

## **TRIAL PREPARATION & DISCOVERY PLAN<sup>1</sup>**

### Case against HorsePower, Inc.

The overall goal is to prove that HorsePower, Inc. (herein “HorsePower”) is liable for the following claims: products liability, personal injury, property damage, and breach of implied warranty of merchantability under the UCC. Sally is seeking at least \$2 million dollars in compensatory damages, exclusive of interests and costs, and the sum of \$1 million in punitive damages.

#### 1. Preliminary Motions/Hearings/Orders

- a. Litigation hold on all of HorsePower’s electronic and paper data memorialized in an order
- b. Pretrial Conference
  - i. Initial discovery scheduling order
  - ii. Ask for Electronic and Media Discovery

#### 2. Facts to be proven/Elements that need to be met

- a. Products Liability
  - i. Duty - HorsePower had a duty to use ordinary care in manufacturing its products to avoid injury to others and property of others
  - ii. Breach – HorsePower breached its duty by designing a roll bar it knew would not perform adequately
  - iii. Causation – The roll bar failed when Sally’s car rolled over

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<sup>1</sup> Student’s permission was given for this assignment to be used.



- iv. Damages – Due to the failure of the roll bar, Sally suffered serious bodily injury, and the car was totaled
- b. Personal Injury
- i. Duty, Breach, Causation same as above
  - ii. Damages
    - 1. Lacerations to face that required 60 stitches and plastic surgery, concussion, broken bones, partial paralysis, and mental anguish.
    - 2. Hospitalization for over 6 months
    - 3. Large amount of medical expenses
- c. Property Damage
- i. Duty, breach causation and damages same as above
  - ii. Damages
    - 1. Plaintiff purchased Stallion for \$30,000
    - 2. Stallion is now totaled and valueless
- d. Breach of Implied Warranty of Merchantability
- i. HorsePower is a manufacturer
  - ii. HorsePower is a merchant who deals in kinds of the goods sold
  - iii. There was an implied warranty that the car was fit for the ordinary purposes for which it was sold
  - iv. Warranty was breached – the roll bar failed when the car rolled over
  - v. Sally suffered personal and property damages



### 3. Informal Investigation

- a. Attorney will conduct informal investigation to gather as much information as possible to help shape the formal discovery and witness lists.
- b. Photographs - from the time of accident showing: Sally's Car (particularly the roll bar), Sally's injuries.
- c. Records – Records from HorsePower regarding other complaints or suits regarding roll bar, manufacturing records, roll bar design, sales contract between Horsepower and Dealer and Dealer and Sally, the accident report, and Sally's medical records

### 4. Discovery

- a. Requests for Production –
  - i. Including Definition Section
  - ii. Documents identified in interrogatory responses
  - iii. Documents showing persons with knowledge of any fact related to the design, manufacturing, or guarantee of the roll bar
  - iv. Documents regarding the design plans of the roll bar
  - v. Documents showing the research and development process for the roll bar
  - vi. Memos, emails, etc. showing communication between designers and company regarding the roll bar
- b. Subpoenas Duces Tecum



- i. Automotive Manufacturing Association – all studies on roll bars, safety design, and industry standards
    - ii. Third-party designers or manufacturers the company used in designing or manufacturing roll bars – documents regarding the design and manufacturing of the roll bars
  - c. Interrogatories
    - i. Including definition section
    - ii. Contention Interrogatories
      - 1. Seeking facts supporting denials of allegations in the complaint
      - 2. Seeking identification of all persons with knowledge of such facts and all documents related to those facts
    - iii. List all dealers they sale Stallions to and agreements/contracts between them, including the dates of the sales
    - iv. Expert witnesses
      - 1. They may call at trial, including ones they retained to testify on their behalf.
      - 2. Describing the information they have been exposed to
      - 3. Opinions they have formed, including basis for opinions and reports produced by them
      - 4. Providing contact information
    - v. Lay witnesses
      - 1. Contact information



2. Knowledge relevant to the case
  3. Facts they will testify to
- d. Depositions – will be edited based on informal discovery, interrogatory and RFP answers.
- i. Critical expert witnesses
  - ii. Party witnesses
  - iii. Critical lay witness
- e. Requests for Admissions – will be edited based on informal discovery, interrogatory, RFP answers, and depositions.
- i. That they guaranteed the roll bar made the Stallion the safest convertible on the road
  - ii. That they did indeed manufacture the Sally’s Stallion
  - iii. That they did not waive the Implied Warranty of Merchantability
  - iv. That the roll bar failed when the Stallion rolled over
  - v. Other requests for admissions to be determined during the discovery process
- f. Information we will not seek in discovery and why – also to be edited during informal discovery phase
- i. Fatal but correctable weaknesses in opponents case - If it is determined that there are fatal weaknesses in opponents case that could be corrected if they were aware of them, then we would not seek discovery on those issues in order to prevent alerting them of their own weaknesses.



- ii. Fatal and possibly uncorrectable weaknesses in our case – we will be careful to not ask for discovery for something that imply to HorsePower that we do not have what we need to prove all the elements of our case. In that situation, we would seek the information through subpoenas duces tecum and other ways not involving HorsePower directly to make sure our elements are met.
- iii. Specifically what these things are will be determined during the informal investigation and after the complaint and answer have been served.

## 5. Witnesses

### a. Lay Witnesses

- i. Sally – to testify as to the purchase of the car, the warranties/guarantees made to here, the sales contract, the accident, her injuries, damage to the car, and other facts to be determined during discovery.
- ii. Dealer who purchased the Stallion from HorsePower – to testify as to the contract between dealer and HorsePower, warranties/guarantees made, that the implied warranty of merchantability was not waived, contract between Sally and dealer.
- iii. Other Stallion owners who have had complaints regarding the roll bar – to testify as to the failure of the same roll bar type in other accidents.

### b. Expert Witnesses



- i. Metallurgist - to testify to the research and development, design and manufacture, production management and quality assurance of this type of metal and whether it was appropriate to use for a roll bar
  - ii. Automobile Roll Bar Design expert - to testify as to whether the bar was designed correctly and whether company would have known that it would not withstand rollovers
  - iii. Professional who declared the car totaled - to testify to the fact that the car is totaled because the roll bar failed, and to testify to the fact the car is now valueless
- c. Consulting Witnesses
- i. Metallurgist – to assist in determining whether this was a proper metal to use for a roll bar, and whether the design process weakened the metal
  - ii. Auto manufacturing expert - whether the company used the appropriate quality control and production/design techniques.
  - iii. Car Safety Expert – to compare and contrast this accident with other roll bar accidents to help determine whether most roll bars would have withstood this type of accident.

