

# 2022 Florida High School Mock Trial Competition



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The R. Fred Lewis High School Mock Trial Competition is hosted by the Justice Teaching Center at Florida Southern College. The 2021-2022 original case materials were created by Stephen Renick, Esquire, Attorney at Law, Homestead, Florida with assistance from college mock trial students Fernando Yzquierdo (Florida State University) and Sebastian Aviles (Florida International University). Editing and formatting assistance provided by Florida Southern College pre-law students Lawton Bauer and Solana Millik.

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Questions, please contact [apitts@flsouthern.edu](mailto:apitts@flsouthern.edu).

## **CODE OF ETHICAL CONDUCT**

The purpose of the Florida High School Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the American legal system by providing students the opportunity to participate actively in the legal process. The education of young people is the primary goal of the mock trial program. Healthy competition helps to achieve this goal. Other important objectives include improving proficiency in speaking; listening, reading, and reasoning skills; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting tolerance, professionalism, and cooperation among young people of diverse interests and abilities.

As a means of diligent application of the Florida High School Mock Trial Competition's Rules of the Competition, the Mock Trial Advisory/Policy Committee has adopted the following Code of Ethical Conduct for all participants.

1. Team members promise to compete with the highest standards of ethics, showing respect for their fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches, and mock trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the rules, including the use of unfair extrapolations. Members will not willfully violate the rules of the competition in spirit or in practice.
2. Teacher coaches agree to focus attention on the educational value of the Mock Trial Competition. They shall discourage willful violations of the rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's rules and this Code of Ethical Conduct.
3. Attorney coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition's rules and this Code of Ethical Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.
4. All participants (including observers) are bound by all sections of this code and agree to abide by the provisions. Teams are responsible for insuring that all observers are aware of the code. Students, teacher coaches, and attorney coaches will be required to sign a copy of this code. This signature will serve as evidence of knowledge and agreement to the provisions of the code. Teams will receive scores on ethical conduct during each round.
5. Staff and Mock Trial Advisory Committee members agree to uphold the rules and procedures of the Florida High School Mock Trial Competition while promoting ethical conduct and the educational values of the program.

## **TRIAL OVERVIEW**

- I.** The presiding judge will ask each side if they are ready for trial.
- II.** Presiding judge announces that all witnesses are assumed to be sworn. Ask teams if there are any preliminary matters (not motions) that need to be addressed.
- III.** Opening Statements - no objections allowed; however, after each opening has concluded, the opposing counsel may stand to be recognized and state that if they could have objected they would have objected to... The presiding judge does **not** need to rule on this. Just state so noted. No rebuttals allowed.
- IV.** Cases presented. See Rules for the trial sequence and time limitations.
- V.** Closing Statements - no objections allowed; however, after each closing statement has concluded, the opposing counsel may stand to be recognized and state that if they could have objected - they would have objected to... The presiding judge does **not** need to rule on this. An optional rebuttal, (up to 1 minute) will be permitted for the Prosecution/Plaintiff.
- VI.** No jury instructions need to be read at the conclusion of the trial.  
Judges should complete score sheets **before** debriefing. This is crucial and ensures completed score sheets.
- VII.** If a material rules violation is entered, teams will not complete forms but rather will prepare and present arguments. The presiding judge will follow the rules for this type of dispute.
- VIII.** Critique **JUDGES DO NOT ANNOUNCE SCORES OR PERFORMANCE DECISIONS!**
- IX.** **ALL DECISIONS OF THE JUDGES ARE FINAL.**

IN THE CIRCUIT COURT FOR THE TWENTY FIRST  
JUDICIAL CIRCUIT IN AND FOR SUMMERCREEK  
COUNTY, FLORIDA

**COLLYMORE WILDLIFE PRESERVE, INC.,  
A Florida Corporation**

**Case No. 2019-CA 226501**

Judge Chamberlain Haller

Plaintiff

v.

**POLK FARMS, LLC, A Florida Limited  
Liability Corporation**

Defendant

**COMPLAINT**

Now comes Plaintiff, COLLYMORE WILDLIFE PRESERVE, INC., and sues the Defendant, POLK FARMS, LLC (“Defendant”) and alleges:

1. Plaintiff, COLLYMORE WILDLIFE PRESERVE (“Preserve”) is a Florida Corporation and wildlife nature preserve located and doing business in Summercreek County, Florida.
2. Defendant, POLK FARMS, LLC (Polk Farms) is a Florida corporation located within Summercreek County, Florida.
3. This court has jurisdiction pursuant to F.S. §25.012(2)(a).
4. Venue is proper pursuant to §§47.011 and 47.051, Florida Statutes, because the cause of action accrued in Summercreek County and because the defendant engaged in wrongful acts or omissions which combined to produce injury to the lands of the Plaintiff.

**STATEMENT OF FACTS**

5. At all times material hereto, the Preserve was located and still is located at the bottom of Moore Hill located in Summercreek County.

6. The Preserve is a well-established, family-owned business in Summercreek, Florida. The Preserve contains a variety of nature trails and offers riverboat tours of the Summercreek Marshlands (“Marshlands”).
7. At all times material hereto, the water from the Marshlands provided income to the Plaintiffs, as well as water to the animals on the Preserve.
8. At all times material to this matter, Defendant’s property was and is still located at the top of Moore Hill, and utilizes water from the Marshlands for use on Defendant’s property.
9. At the beginning of 2009, Defendant’s property owners left the County of Summercreek, and ceased using the property for business or agricultural purposes. Defendant’s property owners returned on or about May of 2019, and restarted their agricultural business in August of 2019
10. The Plaintiff, based upon information obtained, alleges that beginning in June of 2019, the Defendant, in violation of applicable ordinances, began utilizing fertilizer that, along with other chemicals, contained nitrogen, phosphorus, and mercury.
11. During the summer months of 2019, Summercreek County experienced heavy rainfall in the form of frequent storms, including Hurricane Annette that damaged the Summercreek County area.
12. In September 2019, the Marshlands experienced algae blooms that interfered with flora and fauna in such a way that the algal blooms caused the deterioration of plants on the Plaintiff’s property, as well as the death of animals on the Plaintiff’s property, and death of the wildlife on the Plaintiff’s Wildlife Preserve.

### **COUNT I: NEGLIGENCE**

13. The Plaintiffs re-allege paragraphs 1 – 12, above, as fully set forth herein.
14. At all times material hereto, Defendant Polk Farms had a duty to operate their business in a reasonably careful and safe manner, including but not limited to not utilizing chemicals on their property that could cause injury to the property of others.
15. At all times material hereto, Defendant Polk Farms, breached that duty by utilizing fertilizer that the defendant knew, or should have known caused algal blooms in the water.
16. As a direct and proximate result of the breach of this duty by the Defendant, the Plaintiff, Collymore Preserve, sustained damages and injuries to their property, including the loss of animal life, and loss of income to the Plaintiff's business.
17. The losses suffered by the Defendant are either permanent or continuing and the Defendant will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for any and all compensatory damages allowable by law against the Defendant, Polk Farms, together with any and all post-judgment interest, and taxable costs allowable by law.

### **COUNT II: NEGLIGENCE PER SE**

18. Paragraphs 1 through 12 are re-alleged and incorporated herein by reference.
19. At all times material hereto, the Defendants were subject to the Summercreek County Fertilizer Ordinance.
20. The Summercreek County Fertilizer Ordinance is a safety ordinance that is intended to protect Florida's wildlife, businesses as well as the general public from harm of nitrogen, phosphorus, and mercury-based fertilizer.
21. At all times material hereto, the defendant had a duty to comply with Summercreek

County Fertilizer Ordinance.

22. The Defendant failed to comply with and violated the Summercreek County Fertilizer Ordinance by, among other things, failing to implement sufficient restrictions and precautions in place to protect the Marshlands from fertilizer runoff.
23. Furthermore, the Defendant violated the aforementioned ordinance by improperly spreading fertilizer on August 3, 2019 when Summercreek County was under a tropical storm warning, and/or Summercreek county was expected to be impacted with a tropical storm or hurricane within 5 days.
24. The Plaintiff, as a business owner, is part of the class which the Summercreek County Fertilizer Ordinance was intended to protect.
25. As a result of the foregoing, the fertilizer used by Defendant washed onto Plaintiff's property after excessive rainfall and contaminated the Plaintiff's water supply.
26. As a result of the aforementioned actions by the Defendant, animals owned by the Plaintiff, and utilized by the Plaintiff as part of their business and Defendant's business were injured or died causing harm and damages to the Plaintiff's business.
27. The acts and/or omissions of Defendants and/or its agents and employees caused the type of harm that the Summercreek County Fertilizer Ordinance was intended to prevent.
28. As a direct and proximate result of the Defendant's violation of the Summercreek County Fertilizer Ordinance the Plaintiff's sustained past damages and will continue to sustain damages in the future.

WHEREFORE, Plaintiff hereby demands the following:

1. Past damages of at least 1 million dollars;
2. Such other relief as the Court may deem just, equitable and proper
3. Plaintiff demands a jury trial for all matters set forth in this Complaint

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of October, 2019.

Mickey Haller

Mickey Haller, Esquire  
The Lincoln Law Group  
1288 Main Street  
Summercreek, Florida 33333-3333  
Fla. Bar No. 999999

IN THE CIRCUIT COURT FOR THE TWENTY FIRST  
JUDICIAL CIRCUIT IN AND FOR SUMMERCREEK  
COUNTY, FLORIDA

**COLLYMORE WILDLIFE PRESERVE, INC.,  
A Florida Corporation**

**Case No. 2019-CA 226501**

Judge Chamberlain Haller

Plaintiff

v.

**POLK FARMS, LLC, A Florida Limited  
Liability Corporation**

Defendant

**ANSWER**

COMES NOW, Defendant, Polk Farms, by and through its undersigned counsel, hereby files this Answer to the Complaint filed by Collymore Wildlife Preserve, Inc., hereby responds as follows:

1. Admitted
2. Admitted
3. Admitted
4. Admitted
5. Admitted
6. The Defendant lacks the knowledge to admit or deny
7. The Defendant lacks the knowledge to admit or deny
8. Denied
9. Admitted
10. Denied

11. Admitted

12. The Defendant lacks the knowledge to admit or deny

13. Admitted

14. The Defendant admits to having duty but denies any breach of duty

15. Denied

16. Denied

17. Denied

18. The Defendant lacks the knowledge to admit or deny.

19. Denied

20. Admitted

21. Denied

22. Denied

23. The Defendant admits to spreading fertilizer on its property on August 3, 2019, but denies that this was improper.

24. Denied

25. Denied

26. Denied

27. Denied

28. Denied

## **AFFIRMATIVE DEFENSES**

1. At no time did the Defendant violate any regulation, statute or ordinance that would give rise to this cause of action.
2. Assuming the Defendant violated the ordinance in question, the violation of said ordinance was not the proximate cause of the Plaintiff's damages.
3. The damage that the Plaintiff is alleging was primarily caused by its own negligence, and not the violation of any statute rule or ordinance, and any judgment against the Defendant should be reduced accordingly.

I hereby certify of a copy hereof has been furnished to Plaintiff's attorney via email or service portal this 15th, day of October, 2019.

*Jake Brigance*

Jake Brigance, Esquire  
Attorney for Defendant  
Law Office of Jake Brigance  
177 North Main Street  
Summercreek, Florida 33333

## **STIPULATIONS**

1. There is no issue of jurisdiction, venue, service of process, property of parties, or ownership or control of the premises.
2. The applicable law is contained in the jury instructions.
3. The relief sought by Plaintiff is available under the governing and controlling law to a person who proves entitlement to such relief.
4. The exhibits are true and accurate copies and their authenticity may not be challenged. However, other objections to the relevance and/or admissibility of the documents can still be argued in accordance to the applicable Rules of Evidence.
5. All signatures on letters, witness statements and other documents are authentic. Any texts or emails are presumed to be authentic.
6. The Court's instructions on the law are accurate in all respects; no objections to the jury instructions will be entertained.
7. All causes of action have been filed within the limitations period. There is no defense based upon the statute of limitations.
8. Whenever a rule of evidence requires that reasonable notice be given, it has been given.
9. The trial has been bifurcated. This means that you will be trying the matter as to liability only. If the jury finds that defendant is liable, a second trial would occur to determine amount of damages.

10. Harley McKenna and Dr. Skylar Foley are stipulated as expert witnesses.
11. Witness statements, with the exception of Dr. Skylar Foley, were taken in January 2020. Dr. Skylar Foley's statement was taken in March, 2021.
12. All witness statements were taken under oath. "Chain of Custody" for evidence is not in dispute.
13. Stipulations cannot be contradicted or challenged.
14. Any examination, analysis, or experiment conducted by any expert witness is presumed to have been conducted consistent with generally accepted scientific principles pertaining to the field of expertise of the witness.
15. Both maps depicting the path of Hurricane Annette are considered issued by a recognized weather service or news source as defined in the Summercreek County Fertilizer Ordinance.
16. Witnesses are assumed to be constructively sequestered during trial with the exception of party opponents and expert witnesses.

## **WITNESS LIST**

The following witnesses are available and **must** be called by the parties:

**For the Plaintiff**

Ellis Collymore  
Harley McKenna  
Regan Polk

**For the Defendant**

Bobbie Polk  
Dakota Bryant  
Dr. Skyler Foley

*\*All witnesses may be female or male.*

*\*\*All witnesses must be called.*

## **EXHIBITS AVAILABLE TO BOTH PARTIES**

The parties have stipulated to the authenticity of the trial exhibits listed below. The court will, therefore, not entertain objections to the authenticity of these trial exhibits. The parties have reserved any objections to the admissibility of any of these exhibits until the trial of the above-captioned matter. The trial exhibits may be introduced by either the Plaintiff or the Defendant, subject to the Rules of Evidence and stipulations of the parties contained in the materials. The exhibits are pre-marked and are to be referred to by number, as follows:

**Exhibit No.**

**Exhibit Description**

1	Map of Polk Farms and Collymore Preserve
2	National Hurricane Forecasting Institute Forecast of Hurricane Annette
3	WAKY TV Channel 1 Forecast of Hurricane Annette
4	Example of intact retaining wall
5	Photo of Polk Farm's retaining wall
6A	Polk Farm Fertilizer Purchase April 2019
6B	Polk Farm Fertilizer Purchase May 2019
6C	Polk Farm Fertilizer Purchase June 2019
6D	Polk Farm Fertilizer Purchase July 2019
7A	Malorganite Fertilizer Buckets (Photo)
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8	Text Messages Between Regan Polk and Ellis Collymore
9	Text Messages Between Bobby Polk and Regan Polk
10A	Gas Chromatograph Results of Water Samples from Polk Farms and Collymore Preserve
10B	Gas Chromatograph Results of Clean Water and Malorganite Fertilizer
11	Memorandum from Bobby Polk to Employees

## **SUMMERCREEK COUNTY FERTILIZER ORDINANCE 17-235**

### **PURPOSE**

As a result of impairment to Summercreek County's waterways caused by excessive nutrients, or as a result of increasing levels of nitrogen, phosphorus, and/or mercury in waterways within the boundaries of Summercreek County, the governing body of Summercreek County has determined that the use of fertilizers within county borders creates a risk to contributing to adverse effects on Florida waterways. This Ordinance regulates the proper use of fertilizers to protect the environmental, recreational, cultural, and economic well-being of Summercreek County residents, the health of the public, and the integrity of Summercreek County's wildlife.

### **DEFINITIONS**

For this Ordinance, the following terms shall have the meanings set forth in this section.

- (1) **“Application” or “Apply”** means the actual physical deposit of fertilizer to turf and/or landscape plants and/or crops.
- (2) **“Fertilizer”** means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.
- (3) **“Person”** means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.
- (4) **“Prohibited Application Period”** means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for Summercreek County, issued by a recognized weather service or news source, or if heavy rain is likely.
- (5) **“Heavy rain”** includes rainfall greater than or equal to 4 inches in a 24-hour period.
- (6) **“Waterway”** means any pond, stream, canal, water course, lake, or wetland.

## **I. TIMING OF FERTILIZER APPLICATION**

1. No applicator shall apply fertilizers containing nitrogen, phosphorus, and/or mercury to turf and/or landscape plants during a Prohibited Application Period.
2. Summercreek County does not prohibit application of fertilizer during Florida's summer rainy season (typically spanning between June 1 and September 30). However, applicators must take sufficient measures to protect nearby waterways if fertilizer application is planned during this time.
3. No application of fertilizer is allowed under this ordinance, under the following circumstances:
  - a. When Summercreek County is reasonably expected to receive at least 4 inches of rain in a 24 hour period that is forecasted within a 7 day period.
  - b. When a tropical storm or hurricane, forecasted by a recognized weather service or news source is reliably forecasted to affect Summercreek County within 5 days or;
  - c. When Summercreek County is under a hurricane warning issued by a recognized weather service or news source.

## **JURY INSTRUCTIONS**

The claims and defenses in this case are as follows: The Plaintiff, Collymore Preserve, claims that Defendant, Polk Farms, was negligent in maintaining their property, and/or violated the Summercreek County Fertilizer Ordinance, which caused injury and damages to the Plaintiff.

Defendant, Polk Farms denies both claims, and also claims that even if there was a breach of duty, that the Defendant's actions were not the proximate cause of the Plaintiff's damages. The Defendant claims it was the Plaintiff's own actions that caused any injury or damages to the Plaintiff's property. The parties must prove their claims by the greater weight of the evidence. I will now define some of the terms you will use in deciding this case.

### **Negligence**

Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

### **Negligence Per Se:**

Violation of a statute or ordinance is negligence. If it is determined that the Defendant who is claimed to have been negligent violated said statute or ordinance and that violation was a legal cause of Plaintiff's injury or damages, then the Defendant is liable for negligence.

### **Legal Cause**

Negligence is a legal cause of the Plaintiff's injuries and/or damages if it directly and in natural and continuous sequence produces or contributes substantially to producing such damages so that it can be reasonably be said that, but for the negligence, the injuries or damages would not have occurred.

In order to be regarded as a legal cause of injury, negligence need not be the only cause. Negligence may be a legal cause of the injuries even though it operates in combination with the act of another, some natural cause, or some other cause if the negligence contributes substantially to producing such injuries or damages.

### **Burden of Proof**

If the greater weight of the evidence does not support Plaintiff's claim, your verdict should be for Defendant on that claim. The issue you must decide on Plaintiff's claim against Defendant is whether Defendant was negligent, and, if so, whether that negligence was a legal cause of the Plaintiff's injuries or damages. Plaintiff has the burden to prove his claim by the greater weight of the evidence.

If, however, the greater weight of the evidence supports Plaintiff's claim, then you shall consider the defenses raised by Defendant. On Defendant's affirmative defense, you must determine whether the Plaintiff's own actions were the legal cause of the Plaintiff's own injury or damage. If the greater weight of the evidence shows that both Plaintiff and Defendant were negligent and that the negligence of each contributed as a legal cause of the loss, injury or damage sustained by the Plaintiff, you should decide and write on the verdict form what percentage of the total negligence of both parties to this action you apportion to each of them. The Defendant has the burden to prove this affirmative defense by the greater weight of the evidence.

### **Greater Weight of the Evidence**

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entirety of the evidence in the case.

In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. Furthermore, you must always apply the law as I have explained it to you.

Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

Some of the testimony before you was in the form of opinions about certain technical subjects. You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

That is the law you must follow in deciding this case. The attorneys for the parties will now present their final arguments.

IN THE CIRCUIT COURT FOR THE TWENTY FIRST  
JUDICIAL CIRCUIT IN AND FOR SUMMERCREEK  
COUNTY, FLORIDA

<b>COLLYMORE WILDLIFE PRESERVE, INC.,</b> <b>A Florida Corporation</b>	<b>Case No. 2019-CA 226501</b> Judge Chamberlain Haller
Plaintiff	
v.	
<b>POLK FARMS, LLC, A Florida Limited Liability Corporation</b>	<b>Affidavit of Bobbie Polk</b>
Defendant	Taken: February 13, 2020

**AFFIDAVIT OF BOBBIE POLK**

1        After being duly sworn upon oath, Bobbie Polk hereby states as follows: I am thirty-one  
2    years old and am competent to make this affidavit.

3        I'm a sixth-generation farmer and am the current owner and proprietor of Polk Farms here  
4    in Summercreek, Florida. Farming has been the family business for almost 40 years. We travel  
5    around every several years to plant new crops or change our produce. My father, Montgomery  
6    Thaddeus Polk, or Bubba as I liked to call him, bought a 20-acre plot of land in Summercreek  
7    when I was young, and I currently live and work on the farm in one of our four houses. Our  
8    property borders the Summercreek River, and at the top of Moore Hill. It's great to have such easy  
9    access to fresh water for crops, but the downside is all the problems we deal with from the business  
10    downhill, the Collymore Preserve.

11       The Polk's and the Collymore's were at one time very close. But when I was young, Bubba  
12    and the then-owner of the Collymore Preserve got into this huge argument in our kitchen. I  
13    overheard Bubba refusing to sell the property to the Preserve. After that argument, we had nonstop  
14    problems with the Collymore family. That's how I first met Ellis Collymore; I caught Ellis

15 sneaking onto our farm and vandalizing one of our barns. I'd say the fistfight that ensued was an  
16 accurate start to the rest of my non-relationship with Ellis and the Collymore family. In addition  
17 to vandalism, the Collymore's would file false complaints all the time with the water board to drive  
18 us away, but nothing ever resulted from that because Bubba made sure we were up to code with  
19 everything regarding the nearby river. In short, the Collymore's desperately wanted our land, and  
20 would do anything to get it, but we never budged.

21 Growing up, Bubba taught me all the best ways to maintain a farm. He also tried to teach  
22 my younger half-sibling, Regan, the same ropes. But Regan was lazy and always liked using  
23 shortcuts instead of putting in the hard work necessary for the upkeep of a farm. We grew sugar  
24 cane and other types of vegetables on our Summercreek property in addition to raising animals.  
25 When I went to college, Bubba left the management of the farm to Regan. I can't tell you much  
26 about what happened while I was away, but when I returned, the farm was in shambles. It appeared  
27 that, to impress Bubba, Regan had started using malorganite on the property to make the crops  
28 grow faster and stronger. That only ruined the farm, though, because malorganite completely  
29 messes with the chemistry of the soil and ruins the nearby water supply. Regan ruining of the farm,  
30 in tandem with the housing market crash, is what I think caused the heart attack that killed Bubba  
31 in 2009. To make matters worse, with Bubba gone, we just could not take care of the farm any  
32 longer. We moved to Kentucky for several years to continue cheaper farming operations, but I  
33 know leaving Summercreek hurt a lot of families there. A silver lining to the whole situation was  
34 that I vowed to never use malorganite on any property I owned.

35 It was obvious that Regan thought the farm would be under Regan's name when Papa  
36 passed away, but Papa actually left the entire farm to me. Regan was extremely upset about this.  
37 At the time, I couldn't stand to leave my half-sibling out to dry, and because Regan couldn't land  
38 a job anywhere else, I decided to keep Regan on staff and bring Regan to Kentucky. While we

39 were there, I tried to show Regan everything Bubba taught me, but we eventually caught Regan  
40 trying to use malorganite again as an easy shortcut. I eventually just tasked Regan with shoveling  
41 manure from our animals and forbade Regan from getting near the crops.

42 Around March of 2019, I got a call from my mother informing me that she had thyroid  
43 cancer. That alone was enough to get me to move operations back home so that I could help pay  
44 for her surgery that was later scheduled for December of that year. When I returned to Florida, the  
45 property was in shambles and was overgrown. I tasked Regan with fixing up the place. Regan's  
46 attitude about the whole situation was bad enough. But lazy Regan was so slow about fixing up  
47 the property that we couldn't resume operations until May. The normal planting time for our crops  
48 is March or April.

49 Because of this delay, I had to fire Regan and hire locals to help with the farm. With the  
50 delays and my mother's surgery, I told everyone I wanted to do whatever was necessary to get the  
51 crops planted. In order maximize the financial return, we had no choice but to plant closer to the  
52 river than we normally would. I also had to subscribe to monthly organic fertilizer deliveries to  
53 get the crops growing quickly, since we didn't have any animals on the property yet and did not  
54 have a supply of manure. Although we had some damage to our retaining wall near the creek, I  
55 felt it was structurally sound enough it would prevent any fertilizer runoff if we did not have any  
56 major storms.

57 Things were relatively fine until July 20, 2019 when I got a notification on my phone that  
58 a large, unauthorized purchase had been made on the company credit card. I saw that it was an  
59 enormous order of malorganite fertilizer! The order was shipped to us the same day I got the  
60 notification, so I couldn't cancel the shipment. One of my employees, Dakota Bryant, told me that  
61 Regan was the one that made the purchase. I had no choice but to evict Regan from the property  
62 (Regan also wasn't paying rent). Regarding the malorganite, we did keep it on the property since

63 I thought it would be a waste to throw away, and we might have another use for the malorganite.  
64 I also never called the bank for a refund or to cancel the card, since Regan left the card on the  
65 kitchen table when s/he moved out.

66 At the end of July, it was clear to everyone on the farm that the crops wouldn't be ready  
67 for the September harvest. We also saw that Hurricane Annette was heading for Florida. There  
68 were some national trajectories that had Summercreek barely in the cone of the hurricane, but I  
69 don't trust any meteorologist unless they're a native Floridian. All the local news networks had  
70 Summercreek out of the prediction cone. Nonetheless, I'm familiar with the fertilizer ordinance  
71 governing farms in Florida, and I knew that we shouldn't be applying fertilizers within a certain  
72 time. That's why I sent out a memo to my employees to prepare them for a fertilizer application  
73 of the crops on August 3.

74 I oversaw the entire fertilizer application process and I know for a fact we did not use any  
75 malorganite fertilizer. We didn't even have any malorganite since all the fertilizer went missing  
76 before the application process. I just assumed that Regan had taken it all since Regan was the one  
77 who made the purchase. Sure enough, a few weeks after the hurricane, Ellis Collymore peeled into  
78 our parking lot and started yelling at me before I even knew what was happening. Ellis said, "I've  
79 been waiting for you to mess up! Now that you're ruining my land with your runoff, I'm going to  
80 sue you for all you're worth. Polk Farms will be mine in no time." That was ludicrous. The  
81 allegations were bizarre to me because there was no algae in the part of the river beside Polk Farms,  
82 and Ellis could obviously see that.

83 Because of these allegations, I decided that I'd drive down to the Collymore Preserve  
84 myself to make sure Ellis wasn't boldface lying to me. I'll admit that when I drove up to the  
85 property, the Summercreek Marshlands were covered in algae, and I think I saw a dead mammal  
86 that I couldn't identify in the grass. But that was surprisingly the cleanest part of the Preserve.

87 There was plastic and trash littered everywhere. The Preserve was disgusting, and I knew it  
88 couldn't have been because of the hurricane because this was at the beginning of October.

89 I also saw a single, empty bucket of malorganite fertilizer sitting by a storage unit. At this  
90 time, Ellis saw me standing in the parking lot and came running up to pick a fight with me. Before  
91 I got in my car and drove away, I saw Regan come out of the storage unit and pick up the  
92 malorganite bucket. Regan turned to look at me and just smirked. That's how I learned Regan was  
93 working at Collymore Preserve, and I haven't seen that good for nothing scumbag since.

94 I know we're uphill from the Collymore Preserve, and I know our container wall may have  
95 been a little damaged. But on my father's grave, I did not use malorganite fertilizer on my property,  
96 especially not during a prohibited application period. If we were responsible for the algae that Ellis  
97 is complaining about, why isn't there any algae by Polk Farms? None of this makes sense, and it's  
98 obvious to me that this is just a ploy by Ellis to run Polk Farms out of business.

99 I am familiar with the following exhibits: Exhibits 1 is a map of Summercreek. The shaded  
100 area in the north is Polk Farms and the shaded area surrounding the lake in the south is Collymore  
101 Preserve. Exhibit 2 is the cone of Hurricane Annette broadcasted on the national news on August  
102 1, 2019. Exhibit 3 is a different cone of Hurricane Annette that was also broadcasted on August 1  
103 by the local news network in Summercreek. I prefer to listen to the local news because the national  
104 news tries to sensationalize everything, and in my experience, the local news has always been more  
105 accurate predicting hurricane trajectories. Exhibit 5 is a photo of the container wall on Polk Farms.  
106 After this lawsuit was filed, we got it repaired. Exhibit 6A-C are receipts from my monthly organic  
107 fertilizer subscription with some miscellaneous purchases. Exhibit 6D is the receipt from the  
108 malorganite purchase that I never authorized. Exhibit 7A is a photo of the malorganite buckets that  
109 Regan ordered, 7B is the label on those buckets, and 7C is the ingredient list on those buckets.  
110 Exhibit 9 are some texts between Regan and me. At the time I sent those messages, Dakota hadn't

111 told me that Regan was the one who bought the malorganite. Exhibit 11 is the memo I sent out to  
112 my employees. I'm not familiar with any of the other exhibits in this case.

113 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving a  
114 statement, I was told I should include everything that I know may be relevant to my testimony,  
115 and I followed those instructions. I know that I can and must update this affidavit if anything new  
116 occurs to me until the moment before opening statements begin in this case.

Signed,

*Bobbie Polk*

Bobbie Polk

IN THE CIRCUIT COURT FOR THE TWENTY FIRST  
JUDICIAL CIRCUIT IN AND FOR SUMMERCREEK  
COUNTY, FLORIDA

**COLLYMORE WILDLIFE PRESERVE,  
INC.,  
A Florida Corporation**

Plaintiff

v.

**POLK FARMS, LLC, A Florida Limited  
Liability Corporation**

Defendant

**Case No. 2019-CA 226501**

Judge Chamberlain Haller

**Affidavit of Dakota Bryant**

Taken: July 23, 2020

**AFFIDAVIT OF DAKOTA BRYANT**

1        After being duly sworn upon oath, Dakota Bryant hereby states as follows: I am twenty-  
2        nine years old and am competent to make this affidavit. I am testifying voluntarily, and I was not  
3        subpoenaed to testify.

4        I was born and raised in Summercreek. My family has owned the local grocery store for  
5        over twenty years. I used to work there until 2009 when the housing market crashed; Summercreek  
6        was hit bad. That's around the same time that the Polk family moved out of Florida, and when  
7        Polk Farms stopped operating, it was like the heart of Summercreek's business stopped. The  
8        Collymore family started helping everyone in town financially, but they never spared us a penny.  
9        We were always close with the Polk's, so the Collymore's made it clear they didn't like that.

10       The Polk's moved back to Summercreek in March of 2019. The store didn't need that much  
11       help, so I applied for a job up at Polk Farms. I scheduled a meeting with Bobbie Polk and got  
12       myself a job as the farm manager! I was surprised; I have no farming experience, nor do I have a

13 college degree, yet Bobbie was eager as ever to throw me into the new position. Bobbie's sibling,  
14 Regan, didn't take too kindly to me. When I left that meeting with Bobbie, Regan was just outside  
15 Bobbie's office and asked who I was. I told Regan I was the new farm manager. Regan barged  
16 into Bobbie's office and had a huge argument. I couldn't hear them through the door, but I heard  
17 Regan complain about not getting paid enough, to which Bobbie yelled, "you're fired, you good-  
18 for-nothing leech!" I didn't see much of Regan around the farm after that.

19 The first few weeks I spent working on the farm were focused on cleaning our crop area.  
20 Bobbie explained that Regan had done an awful job tilling the soil. To make things worse, Regan  
21 seemed to have dumped fertilizer on the soil without tilling it, so I had to spend those days scraping  
22 up the fertilizer and setting it aside. I recall that one time, Bobbie's nephew, Shane, joked about  
23 dumping all the fertilizer into the river so that the Collymore's could deal with it. I don't know if  
24 Shane is officially employed with Polk Farms (Bobbie deals with all of that), but Shane spends  
25 most of his weekdays working the farm, and I've seen Bobbie hand him some spare bills every  
26 two weeks outside of Bobbie's office.

27 We managed to get all our crops planted in May of 2019, and Bobbie's stress levels seemed  
28 to skyrocket. Every other day, I was hearing Bobbie complain that "because of Regan, we've  
29 planted our crops two months later than we should have." To make matters worse, the routine  
30 shipment of organic fertilizer that Bobbie always ordered never seemed to be enough to get our  
31 crops growing at the rate they should have been. A minor concern of mine was the container wall  
32 separating our agricultural fields from the river. It's this big slab of concrete meant to keep  
33 fertilizer from running off into the Summercreek River. Having a container wall is good enough  
34 to do the job, but I pitched to Bobbie that we should hire professionals to patch up some parts of  
35 the wall that had been worn over the years. Bobbie agreed and asked me to find a contractor.  
36 Because of some scheduling conflicts, the contractor couldn't fix our wall until December, after

37 this lawsuit was filed.

38         Around mid-July, Bobbie invited me and some of the other farmhands for some dinner at  
39 Polk Farms. We were all shocked to see Regan show up, but I guess it made sense since Regan  
40 was still living on the property at the time. Regan didn't say a word and kept checking Regan's  
41 phone. To make conversation, I asked who Regan was texting. Regan said, "Ellis is just on my  
42 case about getting some feed growing for the animals." Regan then excused themselves to go to  
43 the restroom, and I saw Regan pick up a wallet from the table. I thought it was Regan's wallet, but  
44 then Regan came out of the bathroom a few minutes later and said to Bobbie, "I mistook your  
45 wallet for mine," and handed Bobbie back the wallet I had seen Regan pick up.

46         I thought nothing of it, but on July 20, I arrived at the farm early and saw Bobbie yelling  
47 at a delivery man who was dropping off the largest shipment of malorganite fertilizer I'd ever seen.  
48 Bobbie was saying, "I didn't buy any of this!" The delivery driver looked confused and left, leaving  
49 the fertilizer on the farm. When I spoke with Bobbie about it, Bobbie told me that a huge purchase  
50 of fertilizer had been made on the company credit card. Everything seemed to click for me, and I  
51 told Bobbie about my interactions with Regan that day. Strangely enough, we didn't see Regan at  
52 all that day, nor the day after. But on July 22, I saw Regan storming off the property as Bobbie  
53 was tossing bags and boxes of Regan's belongings out the front door.

54         The malorganite fertilizer buckets remained untouched for the rest of the month. On August  
55 1, Bobbie had a meeting with all the farm hands to discuss the news that Hurricane Annette would  
56 be making landfall in Florida. Bobbie was saying that the hurricane didn't seem to be coming for  
57 Summercreek, but that Bobbie would be sending out instructions about fertilizer the next day. On  
58 August 2, Bobbie sent out a memo to everyone on the employee email list. When I checked who  
59 had received the email, I saw that Regan was on the list. I didn't think anything of it until I was  
60 leaving work that day and saw Regan standing around the malorganite buckets. When Regan saw

61 me, Regan's eyes grew wide. Regan said, "I'm just here to pick up some of my things," which was  
62 strange because I never asked what Regan was doing. I just shrugged, got in my car, and left.

63 The next day, I showed up to work late. Some employees were already working on  
64 fertilizing the crop fields with organic fertilizer bags, and I noticed that the malorganite fertilizer  
65 buckets were missing. I asked Bobbie about it and Bobbie said Bobbie had forgotten about the  
66 buckets. I also asked another one of the employees about the buckets, who responded by saying,  
67 "we weren't supposed to use those." From the way the employee said it, I wasn't sure if it was a  
68 question or a statement, but I didn't think much of it at the time. I was working for the rest of the  
69 day, and I never saw anyone use any malorganite fertilizer on the crops.

70 Hurricane Annette made landfall on August 8. I was worried about potential fertilizer  
71 runoff since the container wall hadn't been completed. But the next day, and for the next month  
72 and a half, I never saw any algae growing in Summercreek River, so I figured we had done nothing  
73 wrong. You can imagine my surprise when Ellis Collymore showed up at the farm at the end of  
74 September. Ellis was red in the face and started screaming about us causing all these algal blooms  
75 in the Preserve.

76 I still work for Bobbie. I currently own 15 percent of Polk Farms, but Bobbie has promised  
77 me that if this lawsuit goes well, we can discuss increasing my ownership. I'm concerned that if  
78 Polk Farms loses this lawsuit, we won't have enough money to continue operating and will likely  
79 shut down. I don't want that to happen, especially since I know we did nothing wrong.

80 I am familiar with the following exhibits: Exhibits 1 is a map of Summercreek. Exhibit 2  
81 is the cone of Hurricane Annette that the national news put out on August 1, 2019. Exhibit 3 is  
82 another cone of Hurricane Annette that was also released on August 1, but this one was from the  
83 local news. I was with Bobbie when we watched both of those forecasts. Exhibit 5 is a photo of  
84 the container wall at Polk Farms before it was repaired. Exhibit 6A-C are receipts of Bobbie's

85 organic fertilizer purchases, and Exhibit 6D is a receipt of the malorganite purchase that Bobbie  
86 said was made on the company credit card. Exhibit 7A looks like a bucket of malorganite fertilizer  
87 that was shipped to Polk Farms, 7B looks like the label on those buckets, and 7C is the ingredients  
88 list for malorganite fertilizer. Exhibit 11 is a memo that Bobbie sent out. I'm not familiar with any  
89 of the other exhibits in this case.

90 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving a  
91 statement, I was told I should include everything that I know may be relevant to my testimony,  
92 and I followed those instructions. I know that I can and must update this affidavit if anything new  
93 occurs to me until the moment before opening statements begin in this case.

Signed,

Dakota Bryant

Dakota Bryant

IN THE CIRCUIT COURT FOR THE TWENTY FIRST  
JUDICIAL CIRCUIT IN AND FOR SUMMERCREEK  
COUNTY, FLORIDA

**COLLYMORE WILDLIFE PRESERVE,  
INC.,  
A Florida Corporation**

Plaintiff

v.

**POLK FARMS, LLC, A Florida Limited  
Liability Corporation**

Defendant

**Case No. 2019-CA 226501**

Judge Chamberlain Haller

**Affidavit of Dr. Skyler Foley**

Taken: April 11, 2021

**AFFIDAVIT OF DR. SKYLER FOLEY**

1        After being duly sworn upon oath, Dr. Skyler Foley hereby states as follows: I am fifty-five years  
2 old and am competent to make this affidavit. I am a professor at the University of Florida, where I teach  
3 graduate and doctoral courses on hydrology and meteorology. I received my bachelor's degree in ecology  
4 and my master's degree in hydrology, both from Florida State University, and then my Ph.D. in limnology  
5 from the University of Central Florida. To date, I've published fifty peer-reviewed articles on the  
6 relationship between Florida's waterways and aquatic biology. I have authored four textbooks that are used  
7 to teach hydrology courses in universities throughout Florida. I've testified as an expert in hydrology and  
8 limnology in thirty civil cases, exclusively for the defense.

9        Although I've never been employed by Florida's division of Water Resource Management (WRM),  
10 I've worked closely with the WRM throughout my career. In 2010, the WRM appointed me to teach annual  
11 classes on advanced hydrology that WRM employees are required to take. While I teach hydrology, the  
12 general study of water as it relates to geology, I'm a limnologist. Limnology is a far more specialized form  
13 of hydrology that focuses on lakes, rivers and wetlands. Where a hydrologist would only be able to  
14 investigate the flow of chemicals in water, I have advanced qualifications that allow me to research the

15 impact that underground chemicals have on rivers and their ecosystems.

16        In December of 2020, I was contacted by defense counsel to review the work of the plaintiff's  
17 expert, Harley McKenna. Harley was in my first batch of students for the WRM and passed my course with  
18 flying colors. Harley also served as a research assistant for many of my studies. Prior to this case, I've  
19 always admired Harley's work and believed Harley would come to surpass me as the frontier expert in  
20 limnological studies. When I read Harley's report, I was shocked to see the blatant gaps in Harley's  
21 investigation. To say the least, I was disappointed in my former student.

22        On January 23, I visited Polk Farms to obtain my own water samples for testing. Bobbie Polk  
23 explained that after this lawsuit was filed, Polk Farms paid to rebuild the container wall. As such, I was  
24 unable to inspect the same wall that Harley inspected. Bobbie instead provided me photographs of the old  
25 wall that Bobbie took right before it was rebuilt, which I determined was a bit run down but still sufficient  
26 to prevent fertilizer runoff.

27        The water samples I took from Polk Farms contained moderate levels of phosphorus, nitrogen, and  
28 mercury, all of which are active ingredients in malorganite fertilizer. Nonetheless, when evaluating sources  
29 of chemicals in water, it's crucial to test the soil of corresponding locations. Phosphorus and nitrogen  
30 naturally occur and mix into the environment whenever rocks erode, or dried soil gets caught up in the  
31 wind. The soil samples I collected around Polk Farms tested for similar levels of phosphorus and nitrogen,  
32 meaning that it is more likely that the levels Harley detected were naturally occurring and not caused by  
33 fertilizer runoff. This is even more likely considering that Hurricane Annette had just passed through  
34 Summercreek County when Harley conducted the investigation. The reality is that strong winds and heavy  
35 rainfall are known to disturb soil and cause minerals to mix in with the water.

36        The presence of mercury is concerning, as it is not as common in nature as phosphorus and nitrogen.  
37 But given that its levels are relatively low in both my tests as well as Harley's, it's likely that it occurred as  
38 a result of some other pollutant.

39        Even though Harley did not test the area known as Murphy Bend, I decided to test this location. I  
40 chose this location because it a downstream halfway point from Polk Farms to Collymore Preserve. It is

41 also a sharp curve in the river that would increase a pollutant's likelihood of being deposited on the shore.  
42 The water levels contained extremely low levels of phosphorus, nitrogen, and mercury, which was  
43 surprising. If fertilizer runoff from Polk Farms was contaminating the Summercreek Marshlands, I would  
44 expect that the fertilizer ingredients would, in some part, be deposited into the soil and linger in still parts  
45 of the water. This was not the case, nor did I observe any algae growth in the Bend. Had Harley tested  
46 Murphy Bend in November of 2019, it would have revealed that Harley's opinion is flawed and inaccurate.

47         Admittedly, testing the waters around Murphy Bend over a year after the lawsuit was filed wouldn't  
48 be the most reliable form of evidence, given that pollutant levels in running water vary drastically. But the  
49 soil samples I collected from Murphy Bend also had low levels of these chemicals, and soil preserves  
50 pollutants more securely than open water.

51         I tried to visit Collymore Preserve to retrieve some samples, but the location was closed off to the  
52 public given the continuing animal deaths that have been reported in the Summercreek Marshlands. When  
53 I approached the entrance, Ellis Collymore looked at me through the glass door and flipped the "Open" sign  
54 to "Close." I got the impression that I wasn't wanted and decided I would use the results Harley collected  
55 for my analysis. I could have received permission from the judge to collect some samples, but ultimately  
56 felt it was unnecessary since I had Harley's results.

57         It is important to note that the water samples that Harley collected of the Summercreek Marshlands  
58 contained high levels of polyethylene terephthalate or PTE (particles of synthetic plastics). This was  
59 surprising for two reasons. First, the samples I collected upriver contained no PTE, so I determined it was  
60 more likely than not the source of these PTE levels was due to the plastic that was specifically around the  
61 Preserve. Second, high levels could only be possible with prolonged periods of plastic dissolving in the  
62 water. I agree with Harley that PTE only weakens an animal's immune system and doesn't cause death. But  
63 if there was PTE in the water, then it is just as likely that animals are dying off due to consumption of plastic  
64 that has yet to dissolve (such as plastic rings and straws).

65         While it is uncommon for large algal blooms to occur naturally, a combination of Hurricane Annette  
66 and Florida's rich soil could have allowed these growths to occur naturally. Whenever water is disturbed

67 during harsh storms, the underlying soil in the riverbed would also be disturbed. This would likely result in  
68 naturally occurring nutrients similar to the chemicals found in fertilizer to be released into the water, and  
69 as such, I believe the most plausible reason for the algal blooms experienced by the Preserve is that they  
70 were naturally occurring. The forensic evidence does indicate that these algal blooms were not caused by  
71 fertilizer runoff from Polk Farms, since there was no evidence of even moderate levels of phosphorous and  
72 nitrogen in Murphy's Bend soil and water. The brevetoxins, which are toxic chemicals released by algal  
73 blooms, found in the Summercreek Marshlands most likely caused the death of the animals on Collymore  
74 Preserve. However, had the Marshlands not contained such a large amount of PTE, the wildlife's likelihood  
75 of survival would have been much higher, so I must conclude that the PTE that emanated from Collymore  
76 Preserve was the major contributing factor of the death of wildlife in the Preserve.

77 I have reviewed the opinion of Harley McKenna and disagree with Harley's opinion and  
78 methodology on this case. I have no reason to disagree with the mass spectrometry results that the WRM  
79 provided; in fact, I frequently visit WRM's labs to conduct my own tests and always find them to be accurate  
80 and reliable. However, Harley concluded that the algal blooms in the Summercreek Marshlands were  
81 caused by fertilizer runoff from Polk Farms. My biggest issue with that conclusion is that Harley did not  
82 test a source of water between Polk Farms and the Collymore Preserve to gain a more accurate  
83 understanding of how the two locations interacted with each other. This is a major flaw in Harley's analysis,  
84 and thus a flaw in Harley's conclusion.

85 I spent 50 hours conducting my analysis and investigation. After submitting my report, defense  
86 counsel paid me in the amount of \$25,000. Several days later, the defense attorneys informed me that I  
87 would be called as a witness. For my testimony in court, I charge a flat fee of \$5,000, which is inclusive of  
88 travel and hotel expenses. All the conclusions I have made are contained within this report and are made to  
89 a reasonable degree of scientific certainty.

90 I am familiar with the following exhibits: Exhibits 1 is a map of Summercreek. Exhibit 2 is the  
91 predicted trajectory of Hurricane Annette's path as of August 1, 2019 from the national news. Exhibit 3 is  
92 another predicted path of Hurricane Annette from the local news, released on the same day. Exhibit 4 is a

93 photograph of what a container wall should ideally look like, while Exhibit 5 is the photo that Harley took  
94 of the Polk Farms container wall during Harley's inspection. I've never seen Exhibit 7C before, but I know  
95 it to be the ingredients list of malorganite fertilizer. Exhibit 10 is the results from the mass spectrometry  
96 tests on the water samples that Harley McKenna collected. I also reviewed the report of Harley McKenna.  
97 I'm not familiar with any of the other exhibits in this case.

98 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving a statement, I  
99 was told I should include everything that I know may be relevant to my testimony, and I followed those  
100 instructions. I know that I can and must update this affidavit if anything new occurs to me until the moment  
101 before opening statements begin in this case.

Signed,

Dr. Skyler Foley

Dr. Skyler Foley

IN THE CIRCUIT COURT FOR THE TWENTY FIRST  
JUDICIAL CIRCUIT IN AND FOR SUMMERCREEK  
COUNTY, FLORIDA

<b>COLLYMORE WILDLIFE PRESERVE, INC.,</b> <b>A Florida Corporation</b>	<b>Case No. 2019-CA 226501</b> Judge Chamberlain Haller
Plaintiff	
v.	
<b>POLK FARMS, LLC, A Florida Limited Liability Corporation</b>	<b>Affidavit of Ellis Collymore</b>
Defendant	Taken: February 12, 2020

**AFFIDAVIT OF ELLIS COLLYMORE**

1        After being duly sworn upon oath, Ellis Collymore hereby states as follows: I am thirty  
2        years old and am competent to make this affidavit.

3        I am the president and chief executive officer of Collymore Wildlife Preserve in  
4        Summercreek Florida. The Collymore Wildlife Preserve has been in my family for the last three  
5        generations and is a well-established, family-owned business in Summercreek, Florida. The  
6        preserve contains a variety of nature trails and offer riverboat tours around the Summercreek  
7        Marshlands. In addition, we maintain the preserve to protect the indigenous wildlife of Florida.

8        We take care of the animals, and we commit ourselves to protecting the water and land around the  
9        preserve. We use the water around the preserve to provide drinking water for the animals, as well  
10      as maintaining the crops we grow on the preserve to feed and maintain the animals.

11      We have approximately 40 acres of land, some of which we exclusively use to grow several  
12      different crops to feed the animals on the preserve. Our land is close to the marshlands, so it's easy  
13      to obtain clean water for the crops. Because we grow crops on the west side of our property, we  
14      use different types of fertilizers to grow the crops, but we use only organic fertilizers to have the

15 least impact possible on the area water supply. We don't use commercial fertilizer with any nasty  
16 chemicals in them because the Summercreek Marshlands have had problems with the algae blooms  
17 in the past. We desperately need to protect our water supply and our land not only for the good of  
18 nature, but also because that is what keeps us in business. People come from around the state to  
19 visit our preserve, and whenever algae start growing, business goes down.

20 That is where our relationship with Polk Farms and the Polk family comes into play. The  
21 Polk's and the Collymore's, we have history. About 15 years ago, my father, Earl Collymore, and  
22 the previous owner of Polk Farms, Montgomery Thaddeus Polk, were friends up until a problem  
23 occurred up at Polk Farms about high usage of a certain fertilizer on the Polk Farms property. Polk  
24 Farms had used a type of fertilizer called malorganite that was high in phosphorus, nitrogen and  
25 had traces of mercury in it. Because the Summercreek Marshlands are located at the bottom of  
26 Moore Hill, and the water flows down from Polk Farms, we were hit bad with several algal blooms.  
27 Specifically, my father started noticing algae blooms occurring up and down the stream from the  
28 Polk's farmland all the way down into the mouth of the Summercreek Marshlands. Despite my  
29 father's attempt to resolve this issue with Montgomery, I know my father reported the problem to  
30 the state water authorities, which caused rift between the families.

31 About 10 years ago, Polk Farms completely stopped its operations in the middle of the  
32 housing market crash. This was around the same time that Montgomery passed away of a heart  
33 attack. It has been rumored that they were shut down because of the substantial fines that were  
34 assessed against the farm after my father's complaint. What was clear is that the algae blooms  
35 disappeared after Polk Farms closed and the Polk's moved away. After they moved out, we never  
36 experienced large algae bloom again, that is until Polk Farms returned.

37 After Polk Farms closed, the Preserve thrived. Business was better than ever, our livestock  
38 was prospering, crops were doing well, and we were saving animals just like we wanted to do. But

39 in April of 2019, Bobbie Polk, the current owner of Polk Farms, moved back to Summercreek and  
40 began operations on the old farm uphill. In June, I received a phone call from Regan Polk who told  
41 me how upset Regan was at Montgomery and Bobbie. Regan said that Regan was angry about  
42 how poorly Montgomery treated Regan. I think Regan even said, “I’ll get back at my family one  
43 day.” Regan wanted to continue to work at a job working with animals, so I offered him to come  
44 on as general manager of Collymore Wildlife Preserve.

45 I didn’t interact much with Bobbie or anyone from Polk Farms during those months.  
46 Because I had to drive past the farm to get to work, I saw a bit of what the Polk’s were doing. I  
47 recall being surprised at how fast their crops were growing. I’d also see bags and buckets of  
48 fertilizer every now and then, although I couldn’t identify the brand.

49 I wasn’t too concerned about what I saw until we got news that Hurricane Annette would  
50 be hitting Summercreek in early August. From what the news showed, it was likely that the  
51 hurricane would hit Summercreek. On August 1, 2019, I was at the local department store buying  
52 hurricane shutters and I also saw Bobbie at the next cash register doing the same. In addition to  
53 the hurricane shutters, I also saw Bobbie with quite a few buckets of organic fertilizer. I tried to  
54 extend an olive branch by asking Bobbie what Bobbie was planning on doing with the fertilizer,  
55 but Bobbie just blew past me and said, “none of your business, you filthy Collymore.” I was more  
56 upset with myself for even giving Bobbie the time of day.

57 Hurricane Annette hit Summercreek on August 8, 2019. It was thankfully a weak  
58 hurricane, but water levels still rose drastically. After the hurricane, a bunch of trash washed into  
59 the marshlands, but this always happens. I was able to get Regan to clean things up within the  
60 week. But on September 18, 2019 I began noticing some algae blooms much like we saw in the  
61 marshlands 15 years earlier when Polk Farms was operating at the top of Moore Hill. The algal  
62 blooms were mainly growing on the west side of the Marshlands, but there were some algal blooms

63 on the east of our property as well. I spoke with Regan about my concerns regarding the algal  
64 blooms, and Regan showed me some photos. Evidently, Regan went onto Polk Farms property and  
65 took pictures of the fertilizer buckets that were on the farm. That's how I learned that malorganite  
66 was being utilized on Polk Farms. I did drive up to Bobbie's property and exchanged a few heated  
67 words that I regret, but Bobbie denied use of malorganite fertilizer. Bobbie also said, "You should  
68 ask that weasel Regan about your problem because Regan also used the same fertilizer on your  
69 property." When I heard this, I was shocked. I could not believe that Regan would use this fertilizer  
70 on our property.

71 I approached Regan about using malorganite on our property and Regan admitted to using  
72 malorganite on the west side of the preserve in the past but said that Regan only used the  
73 malorganite in certain parts of the preserve and stayed away from the water as much as possible. I  
74 had certainly never seen Regan using malorganite, especially not near our waterways. Regan also  
75 specified that Regan hadn't used malorganite in months. Nonetheless, I gave strict instructions that  
76 this fertilizer was no longer to be utilized on the Collymore Preserve.

77 On the same day I had this conversation with Regan, Bobbie Polk showed up to our  
78 property. You can imagine my surprise when Bobbie came in with Bobbie's head hanging low.  
79 Before I could even say anything, Bobbie apologized profusely about what Polk Farms had done.  
80 Bobbie said, "I'm really sorry for the trouble we've caused. I'll help you clean up the algae if you  
81 don't sue us. Polk Farms won't be able to survive a lawsuit at this time." I was beside myself.  
82 Bobbie thought Polk Farms could ruin my livelihood and then come crying to me about it? I filed  
83 this lawsuit the very next week.

84 I hoped that the algal blooms would go away and that nothing would result from them. But  
85 after two weeks, my crops started dying because of the contamination of the water supply. Worse,  
86 animals started getting sick and showing up dead on the side of our nature trails. I was on a tour

87 with a group of customers the first time I saw a dead animal, and the tour group left immediately  
88 after demanding a refund. Since then, I have suffered loss of animal life as well as loss of business.  
89 I had no choice but to take legal action against Polk Farms. If things keep going like this, I'll have  
90 no choice but to shut down Collymore Preserve. Something needs to be done. This is my family  
91 legacy. I just can't see it destroyed by Polk Farms.

92 I am familiar with the following exhibits: Exhibit 1 is a map of Summercreek. The shaded  
93 area in the north is Polk Farms, and the shaded area surrounding the lake is the Collymore Preserve.  
94 Exhibit 2 is the cone of Hurricane Annette broadcasted on the national news and local news on  
95 August 3, 2019. Exhibit 3 is the local forecast of Hurricane Annette that was also released on  
96 August 3, 2019. Exhibit 7A is a photo of the malorganite buckets that Regan showed me. Exhibit  
97 8 are some texts between Regan and me, we pretend to argue like that all the time but really don't  
98 mean anything by it. I'm not familiar with any of the other exhibits in this case.

99 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving a  
100 statement, I was told I should include everything that I know may be relevant to my testimony,  
101 and I followed those instructions. I know that I can and must update this affidavit if anything new  
102 occurs to me until the moment before opening statements begin in this case.

Signed,

Ellis Collymore

Ellis Collymore

IN THE CIRCUIT COURT FOR THE TWENTY FIRST  
JUDICIAL CIRCUIT IN AND FOR SUMMERCREEK  
COUNTY, FLORIDA

**COLLYMORE WILDLIFE PRESERVE,  
INC.,  
A Florida Corporation**

Plaintiff

v.

**POLK FARMS, LLC, A Florida Limited  
Liability Corporation**

Defendant

**Case No. 2019-CA 226501**

Judge Chamberlain Haller

**Affidavit of Harley McKenna**

Taken: March 23, 2020

**AFFIDAVIT OF HARLEY MCKENNA**

1        After being duly sworn upon oath, Harley McKenna hereby states as follows: I am thirty-  
2        nine years old and am competent to make this affidavit. I am a hydrologist with the Florida division  
3        of Water Resource Management (WRM). I received my bachelor's degree in environmental  
4        science from the University of Miami, and my master's degree in environmental engineering with  
5        a specialization in hydrology from Florida International University. I began working with the  
6        WRM in 2010 and completed the required courses in meteorology, hydrology, and Florida  
7        geography. In 2017, after my work and testimony involving three water-related lawsuits against  
8        the Pinnacle Paper Company, I was promoted to the position of supervisor. In addition to those  
9        lawsuits, where I testified exclusively for plaintiffs. I have also testified in five criminal cases as  
10       an expert hydrologist both for the prosecution and the defense.

11       Hydrology is the study of the movement and distribution of water as it relates to geology  
12       and weather. I routinely test the chemical composition of water to ensure that the regulations we  
13       have in place are being followed. I'm also responsible with keeping up to date with scientific

14 research in my field. I have attended countless hydrology conferences and I have published three  
15 peer-reviewed articles regarding advanced techniques for testing contaminants in different water  
16 sources. I have a decade of experience investigating algae complaints along Florida waterways.

17 In October of 2019, the WRM was contacted by plaintiff's counsel regarding their lawsuit,  
18 and as the supervisor appointed to Summercreek County's waterways, I was assigned to the job. I  
19 agreed to accept the case pro bono. I began my inspections of both plaintiff's and defendant's  
20 properties on October 15, 2019, which was the day after I was contacted.

21 I spoke with Ellis Collymore on Collymore Preserve property. Ellis explained to me that  
22 dead animals had begun appearing throughout the wildlife preserve in late September, 2019. This  
23 was all shortly after Hurricane Annette made landfall in Florida in August. Algal blooms are  
24 common in the aftermath of hurricanes given the sudden stilling of water after a prolonged period  
25 of increased activity. While six weeks after a hurricane is a bit long for algal blooms to appear, it  
26 is certainly not unheard of. Ellis also explained that during the storm, the water levels in the  
27 marshlands "raised by over a foot." Although I was not present on the Preserve during the rainfall,  
28 the erosion and damage done to vegetation along the waterway edges were, based on my  
29 experience investigating waterways, consistent with high levels of rainfall.

30 During my inspection of the Preserve, I noticed that the Preserve was littered with a variety  
31 of aluminum and plastic trash. Ellis Collymore indicated that all the garbage washed up onto the  
32 property during Hurricane Annette. Ellis stated, "Me and some of my boys are going to pick it up  
33 later today." It did not seem plausible that so much trash could accumulate from a single storm.  
34 The waterways were also covered in an unnaturally large amount of algae, and I did see dead fish  
35 floating in the water. It's true that algal blooms occur naturally after prolonged exposure to rainfall  
36 and strong winds. This is because phosphorus and nitrogen are naturally found beneath the ground,  
37 and those nutrients can be unearthed with increased river activity. But any algae growth that would

38 have arisen from Hurricane Annette could not compare to the overwhelming amount of algal  
39 blooms that I witnessed at the Collymore Preserve. I collected samples of water from different  
40 waterways around the Summercreek Marshlands.

41 On the same day I visited Collymore Preserve, I also visited Polk Farms. I was greeted by  
42 Bobbie Polk and the defense attorneys, who refused to let me onto the property until I showed  
43 them the mandated court order signed by Judge Haller. I saw several empty buckets of malorganite  
44 fertilizer near one of the barns that appeared to have been discarded recently, and there was also  
45 the potent odor of manure as I walked through the agricultural area.

46 I collected samples of water from along the farm's edge next to the waterways. Polk Farms'  
47 agricultural area was dangerously close to the Summercreek River's edge. I inspected the container  
48 wall separating Polk Farms from the river and determined that it was impossible for the wall to do  
49 its job properly. There were a variety of cracks along the foundation, and the wall was not built to  
50 the WRM's regulations for container walls. I told Bobbie that the container wall needed to be  
51 repaired. Bobbie said, "It didn't look like this before the storm."

52 The waterways around Polk Farms were clear of any algal blooms. This was expected. Polk  
53 Farms is located at the top of Moore Hill, and with the high levels of rainfall from Hurricane  
54 Annette, I would expect that the river's downhill flow would have grown rapid before I conducted  
55 my investigation. It is difficult for algae to grow, or even remain, in water that is not stagnant. I  
56 expect that any algae that was present prior to my visit was washed away during the storm.

57 All samples that I collected were sent to WRM's hydrology lab for mass spectrometry  
58 screening. Mass spectrometry is a technique used by hydrologists to identify contaminants in a  
59 sample of water. A vaporized sample is passed through the spectrometer where the gas is ionized.  
60 The ions are then accelerated through the device, and the relevant particles are detected and loaded  
61 onto a graph. Our spectrometers are calibrated before each test we run to ensure accuracy.

62        The samples from Polk Farms contained high levels of mercury, phosphorus, and nitrogen;  
63    all of which are key ingredients in malorganite fertilizer. Furthermore, there were low levels of  
64    brevetoxins detected in the river near Polk Farms. Brevetoxins are a toxic chemical released by  
65    algal blooms that is lethal to many animals (this is why it is dangerous to swim in red tide).  
66    Fertilizer runoff can cause high levels of brevetoxins because the fertilizer ingredients supply  
67    nutrients to algae that would otherwise be inaccessible in undisturbed waterways. With these  
68    levels, I was surprised that there was no algal blooms in the waterway around Polk Farms, but it  
69    is possible that these blooms existed prior to the hurricane.

70        The samples collected from the Summercreek Marshlands contained noticeably lower  
71    levels of phosphorus, nitrogen, and mercury, but higher levels of brevetoxins consistent with the  
72    algal growth around the estuaries. The Marshlands samples also contained moderate levels of  
73    polyethylene terephthalate (PTE), which are particles in synthetic or polyester plastics (namely  
74    water bottles and other common pollutants). Research has shown that these particles alone cannot  
75    cause death of wildlife when ingested, but continued ingestion of these chemicals has been known  
76    to cause substantial damage the immune system of many animal species.

77        Based upon my investigation, Polk Farms created an environment that was highly  
78    conducive to fertilizer runoff. Given the levels of fertilizer chemicals in the water near Polk Farms  
79    and the inadequate container wall, it is more likely than not that the hurricane's rainfall caused the  
80    runoff of fertilizer down to the Collymore Preserve. The downhill flow of water likely deposited  
81    these chemicals from Polk Farms around the Summercreek Marshlands, allowing the unnatural  
82    growth of algal blooms that I observed. The high levels of brevetoxins released by the algal blooms  
83    is likely what caused the death of wildlife reported by Ellis Collymore. Animals have been reported  
84    to develop an immunity to small levels of brevetoxins, but lethal amounts would have been  
85    produced from the plethora of algal blooms. All facts and conclusions contained within this report

86 are made within a reasonable degree of scientific certainty, and are based on my previous  
87 experience, prior knowledge, and the facts and data I collected and reviewed.

88 I am familiar with the following exhibits: Exhibit 1 is a map of Summercreek. Exhibit 2 is  
89 the predicted trajectory of Hurricane Annette's path as of August 1, 2019 from the national  
90 forecast, and Exhibit 3 is another trajectory of the same hurricane on the same day by the local  
91 Summercreek news network. Exhibit 4 is a photo I took from an unrelated algae complaint one  
92 year prior to my investigation of this case. This container wall passed my inspection and shows  
93 what a container wall should ideally look like. Exhibit 5 is the photo I took of the container wall  
94 on Polk Farms. I have never seen Exhibit 7A or 7B before, but I know that they are buckets of  
95 malorganite fertilizer and appear identical to the ones I saw on Polk Farms' property during my  
96 inspection. I've also never seen Exhibit 7C before, but I know it to be the ingredients list for  
97 malorganite fertilizer. Exhibit 10 is the results from the mass spectrometry tests on the water  
98 samples I collected. I'm not familiar with any of the other exhibits in this case.

99 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving a  
100 statement, I was told I should include everything that I know may be relevant to my testimony,  
101 and I followed those instructions. I know that I can and must update this affidavit if anything new  
102 occurs to me until the moment before opening statements begin in this case.

103 Counsel for both parties provided me the opportunity to review the report of Dr. Skylar  
104 Foley and Dr. Foley's interpretation of the chemical tests found in Exhibit 10A and Exhibit 10B.  
105 I was surprised that a former professor of mine would arrive at such unfounded conclusions, and  
106 therefore I would have to respectfully disagree with my dear Dr. Foley's conclusions.

107 Dr. Foley concluded that the algal blooms in the Collymore Preserve were naturally  
108 occurring. I conceded that strong hurricane-force winds likely disturbed the soil in the  
109 Summercreek River. However, had naturally occurring nutrients been the cause of the algal blooms

110 reported in this case, I would have expected to see the algae to be reported no more than four weeks  
111 after Hurricane Annette made landfall. Instead, the algal blooms were only reported two months  
112 after the hurricane. The timeline of Hurricane Annette causing the blooms simply does not add up  
113 with the science, and such a large gap between the algal blooms' appearance indicates a different,  
114 man-made source.

115 I also understand that I did not test the water or soil at Murphy's Bend. While soil testing  
116 is outside of my expertise, as I am not a limnologist, testing the water would have been  
117 unnecessary. There was a large source of fertilizer on Polk Farms, and algal blooms downriver. If  
118 I had tested any chemicals at Murphy's Bend during my investigation, they most likely would have  
119 been the same chemicals found in the Collymore Preserve. However, I cannot say that with  
120 absolute certainty.

121 Part of the reason I joined onto the WRM is because I wanted to protect Florida's  
122 environment. Having worked under Dr. Foley for several years, it's a shame that I have to disagree  
123 with my professor in the court of law, but I simply don't have the same vested interest in the  
124 outcome of this case as Dr. Foley does.

Signed,



Harley McKenna

IN THE CIRCUIT COURT FOR THE TWENTY FIRST  
JUDICIAL CIRCUIT IN AND FOR SUMMERCREEK  
COUNTY, FLORIDA

**COLLYMORE WILDLIFE PRESERVE,  
INC.,  
A Florida Corporation**

Plaintiff

v.

**POLK FARMS, LLC, A Florida Limited  
Liability Corporation**

Defendant

**Case No. 2019-CA 226501**

Judge Chamberlain Haller

Taken: July 12, 2020

**AFFIDAVIT OF REGAN POLK**

1        After being duly sworn upon oath, Regan Polk hereby states as follows: I am twenty-seven  
2    years old and am competent to make this affidavit. I am not testifying voluntarily. The plaintiff  
3    attorneys delivered a subpoena to my mail. I didn't want to touch this case with a mile-long pole,  
4    the reason being that I hate everyone involved.

5        Bobbie is my half-sibling. We've got the same father, Montgomery Thaddeus Polk, but  
6    different mothers. Poppa bought Polk Farms shortly after I was born. Bobbie is four years older  
7    than me, and Poppa made it clear every day that he had a favorite. Growing up, Bobbie was always  
8    out in the fields while Poppa taught Bobbie the family's way of running the business, while I was  
9    left to tend the animals. Poppa made sure that every cent of Bobbie's college tuition was paid, even  
10   though Bobbie never had the best grades. And although my grades earned me a partial scholarship  
11   to the same university, Poppa told me I needed to help work the farm with Bobbie gone.

12       Poppa died of a heart attack in 2009, after Bobbie graduated college. I think it was the  
13   housing market crash that killed him. Poppa left the farm to Bobbie; I didn't get a cent. With the

14 economy in a rut, no one was hiring, and Summercreek County was dying fast. Bobbie made the  
15 executive decision to hightail the business north, so I had no choice but to follow.

16 For the next decade, we operated a series of farms out in Kentucky. Bobbie would always  
17 say that our farms needed to be run exactly how Poppa ran them. Bobbie's favorite of Poppa's  
18 teachings was using fertilizer before rain. "The water helps the fertilizer soak into the soil," Bobbie  
19 told me once. I would always have to shovel manure from the pastures to serve as fertilizer.

20 In April 2019, we got a call from Bobbie's mom telling us she'd come down with thyroid  
21 cancer. She's fine now, but the scare made Bobbie want to move back down to Polk Farms in  
22 Summercreek. We were met with hostility from the Collymore family—apparently, when we were  
23 gone, they'd told everyone that we were the reason Summercreek's economy was ruined.

24 The farm was a mess when we got back. The container wall separating our crop fields from  
25 the river was in shambles. I talked to Bobbie about hiring some professionals to clean up the place  
26 and rebuild the wall. Bobbie brushed me off and said, "with the move and Mom's cancer, what  
27 makes you think I have any money to spend on work you can do?" I then said that if Bobbie wanted  
28 me to clean the place up by myself, I needed a raise that was ten years too late. Bobbie just laughed.  
29 I ended up fixing our buildings and weeding the fields, but the container wall was made of solid  
30 concrete and needed fixing that I couldn't provide. I recall the wall being cracked along its  
31 foundation, with chunks missing in certain portions. My work was quick enough that Polk Farms  
32 was able to plant and fertilize their crops in May of 2019.

33 Without a raise, I told Bobbie that I was quitting after the May crops were planted. Bobbie  
34 let me live on the property, but I didn't spend nearly the same amount of time on the farm as I did  
35 as a farmhand. Shortly after, I landed a job with Ellis Collymore. Initially, Ellis told me that a Polk  
36 was never going to work for the Collymore Preserve, but once I explained to Ellis the situation,  
37 Ellis gave me a job that paid better than Bobbie ever did. I did have to work long hours, though,

38 which meant that I was only really on the farm during the early mornings and right before nightfall.

39         From my limited time on Polk Farms that year, I know that Bobbie hired a few farm hands  
40 and a property manager named Dakota Bryant, which is how I knew Bobbie had enough money to  
41 give me a raise but chose not to. Due to the move, we didn't have any animals on the property yet,  
42 and still didn't when this lawsuit was filed. The only reason we could fertilize the crops in May  
43 was because we had leftover fertilizer from Kentucky, but after that, I know for a fact Bobbie  
44 didn't have any organic fertilizer. Because of that, I think Bobbie switched to store-bought  
45 malorganite fertilizer. On July 20, I saw huge stacks of malorganite buckets sitting on the side of  
46 the house. I also saw a receipt of the purchase sitting on the table. I've never seen Bobbie order so  
47 much fertilizer in one season before. During dinner one night, I overheard Bobbie tell Dakota that  
48 money needed to come in fast to help pay for Bobbie's mom's surgery. As for the container wall,  
49 I never saw anyone go and repair it.

50         I said that I hated everyone involved, and that doesn't exclude Ellis. Even though Ellis  
51 hired me, Ellis would take every opportunity to insult me in front of other employees. Since it's a  
52 family business and all the employees are all part of the Collymore family, they would always  
53 have a good laugh every time Ellis called me a filthy Polk. The irony was that the Collymore  
54 Preserve is just about the filthiest place I've ever seen. The park guests throw trash left and right  
55 because Ellis was too lazy to set up trash cans around the Preserve. It was particularly bad on the  
56 west side of Collymore Preserve. I talked to Ellis about it once, but Ellis just ordered me to pick  
57 up the litter. For what it's worth, I tried my best since I care about the environment, but I know I  
58 missed a water bottle here and there. Along with trash collection, Ellis also put me in charge of  
59 growing some vegetables and other crops to feed the animals around the Preserve. I've heard  
60 through the grape vine what Bobbie's been saying about me, and I want to be clear that I never  
61 used malorganite fertilizer around the Collymore Preserve.

62                   On August 1, I walked in to find Bobbie and Dakota watching a news broadcast about  
63                   Hurricane Annette. Bobbie was clamoring about how this was going to be the perfect opportunity  
64                   to finally dump all that fertilizer out onto the fields. Dakota said, “maybe we should be careful.  
65                   I’m not used to this store-bought stuff.” I was immediately concerned because my new place of  
66                   work was downstream from the farm, and any runoff caused by the storm would really hurt the  
67                   Preserve. I said that Bobbie would be a moron to use any fertilizer when we were smack in the  
68                   middle of Hurricane Annette’s predicted path. We exchanged a few heated words. I decided that  
69                   it was time I move out. I currently live in a storage unit on the Collymore Preserve while I  
70                   apartment hunt.

71                   When Hurricane Annette came through, the water from uphill came rushing down into the  
72                   Marshlands. It took me a week to clean up all the trash that washed in, but I noticed that it was  
73                   mainly concentrated on the west side of Preserve. In September, the water turned green and was  
74                   covered in these murky algal blooms. At the end of the month, animals started turning up dead on  
75                   the side of our nature trails. I knew immediately whose fault this was.

76                   I am familiar with the following exhibits: Exhibit 1 is the map of Summercreek. Exhibit 2  
77                   is the cone of Hurricane Annette broadcasted nationally on the news on August 1, 2019. This is  
78                   the same broadcast I walked into Dakota and Bobbie watching. Exhibit 3 is another Hurricane  
79                   Annette prediction from the local news. Exhibit 5 is a photo of the container wall on Polk Farms  
80                   that looks identical to when I last saw it when I moved out of Bobbie’s place. Exhibit 6D is the  
81                   receipt I saw on the table after I walked past the huge stacks of malorganite buckets. Exhibit 7A is  
82                   a photo of a malorganite bucket, 7B is the label on the bucket, and 7C is the ingredients list of  
83                   malorganite fertilizer. Exhibit 8 are some texts between Ellis and me, while Exhibit 9 are some  
84                   texts between Bobbie and me. I’m not familiar with any of the other exhibits in this case.

85                   I swear or affirm the truthfulness of everything stated in this affidavit. Before giving a

86 statement, I was told I should include everything that I know may be relevant to my testimony,  
87 and I followed those instructions. I know that I can and must update this affidavit if anything new  
88 occurs to me until the moment before opening statements begin in this case.

Signed,

Regan Polk

Regan Polk

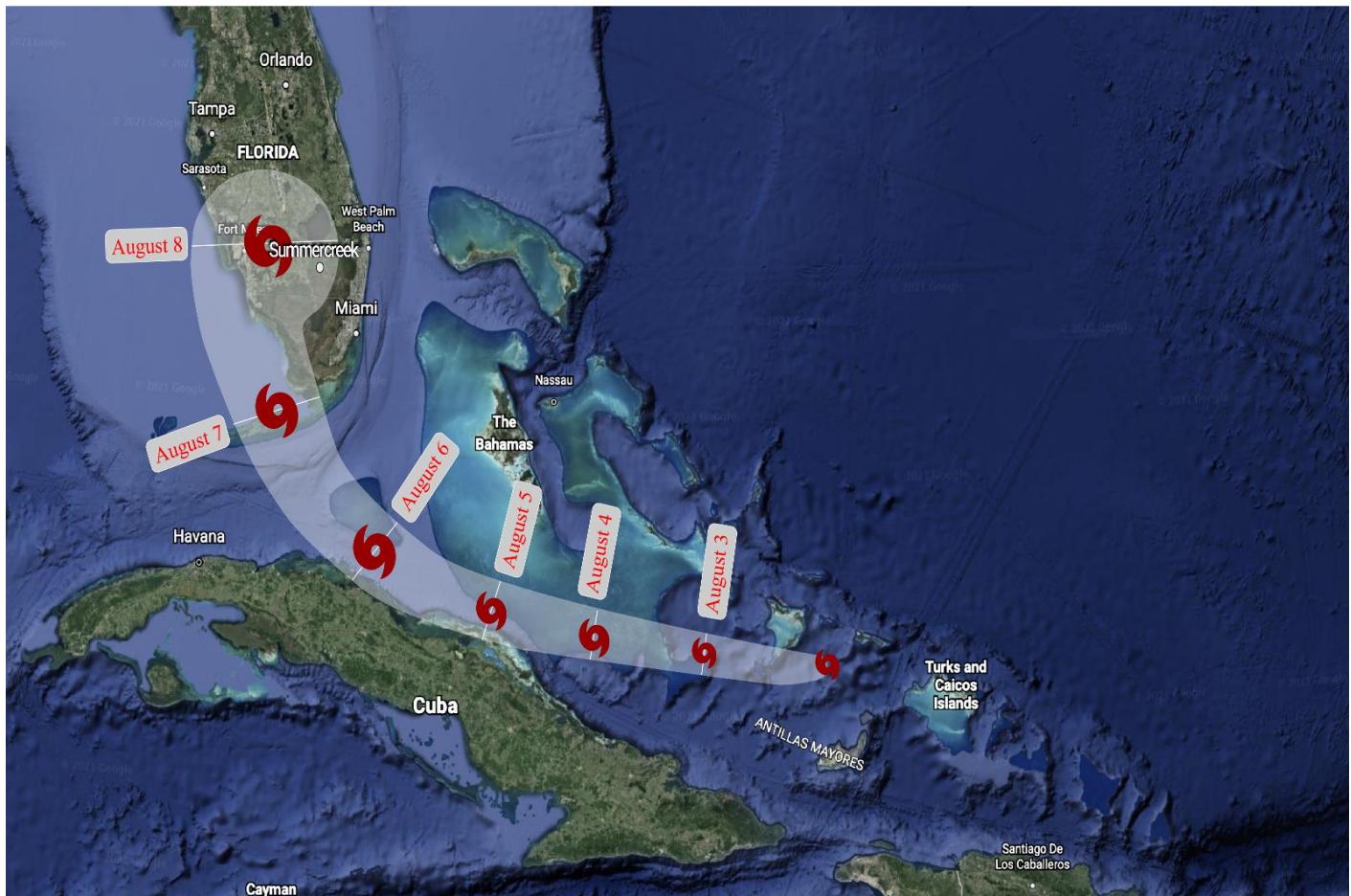
## Exhibit 1

Map of Polk Farms and Collymore Preserve



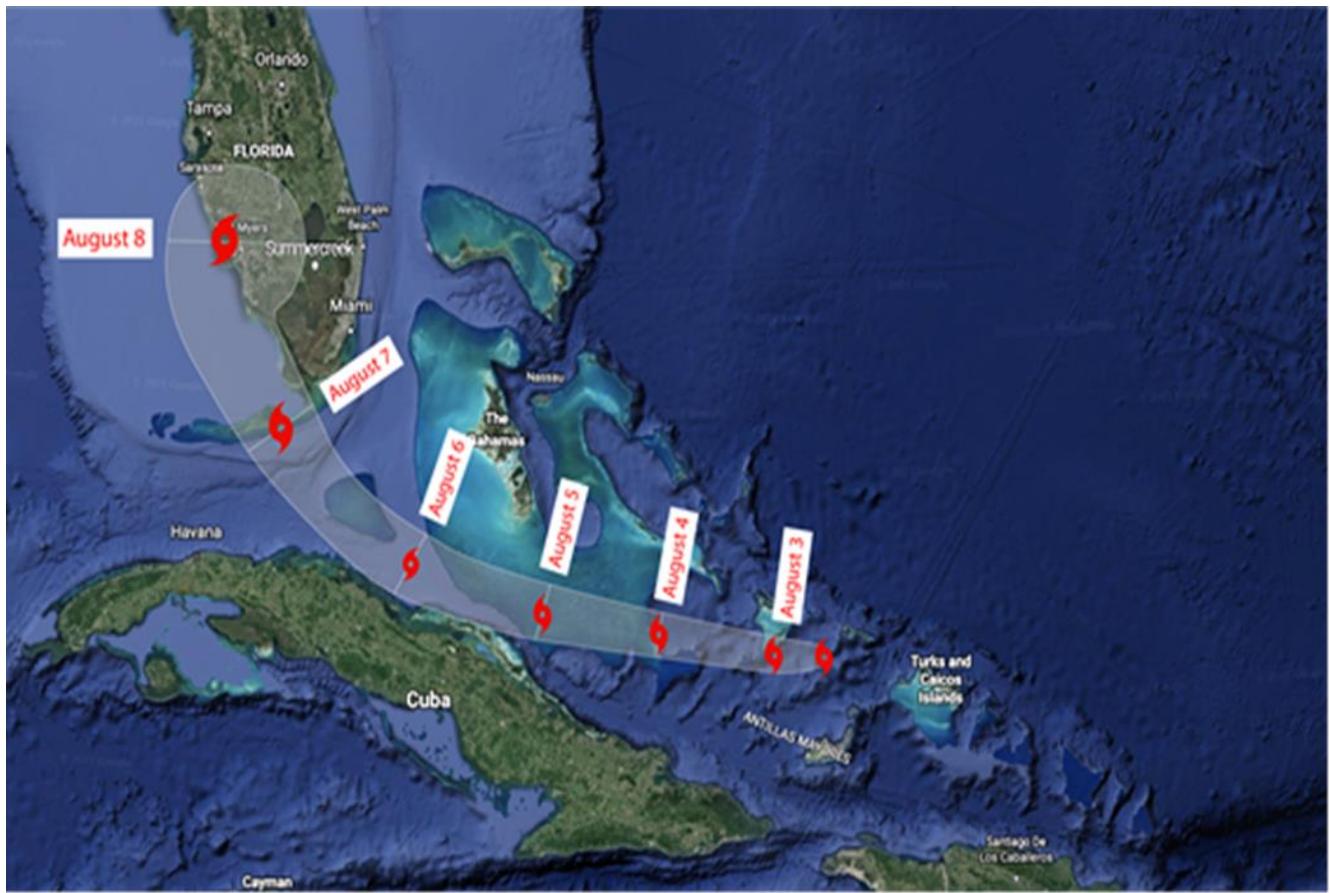
Polk Farms and Collymore Preserve shaded outside water area  
Algal blooms are marked in Summercreek Marshlands

## Exhibit 2



National Hurricane Forecasting Institute – Forecast of Hurricane Annette  
August 3rd, 2019

## Exhibit 3



WAKY TV Channel 1 – Forecast of Hurricane Annette – August 3, 2019

## Exhibit 4



Example of an intact retaining wall

## Exhibit 5



A photo of the defendant's retaining wall  
(Taken October 15, 2019)

## Exhibit 6A

Castillo's Supply Depot  
1211 Harbor Ln  
Summercreek, FL  
(776) 030 - 1718

SALE  
04/24/2019 01:29 PM  
BATCH #:01CDS  
APPR #:9630E  
TRACE #: 9  
VISA 7712

30	Organic Fertilizer 60 lb.	\$1275.00
5	Reusable Respirator	\$107.50
5	26" Shovel	\$99.95

SUBTOTAL:	\$1482.45
SALES TAX:	\$103.77
<b>TOTAL:</b>	<b>\$1586.22</b>

APPROVED  
THANK YOU  
CUSTOMER COPY

Polk Farms Fertilizer purchase April 2019 Receipt

## Exhibit 6B

Castillo's Supply Depot  
1211 Harbor Ln  
Summercreek, FL  
(776) 030 - 1718

SALE  
05/30/2019 03:06 PM  
BATCH #:0C918  
APPR #:50659  
TRACE #: 9  
VISA 7712

30	Organic Fertilizer 60 lb.	\$1275.00
7	10 Gallon Tub, Green	\$62.93

SUBTOTAL:	\$1337.93
SALES TAX:	\$93.66
TOTAL:	\$1431.59

APPROVED  
THANK YOU  
CUSTOMER COPY

Polk Farms Fertilizer purchase May 2019 Receipt

## Exhibit 6C

Castillo's Supply Depot  
1211 Harbor Ln  
Summercreek, FL  
(776) 030 - 1718

SALE  
06/28/2019 02:43 PM  
BATCH #:05692  
APPR #:2F975  
TRACE #: 9  
VISA 7712

30 Organic Fertilizer 60 lb. \$1275.00

SUBTOTAL: \$1275.00  
SALES TAX: \$89.25  
TOTAL: \$1364.25

APPROVED  
THANK YOU  
CUSTOMER COPY

Polk Farms Fertilizer purchase June 2019 Receipt

## Exhibit 6D

Castillo's Supply Depot  
1211 Harbor Ln  
Summercreek, FL  
(776) 030 - 1718

SALE  
07/20/2019 02:43 PM  
BATCH #:0SE75  
APPR #:00940  
TRACE #: 9  
VISA 7712

90 Malorganite 60 lb.	\$3373.20
2 26" Shovel	\$25.98
1 Utility Knife 6"	\$0.50
2 HDX Pump Sprayer	\$19.94
3 100 oz Torch Fuel	\$41.97

SUBTOTAL: \$3469.59  
SALES TAX: \$242.87  
TOTAL: \$3712.46

APPROVED  
THANK YOU  
CUSTOMER COPY

Polk Farms Fertilizer purchase July 2019 Receipt

## Exhibit 7A



Malorganite Fertilizer Buckets  
Picture taken by Regan Polk

## Exhibit 7B



Logo on the front of the bucket of Malorganite fertilizer bucket

## Exhibit 7C

<b>GUARANTEED ANALYSIS</b>	
TOTAL NITROGEN (N).....	24.0%
6.2% AMMONIACAL NITROGEN	
17.8% UREA NITROGEN*	
AVAILABLE PHOSPHORIC ACID (P <sub>2</sub> O <sub>5</sub> ).....	6.0%
SOLUBLE POTASH (K <sub>2</sub> O).....	12.0%
TOTAL SULFUR (S) .....	6.0%
2.0% FREE SULFUR	
4.0% COMBINED SULFUR	
IRON (Fe) .....	1.0%

#313-1119

### DERIVED FROM:

Polymer-coated urea, sulfur-coated urea, urea, ammonium sulfate, di-ammonium phosphate, muriate of potash, iron sulfate and mercury.

\*Contains 16.3% slowly available coated slow release nitrogen from 3 different release components: 4.5% slowly available urea nitrogen from polymer-coated urea (15 micron coating thickness), 4.5% slowly available urea nitrogen from polymer-coated urea (22 micron thickness), 7.3% slowly available urea nitrogen from sulfur-coated urea.

Chlorine (Cl) not more than 12.0%

### ZONE ONE:

Cool season northern grasses, such as Kentucky Bluegrass, Annual and Perennial Ryegrass. Apply early spring after aeration. This is usually in early spring and late fall. Apply American Choice® over lawn at the rate of 21 lb bag of Sam's Choice will cover just over 5,000 sq ft.

### ZONE TWO:

Warm season southern grasses, except St. Augustine. Apply in spring, summer and fall. Spread Sam's American Choice® spreader evenly over 5,000 sq ft. This 21 lb bag of 24-6-12 will cover 5,000 sq ft.

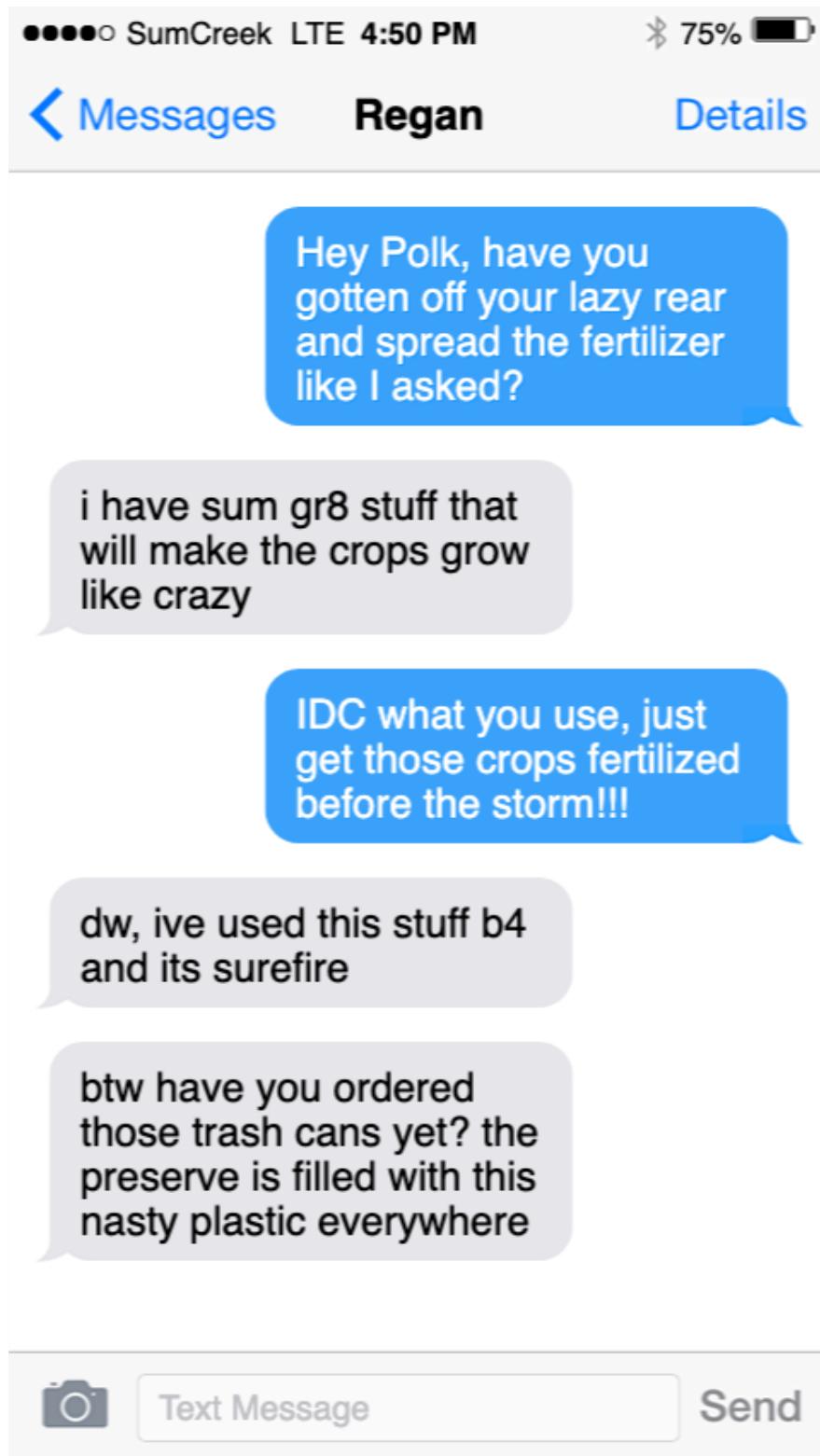
Centipede Grass: Apply early fall at the rate of 21 lb bag.

**TRANSITION ZONE:** Turf grasses in transition grasses. Apply

Information provided on the back of the Malorganite fertilizer Bucket

## Exhibit 8

Text Messages between Regan Polk and Ellis Collymore  
August 1, 2019



●●●●○ SumCreek LTE 4:50 PM

75% 

 Messages

Regan

Details

Don't tell me how to do  
my job, worry about  
yourself. You Polks need  
to learn how to follow  
directions

will get the fertilizer down  
this week...you will be  
impressed

I better be, or its your job  
on the chopping block



Text Message

Send

Regan Polk: Gray bubble

Ellis Collymore: Blue Bubble

## Exhibit 9

Text messages between Bobbie Polk and Regan Polk

July 25, 2019

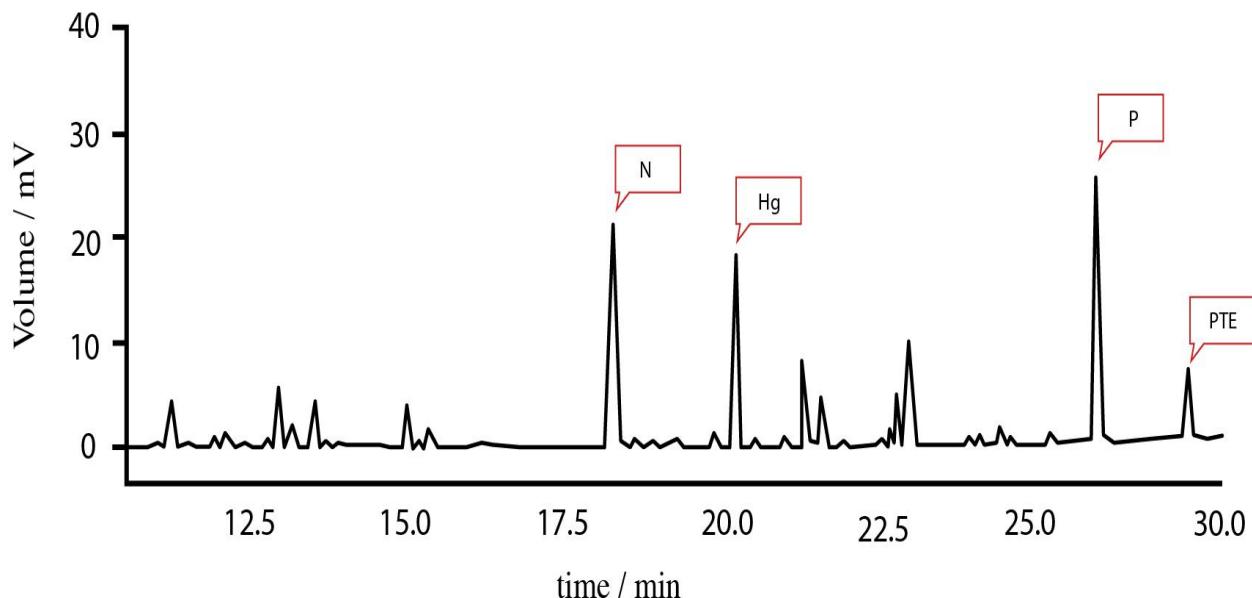


Bobbie Polk: Gray bubble

Regan Polk: Blue Bubble

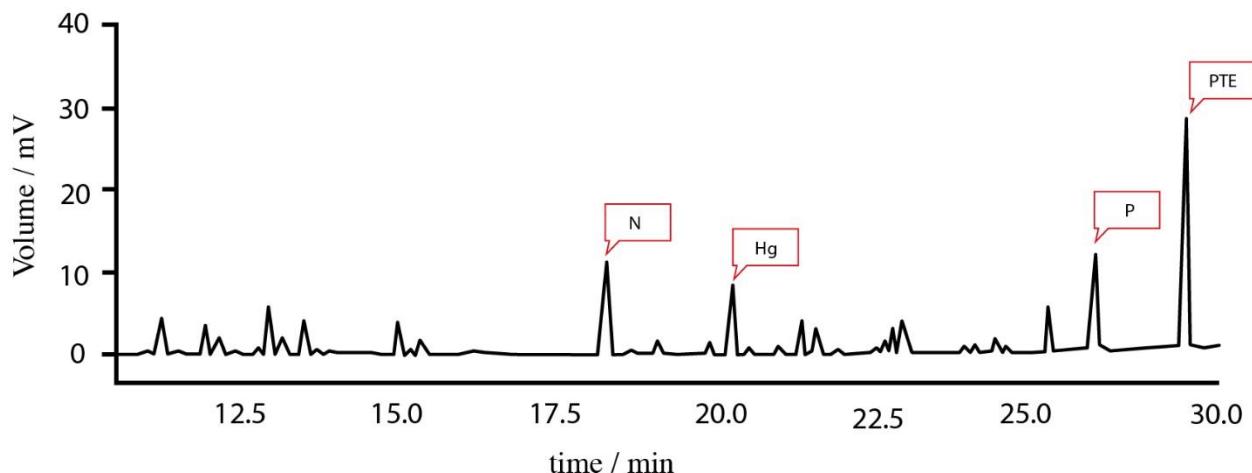
**Exhibit 10A**  
Gas Chromatograph Results

**Water Sample taken at Polk Farms (sample taken on October 15, 2019)**



89

**Water sample taken at Collymore Preserve (sample taken on October 15, 2019)**

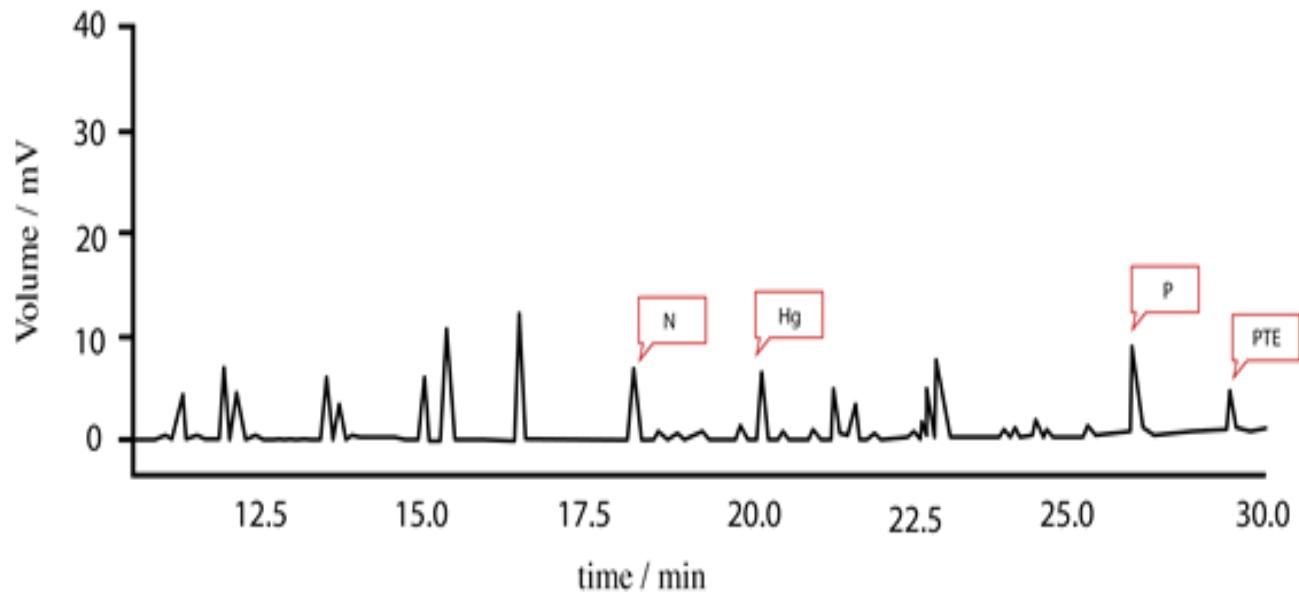


N – Nitrogen    Hg – Mercury    P – Phosphorous    PTE - Particles of Synthetic Plastics

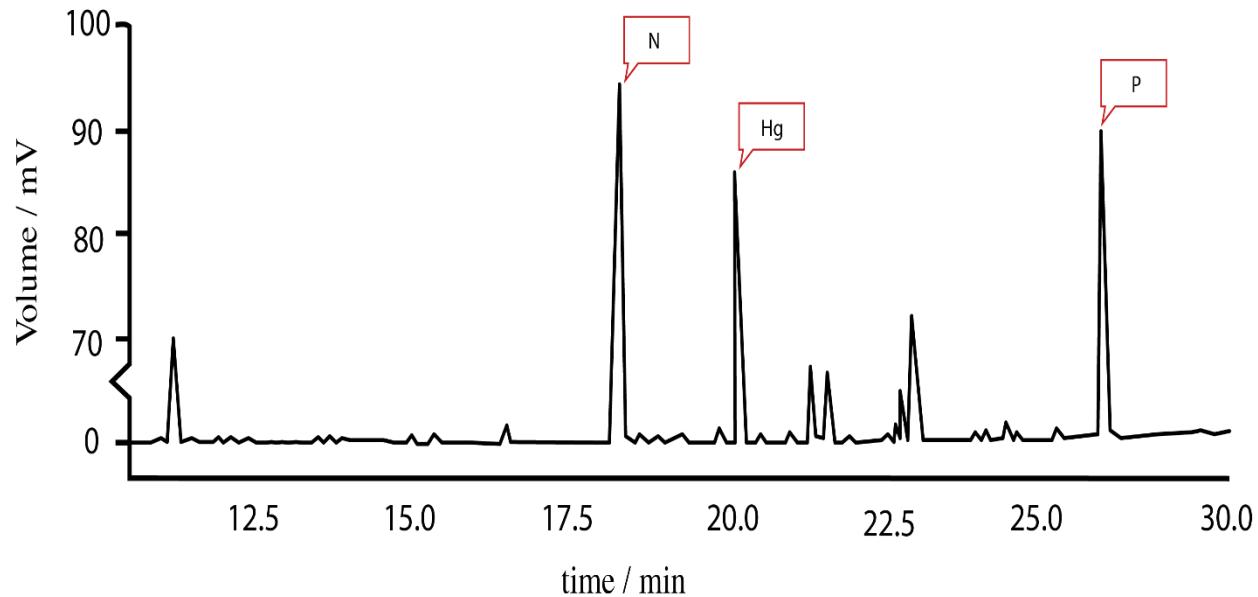
## Exhibit 10B

### Gas Chromatograph Results

#### Clean water (control sample)



#### Malorganite ingredients



N – Nitrogen    Hg – Mercury    P – Phosphorous    PTE - Particles of Synthetic Plastics

## **Exhibit 11**

### Memorandum from Bobbie Polk to Employees

**To:** Polk Farms Employees

**From:** Bobbie Polk

**Date:** August 2, 2019 @ 10:27 A.M.

**Subject:** Upcoming Fertilizer Application

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Hey y'all! If you haven't seen the news already, it looks like Hurricane Annette is undoubtedly making landfall in Florida. Y'all know the drill; let's get that fertilizer spread out on the fields as quickly as possible. I want everything in the shed GONE by the time I come into work tomorrow. Although I don't think this is going to hit us directly, I feel like we're going to get a good bit of rain, so let's get a layer of fertilizer on the fields. Chop, chop!

Bobbie.

P.S. If you have any questions, ask Dakota.

# **HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP RULES OF EVIDENCE**

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# **HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP RULES OF EVIDENCE**

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the High School Mock Trial Rules of Evidence and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. Text in italics or underlined represent simplified or modified language.

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

The Mock Trial Rules of Competition and these High School Mock Trial Rules of Evidence govern the High School Mock Trial Championship.

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

### **Rule 101. Scope**

These High School Mock Trial Rules of Evidence govern the trial proceedings of the High School Mock Trial Championship.

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

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

### **Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes**

If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

### **Rule 106. Remainder of or Related Writings or Recorded Statements**

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — any other writing or recorded statement — that in fairness ought to be considered at the same time.

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## **Article II. – Judicial Notice**

### **Rule 201. Judicial Notice of Adjudicative Facts**

- (a) This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
- (b) The court may judicially notice a fact that is not subject to reasonable dispute because it is a matter of mathematical or scientific certainty. For example, the court could take judicial notice that  $10 \times 10 = 100$  or that there are 5280 feet in a mile.
- (c) The court:
  - 1) may take judicial notice on its own; or
  - 2) must take judicial notice of a party requests it and the court is supplied with the necessary information.
- (d) The court may take judicial notice at any stage of the proceeding.
- (e) On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
- (f) In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

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## **Article III. – Presumptions in Civil Actions and Proceedings -- Not Applicable**

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## **Article IV. – Relevancy and its Limits**

### **Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

### **Rule 402. General Admissibility of Relevant Evidence**

Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

### **Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons**

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

### **Rule 404. Character Evidence; Crimes or Other Acts**

- (a) Character Evidence.
  - (1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
  - (2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:

- (A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;
- (B) a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:
  - (i) offer evidence to rebut it; and
  - (ii) offer evidence of the defendant's same trait; and
- (C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) Other Crimes, Wrongs, or Other Acts.

- (1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
- (2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

#### Rule 405. Methods of Proving Character

- (a) **By Reputation or Opinion.** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.
- (b) **By Specific Instances of Conduct.** When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

#### Rule 406. Habit, Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

#### Rule 407. Subsequent Remedial Measures

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

#### Rule 408. Compromise Offers and Negotiations

- (a) **Prohibited Uses.** Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

- (1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and
- (2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) **Exceptions.** The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

**Rule 409. Offers to Pay Medical And Similar Expenses**

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

**Rule 410. Pleas, Plea Discussions, and Related Statements**

(a) **Prohibited Uses.** In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) **Exceptions.** The court may admit a statement described in Rule 410(a)(3) or (4):

- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
- (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

**Rule 411. Liability Insurance**

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or proving agency, ownership, or control.

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**Article V. – Privileges**

**Rule 501. General Rule**

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

- (1) communications between spouses;
- (2) communications between attorney and client;
- (3) communications between medical or mental health care providers and patient.

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**Article VI. – Witnesses**

## Rule 601. General Rule of Competency

Every person is competent to be a witness.

## Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. (See Rule 2.2)

## Rule 607. Who May Impeach A Witness

Any party, including the party that called the witness, may attack the witness's credibility.

## Rule 608. A Witness's Character For Truthfulness or Untruthfulness

- (a) **Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
- (b) **Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
  - (1) the witness; or
  - (2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

## Rule 609. Impeachment by Evidence of a Criminal Conviction

- (a) **In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
  - (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
    - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
    - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
  - (2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.
- (b) **Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.
- (c) **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

- (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
- (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) **Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

- (1) it is offered in a criminal case;
- (2) the adjudication was of a witness other than the defendant;
- (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
- (4) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) **Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

#### Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

#### Rule 611. Mode and Order of Interrogation and Presentation

(a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

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

(c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

#### Rule 612. Writing Used to Refresh a Witness's Memory

(a) **Scope.** This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

- (1) while testifying; or
- (2) before testifying, if the court decides that justice requires the party to have those options.

(b) **Adverse Party's Options.** An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the

witness's testimony.

**Rule 613. Witness's Prior Statement**

- (a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.
- (b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

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

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

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

**Rule 702. Testimony by Experts**

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
- (b) the testimony is based on sufficient facts or data.

**Rule 703. Bases of an Expert's Opinion Testimony**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

**Rule 704. Opinion on Ultimate Issue**

- (a) **In General — Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.
- (b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

**Rule 705. Disclosing the Facts or Data Underlying An Expert's Opinion**

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

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## Article VIII. – Hearsay

### Rule 801. Definitions

The following definitions apply under this article:

- (a) **Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) **Declarant.** “Declarant” means the person who made the statement.
- (c) **Hearsay.** “Hearsay” means a statement that:
  - (1) the declarant does not make while testifying at the current trial or hearing; and
  - (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
- (d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:
  - (1) **A Declarant-Witness’s Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
    - (A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
    - (B) is consistent with the declarant’s testimony and is offered:
      - (i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
      - (ii) to rehabilitate the declarant’s credibility as a witness when attacked on another ground; or
    - (C) identifies a person as someone the declarant perceived earlier.
  - (2) **An Opposing Party’s Statement.** The statement is offered against an opposing party and:
    - (A) was made by the party in an individual or representative capacity;
    - (B) is one the party manifested that it adopted or believed to be true;
    - (C) was made by a person whom the party authorized to make a statement on the subject;
    - (D) was made by the party’s agent or employee on a matter within the scope of that relationship and while it existed; or
    - (E) was made by the party’s coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant’s authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

### Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

### Rule 803. Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is Available as a Witness

The following are not excluded by the hearsay rule, regardless of whether the declarant is available as a witness:

- (1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

- (2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
- (3) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
- (4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:
  - (a) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and
  - (b) describes medical history; past or present symptoms or sensations; their inception; or their general cause.
- (5) **Recorded Recollection.** A record that:
  - (a) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
  - (b) was made or adopted by the witness when the matter was fresh in the witness's memory; and
  - (c) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

- (6) **Records of Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:
  - (a) the record was made at or near the time by — or from information transmitted by — someone with knowledge;
  - (b) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
  - (c) making the record was a regular practice of that activity;
  - (d) all these conditions are shown by the testimony of the custodian or another qualified witness; and
  - (e) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness

(7) **Absence of Regularly Conducted Activity.**

Evidence that a matter is not included in a record described in paragraph (6) if:

- (a) the evidence is admitted to prove that the matter did not occur or exist;
- (b) a record was regularly kept for a matter of that kind; and
- (c) the opponent does not show that the possible source of information or other indicated a lack of trustworthiness.

(8) **Public Records.** A record or statement of a public office if:

- (a) it sets out:
  - (i) the office's activities;
  - (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel; or
  - (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

- (b) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.
- (10) **Absence of a Public Record.** Testimony that a diligent search failed to disclose a public **record** or statement if the testimony or certification is admitted to prove that:
  - (a) the record or statement does not exist; or
  - (b) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.
- (16) **Statements in Ancient Documents.** A statement in a document that was prepared before January 1, 1998, and whose authenticity is established.
- (18) **Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:
  - (a) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
  - (b) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

- (21) **Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.
- (22) **Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:
  - (a) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
  - (b) the conviction was for a crime punishable by death or by imprisonment for more than a year;
  - (c) the evidence is admitted to prove any fact essential to the judgment; and
  - (d) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

#### Rule 804. [Hearsay Exceptions; Declarant Unavailable](#)

- (a) **Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:
  - (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
  - (2) refuses to testify about the subject matter despite a court order to do so;
  - (3) testifies to not remembering the subject matter;
  - (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
  - (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:
    - (A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or
    - (B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully

caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) **The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

- (1) **Former Testimony.** Testimony that:
  - (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
  - (B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.
- (2) **Statement Under the Belief of Imminent Death.** In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.
- (3) **Statement Against Interest.** A statement that:
  - (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
  - (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.
- (4) **Statement of Personal or Family History.** A statement about:
  - (A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or
  - (B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.
- (5) **Not Applicable**
- (6) **Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.** A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.

#### Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

#### Rule 806. Attacking and Supporting the Declarant's Credibility

When a hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if

on cross-examination.

#### **Rule 807. Residual Exception**

Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:

- (1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and
- (2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

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#### **Article IX. – Authentication and Identification – Not Applicable**

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#### **Article X. – Contents of Writing, Recordings and Photographs – Not Applicable**

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## **Article XI. – Other**

### **Rule 1103. Title**

These rules may be known and cited as the High School Mock Trial Federal Rules of Evidence.

Host states have the discretion to eliminate rules that do not pertain to the trial at hand.

***Last Revision: 7/29/2021***

# FLORIDA HIGH SCHOOL MOCK TRIAL

## CHAMPIONSHIP RULES OF THE COMPETITION

The Florida High School Mock Trial Championship is governed by the Rules of the Competition and the High School Mock Trial Rules of Evidence. Any clarification of rules or case materials will be issued in writing to all participating teams in a timely manner and no less than two weeks prior to the tournament. The trial coordinator, upon the advice and consent of the High School Mock Trial Championship, will distribute to each team any such clarification.

The Mock Trial Rules of Competition and the High School Mock Trial Rules of Evidence govern the State High School Mock Trial Championship. All teams are responsible for the conduct of persons associated with their teams throughout the mock trial event.

# FLORIDA HIGH SCHOOL MOCK TRIAL

## CHAMPIONSHIP RULES OF THE COMPETITION

### ADMINISTRATION

#### **Rule 1.1.      Rules**

All trials will be governed by the Rules of the High School Mock Trial Championship and the High School Mock Trial Championship Rules of Evidence.

Questions or interpretations of these rules are within the discretion of the High School Mock Trial Championship, Inc. ("State Board"), whose decision is final.

#### **Rule 1.2.      Code of Conduct**

The Rules of Competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. The Board possesses discretion to impose sanctions, including but not limited to disqualification, immediate eviction from the Championship, and forfeiture of all fees and awards (if applicable) for any misconduct occurring while a team is participating in the State Championship, for flagrant rule violations, and for breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge, or the mock trial program. In these rules, all references to "participating" include any activity as a part of a State Championship in-person or virtually.

### **Rule 1.3.A. Emergencies - General**

During a trial, the presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period to address the emergency.

In the event of an emergency that would cause a team to be unable to continue a trial or to participate with less than six members, the team must notify the Coordinator as soon as is reasonably practical. If the Coordinator, or its designee(s), in its sole discretion, agrees that an emergency exists, the Coordinator, or its designee(s), shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than six members. A penalty may be assessed.

A forfeiting team will receive a loss and points totaling the average number of the ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round.

Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Coordinator.

### **Rule 1.3.B. Emergencies - Virtual Competitions**

In the event of technical difficulties during the trial in a virtual competition, the presiding judge shall have discretion to declare a brief recess to resolve any technical difficulty substantially impairing a participant's participation in the trial. If the technical difficulty cannot be resolved within a reasonable, but brief, amount of time, then the trial will continue with another member of the impacted team substituting for the impacted team member. The emergency substitute must be a member of the same team as the impacted participant.

Before making an emergency substitution, the impacted team must make the presiding judge aware, by stating words to the effect of, "Your honor, before I begin I would like to inform the court that I am [insert name] and I am substituting for [insert name], who is unable to compete due to technical difficulties." Teams shall advise the Coordinator of any emergency substitution following the round of competition.

The presentation will be scored based on the performance by the initial team member and the emergency substitute, taken as a whole.

Once the presiding judge determines either at the request of the team or *sua sponte* that a student is unable to compete in a role due to technical difficulties, to minimize disruption, the impacted student is not permitted to return and compete in the role for which a substitution was made. If the technical difficulty is resolved, the impacted participant may return and participate in his or her other roles, if any. For purposes of this rule, a witness examination consisting of direct, cross, any re-direct and any re-cross is one role, so that a participant who requires an emergency substitution for a witness examination may not return and participate until the entire witness examination is completed.

For purposes of this rule, technical difficulties include internet failure and computer, device

or microphone failure; failure of a camera only does not permit emergency substitution under this rule. Students who lose internet connection shall rejoin the trial using a telephonic connection, if possible.

In the event of a loss of connection for a timekeeper, that team shall defer to its opponent's timekeeper for that trial segment. The team whose timekeeper lost connection may substitute another timekeeper qualified under Rule 1.4 for the remaining trial segments. The timekeepers shall confer consistent with Rule 4.6.e regarding time remaining at the beginning of each trial segment.

Technical emergencies resulting from the loss of the connection of a presiding or scoring judge shall be handled in accordance with the rules.

In the event that a technical emergency prevents an entire team from completing in part or all of a round, the presiding judge shall declare a recess of up to 15 minutes, to allow that team to reconnect, either via video or by connecting on audio-only via telephone. If reconnection is impossible, a forfeit shall be declared in favor of the team that maintains its connection. If at least five witnesses have been subject to cross-examination, the Coordinator or its designee may in its sole discretion complete the ballot, assigning scores equal to their average score on all segments that could not be completed by the disconnected team and a "10" to the team that remained connected.

No student or team may feign technical difficulty or invoke the technical difficulty rule for purposes other than a genuine technical difficulty. Such an act would violate the Rules of Competition and Code of Ethical Conduct and may be sanctioned at the discretion of the Coordinator or its designees through point deductions or other means up to and including disqualification from the competition.

#### **Rule 1.4. Student Timekeepers**

Teams shall provide timekeepers for the Competition as follows:

Each team participating in the Competition is responsible for providing at least one student as an official timekeeper. All timekeepers must be official team members.

Any student who will keep time, including any witness who will keep time in accordance with Rule 3.2 is required to attend the scheduled timekeeper orientation, which will be held before competition rounds begin. If a team does not have a timekeeper attend the required orientation meeting, that team will defer to its opponents' timekeepers in all rounds of the competition.

If a team desires to assign more than one student to the timekeeper role, then all students who will be assigned to the timekeeper role must attend the timekeeper orientation. (See Rule 1.4(b)) The team's official student timekeeper will keep time for both sides during all competition rounds.

## **Rule 1.5. Accommodations**

These Rules will be interpreted and administered consistent with all applicable laws. Accordingly, should any applicable law require variance from these rules or accommodation, including a legally recognized disability, that team member or their coach may apply to the Coordinator or its designee for accommodation. Where possible, teams competing against the team for which an accommodation was granted shall be informed of the accommodation in advance of a competition round but will ordinarily not be informed of the specific nature of the issue that led to the accommodation.

## **THE PROBLEM**

### **Rule 2.1. The Problem**

The problem will be a fact pattern that may contain any or all of the following: statement of facts, pleadings, indictment, stipulations, witness statements/affidavits, jury charges, orders/rulings and exhibits. Stipulations may not be disputed at trial. Witness statements may not be altered.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics that would allow them to be played by either males or females. All three of the witnesses must be called.

### **Rule 2.2. Witnesses Bound by Statements**

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under "unfair extrapolation."

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

### **Rule 2.3. Unfair Extrapolation**

A fair extrapolation is one that is neutral. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial.

If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case.

Attorneys for the opposing team may refer to a special objection, such as "unfair extrapolation," or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

- a. No extrapolation has occurred;
- b. An unfair extrapolation has occurred;
- c. The extrapolation was fair; or,
- d. Ruling is taken under advisement.

The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings.

#### **Rule 2.4.      Gender of Witnesses**

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender.

#### **Rule 2.5.      Voir Dire**

Voir dire examination of a witness is not permitted.

### **TEAMS**

#### **Rule 3.1.      Team Eligibility**

- a. Teams representing a circuit in the HSMTC are to be comprised of students who participated on the current circuit championship team.
- b. There is a minimum number of six students and a maximum number of twelve students on an official team representing a circuit at the state competition.

- c. The circuit coordinator and the teacher-sponsor have an affirmative obligation to verify each competitor's eligibility. Submission of a roster for the HSMTc constitutes certification that the status of each participant has been verified and that the roster complies with all rules.

### **Rule 3.2. Team Composition**

Teams consist of six to twelve official members assigned to attorney, witness, timekeeper, and evidence technician roles. Only six of the twelve official members will participate in any given round as attorneys and witnesses. The timekeeper must be an official team member. If a team has only six official members, it must designate witnesses to serve as timekeepers in each round. Any student outside the declared official team is considered an additional non-competing team member. Additional non-competing team members may neither compete nor keep time for the team at any point during the competition.

### **Rule 3.3. Team Presentation**

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members in each trial round. For each trial round, teams shall use three students as attorneys and three students as witnesses.

### **Rule 3.4. Team Duties**

Except as permitted during an emergency, team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the opening statement and another will present the closing arguments. In other words, the attorney duties for each team will be divided as follows:

1. Opening Statements
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Witness #1
6. Cross Examination of Witness #2
7. Cross Examination of Witness #3
8. Closing Argument (including Rebuttal)

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

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

Each team must call all three of its assigned witnesses. Witnesses must be called only by their own team during their case-in-chief and examined by both sides. Witnesses may not be recalled by either side.

#### **Rule 3.5. Team Roster Form**

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition for an in-person competition. For a virtual competition, teams must submit Team Roster Forms in accordance with the protocol established and announced for the competition. Teams must be identified by the code assigned at registration. No information identifying team origin should appear on the form.

Before beginning a trial in an in-person competition, the teams must exchange copies of the Team Roster Form. Team Roster Forms will be distributed to judges in a virtual competition according to the protocol established for the competition. The Form should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster Form should also be made available to the judging panel and presiding judge before each round. Teams shall not knowingly disclose their place of origin to any member of the judging panel or to the presiding judge.

### **THE TRIAL**

#### **Rule 4.1. Courtroom Setting**

For in-person competitions, the Prosecution/Plaintiff team shall be seated closest to the jury box. No team shall rearrange the courtroom without prior permission of the judge.

For a virtual competition, each participant will log into the virtual platform separately from a normal personal computer, tablet, cellular phone, or similar device, unless permission is granted by the Coordinator or its designee to do otherwise. At a minimum, each participating attorney, witness, and timekeeper shall utilize an individual device. Each participant shall use a screen name formatted according to the protocol established and announced for the competition. Once the trial begins, only participants who are competing in a particular trial segment will have their camera turned on. All team members who are not actively participating in that trial segment must have their cameras turned off, except for timekeepers turning on their cameras to display remaining time. For purposes of this rule, the witness, direct-examining attorney and cross-examining attorney must have their cameras turned on for the entire witness examination.

## **Rule 4.2.      Stipulations**

Stipulations cannot be disputed.

## **Rule 4.3.      Reading into the Record Not Permitted**

Stipulations, the indictment, or the Charge to the Jury will not be read into the record.

## **Rule 4.4.      Swearing of Witnesses**

For a virtual competition, all witnesses will be deemed to be sworn.

## **Rule 4.5.      Trial Sequence and Time Limits**

The trial sequence and time limits are as follows:

1.    Opening Statement (5 minutes per side)
2.    Direct and Redirect (optional) Examination (25 minutes per side)
3.    Cross and Re-cross (optional) Examination (20 minutes per side)
4.    Closing Argument (5 minutes per side)

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. The Prosecution/Plaintiff need not request or state that it is reserving rebuttal time. The Prosecution/Plaintiffs rebuttal is limited to the scope of the Defendant's closing argument.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

## **Rule 4.6.      Timekeeping**

- a.    Timekeepers are responsible for fairly and accurately keeping and reporting the time during the trial presentation and during any disputes.
- b.    During the rounds of the competition, timekeepers are to act as a neutral entity. Timekeepers are not to communicate with their respective teams during the course of the trial presentation, recesses, or during any dispute procedure, except to display the time remaining or to indicate (as directed by the presiding judge), how much time is remaining during a particular part of the trial.
- c.    Time limits are mandatory and will be enforced. Time runs from the beginning of the witness examination, opening statement, or closing argument until its conclusion.

Introduction of counsel or witnesses prior to the opening statement shall not be included in the time allotted for opening statements. However, if counsel or witnesses are introduced once the opening statement has commenced, such time shall be included in the time allotted for the opening statement. Time stops only for objections, questioning from the judge, or administering the oath. Time does not stop for introduction of exhibits. The presiding judge shall have discretion to stop time for technical difficulties in a virtual competition that do not rise to the level of an emergency.

- d. In trial, each team is to use a set of "Time Remaining" cards with the following designations to signal time: 22:00, 18:00, 12:00, 10:00, 7:00, 5:00, 4:00, 3:00, 2:00, 1:00, and "STOP".
- e. At the end of each task during the trial presentation (i.e. at the end of each opening, at the end each witness examination, at the end of each cross examination and at the end of each closing argument) if there is more than a 15 second discrepancy between the teams' timekeepers, the timekeepers must notify the presiding judge of the discrepancy. The presiding judge will then rule on the discrepancy, the timekeepers will synchronize their stopwatches accordingly and the trial will continue. Any discrepancies between timekeepers less than 15 seconds will not be considered. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of time disputes are final.

During a virtual competition, after each witness, timekeepers shall confer using the "chat" or similar feature regarding how much time remains for each team.

- f. If a team has only six official members, it must designate witnesses to serve as timekeepers in each round.
- g. In a virtual competition, the timekeepers must signal time by posting the time signals permitted by subsection a in the chatroom function of the virtual competition platform. The timekeepers also may display Time Remaining cards by activating their camera to do so.
- h. Students keeping time may use stopwatches or cellular phones. Any cellular phone used for timekeeping must be kept in airplane mode and silenced during the duration of the trial round.

#### **Rule 4.7. Time Extensions and Scoring**

The presiding judge has sole discretion to grant time extensions. Such extensions should be granted sparingly and should be limited in duration, for example, to finish a question, answer, or thought. In all other cases, the presiding judge must stop the presentation once time expires. If time has expired and an attorney continues without permission from the court, the scoring judges may individually decide whether to discount points in a category because of over-runs in time.

#### **Rule 4.8. Motions Prohibited**

The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

## **Rule 4.9. Sequestration**

Teams may not invoke the rule of sequestration.

## **Rule 4.10. Bench Conferences**

Bench conferences are not permitted in either in-person or virtual competitions. Objections are deemed to have occurred at sidebar.

## **Rule 4.11. Supplemental Material: Accents, Costuming, Exhibits**

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and make up which are case specific. An accent is not considered costuming.

The student playing the witness is allowed to act as though she/he is afflicted with any condition, deformity, or disability described in the affidavits. Under no circumstances is the opposing team permitted to question the existence of such conditions based on the fact that the student playing the witness does not actually have them. While the opposing team may cross-examine the witness on the extent of the condition based on information provided in the affidavits, the opposing team may not challenge the witness to prove the existence of the condition by asking him/her to show it to the jury.

A witness is prohibited from referring to his or own physical traits or gender or physical traits or gender of other witnesses where such information is not included in any witness statement. (For example, a witness cannot call attention to her size to show inability to complete some physical act included in the case materials or state that she was treated differently because she is woman.) An attorney is likewise prohibited from making argument pointing out physical traits of a witness not otherwise included in the case materials. Such references are unfair extrapolations. Teams are not prohibited, however, from raising issues about general or common human traits and abilities relevant to the case.

The only documents that the teams may present to the presiding judge or scoring panel are the individual exhibits as they are introduced into evidence and the team roster forms. No roster forms may be altered except to provide the information requested. No exhibits may be modified before trial, but attorneys and witnesses may highlight, underline, or otherwise mark exhibits during direct or cross-examination. Such marked documents may be used as demonstrative exhibits during the trial and during closing arguments, but may not be entered into evidence. If a team wishes to mark an exhibit entered by the opposing team, it must substitute its own clean copy of that exhibit for this purpose before any markings are made. Exhibit notebooks are not to be provided to the presiding judge or scoring panel.

In a virtual competition, students may be directed to display screen names according to a protocol established and announced for a virtual competition. Such display is not a violation of this rule.

#### **Rule 4.12. Trial Communication**

Coaches, teachers, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess, which may occur. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Coaches, teachers, alternates and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar and communicate with each other.

During a virtual competition, no team member, coach, or judge nor students may use the "chat," "instant message," or "chatroom" function of the electronic platform, except to: (1) display timekeeping messages and (2) to communicate in the case of a technical emergency where audio and video functions are lost but access to the chat or instant messaging function is intact. Observers are not permitted to use the chat or instant messaging functions at any time.

During a virtual competition, only the six participating team members may communicate with one another. The six participating team members may use computers, cellular telephones, or other devices to facilitate this communication.

#### **Rule 4.13. Scouting and Viewing Trials**

Team members, coaches, and any other persons directly associated with a mock trial team, except for those authorized by the Coordinator, are not allowed to view other teams' performances in the competition, so long as their team remains in the competition. No person shall display anything that identifies his or her school, state, or organization of origin while in the courtroom.

Team members and individuals associated with competing teams are prohibited from contacting teachers, students and attorney advisors from any other team in any manner in an effort to obtain information about an opponent. This prohibition is read and will be construed broadly, and it includes, without limitation, any form of personal communication, voice/telephone communication, and/or electronic communication, including electronic mail, instant messaging, and communication or messaging through social media sites.

It is not a violation of this rule for teams to participate voluntarily in practice or scrimmage matches in advance of the state competition. It is a violation of this rule for teams to seek information about opposing teams in rounds of the state competition from individuals who

observed such scrimmages, including members of the team competing in that scrimmage.

To the extent that a team or its members makes information publicly available that bears on its strategy or other issues that would normally constitute the object of scouting, it shall not constitute scouting for another team to view these materials. For example, if members of a team post videos of its performance in exhibitions or scrimmages to the public internet; create publicly-accessible online materials such as scripts or flash cards on an internet site; or post to publicly-accessible social media information about their performance, strategy, or other matters, it is not scouting for a potential opponent of that team to view that material. Teams are strongly discouraged from actively seeking out information of this kind, and it may constitute scouting for a member of a competing team to actively seek on social media information posted about a future opponent, such as social media information posted by members of teams that opponent faced in prior rounds.

#### **Rule 4.14. Videotaping/Photography**

Only the State Coordinator is permitted to record the rounds of competition during a virtual competition. All teams must consent to the recordings in a virtual environment.

No team may post, share with another competing team, or otherwise disseminate any recording of any competition round. Each team shall inform any family member or other observer of this rule. Violations of this rule, even by an individual who is not a team member, may result in sanction of the team affiliated with the individual who recorded and/or posted, shared, or otherwise disseminated the recording up to and including disqualification from the competition.

#### **Rule 4.15. Jury Trial**

The case will be tried to a jury; arguments are to be made to judge and jury. Teams may address the scoring judges as the jury.

#### **Rule 4.16 Standing During Trial**

For virtual trials, student attorneys may elect to stand or remain seated for all parts of the trial, except that all objections shall be made while seated.

#### **Rule 4.17. Objections During Opening Statement/Closing Statement**

No objections may be raised during opening statements or during closing arguments. If a team believes an objection would have been warranted during the opposing team's opening statement or closing argument, the opposing attorney for that segment may, following the opening statement or following the closing argument, state that if they could have objected, they

would have objected to (and state the objection). During a virtual competition, the attorney shall make the statement while remaining seated. The presiding judge will not rule on this "objection".

#### **Rule 4.18. Objections**

1. Argumentative Questions: An attorney shall not ask argumentative questions.
2. Lack of Proper Predicate/Foundation: Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. Assuming Facts Not in Evidence: Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").
4. Questions Calling for Narrative or General Answer: Questions must be stated to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")
5. Non-Responsive Answer: A witness' answer is objectionable if it fails to respond to the question asked.
6. Repetition: Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Teams are not precluded from raising additional objections that are available under the High School Mock Trial Rules of Evidence.

#### **Rule 4.19 Reserved**

#### **Rule 4.20.A Procedure for Introduction of Exhibits – Generally**

As an example, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the witness. "Your Honor, may I approach the witness with what has been marked for identification purposes as Exhibit No. \_\_\_\_?"
3. Show the exhibit to opposing counsel.
4. Ask the witness to identify the exhibit. "I now hand you what has been marked for identification as Exhibit No. \_\_\_\_\_. Would you identify it please?" Witness should answer

to identify only.

5. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.
6. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. \_\_\_\_ into evidence."
7. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
8. Opposing Counsel: "No, Your Honor," OR "Yes, Your Honor." If the response is "yes", the objection will be stated for the record. Court: "Is there any response to the objection?"
9. Court: "Exhibit No. \_\_\_\_ (is/is not) admitted." If admitted, questions on content may be asked.
10. If an exhibit is introduced into evidence, a team may publish it to the jury at the presiding judge's discretion.

#### **Rule 4.20.B Procedure for Introduction of Exhibits – Special Rules for a Virtual Competition**

During a virtual competition, the procedure shall be followed, except that:

1. All witnesses shall have all case materials available and in their possession during their testimony but may only refer to them when prompted by an examining attorney.
2. Attorneys will not physically approach witnesses. Instead, attorneys will identify the exhibit they wish to show the witness and request the Court's permission for the witness to view it.
3. Attorneys will not be required to confirm that they have shown the exhibit to opposing counsel.
4. Instead of the language above, the attorney will say words to the effect of "I now show you what has been marked for identification as Exhibit No. \_\_\_\_\_. Would you identify it please?" Witness should answer to identify only.
5. When an exhibit – or, during impeachment or refreshment of recollection, some other document – is shown to a witness, a member of the examining attorney's team shall make that document available to all participants via "screen sharing" or similar technology. The member of the team responsible for sharing the exhibit can be a team member competing in the round, the timekeeper for the round, or another official team member not competing in that round.

6. Exhibits or other documents posted in this manner will be deemed not to have been shown to the jury unless they are admitted into evidence and formally published to the jury. Publication to the jury is at the presiding judge's discretion.
7. Teams may use technology to mark exhibits electronically only to the extent that marking physical exhibits would have been permitted by Rule 4.11. Any marked electronic exhibits may only be used as provided in Rule 4.11.

**Rule 4.21. Use of Notes**

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial.

**Rule 4.22 Redirect/Recross**

Redirect and Recross examinations may be permitted, provided they conform to the restrictions in other rules in the High School Mock Trial Rules of Evidence.

**Rule 4.23. Scope of Closing Arguments**

Closing Arguments must be based upon the actual evidence and testimony presented during the trial.

**Rule 4.24. The Critique**

The judging panel is allowed 10 minutes for critiquing. The timekeepers will monitor the critique following the trial. Presiding judges are to limit critique sessions to a combined total often (10) minutes. There is no critique in the fourth round.

Judges shall not make a ruling on the legal merits of the trial. Judges may not inform the students of score sheet results.

**Rule 4.25 Offers of Proof**

No offers of proof may be requested or tendered.

**JUDGING AND TEAM ADVANCEMENT**

**Rule 5.1. Finality of Decisions**

All decisions of the judging panel are FINAL.

### **Rule 5.2.A    Composition of Judging Panels**

The judging panel will consist of at least two individuals. The composition of the judging panel and the role of the presiding judge will be at the discretion of the Coordinator or designee.

The scoring judges may be attorneys, judges, or persons with substantial mock trial coaching or scoring experience. Each scoring panel shall include at least one attorney. The presiding judge shall be an attorney or a judge.

At the discretion of the state director, the Championship round may have a larger panel.

All presiding and scoring judges will receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing in a judges' orientation.

In the event of an emergency (i.e., sudden illness, etc.), if a judging panel member must leave the courtroom or the virtual competition platform, the presiding judge will call for a brief recess and assess whether the judging panel member will be able to return in a reasonably short period of time. If the panel member is unable to return to the courtroom or virtual competition platform in a reasonably short period, the dispute resolution committee must be informed. Once the panel composition is adjusted by this committee to best meet the requirements of the rules, the round should continue. During any recess under this rule, the teams, whenever possible, should remain in their appropriate positions within the courtroom or in the virtual competition platform until the round resumes.

If the technical or other emergency impacts the presiding judge, a designated scoring judge will serve as the presiding judge until the dispute resolution committee can be informed and can act to adjust the panel composition.

### **Rule 5.2.B    Conflicts Between Judges and Teams**

The HSMT Competition Coordinator recognizes that conflicts of interest between judges and participants may arise. This program requires extensive volunteer support and it is assumed all participants will make every effort to identify potential conflicts. The sole discretion for determining whether a judicial conflict exists is vested in the Coordinator or its designee.

The Competition Coordinator will take reasonable steps to avoid any conflict between judges, teams, coaches and coordinators or sponsors of teams. In all such cases, however, the HSMT or its designee reserves the right to permit a judge to participate in a trial if there are no reasonable alternatives.

### **Rule 5.2.C    Disqualification of Judges**

The HSMTC, or its designee, has discretion in cases involving juror irregularity to disqualify a scoring juror's score sheet.

### **Rule 5.3. Score Sheets/Ballots**

The term "ballot" will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term "score sheet" is used in reference to the form on which points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness) the judging panel should not deliberate on individual scores.

### **Rule 5.4. Completion of Score Sheets**

At the end of each trial, including the championship round, each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each scoring judge shall total the sum of each team's individual points, place this sum in the Total Points box. NO TIE IS ALLOWED IN THE TOTAL POINTS BOXES.

**In the event of a mathematical error in tabulation by the scoring judges which, when corrected, results in a tie in the column Total Points box, the Tiebreaker Box shall determine award of the ballot.**

### **Rule 5.5. Team Advancement**

Teams will be ranked based on the following criteria in the order listed:

1. Win/Loss Record - equals the number of rounds won or lost by a team;
2. Total Number of Ballots - equals the number of judges' votes a team earned in preceding rounds;
3. Total Number of Points Accumulated in Each Round;
4. Point Spread against Opponents - the point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

## **Rule 5.6. Power Matching/Seeding (May be modified – still under review for virtual)**

Pairings for the first round will be determined by random draw. A power-match system will determine opponents for all other rounds. The two teams emerging with the strongest record from the four rounds will advance to the final round. The first-place team will be determined by ballots from the championship round only.

## **Rule 5.8. Odd Number of Teams Participating in Championship**

A "bye" becomes necessary when an odd number of teams are participating in any given round of the tournament. It is the intent of the High School Mock Trial Championship to avoid byes where possible. To avoid having an odd number of teams to start the championship, the state director may invite a wild card team.

In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply:

1. The team drawing the "bye" (no opponent for a single trial round) in rounds two through four will, by default, receive a win and three ballots for that round. For the purpose of power matching, the team will temporarily be given points equal to the average of its own points earned in its preceding trials. At the end of the fourth round, the average from all three actual trial rounds participated in by the team will be used for the final points given for that team's bye round.

For example, a team receiving a bye in round three would receive three ballots and an average of its points earned in rounds one and two. At the end of the fourth round, however, the points actually awarded to the team for the bye round will be adjusted to take into consideration the fourth round performance of the team.

2. A team receiving a bye in round one will be awarded a win, three ballots and the average number of points for all round one winners, which total will be adjusted at the end of each round to reflect the actual average earned by that team.

## **DISPUTE RESOLUTION**

### **Rule 6.1A Disputes at the Conclusion of the Trial – In-Person Competitions**

At the conclusion of each trial, the presiding judge should inquire of the teams whether either team believes that a substantial violation of the rules occurred during trial.

The process follows:

- a. One of the student members of one of the competing teams shall state that the team wishes to file a claim that a substantial rules violation occurred (a "dispute"). Students will have two minutes to prepare an argument.
- b. One member of each team shall briefly present the team's position to the presiding judge. No more than two minutes per team shall be allotted for this explanation.
- c. The presiding judge shall ask any questions and perform any additional investigation s/he believes appropriate.
- d. The presiding judge will advise the teams as to whether the dispute is granted or denied.

#### **Rule 6.2. Effect of Violation on Score**

If the presiding judge determines that a substantial rules violation has occurred, the judge will inform the scoring judges of the dispute and provide a summary of each team's argument. The scoring judges will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges.

#### **Rule 6.3.A Disputes After the Conclusion of the Trial – In-Person Competition**

Disputes that could not be brought to the attention of the presiding judge may be brought to the attention of the Competition Coordinator by teachers or attorney coaches exclusively. Such disputes must be reported promptly to a trial coordinator, who will ask the complaining party to submit the dispute in writing.

The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge and/or may assess an appropriate penalty.

The dispute resolution panel will be designated by the State Competition Board.