33rd Annual Statewide High School Mock Trial Program

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2018 MOCK TRIAL CASE MATERIALS
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The Massachusetts Bar Association expresses its sincere gratitude to this group of dedicated volunteers who spent countless hours developing this year’s case. It is their commitment to this program and to law-related education in Massachusetts that gives thousands of students this unique educational experience.

In addition, the Trial Court of the Commonwealth is a true partner in this effort, providing both staff and space to make this program possible. Please help us in thanking the courts after your competitions.

Funding is provided, in part, by the generous contributions from the Massachusetts Bar Foundation and the law firm of Morrison Mahoney LLP.

If you have general questions about the Mock Trial Program, please contact Mock Trial Central at (617) 338-0570, or email MockTrial@MassBar.org.

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October 2017

Dear Mock Trial Participant:

Thank you for participating in the Massachusetts Bar Association’s 2018 Mock Trial Program, proudly sponsored by the law firm of Morrison Mahoney LLP. We appreciate Morrison Mahoney’s generosity as well as the generosity of the hundreds of volunteer attorneys, judges and teachers across Massachusetts who dedicate their time to this valuable program throughout the year. We also appreciate the talented high school students from around the commonwealth who participate in the program, and have the unique opportunity to learn about our legal system and advocacy with hands-on experience. The students are what makes this program truly special.

This year, the teams are presented with a civil case centering around the death of a prominent man, Liam Hizeneye, from an explosion. The dispute is over the enforceability and payout under the $5 million life insurance policy Liam purchased months before he died. If Liam’s death was accidental, the policy pays double indemnity — a $10 million payment. If the insurance company is successful in proving Liam’s death was a suicide, it is not required to make any payment under the policy. Was Liam’s death a suicide? An accident? Or something else? This hypothetical case gives participates an opportunity to explore different theories to argue in favor (or against) enforcement of the life insurance policy.

The tournament will begin in January 2018. As we have done in years past, participating teams will be divided into 32 geographic regions. Each team will compete in three preliminary rounds, alternating between plaintiff and defense. Each team will be the plaintiff in at least one trial and the defense in at least one trial. The team with the greatest percentage of wins in each region will advance to the later rounds of the competition. If two or more teams within a geographic region have the same percentage of wins, tiebreaker contests will follow. The 32 regional winners will then compete against one another at a regional competition in a central location. The trials will be assigned by random draw. Later that same day, the 16 winners of the morning competition will compete by random draw against one another. The “Elite Eight” and “Final Four” competitions will also be conducted on a single day at a central location. The State Final will be held during the week of March 19, 2018 in Boston at a site to be determined. Check the new Mock Trial website, https://Massbar.org/Mock, for up-to-date information. All participating teams are invited and strongly encouraged to attend the State Final to observe the tournament’s two top competitors. The state champion — Team Massachusetts — will then compete for the national title in Reno, Nevada in May 2018.

We are grateful to the members of the Mock Trial Committee for their creativity, support and dedication to the program, developing this year’s hypothetical case and preparing for the tournament. We also thank the Administrative Office of the Trial Court for once again allowing us to use their courts, and the many attorneys and judges who volunteer their time so the students have a rewarding and positive experience. Additionally, special thanks and appreciation go to the staff members at the Massachusetts Bar Association whose hard work behind the scenes allows this program to function seamlessly.

We hope you find the experience challenging, enlightening, and fun. Please enjoy the tournament and this year’s hypothetical case.

Sincerely,

Hale Yazicioglu Lake
Chair, Mock Trial Committee
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PART I:
MBA Mock Trial Statement of Philosophy,
Code of Conduct and Highlighted Rules

The Massachusetts Bar Association annual Mock Trial Program is governed by the rules set forth herein. Please pay particular attention to the following:

PURPOSE OF PROGRAM:
The purpose of the tournament rules is to create a level playing field so that all students can derive maximum educational benefit. To that end, teacher and attorney/coaches are encouraged to emphasize the educational rather than the competitive aspect of the tournament.

KNOWLEDGE OF THE RULES:
Teams are responsible and accountable for knowing and abiding by all the tournament rules. Rules may not be waived even by mutual consent of the parties. Any violation of the rules could result in disciplinary action that may consist of forfeiture or disqualification for the offending team(s). Any violation of the rules could result in disciplinary action that may consist of forfeiture or disqualification for the offending team(s), as well as suspension or expulsion of individual team members from the current or from future tournaments and mock trial competitions.

COURTROOM COURTESY/DECORUM:
To allow students to experience first-hand how a real courtroom operates, the MBA schedules all trial enactments before sitting judges in district courthouses, whenever possible. While mock trials are taking place, the court is conducting its regular business. Accordingly, all students, teachers, and spectators are expected to conduct themselves with maturity and decorum, and to treat host judges and all courthouse personnel with all due respect.

TRIAL SPACE COURTESY:
Trial enactments are subject to the physical constraints of the individual courtrooms. Students and spectators may not rearrange courtroom furniture or remove equipment from any other courthouse office unless they have received the permission of the court. Teams are responsible for restoring the courtroom to its original condition at the conclusion of the trial, ready for the next day’s business.

PLAGIARISM:
Arguments presented in court are expected to be the team’s own effort. As with all academic work, plagiarism is prohibited. With the ready availability of videotapes of the trials, a team might inadvertently appropriate another team’s strategy or arguments. Coaches should exercise supervision over the use of videotapes to ensure that they are used properly.

WITHDRAWAL/CANCELLATIONS:
The decision to participate in the Mock Trial Program is a serious commitment and should not be undertaken lightly. It is inconsiderate when a school withdraws from a trial and/or the tournament at the last minute, after the other side has prepared carefully for the trial, made plans to leave school early and arranged for transportation.

Withdrawal on the day of the trial is also insensitive to the courts, which have agreed to clear courtroom space, and to the judges and attorneys who have volunteered to hear the cases. Please consider carefully your decision to participate in the tournament and then honor your commitment.

CODE OF CONDUCT FOR STUDENT TEAM MEMBERS:
Mock trial is a competition, and like all competitions, the behavior of mock trial students and coaches should reflect the highest standards of student conduct. Participation in the mock trial program is intended to be a positive experience. Student members of the mock trial program are expected to conduct themselves at all times in the best traditions of legal advocacy, including, but not limited to, while in the courtroom, while in the courthouse, while on any portion of the courthouse premises and while traveling to and from mock trial competitions. Respect must always be shown by students for the presiding judges and for their decisions and rulings. Mutual respect and courtesy must also be shown to opposing teams, their coaches, their attorneys and their witnesses. Reported instances of improper student behavior such as physical altercations, taunting, the use of profanity or other improper language, mean spirited or hurtful teasing, undue criticism, sex-

HTTPS://MASSBAR.ORG/MOCK
ually explicit insults or racially or ethnically charged comments will not be tolerated and will be the subject of appropriate disciplinary action and sanctions issued by the Mock Trial Committee. Depending upon the origin, nature, and degree of such code violations, the Mock Trial Committee may suspend or expel from the current and future mock trial competitions and tournaments individual team members, coaches or the entire team itself. All such disciplinary actions and decisions taken by the Mock Trial Committee are final.

**CODE OF CONDUCT FOR TEACHER AND ATTORNEY COACHES:**

Mock Trial is a competition, and like all competitions, the behavior of coaches should reflect the highest standards of conduct. Just as in athletic competitions, the officials must be shown respect at all times. As part of teaching students about our legal system, we must emphasize that respect must always be shown to the judges and their decisions. While a coach may privately report perceived egregious misconduct of a judge to the Mock Trial Committee, the students should be shown at all times by word and by example that the judge and judge’s decision are to be respected. Coaches should likewise show the same respect to each other. In a difficult situation, coaches are expected to conduct themselves so as to move the competition and the tournament schedule forward.

If a coach fails to observe this code of conduct, the Mock Trial Committee may prohibit the coach from further participation in the tournament or impose such other appropriate sanctions. All decisions of the committee are final. The goal of the Mock Trial Program is to provide a positive experience of the legal system for coaches, students and volunteers.
> **PART II:**  
> **Tournament Rules**

New, modified or highlighted rules appear in bold.

**1. GENERAL CONTEST FORMAT**

The commonwealth will be divided into 16 geographical regions. Within each region, each team will participate in three preliminary round trials, alternating between plaintiff/prosecution and defense. The team with the greatest number of victories will advance to the quarterfinals. In the event of a tie, there will be a single elimination tiebreaker to determine the regional representative. (See Section 3, Structure and Subsequent Scoring Issues, later in this section for more information on how byes affect scoring.) Regional representatives then will face off in the single elimination quarterfinals, with the winning teams advancing to the single elimination semifinals. The two remaining teams will face each other in the state finals.

**2. TEAM COMPOSITION**

2.1 Schools that wish to participate in the tournament may enter one team, which must be comprised of students currently attending that school and a teacher-coach, administrator, or other responsible party who is also from that school. No team may be comprised of students representing more than one school. Only high school students, grades 9–12 or its equivalent, are eligible to compete in trial enactments. Students who are not in grades 9–12 or its equivalent may participate in the Mock Trial Program by attending the meetings and trial enactments of a single high school team, but may not themselves compete or participate in trial enactments.

2.2 Each school’s overall team may be comprised of any number of students, but no fewer than six and no more than nine students (three to six attorneys and three witnesses) may participate in any one trial. Violation of this rule is considered gross misconduct and will result in a 10 point reduction. All teams have the option of providing an official student timekeeper during the trial. The Defense’s timekeeper will be referred to as the clerk, and the Prosecution/Plaintiff’s timekeeper will be referred to as the bailiff.

2.3 A team may use its members in several different ways. It may use the same roster of students throughout all trial enactments or it may rotate students after the first trial to give others a chance to participate in the tournament. Students may play different roles (attorney or witness) at different trial enactments, as long as no fewer than six and no more than nine students appear in any one trial. (See Part II, Sections 4 and 5, Witness Performance and Attorney Performance and Part III, Hints on Preparing for a Mock Trial.)

2.4 During the preliminary trials, at no time will any team play the same side three times. If you notice that your team is playing one side three times on your schedule, please contact Mock Trial Central immediately.

2.5 Use of a podium shall not be required of the participants at any level of competition unless otherwise instructed by the judge.

2.6 All teams are to work with their assigned attorney-coaches in preparing their cases. It is suggested that they meet with their attorney-coach at least twice prior to the first trial. For some suggestions regarding the attorney-coach’s role in helping a team prepare for the tournament, see Appendix A Guidelines for Attorneys.

2.7 Prior to the first trial of the tournament, all teams are required to conduct one full trial enactment or dress rehearsal based on the case. (Several additional sessions devoted to the attorneys’ questioning of individual witnesses are suggested also.)

**3. STRUCTURE AND SUBSEQUENT SCORING ISSUES**

3.1 The total pool of registrants and where schools are geographically located determines into which region schools will be placed. We will make every effort to ensure that each region has enough teams for three trials. Inevitably, some regions will have an odd number of teams. Teams for whom there is no opponent within their region for a given trial will receive a bye. Byes are randomly assigned.
3.2 Any team having a bye will receive a “win” for purposes of determining advancement in the tournament.

3.3 Any team having a bye that does not win its region or compete in a tie-breaker will, if possible, be given the opportunity to compete in a bye make-up trial. Bye make-up trials will take place after snow make-ups, and are intended to give schools having a bye the opportunity to take part in at least three trial enactments. Because participation in a bye make-up trial is optional, the MBA cannot guarantee that bye make-up trials will be scheduled for every eligible team; however, every effort will be made to do so. Bye make-up trial results will not be used for purposes of determining which teams advance in the competition.

3.4 If multiple tie-breaker trials are required to determine a regional winner, any team having had a bye will automatically compete in the first tie-breaker trial.

For example:
After the preliminary rounds, Teams A, B, and C each have a record of 3-0. One of Team B’s “wins,” however, came as a result of a bye.

Because two tie-breaker trials are required to determine the regional winner, Team B will automatically compete in the first tie-breaker trial. Teams A and C will be randomly assigned by the MBA to either the first or second tie-breaker trial.

The team losing the first tie-breaker trial is eliminated from the tournament. The winner advances to the second tie-breaker trial, which determines the regional winner.

4. WITNESS PERFORMANCE

4.1 A student shall not perform both as a witness and as an attorney during the same trial enactment. Witnesses may take the stand in any order, but all witnesses must take the stand. Violation of this rule is considered gross misconduct and will result in a 10 point reduction.

4.2 Each witness is bound by his or her written affidavit. Witnesses are not to invent facts material to the case (See Simplified Rules of Evidence, Rules 301 and 302). Neither should cross-examining attorneys ask questions that require the witness to invent facts material to the case.

4.3 The witness affidavits are to be treated as sworn to under oath. If a witness testifies in contradiction of a fact in the witness statement, the opposition may impeach the testimony of the witness, that is, point out the contradiction on cross-examination in accordance with Rules 303a and 601.

4.4 If a witness invents an answer which is likely to materially affect the outcome of the trial, the opposition may object and ask for a bench conference; the judge will decide whether to allow the testimony.

4.5 The case materials provide sufficient legal points on which to question each witness without the witness inventing, or the cross-examining attorney requiring the witness to invent, facts. Judges will be instructed to deduct penalty points from witnesses for serious or repeated invention of facts, especially if the behavior appears to be intended to disrupt the presentation of the opponent’s case or to eat into their time allotment. Judges also will be instructed to deduct penalty points from cross-examining attorneys who repeatedly ask questions which require the witness to invent facts. (See Simplified Rules of Evidence, Rules 301 and 302.) Teachers should monitor witness and attorney preparation and stress the importance of a spirit of fair play.

4.6 Unless otherwise permitted by an advisory ruling issued by the Mock Trial Committee specifically relating to this rule, there shall be no use of props and/or any intentional alteration of students’ physical appearance and/or clothing in order to mimic the appearance of a trial character in the case. The witness’ appearance is assumed to be as she/he appears in the case in accordance with the characteristics provided in the trial materials. Judges have been advised not to award either bonus points or penalty points for any unintentional use of props and/or alteration of appearance and/or clothing. Any witness who clearly and intentionally uses a prop and/or alters her/his appearance and/or clothing in order to mimic the appearance of a trial character (e.g., wearing a theatrical wig and/or makeup, police uniform, badge, etc.) may be subject to penalty points at the judge’s discretion.

4.7 Witnesses shall stay in the courtroom at all times during the mock trial proceedings unless permis-
sion for a student to leave has been obtained from the opposing coach prior to the match.

4.8 Witnesses, whether plaintiff/prosecution’s or defendant’s, shall not sit at the attorneys’ table.

4.9 Witnesses are not permitted to use notes when testifying during the trial.

4.10 Voir dire of expert witnesses shall not be permitted; any questions directed to an expert about her/his credentials must be raised on cross-examination. However, nothing in this rule precludes appropriate objections to an expert’s testimony if proper foundation has been laid.

4.11 There shall be no sequestration of witnesses. If such a motion is made, it will be denied.

5. ATTORNEY PERFORMANCE

5.1 Each team must prepare an opening statement, three direct examinations, three cross-examinations and a closing argument.

5.2 The attorney presenting the opening statement may not make the closing arguments in the case. No attorney may conduct more than one direct examination. No attorney may conduct more than one cross-examination. Only one attorney from each side may conduct the examination of an individual witness, including re-examinations. Violation of this rule shall result in the offending player receiving a score from the judge but the team shall also receive a deduction of 10 PENALTY POINTS.

5.3 A team with three attorneys will perform the tasks as follows:
   • Attorney A does the opening statement, a direct examination and a cross-examination.
   • Attorney B does the closing argument, a direct examination and a cross-examination.
   • Attorney C does a direct examination and a cross-examination.

A team with four, five or six attorneys will divide the tasks in any way consistent with rule 5.2.

5.4 Attorneys may use notes in presenting their cases, i.e., opening arguments, direct examinations of witnesses, etc. However, undue reliance on notes is not encouraged. (See Appendix C, Matrix on Judging Criteria.)

5.5 Only attorneys who will conduct an opening statement, a closing argument, a direct examination or a cross examination during the course of the actual trial may sit at counsel table or in the well of the courtroom.

6. TRIAL ENACTMENTS

6.1 The trial proceedings are governed by the Simplified Rules of Evidence found in this packet of materials. Procedural motions shall not be raised at trial.

6.2 Usual rules of courtroom decorum apply to all participants and spectators. Appropriate dress is required. The judge should give verbal warning without penalty points to students whose jackets are not buttoned, whose ties are not tied properly, or who are otherwise not appropriately attired. If the matter is not remedied, there may be further sanction involving the deduction of penalty points. No spectator signs or banners are permitted.

6.3 No photographs, or audio or video recording of the proceedings by anyone, including spectators and parents, is permitted without the permission of both the other side and the court.

6.4 No electronic devices may be used to assist in a team’s presentation during a trial. This includes video cameras, laptop computers, tape recorders, PDA’s, Blackberries and other similar devices.

6.5 Immediately prior to each trial enactment, the attorneys and witnesses for each team must be physically identified to the opposing team.

6.6 In all tiebreaker and subsequent rounds, teams must conduct a coin toss to determine which side the teams will argue. The coin toss is to be conducted as soon as both teams have arrived at the trial location and prior to the judge taking the bench. The coin toss procedure is as follows:
   a. Each team will designate a single representative who will participate in the coin toss process.
   b. The representatives will need to decide which team will toss the coin and which team will call “heads” or “tails.”
   c. The winner of the coin toss chooses which side her/his team will play (plaintiff/prosecution or defendant).

6.7 Immediately prior to each trial enactment, the coaches shall submit a prepared Student Roster
and Performance Rating Sheet to the presiding judge.

6.8 The Stipulations of the Parties may not be disputed at the trial.

6.9 The presiding judge may interrupt an attorney’s opening and closing statements and ask questions.

6.10 Students may read other law, cases and materials in preparation for the mock trial. However, they may cite only the law and cases given and may introduce as evidence only those documents that are provided in this packet.

6.11 Exhibits and affidavits may be reproduced or enlarged and used during the trial; however, the contents of exhibits and affidavits may not be altered or redacted, except to reflect revisions posted on the Mock Trial website. This shall also apply to the use of the case materials as demonstrative aids or chalks.

6.12 During the actual trial (including any recesses, up to and until after both closing statements have been made) teacher-coaches, attorney-coaches, student witnesses, student observers and all other observers may not talk to, signal, or otherwise communicate with, or in any way coach their team. If brought to the attention of the presiding judge during the trial and before he or she has announced the two decisions he or she must render at its conclusion (See Rule 8.5), serious and intentional violations of this rule may result in the assessment by the presiding judge of penalty points or deductions from a team’s score. Violations of this rule which are reported to the presiding judge after he or she has announced his or her two decisions cannot result in the assessment of penalty points or deductions from a team’s score and must instead be reported to the Mock Trial Committee for further review, although such review cannot change the numerical score of the trial. To eliminate the appearance of any such improper communication, signaling or coaching during the actual trial, all teacher-coaches and attorney-coaches are encouraged to sit in or near the rear or back of the courtroom and not directly behind the student-witnesses or student-attorneys and not in their direct line of vision. When any such violations are brought to the attention of the presiding judge, regardless of any decision by the judge, both teams shall be required to provide a written report to the Mock Trial Committee of the alleged violations.

7. SCOUTING

7.1 Coaches, students and other people associated with the team’s preparation may not scout or create the appearance of scouting. No coach, student or other person associated with a team’s preparation may attend an actual trial enactment or scrimmage of any possible future opponent in the tournament. This rule prohibits, among other things, giving substantive information concerning an actual trial enactment or scrimmage to other teams through social media, the Internet, by telephone, in person or otherwise. This rule does not prohibit any activity allowed by Rule 7.2.

7.2 While teams are encouraged to scrimmage each other before the tournament begins, a team may not participate in a scrimmage after its first trial has taken place. The only exception to this rule is that a team may, after winning its region, scrimmage any team that has been eliminated from the competition, so long as the eliminated team did not compete against any of the other teams remaining in the competition.

7.3 Any violation of the scouting rules, whether intentional or unintentional, should be brought to the attention of the Mock Trial Committee and may result in disciplinary action.

8. JUDGING

8.1 The Mock Trial Program depends on the generous support of hundreds of volunteers. Please thank your judges for their time, regardless of their decisions. With approximately 50 trials a week for five weeks, we simply would not have a program without their assistance.

8.2 Under no circumstances should teacher-coaches, attorney-coaches, or students debate with the judge after she/he gives a decision. We encourage you to provide feedback to the MBA on particular judges by using the evaluation forms provided.

8.3 The mock trials are designed to be hearings or bench trials, that is, trials held before a judge acting as finder of fact.

8.4 Judges must be provided with a prepared Student Roster Form (see back of packet) before each trial,
that is, one on which the coaches have entered the names of all the participating witnesses and attorneys.

8.5 The presiding judge will render two decisions at the conclusion of the trial. The first decision rendered by the presiding judge is based on the merits of the legal case and the applicable law. The decision of guilt or innocence in a criminal case or finding in favor of the plaintiff or defendant in a civil case, does not determine which team wins or advances to the next round.

8.6 The second decision will be based on the quality of the students’ performances. The judges have been instructed to rate the performance of all witnesses and attorneys on the team. They also have been instructed to award points based on total performance. No consideration should be given to age or grade level. (See Appendix C for the Performance Rating Sheet and Matrix on Judging Criteria.)

8.7 At the sole discretion of the presiding judge, **BONUS POINTS** (a total of up to five points) may be awarded to a team’s total score to recognize superior team performance, exceptionally thorough preparation, a particularly professional and mature level of conduct, an especially sophisticated legal argument, well-made objections and responses and an outstanding ability to think and respond extemporaneously.

8.8 At the sole discretion of the presiding judge, **PENALTY POINTS** (a total of up to five points) may be deducted from a team’s total score for unsportsmanlike behavior. Such behavior might include, but would not be limited to, a team strategy of excessive objections, serious or repeated witness invention of facts designed to disrupt the presentation of the opponent’s case or to eat into their time allotment or any other behavior which, in the presiding judge’s opinion, is inconsistent with proper courtroom demeanor and the spirit of this tournament. Penalty points also may be deducted from cross-examining attorneys who repeatedly ask questions which require the witness to invent facts or for other behavior of participants, which, in the opinion of the presiding judge, is inappropriate and deserving of punitive action.

8.9 In case of a mathematical tie, a tiebreaker point will be awarded. This is explained on the performance rating sheet. The total number of points awarded, including the tie breaker point if it is needed, determines which team prevails.

9. **PERFORMANCE RATING SHEETS AND GRIEVANCE PROCEDURE**

9.1 The criteria used to evaluate students’ performances are located in the Matrix on Judging Criteria in Appendix C of the case packet.

9.2 Judges have been encouraged to call opposing coaches into chambers at the conclusion of the trial enactment so that the coaches may review the scoring sheet and check the scores for mathematical accuracy. Coaches must sign the scoring sheet at that time. Even if the judge does not call the coaches into chambers, they are responsible for reviewing the scoring sheet and checking its accuracy at the conclusion of the trial. It is also the coaches’ responsibility, if they choose to do so, to copy the scores onto a clean copy of the Performance Rating Sheet so that students can review their individual performances. The MBA does not keep track of individual scores.

9.3 The scoring decision of the court is final. We ask that you accept the decision of the judges with dignity and remember that they are volunteering their time. As your attorney-coach will tell you, we don’t always agree with the judge’s decisions. For the correct procedure to follow in the event of a gross rule violation by a student and/or coach, see Section 11, Objections.

9.4 There is no formal grievance procedure. Failure or refusal to check the accuracy of the scores or to sign the scoring sheet will not preserve a right to appeal the decision of the court, which is final.

10. **TIME LIMITS**

The script for the trial enactment is designed to be completed within a two-hour time limit. The MBA has reserved a sufficient amount of time for the teams to be able to complete the trials. Teams that do not monitor their time and run longer than the two hour allotted time will bear sole responsibility for the inability to complete a trial. An incomplete trial will NOT be rescheduled. It will be counted as a loss to both teams.

10.1 The following time periods should be observed in
preparing the case for trial.

a. Opening statements: five minutes per side
b. Direct examination: seven minutes per witness
c. Redirect examination: time limit left to judge’s discretion; limit of three questions per witness
d. Cross-examination: five minutes per witness
e. Re-cross-examination: time limit left to judge’s discretion; limit of three questions per witness
f. Closing arguments: seven minutes per side

10.2 Time runs from the beginning of the witness examination, opening statement, or closing argument until its conclusion. Introduction of counsel or witnesses prior to the opening statement shall not be included in the time allotted for opening statements. However, if counsel or witnesses are introduced once the opening statement has commenced, such time shall be included in the time allotted for the opening statement. Time stops only for objections, questioning from the judge or administering the oath. Time does not stop for introduction of exhibits.

10.3 Both teams have the option of providing a student timekeeper for the trial enactment — a clerk for the defense and a bailiff for the prosecution/plaintiff. The clerk/bailiff must bring a stopwatch or other silent timing device, and time cards to each trial. The clerk/bailiff may only use the time cards provided on the MBA website printed out on white paper. The time cards will be printed with: 2 minutes, 1 minute, 30 seconds, 15 seconds and STOP.

10.4 The clerk/bailiff will be responsible for monitoring its own and the other team’s time, however the timekeeper should only provide time signals for its respective team. If a time limit is exceeded, the clerk/bailiff may hold up the STOP time card and state, “time.” Ultimately, the judge is responsible for moving the trial along and may adjust time at his/her discretion. Deliberate abuse of the time limits may result in deduction of points.

10.5 During the rounds of the competition, timekeepers are to act as a neutral entity. Timekeepers are not to communicate with their respective teams during the course of the trial presentation. If any significant time discrepancy between the clerk and bailiff occurs, the clerk/bailiff should notify the judge. The determination of the abuse of the time periods is a discretionary decision of the judge. The judge’s decision on abuse of time is final and cannot be appealed.

II. OBJECTIONS

11.1 Physical constraints of the courtroom may prevent all counsel from sitting together at the counsel table.

11.2 Any objections, even to gross rule violations, must be raised during the course of the trial or they are lost. A gross rule violation might consist of a teacher, parent, school official or lawyer coaching or signaling the students on the team during the course of the trial. Such coaching could include a verbal message, hand or facial gestures or coughing, and other noise making intended to convey a message to the students.

11.3 The proper procedure to follow in objecting to a gross rule violation is to request a bench conference and bring the objection to the attention of the presiding judge.

11.4 Coaches may raise objections, but only in the event of improper behavior on the part of opposing coaches or spectators. The intent of this rule is to allow coaches to object to behavior on the part of other adults when it might be difficult for students to object to or even to see an adult’s behavior. Coaches must raise objections immediately at the time of the infraction. This rule does not allow coaches to make objections on behalf of their student attorneys regarding the substance of the trial. It applies only to gross rule violations such as coaching or signaling time that occur during the course of the trial.

11.5 Unless circumstances require otherwise (i.e. the physical constraints of the trial location) in order to avoid even the appearance of coaching, coaches and other spectators shall not sit in jury boxes or other seating which is forward of the attorney’s tables. Students should be reminded not to communicate in any way with their coaches, witnesses or non-participating students during the course of the trial.
12. THE SCHEDULE

12.1 The times and dates of the trials are set by the court and, except under extreme circumstances, i.e., dangerous weather conditions, they cannot be changed. An unexcused absence from a trial will result in a forfeit for the absent team and a win for the opposing team.

12.2 Most trials will be scheduled between 1 and 2 p.m. Because courts are closed for business at 4:30 p.m., please keep an eye on the clock. We have asked judges to do the same.

12.3 The MBA will assess a fee of $250 to any school that drops out of the competition after the “latest dropout date to avoid penalty” listed in the Mock Trial Datebook, found in Rule 13 of the case materials.

12.4 A team that does not participate in an assigned trial shall have forfeited that trial.

A team forfeiting a second trial during a tournament year will be considered to have dropped out of the tournament. Upon its second forfeit, the team will be assessed the drop out fee and may no longer compete in trials for the remainder of the tournament year.

A team which forfeits a trial is also subject to being suspended from the Mock Trial Program for the following year at the discretion of the MBA Mock Trial Committee. The team will have the opportunity to explain the reasons for the forfeit(s) before the decision of the committee. The amount of notice provided by the team in advance of the forfeit shall be considered by the committee as part of its deliberation.

Forfeiting a trial deprives another team of the opportunity to compete. Additionally, the trials for the tournament take many hours of staff time to coordinate. Please make sure you and your team members are committed to completing the tournament before you register.

12.5 Accommodations in the Mock Trial schedule will be considered for academic testing and/or religious reasons if the request is submitted before the deadline date provided on the registration form. Other requests for accommodations will be considered only for extraordinary circumstances. Please make sure that your team is available to commit to the entire Mock Trial competition.

12.6 The state police, the court or other authority of the trial location, the school district, or the principal of a participating school are the only relevant authorities who may declare a weather emergency. A weather emergency may not be declared by a teacher or team coach. A weather emergency may either reflect the closure of a school or trial venue, or the determination by a relevant authority that it is unsafe for students to travel. If a weather emergency has not been declared by a relevant authority, teams wishing to cancel a trial due to inclement weather must forfeit the trial. Except under exceptional circumstances, weather emergencies must be declared by 11 a.m. on the day of the trial. A coach of the team of a canceling school is responsible for informing both the coach of the other team and Mock Trial Central of the cancellation. Mock Trial Central will inform the judge and trial venue of the cancellation. The coach of the team giving notice must do so immediately after the emergency is declared, both by telephone and by email, and the team giving notice must receive prompt confirmation of the notice from the teacher coach or their adult (non-high school student) designee at the opposing school in order for the notice to be effective. To avoid miscommunication between teams, please make every effort to make live telephone contact with a responsible adult at the opposing school. Court time permitting, trials cancelled due to weather emergencies will be rescheduled. Failure to comply with provisions for weather emergencies may result in a forfeit.

12.7 Coaches shall confirm with each other (three school days) in advance of any given trial. At that time, coaches shall confirm which side each team will be playing. To ensure effective communication in the event of a weather, or other emergency, Mock Trial Central strongly recommends that coaches exchange emergency contact information—such as a cell phone, or other telephone number where they can be reached on the day of the trial. The website posting is final and official.

12.8 Teacher-coaches (of the winning team) must call in their scores to the MBA by 9 a.m. the next morning. Messages may be left on the MBA’s
voice mail at (617) 338-0570. Scores also may be emailed to MockTrial@MassBar.org.

12.9 The teacher coach or their adult (non-high school student) designee must attend all trials with students. If not, the team will have to forfeit match.

13. MOCK TRIAL DATEBOOK

A schedule will be prepared in early January indicating the time and place of your trials and the side your team must argue. This will be posted in a secure area on the website.

Latest dropout date to avoid penalty.. Nov. 10, 2017

Preliminary rounds begin.......week of Jan. 15, 2018
(No trials scheduled for Monday, Jan. 15 — Martin Luther King Day)

Snow make-ups.....week of Feb. 5 and Feb. 12, 2018

Winter break.......................... week of Feb. 19, 2018

Tiebreaker week..................... week of Feb. 26, 2018

Regionals (32 Regions and Sweet Sixteen trials) ......

Sunday, March 4, 2018 in Worcester
(snow date: Sunday, March 11, 2018)

Elite Eight and Final Four trials....................... week of March 12, 2018 in Boston

State Championship..................................... TBD

14. MOCK TRIAL WEBSITE—NEW SITE!

Mock Trial Central has been working hard all summer developing a new Mock Trial website for teams, teachers and judges. We are very excited about the new look and functionality of the site.

To access the Mock Trial’s home page, go to https://MassBar.org/Mock. This site serves as the most current and efficient source of information regarding clarifications on stipulations, case updates, trial results and answers to the most frequently asked questions.

The new site has a “registrants only” area for students and teacher/attorney coaches. Each team will receive a randomly assigned login and password at the Teacher/Attorney Coach Orientation in October. Note that the coaches will receive an “Admin” login and password, and the students will receive a “Team” login and password. The reason for the two separate logins and passwords is due to each group having a different level of access to the site. (See Appendix D for log-in instructions.)

This website will allow your team to see your schedule, contact information on the other teams, have directions to the venues, and updates to the case. We highly recommend that you check the website on a daily basis so that you do not miss any updates and/or changes. You may want to assign this task to one of your students.

If you have questions, comments or concerns, email MockTrial@MassBar.org or call at (617) 338-0570.
PART III:
Hints on Preparing for a Mock Trial

Review all of the materials in the case packet
• All students should read the entire set of materials and discuss the information/procedures and rules used in the Mock Trial Program.
• The facts of the case, witnesses’ testimony, and the points for each side in the case then should be examined and discussed. Key information should be listed on the chalkboard as discussion proceeds so that it can be referred to at some later time.

Assign roles early
• Even though a team has to represent only one side in the case during any single trial, all roles in the case should be assigned and practiced. This will help in practicing the case as well as in preparing for future trials.
• Schools should designate alternates for both students and teacher-coaches in order to be prepared for unexpected illness or absence.
• The credibility of the witnesses is very important to a team’s presentation of its case. Experience has shown that close decisions in the trial enactments often hinge on individual differences in witness performance. Therefore, students acting as witnesses really need to “get into” their roles and attempt to think like the persons they are playing. Students who are witnesses should read over their statements (affidavits) many times and have other members of the team or their class ask them questions about the facts until they know them cold.

Preparing opening/closing statements and witness questions
• Teams should allow their students to prepare their own questions, with the teacher-coach and attorney-coach giving the team continual feedback and assistance on the assignment as it is completed. Based on the experience of these practice sessions, attorneys should revise their questions and witnesses should restudy the parts of their witness statements where they are weak.
• Team members should prepare their opening statements. Legal and/or non-legal language should be avoided where its meaning is not completely understood by attorneys and witnesses.
• Closing arguments should not be totally composed before trial, since they are supposed to highlight the important developments for the plaintiff/prosecution and the defense which have occurred during the trial. The more relaxed and informal such statements are, the more effective they are likely to be. Students should be prepared for interruptions by judges who like to question the attorneys, especially during closing arguments.

Practice, practice, practice
• As a team approaches the date of its first trial, it is required that the team conduct at least one complete trial as a kind of dress rehearsal. All formalities should be followed and notes taken by the teacher-coach and students concerning how the team’s presentation might be improved. A team’s attorney-coach should be invited to attend this session and comment on the enactment.

Prepare to adapt
• The ability of a team to adapt to different situations is often a key component in a mock trial enactment, since each judge or lawyer acting as a judge has her/his own way of doing things. Because the proceedings or conduct of the trial often depend in no small part on the judge who pre-sides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests.

Some of the skills most difficult for team members to learn
• Deciding which facts are the most important to prove their side of the case and making sure such proof takes place.
• Stating clearly what they intend to prove in an opening statement and arguing effectively in their closing statement that the facts and evidence presented have proven their case.
• Following the formality of court, e.g., standing up when the judge enters, or when addressing the judge, calling the judge “Your Honor,” etc.
• Phrasing questions on direct examination that are not leading (carefully review the Simplified Rules of Evidence and watch for this type of questioning in practice sessions).

• Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions, which often lessen the impact of the point previously made. (Stop and recognize which questions are likely to require answers that will make good points for your side. Rely on the use of those questions. Avoid pointless questions!)

• Thinking quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this)

For more tips on how to prepare for your mock trial, go to MockTrial.MassBar.org and click on the “Mock Trial Tips” link.
PART IV:
Trial Procedures

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as the events that generally take place during a trial and the order in which they occur. This section outlines the usual steps in a bench trial, that is, a trial without a jury.

1. COURTROOM LAYOUT

Participants
The judge
The attorneys:
• plaintiff/prosecution and defense
The witnesses:
• three witnesses for the plaintiff/prosecution
• three witnesses for the defense

2. STEPS IN MOCK TRIAL

The opening of the court
2.1 The plaintiff/prosecution team’s attorney-coach or teacher-coach shall serve as the court crier
2.2 The court crier shall first consult the judge as to the desired method for her/his introduction and the opening of the court. The judge will have sole discretion as to whether or not there will be formal process employed for her/his introduction and the opening of the court.
2.3 If the judge confirms that she/he would like a formal process, as the judge enters the Courtroom and/or approaches the bench to begin the trial, the bailiff shall cry aloud “All rise and remain standing!”
2.4 When the judge has ascended to the bench, the bailiff shall cry aloud, “Hear Ye! Hear Ye! The Mock Trial Court of the Commonwealth of Massachusetts is now in session. The Honorable Justice [judge’s last name] presiding. All persons having business herein can now be heard. You may be seated.”
2.5 The judge will then ask the attorneys for each side if they are ready. Often the judge will begin the trial by asking if there are any preliminary matters or by requesting stipulations. The lawyers would offer stipulations, if any, in response to that question.
2.6 Stipulations of the parties are issues that both sides have agreed to prior to the trial. Only the document in the case packet labeled Stipulations of the Parties and/or additional stipulations designated by the Mock Trial Committee are considered to have been stipulated to and may be entered as such. A team may not object to the admission of stipulations.
2.7 The judge shall direct the bailiff when to recess or adjourn court; upon adjournment the bailiff shall require all present to rise and cry aloud, “This court is adjourned. Please remain standing until the judge leaves the courtroom.”

Opening statements
2.8 Before proceeding with this opening statement, each team of attorneys should have one of its members introduce the team to the presiding judge:
“Your Honor, my name is Mr./Ms. _______. My colleagues are Mr./Ms. ________ and Mr./Ms. ______.”
2.9 Only the co-counsel are introduced to the judge at the beginning of the trial. Witnesses should be introduced in character (not by actual name) as they are called to the stand.
2.10 Occasionally, the judge will have all witnesses stand at the beginning of the trial to be sworn in, but, most often, the judge or the court officer will swear in each witness as she or he is called to the stand. The judge will ask each witness:
“Do you solemnly swear or affirm to tell the whole truth, and nothing but the truth, according to the Mock Trial Rules and Affidavits?

2.11 After introducing herself/himself and co-counsel to the judge, the plaintiff’s attorney/prosecutor summarizes the evidence that will be presented to prove the case.

2.12 After introducing herself/himself and co-counsel to the judge, the defendant’s attorney summarizes the evidence that will be presented to rebut the case the plaintiff/prosecution has made.

Direct examination by plaintiff/prosecution

2.13 The plaintiff/prosecution’s attorneys conduct direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the plaintiff/prosecution’s case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case.

NOTE: The attorneys for both sides, on both direct and cross-examination, should remember that their only function is to ask questions. Attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

Cross-examination by the defense

2.14 After the attorney for the plaintiff/prosecution has completed questioning a witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistent stories, bias and other damaging facts may be pointed out to the judge through effective cross-examination.

Redirect examination by the plaintiff/prosecution

2.15 The plaintiff/prosecution’s attorneys may conduct redirect examination of its witnesses to clarify any testimony that was cast in doubt or impeached during cross-examination. Each side is limited to three questions per witness on redirect.

Re-cross-examination by the defense

2.16 The defense attorneys may re-cross examine the opposing witnesses to impeach previous testimony. Each side is limited to three questions per witness on re-cross.

Direct and redirect examination by the plaintiff/prosecution

2.17 Direct and redirect examination of each defense witness follows the same pattern as the steps above which describe the process for direct and redirect examination of the plaintiff/prosecution witnesses.

Cross and re-cross-examination by the plaintiff/prosecution

2.18 Cross and re-cross-examination of each defense witness follows the same pattern as the steps above which describe the process for cross and re-cross-examination of the plaintiff/prosecution witness.

Closing arguments (attorneys)

2.19 Defense: Defense’s closing statement is presented first. It is essentially the same for both the defense and the plaintiff/prosecution. Counsel for the defense reviews the evidence as presented, stresses the facts favorable to the defense and shows how the plaintiff/prosecution has failed to prove all the necessary elements of its case. Counsel concludes with a request that the court enter judgment on behalf of the defendant.

2.20 Plaintiff/Prosecution: The closing statement is a review of the evidence presented. It should review the evidence as presented, stress facts favorable to the plaintiff/prosecution and show how the plaintiff/prosecution has met its burden of proving all the necessary elements of its case. Counsel concludes with a request that the court enter judgment on behalf of the plaintiff/prosecution.

Burden of proof

2.21 Burden of Proof: In a civil case, the plaintiff is required to prove its case by a preponderance of the evidence; in a criminal case, the prosecution is required to prove its case beyond a reasonable doubt.

The judge’s role and decision

2.22 The judge is the person who presides over the trial to ensure that the parties’ rights are protected and that the attorneys follow the Simplified Rules of Evidence and trial procedure. In trials held without a jury or in evidentiary hearings, the judge also serves as the fact finder, that is, she/he determines the facts of the case and renders a judgment.
In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge probably will allow the evidence. The burden is on the attorneys to know the rules and to be able to use them to protect their clients by limiting the actions of opposing counsel and their witnesses.

Formal rules of evidence are complicated and differ depending on the court where the trial occurs. For purposes of the Mock Trial Program, the rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure in the same way, and you must be prepared to point out the specific rules (quoting them, if necessary) and to argue persuasively for the interpretation and application of the rule you think proper. No matter which way the judge rules, you should accept his or her ruling with grace and courtesy.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope
These Simplified Rules of Evidence and Procedure govern the trial proceedings of the Mock Trial Program. The only rules of evidence that may be cited are those included here.

Rule 102. Objections Beyond the Scope of These Rules
An objection which is not contained or referred to in these Simplified Rules of Evidence and Procedure shall not be considered by the court. Counsel responding to such an objection is responsible for pointing out to the judge that the objection raised is not contained in these rules. If counsel fails to do so, the court may exercise its discretion in considering such an objection.

ARTICLE II. MODE AND ORDER OF INTERROGATION AND PRESENTATION

Rule 201. Form of Question During Direct Examination
On direct examination, witnesses may not be asked leading questions except as may be necessary to elicit background information or basic foundation to develop the witness’ testimony. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a “yes” or “no” answer.

Example of a direct (non-leading) question: “Sergeant Brown, please describe what the defendant looked like the morning of the arrest.” (NOTE: This question is not leading provided that it has already been established that the defendant was arrested on a particular morning, and that Sgt. Brown observed the defendant on the morning of her arrest.)

Example of a leading question: “Sergeant Brown, when the defendant was arrested, wasn’t she wearing a red sweatshirt, blue jeans and white sneakers?”

Rule 202. Scope of Direct Examination
Direct examination may cover any relevant facts about which the witness has personal knowledge.

Rule 203. Narration
(a) Questions Calling for Narrative Testimony
Questions on direction examination must ask for specific information, and may not be so broad that the witness is invited to wander or narrate a story. Questions calling for narrative testimony are objectionable.

Example of a question that calls for narration: “Please tell the court everything you know about the accident.”

(b) Narrative and Non-responsive Answers
The witness’ answer to a question may not go beyond the facts about which the question was asked. Answers that go beyond the scope of the question are objectionable. If the judge sustains an objection on these grounds, the objecting attorney may make a motion to strike the improper testimony.
Rule 204. Form of Question During Cross-Examination
On cross-examination, an attorney may ask leading questions of the opponent’s witness.

Rule 205. Scope of Cross-examination
Cross-examination may cover any relevant facts about which the witness has personal knowledge (whether or not raised during the direct examination) or matters relating to the credibility of the witness.

Rule 206. Redirect Examination
After cross-examination, a maximum of three additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross-examination. The judge has the discretion to limit the scope of redirect.

Rule 207. Re-cross-examination
After redirect examination, a maximum of three additional questions may be asked by the cross-examining attorney, but questions must be limited to matters raised by the attorney on redirect examination. The judge has the discretion to limit the scope of re-cross.

Rule 208. Recalling Witnesses Prohibited
After a witness has been excused from further testifying, the witness may not be recalled by either party.

ARTICLE III. INVENTION OF FACTS (Special Rules for Mock Trial Program)

Rule 301. “Invented Fact” Defined
An “invented fact” is a material fact which is not contained anywhere in the stipulations, the evidence, or in any witness’ affidavit, and which is not a “fair and reasonable extrapolation” of facts which are clearly found within such case materials. An “invented fact” is not permitted because it would promote the unfair creation of inferences which are not supported by the case materials. The case materials provide sufficient factual and legal points on which to question each witness without the witness inventing, or the cross-examining attorney requiring the witness to invent facts.

A fair and reasonable extrapolation does not materially affect the outcome of the case or the arguments in the case, and must be reasonably inferred to be within the personal knowledge of the witness.

Example of a fair and reasonable extrapolation: A witness/soccer player states in her/his affidavit that the final score of the game was 2–1. The coach of the team does not mention the score of the game in her/his affidavit. It is reasonable to assume that the coach would have personal knowledge of the score, and it is a fair and reasonable extrapolation of the facts contained in the evidence (assuming the coach was at the game) to know the final score. The coach is permitted to testify that the final score of the game was 2–1.

Example of an unfair and/or unreasonable extrapolation: In the above example, if a conversation between two players occurred during the soccer game, and the statements made during the conversation are important to the case, unless the coach’s affidavit contains sufficient information to provide a foundation for the coach to testify to what was said, it is not reasonable to assume that the coach heard the conversation just because she/he was at the game. It would be an unfair extrapolation for the coach to claim that she/he heard the conversation.

Rule 302. Invention of Facts on Direct Examination
On direct examination, each witness is bound by the facts contained within her/his written affidavit, but is not required when testifying to be limited only to facts contained in her/his affidavit. A witness may testify to knowledge of other facts contained within the case materials, and to fair and reasonable extrapolations thereof, but such testimony must be reasonably based upon her/his personal knowledge.

Rule 303. Methods of Redressing Invention of Facts on Direct Examination
(a) Traditional Impeachment

If a witness testifies in contradiction to a fact in the witness’ own affidavit, opposing counsel should impeach the witness during cross-examination. If a witness testifies to an “invented fact,” opposing counsel may elect to impeach the witness during cross-examination, by asking questions to confirm that the fact is not contained in the witness’ affidavit (or elsewhere in the case materials), or may elect to object to the “invented fact,” pursuant to Rule 303(b), at the time it is offered by the witness.

(b) Objection Raised at Bench Conference

If a witness testifies to an “invented fact,” opposing counsel may immediately request a bench conference, at which time counsel may object to the invention of facts (as defined above). After the bench conference, any fact deemed by the judge to be an “invented fact” shall not be permitted; the
“invented fact” shall be stricken, and the witness shall be instructed to answer counsel’s questions without reference to the “invented fact.”

Invention of facts objections should be raised at bench conferences to preserve the integrity and decorum of the trial atmosphere. However, the granting of a bench conference is a discretionary decision of the judge and a request for a bench conference may not always be granted. If the judge declines a request for a bench conference, the invention of facts objection may be raised in open court.

Sample objections that may be made at the bench conference:

“Your Honor, the witness is creating facts which are not in the record.”

“Your Honor, the witness has invented facts which are not supported by the record.”

“Your Honor, the facts offered constitute an unfair or unreasonable extrapolation from the facts contained in the record.”

At a bench conference, counsel should be prepared to direct the judge to the invention of facts rules.

Rule 304. Invention of Facts on Cross-examination

On cross-examination, if a witness is asked a question the answer to which is not contained in the stipulations, in the evidence or in any witness’ affidavit, the witness may respond with any answer as long as it is responsive to the question, is not contrary to the witness’ affidavit and does not contain unnecessary elaboration. If the witness provides an answer that is contrary to the witness’ affidavit, the affidavit may be used to impeach the witness’ testimony.

A witness may not be impeached for failing to adopt facts from another affidavit or exhibit if she/he elects not to adopt such facts. If a witness is unable to respond in accordance with Rule 304, she/he may claim to have no recollection on which to base an answer. Questions calling for the invention of facts on cross-examination are not objectionable on those grounds.

Example: If the soccer player in the examples under Rule 302 above claims that the soccer coach was present and heard the entire conversation, but the coach does not admit that in her/his affidavit, the coach is not required to adopt the player’s statement and is allowed to deny that she/he heard the conversation, or may testify that she/he does not recall whether she/he heard the conversation. The coach’s credibility may not be questioned (i.e., she/he may not be impeached) solely because she/he failed to adopt the assertion of the soccer player that the coach heard the conversation. If the coach is asked whether she/he heard the conversation, counsel’s objection on the grounds that the question calls for invention should be overruled.

ARTICLE IV. RELEVANCE

Rule 401. Definition of “Relevant Evidence”

“Relevant evidence” means evidence which tends to make the existence of any fact that is of consequence to the determination of the outcome of the case more or less probable than it would be without the evidence.

Rule 402. Irrelevant Evidence Inadmissible

Relevant evidence is admissible, except as otherwise provided in these rules or other law provided in the case materials. Irrelevant evidence is not admissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Waste of Time

Although relevant, evidence may be excluded if (a) its probative value is outweighed by the danger of unfair prejudice; (b) if it confuses the issues; (c) if it is misleading; or (d) if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.

Rule 404. Character Evidence not Admissible to Prove Conduct, Exceptions, Other Crimes

Evidence of a person’s character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except for:

1. Character of accused. Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same; or

2. Character of victim. Evidence of a pertinent character trait of the victim of a crime offered by an accused, or by the prosecution to rebut same; or

3. Character of witness. Evidence of the character of a witness as provided in Rules 603, 604 and 605.

NOTE: Although evidence of a person’s crimes or other wrongs is not admissible for the purpose of proving action in conformity therewith on a particular occasion (except for the instances noted above), it may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

Example: Sam the Safecracker is on trial for a bank
robbery in which the bank vault was opened by using both a dentist’s drill and the Pip Diamond, a uniquely flawless jewel that had been stolen from a safe in the Famed Farmer Museum the previous year. Evidence that Sam participated in the Famed Farmer heist is not admissible to prove that Sam is guilty of the bank robbery, but may be admissible to show that Sam had the opportunity to open the safe (using the Pip Diamond) or that the Famed Farmer heist was part of the plan or preparation for the bank robbery (in which the Pip Diamond was used).

Rule 405. Methods of Proving Character
(a) Reputation or Opinion
In all cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) Specific Instances of Conduct
In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 406. Subsequent Remedial Measures
When measures taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of such subsequent remedial measures when offered for another purposes, such as proving ownership, control, or feasibility of precautionary measures (if controverted), or for impeachment.

Example: In a lawsuit for negligence arising out of a slip and fall in a grocery store parking lot, evidence that the grocery store added a sign after the accident, warning customers that the area may be slippery, will not be admissible to prove that the grocery store was at fault for the accident, but may be admissible to show that the parking lot is under the control of the grocery store (if the store owner denies it).

Rule 407. Compromise and Offers to Compromise
Evidence of compromise or offers to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rules does not require exclusion of such evidence when it is offered for another purpose.

ARTICLE V. PHYSICAL EVIDENCE
Rule 501. Prerequisites for Admission of Physical Evidence
Physical evidence may be introduced if it is relevant. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic, or its identification and authenticity have been stipulated. That a document is authentic means only that it is what it appears to be, not that the statements in the document are necessarily true.

NOTE: The exhibits in this mock trial are not automatically admissible at trial. While the authenticity of the exhibits has been stipulated, a proper foundation must be laid in order to introduce an exhibit in evidence.

Rule 502. Procedure for Introducing Physical Evidence
The proper procedure to use when introducing a physical object or document for identification and/or in evidence is as follows:

• Show the exhibit to opposing counsel, so that counsel is aware of what exhibit is being offered.

• Ask the judge to mark the exhibit for identification. “Your Honor, I ask that this document be marked as Exhibit A for identification.” At this point, you are not offering the exhibit as evidence, but rather marking it so that it is clear what document you are referring to when asking the witness questions about the exhibit.

• Hand the document to the witness and ask the witness to identify it. “I show you what has been marked as Exhibit A for identification. Would you please identify that exhibit?”

• Ask the witness questions about the exhibit to establish its relevance and other pertinent information.

• Offer the exhibit into evidence. “Your Honor, at this time I ask that the court admit Exhibit A in evidence as Exhibit 1.”

• The judge will ask opposing counsel if there is any objection, rule on any objection (after argument), and either admit the exhibit into evidence or not.
Rule 503. Use of a Writing to Refresh Recollection
If a witness is unable to recall information contained in a document, the attorney, after requesting the Court's permission and showing the document to opposing counsel, and if no objection is sustained, may show a document to the witness to help the witness remember the information without introducing the document into evidence. The witness cannot read the document to the court and must return the document to counsel before answering the question.

Rule 504. Publishing Documents to the Court
Once a document has been admitted in evidence, counsel for either party may publish specific portions of the document to the court by directing the judge's attention to the relevant portion and reading it aloud. Opposing counsel may object only if counsel has misread the document.

Example: “I direct the court’s attention to the second page of Exhibit 1, at the top, where it says ‘Dolores is deceased.’”

Rule 505. Use of a Witness’ Affidavit to Impeach
Unless prohibited by Rule 802, a witness may be asked questions about her/his affidavit without introducing the document. If, after appropriate questioning, a witness refuses to admit having made a statement contained within her/his affidavit, the attorney may, in conformance with Rule 502, enter into evidence the affidavit containing the statement for the purpose of impeachment. An affidavit admitted into evidence under this rule may be considered by the Court only for the limited purpose of impeachment; the document admitted will be deemed to contain only the alleged inconsistent statement(s).

ARTICLE VI. WITNESSES

Rule 601. General Rule of Competency
Every person is presumed to be competent to be a witness.

Rule 602. Lack of Personal Knowledge
A witness may not testify to a matter unless the witness has personal knowledge of the matter; the witness may not speculate. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

Rule 603. Who May Impeach
The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 604. Evidence of Character and Conduct of a Witness
(a) Opinion and Reputation Evidence of Character
The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) The evidence may refer only to character for truthfulness or untruthfulness; and

(2) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific Instances of Conduct
Specific instances of the conduct of a witness may not be offered for the purpose of attacking or supporting the witness’ credibility, except on cross-examination either (1) to rebut testimony regarding the witness’ character for truthfulness or untruthfulness, or (2) to impeach the witness’ testimony regarding the truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Rule 605. Impeachment by Evidence of Conviction of Crime
For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted, but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the probative value of this evidence as reliable proof outweighs its prejudicial effect to a party.

Rule 606. Religious Beliefs or Opinions
Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness’ credibility is impaired or enhanced.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses
If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.
Rule 702. Testimony by Experts
If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, background, training, and/or education may testify in the form of an opinion. Prior to offering such an opinion the witness must be deemed qualified by the court, pursuant to a request by the attorney conducting the examination.

Rule 703. Bases of Opinion Testimony by Experts
The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the trial. The facts or data supporting an expert's opinion need not be admissible in evidence provided that they are of a type reasonably relied upon by experts in the field in forming opinions or inferences.

Rule 704. Opinion on the Ultimate Issue
(a) General Rule
Opinion or inference testimony otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.

(b) Opinion on Guilt or Innocence in a Criminal Case
In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

ARTICLE VIII. HEARSAY
Rule 801. Definitions
The following definitions apply under this article:
(a) Statement. A “statement” is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
(b) Declarant. A “declarant” is a person who makes a statement.
(c) Hearsay. “Hearsay” is an out-of-court statement offered to prove the truth of the matter asserted.

Example of a statement which is offered for the truth of the matter asserted:
“Ralph Malph told me the light was green” when offered to prove that the traffic light was green.

Examples of statements not offered for the truth of the matter asserted:
- The statement is offered to prove that the person to whom it was addressed had notice or knowledge of the contents of the statement (if relevant). In this case, whether the statement is true does not matter, what matters is that the listener heard the statement.
- The statement is offered because the statement itself constitutes a verbal act that is at issue, such as defamation or fraud. In this case, you may be even trying to show that the statement is false.
- The statement is offered as circumstantial evidence of the declarant's state of mind (e.g., “I am Napoleon” offered to show that the declarant is insane).

NOTE: This list is by no means exhaustive.

(d) Statements which are deemed not to be hearsay by rule. A statement is not hearsay if:
(1) Prior statement by witness. The declarant testifies at the trial and is subject to cross-examination concerning the statement and the statement is: (A) inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in an affidavit; (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or (C) one of identification of a person made after perceiving the person.

(2) Statement by a party-opponent. The statement is offered against a party and is: (A) the party's own statement in either an individual or representative capacity; (B) a statement of which the party has manifested an adoption or belief in its truth; (C) a statement by a person authorized by the party to make a statement concerning the subject; (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment made during the existence of the relationship; or (E) a statement by a co-conspirator of a party during the course of and in furtherance of the conspiracy.

NOTE: The statement need not be an “admission.”
Rule 802. Hearsay Rule

Hearsay is not admissible, except as provided by these rules.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

The following are hearsay statements, but are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. Example: “She said, ‘He sure is driving awfully fast.’”

2. Spontaneous exclamation (also commonly referred to as “excited utterance”). A statement made under the impulse of excitement or shock if its utterance was spontaneous to a degree that reasonably negated premeditation or possible fabrication and if it tended to qualify, characterize, or explain the underlying event. Example: “I can’t believe I ate the whole thing!”

3. Then-existing mental, emotional or physical conditions. A statement of the declarant’s then-existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed. Example: “He said he had a terrible stomach ache.”

4. Statements for purposes of medical diagnosis or treatment. Statements made for the purpose of medical diagnosis or treatment.

5. Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly.

6. Records of regularly conducted activity (the “business records” rule). A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made by a person with knowledge:
   (1) If kept in the course of a regularly conducted business activity; and
   (2) If it was the usual course of business to make the record at the time of the event recorded or within a reasonable time thereafter;
   (3) Unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness of the records in question.

The term “business” as used in this paragraph includes business, institution, association, profession, occupation and calling of every kind, whether or not conducted for profit.

7. 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 published 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.

8. Reputation as to character. Reputation of a person’s character among associates or in the community.


Rule 804. Hearsay Exceptions, Declarant Unavailable

(a) Definition of Unavailability

“Unavailability as a witness” includes situations in which the declarant:

1. Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or
2. Testifies to a lack of memory of the subject matter of the declarant’s statement; or
3. Is unable to be present or to testify at the trial because of death or then-existing physical or mental illness or infirmity.

A declarant is not unavailable as a witness if any of the above is due to the wrongdoing of the proponent of a statement for the purposes of preventing the witness from attending or testifying.
(b) Hearsay exceptions

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant’s death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history. (a) A statement concerning the declarant’s own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption or marriage, ancestry or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (b) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption or marriage or was so intimately associated with the other’s family as to be likely to have accurate information concerning the matter declared.

(5) Declaration of deceased person. In any action or other civil judicial proceeding, a declaration of a deceased person shall not be inadmissible in evidence as hearsay or as private conversation between husband and wife, as the case may be, if the court finds that it was made in good faith and upon the personal knowledge of the declarant.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is admissible only if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

ARTICLE IX. PROCEDURAL RULES

Rule 901. Authority to object

Objections to an opening statement must be made and argued only by the attorney making the opposing opening statement. Objections during the direct examination or cross-examination of a witness must be made and argued only by the opposing attorney cross examining or examining the same witness. Objections regarding a closing argument must be made and argued only by the attorney making the opposing closing argument.

Rule 902. Procedure for Objections

The attorney authorized to object may object any time any tournament rule or rule of procedure or evidence is violated, except as noted in Rule 906.

Rule 903. Motion to Strike

If an answer is unresponsive or otherwise objectionable, the opposing counsel may ask the judge to strike the objectionable testimony.

Rule 904. Other Motions

Motions for directed verdict or dismissal or any other motions not specified in the Simplified Rules of Evidence and Procedure are not permitted.

Rule 905. Closing Arguments

Closing arguments must be based on the evidence and testimony presented during the trial.

Rule 906. Objections During Opening Statements and Closing Arguments

No objections may be raised during the course of opening statements or closing arguments. An objection to an opening statement or to a closing argument may be made immediately following the opening statement or closing argument. A brief rebuttal or explanation is permitted at the discretion of the judge.
ARTICLE X. AUTHENTICATION

Rule 1001. Authenticating or identifying evidence
(a) In general
To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must — unless already established by stipulation — produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples
The following are examples only — not a complete list — of evidence that satisfy the requirement:
(1) Testimony of a witness with knowledge. Testimony that an item is what it is claimed to be.
(2) Non-expert opinion about handwriting. A non-expert’s opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.
(3) Comparison by an expert witness or the trier of fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.
(4) Distinctive characteristics and the like. The appearance, contents, substance, internal patterns or other distinctive characteristics of the item, taken together with all the circumstances.
(5) Opinion about a voice. An opinion identifying a person’s voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.
(6) Evidence about a telephone conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:
(A) A particular person, if circumstances, including self-identification, show that the person answering was the one called, or;
(B) A particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.
(7) Evidence about public records.
(A) Originals. Evidence that a document was recorded or filed in a public office as authorized by law, or that a purported public record or statement is from the office where items of this kind are kept.
(B) Copies. A copy of any of the items described in Subsection (7)(A), if authenticated by the attestation of the officer who has charge of the item, is admissible on the same terms as the original.
(8) Evidence about ancient documents. For a document, evidence that it:
(A) Is in a condition that creates no suspicion about its authenticity;
(B) Was in a place where, if authentic, it would likely be; and
(C) Is at least 30 years old when offered.
(9) Evidence about a process or system. Evidence describing a process or system and showing that it produces an accurate result.
(10) Electronic or digital communication. Electronic or digital communication, by confirming circumstances that would allow a reasonable fact finder to conclude that this evidence is what its proponent claims it to be. Neither expert testimony nor exclusive access is necessary to authenticate the source.
PART VI: TRIAL SCRIPT AND EXHIBITS
COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2014-0813

****************************************

LEAH/LEE HIZENEYE,
Plaintiff,

v.

CONSOLIDATED BROKERS
OF BOISE INSURANCE COMPANY,
Defendant

****************************************

STIPULATIONS OF THE PARTIES

NOW COME the parties in the above-captioned matter and hereby agree and stipulate as follows:

1. This is a civil lawsuit for breach of contract based on Consolidated Brokers of Boise Insurance Company’s refusal to pay death benefits claimed by the plaintiff under a life insurance policy issued to Liam Hizeneye. The action was timely commenced within the time periods set forth in M.G.L. c. 260, §2.

2. The jurisdiction and venue of this court are proper and may not be contested.

3. All pre-trial issues have been resolved and are not at issue in this trial.

4. On November 1, 2013, at 7:29 a.m. an explosion occurred outside of the Hizeneye home located at 69 Hanson Road, Oakhill, Massachusetts. The explosion originated in the truck operated by Liam Hizeneye, who was the only person in the vehicle at the time of the explosion.

5. Liam Hizeneye died as a result of the injuries he sustained in the explosion.

6. Leah/Lee Hizeneye is the only beneficiary under the life insurance policy at issue in this action.

7. The pertinent terms of the life insurance policy are as follows:
   a. Policy provides a standard death benefit of $5 million;
   b. Policy includes a double indemnity clause, providing for payment of $10 million in the event of accidental death or murder;
   c. In the event that the insured dies as a result of suicide within three years of the policy’s issuance, no death benefits shall be owed and the insurer shall only be obligated to return all premiums paid.

8. Prior to trial, Consolidated Brokers of Boise Insurance Company properly tendered payment for all of the premiums paid under the policy.

9. On December 1, 2012, Liam Hizeneye executed a Mortgage and Security Agreement in favor of Axon Savings and Loan encumbering the real property located at 69 Hanson Road, Oakhill, Massachusetts. There is no dispute regarding the enforceability of that Mortgage and Security Agreement.

10. The factfinder in this case shall only determine whether the plaintiff is entitled to death benefits under the policy and, if so, the amount of death benefits that are owed.
STIPULATIONS OF THE PARTIES (cont.)

11. Except as provided in Stipulation 12, all documents and all signatures on documents are authentic. Notwithstanding this stipulation regarding authenticity, a party seeking to offer a document into evidence must establish that the document meets the other requirements of admissibility.

12. The parties dispute whether the document attached to the Affidavit of Samantha/Samuel Spade as Exhibit B is authentic. Any party seeking to enter that document into evidence shall be obligated to establish its authenticity in accordance with Rule 1001 of the Simplified Rules of Evidence and Procedure.

13. All named witnesses must testify in this trial and their appearances as witnesses are not subject to objection. This stipulation does not prohibit objecting to a witness being permitted to give an opinion if that witness has not been properly qualified as an expert. Any person not called in this trial to testify is unavailable and no inquiry is permitted as to the reason therefor.

14. Any report, chart or other physical evidence that is not provided in the case materials is unavailable for trial and neither party may comment upon such unavailability.

15. No technical information beyond the information contained in the case materials is admissible at trial.

16. All witness roles in this case are gender-neutral.

17. All persons, places and events described in the materials are completely fictional. Any resemblance to real persons, places or events is coincidental.

18. The parties hereby reference any additional stipulations and any case updates listed on the MBA Mock Trial website and duly incorporate said stipulations and updates herein.

19. Expert witnesses have had pre-trial access to each other’s affidavits and all materials referenced therein.

Witnesses for the Plaintiff

1. Leah/Lee Hizeneye
2. Winnie/Willie Silvermain
3. Phylis/Philip Rupp

Witnesses for the Defendant

1. Jess/Jim Grace
2. Samantha/Samuel Spade
3. Stevie J. O’Hara Ph.D.

Trial Materials and Exhibits

1. Affidavit of Leah/Lee Hizeneye
2. Claim Form signed by Leah/Lee Hizeneye dated Dec. 1, 2013
3. Affidavit of Winnie/Willie Silvermain
STIPULATIONS OF THE PARTIES (cont.)

4. Affidavit of Phylis/Philip Rupp
5. Curriculum Vitae of Phylis/Philip Rupp
6. Photo of Propane Tank
7. Photo of Liam Hizeneye's Truck
8. Affidavit of Jess/Jim Grace
10. Affidavit of Samantha/Samuel Spade
11. Claim Form signed by Isabella Hizeneye dated Nov. 9, 2013
12. Undated document found at Hizeneye home on Nov. 19, 2013
15. Affidavit of Stevie J. O’Hara Ph.D.
16. Curriculum Vitae of Stevie J. O’Hara Ph.D.
AFFIDAVIT OF LEAH/LEE HIZENEYE

1. My name is Leah/Lee Hizeneye. I live at 67 Norwood Ave., in Oakhill, Massachusetts, which is just outside of Boston. I previously lived at 69 Hanson Road in Oakhill, where I had lived my whole life until about a year or so ago. My date of birth is Jan. 26, 1986.

2. My mother died on Oct. 28, 2004 after losing a battle with cancer. I had just begun my freshman year at Bishop’s University in Quebec, but dropped out to help my dad. It took a while, but he finally supported that decision.

3. He was taking my mom’s death hard for a while (and so was I), but after a tough year he managed to get back into being pretty active socially. Although he played in two or three men’s softball leagues every spring and summer, and was an avid candlepin bowler in the winter, something always seemed to be missing. He kept trying for a while to get me to return to college, but I knew that really wasn’t for me. He was always, and I mean always, trying to get me to bowl in his leagues and to play softball, but none of that really interested me either. I was a pretty good athlete in high school, but enough was enough. A couple of my high school friends had remained in the area and my social life is fine. I know my dad never appreciated it, but I have achieved Level VII in “Amazing Spiderman: Aerial Supremacy” (ASAS), and Level VIII in “Svetlana’s Revenge.” I have attended the last two PAX East Gaming Conventions and done really well in some of the tournaments. I don’t think he ever understood it.

4. When I was in high school, every once in a while when my dad needed an extra set of hands to help on a job, I’d serve as a carpenter’s helper. I did not mind the work, but it always took up a whole day and I usually had other things to do. One of the benefits was that I learned quite a bit about construction (including that I did not want to go into it), but I also learned how my dad kept his records. My mom kept his books, but after she died, I always helped keep my dad’s books, including the project files and the financials.

5. My dad’s marriage to Isabella on Oct. 3, 2010 brought my dad back to life. I’m not going to say that their relationship was without its ups and downs, but until the day he died, my dad and Isabella enjoyed life and were a happy couple.

6. I can’t say the same for Jess/Jim Grace, Isabella’s daughter/son. What a stuck-up, conceited, envious brat! Since my dad and Isabella started dating, Jess/Jim always tried to act like she/he was the princess/prince of the castle. Isabella probably couldn’t take her/him either which is why she tucked her/him away in boarding school. I begged my dad not to bring her/him into the house, but he wanted us to all be “family.” It wasn’t going to happen. One thing about Jess/Jim: she’s/he’s a liar. She/he always made things up about me and about my dad to make us look like nut jobs. She/he tried to convince my dad that I was on drugs, which was completely untrue. She/he even tried to convince her/his mother that my dad was on drugs … also untrue. My dad was a very healthy person until the day he died, and Jess/Jim couldn’t accept the fact that maybe, just maybe, our little family was a little better off than hers/his. I remember overhearing Jess/Jim telling Isabella how nice it was not to have to worry about how much they spent at the mall, and how they could get designer clothes instead of the cheap stuff. I also heard Isabella tell her/him, “Life was going to get much better and an awful lot easier” now that they got married.

7. My dad was born on Aug. 12, 1960 and died on his way to work on Friday, Nov. 1, 2013 when a propane tank in his truck exploded. Just after he started his truck in the garage of our house and was pulling out of the driveway, he must have lit up a cigarette without knowing that the propane had leaked from the tank. I know some people think that he tried to kill himself and intentionally opened the tank and lit a match, but that makes absolutely no sense! Who on earth would plan a suicide that way? Besides, we had just celebrated another World Series championship and everything was great! As far as that phony suicide note is concerned, I had never seen that before. I think Isabella wrote it.
AFFIDAVIT OF LEAH/LEE HIZENEYE (cont.)

8. I also heard rumors that my dad had some financial problems. That's ridiculous! My dad was a successful home improvement contractor since I was born and never had any problems getting work. In fact, when he died, his company, Hizeneye Construction, had three jobs going and three more really big jobs scheduled to begin in December. His reputation in the community was spotless. He never said anything to me about money problems, and never even asked me to pay rent. I did pay for my own food, my phone and my car, and occasionally picked up the check when we were out at dinner, but money was never, ever an issue. I challenge anyone who says otherwise! And I should know. After he died, I opened up all of his mail that came to the house and his bank statement showed a very, very healthy balance of more than $250,000.

9. Although my dad and Isabella were living the dream, Isabella and I did not always see eye to eye. Sometimes, usually when she was enjoying one of her several Blue Tongue Margaritas, she would mention that I was at a “dead-end” job and could never get myself off the couch long enough to ever amount to anything. She never called me a “freeloader,” but I always felt that she thought I was. It wasn’t anything specific, just that condescending look she always gave me when I talked about gaming and the condescending, never-ending comments like, “You need to grow up sometime and get a real job.”

10. There’s no question that when she married my dad, Isabella climbed quite a few rungs on the financial ladder. She always bragged about how she enjoyed being able to go impulse shopping, which was probably for the first time in her life. When they first got married, she used to leave her bank statement in the kitchen drawer where anyone could see it. Of course I looked and that confirmed my suspicion that the lady had definitely “married up” since it looked like her account was almost always overdrawn. Occasionally when her tongue was really blue, she would say that she was going to make sure that she and Jess/Jim would be on “Easy Street.” Once in a rare while, I would feel sorry for her. But that would last for about three seconds because that’s how long it would take her to tell me how lazy I was. When she was really drunk, she would say how good my dad was to her and how he would buy her anything she wanted. The funny thing is, I know he said “no” to her more times than she would ever admit and that it really pissed her off. In fact, just a few weeks before he died, she told him he’d “really be sorry” for taking her credit card.

11. For a few years after I left Bishop’s University I worked with dad on some of his projects maybe once or twice a year for a few days each time. I kept telling him that I wanted to do something else. Being in the construction business, he always had to deal with all kinds of problems on the job sites, both on the construction side and on the personnel side. It was always amazing to me how easily and effortlessly he seemed to handle all of these things — the constant issues that always seemed to arise would drive me crazy! Sometimes the architect’s plans would have to be redrawn. Occasionally a building inspector would require changes that caused delays. Once in a while a carpenter or some other worker would not show up for work. The most stressful part always seemed to be when it came time to pay the subcontractors. They never seemed to have their paperwork in order and you wanted to be sure they were not billing you for time and materials spent on someone else’s project. But my dad always handled these issues like the pro he was! The fact that he knew the construction business so well, and that he knew exactly what he was doing made it easy for him to handle what would be stressful to somebody else.

12. Eventually, I entered the managerial program with Walmart where I had been working as a cashier. I would have finished the program except for some scheduling snafus that caused me to miss several mandatory sessions. I have been promoted a couple of times and since May, 2016, I have been an assistant manager in Customer Service at one of the busiest locations in the state. The bad part is that I am only paid a few dollars over minimum wage, and it is only a 30-hour-a-week position. The best part is that I work Tuesdays through Saturdays from 10 a.m. to 4 p.m. and it is only 15 minutes from home!
13. I was at home the day my dad died. He would usually leave early, but that day it was later, just after 7 a.m. We had been celebrating the Sox World Series victory the night before (separately ... me with my friends and him with his hard hat friends) so I went down into the kitchen from my room over the garage at 7:13 a.m. on the dot to ask him how the party was with all the old guys. I know it was 7:13 a.m. because, just as I walked into the kitchen, my phone sent me an alert with the parade information. My dad said he had a great time, but he looked a little tired. I heard him ask Isabella for a few aspirin. I actually thought that was funny because it would usually be me that would be hung over after a night of partying, not him. I don’t know if he heard me, but I coughed out the word “lightweight” to him. I think he laughed. Even though it was early for me to eat, I put one of those “5-minute” breakfast burritos in the toaster oven just as Isabella left the kitchen.

14. The next few minutes were strange. Isabella came back into the kitchen as I was taking my burrito out of the toaster oven. But, she came in from the garage and not from the house. My dad asked her for the aspirin, but she said, “Oh, I forgot.” Dad told her to forget about it because he had some in his truck. Then, he said something to me about the upcoming PAX convention, which was just a few weeks away. It was strange because I didn’t know that he knew what the PAX convention was. He abruptly turned away, and out of the blue Isabella gave him a huge hug and a kiss on the lips (which I never saw her do before). My dad left through the kitchen to go into the garage. After my dad left, I took the burrito up to my room, put on my headphones and started to play a little ASAS.

15. At 7:29 a.m. I heard the loud explosion, ran over to the window and saw dad’s truck on fire at the end of the driveway. I think I was in shock. Instinctively, I called 9-1-1 from my iPhone, although I’m not sure what I said. The firefighters did a great job putting out the fire, but it was too late to save my dad. He was badly burned by the fire and never made it to the hospital.

16. The fire investigator asked me a ton of questions about my dad and the propane tank in the cab of his truck. I answered all of her questions. I told them that I knew my dad always filled the tank himself at work because they had a propane gas dispenser there which they used with their equipment. My dad told me that he had filled the tank at 6 p.m. the day before because it was going to be used to power up a couple of forklifts on a job site the day he died. I knew it was there because, before we went our separate ways to watch the game, my dad asked me to grab a pair of vice grips from a tool box in the cab of his truck to fix something in the house. He gave me the keys because the truck was locked and the windows were up. I asked him why the tank was in his cab and that’s what he told me. I told the investigator that I did not smell any gas in my room either the night before, or the morning of the explosion.

17. Dad rarely talked to me about insurance. The only thing I know about insurance is that he wished he and my mom had gotten life insurance before she died. I didn’t know anything about this policy until the insurance company told me I needed to file a claim. I received a notice in January, 2014 that the insurance company had denied my claim. I miss my dad every day.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 1ST DAY OF DECEMBER, 2017.

L. Hizeneye

LEAH/LEE HIZENEYE
EXHIBIT A

Consolidated Brokers of Boise Insurance Company
Overnight Address: CSBIC Financial Group
Claim Dept. - 5310
Corner Rocky and Bullwinkle Sts., Boise, Idaho 83701
Phone: 100-800-8000

PROOF OF CLAIM

Policy Number: BO2660
Claim Number: 2013-205

Claimant’s Statement

INSTRUCTIONS – Important Information – please read carefully and completely

Required documentation for a death claim:
• Certified Death Certificate showing the manner of death (non-returnable)
• A separate Claimant's Statement must be completed and signed by each beneficiary.

Additional documentation and instructions may be required when the beneficiary is a(n):
• Estate
• Trust
• Guardian (minors and incompetent beneficiaries)
• Corporation
• Partnership
• Assignment to third parties

Please refer to the Distinctive Payee Arrangements form (number CL05984) for full instructions.

Power of Attorney: If an attorney-in-fact under a Power of Attorney is completing the Claimant’s Statement on behalf of the claimant, a copy of the Power of Attorney document must be provided. If the Power of Attorney document was executed more than three years ago, additional information from the attorney-in-fact may be required. The Social Security number of the person who granted the Power of Attorney must be included. The attorney-in-fact's Social Security number may not be used.

Other Possible Requirements (please note that failure to include this information where applicable may cause delay in processing the claim):
• Deceased Beneficiary – if any named beneficiary of the policy is deceased, a copy of the death certificate of such deceased beneficiary must accompany this form.
• Foreign Death – if death of the insured occurred outside of the United States, we will require a Report of the Death of an American Citizen Abroad and a Foreign Death Questionnaire. A translated Certified copy of the Death Certificate may also be required.
• Consent to transfer or a state tax waiver – A form for consent or notice is required in some states. When consent is required, the state must give approval before the death benefit can be paid. If this form is required, it will be provided to the beneficiary by us.

We do not require that the policy(ies) be returned for filing of a claim. However, we ask that the relevant policy(ies) be destroyed once payment is received.
Deceased's Information

If the deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of the first and/or middle name, please include them below:

Name:    Liam Hizeneye
Address:   69 Hanson Road
City, State, Zip: Oakhill, MA  02400
Date of Birth:    Aug 12, 1960
Date of Death:  11/1/2013
Social Security Number: xxx-xx-1234
Citizenship: Was deceased a U.S. Citizen?   Yes   No
If “No”, please list country of citizenship:
Cause of Death:  murder / accident victim from gas explosion
If the policy(ies) contains an Accidental Death Benefit, are you claiming it?   Yes   No
*Furnish all detailed newspaper clippings, policy reports and coroner’s report. We may require additional information, depending on the circumstances of the death.

Claimant Information

Name:   Leah/Lee Hizeneye
Address:    69 Hanson Road
City, State, Zip:  Oakhill, MA  02400

Social Security or Tax ID Number:   (redacted)
Daytime Telephone No:   (redacted)
Date of Birth:   (redacted)
Telephone No:   (redacted)
Email Address (optional):
Claimant's relationship to Decedent: I am filing this claim as:
☒ An individual who is a named beneficiary under the policy
☐ A Trustee of a Trust which is a named beneficiary under the policy
☐ An Executor of an Estate which is a named beneficiary under the policy
☐ Other:
Citizenship: Are you a U.S. Citizen?   Yes   No
If No, please indicate country of Residence: ______________
If you are a resident of a foreign country, a W-8BEN or a W-9 must be completed.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 1st DAY OF DECEMBER, 2013.

x _________________________________________________  (SIGNATURE)
LEAH/LEE HIZENEYE   (PRINT/TYPE NAME LEGIBLY)

MBA 2018 HIGH SCHOOL MOCK TRIAL PROGRAM
Figure 7-A. U.S. Standard Certificate of Death
AFFIDAVIT OF WINNIE/WILLIE SILVERMAIN

1. My name is Winnie/Willie Silvermain. I am 42 years old. I live just outside of Boston, Massachusetts. I am currently employed as an independent insurance agent and operate my own firm, the Silvermain Insurance Agency, in Boston.

2. I have been selling life insurance and providing financial planning services since I graduated from UMass Boston in 1996. At that time, I worked for my father who started the Silvermain Insurance Agency in 1966. When I began working, the firm had three employees: my dad, my dad’s brother Uncle Martin, and me. By the time I took over as senior agent in 2014, I had hired two other agents in the firm, and my dad and uncle had both since retired. The agency represents all major life insurance companies and I always make sure that my clients get the best rates, no matter their age, physical characteristics or medical history. My experience confirms that regardless of your financial or medical situation, I will find a provider who will insure you. We do not handle health insurance.

3. I am a Certified Financial Planner, which certification is the recognized standard of excellence for competent and ethical personal financial planning. My goal is to thoroughly understand your financial needs and then align the resources to help you meet or exceed them. I can help you evaluate near-term concerns and plan for long-term goals, be a sounding board for investment ideas, assist you in developing and executing a strategy that is precisely your own and helps you meet your needs.

4. I knew Liam Hizeneye very well. Although I am approximately 10 years younger than Liam, we became friends more than 15 years ago when we played on a team in a local recreational softball league. This was a co-ed league for “older” softball players, and it was always a lot of fun, even though it is actually quite competitive. Our season starts in April and we play through August. Liam was primarily a pitcher, and I was the catcher, so we often practiced together and spent a lot of time together.

5. Liam’s first wife died about 12 years ago after battling cancer. I think Liam’s only “down time” between taking care of his wife and working was playing softball. He talked about her a lot, often referring to her as the “love of his life.” When she died, their daughter/son Leah/Lee had just started college. Leah/Lee never finished her/his freshman year. Both Liam and Leah/Lee took her death extremely hard.

6. Liam met his second wife Isabella, about three years before he died. They met on one of those online dating sites. They had a whirlwind courtship and the next thing I knew, he had remarried and moved Isabella into his home. Once Isabella moved in with her daughter/son, Liam was around a lot less; he didn’t come out to the bar after games, etc. Isabella was very possessive of him. Liam told me that Leah/Lee was not too thrilled about Liam’s remarriage. Neither was I.

7. Leah/Lee is a cashier at Walmart and seems to have no motivation to do anything else. She/he usually hangs out alone in her/his room playing video games and watching Netflix. Leah/Lee was a pretty good athlete in high school, and Liam constantly tried to get her/him to join the softball team, just to get her/him out of the house. Leah/Lee, however, seemed to have no interest in socializing. I know that Leah/Lee seemed to have a bright future when she/he went off to college. It seemed to me that Liam felt almost guilty about the way Leah/Lee turned out, as he had expected Leah/Lee to graduate from college and have a career. Liam often talked about Leah/Lee and how important it was for him to be there to support her/him; he always seemed worried about her/him.

8. A few months before he died, Liam finally asked me to get him some quotes on a life insurance policy. I had mentioned getting life insurance to him a few times over the years, including soon after his wife had died. He said that, after seeing his first wife die, he knew that life was short. He said that he was getting his estate plan in order and, being solely responsible for the support of his wife and Leah/Lee, he wanted
to make sure they were provided for. Liam always said it was a good idea, but until this time, had never followed up. He told me that seeing one of his employees almost fall off a roof made him realize that he could die any day. Liam said that he was now in pretty good health so I assured him that I could get him a good rate. I told him that I would send him an online application to fill out, but he preferred to fill out the application in person because he wanted to make sure there were not any mistakes. We set up a meeting for the next week.

9. Liam and I met at his house on March 25, 2013. As usual, Isabella wouldn’t leave me alone with him for a minute. I helped him fill out the application, with Isabella watching intently. I think I even saw her smile when Liam said he wanted to get $5 million dollars of coverage to make sure that his family was taken care of.

10. The life insurance application has two pages of medical and health questions, and I assisted Liam with those questions as well. I let him know that every cough and cold, like temporary conditions, did not need to be listed, only those kinds of conditions that were important enough to indicate that he may have a health issue. No insurance company will issue a policy to someone who is on a death bed. For example, there was a box to check off if you had high blood pressure. I explained to Liam that only if the doctor told him that he had high blood pressure and put him on meds for it, that he should check the box “yes.” You don’t say you have “high blood pressure” just because you think you do.

11. Isabella seemed to be paying closer attention than Liam was. After he checked off the box indicating that he had not had any tobacco products in the last five years, Isabella slapped him on the back of the head and said, “C’mon now! Everyone knows about your morning routine.” Liam shrugged his shoulders and changed his answer to reflect that he smoked cigarettes “once or twice a day.”

12. I got Liam an excellent quote on a whole life policy with Consolidated Brokers of Boise Insurance Company out of Boise, Idaho at an annual premium of $7,200. We sent in the application with the premium, and the company issued the policy within a week, on April 1, 2013. I was happy to be of service to my friend and he seemed content that his estate plan was in order.

13. But the policy seemed to bring Liam nothing but bad luck. After Liam missed our first game of the season, he told me that he had been rushed to the hospital with an anaphylactic seizure caused by his peanut allergy. He said that there had been some kind of mistake at the bakery, and that the “nut-free” cookies Isabella bought him for his birthday were actually chock full of them. I told him that he needed to start carrying an EpiPen. He told me that he usually keeps one in his night stand, but that Isabella was so frantic she couldn’t find it. We both had a good laugh.

14. As the summer progressed, I saw less and less of Liam. He was often absent from our softball games, usually saying that he was just too busy at work to make it out. He never told me exactly what was going on, but it seemed like business must have been really busy because I could hear the stress in his voice. The only way I managed to eventually see him was by inviting him to game one of the World Series — even Isabella couldn’t keep him from going to that. We had a great time (Sox won 8-1). He seemed very relaxed and said that everything was going great.

15. I was shocked when, a week later, I learned that Liam was found dead in his truck after an explosion in his driveway. I know that there is some question about whether his death was an accident or suicide, but I know that Liam was not suicidal. He never seemed depressed or out of sorts. I think there are also rumors that his death may have been more sinister, i.e., murder.
16. But I don’t believe any of that murder nonsense. I saw Isabella at the funeral and she was beside herself with grief. She had the look of a woman who had just suffered a tremendous loss. I tried offering her my condolences but she refused to speak with me. In my opinion, this is a classic case of the insurance company not wanting to pay out on a policy that was in effect for such a short time. When the insured dies so quickly after taking out a policy, they always look for an excuse not to pay. This happens all the time; these insurance companies are happy to take your premiums, but when it comes to pay-out time, they are always looking for reasons not to pay. I will do anything I can to help Liam’s family get what is coming to them.


W. Silvermain

WINNIE/WILLIE SILVERMAIN
AFFIDAVIT PHYLIS/PHILIP R. RUPP

1. My name is Phylis/Philip R. Rupp. I reside at 561 Bell Lane, Northside, Massachusetts with my spouse and three dogs. I am 65 years old. I am principal of the fire safety consulting firm of Rupp, Bernum & Frye, which provides consulting services in the fields of fire protection and safety, forensics and fire accident scene reconstruction.

2. My credentials are completely and accurately described in my *curriculum vitae*, attached hereto as Exhibit A. I am an award-winning fire safety and fire accident reconstruction expert and consultant with more than 35 years of experience in fire safety and fire scene reconstruction. I have a Bachelor of Science degree in Fire Science Technology and a Master of Science in Forensic Science, concentrating in fire science. I have received training from the Massachusetts Fire Academy and the Massachusetts State Police Academy in forensics. I have undergone extensive training and gained experience in arson investigation, fire prevention, handling and storing of hazardous materials, combustible materials, fire reconstruction, burn residue analysis, and fire accident reconstruction and analysis.

3. Prior to joining the firm of Rupp, Bernum & Frye, I was a fire fighter for the City of Boston for 25 years, retiring as a captain. I was employed for five years as a forensic arson specialist for the Massachusetts Fire Marshall’s Office. I worked on cases involving reconstruction of accidental fires and explosions. In private practice, my clients have included Federal and State law enforcement agencies, prosecutors, and private individuals and businesses involved in fires and explosions.

4. I am former president of the National Fire Forensic Association. I am also the past president of the American Fire Scene Reconstruction Association. I am a long-term member of the American Academy of Forensic Fire Science. I have received the “Expert of Experts Award” from the American College of Forensic Fire Experts.

5. I have published a number of articles on how to process and analyze physical evidence at fire and explosion scenes. I have received special recognition for two articles, “The Hazardous Materials in Your Home and Business” in the *Journal of Forensic Sciences*, and “Propane Gas — The Clear and Present Danger” in the *Massachusetts Journal of Fire Science Technology and Safety*.

6. In February 2014, I was retained by the attorneys representing the plaintiff, Leah/Lee Hizeneye, to analyze the forensic evidence in this case and render an opinion as to whether the decedent died as a result of accidental explosion and fire.

7. In connection with my assignment, I conducted an inspection of the accident scene. I reviewed photographs of the fire scene, and the photographs of the fire residue taken by the State Fire Marshall and local Arson Investigator for the City of Walbam. In addition, I examined the remains of the decedent’s vehicle; a propane tank discovered near the fire; and the photographs taken by the Medical Examiner’s Office. I also interviewed Leah/Lee Hizeneye. I have not interviewed any of the other witnesses expected to testify in this case.

8. Fire residue analysis plays an important role in the reconstruction of many fires and explosions. In this investigation, it was important to examine the various burn patterns on the property, the motor vehicle, the propane tank involved in the explosion, the location of the decedent’s body after the explosion/fire, and the burns on the body. This evidence is critical in order to determine the origin of the fire/explosion.

9. According to Leah/Lee Hizeneye, a propane tank was located inside the decedent’s motor vehicle on the floor of the back seat prior to the fire. The decedent’s vehicle was a 2010 Ford F-150 quad cab pick-up truck. The exact location of the tank within the vehicle is undetermined, but it was last seen on the floor in the rear compartment.
AFFIDAVIT OF PHYLIS/PHILIP R. RUPP (cont.)

10. Propane is heavier than air and, therefore, sinks. Propane does not dissipate rapidly, so it can pool around the ground near a tank. Propane on its own has no odor. Another gas, called “Mercaptan,” is added to propane gas to give it a rotten egg smell so a leak can be detected.

11. According to an investigation conducted by the National Department of Fire Services, propane gas is still being distributed to commercial and residential customers with an insufficient odorant. During my own decades of experience in this field, I have reached the same conclusion. Fire officials are concerned about the lack of odorant because the odorant is an early warning should a leak occur. Propane gas with an insufficient odorant, if released in a closed compartment or home, could ignite as a result of a spark or other incinerating device causing an explosion and fire.

12. In 2016 the National Fire Protection Agency required all propane tanks to have an OPD valve. OPD stands for “overfill prevention device” and it is required on all 4- to 40-pound cylinders. Before any propane tank (4 to 40) can be filled with propane, the tank must be inspected to ensure that an OPD valve is installed on the tank. Propane companies can generally replace the non-compliant cylinder service valve with the required OPD valve quickly in order to bring it in compliance. In addition, OPD valves are designed to only allow propane into or out of the tank if it attached to the appropriate hose-end connector. Simply stated, OPD valves will not allow propane out of the tank if it is not hooked up to anything, despite the valve being open. Prior to OPD valves, propane could escape from the tanks if the valve was not tightly secured. Propane companies are strictly prohibited from filling propane tanks without OPD valves after January 1, 2016.

13. As part of my investigation, I was informed that the insurance company had denied the claim for benefits on the basis that Mr. Hizeneye’s death was a suicide. Accordingly, one focus of my investigation was to determine whether he had sufficient opportunity to intentionally cause the explosion himself. My opinion is that he did not.

14. After reviewing the photographs which depicted the decedent’s body being projected partially through the front windshield of his F-150 pick-up truck, the burn residue inside the cab of the truck, the heavy residue on the propane tank, and the burns on the decedent’s body, it is my opinion that an explosion of that magnitude could not have been caused by less than 30 pounds of propane gas. Further, I have concluded that it would have taken at least eight minutes for that much gas to have escaped from a cylinder of the type and size that was within Mr. Hizeneye’s truck. This conclusion is based upon a test that I performed, using a similar cylinder with a completely open valve, that was filled to capacity and emptied into a compartment of similar size under similar circumstances.

15. From the information provided by Leah/Lee, Liam Hizeneye simply did not have enough time on the morning of Nov. 1, 2013 to cause this explosion. While it is theoretically possible that Mr. Hizeneye could have intentionally opened the valve the night before, I find that highly improbable. If he had fully opened the valve the night before, there would not have been enough gas in the cab to cause this explosion, as the propane gas would dissipate over time.

16. The far more probable cause of this accident is a leak. Propane gas may leak from a tank/cylinder for a variety of reasons, such as a loosened valve or regulator (a device that maintains the pressure), or simply due to corrosion. According to Leah/Lee’s affidavit the decedent was a contractor who filled his own propane tank from a larger propane cylinder located at his business. When tanks are not filled by licensed propane professionals, it greatly increases the risk of leaks, as they commonly overfill the tank and put undue stress on the valve components.
AFFIDAVIT OF PHYLIS/PHILIP R. RUPP (cont.)

17. I examined the propane tank at issue in this case and discovered that it did not have an OPD valve and it appeared to be at least 10 years old. The tank also appeared to have a great deal of rust and corrosion. The valve on the tank was opened at the time of my inspection. I was unable to determine if the valve was opened manually or if it was opened as a result of the explosion.

18. It is my opinion, to a reasonable degree of scientific certainty that the fire was caused by an explosion due to a leak from a rusted and corroded tank. As a cigarette lighter was recovered from the floor of the vehicle along with charred remains of a cigarette packet located on the front passenger seat, the explosion was likely ignited when the decedent attempted to light a cigarette.


Phylis/Philip R. Rupp
PROFESSIONAL EXPERIENCE

2007–present  Principal of Fire Safety Consulting, Rupp, Burnum & Frye
Specialist in fire safety and prevention, and in fire and explosion accident scene reconstruction. Provide analysis, consultation and expert testimony with respect to investigations involving fires and explosions, including accidental fires, suicides and homicides.

2002–2007  Forensic Arson Specialist, Massachusetts State Fire Marshall’s Office
Served as an assistant fire marshal. Investigated more than 200 fires and explosions, including arson investigations and homicides. Trained at the Massachusetts State Police Academy in Agawam, Massachusetts in forensic crime investigation.

1977–2002  Captain, Boston Fire Department
Served as a fire-fighter, lieutenant and captain. Extensive experience in arson investigation, fire prevention, handling and storing of hazardous materials, combustible materials, fire reconstruction, burn residue analysis, and fire accident reconstruction and analysis. Served on a Haz-Mat Fire Team for the Commonwealth of Massachusetts.

EDUCATION

1982  Forensic Crime Investigation Training, Massachusetts State Police Academy, Agawam
1979  M.S. cum laude, Forensic Science with a concentration in Fire Science, University of Massachusetts, Amherst
1976  B.S., Fire Science Technology, Massachusetts Maritime Academy, Buzzards Bay

CERTIFICATIONS

Board Certified, Forensic Fire Accident/Reconstruction
Diplomate, American Academy of Experts in Fire Science

AWARD

2010  “Expert of Experts Award” recipient, American College of Forensic Fire Experts

AFFILIATIONS

Past President, National Fire Forensic Association
Past President, American Fire Scene Reconstruction Association
Member, American Academy of Forensic Fire Science

NOTED ARTICLES


EXHIBIT C
AFFIDAVIT OF JESS/JIM GRACE

1. My name is Jess/Jim Grace. I am the daughter/son of Isabella Hizeneye. I am 24 years old and I have been living at 13 Chapel Hill Dr., Oakhill, Massachusetts, with my mom since 2014. Before then, we lived at 69 Hanson Road, Oakhill, Massachusetts.

2. The dynamic and the mood over at Hanson Road was ever changing. I felt like I constantly had to watch my back. When mom married Liam, I was 17 years old and away at boarding school in Vermont. I went to the Sullivan Academy — a pretty prestigious boarding school and was at the top of my class. I got a scholarship to Dartmouth College and started my freshman year there. I didn’t finish at Dartmouth because Liam refused to let my mother pay for my living expenses in New Hampshire. He kept going on and on that I was wasting all of his precious money at Dartmouth and I wasn’t taking things seriously enough. I don’t even know why he was constantly on my case because I got into Dartmouth with a full ride, and just had to pay $38,000 a year to live in this amazing loft. It always seemed strange to me that Liam would care about something as insignificant as $38,000 a year for my apartment when he always acted like he had more money than my mom and I had ever seen in our lives. The summer after my freshman year he refused to let my mom co-sign my lease, and told her I was only taking advantage of everything that he had built and everything that he worked so hard for. Incredibly, my mom took his side and I was beside myself! I didn’t know where her loyalties were. I always thought it was going to be just the two of us after my dad passed away.

3. When my mom and Liam first started dating, he would buy her all these fancy gifts, send over these fancy black cars to pick her up for their dates and would always take her out to the newest Michelin star restaurants in town. He even bought me a new MacBook and iPhone within the first three weeks of them dating! After they got married, that’s when things started to change. All of a sudden he was scrutinizing my credit card bill, and complaining about all the money that I was spending when I should have been studying. He was constantly on my mom’s case too. A few weeks before he died, I heard him tell her he had to keep her credit card in the top drawer of his desk for safe keeping. My mom didn’t think anything of it. I thought it was just weird and he was being a real cheapskate. I guess I never imagined that with all the money that he was flaunting he was in some serious financial trouble.

4. Anyway, in July 2012, after he refused to let my mom co-sign my lease, Liam made me move home into one of the small guest bedrooms on the second floor down the hall from his study and tried to get all parental on me. I know I should be sad that Liam is gone, but I am not. Even though he really tried, he wasn’t my dad and I wasn’t going to let him get the satisfaction of calling him “Dad” — ever. I think he was probably trying to make up for that miserable daughter/son of his.

5. Leah/Lee is nice and all, but she/he is just a little weird and out of it. She/he keeps mostly to herself/himself in the apartment over the garage. We just never hit it off. She/he just never warmed up to me or mom. Sometimes, she/he made it seem like we were total strangers shacking up in her/his house. I could tell sometimes by the way she/he looked at us that she/he was always plotting something. But maybe I’ve listened to too many crime podcasts.

6. People around town have told me that Leah/Lee was a totally different person when her/his mom was still alive. Leah/Lee didn’t finish her/his first year of college at Bishop’s University in Quebec because her/his mom died in October 2004. After that, she/he moved back to Hanson Road and into the apartment over the garage. I think she/he helped Liam out when she/he came back from college doing the books or something for his construction company. I feel like that was more because Liam felt sorry for Leah/Lee, not because Leah/Lee cared at all about Liam’s business or even understood it. Eventually, Leah/Lee got bored of working with Liam and started at Walmart where she/he would spend all of her/his time when she/he wasn’t in her/his room playing video games. You would never catch me doing that. I’m usually out about town hanging out with friends.
7. It seemed to me that Leah/Lee’s non-existent social life and personality were taking a toll on Liam. There were some nights during the last few months that Liam was alive that he would be in his study in the middle of the night. I could never tell what he was doing. I was usually trying to sneak back into the house after my curfew and I could hear him pacing around his study. I never wanted to get caught, so I never stopped to really listen. It wasn’t that I was afraid of him, but sometimes when he got in one of his moods, he was so unbearable to listen to. He would start screaming and his face would get bright red and sometimes he barely made any sense. Then five minutes later, he was a totally different person laughing and joking with mom. One night I remember about three months before he died, I heard him on the phone screaming at whoever was on the other line, “I told you you’d get paid. Get off my back and stop calling!” Then, right after he hung up phone it sounded like he was crying.

8. It seemed to me like the two weeks before he died he was spending even more time in his study by himself. I never told my mom because I knew she would accuse me of exaggerating and complaining about Liam just to be dramatic. The Monday before he died, my mom told me to go into Liam’s study to get her credit card out of the desk drawer so I could use it. When I opened the drawer, there was an article right on top from Safety & Health magazine about propane explosions at construction sites. It seemed like a pretty boring article to me at the time, but while I was in there my curiosity got the best of me, so I carefully lifted up the other papers in the top drawer to see what else he was hiding in there. I saw something called a “Judgment” with Liam’s name for $5 million. I didn’t understand what it meant, but it looked interesting so I took a photo of it so I could show my mom. I also found a medicine bottle with Liam’s name for the drug Lorazepam. The label on the bottle said it was prescribed by our family doctor and to “take as needed.” The bottle seemed out of place because I know that all the medicine in the house, even things like aspirin, were in the master bathroom. I was trying not to get caught so I quickly read what I could, grabbed the credit card and ran out of the study. I told my mom what I found in the desk drawer and showed her the photo of the judgment and she said, “Don’t worry. I know all about that and I’m taking care of it. I’ve always taken care of us and I always will.”

9. The morning Liam died everything in the house actually seemed normal and oddly quiet. I was the first one up as usual. I heard Liam’s alarm go off at 6:30 a.m. while I was in the kitchen finishing up my homework. He came down for breakfast at around 7 a.m. My mom made us all omelets — I can’t remember the last time she made us omelets, but they were just as good as I remembered! Omelets used to be our guilty pleasure, and often times our dinner, when it was just the two of us. Liam even managed to not get on my case during breakfast. But, he did seem a little tired and a bit out of it. At some point, Leah/Lee even emerged from her/his room and was going a mile a minute about the Red Sox World Series win the night before and the victory parade. Liam was smiling and nodding and staring at Leah/Lee with this weird look in his eye. Liam then asked my mom for an aspirin. I couldn’t tell if it was because he wasn’t used to Leah/Lee rambling on and on this early in the morning, or if he was just hung over.

10. My mom stepped out of the room for a few minutes and happened to walk back in just as Liam got up from the table around 7:15 a.m. Liam turned to Leah/Lee and brought up the PAX convention that Leah/Lee was going to in a few weeks. Liam was not the biggest fan of Leah/Lee’s gaming, so I thought it was a little weird that he told Leah/Lee that he would “be watching over” her/him at the PAX convention.
11. Just as Liam was leaving the kitchen, my mom walked over to give him a goodbye hug and kiss. I finished up my breakfast, grabbed my bags and ran out the front door. I usually try to meet up with my friends before my 8 a.m. class. Liam usually beats me out the door telling me I better move my car out of the driveway so he can get his truck out of the garage. Since I’m always running late, I starting setting an alarm on my phone for 7:20 a.m. to make sure I was not in his way. That morning, I was running out the door just as my alarm was going off. About a minute later, just as I was pulling out of the driveway, I saw the garage door start to open. I remember thinking to myself that I made it out just in time to avoid Liam yelling at me. I didn’t realize what else I avoided.

12. My mom called me a few hours later. She wasn’t crying and sounded so serious I couldn’t tell what was going on. That’s when she told me that Liam died in his truck from an explosion. She asked me if I had heard or seen anything on my way out this morning and I told her that I really wasn’t paying attention to Liam.

13. I feel bad for my mom and I even feel bad for Leah/Lee. But, I’m not terribly sad Liam is gone. I guess I can’t say I was surprised he decided to kill himself given how crazy he was acting and now that I know how bad his financial problems were. I guess he thought this was the way to make it all better. His last effort to try and control things!


J. Grace

JESS/JIM GRACE
EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.                                                                                     SUPERIOR COURT
CIVIL ACTION
NO. SUCV2010-12345-BLS3

SUNSHINE SQUARE PARTNERS, LLC,
Plaintiff

v.

LIAM HIZENEYE and
HIZENEYE CONSTRUCTION, INC.
Defendants

FINAL JUDGMENT

This action having been tried by a jury with Judge Elizabeth O’Neil presiding, and the jury having returned a verdict,

It is hereby ORDERED, ADJUDGED AND DECREED that
The plaintiff, Sunshine Square Partners, LLC, recover from defendants, Liam Hizeneye and Hizeneye Construction Inc., jointly and severally, the principal amount of $3,625,000, costs in the amount of $50,525.56, attorney’s fees in the amount of $470,793 and prejudgment interest at the rate of 12% from July 31, 2010 to Sept. 4, 2012 in the amount of $912,279.26, for a total judgment of $5,058,597.82 with interest thereon at the rate of 12% from date of judgment until paid.

By the Court,

[Signature]
DEPUTY CLERK

DATED: Sept. 4, 2012
1. My name is Samantha/Samuel Spade. I am 52 years old and live at 17 East Oden Avenue in Gainesville, Florida.

2. I’ve worked for Consolidated Brokers of Boise Insurance Company (CBB) since 2002. Initially, I was what they call a “Level I” investigator — meaning that I was assigned to investigate claims having a value of less than $100,000. Most of my assignments were in North Florida, and involved what I would describe as run-of-the-mill insurance schemes. It wasn’t the most glorious position, but I got to spend my days interviewing witnesses, conducting surveillance and other fun stuff like that.

3. I always wanted to be a detective. Unfortunately, I made a few dumb mistakes when I was a kid that pretty much closed the door on my ability to ever work for law enforcement. Turns out, a conviction for grand theft auto can haunt you your entire life. After I was released from prison in 1988, I worked a variety of dead-end jobs trying to find something meaningful and interesting.

4. Eventually I turned my sights on becoming a private detective. It was a hard business to get into, as there really weren’t many entry-level positions available. That’s why I moved my family all the way from Minnesota to Gainesville, so I could pursue my life-long dream. CBB Insurance Co. did not require any prior experience, just a good attitude and a willingness to work hard. More importantly, they were willing to listen to the circumstances surrounding my conviction and gave me a chance to prove myself.

5. I have certainly made the most of my opportunity. In January 2005, I was promoted to a Level II (claims from $100,000 to $250,000), in January 2007 I was promoted to a Level III (claims from $250,000 to $500,000), in January 2010 I was promoted to a Level IV (claims from $500,000 to $1 million), and in January 2013 I was promoted to a Level V (claims $1 million to $5 million). In November 2013 I was one of four Level V investigators assigned to the eastern United States. I will be eligible for promotion to Level VI (claims over $5 million) in September 2018, which would make me one of only six Level VI investigators in the entire country.

6. My involvement in the Hizeneye case began in November 2013. I received an email from my supervisor instructing me to travel to Boston, Massachusetts for an “SDI.” These are routine investigations that the company performs whenever an insured dies under circumstances that the company deems suspicious. Per company protocol, I was not given any information about the company’s initial views on the claim. This protocol is intended to make sure that my investigation is not tainted by any preconceived ideas. The only information provided to me was a copy of Mr. Hizeneye’s claim file, which in this instance contained a copy of his insurance application, insurance policy, death certificate and the claim form submitted by his widow, Isabella. It wasn’t all that unusual for me to be assigned to investigate a claim with a potential payout of more than $5 million — CBB sometimes doesn’t take double indemnity clauses into account when assigning cases — but I saw this as a great opportunity to prove that I have what it takes to be a Level VI investigator.

7. Before departing Florida, I reviewed the claim file and called Mrs. Hizeneye to arrange for an interview as soon as possible. She agreed to meet me at 10 a.m. on November 17, but insisted that we not meet at her home as it would be too difficult for her to answer questions about her husband so close to where he had died. Given the amount of money at issue, I knew this was not going to be a quick investigation, so I was fine with that suggestion.

8. The meeting took place as scheduled at a Dunkin Donuts approximately 1.5 miles from Mrs. Hizeneye’s home. While the interview failed to provide much clarity on the circumstances surrounding Mr. Hizeneye’s death, I learned a good deal about Isabella. She was born in Louisiana and never finished high school. Her first husband was a heavy smoker and died of lung cancer at a young age. When she met Liam, she had been working as a waitress and could hardly afford to buy groceries. Liam swept her off her feet and
gave her the life that she had always dreamed of. She said he was the kindest, most generous man that she had ever met, and swore that she would never love anyone again the way that she loved Liam. I sipped my coffee and nodded my head waiting for the punchline.

9. Isabella spoke quickly and with a slight accent. She was definitely nervous. I closely watched her facial expressions and body language. She must have spoken for almost 15 minutes without realizing that I hadn’t even asked my first question. When she finally stopped talking, I took a long slow sip of my coffee to prolong the silence. “So what can you tell me about your husband’s death?” It was the one topic that she hadn’t covered already. “He died in an explosion” she said, seeming to fight back tears. “He kissed me good-bye, got in his truck, and then, boom, he was gone.”

10. As I pressed Mrs. Hizeneye for details on her husband’s apparent spontaneous combustion she disclosed that there had been a propane tank in the cab of his pickup truck. “It must have sprung a leak” she said. “I told him not to put the tank in his cab, that it wasn’t safe. Especially with how he would sneak cigarettes on his way to work. He tried to hide the cigarettes from me, but I knew. He wasn’t very good at keeping secrets from me.”

11. I paused for a moment to determine how best to tell Mrs. Hizeneye that her husband was better at keeping secrets than she suspected. Unable to wait for my carefully chosen words, she blurted out, “You don’t think I had something to do with this, do you?” Shaking my head I responded, “No, you had nothing to gain.” I then proceeded to show Mrs. Hizeneye the beneficiary designation form reflecting that she was not the beneficiary under Mr. Hizeneye’s policy. Isabella began to cry.

12. I had gotten what I needed from Isabella and was ready to inspect the scene. The Hizeneye residence was perched on a hill amongst other ostentatious demonstrations of wealth. A dark black rectangle scarred the driveway just as it emptied into the street. The trees above had been slightly charred from the explosion. I walked up the driveway and rang the doorbell. I was eventually greeted by Leah/Lee, who apologized for taking so long to answer as she/he had been in her/his room. I told her/him who I was, and she/he agreed to show me around and answer some questions.

13. It was a home worth dying for. Vaulted ceilings, marble floors — the builder had clearly spared no expense. The only flaw was a plethora of tacky decorations, which Leah/Lee informed me had come courtesy of Isabella. “She’s not a great decorator. She’s not a great anything, really. I never understood what my father saw in her.” I kept my thoughts on the subject to myself and took full advantage of Leah/Lee’s hospitality by inspecting every room of the house. I had never seen a house with so many bathrooms. When I asked Leah/Lee where she/he slept I was led to a large room above the garage that smelled of Cheetos and stale beer. “This is my lair,” she/he said with great pride.

14. We continued on. While passing bathroom number five I questioned Leah/Lee regarding Liam’s mental state in the weeks leading up to his death. After initially being reluctant to say anything more than “fine,” she/he admitted that Liam had engaged in some unusual behavior. On one occasion, for example, Liam began crying while watching a baseball game. On several other occasions, Leah/Lee said that she/he heard Liam yelling and shouting in his office. It also seemed that Liam had been having difficulty sleeping. Leah/Lee said that he was staying up later than usual and had developed bags under his eyes. “That must have been why this happened,” she/he said. “He was just so exhausted and didn’t notice the gas.”

15. The last stop on the tour was Mr. Hizeneye’s office. Leah/Lee was eager to get back to a video game that I had interrupted and told me I could look at whatever I wanted. She/he went back to her/his lair and I carefully examined the numerous files that were contained within Mr. Hizeneye’s desk. It was just as I had suspected.
AFFIDAVIT OF SAMANTHA/SAMUEL SPADE (cont.)

16. His company had been sued about three years prior on account of a failed construction project known as Sunshine Square. The case, like the project, ended in disaster. The company was ordered to pay more than $5 million in damages — money that it apparently did not have. Mr. Hizeneye paid off the debt by mortgaging his home, but was having trouble repaying the bank. I found all of this by examining the contents of a folder labeled “Sunshine Square” in his desk. It included a promissory note and a letter from Axon Bank and Trust. True and accurate copies of these documents are attached to this affidavit.

17. Just as I finished my sleuthing in the office, I was met by a young woman/man who said her/his name was Jess/Jim. After quickly identifying myself, I explained that Leah/Lee had given me permission to look around the house. Jess/Jim rolled her/his eyes and muttered something that included the word “idiot.” She/he told me that Leah/Lee didn’t own the house and that I needed to get permission from “mom” to be there. I explained that I just needed to confirm a few things about her/his mom’s whereabouts on the morning of Liam’s death, and that I had a few questions about Liam’s finances, then I would be on my way. Jess/Jim told me that she/he didn’t know anything about his finances and that I needed to leave. She/he practically pushed me out the door.

18. I knew I was close to cracking the case. Could it really be a coincidence that Liam just happened to die a few months after buying a $5 million insurance policy? And did this windfall just happen to occur at a time when he was deeply in debt? I couldn’t say for sure yet, but I suspected there was one person who knew the truth.

19. I parked my rental car in front of the Hizeneye estate at 6 a.m. sharp on November 19. At 7:15 a.m. Jess/Jim exited the house, got into a blue sedan and began driving South on Hanson Road. At 9:50 a.m., Leah/Lee exited the house, got into a black SUV and began driving North on Chestnut Street. Approximately one hour later, the middle garage door opened and a white Lexus emerged. I moved my car to the end of the driveway, so as to block the Lexus. I exited my car and quickly approached the driver side window. Isabella lowered the window and asked me what I was doing. “I’m here to find out why you killed your husband.” She looked shocked and scared. “The police are on the way, so you better start talking.” Stunned, Isabella said, “He did it to himself. I can prove it!”

20. Isabella led me to Leah/Lee’s lair and pointed at a desk against the far well. “Second drawer down on the right,” she said. “I found it a few days ago when I was cleaning.” I did as instructed and opened the drawer. There were few items that seemed associated with her/his video game hobby. Beneath those items was a folded piece of paper. It contained a message that read like a hastily written suicide note. There was no indication of when the note had been written. I took a picture of the message with my phone, and a true and accurate copy of the picture is attached to this affidavit.

21. My plan had worked to perfection. I had known right away that Isabella was trying to hide something from me. Her behavior during our first meeting showed an obvious guilty conscience. I might have suspected that she actually had killed Liam for the insurance money, but she didn’t strike me as the murdering type. I feel bad for Leah/Lee, and I feel bad for Liam too. That was a horrible way to die.

SIGNED UNDER THE PAINS AND PENALITIES OF PERJURY THIS 5TH DAY OF JANUARY, 2015.

S. Spade
Samantha/Samuel Spade
PROOF OF CLAIM

Policy Number: BO2660

Claimant’s Statement

INSTRUCTIONS – Important Information – please read carefully and completely

Required documentation for a death claim:

- Certified Death Certificate showing the manner of death (non-returnable)
- A separate Claimant’s Statement must be completed and signed by each beneficiary.

Additional documentation and instructions may be required when the beneficiary is a(n):

- Estate
- Trust
- Guardian (minors and incompetent beneficiaries)
- Corporation
- Partnership
- Assignment to third parties

Please refer to the Distinctive Payee Arrangements form (number CL05984) for full instructions.

Power of Attorney: If an attorney-in-fact under a Power of Attorney is completing the Claimant’s Statement on behalf of the claimant, a copy of the Power of Attorney document must be provided. If the Power of Attorney document was executed more than three years ago, additional information from the attorney-in-fact may be required. The Social Security number of the person who granted the Power of Attorney must be included. The attorney-in-fact’s Social Security number may not be used.

Other Possible Requirements (please note that failure to include this information where applicable may cause delay in processing the claim):

- Deceased Beneficiary – if any named beneficiary of the policy is deceased, a copy of the death certificate of such deceased beneficiary must accompany this form.
- Foreign Death – if death of the insured occurred outside of the United States, we will require a Report of the Death of an American Citizen Abroad and a Foreign Death Questionnaire. A translated Certified copy of the Death Certificate may also be required.
- Consent to transfer or a state tax waiver – A form for consent or notice is required in some states. When consent is required, the state must give approval before the death benefit can be paid. If this form is required, it will be provided to the beneficiary by us.

We do not require that the policy(ies) be returned for filing of a claim. However, we ask that the relevant policy(ies) be destroyed once payment is received.
Deceased’s Information
If the deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of the first and/or middle name, please include them below:
Name: Liam Hizeneye
Address: 69 Hanson Road
City, State, Zip: Oakhill, MA 02400
Date of Birth: Aug 12, 1960
Date of Death: 11/1/2013
Social Security Number: xxx-xx-1234
Citizenship: Was deceased a U.S. Citizen? Yes No
If "No", please list country of citizenship:
Cause of Death: accident
If the policy(ies) contains an Accidental Death Benefit, are you claiming it? Yes No
*Furnish all detailed newspaper clippings, policy reports and coroner’s report. We may require additional information, depending on the circumstances of the death.

Claimant Information
Name: Isabella Hizeneye
Address: 69 Hanson Road
City, State, Zip: Oakhill, MA 02400
Social Security or Tax ID Number: (redacted)
Daytime Telephone No: (redacted)
Date of Birth: (redacted)
Telephone No: (redacted)
Email Address (optional):
Claimant’s relationship to Decedent: I am filing this claim as:
☐ An individual who is a named beneficiary under the policy
☐ A Trustee of a Trust which is a named beneficiary under the policy
☐ An Executor of an Estate which is a named beneficiary under the policy
☒ Other: surviving spouse / policy beneficiary
Citizenship: Are you a U.S. Citizen? Yes No
If No, please indicate country of Residence:
If you are a resident of a foreign country, a W-8BEN or a W-9 must be completed.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 9TH DAY OF NOVEMBER, 2013.

x ____________________________________________  (SIGNATURE)
Isabella Hizeneye
ISABELLA HIZENEYE (PRINT/TYpe NAME LEGIBLY)
### U.S. STANDARD
#### CERTIFICATE OF DEATH

**NAME OF DECEASED:**

Liam A. Hizeneye

**SEX:**

M

**DATE OF BIRTH:**

11-1-13

**DATE OF DEATH:**

8-12-60

**CITY, TOWN, OR LOCATION OF DEATH:**

Tirana, Albania

**COUNTY OF DEATH:**

n/a

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**FAMILY NAME:**

Hizeneye

**MOTHER'S NAME:**

Information not available

**FATHER'S NAME:**

Hans H. Hizeneye

**INFORMANT:**

Isabella Hizeneye

**INFORMANT'S NAME (First,Middle,Last):**

Isabella Hizeneye

**INFORMANT'S ADDRESS:**

69 Hanson Road, Oakhill, MA 02400

**MARRITAL STATUS:**

Married

**SURVIVING SPOUSE:**

Isabella (Grace)

**COUNTY:**

Middlesex

**CITY, TOWN, OR LOCATION:**

Oakhill

**ZIP CODE:**

02400

**PLACE OF BIRTH:**

n/a

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**DATE OF DEATH:**

8-12-60

**CAUSE OF DEATH:**

blunt force trauma and burns

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**CERTIFIER:**

Marta Pont, MD

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**NOTE:**

The certificate is filled out with specific details about the deceased, including personal information, cause of death, and certifying physician. The certificate is signed and dated accordingly. The form includes fields for the deceased's name, sex, date of birth, family name, mother's name, father's name, informant's name, address, marital status, surviving spouse, county, city, town, or location, zip code, place of birth, date of death, cause of death, and certifier information.
Dear Leah/Lee,

Please know that I will always be watching over you. I love you so much and know that you will take care of our family. Isabella and Jess/Jim will be there for you, and I know that you will always be there for them.

People will be asking questions about my death. It is very important that you not tell anyone about this note. Just remember that I love you very much, and everything I did was for our family.

Love, Dad
FINAL NOTICE

LIAM HIZENEYE
69 HANSON ROAD
OAKHILL, MA 02400

PAST DUE NOTICE
Notice Date: Oct. 15, 2013
Loan Number: 865932656

Dear Mr. Hizeneye:

Reference is made to a certain Secured Promissory Note that you executed on Dec. 1, 2012 in favor of Axon Savings & Loan. Our records reflect that your loan is now three payments overdue, as we have not received the payments due on 08/01/13, 09/01/13 and 10/01/13. Please contact one of our collections representatives at 1-800-888-8585 to make arrangements to remit your payment today.

Failure to promptly pay the amount due may result in legal action, including, but not limited to, foreclosure of the real property located at 69 HANSON ROAD, OAKHILL, MA 02400, pursuant to the terms of a certain Mortgage and Security Agreement dated Dec. 1, 2012.

As a longstanding customer, we value your loyalty and are prepared to work with you to resolve this matter amicably. If you are experiencing a hardship that is impacting your ability to reinstate your loan, Axon Savings & Loan may be able to offer assistance. Please do not hesitate to contact us at our toll-free number 1-800-888-8585, Monday through Thursday 8 a.m. to 8 p.m., Friday 8 a.m. to 5 p.m., and Saturday 8 a.m. to 12 p.m. (Eastern Standard Time). You may also email HELPME@asl.com. Be sure to include your loan number in any correspondence. If home ownership counseling is needed, HUD-approved counselors are also available to provide you with the information and assistance to avoid possible foreclosure. To find a counselor near you, contact HUD at 1-800-225-5342 or online at www.hud.gov.

This debt will be assumed to be valid unless you dispute the validity of the debt, or any portion thereof, within 30 days after receipt of this notice.

This matter is urgent and your prompt response is necessary.

Sincerely,
Axon Savings & Loan
Collections Operations
EXHIBIT D
SECURED PROMISSORY NOTE

$5,000,000.00

FOR VALUE RECEIVED, and upon and subject to the terms and conditions set forth herein, LIAM HIZENEYE, 69 HANSON ROAD, OAKHILL, MA 02400 ("Issuer"), hereby promises to pay to the order of AXON SAVINGS & LOAN (together with its permitted successors and assigns, “Holder”), the principal sum of FIVE MILLION UNITED STATES DOLLARS (U.S. $5,000,000.00) on the Maturity Date, together with interest as provided herein.

1. **Maturity Date.** This Note will mature, and be due and payable in full, on December 1, 2013 (the “Maturity Date”).

2. **Interest.** From and after the date hereof, all outstanding principal of this Note will bear simple interest at the rate of six percent (6%) per annum. On the first of each month commencing January 1, 2013, Issuer shall pay the then accrued interest on this Note. Upon the occurrence and during the continuance of any Event of Default (as hereinafter defined) under this Note, all outstanding principal of this Note shall bear interest at the rate of twelve percent (12%) per annum. All outstanding principal and accrued but unpaid interest on this Note shall be payable on the Maturity Date.

3. **Security.** Repayment of this Note secured by a Mortgage and Security Agreement (the “Security Agreement”) dated as of December 1, 2012 between Issuer and Holder.

4. **Prepayment.** Issuer may prepay this Note prior to the Maturity Date, without premium or penalty upon written notice to Holder.

5. **Transfer.** Holder may transfer this Note in compliance with applicable U.S. federal and state and/or foreign securities laws.

6. **Events of Default.** An “Event of Default” will occur if the Issuer fails to pay (a) any principal of this Note when such amount becomes due and payable in accordance with the terms hereof and such payment is not made within three Business Days of when it is due, or (b) any interest on the Note when such amount becomes due and payable in accordance with the terms hereof and such payment is not made within three Business Days of when it is due.

7. **Remedies.** At such time that an Event of Default has occurred and is continuing, then Holder, by written notice to Issuer (the “Notice”), may declare all amounts hereunder immediately due and payable in cash and Holder will be entitled to reimbursement of its reasonable costs and expenses related to collection of all amounts owing in connection thereof. Except for the Notice, Holder need not provide, and Issuer hereby waives, any presentment, demand, protest or other notice of any kind, and Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such election may be rescinded and annulled by Holder at any time prior to payment hereunder.

**SIGNED, SEALED AND DELIVERED** as of the date first above written.

LIAM HIZENEYE
AFFIDAVIT OF STEVIE J. O’HARA, PH.D.

1. My name is Dr. Stevie J. O’Hara. I reside at 7 Old Forge Road, Chester, MA. I am single and reside only with my cat Artemis. Her name means “huntress.” We both like to hunt. I hunt for the truth and cause of why things happen to people when they die and she likes to hunt for mice. With all my moves with the FBI it was never easy to establish relationships, so I decided to stay single so that I could focus on my various careers. I am a forensic psychologist.

2. I knew I was running out of time to become an FBI agent, candidates must be between the ages of 23 and 36. Criminal profiling at the federal level is conducted by professionals known as supervisory special agents (SSA). FBI special agents must work a minimum of three years as SSAs before they can be part of the National Center for Analysis of Violent Crime (NCAVC) at Quantico, VA.

3. I applied and was accepted into the FBI academy at Quantico in 1988. Upon completion of the academy I was assigned as a special agent to multiple locations and reached the rank of supervisory special agent, and held that rank for six years. I then applied, and was accepted, to become part of the NCAVC. Working as an SSA in this unit, like any law enforcement field, can be physically demanding, dangerous and stressful.

4. In 2000, when I was promoted to FBI Area Director of the Behavioral Analysis Unit in Boston (BAU), my traveling was greatly reduced in my position. During this time I completed my Ph.D. in Clinical Psychology at Harvard University. My dissertation in suicidology provided me with extraordinary scientific psychological study of suicidal behavior and suicide prevention. Soon thereafter I was awarded the Shneidman Award for Excellence in Suicide Research from the American Association of Suicidology.

5. In my directorship, I knew I had finally found the job that allowed me to share all my expertise in forensic psychology, law enforcement and clinical psychology. I knew this would be the last position I would have with the FBI so I made every effort to mentor as many special agents in my area office so that they would be the most effective unit for analysis in the country.

6. I retired from my position with the FBI in 2010 and started the consulting firm Mason & Drake LLP within the same year. All my affiliations with professional agencies and my stellar reputation from my work with the FBI have provided me a steady stream of work, and I truly am enjoying the freedom to choose the cases that I want to be part of.

7. I was a principal contributor to writing numerous training manuals for the FBI’s BAU during my tenure there. My thesis for my Ph.D. was on forensic suicidology and the psychological autopsy. Since my retirement, I have been in such demand as a consultant I have not had any leisure time to write articles for publications. I have been approached by numerous publications to contribute a chapter, essay, etc. regarding my expertise in performing psychological autopsies and expert testimony, but have had to decline.

8. I am a forensic psychologist and principal in my consulting firm, Mason & Drake LLP. We are a multi-disciplinary group that provides comprehensive clinical, forensic, psychological and scientific consultation to determine causes of injury/death to individuals. The circumstances may be natural causes, accident, homicide or suicide. Our client base includes all levels of law enforcement agencies, insurance providers, court systems, attorneys and private citizens. We often provide clarity for these agencies and individuals when typical analysis is inadequate.

9. Due to my broad experience I have developed exceptional observational, assessment and documentation skills. I have submitted dozens of expert reports for my clients. On many occasions, my reports have led to the resolution of their cases. In fact, I’ve been so successful in helping resolve those cases that I’ve testified in court only three times. My rates are $500/hour for investigation and, if I have to testify at trial, my hourly rate is $1,050 for trial and preparation, plus expenses.
10. In early 2015 I was contacted by the Consolidated Brokers of Boise Insurance Company (CBB), located in Boise, Idaho, to conduct a psychological autopsy of the decedent Liam Hizeneye in preparation for an upcoming trial regarding a death benefit payment filed by the plaintiff, Leah/Lee Hizeneye, the decedents’ daughter/son. The policy holder Liam Hizeneye had died on Nov. 1, 2013 as a consequence of an explosion at his home while in his vehicle, which was garaged immediately prior to the explosion. The insurance company is asserting that the decedent committed suicide and therefore, the claimant is not entitled to payment under the policy.

11. Upon receipt of my signed fee agreement and a retainer for $50,000 from CBB, I commenced my investigation on June 7, 2015.

12. I specialize in psychological autopsies. It is a term that was coined by E.S. Shneidman of the Los Angeles Medical Examiner’s Office in 1981. It is a procedure used to classify equivocal deaths. An equivocal death is a death in which it is not immediately clear whether a person committed suicide or not. The psychological autopsy method entails reconstructing a biography of the deceased through psychological information gathered from personal documents; police, medical and coroner records; and first-person accounts, either through depositions or interviews with family, friends, coworkers, physicians and business associates.

13. Shneidman identified 14 areas for inquiry in psychological autopsies. I have ascertained that the following are pertinent to this psychological autopsy: Those areas include; (i) a brief outline of the victim's history (e.g., previous suicide attempts); (ii) a description of the personality and lifestyle of the victim; (iii) the victim’s typical pattern of reaction to stress, emotional upsets and periods of disequilibrium; (iv) recent stressors, tensions, or anticipations of trouble; (v) changes in the victim's habits and routines before death (e.g., hobbies, appetite and other life routines); and (vi) any comments or special features of the case.

14. I determined that interviewing all the principals in the case would not be the most effective way to develop my psychological profile of Mr. Hizeneye at the time of his death. After such an abrupt and horrific death, individuals often begin a process of interpreting their own thoughts about what, if anything, they might have done to contribute to the death of the decedent. This was particularly true here, where there was obvious family discord and distrust among multiple family members. I have read all the affidavits in the case and reviewed the medical examiner’s summary death certificate, and visited the main business and the home of the decedent. This provided me with a visual context of where he went to work, lived and died.

15. After a thorough review of the behavioral and forensic evidence, it became clinically evident that there were indeed indicators that Mr. Hizeneye was suffering from psychache due to unmet needs that were vital to his ability to cope with his current life circumstances. “Psychache” is defined as the psychological pain consisting of negative emotions and unmet psychological needs that an individual experiences. Psychache creates an overwhelming amount of distress in an individual so that she/he perceives suicide as the only way to escape the pain. Mr. Hizeneye’s use of medication to reduce his intermittent anxiety was an additional clinical indicator that he was feeling out of control and overwhelmed. His primary care physician prescribed Lorazepam to be taken as needed. As a clinical psychologist, I would deduce from the medication chosen, dosage and duration of condition, that he was not in need of daily medication to manage his episodes of heightened anxiety and distress. However, Mr. Hizeneye’s reporting of his level of distress was likely minimized to his physician. Mr. Hizeneye, in my expert opinion, was not of unsound mind at the time of his death.

16. Mr. Hizeneye was facing significant financial distress due to a judgement entered against him for $5 million just two months prior to his death. All his real estate holdings and primary residence were encumbered. At the time of his death Mr. Hizeneye was facing almost certain financial ruin.
17. When Mr. Hizeneye married Isabella in 2010 his financial status was sound. By statements in Jess/Jim Grace’s affidavit, he was at times reckless with his expenditures to impress Isabella during their courtship. Liam and Isabella quickly married after a brief courtship. His daughter/son Leah/Lee stated she/he was not happy about the union and the subsequent move-in of Isabella’s daughter/son, Jess/Jim soon thereafter.

18. Mr. Hizeneye’s desire to recreate a family was unrealistic and was quickly crumbling around him, as evidenced by the divisive family environment and the failed unity within his own home. Isabella reportedly was engaging in increased alcohol use within the home. He felt ineffective in his ability to maintain financial security, close interpersonal relationships and collateral relationships. His withdrawal from his hobbies and peers was indeed another indicator of his isolation. His behaviors viewed as controlling regarding financial expenditures of late were in fact a possible attempt to further conceal his reversal of finances. Mr. Hizeneye viewed his ability to provide for his family as a major source of self-esteem. It is not uncommon for men to base their self-esteem on their work or their ability to provide for their family. Mr. Hizeneye’s self-perception did not allow him to be embarrassed and suffer the shame of his failure to create a new family and provide for them.

19. I understand that an alleged suicide note was found. However, there is no forensic evidence which can determine the authenticity of the note and, accordingly, I am not taking it into consideration for purposes of this testimony.

20. After completing a comprehensive psychological autopsy of Mr. Hizeneye, it is my expert opinion that Mr. Hizeneye chose suicide as the means to resolve his current life circumstance. He had set a goal to make a new family, which had failed. His financial ruin was imminent and his ability to provide for his family in life was destroyed. His frustration and inability to control these life circumstances led him to feel physical and emotional exhaustion, despair, shame, humiliation and disgrace. His vital needs were unmet and his life unbearable. Mr. Hizeneye’s vital need to provide for his family, protect his loved ones from shame and disgrace and to relieve himself of the unbearable psychache he could no longer tolerate became lethal. On the morning of his suicide, his improved mood and loving gestures would indicate that he was at peace and relieved by his decision to end his life.

21. His means of self-harm was the explosion which he perceived would provide his family with funds from his life insurance policy for financial security.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 7th DAY OF DECEMBER 2017

Stevie J. O’Hara, Ph.D.
Stevie J. O’Hara, Ph.D.
EXHIBIT A

STEVIE J. O’HARA, Ph.D.
Curriculum Vitae

PROFESSIONAL EXPERIENCE
2010–present  Clinical Forensic Psychologist, Mason & Drake LLP, Boston, MA
Principal in forensic consulting firm specializing in a multidisciplinary approach that provides comprehensive clinical, forensic, psychological and scientific analysis of causes of injury/death due to natural causes, accident, homicide and suicide. Clients include police departments, insurance providers, attorneys and private citizens.

2000–2010  Area Director, Federal Bureau of Investigation Behavioral Analysis Unit (BAU), Boston, MA

1988–1992  Field Agent, Federal Bureau of Investigation National Center for the Analysis of Violent Crime (NCAVC), Quantico, VA
Multiple assignment locations and criminal and civil analysis assignments.

1980–1987  Head Aftercare Caseworker/Court Liaison, Department of Youth Services (DYS), Taunton, MA
Responsible for total case management of juveniles until their discharge from the department upon age of majority. Court liaison to juvenile courts Brookline, Hingham, Stoughton, Dedham and Quincy.

1976–1980  Patrol Officer, Vermont State Police, St. Johnsbury Barracks, St. Johnsbury, VT
Duties included enforcing state laws, patrolling state roads and crime investigation.

EDUCATION
2008  M.S. Forensic Science, cum laude, Boston University, School of Medicine, Boston, MA
2006  Ph.D., Clinical Psychology, Harvard University, Cambridge, MA
2005–2006  Internship, Harvard, Lemeul Shattuck Hospital, Jamaica Plain, MA
Provided clinical assessment for the Department of Corrections of prisoners in custody due to suicidal behaviors exhibited either in awaiting trial units and/or during incarceration.

1975  B.S., Criminal Justice, cum laude, Bryant University, Smithfield, RI
1973  Associates Degree, Law Enforcement, Massasoit Community College, Brockton, MA

CERTIFICATIONS
Board Certified in Forensic Psychology, American Board of Professional Psychology
Board Certified in Clinical Psychology, American Board of Professional Psychology
Massachusetts Certified Clinical Psychologist

PROFESSIONAL AFFILIATIONS
American Psychology Law Society
American Psychological Association
American Academy of Forensic Psychologists
American Association of Suicidology

AWARDS
Federal Bureau of Investigation Meritorious Award
United States Attorney General Award
William W. Webster Award, The Heart of Society, Federal Bureau of Investigation
Shneidman Award for Excellence in Suicide Research, American Association of Suicidology
PART VII:
Pertinent Information, Statutory Case Law and Evidentiary Standards
BREACH OF CONTRACT

In this matter the plaintiff has alleged that she/he had a contract with the defendant, that the defendant breached or violated the terms of the contract, and that the plaintiff has been harmed by the defendant’s breach of the contract. A breach of contract is a failure to comply with one or more material, or significant, terms of the contract. In order to recover for breach of contract, the plaintiff must have completely performed her/his obligations.

In order to succeed in this claim, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. That there was a valid contract, including proof of the terms of the contract;
2. That the plaintiff performed her/his material obligations under the contract (or because of the conduct of the other party, is excused from performance);
3. That the defendant breached or violated the contract; and
4. That the plaintiff suffered damages as a result of the breach of contract.

In this case, the parties have agreed that there is a valid life insurance contract. the plaintiff performed her/his obligations and the parties have stipulated to the terms thereof so you need not deliberate on those elements; you may treat them as already proven by the plaintiff. Instead you should focus on the remaining elements which are not in agreement and which the plaintiff must prove by a preponderance of the evidence.

“A breach of contract is a failure to perform for which legal excuse is lacking.” Realty Development Co. v. Wakefield Ready-Mixed Concrete Co., 327 Mass. 535, 537 (1951). A refusal or failure to perform may not be a breach of contract where there is a legally justified reason not to perform. Legal reasons are called “defenses.” The defendant has the burden of proving to you by a preponderance of evidence that it has a legal reason or defense for its non-performance.

THIRD-PARTY BENEFICIARIES

Usually, someone who is not a party to a contract may not bring suit for breach of the contract. However, if the contract was made for [her/his/its] direct benefit, that person is called a third-party beneficiary and has a right to enforce the contract provision in her/his favor.

The plaintiff must demonstrate that the parties to the contract intended her/him to be the beneficiary of the contract, as opposed to an incidental beneficiary. She/he is an intended beneficiary if the parties to the contract intended that performance of the contract would result in a benefit to her/him.

For example, the parties to a life insurance policy intend that, on the death of the insured, the company will make a payment to the designated beneficiary. That beneficiary may sue for payment, although the contract was between the insured and the life insurance company.

EVIDENTIARY ISSUES

Preponderance of Evidence — Burden of Proof in Civil Case

The plaintiff must prove each element of her/his claim(s) by a preponderance of the evidence. The Massachusetts Supreme Judicial Court has described the standard of “preponderance of the evidence” in this way:

The weight or preponderance of evidence is its power to convince the tribunal which has the determination of the fact, of the actual truth of the proposition to be proved. After the evidence has been weighed, that proposition is proved by a preponderance of the evidence if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there. Sargent v. Massachusetts Acci Co., 307 Mass. 246 (1940).
An essential part of the plaintiff’s case was to establish either that she/he furnished the defendant with due proof that the death was accidental or that the company waived the requirement of due proof.

Due proof in connection with a policy of the type involved in this case is provided when the proof furnished to the insurer shows on the whole “that the claim is of a class within the protection of the policy, so that if the proofs should be accepted as true the insurer reasonably might pay the claim.” *Washington v. Metropolitan Life Ins. Co.*, 372 Mass. 714, 363 N.E.2d 683 (1977).

We have long recognized that an insurer may request further proof and any additional submission should be considered in assessing whether the claimant submitted adequate proof under the policy. *See Traiser v. Commercial Travellers’ E. Accident Ass’n*, 202 Mass. 292, 294-296 (1909).

**Direct and Circumstantial Evidence**

There are two types of evidence that you may use to determine the facts of a case: direct evidence and circumstantial evidence. You have direct evidence where a witness testifies directly about the fact that is to be proved, based on what she/he claims to have seen or heard or felt with her/his own senses and the only question is whether you believe the witness. You have circumstantial evidence where no witness can testify directly about the fact that is to be proved, but you are presented with evidence of other facts and then asked to draw reasonable inferences from them about the fact that is to be proved.

Example: Your mother might tell you one morning that she sees the mailman at your mailbox. That is direct evidence that the mailman has been to your house. On the other hand, she might tell you only that she sees mail in the mailbox. That is circumstantial evidence that the mailman has been there; no one has seen her/him, but you can reasonably infer that she/he has been there because there is mail in the box.

**Burden of Proof**

The standard of proof in a civil case is that a plaintiff must prove [her/his] case by a preponderance of the evidence. This is a less stringent standard than is applied in a criminal case, where the prosecution must prove its case beyond a reasonable doubt. By contrast, in a civil case such as this one, the plaintiff is not required to prove [her/his] case beyond a reasonable doubt. In a civil case, the party bearing the burden of proof meets the burden when [she/he] shows it to be true by a preponderance of the evidence. The standard of a preponderance of the evidence means the greater weight of the evidence. A preponderance of the evidence is such evidence which, when considered and compared with any opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more probably true than not true.

A proposition is proved by a preponderance of the evidence if, after you have weighed the evidence, that proposition is made to appear more likely or probable in the sense that there exists in your minds an actual belief in the truth of that proposition derived from the evidence, notwithstanding any doubts that may still linger in your minds.

Simply stated, a matter has been proved by a preponderance of the evidence if you determine, after you have weighed all of the evidence that that matter is more probably true than not true. *Sargent v. Mass. Accident Co.*, 307 Mass. 246, 250 (1940); *see also Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246 (1996).

**Preponderance of Evidence**

In a civil action such as this, the plaintiff bears the burden of proving every essential element of [her/his] claim by a fair preponderance of the credible evidence.

Whether the plaintiff has established the essential elements of [her/his] case by a fair preponderance of the credible evidence is determined by the quality of the evidence: its credibility, believability, trustworthiness and accuracy.
To prove something by a preponderance of the evidence, the plaintiff must prove that thing to be more likely or more probably true than not true.

It is not enough that mathematically the chances somewhat favor a proposition to be proved. The weight of the preponderance of the evidence is its power to convince [a jury] of the actual truth of the proposition to be proved. Sargent v. Mass. Accident Co., 307 Mass. 246, 250 (1940); see also Lisbon v. Contributory Ret. App. Bd., 41 Mass. App. Ct. 246 (1996).

Preponderance of Evidence — Suicide

There exists a rebuttable presumption “that one does not commit suicide.” The presumption is “drawn from … the normal strong urge to life and the compulsions of law and religion against self-destruction.” In the “absence of compelling circumstances” otherwise, the presumption meets the burden of the representative or beneficiary of the insured to show death other than by suicide. In effect, the rule places upon the insurer the burden of rebutting the presumption. Though upon proper proof the issue may be a jury question, the burden on an insurer is satisfied if facts are proven “which conclusively exclude every other reasonable hypothesis of death.”

Case law


Preliminary “due proof” required by a double indemnity clause of a life insurance policy, that the death of the insured resulted from accident “as a direct result thereof, independently and exclusive of all other causes, and … was not caused directly or indirectly by disease or bodily or mental infirmity or by self-destruction, sane or insane. Krantz v. John Hancock Mut. Life Ins. Co., 335 Mass. 703, 141 N.E.2d 719 (1957).


Addition to Mock Trial Simplified Rules of Evidence, Article VIII, Hearsay, Rule 804

In any action or other civil judicial proceeding, a declaration of a deceased person shall not be inadmissible in evidence as hearsay or as private conversation between husband and wife, as the case may be, if the court finds that it was made in good faith and upon the personal knowledge of the declarant. G.L. c. 233, §65.
APPENDIX A:
Guidelines for Attorneys

The preparation phase of the tournament is intended to be a cooperative effort of students, teacher-coach and attorney-advisor. For such cooperation to occur, it is important for attorneys to avoid even the appearance of talking down to students or stifling discussion through the use of complicated legalese.

Experience has shown that students and teachers alike develop a better understanding of the case and learn more from the experience if the attorney-advisors do not dominate the preparation phase of the tournament.

Attorneys and witnesses may neither contradict the “Stipulation of the Parties” or “Witness Affidavit” sheets for the case (see Part V, Trial Script), nor introduce any evidence that is not included in this packet of materials.

All witnesses (three for each side) must take the stand.

The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial tournament. (See Part IV of materials packet.) Other more complex rules are not to be raised during the trial enactment.

The first session with a student team should be devoted to the following tasks:

- Answering the questions that students have concerning general trial practices;
- Explaining the reasons for the sequence of events/procedures found in a trial;
- Listening to the students’ approach to the assigned case;
- Discussing general strategies as well as raising key questions regarding the enactment;
- Discussing the realities of the courtroom situation, that is, that each judge will conduct the trial differently. Students and teacher-coaches should be prepared to accept a judge’s ruling, whatever it is, with grace and courtesy;
- A second and subsequent session with students should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here an attorney can best serve as a constructive observer and critical teacher—listening, suggesting and demonstrating to the team;
- The decision of the judge in any mock trial enactment determines which team advances in the single elimination tournament. This decision is to be based on the quality of the students’ performances. Judges will be instructed to award points based on total performance and to give no consideration to age or grade level (see the Performance Rating sheet); and
- Years of tournament experience have shown that, except for opening the court, general procedural instructions, and rulings on objections, etc., it is best to keep judicial involvement/participation to a minimum during the trial enactment.
APPENDIX B:
Guidelines for Tournament Judges

It is essential that the presiding justice carefully rate each team on a clean Performance Rating sheet, since the best numerical score determines the prevailing team.

To avoid confusion, it is strongly recommended that judges award a score to each student immediately after her/his performance, rather than waiting until the trial is concluded.

The script for the trial enactment is designed for completion within a two-hour time limit. The MBA has reserved a sufficient amount of time for the teams to be able to complete the trials. Teams that do not monitor their time and run longer than the two-hour allotted time will bear sole responsibility for the inability to complete the trial. An incomplete trial will not be rescheduled. It will be counted as a loss to both teams. Due to our agreement with the courts, we ask that you keep your eye on the clock.

The script for the trial enactment is designed for completion within a two-hour time limit. The MBA has reserved a sufficient amount of time for the teams to be able to complete the trials. Teams that do not monitor their time and run longer than the two-hour allotted time will bear sole responsibility for the inability to complete the trial. An incomplete trial will not be rescheduled. It will be counted as a loss to both teams.

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• Attorneys have been asked to keep their presentations within the following guidelines:
  Opening statements 5 minutes each
  Direct examinations 7 minutes/witness
  Cross-examination 5 minutes/witness
  Redirect/Redirect/re-cross-examinations 3 questions/witness
  Closing statements 7 minutes each

• Each team will be responsible for monitoring its own and the other team’s time. Objections may be raised if time limits are exceeded. Ultimately, the judge is responsible for moving the trial along. In keeping with the atmosphere and decorum of a courtroom trial, timekeepers, stopwatches, and buzzers are not permitted during the enactment of the trial.

• The purpose of the tournament is to hear both sides; therefore, motions as to jurisdiction, to split the trial, or to dismiss for failure to establish a prima facie case, etc., should be denied. A foundation must be laid for admissibility of expert witness testimony, but no voir dire shall be allowed.

• There shall be no sequestration of witnesses at any time during the trial. If such a motion is made, the motion must be denied.

• The rules of evidence governing trial practice have been modified and simplified for the purpose of this Mock Trial Program. (See Part V, Simplified Rules of Evidence.) They are to govern the proceedings. Other more complex rules are not to be raised during the trial enactment.

• Attorneys and witnesses may neither contradict the “Stipulation of the Parties” or “Witness Affidavit” sheets for the case (see Part VI, Trial Script), nor introduce any evidence that is not included in this packet of materials. (See Part V, Simplified Rules of Evidence, Rules 701 and 702.)

• An attorney for a team presenting the opening statement may not make the closing arguments in the case, and no attorney shall conduct more than two examinations. Tournament procedures permit only one opening and closing statement for each party. (See Part II, section 5, Attorney Performance.)

• Under contest rules, student-attorneys are allowed to use notes in presenting their cases; witnesses may not use notes in testifying. However, undue reliance on notes should be reflected in the score. (Refer to Appendix C, Matrix on Judging Criteria.)

• Witness statements may be used by attorneys to “refresh” a witness’ memory and/or impeach the witness’ testimony in court.

• Students’ performances also should be evaluated on their use of objections. Refer to Appendix C, Matrix on Judging Criteria for more information.

• Points should be awarded based on total performance. No consideration should be given to age or grade level.

• No fractions of points are allowed (i.e., 7.5). Scoring is on a 10-point scale.

• The judge should give a verbal warning without penalty points to students whose jackets are not buttoned, whose ties are not tied properly or who are otherwise not appropriately attired. If the matter is not remedied, there may be further sanction involving the deduction of penalty points.
Coaches have been instructed that they may raise objections, but ONLY in the event of improper behavior on the part of opposing teachers or spectators. Coaches must raise objections immediately at the time of the infraction. This rule does not allow coaches to make objections on behalf of their student-attorneys regarding the substance of the trial. It applies only to gross rule violations (such as coaching or signaling time) that occur during the course of the trial.

At the sole discretion of the presiding judge, **BONUS POINTS** (a total of up to five points) may be awarded to a team's total score to recognize superior team performance, exceptionally thorough preparation, a particularly professional and mature level of conduct, an especially sophisticated legal argument, well-made objections which are sustained and an outstanding ability to think and respond extemporaneously.

At the sole discretion of the presiding judge, **PENALTY POINTS** (a total of up to 5 points) may be deducted from a team's total score for unsportsmanlike behavior. Such behavior might include, but would not be limited to, a team strategy of excessive objections, serious or repeated witness invention of facts designed to disrupt the presentation of the opponent's case or to eat into their time allotment or any other behavior which, in the presiding judge's opinion, is inconsistent with proper courtroom demeanor and the spirit of this tournament. Penalty points may also be deducted from cross-examining attorneys who repeatedly ask questions that require the witness to invent facts or for other behavior of students and adults, which, in the opinion of the presiding judge, is inappropriate and deserving of punitive action.

In case of an arithmetic tie, the tiebreaker point is to be awarded to one of the teams. This point should indicate which team, overall, gave the better performance, and it will determine who prevails in the trial enactment. (See explanation on bottom of the Performance Rating sheet).

The decision of the judge in a high school mock trial enactment determines which team advances in the tournament and which team is eliminated. (See the Performance Rating sheet and criteria for awarding points.)

Judges are encouraged to call the opposing coaches into chambers at the conclusion of the trial enactment so that they may review the scoring sheet and check the scores for arithmetic accuracy. Coaches have been instructed to sign the scoring sheets at that time. They have also been instructed that there is no formal grievance procedure. The decision of the court is final. The score sheet should be given to the coach of the prevailing team (after you have explained your verdict).

In the event that you encounter unsportsmanlike behavior from a teacher, lawyer-coach or student, contact us at (617) 338-0570 or email MockTrial@MassBar.org.

Experience has shown that better understanding is promoted among students and teachers, and more good will generated, if the presiding judge in a mock trial takes a few minutes following the enactment to explain her/his decisions regarding the case and the teams' presentations. Two decisions should be rendered: the first on the merits of the legal case, and the second, on the teams' performance. As previously mentioned, we encourage you to spend a few moments explaining your decisions to the students, but we ask that you remember that courts expect the teams to be out of the building shortly after the two-hour time period is up.
# APPENDIX C: Matrix on Judging Criteria

## Attorney Performance: Opening Statement

<table>
<thead>
<tr>
<th>Content</th>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Articulates a theme for the case.</td>
<td>• The court can extract the theme for the case.</td>
<td>• Does NOT state a theme for the case.</td>
<td></td>
</tr>
<tr>
<td>• States what the witness and documentary evidence will show.</td>
<td>• States some of what the witness and documentary evidence will show.</td>
<td>• States little or none of what the witness and documentary evidence will show.</td>
<td></td>
</tr>
<tr>
<td>• Gives the court a clear picture of the case.</td>
<td>• Gives the court a correct but incomplete picture of the case.</td>
<td>• Does NOT gives the court any picture or gives a confusing/contradictory picture of the case.</td>
<td></td>
</tr>
<tr>
<td>• Is persuasive without lapsing into argument.</td>
<td>• Is persuasive yet incorporates some thread of argument.</td>
<td>• Uses primarily argument.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Presentation</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Speaks clearly and with a solid command of the language.</td>
<td>• Speaks somewhat clearly and with a good command of the language.</td>
<td>• Does NOT speak clearly and has little command of the language.</td>
<td></td>
</tr>
<tr>
<td>• Presentation is organized.</td>
<td>• Presentation has some organization.</td>
<td>• Presentation is not organized.</td>
<td></td>
</tr>
<tr>
<td>• Rarely, if ever, refers to notes.</td>
<td>• Uses notes, but does not present as if memorized.</td>
<td>• Over-dependent on notes.</td>
<td></td>
</tr>
<tr>
<td>• Uses appropriate body language and voice inflections.</td>
<td>• Uses some appropriate body language and voice inflections.</td>
<td>• Uses little, if any, appropriate body language and voice inflections.</td>
<td></td>
</tr>
<tr>
<td>• Observes proper courtroom etiquette.</td>
<td>• Somewhat observes proper courtroom etiquette.</td>
<td>• Does NOT observe proper courtroom etiquette.</td>
<td></td>
</tr>
</tbody>
</table>

## Attorney Performance: Closing Argument

<table>
<thead>
<tr>
<th>Content</th>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Revisits the theme.</td>
<td>• Gives some reference to the theme.</td>
<td>• Gives little, if any, reference to the theme.</td>
<td></td>
</tr>
<tr>
<td>• Uses relevant law to support the argument.</td>
<td>• Uses some relevant law to support the argument.</td>
<td>• Uses little, if any, relevant law to support the argument.</td>
<td></td>
</tr>
<tr>
<td>• Cites relevant testimonial and documentary evidence that was entered during the trial.</td>
<td>• Cites some relevant testimonial and documentary evidence that was entered during the trial.</td>
<td>• Cites little, if any, relevant testimonial or documentary evidence that was entered during the trial and/or cites a substantial amount of testimonial or documentary evidence that was NOT entered in at trial.</td>
<td></td>
</tr>
<tr>
<td>• Does not cite testimonial and documentary evidence that was NOT entered in at trial.</td>
<td>• Cites little, if any, testimonial or documentary evidence that was NOT entered in at trial.</td>
<td>• Does NOT use persuasive language.</td>
<td></td>
</tr>
<tr>
<td>• Uses persuasive language.</td>
<td>• Uses somewhat persuasive language.</td>
<td>• Does NOT state what is requested of the court.</td>
<td></td>
</tr>
<tr>
<td>• Clearly states what is requested of the court.</td>
<td>• Somewhat, but not emphatically, states what is requested of the court.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Presentation</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Speaks clearly and with a solid command of the language.</td>
<td>• Speaks somewhat clearly and with some command of the language.</td>
<td>• Does NOT speak clearly or comfortably and has little, if any, command of the language.</td>
<td></td>
</tr>
<tr>
<td>• Refers to notes only when citing testimonial evidence and law presented at trial, otherwise does not read from notes.</td>
<td>• Speaks somewhat comfortably and seldom, if ever, lapses into reiterating a memorized speech.</td>
<td>• Primarily reads from notes or is clearly reiterating a memorized pre-written speech.</td>
<td></td>
</tr>
<tr>
<td>• Speaks with fluency and not as if reiterating a memorized speech.</td>
<td>• Speaks somewhat comfortably and seldom, if ever, lapses into reiterating a memorized speech.</td>
<td>• Uses little, if any, appropriate body language and voice inflections.</td>
<td></td>
</tr>
<tr>
<td>• Uses appropriate body language and voice inflection.</td>
<td>• Uses some appropriate body language and voice inflections.</td>
<td>• Does NOT observe proper courtroom etiquette.</td>
<td></td>
</tr>
<tr>
<td>• Always observes proper courtroom etiquette.</td>
<td>• Most always observes proper courtroom etiquette.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Attorney Performance: Direct Examination

<table>
<thead>
<tr>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Content</strong></td>
<td><strong>Content</strong></td>
<td><strong>Content</strong></td>
</tr>
<tr>
<td>• All questions are relevant.</td>
<td>• Most questions are relevant.</td>
<td>• Few, if any, questions are relevant.</td>
</tr>
<tr>
<td>• Asks who, what, when, why, where and how questions.</td>
<td>• Mostly asks who, what, when, why, where and how questions.</td>
<td>• Does NOT ask who, what, when, why, where and how questions.</td>
</tr>
<tr>
<td>• The questions are organized to clearly tell the witness’ story.</td>
<td>• Questions are organized to somewhat tell the witness’ story.</td>
<td>• The questions are NOT organized to somewhat tell the witness’ story.</td>
</tr>
<tr>
<td>• Necessary documentary evidence is entered through the appropriate witness and the proper foundation is laid when the evidence is entered.</td>
<td>• Most necessary documentary evidence is attempted to be entered, but proper foundations may not be laid every time.</td>
<td>• Little, if any, necessary documentary evidence is entered and/or proper foundations are NOT laid when evidence is attempted to be entered.</td>
</tr>
<tr>
<td>• When appropriate, the proper groundwork is laid for an expert witness and the expert witness’ testimony is fully developed.</td>
<td>• When appropriate, the proper groundwork is laid for the an expert witness but the expert witness testimony is NOT fully developed.</td>
<td>• When appropriate, the proper groundwork is NOT laid for an expert witness.</td>
</tr>
<tr>
<td>• Makes and responds to objections demonstrating knowledge of the Rules of Evidence.</td>
<td><strong>Presentation</strong></td>
<td><strong>Presentation</strong></td>
</tr>
<tr>
<td>• Shows knowledge of case theory and team strategy.</td>
<td>• Speaks somewhat clearly and with some command of the language.</td>
<td>• Speaks NOT speak clearly and has little command of the language.</td>
</tr>
<tr>
<td>• Speaks clearly and with a solid command of the language.</td>
<td>• Asks few, if any, leading questions except for background questions.</td>
<td>• Asks many leading questions.</td>
</tr>
<tr>
<td>• Lawyer(s) is/are able to effectively rebut objections from opposing side without losing composure.</td>
<td>• Lawyer(s) is/are able to effectively rebut most objections from opposing side and loses little composure.</td>
<td>• Lawyer(s) is/are NOT able to rebut most objections from opposition and/or loses composure.</td>
</tr>
<tr>
<td>• Rarely refers to notes.</td>
<td>• Uses notes but does not read verbatim from them repeatedly.</td>
<td>• Uses notes and reads verbatim from them question after question.</td>
</tr>
<tr>
<td>• The witness is the focus of the examination at all times, not the lawyer.</td>
<td>• The witness is the focus of the examination at most times.</td>
<td>• The witness is NOT the focus of the examination.</td>
</tr>
<tr>
<td>• Uses appropriate body language and voice inflections.</td>
<td>• Uses some appropriate body language and voice inflections.</td>
<td>• Uses little, if any, appropriate body language and voice inflections.</td>
</tr>
<tr>
<td>• Observes proper courtroom etiquette.</td>
<td>• Observes proper courtroom etiquette.</td>
<td>• Does NOT observe proper courtroom etiquette.</td>
</tr>
</tbody>
</table>

### Attorney Performance: Cross-Examination

<table>
<thead>
<tr>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Content</strong></td>
<td><strong>Content</strong></td>
<td><strong>Content</strong></td>
</tr>
<tr>
<td>• All questions are precisely aimed at attacking the witness’ testimony or the other side’s case.</td>
<td>• Most questions are aimed at attacking the witness’ testimony or the other side’s case.</td>
<td>• Few, if any, questions are aimed at attacking the witness’ testimony or the other side’s case.</td>
</tr>
<tr>
<td>• Appropriately uses affidavit to impeach the witness when necessary.</td>
<td>• Uses affidavit to impeach the witness when necessary.</td>
<td>• Does NOT use the affidavit to impeach the witness when necessary.</td>
</tr>
<tr>
<td>• Makes appropriate use of evidence when necessary.</td>
<td>• Makes use of evidence when necessary.</td>
<td>• Makes little, if any, use of evidence when necessary.</td>
</tr>
<tr>
<td>• Makes and responds to objections demonstrating knowledge of the Rules of Evidence.</td>
<td><strong>Presentation</strong></td>
<td><strong>Presentation</strong></td>
</tr>
<tr>
<td>• Shows knowledge of case theory and team strategy.</td>
<td>• Speaks somewhat clearly and with some command of the language.</td>
<td>• Speaks NOT speak clearly and has little command of the language.</td>
</tr>
<tr>
<td>• Speaks clearly and with a solid command of the language.</td>
<td>• Examination is conducted using mostly leading questions.</td>
<td>• Examination is NOT conducted using leading questions.</td>
</tr>
<tr>
<td>• Examination is conducted using predominantly leading questions.</td>
<td>• Questions are pointed to elicit yes or no answers, but there is some repetition of the wording of the questions.</td>
<td>• Questions are NOT pointed to elicit yes or no answers.</td>
</tr>
<tr>
<td>• Questions are pointed to elicit yes or no answers and done so without undue repetition of the wording of the questions.</td>
<td>• Lawyer sometimes and to a lesser degree reacts to the witness’ answers, especially if the witness is being evasive.</td>
<td>• Lawyer does NOT react or does NOT react appropriately to the witness’ answers, especially if witness is evasive.</td>
</tr>
<tr>
<td>• Lawyer quickly and appropriately reacts to the witness’ answers, especially if the witness is being evasive.</td>
<td>• Lawyer(s) is/are somewhat able to rebut objections from opposing side.</td>
<td>• Lawyer(s) is/are NOT able to rebut objections from opposing side.</td>
</tr>
<tr>
<td>• Lawyer(s) is/are able to effectively rebut objections from opposing side.</td>
<td>• Uses some appropriate body language and voice inflections.</td>
<td>• Uses appropriate body language and voice inflections.</td>
</tr>
<tr>
<td>• Uses appropriate body language and voice inflections.</td>
<td>• Most always observes proper courtroom etiquette.</td>
<td>• Does NOT use appropriate body language and voice inflections.</td>
</tr>
<tr>
<td>• Always observes proper courtroom etiquette.</td>
<td></td>
<td>• Does NOT observe proper courtroom etiquette.</td>
</tr>
</tbody>
</table>
### Witness Performance

<table>
<thead>
<tr>
<th>9–10 Points</th>
<th>5–8 Points</th>
<th>1–4 Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Total knowledge and command of case and character (direct AND cross).</td>
<td>• Good knowledge and command of character (direct AND cross).</td>
<td>• Very little knowledge and command of character (direct AND cross).</td>
</tr>
<tr>
<td>• Portrays part in convincing and compelling way (direct AND cross).</td>
<td>• Some ability to portray the part (direct AND cross).</td>
<td>• Little ability to portray the part (direct AND cross).</td>
</tr>
<tr>
<td>• Able to respond to questions effectively on cross-examination.</td>
<td>• Responds less securely on cross-examination.</td>
<td>• Poor cross-examination responses.</td>
</tr>
<tr>
<td>• Knows affidavit extremely well.</td>
<td>• Good knowledge of affidavit.</td>
<td>• Poor knowledge of affidavit.</td>
</tr>
<tr>
<td>• Always gives specific responses to questions.</td>
<td>• Sometimes gives specific responses to questions.</td>
<td>• Rarely gives specific responses to questions.</td>
</tr>
<tr>
<td>• Is not argumentative unless absolutely necessary and only to the extent needed to clarify a question.</td>
<td>• Somewhat argumentative when not necessary.</td>
<td>• Overly argumentative.</td>
</tr>
<tr>
<td>• Always compliant to judge’s instructions.</td>
<td>• Sometimes compliant to judge’s instructions.</td>
<td>• Rarely compliant to judge’s instructions.</td>
</tr>
<tr>
<td>• Always projects answers to judge.</td>
<td>• Sometimes projects answers to judge.</td>
<td>• Rarely projects answers to judge.</td>
</tr>
<tr>
<td>• Response to questions is always audible.</td>
<td>• Response to questions is sometimes audible.</td>
<td>• Response to questions is rarely audible.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Requires rehabilitation.</td>
</tr>
</tbody>
</table>
APPENDIX D: MBA Mock Trial NEW Website: Log-in Instructions

1. Log-on to the new Mock Trial website by typing https://Massbar.org/Mock into your browser’s address field. Hit the “Enter” key.

2. In the upper right-hand corner, click the “Mock Trial Login” button.

3. In the field labeled “ID,” enter your six digit Mock Trial Team Login ID number. The login and password was issued at by Mock Trial Central at the teacher orientation.

4. Enter your password in the “Password” field. This will be a randomly generated nonsense word.

5. Click the “Login” button or hit the enter key to submit the form.

6. You will now have access to all information on the website, including the case packet, news and advisories, your team schedule, etc.

7. In order to log-out of your school’s profile page, click the “My Profile” button in the upper right corner and choose “Logout” on the drop down menu.

If you have questions, comments or concerns, email MockTrial@MassBar.org or call at (617) 338-0570.
2018 MOCK TRIAL TOURNAMENT PERFORMANCE RATING SHEET

PHILOSOPHY OF THE MOCK TRIAL TOURNAMENT

While the MBA’s Mock Trial Committee wishes this trial enactment to be as realistic an experience as possible, please remember that this is for the educational benefit of the students. All participants are urged to compete in a spirit of fair play. Winners must call in their scores to (617) 338-0570 or email to MockTrial@MassBar.org by 9 a.m. the next morning.

Students are to be judged upon their knowledge of procedure, the law and the facts of the case, in addition to the overall quality of their presentation. For each of the performance categories listed below, we ask that you rate each individual on a scale of 1 to 10. **No fractions of points are allowed**. Students are to be judged on their total performance. No consideration should be given to age or grade level. Note: All categories must be judged except discretionary points. Bonus or penalty points are to be awarded solely at the judge’s discretion.

HIGHEST SCORE = 10  LOWEST SCORE = 1

<table>
<thead>
<tr>
<th>REGION #___________</th>
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</tr>
</thead>
<tbody>
<tr>
<td>PROSECUTION/PLAINTIFF</td>
<td>DEFENSE</td>
</tr>
</tbody>
</table>

**ATTORNEY PERFORMANCE (TIME LIMITS)**
- Opening statement (5 min.)
- Direct of Leah/Lee Hizeneye (7 min.)
- Direct of Winnie/Willie Silvermain (7 min.)
- Direct of Phylis/Philip Rupp (7 min.)
- Cross of Jess/Jim Grace (5 min.)
- Cross of Samantha/Samuel Spade (5 min.)
- Cross of Stevie J. O’Hara Ph.D. (5 min.)
- Closing argument (7 min.)

**WITNESS PERFORMANCE**
- Leah/Lee Hizeneye
- Winnie/Willie Silvermain
- Phylis/Philip Rupp

**DISCRETIONARY POINTS**
- Bonus points (if applicable)
- Penalty points (if applicable)

**TOTAL POINTS**

**TIE BREAKER** (if applicable)

-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

*Please review the performance rating sheet carefully at the conclusion of the trial enactment. Your signature indicates that you have reviewed it and concur that it is arithmetically accurate. Failure or refusal to sign this sheet will not preserve a right to appeal the decision of the court, which is final.
Prior to each trial, coaches for the two competing teams should fill in the roster below with the names of the students who will be playing the roles for that particular trial. Only one performance rating sheet should be submitted to the judge. At the conclusion of the trial, the presiding judge will give the original performance rating sheet to the prevailing team. (Be sure to ask them for it if they do not give it to you). Upon request, the judge may allow the opposing team to copy the score sheet. The prevailing team’s coach must call in the score to the Mock Trial Central at (617) 338-0570 by 9 a.m. of the day following the trial. Messages may be left after business hours. Your cooperation is needed so that we can keep the scores on the web page up to date.

**PLAINTIFF/PROSECUTION**

<table>
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<tr>
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<tr>
<td>Cross of Stevie J. O’Hara Ph.D.</td>
<td></td>
</tr>
<tr>
<td>Closing argument</td>
<td></td>
</tr>
<tr>
<td>Witness — Leah/Lee Hizeneye</td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
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<td>Witness — Phylis/Philip Rupp</td>
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</tbody>
</table>

**DEFENSE**

<table>
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<th>Region #</th>
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<td></td>
</tr>
<tr>
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<td></td>
</tr>
</tbody>
</table>

**Rule 5.2:** The attorney presenting the opening statement may not make the closing arguments in the case. No attorney may conduct more than one direct examination. No attorney may conduct more than one cross-examination. Only one attorney from each side may conduct the examination of an individual witness, including re-examinations. *Violation of this rule shall result in the offending player receiving a score from the judge but the team shall also receive a deduction of 10 PENALTY POINTS.*