

## **INSTRUCTIONS FOR A. WILDER (Defendant'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 (in Springdale, XX) 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.

In your work with Best Helmets, you have become aware of the Ash Johnson accident. It is your understanding that Best Helmets, your employer, has contacted the law firm that represents Best Helmets in the region of the country that includes the state of XX, to ask it to be prepared to defend Best Helmets in any lawsuit arising out of this accident. You have been in contact with the law firm about this matter.

### **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.

You have authority to manage litigation involving Best Helmets, which includes settlement authority. You are currently a Vice President at Best Helmets.

### **3. Your Story**

You talked to a lawyer in the firm representing Best Helmets and agreed to evaluate the open-face helmet with the 3-inch stiff visor to determine whether the helmet is unreasonably dangerous. You will not receive any extra compensation for your work on this case, because this is part of your regular job duties as a Best Helmets Vice President.

You have come to the following conclusions:

1. An open-face helmet with a stiff 3-inch visor is not unreasonably dangerous.
2. A warning on the helmet itself not necessary to make the helmet reasonably safe.
3. Riding a street bike 25 mph in a dry riverbed of rocks and gravel is negligent conduct.

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 A. Wilder, 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.

**A. Wilder**  
**Best Helmets**  
**1000 Airport Highway**  
**Metropolis, ZZ**

**Present Position**

Vice President, Best Helmets since [-5]  
Head of Product Design & Testing Division since [-13]

**Education**

BA, Dartmouth College, [-36]  
MA, Thayer School of Engineering, [-34]  
JD, Boston University, [-30]

**Other Employment**

General Motors  
Product Design Division, [-30]-[-23]  
Legal Department, [-23]-[-13]  
  
Dartmouth College, Thayer School of Engineering  
Research Assistant for Dr. Jones, [-38]-[-36]

**A. Wilder  
Best Helmets  
1000 Airport Highway  
Metropolis, ZZ**

**Expert Witness Report**

I have been asked to be a witness in the case of *Johnson v. Best Helmets*. I am currently a Vice President and Head of Product Design & Testing. I am not being compensated for this report. Of course, I am receiving my usual compensation as an employee of Best Helmets.

I recall my division developing the Best open-face helmet with a 3-inch visor. This was in about [-13], when I had just started as head of product development at Best. I did not participate in the development of this helmet.

The Best open-face helmet with a 3-inch visor is a popular purchase by many cyclists. It protects the head and affords limited protection of the eyes, face, and chin, since it is an open-face helmet. For riders that want maximum protection of a full-face helmet, Best and most helmet manufacturers make such models.

From [-13] to [-1], the Best open-face helmet was a popular choice, but after news spread about the Johnson accident, sales dropped sharply. Best no longer sells the open-face helmet. We have none of this model in inventory.

Plaintiff claims that the 3-inch stiff visor makes the helmet unreasonably dangerous. This claim is incorrect. The 3-inch visor helps protect the rider's face, eyes, and chin in the event a rider is ejected from the motorcycle. These accidents and injuries are the most common, and a stiff 3-inch visor provides substantial protection. Much less common is an injury to the neck, particularly one where the head is thrust downward suddenly.

In short, the Best helmet with the stiff 3-inch visor protects the rider from the most common injuries—eyes, face, and chin, and still provides some protection to the much less common injuries—the neck.

Best chose to design an open-face helmet that protects the rider from the more common injuries, not the less common. That choice does not make the Best open-face helmet unreasonably dangerous.

Plaintiff also claims that a product warning should have been placed on the helmet itself, and that Best's decision not to do this makes the open-face helmet unreasonably dangerous.

Best has learned that many users of helmets will remove any product warnings or other stickers as unsightly. Therefore, Best put the instructions and product warnings on a package insert which is tied to the inside of each helmet. This was a sensible decision.