
# 2017 NATIONAL STUDENT TRIAL ADVOCACY COMPETITION (STAC)

## OFFICIAL RULES

## and

## FACT PATTERN

**Endowed by Baldwin & Baldwin, LLP**

## Important Dates:

Requests for fact pattern clarification due: January 13, 2017
Team Participant Registration due (students must be AAJ members): February 3, 2017
Regional Competitions: March 9 – 12, 2017
National Final Competition: March 30 – April 2, 2017

AAJ's 2017 Fact Pattern is authored by A. Michael Gianantonio of Pittsburgh, PA. AAJ extends its thanks and appreciation to Mr. Gianantonio for developing the 2017 Fact Pattern. AAJ also extends its thanks and appreciation to our STAC co-chairs Lauren Barnes, Maria Glorioso, and Fred Schultz.



**Please note:**

Information regarding the 2017 Student Trial Advocacy Competition is available at www.justice.org/STAC and will be updated frequently.

**All questions and correspondence should be addressed to:**

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American Association for Justice
*Formerly the Association of Trial Lawyers of America (ATLA®)*
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STAC@justice.org

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## GENERAL INFORMATION

One of AAJ's goals is to inspire excellence in trial advocacy through training and education for both law students and practicing attorneys. One way AAJ accomplishes this goal is by sponsoring a national student mock trial competition. This is an exceptional opportunity for law students to develop and practice their trial advocacy skills before distinguished members of the bar and bench.

Because the purpose of this competition is to give law students the opportunity to develop their trial skills, the actual merits of the plaintiff's case and the defendant's case presented are irrelevant to this purpose. Competition rounds are decided not on the merits of a team's side but on the quality of a team's advocacy.

### Requests for Clarification

Requests for clarifications of the rules or fact pattern must be submitted via an online survey no later than 5:30 p.m. (EST) on January 13, 2017. A link to the survey will be posted online at www.justice.org/STAC after the fact pattern is released. *Each school is limited to five (5) questions.* No school, regardless of the number of teams it has in the competition, may submit more than five questions. Each subpart of a question is counted as a question.

## RULE VIOLATION AND FILING OF COMPLAINTS

A competitor or coach violating any of the rules governing the national Student Trial Advocacy Competition may be penalized or disqualified. If a team wants to file a complaint under the rules, the team's coach should immediately notify the regional coordinator at a regional competition or the final round coordinator at the final competition. The coordinator will review the complaint and make a ruling, which shall be binding for that round of competition. The coordinator's rulings will be governed by the rules of the competition and the objectives of the program.

Complaints after a regional competition or after the national competition must be filed in writing with Kara Yoh at the address on page 2 no later than the seven (7) days following the last day of the regional or final round, as appropriate. The AAJ Law Student Services Committee will promptly consider and rule on any such complaints.

## LAW SCHOOL AND STUDENT ELIGIBILITY

The competition is open to all law schools nationwide. A law school may enter up to two teams. Each team shall be comprised of four law students. A school's selection method of its trial team(s) is left for the school to determine. However, for a student to be eligible, he or she must be enrolled for a J.D. degree and be a law student member of AAJ.

Students who graduate in December 2016 are eligible to participate only if the competition counts toward their credits for graduation and they will not be admitted to practice prior to March 2017.

*Each student participant must be an AAJ student member by February 3, 2017 in order to participate.*

## REGISTRATION PROCEDURES

### Refund Policy

Requests for a refund of a school's registration fee were due in writing before November 13, 2016. It is inevitable that a few teams drop out of the competition in the months leading up to the regionals. Teams placed on the waiting list because the competition is full will be contacted for participation in the order that their registrations were received. Teams on the waiting list will also be issued a refund check if it is determined that the team will not be competing. Schools that registered two teams but are only able to enter one team because the competition is full will receive a refund of the registration fee for the second team.

### AAJ Law Student Membership and Student Team Registration

Student team members must be AAJ members by February 3, 2017 in order to participate. This year, all students must verify their membership and register for their respective team online at www.justice.org/STACParticipantRegistration. AAJ Law Student membership dues are $15. If you have any questions about AAJ's law student membership, or if you have any trouble becoming a member online, please call AAJ's member hotline at (202) 965-3500, ext. 8611. If you have any questions about registering as a STAC team member, please call Kara Yoh, STAC Manager, ext. 3502.

### Coach Registration

AAJ must receive the names of the coach for each team. A coach must accompany each team to the regional competitions. A coach may be a law student, but may not be a student who is competing in the competition. Coaches do not need to be members of AAJ, and should not register for the STAC event. Coaches, and other administrators traveling with the team, must complete an online survey listing the team coach that will be travelling with the team by February 3, 2017. This is the information that will be sent to the regional coordinators to communicate logistics onsite.

### Student Substitution Policy

Substitution of team members after February 3, 2017 is not permitted except in the case of personal emergencies. Requests for substitution after the February 3 deadline must be made in writing with an explanation of why the substitution is needed and sent to Kara Yoh at AAJ for consideration. These requests can be made to STAC@justice.org.

## REGIONAL AND FINAL COMPETITION ASSIGNMENTS

Entering teams will be assigned to one of 14 regional competitions based on geographical convenience *to the extent possible*. Teams from the same law school will be assigned to the same region. If a school's second team is waitlisted, there is no guarantee that second team will be sent to the same region as the first team. Teams will be notified of any date changes when regional assignments are made. Please remember that a school's second team will not be officially registered until one team from each law school has entered the mock trial competition. Then the second teams will be registered on a first-come, first-served basis until all the team slots are filled. If you paid for two teams and only one team is able to participate, you will receive a refund for the second team.

In order to officially compete in the competition, a team **must** receive its regional assignment. If a team is not informed by AAJ that it is able to compete, that team is not registered for the competition.

### Coaches

A coach must accompany each team to the regional and the final competitions. The coach for a team that goes to the final competition does not have to be the person who coached the team at the regional competition.

A coach may be a law student, but may not be a student who is competing in the competition.

*Only team coaches are permitted to attend the coaches' meeting*. If a coach is unable to attend, he or she must notify AAJ and the regional coordinator. Only then can students be permitted to attend in the coach's absence.

### Team Expenses

Travel expenses for the regional and final competitions are the responsibility of the participants. Teams competing in past competitions have obtained funds from law school deans and alumni associations, members of the local legal community, state and local trial associations, and AAJ law school chapters.

## COMPETITION FORMAT

This is a trial skills competition. There is no motion or trial brief writing component. Each team will consist of four law students. Two students will be advocates and two students will play the witnesses for their side in each round. Advocates and witnesses may change their roles from round to round, but roles must remain consistent throughout each individual trial.

**In the regional competitions:**

- Each team will compete in three qualifying rounds
- The top four teams from the qualifying rounds will advance to a single elimination semifinal round
- The top two teams from the semifinal round will advance to a single elimination final round to determine which one team will advance to the National Final Competition

**In the final competition:**

- Each team will compete in three qualifying rounds
- The top eight teams from the qualifying rounds will advance to a single elimination quarter-final round
- The top four teams from the quarter-final round will advance to a single elimination semifinal round
- The top two teams from the semifinal round will advance to a single elimination final round

**Regional Team Pairings in Qualifying Rounds**

Pairing of teams in the qualifying rounds will be at random and conducted during the coaches' meeting prior to each competition. Teams may also be pre-assigned by the regional coordinator prior to the coaches' meeting; this practice is at the discretion of the regional coordinator. Each team will represent both plaintiff and defendant in the first two rounds. No two teams shall compete against each other more than once in the qualifying rounds. Teams from the same school will not compete against each other during any of the rounds of the regional competition or in the qualifying rounds of the national final competitions.

**Team Rankings in All Other Rounds**

In the semifinal round, the first-ranked team will meet the fourth-ranked team, and the second-ranked team will meet the third-ranked team.

***Regional semifinal round*** (Normal pairings: 1 v. 4; 2 v. 3)

Situation 1: Teams ranked 1 and 4 are from the same school
New pairings: 1 v. 3; 2 v. 4

Situation 2: Teams ranked 2 and 3 are from the same school
New pairings: 1 v. 3; 2 v. 4

The ranking of teams to determine the semifinalists and finalists will be determined by the following factors (in this order):

1. Win/loss record
2. Number of winning votes
3. Number of total points awarded to the team

Each succeeding criterion above will be used only if the prior criterion does not fully rank the teams, and will be used only to break ties created by the use of the prior criterion. In the event that all three of these criterion are tied, the regional coordinator will announce a tie-breaker.

If paired regional semifinal teams have met in the qualifying rounds, they will each represent different sides than in the previous meeting. If they have not yet met, each team will take the side they represented only once in qualifying rounds. If matched teams represented the same side only once, the winner of a coin toss will choose sides.

In the regional finals, the teams will represent a different side than in the semifinal round. If two opposing teams each represented the same side in the semifinal round, the winner of a coin toss will choose sides. The two regional finals teams will represent a different side than in the semifinal round. If matched teams in the final round represented the same side in the semifinal round, the winner of a coin toss will choose sides.

When an odd number of teams compete at a regional competition, one randomly chosen team will receive a "bye" in each qualifying round. For ranking purposes, a bye will count as a win and the team with the bye will be deemed to have had three votes and the points equal to the average of the team's points from the two other qualifying rounds.

***NATIONAL FINALS***

***Quarter-final round*** (Normal pairings: 1 v. 8; 2 v. 7; 3 v. 6; 4 v. 5)

Situation 1: Teams ranked 1 and 8 are from the same school
New pairings: 1 v. 7; 2 v. 8; 3 v. 6; 4 v. 5

Situation 2: Teams ranked 2 and 7 are from the same school
New pairings: 1 v. 7; 2 v. 8; 3 v. 6; 4 v. 5

Situation 3: Teams ranked 3 and 6 are from the same school
New pairings: 1 v. 8; 2 v. 7; 3 v. 5; 4 v. 6

Situation 4: Teams ranked 4 and 5 are from the same school
New pairings: 1 v. 8; 2 v. 7; 3 v. 5; 4 v. 6

***Semifinal round*** (Normal pairings: 1 v. 4; 2 v. 3)

Situation 1: Teams ranked 1 and 4 are from the same school
New pairings: 1 v. 3; 2 v. 4

Situation 2: Teams ranked 2 and 3 are from the same school
New pairings: 1 v. 3; 2 v. 4

If teams from the same school are matched to compete based on rank in the semifinal and final rounds of a regional competition, regional hosts will re-pair teams according to the following scenarios:

**Determination of Team Representation**

If the four national and regional semifinal teams have already met in the qualifying rounds, they will represent different sides from the previous confrontation. If they have not yet met, each team will take the side they represented only once in qualifying rounds. If matched teams represented the same side only once, the winner of a coin toss will choose sides.

The national finals semifinal teams will represent a different side than in the quarter-final round. If matched teams represented the same side in the quarter-final round, the winner of a coin toss will choose sides. The two national final teams will represent a different side than in the semifinal round. If matched teams represented the same side in the semifinal round, the winner of a coin toss will choose sides.

## THE TRIAL

The competition this year involves the trial of a civil lawsuit. The same fact pattern will be used in the regional and final competitions. The trial judge previously ruled that the case would be bifurcated, and the case being tried in the competition is the first phase of the case—the liability phase. Only evidence relevant to the liability issue will be received. There are no pending third-party claims.

The Federal Rules of Evidence (FRE) and Federal Rules of Civil Procedure (FRCP) are the applicable rules of evidence and civil procedure. Only these rules, and the law provided in the fact pattern, shall be used in argument. Specifically, no statutory, regulatory, or case law shall be cited unless such law is provided in the fact pattern.

Students may argue based upon the comments or advisory notes to the Federal Rules of Evidence but may not cite the cases contained therein. No written briefs or motions, trial notebooks, or other written materials may be presented to the judge hearing a case.

No pretrial motions of any kind are allowed.

Motions for a judgment as a matter of law and evidentiary objections are permitted.

The trial will consist of the following phases by each team in this order:

- Opening statements for plaintiff followed by defendant
- Plaintiff's case-in-chief
    - Plaintiff's direct of plaintiff's witness #1
    - Defendant's cross of witness
    - Plaintiff's redirect of witness
    - Similar for plaintiff's witness #2
- Defendant's case-in-chief
    - Defendant's direct of defendant's witness #1
    - Plaintiff's cross of witness

    - Plaintiff's redirect of witness
    - Similar for defendant's witness #2
- Closing argument
    - Plaintiff's closing
    - Defendant's closing
    - Plaintiff's rebuttal closing

Each side is limited to two live witnesses whom they may call in any order.

- Plaintiff must call Bobby Daley and Bryce Summerstein.
- Defendant must call Tracey "Scooter" Simon and Quinn Noonan.

The trial has six (6) major advocacy opportunities for each team: opening statement; direct/redirect examinations (2); cross-examinations (2); and closing argument. Each member of a team must handle three of the six opportunities. Opening statement and closing argument may not be done by the same person, and may not be split between team members. Each team member must do a direct and cross.

During the competition, each team will represent both parties. Pairing in the qualifying rounds will be at random, with each team representing both plaintiff and defendant at least once in the three rounds.

Except in the final round, the courtrooms will be off-limits to all team members, coaches, friends, and family members who are not associated with either team competing, unless their team has already been eliminated from the competition.

No team may receive any coaching from anyone in any form during a round, including any recesses or breaks. The regional or national coordinator, as applicable, has the authority to punish any violation of this rule by disqualifying the team from the remainder of the competition.

A team may record its trial if: (1) no additional lighting is required; (2) recording of the trial does not interfere with or delay its conduct; and, (3) all participants of the round, including the presiding and scoring judges and the regional or national coordinator, as applicable, agree. All recordings are subject to the local courthouse policy and discretion.

**Timing of the Trial**

- Each team will have 80 minutes to complete its argument; time will be stopped during objections.
- The time limit will be strictly enforced, although it is not necessary that all time allotted be used.
- There will be no time limits for specific aspects of the trial.
- Time on cross-examination is charged against the team conducting the cross-examination.
- Time will be stopped for objections and responses to objections.
- Performance at trial will be evaluated by a panel of judges and/or attorneys, one of whom will preside over the trial as Judge, making rulings as necessary, and the remainder (up to three) of whom will act as the jury.

**Facts Outside the Record**

Advocates must confine the questions, and witnesses must confine their answers, to the facts given in the fact pattern and inferences which may reasonably be drawn therefrom, with the following qualifications:

(1) A reasonable inference is not any fact that a party might wish to be true; rather, it is a fact that is likely to be true, given all the facts in the case; and

(2) No inferred fact may be material, which is defined (a) as a fact that changes the merits of either side of the case or (b) that bears on the credibility of any witness or litigant. The latter is defined to include any background information about a witness or litigant.

Except during closing argument, no party may make an objection that the opposing team is going outside the record. Instead, a party may address instances of testimony outside the record by means of impeachment of the offending witness or by contradiction using another witness or document.

When true and if asked, witnesses must admit that the "facts" they have testified to are not in their deposition or otherwise in the record: "yes, I did not say that in my deposition." Witnesses may not qualify this response; for example, a witness may not say he or she was not asked about the issue at deposition or that the facts were contained in some portion of the deposition omitted from the record.

Like all officers of the court, coaches and team members must play fairly and ethically. This is a competition about trial advocacy skills—doing what you can with the facts provided and the witnesses in the courtroom. The coordinators will instruct the judges on the significance of impeachment efforts and that they may take unfair additions or changes to the record into account in their scoring of the witness's team.

**Witnesses**

Any witness may be played by a person of either gender. Before the opening statement, each team should notify the other team of the gender of each witness they intend to call and any witness they could call but are choosing not to call.

Expert witnesses are assumed to have access to and have read all documents in the fact pattern. A lay witness can only attest to his or her deposition and related exhibits.

All depositions are signed and sworn. The same attorney conducting direct examination of a witness shall also conduct any redirect examination.

The only lawyer who may object during witness testimony is the lawyer who will be examining that witness.

Witnesses may not be recalled. Witnesses will not be sequestered.

## JURY INSTRUCTIONS

The instructions provided in the fact pattern are the only instructions that will be given. The instructions are the only statements of the applicable substantive law. Instructions will not be eliminated or modified. No additional instructions may be tendered or will be given.

## EXHIBITS

The use of demonstrative evidence is limited to that which is provided in the fact pattern, but participants are free to enlarge any diagram, statement, exhibit, or portion of the fact pattern if it is identical to the item enlarged, or if any changes provide no advantage to the party intending to use it.

Subject to rulings of the court, counsel and witnesses may draw or make simple charts or drawings in court for the purpose of illustrating testimony or argument. These materials may not be written or drawn in advance of the segment during which they are being used.

No demonstrative evidence, including charts or drawings, may reflect facts outside the record. Participants must clear all demonstrative evidence with the regional or national coordinator, as applicable, at the coaches' meeting preceding the competition.

All exhibits are stipulated as authentic and genuine for purposes of trial.

## SCORING CRITERIA

Performances at trial will be evaluated by a panel of three judges and/or attorneys, one of whom will preside as the trial judge, with the others sitting as jurors. The trial judge will rule on any objections or motions for judgment as a matter of law.

Each member of the jury may award up to ten points in each phase of trial for each party. A sample score sheet is attached.

If at the end of the trial, an evaluator awards the same number of points to both the plaintiff and the defendant, the evaluator will award one additional point to either the plaintiff or the defendant for effectiveness of objections and/or overall case presentation in order to break the tie.

Evaluators have been instructed not to score teams on the merits of the case.

The following criteria for scoring trial performances are set forth to assist both judges and student advocates. Evaluators are not limited to these criteria and may consider other aspects of strategy, technique, and so forth, which they view as important.

### Evaluator Shortage

For each match, there must be three votes from evaluators. In the event that, due to circumstances beyond AAJ's control, there are not three evaluators in a particular match, "ghost" evaluator(s) will be used to score the round. The vote of a ghost evaluator is determined by calculating the average of all other evaluators in the session.

**Suggested Evaluation Criteria**

## OPENING STATEMENT

Did Counsel:

1. Generally confine statement to an outline of the evidence that would be presented?
2. Clearly present counsel's theory of the case?
3. Persuasively present counsel's theory of the case?
4. Personalize self and client?
5. Allow opposing attorney to make argument during opening statement?
6. Make unnecessary objections?

## EXAMINATION OF WITNESSES

Did Counsel:

1. Ask questions that generated minimal valid objections?
2. Make/fail to make objections with tactical or substantial merit?
3. Respond appropriately to objections?
4. Know the rules of evidence and express that knowledge clearly?
5. Develop rapport with the witness?
6. Maintain appropriate general attitude and demeanor?
7. Address the court and others appropriately?
8. Demonstrate awareness of ethical considerations?

Did Direct-Examiner:

9. Use leading questions unnecessarily?
10. Develop testimony in an interesting and coherent fashion?
11. Follow up on witness' answers?
12. Present the witness in the most favorable light?

Did Cross-Examiner:

13. Appropriately use leading questions?
14. Control witness?
15. Follow up on answers and elicit helpful testimony?
16. Use impeachment opportunities?

## CLOSING ARGUMENT

Did Counsel:

1. Present a cohesive theory of the case, pulling all the positive arguments together?
2. Deal effectively with the weakness(es) in his or her own case?
3. Make an argument that was persuasive?
4. Have an effective style of presentation?
5. Utilize the law effectively in the argument?
6. Inappropriately interrupt the argument of the opposing counsel?
7. Properly confine rebuttal to rebuttal matters?
8. Effectively counter the opponent's speech in rebuttal

**Discrepancies in Remaining Match Time**

Often, bailiffs are unavailable to keep time for rounds. In such cases, one or more judges in each match should be instructed to keep time according to the timekeeping rules.

Additionally, judges may ask the respective teams to assist with this process. Teams may also keep track of time used for their own purposes. They may not, however, report their time used or that of an opposing team to the bailiff or judge for any purpose, unless they were instructed to do so. Moreover, time use improperly reported by any team may not be considered or used by a bailiff or judge for any purpose.

Notwithstanding this limitation, in the event that the match judge or judges declare the time remaining as less than the team requires for closing or other parts of the trial, the coach or team member (whoever records the time discrepancy[1]) should immediately consult with the Regional Coordinator during the break, who should then evaluate the circumstances and decide the amount of time remaining. Neither the team coach nor the team member should discuss the discrepancy with the match judge. Should the team be unable to consult with the Regional Coordinator before completion of the trial and the team requires additional time to complete the trial, the team may elect to complete the trial beyond the time allotted. When the trial is complete, the time will be evaluated by the Regional Coordinator. The team will lose two points from the number of total overall points for that round (as tallied on the 'Trial Score Sheet') for every five minutes—or fraction thereof—of time in excess of its allotment.

**Viewing of Score Sheets by Teams**

Viewing of the score sheets is done at the discretion of the Regional Coordinator. Each team will have the right to view their score sheets for each round. Team coaches may only view score sheets once the third round has commenced. This should be done one team at a time. Participating students should be unaware of how they were scored until the qualifying rounds are completed, and the semi-final teams are announced. Teams are not allowed to take score sheets with them or make any markings to the score sheets. Teams may view score sheets only in the presence of the Regional Coordinator. If team coaches require a copy of their score sheets, they should notify the Regional Coordinator and email AAJ staff.

[1] Note that coaches and team members may not communicate during rounds

## 2016 STUDENT TRIAL ADVOCACY COMPETITION (STAC)
## JUDGE'S SCORE SHEET

Teams are to be scored on their trial skills only, NOT on the merits of the case.

**Do not give half-points. Do not tie teams. There must be a winner.**

**Do not write your name on this score sheet, and do not share your score with the participating students or coaches.**

**ROUND:**

REGIONAL LOCATION:_____

**TEAM _____-- PLAINTIFF**

| | Good | | | | Average | | | | Poor | |
|---|---|---|---|---|---|---|---|---|---|---|
| Opening Statement | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Direct Exam of Plaintiff's Lay Witness | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Direct Exam of Plaintiff's Expert Witness | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Cross Exam of Defendant's Lay Witness | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Cross Exam of Defendant's Expert Witness | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Summation | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |

Total points awarded to PLAINTIFF _____

**TEAM _____-- DEFENDANT**

| | Good | | | | Average | | | | Poor | |
|---|---|---|---|---|---|---|---|---|---|---|
| Opening Statement | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Cross Exam of Plaintiff's Lay Witness | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Cross Exam of Plaintiff's Expert Witness | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Direct Exam of Defendant's Lay Witness | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Direct Exam of Defendant's Expert Witness | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Summation | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |

Total points awarded to DEFENDANT _____


## AMERICAN ASSOCIATION FOR JUSTICE

## MISSION

*The Mission of the American Association for Justice is to promote a fair and effective justice system—and to support the work of attorneys in their efforts to ensure that any person who is injured by the misconduct or negligence of others can obtain justice in America's courtrooms, even when taking on the most powerful interests.*

## ABOUT TRIAL LAWYERS

Trial lawyers ensure access to the civil justice system for the powerless in America: working families, individual workers, and consumers who often lack the resources to take their grievances to court.

Trial lawyers play a valuable role in protecting the rights of American families. They champion the cause of those who deserve redress for injury to person or property; they promote the public good through their efforts to secure safer products, a safe workplace, a clean environment and quality health care; they uphold the rule of law and protect the rights of the accused; and they preserve the constitutional right to trial by jury and seek justice for all.

Some of the types of cases our attorneys handle include:

- A child paralyzed after being struck by a drunk driver;
- A young woman unable to have children because of a medical mistake;
- A person denied a promotion due to racial discrimination;
- An elderly man injured in a nursing home; and,
- A community whose water was made toxic by a local manufacturer.

## ABOUT AAJ

As one of the world's largest trial bars, AAJ promotes justice and fairness for injured persons, safeguards victims' rights—particularly the right to trial by jury—and strengthens the civil justice system through education and disclosure of information critical to public health and safety. With members worldwide, and a network of U.S. and Canadian affiliates involved in diverse areas of trial advocacy, AAJ provides lawyers with the information and professional assistance needed to serve clients successfully and protect the democratic values inherent in the civil justice system.

# Six Benefits

## to American Association for Justice Law Student Membership You Can Put to Work Today!

**1.**

Network with America's premier trial lawyers through **AAJ's Membership Directory**.

**2.**

***Trial* magazine**'s digital version gives you the latest developments in civil litigation, current tort and consumer law verdicts, and other career-enhancing information.

**3.**

AAJ's annual **Student Trial Advocacy Competition (STAC)** gives you the opportunity to participate in the nation's premier mock trial before sitting judges and practicing trial lawyers.

**4.**

**AAJ Annual and Winter Conventions** allow you to attend information-packed workshops and Continuing Legal Education (CLE)–approved education sessions on all aspects of trial law from those at the top of their field. You will have the opportunity to attend social events and meet attorneys in all stages of their professional careers. Visit www.justice.org/convention to learn more.

**5.**

Attend select **AAJ Continuing Legal Education** courses for only the price of the reference materials. AAJ Education seminars and teleseminars will give you insight into different practice areas, how to be an effective advocate, and prepare you for life after law school.

**6.**

**AAJ Law Student Member scholarships and awards** help you pay down student loans. Start laying the groundwork today for the successful career you look forward to tomorrow. Visit www.justice.org/lawstudents for information on law school scholarships and networking opportunities.

For just **$15 a year**, you can invest in an American Association for Justice, formerly the Association of Trial Lawyers of America (ATLA®), Law Student Membership. That's a small price to pay for the kind of trial lawyer contacts, educational opportunities, and access to information you'll enjoy as a member of the world's largest trial lawyer bar.

AMERICAN ASSOCIATION *for* JUSTICE | STAC STUDENT TRIAL ADVOCACY COMPETITION

777 6th Street NW, Suite 200, Washington, DC 20001 • www.justice.org
800-424-2727 or 202-965-3500, ext. 8611

# American Association for Justice Law Student Member Scholarships and Awards

## The Richard D. Hailey Law Student Scholarship

AAJ's Minority Caucus awards $5,000 scholarships to first-, second-, and third-year African American, Hispanic, Asian American, Native American, and Biracial Law Student Members.

## Trial Advocacy Scholarship

Open to all second- and third-year AAJ Law Student Members, this $3,000 scholarship is awarded to the applicant who best demonstrates the following: commitment to AAJ and its mission; a desire to represent victims; interest and skill in trial advocacy; and financial need.

## Leesfield Scholarship

Sponsored by AAJ and AAJ member Ira Leesfield, this scholarship awards $2,500 to a Law Student Member to subsidize attendance at AAJ's Annual Convention. Available to first- and second-year AAJ Law Student Members.

## Mike Eidson Scholarship

The Mike Eidson Scholarship Fund was established by the AAJ Women for Justice Education Fund in 2008, in honor of AAJ Past President Mike Eidson, whose vision and generosity inspired it. The Scholarship awards $5,000 annually to a female student entering their third year of law school (the student can be enrolled in a three-year day program or four-year night program) who has demonstrated a commitment to a career as a trial lawyer, along with dedication to upholding and defending the principles of the Constitution, and to the concept of a fair trial, the adversary system, and a just result for the injured, the accused, and those whose rights are jeopardized.

Visit www.justice.org/lawstudents for more information on law school scholarships.

AMERICAN ASSOCIATION for JUSTICE | STAC STUDENT TRIAL ADVOCACY COMPETITION

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# 2017 AAJ Fact Pattern

BOBBY DALEY

v.

SIMON PROPERTIES, LLC

D/B/A SCOOTER'S ICE CREAM PARLOR

**Prepared by A. Michael Gianantonio**

**of Robert Peirce & Associates**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STEELTON

BOBBY DALEY;

Plaintiff, GD No.: 15-008771

v.

SIMON PROPERTIES, LLC
d/b/a SCOOTER'S ICE CREAM
PARLOR;

Defendant.

**COMPLAINT**

AND NOW, comes Plaintiff, Bobby Daley, and files the within Complaint, the following of which is a statement:

## I. PARTIES

1. Plaintiff, Bobby Daley, is an adult individual residing at 6711 Lord Stanley Drive, Penns Woods, the District of Steelton.

2. Defendant, Simon Properties, LLC (Simon), doing business as Scooter's Ice Cream Parlor (Scooter's), is a District of Steelton limited liability company with a registered address of Suite 8700, Crosby Building, 707 Rihn Street in the District of Steelton.

## II. FACTS

3. In 2015, the augmented reality video game "Chase'm" was released.

4. Augmented reality is a technology that is capable of superimposing a computer-generated image on the user's cell phone or mobile device.

5. Chase'm uses use a mobile device's GPS capability to locate, capture, battle, and train virtual creatures called Chase Monsters.

6. In Chase'm, players are encouraged to travel to real world locations in an effort to catch Chase Monsters, which are geographically tied to a certain area.

7. Once a Chase Monster is caught, players then own that Chase Monster as part of the Chase'm collection.

8. There are certain real-world locations designated as "Chase's Places," in which rare Chase Monsters can be found.

9. Businesses have the ability to request the software developer responsible for creating Chase'm to have a business' physical location turned into a Chase's Place.

10. At all times relevant hereto, Defendant was engaged in the business of selling and serving ice cream and related items and was open to the general public.

11. Upon information and belief, Defendant applied to have its physical business address turned into a Chase's Place.

12. On or about April 30, 2015, Defendant began advertising to the general public that it was a certified Chase's Place.

13. It is believed, and therefore averred, that Defendant utilized its status as a Chase's Place to attract increased business.

14. On the evening of June 6, 2015, Plaintiff traveled to Defendant's property in an effort to catch a Petunia Chopper, one of the rarest and most sought after Chase Monsters available in the game.

15. When Defendant was designated a Chase's Place, it was guaranteed to have five Petunia Choppers appear monthly.

16. In fact, Defendant advertised this fact, which it is believed increased Defendant's business tremendously.

17. When Plaintiff was attempting to catch a Petunia Chopper, he was viciously beaten and robbed while on Defendant's property.

18. As a result of this attack, Plaintiff suffered a subdural hematoma, a fractured orbital socket, and a compound fracture of the humerus.

19. For the reasons described herein, Defendant is liable to Plaintiff for the harm and injuries sustained by Plaintiff on June 6, 2015.

**COUNT I**
**Negligence**

20. Plaintiff incorporates by reference all previous Paragraphs of the Complaint as if set forth in their entirety herein.

21. Defendant knew, or should have known, that people would enter Defendant's property in an effort to catch Chase Monsters.

22. Defendant owed a duty to protect and ensure the safety of those people entering Defendant's property and to protect them from the criminal actions of a third party.

23. Defendant knew, or should have known, that Plaintiff, or those similarly situated were at risk for being attacked by third parties as there have been similar attacks previously on Defendant's property.

24. Despite the fact that Defendant knew, or should have known, that individuals such as Plaintiff were at risk of attack by third parties, Defendant breached its duties in the following particulars:

a. Defendant, its servants, agents, and/or employees lured individuals to a dangerous location without appropriate security measures in place;

b. Defendant, its servants, agents, and/or employees lured individuals to a dangerous location without due regard for the safety of those individuals;

c. Defendant failed to provide adequate security for its patrons; and

d. Defendant, its servants, agents, and/or employees had prior notice of previous criminal activities on its property and still lured individuals to its location to participate in Chase'm.

25. Defendant's negligence caused Plaintiff to suffer great harm as pled above.

26. As a direct and proximate result of Defendant's negligence, Plaintiff sustained and will continue to sustain injuries and damages.

WHEREFORE, Plaintiff demands judgment against Defendant, in an amount in excess of the prevailing arbitration limits, exclusive of prejudgment interest, post-judgment interest and costs; for punitive damages; and for such other relief as this Court seems fit to award.

Respectfully submitted

/s/ Lizzie Chia
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
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PARLOR;

Defendant.

**ANSWER AND AFFIRMATIVE DEFENSES**

AND NOW, comes Defendant, Simon Properties, LLC d/b/a Scooter's Ice Cream Parlor, and files the within Answer and Affirmative Defenses, the following of which is a statement:

**ANSWER**

1-2. The averments of Paragraphs 1-2 of Plaintiff's Complaint are admitted.

3-7. As to the averments of Paragraphs 3-7 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief about the truth of these allegations. As such, the averments are denied.

8. The averments of Paragraph 8 of Plaintiff's Complaint are denied as stated. To Defendant's knowledge and understanding, Chase's Places are real world locations in which all types of Chase Monsters can be found.

9-11. The averments of Paragraphs 9-11 of Plaintiff's Complaint are denied as stated. While Defendant is aware that businesses can request that their locations be designated as a Chase's Place, and while Defendant did in fact request that its business be

designated as a Chase's Place, unbeknownst to Defendant, the creators of Chase'm already designated Defendant's location as a Chase's Place at the launch of Chase'm.

12-13. The averments of Paragraphs 12-13 of Plaintiff's Complaint are denied as stated. While Defendant's advertising did include the fact that Defendant's business was a Chase's Place, Defendant's advertising was focused on the quality of Defendant's products.

14-15. The averments of Paragraphs 14-15 of Plaintiff's Complaint are denied as stated. Defendant recognized that the certain Chase Monsters were rare, however, it was never notified of specific quantities of those Chase Monsters that would be available. In fact, Defendant's advertisements indicated that patrons could catch Petunia Choppers, Dornburgers, and Giggle Tickles, among others.

16. As to the averments of Paragraph 16 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief about the truth of these allegations. As such, the averments are denied.

17. The averments of Paragraph 17 of Plaintiff's Complaint are denied. While Plaintiff was standing on the sidewalk outside of Defendant's business, Plaintiff was unforeseeably attacked by unknown individuals who are still fugitives from justice as of the filing of this pleading.

18. As to the averments of Paragraph 18 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief about the truth of these allegations. As such, the averments are denied.

19. The averments of Paragraph 19 of Plaintiff's Complaint are denied.

20. As Paragraph 20 of Plaintiff's Complaint is a mere incorporation Paragraph, no responsive pleading is required.

21-26. The averments of Paragraphs 21-26 of Plaintiff's Complaint are denied.

**AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint fails to set forth a cause of action upon which relief may be granted.

2. Plaintiff's Complaint is barred by Plaintiff's own negligence.

3. Plaintiff's claims were caused or contributed by the superseding and intervening acts of persons, entities, or circumstances beyond the control of Defendant.

4. Plaintiff was trespassing upon Defendant's property at the time of actions alleged in the Complaint.

Respectfully submitted

/s/ Mark Trojan
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
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**STIPULATIONS**

AND NOW, come the parties to this matter, and file the within Stipulations to be used at Trial, which shall have the binding effect of being taken as established facts if so offered:

1. On Saturday, June 6, 2015, Defendant's business was open from the hours of 12:00 p.m. until 10:00 p.m.

2. Plaintiff was assaulted between 10:45 p.m. and 11:00 p.m.

3. Plaintiff's assailants have not been apprehended.

4. Kristy Fullatonova was a foreign exchange student from Russia. Ms. Fullatonova was deposed, but has since returned to Russia. She is unavailable to testify, as that term is defined by the Federal Rules of Civil Procedure and the Federal Rules of Evidence, and not subject to the subpoena power of this jurisdiction at the trial of this matter.

5. English is not Ms. Fullatonova's primary language.

6. The parties agree that Ms. Fullatonova's deposition may be used at trial and the deposition testimony itself is not subject to a hearsay objection. As such, the deposition testimony may be used for any purpose so long as the intended use is otherwise admissible under the Federal Rules of Evidence.

7. Rudy Mast, Brendan Newman, and Shelley Primes could not be located for their depositions by either party.

8. The District Court for the District of Steelton follows the Federal Rules of Evidence.

9. The District Court for the District of Steelton follows the Federal Rules of Civil Procedure.

10. The depositions are signed and sworn to by each respective deponent as being accurate and authentic.

11. The expert reports were produced by the parties simultaneously before trial. Experts have reviewed all documents contained within this case file and may testify to the same; however, the expert testimony is limited by the applicable rules of Civil Procedure.

12. The expert reports have been prepared and signed by each respective expert.

13. Plaintiff must call Bobby Daley and Bryce Summerstein as witnesses.

14. Defendant must call Tracey ("Scooter") Simon and Quinn Noonan as witnesses.

15. This case has been bifurcated into a liability phase and a damages phase. For purposes of this trial, the parties will try the liability phase only.

IN THE UNITED STATES DISTRICT COURT
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Defendant.

**JOINT EXHIBIT LIST**

AND NOW, come the parties to this matter, by and through their respective counsel, and submit the following proposed joint exhibit list. The parties agree the identified exhibits are authentic and admissible subject to objection on grounds that the proposed exhibit is otherwise inadmissible under the pertinent rules of evidence.

1. Police Incident Report for June 6, 2015;

2. June 4, 2015 Steelton Post-Gazette Newspaper Article entitled *Video Game Leads to Violence*;

3. Scooter's printed advertisements before and after the release of Chase'm

4. Pertinent portions of Chase'm's End User Licensing Agreement (EULA).

5. Screen shots of Chase'm game; and

6. Map of Scooter's property.

**Deposition of Bobby Daley**

And now, this 8th day of January, 2016, Bobby Daley, being duly sworn by the undersigned, appeared at the offices of Kickem and Strait, for the purposes of deposition by oral questioning.

(Questioning by Defendant's attorney)

Q. Good morning. We met earlier today before your deposition, but for purposes of the record, can you please state your name?

A. Sure, my name is Bobby Daley.

Q. And where do you live?

A. I was supposed to start college this year, but I am living at home with my parents.

Q. Where is that?

A. Oh, sorry, in Steelton.

Q. That's okay. Can I have an address please?

A. Why do you need that?

Q. It's just background information. I am not going to stop over or anything.

A. Okay. It's 480 Pennsylvania Avenue, Steelton.

Q. How old are you?

A. 19.

Q. At the time of the accident, how old were you?

A. What accident? Do you mean the time I was savagely beaten and had a piece of bone sticking out of my arm? Is that the accident that you are talking about?

Q. Listen, I understand this is not what you want to be doing right now, but if you could just calm down and answer my questions, we could get you in and out of here much quicker so that you can go about your day.

A. Sorry. I get worked up thinking about what happened to me that night.

Q. I understand. Not a problem.

A. I have a generalized anxiety disorder and I can't control it sometimes.

Q. Is that something you always had or something that happened since June 6, 2015?

A. It was not diagnosed until after the sixth, but it seems like I always had some sort of problems in stressful situations.

Q. Do you take any medications for this problem?

A. I take Xanax, but only when I need it.

Q. Did you take Xanax today?

A. I did this morning, but I have not had any in a few hours.

Q. Do you think that is affecting your ability to testify here today?

A. No.

Q. Okay, well I will do my best to keep the stress levels down. How old were you on June 6, 2015?

A. I was 18. I just graduated from high school. I was really never out after dark that much with my friends before then. My parents were kind of strict.

Q. We'll get to that, but I want to talk to you about some other things first.

A. Alright.

Q. I assume you are familiar with the game Chase'm.

A. Yeah, I mean, I was. Nobody really plays that game anymore. It was a lot of fun when it first came out, but there are new games that I play now.

Q. Let's focus on 2015 when you graduated high school and still played Chase'm. When did you first start playing the game?

A. Probably when it first came out. I mean, not right away, because the servers were so busy with new people trying to register that it took a while to get set up.

Q. So it would have been within the first couple of weeks?

A. Probably the first week.

Q. Do you remember when Chase'm first came out?

A. I think it was sometime in April.

Q. Can you tell me about the game? How do you win?

A. You really don't win in the traditional sense. It is more about collecting different Chase Monsters. Depending on where you actually were in town, different Chase Monsters would appear, and you would have to catch them.

Q. So the availability of different monsters depended on where you were physically located?

A. Exactly.

Q. I think I understand. How do you go about catching these monsters?

A. Each Chase Monster Wrangler, that is what a player is called, has a Shooter Gun that you use to stun and capture the Chase Monster. The rarer a Chase Monster was, the harder it was to catch. You had to trade in your earlier catches to get more powerful Shooter Guns, which in turn allowed you to catch rarer Chase Monsters.

Q. Before June 6, how many Chase Monsters did you catch?

A. I probably had just over 60. I think there are 100.

Q. Did you have any rare Chase Monsters?

A. I had a good mix of common and mid-level ones. I had only just started catching rare ones. That is why I was out that night.

Q. So, when you set out that day, you knew that you would be staying out late to catch Chase Monsters?

A. Not exactly.

Q. What do you mean by not exactly?

A. Well, I was out with my friends, Rudy Mast, Brendan Newman, and Shelley Primes, and…

Q. I do not mean to interrupt you, but do you know where we can find Rudy, Brendan or Shelley?

A. I really have no idea. They kind of fell off of the face of the earth after that summer.

Q. Really? Not even on My Face, Tweeter, or any of those other sites?

A. Not a word.

Q. Okay, let's go back to what we were discussing. You said you did not set out on June 6 to catch Chase Monsters, or at least the rare ones I guess?

A. No, we went to see a baseball game. Rudy's little brother was playing and we went for ice cream after.

Q. Is that how you got to Scooter's?

A. Yes.

Q. Had you been there before?

A. No, or not since it had become Scooter's. A few years back it used to be this shady bar. A bunch of people got shot in the parking lot one night and they closed it down.

Q. What can you tell me about the shooting?

A. Well, I was in junior high, but I do remember some of the details. Apparently somebody hit on the wrong girl in the bar, and two groups went outside to fight. Things got bad and some guy killed two people. It was big news here in Steelton.

Q. Do you know what happened to the shooter?

A. He went to jail for life. I think.

Q. Did you know that Scooter's was a Chase Place?

A. Not before I got there. But, when we arrived, there had to be at least 100 people in the shop and around the parking lot, all staring at the phones. I took out my phone and saw it was a Chase Place. Then, right on the wall, there was this big flyer about the fact that all of these rare Chase Monsters could be caught there. And these rare Chase Monsters only spawn something like five times at each location.

Q. I am going to show you an advertisement dated June 1, 2015. Does this appear to be a copy of the flyer that you were talking about?

A. Yes, that's it.

Q. What do you mean by spawn?

A. Appear.

Q. Oh, thank you.

A. And, from what I could tell, no Petunia Choppers had been caught at that location yet, which meant one was due to show up. The Petunia Chopper was one of the

rarest Chase Monsters there is, so even though I was not sure my Shooter Gun was powerful enough to catch it, I wanted to take my chance at getting one.

Q. Did you buy anything at Scooter's?

A. Yes, I got some ice cream, it was not really that good, and that is hard to say about ice cream.

Q. What time did you get to Scooter's?

A. Around 8 p.m.

Q. Did you stay after you finished your cone?

A. Yes.

Q. Even though you did not order anything else and the ice cream was not that good?

A. The place was packed with people just staring at their phones. Nobody asked us to leave when we finished.

Q. Did you know that Scooter's closed at 10 p.m.?

A. I found out when they asked us to leave.

Q. Where did you go?

A. We tried to hang out in the parking lot, but we were asked to go stand on the sidewalk next to the parking lot.

Q. Where did you end up going?

A. We went onto the sidewalk right next to the shop.

Q. This is a diagram of the property. Can you please place an X as to where you were standing?

A. I was right here.

Q. What was the lighting like?

A. All of the parking lights in Scooter's lot were on. However, none of the lights on the street came on for some reason.

Q. What happened to all of the other people?

A. They started to leave until it was just us.

Q. Why did you not leave?

A. Brendan and I really wanted to take a shot at catching at least one rare Chase Monster.

Q. What happened next?

A. Rudy mentioned that he saw some people coming our way and that maybe we should get going. I said they were probably coming to play the game as well. He said he did not think so, and then I heard a voice say, "I told you we could find some of those video game nerds here. Easy pickings." I was hit in the head and next thing I really remember was waking up in the hospital a couple of days later.

Q. Do you know who hit you?

A. I do not.

Q. Do you know what happened to your friends? Were they attacked that night?

A. No. I guess I was the closest to those jerks so they started beating on me and my friends ran away. Some friends, huh?

Q. I am sorry to hear that your friends left you. I do not have further questions.

WHEREUPON the deposition was concluded.

**Deposition of Tracey ("Scooter") Simon**

And now, this 15th day of January, 2016, Tracey ("Scooter") Simon, being duly sworn by the undersigned, appeared at the offices of Beau, Bo, and Bogey for the purposes of deposition by oral questioning.

(Questioning by Plaintiff's attorney)

Q. Please state your name for the record.

A. My name is Scooter Simon.

Q. Is Scooter your real name?

A. No, it is not. My real name is Tracey Simon.

Q. Why Scooter?

A. When I was a kid, I never learned how to crawl. I would just sit on my behind and scoot myself to where I wanted to go. My parents called me Scooter and it stuck. I have been Scooter for as long as I can remember.

Q. Makes sense. It is my understanding that you are the owner of Scooter's Ice Cream?

A. Scooter's Ice Cream Parlor. Yes.

Q. That is an LLC?

A. Yes, my lawyer told me that I should form a limited liability company to protect my assets. I am glad I listened. If it wasn't for my insurance policy, everything I had would be at risk.

Q. It is my understanding that you are insured by Cawley Insurance Company?

A. Yes.

Q. You are aware that they are in some significant financial trouble?

A. Yes, I heard that they had been unable to pay some judgments, but my representative told me not to worry and that I would be fine.

Q. Do you know what parts of your property are covered by that policy?

A. My understanding is that if anything were to happen inside the store, the parking lot, or the sidewalk by the store, we would be covered.

Q Do you know who owns the sidewalk outside of your store?

A. I do not know, but we always made sure to keep the thing clear of ice and snow. We don't want anybody slipping out there and suing us.

Q. When did you open Scooter's?

A. About five years ago.

Q. Did you own any other businesses at the time?

A. No, this is the first time I had done anything like this.

Q. What did you do before opening Scooter's?

A. You won't believe it if I tell you.

Q. Well, I am asking you to tell me.

A. I was the accordion player in a polka band. I played music professionally for 20 years or so, but it was not paying the bills. We were always booked in September for Oktoberfest celebrations, but I am afraid not many people still want to hear a good polka. Our only steady gig was at Mad Max's Goodtimes Saloon for Throwback Thursdays, but that place got into some legal troubles and they cut us out of their entertainment lineup.

Q. How did you get into the ice cream business?

A. This bar we used to play, the property, went for sale pretty cheap. There was some sort of domestic dispute and some people got shot in the parking lot. As you can imagine, this was bad for business and the place shut down. It was located in a rougher part of the city, but there was an urban renewal effort underway there and I saw it as an opportunity to get in at the ground floor. There weren't any other ice cream shops located nearby, so my spouse and I talked it over and we decided to go for it.

Q. Can you tell me how the business did at first?

A. Sure. We had our ups and downs, mostly downs for the first couple years. But as I got better at running a business, and as word spread, by the fourth year we made a profit. And then things got a little tricky.

Q. What do you mean by tricky?

A. A new ice cream place, Steve's Succulent Sweets, opened a couple of blocks over. The location turned out to be much better, and people thought the area was safer.

Q. Why did they think that?

BY COUNSEL

Object to the form.

Q. Do you know why people thought the Steve's location was safer?

A. Not really.

Q. Did anybody tell you why they thought the location was safer?

A. A couple people said that when it started to get dark, they would notice a bunch of unsavory people hanging out by our store.

Q. Do you know if anybody ever had any problems coming to or leaving your store?

A. What do you mean by problems?

Q. Sure, let me clarify. Was anybody, to your knowledge, ever the victim of a crime while coming to or leaving your store?

A. Not that I recall. I mean, three years ago, we had a serial mugger in the neighborhood.

Q. Can you tell me what you know about the serial mugger?

A. As far as I can remember, there were about four or five people mugged within a few blocks of our shop.

Q. Was anybody ever robbed on your property?

A. No, never. We had security cameras, inside and out, and our parking lot was well lit. I made sure of that after the Swanson boy fell in there one night.

Q. You had somebody fall in your parking lot?

A. Yeah, about a year before Bobby's incident, a kid tripped over his own two feet and his parents said the lighting wasn't good enough.

Q. Was there a lawsuit?

A. No, they weren't sue happy like your client. But I did think they had a point about the lighting, and then I put in the cameras so that I could have evidence if something like that happened again.

Q. Were the cameras working on the night of June 6, 2015?

A. No. They had been down for a week. We had a service call in, but it took a while for somebody to come out and fix them.

Q. Don't you think if the cameras were there my client could have avoided getting beaten?

A. No, I do not.

Q. Why is that?

A. Well, the cameras are prominent, and it is impossible for anybody to tell if they are actually working. Also, it is not like they give a live feed to the police who could have come out and stopped them.

Q. How many cameras did you have?

A. Two. That is all that I could afford. As I mentioned, the shop was not doing well. The installer recommended that I place more, but I simply could not pay for it.

Q. Where did you have the cameras installed?

A. On the west side of the shop, facing the parking lot.

Q. Well, who could monitor them?

A. Any of the employees could have access to them if they were in the office.

Q. And didn't you have an employee in the store at the time of the incident?

A. Who? You mean Kristy Fullatonova? The Russian exchange student? Other than not having the best grasp on English, she did not have access to the office. Nobody did except me and my spouse.

Q. Wasn't she the one who called 911?

A. Yes, after Bobby crawled down the sidewalk, he was not in the parking lot at the time of that crime, and banged on the door.

Q. You said you were having trouble with new competition at the shop. Can you tell me some more about that?

A. Well, when Steve's opened, it was something new, so a lot of my customers wanted to try it out. Some came back. A lot didn't.

Q. How did you respond?

A. I tried everything. Two for one sales, a discounts club, advertising…nothing was working. But when Chase'm came out, I saw a real opportunity.

Q. How so?

A. I have always been a fan of video games. I have been playing them since I was a kid. And here is a video game that requires people to go outside and interact with their environment. It was great. Also, there was a way to apply to make your business a Chase Place. I figured that if I could get Scooter's turned into a Chase Place, with the number of people that were playing the game, I could be really on to something.

Q. Did you get Scooter's turned into a Chase Place?

A. I submitted an online application. But it turned out that they actually did it for me. The corner where we were located was designated a Chase Place before I submitted my application. People could catch Chase Monsters from my shop.

Q. What happened to your online submission to the Chase'm people?

A. About a week after the incident with Bobby, they moved the Chase Place to inside my shop.

Q. Did you have to give anything to the Chase'm people to get your location designated as a Chase Place?

A. Just my indication that the location was safe for people to play the game.

Q. What did that require?

A. Exactly that. I had to check a box indicating that my location was safe to play the game.

Q. They did not do an investigation?

A. No.

Q. Well, why did you check that your place was safe?

A. Because it was. People do not generally regard my shop as being in the best neighborhood, but nothing happens here. Literally no crime at all except for some graffiti or noise issues.

Q. What about the serial mugger?

A. Well he was caught and put in jail.

Q. Do you know what happened to him?

A. I know that he was let out. He got arrested a couple of months back for beating up some kids playing video games in the street.

Q. Did you advertise your shop as a Chase Place?

A. I did. Since it was right outside the shop, and because you could catch Chase Monsters, I advertised Scooter's as being a Chase Place.

Q. How did this affect your business?

A. More people came and profits went up.

Q. Did anybody complain about the safety of your shop to you?

A. Not once.

Q. Do you subscribe to the Steelton Gazette?

A. I do.

Q. Do you read it?

A. Every day.

Q. Did you read the story about Chase'm being linked to various crimes?

A. I don't recall seeing that. I may have heard that on the local radio morning show, but those guys are always making up fake news stories, like that website, The Shallot, so I never took that seriously.

Q. If you knew people were getting attacked while playing Chase'm, would you have done something differently?

A. How so? I am not sure that I understand your question.

Q. Would you still have advertised as a Chase Place?

A. That is difficult to answer. I mean, if people were getting attacked in Steelton, I am sure I would have made sure that nobody was hanging around on my property after we closed. I mean, as best that I could. I could not be at the place 24 hours a day.

Q. Thank you. I have no further questions.

WHEREUPON the deposition was concluded.

**Deposition of Kristy Fullatonova**

And now, this 14th day of February, 2016, Kristy Fullatonova, being duly sworn by the undersigned appeared at the offices of Kickem and Strait for the purposes of deposition by oral questioning.

(Questioning by Defendant's attorney)

Q. Please state your name for the record.

A. Kristy Fullatonova.

Q. Kristy, I understand you are probably nervous, but there is no need. We are just going to ask you some questions.

A. Okay.

Q. I also understand that you are a Russian citizen and that English is not your first language, is that correct?

A. Yes, it is true. But I am fluent. Mostly.

Q. Okay, thank you, but if for some reason you do not understand me, please let me know and we can try to figure it out.

A. Alright.

Q. Kristy, why are you in the United States?

A. I am in a foreign exchange student program.

Q. And how old are you?

A. I am 17.

Q. Are you going to high school here?

A. Yes, I go to Steelton High. I will be returning to the Rodina in a few weeks.

Q. Rodina?

A. Russia, the motherland. Sorry, that slipped in.

Q. No problem. Why are you returning?

A. My time here is up. Because of the differences in our education system, I have complete the requirements to graduate from secondary general education, which is somewhat similar to your high school.

Q. Alright, well, congratulations. Don't take this the wrong way, but why are still here?

A. I was able to stay to help with my understanding of American English. I am going to specialize on this in future education, should I be fortunate enough to obtain my Certificate of Secondary General Education.

Q. In the summer of 2015, were you working at Scooter's?

A. Yes.

Q. What did you do there?

A. I was the cashier.

Q. What were your job duties as a cashier?

A. I scooped ice cream and took money from the people. The customers.

Q. Were you working on June 6, 2015?

A. Yes.

Q. Do you know if Bobby Daley was in Scooter's that night?

A. Bobby was, yes.

Q. How is it that you remember Bobby?

A. The place was very busy, and it had been since that silly computer game came out.

Q. Do you mean Chase'm?

A. Chase who?

Q. No, the name of the game.

A. Oh, yes, sorry, that is the one. A lot of the American students really seemed to like playing this game, but I remember Bobby well because Bobby really wanted to catch some sort of flower thingy.

Q. A Petunia Chopper?

A. Sure, whatever, I do not know, but that sounds right.

Q. Did Bobby buy anything?

A. Not that I remember. I think Bobby's friends did, but I remember that Bobby was just staring at the phone. I do not understand why you Americans are always staring at those things. Nothing good can come of it.

Q. Okay, thank you for that. Do you know what time Bobby left?

A. It was closing time. I had to ask a lot of people to leave so I could clean up and close up for the night.

Q. Was anybody else there?

A. No it was just me.

Q. Weren't you nervous being the only person there?

A. I have been to Chernobyl. Steelton does not scare me. Besides, this was a pretty safe place.

Q. Do you know where Bobby went after leaving Scooter's?

A. Bobby, and all of the other customers, took their phones and went into the parking lot. I had to come out two or three times to ask them all to leave before they finally did. I think Bobby went onto the sidewalk down the street from the shop.

Q. Can you mark on this diagram with a “KF” at the location where you remember Bobby going?

(witness complies)

Q. Thank you. We will mark this as Exhibit F. Do you know what happened next?

A. Not really, I just remember hearing sirens and some police pulled into the parking lot with an ambulance.

Q. Did you know what happened?

A. No, but later I found out that Bobby was beaten up pretty badly. Probably should not have been staring at his phone so much.

Q. Thank you, I do not have any further questions.

WHEREUPON the deposition was concluded.

October 15, 2016

Lizzie Chia, Esquire
Beau, Bo, and Bogey
1919 Dark Tower Rd.
District of Steelton, USA 12345

**Re: Bobby Daley v. Simon Properties, LLC**

Dear Ms. Chia:

You have asked me to render an opinion as to whether or not Simon Properties (Scooter's) knew, or should have known, that visitors, such as your client, were subject to attack at his business. In short, my answer is that Scooter's was aware that customers were going to be on and around the property and that Scooter's had an obligation to ensure that Bobby Daley was not injured.

In preparation of issuing these opinions, I have reviewed the depositions of Bobby Daley, Tracey ("Scooter") Simon, and Kristy Fullatonova. I have also reviewed all of the exhibits, including Scooter's advertisement concerning Chase'm and the police report. I did not personally view the site, but I did review the diagram of Scooter's.

On top of the materials, I have applied my experience, training, and professional knowledge in arriving at my opinions.

## FACTS

On June 6, 2015, Bobby Daley was viciously beaten in what was a preventable assault while he was outside of Scooters. Scooter's is a local ice cream parlor located in one of the rougher neighborhoods of Steelton. It is famously known among locals for the fact that several people were shot in the parking lot when it was previously a bar.

These types of incidents were not uncommon for that area. In the time leading up to Bobby's attack, the area had a serial mugger on the loose. From what I have been able to gather from various news articles and police reports, that mugger would wait for people to be distracted on their cell phones and physically attack them, taking their phones and money. Most of these attacks occurred after dark when local businesses would close.

That mugger was identified as Mad Dog Mike Streib and was arrested approximately three years prior to Bobby's attack, but released from prison about two weeks before Bobby's attack. It is my understanding there was a prior attack on somebody playing Chase'm approximately one mile from Scooter's about a week before Bobby's attack according to an article in the *Steelton Gazette*. Several months after Bobby's attack, Mad Dog Mike Streib was arrested for beating and robbing an individual playing Chase'm a block away from Scooters.

## OPINIONS

### A. Scooter's did not adequately prepare for the influx of new patrons.

For all intents and purposes, Scooter's was a struggling business until Chase'm was released. While I recognize that Scooter's location was turned into a Chase Place even before Scooter's sought designation as such, Scooter's was keenly aware of the game Chase'm and of its ensuing popularity.

Scooter's capitalized on this popularity, but it was ill equipped to handle the influx of new customers. To that end, Scooter's not only advertised utilizing its designation as a Chase Place, from what I have been able to deduce from the record, one did not even have to be a customer at Scooter's during normal business hours to be on the property. It seems as though Scooter's encouraged this because more people on the property would lead to more opportunities to sell ice cream. Moreover, there is not any indication that Scooter's was asking people to leave the interior of the store regardless of whether or not they were playing the game.

The advertisements were also problematic. Although they certainly furthered the intended purpose of increasing foot traffic to Scooter's, by advertising that it was a Chase Place, Scooter's was essentially placing a neon sign on its business that there would be a large number of distracted individuals on Scooter's property. These advertisements were posted in multiple newspapers of varying circulation. By advertising, Scooter's message was received by a large number of people. This was essentially an open invitation for criminal activity that was accepted by the individual responsible for attacking Bobby.

Finally, as a former Steelton police officer, I am familiar with the area in which Scooter's is located. It has always been my personal belief that this particular area was one of the more dangerous in the city. While I cannot point to any statistics or data that would confirm or dispute this contention, I have made numerous arrests in that neighborhood, albeit mostly for petty crimes and vandalism, in my law enforcement career.

### B. Scooter's did not have adequate security measures.

Based upon my training and experience as a security specialist, I have learned that it is much more common for crimes to occur during darkness, outside the presence of police officers in crowded activities, although I cannot point to any scientific studies that corroborate this common sense principle. Scooter's had absolutely no protection in place for the dangerous condition that it created.

Scooter's did act prudently by placing camera in the parking lot. I accept that often the appearance of monitoring will act as a deterrent to many crimes. However, these cameras were not actually recording. While they did have a visible, red light that would indicate to an observer that they were on, they were located in such a place that the cameras themselves may not have been visible to a person coming from the east direction walking west. Further, if the attack occurred in the location indicated by Bobby, an attacker would

not even have seen the cameras, so there is a possibility that they were not a deterrent whatsoever. A reasonably prudent business owner would have placed cameras on the other side of the store, as well as at the front door to provide a legitimate deterrent to potential criminal acts.

Other than the cameras, there were no other deterrents in place. When Scooter's business picked up, it did not take any steps to ensure the safety of its increased customers. Scooter's should have hired private security guards to safeguard its patrons.

At the very least, Scooter's could, and should have had more employees at the store during nighttime hours. The more employees that are present, the greater the deterrent there is to criminal action. Instead, on the night in question, the only person working was a 17-year-old Russian foreign exchange student.

**C. Scooter's claim that Bobby was a trespasser is disingenuous.**

Scooter's is attempting to disclaim liability by calling Bobby a trespasser. This is simply not true. First, Bobby was a paying customer and welcomed onto the property. After the business was closed, Bobby went into the parking lot. While Bobby was asked to leave the parking lot, Bobby was never actually asked to leave the property.

I recognize there is a dispute as to the ownership of the sidewalk, but Scooter's certainly treated the sidewalk as Scooter's property. To that end, Scooter's even made sure that it had an insurance policy that would provide coverage for incidents occurring on the sidewalk. Furthermore, if Bobby was standing outside of the shop as is depicted in one of the potential locations, there is a clear view of Bobby from the shop.

**CONCLUSION**

Based upon the above, it is my opinion, within a reasonable degree of professional certainty, that Scooter's knew, or should have known that its customers were in danger of criminal assaults by third parties, but took no action to prevent the foreseeable attack on Bobby.

Very truly yours,

Bryce Summerstein

Bryce Summerstein
Security Innovations
1975 Asbury Park Road
Steelton
bsummerstein@securitylitigationsoultions.com
www.securitylitigationsolutions.com

**CURRICULUM VITAE**

| | | |
|---|---|---|
| Education: | BS Criminal Science<br>2002 Steelton Tech | |
| | Police Certification<br>2004 Steelton Police Academy | |
| Work Experience: | 2002-2004 | Security Guard<br>American Guard Company |
| | 2004-2008 | Patrol Officer<br>Steelton Police Department |
| | 2008-2012 | Homicide Task Force<br>Steelton Police Department |
| | 2012-Present | Owner<br>Security Litigation Solutions |
| Certifications: | As a member of the Steelton Police Department, I have been certified in criminal investigations, use of weapons, use of force, forensic evidence recovery, and investigative techniques. | |
| Honors: | 2004 | Top 10 Graduates of Steelton Police Academy |
| | 2007 | Steelton Patrol Officer of the Year |
| | 2008 | Promotion to Steelton Homicide Task Force |

October 16, 2016

Mark Trojan, Esquire
Kickem and Strait
257 Wilderness Drive
District of Steelton, USA 12345

**Re: Opinions as to Liability of Scooter's Ice Cream Parlor**

Dear Mr. Trojan:

I am able to state, within a reasonable degree of professional certainty, that under no circumstances, is Scooter's Ice Cream Parlor responsible for, nor could it have prevented, the random act of violence that occurred on June 6, 2015. Put simply, the attack was an unforeseeable, intentional act that was so dissimilar to any other activity reported in that area for the relevant time frame that to say Scooter's should have been prepared would stretch the very boundaries of the accepted definition of foreseeable.

As you know, I am a former Special Agent with the Federal Bureau of Investigation who worked intimately in America's counter-terrorism activities, so I am familiar with reasonable security measures. The steps taken by Scooter's to secure its property, when coupled with what was known about the location, were more than adequate. While I agree that one can never be secure enough, to require a small business owner to be prepared for random, intentional acts of violence would place such a strain on the economic viability of these hard working citizens that small operations like Scooter's would be forced to shutter their doors all across this great country of ours.

On June 6, 2015, it is undisputed that Bobby Daley was viciously attacked while trespassing on Scooter's property. I understand that the Plaintiff was a customer of the shop earlier in the evening, but the Plaintiff was twice asked to leave the area. In that regard, Scooter's closed at 10:00 p.m. on the date in question. Instead of going home, the Plaintiff exited to the parking lot with other individuals. When asked to leave the parking lot, the Plaintiff still did not vacate the premises, but instead went and stood on the sidewalk. Before he could be asked to leave this portion of the property, he was attacked.

The evidence demonstrates to me that the Plaintiff was clearly, and intentionally, on Scooter's property against the will of a Scooter's employee. This is a criminal trespass.

Further, the Plaintiff's conduct was negligent for the Plaintiff's own safety. The Plaintiff complains that Scooter's was in a bad location, yet the Plaintiff was standing in the dark, completely unaware of the Plaintiff's own surroundings. Instead of focusing on potential threats and dangers, the Plaintiff's eyes were glued to the Plaintiff's phone. It does not matter if the Plaintiff was playing Chase'm, sending a text message, or checking on the Steelton Pit Bulls score, the Plaintiff was completely unaware of any potential dangers that were lurking. Instead of retreating from what was a clearly recognizable danger, the Plaintiff chose to continue to play on the phone.

As far as security goes, there is not much more that Scooter's could have done apart from providing armed guards. This is a local ice cream shop in an up and coming neighborhood, not a refugee camp in Aleppo.

First, Scooter's installed cameras. While I understand the cameras were not working, the cameras were visible. Visibility is the most important factor in these instances. A third party who only sees the cameras has no idea if the camera is real, if it is recording, or if it simply a decoration. That is one of the primary deterrent effects of the cameras. Those cameras were clearly visible and there was a notice outside of the parking lot that the lot was under video surveillance. Clearly, third parties were on notice that there was a security presence in the lot. While the cameras could not actually prevent an actual crime, they do make identification much easier so an arrest can be made. If a criminal actor believes he or she will be caught, there is less likely of a chance that the criminal act will be performed.

Next, the lighting in the parking lot and outside of Scooter's was excellent. It is well-known that visibility is a deterrent to criminals, and that if their crime has a chance of being witnessed, then they will be deterred from committing that crime. Here, Scooter's had an incident a few years back where an individual tripped over a curb. As a result, Scooter's spared no expense in ensuring that the parking lot was well-lit. This is another adequate security measure.

Finally, the incident involving the Plaintiff is the only incident of criminal violence that I have been able to learn about in the area in which Scooter's is located on or before that date for a three-year period. Of course, there had been petty crimes of vandalism such as graffiti, but that is something that will not be prevented even in the most secure of locations. Nevertheless, a graffiti tagger is hardly the type of hardened criminal that would cause a reasonable business owner to assume that a violent criminal action was about to occur.

In sum, the random, criminal act of violence was not something that Scooter's could have foreseen or prevented. It took place off of Scooter's main property and on a sidewalk in a location where the Plaintiff did not have the privilege to be at that time. In fact, the Plaintiff placed the Plaintiff in danger by standing in the dark, completely unaware of the Plaintiff's surrounding, and while significantly distracted.

All of my opinions herein have been offered within a reasonable degree of professional certainty.

Very truly yours,

Quinn Noonan

Quinn Noonan, Esquire

178 Clay Street
Steelton

## Education

B.A. Political Science, The Steelton State University 1997

J.D. with honors, Steelton A&M 2000

Federal Bureau of Investigation Training Academy, Quantico 2000

## Employment History

**New York Field Office**
**Special Agent**
**2000-2003**

Intelligence agent responsible for detecting and evaluating threats and emerging threats to national security.

**Los Angeles Field Office**
**Special Agent**
**2003-2007**

Counterintelligence agent responsible for discovering threats imposed by foreign governments related to National Security.

**Des Moines Field Office**
**Assistant Special Agent in Charge**
**2007-2010**

Assisted in directing all counterintelligence in Iowa and surrounding area.

**Guardsman Corporation**
**Security Specialist**
**2010-Present**

Responsible for providing security advice and instruction to private corporations across the globe.

**STEELTON POLICE DEPARTMENT**
Steelton, United States
Incident Report 2077694
Report Date: June 06,2015
Report Time: 2345
Reporting Officer: Abigail Nath

**INCIDENT DESCRIPTION**

At approximately 2305 this officer responded to a 911 emergency dispatch phone call at Scooter's Ice Cream. This officer was told there were reports of an aggravated assault.

This officer arrived on location at approximately 2315 where she discovered an individual lying on the sidewalk outside of Scooter's and the parking lot for Scooter's. There were no other actors or witnesses available, though this officer learned that Kristy Fullatonova, an employee of Scooter's was still inside of the business.

Upon arrival, this officer immediately requested EMT to assist in the care of the victim. The victim could not be identified as the victim's wallet and any other potential identifying materials were apparently stolen. After the arrival of EMTs, this officer then spoke to Ms. Fullatonova who relayed that she saw the victim inside of Scooter's during regular business hours. She said she also asked the victim to leave the parking lot because the business was closed. However, this officer did not observe any no trespassing signs on the parking lot, so the victim was not cited for trespassing.

Upon transportation to the hospital, the victim regained consciousness and this officer was able to identify the victim as Bobby Daley. The victim was unable to identify the assailants.

An investigation will be opened into the aggravated assault of the victim.

**DESCRIPTION OF THE SCENE**

This officer arrived to a well-lit area. Although it was dark, as is customary for this time of year, the parking lot of Scooter's was appropriately illuminated. The sidewalk area outside of Scooter's had sufficient ambient light, however, there was no additional light provided by street lights in the area. There was a single car in the parking lot, which this officer later determined to belong to Kristy Fullatonova.

**CONTRIBUTING FACTORS**

No contributing factors were discovered at this time.

Home National State Local Sports STEELTON GAZETTE

# VIDEO GAME LEADS TO VIOLENCE

By Donald Clinton

June 4, 2015

Perhaps you have noticed your children glued to their smartphones more so than usual these past few weeks. You are not alone. The augmented reality game Chase'm is taking the nation by storm, and Steelton is no exception. But every time your children pick up their phones, are they putting away their safety?

A rash of reports of violence associated with this phenomenon was not far behind stories of its popularity. By now you have probably heard the stories of players of this game walking off of cliffs or falling into rivers. While rare, those stories are true and, surprisingly, not the worst thing that can happen while playing the game.

Augmented reality requires constant attention to the user's phone screen. Video game characters are projected as images utilized in conjunction with a smartphone camera's display. While those not playing the game will simply see their street, their yard or whatever else they are looking at, a person with a phone may see a small, cuteish "Chase Monster" that exists only on the screen.

Because the game requires such constant attention to the user's phone, the user is obviously distracted. A distracted user is often makes a prime target for the perpetrator of small and petty crimes and accidents.

In fact, according to the website, dailymail.com, a study in the United States suggests that in the span of a ten day period, there have been more than 110,000 incidents caused by distracted drivers and passengers who were too involved in playing Chase'm.

However, it is not just distracted driving. Reports from Missouri have linked multiple robberies attributed to individuals waiting outside of vacant areas for distracted players. Even Steelton is not immune as there have been reports of people having their phones stolen in the past several weeks.

It is clear, that, at the present time, Chase'm will be around. However, if you pick up your phone, do not put down your common sense.

# SCOOTER'S ICE CREAM PARLOR

## VOTED BEST ICE CREAM IN STEELTON

-by Scooter himself

We Have:

- Over 36 flavors of ice cream
- Sundaes
- Floats
- Milkshakes
- Smoothers
- Birthday Cakes
- And More

We are located in safe and friendly Steelton at 178 Kessel Drive

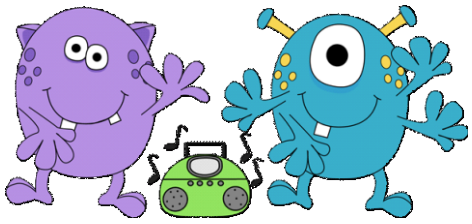
# SCOOTER'S ICE CREAM PARLOR

Need Chase'm Monsters?!?!?!?

We got 'em!

Scooter's is now a Chase's Place

Catch a rare Chase Monster and your order is FREE!!!!



# CHASE'M

End User Licensing Agreement (EULA)

Welcome to Chase'm, a video game service, which is accessible via the Chase'm mobile device application (the App). Please read carefully these Terms, our Warnings, and our Privacy Policy, because they govern your use of Chase'm.

## Agreement to Terms

By using our Chase'm, you are agreeing to these Terms, to abide by our Warnings, and to our Privacy Policy. If you do not agree to these Terms, our Warnings, and our Privacy Policy, do not use the Services.

## ARBITRATION NOTICE

**YOU AGREE THAT DISPUTES BETWEEN YOU AND CHASE'M WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, AND YOU ARE WAIVING YOUR RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.**

## Arbitration Rules

The arbitration will be administered by the Steelton Arbitration Association (SAA) in accordance with the Steelton Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the SAA Rules). The Federal Arbitration Act, without regard for principles of preemption or conflict of laws, will govern the interpretation and enforcement of this Section.

## Arbitration Process

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the SAA Rules. The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the SAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the SAA will appoint the arbitrator in accordance with the SAA Rules.

## Arbitration Location and Procedure

The arbitration will be conducted in the county where you reside. If your claim does not exceed $10,000, then the arbitration will be conducted solely on the basis of the documents submitted to the arbitrator. If your claim exceeds $10,000, your right to a hearing will be determined by the SAA Rules. Subject to the SAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

## Arbitrator's Decision

The arbitrator will render an award within the time frame specified in the SAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable.

## Safe Play

While playing Chase'm, you must be aware of your surroundings and play safely. You agree that your use of the App and playing Chase'm is at your own risk. You also agree not to violate any applicable law, rule, or regulation, especially the laws of trespass. You are not to encourage or enable any other players of Chase'm to violate any applicable law, rule, or regulation. Without limiting the foregoing, you agree that you will not enter onto private property without permission. To the extent permitted by applicable law, Chase'm disclaims all liability related to any property damage, personal injury, or death that may occur during your use of Chase'm, including any claims based on the violation of any applicable law, rule, or regulation or your alleged negligence or other tort liability.

## Chase'm Code of Conduct

You agree that you are responsible for your own conduct while playing Chase'm, and for any consequences thereof. For example, you agree that when playing Chase'm, you will not:

a. defame, abuse, harass, harm, stalk, threaten, or otherwise violate the legal rights (including the rights of privacy and publicity) of others;
b. trespass, or in any manner attempt to gain or gain access to any property or location where you do not have a right or permission to be;
c. violate, or encourage any conduct that would violate, any applicable law or regulation or would give rise to civil liability;
d. promote or engage in physical harm, violence, or injury against any group or individual;
e. hold yourself out to be affiliated with Chase'm in any way, such as taking ownership of a Chase Place;
f. use Chase'm, or any portion thereof, for any commercial purpose in a manner not permitted by the EULA;
g. violate any applicable law or regulation; or
h. encourage or enable any other individual to do any of the foregoing.

We reserve the right to remove or disable access to Chase'm at any time and without notice. We have the right to investigate violations of the EULA or conduct that affects Chase'm. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

**Disclaimer of Warranties**

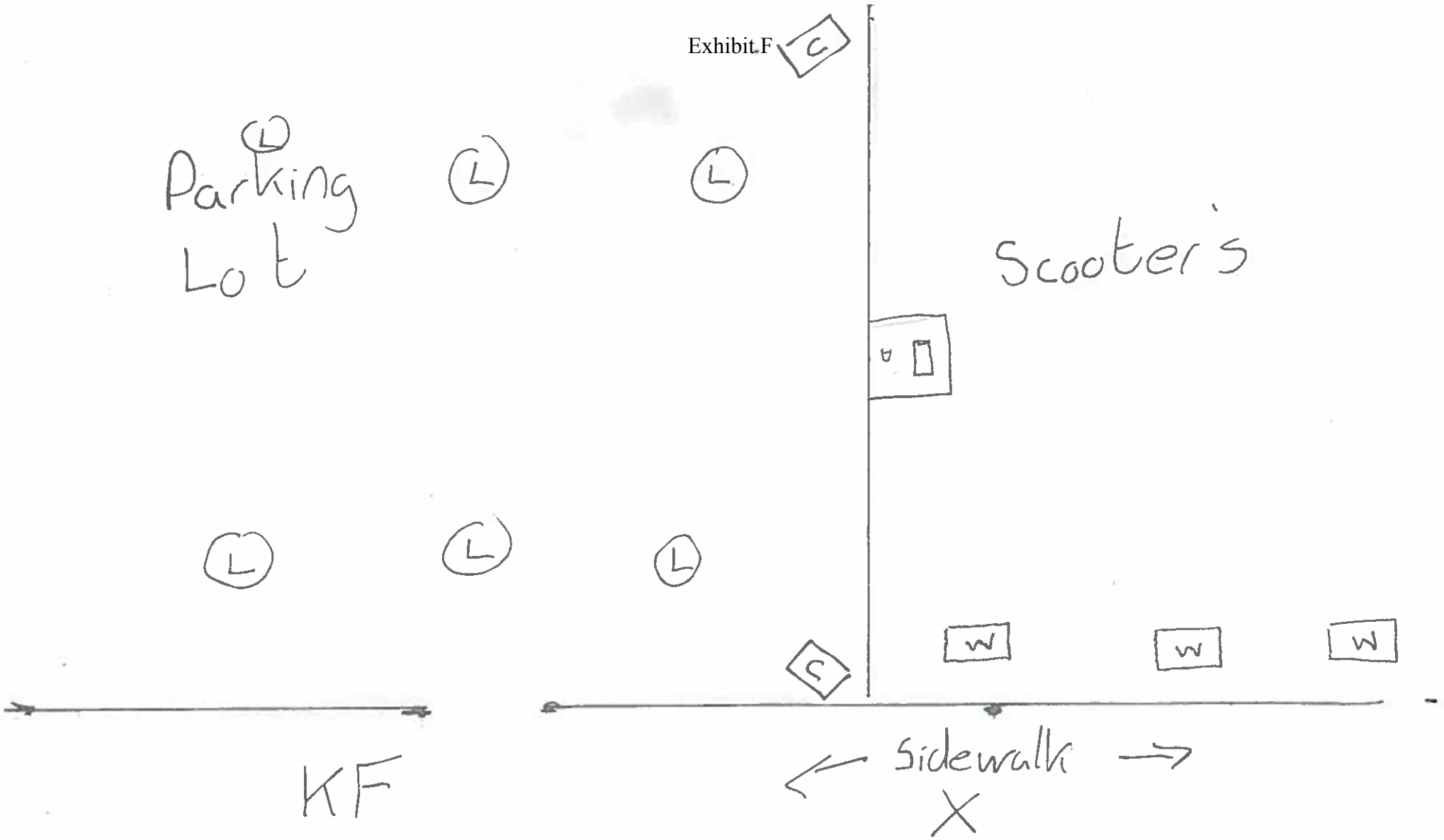
YOUR USE OF CHASE'M IS AT YOUR OWN RISK. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND CONTENT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, CHASE'M EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

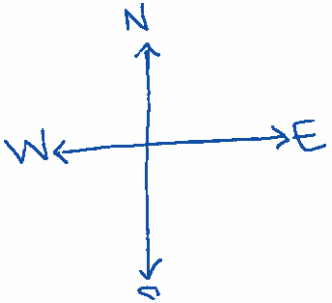
YOU ASSUME ALL RISKS RELATING TO YOUR ONLINE OR OFFLINE COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATED OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES. YOU UNDERSTAND THAT CHASE'M DOES NOT SCREEN OR INQUIRE INTO THE BACKGROUND OF ANY USERS OF THE SERVICES. CHASE'M MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON.

**Limitation of Liability**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, CHASE'M WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS,

Exhibit F




C = Camera

L = Light

D = Door

W = Window

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF STEELTON

BOBBY DALEY;

Plaintiff, GD No.: 15-008771

v.

SIMON PROPERTIES, LLC
d/b/a SCOOTER'S ICE CREAM
PARLOR;

Defendant.

**JURY INSTRUCTIONS**

**BELIEVABILITY OF WITNESSES GENERALLY**

As judges of the facts, you decide the believability of the witnesses' testimony. This means that you decide the truthfulness and accuracy of each witness' testimony and decide whether to believe all, or part, or none of that witness' testimony. The following are some of the factors that you may and should consider when determining the believability of the witnesses and their testimony:

a. How well could each witness see, hear, or know the things about which he or she testified?

b. How well could the witness remember and describe those things?

c. Was the ability of the witness to see, hear, know, remember, or describe those things affected by age or by any physical, mental, or intellectual deficiency?

d. Did the witness testify in a convincing manner? How did the witness look, act, and speak while testifying?

e. Was the testimony uncertain, confused, self-contradictory, or presented in an evasive manner?

f. Did the witness have any interest in the outcome of the case, or any bias, or any prejudice, or any other motive that might have affected his or her testimony?

g. Was a witness' testimony contradicted or supported by other witnesses' testimony or other evidence?

h. Does the testimony make sense to you?

i. If you believe some part of the testimony of a witness to be inaccurate, consider whether that inaccuracy cast doubt upon the rest of that same witness' testimony. This may depend on whether the inaccuracy is in an important matter or in a minor detail.

j. You should also consider any possible explanation for the inaccuracy. Did the witness make an honest mistake or simply forget, or was there a deliberate attempt to present false testimony?

k. If you find that a witness intentionally lied about a significant fact that may affect the outcome of the trial, you may, for that reason alone, choose to disbelieve the rest of that witness' testimony. But, you are not required to do so.

l. As you decide the believability of each witness' testimony, you will at the same time decide the believability of other witnesses and other evidence in the case.

m. If there is a conflict in the testimony, you must decide which, if any, testimony you believe is true.

As the only judges of believability and facts in this case, you, the jurors, are responsible to give the testimony of every witness, and all the other evidence, whatever credibility and weight you think it is entitled to receive.

**EXPERT TESTIMONY**

During the trial you have heard testimony from both *fact* witnesses and *expert* witnesses. To assist juries in deciding cases such as this one, involving scientific, technical, or other specialized knowledge beyond that possessed by a layperson, the law allows an expert witness with special education and experience to present opinion

testimony.

An expert witness gives his or her *opinion,* to a reasonable degree of professional certainty, based upon the assumption of certain facts. You do not have to accept an expert's opinion just because he or she is considered an expert in his or her field.

In evaluating an expert witness' testimony and in resolving any conflicting expert witness' testimony, you should consider the following:

a. The witness' knowledge, skill, experience, training and education;

b. Whether you find that the facts the witness relied upon in reaching his or her opinion are accurate; and,

c. All the believability factors I have given to you.

**EXPERT OPINION – BASIS FOR OPINION GENERALLY**

In general, the opinion of an expert has value only when you accept the facts upon which it is based. This is true whether the facts are assumed hypothetically by the expert, or they come from the expert's personal knowledge, from some other proper source, or from some combination of these.

**WEIGHING CONFLICTING EXPERT TESTIMONY**

In resolving any conflict that may exist in the testimony of expert witnesses, you are entitled to weigh the opinion of one expert against that of another. In doing this, you should consider the relative qualifications and reliability of the expert witnesses, as well as the reasons for each opinion and the facts and other matters upon which it was based.

**CONFLICTING TESTIMONY**

You may find inconsistencies *within* the testimony of a single witness, or conflicts *between* the testimonies of several witnesses. Conflicts or inconsistencies do not

necessarily mean that a witness intentionally lied. Sometimes two or more persons witnessing the same incident see, hear, or remember it differently. Sometimes a witness remembers incorrectly or forgets. If the testimony of a witness seems inconsistent within itself, or if the testimony given by several witnesses conflicts, you should try to *reconcile* the differences. If you cannot reconcile the differences, you must then decide which testimony, if any, you believe.

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

The evidence presented to you may be either *direct* or *circumstantial evidence*. *Direct evidence* is testimony about what a witness personally saw, heard, or did. *Circumstantial evidence* is testimony about one or more facts that logically lead you to believe the truth of another fact. You should consider both *direct* and *circumstantial* evidence in reaching your verdict. You may decide the facts in this case based upon circumstantial evidence alone.

**NEGLIGENCE – DEFINITION**

In this case you must decide whether the Defendant was negligent. I will now explain what negligence is. A person must act in a reasonably careful manner to avoid injuring others. The care required varies according to the circumstances and the degree of danger at a particular time. You must decide how a reasonably careful person would act under the circumstances established by the evidence in this case. A person who does something a reasonably careful person would not do under the circumstances is negligent. A person also can be negligent by failing to act. A person who fails to do something a reasonably careful person would do under the circumstances is negligent.

## STANDARD OF CARE

The standard or level of care owed by an owner of land to a person who entered the land depends on whether the person who entered was an invitee, a licensee, or a trespasser.

## INVITEE DEFINED

An invitee can be a public invitee or a business visitor.

## PUBLIC INVITEE DEFINED

A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.

## BUSINESS VISITOR DEFINED

A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the owner of the land.

## LICENSEE DEFINED

A licensee is a person permitted to enter or remain on land with the owner's consent. This includes persons whose presence on the land is solely for their own purposes for which the owner or occupier has no interest. Generally, such licensees enter the land as a result of personal permission from the owner or occupier, or as a matter of general or local custom.

## TRESPASSER DEFINED

A trespasser is a person who enters or remains on land in the possession of another without a right or privilege to do so.

## OWNER OF LAND'S DUTY TO INVITEES

An owner of land is required to use reasonable care in the maintenance and use of the land, and to protect invitees from foreseeable harm. An owner of land is also required

to inspect the premises and to discover dangerous conditions. An owner of land is liable for harm caused to invitees by a condition on the land if:

1. the owner knows, or by using reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm, and

2. the owner should expect that the invitees will not discover or realize the danger, or will fail to protect themselves against it, and

3. the owner fails to use reasonable care to protect the invitees against the danger.

An owner of land is liable to invitees for any harm that the owner should have anticipated, regardless of whether the danger is known or obvious.

**OWNER OF LAND'S DUTY TO LICENSEES**

An owner of land is required to use reasonable care to make the land as safe as it appears, or to disclose to the licensees the risks they will encounter. An owner of land is liable for harm caused to the licensees by a condition of the land, if

1. the owner of land knows, or has reason to know of the condition, should realize that it involves an unreasonable risk of harm, and should expect that the licensees will not discover or realize the danger, and

2. the owner fails to use reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and

3. the licensees do not know or have reason to know of the condition and the risk involved.

**OWNER OF LAND'S DUTY TO TRESPASSERS**

If you find from the evidence that Plaintiff entered upon or remained on the premises of Defendant without permission, right, lawful authority, express or implied invitation, or consent, the legal status of Plaintiff then and there was that of a trespasser.

In that event, if Defendant owner knew or had reason to know of Plaintiff trespasser's presence, Defendant's only duty to Plaintiff was to refrain from willful or reckless misconduct that would necessarily cause injury to Plaintiff.

**OWNER'S DUTY OF CARE WITH RESPECT TO ABUTTING PUBLIC SIDEWALKS**

One in possession of land is required to maintain the abutting public sidewalks in a reasonably safe condition to prevent or eliminate any hazardous or unsafe condition that, upon all the circumstances involved, would be an unreasonable risk of harm to pedestrians properly using walks.

**FAILURE TO PREVENT INTENTIONAL HARM TO BUSINESS INVITEES**

A business person has a duty to use reasonable care to find out if a customer is being harmed or is likely to be harmed by others on the premises and warn or protect him or her. The failure to do so is negligence. You must therefore decide whether Defendant knew or should have known that there was a likelihood of criminal activity occurring on his premises and took reasonable steps to warn or protect Plaintiff against it. In making this decision, you may consider the location and nature of the Defendant's business and the Defendant's past experience.

**BURDEN OF PROOF**

In civil cases, the Plaintiff has the burden of proving his claims.

The Plaintiff must prove his or her claims by a legal standard called "a preponderance of the evidence." Preponderance of the evidence means the claim is more likely true than not.

If, after considering all the evidence, you find the Plaintiff's claims are more likely true than not, you must find for the Plaintiff.

Think about an ordinary balance scale with a pan on each side to hold objects. Imagine using the scale as you deliberate in the jury room. Place all the evidence favorable to the Plaintiff in one pan. Place all evidence favorable to the Defendant in the other. If the scales tip, even slightly, to the Plaintiff's side, then, you must find for the Plaintiff. If, however, the scales tip even slightly on the Defendant's side, or if the two sides balance, then you must find for the Defendant.

In this case, the Plaintiff has the burden of proving the following claims:

a. The Defendant was negligent;

b. The Defendant's negligence was a factual cause in bringing about the harms/damages; and,

c. The extent of damages caused by the Defendant's negligence.

**FACTUAL CAUSE**

In order for Plaintiff to recover in this case, Defendant's negligent conduct must have been a factual cause in bringing about harm. Conduct is a factual cause of harm when the harm would not have occurred absent the conduct. To be a factual cause, the conduct must have been an actual, real factor in causing the harm, even if the result is unusual or unexpected. A factual cause cannot be an imaginary or fanciful factor having no connection or only an insignificant connection with the harm.

To be a factual cause, Defendant's conduct need not be the only factual cause. The fact that some other causes concur with the negligence of the Defendant in producing an injury does not relieve the defendant from liability as long as his or her own negligence is a factual cause of the injury.

**CONCURRING CAUSES**

Sometimes a person's negligent conduct combines with other people's conduct to

cause harm.

When a defendant's negligent conduct combines with the conduct of other persons, the defendant is legally responsible if his or her negligent conduct was one of the factual causes of the harm.

In such a case, Defendant is fully responsible for the harm suffered by Plaintiff regardless of the extent to which Defendant's conduct contributed to the harm.

**COMPARATIVE NEGLIGENCE**

Defendant claims that Plaintiff was negligent and Plaintiff's negligence was a factual cause of Plaintiff's injury. Defendant has the burden of proving by a fair preponderance of the evidence that Plaintiff was negligent and that the Plaintiff's negligence was a factual cause of the plaintiff's harm. Plaintiff does not have the burden to prove he was *not* negligent. The burden is not on Plaintiff to prove his or her freedom from negligence. You must determine whether Defendant has proven that Plaintiff, under all the circumstances, failed to use reasonable care for his or her own protection

**DEPOSITION TESTIMONY**

The testimony of a witness, who for some proper reason cannot be present to testify in person, may be presented in this form. Such testimony is given under oath and in the presence of attorneys for the parties, who question the witness. A court reporter takes down everything that is said and then transcribes the testimony. The use of videotape permits you to see and hear the witness as he appeared and testified under questioning by counsel. This form of testimony is entitled to neither more nor less consideration by the jury because of the manner of its submission.