility
A. Both sides of the case must be presented by students enrolled in the same school.
B. Each school may only submit one video.
SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

Simplified Rules of Evidence are provided for informational purposes and may be used at the discretion of the teacher and/or coach. They are provided as an outline for the trial process but should not complicate the instructional process.

In American courts, elaborate rules are used to regulate the kind of proof (i.e., spoken testimony by witnesses or physical evidence) that can be used in trials. These rules are designed to ensure that both parties receive a fair hearing. Under the rules, any testimony or physical objects deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial may be kept out of the trial.

If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. Usually, the attorney stands and says, "I object, your honor," and then gives the reason for the objection. Sometimes the attorney whose questions or actions are being objected to will then explain why he or she thinks the rule was not violated. The judge then decides whether the rule has been violated and whether the testimony or physical items must be excluded from the trial.

Official rules of evidence are quite complicated. They also differ depending on the kind of court where the trial occurs. For purposes of this mock trial competition, the rules of evidence you will use have been made less complicated than those used in actual courts. The ideas behind these simplified rules are similar to actual rules of evidence.

A. Witness Examination/Questioning

1. Direct Examination

Attorneys call and question their own witnesses using direct as opposed to leading questions.

Example:

Elyse Roberts is called by her attorney to explain the events leading up to her filing suit against Potomac County.

"Ms. Roberts, where do you work? How long have you worked there? Please describe your working relationship with Mr. Kevin Murphy during the first month of employment. Why did you meet with your supervisor, Fran Troy? Did you seek advice from a therapist during this time?"

Questions such as the above do not suggest the answer. Instead, they introduce a witness to a particular area of importance, leaving the witness free to relate the facts. Obviously, the witness will have been prepared to answer such questions in a particular way. But the question by its terms does not "lead" to the answer.

a. Leading Questions

A leading question is one that suggests the answer. It does not simply call the witness' attention to a subject. Rather, it indicates or tells the witness what the answer should be about that subject. Leading questions are not permitted on direct examination, but questions on cross-examination should be leading.

Examples:

"Mrs. Roberts, despite repeated invitations, you chose not to participate in office social functions, correct?"

"Isn't it true, that due to all the stress from work you decided to go to a therapist?"
These questions are obviously in contrast to the direct examination questions in the preceding section. **Leading questions** suggest the answer to the witness. This is **not** proper for direct examination when a party is questioning its own witness.

b. **Narration**

While the purpose of direct examination is to get the witness to tell a story, the questions must ask for **specific information**. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. At times, the witness' answer to a direct question may go beyond the facts asked for by the question asked. Narrative questions are objectionable.

Example Narrative Question:

"Ms. Roberts, please tell the court about the events that contributed to your decision to sue the county."

Narrative Answer:

"It all began the night I found out that it was the county that was dumping on my land. At first I thought it was my neighbors, but they denied having any part in the dumping. I decided to watch my vacant lot and see if I could catch the person responsible. I drove down to my lot the night of the 13th and parked in a place where I could see the lot but no one could see me..."

c. **Scope of Witness Examination**

Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge.

d. **Character**

For the purpose of this mock trial, evidence about the character of a party may not be introduced unless the person’s character is an issue in the case.

i. **Methods of Proving Character (Section 90.405)**

1. Reputation: When evidence of the character of a person or of a trait of his/her character is admissible, proof may be made by testimony about his/her reputation.

2. Specific Instances of Conduct: When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of his/her conduct.

e. **Refreshing Recollection**
When a witness uses a writing or other item to refresh his/her memory while testifying, an adverse party is entitled to have such writing or other item produced at the hearing to inspect it, to cross-examine the witness thereon, and to introduce it, or in the case of writing, to introduce those portions which relate to the testimony of the witness, in evidence.

2. **Cross Examination** (questioning the opposing side’s witnesses)

Cross-examination **should** involve leading questions. In fact, it is customary to present a witness with a proposition and ask the witness to either agree or disagree. Thus, good cross-examination calls only for a yes or no answer.

Examples:

“Mr. Roberts, in direct examination you testified that litigation was very stressful for you, correct? In fact you were so stressed that you did work at home or called in sick. Isn't this true?”

“As an assistant district attorney, you knew that trying only three cases while settling 75 cases was not a job performance your supervisor would rate highly, didn't you?”

“Thus given the stress you felt, your poor attendance at work and poor job performance, it was not unusual for your supervisor to transfer you to another Bureau, was it?”

Leading questions are permissible on cross-examination. Questions tending to evoke a narrative answer should be avoided.

a. **Scope of Witness Examination**

Cross-examination is not limited. Attorneys may ask questions of a particular witness that relate to matters brought out by the opposing side on direct examination of that witness, matters relating to the credibility of the witness, and additional matters otherwise admissible, that were not covered on direct examination.

b. **Impeachment**

On cross-examination, the attorney may want to show the court that the witness should not be believed. A witness' credibility may be impeached by showing evidence of the witness' character and conduct, prior convictions, and prior inconsistent statements. If the witness testifies differently from the information in their sworn affidavit, it may then be necessary to "impeach" the witness. That is, the attorney will want to show that the witness previously said something that contradicts the testimony on the stand.

i. **Impeachment Procedure**

Impeachment may be done by comparing what a witness says on the witness stand at trial to what is contained in the witness' affidavit. By pointing out the differences between what a witness now says and what the witness' affidavit says, the attorney shows that the witness has contradicted himself or herself.

ii. **Who May Impeach?**
Any party, including the party calling the witness, may attack the credibility of a witness by:

1. Introducing statements of the witness which are inconsistent with his/her present testimony;

2. Showing that the witness is biased;

3. Attaching the character of the witness in accordance with the state mock trial competition rules of evidence and procedure;

4. Showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which he/she testified; and

5. Proof by other witnesses that material facts are not as testified to by the witness being impeached.

iii. Section 90.610 Conviction of Certain Crimes as Impeachment

A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:

1. Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.

2. Evidence of juvenile adjudications is inadmissible under this subsection.

iv. Section 90.614 Prior Statements of Witness

1. When witness is examined concerning his prior written statement or concerning an oral statement that has been reduced to writing, the court, on motion of the adverse party, shall order the statement to be shown to the witness or its contents disclosed to him.

2. Extrinsic evidence of a prior inconsistent statement by a witness is inadmissible unless the witness is first afforded an opportunity to explain or deny the prior statement and the opposing party is afforded an opportunity to interrogate him on it, or the interests of justice otherwise require. If a witness denies making or does not distinctly admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. This subsection is not applicable to admissions of a party-opponent.
3. Re-direct and re-cross examination/questioning. If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Re-cross examinations follows re-direct examination but is limited to the issues raised on re-direct only and should avoid repetition. The presiding judge may exercise reasonable control over questioning so as to make questioning effective to ascertain truth, avoid needless waste of time, and protect witnesses from harassment.

B. Objections

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge may ask the reason for it. Then the judge may turn to the attorney whose question or action is being objected to, and that attorney usually will have a chance to explain why the judge should not accept the objection. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence or whether to allow the question or answer to be considered as evidence. The legal term “objection sustained” means that the judge agrees with the objection and excludes the testimony or item objected to. The legal term “objection overruled” means that the judge disagrees with the objection and allows the testimony or item to be considered as evidence.

1. Standard Objections on Direct and Cross Examination

2. Irrelevant Evidence: “I object, your honor. This testimony is irrelevant to the facts of this case.”

3. Leading Questions: “Objection. Counsel is leading the witness.” Remember, this is only objectionable when done on direct examination (Ref. Section A1.a).

4. Narrative Questions and Answers: may be objectionable (Ref. Section A1.b).

5. Improper Character Testimony: “Objection. The witness’ character or reputation has not been put in issue or “Objection. Only the witness’ reputation/character for truthfulness is at issue here.”

6. Hearsay: “Objection. Counsel’s question/the witness’ answer is based on hearsay.” If the witness makes a hearsay statement, the attorney should also say, “and I ask that the statement be stricken from the record.”

7. Opinion: “Objection. Counsel is asking the witness to give an opinion.”

8. Lack of Personal Knowledge: “Objection. The witness has no personal knowledge that would enable him/her to answer this question.”
9. **Lack of Proper Predicate**: Exhibits will not be admitted into evidence until they have been identified and shown to be authentic (unless identification and/or authenticity have been stipulated). Even after proper predicate has been laid, the exhibits may still be objectionable due to relevance, hearsay, etc.

10. **Ambiguous Questions**: An attorney shall not ask questions that are capable of being understood in two or more possible ways.

11. **Non-responsive Answer**: A witness’ answer is objectionable if it fails to respond to the question asked.

12. **Argumentative Question**: An attorney shall not ask a question which asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

13. **Unfair Extrapolation/Beyond the Scope of the Statement of Facts**

   Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral.

   Note: Fair extrapolations may be allowed, provided reasonable inference may be made from the witness’s statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection Outside the Scope of the Problem. If in CROSS examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness’ statement or affidavit and does not materially affect the witness’ testimony.

14. **Asked and Answered**: “Objection. Your honor, the question has already been asked and answered.”

15. **Objections Not Recognized in This Jurisdiction**: An objection which is not contained in these materials shall not be considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objection.

   Note: Attorneys should stand during objections, examinations, and statements. No objections should be made during opening/closing statements but afterwards the attorneys may indicate what the objection would have been. The opposing counsel should raise his/her hand to be recognized by the judge and may say, “If I had been permitted to object during closing arguments, I would have objected to the opposing team’s statement that _____.” The presiding judge will not rule on this objection individually and no rebuttal from the opposing team will be heard.

16. **Opinions of Witnesses**

1. **Expert Opinion**
1. **Section 90.702 Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

2. **Section 90.703 Opinions on Ultimate Issue**

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it included an ultimate issue to be decided by the trier of fact.

3. **Section 90.704 Basis of Opinion Testimony by Experts**

The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, him at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.

4. **Expert Opinion (additional information)**

An expert shall not express an opinion as to the guilt or innocence of the accused.

2. **Lay Opinion**

1. **Section 90.701 Opinion Testimony of Lay Witnesses**

If a witness is not testifying as an expert, his testimony about what he perceived may be in the form of inference and opinion when:

1. The witness cannot readily, and with equal accuracy and adequacy, communicate what he has perceived to the trier of fact without testifying in terms of inferences or opinions and his use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and

2. The opinions and inferences do not require a special knowledge, skill, experience, or training.

2. **Lay Opinion (additional information)**

All witnesses may offer opinions based on the common experience of laypersons in the community and of which the witnesses have first-hand knowledge. A lay opinion may also be obtained. For example, Sandy Yu, as the personnel director, would know of other complaints of sexual harassment in the office and any formal reprimands, even though he is not an expert in sexual harassment. They may be asked questions within that range of
experience. No witness, not even an expert, may give an opinion about how the case should be decided.

The cross-examination of opinions proceeds much like the cross-examination of any witness. Questions, as indicated above, may be based upon the prior statement of the witness. Inconsistencies may be shown. In addition, the witness may be asked whether he or she has been employed by any party, to show bias or interest. Or a witness giving an opinion may be asked the limits of certainty in that opinion, as follows:

“Dr. Isaacs, please read this portion of your sworn statement to the court.”

“I have studied the records of this case, and have conducted two one-hour interviews with Elyse Roberts on March 29 and 31st. In those interviews, she described to me her family history, her work environment, the actions of her co-workers and supervisor and her resulting feelings.”

“This is your statement, is it not, Dr. Isaacs? Ms. Roberts selected you because of your expertise in sexual harassment in the workplace, correct? During your two-hour interview you were only concerned with evaluating Ms. Roberts’ working environment and no other psychological factors that may have caused her problems. Thus you really can’t say that Ms. Roberts’ difficulty on the job was only caused by the actions of Mr. Murphy, can you?”

The point of these questions is not to discredit the witness. Rather, the objective is simply to treat the witness as a responsible professional who will acknowledge the limits of her or his expertise and testimony. If the witness refuses to acknowledge those limits, the witness then is discredited.

It is always important in cross-examination to avoid arguing with the witness. It is particularly important with an expert. Thus, the cross-examination should be carefully constructed to call only for facts or to draw upon statements the witness has already made.

3. **Lack of Personal Knowledge**

A witness may not testify to any matter of which the witness has no personal knowledge. The legal term for testimony of which the witness has no personal knowledge is "incompetent."

17. **Relevance of Testimony and Physical Objects**

Generally, only relevant testimony may be presented. Relevant evidence is physical evidence and testimony that makes a fact that is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. Such relevant but excludable evidence may be testimony, physical evidence, or demonstrations that have no direct bearing on the issues of the case or do not make the issues clearer.

1. **Introduction of Documents, Exhibits, Items, and Other Physical Objects Into Evidence**

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case, and the attorney must be prepared to its use on that basis.
Below are the basic steps to use when introducing a physical object or document for identification and/or use as evidence.

a. All evidence will be pre-marked as exhibits.
b. Ask for permission to approach the witness. “Your Honor, may I approach the witness with what has been marked for identification purposes as Exhibit No. ___?”
c. Show the exhibit to opposing counsel.
d. Ask the witness to identify the exhibit. “I now hand you what has been marked for identification as Exhibit No. ____. Would you identify it please?” Witness should answer to identify only.
e. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.
f. Offer the exhibit into evidence. “Your Honor, we offer Exhibit No. ___ into evidence.”
g. Court: “Is there an objection?” (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
h. Opposing Counsel: “No, Your Honor,” OR “Yes, Your Honor.” If the response is “yes”, the objection will be stated for the record. Court: “Is there any response to the objection?”
i. Court: “Exhibit No. ___ (is/is not) admitted.” If admitted, questions on content may be asked.

NOTE: A witness may be asked questions about his/her statement without its introduction into evidence; but to read from it or submit it to the judge, it must first be admitted into evidence.

18. Hearsay and Exceptions to this Ruling

1. What is Hearsay?

Hearsay evidence is normally excluded from a trial because it is deemed untrustworthy. “Hearsay” is a statement other than one made by the witness testifying at the trial, offered in evidence to prove that the matter asserted in the statement is true. An example of hearsay is a witness testifying that he heard another person saying something about the facts in the case. The reason that hearsay is untrustworthy is because the opposing side has no way of testing the credibility of the out-of-court statement or the person who supposedly made the statement. Thus, for example, the following questions would be objectionable as “hearsay” if you are trying to prove that the color of the door was red:

“Mr. Edwards what color did Bob say the door was?”

This is hearsay. Mr. Edwards is using Bob’s statement for him to prove the color of the door. Instead, Bob or someone who saw the door needs to be called to testify as to the color of the door.

2. Reasons for Prohibiting Hearsay

Our legal system is designed to promote the discovery of truth in a fair way. One way it seeks to accomplish this goal is by ensuring that the evidence presented in court is “reliable”; that is, we can be fairly certain the evidence is true. Hearsay evidence is said to be “unreliable” for four reasons:

1. The hearsay statement might be distorted or misinterpreted by the witness relating it in court.
2. The hearsay statement is not made in court and is not made under oath.

3. The hearsay statement is not made in court, and the person who made it cannot be observed by the judge or jury (this is important because the judge or jury should be allowed to observe a witness' behavior and evaluate his/her credibility).

4. The hearsay statement is not made in court and the person who made it cannot be challenged by cross-examination.

3. **When Can Hearsay Evidence Be Admitted?**

Although hearsay is generally not admissible, there are certain out-of-court statements that are treated as not being hearsay, and there are out-of-court statements that are allowed into evidence as exceptions to the rule prohibiting hearsay.

Statements that are not hearsay are prior statements made by the witness himself and admissions made by a party opponent.

1. **Exceptions**

Hearsay is not admissible, except as provided by these rules. For purposes of this mock trial, the following exceptions to the hearsay rule will be allowed; even though the declarant is available as a witness.

1. **Spontaneous Statement**

A statement describing or explaining an event or condition made while the declarant perceived the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

2. **Excited Utterance**

A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

3. **Medical Statements**

Statements made for the purpose of medical diagnosis or treatment by a person seeking the diagnosis, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.

4. **Recorded Recollection**
A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.

5. **Records of a Regularly Conducted Activity**

1. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by testimony of the custodian or other qualified witness, unless the sources of information or other circumstances show lack of trustworthiness. The term “business” as used in this paragraph includes a business, institution, association, profession, occupation, and calling for every kind, whether or not conducted for profit.

2. No evidence in the form of an opinion or diagnosis is admissible under paragraph (a) unless such opinion or diagnosis would otherwise be admissible if the person whose opinion is recorded were to testify to the opinion directly.

6. **Learned Treatises**

To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in public treatises, periodicals or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, or by other expert testimony, or by judicial notice.

7. **Then Existing Mental, Emotional, or Physical Condition**

1. A statement of the declarant’s then existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:

   1. Prove the declarant’s state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.

   2. Prove or explain acts of subsequent conduct of the declarant.

2. However, this subsection does not make admissible:
1. An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such a statement relates to the execution, revocation, identification, or terms of the declarant's will.

2. A statement made under circumstances that indicate its lack of trustworthiness.

C. Trial Motions

*No trial motions are allowed except for special jury instructions as permitted in these case materials.*

Examples:

Directed verdict, dismissal, acquittal, motion in limine, motion to sequester witnesses.

Exception:

Motion for Recess may only be used in emergency situations.

D. Attorney Demeanor

*See Code of Ethical Conduct*

Note: Please refer to Official Case Materials for any specific additions relative to this trial.
Florida Virtual Middle School Mock Trial Competition

SCORE SHEET/BALLOT

P = Plaintiff/Prosecution:__________________________ D = Defendant:____________________________

Date: ______________________

Using a scale of 1 to 10, rate the P and D in the categories below.
Do NOT use fractional points. Please use a ballpoint pen.

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Note: Any errors in ADDITION will be corrected by score room staff. Please review your individual scores and return to trial coordinator.

______________________________
Judge’s Signature
Participants will be rated in the categories on the ballot on a scale of 1-10 points (10 being the highest), according to their roles in the trial. Each video will consist of a plaintiff/prosecution side and defendant/defense side from the same school.

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<td>Exhibits lack of preparation/understanding of the case materials. Communication unclear, disorganized, and ineffective. Unsure of self, does not think well on feet, depends heavily on notes.</td>
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<td>Fair</td>
<td>Exhibits minimal preparation/understanding of the case materials. Communication minimally clear and organized, but lacking in fluency and persuasiveness. Minimally self-assured, but lacks confidence under pressure.</td>
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<td>5-6</td>
<td>Good</td>
<td>Exhibits adequate preparation/understanding of the case materials. Communications are clear and understandable, but could be stronger in fluency and persuasiveness. Generally self-assured, reads from notes very little.</td>
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<td>7-8</td>
<td>Excellent</td>
<td>Exhibits mastery of the case materials. Communication is clear, organized, fluent and persuasive. Thinks well on feet, poised under pressure, does not read from notes.</td>
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<td>Outstanding</td>
<td>Superior in qualities listed for 7-8 points' performance.</td>
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