

SUPERIOR COURT OF NEW JERSEY
ESSEX VICINAGE



2010 Law Day Theme

Law in the 21st Century: Emerging Challenges and Enduring Traditions

**MOCK TRIAL
FACT PATTERN**

GALLAGHER

v.

ACME SEWER COMPANY

The following individuals served on the
2010 Essex Vicinage Law Day Mock Trial Fact Pattern Committee

Hon. Verna G. Leath, J.S.C.
Kimberly Cicala, Community Relations Liaison
Bruce Humphreys, Landlord / Tenant Master
Shazeeda Samsudeen, Ombudsman
&
Members of the Law Day Committee

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Facts

On the afternoon of April 15th, 2008, eighteen year old Carol Gallagher was walking down Main Street, located in the business district of the city of Essexville. As she was walking down the street, Carol was texting her friend Lydia Montero on her Sidekick about the latest gossip at her school.

At the same time that Carol was walking down Main Street, Gerald Edwins, a worker for Acme Sewer Company, was repairing a sewer pipe in a manhole near the intersection of 13th and Main Streets. [Acme Sewer Company is a private contractor that provides maintenance service for the city of Essexville's sewer lines and pipes.] In compliance with the company's safety procedures, Gerald secured the work area by placing construction cones around the perimeter of the manhole. Since the work area was close to the cross walk, he also created a temporary walkway delineated by two cones and an eight foot steel and wood barricade on each side. Gerald also placed an upright "work area" sign and a blinking arrow sign in front of the work area so that the oncoming traffic would be able to slow down and drive around the work site. Eight cones were placed around the manhole. At one point Gerald walked to his van, which was parked across the street so that he could retrieve a wrench. It was at this moment that Carol, who was crossing 13th and Main Streets walked between the cones and fell 10 feet down the open manhole space.

The local fire department had to be called to the scene to lift Carol out of the manhole because she could not move after the fall. As a result of the fall, Carol broke both her legs and her nose. She missed the remainder of her senior year because of surgeries, intensive physical therapy and psychological counseling that she had to

undergo in order to walk again. Carol still walks with a limp from the permanent leg injuries she sustained. She also had to give up the full athletic scholarship she had been awarded to attend the University of North Carolina at Chapel Hill.

In September 2008, Carol filed a lawsuit against Acme Sewer Company for personal injuries she sustained due to the company's alleged negligence in failing to properly secure the worksite around the open manhole. She is looking to be reimbursed for approximately \$2 million in medical bills and compensated for pain and suffering.

Instructions For Teachers

This fact pattern involves a case in which Carol Gallagher is suing Acme Sewer Company for negligence.

On the day of the mock trial, a judge and two attorneys will visit your school. One of the attorneys will be representing the plaintiff, Carol Gallagher. The other attorney will be representing the defendant, Acme Sewer Company.

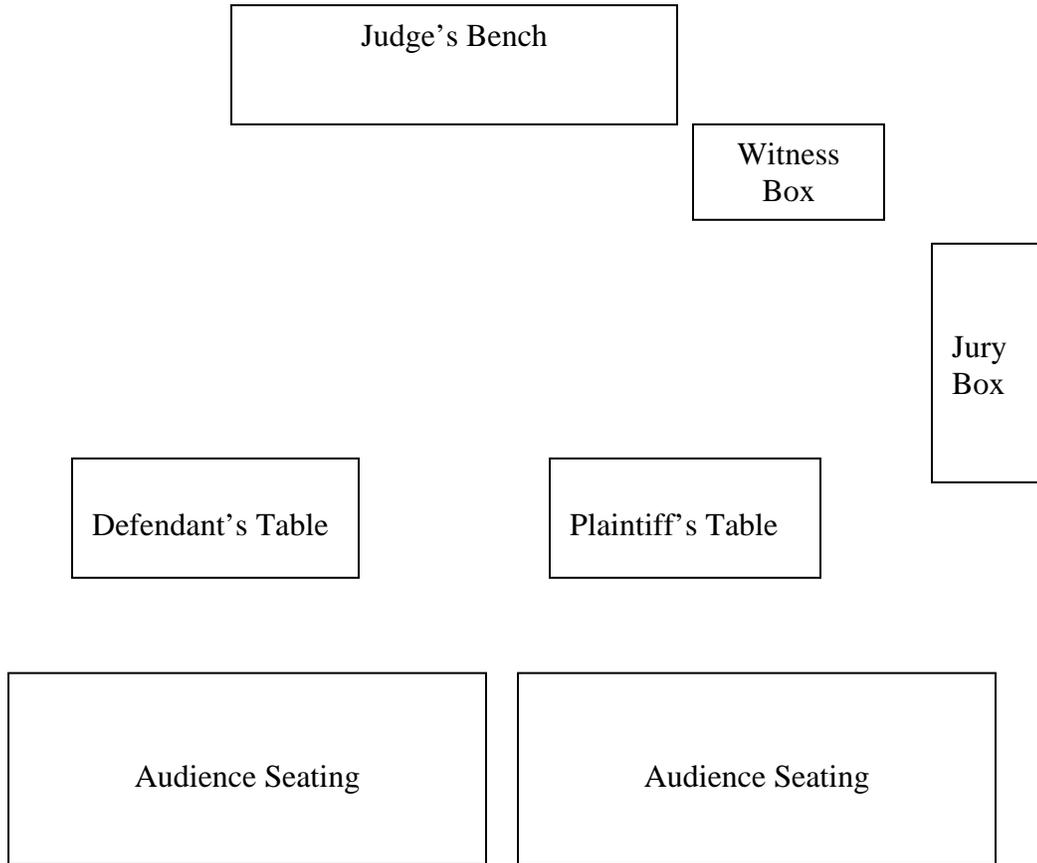
In addition to the arguments that the attorneys will be making, teachers should select six students to play the parts of the witnesses. Some of the witnesses will be testifying for the plaintiff and some of the witnesses will be testifying for the defendant. Witnesses may be cross-examined by the opposing attorneys. Both attorneys will make their arguments and then the judge will lead a dialogue with the students in deciding the outcome of the case.

If you would like two students to act as co-counsel and assist the visiting attorneys, please have each student create an opening and closing statement as well as a list of questions for each witness. Teachers should also inform the visiting attorneys that they will have co-counsel prior to the start of the mock trial.

The remaining students will act as the jury. The jury will decide whether Acme Sewer Company was negligent and whether Carol is entitled to the money for which she is suing.

The students should be familiar with the entire fact pattern and understand the sequence of events prior to Wednesday, April 21st, the date of the mock trial.

Creating A Courtroom



The room that will be used for the mock trial should be set up as follows. A desk or table should be placed in the center of the room as the judge's "bench". Chairs for the attorneys should be placed on either side of the judge's bench, facing the judge. A "witness box" should be created by placing a chair to left of the judge's bench.

Instructions for Attorneys / Judges

The students have received the fact pattern in advance. Students have been selected to portray the witnesses. The judge will preside over the mock trial. The attorneys will role-play. One attorney will act as the attorney for the plaintiff and one attorney will act as the defendant's attorney. Each attorney will make a five minute opening argument. The direct and cross-examination of each witness should take no longer than five minutes. Then the attorneys will each make a five minute closing argument.

The judge will give a brief explanation of the applicable law. The judge will then provide an overview of the facts of the case and an overview of the issue and arguments. The judge will then lead the students through an analysis of the issue so that they can make a decision.

The students in the audience should be encouraged to express their various viewpoints. Feedback and participation are encouraged. Additional discussion questions are available on page 35.

Judge's Directions to the Students

My name is Judge _____ of the New Jersey Superior Court. This is a civil trial. In this civil lawsuit, the plaintiff Carol Gallagher claims that she has been injured because of the negligence of the defendant, Acme Sewer Company. She is seeking monetary damages for medical bills as well as pain and suffering.

You are the judges of the facts. You will listen to the witnesses and at the end of the case, you will determine what facts have been proven or not proven. I am the judge of the law. In addition to regulating the trial, at the end of the case, I will tell you what the law is. You must accept the law as I tell it to you, whether you agree with the law or not, and you must apply that law to the facts as you find them to be, in order to reach your verdict. In a civil case such as this, there is a minimum of six people on the jury in deciding a case. It is not necessary that all six jurors agree on a verdict. An agreement by any five jurors is enough. For the purposes of this exercise, however, we can allow as many students on the jury as would like to participate in making the final decision.

The burden of proof is on the plaintiff to prove the claim by a preponderance of the evidence, meaning that the evidence supporting that claim must weigh heavier and be more persuasive in your minds than the contrary evidence. In other words, the plaintiff's evidence must be a little bit better than the defendant's evidence.

Now please stand and raise your right hand, state your name after the word "I" and repeat after me: "I (state your name) do solemnly promise that I will listen to the evidence of the case with an open mind, without prejudice or favoritism and apply the law as it is given by the judge in reaching a fair and just verdict".

I will now introduce the attorneys and they will explain their positions and what they think the evidence will show. Remember that what the attorneys say in these opening statements is not evidence. Also, what they say in their concluding arguments is not evidence. The evidence on which you must decide this case will come from the testimony of the witnesses.

First, the plaintiff is represented by _____

The defendant is represented by _____

OPENING STATEMENTS

ARE WE READY? PLAINTIFF MAY CALL HIS FIRST WITNESS.

WITNESSES FOR THE PLAINTIFF:

Witness: Carol Gallagher

Witness: Paulina Gallagher

Witness: Sameer Sampson

WITNESSES FOR THE DEFENDANT:

Witness: Gerald Edwins

Witness: Sally Carson

Witness: Patrick Summers

CLOSING STATEMENTS - SUMMATIONS

Carol Gallagher

On the afternoon of April 15th, I was on my way to H & M to do some shopping. H & M is located on Main and 20th Streets. As I was walking, I decided to text my friend Lydia Montero, who was going to meet me at H & M. The reason that I texted her is because Main Street is very busy and it's hard to speak to someone on the phone with all the traffic and other noise. Anyway, Lydia texted me back that she was already at the store so we began texting about school.

I was holding my T-Mobile Sidekick about six or seven inches from my face so I could still see what was going on around me. All I remember was that I was crossing Main and 13th and I remember looking up to make sure that I had the walk signal so that I could cross the street. As I was crossing the street, I got another text from Lydia so I began reading it and the next thing that I remember was falling and hitting the ground legs first. Then I fell forward and hit my nose. There was instant pain and I couldn't move. My first thought was that I was paralyzed. I began screaming for help and some guy at the top yelled back down to me "that everything was going to be ok and that he was going to get help." I was in that manhole for about 10 minutes before I heard the sirens. About 30 minutes later, I was lifted out of the manhole in a harness by firefighters and taken in an ambulance to the hospital.

I broke both my legs and my nose. Since the accident, my entire life has been lived in hospitals and doctors' offices with the surgeries, physical therapy and counseling. I wouldn't wish what happened to me on my worst enemy. The pain from my broken legs was excruciating. I remember being in that manhole and seeing the broken bone in my right leg because it cut through the skin. My surgeon told me later that this is an open

compound fracture. They had to surgically insert metal rods in both my legs. In order to walk again, I had to go through so much physical therapy. I also had to have plastic surgery because of my broken nose. It still doesn't look the way that it did before.

I had to go to a psychologist to deal with the mental part of this ordeal which believe it or not has been even more difficult than the physical recovery. I have nightmares all the time about falling into that manhole. I also have a fear of confined spaces because I was stuck in that manhole for 30 minutes.

The most difficult blow, however, was that I lost my basketball scholarship to the University of North Carolina at Chapel Hill. My leg injuries left me with a permanent limp so I can't play basketball anymore. I was the star center on my high school team, the Essexville Panthers. When I got a scholarship with a chance to play for the Tar Heels, it was like a dream come true. Not only will I not play basketball, but now I won't get the caliber of education I would have gotten at Chapel Hill. This has really affected me emotionally. I used to love playing basketball and now I can't even walk long distances without my legs hurting. My parents were worried about me so I had to meet with a psychologist for about a year. To be honest though, my sessions with him didn't help because at the end of the day, my life will never be the same for me or my parents. My parents have also been severely affected by what happened to me. They do not have health insurance to cover the medical bills so my parents now owe a lot of money to hospitals, physical therapists and my psychologist. My mother lost her job because she had to take care of me during this ordeal. They don't have any money left.

The whole accident could have been prevented if Acme had a better method for securing the manhole where the work was being done. I have had a lot of time to think about Acme Sewer Company and their negligence in setting up the work area. Now I notice construction areas all the time.

First of all, they could have used bigger barriers instead of cones. With the barriers, I would have bumped into it and stopped walking. Cones are easier to knock over while larger construction barriers are more difficult to knock over. Someone told me that they had two larger barriers for this temporary walkway that Mr. Edwins created. That shows that they knew that a larger construction barrier would be more difficult to knock over.

Secondly, if they were going to use cones, then they should have situated them closer together. I swear there was about three or four feet separating each of those cones. I admit that I was texting, but if the cones had been closer together, I would have seen the cones out of the corner of my eye and stopped or I would have bumped into them. There should not be enough space between the cones for someone to walk between.

I know that they are going to try to say that I shouldn't have been walking and texting, but this is not my fault. What if I had been blind or what if it were a small child or someone's dog? They should know that they had to have enough cones or barriers around the perimeter of the open manhole so that no one falls in.

That worker, Gerald Edwins, claims that he yelled out to me to stop, but I did not hear anyone. Even if he had yelled, I would not have heard him because the downtown city area is very noisy. Also, he claims that he saw me bump into the cone, but that

instead of stopping I walked around the cone. If I had bumped into the cone, I would have stopped to see what was in front of me.

I deserve to be compensated for several reasons. First, there is all of the money that my parents and I owe from the medical expenses. Secondly, there is the pain and suffering I have endured because my life has been completely ruined. Psychologically, this has taken a toll on me. I went from being a healthy athletic young woman to being someone who walks with a limp. I feel like everyone is staring at me when I am out in public because of my limp and my surgically repaired nose. In addition, I don't have the money to go to college and I can't do the thing that I loved most in the world; play basketball. I really believe that I had the potential to become a professional basketball player. It's like I have lost my purpose. I sit at home and am so depressed. I feel like I am a burden on my parents.

Paulina Gallagher

My name is Paulina Gallagher and I am Carol Gallagher's mother. On the afternoon of April 15th, 2008, I received a phone call from Officer Williams from the Essexville police force. He informed me that my daughter Carol had been in an accident and that she was at the Essexville General Hospital Emergency room.

I immediately called my husband Donald and rushed to the hospital. When I got to the hospital and saw Carol, I was absolutely devastated. My beautiful daughter looked terrible. Her nose was broken and her right leg was completely distorted and the bone was sticking out of the skin. She was in so much pain that all she could do was scream and cry. She kept screaming, "I won't be able to play basketball again." No mother wants to see their child in pain like that. I kept thinking her life would never be the same.

And our lives have not been the same since that day. Carol had to have surgery on her legs. Then she had to have extensive rehabilitation. I had started a new job as a dental assistant and because I missed so many days, they had to let me go. Then Carol needed help at home because she was immobile and couldn't do anything for herself. For months, I stayed home with her and helped her move around the house. Then I had to drive her to therapy. She literally had to learn to walk again.

Carol never fully recovered. She still walks with a limp and she is always looking at herself in the mirror and commenting on how horrible she looks because of her nose. It had to be surgically repaired. The worst part was that she lost her basketball scholarship for the University of North Carolina at Chapel Hill. My husband and I only have Carol so we wanted the best for her. Chapel Hill is a very good school. She was going to play for the Tar Heels and get a great education. Her future would have been

set. Now she sits at home with no future. We don't have the money to pay for her to go to college because most of our money is being spent paying off all of the hospital bills. My husband and I do not have medical insurance covering Carol.

Also, Carol is very depressed. I am so worried about her. She won't leave the house. It's like her life no longer has any purpose. We paid for her to go to a psychologist for a while but then we had to stop because we couldn't afford it anymore.

Acme owes us big time. They have a duty to protect pedestrians when they are doing maintenance work or construction or whatever they were doing that afternoon. My daughter should not have been able to walk directly into the path of that manhole. I don't want to hear about cones and barricades or anything else. I don't care if she was texting because at the end of the day, there is no law that says people can't walk and text at the same time. She was not at fault; they were.

They owe us for all of the medical bills and all the pain and suffering she has had to endure.

Sameer Sampson, Expert Witness

My name is Sameer Sampson and I worked as an engineering manager for 27 years before retiring. I am now the president and owner of Sameer Safety Inc., which is a consulting firm that provides services to various municipalities as well as private companies in helping them develop safety standards on worksites. This includes work done on manholes. Accidents involving manholes is actually a common occurrence. All over the country, I have done consulting work for various municipalities and businesses that have had to deal with this very important issue. I have helped them develop more thorough safety codes so that they don't have to deal with liability issues when there is an accident. The question I always ask when there is an accident of the sort that little Carol Gallagher was a victim of is, "Could this have been prevented?" In this case I believe that it could have absolutely been prevented.

Acme Sewer Company does not have a specific pedestrian safety policy for when work is being done in and around manholes. The general policy simply mandates that "work sites must be marked with warning signs or cut off from pedestrian access while they are undergoing work." I am sorry but this is not sufficient. I don't have the exact number but I bet that we would all be shocked if we knew the number of people that fall down manholes every year. I have assisted six companies around the country in developing safety standards to prevent these accidents. I have seen cases where the covers have not been adequately secured and individuals have fallen down the manholes. I have seen other cases such as this one where the work areas around manholes have not been sufficiently secured and pedestrians or small animals have fallen through.

The first issue that I notice immediately is that there was one person at the site. Anytime work is being done at a worksite, there should be at least two workers on site. If there were two workers, then there would have been someone by the open manhole while Mr. Edwins went to his van to retrieve his wrench.

Secondly, there should have been some sort of large prohibitive barrier around the manhole. I brought a photograph of the type of barricade that the city should have used to prevent the accident that took place on April 15th, 2008 (**See Exhibit A; pg. 26**). The worker, Gerald Edwins, used similar barricades on either side of the temporary pedestrian walkway that he set up. Four of these barricades around the manhole would have surely protected little Carol from falling into the manhole.

The smaller cones that were used (**See Exhibit B; pg. 27**) were clearly not sufficient. These can be easily knocked over. Also, as with this case, if you leave too much space in between the cones, someone can walk in between them. In addition, if they were going to use cones, they should have used the larger, bulkier size which would have provided a more secure barrier around the manhole (**See Exhibit C; pg. 28**).

In my expert opinion, Acme's construction safety standards are not sufficient to protect pedestrians walking in and around worksites. This accident involving Ms. Gallagher could have been prevented if Acme had used better precautions and had a more thorough safety policy for protecting pedestrians.

Gerald Edwins

My name is Gerald Edwins. I have worked for Acme Sewer Company for 15 years. On the afternoon of April 15th, I was doing some maintenance work on a manhole located on the corner of 13th and Main Streets. It was about 1 p.m. and it was very busy in downtown Essexville. Because it was so busy, I took careful measures to secure the area around the manhole in accordance with company policy. I had two barriers which created a walkway for pedestrians crossing the street. I created this walkway so that pedestrians would not have to walk in the area of the open manhole. I placed lighted “work area” signs up so that the oncoming traffic would know that work was being done and that they had to slow down. I placed eight cones around the manhole area. I really only needed about six but because I am always so careful, I put two extra cones around the area. There was only about one foot separating the cones.

The only thing that I didn’t do was bring my wrench with me. I left it in the van. So I had to go back to my van, which was parked on the other side of 13th street to retrieve my wrench. As I was walking back to the manhole I noticed a young girl walking directly toward the manhole. Every other pedestrian was paying attention and was using the temporary pedestrian walkway which I had set up to the left of the worksite. But this girl was not even looking up. She was texting on her phone so she was looking down. I was only about seven feet from her but I couldn’t reach her. I yelled to her “Stop, there is a manhole in front of you” but she was so distracted by her texting that she didn’t hear me. I remember that other people looked up when I yelled.

As soon as she fell down the manhole, I knew that she was going to be seriously injured. Initially, I started yelling down to her asking her if she was okay. I remember

being relieved that she answered me and that she wasn't unconscious. I immediately called an ambulance. I climbed down the ladder but it was obvious that she couldn't move. Eventually, the fire department came and lifted her out.

It was an absolute nightmare. In 15 years of doing maintenance for Acme, nothing like this has ever happened. As I stated before, I am always very safe. The problem is that this kid was not paying attention. I know that she has said that it could have been a blind person or a baby who fell down the manhole. Well babies have adults with them and even a blind person using a cane would have noticed that a hole or some sort of obstruction such as the cones were in front of him or her. This little girl actually bumped into the cones but because she wasn't paying attention, she kept walking. And by the way, she isn't blind. She is an able bodied individual who has her eyes but failed to use them. She claims that she looked up to make sure that she had the light to cross the street. Well the pedestrian walk signal was right above the worksite. How come she didn't notice all of those cones in front of her? I believe that she never looked up. She is lucky that a car didn't hit her.

If they allow her to sue and recover millions of dollars then I guarantee you that you will have people squeezing in between cones all over the city and throwing themselves down open manholes because it will become an easy way to make money. I mean don't get me wrong. I feel bad that she was injured but it was her own negligence that caused the injury. The company should not have to pay her.

Sally Carson

My name is Sally Carson and I am 58 years old. I am now retired but I was an Essexville crossing guard for 15 years. On the afternoon of April 15th, I was standing at the bus stop located close to the corner of Main and 13th Streets. I remember seeing the young lady, whose name I learned later is Carol Gallagher, walking down the street. I saw her before she crossed the street and fell into the manhole. The reason that I was looking at her was because of how carelessly she was walking and not paying attention to where she was walking. She was busy on that phone of hers. Texting is what they call it. Anyway, she was not even walking in a straight path. She was swaying as she was walking in all directions and because she was looking down at that contraption of hers, she bumped into a few people. Other pedestrians had to get out of her way before she bumped into them. Also, she would stop walking in the middle of the sidewalk and continue to text. The pedestrians who were unfortunately walking behind her would have to stop suddenly and walk around her.

I remember thinking that she could get hit by a car if she didn't pay attention to where she was going. I saw her cross the street and while every other pedestrian walked to the left and used the walkway, she walked toward the construction site and fell down the manhole. I heard that poor construction worker yelling at her but she was looking down at her phone the whole time so she never heard him. It doesn't surprise me that she fell down the manhole. She was so focused on her phone that she probably didn't even know she was falling until she hit the ground.

This is what technology has done to the world. It is one of the main reasons that I retired a year ago. As a crossing guard in Essexville, I had to deal with young people

crossing the street and texting or talking on their phones all the time. Most of the time, they were not paying attention to me and whether I was giving them the sign to cross or stop. They just walked across. I was always terrified that one of them was going to get hit while I was on duty.

And it's not only the people crossing the street. The drivers are always on their cell phones when they are driving too. I know that they passed a law now that says you will be fined \$100 if you are driving and talking or texting on your phone. They need to pass that same law for people crossing the street and texting or talking on their phone.

I understand that she was seriously injured from her fall down the manhole. Well at least she won't text anymore when she is walking down the street. I don't believe anyone should have to pay her a dime. People need to take responsibility for their own actions. What would have happened if one of those kids who was texting when I was a crossing guard got hit by a car? Would it have been my fault? Giving her money for something that she needs to take responsibility for is not right.

Patrick Summers, Expert Witness

My name is Patrick Summers and I am testifying as an expert on behalf of Acme Sewer Company. I have a degree in civil engineering and I worked as a construction manager for 30 years. Part of my work as a construction manager was to ensure the safety of both the workers and pedestrians. I can say that my 30 years of experience taught me that safety is a two way street. The company can put all kinds of safety mechanisms in place but the pedestrians also have to make smart decisions when they are walking in and around construction areas.

I have reviewed the setup of the work area on Main and 13th Streets on the afternoon of April 15th as outlined by Acme. First, the cones that were used were sufficient in my expert opinion. The cones used were 28 inches high and weighed approximately 10 lbs. They are not easy to knock over. The bulkier construction cones were not necessary. Those bulkier cones are typically used for larger construction projects involving heavy machinery. The job that Gerald Edwins was doing on April 15th was a simple job that would not have taken more than two hours. It was not necessary to have more than one person at the site or to have used bulkier cones. It was also not necessary to have larger barricades on all four sides of the manhole. Those barricades are typically used to prevent the worker from being hit by a car, or as in this case, to delineate a temporary pedestrian walkway.

We can go on all day about the cones and the barriers but at the end of the day, the pedestrian has to make smart choices. This pedestrian did not ensure her own safety. She chose to look down while she walked. She chose to not pay attention to the cones in front of her. I have monitored the traffic on Main and 13th Streets. On a given day, you

can have approximately 300 people an hour crossing Main and 13th Streets. The construction site was set up for about an hour before Ms. Gallagher fell into that manhole. Yet she was the only one that fell down the manhole. There have been no other witnesses produced by the plaintiff who have even said that they did not see the cones and almost fell down the manhole.

In addition, I have reviewed Acme's history. There has never been a reason for this company, which has been in business for 15 years to change its safety mechanism or policies. Why, you ask? Because they have never had a pedestrian fall down a manhole before.

Exhibit A



Exhibit B



Exhibit C



JURY CHARGE

General Charge

Ladies and Gentlemen of the Jury the time has arrived when you are to perform your final function in this case, but before you decide on a verdict, it is my duty to instruct you as to the principles of law which apply.

Functions of the Court

In this trial the function of the judge is to instruct the jury with respect to the laws the case. The jury is required to accept and apply the law as stated by me to the facts of this case.

Burden of Proof

The burden of proof is on the plaintiff in this case to prove that she was injured due to the defendant's negligence. To prove an allegation by a preponderance of the evidence, the plaintiff must convince you that it is more likely true than not true. You must ask yourself, as to each issue, which side has the better evidence.

Your Role

Your role is to determine, based on the facts of the case, whether the plaintiff has proven that the defendant's negligence caused her injuries, and if so, what should the remedy be.

Evidence/Credibility

You are to determine the facts from the testimony you heard from the witnesses. You will do this by judging which testimony can be believed or what probably happened. Under no circumstances should your deliberations be affected by any favoritism for a party or any prejudice against a party. Bias, passion, and sympathy may not influence your decision. Decide this case on the facts and law I have given you.

The Evidence

The evidence in this case consists of:

1. the testimony that you heard from the witnesses; and
2. the exhibits that have been marked into evidence.

EXPERT TESTIMONY

You have heard testimony from witnesses who were called as experts. Generally, witnesses can testify only about the facts and are not permitted to give opinions. However, an exception to this rule exists in the case of an expert witness. An expert witness may give an opinion on a matter in which the witness has (some special knowledge, education, skill, experience or training). An expert witness may be able to assist you in understanding the evidence in this case. But I want to emphasize to you that the determination of the facts in this case rests solely with you as jurors.

In this case, Sameer Sampson was an expert witness for the plaintiff and Patrick Summers was an expert witness for the defendant.

Finally, you are not bound by the testimony of an expert. You may give it whatever weight you deem is appropriate. You may accept or reject all or part of an expert's opinion(s).

5.10A NEGLIGENCE AND ORDINARY CARE – GENERAL

The plaintiff, Carol Gallagher, has alleged that the defendants were negligent and this caused her injuries. Negligence may be defined as a failure to exercise a degree of care for the safety of others, which a person of ordinary care would exercise in similar circumstances.

5.10B FORESEEABILITY (AS AFFECTING NEGLIGENCE)

The plaintiff, Carol Gallagher, alleges that the defendant should have foreseen that a pedestrian could have fallen down the manhole and as a result should have set up the work area differently. In determining whether reasonable care has been exercised, you will consider whether the defendant ought to have foreseen that the natural and probable consequence of their actions would have been some injury.

5.32A DUTY OF PEDESTRIANS AND BICYCLISTS TO MAKE OBSERVATIONS

In this case, Carol Gallagher, the plaintiff was the pedestrian who was injured. Pedestrians have a right to the use of streets and highways. A pedestrian is required to use such powers of observation, and to exercise such judgment as to how and when to cross a street or highway, as a reasonably prudent person would use in the particular circumstances.

6.10 PROXIMATE CAUSE — GENERAL CHARGE TO BE GIVEN IN ALL CASES

If you find that Acme Sewer Company was negligent, you must find that the company's negligence was a proximate or immediate cause of the accident before you can find that they are responsible for Carol Gallagher's claimed injuries. It is the duty of Carol Gallagher to establish, by the preponderance of evidence, that the negligence of Acme Sewer Company was a proximate cause of the accident and of the resulting injuries from Acme Sewer Company's alleged negligence.

The basic question for you to resolve is whether Carol Gallagher's injuries are so connected with the negligent actions or inactions of Acme Sewer Company that you decide it is reasonable, in accordance with the instructions I will now give you, that the company should be held wholly or partially responsible for her injuries.

7.31 COMPARATIVE NEGLIGENCE: ULTIMATE OUTCOME

If you find that both the plaintiff and the defendant were negligent, and proximately caused the accident, then you must compare their negligent conduct in terms of percentages. You will have to decide the percentage of both Carol Gallagher and Acme Sewer

Company's negligent contribution to the happening of the accident. The percentages must add up to 100%.

I will explain to you the effect of these percentages. If you find that Carol Gallagher's percentage of negligent conduct to be 50% or less, then the court will reduce her recovery of damages by that percentage. If you find that Carol Gallagher's percentage of negligent conduct was greater than 50%, then she will not recover any damages from the Acme Sewer Company.

Damages

If you find that Carol Gallagher was negligent 50% or less, then you will have to decide if she is entitled to the damages or money that she is suing for.

In this case the plaintiff, Carol Gallagher is seeking the following types of damages:

1. medical expenses; and
2. pain, suffering, disability, impairment and loss of enjoyment of life.

I will now discuss each category of damages with you.

8.11 DAMAGES CHARGES — GENERAL

MEDICAL EXPENSES (NON-AUTO)

A plaintiff who is awarded a verdict is entitled to payment for medical expenses which were reasonably required for the examination, treatment and care of injuries proximately caused by the defendant's negligence. In this case, Carol Gallagher is seeking the sum of \$2 million dollars in medical expenses.

DISABILITY, IMPAIRMENT AND LOSS OF THE ENJOYMENT OF LIFE, PAIN AND SUFFERING

A plaintiff who is awarded a verdict is entitled to fair and reasonable compensation for any permanent or temporary injury resulting in disability to or impairment of her faculties, health, or ability to participate in activities, as a proximate result of the defendant's negligence. Disability or impairment means worsening, weakening or loss of faculties, health or ability to participate in activities. It includes the inability to pursue one's normal pleasure and enjoyment. You must determine how the injury has deprived Carol Gallagher of her regular activities as a whole person.

Here are some factors you may want to take into account when fixing the amount of the award for disability impairment, loss of enjoyment of life, pain and suffering. You may consider Carol Gallagher's age, usual activities, occupation, family responsibilities and similar relevant facts in evaluating the probable consequences of any injuries you find she has suffered. You are to consider the nature, character and seriousness of any injury, discomfort or disfigurement. You must also consider their duration, as any award you make

must cover the damages suffered by Carol Gallagher since the accident, to the present time, and even into the future if you find that her injuries and its consequence have continued to the present time or can reasonably be expected to continue into the future.

Verdict Sheet

As to Liability

1. Was the defendant, Acme Sewer Company negligent?
Yes ____ No ____

2. Was the negligence of Acme Sewer Company a proximate cause of the accident?

Yes ____ No ____

3. Was Carol Gallagher negligent?

Yes ____ No ____

4. Was Carol Gallagher's negligence a proximate cause of the accident?

Yes ____ No ____

5. If you find that you have answered all the previous four questions Yes, *i.e.*, you have found that both the plaintiff and the defendant were negligent and that their conduct proximately caused the accident, then you must answer this question — taking the total negligence of both the defendant and plaintiff which proximately contributed to the happening of this accident as being 100% — what percentage of such total negligence is attributable to:
 - a. Acme Sewer Company Answer _____%
 - b. Carol Gallagher Answer _____%

TOTAL 100 %

If you determined that Carol Gallagher's negligence is 50% or less, please proceed to the next question to determine how much money she is entitled to from the defendants.

If you determined that Carol Gallagher's negligence is more than 50%, she will not receive any money from the defendants and has lost her case.

As to Damages:

What amount of money would reasonably and fairly compensate the plaintiff for her injuries and losses?

A. Past Medical Expenses?	\$_____
B. Pain, Suffering, Disability, Impairment and Loss of Enjoyment of Life?	\$_____
TOTAL	\$_____

ADDITIONAL QUESTIONS FOR STUDENTS TO CONSIDER

- 1) Do you think that there should be laws prohibiting individuals from texting or talking on their cell phone while crossing the street?
- 2) Carol states that she believes that she could have become a professional basketball player. Do you think that Carol should be compensated for future loss income or money that she could have potentially made as a basketball player?
- 3) Both the plaintiff and the defendant hired expert witnesses to testify. Expert witnesses are paid a fee for their testimony. Which expert witness do you believe did a better job of testifying and why?
- 4) Since the City of Essexville hired Acme Sewer Company to repair and maintain the sewer lines in the manhole, do you believe that Carol should have sued the city as well?
- 5) Do you believe that students should be prohibited from bringing their Ipods and cell phones to school?

Vocabulary List

Admissible: Evidence that the court allows to be admitted at trial.

Attorney: A person who advises and represents clients on legal matters.

Circumstantial Evidence: Evidence not based on one's actual personal knowledge or observation of the facts in a case.

Credibility: The quality making testimony worthy of belief.

Damages: In a lawsuit, the harm caused to a party who is injured and the money awarded to one party based on injury or loss caused by another.

Direct Evidence: Evidence that itself directly proves the facts in a case.

Evidence: Data, including testimony, records and objects, that is presented to a court or jury to prove or disprove something.

Foreseeable Risk: A likelihood of injury or damage that a reasonable person should be able to anticipate in a given set of circumstances.

Inadmissible: Evidence that the court does not allow to be admitted at trial.

Judge: A public officer authorized to hear and decide issues and cases in a court of law.

Jury: A group of persons sworn to render a verdict or true answer on a question or questions submitted to them

Jury Charge: Direction that the judge gives the jury concerning the applicable law of an issue or case.

Mock Trial: An imitation of a real trial, based on a fact pattern including fictitious characters and testimony.

Negligence: Failure to exercise the care toward others that a reasonable person would use in the same circumstances or taking action that such a reasonable person would not, resulting in unintentional harm to others.

Pain and Suffering: The physical or emotional distress resulting from an injury.

Preponderance of the Evidence: The burden of proof required in a civil (non-criminal) action to convince the court that a given proposition is true.

Proximate Cause: The immediate reason that something happened that caused harm to another person.

Reasonable: Fair, proper, suitable under the circumstances.

Verdict: A jury's decision or judgment.

Witness: An individual who actually sees, hears or perceives something; an individual who provides testimony in court.