SUPPLEMENT TO CASE MATERIALS (April 13, 2024 update)

In re: QuikPhone SAC I Shareholder Derivative Litigation

The deadline for submitting questions is April 24, 2024. The final posting for the competition will be no later than April 26, 2024. Case supplements will be released at or before Noon ET on each Friday (i.e., April 12, April 19, with a final release April 26) before the case becomes final. The final version of the case will be available at or before 5pm ET on April 29.

Questions must be sent via email. Please include return contact information in case we need to clarify an issue. **No questions will be considered unless submitted under this procedure**.

Questions E-mail: dehsmocktrial@gmail.com and daniel.attaway@wbd-us.com

THIS IS THE SECOND SUPPLEMENT TO THE CASE MATERIALS—THE FINAL SUPPLEMENT BECOMES AN OFFICIAL MEMO THAT MAY BE USED IN THE COMPETITION. THE FINAL SUPPLEMENT MAY BE USED AS PROVIDED BELOW:

Supplemental Materials – Evidentiary Value:

> The supplemental clarifications may be used in all the same ways (including for impeachment and as testimony) that the main body of the case materials are used. Answers clarifying a witness statement are to be treated as follows: Where necessary, information will be attributed to a specific witness in which case the clarifying information becomes part of that witness' statement. If the clarifying information is not attributed to a single witness, assume that all witnesses have this knowledge. The practical implication of this is that if a witness is challenged as to his or her knowledge reflected in the statement, he or she may refer to these supplemental clarifications to show knowledge.

NOTE TO THE SUPPLEMENT

Questions have been divided into "Case Clarifications" and "Rule and Evidentiary Interpretations." Later supplements include answers from all previous supplements.

Some case clarification questions have been answered with a general response: ***"The case materials provide all of the information available to answer this question."*** That response sometimes means that there is enough information already in the materials to answer the question asked; more often, the response means that the question was not addressed in the case materials and the answer to the question is unnecessary for purposes of the competition. The case committee has tried to fill in unintentional gaps in the case materials without creating too much new information that might burden teams preparing for the competition.

Some questions have been edited for the sake of clarity and brevity.

CASE CLARIFICATIONS – Answers Provided:

On the Exhibit List table of contents, Exhibits 12 and 13 don't match the Exhibits found on those pages (Pat Quinn and Terri Pollo are listed instead of Toni Scott and Jean Varenberg)

> Whoops! I guess now everyone knows the name of two of the witnesses from our drafting process, when they were named for Delaware mock trial participants and volunteers. We will correct this in the final draft. The documents themselves have the correct names.

Was Exhibit 9 the attachment discussed in Exhibit 8? If so, the date on Exhibit 9 is after the dates of the emails in Exhibit 8.

> This is a mistake. We will correct the date on Exhibit 9 to be February 20, 2021.

With regard to stipulation 9 it states that "these facts are considered to be in the record," Does this mean that it is in evidence and/or admissible? Generally, this would be excluded under National Rule 4.11.

> Presumably, this question refers not to Rule 4.11 but to Rule of Evidence 411, which does not provide a *per se* bar on insurance evidence but only prohibits certain uses of such evidence. Regardless, teams are reminded of Rule of Competition 4.2, which states "Stipulations will be considered a part of the record and already admitted into evidence."

CASE CLARIFICATIONS – No Answers Provided

The answer to all the following questions is:

> ***"The case materials provide all of the information available to answer this question."***

As noted, this response sometimes means there is enough information already in the problem; more often, this response means the question was not addressed in the case materials and the answer to the question is unnecessary for purposes of this competition.

In Jamie's testimony, should Lines 52-62 on Page 33 should be "in front of" Lines 47-50? The timing doesn't entirely line-up with the timeline of the case.

In Gerry's testimony, the company goes public in early 2018 but in Complaint, Paragraph 9 it says it was public in 2014. Is the 2014 reference to QuikBrands and the 2018 date is for QuikPhone?

In Gerry's testimony, the sporadic period of board meetings is listed as 2018-2019 but in the Complaint, Paragraph 12 it is listed as 2020-2021

In Gerry's testimony, lines 162-165 – are they referring to 2020 (with the testing of the mushrooms) or 2021 (testing the cases)? The two paragraphs before seem like 2021 but the paragraphs after go back to 2020.

What year is Exhibit 1 from? We think it is 2017 but were not 100% sure.

In Exhibit 6, does Bree also have to sign the document?

Gerry says they are the "Chief Officer of Officers" (pg. 38, line 4), but is that a real position? Are they the Chief Operations Officer / Chief Operating Officer as Jean says?

RULE AND EVIDENTIARY QUESTIONS:

Do we need to tender experts before they can testify to an opinion?

> Believe it or not, there's no one "Delaware answer" to this question. Delaware courts do not follow a uniform practice in this regard, and even judges in the same court may ask different things of attorneys appearing before them. Accordingly, we have not set a single, uniform rule, and some judges may allow experts to opine without having been tendered, while others will not.
>
> In terms of a default practice, no judge is likely to mark students down for tendering an expert before that expert opines.

One of my rule experts pointed out that the Mock Trial Rules of Evidence at the National level is missing Rule 611 D and E (which are about redirects and recrosses) from that at our competition. However, the National Rules of Competition Rule 4.22 (which are about redirects and recrosses) still exists. So the question is, are redirects and recrosses allowed (and the rules of evidence were just streamlined) or are they not allowed and Rule 4.22 was not removed as you intended?

> The NHSMTC Rules of Evidence were revised over the last few years to make them closer to in line with the Federal Rules of Evidence. The current Fed. R. Evid. 611 does not contain subsection (d) and (e). Your state's may, but many states have changed theirs to match the Federal rules. (In fact, this question comes from one such state!)
>
> Because the Rules of Evidence would no longer expressly provide for redirect and recross, Rule of Competition 4.22 was updated to clarify that redirects and recrosses were allowed in the National Championship. That remains the rule today.

The witness statements are missing signatures. Was that an oversight or is the stipulation that they were truthful enough?

> The stipulation is enough. Because the practices vary state to state on whether a notary is required, how and whether unsworn declarations may be made, etc., we operate without signatures on each statement.
>
> Any witness who violates Stipulation 4 by denying that the statement is theirs, denying that they made it after being told to include all material facts, denying that they reviewed the statement the day before trial, or denying that they confirmed the day before trial that no additional facts needed to be added will be in violation of the Rules of Competition and the Code of Conduct.

We have a question about the rules of what witnesses may testify to per rule 2.2. Our question may relate mostly as to what "bound" means exactly. For example, Jamie Cameron's statement mentions filing a report/complaint with the Department of Defense. There are no other details or mention of it in Cameron's statement. But then the plaintiff attorney Toni Scott goes into detail what happened with that complaint DoD issue.

So the question is, does the intent of the rules allow Jamie Cameron to talk about the DoD complaint using some of the details found in Toni Scott's statement? Would that be a violation of the Unfair Extrapolation rule?

> This is a more complex question than it appears at first, but the simplest answer is that it does not violate unfair extrapolation, because it is not an extrapolation: these facts appear in the case materials and are therefore within the "four corners" of the materials from which teams may work.
>
> However, Jamie Cameron did agree that the facts contained in Cameron's statement are all of those that were relevant, *see* Stipulation 4, so Cameron could be cross-examined on why facts previously thought to be irrelevant Cameron is now discussing.

Another question--is there a considered Statement of Fact in these case materials? The rules refer to a Statement of Fact but there isn't anything explicitly labeled in the case materials and we're wondering if anything in the materials would be considered Statement of Fact.

> There is no Statement of Facts.

Also, are witnesses allowed to testify to something they would have reasonable knowledge of if it is stipulated, or if it is listed in the complaint/answer as long as it is not disputed or denied?

> That likely depends a great deal on context, but it would not violate the rules regarding unfair extrapolation, because it is not an extrapolation: these facts appear in the case materials and are therefore within the "four corners" of the materials from which teams may work. However, again, there could still be cross-examination on why facts previously thought to be irrelevant are now being discussed.
>
> Teams are reminded that in accordance with Rule 4.2, the Stipulations are already evidence in the case.

It is not clear to us from the legal materials whether causation and the existence of damages are part of the first phase of trial. The stipulations say liability first, then damages. But the elements listed in the jury instructions make it seem that liability arises **only** from duty and breach, not from causation. There is no jury instruction addressing causation that we are able to find.

We're wondering if scorers will expect that causation and existence of damages will be addressed in the first phase because those are usually elements of liability. And also wondering if teams may object to relevance to whether damages exist based on the way the jury instructions are written.

> Causation need not be proved in this phase of the trial, but some judges may accept evidence regarding causation as relevant to the reasonableness of defendant's response to risk or for other purposes. This response is limited to the bifurcation question, and it is not intended to address the admissibility of any particular evidence in any particular trial.

We have a question concerning rule 4.9 which discusses sequestration and exclusion. Will witnesses be considered automatically sequestered? If not, can they be questioned about testimony provided before their own during the trial?

> Rule 4.9 provides that no team may request sequestration of witnesses, and therefore witnesses are not sequestered. The proper subjects for questioning are defined in the Rules of Competition, which do not forbid questioning about other witnesses' testimony, but which - again - could open questions regarding why such testimony was not found in the witness's statements.