

CIRCUIT COURT OF MIDLANDS

Midlands Television Studios, Inc.,

Plaintiff,

v.

Danny Kosack,

Defendant.

Case No. CV 18-101248

Judge Jacob Alexander Jackson

Answer and Counterclaim

**JURISDICTION AND VENUE**

1. This court has subject matter jurisdiction, personal jurisdiction, and is a proper venue for this lawsuit.

a) Defendant's response: **admitted.**

**THE PARTIES**

2. Plaintiff Midlands Television Studios, Inc. ("Plaintiff") is a corporation chartered under the laws of Midlands.

a) Defendant's response: **admitted.**

3. Defendant Danny Kosack is an individual residing in Midlands.

a) Defendant's response: **admitted.**

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION**

4. Plaintiff used to produce and air a late-night television show called *Midlands After Dark with Alex Grace* (the "Show").

a) Defendant's response: **admitted.**

5. The Show was hosted by Alex Grace.

a) Defendant's response: **admitted.**

6. Defendant is a celebrity animal handler who frequently makes appearances on live shows and television shows with animals that Defendant has trained.

a) Defendant's response: **admitted.**

7. Plaintiff booked Defendant for an appearance on the Show on June 29, 2017.

a) Defendant's response: **admitted.**

8. The parties agreed that Defendant would appear on the Show with a chimpanzee (the "Animal").

a) Defendant's response: **admitted.**

9. Defendant had a duty to Plaintiff to ensure that the selection of the Animal to appear on the Show was reasonable.

a) Defendant's response: **denied.**

10. Defendant had a duty to Plaintiff to take reasonable steps to ensure that the Animal was properly trained for its appearance on the Show and would not pose a danger to Plaintiff, Plaintiff's employees, or the audience.

a) Defendant's response: **denied.**

11. Defendant breached that duty by failing to ensure that the selection of the Animal was reasonable, failing to properly train the Animal, and otherwise failing to take reasonable steps to ensure that the Animal would not pose a danger to Plaintiff, Plaintiff's employees, or the audience.

a) Defendant's response: **denied.**

12. On June 29, 2017, Defendant appeared with the Animal for a closed rehearsal before the Show was scheduled to air.

a) Defendant's response: **admitted.**

13. During the rehearsal, the animal became unruly and attacked people in the room.

a) Defendant's response: **admitted.**

14. One of Plaintiff's writers, Chris Villafana, was killed during the attack.

a) Defendant's response: **admitted.**

15. Because of the attack, the Show did not air on June 29, 2017.

a) Defendant's response: **admitted.**

16. After negative publicity surrounding the incident, the Show was canceled.

a) Defendant's response: **admitted.**

17. As a direct and proximate result of the foregoing, Plaintiff has suffered harm

a) Defendant's response: **denied.**

### **FIRST COUNTERCLAIM: NEGLIGENCE**

1. In 2016 and 2017, Plaintiff and Defendant exchanged emails about Defendant appearing with an animal on Plaintiff's show *Midlands After Dark with Alex Grace* (the "Show").

2. Defendant agreed to appear on the Show on June 29, 2017 with a chimpanzee (the "Animal") that Defendant had trained.

3. Plaintiff booked Defendant for an appearance on the Show on June 29, 2017.

4. Prior to June 29, 2017, Defendant sufficiently informed Plaintiff that there were potential risks involved in having the Animal appear on the Show.

5. Prior to June 29, 2017, Defendant sufficiently informed Plaintiff that there were certain steps that Plaintiff was required to take in connection with Defendant's appearance on the Show to ensure the safety of everyone involved.
6. Plaintiff had a duty to follow Defendant's instructions and to otherwise take reasonable steps to ensure that the Animal would not pose a risk to others by appearing on the Show.
7. Plaintiff breached that duty by failing to follow Defendant's instructions and by failing to take reasonable steps to ensure that the Animal would not pose a risk to others by appearing on the Show.
8. On June 29, 2017, Defendant appeared with the Animal for a closed rehearsal before the Show was scheduled to air.
9. During the rehearsal, the Animal became unruly and attacked people in the room.
10. Upon information and belief, one person was killed during the attack.
11. The negative publicity surrounding the incident caused harm to Defendant's entertainment career.
12. After the incident occurred, multiple scheduled appearances by Defendant were canceled by the vendors, and Defendant lost substantial income as a result.
13. As a direct and proximate result of the foregoing, Defendant has suffered harm.

**PRAYER FOR RELIEF**

THEREFORE, Defendant demands judgment against Plaintiff on Defendant's counterclaim for compensatory damages in an amount to be determined at trial, but not less than \$1,000,000.

Respectfully submitted,

Y. Verma

Verma, Arrigoni and Fogel  
Attorneys for Defendant

CIRCUIT COURT OF MIDLANDS

**Midlands Television Studios, Inc.,**

**Plaintiff,**

v.

**Danny Kosack,**

**Defendant.**

**Case No. CV 18-101248**

Judge Jacob Alexander Jackson

**Complaint**

**JURISDICTION AND VENUE**

1. This court has subject matter jurisdiction, personal jurisdiction, and is a proper venue for this lawsuit.

**THE PARTIES**

2. Plaintiff Midlands Television Studios, Inc. (“Plaintiff”) is a corporation chartered under the laws of Midlands.

3. Defendant Danny Kosack is an individual residing in Midlands.

**FIRST CAUSE OF ACTION: NEGLIGENCE**

4. Plaintiff used to produce and air a late-night television show called *Midlands After Dark with Alex Grace* (the “Show”).

5. The Show was hosted by Alex Grace.

6. Defendant is a celebrity animal handler who frequently makes appearances on live shows and television shows with animals that Defendant has trained.

7. Plaintiff booked Defendant for an appearance on the Show on June 29, 2017.

8. The parties agreed that Defendant would appear on the Show with a chimpanzee (the “Animal”).

9. Defendant had a duty to Plaintiff to ensure that the selection of the Animal to appear on the Show was reasonable.

10. Defendant had a duty to Plaintiff to take reasonable steps to ensure that the Animal was properly trained for its appearance on the Show and would not pose a danger to Plaintiff, Plaintiff’s employees, or the audience.

11. Defendant breached that duty by failing to ensure that the selection of the Animal was reasonable, failing to properly train the Animal, and otherwise failing to take reasonable steps to ensure that the Animal would not pose a danger to Plaintiff, Plaintiff’s employees, or the audience.

12. On June 29, 2017, Defendant appeared with the Animal for a closed rehearsal before the Show was scheduled to air.

13. During the rehearsal, the animal became unruly and attacked people in the room.

14. One of Plaintiff's writers, Chris Villafana, was killed during the attack.
15. Because of the attack, the Show did not air on June 29, 2017.
16. After negative publicity surrounding the incident, the Show was canceled.
17. As a direct and proximate result of the foregoing, Plaintiff has suffered harm.

**PRAYER FOR RELIEF**

THEREFORE, Plaintiff demands judgment against Defendant and compensatory damages in an amount to be determined at trial, but not less than \$4,000,000.

Respectfully submitted,

**D. Clarkson**

Clarkson, Giordano and Lantigua  
Attorneys for Plaintiff

## MIDLANDS CASE LAW

(All cases listed below are from the Supreme Court of Midlands and are the only legal authorities that may be cited in trial)

### **Basis for Evidentiary Rulings**

#### ***Zomerfeld v. Noto* (2012)**

Pursuant to Midlands Rule of Evidence 104(a), when evaluating the admissibility of evidence, a trial court is permitted to rely on both admissible and inadmissible evidence. The use of underlying inadmissible evidence does not make that inadmissible evidence admissible. Instead, the court is merely permitted to consider the underlying inadmissible evidence in order to assess the admissibility of the offered evidence. In a jury trial, the jury may not always be privy to the underlying facts used to determine what evidence is admissible, but the Court may hear it. Previous upheld examples of this in Midlands include using character evidence to make ruling on hearsay exceptions, using hearsay to make a ruling on character evidence, and using hearsay to decide whether an expert has adequate foundation to testify.

#### ***Grandhi v. Shokry* (1988)**

Pursuant to Midlands Rule of Evidence 104(a), courts may consider custodial documents, such as clerks' certifications or affidavits of records keepers, when determining the admissibility of other evidence without regard for the admissibility of the custodial document itself. The custodial document typically only addresses preliminary matters of admissibility and is not entered into evidence, and thus the court is not bound by the rules of evidence when considering it. However, if a party wishes to enter the custodial document itself into evidence, the proper foundation must be laid to establish its admissibility.

### **Nature and Elements of Negligence**

#### ***Kligman v. The Detsky Dump, Inc.* (1930)**

Negligence refers to a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. Negligence usually consists of actions but can also involve the failure to act when there is some duty to act.

#### ***Grant v. Connolly* (1955)**

The elements of negligence are the following: (i) the existence of a legal duty owed by the defendant to the plaintiff; (ii) the defendant's breach of that duty; (iii) harm suffered by the plaintiff; and (iv) proof that the defendant's breach was the direct and proximate cause of the harm that the plaintiff suffered.

#### ***Kunkel v. Madeka* (1970)**

The elements of negligence set forth in *Grant v. Connolly* also apply when a defendant asserts a counterclaim for negligence against the plaintiff.

#### ***Abarca-Espiritu v. McAllister* (1980)**

In a negligence case, a duty of care can arise in a number of circumstances. There is no exhaustive list, but the most common situations in which a defendant has a duty to act include: (i) the defendant created the risk which resulted in the plaintiff's harm; (ii) the defendant volunteered to protect the plaintiff from harm; (iii) the defendant knew or should have known that their conduct would cause harm to the plaintiff; and (iv) the business or voluntary relationship between the plaintiff and defendant (such as business owner/customer, innkeeper/guest, employer/employee, and landlord/tenant) creates a duty.

***Koo v. Sims*** (1985)

Proving that the defendant owed a duty is not enough to prevail in a negligence case. The plaintiff must also prove that the defendant breached his or her duty to the plaintiff. A defendant breaches a duty by failing to act reasonably in fulfilling or attempting to fulfill the duty.

***Trevisani v. Tunceli*** (1990)

A defendant “fails to act reasonably” for the purposes of negligence liability if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances. The reasonableness test is an objective test—the specific abilities or traits of the defendant are irrelevant. Thus, even a person with low intelligence or who is chronically careless is held to the same standard as a more careful person or a person of higher intelligence.

***Campbell v. Holden*** (1993)

In deciding whether a defendant acted reasonably, the jury may take into consideration whether or not the defendant followed standards that are prevailing in the industry. While such industry standards are relevant, they are not necessarily dispositive.

***Gemma v. Slater & Burton, Inc.*** (2012)

A defendant is not absolved from liability by following industry standards if it was clear or should have been clear to the defendant that the defendant’s conduct or the particular situation was not contemplated by the industry standards.

***Kleyman v. Spungen*** (1991)

The plaintiff must prove that the defendant’s breach of duty was both the direct and proximate cause of the plaintiff’s harm. Direct causation means that but for the defendant’s actions or failure to act, the plaintiff’s harm would not have occurred. Proximate causation means that the plaintiff’s harm was a reasonably foreseeable result of the defendant’s actions or failure to act.

***Kuang v. Clement*** (1975)

The notion that a risk must be “foreseeable” in order for a defendant to have violated its duty of care does not require that the defendant be able to anticipate in advance the target of the harm or the precise manner in which the harm or accident will occur. Instead, it requires only that the defendant should have foreseen the general type of risk that caused the accident.

***Stebbins v. Baldacci*** (2007)

Individuals having superior skill or knowledge are required to conduct themselves consistent with such superior capacity. In the practice of a trade or profession, the standard of care is the skill and knowledge normally possessed by members of that trade or profession in good standing in similar communities.

**Authentication**

***Filteau v. Wanek*** (1992)

The application of various rules of evidence sometimes turns on who made a particular statement. As long as the proponent of the statement produces evidence that would permit a reasonable jury to find, by a preponderance of the evidence, that a given person made a particular statement, the court must assume for purposes of assessing its admissibility that the statement was made by that person.

***Ginger v. Heisman*** (2015)

Emails or text messages are properly authenticated when the proponent has produced evidence, either direct or circumstantial, that would allow a reasonable jury to determine the author of the message. The fact that an email, text message, or other electronic communication is listed as coming from an address or number that is either known or purports to belong to a particular person is sufficient to lay foundation that the communication was sent by the person in order to determine its admissibility, at least absent particularized reason to believe that the communication may have been sent by someone else.

**Agency**

***Vir v. Londo Manufacturing Co.*** (2011)

Traditional principles of agency law provide that a corporation is generally charged with knowledge of any fact learned by its agents within the scope of their employment. This is especially true in circumstances where the agent, in light of his or her role at and duties to the corporation, ought and would reasonably be expected to act upon those facts or communicate his or her knowledge of the facts to others at the corporation. This rule applies regardless of whether the agent did, in fact, communicate the information to others.

**Burdens of proof**

***Amann v. Punk*** (2018)

A plaintiff in a civil case must establish all of the elements of the plaintiff's claim by a preponderance of the evidence (*i.e.*, it must establish that all elements are *more likely than not* true).

***Roytman v. Fawcett*** (2012)

When the defendant asserts a counterclaim, the defendant has the burden of proof on that counterclaim. That means that the defendant must establish all of the elements of the defendant's counterclaim by a preponderance of the evidence.

**Character Evidence**

***Coburn Camera Crew v. Ellicott City*** (1989)

Though the Midlands Rules of Evidence regarding character evidence refer to "person" and "persons," the Court construes those terms as applying equally to companies, corporations, partnerships, and other legal entities. In other words, businesses sued for negligence or recklessness generally may not defend themselves on the grounds that they acted safely with respect to other situations and activities that are separate from the case at hand. Similarly, plaintiffs suing businesses generally may not introduce the businesses' prior bad practices to prove bad practices in the case at hand. Nothing in this rule, however, prevents parties from offering traits or instances of character for other purposes, such as those listed in Rule 404(b).

***Mourrain T. Parts Animal Preserve v. Wandawa Wang Consolidated*** (2017)

While the Court recognizes the ongoing development of animal rights law, the current law in Midlands is clear: terms such as "person" or "persons" do not include animals. Therefore, the Midlands Rules of Evidence referring to "person" and "persons," including those regarding character evidence, do not apply to animals.

## Experts

### ***Davis v. Adams*** (1993)

Trial judges must ensure that any scientific testimony or evidence admitted is not only relevant but reliable. In determining reliability, judges should consider only the methods employed and the data relied upon, not the conclusions themselves. The proponent of the evidence has the burden of proving each section of Rule 702 by a preponderance of the evidence.

### ***Tarot Readers Association of Midlands v. Merrell Dow*** (1994)

In assessing reliability under Rule 702(c), judges should consider whether the theory or technique has been or can be tested, whether it has been subjected to peer review and publication, whether it has a known error rate, and whether it has gained widespread acceptance within the field. These factors, while relevant, are not necessarily dispositive. For example, lack of publication does not automatically foreclose admission; sometimes well-grounded but innovative theories will not have been published. There is no definitive checklist. Judges must make such assessments based on the totality of the circumstances.

### ***Richards v. Mississippi BBQ*** (1997)

Midlands Rule of Evidence 703 does not permit experts to testify or present a chart in a manner that simply summarizes inadmissible hearsay without first relating that hearsay to some specialized knowledge on the expert's part. The court must distinguish experts relying on otherwise inadmissible hearsay to form scientific conclusions from conduits who merely repeat what they are told. The testimony of the former is admissible; that of the latter is not. At the same time, statements that would otherwise be admissible are not inadmissible simply because they are offered by or through an expert witness.

### ***Gargano v. Ciampa*** (2018)

The trial court properly permitted plaintiff's expert to testify. While plaintiff's expert had never previously testified as an expert at trial, the trial court correctly found that the expert's opinion still met all of the elements of Rule 702. An expert's opinion may be sufficiently reliable even if that expert has never testified before. On the other hand, the fact that an expert has testified many times at trial will not make an unreliable opinion admissible.

## Framing the Issues for Trial

### ***Thomas v. Davis*** (2001)

The purpose of the pleadings is to frame the issues for trial and permit the parties to frame their presentations accordingly. This latter function is especially important because Midlands, unlike most jurisdictions, does not permit the plaintiff to call rebuttal witnesses or the defendant to alter its decision about which witnesses to call after hearing the plaintiff's evidence. Accordingly, it is highly inappropriate for a party that has alleged or denied something in its complaint or answer to seek to prevent its adversary from presenting otherwise admissible evidence that relates to that thing by asserting that it is no longer interested in alleging or contesting that particular thing. Parties may, of course, choose which evidence they wish to present and which arguments they wish to emphasize, but the time for amending one's pleadings is well before the court convenes for purposes of trial.

***Koller v. Summers*** (2005)

Plaintiff asserted a claim for negligence, and defendant asserted a counterclaim for negligence arising out of the same incident or core set of material facts. The trial court found that the only elements of negligence in dispute were: (i) the parties' breach of duty and (ii) proof that the parties' breach was the direct and proximate cause of the harm suffered. In that situation, both plaintiff and defendant assume an additional burden to prove that the other party's negligence is more responsible for the harm suffered. Should both plaintiff and defendant be found negligent, the party whose negligence is found to be more responsible for the harm that occurred will be held liable, while the party less negligent for the harm suffered will be absolved from liability. In light of *Thomas v. Davis*, in the State of Midlands, a defendant who interposes a counterclaim is not entitled to simply defend against the plaintiff's claim and ignore that counterclaim or its additional burden during trial. Rather, during trial, the defendant must affirmatively pursue the counterclaim and must affirmatively argue and attempt to prove its burden that the plaintiff is subject to liability.

***Rusev, Inc. v. Day*** (2014)

Against a negligence claim, a party typically may raise the affirmative defenses of comparative fault and assumption of risk that would absolve the party of liability if proven at trial. Comparative fault involves a party establishing that the other side was more responsible for the resulting harm. Assumption of risk involves a party establishing that the other side knew, appreciated, and accepted the risk of the party's specific acts of negligence that caused the harm. However, when a plaintiff sues for negligence and a defendant asserts a negligence counterclaim based on the same incident or core set of material facts, it is unnecessary for the plaintiff and defendant to separately plead either of these defenses. Instead, the issues related to these defenses are subsumed within the claim and counterclaim. Specifically, the trier of fact may and should consider the parties' comparative fault if asked to determine which party was more negligent. Likewise, the trier of fact may and should consider the degree to which a party assumed a known risk of harm when determining which party was more negligent.

***Pinchak v. Millhouse*** (2005)

A factual allegation in a complaint that is admitted by the defendant in its answer should not be excluded at trial as irrelevant or moot if that information would be useful to the jury in evaluating other aspects of the case that remain in dispute.

**Hearsay**

***Li v. Worrell*** (2010)

Unlike most other evidentiary rules, Rule 801(d)(2) may be invoked in only one direction. Under that rule, the plaintiff may offer statements by the defendant and the defendant may offer statements by the plaintiff. But Rule 801(d)(2) does not permit the plaintiff to offer statements by the plaintiff or the defendant to offer statements by the defendant, even if the opposing party has already elicited out-of-court statements by the party during a preceding examination, subject to Rule 106.

***America's Best Cookie v. International House of Waffles*** (2009)

The Court recognizes that practices differ in other jurisdictions. But, in Midlands, the definition of "hearsay" includes out-of-court statements by a witness who is on the stand or by another person who has or will be testifying in a particular trial.

## **Depositions**

### ***Weaver v. Daknis* (2010)**

In lieu of submitting an entire deposition into evidence, a party may instead elect to read excerpts of a deposition onto the record. The excerpt must include the full question(s) asked and the full answer(s) given, unless both sides agree to specific redactions. Any excerpt read onto the record is still subject to the Midlands Rules of Evidence. Should a party elect to read excerpts of a deposition onto the record, that party cannot also submit the deposition itself into evidence.

### ***Wolkin v. Christie* (2013)**

In Midlands, substantive objections are not appropriate during a deposition. As a result, failure to object to a question during a deposition does not preclude a party from objecting to the deposition (or an excerpt under *Weaver v. Daknis*) being offered at trial.

## **Witnesses Must Be Able to Respond to Cross Examination**

### ***Jeon v. Olson* (2014)**

Civil case arising from alleged assault. The plaintiff was called as a witness and testified fully on direct examination. On cross examination, however, the plaintiff failed to respond to some questions, purportedly because of a condition arising from the assault. *Held:* The judgment for the plaintiff must be reversed. The reason why the witness failed to respond to questions on cross examination is immaterial. If a witness becomes unable or unwilling to respond to otherwise proper questions on cross examination, the trial court must strike the witness's testimony in its entirety.

## **Bifurcation**

### ***Tejada v. Utley* (2015)**

Trial in civil suit for battery was properly bifurcated. When a trial is bifurcated, during the liability phase, evidence that solely relates to the amount of damages suffered is irrelevant and shall not be admitted. That said, if evidence that is relevant to liability also refers to damages, that evidence is admissible. However, as the name suggests, the purpose of a threshold liability-only phase is to focus on liability, not the extent of damages. As a result, trial judges should be especially vigilant in applying MRE 401 and 403 with respect to evidence that either does not or only marginally relates to questions at issue during such a phase.



# American Mock Trial Association

## MIDLANDS RULES OF EVIDENCE

### Article I.

#### Rule 101. Scope; Definitions

**(a) Scope.** These rules apply to proceedings in the courts of the State of Midlands. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101. No bureaucratic organizations whose edicts govern conduct in Midlands are considered to exist unless specified within the case problem.

*Comment:* Midlands is recognized as being in the United States and governed by the U.S. Constitution.

**(b) Definitions.** In these rules

- (1) “civil case” means a civil action or proceeding;
- (2) “criminal case” includes a criminal proceeding;
- (3) “public office” includes a public agency;
- (4) “record” includes a memorandum, report, or data compilation;
- (5) a “rule prescribed by the Midlands Supreme Court” means a rule adopted by the Midlands Supreme Court under statutory authority; and
- (6) a reference to any kind of written material or any other medium includes electronically stored information.

#### Rule 102. Purpose

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

#### Rule 103. Rulings on Evidence

**(a) Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

- (1) if the ruling admits evidence, a party, on the record:
  - (A) timely objects or moves to strike; and
  - (B) states the specific ground, unless it was apparent from the context; or
- (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

**(b) Not Needing to Renew an Objection or Offer of Proof.** Once the Court rules definitively on the record – either before or at trial – a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

**(c) Omitted.**

**(d) Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

**(e) Taking Notice of Plain Error.** A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

### **Rule 104. Preliminary Questions**

(a) **In General.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

(b) **Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) *Omitted.*

(d) *Omitted.*

(e) **Evidence Relevant to Weight and Credibility.** This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

### **Rule 105. Omitted**

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

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

*Comment:* This rule of completeness applies only to material provided in the case packet. This rule does not reference any material not provided in the case packet.

## **Article II.**

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

(a) **Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) **Taking Notice.** The court:

(1) *omitted;*

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) **Timing.** The court may take judicial notice at any stage of the proceeding.

(e) **Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) **Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

## **Article III.**

### **Rule 301. Presumptions in Civil Actions Generally**

In a civil case, unless a Midlands statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

**Rule 302. Omitted**

**Article IV.**

**Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

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

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

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- these rules; or
- other rules prescribed in Midlands.

Irrelevant evidence is not admissible.

*Comment:* Relevant evidence is limited to the information supplied by or reasonably inferred from the case materials supplied by AMTA. For further explanation see Rule 8.9 of the AMTA Rulebook.

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

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

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

**(a) Character Evidence.**

**(1) Prohibited Uses.** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

**(2) Exceptions for a Defendant or Victim in a Criminal Case.** The following exceptions apply in a criminal case:

**(A)** A defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it. In lieu of rebuttal witness availability, a defendant must first notify the court and opposing counsel in writing at the Captains' Meeting of the intention to offer such evidence. If such notice is given, the form included with these Rules of Evidence should be completed and presented to the judges with the ballots, and the prosecution may also offer such character evidence during its case-in-chief.

**(B)** A defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

- (i)** offer evidence to rebut it; and
- (ii)** offer evidence of the defendant's same trait.

In lieu of rebuttal witness availability, a defendant must first notify opposing counsel in writing at the Captains' Meeting of the intention to offer such evidence. If such notice is given, the form included with these Rules of Evidence should be completed

and presented to the judges with the ballots, and the prosecution may also offer such character evidence during its case-in-chief.

(C) In a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

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

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

**(1) Prohibited Uses.** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

**(2) Permitted Uses; Notice in a Criminal Case.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. The prosecution in a criminal case shall provide written notice of such intent prior to witness selection in the Captains' Meeting.

**Rule 405. Methods of Proving Character**

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

**(b) By Specific Instances of Conduct.** When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

**Rule 406. Habit; Routine Practice**

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

**Rule 407. Subsequent Remedial Measures**

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

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

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

**Rule 408. Compromise Offers and Negotiations**

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

**(1)** furnishing, promising, or offering – or accepting, promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim – except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

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

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

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

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

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

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) *omitted*; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

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

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

**Rule 411. Liability Insurance**

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

**Rule 412. *Omitted***

**Rule 413. *Omitted***

**Rule 414. *Omitted***

**Rule 415. *Omitted***

**Article V.**

**Rule 501. Privileges in General**

Only privileges granted by a statute of the state of Midlands or by Midlands case law shall be recognized.

**Rule 502. *Omitted***

## **Article VI.**

### **Rule 601. Competency to Testify in General**

Every person is competent to be a witness unless these rules provide otherwise.

### **Rule 602. Need for Personal Knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

### **Rule 603. Oath or Affirmation to Testify Truthfully**

Before testifying, a witness shall be presumed to have been sworn in, by an oath or affirmation to testify truthfully administered in a form designed to impress that duty on the witness's conscience.

### **Rule 604. Omitted**

### **Rule 605. Judge's Competency as a Witness**

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

### **Rule 606. Omitted**

### **Rule 607. Who May Impeach a Witness**

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

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

**(a) Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

*Comment:* Written notice is required in civil and criminal cases. In lieu of rebuttal witness availability, if the party attacking the character of the witness for truthfulness is the defense and the witness is a plaintiff/prosecution witness, the defense must first notify opposing counsel in writing at the Captains' Meeting of the intention to offer such evidence. If such notice is given, the form included with these Rules of Evidence should be completed and presented to the judges with the ballots, and the plaintiff/prosecution may offer evidence of truthful character during its case-in-chief.

**(b) Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or
- (2) another witness whose character the witness being cross-examined has testified about.

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

**(a) In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

- (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
  - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
  - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
- (2) for any crime regardless of the punishment, the evidence must be admitted if the court can determine that establishing the elements of the crime required proving – or the witness's admitting – a dishonest act or false statement.

**(b) Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

- (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
- (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

**(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

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

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

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

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

**Rule 610. Religious Beliefs or Opinions**

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

**Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence**

**(a) Omitted.**

**(b) Scope of Examinations.** The initial cross examination is not limited to matters discussed on direct examination. Re-direct and re-cross examination are permitted. But any re-direct or re-cross examination may not go beyond the subject matter of the examination immediately preceding it and matters affecting the witness's credibility.

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

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

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

A witness may use any material provided by AMTA to refresh memory either during or prior to giving testimony.

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

**(a) Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

**(b) Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

**Rule 614. Court's Calling or Examining a Witness**

Calling and/or examining of a witness by the court is not allowed.

**Rule 615. Excluding Witnesses.**

At a party's request, the court must order witnesses constructively excluded so that they cannot hear other witnesses' testimony. But this rule does not authorize constructively excluding:

- (a) a party who is a natural person;
- (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative;
- (c) *omitted*; or
- (d) a person authorized by a statute provided in the case materials to be present.

*Comment:* This rule does not permit the actual exclusion of students portraying witnesses. Rather, it allows for the constructive exclusion of some witnesses.

**Article VII.**

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

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

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

**Rule 702. Testimony by Expert Witnesses**

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

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

*Comment: Formal Certification of Experts Not Permitted.* Unless otherwise provided in the case materials, formal certification of a witness as an expert in a specific field of expertise is not required nor permitted. Attorneys and witnesses should develop expertise and lay foundation through appropriate questioning based on the case materials provided. Judges may entertain any appropriate objections to expert witness qualifications and opinions under the Midlands Rules of Evidence.

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

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

**Rule 704. Opinion on an Ultimate Issue**

(a) **In General – Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

(b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

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

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

**Rule 706. Omitted**

**Article VIII.**

**Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay**

(a) **Statement.** "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) **Declarant.** "Declarant" means the person who made the statement.

(c) **Hearsay.** "Hearsay" means a statement that:

- (1) the declarant does not make while testifying at the current trial or hearing; and
- (2) a party offers in evidence to prove the truth of the matter asserted in the statement.

**(d) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

**(1) A Declarant-Witness's Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) identifies a person as someone the declarant perceived earlier.

**(2) An Opposing Party's Statement.** The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's conspirator during and in furtherance of the conspiracy.

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

### **Rule 802. The Rule Against Hearsay**

Hearsay is not admissible unless any of the following provides otherwise:

- these rules; or
- other rules prescribed by the Midlands Supreme Court.

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

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

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

**(2) Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

**(3) Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

**(4) Statement Made for Medical Diagnosis or Treatment.** A statement that:

(A) is made for – and is reasonably pertinent to – medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

**(5) Recorded Recollection.** A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

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

**(6) Records of a Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by – or from information transmitted by – someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

**(7) Absence of a Record of Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

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

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate lack of trustworthiness.

**(9) Public Records of Vital Statistics.** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

**(10) Absence of a Public Record.** Testimony – or a certification under Rule 902 – that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

**(11) Records of Religious Organizations Concerning Personal or Family History.** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

**(12) Certificates of Marriage, Baptism, and Similar Ceremonies.** A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

**(13) Family Records.** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

**(14) Records of Documents That Affect an Interest in Property.** The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

**(15) Statements in Documents That Affect an Interest in Property.** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose – unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

**(16) Statements in Ancient Documents.** A statement in a document that is at least 20 years and whose authenticity is established.

**(17) Market Reports and Similar Commercial Publications.** Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

**(18) Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

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

*Comment:* This rule concerns published treatises, periodicals, or pamphlets that have been provided in the case packet. Mere reference to a title in the packet is insufficient; the entirety of the item must be provided in the case packet for this rule to be applicable.

**(19) Reputation Concerning Personal or Family History.** A reputation among a person's family by blood, adoption, or marriage – or among a person's associates or in the community – concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

**(20) Reputation Concerning Boundaries or General History.** A reputation in a community – arising before the controversy – concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

**(21) Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.

- (22) Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:
- (A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
  - (B) the conviction was for a crime punishable by death or by imprisonment for more than a year;
  - (C) the evidence is admitted to prove any fact essential to the judgment; and
  - (D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

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

- (23) Judgments Involving Personal, Family, or General History, or a Boundary.** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

- (A) was essential to the judgment; and
- (B) could be proved by evidence of reputation.

- (24) Omitted.**

**Rule 804. Exceptions to the Rule Against Hearsay –When the Declarant Is Unavailable as a Witness**

- (a) Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

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

But this subdivision (a) does not apply if the statement’s proponent procured or wrongfully caused the declarant’s unavailability as a witness in order to prevent the declarant from attending or testifying.

*Comment:* This rule may not be used at trial to assert that a team has “procured” the unavailability of a witness by choosing not to call that witness.

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

- (1) **Former testimony.** Testimony that:
  - (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
  - (B) is now offered against a party who had – or, in a civil case, whose predecessor in interest had – an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

- (2) **Statement Under the Belief of Imminent Death.** In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant’s death to be imminent, made about its cause or circumstances.

**(3) Statement Against Interest.** A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

**(4) Statement of Personal or Family History.** A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

**(5) Omitted.**

**(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.** A statement offered against a party that wrongfully caused – or acquiesced in wrongfully causing – the declarant's unavailability as a witness, and did so intending that result.

**Rule 805. Hearsay Within Hearsay**

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

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

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

**Rule 807. Omitted**

**Article IX.**

**Rule 901. Authenticating or Identifying Evidence**

(a) **In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

**(b) Examples.** The following are examples only – not a complete list – of evidence that satisfies the requirement:

- (1) Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.
- (2) Nonexpert Opinion About Handwriting.** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.
- (3) Comparison by an Expert Witness or the Trier of Fact.** A comparison with an authenticated specimen by an expert witness or the trier of fact.
- (4) Distinctive Characteristics and the Like.** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.
- (5) Opinion About a Voice.** An opinion identifying a person's voice – whether heard firsthand or through mechanical or electronic transmission or recording – based on hearing the voice at any time under circumstances that connect it with the alleged speaker.
- (6) Evidence About a Telephone Conversation.** For a telephone conversation, evidence that a call was made to the number assigned at the time to:
  - (A)** a particular person, if circumstances, including self-identification, show that the person answering was the one called; or
  - (B)** a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.
- (7) Evidence About Public Records.** Evidence that:
  - (A)** a document was recorded or filed in a public office as authorized by law; or
  - (B)** a purported public record or statement is from the office where items of this kind are kept.
- (8) Evidence About Ancient Documents or Data Compilations.** For a document or data compilation, evidence that it:
  - (A)** is in a condition that creates no suspicion about its authenticity;
  - (B)** was in a place where, if authentic, it would likely be; and
  - (C)** is at least 20 years old when offered.
- (9) Evidence About a Process or System.** Evidence describing a process or system and showing it produces an accurate result.
- (10) Methods Provided by a Statute or Rule.** Any method of authentication or identification allowed by a Midlands statute or a rule prescribed by the Midlands Supreme Court.

#### **Rule 902. Evidence That Is Self-Authenticating**

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

- (1) Domestic Public Documents That Are Sealed and Signed.** A document that bears:
  - (A)** a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and
  - (B)** a signature purporting to be an execution or attestation.
- (2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified.** A document that bears no seal if:
  - (A)** it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal – or its equivalent – that the signer has the official capacity and that the signature is genuine.

**(3) Foreign Public Documents.** A document that purports to be signed or attested by a person who is authorized by a foreign country’s laws to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester – or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document’s authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

**(4) Certified Copies of Public Records.** A copy of an official record – or a copy of a document that was recorded or filed in a public office as authorized by law – if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3) or a rule prescribed by the Midlands Supreme Court.

**(5) Official Publications.** A book, pamphlet, or other publication purporting to be issued by a public authority.

**(6) Newspapers and Periodicals.** Printed material purporting to be a newspaper or periodical.

**(7) Trade Inscriptions and the Like.** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

**(8) Acknowledged Documents.** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

**(9) Commercial Paper and Related Documents.** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

**(10) Omitted.**

**(11) Certified Domestic Records of a Regularly Conducted Activity.** The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a rule prescribed by the Midlands Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record – and must make the record and certification available for inspection – so that the party has a fair opportunity to challenge them.

*Comment:* The reasonableness requirement of this rule is satisfied if the aforementioned notice, record, and certification are affirmatively made available at the Captains’ Meeting.

**(12) Certified Foreign Records of a Regularly Conducted Activity.** In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a Midlands Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

*Comment:* If no foreign law is provided in the case materials, the presumption will be that no legal infraction occurred with respect to the requirement of subdivision 12 that the

certification “must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed.”

**Rule 903. Subscribing Witness’s Testimony**

A subscribing witness’s testimony is not necessary to authenticate a writing.

**Article X.**

**Rule 1001. Definitions That Apply to This Article**

In this article:

- (a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.
- (b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.
- (c) A “photograph” means a photographic image or its equivalent stored in any form.
- (d) An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout – or other output readable by sight – if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.
- (e) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

**Rule 1002. Requirement of the Original**

An original writing, recording, or photograph is required in order to prove its content unless these rules or a Midlands statute provide otherwise.

*Comment:* No attorney may object under this Rule that the “original writing, recording, or photograph” in question is not among the documents contained in the case packet.

**Rule 1003. Admissibility of Duplicates**

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.

**Rule 1004. Admissibility of Other Evidence of Content**

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;
- (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- (d) the writing, recording, or photograph is not closely related to a controlling issue.

**Rule 1005. Copies of Public Records to Prove Content**

The proponent may use a copy to prove the content of an official record – or of a document that was recorded or filed in a public office as authorized by law – if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

**Rule 1006. Summaries to Prove Content**

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

**Rule 1007. Testimony or Statement of a Party to Prove Content**

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

**Rule 1008. Functions of the Court and Jury**

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines – in accordance with Rule 104(b) – any issue about whether:

- (a) an asserted writing, recording, or photograph ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

**Article XI.**

**Rule 1101. Applicability of the Rules**

**(a) To Courts and Judges.** These rules apply to proceedings before all courts in the State of Midlands.

**(b) To Cases and Proceedings.** These rules apply in:

- civil cases and proceedings; and
- criminal cases and proceedings.

**(c) Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding.

**(d) Exceptions.** These rules – except for those on privilege – do not apply to the following:

- (1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
- (2) *omitted*; and
- (3) *omitted*.

**(e) *Omitted*.**

**Rule 1102. Amendments**

Amendments to the Midlands Rules of Evidence may be made at the annual AMTA Board Meeting or by special vote convened by the Board.

**Rule 1103. Title**

These rules shall be cited as the Midlands Rules of Evidence.

CIRCUIT COURT OF MIDLANDS

**Midlands Television Studios, Inc.,**

**Plaintiff,**

v.

**Danny Kosack,**

**Defendant.**

**Case No. CV 18-101248**

Judge Jacob Alexander Jackson

**Pretrial Orders**

**Order Filed: August 13, 2018**

1. **Summary Judgment.** Plaintiff and Defendant both moved for summary judgment on their claim and counterclaim, respectively. Those motions are decided as follows. Based on their submissions, Plaintiff and Defendant have established that they both owed each other a duty as a matter of law. Defendant owed a duty to Plaintiff to ensure that the selection of Elias the chimpanzee to appear on *Midlands After Dark with Alex Grace* was reasonable, that Elias the chimpanzee was properly trained for Elias' appearance on *Midlands After Dark with Alex Grace*, and to otherwise take reasonable steps to ensure that Elias would not pose a danger to Plaintiff, Plaintiff's employees, or the audience. Plaintiff owed Defendant a duty to follow Defendant's instructions and to otherwise take reasonable steps to ensure that Elias would not pose a risk to others by appearing on *Midlands After Dark with Alex Grace*. In addition, both Plaintiff and Defendant sufficiently established that they suffered harm—Plaintiff had to cancel Plaintiff's show while Defendant had to close Defendant's sanctuary—and that such harm was caused solely and exclusively by the negative publicity arising from the animal attack that occurred on June 29, 2017. Therefore, those issues are no longer in dispute and will not be addressed at trial.

However, the Court finds that there are genuine issues of material facts as to whether Plaintiff and Defendant breached their respective duties to each other and whether such breaches were the (direct and proximate) cause of the animal attack. Accordingly, both Plaintiff and Defendant must prove at trial that the other side breached its duty of care and that such breaches were the (direct and proximate) cause of the animal attack. Further, pursuant to *Koller v. Summers*, both Plaintiff and Defendant must also prove at trial that the other side's negligence was more responsible for the animal attack that occurred. Pursuant to *Rusev, Inc. v. Day*, any issues related to comparative fault or assumption of risk are subsumed within Plaintiff's claim and Defendant's counterclaim and may be offered at trial even though these affirmative defenses were not separately pleaded. Whichever party prevails on these issues shall be entitled to damages.

2. **Bifurcation of trial.** In addition, the parties have jointly moved to bifurcate the trial into separate proceedings on liability and damages. That motion is GRANTED. In the first phase, the trial shall be limited to the issues set forth in section 1 above. If either Plaintiff or Defendant is found to be negligent and more at fault than the other party, the jury will hear evidence on the question of damages in a separate proceeding. Any evidence relating solely to damages shall be inadmissible at the liability stage. Either side may still introduce evidence involving the facts and circumstances of the relevant events as is necessary to establish liability

3. **Vicarious Liability.** Defendant further moved to hold Plaintiff vicariously liable for the conduct of the following current and former Plaintiff employees: Alex Grace, Jameson Clark, Tony Gomes, Chris Villafana, Ashley Thornhill, and Cory Beery. That motion is GRANTED. At trial, all of the above-named individuals' acts and omissions prior to, and including, June 29, 2017 shall be imputed to Plaintiff, and Plaintiff shall be vicariously liable for any of those acts or omissions. Moreover, any and all statements made by the above-named individuals prior to, and including, June 29, 2017 shall be imputed to Plaintiff, and Plaintiff shall be deemed to have made those statements. Nothing in this order speaks to any act, omission, or statement made by the above-named individuals after June 29, 2017, with the exception of the deposition of Alex Grace. Statements made by Grace in the course of Grace's deposition shall be imputed to Plaintiff, and Plaintiff shall be deemed to have made those statements. As for all other acts, omissions, or statements made by the above-named individuals after June 29, 2017, the trial court shall determine whether to impute them to Plaintiff.

## CIRCUIT COURT OF MIDLANDS

**Midlands Television Studios, Inc.,**

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**Danny Kosack,**

**Defendant.**

**Case No. CV 18-101248**

Judge Jacob Alexander Jackson

**Reply to Counterclaim**

**AS AND FOR A REPLY TO THE FIRST COUNTERCLAIM**

1. In 2016 and 2017, Plaintiff and Defendant exchanged emails about Defendant appearing with an animal on Plaintiff's show *Midlands After Dark with Alex Grace* (the "Show").

a) Plaintiff's response: **Admitted.**

2. Defendant agreed to appear on the Show on June 29, 2017 with a chimpanzee (the "Animal") that Defendant had trained.

a) Plaintiff's response: **Admitted.**

3. Plaintiff booked Defendant for an appearance on the Show on June 29, 2017.

a) Plaintiff's response: **Admitted.**

4. Prior to June 29, 2017, Defendant sufficiently informed Plaintiff that there were potential risks involved in having the Animal appear on the Show.

a) Plaintiff's response: **Denied.**

5. Prior to June 29, 2017, Defendant sufficiently informed Plaintiff that there were certain steps that Plaintiff was required to take in connection with Defendant's appearance on the Show to ensure the safety of everyone involved.

a) Plaintiff's response: **Denied.**

6. Plaintiff had a duty to follow Defendant's instructions and to otherwise take reasonable steps to ensure that the Animal would not pose a risk to others by appearing on the Show.

a) Plaintiff's response: **Denied.**

7. Plaintiff breached that duty by failing to follow Defendant's instructions and by failing to take reasonable steps to ensure that the Animal would not pose a risk to others by appearing on the Show.

a) Plaintiff's response: **Denied.**

8. On June 29, 2017, Defendant appeared with the Animal for a closed rehearsal before the Show was scheduled to air.

a) Plaintiff's response: **Admitted.**

9. During the rehearsal, the Animal became unruly and attacked people in the room.
  - a) Plaintiff's response: **Admitted.**
10. Upon information and belief, one person was killed during the attack.
  - a) Plaintiff's response: **Admitted.**
11. The negative publicity surrounding the incident caused harm to Defendant's entertainment career.
  - a) Plaintiff's response: **Denied.**
12. After the incident occurred, multiple scheduled appearances by Defendant were canceled by the vendors, and Defendant lost substantial income as a result.
  - a) Plaintiff's response: **Denied.**
13. As a direct and proximate result of the foregoing, Defendant has suffered harm.
  - a) Plaintiff's response: **Denied.**

Respectfully submitted,

D. Clarkson

Clarkson, Giordano and Lantigua  
Attorneys for Plaintiff

## SPECIAL INSTRUCTIONS

- 1. Witness Availability.** Alex Grace, Jameson Clark, and Willoughby Hawkins may only be called by the Plaintiff. Danny Kosack, Ashley Thornhill, and Miller McCoy may only be called by the Defense. Hunter Cooper, Tony Gomes, Remy Hollis, A.J. McClellan, and Harper Villafana may be called by either side. The Captains' Meeting Form explains the procedures regarding witness selection.
- 2. Genders of Available Witnesses.** The procedures for picking the genders of witnesses and non-witnesses are set forth in the Captains' Meeting Form.
- 3. Party Representatives.** Danny Kosack and Alex Grace are the only permissible party representatives under Rule 615 of the Midlands Rules of Evidence. If Kosack or Grace will be called as witnesses, they must be designated as party representatives by the party calling them. If Grace will not be called as a witness, Plaintiff cannot designate a party representative.
- 4. Authenticity.** Witnesses must acknowledge authorship of any document that purports to be authored by them and the authenticity of any signature that purports to be theirs. A witness whose affidavit, deposition, or report states that the witness is familiar with a particular document must acknowledge, if asked, that the witness is familiar with that document and that the referenced document is the same version as the corresponding document in the current case.
- 5. Reports as "Affidavits."** The reports of Dr. Willoughby Hawkins and Dr. Miller McCoy are "affidavits" for purposes of AMTA Rules 8.9 (Invention of Fact) and 8.17 (Admission) and thus may not be offered into evidence.
- 6. Kosack and Grace Depositions.** Danny Kosack and Alex Grace do not have affidavits or reports. The depositions of Kosack and Grace are not "affidavits" for purposes of AMTA Rules 8.9(4)(a)(ii) (Invention of Fact) or 8.17 (Admission). Depositions are, however, "affidavits" for purposes of Rule 8.9(4)(a)(i), meaning that testimony that contradicts a witness's deposition may qualify as an Invention of Fact. Students playing Kosack and Grace may build their testimony using the depositions and other documents in the case. Kosack and Grace may also invent facts outside of the case documents but can still be cross examined on those inventions using the deposition, exhibits, or other case materials. All inventions of fact by Kosack and Grace must comply with all AMTA Rules and other special instructions in the case (including Special Instruction 4 above). For example, Kosack may not deny that Kosack gave the answers given in the deposition after having sworn to tell the truth or deny having sent any emails or texts that purport to have been sent by Kosack.
- 7. Closed-Universe Problem.** The only legal material that competitors may mention, or judges may rely upon, for any purpose are those set forth in the "Midlands Case Law" or the Midlands Rules of Evidence. All participants must acknowledge such if asked.
- 8. Constitutional Issues.** The parties have raised all objections arising under the United States Constitution prior to trial in motions in limine and preserved them for appeal. Accordingly, no party may raise any objections specifically related to the United States Constitution at trial. Any such objections have previously been overruled, and no motion for reconsideration is permitted pursuant to AMTA Rule 8.11, which forbids parties from making motions other than a motion to strike or a motion to sequester witnesses at trial. Nothing in this rule precludes the making of timely objections during trial based on the Midlands Rules of Evidence.

9. **Fifth Amendment.** No witness may refuse to answer any question—and no attorney may instruct a witness not to respond—based on the witness’s Fifth Amendment rights.
10. **Best Evidence Rule Limited to Items in the Case Packet.** No attorney may object under Rule 1002 of the Midlands Rules of Evidence if the “original writing, recording, or photograph” in question is not among the documents contained in this case packet.
11. **Black-and-White Copies.** No objection may be raised on the ground that a document, exhibit, or demonstrative was altered by printing it in black-and-white.
12. **Final Versions (and Revision Dates).** All participants must acknowledge that all case documents are the final and only versions of those documents. AMTA’s case corrections will be indicated by dates (*e.g.*, “8/13/18”) at the top or bottom of corrected documents. For purposes of the trial, such dates do not indicate anything else about the history of the document. For instance, dates do not indicate that a witness has revised his or her affidavit, report, declaration, etc., or when such a revision occurred.
13. **Witnesses Must Be Able to Respond to Cross-Examination.** Stipulation 3 provides that “[a]ll parties and witnesses are of at least of normal intelligence and none has or ever has had a mental condition that would impact a person’s perception, memory, or ability to respond to questions on cross examination.” It is a violation of that stipulation and of this special instruction to portray Danny Kosack—or any other witness—in a manner that renders Kosack unable or unwilling to respond to otherwise proper questions on cross examination.
14. **Time Limits.** Should a team wish to publish part or all of a document by reading it onto the record, the time spent reading shall be deducted from the publishing team’s total 25-minute direct or cross time, depending on whether the reading occurs during the publisher’s case-in-chief or that of the other team. Publication may not occur before opening statements or after the defense team closes its case-in-chief.
15. **Exhibit 4 (Photograph of Chris Villafana).** Teams may provide a single photograph of Chris Villafana. The photograph may not contain any other person in addition to Chris Villafana or anything specifically intended to evoke other persons, places, things, or events specifically mentioned or described in the case (*e.g.*, Midlands Television Studios, chimpanzees, etc.). The person portraying Chris Villafana in the photograph must appear to be reasonably close to Chris Villafana’s age shortly before Chris Villafana’s death and must not show any signs of death or injury (*i.e.*, these are not post-accident photographs). The photograph may not contradict any facts in the case packet or introduce any material facts beyond what is in the case packet. Nothing in these instructions implies anything about the race or gender of Chris Villafana. If both teams provide photographs of Chris Villafana, the photograph from the team calling Harper Villafana will be used. If both teams provide photographs of Chris Villafana and Harper Villafana will NOT be called to testify, the Plaintiff’s photograph will be used. The team whose photograph is used must provide the photograph for use by the opposing team at any time.
16. **Reports of Dr. Miller McCoy and Dr. Willoughby Hawkins.** Only one of Dr. McCoy’s reports will be deemed to exist for each trial. If Plaintiff calls Dr. Hawkins, Dr. McCoy’s July 16, 2018 report is NOT part of the case packet for that round and may not be referenced during trial. If Plaintiff does NOT call Dr. Hawkins, then both Dr. Hawkins’ report and Dr. McCoy’s July 13, 2018 report are NOT part of the packet for that round and may not be referenced during trial.

17. **Benchbooks.** Benchbooks within the meaning of AMTA Rule 8.14 do not need to include statutory law, jury instructions, or verdict forms, as those materials are not in this case packet.
18. **Speech Characteristics as Material Invention.** While teams may employ distinctive accents/speech characteristics to develop a character, teams may not use such accents/speech characteristics to invent material facts or to prove that a voice heard was or was not the voice of a specific person in the case. This Special Instruction does not prohibit asking a witness questions regarding the witness's certainty of a voice identification or the circumstances in which the witness heard the voice in question. This Special Instruction applies both to examinations of witnesses and to opening statements/closing arguments.

CIRCUIT COURT OF MIDLANDS

**Midlands Television Studios, Inc.,**

**Plaintiff,**

v.

**Danny Kosack,**

**Defendant.**

**Case No. CV 18-101248**

Judge Jacob Alexander Jackson

**Stipulations**

1. For the convenience of the parties, witnesses, court, and jury, all potential exhibits have been pre-labeled and pre-numbered. Those numbers will be used for all purposes at trial, regardless of which party first offers the exhibit or the order in which the exhibits are offered.
2. The parties, having engaged in discovery, agree that no documents other than Exhibits 1-23 are relevant. This stipulation does not bar relevance objections to Exhibits 1-23. This stipulation also does not address demonstrative aids that may be used during trial and will not be admitted into evidence.
3. All parties and witnesses are of at least of normal intelligence and none has or ever has had a mental condition that would impact a person's perception, memory, or ability to respond to questions on cross examination.
4. The parties waive any and all objections that Exhibit 1 (the blueprint of the MTS set) is not drawn to scale.
5. Exhibit 3 (the biography of Elias the chimpanzee) was written and created by Danny Kosack. As of June 29, 2017, all information in Exhibit 3 (including, without limitation, Elias' age, sex, height and weight) was true and accurate.
6. As of June 29, 2017, Elias had no medical, physical, mental, or emotional defects, unusual traits, or abnormalities other than what is expressly set forth in the affidavits, depositions, reports, and exhibits.
7. The parties acknowledge and agree that Exhibit 5 (the autopsy report of Chris Villafana) is genuine and accurate, and all objections to the admissibility of Exhibit 5 are waived. Either party may enter Exhibit 5 into evidence at any point after opening statements.
8. Both parties were present for a joint handwriting analysis of Exhibit 20 (the handwritten letter). The analysis determined that Alex Grace was the author of Exhibit 20. The parties acknowledge and agree that Alex Grace authored Exhibit 20.
9. Harper Villafana received Workers Compensation payments from MTS (without any admission of liability or wrongdoing) due to the incident on June 29, 2017. Under Midlands law, the receipt of such payments precluded Harper Villafana from separately suing MTS or any allegedly negligent third-party (including Danny Kosack) for the wrongful death of Chris Villafana.
10. As of the date of trial, Jameson Clark is employed by MTS, and Alex Grace retains 5% ownership of MTS.

11. During the depositions of Alex Grace and Danny Kosack, all deponents and parties to this action were represented by counsel. All signatures on the depositions are authentic and of the people they purport to be. The parties further stipulate that the documents labeled “Deposition of Alex Grace” and “Deposition of Danny Kosack” are authentic, and no further testimony is needed to establish that fact.
12. Danny Kosack’s cremation of Elias on June 30, 2017 was lawful in all respects and did not constitute spoliation of evidence. The parties agree that nothing relevant to this action would have been discovered from an autopsy of Elias.
13. All notice requirements of Midlands Rules of Evidence 902(11) and 902(12) have been satisfied for all exhibits.
14. From the end of their respective depositions to the beginning of trial, neither Alex Grace nor Danny Kosack has seen, heard, or otherwise learned anything that would cause either of them to change the answers they provided to the questions asked during their respective depositions.
15. If Harper Villafana is called as a witness at trial, all objections to the admissibility of Exhibit 20 (the handwritten letter) are waived, and either party may enter Exhibit 20 into evidence at any point after opening statements.
16. If Danny Kosack is called as a witness at trial, all objections to the admissibility of Exhibit 21 (the monthly financial statements for the Midlands Animal Sanctuary) are waived, and either party may enter Exhibit 21 into evidence at any point after opening statements.
17. If Alex Grace is not called as a witness at trial, neither party is at fault for Grace being unavailable to testify, and Grace shall be deemed to be unavailable for purposes of Midlands Rules of Evidence 804. Further, in such an event, both parties agree that the entirety of Grace’s deposition cannot be submitted into evidence, but portions of Grace’s deposition may be read onto the record pursuant to *Weaver v. Daknis*.
18. On June 29, 2017, following the animal attack resulting in the death of Chris Villafana, on-scene EMTs treated Danny Kosack’s left forearm for an injury consistent with an animal bite. Treatment of the injury required a total of eighteen stitches.
19. On July 12, 2011, in the jurisdiction of Midlands, Dr. Willoughby Hawkins pleaded guilty to the crime of attempted grand larceny. In Midlands, attempted grand larceny is punishable by imprisonment for up to five years.