

**2014 Wisconsin High School  
Mock Trial Tournament Case Materials**

**Alex Cooper vs. Taylor Hamilton et al.**

**PLAINTIFF WITNESSES**

Alex Cooper  
Blake Green  
Ryan Crawley

**DEFENSE WITNESSES**

Taylor Hamilton  
Jeri/Jerry Houseman  
Kirby Latanatto

**STIPULATIONS FOR TRIAL:**

1. The accuracy of the data contained in the Crash Data Retrieval Report is not in dispute.
2. All of the data obtained in the Crash Data Retrieval Report was obtained using proper and lawful procedures.
3. The trial is bifurcated and the amount of damages therefore is not at issue.
4. All of the exhibits are authentic and the authenticity of an exhibit is never at issue. Authentic exhibits are not necessarily admissible at trial
5. All witness affidavits have been properly signed and notarized. A copy of any affidavit which does not bear a signature or is not notarized is to be treated as though it is signed and notarized. This stipulation does not apply to any exhibits attached to those witness affidavits.

6. Harper Stanley currently is a student at Clearwater University studying oceanography. S/he is somewhere in the South Pacific and, due to lack of resources, no party has interviewed, taken the deposition of, or subpoenaed her/him to this trial.
7. Although Clearwater Police Officer Manuel Jacinto responded to the accident, no party will be calling him as a witness and he is not to be considered a missing witness.
8. Each witness at the trial has re-read and approved his or her affidavit the morning before his or her testimony at trial.

#### **DISCLAIMER**

The 2014 mock trial case is a hypothetical case. All names used in the mock trial case are fictitious and were created to be gender-neutral. Any similarity to an actual event or to the name of an actual person is strictly coincidental.

#### **EXHIBITS**

Please note that exhibits, including affidavits, are pre-marked this year. The pre-marking of exhibits is solely a convenience. It is not intended to suggest the order in which exhibits should be used nor is it intended to suggest anything about their admissibility. In addition, the pre-marking of exhibits is not intended to suggest that all exhibits must be or should be used.

## BACKGROUND

On the evening of October 5, 2012, Taylor Hamilton, a high school student, drove his/her mother's Lincoln Town Car with permission. That vehicle struck and injured pedestrian Alex Cooper on Nash Street near Clearwater Regional High School.

Alex now has sued Taylor, his/her parents, and their insurance company. Neither the parents nor any representative of the insurance company were present at the time of the accident. Although they also are defendants, they are included as defendants for purposes of damages and their interests at trial are aligned with Taylor's interests. The trial has been bifurcated and damages are not at issue in the trial.

## STATUTORY BACKGROUND

**Wisconsin Statutes § 343.085(2m)** prohibits a person with a probationary license who is within nine months of the date of issue from operating an automobile if the vehicle is occupied by more than one person other than family members except in very limited circumstances, none of which are applicable to this case.

**Wisconsin Statutes § 346.89(3)(a)** provides that "no person may drive...any motor vehicle while composing or sending an electronic text message or an electronic mail message."

**Wisconsin Statutes § 346.89(4)** provides that "no person who holds a probationary license...may drive... any motor vehicle while using a cellular or other wireless telephone, except to report an emergency."

**Wisconsin Statutes § 345.38** provides, in relevant part, that a no-contest plea "shall not be admissible in evidence as an admission against interest in any action or proceeding arising out of the same occurrence as the charge of violation of a traffic regulation."

## JURY INSTRUCTIONS<sup>1</sup>

### 200 BURDEN OF PROOF: ORDINARY

The burden of proof on any question which can be answered yes or no rests upon the party contending that the answer to a question should be “yes.” This burden is to satisfy you by the greater weight of the credible evidence, to a reasonable certainty, that “yes” should be the answer.

The greater weight of the credible evidence means that the evidence in favor of a “yes” answer has more convincing power than the evidence opposed to it. Credible evidence means evidence which, in light of reason and common sense, is worthy of your belief.

If, after discussing all the evidence, you have to guess what the answer should be, then the party having the burden of proof as to that question has not met the required burden.

### 215 CREDIBILITY OF WITNESSES; WEIGHT OF EVIDENCE

You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony.

In determining the credibility of witnesses and the weight you give to the testimony of witnesses, including expert witnesses, you should consider their interest or lack of interest in the result, their conduct and demeanor on the witness stand, the clarity, or lack of clarity, of their recollections, their ability to observe or to know the matters testified to, their bias or prejudice (if any has been shown), and any possible motives for lying.

There is no magic way for you to evaluate the testimony; instead, you should use your common sense and experience. In everyday life, you determine for yourselves the reliability of things people say to you. You should do the same thing here.

The weight of the evidence does not depend on the number of witnesses on each side. You may find that the testimony of one witness is entitled to greater weight than that of another witness or even of several other witnesses.

### 1005 NEGLIGENCE: DEFINED

A person is negligent when he or she fails to exercise ordinary care. Ordinary care is the care which a reasonable person would use in similar circumstances.

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<sup>1</sup> These jury instructions are based upon, but not identical to, Wisconsin pattern jury instructions.

A person is not using ordinary care and is negligent, if the person, without intending to do harm, does something (or fails to do something) that a reasonable person would recognize as creating any unreasonable risk of injury or damage to a person or property.

In addition to this general definition of negligence, there are other safety statutes enacted by the legislature, a violation of which is negligence as that term is used in the verdict and these instructions.

### **1007 CONTRIBUTORY NEGLIGENCE: DEFINED**

Every person in all situations has a duty to exercise ordinary care for his or her own safety. This does not mean that a person is required at all hazards to avoid injury. A person must, however, exercise ordinary care to take precautions to avoid injury to himself, or herself.

A person must exercise ordinary care to employ his or her senses of sight and hearing so as to become aware of the existence of danger to him or her. A failure to do so is negligence.

It is the duty of every person to exercise ordinary care to recognize and appreciate all dangers that are open and obvious or which should have been recognized and appreciated by a reasonably prudent person under the same or similar circumstances. That the warning of the existence of danger was not seen or was not heard does not free one from negligence. In addition, one who looks and fails to see, or listens and fails to hear, a warning of danger which under like or similar circumstances would have been seen or heard by a reasonably prudent person is as guilty of negligence as one who did not look or listen at all.

However, a person is not bound to see every hazard or danger in his or her path even though they should be plainly observable, nor to remember the existences of every condition of which the person has had knowledge. A person is only required to act as a reasonably prudent person would act under the same or similar circumstances.

### **1284 SPEED: REASONABLE AND PRUDENT: REDUCED SPEED**

A safety statute provides that no person shall drive a vehicle at a speed greater than is reasonable and prudent under existing conditions and having regard for actual and potential hazards. This statute requires that a driver in hazardous circumstances use ordinary care to regulate the vehicle's rate of speed to avoid colliding with any object, person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and using due care.

The statute also provides that a driver must drive at an appropriate reduced speed when passing school children or other pedestrians. Appropriate reduced speed means less than the otherwise lawful speed. An appropriate reduced speed is that speed at which a person of ordinary intelligence and prudence would drive under the same or similar circumstances.

### **1290 SPEED: FIXED LIMITS**

A safety statute relevant to this case provides that no person shall drive a vehicle at a speed in excess of 35 miles per hour; any speed in excess of that limit would be negligent speed regardless of conditions.

It is for you to determine whether Taylor Hamilton's speed was over this limit and, if under, whether it was nevertheless a negligent speed under the conditions and circumstances then present and under the rules of law given to you by these instructions.

### **1055 LOOKOUT**

A driver must use ordinary care to keep a careful lookout ahead and about him or her for the presence or movement of other vehicles, objects, or pedestrians that may be within or approaching the driver's course of travel. In addition, the driver has the duty to use ordinary care to lookout for the conditions of the highway ahead and for traffic signs, markers, obstructions to vision, and other things that might warn of possible danger. The failure to use ordinary care to keep a careful lookout is negligence.

To satisfy this duty of lookout, the driver must use ordinary care to make observations from a point where the driver's observations would be effective to avoid the accident. Additionally, having made the observation, the driver must then exercise reasonable judgment in calculating the position or movement of persons, vehicles, or other objects.

#### **COMMENT...**

The duty of lookout has two aspects: namely a duty of observation and a corollary duty to exercise reasonable judgment in calculating the position and movement of other persons, vehicles and other objects. This dual aspect of the duty of lookout has been collectively referred to as "the requirement of efficient lookout." Gleason v. Gillihan, 32 Wis.2d 50, 55, 145 N.W.2d 90 (1966).

...The operator of an automobile having the right of way on an arterial highway must still maintain a proper lookout. Having the right of way does not relieve one of the duty of watching the road for vehicles on the highway or entering thereon. (Citing Puhl v. Milwaukee Auto Ins. Co., 8 Wis.2d 343, 348, 99 N.W.2d 153 (1959).)

The failure of a driver who does not see or become aware of danger in time to take effective steps to avoid an accident is negligent as to lookout, not management and control. Leckwee v. Gibson, supra, at 291 n.7.

...the duty of lookout extends beyond the confines of the roadway being traveled. See Rehan v. Harvey, 63 Wis.2d 524, 530, 217 N.w.2d 302 (1974).

#### **1056 LOOKOUT: CAMOUFLAGE**

A person who claims to have exercised ordinary care in maintaining a lookout, but nevertheless failed to see an object is not negligent because of failure to see the object if the object is not seen because at least one of the factors of recognition (color, shape, texture, movement, position, or shadow) was not present, causing the object to blend with its background.

You must decide whether the factors of recognition claimed to be absent provide a valid explanation for the party who claims to have exercised ordinary care in maintaining lookout but, nevertheless, failed to see the object.

#### **1095 LOOKOUT: PEDESTRIAN**

When a pedestrian crosses at a place other than a crosswalk, it is the pedestrian's duty to maintain a lookout reasonably necessary to enable the pedestrian to yield the right of way to vehicles.

#### **1105 MANAGEMENT AND CONTROL**

A driver must use ordinary care to keep his or her vehicle under proper management and control so that when danger appears, the driver may stop the vehicle, reduce speed, change course, or take other proper means to avoid injury or damage.

If a driver does not see or become aware of danger in time to take proper means to avoid the accident, the driver is not negligent as to management and control.

#### **1500 CAUSE**

In answering questions on the special verdict form, you must decide whether someone's negligence caused the accident and injuries. These questions do not ask about "*the* cause" but rather "*a* cause" because an accident may have more than one cause. Someone's negligence caused the accident if it was a substantial factor in producing the accident. An accident may be caused by one person's negligence or by the combined negligence of two or more people.

**ALEX COOPER**

648 S. Main Street

Clearwater, WI 55555,

a minor child, by Guardian ad Litem Ellis Bell,

Plaintiff

Case No. 13-CV-144

vs.

**TAYLOR HAMILTON**

2855 E. Crescent Road

Clearwater, WI 55555,

a minor,

Classification: 30101

**BRAD HAMILTON**

2855 E. Crescent Road

Clearwater, WI 55555,

**ANGIE HAMILTON**

2855 E. Crescent Road

Clearwater, WI 55555

and

**GOT YOU COVERED INSURANCE  
COMPANY**

123 South Voyager Street

Clearwater, WI 55555,

Defendants.



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## COMPLAINT

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NOW COMES Plaintiff Alex Cooper, by his/her attorney, Harriet Goodchild, and by his/her Guardian ad Litem, Ellis Bell, and for his/her complaint against Defendants Taylor Hamilton, Brad Hamilton, Angie Hamilton, and Got You Covered Insurance Company alleges as follows:

1. Plaintiff Alex Cooper is a minor residing with his/her parents at 648 S. Main Street, Clearwater, Wisconsin. Ellis Bell was named Guardian Ad Litem of Alex Cooper for purposes of this matter by the Clearwater County Circuit Court on May 30, 2013.
2. Defendant Taylor Hamilton is a minor residing with his/her parents, Brad and Angie Hamilton, at 2855 E. Crescent Road, Clearwater, Wisconsin.
3. Defendant Brad Hamilton is an adult who, upon information and belief, resides at 2855 E. Crescent Road, Clearwater, Wisconsin. Brad Hamilton is the father of Taylor Hamilton and was the sponsor of his motor vehicle operator's license pursuant to Wisconsin Statutes § 343.15(2)(b).
4. Defendant Angie Hamilton is an adult who, upon information and belief, resides at 2855 E. Crescent Road, Clearwater, Wisconsin. Angie Hamilton is the mother of Taylor Hamilton and was the sponsor of his motor vehicle operator's license pursuant to Wisconsin Statutes § 343.15(2)(b).
5. Defendant Got You Covered Insurance Company, is a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business at 123 South Voyager Street, Clearwater, WI. Upon information and belief, at all times material to this action, Got You Covered Insurance Company had in full force and effect a liability insurance policy, under the terms of which it insured Taylor Hamilton for liability imposed on him by law for damages caused by his/her negligent acts and omissions to act. Said policy was issued and/or delivered in the State of Wisconsin. At all times material to this action, said liability policy insured the vehicle driven by Defendant Taylor Hamilton in the incident that form the basis of the instant matter. Got Your Covered Insurance Company is a proper party to this action pursuant to Wisconsin Statuts § 809.04(2).

6. On or about October 5, 2012, at approximately, 6:45 p.m., while exercising due care, plaintiff was crossing Nash Street on foot when s/he was hit by a Lincoln Town Car automobile driven by Defendant Taylor Hamilton.
7. At and before the subject accident, defendant Hamilton was negligently operating his/her automobile including, without limitation, traveling at an excessive rate of speed, failing to keep a proper lookout, inattentively driving, talking and/or texting on a cell phone, and failing to pay attention.
8. Defendant Taylor Hamilton's negligence was a substantial factor and the proximate cause of the subject accident and of the injuries suffered by plaintiff.
9. As a result of Defendant Taylor Hamilton's negligence, plaintiff has suffered and will continue to suffer, great and grievous bodily injury, emotional distress, pain and suffering, medical bills, and future damages.

WHEREFORE, plaintiff Alex Cooper demands judgment in his/her favor, awarding him/her damages for pain and future pain and suffering, future lost wages, past and future medical expenses, emotional distress, attorney's fees, costs and other such relief as this Court may deem just and equitable.

PLAINTIFF DEMANDS A JURY OF 12

Dated this 3rd day of June, 2013.

GOODCHILD AND JACKSON, S.C.  
ATTORNEY FOR PLAINTIFF

By: Harriet Goodchild  
Harriet Goodchild

P.O. ADDRESS:  
11 St. Stephen Way  
Suite L15  
Clearwater, WI 55555  
(555) 123-4567

**ALEX COOPER**

648 S. Main Street  
Clearwater, WI 55555,  
a minor child, by Guardian ad Litem Ellis Bell,  
Plaintiff

Case No. 13-CV-144

vs.

**TAYLOR HAMILTON**

2855 E. Crescent Road  
Clearwater, WI 55555,  
a minor,

**BRAD HAMILTON**

2855 E. Crescent Road  
Clearwater, WI 55555,

**ANGIE HAMILTON**

2855 E. Crescent Road  
Clearwater, WI 55555

and

**GOT YOU COVERED INSURANCE  
COMPANY**

123 South Voyager Street  
Clearwater, WI 55555,  
Defendants.

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## SPECIAL VERDICT

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On the questions submitted, the jury finds as follows:

**Question No. 1:** Was defendant Taylor Hamilton negligent?

**Answer:** \_\_\_\_\_ (*Yes or No*)

If the answer to Question No. 1 is "No," you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for the defendants and against the plaintiff, and you will all return to open court.

If the answer to Question No. 1 is "Yes," you are to answer Question No. 2.

**Question No. 2:** Was any negligence of the defendant Taylor Hamilton a cause of plaintiff's injuries and damages?

**Answer:** \_\_\_\_\_ (*Yes or No*)

If the answer to Question No. 2 is "No," you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for the defendants and against the plaintiff, and you will all return to open court.

If the answer to Question No. 2 is "Yes," you are to answer Question No. 3.

**Question No. 3:** Was plaintiff Alex Cooper negligent?

**Answer:** \_\_\_\_\_ (*Yes or No*)

If the answer to Question No. 3 is "No," go on to question 5. Your foreperson must sign this special verdict, which will be your verdict for the defendants and against the plaintiff, and you will all return to open court.

If the answer to Question No. 3 is "Yes," you are to answer Question No. 4.

**Question No. 4:** Was any negligence of the plaintiff Alex Cooper a cause of plaintiff Alex Cooper's injuries and damages?

**Answer:** \_\_\_\_\_ (*Yes or No*)

**Question No. 5:** Compare the negligence of the following persons and find a percentage for each one. The total of both percentages must equal 100%

Defendant Taylor Hamilton \_\_\_\_\_%

Plaintiff Alex Cooper \_\_\_\_\_%

**TOTAL** **100%**

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Foreperson

Dissenting jurors (if any)

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Because it was nearly dusk, our maroon and black sweatshirts and dark jeans blended into the night and we snuck away, unnoticed, into the woods behind the playing field.

4. A.J. and I took a short cut through the woods. Even though there was a narrow path we both got burs stuck to our clothes. Good thing I had my hood on or I would have gotten burs in my hair for sure. I love wearing a hood. It keeps my head warm. I even practice basketball with my hood on. My coach told me just before the accident that he is amazed my hood does not affect my performance. A.J. stayed back to, well, use the woods as a bear would use the woods.
5. I walked out to the street. Kids cross the street here all the time. Whenever I drive on this street, I always drive slower than the 35 MPH speed limit because with the playing fields there are so many kids around. When I was learning to drive, my mom taught me to say "with kids around, slow you drive, or else a life, you could deprive." Drivers have a responsibility to be extra cautious whenever driving near where kids are. I don't care what the speed limit is.
6. I must have looked both ways before I crossed the street. I always do. From a very early age, my mom drilled into my head "look to and fro, before you go" whenever I cross a street. I say that every time I cross a street. I never saw a car coming. If I saw a car coming, I wouldn't have crossed the street. D'uh. That's a no-brainer. The car must have been driving really fast for me not to see it. There were no street lights around, and because it was starting to get dark, drivers must have their headlights on. I was clearly visible in the remaining daylight.
7. I started jogging across the street then BAM! That's all I remember. I woke up in the hospital on Halloween night. I was just drifting in and out of sleep and kept seeing a nurse dressed like a cat, with make-up and a tail and everything. I looked down at my body and I was bandaged like a mummy. My right leg was cut off above my knee. My chest felt heavy and I couldn't lift my head.
8. When I woke up in the hospital, the cat nurse was talking to me. She told me I'd been in a coma for over three weeks, cracked two ribs, punctured my lung, and had swelling in my brain. She also helped me with the horrible realization that I had lost my leg. She said I almost died. She told me a teenager who was texting and driving ran over me and pinned my leg under the car.

Dated at Clearwater, Wisconsin, May 3, 2013.

Alex Cooper  
Alex Cooper

Subscribed and sworn before me on  
This 3rd day of May, 2013

Bo Jackson  
My Commission is permanent





5. After my fight with my brothers and parents, I hadn't had dinner yet, and didn't care to sit down with my family after the situation we just had, so I asked if Taylor wanted to grab a burger and hang out on the edge of Clearwater at Pizza and Ping Pong. "P Cubed" is the place to be during the football games. We like to hang out there when it's not crowded, grab the big booth in the back corner and play shuffleboard and pinball. I don't think they've actually had ping pong there since my parents were in high school, ages ago. Taylor and I used to go there all the time.
6. I guess Taylor and I were friends at the time, but I don't hang out with him/her anymore. We were really tight and have been since we were kids. But then Taylor was stupid enough to get caught when we were helping some seniors pull off their prank. We would've been the only ones to pull off toilet papering the school and spray painting the Clearwater mascot, a stupid evergreen, in a compromising position on the baseball dugout the night before the big home game.
7. I heard Taylor cried like a baby and told the cops it was all my idea and then ratted out me and a bunch of my friends. No one at Clearwater High wants to be his/her friend. Thanks to Taylor, I got expelled from school and banned from prom. And I was the only sophomore invited to go this year! On top of that, now I have to go to Bailey Alternative High School and they don't even have a soccer program! I was a shoe-in for a soccer scholarship to Clearwater University and now I don't know what I am going to do. Taylor has completely ruined my life! I hate him/her! I mean, can you blame me?
8. Anyway, that night Taylor picked me up after 6:30, s/he was running late (as usual) and my friends were waiting. While I was waiting, I heard from a friend of mine, Harper, that s/he also needed a ride to P-Cubed. I was surprised that Harper was home from Clearwater University and even more surprised when she asked to hang out. When Taylor finally showed up, I asked if we could pick Harper up on the way. Taylor was really only supposed to have one other person in the car, but we couldn't go to P-Cubed without Harper! Walking in with a college kid would have been so cool!
9. We picked up Harper and started speeding off toward P-Cubed because we were late. I don't know exactly how fast Taylor was going because I didn't look at the speedometer, but it seemed pretty fast for the road we were on. Taylor was whining the whole way about this argument s/he had gotten into earlier with this loser s/he was seeing at the time.

I told Taylor that s/he should slow down because s/he was going pretty fast and missing out on the first few shuffleboard games was not a big deal.

10. Taylor's phone kept buzzing with new messages along the way, and s/he begged me to read them. I couldn't put up with any more of his/her begging and whining so I finally grabbed the phone from the middle console and read the history of their conversation and the new messages aloud.

11. Taylor got really upset and asked me to send a text back. Harper and I were both, like, "No way! Do not send that!" Taylor got even more upset and grabbed the phone from my hands to send it him/herself.

12. Taylor just finished typing a response and started to put the phone down when all of a sudden Harper and I saw someone in the road. Harper and I shouted to Taylor "look out!" Taylor looked up just in time to see the person, but it was too late. I felt him/her hit the brakes just before we collided with Alex.

13. It was awful, I saw Alex's leg was mangled under the car and s/he was covered in blood. S/he wasn't responsive and I was worried s/he was dead. Alex was the star basketball player in school. S/he was counting on a scholarship to go to college to play ball. Our basketball team is one of the few sports teams we're proud of at Clearwater High. Our team is going to suck next year without him/her.

14. I know I said in my deposition with all the lawyers that I sent the response for Taylor, but that was because I didn't want to get him/her in any more trouble. But after s/he narked on me after the prank incident, I am not going to lie for him/her anymore! He or she shouldn't have been speeding and texting when it was dark like it was – now Taylor has to face his/her consequences for hitting Alex and causing those awful injuries.

Dated at Clearwater, Wisconsin on the 23rd day of May, 2013

Blake Green

Blake Green

Subscribed and sworn to before me

On this 23rd day of May, 2013.

BO JACKSON

State of Wisconsin, County of Clearwater

My commission is permanent.

ALEX COOPER,

Plaintiff,

v.

Case No. 13-CV-144

TAYLOR HAMILTON et al.,  
Defendant.

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**Partial Transcript for the Deposition of BLAKE GREEN**

Friday, January 25, 2013 8:31 a.m.

Reported by: Jane Watson, Certified Court Reporter

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APPEARANCES:

BO JACKSON  
GOODCHILD & JACKSON S.C.  
Attorney for Plaintiff

DAKOTA L. SLEZAK  
SLEZAK LAW OFFICE S.C.  
Attorney for Defendants

**EXHIBIT A**

EXAMINATION  
By Attorney Bo Jackson

15. Q Taylor picked you up from your home?  
16. A Yeah, then we went and picked up Harper Johnson.  
17. Q Was it dark?  
18. A Yeah, kind of. It was around dusk.  
19. Q After Taylor picked up Harper, he/she drove toward Pizza and Ping Pong,  
20. right?  
21. A Yes.  
22. Q Taylor took Nash Street, correct?  
23. A Yes.  
24. Q Do you know what the speed limit is on Nash Street where the collision  
25. occurred?  
26. A Uh, yeah, it's 35 miles per hour there.  
27. Q Was Taylor driving faster than 35 miles per hour on Nash Street?  
28. A I don't know, I mean, I never looked at the speedometer.  
29. Q Did it seem to be faster than 35 miles per hour?  
30. A I don't know.  
31. Q During the drive, did Taylor have his/her cell phone out?  
32. A Yes, it was sitting on the console between Taylor and me in the front.  
33. Q At any point during the drive did Taylor pick up the phone from the middle  
34. console?  
35. A No.  
36. Q Taylor didn't pick it up to make a call?  
37. A No.  
38. Q Send any text messages?  
39. A No.  
40. Q But there was a text message sent from Taylor's phone right before the collision,  
41. how do you explain that?  
42. A Well Taylor's phone kept whooshing during the drive with all these text  
43. messages coming in from Avery Smith. I guess Taylor and Avery got into an  
44. argument earlier that night. Taylor was telling us about it during the drive.  
45. He/she wanted me to read him/her Avery's texts. So I picked up the phone and  
46. read them to Taylor. Then he/she asked that I send a response so I did, and that  
47. was the message that went out right before we hit Alex.  
48. Q So that was the only time the phone left the console during the drive?  
49. A Yes.  
50. Q And you were the only person to use the phone during the drive?  
51. A Yeah.

1 STATE OF WISCONSIN)  
2 )  
3 CLEARWATER COUNTY )

4  
5  
6 I, Jane Watson, certify that I, a certified court reporter; that as such court  
7 reporter, I made full and correct stenographic notes of the foregoing  
proceedings; that the

8 same was later reduced to typewritten form; and that the foregoing is a  
full and correct

9 transcript of my stenographic notes so taken.

10

11 Dated and signed at Clearwater, Wisconsin this 3<sup>rd</sup> day of January, 2013

11

12

Jane Watson

13

Jane Watson

ALEX COOPER,  
Plaintiff,

13-CV- 144

vs.  
TAYLOR HAMILTON et al.,  
Defendants.

**AFFIDAVIT OF RYAN CRAWLEY, MSME, PE**

STATE OF WISCONSIN            )  
  )        ss.  
COUNTY OF CLEARWATER        )

Ryan Crawley, being duly sworn, deposes and says:

1. My name is Ryan Crawley. I am a Registered Wisconsin Professional Engineer. My extensive credentials in the fields of mechanical and automotive engineering are set forth in greater detail in my attached *curriculum vitae*. For my entire career as an engineer, I have specialized in motor vehicle accident investigation and reconstruction.
2. I was contacted by counsel for Alex Cooper to provide my expert consulting services in this matter. Please see my attached preliminary report, which is incorporated and sworn to by reference and sets forth the matters I was asked to investigate and my opinions on those matters. The attached report also lists the materials I reviewed and relied upon in forming my opinions. These materials are regularly and reasonably relied upon by experts in my field in forming opinions on matters such as those I investigated in this case.
3. I was not asked to prepare any additional reports or to review any additional information after I drafted my preliminary report in this matter.
4. The opinions set forth in my preliminary report have not changed since the time of writing this affidavit. I was not asked to render any opinions with regard to the reasonableness of Alex Cooper’s actions in this matter.
5. I am being compensated for the time I have devoted to this matter, as would any professional. My hourly rate is \$300 per hour. Any trial testimony is billed at a flat rate of \$1,000 per day. I am also reimbursed by Plaintiffs for all travel expenses.



6. I have worked with Plaintiffs' counsel on other cases in the past. When Plaintiffs' counsel contacts me to review a case, they tell me that they know they can rely on me. In terms of being retained by Plaintiffs versus Defendant insurance companies or their lawyers, the split is 60/40.
7. I know Kirby Latanatto. I have only ever encountered him/her when he/she was an expert on the defense side. I think it is very important to approach an investigation without a predetermined conclusion. This ensures the investigation will be thorough and will take into consideration all of the important facts and data.

Dated: May 9, 2013.

RYAN CRAWLEY  
Ryan Crawley

Subscribed and sworn before me on  
this 9th day of May, 2013

BO JACKSON  
My Commission is permanent

**Ryan Crawley, MSME, PE**  
Crawley Engineering, Inc.  
Clearwater, Wisconsin

December 12, 2012

Re: Alex Cooper vs. Taylor Hamilton  
My File No.: 34621

To Whom it May Concern:

I write this letter with regard to my investigation and analysis to date in the above-captioned motor vehicle/pedestrian collision which occurred on October 5, 2012. The collision involved a 2001 Lincoln Town Car and a pedestrian. The collision took place at dusk in Clearwater, Wisconsin. Per the request of counsel for the plaintiff, this letter serves to memorialize my preliminary opinions in this matter.

The materials I have reviewed or considered to date in the preparation of this report include:

- The Wisconsin Motor Vehicle Accident Report as completed by the Clearwater Police Department;
- The Summary Crash Data Retrieval report: a listing of the data retrieved from the Sensing and Diagnostic Module ("black box") of the involved Town Car;
- Observations made and measurements taken when I inspected the scene of the collision at dusk on November 16, 2012;
- The witness statements of Alex Cooper, Taylor Hamilton, Blake Green and Jerri/Jerry Houseman.

The materials I reviewed and the methods I used to reach my conclusions in this case are regularly and reasonably relied upon by experts in the field of accident reconstruction.

I began my investigation of this accident after being contacted by counsel for the plaintiff on November 5, 2012. To date, my assignment has been to review the above listed materials and to determine the following: 1) the speed, actions and course of the vehicle driven by Taylor Hamilton in the moments leading up to the collision; 2) the ability for Taylor Hamilton to see Alex Cooper before the collision; and 3) the ability for Taylor Hamilton to take evasive action to avoid a collision after Alex Cooper entered the roadway.

**EXHIBIT B**

Based upon my review of the above listed materials, the accident took place on Nash Street as it crosses the Clearwater High School woods in Clearwater, Wisconsin. Taylor Hamilton was driving a 2001 Lincoln Town Car in an eastbound direction at approximately 6:45 p.m. on October 5, 2012 with two teenage passengers. Sunset was at 6:30 p.m. and the moon did not rise until 9:47 p.m. The posted speed limit was 35 miles per hour and the road was a hard-surface, two lane road. On Hamilton's right was a farmhouse with outdoor and garage lights on. On Hamilton's left was a wooded area with a worn footpath leading from the street to the Clearwater High School football field. This portion of Nash Street had no streetlights.

At the same time, Alex Cooper was walking on the path through the same wooded area and was preparing to cross Nash Street from the north to the south. Alex Cooper was wearing a maroon and black sweatshirt and blue jeans. He/she looked both ways and began to walk out onto Nash Street. He/she walked across the westbound lane of traffic without incident. He/she was then struck by the vehicle driven by Taylor Hamilton as he/she continued across the eastbound lane of traffic. There are questions about whether Taylor Hamilton was distracted by friends in the vehicle or by texting while driving at the time of the collision.

Based upon the Summary Crash Data Retrieval Report which captured certain data regarding the Town Car in the five seconds leading up to impact, Hamilton was traveling at a speed of 37 miles per hour in the five seconds leading up to the collision. Cruise control was disengaged, and Hamilton's speed decreased to 35 miles per hour at two seconds before the collision. Hamilton's brakes were engaged as the vehicle slowed to 32 miles per hour in the second before the collision. At the time Hamilton struck Cooper, the vehicle was slowed to 27 miles per hour.

I assumed the following from sources generally accepted by experts in my field:

- The vehicle driven by Taylor Hamilton had a standard headlight alignment of 160 feet, meaning the center of the headlight's beam would hit the road approximately 160 feet ahead of the vehicle on a flat surface.
- If a vehicle is traveling 35 miles per hour, or 51.3 feet per second, its braking distance is 59 feet.
- I use a perception/reaction time figure of 1.1 seconds. Other expert witnesses use other figures for perception/reaction time, but in my experience, I have found that the latest research and testing supports use of the 1.1 second figure rather than the outdated, longer times used by some other expert witnesses.

With this information, I formed the following opinions, to a reasonable degree of professional certainty:

- 1) Taylor Hamilton failed to exercise ordinary care when he/she drove along a roadway near his/her school during a home football game, at a time when he/she should have reasonably expected pedestrian traffic to be present.

Taylor Hamilton should have heightened his/her lookout and awareness while driving at this time, on this road, but instead was distracted.

- 2) Taylor Hamilton either engaged in improper lookout and failed to react reasonably upon seeing Alex Cooper crossing the street, or failed to engage in proper lookout.
  - a. The black box data indicate that cruise control was disengaged for two seconds before the brakes were even applied. If Taylor Hamilton switched off the cruise control because he/she saw Alex Cooper, he/she should have braked immediately at this time and undoubtedly would have avoided the collision. Instead, the delay between turning off cruise control and applying the brakes indicates that Taylor Hamilton failed to react reasonably upon seeing Alex Cooper crossing the street.
  - b. In the alternative, Taylor Hamilton should have seen Alex Cooper crossing the street and failed to do so. If Taylor Hamilton had been engaged in proper lookout, it is more likely than not that he/she would have seen that his/her headlights illuminated Alex Cooper as he/she crossed the first half of the street. The area of the collision was illuminated by lights from the football game on the other side of the woods and by light from the home and garage of Jerri/Jerry Houseman. The sun was below the horizon and the sky still provided a small amount of light. Alex Cooper would have been further illuminated by Taylor Hamilton's headlights as he/she crossed the westbound half of the street.
  
- 3) If Taylor Hamilton had seen Alex Cooper when he/she was first illuminated by headlights, and if Taylor Hamilton had exercised ordinary care when driving, Taylor Hamilton would have had time and ability to avoid the collision. Taylor Hamilton should have seen Alex Cooper, at the latest, when he/she was illuminated by headlights approximately 160 feet before the collision. Braking distance of 59 feet plus traveling 56.43 feet during the perception/reaction period would have Taylor Hamilton stopped at 115.43 feet - 44.57 feet before the collision. This indicates that, more likely than not, if Taylor Hamilton had looked, he/she would have seen Alex Cooper with enough time to brake or even swerve to avoid the collision. The level of distraction present in the vehicle adds to the strength of this opinion.

Please let me know if any questions or concerns arise, or if I can be of any further assistance.

Sincerely,

RYAN CRAWLEY  
Ryan Crawley

**Ryan Crawley, MSME, PE**  
**Curriculum Vitae**

**Education**

**Purdue University**  
Indiana

West Lafayette,

Bachelor of Science – Mechanical Engineering, graduated May 1991 *cum laude*

**University of Wisconsin – Madison**

Madison, Wisconsin

Master of Science – Mechanical Engineering, graduated May 2004 *magna cum laude*

**Professional Experience**

**Crawley Engineering, Inc.**

Clearwater,

Wisconsin

President, 2004 - Present

- Engineer serving as a consultant and expert witness in matters involving motor vehicle accident investigation and reconstruction

**Expert Engineering Consultants, Inc.**

Madison, Wisconsin

Engineer, 1991 – 2004

- Engineer serving as a consultant and expert witness in matters involving motor vehicle accident investigation and reconstruction

**Areas of Expertise**

- Motor vehicle accident investigation and reconstruction
- Motor vehicle and machine testing and defect analysis

**Memberships**

- Registered Wisconsin Professional Engineer, 1991-2005, 2007-present
- USA Society of Mechanical Engineers: Board of Governors since 2012
- Automotive Engineers Association: Member
- Alliance of Elite Dungeon Masters

**Professional Development**

- Regular attendee and presenter at the Automotive Engineers Association's conferences, focusing on accident investigation and reconstruction practices
- Conference Organizer for Automotive Engineers Association's 1997 Conference on Conspicuity

EXHIBIT C

- Speaker at Continuing Legal Education seminars for Plaintiff and Defense attorneys on accident investigation and reconstruction, and use of the “black box” in modern reconstruction
- Consultant to various insurance companies and speaker at claims workshops

**Hobbies and Special Interests**

- Dungeons and Dragons
- Intramural Ultimate Frisbee
- Fluent in Spanish, Quenya (Elvish) and Dothraki

**SUMMARY CRASH DATA RETRIEVAL REPORT**  
**Clearwater Police Department**

Data Download/Recovery Source: 2001 Lincoln Town Car, downloaded by Clearwater Police Department from the Sensing Module using standard procedure by connecting the appropriate cable to the Module, which was located under the front driver's seat. The data were recovered on October 6, 2012.

Information Recovered: The long-form report generated by the Sensing Module was 15 pages long. The Summary Crash Data Retrieval Report is a summary document prepared by the Clearwater Police Department in the regular course of the business of the Clearwater Police Department in investigating collisions. Pre-crash data were obtained for approximately 5 seconds prior to the collision. This Summary Report includes all information available from the Sensing Module regarding speed, braking, cruise control and seat belt usage.

<b>Time Prior to Collision</b>	<b>Speed</b>	<b>Brakes Engaged?</b>	<b>Cruise Control Engaged?</b>	<b>Driver Seat Belt?</b>	<b>Passenger Seat Belt?</b>
-5.0 sec	37 mph	No	Yes	Yes	Yes
-4.0 sec	36 mph	No	No	Yes	No
-3.0 sec	36 mph	No	No	Yes	No
-2.0 sec	35 mph	No	No	Yes	No
-1.0 sec	32 mph	Yes	No	Yes	No
Collision	27 mph	Yes	No	Yes	No

**EXHIBIT D**





5. I was originally supposed to meet up with Avery Smith that night. Avery and I had been dating for a month or so at that point. We were supposed to go get dinner and then go see a movie together. We had been talking about it all week. Anyway, that afternoon Avery texted me and said that people were going to the football game and asked if I wanted to do that instead. I could care less about football, and honestly felt hurt that Avery did not want to hang out just the two of us and was happy to just blow off our plans. I texted Avery to go ahead and go to the football game, but to count me out. Avery texted me back saying, "whatever." So when Blake called me a few minutes later, I was happy to have something else to do to take my mind off things.
6. When Blake and I were in the car driving towards P-Cubed, Blake asked if we could give Blake's friend Harper a ride. I knew I was only supposed to have one other person in the car, but no one else had a license and Harper's house was right on the way. Besides, Harper is in college and I thought hanging out with a college kid would be cool.
7. We picked up Harper at like 6:45. We were driving on that two-lane road at the edge of the woods behind our high school. Even with the music on, I could hear the roars coming from the football stadium.
8. I know I was driving the speed limit. No way I was getting pulled over with two people in the car on a probationary license. I was careful because of that. I specifically remember looking down at the dashboard a few seconds before the accident and seeing that I was going exactly 35 miles per hour.
9. As I started driving near the high school, my phone—which I had sitting in the center cup-holder behind my soda—buzzed. I knew from the sound it was a text message. I told Blake to look at what it said. I wanted to pay attention to the road since it was getting kind of dark.
10. Blake told me that the text was from Avery, and that it said "hey, wanna come pick me up after the game is over?" That got me really mad. Like I said, I don't mind driving people in general, but this was different. Avery and I were supposed to hang out together, but Avery ditched me. And now Avery wanted me to come pick him/her up because s/he didn't have a ride?
11. I told Blake to text Avery back and say, "I'm busy, looks like you're on your own." I heard my phone make the "woop" sound it makes when a text goes out after s/he wrote it.

12. Less than a second after I heard that sound, and just as I was coming up to the top of the hill by the woods, all of a sudden I see a person run out from the woods on the left side of the road into the middle of the street in front of me.
13. I tried slamming on the brakes, but it wasn't enough. I hit the person with my car. I remember Blake screamed: "Wow that person came out of nowhere!" I grabbed my phone and got out of the car and went to the front of the car to help. I realized at that point that the person I hit was Alex Cooper from my school. I felt so terrible. I could tell that Alex was hurt badly and I didn't know what to do. I called 911. It felt like forever before the ambulance and police got there. Alex was just lying there. I kept thinking "this can't be happening," and thought about how mad my parents would be.
14. Alex was taken to the hospital, and a police officer stayed and asked questions. I swear I did not mean to hurt Alex. There was nothing I could do to avoid it. Things have been really tough for me since this all happened. Even though I was paying attention, I got cited for inattentive driving! I pled no contest, because I just wanted this all to be over.
15. Since this accident happened, Blake and I have had what you might call a falling out. Really, it was more like I was trying to be nice by hanging out with Blake and Blake was continuously doing stupid stuff. Of course, Blake eventually got caught, and I was not about to take the fall for something Blake did! One night, we were hanging out with some other kids from the school, and Blake suggested that we should go to the baseball field. I wasn't sure what we were going to do there, but when we got up by school, out of nowhere Blake takes toilet paper and spray cans out of his/her backpack. I asked Blake: "What are you doing?" Before I knew it, Blake was throwing toilet paper all over. Blake also spray painted on the side of the dugout a picture of our school's mascot doing something inappropriate. We are the Clearwater High Evergreens, and our mascot is a smiley-faced tree. Needless to say, I was freaked out when I saw what Blake had done and had no idea what to do. And when a cop showed up all of a sudden and asked me who did it, what choice did I have other than to be honest? I shouldn't be punished for Blake's stupid behavior. Blake has lied to everyone about what happened that night, and really seems to be happy to makeup whatever lies about me s/he wants. But the truth is Blake brought all of that stuff upon himself/herself. The only mistake I made that night on the baseball field was choosing to hang out with Blake.

Dated this 20TH day of May, 2013 at Clearwater, Wisconsin.

**Taylor Hamilton**  
Taylor Hamilton

Subscribed and sworn before me  
on this 20th day of May 2013.

Dakota Slezak  
Notary Public, Clearwater County Wisconsin  
My Commission: is permanent

ALEX COOPER,

Plaintiff,

Case No. 13-CV-144

v.

TAYLOR HAMILTON et al.,  
Defendants.

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**AFFIDAVIT OF JERRY/JERRI HOUSEMAN**

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STATE OF WISCONSIN :  
 : SS  
COUNTY OF CLEARWATER :

Jerry/Jerri Houseman, having been duly sworn, deposes and says:

1. My name is Jerry/Jerri Houseman. I reside at 702 Nash Street in Clearwater, Wisconsin. I have lived in this house for 50 years and I know the area really well.
2. My house is kind of secluded. I live on 15 acres and my land is surrounded by woods. Thank goodness, because the local kids hang out in a place through the woods behind my place. I think they call it the P Cubed.
3. October 5, 2012, was a Friday and there was a football game at Clearwater Regional High School. I was out in my garage having a few beverages that night. I always like to hang out in my garage after football games because there is lots of activity on my street because of that teenage hangout. But I don't mind, I'm kind of a people watcher.
4. Even though I'm a people watcher, I don't like those kids on my property. I make sure to watch for any kids trying to cut through my garden. My garden is my pride, even after the harvest season I make sure to keep the soil in tip-top shape.
5. Also, sometimes those kids try to park on my grass. And, I get that kids want to have fun, but they also need to learn to respect other people's property.
6. In the past I didn't have to keep a watch so early, usually the games don't end until well after dark. But lately, they can't keep the seats filled. The Clearwater

football team is horrible this year. Fighting Evergreens. Yeah, they fight just like evergreens. They just stand there. Sometimes I think that politically correct name change took all the fight out of them. I don't think they have to worry about making it to the state championship.

7. Nash Street is a pretty busy street and we get a lot of foot and vehicle traffic after football games. And all the high schoolers know that it is important to look both ways on my road because of the traffic.
8. Now, it was about dusk when I saw everything happen. A kid in a dark hoodie, maybe black or dark maroon, was about to cross the street. That kid didn't even seem to look both ways before they started walking out into the street. Now, I can't be sure but I think they even had headphones on or something, I could see them looking down - maybe at some fancy electronic device.
9. I didn't have my glasses on, but I could tell right away that the vehicle that hit the kid was a Lincoln Town Car. I don't wear my glasses all the time, I'm not even sure if the doctor was correct to say I needed glasses, I can see just fine.
10. I live on a pretty busy street and since there are no streetlights, generally pedestrians take a little extra caution when crossing the street. But the kid that was hit by the car didn't seem to pay any attention to the car that was coming. He/she seemed to dash right out in front of the car.
11. As soon as I saw what happened I ran out to help. The driver was already getting out of the car when I got there to help the kid who was hit. As soon as I got there I heard the driver say, "They ran out right out of nowhere. I tried to stop."
12. I also saw that the driver was immediately on the phone calling 911, so I knew help was on the way.
13. Back in 1989 I had two convictions for Operating While Intoxicated. But I learned my lesson. Now I stick to being responsible when I have any drinks. I never take the "show" on the road, so to speak.

Dated this 23rd day of May, 2013.

Jerry/Jerri Houseman  
Jerry/Jerri Houseman

SUBSCRIBED AND SWORN to before me  
this 23rd day of May, 2013.

Dakota Slezak  
Notary Public/State of Wisconsin  
My commission expires: is permanent

## **CURRICULUM VITAE OF KIRBY LATANATTO**

### **EDUCATION**

Lake Superior College, Duluth, MN, Associate Applied Science, Auto Service Technology, 1992

Dr. Xavier's On-line College, Certificate in Applied Mutantology, 1997

W.J. Kovacs School of Social Work, Rorschach Technician Training, 1999

St. Olafson Community College, Lake Wobegon, MN, Associate Degree, Criminal Justice, 2001

Clearwater Police Academy, 2002

WI State Patrol Accident Investigation, 2004

WI State Accident Reconstruction Course, 2004-2007

Dee's Safety School, Certification, 2008

### **PROFESSIONAL EXPERIENCE**

Runaas Engineering Group, 2012 to present

Clearwater Police Department, 2002-2012

- Patrol Officer, 2002-2007
- Detective, 2007-2012

Rochester, MN Police Dept., Dispatcher, 2001-02

Moore Clinic for the Criminally Insane, Technician, 1999-2000

Research Assistant to Dr. Stan Kirby, 1997-1998

George's Automotive, Technician, 1992-97

### **PROFESSIONAL ASSOCIATIONS**

Certified Safety Specialist, C.S.P., 2008

Certified Accident Reconstructionist, 2007

Wisconsin Professional Police Association,

- Member, 2002 to present
- Accident Investigation Committee, 2006-2012; Chair, 2011-12

Society for Extraterrestrial Investigations

### **AREAS OF EXPERTISE**

- Accident Investigations
- Accident Reconstruction
- Intoximeter Use
- Auto Mechanics
- Effect of Mutations on Human Behavior

## **EXHIBIT E**

## **PUBLICATIONS**

"Wisconsin's Drunk Driving Problem," Op Ed, Clearwater Gazette, May 10, 2012

"Use of Skid Marks in Accident Reconstruction," State Patrol Quarterly, June 2011

"Is Anyone Really Out There," Society for Extraterrestrial Investigations Monthly Newsletter, March 2010

"Reliability of Automotive Computer Data Modules," Scientific American, August, 2009

"How I Got a Negligent Driver Off the Street (and made detective)," Police Gazette, April 1, 2007

"The Use of Gamma Rays in Human Adaptations," National Mutation Journal, November, 1997





frequently work for defense attorneys, my reports are objective – just like when I was a police officer. In fact, in many cases I do not do a report because I conclude that the defendant driver is at fault and the insurance company usually tries to quickly settle the case. My hourly rate is \$250 per hour. Trial or deposition testimony is a minimum of four hours.

3. I read the affidavits of Alex Cooper, Blake Green, Taylor Hamilton, Jerry/Jerri Houseman, and Ryan Crawley; viewed the accident scene; read the police reports; viewed photographs; and took my own measurements.
4. Based on the skid marks, Taylor Hamilton was travelling approximately 35-37 mph right before the accident. This was confirmed by the data download from the Sensing Module – most people don't even know that modern cars have such computer equipment. The posted speed limit is 35 mph. As the weather was clear, the defendant's speed was reasonable.
5. I examined defendant's vehicle and everything appeared in proper working order, including the headlights. The accident did not significantly alter the headlight adjustment and from my measurements, the headlights were properly adjusted prior to the accident. Based on standard adjustment and measurement, the defendant's headlights would illuminate an object within 160 feet. At 35 mph, the defendant would have covered the distance in 3.12 seconds.
6. In order to avoid an object, the driver must first perceive it, recognize the danger, apply the brakes, and then bring the vehicle to a stop. With a pedestrian coming across a rural road where there is no crosswalk or intersection, the recognition

time is even longer. The driver does not anticipate someone running out into the road. Nor is the driver's perception usually off to the side (peripheral vision). Instead it is straight ahead for dangers immediately in front. This is why so many deer are hit by drivers when the deer suddenly leap out in front of the car. It is far easier for a pedestrian to see a car coming and stop, than it is for a car to see a pedestrian and stop.

7. In the incident in question, Alex Cooper not only was at best in Taylor Hamilton's peripheral vision, but he/she was a lane width away when he/she started out into the roadway. Thus, Alex Cooper had to come across an entire lane, unexpectedly to Taylor Hamilton before Taylor Hamilton even perceived him/her. Then Taylor Hamilton had to register that Alex Cooper in the roadway was a potential hazard. All of this takes time. Normal perception-reaction time is about 1.5 seconds and this is for good weather during daylight conditions. See Green, M., "'How long does it take to stop?' Analysis of brake reaction times," *Transportation Human Factors*, **2**, 195-216 (2000). Plaintiff's expert Crawley's claim that it is only 1.1 for normal perception-reaction time is misplaced, especially since the accident happened at dusk and involved a teenage driver. The time depends on the conditions and the person – usually it's longer with young and the very old.
8. Reaction time also is longer depending on one's vision. For instance, Wisconsin like most states, does not require perfect vision. 20/40 in each eye with 70 degree field of vision is all that is required without corrective lenses for non-

commercial drivers. Thus, someone with 20/20 (or better) may perceive a danger sooner than someone with 20/40, but it is still legal and reasonable for the person with 20/40 to drive.

9. The crash data download is consistent with Taylor Hamilton's perception-reaction time being approximately 1.5 seconds. At three seconds before the accident, Hamilton is traveling at 36 mph and that decreases to 35 mph a second later, implying that Hamilton's foot has come off the accelerator some time in that period and Hamilton then applies the brakes at one second. Thus, sometime between the three second mark and the one second mark, Hamilton sees the plaintiff, removes his/her foot from the accelerator and starts to brake. Note, the cruise control reading seems to indicate some possible error with the data sensor. First, it would be very unusual to have cruise set at 35 mph. Second, it makes little sense that the cruise came off without the brakes being applied. I think I have heard or saw a bulletin somewhere that 2001 Lincoln's had cruise control issues. Plaintiff's expert's conclusion that Hamilton disengaged the cruise control upon seeing the plaintiff is nonsensical, speculative, and not based on any evidence. The odd reading that the passenger disengaged his/her seat belt at 4.0 seconds before the incident is further proof that something was amiss with the data module. Why would the passenger disengage the safety belt if he/she believed that there was someone in the road as claimed in her/his affidavit?
10. From the witness statements, photographs, and measurements, it would have been impossible for the defendant to avoid hitting the plaintiff. In 1.5 seconds of

perception-reaction time, defendant's car would have covered more than 75 feet. Thus, from first seeing the plaintiff, a normal and reasonable driver would have travelled 75 feet before even beginning to apply his/her brakes. The driver then needs to apply the brakes. Even slamming the brakes on will not lead to an immediate stop, especially for as large a car as a 2001 Lincoln Town Car – what a boat. Average stopping distance at 35 mph is somewhere around 60 feet. Thus, normal stopping distance in the best circumstances is around 135 feet at 35 mph from the time that the driver perceives and recognizes the need to stop. From my experience as a police officer and accident reconstructionist, drivers do not disengage the cruise control manually upon seeing a pedestrian or other possible danger. Instead, they most likely would engage the brakes, which then would have registered on the Sensing Module, but it did not do so.

11. Based on the above and the record in this case, it is my opinion to a reasonable degree of engineering certainty that Taylor Hamilton was driving reasonably at the time of the accident and was not negligent in striking Alex Cooper.

FURTHER AFFIANT SAYETH NOT

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Kirby Latanatto

Subscribed and sworn to before me  
this \_\_\_\_\_ day of May, 2013

Notary Public, Clearwater County, WI  
My Commission is permanent  
or expires: \_\_\_\_\_