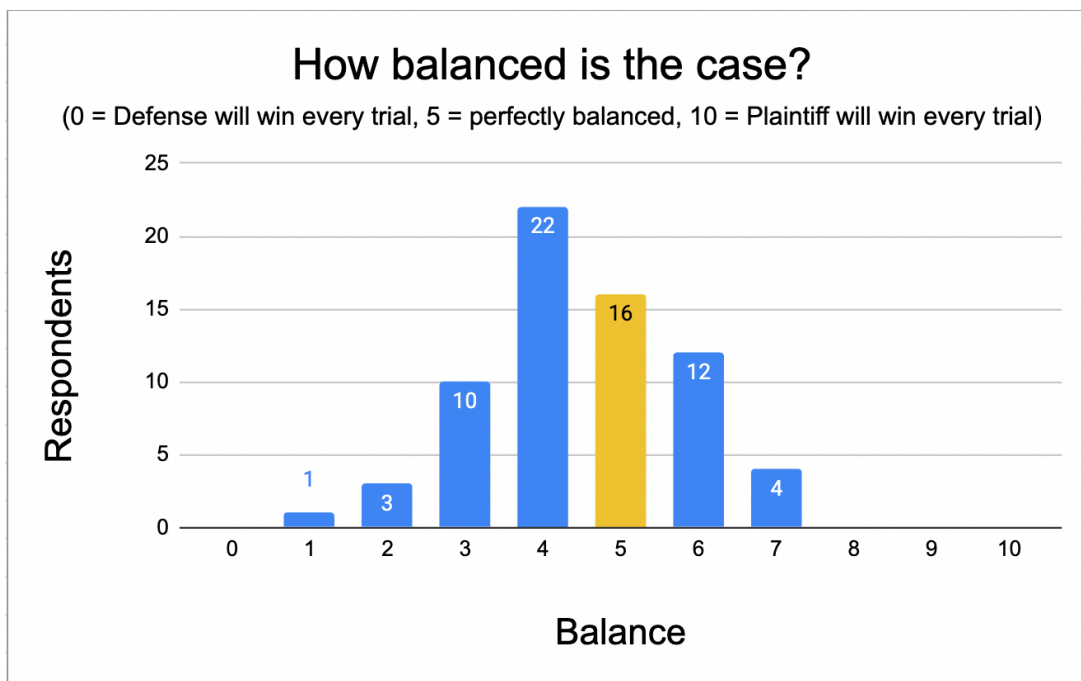


TO: Advocates and Coaches
FROM: NTC Case Authors - Matt Woodham, Nick Cotter, and Justin Bernstein
DATE: January 11, 2025
RE: **NTC Regional Case - Feedback and Updates**

Thank you for the feedback! We received more than 300 questions from 75 schools. We appreciate the careful reading and incisive questions. This memo includes (1) a summary of case balance feedback, including how it affected the case revisions; and (2) case clarifications.

1. CASE BALANCE FEEDBACK

The case survey asked, “How balanced is the case?” and invited respondents to assign a 0-10 score. Sixty-eight teams responded to this question.



On the one hand, we viewed this feedback positively. The mean score was 4.48 (with 5.0 meaning perfectly balanced). About 75% of respondents felt the case was within “one point” of perfectly balanced.

On the other hand, the community consensus was that the Plaintiff needs some help. More than twice as many respondents said the case favored Defense (36) over Plaintiff (16). And while a few people observed a huge Defense advantage (scores of 0-2), no one reported a huge Plaintiff advantage (8-10).

Based on your feedback, we opted against sweeping changes, but made these changes to assist Plaintiff:

- Changed *modified* comparative fault to *pure* comparative fault (so Plaintiff need not prove Defendant’s negligence exceeded Plaintiff’s negligence)
- Added evidence of black ice on I-20 (to police report, accident website, and Wooden’s depo)
- Added support for commercial truck driver’s duty to vehicles on both sides of road (in commercial vehicle handbook and Summit’s depo)

2. CASE CLARIFICATIONS

We received hundreds of smart and reasonable questions that, in a real case, would make sense to ask during discovery. We nonetheless felt it best not to answer most of them. For one, NTC isn't a "discovery question" competition where all requested information is supplied; instead, NTC has historically addressed only the most vital issues. But more importantly, we did not think it fair or helpful to introduce literally hundreds of new facts three weeks before the first regionals, and we were confident that the case generally contains enough information to be tried.

Accordingly, we limited clarifications to these categories:

1. Vital issues – providing information necessary for the case to work
2. Errors – fixing typos and unintended inconsistencies

We did not answer TYLA rules questions (e.g., enlargement size, how motions are scored), but we did share them with TYLA. Nor did we answer coaching questions (e.g., "How can we use the Saban deposition since Saban is not testifying?" and "What is the relevance of Exhibit 18?").

All clarifications that are meant to change the case have been added to the updated case. Thus, teams should avoid reference this list of clarifications during trial (because they can simply use the case itself).

* * *

Is Exhibit 22 (Saban depo) authentic?

NTC Rule IV.3 says all exhibits are authentic. But, just in case, a stipulation has been added.

Did the kids have their seatbelts on? Did airbags deploy?

Yes and yes. The updated case now reflects this.

May we cite to the FRE advisory notes?

Yes. This is now stated in the pretrial order.

Both experts have opinions on what would have happened if the Saban truck had been driving more slowly. How did they form those opinions? Can you include the math and formulas?

We converted this to a stipulation. (We gave both experts similar causation opinions so it would be undisputed, but you're right; without the math, there could be unintended admissibility issues.)

Can you add "Clark" and "Lombardi" to their uniforms so there is no dispute about who said what?

Good idea. Wooden's deposition now contains this information.

The police report is admissible. Does that mean no challenge is permitted to any portion thereof (in particular to the line about no arrest/charges)?

Can we still object to a lack of foundation for the police report?

The case does not say Exhibits 1-4 are "admissible." It says "preadmitted." They are already in evidence before trial begins. This means advocates may not object to their admissibility, may not say "they need to come in through a witness," may not say, "we still need to hear some foundation," etc.

If advocates want to read Exhibit 1 into the record, may they do so constructively? If not, are they required to read the entire report into the record?

This is now addressed in the pretrial order.

Summit depo: "Hired by plaintiff in 8 lawsuits." Intentional, or should it be plaintiff's law firm?

Here, "plaintiff" means the plaintiff in those suits, not Wooden specifically. This is now clarified.

The text at the bottom of Exhibit 21 is hard to read.

Sorry about that. It wasn't intended to be relevant content. We removed it.

Exhibit 15 is hard to use without knowing the distance of each accident to the Wooden accident.

Fair point. That information is now stipulated.

Lombardi says he could tell the Mercedes on the shoulder was traveling westbound but its nose was pointed east. Should that be "traveling eastbound"? In my head this means the vehicle was on the same side of the road at the semi but somehow spun 180 degrees? Does this not make sense or am I just dumb? Your question does make sense. Don't doubt yourself! We have clarified this testimony.

What was Lombardi actually *convicted* of? Were any of the tickets reduced?

This is clarified in the updated case.

Lombardi stated on 5.03.2024 that he was hired by Saban a "couple of years ago" but then states he was hired in October 2023. Did he work for Saban for a few years before becoming a driver for the company?

This is clarified in the updated case.

What is Kareem's age? We know Lew was 7 when he died but no mention of Kareem's age that day?

Sorry, Kareem. This is clarified in the updated case.

What does the red dot in Exhibit 11 represent?

It was not meant to represent anything. We removed it.

How difficult is it to find the webpage depicted in Exhibit 15?

We've added some information about this to Kerr's deposition.

Kerr says they are paid \$750. Is that hourly?

Yes. That has been clarified.

Who took Exhibit 5 and when was it taken?

Exhibit 1 now answers this.

Is Terry Saban considered unavailable for purposes of hearsay and FRCP 32?

The case intentionally says nothing about Saban being unavailable.

Is Lombardi in the courtroom as the defendant's party representative -- if not, who is the party representative for the defendant at trial? Is Lombardi a party rep for purposes of Rule 615?

These are questions of strategy and evidence that we leave to advocates and the presiding judges.

Was the lack of a key or scale on the maps intentional?

Can we get the distance from Birmingham to Midland?

We received a few requests for distances between points along the Defendant's route. We appreciate why teams want this information, but it was intentionally omitted (we felt there were enough plaintiff theories and more than enough numbers for witnesses to know). But to help Plaintiffs make the same argument non-numerically, we added some detail to Wooden's post-accident quote from Lombardi.

Are the jury instructions' intoxication/BAC presumptions rebuttable?

Yes. This has been clarified.

How long does it take rain to freeze on black asphalt?

Almost instantly. We added some detail to Lombardi's discussion of black ice.

What direction was the storm moving?

East. This is clarified in Lombardi's deposition.

Can we learn where on Ex. 11 the accident happened precisely?

That's important information we omitted! Sorry about that. We have updated Exhibit 11, as well as the Lombardi and Wooden depositions.

Is Exhibit 6 the Saban truck involved in the accident, or just a general Saban truck? Wooden, Lombardi and Exhibit 1 all suggest it was the truck in the crash, but the CEO calls it "A standard Saban truck."

Exhibit 6 is a pre-crash photo of the truck in this crash. This has been clarified.

Was Lombardi hauling a single or multiple trailers? Exhibit 6 pictures the actual Saban truck, which is attached to a single trailer, but Exhibits 3 and 4 depict the truck attached to a double trailer.

Exhibit 6 depicts the Saban truck that was involved in this crash.

Does Lombardi still work for Saban?

Yes. Lombardi's deposition now says this.

The comparative negligence defense has a substantial factor test, and the Act of Nature defense requires that the natural event be the "sole cause." Which is correct?

Both.

Page 65 Line 70 Expert says, "Wooden under the speed limit." Could you add a verb?

Done!

P. 54, Line 42 – we believe "principal" should be "principle"

Fixed. Thanks!

In Summit's report, does the table address the standard of care for scheduling or Saban's scheduling?

Summit's report now clarifies this.

Can a motion to designate a responsible third party be submitted during the pretrial conference?

No.

May we use other CFR provisions? If we think there are more recent CFR provisions, can we use them?

No and no.

If the Plaintiff team decides on vicarious liability, are the direct liability portions of Summit's report assumed to be stricken? And vice versa?

No.

Can we have pre-made verdict forms with black lines striking dropped claims from the plaintiff and defense to make it more clear when presenting to the jury?

No. Any alterations to the verdict form based on a party's strategic choices shall be constructive. (If any hosts enlarge the verdict form, we don't want them to have to enlarge multiple versions.)

Are the newly enacted (Dec. 1, 2024) Federal Rules of Evidence going to apply to this competition?

Yes.

The expert reports are signed under a declaration for truthfulness. Does this mean these reports were also made under oath?

No. The case is written as intended on this issue.

Multiple witnesses indicate that Saban does not have dispatchers, but Exhibit 8 lists a dispatcher.

The case is written as intended on these points. Witnesses indicate that Saban does not have dispatchers performing certain duties; they do not say Saban has no dispatchers.

When did Lew Wooden die? Exhibit 1 states "Lew killed in crash" and Exhibit 23 line 76-77 states "He lingered for about three days in the hospital before he died." Can we get clarification?

Exhibit 1 now says Lew died as a result of the crash.

Riley Kerr says he was retained 24 times; 18 trucking; 4 went to trial. Later he references Saban hiring him 6 times and "each time the jury agreed with me." Unclear if intentional discrepancy or not.

This has been clarified.

Lombardi states he was in Phase 1. Summit's report indicates that Lombardi had not yet begun Phase 2. Kerr's report indicates that Lombardi was in Phase 2. Intentional inconsistency?

The inconsistency has been removed from Kerr's report.

Patty Summit report on page 61, says, "Based on Exhibits 5 - 8," Lombardi couldn't have gotten enough rest during the trip. Is this reference to the wrong exhibit numbers?

Oops. We meant Exhibits 8-11. Clarified in updated case.

Paragraph 6 of the complaint reads, "Defendant's truck struck the Woodens' Ford Fusion." The answer reads, "Defendant's truck and the Woodens' Ford Fusion collided." Is that intentional?

Good catch. The Answer has been corrected to match the Complaint.

In Exhibit 1, paragraph 7 states that the Saban truck was traveling 30 mph at impact. Paragraph 8 states that the truck slowed to 35 mph "after the last 32 feet." Is that inconsistency intentional?

This has been corrected in Exhibit 1.

The police report says Kareem was in the passenger seat, but in Wooden's deposition implies both kids were in the back. Was this inconsistency intentional?

Both kids were in the back seat. This has been corrected.

Exhibits 5 and 7 appear to show different roads. Can you clarify?

Good eye. That inconsistency was unintentional. (Confession: we searched the Internet for photos rather than reenacting the accident ourselves.) Please ignore inconsistencies among the crash photos.

Last sentence of Summit's report p. 62: "All the negligence acts described above helped cause this terrible accident." Should be "negligent" instead.

A "negligence" typo ... ironic. This is corrected in the updated case.

49 C.F.R. § 383.135 (b)(1) states that "To achieve a passing score on each segment of the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113" We do not see any provision labeled § 383.113 (skills) in the packet. Is this intentional?

Good catch. We have added (a shortened version of) Section 383.113 to Exhibit 20.

What team (Plaintiff or Defendant) has to declare first whether they are going to dismiss a claim?

Please complete the form in the order listed. Plaintiff should declare first.