

---

**2010-2011**  
**ALASKA HIGH SCHOOL**  
**MOCK TRIAL**  
**COMPETITION**

Anchorage, December 2-4, 2010

Boney Courthouse

**Jordan Stanley v. ATVictory, Inc.**

Case No. 5AN-10-9999 CI

**OFFICIAL CASE MATERIALS & COMPETITION RULES**

---

**TEAM MEMBER'S PACKET**

Including all evidence, applicable law, competition rules, and team registration forms.

**Sponsored by the Anchorage Bar Association,  
Young Lawyers Section**

## TABLE OF CONTENTS

Table of Contents .....	1
Author’s Note .....	3
<b>I. Legal Documents</b> .....	4
Complaint .....	5
Answer .....	9
Stipulations .....	13
Jury Instructions .....	15
<b>II. Affidavits</b> .....	24
<b>For the Plaintiff:</b>	
Affidavit of Jordan Stanley .....	25
Affidavit of Chris Harris .....	30
Affidavit of Terry Walters .....	35
Affidavit of Sam Rosen .....	39
<b>For the Defendant:</b>	
Affidavit of Jesse Cain .....	43
Affidavit of C.J. Ziegler .....	48
Affidavit of Lynn Fernandez .....	51
Affidavit of Shay Marinelli .....	54
<b>III. Exhibits</b> .....	57
Jordan Stanley Racing, Inc. Purchase Order .....	58
ATVictory, Inc. Invoice .....	59
Big West ATV Ridgegrabber Front Suspension System .....	60
Diagrams of Widowmaker Hill and Bend .....	61
Letter from Dr. Molly Denninger .....	63
ATVictory Bolt and Washer Combination .....	65

Kessel XB15 Recall Letter .....	66
Letter from Lynn Fernandez to Jesse Cain .....	67
Diagram of Bolts on Jordan Stanley’s Connection Plate .....	68
<b>IV. Competition Rules and Forms</b> .....	69
Contents .....	70
Rules of Competition .....	73
Modified Rules of Evidence .....	85
Evaluation Guidelines .....	96
Team Registration Form .....	97

### Author's Note

The Bushrunner Off-Road Challenge is the most prestigious and most watched race on the competitive all terrain vehicle (ATV) circuit. And Jordan Stanley aimed to win it. The Bushrunner, which takes place in the foothills of the Savage Mountains on the outskirts of Alaskopolis, draws racers from around North America, hoping to capture the biggest prize in their sport. It was a bright, sunny day on July 10, 2010 at the Bushrunner Challenge when Jordan Stanley suffered a horrific accident, resulting in a broken back and the end of a promising racing career.

An examination of the wreckage of Jordan's ATV after the crash reveal that one of the bolts attaching the front suspension to the chassis of the ATV was missing and another one broken. But why was a bolt missing, and did this cause the accident? Possible theories for the crash range from improperly manufactured bolts to improper installation of the suspension system to reckless driving by Jordan. Jordan has sued ATVictory, Inc., the manufacturer and distributor of the bolts, for product defects and breach of warranty.

For the plaintiff, students must choose three of the following four witnesses: Jordan Stanley – a promising ATV driver who suffered a career-ending injury on Widowmaker Bend; Chris Harris – the pit crewperson for Jordan who ordered and installed the new axle on Jordan's ATV; Terry Walters – a former employee of ATVictory who has questions about their quality control; and Sam Rosen – a mechanical engineer hired to determine the cause of the crash. Students must also choose three of four possible witnesses for the defendant: Jesse Cain – the owner of ATVictory and the person who took the order from Chris; C.J. Ziegler – a racer in the Bushrunner who can testify about the dangers of the track; Lynn Fernandez – another Bushrunner racer, Lynn saw Jordan crash; and Shay Marinelli – a mechanical engineer who comes to a different conclusion about the cause of the accident than Sam.

\* \* \* \* \*

The 2010-2011 Alaska High School Mock Trial Problem is adapted from the 2005 National High School Mock Trial Championship problem from a competition held in Charlotte, North Carolina and sponsored by the Carolina Center for Civic Education. Of course, we have added an Alaska twist to the problem, changing it from an auto race and a faulty car seat to an ATV and a faulty (allegedly) front suspension system. This is also unique because it is the first time in recent memory that we have done a product liability civil case.

I have been fortunate this year to have had the wonderful and able assistance of Lars Johnson, Amy Doogan, and Jes Spuhler in drafting the problem. It was truly a committee effort. Thank you also to Dave Popiel for creating the best mock trial exhibits ever and to Matt Block for editing the complaint, answer, and jury instruction.. This is especially helpful because we are once again allowing students to use demonstrative displays.

The 2010-2011 Alaska High School Mock Trial Competition is organized and sponsored by the Young Lawyers Section of the Anchorage Bar Association, and the efforts of its members are greatly appreciated in staffing the competition. Finally, a huge thank you to all of those teachers, attorneys, and parents who volunteer their time to coach mock trial teams. The competition would not be possible without you. If you have any questions about the problem or about forming a team for the competition, please feel free to contact me at [fortson@gci.net](mailto:fortson@gci.net). You can also take a look at our website – [www.alaskamocktrial.org](http://www.alaskamocktrial.org) for a variety of teaching materials that you may find of assistance. It has been a great experience, as always, drafting and editing the case materials, and I cannot wait to see what the students do with them.

Ryan Fortson

# **I. Legal Documents**

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS

JORDAN STANLEY )  
)  
Plaintiff, ) **COMPLAINT**  
vs. )  
)  
ATVICTORY, INC. )  
) Case No. 3AK-10-9999 CI  
)  
Defendants. )  
\_\_\_\_\_ )

COMES NOW the Plaintiff, Jordan Stanley, and in complaint against the Defendant, ATVictory, Inc., alleges and requests relief as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this case pursuant to Alaska Statute 09.05.015 and Alaska Statute 22.10.020.
2. Venue is proper under Alaska Statute 22.10.030 and Alaska Civil Rule 3(c).

**PARTIES**

3. Plaintiff Jordan Stanley is a 24-year-old resident of Alaskopolis, Alaska. Plaintiff was formerly a professional all-terrain vehicle (ATV) racer.
4. Defendant ATVictory, Inc. is a company doing business in the State of Alaska. Defendant produces parts and equipment for use with ATVs. Defendant has provided Plaintiff with parts used on Plaintiff's ATV.

**FACTUAL BACKGROUND**

5. Jordan Stanley was a professional ATV racer on the North American Off-Road Racing Association (NAORRA) racing circuit for the 2010 season. Jordan Stanley began racing competitively on the NAORRA circuit in 2007.

6. Jordan Stanley over the course of her/his career had multiple top-five race finishes, including two victories. Jordan Stanley was generally considered to have a promising future in ATV racing.

7. For the 2010 racing season, Jordan Stanley was sponsored, in part, by ATVictory. Continued sponsorship was contingent upon Jordan Stanley either winning the Bushrunner Off-Road Challenge or finishing in the top eight in the final NAORRA points standings at the end of the season.

8. On or about June 29, 2010, Jordan Stanley's mechanic, Chris Harris, called ATVictory to order a Ridgegrabber Front Suspension System manufactured by Big West ATV Corporation. ATVictory was the exclusive distributor at the time for the Ridgegrabber, and Jesse Cain, the owner of ATVictory, strongly encouraged Chris Harris to install the Ridgegrabber on Jordan Stanley's racing ATV for use in the Bushrunner Off-Road Challenge.

9. Chris Harris requested that the Ridgegrabber be shipped with Suregrip brand bolts. Suregrip brand bolts are recommended by Big West ATV for use with the Ridgegrabber.

10. Against the expressed desire and request of Chris Harris, ATVictory shipped the Ridgegrabber with ATVictory brand bolts.

11. On or about July 8, 2010, Jordan Stanley received the Ridgegrabber and ATVictory brand bolts shipped by ATVictory.

12. The packaging for the ATVictory bolts shipped to Jordan Stanley did not include any instructions for their installation or warnings regarding their use.

13. On or about July 8, 2010, Chris Harris, a trained ATV mechanic, properly installed the Ridgegrabber on a racing ATV owned and used by Jordan Stanley.

14. Jordan Stanley competed in the Bushrunner Off-Road Challenge on July 10, 2010 using the ATV on which the Ridgegrabber and the ATVictory brand bolts had been installed.

15. During the Bushrunner Off-Road Challenge, Jordan Stanley suffered a crash on the part of the course known as Widowmaker Bend, resulting in severe and permanent injuries to his/her body and equipment. Due to his/her bodily injuries, Jordan Stanley is unable to continue his/her ATV racing career, at a substantial loss of enjoyment and income.

16. The cause of this crash was the failure of at least one ATVictory brand bolt. As a result of the bolt failure, Jordan Stanley was unable to properly steer the ATV and lost control of the vehicle.

### **FIRST CLAIM FOR RELIEF – PRODUCT DEFECT**

17. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

18. Plaintiff is informed and believes and therefore alleges that the heat treatment machine used by Defendant in the manufacture of the ATVictory bolts had been recalled and that one or more of the ATVictory bolts used by plaintiff were not properly heat treated.

19. Plaintiff alleges that the defect in the ATVictory bolt or bolts was present at the time the bolts were sent to the Plaintiff, was knowable by the Defendant, and was the legal cause of Plaintiff's injuries.

20. All of which constitutes a breach of Defendant's duties and a product defect for which Defendant is liable, and Plaintiff is entitled to recover from Defendant for all of Plaintiff's bodily injuries, property damage, and other damages in an amount to be determined at trial.

### **SECOND CLAIM FOR RELIEF – VIOLATION OF WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

21. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

22. Defendant implicitly warranted that the bolts it included with the Ridgegrabber suspension system were fit for use with the Ridgegrabber suspension system. Defendant manufactured the bolts.

23. The ATVictory bolts were not adequate for use with the Ridgegrabber suspension and caused the failure of the suspension and the resulting crash of Plaintiff.

24. All of which constitutes a breach of the implied warranty of fitness for a particular purpose under Alaska Statute 45.02.315 to which Defendant is bound, and Plaintiff is entitled to recover from Defendant for all of Plaintiff's bodily injuries, property damage, and other damages in an amount to be determined at trial.

**WHEREFORE**, the Plaintiff requests that this Court award the following relief:

- i. That Plaintiff has and is entitled to recover from Defendant compensatory damages in an amount to be determined at trial.
- ii. Punitive damages;
- iii. Reasonable attorneys' fees, including litigation expenses and costs; and
- iv. All other proper relief.

Dated this 15th day of September, 2010.

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Counsel for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS

JORDAN STANLEY	)	
	)	
Plaintiff,	)	<b>ANSWER</b>
vs.	)	
	)	
ATVICTORY, INC.	)	
	)	Case No. 3AK-10-9999 CI
Defendants.	)	
_____	)	

COMES NOW the Defendant, ATVictory, Inc., and in response to the Complaint filed by the Plaintiff, Jordan Stanley, answers as follows:

**JURISDICTION AND VENUE**

1. Admitted. Defendant agrees that jurisdiction is proper.
2. Admitted. Defendant agrees that venue is proper.

**PARTIES**

3. Admitted.
4. Defendant admits that it manufactures ATV parts and has shipped ATV parts to Plaintiff in Alaska. Defendant is without sufficient knowledge to admit or deny that the parts were used on Plaintiff's ATV.

**FACTUAL BACKGROUND**

5. Defendant admits that Jordan Stanley raced on the North American Off-Road Racing Association (NAORRA) racing circuit for the 2010 season. Otherwise, on information and belief, admitted.

6. Defendant admits that plaintiff has had two victories on the NAORRA circuit, and that Plaintiff has finished in the top five in more than one race. Defendant denies the remainder of this paragraph.

7. Admitted.

8. Defendant admits that Chris Harris and Jesse Cain discussed the ordering of a Big West ATV brand Ridgegrabber on or about June 29, 2010. Defendant admits that it had an exclusive arrangement with Big West ATV to distribute Ridgegrabber suspension systems in 2010. Defendant denies the remainder of this paragraph.

9. Defendant admits that Big West ATV recommends using appropriate bolts with the Ridgegrabber Front Suspension System and that Suregrip bolts are recommended for use with the Ridgegrabber Front Suspension System by Big West ATV. Defendant denies the remainder of this paragraph.

10. Defendant admits that it shipped ATVictory brand bolts to Plaintiff. Defendant denies the remainder of this paragraph.

11. Defendant is without sufficient knowledge to admit or deny the allegations in this paragraph.

12. Admitted.

13. On information and belief, denied.

14. Admitted.

15. On information and belief, Defendant admits that Jordan Stanley suffered a crash during the Bushrunner Off-Road Challenge. Defendant denies the remainder of this paragraph.

16. Denied.

//

//

### **FIRST CLAIM FOR RELIEF – PRODUCT DEFECT**

17. Defendant repeats and reincorporates by reference its responses to the allegations of the preceding paragraphs.

18. Denied.

19. Denied.

20. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is required, it is denied.

### **SECOND CLAIM FOR RELIEF – VIOLATION OF WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

21. Defendant repeats and reincorporates by reference its responses to the allegations of the preceding paragraphs.

22. Defendant admits that it manufactured the bolts used by Jordan Stanley. Defendant denies the remainder of this paragraph.

23. Denied.

24. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is required, it is denied.

### **AFFIRMATIVE DEFENSES**

Comes now the Defendant and for its affirmative defenses states:

1. The Ridgegrabber front axle was not properly installed on the ATV driven by Plaintiff.

2. The ATVictory bolts supplied to Plaintiff were properly manufactured.

3. Plaintiff misused the parts and products supplied by Defendant.

4. The ATVictory bolts supplied to Plaintiff were adequate for use with the Ridgegrabber Front Suspension System under normal ATV racing circumstances

5. Plaintiff's injuries or damages, if any, are the result of Plaintiff's own acts.

6. Plaintiff's injuries or damages, if any, are the result of the actions of someone outside of Defendant's control.

7. The design of the Ridgegrabber Front Suspension System contributed to its failure.

8. ATV racing is an inherently dangerous activity. Plaintiff assumed the risk of accident and injury by participating in the activity of ATV racing.

Dated this 30th day of September, 2010.

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Counsel for Defendant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS

JORDAN STANLEY	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
ATVICTORY, INC.	)	
	)	Case No. 3AK-10-99999 CI
Defendants.	)	
<hr style="width:45%; margin-left:0;"/>		

**STIPULATIONS**

It is stipulated for purposes of this Mock Trial that the following facts have been properly introduced into evidence and may be relied upon by the parties in the presentation of their case:

I.

Alaskopolis, Alaska is a city of approximately 200,000 people. It is located in the Fifth Judicial District of Alaska. Jurisdiction for this trial is properly located in the Fifth Judicial District.

II.

The Parties stipulate that the type and amount of damages at stake reach the jurisdictional threshold for Alaska Superior Court.

III.

All pleadings have been properly filed and served to all other parties. Discovery has been conducted pursuant to the applicable Rules of Procedure, and no discovery violations are alleged. All other procedural matters have been properly conducted.

IV.

All affidavits are considered part of the case materials and may be used during trial for impeachment purposes and to refresh the memory of that particular witness. The affidavits have been validly signed and notarized.

V.

All exhibits included in these case materials are authentic and, where appropriate, validly signed. No objections to the authenticity of the exhibits will be entertained. Exhibits may otherwise be challenged for admissibility.

VI.

The Plaintiff, Jordan Stanley, has reached a settlement with Big West ATV Corp. for an undisclosed sum. The settlement explicitly states that Big West ATV is not admitting liability and entered the settlement for the purpose of avoiding the costs of litigation.

VII.

The course in the Bushrunner Off-Road Challenge is 5.5 miles in length; the race consists of 20 laps around the course. The constantly winding course contains thirteen downhill that are classified as “steep” by NAORRA. Widowmaker Hill is located at approximately mile three of the course. The track at Widowmaker Hill drops precipitously for about 5 feet at a 50 degree angle before leveling out to a 15 degree angle for the next 15 feet.

VIII.

Thirty-three racers started the Bushrunner Off-Road Challenge, but only twenty-four finished it. Six racers suffered mechanical failures, and three collided in a pile up that left them unable to continue racing. Jordan Stanley suffered the only serious injury of the race.

IX.

The witnesses for the Plaintiff/Counter-Defendant are (in no particular order):

- 1. Jordan Stanley
- 2. Chris Harris
- 3. Terry Walters
- 4. Sam Rosen

X.

The witnesses for the Defendant/Counter-Plaintiff are (in no particular order):

- 1. Jesse Cain
- 2. C.J. Ziegler
- 3. Lee Fernandez
- 4. Shay Marinelli

DATED this 12th day of October 2010 at Alaskopolis, Alaska.

ATTORNEYS FOR  
JORDAN STANLEY

ATTORNEYS FOR  
ATVICTORY, INC.

By: \_\_\_\_\_ /s/ \_\_\_\_\_

By: \_\_\_\_\_ /s/ \_\_\_\_\_

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS

JORDAN STANLEY	)	
	)	
Plaintiff,	)	<b>JURY INSTRUCTIONS</b>
vs.	)	
	)	
ATVICTORY, INC.	)	
	)	Case No. 3AK-10-99999 CI
Defendants.	)	
<hr/>		

FOUNDATIONAL INSTRUCTIONS

**Introduction**

Members of the jury, you have now heard and seen all of the evidence in the case and you have heard argument about the meaning of the evidence. We have reached the stage of the trial where I instruct you about the law to be applied.

It is important that each of you listen carefully to the instructions. Your duty as jurors does not end with your fair and impartial consideration of the evidence. Your duty also includes paying careful attention to the instructions so that the law will properly and justly be applied to the parties in this case. You will have a copy of my instructions with you when you go into the jury room to deliberate and to reach your verdict. But it is still absolutely necessary for you to pay careful attention to the instructions now. Sometimes the spoken word is clearer than the written word, and you should not miss the chance to hear the instructions. I will give them to you as clearly as I can in order to assist you as much as possible.

The order in which the instructions are given has no relation to their importance. The length of instructions also has no relation to importance. Some concepts require more explanation than others, but this does not make longer instructions more important than shorter ones. All of the instructions are important and all should be carefully considered. You should understand each instruction and see how it relates to the others given.

**Direct and Circumstantial Evidence**

Evidence is either direct or circumstantial. Direct evidence, if you accept it as true, proves a fact. Circumstantial evidence, if you accept it as true, proves a fact from which you may infer that

another fact is also true.

Let me give you an example. Let us pretend that as a juror you are asked to decide the following question: Did snow fall during a particular night? Direct evidence would be a witness testifying that the witness awoke during that night, went to the window, and saw the snow falling. From this evidence you could conclude that snow fell during the night.

Circumstantial evidence would be a witness testifying that the ground was bare when the witness went to sleep at 10:00 p.m., but the next morning when the witness awoke and looked out the window, the witness saw that the ground was covered with snow. From this evidence you could also conclude that snow fell during the night.

Facts may be proved by either direct or circumstantial evidence. The law accepts each as a reasonable method of proof.

### **Witness Credibility**

You have heard a number of witnesses testify in this case. You must decide how much weight to give the testimony of each witness.

In deciding whether to believe a witness and how much weight to give a witness's testimony, you may consider anything that reasonably helps you to evaluate the testimony. Among the things that you should consider are the following:

- (1) the witness's appearance, attitude, and behavior on the stand and the way the witness testified;
- (2) the witness's age, intelligence, and experience;
- (3) the witness's opportunity and ability to see or hear the things the witness testified about;
- (4) the accuracy of the witness's memory;
- (5) any motive of the witness not to tell the truth;
- (6) any interest that the witness has in the outcome of the case;
- (7) any bias of the witness;
- (8) any opinion or reputation evidence about the witness's truthfulness;
- (9) any prior criminal convictions of the witness which relate to honesty or veracity;
- (10) the consistency of the witness's testimony and whether it was supported or contradicted by other evidence.

You should bear in mind that inconsistencies and contradictions in a witness' testimony, or between a witness's testimony and that of others, do not necessarily mean that you should

disbelieve the witness. It is not uncommon for people to forget or to remember things incorrectly and this may explain some inconsistencies and contradictions. It is also not uncommon for two honest people to witness the same event and see or hear things differently. It may be helpful when you evaluate inconsistencies and contradictions to consider whether they relate to important or unimportant facts.

If you believe that part of a witness's testimony is false, you may also choose to distrust other parts of that witness's testimony, but you are not required to do so. You may believe all, part, or none of the testimony of any witness. You need not believe a witness even if the witness's testimony is uncontradicted. However, you should act reasonably in deciding whether you believe a witness and how much weight to give to the witness's testimony.

You are not required to accept testimony as true simply because a number of witnesses agree with each other. You may decide that even the unanimous testimony of witnesses is erroneous. However, you should act reasonably in deciding whether to reject uncontradicted testimony.

When witnesses are in conflict, you need not accept the testimony of a majority of witnesses. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

### **Evaluation of Evidence**

The weight to be given the evidence is for you to determine. You must examine the evidence carefully and decide how to evaluate it in light of the law that I have given you in these instructions. In your deliberations, you must not be governed by mere sentiment, unsupported conjecture, sympathy, passion, prejudice, public opinion, or public feeling. You should consider the evidence in light of your own common sense and observations and experiences in everyday life. But you may not consider other sources of information not presented to you in this court.

Your consideration of this case should be based solely on the evidence presented and the instructions I have given. The parties to this action are entitled to have a calm, careful, conscientious appraisal of the issues presented to you. Sympathy, bias or prejudice should not have the slightest influence upon you in reaching your verdict.

### **Objections**

There are rules of law that control what evidence you can consider. When a lawyer asks a question or offers an exhibit into evidence, and the lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question

may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit be received. Whenever I sustain an objection to a question addressed to a witness, you must disregard the question entirely, and must not draw any inference from the wording of it, nor speculate as to what the witness would have said if permitted to answer the question. If I sustain an objection to a question after an answer has been given, then you must disregard the question and the answer.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. In that case, you must not consider the evidence which I told you to disregard. You may wonder why some evidence must be excluded or disregarded when it appears to be of some interest to you. The rules that govern what evidence can be received are designed to do two things. First, they try to help you focus on important and reliable evidence by keeping out interesting but not very important or reliable information. Second, the rules help you decide the case objectively without being swayed by information that might cause you to respond emotionally.

Many of us have said to ourselves from time to time something like “I wish I never heard that about someone, because it makes it impossible for me to be unbiased now.” The law tries to protect jurors from this natural human reaction. It is because the law protects what jurors hear that we have such confidence in the impartiality and integrity of the jury.

You should not be influenced by the fact that objections are made or that requests are made that I take certain actions; nor should you be influenced by the number of objections or requests that are made. Objections or requests are not evidence. Please remember that my rulings that exclude evidence or that bar questions are designed to help you decide the case fairly. When I allow testimony or other evidence to be introduced over the objection of a lawyer, I do not mean to suggest any opinion as to the weight or effect of such evidence.

### **Bifurcation**

In this trial, you will only be deciding whether liability exists for either Party. If you decide that either Party is legally liable for damages to the other Party, there will be a second trial to determine the amount of those damages. If damages are an element of a claim, then the existence of damages must be proven according to the appropriate burden of proof, but it is not necessary to prove the amount of those damages. In your deliberations today, you must disregard the monetary amount of any damages either Party may have suffered.

## **SUBSTANTIVE INSTRUCTIONS**

In this case, the plaintiff claims that a product manufactured and sold by the defendant injured the plaintiff. More specifically, Jordan Stanley claims that the ATVictory bolts used with the Ridgegrabber resulted in the injuries plaintiff suffered during the Bushrunner Off-Road Challenge. The plaintiff's claim is based upon two separate theories. These theories are:

- (1) defect in a product; and
- (2) the defendant's breach of warranty of fitness for a particular purpose.

I will instruct you separately on each of these theories and you must decide each theory separately. In order to recover, the plaintiff must establish the elements of at least one of these theories by a preponderance of the evidence. I will now explain preponderance of the evidence to you.

### **Burden of Proof**

In this case, you will be asked to decide questions according to two different standards. In some questions you will be asked whether something is "more likely true than not true." In other questions you will be asked whether there is "clear and convincing evidence" of something. I will now explain these terms to you.

An alleged fact is "more likely true than not true" if you believe that the chance that it is true is even the slightest bit greater than the chance that it is false. In more familiar language, an alleged fact is more likely true than not true if you believe that there is a greater than 50% chance that it is true. Fifty-one percent certainty is sufficient; no more is required for you to decide that the alleged fact is more likely true than not true.

An alleged fact is established by "clear and convincing evidence" if the evidence induces belief in your minds that the alleged fact is highly probable. It is not necessary that the alleged fact be certainly true or true beyond a reasonable doubt or conclusively true. However, it must be more than probably true.

### **First Claim For Relief – Product Defect**

#### **Liability for Defect in a Product**

Plaintiff's first theory of recovery is that plaintiff was injured by a defect in a product which the defendant manufactured and sold to the plaintiff. In order to recover for a product defect, the plaintiff must establish that it is more likely true than not true that:

- (1) the product was defective;
- (2) the product was defective when it left the possession of the defendant; and
- (3) a defect in the product was a legal cause of the injury.

A product is not defective with regard to any particular danger if the defendant proves it is more likely true than not true that that particular danger was not scientifically knowable when the product left the defendant's possession.

I will explain what "defect in the product" means and what "legal cause" means in a moment.

### **Defectiveness Defined**

A product is defective if:

- (1) the product differed from the manufacturer's intended result and this difference negatively impacted the performance of the product; or
- (2) the product differed from other units of the same product line and this difference negatively impacted the performance of the product; or
- (3) the product failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner; or
- (4) the use of the product in a manner that is reasonably foreseeable by the defendant involves a substantial danger that would not be readily recognized by the ordinary user of the product and the manufacturer fails to give adequate warning of such danger. An adequate warning is a warning that clearly indicates the scope of the risk or danger posed by the product, reasonably communicates the extent or seriousness of harm that could result from the risk or danger, and is conveyed in a manner that would alert a reasonably prudent person.

### **Legal Cause**

I will now define "legal cause" for you as used in the context of product liability. A defective condition in a product is a legal cause of harm if it is a substantial factor in bringing about the harm or injury claimed by the plaintiff.

A defective condition in a product is a substantial factor in bringing about the harm or injury if it is more likely true than not true that:

- (1) the defective condition in the product was so important in bringing about the harm that a reasonable person would regard it as a cause and attach responsibility to it;

and

- (2) the harm or injury would not have occurred but for the defective condition of the product.

There is, however, one exception to the requirement that the harm or injury would not have occurred but for the defective condition. If two separate forces operated to cause the harm or injury, one because of the defective condition of the product and the other not, and each force by itself was sufficient to cause the harm or injury, then the defective condition is a legal cause of the harm or injury if you decide that the defective condition was so important in bringing about the harm or injury that a reasonable person would regard the defective condition as a cause and attach responsibility to it.

### **Second Claim for Relief – Warranty of Fitness for a Particular Purpose**

#### **Liability for Implied Warranty of Fitness for a Particular Purpose**

If the seller at the time of contracting has reason to know a particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods shall be fit for that purpose. In order to recover for an implied warranty of fitness for a particular purpose relating to the sale of a product, the plaintiff must establish that it is more likely true than not true that:

- (1) the seller knew at the time of purchase of the particular purpose for which the buyer intended to use the product;
- (2) the buyer reasonably relied on the seller's skill or judgment to select the product for that particular purpose;
- (3) the product was not fit for the purpose for which the buyer intended to use it; and
- (4) the unfitness of the product for its intended use was a legal cause of the injury.

#### **Legal Cause**

I will now define "legal cause" for you as used in the context of an implied warranty of fitness for a particular purpose. A violation of the implied warranty of fitness for a particular purpose of a product is a legal cause of harm if it is a substantial factor in bringing about the harm or injury claimed by the plaintiff.

A violation of the implied warranty of fitness for a particular purpose of a product is a substantial factor in bringing about the harm or injury if it is more likely true than not true that:

- (1) the unfitness of the product for its intended purpose was so important in bringing about the harm that a reasonable person would regard it as a cause and attach responsibility to it; and
- (2) the harm or injury would not have occurred but for the unfitness of the product for its intended purpose.

There is, however, one exception to the requirement that the harm or injury would not have occurred but for the unfitness of the product for its intended purpose. If two separate forces operated to cause the harm or injury, one because of the unfitness of the product for its intended purpose and the other not, and each force by itself was sufficient to cause the harm or injury, then the unfitness of the product for its intended purpose is a legal cause of the harm or injury if you decide that the unfitness of the product for its intended purpose was so important in bringing about the harm or injury that a reasonable person would regard the unfitness of the product for its intended purpose as a cause and attach responsibility to it.

## **AFFIRMATIVE DEFENSES**

### **Comparative Negligence**

In response to the plaintiff's claim, the defendant alleges that the plaintiff's injury resulted from the negligence of the plaintiff (including plaintiff's agent) or a third party. In order to establish this claim, the defendant must prove that it is more likely true than not true that:

- (1) a party other than the defendant was negligent, and
- (2) negligence of this other party was a legal cause of the plaintiff's injury.

Negligence is the failure to use reasonable care to prevent harm to oneself or to others. A person can be negligent by acting or by failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation. The law does not require exceptional caution or skill, only reasonable care. Negligence by the plaintiff in the context of product liability can include, but is not limited to, knowingly using a product for a purpose other than the manufacturer's intended use of the product or in a manner inconsistent with the manufacturer's specified use and limitations for the product.

### **Assumption of Risk**

For the purpose of determining comparative negligence, you are allowed to consider whether the plaintiff assumed the risk of injury by participating in an inherently risky activity. A

plaintiff is at fault under the doctrine of assumption of risk if the risks involved in the activity are beyond the control of the defendant. For example, the inherent risks of an activity such as ATV riding are those risks that are obvious and necessary to the sport. Fault can be attributed to the plaintiff to the extent that the injury is caused by virtue of this participation in an inherently risky activity and not by any other cause. It is possible that a plaintiff will be at fault both for assumption of risk and for actions by plaintiff or plaintiff's agent.

### **Attributing Fault**

If you determine that the plaintiff or a third party was negligent or otherwise at fault, you should determine the percentage of fault attributable to the plaintiff (if any), the percentage of fault attributable to a third party (if any), and the percentage of fault attributable to the defendant (if any). A negligent third party need not be a party to the case to have fault attributed to it.

## **II. Affidavits**

## Affidavit of Jordan Stanley

1. My name is Jordan Stanley. I am 24 years old. I was born and raised in Norvaguk, Alaska, a small village located about 400 miles northwest of Alaskopolis. Norvaguk has a population of approximately 175 people. It's basically a bunch of houses, a church, a health clinic and a small school. Norvaguk doesn't have roads or an airstrip, so the only form of transportation inside and outside the village is by ATV or snow machine.
2. I pretty much grew up riding ATVs. My parents have pictures of me driving around on a toy ATV when I was about three. When I was five or six, my dad would take me just outside of the village and let me steer while he drove his ATV around the tundra. When I was eight, dad started letting me drive his ATV for short distances inside the village; by the time I was 12, I pretty much had free rein to drive it wherever I wanted.
3. I bought my first used ATV when I was 14 with money I had saved up from my allowance and my summer job helping out at the health clinic. When I was in high school, all the teenagers used to get together on summer weekends and race our ATVs outside of town. I don't mean to brag or anything, but I won every single race, even when I was a freshman and I was racing against juniors and seniors. The terrain was pretty rough out there, but I was never scared. In fact, I got a bit of a reputation around school as someone who would never turn down a racing challenge.
4. When I was 18, I moved to Alaskopolis to attend college at Alaska State University. Obviously, I couldn't ride my ATV around Alaskopolis, so I gave it to a friend in Norgavuk. After about a month, though, I found that I really missed riding. Freshman comp just didn't have the same thrill as hitting a corner at 35 miles an hour and making everyone else eat your dust.
5. Luckily, I made friends with a couple other students who had grown up in Porcupine Valley, just outside Alaskopolis. Porcupine Valley is a popular spot for people to go ATVing, and my friends both had ATVs, so sometimes I would go home with them on weekends in order to go riding. The terrain wasn't anywhere near as challenging as I was used to – in fact, it was pretty tame – but still, riding is riding.
6. One fall weekend, when we were riding around at Bear Creek in Porcupine Valley, a guy came up to my friends and me and started talking about competitive ATV racing. I had never heard of competitive ATV racing before, but it sounded like something I could totally get into. The guy said he was the local rep for the Alaska Off-Road Racing Association and that there were races held in Porcupine Valley almost every weekend from breakup to first snowfall. He invited us to come race sometime. My friends said no thanks, probably because they realized they weren't talented enough to race competitively, but I was intrigued.
7. The following weekend I went out and watched a competitive ATV race at Turnagain Track in Porcupine Valley. The race itself was awesome, but to be honest, I wasn't super-impressed with the other racers. I mean, I was going faster than that on rougher courses when I was still in middle school. I knew if I could enter one of those races I would blow away the competition. Plus, there was prize money. A few hundred bucks might not sound like all that much to most people, but to a college student it's a fortune. From that moment on, I was determined to somehow get onto the competitive racing circuit.
8. After I got back to Alaskopolis that weekend, I went and applied for a job at a House Station

hardware store near campus. I got the job and worked evenings and weekends all winter in order to save up enough money to buy an ATV of my own to race. It was especially hard because I wanted a new machine, one that had a really fast motor. See, I'm really terrible at mechanics. When I was in Norvaguk, my dad would help me fix up used machines, but in Alaskaopolis I didn't have anyone to help and I knew I'd have a hard time getting a used ATV into racing condition.

9. After 5 months of working, I finally had enough money to buy an ATV. That weekend, I took it out to Porcupine Valley and entered a race at Turnagain Track. I won the race, of course, and got \$200 in prize money. After that, I raced at Turnagain Track pretty much every weekend until snowfall. I lost a couple of races, once because I had the flu and once because my gear shift got stuck in neutral at the starting line, but for the most part I totally outclassed the competition. These races weren't the big leagues. That would be the North American Off-Road Racing association, or NAORRA as it is called for short. But they were better than nothing, and there were only a couple of NAORRA circuit races in Alaska each year.

10. That spring, I started racing again. This time, I decided I wanted to try some of the tougher off-track races at Bear Creek and Wolverine Canyon. Some of the other racers from Turnagain Track tried to warn me off, saying that the courses were a lot more dangerous, but I knew it wasn't going to be anything I couldn't handle. Soon I had racked up an impressive series of wins in local off-track races. I guess you could say I was a bit of a prodigy. The race at Bear Creek was a NAORRA sanctioned race. I didn't win because there were a lot of other racers with a lot more experience than me, but I certainly wasn't the worst racer there, and it convinced me that I had the skill to compete on the highest level.

11. By the end of the semester, I had pretty much decided that I'd rather race than study, so I dropped out of school in order to race full-time. I knew that if I wanted to be taken seriously, I would need to start traveling to NAORRA races outside of Alaska, so I started working at Home Station again. As soon as I had saved enough money and vacation time, I would travel to whatever races were being held that weekend.

12. I didn't have the money to hire a mechanic, so most of the time I had to serve as my own pit crew. Fortunately, I never had any major mechanical problems, so all I had to do was routine maintenance. There was a lot of that, though, because I was constantly pushing my machine to the limit in every race I rode in. After all, I didn't just want to be known as an okay racer. I wanted to win, and the only way to do that was to race all-out every time.

13. It was exhausting, working, traveling, racing and crewing, but I still managed to finish in the top five of some fairly important mid-level races. By the end of the 2009 NAORRA season, I had only won one of the races, and a pretty minor one at that, which ticked me off, but everyone seemed to recognize my talent anyway. Other racers started being more respectful of me, and I would occasionally hear rumors around the track that sponsors were interested in working with me as well. That was a huge deal. Most NAORRA racers don't have sponsors and can't afford to race professionally. In fact, only the top 6 or 7 racers on the circuit have sponsors.

14. One day in December of 2009, I got a call at home from Jesse Cain. I didn't know at the time who s/he was, but Jesse explained that s/he was the owner of ATVictory, a manufacturer and distributor of parts and gear for ATVs. I had heard of ATVictory on the NAORRA circuit, but I didn't especially use their stuff and didn't think much of them. But, hey, I can recognize a potential sponsorship opportunity when I see it. Jesse said that the company was looking for young, talented,

up-and coming racers to sponsor, and I fit the bill. Jesse asked if I would let ATVictory become my sponsor. I was totally stoked! Having a sponsor meant that I could afford to quit my job at House Station and focus completely on racing. It also meant that I could afford to hire a mechanic so I wouldn't have to crew my own races anymore.

15. When I asked about the details, Jesse told me that what s/he was offering was a conditional sponsorship. Specifically, s/he said that in order for ATVictory to sponsor me beyond the 2010 season I would have to either win the Bushrunner Off-Road Challenge or finish in the top eight in the final NAORRA points standings at the end of the season. I would definitely have preferred a long-term contract up front, but at least this way I could race full-time for the 2010 season. Besides, I was sure that I could win the Bushrunner Challenge. After all, it was in Alaska – my home turf. The Bushrunner is sort of like the Super Bowl of competitive ATV racing – by far the biggest race of the year. I had never raced in the Bushrunner Challenge before because it is by invitation only, and being a newer racer without a sponsor, I hadn't really been on the radar of the big brass at NAORRA.

16. After Jesse and I signed the sponsorship agreement, I started looking for a mechanic. Through the grapevine, I heard that Lynn Fernandez, the 2008 Bushrunner champion and 2009 NAORRA points champion, had recently parted ways with her/his mechanic, Chris Harris. I called Chris immediately and set up a time to meet with him/her down in Seattle in early January 2010. When he/she arrived, I asked Chris why s/he wasn't working for Lynn anymore. Chris just said that s/he and Lynn had different personalities and that it wasn't possible for them to work together anymore. I was fine with that. All I needed to know was that Chris had helped Lynn get to the top of the NAORRA circuit, and that she/he could do the same for me.

17. Any doubts that I might have had about hiring Chris were quickly dispelled. S/He was an excellent mechanic and always seemed to know exactly what to do to make my ATV run better. Plus, it was nice having someone on the track to encourage me as I was racing. Chris could read my races really well, and always told me when s/he thought I needed to push harder to win. In fact, after hiring Chris, I started doing much better in my races. My ATV was faster and more responsive, and I found myself racing just a little bit harder due to Chris's encouragement. I thought we made a pretty good team.

18. In late June of 2010, during one of the off weeks we had between races, Chris called me and said that ATVictory wanted me to replace the front suspension on my ATV with one that had been manufactured for ATVictory. The new suspension was called the Ridgegrabber, and was designed to provide more stability in sharp turns. I was excited to try it out, but a little bit upset because it would have to be installed right before the Bushrunner Off-Road Challenge, which is the biggest race of the year. I wasn't sure that was the right time to be breaking in new parts. Still, I knew it was important to use ATVictory products, and I trusted Chris's judgment when it came to the mechanical side of things, so I told him/her to go ahead and install it. One thing I did insist on was that Chris use Suregrip brand bolts when installing the new suspension. Word around the racetrack was that ATVictory bolts can break without warning, and I sure didn't want that to happen during the Bushrunner Off-Road Challenge.

19. The suspension arrived in early July, and it had been shipped with ATVictory bolts, not Suregrip ones. I was pretty mad at first, especially since there was no time to get replacement bolts before the race. But, I figured that bolts were bolts and told Chris to go ahead and put the Ridgegrabber on my ATV. S/He installed it and I tested it out in the pit area. It worked ok then,

but the pit area wasn't anything like race conditions.

20. On the day of the Bushrunner Off-Road Challenge, I was of course really excited. This was going to be the most major race of my career. My parents even flew out to watch me race. Not only would winning it bring huge prestige, but the future of my contract with ATVictory depended on it. I knew that I was talented enough to win, and I was hoping that the Ridgegrabber would help me get a technical advantage over the rest of the field as well.

21. Before the race, we had a safety briefing. The Bushrunner track is the hardest track in ATV racing. It has one particularly steep downhill called Widowmaker Hill which connects immediately to a really sharp turn called Widowmaker Bend. A lot of the other racers seemed pretty nervous, but I was confident that I could handle the track. I mean, we had steep hills and sharp turns in Norvaguk, and they never gave me any trouble.

22. The beginning of the race was great. I got off to a fast start and was handling the terrain like an expert. But about halfway through the race, I started noticing that my ATV seemed unstable. I mentioned this to Chris on my pit stop on lap 14, and Chris told me that maybe I just wasn't used to how the Ridgegrabber handled. That made sense to me, so I drove off. But the problems kept getting worse, and I really began to have trouble steering the ATV. I just didn't feel comfortable racing like this. I radioed to Chris on lap 16 about it, and s/he said I could come in for a second pit stop and s/he'd check it out. I had just taken my second pit stop on lap 14 and was in first place in the race, so I really didn't want to take the time for another pit stop. Usually racers only take two pit stops in a race the length of the Bushrunner to refuel, but I was very concerned about the wobbling I was experiencing with my front suspension and wheels. I had built up enough of a lead that I felt comfortable pulling in for a second time. At the pit stop, Chris took a quick look at the suspension assembly, tightened one of the bolts, and told me that s/he thought everything looked fine. In fact, s/he encouraged me to go even faster, saying that I had a chance to win and that I should "push it to the limit."

23. I went back out on the course and everything was more or less fine until lap 19. A few wobbles here and there, but nothing serious. I had worked my way back into second place and I was really stoked. I remember going over Widowmaker Hill and slamming on the brakes to make it around Widowmaker Bend. Even though I tried to slow down like they told us in the safety briefing, my ATV wasn't responding like it should. Usually there is a bit of resistance on the brake handles when you squeeze them, but this time nothing. Even worse, I felt like I couldn't steer my ATV at all. It was like the connection between the handlebar and the wheels had been completely severed. The next thing I knew, I was out of control, flying over some concrete barriers and falling all the way down into a ravine.

24. I don't remember anything else until I woke up in the hospital the next day with 4 broken vertebrae, a broken arm, and, even though I'd been wearing a helmet, a fractured skull. The broken vertebrae were putting pressure on my spinal column, making it impossible for me to walk. I had a series of spinal surgeries to correct the problem. They were painful and expensive. All told, I was in the hospital for 6 weeks and then I was discharged to a rehab facility, where I had to stay for three months. I had to relearn how to walk and do other activities. My motor skills are pretty much back to normal now, but I still have ongoing back pain and am very slow moving around. But the worst part is that when I fractured my skull, part of my optic nerve was permanently damaged so I now have no peripheral vision. Because of all of my injuries, I'll never be able to race ATVs again. Heck, I can't even qualify for a regular driver's license!

25. After the crash, I was told that there was a chance my crash was caused by the bolts on my front suspension malfunctioning. I'm sure that's what happened. I was having trouble with it through the whole race, and it must have just snapped when I tried to round Widowmaker Bend on lap 19. I mean, I know it was nothing I did that caused the accident. I've been racing for years and never had anything like this happen before. No, it had to have been the bolts. Thanks to ATVictory and those bolts, I'll never race again.

## Affidavit of Chris Harris

1. My name is Chris Harris. I am 28 years old and I currently reside in Alaskopolis, Alaska. I grew up in Bloomington, Indiana, where my dad owned a garage. I started helping him in the shop for pocket money when I was a little kid. At first I'd just sweep up, clean tools, that kind of thing, but when I got a little older, Dad and the other mechanics started showing me how to do repairs. I started with little stuff, like oil changes and tire alignments, but by the time I was a teenager I was doing pretty much the same things that all the other mechanics did.

2. When I was 17, Cameron Duckworth, one of my Dad's best friends, opened an ATV sales and rental shop down the street from Dad's garage. Since the ATV shop didn't have its own garage, Dad and Cameron worked out a system where Dad would do the repairs on Cameron's rental ATVs at a discounted rate. In return, Cameron started referring his customers to Dad whenever they had a problem or wanted something done to the ATVs that they'd bought from Cameron.

3. ATVs are different from cars, obviously. Some of the repairs that the ATVs needed were similar to repairs you'd do on a car, but some of them were completely different. Dad's mechanics were mostly old-timers, and most of them balked at learning how to do repairs on a whole new type of vehicle. I didn't mind, though. It was kind of nice to learn a whole new set of skills. It took some time, but eventually I became a pretty good ATV mechanic. In fact, I started getting clients who hadn't even been referred by Cameron; they came in because their friends had told them that I did good work. That was a nice feeling.

4. When I was 23, Dad died of a heart attack. My mother was dealing with breast cancer at the time, and we had to sell the shop in order to have the money to pay for her treatments. I was kind of disappointed, because I'd always imagined taking over the shop someday, but I knew that we had to do what was best for Mom. Luckily, I found a new job almost right away at a garage across town. We worked mostly on cars, but we also got the occasional ATV, and I was pretty much the only one in the shop that the owner trusted to work on it.

5. About a year after we sold the shop, I got a call from an old customer. He said that he'd started racing ATVs competitively on weekends, and that he needed a mechanic/pit crewperson. He couldn't afford to pay me a salary or anything, but he said I could have a percentage of any prize money he earned. Also, since he raced only on weekends, I could keep my job at the garage.

6. I wanted to learn more about the job before I committed myself, so I started asking around. What I learned is that basically, an ATV mechanic/pit crewperson does three things. First, he or she is in charge of making sure that the ATV is always in top racing condition. That means doing regular tune-ups as well as major repairs and upgrades, including installation of new components. Second, she or he is in charge of servicing the ATV during races. See, an ATV can only go about 40 miles on a tank of gas. In some shorter races that's fine, but in longer races an ATV driver needs to make one or two pit stops for fill-ups. During the pit stops, the ATV mechanic/pit crewperson is also in charge of checking out any problems that the driver has noticed during the preceding laps. Third, depending on the racer, the ATV mechanic/pit crewperson can serve as kind of an informal coach or motivator, letting the driver know his or her position relative to the other racers and encouraging the racer to push harder, ease up, etc.

7. The job sounded like fun, so I started the week after the race. At first, I was just crewing for my ex-customer. Over time, though, he told his friends about me, and I started getting asked by other people if I would crew for them. With all these new clients, I started working evening races in addition to weekends. I still wasn't earning a salary, but when I added together all the prize money I was getting it worked out to a few hundred a week. Between that and the money I had saved from Dad's estate, I finally decided that I could afford to quit my job at the garage and give it a go doing this full-time.

8. For the next few years, I worked for a series of ATV racers. Since Mom was in remission, I could travel to races out of state, so I started going to most of the major races each year. Sometimes I was there working for a client, but even when I wasn't I would sometimes go anyway. I knew enough of the racers by then that I was usually allowed into the pit, and watching an ATV race from the pit is really exciting. The speed, the adrenaline, everything. Sometimes before the race I'd wander around asking the racers if they needed mechanical help. I usually found someone who would take me up on my offer.

9. One day about two years after I started working on the competitive ATV racing circuit, I was approached by a racer named Lynn Fernandez. I had crewed for Lynn at a few previous races, and s/he had liked my work. After winning the 2008 Bushrunner Challenge, which is one of the biggest races on the competitive ATV racing circuit, Lynn had gotten a sponsorship contract from Suregrip ATV products, so s/he could afford to hire a full-time mechanic/pit crewperson. Lynn asked if I'd be interested in crewing for her/him full-time during the 2009 racing season. Of course I said yes. Having a full-time contract as a mechanic/pit crewperson on the competitive ATV racing circuit had been my dream for a long time. Plus, Lynn was well-known as one of the best racers on the circuit, and I was looking forward to the chance to work with her/him.

10. In addition to having all my travel expenses paid, Lynn offered me a regular salary as well as a percentage of any prize money he or she took home during the season. This is a pretty common part of the agreements between ATV racers and their mechanics, for a couple of reasons. First, even with a sponsorship, the racer can only afford to pay a small salary, so the extra money helps them get good-quality mechanics to sign on and stick around. Second, having a financial incentive makes the mechanics work harder to be sure that the ATVs are always in tip-top racing condition so that the racer can score high enough to get some prize money.

11. I started working for Lynn in January of 2009. It went really well for a long time. Lynn was racing really well, and s/he was really happy with the job I was doing. But in early August, everything changed. Lynn was racing in the Sioux City Classic, a major race in Iowa. About halfway through the race, Lynn hit a corner too fast and almost crashed out of the course. I think s/he was spooked, because s/he slowed way down after that and ended up coming in eleventh – not a great finish for the reigning Bushrunner Challenge winner. It was extra embarrassing for Lynn because his/her sponsor was there and saw Lynn's poor performance. Plus, Lynn wasn't really popular on the circuit, and I think a lot of the other drivers had some fun at his/her expense after his/her poor performance. There's a lot of jealousy in ATV racing, and a lot of the lesser-known racers enjoyed seeing Lynn taken down a peg.

12. Lynn didn't say anything to me after the race; s/he just stomped back to his/her RV and disappeared for the rest of the day. The next day, though, when I was changing a tire on the ATV before loading it into the truck to be taken to the next race, Lynn came over looking really mad. S/He lit into me, claiming that the engine was sluggish and that was why s/he had to slow

down during the race. I had checked that engine before the race and everything was fine. When I told that to Lynn, s/he called me incompetent and stomped away.

13. I was upset by Lynn's behavior, but I figured everything would blow over in time. Boy, was I wrong. From then on out I couldn't do anything right as far as Lynn was concerned. Every time anything went wrong, it was my fault. I wasn't pushing her/him hard enough, or maintaining the machinery well enough, or whatever else Lynn could come up with that week. But when Lynn won, s/he took total credit for it, claiming that she/he had won "in spite of" me. Fundamentally, I think Lynn had been pretty embarrassed by what had happened at the Sioux City classic. The scuttlebutt around the track was that Lynn had gotten some major flak from his/her sponsor after that debacle. I guess Lynn thought it was easier to blame me than to admit she/he had made some racing mistakes. In truth, I think I was doing a great job for Lynn! Lynn was still ahead in points in the NAORRA standings and ended up winning the season. How could s/he have done that if I wasn't maintaining her/his machine well enough?

14. By the end of 2009, I had had enough of Lynn's attitude. I couldn't handle the constant pressure and criticism, so I quit. I mean, I had helped Lynn get to the top of the competitive ATV racing circuit, and all I got for it was Lynn's bad attitude. I heard later that Lynn was telling people that s/he had fired me for incompetence, which wasn't true at all. The truth is that we just couldn't work together. His/Her personality was just too strong, and s/he could never take responsibility for any of his/her own mistakes.

15. A short time after leaving Lynn's crew, I was approached by Jordan Stanley. Jordan was an up-and-coming racer who had recently been signed to a sponsorship agreement by ATVictory, a big ATV manufacturing/sales company. Jordan asked if I was interested in joining his/her team as her/his mechanic and pit crewperson. Of course I said yes. When Jordan asked why I had left Lynn, I told him/her the truth – we had a major personality conflict that wouldn't allow us to work together anymore. I mean, I could have been way more specific, but I didn't want to trash Lynn. I'm just not that kind of person. Anyway, Jordan must have been satisfied with my answer, because s/he hired me without hesitation.

16. Working for Jordan was great. S/He was much easier to get along with than Lynn, and we had a lot of fun together. Plus, Jordan gave me the space I needed to do my job. Lynn was a bit of a micromanager where it came to the maintenance work, always asking why I was using X tool instead of Y tool or installing a certain brand of parts. Jordan told me straight out that s/he was not a mechanic and would be leaving that side of things to me, which suited me perfectly.

17. In June of 2010, ATVictory started marketing a new kind of front suspension system manufactured by Big West ATV. It was called the Ridgegrabber, and was designed to increase a machine's stability when a driver made sharp turns. You see, when you are going into sharp curves on an ATV, or really any other kind of vehicle I guess, you tend to slow down. This puts more stress on the front wheels of the ATV, and on the suspension in particular. Often times, the suspension will sort of freeze up while it is absorbing the stress before the rider is able to turn the wheels. I had read about the Ridgegrabber in an industry publication, and the design of the shock absorbers on the suspension was supposed to allow the driver to turn the wheels at the same time the suspension was absorbing the shock from the increased stress from slowing down. In short, it increased the driver's reaction time on turns. I was really looking forward to the Ridgegrabber coming out to see if these claims were true.

18. On June 25, Jesse Cain, the head of ATVictory, called me and asked me to install the Ridgegrabber on Jordan's ATV. I said I would have to check with Jordan first, but that I was all for installing a Ridgegrabber and was excited about the advantage it might give us. First, I thought it would give Jordan a big advantage in the upcoming Bushrunner Challenge, and second, I knew it was important for Jordan to keep ATVictory happy, and using their parts was one way to do that. I even asked Jesse if Jordan could be the only racer to get a Ridgegrabber before the Bushrunner. Jesse said s/he couldn't do this, but would consider giving us a bonus if Jordan promoted the the Ridgegrabber and ATVictory in some on-air spots after winning.

19. When I approached Jordan about using the Ridgegrabber, s/he was jazzed to try it out. S/He did complain that the timing was bad, since we would be installing it right before the Bushrunner Challenge, but s/he knew that s/he didn't have any other choice. The one thing s/he insisted on is that I use Suregrip bolts instead of ATVictory bolts when I was attaching the new suspension. Jordan had heard from other racers that ATVictory bolts tended to break, so he/she wanted to make sure that I used Suregrip bolts instead. Jordan understood it was important to keep the sponsor happy, but a big race like the Bushrunner was too prestigious to risk on potentially unsafe equipment. Plus, if a racer doesn't feel confident in his or her equipment, the racer might not race as hard or as fast as is necessary to win.

20. I called Jesse back on June 29 and told him/her that Jordan would love to try out the new suspension, but wanted it shipped with Suregrip bolts instead of ATVictory bolts. Just a few minutes before calling Jesse, I had faxed ATVictory a purchase order listing the Suregrip bolts. Jesse argued with me, saying that ATVictory bolts were better and more reliable. When I told her/him about the complaints I'd heard about ATVictory bolts, s/he claimed they were baseless. Still, I insisted s/he ship the Suregrip bolts. I told Jesse that I was just following orders from Jordan. I also told Jesse about how I had gone onto the Big West ATV website and how they recommended Suregrip bolts, not ATVictory bolts, for use with the Ridgegrabber. I then tried to get forceful with Jesse by telling her/him that ATVictory needs Jordan Stanley as much as Jordan Stanley needs ATVictory. I'm not sure I really believed that, but I did know that ATVictory was in financial trouble and thought this might work.

21. Well, of course, this just set Jesse off. Jesse kept arguing about all the advantages of the ATVictory bolts and about how they had been contacted by NASA and all that about the bolt design. Jesse also reminded me of the ATV sponsorship several times and offered to give me the number of Big West ATV so that I could call them if I had any concerns about the compatability of the Ridgegrabber with ATVictory bolts. I told Jesse that I wouldn't need the number for Big West ATV because we were going to be getting the Suregrip bolts. Jesse assured me repeatedly that the ATVictory bolts would work just as well as or even better than the Suregrip bolts with the Ridgegrabber. But, I held firm and even threatened that if we didn't get Suregrip bolts, we wouldn't use the Ridgegrabber. This got Jesse's attention. Jesse finally said s/he would ship the Suregrip bolts. I could tell that s/he wasn't happy about it, though. Anything that Jesse says now about me agreeing to ship the ATVictory bolts instead is a pure lie.

22. When the Ridgegrabber Front Suspension System arrived, it had ATVictory bolts instead of Suregrip ones. Jordan was pretty mad when I told her/him about it, but s/he ultimately said to install the Ridgegrabber as it had been sent to us, since there wasn't any time to get new bolts. Jordan joked that "bolts are bolts" and that maybe s/he should have more confidence in her/his own sponsor. I could tell, though, that Jordan was quite displeased and just trying to put a good face on a bad situation. I put the Ridgegrabber on Jordan's ATV and got it ready for her/him

to ride in the Bushrunner Challenge.

23. I am very familiar with the peculiarities of ATVictory bolts and how to install them. The key difference between ATVictory bolts and Suregrip bolts is kind of complicated, but basically it boils down to the fact that ATVictory bolts require an extra washer on the underside of the bolt head. This washer has slightly raised teeth that are intended to provide extra grip to prevent the bolt from slipping. So, you just need to make sure that you put this washer on correctly. I had never used ATVictory brand bolts before, but it seemed pretty easy right out of the packaging. There were no instructions included with the bolts, but I didn't really care. I've dealt with bolt and washer combos all the time on other kinds of vehicles, so this wasn't that big a deal.

24. On the day of the Bushrunner Challenge, things started out great. Jordan was driving really well, and his/her ATV was in tiptop shape. But a ways into the course, Jordan started radioing in to me and saying that the steering on the ATV seemed unstable. When Jordan came in for her/his second pitstop, we talked about the steering issues while I was refueling. I thought maybe Jordan just wasn't used to how the Ridgegrabber handled. I took a quick look over the ATV and everything seemed fine. Jordan said I must be right and drove off.

25. Less than two laps later, Jordan radioed me again to say that the shaking on the front suspension had gotten much worse. Jordan said s/he felt like s/he had no choice but to come in for a third pit stop, even though racers on the Bushrunner typically only take two pit stops to refuel. Jordan was in the lead at the time by a bit, so I told Jordan that s/he could come in for a quick pit stop and probably still have enough race to go to get back into first place if s/he really pushed hard. When I looked at the Ridgegrabber assembly, I didn't see anything major wrong with it. The front left bolt looked a little loose, so I tightened it. But, it didn't seem like it was in any danger of coming off. I told Jordan that everything looked good to go, and encouraged him/her to keep pushing his/herself because s/he had a chance to win the race. Jordan said okay, and took off.

26. Shortly after Jordan left after the second pit stop, I radioed him/her and told her/him to keep going, that s/he was doing really well and was in second place. At first he was responsive, but after a while I couldn't raise her/him on the radio anymore. Sure, I was a little worried, but I figured s/he was just concentrating on driving and wasn't capable of radioing back right then. Eventually, though, Lynn came across the finish line and said that s/he had seen Jordan take a bad crash on Widowmaker Bend. Lynn had already radioed to race officials for help, and they soon located Jordan at the bottom of a ravine below Widowmaker Bend. Jordan was pretty badly injured. As we found out later, s/he had several broken vertebrae and a bad head injury. I guess the doctors have told him/her that s/he can expect to never be able to race again.

27. I sure feel bad about what happened to Jordan, but I know that there wasn't anything wrong with the way that I maintained that machine. Everything was working fine when I looked it over at the third pitstop. If those bolts broke and caused Jordan's crash, it was because they were faulty. That's the only explanation I can think of.

## Affidavit of Terry Walters

1. My name is Terry Walters. I am forty-nine years old and am a trained mechanical engineer. I received my masters degree in mechanical engineering from Stanford University, where I specialized in metalworking. I used to work for Garrison Manufacturing, Inc. before Jesse Cain took it over and ruined the company. I put in twelve great years with Garrison Manufacturing and designed many of their better products. For my last six years with the company, I was the Chief Engineer.

2. For example, in late 2005 and early 2006, I developed this revolutionary new bolt technology involving a unique washer with slightly raised teeth that dramatically increased the friction or grip of the bolt. I also had to specially score and slightly recess the underside of the bolt to allow these teeth to dig into the bolt without decreasing its structural integrity. The increased grip of this washer and bolt design greatly reduces the danger that the bolt will slip or lose its hold on the metal parts that it is keeping together. All without damaging the underlying metal parts to which the bolts are affixed. Other kinds of bolts do not have this additional washer, and hence are inferior to the bolt design that I developed. But, do not just take my word for it – subcontractors for NASA contacted me to ask about licensing the design for manufacturing bolts used for rockets. That is how highly they thought of my innovation. Unfortunately, I left the company before this licensing could be finalized, and the patent on the bolt design resides with Jesse Cain.

3. My bolt design does carry a bit of a downside to it, though. The scoring and slight recessing of the underside of the bolt requires the presence of the washer to ensure a secure fit. If the washer is left off of the assembly, the bolt will be even more prone than normal bolts to slip, come loose, and maybe even fall off entirely. If a mechanic working on an ATV is not used to my bolt design, it could lead to disaster on the trail. That is why I insisted that each package of bolts shipped out contain detailed instructions on how to install the bolt, with big bold letters emphasizing the need to place the washer between the metal part and the underside of the bolt so that the bolt can function properly. I have talked to a few of our customers who have installed my bolts, and they have told me that after getting used to the new design and the additional washer, it is not difficult to install.

4. Of course, all of the mechanical know-how and design work is for nothing if a company does not have the proper machinery to create the final product. Products such as bolts need to be heat treated to properly temper them. This process of rapid heating and cooling strengthens the bolts to enables them to withstand the immense torque placed on them in the course of ATV racing. Bolts are rated according to the pounds of force that they can withstand before they are in danger of snapping. Properly heat treated bolts can withstand several thousand pounds of force. This is necessary due to the high speeds and quick turns found in ATV racing.

5. From the time I started at Garrison Manufacturing, we used a HeatMax 4000 Heat Treatment Unit. It got its name because it was able to create bolts and other metal parts capable of withstanding 4000 pounds of force. However, it was also a rather slow heat treatment machine and could not handle high volumes of parts at the same time. Consequently, it could take a while for us to manufacture any parts that required heat treatment. This just would not do for Jesse and her/his plan to dramatically increase production volumes. By 2007, Jesse had purchased quite a bit of new machinery for the factory, including a Kessel XB15 Heat Treatment Processing Machine. Much of the new machinery purchased by Jesse was high quality manufacturing equipment. But not the Kessel XB15. I had heard bad things about Kessel products from some of my other engineer friends. Plus, the Kessel XB15 could only heat treat metal products to 3500 pounds of force.

6. My concerns about the Kessel XB15 were borne out when, in February 2008 I received a recall notice for the equipment. The recall notice stated that Kessel had been receiving reports that some XB15 equipment was not properly completing the heat treatment process, leaving the treated products unable to withstand the 3500 pounds of force to which the machine was rated. As a result, some of the products treated by the XB15 would unexpectedly fail during use. Kessell had determined that some of the sensors used to detect internal temperature during the heating process were defective and needed to be replaced. These sensors, for reasons the manufacturer could not determine, sometimes overheated, causing the heating process to prematurely abort. Kessel stated that it did not believe that all sensors used in the manufacturing of the XB15 were defective and that the only way to tell if a particular machine had defective sensors was to send it back to the Kessel factory for repairs. Kessel offered to pay all shipping and repair costs associated with the recall.

7. When I received the recall notice in October 2008, I went to Jesse to show him/her the recall notice. I then stated, as if without question, that I would be shipping the XB15 back to Kessel and that we would be without the unit for about a month. To my dismay, Jesse ordered me not to ship the XB15 immediately but instead to conduct some tests on the unit to determine if our unit had these faulty sensors. Jesse said that ATVictory simply could not afford to be without its heat treatment machine for an entire month or longer. I tried to explain to Jesse that the sensors did not fail every time the XB15 was used and that it would therefore be impossible to determine definitively if our unit had faulty sensors without sending it back to Kessel for proper testing. Against my recommendation, though, Jesse insisted that I test the XB15 myself and suggested that I should have confidence in my own abilities to determine if the unit was defective. I don't see an engineering degree on Jesse's résumé! A good engineer knows that only with the proper equipment can proper testing be conducted.

8. Despite my reservations, I tested the XB15 as Jesse requested. I selected 25 ATVictory bolts at random from the last production run. A production run does not involve just one use of the XB15. Rather, a production run refers to the mass production of bolts or other products that is intended to create a supply of that product to last for several months. For example, with the M8 1.25 hex bolts, the type of bolt used with Big West ATV's Ridgegrabber, we produce 2500 bolts per production run. The XB15 can handle 250 of that type of bolt at a time, so a production run of M8 1.25 hex bolts would require 10 firings of the XB15. After the bolts are produced, they are all mixed together in a bin, so I cannot tell for sure from which firing of the XB15 each bolt was heat treated.

9. I tested the bolts using the Rockwell hardness test, which involves using a diamond-pointed indenter to make a small indentation in the threaded area of each bolt. The "hardness" of the metal is determined by how deep the indentation penetrates the object. The deeper the indentation, the softer the metal. So, when testing the bolts, you are hoping for a relatively shallow indentation, which would indicate a harder metal. Of course, since the bolts are pretty small to begin with, we are talking indentations that measure in the thousandths of millimeters. The depth of the indentation can be compared against a chart to determine the overall hardness rating of the object. Properly heat treated metal will have a certain hardness rating, whereas improperly heat treated metal will have a significantly lower rating.

10. We do not have a machine at the factory capable of conducting proper Rockwell hardness testing. We could get such a machine for about \$10,000, which would allow us to test each batch of bolts and other products after they have been heat treated, but Jesse has determined that this is not a good use of company money. Consequently, I had to go to the physics laboratory at Gonzaga

University to do the testing. The Rockwell hardness testing I conducted determined that all 25 of the randomly chosen bolts had been properly heat tested. The Rockwell hardness test does not per se determine the amount of stress that a metal object can handle, though it is a good indicator of it. To test the strength of the bolts, I next took five of the bolts and subjected them to a tensile strength test in a different machine. This testing determined that all five of the bolts tested could withstand the 3500 pounds of force for which they had been rated.

11. When I informed Jesse of my test results, s/he seemed quite relieved. I think Jesse said something along the lines of “See, nothing to worry about. Let’s just forget this silly recall notice and go on with business as usual.” I tried to explain to Jesse that all that my tests proved was that these particular bolts were not flawed, but that we could not guarantee that other bolts and other heat treated products would be able to function as promised. I begged Jesse to let me purchase a Rockwell hardness testing machine so that we could test each batch of heat treated products to make sure the heat treatment process had been completed properly. If we were not going to send the Kessel XB15 back for its recall, I thought this was the least we could do to ensure that our company continued to sell quality products. But, Jesse responded that my fears were overblown and that we had neither the time nor the money to test each product we manufactured. I feared this would cost us eventually, and it looks like it has with Jordan Stanley.

12. The debacle with the XB15 was emblematic of the decline in attention to quality workmanship ever since Jesse bought Garrison Manufacturing and transformed it into ATVictory. I am not against Jesse trying to make money, but I believe s/he sacrificed too much to the almighty dollar. When purchasing new equipment, Jesse refused to buy top of the line equipment but instead bought the next level down. Jennifer Garrison always supplied the company with the best manufacturing equipment money could buy, and this was reflected in the products we created. Jesse also spread the workforce out too thin by having the same number of workers cover additional production lines. Jesse should have hired additional workers when the new machinery arrived, but s/he decided once again to cut corners. While the new manufacturing equipment did not require quite as much personal oversight and attention as the old equipment, the additional workers would have meant better quality control, as there would have been more eyes on each production line. When I was not in my office designing new products, I operated in a supervisory capacity over many of the factory workers, and with the stretched out workforce, I was always afraid that a flawed product would make it to market before the defect could be detected. While I was at ATVictory – what a stupid name – I kept tabs on the complaints department. I have to admit that we never had any major complaints that would indicate a serious structural or design flaw in any of our products while I was there, but again, I feared it would be a matter of time.

13. Unfortunately, I was not surprised in the least when I heard that Jordan Stanley’s accident was likely the result of an improperly heat treated bolt. I heard from friends still within the company that ATVictory was hemorrhaging money and that the workforce was being stretched even thinner in an attempt to get more product to the market. Jesse should have listened to my initial advice when s/he bought the company to concentrate on producing fewer high quality products. This may not have led to us taking over the market, but we could have continued our steady growth and continued to be profitable. Instead, Jesse ran the company into the ground. Cutting corners never pays in the end. I’m sure Jennifer Garrison would be ashamed of what has happened to the company she spent so much of her life building.

14. I have reviewed the affidavit of Jesse Cain and examined the purchase order Chris Harris sent to Jesse Cain along with the invoice Jesse sent back to Chris. If Jesse is telling the truth, then

s/he committed a serious breach of company policy, even under the lax regime that s/he encouraged. It was certainly Garrison Manufacturing policy and continued to be ATVictory policy that we always ship to the customer exactly what is on the purchase order. This way, the customer knows exactly what he or she is getting and cannot complain later on. I was not a part of the conversation, so of course I cannot say for sure what happened, but if Jesse did convince Chris to accept the ATVictory bolts, then company policy required Jesse to have Chris send in a new invoice changing the order. Then again, Jesse did not work sales except on sponsorship deals, so who knows what Jesse really knows about company sales policies. But I think it is equally possible, and perhaps more likely, that Jesse knew company policy and ignored it by sending ATVictory bolts regardless of what Chris and Jordan actually wanted. As I said, ATVictory was in significant financial trouble, and I would not put anything past Jesse to try to revive the company through promoting ATVictory bolts in the Bushrunner, even if this meant defying a key customer's order.

## Affidavit of Sam Rosen

1. My name is Sam Rosen. I am forty-seven years old. I studied mechanical engineering in undergrad at the University of Chicago and graduated in 1985. After graduation I began working for a motorcycle design firm in Chicago. I started out as a Stress and Dynamics Engineer for motorcycle components. As the firm expanded the vehicles it designed, I also began working on components for other small vehicles, such as all-terrain vehicles and snowmobiles (snow machines I think people in Alaska call them).

2. In 1995, I pursued a PhD in mechanical engineering from Cornell University so that I could take on more responsibilities within my company. I completed that in 1999. In 2002, I became general manager of the firm's Safety Division. In that role, I oversaw the design and construction of components of all types of vehicles, including components for ATVs. I was responsible for ensuring that vehicles were manufactured safely, which required understanding the various stresses put on vehicles, as well as testing vehicles to ensure they met safety requirements.

3. In 2005, I also began working as an expert consultant, providing analysis and expert testimony, primarily for plaintiffs. I have worked on dozens of cases, acting as the lead investigator on many cases involving vehicle part failures with suspicious causes. When I investigate an accident, my role is to determine what, if any, part of the vehicle failed and to determine the cause of that failure. I receive \$350 per hour for my services, plus expenses. I receive \$500 per hour for in-court and deposition testimony. I am paid regardless of the trial's outcome.

4. Chris Harris contacted me soon after the Bushrunner Off-Road race and Jordan Stanley's accident. I knew Chris because I had met him/her while testifying in a different case in Alaska. S/He knew I had significant experience in vehicle design and safety and asked me to investigate the cause of Jordan's accident. I agreed. I flew to Alaskopolis shortly afterward to examine the ATV myself.

5. I believe that because of their own liability concerns the Bushrunner Off-Road organizers kept Jordan's ATV locked in a storage unit in Alaskopolis. On August 23, 2010, I was able to visit it with the approval of the race organizers, who had a race employee accompany me at all times. I was also able to use a nearby garage to perform tests on the ATV. Shay Marinelli examined the ATV at the same time that I did.

6. I performed a detailed examination of the ATV. I took complete measurements of the vehicle, including measuring the Ridgegrabber suspension. I also examined the set-up used to attach the suspension to the ATV. An examination of the connection plate revealed that two of the four bolts attaching the Ridgegrabber to the chassis of the ATV had sheared off. However, it is unclear whether this occurred before the crash or while the ATV was tumbling down the ravine, as the stresses on the ATV caused by rolling down a steep hill as happened with Jordan's ATV could quite easily exceed any tested tolerances for commercially available bolts. The rear right-hand-side bolt was broken and never found. The front-right-hand side bolt was still in the connection plate but was not holding it to the chassis of the ATV because the bolt was broken. In fact, the suspension was bent back from the chassis and almost cracked in half. Both left-hand-side bolts were intact.

7. The first thing I did was run a computer simulation of how the ATV would handle on Widowmaker Hill. I studied the Bushrunner track, Widowmaker Hill in particular, to determine the

appropriate angles of the computer simulation. Racers typically fly off the top of Widowmaker Hill. The track drops precipitously for about 5 feet at a 50 degree angle before leveling out a bit. At the bottom of the 20 foot hill is a hairpin turn to the left. I simulated the ATV going over the top of the hill, down a 50 degree slope, then having to make the sharp left hand turn at the bottom of the hill. Unfortunately, I did not know the speed of Jordan's ATV at the time of the accident, so I ran tests of ATVs cresting Widowmaker Hill at various speeds. According to race officials, they instruct drivers not to crest the hill at more than 35 mph. It appears that some racers crest the hill at faster speeds, up to at least 45 mph. I ran simulations based on an ATV traveling at 35, 45, and 55 mph.

8. It is important to note that drivers have to slow down immediately after landing at the bottom of Widowmaker Hill. The turn at the bottom, Widowmaker Bend, is very sharp and anyone driving too fast would have trouble controlling their ATV through it. Of course, if an ATV's suspension broke, the driver would not be able to use her or his brakes. This would almost assuredly make the driver enter Widowmaker Bend way too fast, likely skidding into the concrete barrier and possibly flipping over the barrier.

9. Based on my simulations, I determined that a properly running ATV with the Ridgegrabber suspension would not become unstable. Unless something went wrong, Jordan would have been able to control the ATV coming over Widowmaker Hill at all of the tested speeds. I did note that the Ridgerunner suspension did not provide the increased stability that Big West ATV claimed it would. It is possible that a racer relying on the assertions of Big West ATV might push the ATV more than he or she would otherwise feel comfortable doing. However, although the claims of increased stability were not borne out in my testing, the Ridgegrabber was no less stable than other ATV suspension systems. And, my tests did show that up to 25 miles per hour, Jordan's ATV should have been stable coming through Widowmaker Bend, assuming the Ridgegrabber suspension was properly attached and all the bolts were still in place.

10. I next tested a comparable ATV with a Ridgegrabber suspension in a controlled environment. I hired an ATV racer to operate the ATV with the suspension correctly installed, as well as with one bolt missing, then two bolts missing. With one bolt missing, the ATV became noticeably unstable. With two bolts missing, it would be impossible for a driver to control the ATV. I do not think a driver could control the ATV coming over Widowmaker Hill, or make the left-hand turn, with two bolts missing.

11. I also examined the bolts themselves and how they were used to attach the Ridgegrabber suspension to the ATV. The bolts were attached in a trapezoid arrangement. Although this was different from the commonly used square pattern of bolt attachment, I do not think this affected how well the bolts held the Ridgegrabber suspension in place. I experimented with different bolt arrangements in a computer simulation, and while the trapezoid arrangement did produce a lower level of resistance to force, it was not a significant diminishing of resistance and was still within the 4000 pounds of force tolerance that the Ridgegrabber claimed to be able to handle. Only a weakness in one of the bolts, not their arrangement on the plate connecting the suspension to the chassis, would have caused the first bolt to break.

12. Based on my analysis, I believe that the Ridgegrabber suspension became unstable because two of the bolts broke. The rear right-hand-side bolt likely broke sometime during the race, which would have made the ATV's steering unstable but still usable. However, because of the extra strain

of only having three bolts put on the connection plate on the Ridgegrabber suspension, the second bolt broke after Jordan came over Widowmaker Hill on lap 19. The force of the ATV landing on the steep incline was too much for the second bolt to take. After the rear right-hand-side bolt broke, it was only a matter of time before the front right-hand-side bolt broke.

13. From my earlier computer modeling, only having three bolts on the connection plate would increase the force on the other bolts to over 5000 pounds, well beyond the 4000 pounds that the Ridgegrabber is expected to handle. The front right-hand-side bolt would experience more of this force than the left-hand-side bolts because of how the suspension reacts to a turn. When the ATV turns, this shifts the pressure on the suspension primarily to the opposite side of the suspension. With only one bolt on the right-hand-side, this would mean the front right-hand-side bolt experienced disproportionate pressure. The pressure would be well beyond what the bolt is ever expected to withstand, especially with the rear right-hand-side bolt missing. This increased force does not necessarily mean that the bolt would fail immediately, but it does make it very likely that sustained excessive pressure would lead to a rapid failure of the bolt.

14. Having determined that the Ridgegrabber suspension became unstable because of a failure in two bolts, I set out to determine why the bolts failed. I had already determined that the arrangements of the bolts on the suspension did not affect their stability, so I had to determine what could have weakened the rear right-hand-side bolt.

15. I first examined the bolts to determine if they had been properly heat treated. Heat treating is important because it can dramatically increase the fatigue life of a bolt. Heat treatment can increase the fatigue life of a bolt by more than 1000% over a bolt that is not heat treated. It is not difficult to test a piece of metal following an accident to determine if it has been properly heat-treated. Two methods are available to do so – the Rockwell Hardness Test and micro-structural examination.

16. I started by performing the Rockwell Hardness Test on all three remaining bolts. The test is named for its inventor, Stanley P. Rockwell, a metallurgist who wanted a fast, non-destructive way to determine if the heat treatment applied to various metals was successful. I performed this test using a Tru-Blue Rockwell hardness tester from United Calibration Corporation. It is the standard equipment used to perform a Rockwell Hardness Test. The hardness tester has a diamond-point indenter that makes an indent in the threaded area of each bolt. By measuring how deeply the indenter penetrates the metal, a user can determine if the metal has been adequately heat treated. There will be less penetration of adequately heat-treated metal than of softer, non-heat treated metal. It is this additional hardness and strength that makes a bolt safe enough to use on an ATV. Given the stresses involved in ATV racing, it is particularly important that bolts be properly heat treated.

17. Two of the remaining three bolts, the front left-hand-side bolt and the front right-hand-side bolt, had been properly heat treated. Indeed, the two bolts were sufficiently hardened to withstand the 3500 pounds of force for which they were rated. Such high tolerances are necessary for the stresses involved in ATV racing. The fact that the front right-hand-side bolt nonetheless broke indicates the strain put on the remaining bolts by the failure of the rear right-hand-side bolt.

18. However, the rear left-hand-side bolt was a different story. The depth to which the diamond-point indenter penetrated indicated that this bolt had not been heat treated to the correct

temperature. It is unusual that an improperly heat treated bolt survived the race. However, even an improperly heat treated bolt might survive the stresses of racing for some time. It is just simply more unpredictable and more prone to breaking. The rear right-hand-side bolt, of course, was missing, so I couldn't test it to determine if it was properly heat treated. If it had been improperly heat treated, it would have been more likely to break, especially given the increased strain hard left turns would have put on it.

19. I also used the second test, the micro structural examination, to verify my Rockwell Hardness Test results. Micro structural examination involves grinding and polishing a bolt to a mirror finish then etching it with an appropriate acid. Acid etching reveals the microstructure, which more clearly indicates if a bolt was properly heat treated or not. This test damages the bolt being examined, but it is considered more reliable than the Rockwell Hardness Test.

20. After grinding and polishing the three remaining bolts, I did the acid etching. The micro structural examination confirmed my earlier results. The front left-hand-side bolt was properly treated, as was the front right-hand-side bolt. However, the rear left-hand-side bolt was not properly heat treated.

21. Based on my analysis of the data, the first bolt on Jordan's ATV broke because it was not properly heat treated. This put additional strain on the remaining bolts, eventually causing the rear left-hand-side bolt to break when Jordan came over Widowmaker Hill on lap 19. Once this bolt broke, the steering on Jordan's ATV became impossible to control. S/He would have lost control of the ATV, skidding into the concrete barrier and being thrown over the barrier. If the missing bolt had been properly heat treated, the steering on Jordan's ATV would not have become unstable and the crash would not have occurred.

## Affidavit of Jesse Cain

1. I am Jesse Cain. I am thirty-two years old and the President and CEO of ATVictory, Inc., the premier manufacturer of customized parts for all-terrain vehicles. I received a Master of Business Administration degree in 2003 from the University of Oregon's Lundquist College of Business. My focus in business school was on sports marketing. My father is the famous sports agent Abel Cain, so I have been surrounded by the sports world most of my life. I knew upon graduating that I wanted to run my own sports-products company. My father told me that once I spent a few years learning the ropes in an established business, he would help me purchase my own company.

2. My father set me up with a job in the international marketing division of a major sports apparel company upon graduating. Many of his clients endorsed this company, so my father had sort of an in. It was fun and all, but I soon grew tired of all the travel. The thing I enjoy most is spending my weekends out on the trails on my ATV, and I can't do that if I am always on airplanes. I was looking for a more sedentary job. When I heard from a business school friend in 2006 that Garrison Manufacturing might be up for sale, it was almost too good to be true. I knew from my enthusiasm for ATVs that Garrison produced the highest quality ATV parts to be found anywhere on the market. Garrison operated behind the scenes, so to speak, manufacturing parts for other companies that took the Garrison components, assembled them with their own components, and then sold the finished product under their own name. Really, only the most hardcore ATV enthusiasts or those in the business world knew about Garrison Manufacturing. I had studied Garrison in business school as a model of a profitable niche manufacturing plant in the Pacific Northwest. At the time, though, I never dreamed I would one day own the company.

3. In April 2006, I finally convinced my father that Garrison Manufacturing had real growth potential as a business and would be a good investment. Garrison Manufacturing had good engineers working for it and a great reputation among other ATV parts manufacturers and resellers. With the right strategic plan, it could break out of the shadows and become a real force in the ATV world. My father agreed to invest \$5 million toward a purchase of Garrison, but that I would have to finance the rest. In early May, I drove up to Spokane, Washington to talk to Jennifer Garrison, the owner of Garrison Manufacturing. She was looking to retire and move on to other things. We agreed upon a purchase price of \$27.6 million, including assuming all outstanding debt for the company. Fortunately, I was soon able to obtain financing for the full purchase price. On June 6, 2006, the company was mine!

4. Not only did I love riding ATVs, but I knew the popularity of ATV riding was increasing dramatically. I had done a research paper on ATV ridership in my last year of business school showing that sales of ATVs increased 37% over the previous five years, compared to only an 18% growth for similar types of recreational equipment over the same time period. Garrison Manufacturing's sales had grown an average of 12% each year for 2000 to 2005. That is healthy growth by any measure, but I knew I could do better. In order to go from being a third party supplier to a national ATV brand, Garrison Manufacturing needed two things – increased production volume and widespread recognition.

5. The equipment Garrison had in its factory was high quality, but it required a lot of attention by individual employees. There was no way to increase production volume when individual workers had to spend so much time hand-crafting each item. It was just too slow. So, I invested in new equipment that could mass produce vehicle components and that was less dependent on

individual craftsmanship of workers in the shop. My goal was to produce so many different types of ATV component parts that one could almost build an entirely new ATV out of parts the company sold. Our products ranged from basic items such as sprockets, chains, and bolts to higher visibility items such as handlebars, helmets, seats, winches, and trunks. Garrison Manufacturing had produced some of these parts before, but I saw the opportunity to increase dramatically the company's product line as a means to capture a larger portion of the market share. And the new manufacturing equipment I bought not only enabled production of a wider range of product, it also did so at a much higher rate of production.

6. Unfortunately, my efforts to diversify our product lines and increase production met with some resistance among existing Garrison employees. I learned in business school that changing worker habits is one of the hardest things about transforming a small niche company into a thriving larger business. The biggest problem I had was with Terry Walters, the chief engineer for Garrison Manufacturing. I think Terry saw me as infringing upon her/his territory by trying to change practices on the shop floor and installing new equipment. I may have been asking old dogs to learn new tricks, but look, I didn't fire anyone with the changes I brought about. Yes, the new equipment meant that there could now be fewer employees per manufacturing machine, but by bringing in more machinery and expanding production, this allowed me to spread the workforce around. Everyone kept their job and the factory as a whole became more productive. A win-win. I think Terry was just sore because this meant workers were more isolated from each other, focusing on different product lines. There was not as much of an opportunity to stand around and socialize. As an owner, that is fine with me. I'm not paying workers to socialize, they can do that on their own time.

7. I know Terry thinks that expanding our product lines and increasing production led to a decrease in product quality. But, that is patently false. Producing high quality products is how Garrison Manufacturing built its great reputation, and maintaining those standards was essential to our marketing plan. We were not a well-known brand, and no one would buy our products if they thought we were low quality. While it is true that I knew we would have to lower our prices to be competitive in the larger marketplace, the new manufacturing equipment I invested in would allow us to maintain high standards for quality products while at the same time increasing production.

8. I was aware of the recall notice from Kessel Manufacturing Supply Company in 2008 for the XB15 Heat Treatment Processing Machine I purchased from them the previous year. The recall notice stated only that heat treatment errors may exist, not that they definitely did. Kessel offered to pay for shipping the Heat Treatment Processing Machine to their plant in North Carolina for testing and repair, but that would mean the machine would be offline for over a month. I had invested \$125,000 in this machine, and I needed the sales of bolts and other ATV parts so that I could recoup my investment. I couldn't afford to have it offline for a month for something that may or may not be a problem.

9. Instead of sending the Kessel machine back for the recall, I had Terry do a random sample of 25 bolts from the last production run to see if any of them had been improperly heat processed. None of them had been. Terry still insisted that the machine be sent back to the manufacturer, but I reminded Terry that I made the decisions and that s/he should feel confident enough from her/his own testing that the machine we had purchased did not have the defect mentioned in the recall notice. It was not long after this disagreement that Terry Walters quit the company. I remain confident that the products we produce are safe and reliable.

10. I do not know if we have had any complaints about bolts breaking or other equipment failures for the ATV parts we sell. I am too busy keeping the business afloat to respond to customer complaints. I have my salespeople – well, all three of them – respond to any customer complaints the company receives. I trust that if there were any serious problems with our products, it would have been brought to my attention.

11. As to the second step in brand development, I believed that the best way to gain the kind of national recognition I needed among ATV enthusiasts was to become a player in the emerging sport of competitive ATV racing. The first thing I did was to change the name to something catchier – ATVictory. Now that sounds like a brand I'd want to buy! I also sought to sponsor racers on the North American Off-Road Racing Association (NAORRA) circuit. I knew the importance that ATV enthusiasts place on both speed and performance. I also knew that individual ATV owners upgrade their vehicles one part at a time, and if a racer said that a new ATVictory seat or ATVictory gearshift gave him or her an edge, an ATV enthusiast might buy the part to seek the same edge.

12. By the time ATVictory came on the scene, all of the most successful and most well-known ATV racers were already being sponsored by major ATV component manufacturers. This meant that ATVictory had to look to up and coming racers who could bring the company into prominence as they built their own reputations. Jordan Stanley fit this bill perfectly. Jordan had won one race during the 2009 season and finished in the top 5 in four others. I believed in my bones that Jordan was on the cusp of something great. ATVictory had tried sponsoring several other racers, but none of them had become national names on the NAORRA circuit. Unfortunately, by the fall of 2009, profits were down and ATVictory was at risk of facing financial difficulties. I knew that we had to have a successful racer under our sponsorship if we were going to have a chance at gaining the market share we needed to survive. But, we can't just take anyone. For example, C.J. Ziegler contacted me a couple of times after the 2009 season asking for a sponsorship, but I felt that s/he just didn't have the skills or the wins to effectively promote ATVictory products. I appreciated her/his eagerness to endorse ATVictory products, but I couldn't see C.J. becoming a top racer. Jordan Stanley, on the other hand, I could envision developing into one of the top performers in our sport. I had personally scouted Jordan Stanley for the last few races of the 2009 season and felt that s/he could provide just the spark the company needed.

13. In early December 2009, I contacted Jordan and offered to sponsor her/him for the 2010 season. I had already spent too much money on failed multi-year sponsorships, so made Jordan's sponsorship beyond the 2010 season conditional upon her/him either winning the Bushrunner Off-Road Challenge or finishing in the top eight in the final NAORRA points standings at the end of the season. Not only did this provide financial protection for ATVictory if Jordan Stanley didn't pan out as a racer, I figured it would also provide Jordan with additional incentive to do well. Not that Jordan needed any additional motivation. I admired how Jordan was an aggressive rider who would do anything to win. Jordan was eager to have a sponsor, and though we were not able to offer as much money as the bigger ATV parts suppliers, it was enough for Jordan to make a living racing and take a full-time mechanic with her/him to all the races on the circuit.

14. As with the other racers ATVictory sponsored, I personally handled Jordan Stanley's account. This allowed me to monitor Jordan's race performance and make sure that s/he had all of the newest products from ATVictory and our partners. Not only was it important to me and the company that Jordan use ATVictory parts – after all, Jordan is sponsored by ATVictory – but also that Jordan take advantage of our exclusive partnerships. One partnership I was especially excited about for 2010 was with Big West ATV Corporation. Like ATVictory, Big West ATV was a small

player in the growing ATV market. But also like us, they had great engineers and produced high quality products. Even better, our product lines barely overlapped. ATVictory produces mostly smaller parts like bolts and gears and handlebars and the like. Big West ATV produces larger assemblies such as engines and axles. ATVictory paid Big West ATV a substantial fee to be their exclusive reseller and also agreed to give Big West ATV 25% of any profits from sales of its products. Normally, vendors do not get a cut when we resell their products, so this was a real incentive for Big West ATV. I hated to cut into our profits that much, but I felt it was necessary to garner an exclusive agreement with them.

15. In June 2010, Big West ATV came out with its Ridgegrabber Front Suspension System. This suspension system used a specially-designed spring suspension system that was supposed to provide increased stability when making sharp turns. Being able to make sharper turns would allow racers to turn more quickly after jumps rather than waiting for the ATV to stabilize before going forward after landing. Even outside the racing world, though, I knew the Ridgegrabber would be a popular product even among casual ATV riders who wanted a more stable ride across rough terrain. It was therefore important to raise public awareness of the Ridgegrabber by getting it out on the racing circuit as quickly as possible. So, I was really excited when, on June 29, 2010, Chris Harris, the mechanic for Jordan Stanley, faxed me a purchase order for a Ridgegrabber and then called me to ask if we had one in stock and whether we could get it shipped in time for the Bushrunner. I told Chris that it would be cutting it close, and that we would have to ship the Ridgegrabber directly to the race site, but that we could do it.

16. Chris and I had a little bit of a ... let's call it a disagreement about what bolts to ship with the Ridgegrabber. You see, ATVictory manufactures its own brand of bolts. Indeed, our bolts are one of our main product lines and were one of the products we were known for even back when we were Garrison Manufacturing. However, the purchase order that Chris faxed me with an invoice for the Ridgegrabber requested Suregrip bolts. Suregrip is one of our main competitors in the bolt market. We carry Suregrip brand bolts because as an ATV parts supplier we need to have them available if the customer requests them. But, as a racer sponsored by ATVictory, I definitely wanted Jordan Stanley to be using ATVictory bolts. I knew that if Jordan won the Bushrunner, real ATV enthusiasts would want to know everything about the equipment Jordan used, down to what type of bolts. This information would probably appear on the web or in a magazine article a couple months later, and I couldn't have the Ridgegrabber, which we were promoting heavily, associated with a competitor's bolts.

17. Chris reiterated on the phone that s/he and Jordan wanted Suregrip bolts. Chris said that s/he had gone on the Big West ATV website to look at the Ridgegrabber and that Big West ATV recommended using Suregrip bolts with the Ridgegrabber. I was aware that Suregrip bolts were recommended for the Ridgegrabber, but I never knew why and kept forgetting to ask Big West ATV about it. I told Chris that it was my understanding that this was due to a prior promotional arrangement and assured Chris that ATVictory bolts were just as good as Suregrip bolts. In fact, ATVictory bolts are better. And marginally cheaper when sold directly from ATVictory.

18. Just as I was purchasing the company, Terry Walters was developing this revolutionary new bolt. The primary difference between ATVictory bolts and other more traditional ATV bolts, such as Suregrip bolts, is that ATVictory bolts require an extra washer on the underside of the bolt head. This washer has slightly raised teeth that are intended to provide extra grip to prevent the bolt from slipping. As long as this special washer is installed correctly, ATVictory bolts provide a tighter, more secure grip than traditional bolts. Our superior bolt design has been a huge success and,

before Jordan's accident, one of our best sellers. We have even been asked by manufacturers for NASA about licensing our bolt design for use on rockets.

19. Still, I told Chris that if s/he wanted to use the manufacturer's recommended bolts with the Ridgegripper, I would understand and would ship the Suregrip bolts. I assumed that Big West ATV had tested the Ridgegripper using Suregrip bolts and knew they would work before recommending them. I told Chris that while I could not see any reason why ATVictory bolts would not work with the Ridgegripper, I was not aware of ATVictory bolts being tested on the Ridgegripper and could not guarantee that they would work with the Ridgegrabber. I even gave Chris the phone number of my contact at Big West ATV and encouraged her/him to call the manufacturer to inquire specifically about ATVictory bolts if s/he had any concerns about the compatibility of the two products. That said, I reiterated the advantages of ATVictory bolts from testing on other products.

20. It wasn't easy to convince Chris to use the ATVictory bolts. I did remind Chris of the sponsorship, but did not make a big deal of it. But, even mentioning the sponsorship for some reason angered Chris, and s/he went off about how ATVictory needed Jordan Stanley as much as Jordan needed us. I definitely did not agree with this, and calmly informed Chris of my disagreement. A successful sponsorship would certainly help ATVictory gain recognition, but it would not make or break the company. I'm really not sure why Chris got so worked up. After calmly explaining the benefits of ATVictory bolts again to Chris and reassuring him/her that the Ridgegrabber would work with ATVictory bolts, Chris agreed to use them. I filled out an invoice pursuant to Chris's request. There is a common understanding in our company that when no brand is specified for a product that we produce, ATVictory products are to be supplied. Thus, ATVictory bolts were shipped with Jordan Stanley's Ridgegrabber. But, again, this is what Chris agreed to.

21. The bottom line is that if Chris had insisted on Suregrip bolts, we would have supplied Chris and Jordan with Suregrip bolts, despite the sponsorship. I don't think it was wrong of me to try to convince Chris to use ATVictory bolts, but I in no way forced Chris to agree to use them. Regardless, I don't think ATVictory bolts are to blame for Jordan's crash. Jordan is a reckless driver – that is one of the reasons why I took a chance on signing her/him. And, ATV racing is an inherently dangerous sport. Unfortunately, accidents happen. I feel bad about Jordan's injuries and the fact that s/he will never race again. This is just another in a long line of failed sponsorships for ATVictory. But, I do not feel that ATVictory is in any way to blame for what happened to Jordan.

## Affidavit of C.J. Ziegler

1. My name is C.J. Ziegler and I'm twenty-eight years old. I've been racing ATVs for three years now. I learned about the competitive ATV world from some friends I met at work. I'm an auto mechanic and some of the guys at my shop were weekend racers. I've paid my own way, working full time while maintaining my commitment to the sport, traveling all over North America to compete with the best drivers the sport has to offer. I race the NAORRA circuit and have potential sponsorships lined up with several big-time companies, ATVictory being one of those, assuming I bring the heat next season. I've only won one race during my three years on the circuit and only had two other top five finishes, but I just know my time will come soon. It takes a lot of hard work, but I've been paying my dues, and I think it could all work out soon, I could get some big wins and then I'll be able to focus exclusively on my racing.

2. It's always a risk getting out there on the machine and giving it your all. It seems like every season there are new crashes, different racers trying to recover from different kinds of injuries. We all know the dangers and risk involved, but if you're committed to the sport, you keep going out, doing your best, and hope that it's enough to win and stay as safe as possible. Yeah, you need a bit of luck to have a long career, but you know that when you choose to race ATVs competitively. Everyone takes risks in their everyday lives. At least the risk I take racing is a conscious one that lets me do the thing I love.

3. I started racing about the same time Jordan did; we've always been buddies even though we were competitors. S/He and I were talking a lot during the weeks leading up to the race about the new gear we had ordered – the Ridgegrabber, Big West's new suspension system. The Ridgegrabber had the potential to totally change the way a driver could maneuver the Bushrunner racecourse. The course has so many hairpin turns and such extreme terrain, if the manufacturer's claim that the innovative "roll design" spring suspension system would allow the driver to turn immediately after landing a jump, instead of having to wait for the ATV to stabilize after a big jump, the course could become a whole lot easier ... and faster.

4. Of course, Jordan was already sponsored by ATVictory, due to a few wins s/he had pulled off in some small races around Alaska. S/He was outfitted with a Ridgegrabber, but I had to go out and buy my own. I'm glad now, of course, that I installed the Ridgegrabber on my ATV myself. Jordan had hired Chris Harris once s/he got enough sponsorship dollars to pay a mechanic. What I hear is Chris forgot to put a washer underneath one of the bolts he used to attach the Ridgegrabber. Without that washer, the bolt probably just came undone while Jordan was riding. After that, it was just a matter of time before the other bolts broke under the pressure of the jumps Jordan was taking and eventually the suspension disconnected and made it impossible to steer.

5. I remember Jordan asking about how good his/her choice to hire Chris was a few days before the race. The Ridgegrabber had arrived with ATVictory bolts. Jordan told me s/he had specifically requested that the Ridgegrabber be attached to his/her ATV with Suregrip bolts. ATVictory has gotten some bad press (in my opinion from racers who couldn't get sponsorships), and Jordan didn't want to use ATVictory bolts, even though s/he was sponsored by the company. Apparently when you're as good as Jordan was you just have to wear some clothes with a logo showing and slap some stickers on your machine to hold up your end of the bargain. Anyway, Chris told me s/he called ATVictory and tried to fix the order, but it was too late. Jordan barely even got a chance to test out the Ridgegrabber; it arrived on July 8, and the Bushrunner Challenge was on July 10. It was the same for me. I guess maybe Big West ATV was a little late in shipping

out the Ridgegrabber. It would have been nice to test out the new suspension before the most important race of the season, but I mean, we are professionals ... well, me sort of ... so we should be able to handle it, right?

6. I remember the morning of the race so clearly. It was a stunning Alaska day. The weather and scenery really highlighted why the Bushrunner Challenge is known nationally as one of the best natural ATV races. Everyone knows about the most dangerous part of the course, Widowmaker Hill and Bend. The track drops about 5 feet at a 50 degree angle before evening out a bit. At the bottom of the 20 foot hill is a hairpin turn to the left, Widowmaker Bend. You have to slam on your brakes, or you're going to go sliding off the track, and it's a long way down. The race director told us over and over, in the weeks leading up to the race and at the start that day: if we didn't slow down we were going to end up injured or worse. That isn't to say the whole course isn't dangerous. The terrain on a natural course is always varied, and the Bushrunner Challenge features some of the biggest bumps, tightest turns, and steepest hills on the circuit. The weather, although beautiful that day, had been rainy the week leading up to the race, so the organizers were also really concerned about the mud that was almost, but not quite, dry that morning. It added to the danger of the Widowmaker, that's for sure.

7. It may be in poor taste to say this, given what happened to Jordan, but everyone who loves ATV racing loves that portion of the course. Flying off the top of Widowmaker Hill is exhilarating. It is very tempting to go as fast as you can over the crest of Widowmaker Hill. But then you remember the warnings from the race organizers and you slow down so that you can make the turn at Widowmaker Bend. The precipitous drop on the outside edge of Widowmaker Bend only reinforces this. Even going at less than full speed over Widowmaker Hill, I always had to slam on my brakes to make it around Widowmaker Bend. Too much speed on the turn could cause a racer to lose control of his or her ATV.

8. To be honest, Jordan had been taking risks all day. S/He never seemed to lay off the gas – not in the mud and bumps, not going up hills, and certainly not coming back down. The mud, dry in some places but still slick in others, gave the whole course a degree of unpredictability no one had planned for; we were all having a hard time keeping our machines under control. Jordan seemed to be under the impression s/he would just ride it out as fast as possible, never mind the consequences. I remember coming around a corner into a straightaway early in the course and seeing Jordan up ahead, swerving all over the track, overcorrecting, and eventually bouncing off the barrier. I breathed a sigh of relief when s/he straightened out and headed up the next hill. Little did I know I should have been hoping his/her race would end there, before worse could happen.

9. I guess that was the big difference between Jordan and me as drivers. I love to race – the adrenaline, the speed, and the whole competitive atmosphere. But when the race organizer told us all that morning that we shouldn't be coming up over Widowmaker Hill any faster than 35 mph, I listened. I did not see Jordan's crash, and the terrain around Widowmaker Bend makes it impossible for television cameras to film the jump, but I have no problem believing that s/he was going too fast to control his/her ATV. That's just the way Jordan was as a racer. Don't get me wrong, I raced all out, and I always do – within reason. Jordan pushed the boundaries of what her/his machine could do continually, and it got her/him the wins. Unfortunately, it also ended his/her career. Honestly, given the cement barricades Jordan went through, and the nearly thirty feet s/he fell, I can't believe s/he lived to tell about it.

10. I do have to say that ATVictory products have always performed well for me, and I've never had safety issues with them. I use ATVictory parts whenever they are available; I've used everything from oil filters to brake pads – even carburetor kits made by ATVictory and I've had great outcomes. The better the gear you put on your machine, the longer it's going to last and the faster it is going to go, and I really think ATVictory parts have extended the life of my ATV. I've even talked to ATVictory about getting a sponsorship with them, but it hasn't panned out so far. Like I said, if I can just get a few more good finishes, maybe a big win or two, I think I'll really get somewhere as far as sponsorships go, and I hope ATVictory decides I'm a good investment. It's going to have to happen soon, that's why I'm so amped about this season, I can only keep this level of commitment for a little while longer before I'm out of money and have to scale back. It's starting to feel like it's do or die for my racing career.

11. I was very excited to hear that ATVictory would be the exclusive supplier of the Big West ATV Ridgegrabber. I have to say that the Ridgegrabber really lived up to its hype. In fact, the Ridgegrabber, attached with ATVictory bolts, allowed me to take sixth at the Bushrunner when all was said and done. This was by far my best finish in the three times I've raced in the Bushrunner! I feel the Ridgegrabber really did allow me to make sharper turns at higher speeds than I was able to do with any other front suspension I've used previously. Of course, Jordan's injury overshadows the pleasure I would normally get out of that kind of finish. Unfortunately, I think Jordan just caught a bad break – a little too much speed, and a mechanic who didn't do her/his job right.

12. The irony is, ATVictory bolts are built to be *more* secure than other companies' hardware. The extra washer on the underside of the bolt head has slightly raised teeth to provide extra grip to keep the bolt from slipping. So basically, if used properly, the ATVictory bolts have an added safety feature that should make it nearly impossible for them to come loose. The bolts also come with instructions and diagrams explaining what is already a simple installation — I know I'm an auto mechanic, but it doesn't get much easier than installing ATVictory bolts. They are so proud of the extra security their hardware provides, they make it real clear how the extra washer does that, and how to install it.

13. I feel awful about what happened to Jordan. But in the end, ATV racing is still one of the best sports out there. Anyone with a machine can go out for the weekend and hit the course, most even have a shot at winning. The sport is still so open to newcomers and people who can only commit a weekend here and there to racing, which makes it exciting. Of course racers, both veterans and inexperienced riders, need to come prepared with the proper equipment and make smart decisions. ATVictory is working all the time to increase the safety of the sport, the rest is in the racer's hands. I hope I can make it big this year and get some income to support my racing. I love ATV racing, but it has to start paying soon.

## Affidavit of Lynn Fernandez

1. My name is Lynn Fernandez; I began ATV racing as a kid in North Dakota. My family was a bit of an ATV dynasty back home, and once I got a little older I came to Alaska to prove myself in a new racing community. I had heard stories of the tough conditions and terrain in Alaska, and of course the challenge presented by the Bushrunner Off-Road Challenge. Ten years later, I can't imagine racing anywhere else.

2. I've established myself as a force to be reckoned with in ATV circles on the North American Off-Road Racing Association (NAORRA) circuit. I have earned several sponsorships, which allows me to race full time. I won the 2008 Bushrunner Off-Road Challenge, and was the 2009 NAORRA points champion. I would have won points champion in 2008 had it not been for ATVictory's subpar bolts.

3. It was the last race of the season, and I stood in first place in the points standing going into NAORRA's biggest stadium track race, the Polar-X 5000 in Winnipeg. All I needed to do was finish in the top ten – something I had done in all but two races that season – to finish first in the points standings. I was in second place, rounding the final corner of the eighth lap out of twenty, and had gotten out to a great start, leading the rest of the pack by at least 100 yards. Indoor tracks are fast, obviously, due to the lack of rough terrain ATV's are built to handle. The inside game requires a lot more strategy and a lot more finesse; you can really put yourself in a bad position if you come off one of those banked corners too fast or too high.

4. I knew that, and so I came around the corner low and tight. I was racing hard, but wasn't in a situation where I was riding all out, as it was still so early in the race. My ATV should have been able to easily handle the turn at the speed I was riding. As I came out of the turn though, the machine suddenly over-corrected, it was like the handlebars were useless. Luckily, I recognized there was a serious issue immediately and coasted to a stop off the track, in the middle of the arena. I would soon learn that one of the ATVictory bolts I had used for some basic suspension maintenance had broken from "overuse." I had only been riding on the bolts for less than a week, and not in race conditions.

5. When the bolt broke, the integrity of the whole machine was jeopardized, causing damage to the suspension, the chassis, and the drivetrain. There was no way I could fix my machine and get back on the track to finish the race. I was very frustrated with ATVictory and the next day dashed off an angry letter to them.

6. I learned my lesson after the Polar-X and have only used Suregrip parts since. Suregrip is also one of my sponsors now. The company picked me up after the 2008 season, despite failing to bring home the most NAORRA points that year. It's amazing how dependent this sport is on good gear and good maintenance. Whenever you rely on a machine the way we do, everything can change in a second if the gear fails or your mechanic has made a mistake. In 2008 I dealt with gear failure, and I faced more challenges in 2009 because of a sloppy mechanic.

7. I hired Chris Harris as my mechanic at the close of the 2008 season. I had finally reached the point in my career where I could hire my own mechanic, a rare achievement in ATV racing. Chris has been hanging around the NAORRA circuit for as long as I've been around, but has never raced him/herself. Chris worked odd jobs here and there hoping to catch on as a full-time mechanic

for a racer. I was told s/he knew the machines well and would make a great pit crew. A trusted racer and friend described him/her as part mechanic, part cheering section, part coach. I figured I had nothing to lose since I've been working on ATV's since I was a kid, if s/he turned out to be incompetent, I would catch it before s/he could do any real harm.

8. It turns out I couldn't both supervise Chris and focus on my racing. S/He was sloppy and lazy and it seemed s/he had only come to work for me to gain exposure in ATV circles. Working for me, s/he figured, would give her/him the legitimacy s/he lacked. In the same way that ATV racers work hard to get the wins necessary to nail down a sponsorship, I think Chris wanted to work for high profile ATV racers for his/her own career ambitions. S/He had some pretty sad stories about how his/her dad had been a mechanic with his own shop before he passed away. Chris had always wanted to run the shop, but then his/her mom got cancer, and the shop was sold. I think Chris saw working for me as the beginning of a new career that would maybe lead to his/her own shop. This was probably why I remained sympathetic to Chris for so long; I really wanted to see him/her succeed.

9. I didn't realize just how bad things were until midway through the 2009 season, even though there were warning signs early on. Chris was responsible for doing basic maintenance and safety checks before each race, and I discovered at some of the early season indoor races that my ATV hadn't been looked at before I took it out on the track. I complained vociferously to Chris, and it seemed s/he was doing her/his job for awhile. I just chalked up the early hiccups to her/his inexperience in the world of racing. Unfortunately, the problems at the beginning of the season were only signs of more trouble to come.

10. As it turned out, Chris wasn't just inexperienced – s/he was incompetent. During several races s/he was at a loss as to what I needed him/her to do during pit stops. The effort of instructing her/him on what I needed done was a complete waste of time given that I'd been doing the work on my own machine for so many years. By the time I realized how useless Chris was as a mechanic it was too late in the season to find someone else to take over for him/her. I let him/her finish out the season (not that s/he was doing much, mind you) and then let him/her go immediately.

11. I tried to tell Jordan what a mistake it was hiring Chris, but s/he wouldn't listen to me. Jordan could be unusually stubborn and arrogant, often over-estimating her/his talent. I do admit that Jordan was quite the raw talent, but s/he climbed the racing ranks a little too quickly in my mind. It takes years to learn the limits of the machine and one's self as a racer; Jordan often struck me as pushing the boundaries haphazardly, not out of the calculated risks so many of us take to win, but out of an inexperience that can be dangerous. It seemed like Jordan was always pushing the ATV a little too hard or taking a corner a little too fast. I often saw Jordan make dangerous passes of other racers around sharp corners. It was not uncommon for Jordan to nudge other racers with her/his ATV to try to throw them off their game. A lot of racers resented Jordan for this, and I don't blame them. Everyone on the NAORRA circuit wants to win, but safety has to come first. With her/his overly aggressive driving style, I'm not sure Jordan believed this. Somehow, Jordan almost always made it through the race without any major accidents, but I feared this would not always be the case.

12. The day of Jordan's tragic crash, s/he looked to be even more frenetic than normal. I was coming up right behind him/her in third place when s/he went off the track. You have to remember, the Bushrunner Challenge is notorious among natural race tracks for its terrifying turns and terrain.

Widowmaker Hill and Bend are legendary, not just in Alaskapolis, but all over the country among elite ATV racers. You need to slow down to about 15-20 mph going around Widowmaker Bend. Otherwise you'll slide off the edge. It sure looked to me like Jordan Stanley was going faster than that when her/his accident happened.

13. So, on lap 19, I was in third place – Jordan had just passed me early in the lap. We were approaching Widowmaker Hill, and Jordan was clearly trying to put some distance between herself/himself and me. Really, drivers should be slowing down on Widowmaker Hill, or at least not speeding up. But, speeding up is exactly what it seemed Jordan was doing. Jordan was probably about 30 yards in front of me when we got to Widowmaker Hill. I started to slow down, but Jordan was increasing the gap in front of me, meaning s/he must have been speeding up. I think I was going about 45 mph at the start of the hill but only 30 mph at the top of the hill. As I crested the hill, I took a quick glance to try to see where Jordan was. What I saw was Jordan crashing hard into the concrete barrier on Widowmaker bend and then flipping over it. I don't know how fast Jordan was going at the time or whether there was anything wrong with his/her ATV. It all just happened too fast. Because I had slowed down at the top of Widowmaker Hill, I was able to slam on my brakes and make it around Widowmaker Bend. Once I was on more level terrain, I radioed my pit crew to alert the race organizers that Jordan had crashed over Widowmaker Bend into the gulch below. I couldn't stop, though, as I still had a race to run.

14. I have to wonder if Jordan would have been racing that way, on that equipment, had Chris not been involved. Jordan didn't have the mechanical background I do, and may not have picked up on warning signs that Chris wasn't making the right choices or doing the work required to maintain Jordan's ATV. Also, Chris is nothing if not a fan. Jordan had the chance to win the Bushrunner that day; s/he was in the running right up until the end. I saw how s/he was racing, and can't help but think s/he was getting a little too much fire in his/her ear from the pit crew. One of the jobs of a pit crew is to control the emotion of the racer and keep him or her in check. So, if Jordan was pushing things too hard for what the course allowed, it was Chris's job to tell Jordan to slow down. Knowing Chris as I do, though, I think it was probably the other way around, and Chris was pushing Jordan to go even faster.

15. This tragedy should serve as a warning to our sport. We have to look out for each other. ATV racing is dangerous. Kids like Jordan, coming up too fast and looking for sponsorships, getting bad advice from hangers-on like Chris, they're going to find themselves in bad situations. I wish I had done more to mentor him/her and steer him/her away from what was an avoidable end to a promising career.

## Affidavit of Shay Marinelli

1. My name is Shay Marinelli. I am fifty-one years old. I have a Bachelors of Science from Wake Forest University, where I majored in physics. I also have a Masters and PhD in Mechanical Engineering from North Carolina State University.
2. For the last twelve years I have worked at the Transportation Safety Facility (TSF) in Raleigh, North Carolina. For the last eight years, I have worked as the Senior Engineering Expert. My work involves studying automobile and airplane accidents in order to determine what caused the accidents. This often involves components similar to those involved in this case. My research and work has given me a deep understanding of the mechanics of bolt failures during accidents involving high rates of speed.
3. ATVictory contacted me shortly after Jordan Stanley's accident to research what might have caused it. I have testified as an expert in numerous cases, and I believe Jesse Cain contacted me based on word of mouth reports about my past work. All told, I have been retained by defendants or their counsel to testify in nearly sity product liability and personal injury cases. I have also occasionally, but less frequently, testified on behalf of a plaintiff. I receive \$350 per hour for my consulting work, as well as expenses. I get paid regardless of which side prevails at trial.
4. I arrived in Alaskopolis for this investigation near the end of July, and I was able to inspect Jordan's ATV at the same time that Sam Rosen inspected it for Jordan's attorneys, on August 23, 2010. The race organizers, I believe for security purposes, kept the ATV stored securely in an Alaskopolis auto garage. A race official accompanied us both at all times. I was able to thoroughly examine the ATV as well as perform some computer simulations in order to determine what caused the Ridgegrabber suspension system to become detached from the ATV.
5. In examining the ATV, the first thing I noticed was that the suspension was bolted to the ATV frame using a trapezoidal arrangement. The two rear bolts were fastened 20 inches apart while the two front bolts were 14 inches apart. This is contrary to the common arrangement of bolts on an ATV suspension connection plate, which are that the bolts should be attached in a square arrangement. Attaching the bolts in a trapezoidal arrangement might make the bolts less stable because it shifts a greater percentage of the force from the weight of the ATV to the rear two bolts rather than spreading the force more evenly amongst all four bolts. I'm not sure why ATVictory chose to use a trapezoidal arrangement of bolts as opposed to the more traditional square arrangement, and I have not interviewed anyone at the company to find out. However, while it may have been a contributing factor, I do not think this was the most significant cause of the bolt failure.
6. On the ATV, the rear right-hand-side bolt was missing. The front right-hand-side bolt had sheared off but remained attached to the suspension. The left-hand-side bolts were intact and attached. The first thing I did for my investigation was examine all three remaining bolts to determine if they had been properly heat treated. Heat treatment dramatically increases a bolt's strength because it makes the bolt harder. This allows bolts to withstand much greater forces. Sam Rosen and I conducted our tests of the bolts independently, and I am not sure which tests s/he used.
7. I used the Rockwell Hardness Test, which involves using a diamond-point indenter to determine the hardness of a bolt, to determine if the bolts had been properly heat treated. The test, which is commonly used for this purpose, is named for its inventor, Stanley P. Rockwell, a metallurgist who wanted a fast, non-destructive way to determine if the heat treatment applied to

various metals was successful. The indenter is pressed into the metal at calibrated levels of force. A heat treated bolt will be harder than a non-heat treated bolt, meaning the indenter cannot penetrate as far.

8. From my testing, I determined that the rear left-hand-side bolt had not been properly heat treated. It nonetheless remained intact after the accident, demonstrating that even a non-heat treated bolt, if properly installed, can withstand significant stress. The front left-hand-side bolt had been properly heat treated and was intact. The front right-hand-side bolt was also properly heat treated but was broken. I also examined ten randomly selected ATVictory bolts from the same batch of bolts as in the shipment sent to Chris Harris. All ten had been properly heat treated.

9. I am aware that Sam Rosen has concluded that one of the three bolts was not properly heat treated. This in no way invalidates my opinion that it was not heat treatment that caused the suspension to fail. My examination of the ten random bolts from the same manufacturing batch as the missing one tells me that, more likely than not, the missing bolt was properly heat treated. Given that 100% of the random bolts were properly heat treated, I consider it unlikely that the missing bolt would not also have been properly heat treated. The chances of that are simply too low. Moreover, one of the bolts survived despite not being properly heat treated. We obviously don't have the missing bolt, so we cannot determine for sure if it was properly heat treated, but the fact that an improperly heat treated bolt survived the accident tells me that improper heat treatment did not cause the missing bolt to fail. I honestly think that suggesting otherwise is a little silly. Something else must have caused the bolt to fail.

10. My examination of the remaining bolts revealed another possible cause of the bolt failure. When I was conducting my initial examination of the bolts on Jordan's ATV and removing them for hardness testing, I noticed that of the three remaining bolts, the front left-hand-side bolt was missing a necessary washer. ATVictory bolts use raised teeth that increase the friction and grip of the bolts. However, these bolts require an additional washer when they are attached. With this washer, the bolts provide increased strength compared to regular bolts. However, if this washer is not included, the bolt will not provide a secure attachment between the suspension and the chassis. Without the secure attachment, the suspension may become unstable, causing significant steering problems. The bolt will also be prone to breaking more easily.

11. Although I do not like to point fingers, I believe Chris Harris improperly installed the missing bolt by failing to install this necessary washer on it as well. Because of this improper installation, the missing bolt was not secured to the suspension. The improper installation allowed the bolt to work its way free throughout the race. Once it worked its way free, the remaining three bolts were subject to significant additional stress during the race. Eventually, the front right-hand-side bolt succumbed to this stress and broke, rendering the ATV nearly impossible to steer. The increased strain put on the right side of the suspension during the race's left-hand turns would have made the right-hand-side bolts more likely to break.

12. I also ran computer simulations and laboratory tests that strengthen my conclusion about improper bolt installation. I simulated the stresses put on an ATV suspension and how well different bolts could withstand those forces. From these tests, I determined that, when properly installed, ATVictory bolts could withstand 3500 pounds of force. This Ridgegrabber suspension specifications that that it can withstand up to a 4000 pound stress limit. For a hill like Widowmaker Hill, a driver could crest the hill at 45 miles-per-hour and land safely without causing

undue stress on the ATVictory bolts or the Ridgegrabber suspension.

13. From speaking with C.J. Ziegler, a NAORRA racer who competed in the Bushrunner Off-Road Challenge along with Jordan Stanley, I learned that the Bushrunner organizers instructed drivers not to crest Widowmaker Hill at anything above 35 miles-per-hour. This is well within the stress limits of the Ridgegrabber suspension and the ATVictory bolts if the bolts are properly installed. From my computer simulations, however, if a bolt is improperly installed and has become loose or fallen off entirely, the instability in even just one bolt can reduce the maximum speed at which a driver could crest Widowmaker Hill. By my estimate, a driver going over even 30 miles-per-hour would have difficulty controlling his or her ATV after landing. Drivers have to be careful coming over Widowmaker Hill because at the bottom of the hill, following a steep decline, is a sharp turn, known as Widowmaker Bend. Anybody driving too fast coming over the hill would not be able to slow down quickly enough to make the turn. If an improperly installed bolt rendered the ATV unstable, the driver might lost control as they braked for the turn.

14. From my computer simulations, I also determined that even with proper installation, because of the sharp left turn at Widowmaker Bend, at the bottom of Widowmaker Hill, a driver would have difficulty controlling his or her ATV through that turn at speeds over 20 miles-per-hour. This is true regardless of the weight limit of the bolts. Anybody who crests Widowmaker Hill at too fast a speed would have difficulty slowing down for the turn and would struggle to control their ATV.

15. This leads me to my alternate conclusion about the accident. Even if all three of the remaining bolts had been properly installed, Jordan's reckless driving put undue strain on his/her ATV, stressing the bolts to the point of failure. Driving with excessive speed, particularly on course features like Widowmaker Hill and Widowmaker Bend, would put dramatic and unsustainable strain on the Ridgegrabber suspension. The driver might also just fail to control the ATV coming through Widowmaker Bend even with no stability problems.

16. The nature of the Bushrunner course did not help. Most of the turns on the course, including the turn at the bottom of Widowmaker Hill, are left-hand turns. Turning left causes more pressure on the right side of the front suspension. Tests on comparable ATVs equipped with properly installed Ridgegrabber suspension systems demonstrate that the sharper the left-hand turn, the more stress the right side of the suspension experiences. The additional stress varied with how sharp the turn was, but when an ATV executed a left turn as sharp as that found at the bottom of Widowmaker Hill, the stress experienced by the right side of the suspension could be as much as three times that experienced by the left side of the suspension. Jordan might have thought s/he could turn at increased speeds because of the Ridgegrabber suspension, but doing so only increased the pressures on the bolts, particularly the right-hand-side bolts.

17. I tested the other ATVs using ATVictory bolts as well as Suregrip bolts. I actually found that the Suregrip bolts had a higher tolerance for sharp turns and high stresses than did the ATVictory bolts, which befits their higher rating as being able to handle 4500 pounds of force. Incidentally, this higher rating for Suregrip bolts would provide an additional 7 mph speed tolerance coming over Widowmaker Hill.

18. It is my expert opinion that the only reason the rear right-hand-side bolt failed was due to improper installation of the bolt, or due to Jordan's reckless driving. Improper heat treatment did not cause Jordan's accident.

# **III. Exhibits**

**Jordan Stanley Racing, Inc.**

**PURCHASE ORDER**

1452 Ryan Lane  
 Alaskopolis, AK 99999  
 Phone (907) 555-3578 Fax (907) 555-3579

The following number must appear on all related  
 correspondence, shipping papers, and invoices:  
**PURCHASE ORDER NUMBER: 133**

**TO:**  
 Jesse Cain  
 ATVictory, Inc.  
 9635 Fortson Rd.  
 Spokane, WA 99202  
 FAX: (509) 555-0168

**SHIP TO:**  
 Chris Harris  
 Jordan Stanley Racing, Inc.  
 1452 Ryan Lane  
 Alaskopolis, AK 99999  
 Phone (907) 555-3578

P.O. DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
June 29, 2010	Chris Harris	National Express	Air	Net 30

QTY	MANUFACTURER	DESCRIPTION	UNIT PRICE	TOTAL
1	Big West ATV	Ridgegrabber Front Suspension System	\$1,249.00	\$1,249.00
4	Suregrip	M8 1.25 hex bolt	\$14.95	\$59.80
			SUBTOTAL	\$1308.80
			SALES TAX	\$0.00
			SHIPPING & HANDLING	\$63.72
			OTHER	\$0.00
			TOTAL	\$1372.52

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to:  
 Chris Harris  
 Jordan Stanley Racing, Inc.  
 1452 Ryan Lane  
 Alaskopolis, AK 99999  
 Phone (907) 555-3578 Fax (907) 555-3579

*Chris Harris*

*6/29/10*

Authorized by

Date



# ATVictory, Inc

## I N V O I C E

**Invoice #:** 10-394  
**Invoice Date:** 06/30/2010  
**Customer ID:** AK-12345

**Bill To:**

Jordan Stanley Racing, Inc.  
 1452 Ryan Lane  
 Alaskopolis, AK 99999

**Ship To:**

Jordan Stanley Racing, Inc.  
 1452 Ryan Lane  
 Alaskopolis, AK 99999

Date	Your Order #	Our Order #	Sales Rep.	Ship Via	Terms	Tax ID
6/29/2010	133	10-394	Jesse Cain	National Express	30 days	08-9876543

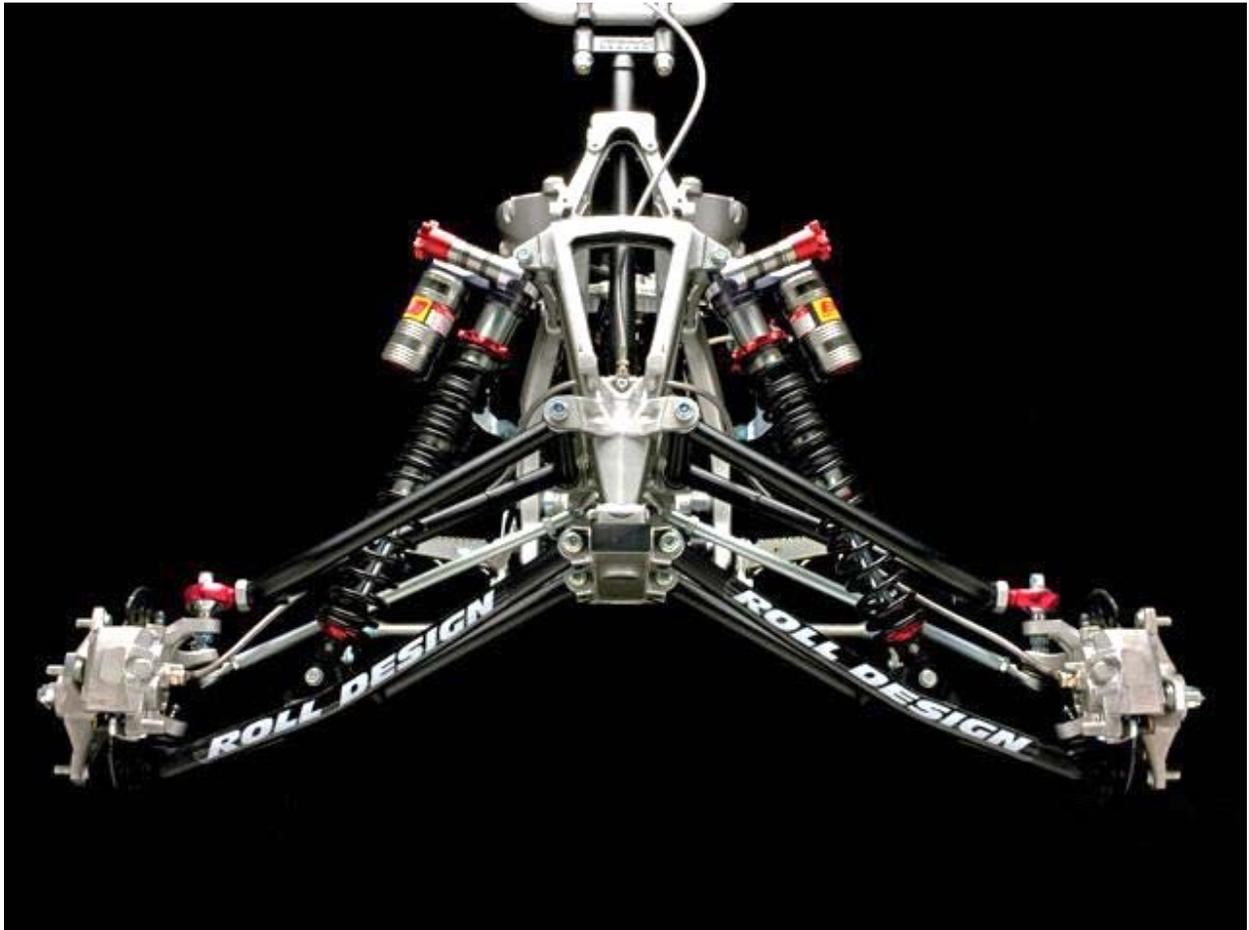
Quantity	Item	Manufacturer	Description	Unit Price	Total
1	BWA-673	Big West ATV	Ridgegrabber Front Suspension System	\$1,249.00	\$1,249.00
4	ATV-58723	ATVictory	M8 1.25 hex bolt	\$11.99	\$47.96

Subtotal	\$1,296.96
Tax	\$0.00
Shipping	\$63.72
Miscellaneous	\$0.00
<b>Balance Due</b>	<b>\$1,360.68</b>

REMITTANCE  
**Customer ID:** AK-12345  
**Date:** July 30, 2010  
**Amount Due:** \$1,360.68  
**Amount Enclosed:**

Primary Business Address 9635 Fortson Road Spokane, Washington 99202  
 Phone: (509) 555-0167 Fax: (509) 555-0168 E-mail: orders@atvictory.com Web site: www.atvictory.com

## Big West ATV Ridgegrabber Front Suspension System



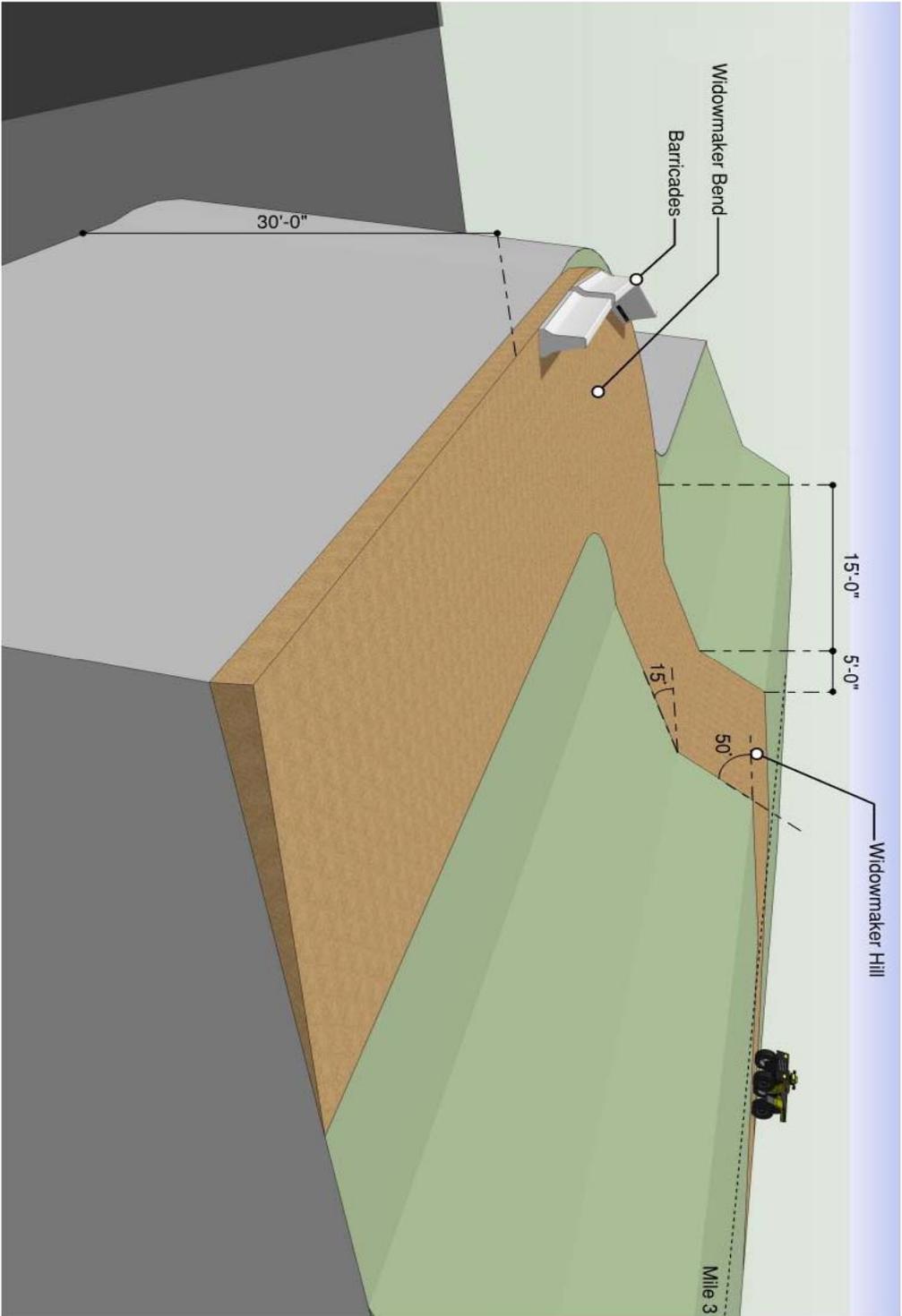
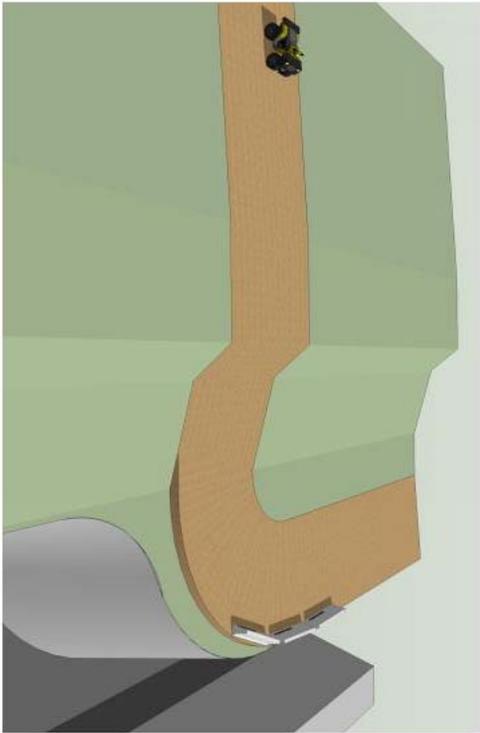
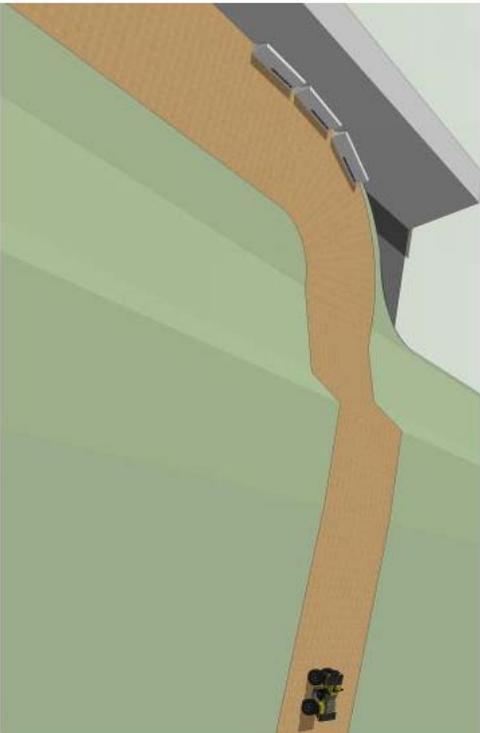


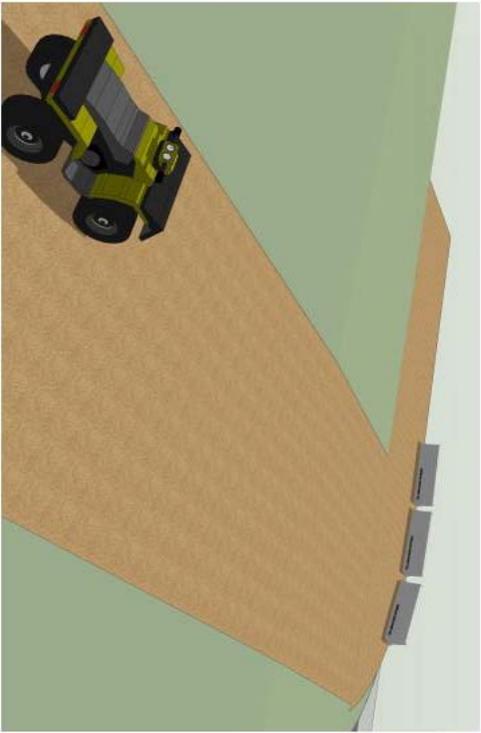
Diagram of Widowmaker Hill and Bend



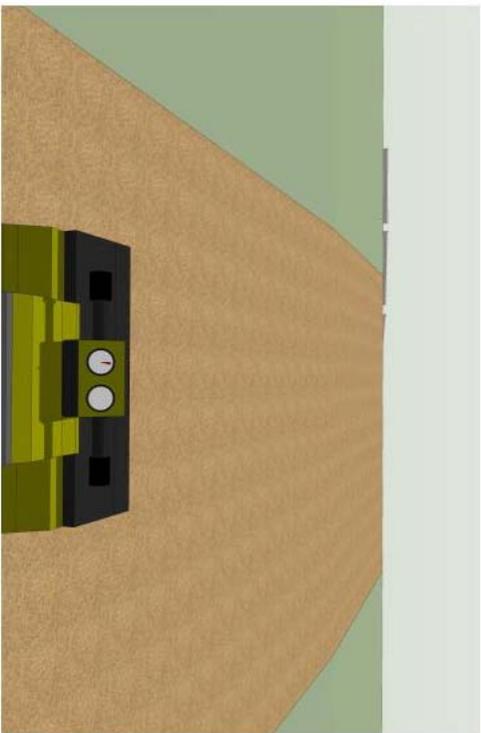
Bird's eye perspective - 1



Bird's eye perspective - 2



Bird's eye perspective - 3



Driver's Perspective

Molly Denninger, MD  
1234 Hospital Drive, Suite 247  
Alaskopolis, Alaska 99999  
907-555-1875

To Whom It May Concern:

I have been asked to provide a letter documenting injuries sustained by Jordan Stanley during an ATV accident on July 10, 2010. This letter is drafted based upon my diagnosis of Jordan Stanley's condition as of October 19, 2010.

I am a board-certified neurologist, which means I specialize in problems related to the brain and spinal cord. Because my practice is affiliated with Alaskopolis General Hospital, I am often called in as a consultant when doctors there believe that their patients may have neurological problems. These calls can come from any department, but it is most common for me to be contacted by an emergency room physician who wants an evaluation of a trauma patient.

On July 11, 2010, one of Alaskopolis General's ER doctors called me and asked me to come in to examine a patient named Jordan Stanley who had recently been in an ATV accident and had been brought in via emergency medical services. Jordan was conscious but was complaining of vision deficits and severe back pain as well as numbness and substantial tingling in his/her legs and feet. The ER doctor had performed a series of X-rays, which indicated that Jordan had fractured spinal vertebra in the T2-T6 region as well as a fractured skull and broken arm. They wanted my opinion as to the best course of treatment for Jordan's injuries.

I met with Jordan that afternoon. I started with a basic examination to determine his/her overall neurological functioning level. This included tests of brain function, vision, and gross and fine motor skills. I determined that Jordan did not have any significant level of impairment to her/his intellectual functioning, but that his/her peripheral vision was completely gone. I also determined that Jordan was at the time incapable of walking.

To further assess Jordan's problems, I ordered an MRI of his/her brain and spinal column. The MRI showed that there was damage to the optic nerve, which was affecting Jordan's peripheral vision. It also showed that two of the vertebral fractures had become displaced and that the bone fragments were putting pressure on Jordan's spinal column, which was the cause of her/his inability to walk. In my opinion, the damage to the optic nerve was irreversible, but I thought surgical intervention could fix the damage to the spinal column to an extent that would allow Jordan to regain full function of his legs.

I ordered Jordan prepped for immediate spinal surgery. Repairing damage to the spinal column is tricky, and it is not unusual for a patient to undergo several surgeries before he or she reaches the full therapeutic benefit level. In Jordan's case, a total of 4 surgeries were performed. Jordan then had to spend a significant period of time in rehabilitation, where s/he worked on relearning basic motor activities. Fortunately, the surgeries were successful enough to allow Jordan to walk again, although s/he is slower than s/he used to be and complains of ongoing back pain.

In my medical opinion, Jordan has now attained the maximum level of functioning that s/he is capable of given the injuries sustained. This means that Jordan is never going to be able to

function any better than s/he can today. Jordan's slowness in walking will be permanent, as will his/her loss of peripheral vision. Jordan is currently working with a pain clinic in order to try to get his/her back pain under control, but to a certain extent that pain will always be present. Jordan will certainly never be able to drive an ATV again because of the jarring vibrations of the vehicle. Still, under the circumstances, Jordan's outcome is much better than it could have been. Given his/her injuries, it was possible that s/he could have been permanently paralyzed from the waist down.

Sincerely,  
Molly Denninger, MD

## ATVictory Bolt and Washer Combination



Natalia Chan, President  
Kessel Manufacturing Corp.  
8120 Industrial Blvd.  
Baltimore, MD 21202

February 16, 2008

Terry Walters  
Chief Engineer  
ATVictory, Inc.  
9635 Fortson Rd.  
Spokane, WA 99202

Dear Mr. Walters:

Our records indicate that your company recently purchased a Kessel XB15 Heat Treatment Processing Machine. I am writing to inform you that Kessel Manufacturing has determined that some XB15 Heat Treatment Processing Machines intermittently fail to properly complete the heat treatment process. This is due to defective sensors used to detect internal temperatures during the heating process. The defect causes the sensors to register incorrectly high temperatures inside the machine, causing the machine to shut off before the heat treatment process has completed. Because the heat treatment process is prematurely terminated, products heat treated in the XB15 Heat Treatment Processing Machine are unable to withstand the 3500 pounds of force for which the XB15 Heat Treatment Processing Machine is rated.

Kessel Manufacturing deeply regrets this problem and wants to make every effort to correct it. Not all sensors used on XB15 Heat Treatment Processing Machines are defective. It is therefore possible that your machine functions properly. Unfortunately, the only way to accurately determine if the sensors on your machine are defective is to send the entire machine back to our factory for our technicians to inspect. If defective sensors are found, they will of course be replaced free of charge. Kessel Manufacturing will also pay any shipping costs associated with returning your XB15 Heat Treatment Processing Machine. We anticipate that the recall process, including shipping, will take four to six weeks, depending on your location. Please contact our Customer Service Department at 1-866-555-2431 to arrange shipping of your machine back to Kessel Manufacturing.

Customer satisfaction is of the utmost importance to Kessel Manufacturing. We realize that this recall will be a great inconvenience for your company. For this we apologize. I personally want to assure you that Kessel Manufacturing is increasing its quality assurance to ensure that similar problems do not arise in the future.

Sincerely,  
*Natalia Chan*

Lynn Fernandez  
3210 Bowmer Rd.  
Modesto, CA 95358

October 27, 2008

Jesse Cain  
ATVictory, Inc.  
9635 Fortson Rd.  
Spokane, WA 99202

Dear Mr. Cain,

I am writing to inform you that you have lost one of your most prominent and successful ATV customers. I will no longer be using ATVictory products or recommending that any other NAORRA racers use them. Last week, in the final race of my 2008 series, which should have led to a points championship, one of your subpar bolts gave way, leaving me with a badly damaged machine and a DNF to end my season.

As I'm sure you are aware, I was racing indoors at the Polar-X 5000, the biggest stadium race on the NAORRA circuit. I had installed the ATVictory bolts as part of some basic suspension maintenance only a week before the race. I had done the requisite safety rides to ensure my machine was in race form before I took to the track at the Polar-X. Everything appeared to be in good condition.

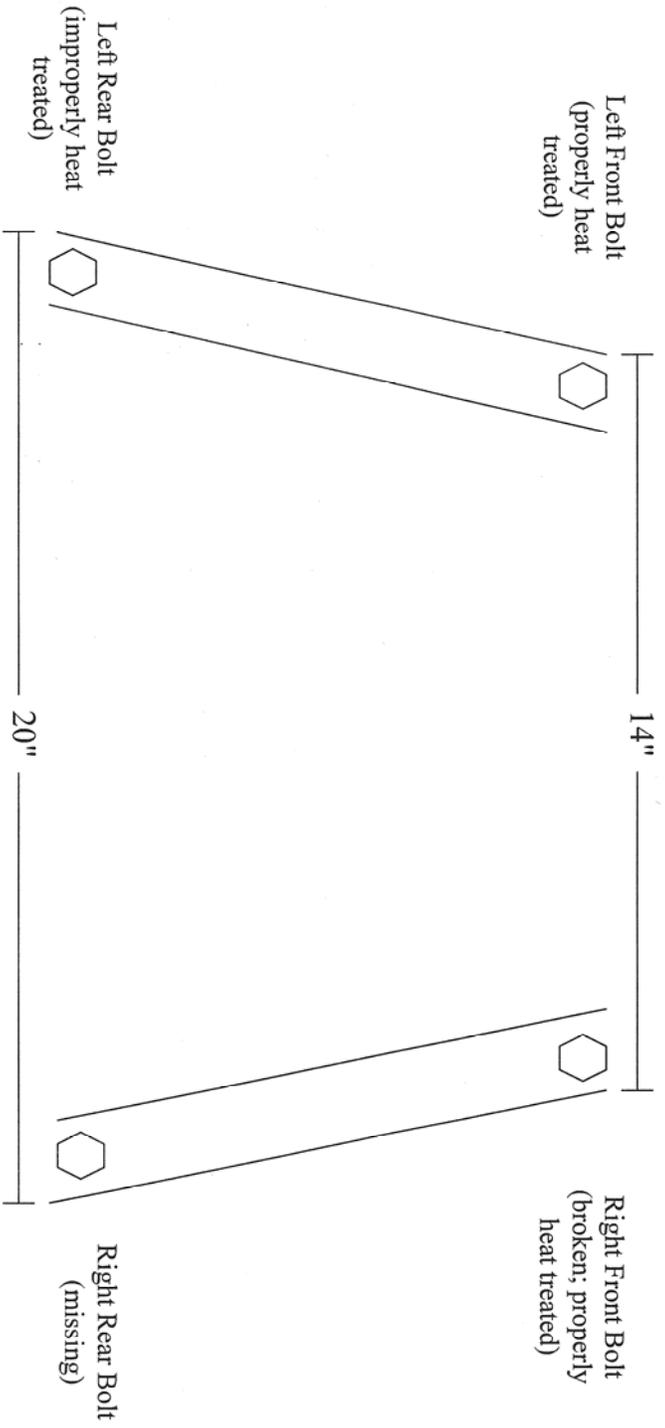
All I had to do at the Polar-X was garner a top-ten finish. Realistically, I easily could have won the Polar-X, but I wasn't pushing any boundaries. I came around a corner in the eighth lap, I was racing in second place, no need to push my speed, no need to maneuver through any traffic at this point in the race. Suddenly, my steering was useless. I overcorrected and could have ended up badly injured had I been a less experienced rider. Luckily I managed to coast my machine into the center of the arena, where I watched my points championship slip away.

When I managed to return to my pit area and examine my ATV, I noticed that one of the bolts connecting the suspension to the chassis of the ATV had sheared off. This resulted in the suspension system becoming unstable – I could feel this instability the moment I grabbed onto the suspension, which clearly was no longer solidly connected to the chassis.

I am an experienced racer and mechanic. The only explanation for the failure of that bolt is that it was entirely defective. Your company's faulty equipment cost me a lot professionally, and I'm lucky it didn't cost me more in the form of injuries or even worse. You will never again get my business. You can also be assured that I will be extremely vocal from here on out, I want every racer on the circuit to know that they take a serious safety risk by using your parts on their machines.

Sincerely,  
Lynn Fernandez

Diagram: Placement of bolts on connection plate connecting Ridgegrabber Front Suspension System to ATV frame on Jordan Stanley's ATV (top down view).



# **IV. Competition Rules**

**RULES GOVERNING THE ALASKA HIGH SCHOOL**  
**MOCK TRIAL COMPETITION**

**CONTENTS**

- A. *Governing Rules*
- Rule 1. Competition Coordinators
  - Rule 2. Interpretation of Rules
  - Rule 3. Code of Conduct
  - Rule 4. Emergencies
  - Rule 4.5 Food and Beverages in the Courtrooms
- B. *The Problem*
- Rule 5. Case Materials
  - Rule 6. Witness Bound by Statements
  - Rule 7. Unfair Extrapolation
  - Rule 8. Gender of Witnesses
  - Rule 9. Voir Dire
- C. *The Trial*
- Rule 10. Team Eligibility
  - Rule 11. Team Composition
  - Rule 12. Team Presentation
  - Rule 13. Team Duties
  - Rule 14. Swearing of Witnesses
  - Rule 15. Trial Sequence and Time Limits
  - Rule 16. Timekeeping
  - Rule 17. Time Extensions and Scoring
  - Rule 18. Prohibited Motions
  - Rule 19. Sequestration
  - Rule 20. Bench Conferences
  - Rule 21. Supplemental Material/Illustrative Aids
  - Rule 22. Trial Communication
  - Rule 23. Viewing a Trial
  - Rule 24. Videotaping/Photography/Audiotaping
- D. *Judging*
- Rule 25. Decisions
  - Rule 26. Composition of Panel
  - Rule 27. Score Sheets
  - Rule 28. Completion of Score Sheets
  - Rule 29. Team Advancement
  - Rule 30. Selection of Opponents for Each Round
  - Rule 31. Merit Decisions
  - Rule 32. Effect of Bye

- E. *Dispute Settlement*
  - Rule 33. Reporting a Rules Violation
  - Rule 34. Reporting Rules Violations During Trial
  
- F. *Conduct Initiating the Trial*
  - Rule 35. Team Roster
  - Rule 36. Stipulations
  - Rule 37. The Record
  - Rule 38. Jury Trial
  - Rule 39. Standing During Trial
  - Rule 40. Objection During Opening Statement/Closing Argument
  
- C. *Presenting Evidence*
  - Rule 41. Argumentative Questions
  - Rule 42. Establishing Proper Predicate/Foundation
  - Rule 43. Procedure for Introduction of Exhibits
  - Rule 44. Admission of Expert Witnesses
  - Rule 45. Use of Affidavits
  - Rule 46. Use of Notes
  - Rule 47. Use of Exhibits in Examining Witnesses
  
- D. *Closing Arguments*
  - Rule 48. Scope of Closing Arguments
  
- E. *Critique*
  - Rule 49. The Critique

### III. MODIFIED FEDERAL RULES OF EVIDENCE (Mock Trial Version)

- A. *General Provisions*
  - Rule 101. Scope
  - Rule 102. Purpose and Construction
  
- B. *Relevancy and its Limits*
  - Rule 401. Definition of “Relevant Evidence”
  - Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible
  - Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time
  - Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes
  - Rule 405. Methods of Proving Character
  - Rule 406. Habit; Routine Practice
  - Rule 407. Subsequent Remedial Measures
  - Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements
  - Rule 411. Liability Insurance (civil case only)

- C. *Privileges*
  - Rule 501. General Rule
  
- D. *Witnesses*
  - Rule 601. General Rule of Competency
  - Rule 602. Lack of Personal Knowledge
  - Rule 607. Who may Impeach
  - Rule 608. Evidence of Character and Conduct of Witnesses
  - Rule 609. Impeachment by Evidence of Conviction of Crime (this rule applies only to witnesses with prior convictions)
  - Rule 610. Religious Beliefs or Opinions
  - Rule 611. Mode or Order of Interrogation and Presentation
  - Rule 612. Writing Used to Refresh Memory
  - Rule 613. Prior Statements of Witnesses
  
- E. *Opinions and Expert Testimony*
  - Rule 701. Opinion Testimony by Lay Witnesses
  - Rule 702. Testimony by Experts
  - Rule 703. Bases of Opinion Testimony by Experts
  - Rule 704. Opinion on Ultimate Issue
  - Rule 705. Disclosure of Facts or Data Underlying Expert Opinion
  
- F. *Hearsay*
  - Rule 801. Definitions
  - Rule 802. Hearsay Rule
  - Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial
  - Rule 804. Hearsay Exceptions – Declarant Unavailable
  - Rule 805. Hearsay within Hearsay

# **I. RULES OF COMPETITION**

## **A. GOVERNING RULES**

### **Rule 1. Competition Coordinators**

The Alaska High School Mock Trial Championship is sponsored by the Anchorage Bar Association, Young Lawyers Section. A committee comprised of interested members of that organization and other persons, as appropriate, shall organize and oversee all aspects of the competition, and shall be referenced as the competition coordinators. All correspondence with the competition coordinators should be sent via email to [alaskamocktrial@gmail.com](mailto:alaskamocktrial@gmail.com) or addressed to:

YOUNG LAWYERS SECTION  
P.O. BOX 100844  
ANCHORAGE, AK 99510-0844  
Attn: MOCK TRIAL

### **Rule 2. Interpretation of the Rules**

All trials will be governed by the current Alaska High School Mock Trial Championship's Rules of Competition and Rules of Procedure and by the Federal Rules of Evidence (Mock Trial Version). Interpretation of the rules is within the discretion of the competition coordinators, whose decisions are final. Any clarification of rules will be issued in writing to all participating teams. Teams who believe that clarification is needed should request clarification in writing. Any situations that arise that are not addressed in these rules may be resolved at the sole discretion of the competition coordinators.

### **Rule 3. Code of Conduct**

The Competition rules, proper rules of courthouse and courtroom decorum and security must be followed. The competition coordinators will have the discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

### **Rule 4. Emergencies**

During a trial, the presiding judge or the competition coordinators shall have discretion to declare an emergency and adjourn the trial for the period of time necessary to address the emergency. If an emergency arises which would cause a team to be unable to continue a trial, or require it to participate with less than six members, the competition coordinators shall have the discretion to determine how to proceed.

### **Rule 4.5. Food and Beverages in the Courtrooms**

Food and beverages – other than water – are NOT ALLOWED in the courtroom at any time. After receiving a warning, teams that fail to follow this rule are subject to forfeiture of rounds and/or disqualification. Competition organizers will do their best to make water available during the trial for the participating lawyers and witnesses, but teams may want to consider bringing their own bottled water.

## **B. THE PROBLEM**

### **Rule 5. Case Materials**

The problem will be an original fact pattern which may contain any or all of the following: statement of facts, indictment or complaint, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Teams who believe that errors exist in the case materials should bring such errors to the attention of the competition coordinators in writing prior to the start of the competition. Any clarification of case materials will be issued in writing to all participating teams. In preparing and participating in the Competition, students are limited to the supplied case materials, the Governing Rules and the Modified Rules of Evidence.

Participants are not allowed to introduce at trial cases or exhibits not included in the case materials. Reasonable extrapolation will be allowed as explained in Rule 7.

### **Rule 6. Witness Bound by Statements**

Each witness is bound by the facts contained in his/her own witness statement or affidavit, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Reasonable extrapolations from a witness's affidavit may be allowed, as may extrapolation explicitly allowed by the case materials. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the question is subject to objection under Rule 7 (Unfair Extrapolation) as being outside the scope of the problem. In such a situation, the witness should respond that he or she does not have sufficient information to answer the question.

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony. Again, reasonable extrapolation by the witness is permitted.

A witness is not bound by the facts contained in other witness statements.

### **Rule 7. Unfair Extrapolation**

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. An unfair extrapolation is a statement by a witness at trial that creates a sense of bias for or against a party and which is not supported by the materials provided. A fair extrapolation is one that is neutral toward the outcome of the trial and is either based on common knowledge or can be reasonably inferred from the witness's statement and pertinent exhibits.

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. If a witness is asked for information not contained in the witness's affidavit, the answer must be consistent with the statement and may not materially affect the witness's testimony or any substantive issue of the case.

If an attorney or witness for a team asks for or provides unfair extrapolations while presenting their case, attorneys for the opposing team may refer to Rule 7 in a special objection, such as "unfair extrapolation" or "information is beyond the scope of the statement of facts." The attorney examining the witness may defend the witness' statement by directing the judge to a passage in that witness' affidavit, or to other applicable materials, that support the statement or conclusion made by the witness.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings. Possible rulings by a judge include: (a) no extrapolation has

occurred; (b) an unfair extrapolation has occurred; (c) the extrapolation was fair; or (d) ruling is taken under advisement. The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

Rule 8. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any team member may portray the role of any witness regardless of the gender of the student. Please try to be mindful of the genders of the witnesses portrayed by the opposing team.

Rule 9. Voir Dire

Voir dire examination of a witness is not permitted. Expert witnesses may be challenged on their qualifications as an expert.

**C. THE TRIAL**

Rule 10. Team Eligibility

Any Alaska high school may assemble one or more teams and become eligible to compete in the Alaska High School Mock Trial Championship Competition. Two or more Alaska high schools may jointly form a team if each school participating in the formation of a joint team would otherwise be unable to participate in the Alaska High School Mock Trial Championship Competition. Educational and civic organizations which are 1) independent of any Alaska high school, 2) not formed primarily for the purpose of competing in the Alaska High School Mock Trial Championship Competition, and 3) comprised of high school students residing in Alaska may assemble one or more teams and become eligible to compete in the Competition.

Alaska high schools or high school students wishing to form a team but not qualifying under this Rule may timely request that an exception to this Rule be granted by the competition coordinators. A decision by the competition coordinators as to eligibility under this Rule or an exception to this Rule shall be final. Any team wishing to participate in the Alaska High School Mock Trial Championship Competition must properly register with the competition coordinators in advance of the competition. The competition coordinators will attempt to accommodate all registrants. Any school or other organization wishing to enter multiple teams must designate a “first” team. In the unlikely event that registration must be limited as a result of too many teams attempting to participate, priority will be given to the “first” team over other teams from the same school or organization. In all other aspects, registration will be permitted on a first come, first served basis. Registration will only be limited if the number of teams registered exceeds the capacity of the facilities where the competition is held.

The team that wins the Alaska High School Mock Trial Championship Competition will be deemed the current Alaska State Mock Trial Championship Team and will eligible to participate and compete in the National High School Mock Trial Championship. Any team representing Alaska in the National High School Mock Trial Championship must be comprised of students who participated on the Alaska State Mock Trial Championship team. A team intending to compete in the National High School Mock Trial Championship *must* bring at least nine members to the National Championship. Teams eligible for the National Championship may decline to participate, in which case eligibility will pass to the next highest finishing team in the Alaska Competition. The Alaska State Mock Trial Championship Team is responsible for its own expenses in attending the National High School Mock Trial Championship Competition.

Rule 11. Team Competition

Teams must consist of no fewer than *six* members and no more than *nine* members, including alternates. Team members are assigned to attorney and witness roles representing the Prosecution/Plaintiff and Defense/Defendant sides in each round of the competition. For each match, a team is required to provide three attorneys and three witnesses, as described below in Rule 12. Teams may rotate participants between rounds at their discretion.

Rule 12. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members. Different sides will be assigned to teams for different rounds. Only in the case of an emergency may a team participate with less than six members. In such a case, a team may continue in the competition by making substitutions to achieve a two attorney/three witness composition. If an emergency causes a team to use less than three attorneys, the team may be penalized by a reduction of points for that round or may be required to forfeit the round, depending on the nature of the emergency. Final determinations of emergency, forfeiture, or scoring record will be made by the competition coordinators and are solely at their discretion. If a coach knows his or her team might not be able to field the required six members for a given round, the coach should notify the competition coordinators as soon as possible.

Rule 13. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross examination. In addition, one student attorney will present the opening statement and a different student attorney will present a closing argument. The principal attorney duties for each team will be as follows:

1. Opening Statement
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Opposing Witness #1
6. Cross Examination of Opposing Witness #2
7. Cross Examination of Opposing Witness #3
8. Closing Argument

Opening Statements must be given by both sides at the beginning of the trial. The defense does not have the option to reserve their opening statement for the beginning of the presentation of their case.

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

Each team must call three witnesses. Witnesses must be called only by their own team and examined by both sides. Although re-direct and re-cross are permissible, witnesses may not be recalled to the stand after their testimony is complete. Thus, once a witness is excused and steps down, neither team may recall the witness for further questioning even if no re-direct or re-cross was previously conducted. A presiding judge may elect not to allow re-cross examination.

Attorneys are not permitted to ask leading questions on direct or re-direct examination, but may ask leading questions on cross or re-cross examination if they so choose. The scope of cross

examination is not limited to the scope of issues raised during direct examination. However, the scope of re-direct examination is limited to issues raised during cross examination, and the scope of re-cross examination, if allowed by the presiding judge, is limited to issues raised during the re-direct examination.

Rule 14. Swearing of Witnesses

The following oath, or a similar oath permitted by the presiding judge, may be used before questioning begins:

“Do you promise that the testimony you are about to give faithfully and truthfully conforms to the facts and rules of the mock trial competition?”

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate that all witnesses are to be sworn in collectively at the start of the competition, or the above oath will be conducted by the presiding judge upon the calling of each witness. The presiding judge shall indicate which method will be used during any given round of the Mock Trial Competition. Witnesses must stand during the oath unless physically unable to do so.

Rule 15. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and (optional) Re-direct Exam (20 minutes total per side)
3. Cross and (optional) Re-cross Exam (15 minutes total per side)
4. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff is the first to present the opening statement and give the closing argument. The Prosecution/Plaintiff may reserve a portion of the time allotted for closing argument to present a rebuttal. Rebuttal is limited to the scope of the opposing side’s argument. The Defendant shall not be permitted rebuttal during closing argument.

The time allotted for examination of the witnesses is the combined time for all three witnesses. Teams may allocate their available time between each witness and between direct/re-direct or cross/re-cross examination as they choose. Extensions of time may be granted as set forth in Rule 17. If a team fails to present direct examination of a witness, that team will receive zero (0) points for that round for both the attorney and the witness; the cross-examining attorney will receive the average score of the other cross-examining attorneys. If a team fails to present a cross-examination because their time for cross-examination has expired, that team will receive zero (0) points for that attorney.

Rule 16. Timekeeping

Time limits are mandatory and will be enforced. Where possible, teams will be permitted to have one additional student at the table with the attorneys. This student must be a team member but need not be a witness in that particular match. This person may serve as a student timekeeper, but may not consult with the student attorneys other than to convey available time. Student timekeepers are not considered “official timekeepers” in the tournament. In criminal trials, the timekeeper may be the Defendant if the team so chooses, but teams will not be allowed an additional timekeeper at the table in addition to the Defendant. Time for objections, extensive questioning from the judge, or

administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for the introduction of exhibits.

Rule 17. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. Teams will not be given additional time during opening or closing arguments for failure to budget time properly, though the attorney will be allowed to conclude his or her argument. A team that runs out of time during either direct or cross examination of witnesses may request a two minute extension of time. Extensions of time will be granted only in two-minute increments and are at the discretion of the presiding judge. A team requesting an extension of time will be assessed a penalty of three (3) points against that team's overall score for each extension of time granted; the penalty will be recorded in the "penalty" section of each judge's score sheet. There is no limit to the number of extensions that may be requested; however, a three (3) point penalty will be assessed for each extension granted.

Rule 18. Prohibited Motions

Except as provided in these Rules, no motions may be made. (A motion for directed verdict, acquittal, or dismissal of the case at the end of the Prosecution's case, for example, may not be used.) A motion for a recess may be used in the event of an emergency (e.g., health emergency). To the greatest extent possible, team members are to remain in place. Should a recess be called by the court, teams are not to communicate with any observers, timekeepers, coaches, or instructors during the recess.

Rule 19. Sequestration

Teams may not sequester or exclude witnesses belonging to the other team.

Rule 20. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should normally be conducted in such a manner that all participants, scoring judges, instructors, alternates, and other courtroom observers can hear the arguments and discussions in their entirety. This Rule is designed to further the educational interests of the Alaska High School Mock Trial Competition. Bench conference time shall not be counted against the time allotted to either team.

Rule 21. Supplemental Materials/Illustrations/Demonstrative Displays

Teams may refer to and use as exhibits only the materials included in the trial packet. No illustrations of any kind may be used, unless they are provided in the case packet. Absolutely no props or costumes are permitted unless they are authorized specifically in the case materials.

Students will be permitted to make enlargements of the materials in the case packet, including the provided exhibits, for use at trial. Students may also create for use at trial demonstrative displays containing timelines or quotations from affidavits or case exhibits, provided these demonstrative displays quote exactly the source material or are directly supported by the case materials. Demonstrative displays may be objected to as to their accuracy. Demonstrative displays may not be admitted as exhibits. If an enlargement of an exhibit or demonstrative display is used, it must be displayed in a manner easily observable to all trial participants and must remain so displayed for the duration of its use.

Rule 22. Trial Communication

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This Rule remains in force during any recess time that may occur during

the course of the trial. Team attorneys may communicate with each other during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' own timekeepers shall not be considered a violation of this Rule. Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Witnesses must remain outside the bar except when called to the stand. Only team attorneys participating in a round and a designated timekeeper may sit inside the bar during that round.

Rule 23. Viewing a Trial

Each team is responsible for the conduct of its members and persons associated with the team throughout the duration of the mock trial competition. Team members, alternates, attorney-coaches, teacher-sponsors, parents, and any other persons directly associated with a mock trial team may view their team competition, but otherwise, except when specifically authorized by the competition coordinators, are not allowed to view other teams in the competition.

Nothing may be brought into the courtroom which would tend to reveal the identity of the participating teams. Spectators should be cautioned that they may not wear school logos or insignias. School-owned equipment should have all identifying marks covered.

Viewing of the competition by members of the public shall be allowed so long as it does not disrupt the conduct of the trial. All persons in the courtroom shall show respect for the conduct of the proceedings.

Rule 24. Videotaping/Photography/Audiotaping

Any team may videotape or audiotape a competition round in which it participates for its own educational purposes only. With the consent of an opposing team, any team may videotape or audiotape a competition round for any other purpose. Bright camera lights, flash bulbs and equipment tending to distract the competitors may be barred in the discretion of the presiding judge. Disruptive conduct in the course of taping, filming, or taking photographs is prohibited, and may result in a penalty against the team responsible for the conduct of the offending photographer.

If school owned equipment is employed for video or audiotaping, identifying information must not be visible on such equipment.

Media coverage will be allowed in accordance with the policies of the competition coordinators. Competition coordinators will be permitted to photograph or otherwise record the competition for promotional purposes. Students may be provided releases so that images can be used in public display.

## **D. JUDGING**

Rule 25. Decisions

All decisions of the judges regarding scoring are FINAL.

Rule 26. Composition of the Judging Panel

The judging panel will consist of individuals determined to be eligible by the competition coordinators. Generally, the competition judges are members of the Alaska judiciary (including law clerks) or attorneys practicing in Alaska. Qualified educators, paralegals, and other persons may also be invited by the competition coordinators to participate as Mock Trial judges. The composition of the judging panel and the role of the presiding judge will be at the discretion of the competition coordinators. For preliminary rounds, one presiding judge and two additional scoring judges will be appointed by the competition coordinators to judge the round. The final

(championship) round may have a larger judging panel than preliminary rounds, at the discretion of the competition coordinators.

All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing as to the case, the role of judges, and the standards to be applied. These materials will not be available to the team members.

Rule 27. Scoresheets

The presiding judge and each additional scoring judge shall complete a “scoresheet” for each trial conducted in each round of the competition. Judges’ scoresheets will be substantially like the sample provided by the competition coordinators to each team. When evaluating the teams that each judge observes in the competition, the judges will reference the teams only by their assigned identification codes.

Scoresheets are to be completed individually by the judges and without consultation with the other judges. Scoring judges are not bound by the rulings of the presiding judge. While the judging panel may confer within guidelines established by the competition coordinators, the judging panel should not deliberate on individual scores. Judges are to evaluate students on the basis of the criteria contained in these Rules and the guidelines printed on the back of the scoresheet.

There will be a space on the scoresheet for judges to deduct points at their discretion if a team exhibits poor courtroom etiquette or makes excessive unwarranted objections. At the option of the competition coordinators, there may be a mechanism for awarding certificates of recognition based on individual performance.

Rule 28. Completion of Scoresheets

Score sheets are completed by the judges as follows:

1. Trial Points:  
Each judge will award and record a number of points for each aspect of the trial. Points will be awarded from a scale of 1 to 9, with 9 being the highest. Judges are required to complete the scoresheets in their entirety.
2. Final Point Total:  
A team is determined to be the winner of a round when that team wins a majority of the points cast by the judges scoring a given trial. If the opposing teams for a given round each receive the same number of points for that trial, the competition coordinators shall consider the judges’ determinations of tiebreaker points, as provided in the tiebreaker box on each score sheet.
3. Bonus Points:  
The Mock Trial Committee may decide to award a bonus per score sheet to the team that wins that score sheet. The Committee will announce well in advance of the Competition whether a bonus will be awarded, and if so what the amount of the bonus will be.

A forfeiting team will receive a loss for purposes of ranking. If a trial cannot continue due to forfeiture, the non-forfeiting team shall be considered to have won by default. A non-forfeiting team will not be penalized in ranking by any inability to receive points from scoring judges. The non-forfeiting team will be awarded the average number of points from its remaining rounds.

Rule 29. Team Advancement

Teams will be ranked based on the total number of points received for all rounds. If a semi-final round is to be held, the team with the most points will face the team with the fourth most points, and the team with the second most points will face the team with the third most points. In the semi-final round, the team with the greater number of points in the preliminary round will get to choose which side to represent.

If no semi-final round is held, the two teams emerging with the greatest number of points from the preliminary rounds will advance to the final round. If a semi-final round is held, the two teams who emerge victorious from their respective match-ups will face off in the final round. Sides in the final round, regardless of how the teams are selected, will be determined based upon the number of points the teams received during the preliminary rounds. The team that received the higher number of points during the preliminary rounds will be permitted to choose the side it wants to present during the final round.

In the unlikely event of a tie in determining placement, the advancing team(s) will be determined by the overall win-loss record in the preliminary rounds, then if necessary by head-to-head competition (if any) between the tied teams, and finally by the total number of highest scores (9 out of 9) on all score sheets combined.

Scoresheets from only the championship round will determine the Alaska State Mock Trial Championship Team. In the final round, and only in the final round, each scoresheet will count as one vote, with the team that receives the higher score for that scoresheet being awarded that judge's vote. The team that receives the most votes will be declared the Alaska State Mock Trial Championship Team. If an even number of judges score the final round and the votes of the judges are split, only then will the scores of the judges be combined to determine the winner of the competition.

Rule 30. Selection of Opponents for Each Round

A random lottery will be conducted prior to the competition for the purpose of assigning team identification designations. The schedule governing the assignment of opponents will designate which team is to present the Prosecution/Plaintiff's case and which is to present the Defense/Defendant's in each round. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Every effort will be made to ensure that each team will present each side twice, but all teams will be scheduled to present each side of the case at least once. Individual teams will be sent their schedule by the Tuesday before the competition. Coaches should immediately notify the competition coordinators of any scheduling conflicts.

Rule 31. Merit Decisions

Judges will make a ruling on the legal merits of the trial after deliberating. This determination shall be made independent of the scores awarded to each team. During the debriefing process, judges may inform students of the verdict on the merits of the case. Judges may not inform the students of scoresheet results.

Rule 32. Effect of Bye

A "bye" becomes necessary when an odd number of teams are present for the tournament or if necessitated by scheduling conflicts. If it becomes necessary to schedule a team for a bye, an additional round will be scheduled, during which those teams receiving a bye will compete against each other. Any team receiving a bye must not observe other teams competing during the round in which the bye was drawn.

## **E. DISPUTE SETTLEMENT**

### **Rule 33. Reporting a Rules Violation**

Disputes which (a) involve students competing in a competition round and (b) occur during the course of a trial must be filed immediately upon conclusion of the trial. Disputes may be brought exclusively by a team's official faculty advisor or attorney coach. Such disputes must be made promptly to the competition coordinators, who may ask the complaining party to state the complaint in writing. The competition coordinators will investigate the complaint and seek a response from the advisor or attorney coach of the team against which the violation is alleged. If a rules violation is found to have occurred, the competition committee will determine the appropriate remedy or punishment. These remedies include, but are not limited to, a warning to the offending team, a deduction of points from the offending team's score, or disqualification from the round in which the offense occurred.

### **Rule 34. Reporting Rule Violations During Trial**

Rule 33 does not preclude students from identifying potential rule violations to the presiding judge during the trial in an attempt to prevent a violation from arising. In such instances, the presiding judge shall consult the competition rules and issue a warning to the offending team if it is determined that a rule violation is occurring. If the violation persists or if it is of such a serious nature as to substantially affect the conduct of the trial, the presiding judge and scoring judges may assess penalty points against the offending team in an amount at their discretion. Except in cases where the rules violation will substantially affect the conduct of the trial, students are encouraged to allow faculty advisors and attorney coaches to address rule violations per Rule 33 as opposed to addressing them at trial.

## **F. CONDUCT INITIATING THE TRIAL**

### **Rule 35. Team Roster**

Copies of the team roster must be completed and duplicated by each team prior to arrival for trial. Teams must be identified ONLY by the code assigned at registration. No information identifying a team's city or school of origin should appear on the form or any materials brought into the courtroom. Before beginning a trial, the teams must exchange copies of the Team Roster Form. Copies of the Team Roster Form should also be made available to the judging panel before each round.

### **Rule 36. Stipulations**

When the Court asks the Prosecution/Plaintiff if it is ready to proceed with opening statements, the attorney assigned the opening statement should offer the stipulations into evidence.

### **Rule 37. The Record**

The stipulations, indictment, and jury instructions, if any, will not be read into the record at trial. However, all such documents will be considered as part of the record and as governing the legal framework of the case. Students should assume that the judges are familiar with these documents.

### **Rule 38. Jury Trial**

The case will be tried to a jury consisting of the scoring judge(s), who shall serve as the official timekeeper(s). Arguments are to be made to the judge and jury. Teams may address the

scoring judges and any other persons permitted by the presiding judge to sit in the jury box as the jury. However, students may at any time also inquire of the jury member in his or her role as timekeeper of the remaining available time for that portion of the trial.

Rule 39. Standing During Trial

Unless excused by the presiding judge or physically unable to do so, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections. Attorneys may request permission of the presiding judge to walk around the courtroom during their presentation but may not do so until permitted.

Rule 40. Objection During Opening Statement/Closing Argument

No objections may be raised during opening statements or during closing arguments. If a team believes an objection would have been necessary during the opposing team's closing argument, a student attorney, following the arguments, may seek to be recognized by the presiding judge and may say "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that \_\_\_\_\_." The presiding judge need not rule on this "objection." The presiding judge may, at his or her discretion, permit rebuttal by the opposing team. Presiding and scoring judges will weigh the "objection" individually. It is recommended that students cite Mock Trial Rule 40 if making an objection to an opening statement or closing argument.

## **G. PRESENTING EVIDENCE**

Rule 41. Argumentative Questions

An attorney shall not ask argumentative questions, except that the Court, may, in its discretion, allow limited use of argumentative questions on cross-examination.

Rule 42. Establishing Proper Predicate/Foundation

Attorneys shall lay a proper foundation prior to moving for the admission of evidence. After a motion for the admission of evidence has been made, the exhibits may still be objected to on other grounds. Objections not made upon an attempt to admit evidence as an exhibit will be considered waived. All exhibits contained in the problem materials are to be considered accurate reproductions of the item or document in question and may not be challenged on the basis of authenticity. Other grounds for challenging admission of exhibits are permissible.

Rule 43. Procedure for Introduction of Exhibits

The following steps are *examples* by which evidence may be effectively introduced:

1. All evidence will be pre-marked as exhibits. For the sake of the presiding judge and jury, the students should identify the page in the problem materials on which the exhibit appears.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. \_\_\_?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. \_\_\_ for identification."
6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.

8. Offer the exhibit into evidence.
9. Court: “Is there an objection?” (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: “No, your Honor,” or “Yes, your Honor.” If the response is “yes”, the objection will be stated on the record. Court: “Is there any response to the objection?”
11. Court: “Exhibit No. \_\_\_\_ is/is not admitted.”

**Rule 44. Admission of Expert Witnesses**

If a team wishes to admit a witness as an expert in a particular area of knowledge, the attorney performing the direct examination must establish foundation to the satisfaction of the presiding judge for admission as an expert. Voir dire by the opposing attorney will not be allowed, but the opposing attorney may object that insufficient foundation has been laid to qualify the witness as an expert in the field asserted.

**Rule 45. Use of Affidavits**

Affidavits may not be independently introduced as evidence, but may be used for impeachment purposes or to refresh a witness’s memory. Affidavits for witnesses not called to testify may not be introduced to the court except as necessary to demonstrate foundation for the statements of a different witness. Quotations from affidavits may be used as part of a demonstrative display, but are not by this use admissible as evidence.

**Rule 46. Use of Notes**

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally (in a volume that does not disturb the conduct of the trial) or through the use of notes.

**Rule 47. Use of Exhibits in Examining Witnesses**

All examinations of witnesses, including re-direct and re-cross examinations are permitted to use exhibits previously introduced by the other party or introduced by the examination of other witnesses, provided that any examinations conform to the restrictions in Rule 611(d) in the Modified Rules of Evidence (Mock Trial Version).

## **H. CLOSING ARGUMENTS**

**Rule 48. Scope of Closing Arguments**

Closing arguments must be based on the actual evidence and testimony presented during the trial. Students in closing arguments should address the applicable legal standards necessary to prevail at trial. Attorneys may not cite to affidavits of witnesses not called at trial.

## **I. CRITIQUE**

**Rule 49. The Critique**

If time permits, the judging panel may offer critiques to the participants. Judges will not reveal the scores attributed by them to individual performances, nor will they reveal which team was the winner of the round on the score sheets. The judges may announce the winner of the case on the merits and may discuss or comment upon the presentations in furtherance of the educational interests of the Alaska High School Mock Trial Competition.

## **II. MODIFIED RULES OF EVIDENCE** (Alaska Mock Trial Version)

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. 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 will probably allow the evidence. The burden is on the mock trial team to know the Rules of Evidence (Alaska Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses. For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Alaska and Federal Rules of Evidence and their (shared) numbering system. When rule numbers or letters are skipped, those rules were deemed not applicable to mock trial procedure. Text in italics, other than topic headings, represents simplified or modified language from the Alaska and Federal Rules of Evidence. Departures from the actual Federal Rules of Evidence are for informational purposes only. These Rules of Evidence are to be interpreted as written.

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate. The Mock Trial Rules of Competition and these Rules of Evidence (Alaska Mock Trial Version) govern the Alaska High School Mock Trial Competition.

### **Article I. General Provisions**

#### **Rule 101. Scope**

*These Rules of Evidence (Alaska Mock Trial Version) govern the trial proceedings of the National Mock Trial Championship.*

#### **Rule 102. Purpose and Construction**

*The Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.*

### **ARTICLE II. Judicial Notice**

#### **Rule 201. Judicial Notice of Fact**

(a) *Scope of Rule.* This rule governs only judicial notice of facts. Judicial notice of a fact as used in this rule means a court's on-the-record declaration of the existence of a fact normally decided by the trier of fact, without requiring proof of that fact.

(b) *General Rule.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within this state or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) *When Discretionary.* A court may take judicial notice as specified in subdivision (b), whether requested or not.

Rule 202. Judicial Notice of Law

(a) *Scope of Rule.* This rule governs only judicial notice of law.

(b) Without request by a party, the court shall take judicial notice of the common law, the Constitution of the United States and of this state, the public statutes of the United States and this state, the provisions of the Alaska Administrative Code, and all rules adopted by the Alaska Supreme Court.

**ARTICLE III. Presumptions**

Rule 301. Presumptions in General in Civil Actions and Proceedings

(a) *Effect.* In all civil actions and proceedings when not otherwise provided for by statute, by judicial decision or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. The burden of going forward is satisfied by the introduction of evidence sufficient to permit reasonable minds to conclude that the presumed fact does not exist. If the party against whom a presumption operates fails to meet the burden of producing evidence, the presumed fact shall be deemed proved, and the court shall instruct the jury accordingly. When the burden of producing evidence to meet a presumption is satisfied, the court must instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proved fact, but no mention of the word “presumption” may be made to the jury.

(b) *Prima Facie Evidence.* A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) *Inconsistent Presumption.* If two presumptions arise which conflict with each other, the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded.

Rule 303. Presumptions in General in Criminal Cases.

(a) *Effect.*

(1) *Presumptions Directed Against an Accused.* In all criminal cases when not otherwise provided for by statute, by these rules or by judicial decision, a presumption directed against the accused imposes no burden of going forward with evidence to rebut or meet the presumption and does not shift to the accused the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. However, if the accused fails to offer evidence to rebut or meet the presumption, the court must instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proved fact, but no mention of the word “presumption” shall be made to the jury. If the accused offers evidence to rebut or meet the presumption, the court may instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proved fact, but no mention of the word “presumption” shall be made to the jury.

(2) *Presumptions Directed Against the Government.* In all criminal cases when not otherwise provided for by statute, by these rules, or by judicial decision, a presumption directed against the government shall be treated in the same manner as a presumption in a civil case under Rule 301.

(b) *Prima Facie Evidence.* A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) *Inconsistent Presumptions.* If two presumptions arise which conflict with each other, the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded.

#### **ARTICLE IV. Relevancy and its Limits**

##### **Rule 401. Definition of “Relevant Evidence”**

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

##### **Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible**

Relevant evidence is admissible, except as otherwise provided *in these Rules*. *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 its probative value is outweighed by the danger of unfair prejudice, *if it confuses the issues, if it is misleading, or 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**

(a) *Character Evidence* – Evidence of a person’s character or a *character trait*, is not admissible to prove *action regarding* a particular occasion, except:

(1) *Character of Accused* – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

(2) *Character of Victim* – Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

(3) *Character of witness* – Evidence of the character of a witness as provided in Rules 607, 608, and 609.

(b) *Other crimes, wrongs, or acts* – Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

##### **Rule 405. Methods of Proving Character**

(a) *Reputation or opinion* – In all cases in which evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, *questions may be asked regarding* relevant specific instances of conduct.

(b) *Specific instances of conduct* – In cases in which 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. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

When measures are 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 event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose; such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 410. Inadmissibility of Pleas, Pleas Discussions, and Related Statements

Except as provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of *nolo contendere*;
- (3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in presence of counsel.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias, or prejudice of a witness.

**Article V. Privileges**

Rule 501. Privileges Recognized Only as Provided

Except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, or by these or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:

- (1) refuse to be a witness; or
- (2) refuse to disclose any matter; or
- (3) refuse to produce any object or writing; or
- (4) prevent another from being a witness or disclosing any matter or producing any object or writing.

## Article VI. Witnesses

### Rule 601. General Rule of Competency

Every person is 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*. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

### Rule 607. Who may Impeach

(a) Subject to the limitation imposed by these rules, the credibility of a witness may be attacked by any party, including the party calling the witness.

(b) Evidence proffered by any party to support the credibility of a witness may be admitted to meet an attack on the witness' credibility.

### Rule 608. Evidence of Character and Conduct of Witness

26. (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, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination with respect to matters related only to credibility.

### Rule 609. Impeachment by Evidence of Conviction of Crime (this rule applies only to witnesses with prior convictions)

(a) *General Rule* – For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused had been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) *Time Limit* – Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However,

evidence of a conviction more than 10 years old as calculated herein is not admissible unless *the Court determines that probative value of the conviction outweighs its prejudicial effect.*

(c) *Effect of pardon, annulment, or certificate of rehabilitation* – Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

Rule 610. 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.

Rule 611. Mode and Order of Interrogation and Presentation

(a) *Control by Court* – The Court shall exercise reasonable control over *questioning* of witnesses and presenting evidence so as to (1) make the *questioning* and presentation effective for ascertaining the truth, (2) to avoid needless use of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of cross-examination* – *The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement or affidavit, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement or affidavit that are otherwise material and admissible.*

(c) *Leading Questions* – Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

(d) *Redirect/Recross* – *After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.*

Rule 612. Writing Used to Refresh Memory

*If a written statement is used to refresh the memory of a witness before or during the witness's testimony, the Court shall determine that the opposing party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.*

Rule 613. Prior Statement of Witnesses

*Examining witness concerning prior statement* – In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

*Extrinsic evidence of prior inconsistent statement of witness* – Extrinsic evidence of prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

## **Article VII. Opinions and Expert Testimony**

### **Rule 701. Opinion Testimony by Lay Witness**

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, training, or education, may testify in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. *A witness shall not be permitted to testify as an expert until designated by the Court as an expert. An expert witness shall only be considered an expert in the fields designated by the Court, as requested by the party seeking expert designation.*

### **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 hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

### **Rule 704. Opinion on Ultimate Issue**

(a) *Opinion or inference testimony* otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.

(b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

### **Rule 705. Disclosure of Facts or Data Underlying Expert Opinion**

The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

## **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 a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) *Statements which are not hearsay* – A statement is not hearsay if:

(1) *Prior statement by witness* – The declarant testifies at the trial or hearing 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 a deposition, or (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; or

(2) *Admission by a party-opponent* – The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (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 in furtherance of the conspiracy.

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 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.

(2) *Excited utterance* – A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(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 unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) *Statements for purpose of medical diagnosis or treatment* – Statements made for the purpose of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

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

(6) *Business Records* – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. 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) *Absence of Record* – Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of subdivision (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a

kind which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Public Records and Reports* – Records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

(9) *Records of Vital Statistics* – Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) *Absence of Public Record or Entry* – To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, ... that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) *Records of Religious Organizations* – Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Marriage, Baptismal, and Similar Certificates* – Statements of facts contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family Records* – Statements of fact concerning personal or family history contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings and urns, crypts, or tombstones, or the like.

(14) *Records of Documents Affecting an Interest in Property* – The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) *Statements in Documents Affecting an Interest in Property* – A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in Ancient Documents* – Statements in a document in existence twenty years or more the authenticity of which is established.

(17) *Market Reports, Commercial Publications* – Market quotations, tabulations, lists, directories, codes, standards, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) *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.

(21) *Reputation as to character* – Reputation of a person's character among associates or in the community.

(22) *Judgment of previous conviction* – Evidence of a judgment *finding* a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

(23) *Other exceptions* – A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact; (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (c) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence.

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 his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) establishes a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), (4), or (5), of this rule, his attendance or testimony) by reasonable means including process.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose 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 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.* 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 his 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, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (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) *Other Exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

## EVALUATION GUIDELINES

The competition judges are given instructions on how to evaluate the performance of participating teams and individuals. The following guidelines, as well as additional instructions contained on the scoresheets, are included in the material provided to the competition judges. Participating teams may assume that the winning team will excel in the following ways:

**ATTORNEYS: DEMONSTRATED SPONTANEITY:**

- in response to witnesses and/or the court;
- in the overall presentation of the case; and
- in making and responding to objections.

**DEMONSTRATED COMMAND OF THE FACTS AND ISSUES**  
in the case and attorney's understanding of the relevant points of law.

When examining witnesses, attorney **PHRASED QUESTIONS PROPERLY** and demonstrated a clear understanding of trial procedure and the simplified rules of evidence used for the mock trial competition.

The attorney's questions:

- were clearly stated, concise, and to the point;
- resulted in straightforward answers from the witness;
- brought out information important to the case; and
- brought out contradictions in testimony.

Opening statements and closing arguments were **ORGANIZED AND WELL-REASONED** presentations, with the closing argument emphasizing the strengths of the attorney's own side and addressing the flaws exposed by the opposing attorneys during trial.

**WITNESSES:** Testimony was **CONVINCING** and characterizations were **BELIEVABLE** and **CONSISTENT** with the affidavits and character descriptions. **PREPARATION** and **SPONTANEITY** were evident in the manner witnesses handled questions posed to them by the attorneys.

**TEAMS:** Courtroom **DECORUM AND COURTESY** by all team members and coaches were observed. Affiliated observers were not disruptive. All participants were **ACTIVE** in the presentation of the case.

2010-2011 ALASKA HIGH SCHOOL  
MOCK TRIAL CHAMPIONSHIP COMPETITION  
(Anchorage, December 3-4, 2010)

**TEAM REGISTRATION FORM**  
(Please CLEARLY print name and contact information)

School (Organization) Name: \_\_\_\_\_

Team Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Teacher or other School Advisor: \_\_\_\_\_

Advisor Contact Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Advisor FAX Number: \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

Attorney Coach: \_\_\_\_\_

Coach Contact Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Coach FAX Number: \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

Student Team Members (Please print names in block lettering)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS IS TEAM NUMBER \_\_\_\_\_

Each team must have a minimum of six student members. No team may have more than nine members, including alternates. The assistance of attorney coaches is recommended, but not mandatory. Schools wishing to register more than one team may designate the same teacher or other school sponsor as the official school advisor. A different registration form must be submitted for each team. Any school wishing to register multiple teams **MUST** indicate which team is the "First Team," "Second Team," etc. **All teams must be registered no later than Friday, November 19, 2010.**

TO REGISTER A TEAM, PLEASE RETURN THIS FORM WITH THE REGISTRATION FEE OF \$150 PER TEAM TO:

ALASKA HIGH SCHOOL MOCK TRIAL  
P.O. BOX 100844  
ANCHORAGE, ALASKA 99510-0844

**Please also either fax a copy of the registration form to 866-813-8645 or email it to [alaskamocktrial@gmail.com](mailto:alaskamocktrial@gmail.com).**