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COURT OF APPEALS
DIVISION II

No. 39400-6 -II

THE COURT OF APPEALS, DIVISION II

State of Washington

**KAREN MOORE AND THE ESTATE OF
JOHNNY C. MOORE**

PLAINTIFFS

v.

**HARLEY DAVIDSON MOTOR COMPANY GROUP, INC
AND DESTINATION MOTORCYCLES TACOMA, LLC,**

DEFENDANTS

FILED
COURT OF APPEALS
DIVISION II
10 JAN -4 PM 2:10
STATE OF WASHINGTON
BY
DEPUTY

APPELLANT'S OPENING BRIEF

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ASSIGNMENTS OF ERROR

1. The jury finding on Question 1, and determination that no defect exists in the Moore motorcycle, is error; it is unsupported by substantial evidence.

2. The Superior Court erred on March 20, 2009 by ordering the exclusion plaintiff's expert Cline and in limiting plaintiff's experts from relying on Mr. Cline's "spatter analysis." The court similarly erred on April 17, 2009 in denying plaintiff's motion to reconsider the exclusion of Mr. Cline and discussion of his "spatter analysis."

3. The Superior Court erred in allowing defense expert Larry Hejlik to testify about GT Engineering's "bake test," and allowing Mr. Hejlik to present his conclusion that the "bake test" indicated the Moore breaker did not open unexpectedly on the day of the wreck.

ISSUES RELATING TO ASSIGNMENTS OF ERROR

Is the jury's determination that the Moore motorcycle is not defective supported by substantial evidence?

Did the court properly exercise its discretion in excluding Mr. Cline and all discussion of his "spatter analysis"?

Did the court properly exercise its discretion in allowing Mr. Hejlik to present his conclusions and expert opinion regarding the significance of Harley-Davidson's "bake-test," and are his opinions based on validated scientific testing?

Is the "bake-test" relevant to any issue in the case?

STATEMENT OF THE CASE

This case arises from a motorcycle wreck that killed Johnny Moore and severely injured his wife on April 25, 2004. They were riding a 2003 Harley-Davidson "Ultra-Classic" motorcycle.

For a long time reports were surfacing about these motorcycles suddenly shutting down unexpectedly on the road. In response to reports received, the National Highway Traffic Safety Administration (NHTSA) sent an inquiry to Harley-Davidson seeking all kinds of information relating to the reported problem. CP 452-59.

Harley-Davidson never responded to the NHTSA inquiry with any substantive information. Instead on March 11, 2004, Harley instituted a "voluntary" recall of over 80,000 motorcycles, asserting:

Harley-Davidson Motor Company, Inc. has decided that a defect which relates to motor vehicle safety, exists in certain 2001-2003 Model Year FL Touring and Police model motorcycles, including FLHPI, FLHTPI, FLHPEI, FLHTCI, FLHTCUI, FLTRI and FLTRSEI-2. These motorcycles have a condition whereby the 40 Amp. main circuit breaker could open due to reasons other than for which it was designed, causing an unexpected interruption of all electrical power to the motorcycle. This condition could cause a "quit while riding" situation, which could occur without warning and ultimately lead to a crash, thereby presenting a risk of death or injury to the rider.

CP 461-69; trial exhibit 72.

Harley's solution was to replace the 40-amp breaker with a 50-amp breaker. CP 467; Trial Exhibit 71. This had the effect of closing the NHTSA investigation and so Harley has never produced the technical data and information sought by NHTSA.

Harley's corporate decision to recall the Moore motorcycle was made March 11, 2004. See Trial Exhibit 68 and 69.

A service bulletin was issued to its dealers explaining the problem, and Harley's proposed solution to the problem, which was replacement of the breaker. That Service Bulletin went out April 15, 2004. CP 467-68 Trial Exhibit 71.

Although the Service Bulletin went to Harley's dealers April 15th, for reasons not yet explained, Harley did not mail letters to owners until April 23, 2004 or later. Trial Exhibit 72 is a copy of the letter sent to the Moores.

Johnny Moore died April 25, 2004. Trial Exhibit 27. Harley-Davidson's safety recall letter was received by Ms. Moore after Johnny's death.

Karen Moore and the estate of Johnny Moore assert that on April 25, 2004, the 40-amp main breaker in their Ultra-Classic “opened for reasons other than for which it was designed, causing an unexpected interruption of all electrical power to the motorcycle” just as described in the recall notice.

In light of the recall, the essential dispute in this case is not whether the motorcycle is defective, but whether the motorcycle’s main breaker in fact failed on the day Johnny Moore died **causing** injury. The alternatives presented by Harley-Davidson is that some error by Johnny Moore or some medical crisis precipitated the crash.¹

The significant pre-trial disputes centered on what testing would be allowed and what expert testimony would be allowed.

The first dispute centered on plans for testing the motorcycle’s main breaker. Plaintiff wanted simply to split open the breaker and conduct a physical examination of the breaker surfaces because “tripping” of the breaker leaves behind a telltale scorching of the metal surface. CP 22-32.

Harley-Davidson rejected that approach and requested that it be allowed to force-trip the breaker multiple times and to measure the temperature at which the Moore breaker tripped. CP 33-45.

¹ The jury never reached these questions.

Ms. Moore's objection to Harley's test was denied, and Harley-Davidson was permitted to "bake test" the breaker, recording the temperature at which the breaker opened. CP 162-63.

Ms. Moore was able to later open and visually inspect the breaker contact surfaces, but only after Harley's testing altered irrevocably those surfaces.

The second dispute centered on the relevance of Harley's testing. Although obviously baking the breaker in a static oven is not the same as operating the breaker in a motorcycle being ridden on the highway, the court allowed Harley's expert to correlate results from the bake test and to present his conclusion to the jury that results of the bake test showed that the breaker could not have tripped on the day Johnny Moore died.²

After Harley's bake test the third dispute arose, having to do with plaintiff's expert, Keith Cline. Mr. Cline is an engineer who would have presented an analysis of the breaker surfaces and a conclusion that the breaker had at least one unexplained opening event. Everyone knew that Harley's bake test "tripped" the breaker three times. There was also the known trip of the breaker at the factory done as routine testing before the breakers were delivered to Harley for installation. Mr. Cline proposed to

² The order on the parties' various motions in limine was inadvertently omitted from the Clerk's Papers and is the subject of a supplemental designation. See order dated April 21, 2009 at page 2, paragraph 22.

testify that observable metallic spatter left behind showed, however, five different tripping events. CP 720-70.

Mr. Cline was excluded by the court and not allowed to testify. Testimony by other experts for Ms. Moore were likewise not allowed to testify based on Mr. Cline's analysis. CP 567-68; 822-23.

After Harley was permitted to do its testing to the exclusion of Ms. Moore's testing, and after the court allowed Harley's expert to discuss the brake test, but excluded Mr. Cline's discussion of the number of tripping events, a jury found for Harley-Davidson.

Oddly, the jury never reached the core question of whether the breaker in fact tripped the day of Johnny's demise. The jury concluded instead that there was no defect in the motorcycle design.³

LAW and ARGUMENT

1. Standard of Review

The jury's conclusion that no defect existed in the motorcycle must be upheld if there is any substantial evidence to support that determination. Overturning a jury verdict is appropriate only when it is clearly unsupported by substantial evidence. See Burnside v. Simpson

Paper Co., 123 Wn.2d 93, 864 P.2d 937 (1994) (emphasis omitted)

(quoting State v. O'Connell, 83 Wn.2d 797, 839, 523 P.2d 872 (1974)):

. . . This court will not willingly assume that the jury did not fairly and objectively consider the evidence and the contentions of the parties relative to the issues before it. Phelps v. Wescott, 68 Wn.2d 11, 410 P.2d 611 (1966). The inferences to be drawn from the evidence are for the jury and not for this court. The credibility of witnesses and the weight to be given to the evidence are matters within the province of the jury and even if convinced that a wrong verdict has been rendered, the reviewing court will not substitute its judgment for that of the jury, so long as there was evidence which, if believed, would support the verdict rendered. Burke v. Pepsi-Cola Bottling Co., 64 Wn.2d 244, 391 P.2d 194 (1964).

Id. at 108. The jury decision is thus reviewed only to determine if any substantial evidence supports the verdict.

Generally, evidentiary rulings by the court, and particularly questions of admitting or excluding testimony, are reviewed for manifest abuse of discretion. The challenge to admissibility of Harley's "bake-test" on ***relevancy*** grounds is reviewed for abuse of discretion.

However, the court also made rulings on whether to permit or exclude experts based on *Frye*. Appellate review of a *Frye*⁴ ruling (issued after a *Frye* hearing) is *de novo*. State v. Gregory, 158 Wn.2d 759, 830, 147 P.3d 1201 (2006), citing, State v. Gore, 143 Wn.2d 288, 302, 21 P. 3d 262 (2001).

³ A copy of the jury verdict is appended as Exhibit A; it is attached to the Notice of Appeal, but is also the subject of a supplemental designation of Clerk's Papers.

⁴ Frye v. United States, 54 App. D.C. 46, 293 F. 1013 (D.C.Cir.1923).

2. The Jury decision on Question 1 is unsupported by substantial evidence.

At the trial, Doug Barovsky, an electrical engineer testified that the use of a simple, bi-metallic circuit-breaker is a defective design. His testimony was that it was defective because breakers are subject to a variety of non-electrical factors, including vibration, that could cause them to open for reasons other than essential electrical overload for which they are designed. TR 607, line 6 to 610, line 5; see also CP 237 at ¶ 7 and CP 426 ¶ 6.

No witness contradicted or contested that testimony at trial.

Moreover, Harley's recall notice itself recognizes that the 40-amp breakers are defective in design and need to be replaced. See recall information which are trial Exhibits 68-72.

No one testified that the 40-amp breaker in the Moore motorcycle is somehow different than all the other 40-amp breakers. No one testified that any sub-group of 40-amp breakers has inferior construction, or for some other reason is subject to failure unlike all other 40-amp breakers. See also declaration of Doug Barovsky, CP 561-63. All of the 2003 Ultra-Classics were recalled in a campaign designed to replace all of the defective breakers.

The dispute in this case is not about whether the 40-amp breaker in the Moore motorcycle is a design defect subject to unpredictable opening, but rather whether it actually failed on the day of Johnny Moore's death and that failure caused the damages.

On this record, the jury decision as to Question No. 1 is unsupported by any substantial evidence.

3. Mr. Cline's testimony and spatter analysis should have been allowed because it meets the Frye standard.

In analyzing the question of Mr. Cline's testimony, the court should be mindful of the fact that early on, allowing Harley's "bake testing" itself impacted the ability to discern from the contact surfaces what likely transpired. CP 159-60. Ms. Moore asserts that allowing Harley to "bake-test" the breaker was an erroneous ruling, but it's obvious that this is a decision for which no remedy is possible now that Harley has completed its testing.⁵

⁵ As described in the pleadings filed with the trial court, while it's known that each 40-amp breaker is tested at the factory with a forced tripping event, these factory trips occur at approximately a 200% overamp, resulting in a dramatically larger pitting of the breaker surface than occurs in an ordinary tripping event. So, the factory overamp pit mark is readily identifiable. CP 27. Still, everyone recognizes that the electrical arching that occurs can fork, causing several pit-marks from a single tripping event. But, forking is not something that always occurs, or must occur. Assuming the breaker did not fail the day Johnny Moore died, an examination of the contact surfaces might show only the single factory pitting mark. The presence of additional pitting marks would be attributable alternately to either 1) forking of the factory arcing, or 2) an additional tripping event. So, while the presence of multiple pit-marks would not show conclusively a failure on the day Johnny Moore died, the absence of anything other than the factory pit-mark would show fairly conclusively that the breaker did *not* fail the day he died. However, once Harley-Davidson was allowed to force three additional tripping events, drawing

Once Harley-Davidson was allowed to conduct its “bake testing,” the contact surfaces would necessarily show multiple pit-marks associated with multiple tripping events. Mr. Cline is an engineer who devised a method for determining the number of tripping events and for understanding why the pitting marks left behind on the Moore breaker indicated five different tripping events – the factory overramp test, plus the three tripping events known to have occurred at Harley’s “bake test,” plus one other tripping event. This is important because, from his testimony, the jury could have concluded that the fifth tripping event was due to the breaker opening on the day Johnny Moore died.

The details of Mr. Cline’s testing and the scientific basis for it are all set out in the various pleadings filed with the court. See CP 305-409; 720-70.

Mr. Cline recognized that while electrical arcs can fork, or separate, the **direction** of the forks is the same for each arcing event and that direction can be calculated by examining the spatter pattern of metal displaced by the electrical arcing.

To put this in context with ordinary experience: if a person throws a baseball into a mud puddle, there is a single impact point, with an associated direction of mud spatter that depends on the direction of ball travel. If a person were instead to throw a handful of golf balls, there

conclusions from the contact surfaces becomes much more difficult. Hence, the need for Mr.

would result multiple impact points, but the **direction** of mud spatter relative to impact points would all be the same because the direction of spatter is determined by the direction of incoming balls, not by the number of balls being thrown.

If an investigator sees five impact points in the mud puddle, it's impossible to know from the number of impact points alone whether that represents one throw of five golf balls, or five different throws of one ball. However, if there are five different **directions** of spatter, that indicates five different throwing events because, whether throwing one ball or five, a single throwing event would not result in five **different** spatter directions.

Mr. Cline's investigation resulted in his concluding there were five different spatter directions. CP 385-86. Yet, that important testimony was kept from the jury because Mr. Cline's analysis was excluded. CP 567-68; CP 822-23.

In relation to the application of *Frye*, Washington's Supreme Court explained that the "primary goal is to determine 'whether the evidence offered is based on established scientific methodology.'" State v. Russell, 125 Wn.2d 24, 41, 882 P.2d 747 (1994).

It was also stated by the Supreme Court Court in State v. Gregory, 158 Wn.2d 759, 830, 147 P.3d 1201 (2006) that "[o]nce a methodology is accepted in the scientific community, the

Cline's analysis.

application of the science to a particular case is a matter of weight and admissibility under ER 702, which allows qualified expert witnesses to testify if scientific, technical, or other specialized knowledge will assist the trier of fact.” *Id.*

The idea that analysis of directional spatter can be used to identify the direction from which impacts are made is not itself unusual, and the record contains a treatise showing how the techniques and analysis is used to determine origin and directionality of blood stains from examination of the shape of spatter marks. CP 729-67; see also CP 768-70.

The application of this methodology and theory to analysis of liquid metal spatter is unusual, perhaps even unique to Mr. Cline. But, expert testimony based on the application of well-recognized visual observation and analysis is not properly excluded under *Frye* simply because the techniques are being applied in a new context. See e.g. State v. Nolte, 57 Wn. App. 21, 27, 786 P.2d 332 (1990) (“We find no basis for Noltie's contention that colposcopy constitutes a ‘novel’ field or scientific technique, even though its use in child abuse cases may be relatively recent.”)

In the end, it’s conceded that none of plaintiffs’ witnesses are aware of any other incidence where analysis of directional spatter has been used to analyze circuit breaker tripping incidents. But, the fact that Mr. Cline is

applying well-recognized principles in a new context is not a proper reason to have excluded his testimony.

4. Mr. Hejlik's testimony about Harley's "bake test" should be excluded because it does not meet the Frye Standard.

Mr. Hejlik critical testimony was that Harley's "bake-test" showed that the Moore breaker could not have failed on the day Johnny Moore died. TR 753-78.

Ms. Moore sought to exclude that testimony on the basis that no scientifically reliable methodology allowed Mr. Hejlik to draw correlations between how the 40-amp breaker acted in the controlled oven environment and how it acts in a moving motorcycle. (A supplemental motion in limine was inadvertently omitted from the Clerk's Papers and is the subject of a supplemental designation. See Plaintiff's motion at section 22 pages 19-21); see also supporting declaration of Gerald Schaefer (CP 818-821, and particular CP 819, line 20 "nor is there any accepted scientific methodology from which reliable conclusions could be drawn from GET's testing about what causes a 40-amp main circuit breakers [sic] to fail under ordinary riding conditions."

As described above, there are limits to admissibility imposed by the *Frye* standard. Washington's Supreme Court explained that courts perform a gatekeeping function, whose "primary goal is to determine

‘whether the evidence offered is based on established scientific methodology.’” State v. Russell, 125 Wn.2d 24, 41, 882 P.2d 747 (1994).

Expert testimony concerning evidence derived from a scientific theory is admissible only if the theory has achieved general acceptance in the relevant scientific community; this rule is concerned only with whether the expert’s underlying theories and methods are generally accepted. ER 702 Ruff v. Department of Labor and Industries of the State of Wash, 107 Wn. App 289, 28 P. 3rd 1 (2001).

The Defendants presented no evidence that there is an accepted methodology for concluding that the “bake-test” results can be correlated with performance of the breaker in an operating motorcycle.

The Defendants have not performed a bake test on breaker that they know to have experienced a “quit while riding” event. Therefore they do not have a control group upon which to base their conclusions therefore the methodology is invalid. See Ruff at 107 Wn. App. 302. Because the “bake-test” was created for litigation, not surprisingly the defendants have not submitted their test to any peer review.

The defendants produced nothing to show the test they created supports the conclusion for they want to give testimony about. However, to be admissible, expert testimony concerning novel scientific evidence must both satisfy *Frye* and ER 702. State v. Copland, 130 Wash 2nd 244, 256, 922 P.2nd 1304 (1996). The “bake test” was designed to determine

the degree of ambient temperature required to trip a 40 amp breaker with 30 amps of current passing through it. It was not designed to determine how the Honeywell 40-amp breaker actually performs under the kinds of varying environmental conditions likely to have been encountered by Johnny Moore on the day he died.

Because there is no such accepted scientific methodology, Mr. Hejlik's testimony should have been excluded and the court erred in denying Ms. Moore's motion.

5. Harley's "bake test" should have been excluded because it is not relevant to any issue in the case.

"Evidence which is not relevant is not admissible." ER 402. Evidence is relevant and thus probative if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. There must be a logical nexus between the evidence and the fact to be established. State v. Burkins, 94 Wn. App. 677, 692, 973 P.2d 15, review denied, 138 Wn.2d 1014 (1999). State v. Cochran, 102 Wash.App. 480, 8 P.3d 313, rev. den. 143 Wn.2d 1004, 20 P.3rd (2000).

Ms. Moore requested that the trial court exclude what the parties refer to as the "bake test" as irrelevant. CP 445-49. This is a series of tests of the Moore motorcycle's 40-amp circuit breaker done

at GTE Engineering at the request of Harley Davidson on May 20 and 21, 2008. CP 517-37 is a copy of the “bake test” report.

The “bake test” consisted of putting the Moore breaker into a controlled oven. The breaker was subjected to a 30-amp current. The oven’s heat was slowly raised until the Moore breaker “tripped.” The oven was then cooled down, and the test repeated three times. Results of this test showed that, when in a carefully controlled environment, where the *only* variable is heat, the Moore breaker, with 30-amperes of current applied, tripped at 210.84°, 221.71°, and 221.99°. CP 525.

During the “bake test,” no vibration of the breaker occurred, although everyone knows there is considerable vibration on the motorcycle. During the “bake test,” no variation in current was supplied to the breaker, although everyone knows that the current on a motorcycle varies considerably with engine speed and the number of appliances, like lights, radio, cruise control and such that are activated. In short, the “bake test” is designed to test the Moore breaker under conditions everyone knows simply did *not* exist at the time of the wreck.

What’s interesting about this case is that the problem is not individual breakers with faulty construction, in the sense that some small population of 40-amp breakers act like, say, 20-amp breakers, “tripping” when the motorcycle lights are turned on. This case is not

about the construction of Honeywell's 40-amp breaker. It's about Harley's decision to use Honeywell's 40-amp breakers in the design of their motorcycle when the 40-amp breaker is not a suitable component.

In discovery Harley produced zero data on how to differentiate "faulty" breakers from "good" breakers. When asked to provide a "defective" breaker, Harley indicated:

The main breakers included in the population of recalled motorcycles are not defective. Instead, Harley-Davidson determined that the 40 amp circuit breakers in the population of motorcycles recalled could trip depending on environmental conditions and circumstances of use.

See Harley's answers to Plaintiff's First Interrogatories and Requests to Produce at RFP #8 , CP 540.

Once the court understands that all 40-amp breakers installed by Harley "could trip depending on environmental conditions and circumstances of use," it's apparent that the "bake test" has no **relevance** to any issue in the case because the "bake test" doesn't show that the Moore breaker is any different from any other 40-amp breaker that trips unexpectedly. **Every** 40-amp breaker pulled from every recalled motorcycle would apparently return more-or-less the same result from the "bake test," but that tells us nothing about whether the Moore breaker failed on the day Johnny Moore died because it tells us nothing about the "environmental conditions and circumstances of use" that day. That's because (from paragraph 1.0 on

page 3 of the “bake test” report: “The purpose of this test was to determine the temperature at which a 40 amp circuit breaker will open under a constant current of 30 amperes.” CP 519.

There is not an issue in this case about what temperature trips a 40 amp breaker under a constant current of 30 amperes because the Moore motorcycle, when ridden, *never* directs a constant current of 30 amperes through its main breaker.

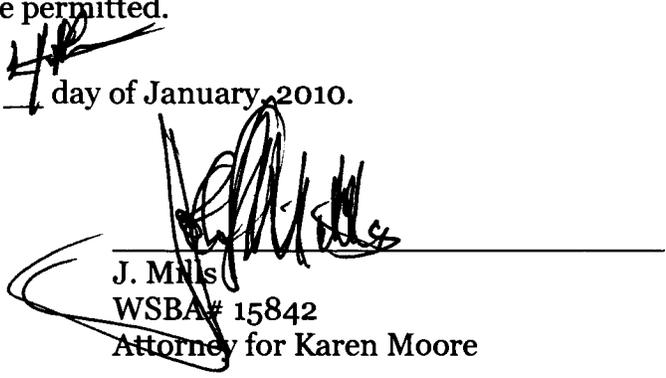
The issue is whether conditions encountered by Johnny Moore actually caused the 40-amp breaker to “trip” on the day in question “for reasons other than for which it was designed.” Accordingly, the “bake test” has no relevance.

Harley’s engineers designed a very carefully controlled test and showed that the Moore breaker “passed” this test, or performed up to expectations in the test. The point was to persuade jurors that the Moore breaker wasn’t “defective.” But, “passing” this test doesn’t really say anything pertinent about any issue in the case because it shows merely that Moore’s breaker is an ordinary Honeywell 40-amp breaker – something no one disputes. Accordingly the “bake test” should have been excluded under ER 402 (“Evidence which is not relevant is not admissible.”)

CONCLUSION

This case should be remanded for a new trial. Mr. Hejlik's testimony about Harley-Davidson's "bake test" should be excluded because the information it produced was irrelevant and Mr. Hajlik's opinions about what the bake test showed did not meet the Frye standard. Mr. Cline's testimony should be permitted.

DATED this 4th day of January, 2010.



J. Mills
WSBA# 15842
Attorney for Karen Moore

APPENDIX A



**SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

**KAREN MOORE and the ESTATE
OF JOHNNY C. MOORE,**
Plaintiffs,

vs

**HARLEY-DAVIDSON MOTOR
COMPANY GROUP, INC., d/b/a
HARLEY-DAVIDSON MOTOR
COMPANY, a Washington State
corporation; and DESTINATION
MOTORCYCLES TACOMA, LLC, d/b/a
DESTINATION HARLEY-DAVIDSON,
a Washington State Limited Liability
Company,**
Defendants.

NO. 07-2-07358-8

SPECIAL VERDICT FORM

We, the jury, answer the questions submitted by the court as follows:

QUESTION 1: Did the defendants supply a product that was in a defective condition and not reasonably safe at the time the product left the defendants' control?

ANSWER: NO (Write "yes" or "no")
(INSTRUCTION: If you answered "no" to Question 1, sign this verdict form. If you answered "yes" to Question 1, answer Question 2.)

QUESTION 2: Was the unsafe condition of the product a proximate cause of the injury or damage to the plaintiffs?

ANSWER: _____ (Write "yes" or "no")
(INSTRUCTION: If you answered "no" to Question 2, sign this verdict form. If you answered "yes" to Question 2, answer Question 3.)

QUESTION 3: What do you find to be the plaintiffs' amount of damages? Do not consider the issue of contributory negligence, if any, in your findings.

ANSWER: (a) Past Economic Damages \$ _____
(b) Noneconomic Damages \$ _____
(c) Future Economic Damage \$ _____

(INSTRUCTION: If you answered Question 3 with any amount of money, answer Question 4. If you find no damages, sign this verdict form.)

QUESTION 4: Was Johnny Moore negligent?

ANSWER: _____ (Write "yes" or "no")
(INSTRUCTION: If you answered "no" to Question 4, sign this verdict form. If you answered "yes" to Question 4, answer Question 5.)

QUESTION 5: Was Johnny Moore's negligence a proximate cause of the injury to the plaintiffs?

ANSWER: _____ (Write "yes" or "no")
(INSTRUCTION: If you answered "no" to Question 5, sign this verdict form. If you answered "yes" to Question 5, answer Question 6.)

QUESTION 6: Assume that 100% represents the total combined fault that proximately caused the plaintiffs' injuries. What percent of this 100% is attributable to Johnny Moore's negligence and what percentage of this 100% is attributable to defendants' negligence? Your total must equal 100%.

ANSWER:

PERCENTAGE

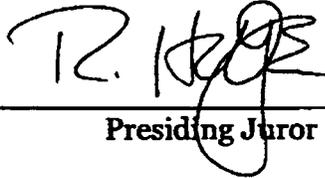
To Plaintiff Johnny Moore

To Defendants

TOTAL: 100%

(INSTRUCTION: Sign and return this verdict.)

DATE: 5/6/09, 2009



Presiding Juror