



**FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY**

BUILDING FUTURE LEADERS

**YMCA Youth & Government
VOLUNTEER PACKET**

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LIST OF CONVENERS

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VISION STATEMENT

New generations of ethical and informed, public-minded citizens

MISSION STATEMENT

Teach Democratic values and skills to youth through hands-on experiences

SPECIFIC PROGRAM GOALS:

- To foster the development of citizen responsibility
- To develop social competence, problem-solving ability, and communication skills
- To encourage self reliance and a sense of purpose for youth
- To provide training and experience through active participation in the three branches of government: Legislative, Executive, and Judicial
- To stimulate careful deliberation of social issues and their possible resolutions
- To create opportunities to hear and respect varying viewpoints
- To inspire young people to be responsible & act with integrity
- To apply ethical values in making public policy
- To teach the YMCA core values of **Honesty, Caring, Respect, and Responsibility**

MOTTO

“Democracy must be learned by each generation.”

MOCK TRIAL VOLUNTEER ORIENTATION

JUDGES

1. Stay in role and keep others in role. There should be no mention of schools, competition or mock trials.
2. Keep the case moving. Do not bog down with discussing objections or explaining rulings. Aim for a 120-minute trial.
3. Bailiff will swear in all witnesses at the beginning and keep time.
4. Remember surrebuttal on motion: no rebuttal case. Limited re-cross exam is permitted within a team's total cross time. There is no rebuttal case.
5. Scope of cross is NOT limited by scope of direct. Scope of recross IS limited to that of redirect.
6. Witnesses cannot exceed facts in statements for tactical advantage. Use your sense of fairness.
7. Ruling on pretrial motion does not matter. Consider ruling different ways during different trials.
8. If recess is needed, keep it very short. Allow no consulting.
9. In critiquing, remember to be constructive.

RATERS

1. Score as you go. Keep notes on a separate sheet.
2. Merits of case (and pretrial) should not be allowed to affect scoring.
3. Be consistent between teams and from round to round.
4. Score witnesses for acting, not advocacy. If the judge rules that a witness has strayed from their statement, consider that in your scoring.
5. Score only in whole numbers.
6. Remember to fill out the tie-breaker and best witness/attorney spaces at the bottom of the score sheet.
7. In critiquing, remember to be constructive.



GUIDELINES FOR JUDGES

1. Judges are asked to decide the pretrial motion. The judge may also comment on the merits of the case, i.e. how the facts and applicable law might be decided in an actual bench trial. The audience raters decide which team made the best overall team presentation. When the trial is over, the judge may wish to recess briefly in order to consider these decisions.
2. When commenting on the merits of the case, the judge should consider only the evidence presented, the statutes or case authority provided in the fact pattern, the stipulated facts, and the legal arguments of the attorneys. No other cases, statutes, etc., may be referred to by counsel during the trial. After the trial, the judge may explain what facts and legal principles he or she would consider particularly important in making a decision.
3. It is important to be familiar with the general summary of the case to be presented by the parties. This will assist you in making decisions on relevance objections. You should not, however, rule on whether a witness has testified consistently with a particular statement in a declaration.
4. The witness statements contained in the packet should be viewed as signed affidavits. Witnesses can be impeached if they contradict the material contained in their witness affidavits. This rule is designed to limit, not eliminate, the need for reasonable inference by providing a familiar courtroom procedure.
5. Use only the Mock Trial Simplified Rules of Evidence and Competition Rules. The judge should encourage the attorneys to demonstrate their knowledge of the rules by allowing argument on objections when appropriate.
6. The judge may not interrupt an attorney's opening statement or closing argument to ask questions. The judge may not question the witnesses.
7. At the conclusion of the trial, the judge may comment on the case and its merits, then begins the comments, critiques and suggestions for improvements to the teams, including appropriate praise. Ask raters to make brief comments. At the district competition, comments should be limited to 5 minutes per rater. At the state level, total oral comments, by judge and raters, is limited to 10 minutes, and is timed by the bailiff. Students need time between rounds to relax and prepare.

Please keep your comments short, positive and constructive. Detailed suggestions for change in a team's presentation are not helpful at the state competition.



Positive reinforcement of both sides helps ensure a beneficial educational experience for everyone

8. If it is necessary to call a recess during the trial, please be sure to remind all participants that they are not to communicate with anyone who is not a member of their own team. Attorneys and teachers may not be consulted.
9. During the trial, the judge may be asked to stop the clock during examination of witnesses, or to add to a team's total examination time. Generally, the judge should keep the trial within the prescribed time limits; this encourages teams to be prepared and efficient in their use of time. However, the judge should consider whether to stop the clock/add time when (a) ruling on an objection calls for a response and extended argument, or (b) it appears that a witness or attorney is deliberately attempting, through evasiveness or stalling tactics, to waste another team's examination time. The bailiff and judge will review how to handle time issues, and advise the teams before trial begins.

ORDER OF PRE-TRIAL MOTION EVENTS

1. The judge asks the moving party to summarize the arguments made in the motion. The moving party has four minutes. The judge may interrupt to ask clarifying questions. The time spent answering the judge's questions is not part of the four minute time limit.
2. The judge asks the non-moving party to summarize arguments made in its opposition. The non-moving party has four minutes. The judge may interrupt to ask clarifying questions. The time spent answering the judge's questions is not part of the four minute time limit.
3. The judge offers the moving party two minutes of rebuttal time. The rebuttal time is used to counter the opponent's arguments. It is not to be used to raise new issues. The same attorney presents both the arguments and the rebuttal.
4. The judge offers the non-moving party two minutes of rebuttal time. The rebuttal time is used to counter the opponent's arguments. It is not to be used to raise new issues. The same attorney presents both the arguments and the rebuttal.
5. At the end of the oral arguments, the judge will rule on the motion.



CONDUCTING THE TRIAL

1. Normal courtroom procedure and decorum should be followed during the trial. If a mistake does occur, the judge should usually not interrupt the trial to explain the proper procedure if this can wait until the end of the trial. Judges should realize, however, that inexperience is usually the cause of student errors.
2. Judges should feel free to interrupt attorneys as they would in their own courtroom. Judges may not, however, interrupt opening statement or closing argument to ask questions, or question witnesses. Some students, however, will become more nervous when faced with a direct question from the judge. Further, interruptions from judges should be considered when deciding whether to give the students more time.
3. Students have been taught the Simplified Rules of Evidence and are expected to make some objections. Judges should encourage the attorneys to demonstrate their knowledge of the rules, by allowing argument on objections when appropriate. Judges may immediately explain their rulings on objections, or may wait until the conclusion of trial.
4. The trial should last at most between two and two and a half hours; therefore, the judge should help it proceed efficiently. Guidelines for the length of each segment of the trial are provided. Barring an unusual number of objections or lengthy arguments on them, the time limits set forth should be sufficient to allow for objections. The time limits are purposely short. This is because part of the purpose of the mock trial competition is to get the students to focus upon the salient facts and issues. Teams should have rehearsed sufficiently to make their presentations within the allotted time. Judges may, in their discretion, occasionally add time when a team has deliberately used obstructive tactics to waste another team's time for examination of witnesses. Otherwise, judges should hold students to the time guidelines provided.
5. Any Statement of Facts and Stipulations in the case are agreed to by both sides. Each witness has been provided an affidavit which both sides have. These affidavits may be used to impeach during cross-examination.
6. Only one attorney may question each witness, and only the attorney questioning that witness may raise objections.
7. The same attorney may NOT make both the opening statement and the closing argument for his or her side of the case.



SUGGESTIONS FOR JUDGES AND AUDIENCE RATERS

General Parameters:

The trial should last two to two and a half hours. At the district level, oral critiques should be limited to 5 minutes per rater. At the state level, total time for oral comments by raters will be limited to 10 minutes, and will be timed by the bailiff. The close timing of competition rounds does not allow for deviations from these rules. One late trial can hold up the entire schedule. Judges should discourage excessive objections and limit recesses.

Pre-Trial Conference:

- Ask each team if it is ready for trial. Ensure they've supplied a Team Roster to each audience rater and the judge (a total of four copies). Teams are to be identified by team letter only.
- If video recorders are present, ask an attorney from each team to consult their team of any objection they would have to the trial being videotaped. If a team objects, the videotape may not be made.
- Remind all present that observers connected to other teams in competition are not allowed to view the proceedings in this courtroom. Only observers connected to the teams in this round are permitted to observe the trial.
- Remind all present that the mock trial rules prohibit any communication between team members and observers, teachers, or coaches from this point to the end of the trial. This includes any recesses that may be called. Also, no team member should leave the courtroom without the permission of the court.

Before the Round:

- At the orientation meeting prior to the trial, score sheets and pens will be provided for each rater. Please use the pen provided and write legibly.
- Before the trial, raters should write the round number and team letters (for example, T vs. Q) on the top right corner of all comment sheets. Raters need to fill in the score sheets with names provided on the Team Rosters, and sign their name to each sheet. Make any written comments on the separate sheet provided, not on the score sheet.



During the Round:

- Keep up with scoring; it's impossible to do it all at the end of the trial. Raters must also vote for best witness and attorney. Raters are asked to penalize attorneys who are obviously over-objecting or using unfair extrapolations. Raters should also reduce the score of any witness who is successfully impeached, or shown to have gone beyond the scope of the case or their written statement. See Explanation of Scoring System under *Witnesses* for details on this process.
- Score sheets will be collected immediately after the trial by mock trial staff. Do not distribute comment sheets directly to the teams. We reproduce these for distribution to teams after the competition.
- Scoring, rater critiques, and the judge's ruling/comments should take no more than 20 minutes at the district level, and ten minutes at the state competition. Raters are encouraged to be available to students after the formal critique period to provide individual comments, and to make written comments on the form provided. Please remember that students may need to rest and prepare before the next round, and that the courtroom may be needed for other trials.
- The judge should decide whether to stop the clock, or to add time, using the guidelines discussed in the mock trial rules. If the bailiff is told that the clock should be stopped during portions of the trial, then the judge should make sure the bailiff is stopping and restarting the clock correctly. Please remember the time limits are purposely short, so students will focus on salient facts and rounds will run on time.

Post-Trial Comments:

When the trial is over, the judge may announce any decision on the merits of the case and begin the critique session while the raters are completing their score sheets. Once those have been collected, the judge should turn the critiquing over to the raters.

At the district level, provide about five minutes each for comment from each rater, and from the judge. At the state level, provide about 2-3 minutes each. The raters may assign areas of the trial to which each can focus their oral critique; another approach could be to assign one rater to the attorney critiques and another rater to witness critiques. Or raters can agree to cover everyone in the trial, knowing they'll pick up different aspects in their comments. In either case, each score sheet needs to be completely filled out by each individual rater, including a vote for the best witness and best attorney in the trial. The bailiff will time rater comments, to assure that raters stay within the allotted time.



For many students, critiques are the most valuable part of the competition. Brief general comments are a good way to preface the critique. Students may see comments that are too general as unhelpful or simplistic; so keep most comments specific and follow them with suggestion(s) on how to improve. Highly competent teams will expect specific comments and insightful observations; whereas, less experienced or less polished teams may require gentler handling. Humor is often helpful as a tension reliever when used appropriately. Please remember that detailed suggestions for changes in a team's presentation are not helpful at the state competition.

One of most difficult concepts to teach students is the proper use of leading versus open-ended questions. (In contrast, the presentation of opening statements and closing arguments is much like debate and playing a witness role is much like drama.) It is not surprising therefore that many possible "form of the question" objections are missed. In order to make the scoring as uniform as possible, scorers should evaluate form of the question issues. Thus, a direct team consisting largely of leading questions should be marked down even if no objections are made, because the questioner has not demonstrated knowledge of the rules, similarly, in such a case, the opposing team should be marked down because they failed to object.

After Each Trial/Round:

- **Important!** A mock trial score runner will pick up the score sheets right after the trial. Be sure to fill out all areas on the score sheet including opening and closing statements and best witness and best attorney votes. Also be sure to vote on which team did the best - plaintiff or defense. The runners will leave with just the score sheets, so you must take the comment sheets to the orientation room unless otherwise designated. Be sure to mark you name, the team letters and the trial on each comment sheet. Thanks!
- Raters must turn in comment sheets **to the orientation room** after using them to provide feedback to each team in the round.
- Raters and judges are requested to fill out the evaluation form on their mock trial experience and turn it in before they leave to the orientation room in the box provided. We use your feedback to improve future competitions.



EXPLANATION OF THE SCORING SYSTEM FOR AUDIENCE RATERS

RATING SCALE:

- Individual participants are rated on a scale of 1 – 10.
- The audience rater scores individual and team performances.
- **Scoring of the presentations should be independent of the case's legal merits.**

Scores should not be based on the judge's comments about how the case might be decided in a real trial.

Please note: After score sheets are turned in, the points awarded for the pre-trial motion and closing arguments will be tripled and the points awarded for the opening statement will be doubled. This is in recognition of the extra work that goes into these important phases of the trial.

SCORING:

- Please **do not** award fractional points, a range of points or a score of "0".
- Make sure to score all phases of the trial, including the pretrial motion, opening statements and closing arguments. the pretrial and opening statements near the top left of the score sheet and the closing statement in the bottom corner.
- Be sure to vote on best attorney and best witness in the trial. Please identify the student by name and team letter, rather than character name.
- When a witness has been successfully impeached with a prior inconsistent statement, the witness' overall score should be reduced, and the cross-examiner's score should be increased.
- Scores from 1 to 4 are extremely rare. Assume each student starts at a 7 and stays there or works his/her way up or down. Students earning a seven or more are doing a lot of things right. 8 and 9 denote great performances and 10 is for outstanding performances. Review and use the two rubrics included in your rater packet to guide your scoring process.
- **Important!** When awarding points, please **do not artificially lower points** to a team in "fairness" to a weaker opponent **OR artificially raise points** to a team in "fairness" to a



stronger opponent. The points play a very important role in the competition. You may inadvertently affect a team's placement by doing so.

INTRODUCTIONS: Teams often introduce themselves to the judge and raters, and make clarifying motions and comments to the judge before the trial begins. Except for the mandatory pre-trial motion, these events are not part of the trial, and should NOT influence your scoring decisions.

THE OPENING AND CLOSING STATEMENTS should provide a clear and concise case description and summarize the important points in an organized and well-reasoned fashion.

DIRECT EXAMINATION should use questions requiring straightforward answers. Questions should be properly phrased, exhibit an understanding of trial procedure, and elicit key info.

CROSS-EXAMINATION should elicit any helpful information for the cross-examiner's theory of the case, should bring out any contradictions in the witness' testimony and should demonstrate the ability to adapt to the needs presented by the tone and content of the witness' testimony. **Attorneys** should demonstrate their knowledge of the rules of evidence and trial procedures by making appropriate objections during the examination of witnesses, or by appropriately responding to opposing counsel's objections. Objections and responses should be timely, properly phrased, and should succinctly state their legal basis. An attorney's score during an examination should include his or her performance concerning objections. [Note: Objections are not permitted during opening statements and closing arguments].

WITNESSES should present believable characterizations and convincing testimony. They should also demonstrate careful preparation on direct examination and the ability to field questions on cross-examination with poise. A witness should not be unrealistically evasive on cross-examination or seem to be deliberately causing delay. If a witness has engaged in "unfair extrapolation" for tactical advantage, the cross-examiner's remedy is to impeach with the prior inconsistent statement or omission. Both the attorney and witness' scores should reflect a successful impeachment.



Rubric for Scoring Attorney Performance

Point(s)	Performance	Criteria For Evaluating Student Performance
1 – 2	Not effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, definitely ineffective in communication.
3 – 4	Fair	Minimally informed and prepared. Performance is just passable, but lacks depth, knowledge, logical thinking and understanding of case materials. Communication lacks clarity and conviction.
5 – 6	Good	Solid performance, but still lacking. Can perform outside the script but with less confidence. Logic and organization adequate. Grasps major aspects of the case, but without mastery. Communication is clear and understandable. Speaking is clear and understandable, but could be more fluent and persuasive. Logical thought is lacking at times. Doesn't use time as effectively as possible.
		*Assume each student starts at a 7 and works his/her way up or down. Students earning a seven or more are doing a lot of things right.
7 – 8	Excellent	Generally fluent, persuasive, clear, and understandable. Shows skill in organizing materials and thoughts and exhibits knowledge of the case and materials. Works well under predictable circumstances, but may become flustered or lose train of thought when confronted with the unexpected, but shows ability to recover. Uses time effectively and demonstrates logical thinking most of the time. Makes and responds to objections appropriately.
9 – 10	Outstanding	Superior qualities – articulate, poised, confident. Follows through on weak points of the opposing team. Thinks well on feet, demonstrates logical thinking, maintains poise under duress and questioning by judge. Sorts out essential from the non-essential and uses time effectively. Demonstrates unique ability to utilize all resources to emphasize vital points of the trial. Displays a personal style that supports the role rather than detracts from the trial. Makes and responds to objections skillfully.



RUBRIC FOR SCORING WITNESS PERFORMANCE

Point(s)	Performance	Criteria For Evaluating Student Performance
1 – 2	Not effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, definitely ineffective in communication. Steps out of role numerous times. Unable to respond to some questions due to lack of preparation or knowledge.
3 – 4	Fair	Minimally informed and prepared. Performance is passable, but the role lacks depth. Communication lacks clarity and conviction. May step out of role or act at times in a way inconsistent with their role. Unprepared resulting in an inability to answer a question.
5 – 6	Good	Fairly solid testimony and shows a near complete mastery of the role. Can perform outside the script but does so with less confidence. Answers are adequate, but seem stilted with little or no hint of character development. Clear communication isn't a problem, but could be more fluent and persuasive. Shows confusion or is at a loss for words when confronted with an unexpected question.
		*Assume each student starts at a 7 and works his/her way up or down. Students earning a seven or more are doing a lot of things right.
7 – 8	Excellent	Fits believably into the role and is persuasive. Communication is clear and understandable. Has creatively developed and mastered the role. Most elements of testimony are well done. May become temporarily flustered when confronted with an unexpected question, but shows an ability to recover. Performs well outside the script. May appear too well-prepared, so that the words seem memorized or too automatic. Believable witness with potential.
9 – 10	Outstanding	Possesses superior qualities that set this character apart from the rest. It may be pizzazz, a total immersion in the character, or a sense that this person's skill under testimony could alter the course of the trial. Character is totally believable and persuasive. Answers questions convincingly without a 'canned feel'. Thinks well on feet and maintains poise under duress. Never is unsure of details during testimony or is caught in an inaccuracy.

Washington State YMCA Mock Trial Scoresheet

Date: _____ Round (circle): **1** **2** **3** **4** **F**
 Plaintiff Team: _____ Defense Team: _____ Rater's Name: _____

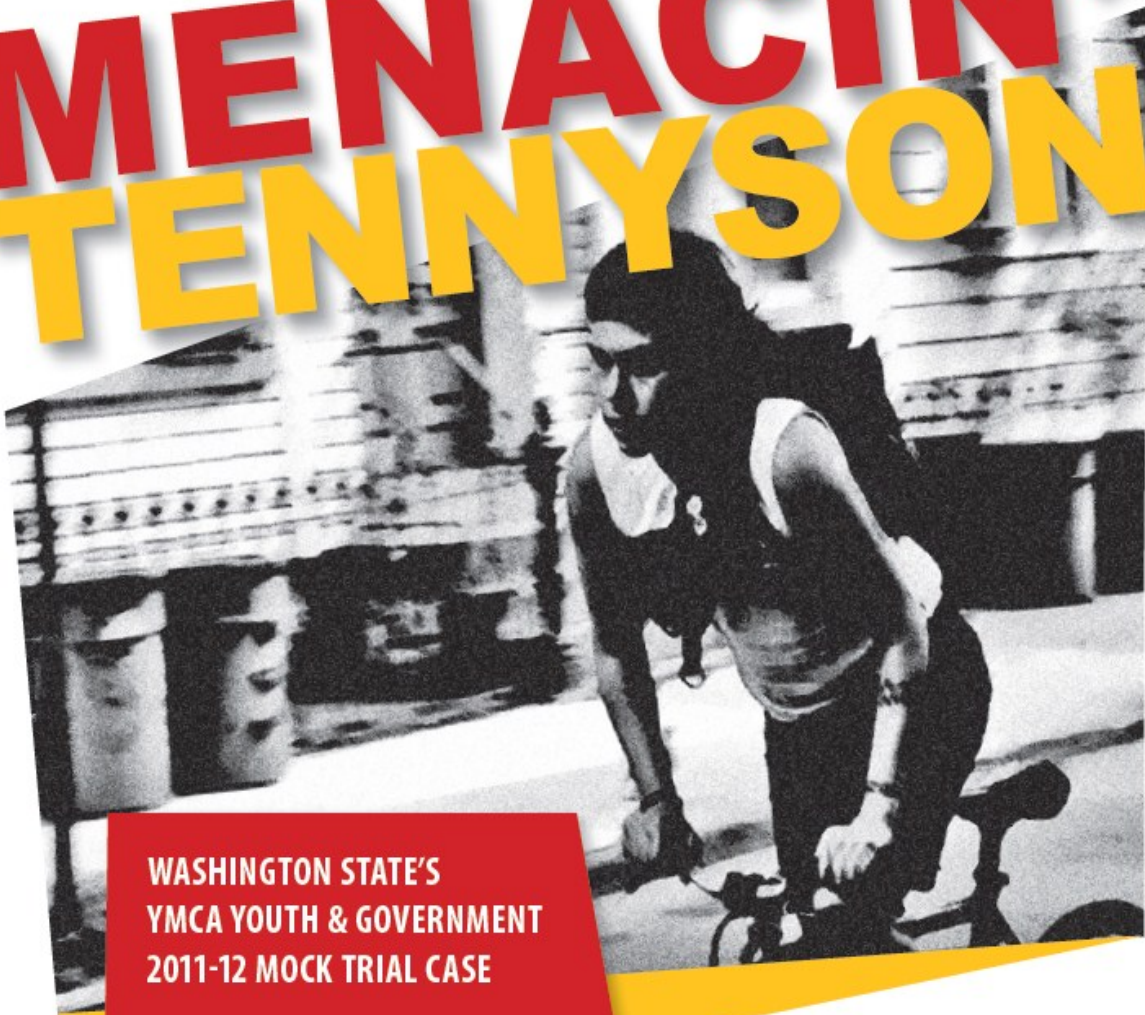
Rate each category on a scale of 1-10, with 10 being the highest, in the score spaces provided below (only whole numbers, no half scores please). Additional space is provided for attorney and witness names.

Plaintiff			Defense		
		Score			Score
Pretrial Motion	(_____)	_____	Pretrial Motion	(_____)	_____
Opening Statement	(_____)	_____	Opening Statement	(_____)	_____
Direct Examination 1	(_____)	_____	Cross Examination 1	(_____)	_____
P Witness 1	(_____)	_____			
Role: _____					
Direct Examination 2	(_____)	_____	Cross Examination 2	(_____)	_____
P Witness 2	(_____)	_____			
Role: _____					
Direct Examination 3	(_____)	_____	Cross Examination 3	(_____)	_____
P Witness 3	(_____)	_____			
Role: _____					
Direct Examination 4	(_____)	_____	Cross Examination 4	(_____)	_____
P Witness 4	(_____)	_____			
Role: _____					
Cross Examination 1	(_____)	_____	Direct Examination 1	(_____)	_____
			D Witness 1	(_____)	_____
			Role: _____		
Cross Examination 2	(_____)	_____	Direct Examination 2	(_____)	_____
			D Witness 2	(_____)	_____
			Role: _____		
Cross Examination 3	(_____)	_____	Direct Examination 3	(_____)	_____
			D Witness 3	(_____)	_____
			Role: _____		
Cross Examination 4	(_____)	_____	Direct Examination 4	(_____)	_____
			D Witness 4	(_____)	_____
			Role: _____		
Closing Argument	(_____)	_____	Closing Argument	(_____)	_____

Do **NOT** tally scores. All tabulation will be performed by tournament staff.

Tiebreaker (best overall team; one **MUST** be circled): **Plaintiff** **Defense**
 Best Attorney: _____ Best Witness (student's name): _____

MENACIN' **TENNYSON**



**WASHINGTON STATE'S
YMCA YOUTH & GOVERNMENT
2011-12 MOCK TRIAL CASE**

BY HON. WILLIAM L. DOWNING

INTRODUCTION

“Alfred Tennyson was born at Somersby Rectory in remotest Lincolnshire on 5 August, 1809... The doctor thought he had a fine pair of legs.”

- TENNYSON, Peter Levi, Charles Scribner's Sons, 1993; Chapter One “The Birth of the Poet”.

Alfred Lord Tennyson's fine legs carried him through 83 years – half of them spent as poet laureate of Great Britain – but there exists no evidence at all that they ever pedaled a bicycle. If they did, of course, it would have been one of the fixed gear velocipedes of his time, the coasting brake and the gear shifter not yet dreamed up. Tennyson did write – and write well – of “cycles” of history and of politics but a researcher's attempt to link him to pedalable cycles leaves one spinning his wheels.

Still, it's fun to think about how Tennyson might have viewed the skirmishes of the contemporary charge of the bicycle brigade. Would he have seen his fictional descendant “Menacin' Millie” as exuding the determinedly adventuresome spirit of Ulysses or the curse-inviting impetuosity of the Lady of Shalott? Would he have seen “our” Locksley Hall as having a leader's forward-looking view of progress or as one blinded by disdain for the Pre-Raphaelites?

One odd episode from Alfred Tennyson's life may be of interest. In 1840, as a struggling young poet, he invested what little money he had with a fellow who planned to use steamdriven machines to manufacture wood carvings. When the scheme crashed, his investment was lost. Shortly afterwards, however, the partner in the scheme died with an insurance policy in effect that paid Tennyson £2000 and this put Tennyson right back up on his fine legs.

In this observer's opinion, the true beauty of the law begins to appear only when the human element is added to its otherwise dry principles. All that remains is to mix in some poetry. As you ride carefully through the issues of the rights and responsibilities of 21st century bicyclists, motorists and insurance companies in this case, it is my hope that, at some point, on some level, a poet will illuminate your analysis.

The author would like to thank and acknowledge Connie Butler and Debra Bailey Trail for their artwork and Dan Shickich for his legal legwork.

william.downing@kingcounty.gov
August 2011

CASE WITNESSES

For the plaintiff:

Jari Van Allen: Evening Star Life & Casualty Insurance Company agent

Locksley Hall: Former State Representative

Nelly Bales: Chicago bike messenger

Dray Porter: United Parcel Service driver

For the defense:

Telemeka Tennyson: President and founder of Ithacus Solutions

Nicky Scarlotti: Owner of "Lock 'n' Sole", a locksmith and cobbler shop

Devon Bideford: Chinook Bicycle Club President

Cass Testerman: accident reconstructionist, Eagle Insurance Co.

TRIAL EXHIBITS:

Exhibit 1: application signature page

Exhibit 2: diagram of accident scene

Exhibit 3: purported "trip sheet"

Exhibit 4: cover letter sent with policy

Exhibit 5: photo of storm drain

STIPULATIONS:

1. The Court has ruled that the defendants in this action are appropriate parties to jointly litigate all issues raised in this action through a single set of attorneys.
2. Millicent Alyssa Tennyson died on August 5, 2009 as a result of the traumatic brain injury suffered when she was thrown from her bicycle and landed on pavement.
3. The Columbus Police Department's Major Accident Response Team investigated the collision in question and, in conjunction with the Cedar County Prosecutor, determined that no criminal charges would be brought. The diagram that is marked Exhibit 2 was prepared by the MAR detective and, although not to scale, is accurate and admissible for illustrative purposes.
4. All statements of the witnesses were given under oath and certified as being true and accurate to the best of that witness's memory.
5. The contract language quoted in paragraph 6 of the Defendants' Answer and Counterclaim and in paragraph 1 of the Plaintiff's Answer to the Counterclaim are accurate recitations of language found in the insurance policy.

PLEADINGS

SUPERIOR COURT OF WASHINGTON
FOR CEDAR COUNTY
AT COLUMBUS

EVENING STAR LIFE & CASUALTY
INSURANCE COMPANY, INC.,

Plaintiff,

v.

ITHACUS SOLUTIONS, INC.; and the
ESTATE OF MILLICENT ALYSSA
TENNYSON,

Defendants.

NO. 10-2-12106-1 COL

COMPLAINT

1. This is an action for declaratory judgment, pursuant to Washington law, for the purpose of determining a question of actual controversy between the parties.
2. The plaintiff and one defendant are companies licensed to transact business in the State of Washington and the other defendant is an estate being administered in the State of Washington.
3. On or about the date of February 21, 2009, Millicent Alyssa Tennyson (also reportedly known as "Menacin' Tennyson") (the "Insured"), acting together with Ithacus Solutions, purchased a term life insurance policy from the plaintiff Evening Star Life & Casualty (the "Insurer") which took effect shortly thereafter.
4. On or about the date of December 30, 2009, the defendants submitted a claim for payment under the terms of the policy, presenting a death certificate reflecting the death of the Insured on August 5, 2009. The plaintiff Insurer has denied that claim.
5. The basis for said denial is that the Insured knowingly and intentionally failed to disclose, concealed or misrepresented facts which were material and were known by Insured to be material to the risks undertaken by the Insurer, for the purpose of inducing the Insurer to issue the policy.

6. As a result of the foregoing, an actual and justiciable controversy exists between the Insurer and the designated beneficiaries of the Insured regarding the former's purported obligation to pay the latter.
7. Wherefore, the plaintiff Evening Star hereby seeks a judicial determination that it is free from any such obligation because the policy of insurance in question is void and without effect.

Respectfully submitted,

/S/

Attorney for Plaintiff

COUNTERCLAIM

6. Under the policy of insurance at issue, the plaintiff promised that “Upon presentation of documentation of the death of the named Insured, under circumstances covered by this policy, the Insurer will pay the sum of \$1,000,000 to the beneficiary or beneficiaries designated by the Insured.”

7. Upon the death of Millicent Alyssa Tennyson at a time when the Plaintiff’s policy insuring her life was in effect, the Plaintiff became contractually obligated to pay the claim of the designated beneficiaries.

8. The Plaintiff’s failure to pay the claim constituted a breach of its contractual obligations.

9. Wherefore, the Defendants seek judgment of the Court enforcing the contract by directing the Plaintiffs to pay to the Defendants the amount it is contractually obligated to pay.

Respectfully submitted,

/S/

Attorney for Defendants

SUPERIOR COURT OF WASHINGTON
FOR CEDAR COUNTY
AT COLUMBUS

EVENING STAR LIFE & CASUALTY
INSURANCE COMPANY, INC.,

Plaintiff,

v.

ITHACUS SOLUTIONS, INC.; and the
ESTATE OF MILLICENT ALYSSA
TENNYSON,

Defendants.

NO. 10-2-12106-1 COL

PLAINTIFF'S ANSWER
TO DEFENDANTS'
COUNTERCLAIM

While maintaining its primary position put forward in its initial Complaint, the Plaintiff hereby answers the Defendants' Counterclaim as follows:

ANSWER TO COUNTERCLAIM

1. The contract at issue contains language clearly excluding insurance coverage under certain specified circumstances. One of these exclusionary clauses provides that there is no coverage under the policy for "the death of the insured resulting from deliberate exposure of himself/herself to exceptional danger or from his/her own criminal act."
2. The death of the insured Millicent Alyssa Tennyson, while deliberately violating traffic laws and participating in an illegal and exceptionally dangerous "alleycat race", resulted from her own deliberate exposure of herself to exceptional danger as well as from her own criminal acts.
3. Wherefore, the Plaintiff would seek judgment from the Court that even if the life insurance policy was in effect at the time of the death of the insured, the plaintiff had no contractual obligation to pay and now has no further obligation.

Respectfully submitted,

/S/

Attorney for Plaintiff

JURY INSTRUCTIONS

Instruction No. 1

A signed insurance policy is a contract and, like any contract, is enforceable according to its terms. A contract is an agreement by which the parties to it agree to be bound by mutual promises. Each party is entitled to expect that other parties to the contract will act in good faith compliance with the terms of the contract in order that each may receive the benefits of the promises made to them. When necessary, a life insurance contract may be enforced by a designated beneficiary who steps into the shoes of the insured.

Instruction No. 2

A contract of insurance should be given a practical, reasonable and fair interpretation consistent with the apparent object and intent of the parties. The language of an insurance policy is to be interpreted as it would be understood by the average person, rather than in a technical sense.

Instruction No. 3

Any ambiguity in the language of an insurance policy should be construed in favor of the insured. For an exclusionary clause to be applicable, it is required by law that the conduct described as excluded was a direct cause of the loss in question.

Instruction No. 4

When a bicycle is operated on a public roadway, its operator is subject to the rules of the road. Every person operating a bicycle on a public roadway shall obey all traffic control devices. All on the roadway – motorists and bicyclists alike – have a duty to reasonably look out for their own safety and the safety of others.

Instruction No. 5

An applicant for insurance has a duty to provide truthful and complete information in response to inquiries by the insurer. There is, however, no duty to volunteer information in the absence of inquiry. If an applicant knowingly or intentionally makes any material misrepresentation, the policy being applied for is void and neither party has any obligation under it. The term "material" refers to information that would significantly affect the insurer's decision whether or not to accept the risk. When the insured is provided a reasonable opportunity to review his or her insurance application and he or she fails to report any material misrepresentation contained therein, the application becomes a part of the contract and the failure to make a necessary correction shall be deemed a knowing ratification or approval of such misrepresentation.

Instruction No. 6

A corporation can act only through its officers, agents or employees. Any act or omission by an officer, agent or employee of a corporation is deemed the act or omission of the corporation.

Instruction No. 7

When it is said that a party has the burden of proof as to any proposition or claim, it means that the party must prove that proposition by a preponderance of the evidence. A preponderance of the evidence means that the proposition has been established by the greater weight of the evidence and is more likely true than not true.

Instruction No. 8

As to its claim that the insurance policy is void due to misrepresentations in the application, the plaintiff must prove each of the following propositions:

- a) that the applicant made a false statement of fact in the application for insurance;
- b) that the false statement was made knowingly or intentionally;
- c) that the false statement materially affected the insurer's decision whether to accept the risk;
- d) the insurer was ignorant of the falsity of the statement; and
- e) the insurer relied to its detriment on the false statement of fact in issuing the policy.

If you find that the plaintiff has met its burden of proof in establishing each of these propositions, your verdict should be for the plaintiff. If not, your verdict should be for the defendants.

Instruction No. 9

If you find for the plaintiff as to the claim of voidness, you will not consider the defendants' claim breach of contract claim. On the other hand, if you do not find for the plaintiff on the voidness claim, you will then consider the defendants' contract claim.

Instruction No. 10

As to their claim for recovery on the contract, the defendants must prove each of the following propositions by a preponderance of the evidence:

- a) that the plaintiff had entered into a binding contract in the form of a life insurance policy;
- b) that the death of the named insured Millicent Alyssa Tennyson was a loss covered by the policy (i.e., that it was not "excluded" from coverage); and,
- c) that, upon her death, plaintiff became bound to pay death benefits to the named beneficiaries.

If you find that the defendants have met their burden of proof in establishing each of these propositions, your verdict should be for the defendants. If not, your verdict should be for the plaintiff

PRETRIAL MOTION

SUPERIOR COURT OF WASHINGTON
FOR CEDAR COUNTY
AT COLUMBUS

EVENING STAR LIFE & CASUALTY
INSURANCE COMPANY, INC.,

Plaintiff,

v.

ITHACUS SOLUTIONS, INC.; and the
ESTATE OF MILLICENT ALYSSA
TENNYSON,

Defendants.

NO. 10-2-12106-1 COL

PLAINTIFF'S MOTION
TO LIMIT CROSS
EXAMINATION

Plaintiff Evening Star Life & Casualty Insurance Company, Inc. hereby moves the Court for a pretrial order prohibiting all examination of expected witness Dray Porter on the subject of the witness' religious beliefs. This motion is based upon the legal authority being provided herewith in a joint submission with defense counsel. The parties agree as to these authorities but disagree as to their application to this case. Oral argument is requested.

Respectfully submitted,

Attorney for Plaintiff