

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COMPANY WRENCH, LTD,	)	
	)	
Plaintiff,	)	2:10-cv-01763
	)	
v.	)	Judge Mark R. Hornak
	)	
HIGHWAY EQUIPMENT	)	
COMPANY,	)	
	)	
Defendant.	)	

Counsel for Plaintiff: Charles Johns / Brian Pulito

Counsel for Defendant Eric Reif / Mark Caloyer / Bradley Matta

**COURT'S PROPOSED  
JURY SELECTION PROCEDURE**

GOOD MORNING LADIES AND GENTLEMEN, I WANT TO WELCOME YOU TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. I AM JUDGE MARK HORNAK AND I WILL BE PRESIDING OVER JURY SELECTION FOR A CIVIL TRIAL IN WHICH YOU HAVE BEEN SUMMONED TO PARTICIPATE.

THE CASE IS ENTITLED: COMPANY WRENCH, LTD, PLAINTIFF  
v. HIGHWAY EQUIPMENT COMPANY, DEFENDANT.

LADIES AND GENTLEMEN, BUT FOR SERVICE IN OUR U.S. MILITARY, SERVING AS A JUROR IN OUR JUSTICE SYSTEM IS THE HIGHEST FORM OF CIVIC DUTY AND RESPONSIBILITY WHICH ONE IS CALLED UPON TO PERFORM AS A CITIZEN IN OUR DEMOCRACY. CITIZENS SITTING IN JUDGMENT OF THE ACTIONS OF FELLOW CITIZENS IS A BASIC TENET OF OUR JUSTICE SYSTEM, WHICH WE BELIEVE TO BE THE FAIREST SYSTEM IN THE WORLD AND WHICH COULD NOT FUNCTION WITHOUT YOU. WE KNOW THAT IT IS A PERSONAL AND PROFESSIONAL SACRIFICE FOR YOU TO BE HERE, BUT IT IS TRULY VERY IMPORTANT AND I WILL DO EVERYTHING IN MY POWER TO MAKE THIS A MEANINGFUL EXPERIENCE FOR YOU WITH AS LITTLE INCONVENIENCE AS POSSIBLE.

BELIEVE ME, THIS TRIAL IS VERY IMPORTANT TO THE PARTIES INVOLVED, THE ATTORNEYS AND THIS COURT AND WE ARE MOST APPRECIATIVE OF YOUR PARTICIPATION AS CITIZEN JURORS.

IT IS THE JURY'S FUNCTION TO DECIDE THE FACTS OF THE MATTER WITHOUT BIAS OR PREJUDICE TO ANY PARTY IN THE CASE. THE LAW DOES NOT PERMIT JURORS TO BE GOVERNED BY SYMPATHY, PREJUDICE, BIAS OR PUBLIC OPINION. YOU ARE TO BE FAIR MINDED.

THEREFORE, I MUST EXCLUDE FROM THE JURY ANYONE WHO HAS SUCH STRONG FEELINGS, OR PERSONAL KNOWLEDGE, ABOUT THE PEOPLE OR ISSUES INVOLVED IN THE CASE THAT HE OR SHE IS UNABLE TO EVALUATE THE EVIDENCE IMPARTIALLY. THE LAW ALSO PROVIDES FOR THE ATTORNEYS FOR THE PARTIES TO PARTICIPATE IN THE JURY SELECTION PROCESS THROUGH THE EXERCISE OF PEREMPTORY CHALLENGES (EXCUSALS), WHICH MEANS THAT THEY WILL BE PERMITTED TO EXCLUDE A TOTAL OF SIX (6) (3 A PIECE) OF YOU PROSPECTIVE JURORS FROM THE CASE WITHOUT STATING A REASON FOR DOING SO. IN FACT, THE LAWYERS MUST EXCLUDE A CERTAIN NUMBER OF YOU JUST TO GET TO THE REQUISITE NUMBER OF JURORS FOR THIS TRIAL.

THE EXERCISE OF THE PEREMPTORY CHALLENGES DOES NOT CONSTITUTE ANY REFLECTION WHATSOEVER ON THE PROSPECTIVE JURORS WHO ARE EXCUSED FROM DELIBERATING ON THIS CASE. IT SHOULD NOT BE INTERPRETED AS A DECISION THAT THOSE PERSONS WHO ARE EXCUSED ARE BIASED OR PREJUDICED. IT SIMPLY MEANS THAT THE LAWYERS, BASED ON HIS OR HER TRIAL EXPERIENCE, KNOWLEDGE OF THE CASE, AND THE INFORMATION LEARNED THROUGH THIS PROCESS, HAVE

DECIDED THAT SOMEONE ELSE SHOULD SIT AS A JUROR TO HEAR AND DECIDE THIS PARTICULAR CASE.

THE JURY IN THIS CASE WILL CONSIST OF EIGHT MEMBERS. ALL JURORS SEATED WILL PARTICIPATE IN THE TRIAL AND DELIBERATIONS TO A VERDICT.

TO ASSIST BOTH THE COURT AND THE LAWYERS IN THE JURY SELECTION PROCESS, I WILL CONDUCT WHAT IS KNOWN AS VOIR DIRE. THAT MEANS I WILL ASK YOU CERTAIN QUESTIONS ABOUT YOUR FEELINGS AND EXPERIENCES WHICH MIGHT INFLUENCE YOUR THINKING ABOUT THIS CASE. THESE QUESTIONS ARE DESIGNED TO SUPPLY INFORMATION TO BOTH SIDES WHICH WILL ENABLE THE LAWYERS TO EXERCISE THEIR CHALLENGES MORE INTELLIGENTLY AND EFFECTIVELY. CERTAIN QUESTIONS WILL BE ASKED OF YOU HERE IN OPEN COURT AND OTHER QUESTIONS WILL BE ASKED INDIVIDUALLY IN PRIVATE OUT OF THE HEARING OF ONE ANOTHER.

NOW THAT I HAVE EXPLAINED THE PURPOSE OF VOIR DIRE TO YOU, I'LL TELL YOU A LITTLE ABOUT THE CIVIL CASE ON WHICH WE'RE ABOUT TO HAVE A TRIAL.

I WILL NOT AT THIS TIME GIVE ANY DETAILED EXPLANATION OF THE LAWS APPLICABLE TO THIS CASE, BUT IN ORDER THAT YOU HAVE SOME FAMILIARITY WITH THE CASE WHICH YOU MAY BE SELECTED TO HEAR, I WILL GIVE YOU A CAPSULE SUMMARY OF THE BASIC ISSUES IN THIS CASE.

**[INSERT DETAILS OF ACTION]**

THESE ARE THE BASIC FACTS AND CONTENTIONS OF THE PARTIES IN THIS CASE.

REPRESENTATIVES OF THE PLAINTIFF, COMPANY WRENCH ARE PRESENT IN THE COURTROOM THIS MORNING SEATED BEHIND THE TABLE CLOSEST TO THE JURY BOX WITH THEIR ATTORNEYS, CHARLES JOHNS AND BRIAN PULITO. THE ATTORNEYS FOR THE DEFENDANT, HIGHWAY EQUIPMENT COMPANY ARE AT COUNSEL TABLE TO MY RIGHT, YOUR LEFT. THEY ARE ERIC REIF, MARK CALOYER AND BRADLEY MATTA. SEATED WITH THEM IS A REPRESENTATIVE OF HIGHWAY EQUIPMENT COMPANY.

MY COURTROOM DEPUTY IS MR. BRIAN BABIK. MY JUDICIAL LAW CLERKS ARE MR. JOSEPH PARSONS AND MS. GINEVRA VENTRE. MY JUDICIAL ASSISTANT IS MS. JUDY DRESSLER. THEY ARE OFFICERS OF THE COURT AND WILL HELP WITH THE JURY SELECTION AND TRIAL PROCESS. OUR COURT REPORTER IS MS. SANDY WENGER, WHO WILL STENOGRAPHICALLY TRANSCRIBE EVERYTHING THAT IS SAID DURING THIS PROCEEDING AND TRIAL.

LADIES AND GENTLEMEN, WILL YOU NOW PLEASE STAND AND RAISE YOUR RIGHT HAND TO BE ADMINISTERED AN OATH.

**MR. BABIK, WILL YOU KINDLY SWEAR THE PANEL OF JURORS.**

WE WILL START THE ACTUAL JURY SELECTION PROCESS BY ASKING EACH OF YOU TO STAND ONE AT A TIME AND ANSWER ALOUD THE QUESTIONS ON THE DATA INFORMATION SHEET DISTRIBUTED TO YOU THIS MORNING. PLEASE TAKE YOUR TIME AND SPEAK UP SO THAT ALL OF YOUR ANSWERS WILL BE HEARD AND UNDERSTOOD. IF YOU DO NOT UNDERSTAND ANY OF THE QUESTIONS, PLEASE FEEL FREE TO ASK ME FOR AN EXPLANATION. LET'S START WITH THE PERSON IN THE FIRST ROW ON THE AISLE, AND PROCEED FROM THERE.

**CIVIL JURY PERSONAL DATA INFORMATION**

- A. I AM JUROR NUMBER \_\_\_\_\_.
- B. I AM (AGE) \_\_\_\_\_ YEARS OLD.
- C. I LIVE IN (CITY OF RESIDENCE & COUNTY) \_\_\_\_\_.
- D. I HAVE LIVED THERE APPROXIMATELY \_\_\_\_\_ YEARS.
- E. I OWN / RENT MY HOME.
- F. I AM / AM NOT LICENSED TO DRIVE A MOTOR VEHICLE.
- G. MY EDUCATIONAL BACKGROUND IS \_\_\_\_\_.  
(E.G. HIGH SCHOOL? COLLEGE? OTHER?)  
IF COLLEGE, MY MAJOR AREA OF STUDY WAS \_\_\_\_\_.
- H. MY EMPLOYER IS \_\_\_\_\_.  
MY JOB TITLE IS \_\_\_\_\_. (IF RETIRED,  
WHO WAS YOUR LAST EMPLOYER AND WHAT WAS YOUR JOB  
TITLE?)
- I. I AM / AM NOT MARRIED. IF MARRIED,  
(a) MY SPOUSE'S EMPLOYER IS \_\_\_\_\_.  
(b) MY SPOUSE'S JOB TITLE IS \_\_\_\_\_.  
(IF RETIRED, WHO WAS HIS / HER LAST EMPLOYER AND WHAT  
WAS HIS / HER JOB TITLE?)
- J. DO YOU HAVE CHILDREN? IF YES, PLEASE TELL US THEIR

AGES AND EMPLOYMENT, IF ANY.

K. I DO / DO NOT HAVE AN ATTORNEY. IF SO, MY ATTORNEY'S NAME IS \_\_\_\_\_ AND I HAVE RETAINED HIM / HER BECAUSE \_\_\_\_\_.

**QUESTIONS DIRECTED TO THE PANEL EN BANC**

TO THE ENTIRE PANEL:

NOW I WILL POSE A NUMBER OF QUESTIONS TO YOU AS A GROUP. IF YOUR ANSWER TO THE QUESTION IS "NO," PLEASE REMAIN SEATED AND SAY NOTHING. IF YOUR ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS "YES", PLEASE STAND AND STATE YOUR JUROR NUMBER ONLY TO EACH QUESTION TO WHICH YOUR ANSWER IS "YES." AT THIS TIME, DO NOT PROVIDE ANY FURTHER INFORMATION ABOUT ANY "YES" ANSWER.

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1. NOW THAT YOU HAVE HEARD A BRIEF SUMMARY OF THE FACTS AND CONTENTIONS OF THE PARTIES IN THIS MATTER, DO ANY OF YOU KNOW ANYTHING ABOUT THIS CASE OR HAVE YOU READ, SEEN OR HEARD ANYTHING ABOUT IT?

IF SO, PLEASE STAND AND STATE YOUR JUROR NUMBER.



FOLLOW UP IN CHAMBERS

- WHAT DO YOU KNOW ABOUT THIS CASE?
- HOW DO YOU KNOW IT?
- HAS WHAT YOU HAVE READ, SEEN OR HEARD CAUSED YOU TO FORM AN OPINION ABOUT THE CASE?
- WHAT IS YOUR OPINION?
- COULD YOU SET THAT OPINION ASIDE?
- WOULD WHAT YOU HAVE READ, SEEN OR HEARD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

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2. I WILL ASK THE REPRESENTATIVES OF THE PLAINTIFF, \_\_\_\_\_, TO STAND. DO ANY OF YOU KNOW OR KNOW ANYTHING ABOUT COMPANY WRENCH OR EITHER OF THEM? HAVE YOU, OR ANY MEMBER OF YOUR IMMEDIATE FAMILY, BEEN EMPLOYED BY COMPANY WRENCH OR DONE BUSINESS WITH THEM? "IMMEDIATE FAMILY" IS DEFINED AS HUSBAND, WIFE, CHILDREN, BROTHERS, SISTERS, MOTHER, FATHER, AND GRANDPARENT.

FOLLOW-UP IN CHAMBERS

- HOW DO YOU KNOW PLAINTIFF
- IS HE / SHE A FRIEND / RELATIVE / BUSINESS ASSOCIATE? WOULD YOUR KNOWLEDGE OF COMPANY WRENCH OR OF \_\_\_\_\_ AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

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3. I WILL ALSO ASK THE PLAINTIFF'S ATTORNEYS, CHARLES JOHNS AND BRIAN PULITO, OF THE LAW FIRM OF STEPTOE AND JOHNSON PLLC TO STAND.

- DO ANY OF YOU KNOW EITHER ATTORNEYS JOHNS OR PULITO?
- HAVE THEY OR THEIR FIRM EVER REPRESENTED YOU OR A MEMBER OF YOUR IMMEDIATE FAMILY, IF YOU KNOW?

FOLLOW-UP IN CHAMBERS

- HOW DO YOU KNOW HIM OR HIS FIRM?
- DETAILS OF REPRESENTATION.
- CAN YOU BE FAIR AND IMPARTIAL?

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4. THE DEFENDANT IS HIGHWAY EQUIPMENT COMPANY.
- ARE YOU, OR ANY MEMBER OF YOUR IMMEDIATE FAMILY, CURRENT OR FORMER EMPLOYEES OF HIGHWAY EQUIPMENT COMPANY?
  - DO YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY HAVE A BUSINESS RELATIONSHIP WITH HIGHWAY EQUIPMENT COMPANY?

FOLLOW-UP IN CHAMBERS

- WHO IS EMPLOYED / WHAT RELATIONSHIP / WHAT JOB CAPACITY / HOW LONG?
- WOULD ANY SUCH RELATIONSHIP AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IF SELECTED IN THIS CASE?

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5. I WILL ASK THE ATTORNEYS FOR HIGHWAY EQUIPMENT COMPANY, ERIC REIF, MARK CALOYER AND BRADLEY MATTA OF THE LAW FIRM OF PIETRAGALLO, GORDON ALFANO BOSICK & RASPANTI TO STAND:

- DO ANY OF YOU KNOW ANY OF THEM OR THEIR FIRM?

- HAVE YOU OR ANY MEMBERS OF YOUR IMMEDIATE FAMILY EVER BEEN REPRESENTED BY ANY OF THEM OR THEIR LAW FIRM?

FOLLOW-UP IN CHAMBERS

- HOW DO YOU KNOW THEM?
- DETAILS OF REPRESENTATION?
- CAN YOU BE FAIR AND IMPARTIAL?

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6. YOU SHOULD KNOW THAT THIS CASE IS ESTIMATED TO LAST APPROXIMATELY FIVE (5) TO SEVEN (7) TRIAL DAYS, AND WILL BEGIN NEXT MONDAY, OCTOBER 7, 2013 AT 9:00 AM. HOWEVER, THIS IS JUST OUR BEST ESTIMATE AND IT MAY BE SHORTER OR LONGER. ALSO OUR JURY DELIBERATION ROOM IS UP TWO FLIGHTS OF STAIRS FROM THIS COURTROOM WHICH MUST BE TRAVERSED SEVERAL TIMES EACH DAY.

NOW KNOWING THE PARTIES, THE BASIC FACTUAL ISSUES OF THE CASE, THE POTENTIAL DURATION OF THE TRIAL AND THE INVOLVEMENT OF STAIRS, IS THERE ANY LEGITIMATE, JUSTIFIABLE HARDSHIP OR REASON, PERSONAL, PROFESSIONAL, EMPLOYMENT, MEDICAL OR OTHERWISE, WHY

YOU COULD NOT SERVE AS A JUROR FOR THE DURATION OF THIS RELATIVELY SHORT CIVIL TRIAL?

FOLLOW-UP IN CHAMBERS

- WHAT REASON?
- HOW DOES THAT PREVENT YOU FROM FULFILLING YOUR JURY SERVICE?

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7. THE FOLLOWING WITNESSES MAY TESTIFY IN THIS TRIAL. IF YOU KNOW ANY OF THESE PERSONS, AS I STATE THEIR NAMES PLEASE INTERRUPT ME, STAND AND STATE YOUR JUROR NUMBER ONLY:

BRAD HUTCHINSON  
GARY GLECKER  
SCOTT A. CARPENTER  
TOM REYNOLDS  
RONALD J. SLEE  
CAM GABBARD  
PENNY HUTCHINSON  
KEVIN ALLEN  
BRIAN MCKINNEY  
DALE LESLIE  
KIRK GILLETTE  
TODD JOHNSON

CHUCK BETTERS, SR.  
ED TURNER  
RICHARD STEINBRENNER  
ROBERT GEORGE  
SCOTT COLLINS  
KEITH DODDS  
MARK FRANCIS  
AL SPRINGER  
BOB DESANTIS  
JANE CHOI  
JENNIFER DONALDSON  
MARTIN W. SCHNURR  
GREG CONNER  
DEAN BARLEY  
KRISTY JENNINGS  
SHAWN SCHOEDEL  
WADE AMELUNG  
ROBERT P. OVERBAUGH  
MARK M. GLEASON

FOLLOW UP IN CHAMBERS

- WHO DO YOU KNOW?
- HOW? WHY? RELATIONSHIP?
- HOW WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

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8. HAVE YOU EVER SERVED AS A JUROR IN A CIVIL OR CRIMINAL CASE OR AS A MEMBER OF A GRAND JURY IN EITHER THE FEDERAL OR STATE COURTS?

FOLLOW-UP IN CHAMBERS

- TYPE OF CASE?
- WHAT COURT?
- HOW LONG AGO?
- WITHOUT DISCLOSING RESULT OF CASE, DID YOU REACH A VERDICT?
- CAN YOU BE FAIR AND IMPARTIAL IN THIS CASE?

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9. HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN INVOLVED IN A CIVIL LAWSUIT AS A PARTY, A WITNESS OR IN ANY OTHER CAPACITY?

FOLLOW-UP IN CHAMBERS

- HOW WERE YOU INVOLVED?
- WHAT KIND OF CASE?
- WHAT WAS THE OUTCOME?
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

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10. BOTH PARTIES TO THIS CASE ARE BUSINESSES. DO YOU HAVE ANY STRONG PERSONAL FEELINGS FOR OR AGAINST BUSINESSES THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE AND/OR PREVENT YOU FROM TREATING EACH PARTY AS EQUALS UNDER THE LAW?

FOLLOW-UP IN CHAMBERS

- PLEASE EXPLAIN SUCH FEELINGS
- PERSONAL EXPERIENCE
- WHY / HOW LONG?
- COULD YOU PUT THOSE FEELINGS ASIDE AND DECIDE THIS CASE ONLY ON THE FACTS AND EVIDENCE PRESENTED THROUGH THE WITNESSES AND EVIDENCE IN THIS TRIAL?
- COULD YOU BE FAIR & IMPARTIAL?

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11. ALL WITNESSES ARE SWORN TO TELL THE TRUTH AND THEIR TESTIMONY IS TO BE FAIRLY AND IMPARTIALLY ASSESSED WITHOUT ANY PRECONCEIVED NOTION OF BIAS OR PREJUDICE. IS THERE ANY REASON OF WHICH YOU ARE AWARE THAT YOU



COULD NOT OR WOULD NOT FAIRLY AND IMPARTIALLY ASSESS THE TESTIMONY OF EACH INDIVIDUAL WITNESS IN THIS TRIAL?

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12. DO YOU HAVE ANY HEALTH CONDITION, FAMILY OR JOB-RELATED MATTER OR OTHER PERSONAL MATTER WHICH WOULD INTERFERE WITH YOUR ABILITY TO SERVE AS A JUROR IN THIS MATTER FOR A WEEK OR A WEEK AND A-HALF?

FOLLOW-UP IN CHAMBERS

- IF SO, WHAT IS THE NATURE OF THE MATTER WHICH MAY INTERFERE WITH YOUR ABILITY TO SERVE AS A JUROR?

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13. DO YOU HAVE ANY INNATE BIAS, PREJUDICE OR CRITICISM OF THE JURY SYSTEM AS A MEANS OF RESOLVING DISPUTES?

FOLLOW-UP IN CHAMBERS

- IF SO, WHAT IS THE NATURE OF AND BIAS OR PREJUDICE YOU MAY HAVE AGAINST THE JURY SYSTEM OR CRITICISM OF IT AS A MEANS OF RESOLVING DISPUTES?

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14. DO YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY HAVE A BACKGROUND IN ACCOUNTING, FINANCING OR ECONOMICS?

FOLLOW-UP IN CHAMBERS

- IF SO, PLEASE DESCRIBE.

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15. HAVE YOU OR A MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN EMPLOYED AT AN AUTO, TRUCK OR MOBILE EQUIPMENT DEALER OR DISTRIBUTOR, OR BUSINESS, WHICH SERVICES THEM?

FOLLOW-UP IN CHAMBERS

- AND, IF SO, WHAT IS THE NATURE OF THE WORK YOU PERFORMED THERE?

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16. HAVE YOU OR A MEMBER OF YOUR IMMEDIATE FAMILY EVER WORKED IN A LAW FIRM OR LAW OFFICE?

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17. DO YOU NOT USE EMAIL ON A REGULAR BASIS?

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18. HAVE YOU OR A MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN EMPLOYED IN A SALES POSITION, OR IN A POSITION THAT INVOLVES ASSIGNED SALES OR DISTRIBUTION TERRITORIES?

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19. HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN EMPLOYED IN THE SCRAP OR DEMOLITION INDUSTRIES?

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20. DO YOU KNOW ANY OF THE OTHER PROSPECTIVE JURORS?

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21. HAVE YOU, OR ANY MEMBER OF YOUR IMMEDIATE FAMILY, EVER BEEN EMPLOYED BY, OR DONE BUSINESS WITH, HYUNDAI CORPORATION OR A SUBSIDIARY?

FOLLOW-UP IN CHAMBERS

- PLEASE DESCRIBE.

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22. NOW HAVING HEARD ALL THE PRELIMINARY INFORMATION REGARDING THIS CASE, IS THERE ANY REASON

OF WHICH YOU'RE AWARE THAT YOU COULD NOT OR WOULD NOT FOLLOW THE LAW AS I INSTRUCT YOU REGARDING LIABILITY AND DAMAGES AND SERVE AS A FAIR AND IMPARTIAL JUROR IN THIS CASE, BASING YOUR VERDICT ON THE FACTS AS YOU DETERMINE AND THE LAW AS I INSTRUCT YOU?

FOLLOW-UP IN CHAMBERS

- WHAT REASON?
- HOW DOES IT AFFECT YOUR JURY SERVICE IN THIS CASE?

**RETIRE TO CHAMBERS FOR INDIVIDUAL VOIR DIRE AND THEN RETURN TO COURT FOR ATTORNEYS - STRIKE PROCESS**