

## **INSTRUCTIONS FOR P. NEWSOME (Plaintiff's Engineering Expert)**

[Note: do not let anyone see these instructions.]

### **1. Case Summary**

Ash Johnson was in a fatal accident on October 1, [-1] when the motorcycle he/she was riding in the dry riverbed of the Ronson River hit a large rock. He/She was ejected over the handlebars and fell face down in the gravel breaking his/her neck.

At the time of the accident, Ash Johnson was wearing an open-faced helmet with a 3-inch rigid visor made by Best Helmets. His/Her father/mother, Riley Johnson, has talked to a law firm about bringing a wrongful death lawsuit against Best Helmets. The law firm is looking for engineering experts who can evaluate the helmet to determine if it is unreasonably dangerous and was the cause of Ash's fatal injuries.

### **2. Personal Background**

You have been an engineer focusing on design and safety issues for many years. Your current resume setting out your professional background and experience is attached to these instructions.

### **3. Your Story**

You talked to a lawyer in the firm representing Johnson and agreed to evaluate the Best Helmets open-face helmet with the 3-inch stiff visor to determine whether the helmet is unreasonably dangerous. You will charge \$300/hr. to make this evaluation.

You have come to the following conclusions:

1. An open-face helmet with a 3-inch stiff visor is unreasonably dangerous.
2. Failure to put a warning on the Best Helmet itself makes it unreasonably dangerous.

You agree to provide a current resume and an expert report that meets the requirements of Rule 26.

### **4. Documents**

You have seen, and are familiar with, the documents attached to these instructions. If there is a circumstance where, while you are staying in character, you would show one of the

documents below to an attorney, you can do so, but you cannot show any attorney this set of instructions.

## **5. Instructions on role-playing**

In role-playing P. Newsome, please stay “in character” at all times.

To play this expert witness role, you will probably need to do some computer research to “get up to speed” so you can realistically play the role of an engineer. You will want to become familiar with issues regarding the open-face v. close-face design, the stiff visor v. the flexible visor, warnings, Underwriters Laboratories, federal and state regulations, etc.

**P. Newsome  
4000 Williams Circle  
Capital City, XX**

**RESUME**

**Education:**

Purdue University, B.S. degree, [-43]  
Purdue University, M.S. degree, [-41], civil engineering

**Licenses:**

XX Engineering License, [-37]-present

**Work Experience:**

Underwriters Laboratory, [-41]-[-21]  
Engineering Consultant, [-21]-present

**Specialty Area:**

Design and safety issues, consumer products.

**Litigation Experience:**

Retained as an expert in safety of various consumer products, such as:  
Bicycle, football, hockey, baseball, and motorcycle helmets

Testified as an expert in state and federal courts over 30 times since [-11].

**P. NEWSOME**  
**4000 Williams Circle**  
**Capital City, XX**

**Expert Report of P. Newsome**

***Riley Johnson v. Best Helmets***

I have been retained by plaintiff's law firm as an expert witness in the case of Riley Johnson v. Best Helmets. I am being compensated at the rate of \$300/hr. My qualifications are set forth in my resume attached to this report.

I have considered the following issues:

1. Does the design of the Best Helmet, an open-face motorcycle helmet with a 3-inch stiff visor, make the helmet unreasonably dangerous?
2. Does the absence of a warning on the Best Helmet make the warning inadequate and the helmet unreasonably dangerous?

It is my opinion that the answer to #1 is "yes," and the answer to #2 is "yes." My reasoning is as follows.

There are several types of motorcycle helmets sold in the U.S., but two helmet types are important here: the full-face and the open-face. The full-face design provides the most protection. It is a complete shell, which gives maximum protection to the rider's head, eyes, and face. The open-face helmet also protects the rider's head, but does not protect the rider's face, eyes, or chin. The full-face helmet is heavy, can get hot, can fog up, and is usually more expensive. For that reason, some riders refuse to wear a full-face helmet, and instead will only wear an open-face helmet, which is lighter, cooler, and does not fog up. No jurisdiction requires riders to wear a full-face helmet. Some jurisdictions require no helmet at all. Motorcycle helmet manufacturers have responded by providing both full-face and open-face helmets, and letting the buyer choose the helmet.

That does not end the analysis, because the Best Helmet has a 3-inch stiff visor, and it is this feature that renders the helmet unreasonably dangerous. While the visor does shade the eyes, it has the risk that in the event the rider falls off the cycle face first, the stiff visor will hit the ground first, jerking the head toward the chest causing a catastrophic neck injury. This visor size (3 inches) and stiffness makes it unreasonably dangerous.

A warning, to be effective, should, in the case of motorcycle helmets, be clearly displayed on the instructions for use, and on the helmet itself. That is the industry practice. The Best Helmet has no warning on the helmet itself. This makes the helmet unreasonably dangerous. An adequate warning would have warned the user that the helmet does not protect the user's eyes, face, and chin to the extent a full-face helmet does. An adequate warning would have warned that a stiff 3-inch visor increases the likelihood of a catastrophic neck injury if the user falls face down. That was not done on the Best Helmet, making it unreasonably dangerous.

Another approach would have been to make the Best Helmet with a flexible brim or a detachable brim. Both alternatives would have made the helmet safer, but neither was done.