

**2005 WYOMING HIGH SCHOOL  
MOCK TRIAL COMPETITION**

***GALLO***  
**v.**  
***URBANKSI***  
a Civil case

***SPONSORED BY:***  
***WYOMING PARTNERSHIP FOR CIVIC EDUCATION***

***CASE CONTRIBUTOR:***  
***THE PENNSYLVANIA BAR ASSOCIATION,  
YOUNG LAWYERS DIVISION***

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## FOREWORD

This year's fictional civil action is brought by the parents of a young man who died from injuries caused by a crowd-crushing incident at a rap concert. The parents claim that the performer Skee Poll incited the crowd to charge the stage while performing a song, resulting in the death of their son. One of the issues raised by the performer is that s/he cannot be liable because music lyrics are protected speech under the First Amendment.

Entertainment, in the form of motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, have been afforded the utmost First Amendment protection since such forms of expression are considered political speech. Political speech is not limited to the political arena per se, but includes any form of speech that addresses societal values. Speech does not lose First Amendment protection merely because the ideas are offensive; the protection extends regardless of the truth, popularity, or social utility of the ideas and beliefs offered. Radical, and even dangerous ideas are all equally entitled to First Amendment protection including the abstract advocacy of lawlessness. This principle was recognized by the United States Supreme Court in the seminal case of Brandenburg v. Ohio. The Court recognized, somewhat paradoxically, that the right to advocate lawlessness is one of the ultimate safeguards of liberty. Nevertheless, speech is not entitled to First Amendment protection under Brandenburg if it incites imminent lawless action. It is under this theory of incitement that the plaintiffs in this year's case seek to hold Skee Poll liable for their son's death.

STATE OF WYOMING ) IN THE DISTRICT COURT  
 ) ss.  
COUNTY OF CLEARWATER ) FIRST JUDICIAL DISTRICT

LINDA GALLO and JON GALLO, )  
as Executors of the Estate of )  
KEITH GALLO, Deceased, and )  
Individually in their Own Right, )

Plaintiffs, )

v. )

No. 2004 CV 2419

RILEY URBANSKI, a/k/a SKEE )  
POLL, Individually and as sole )  
proprietor of THUGS & SKEES, )

Defendant. )

**AMENDED COMPLAINT**

COMES NOW, Plaintiffs, Linda and Jon Gallo, as Executors of the Estate of Keith Gallo, Deceased, and individually, by and through their attorneys, and bring the following action, and in support thereof, aver as follows:

1. Plaintiffs Linda and Jon Gallo, husband and wife, are adult individuals currently residing at 891 North 27<sup>th</sup> Street, Ridgetown, Wyoming.
2. Keith Gallo, the decedent, formerly resided at 891 North 27<sup>th</sup> Street, Ridgetown, Wyoming.
3. Defendant Riley Urbanski, also known as Skee Poll, is an adult individual currently residing at 6100 City Avenue, Caseyville, Wyoming.
4. Defendant is a performing artist/entertainer who provides entertainment services to paying customers under the name Skee Poll.
5. Defendant is also a record producer and music promoter who does business under the name Thugs & Skees, a sole proprietorship.

**Factual Background**

6. On June 18, 2003, the decedent, then 18 years of age, attended a Skee Poll concert at the Watchoverya Center in Reidville, Wyoming as a paying customer.
7. Defendant was the headlining performer at the concert, which was promoted by Thugs & Skees.
8. Total Watchoverya Arena capacity was 6,350 for the concert on June 18, 2003.
9. At approximately 11:40 p.m., the Defendant performed the song Fire It Up.
10. During the performance of Fire It Up, the audience in the festival seating area on the floor of the Watchoverya Arena surged forward to the stage causing a crush near the front of the stage.

11. Decedent Keith Gallo was located in the festival seating area during the performance of Fire It Up.

12. During the performance of Fire It Up, the audience surge caused Keith Gallo to be trampled and pushed to the ground by other audience members, resulting in a severe head injury.

13. After having fallen to the ground by the audience surge, other audience members fell on top of Keith Gallo and crushed him, resulting in asphyxiation.

14. The combined head trauma and asphyxiation were so severe that Keith Gallo retained no cognitive functioning at any time after June 18, 2003.

15. As a result of the injuries sustained on June 18, 2003, Keith Gallo was pronounced dead on July 5, 2003.

16. Keith Gallo, decedent, left the following persons surviving him, entitled to recover damages for his death under the laws of the state of Wyoming:

- (a) Linda Gallo – Mother
- (b) Jon Gallo – Father
- (c) Kate Gallo – Sister
- (d) Reggie Gallo – Brother

#### **COUNT 1: WRONGFUL DEATH / LIABILITY IN TORT**

17. Plaintiffs Linda and Jon Gallo, incorporate Paragraphs 1 through 16 as if set forth at length.

18. This civil action is brought pursuant to the Wrongful Death Act.

19. Decedent Keith Gallo did not bring any other action during his lifetime and no other action for his death has been commenced against the Defendant.

20. This action is brought to recover, on behalf of all the statutory beneficiaries of the decedent, all damages legally available under the Wrongful Death Act.

21. The audience surge and resultant trampling and crushing in the festival seating area were directly and proximately caused by Defendant's act of inciting the audience.

22. Fire It Up contains flagrantly violent lyrics likely to incite imminent lawless conduct by the audience members.

23. As performed by Defendant on June 18, 2003, Fire It Up in fact incited imminent lawless conduct by the audience members, including but not limited to, disorderly conduct and illegal entrances by audience members onto the festival seating area.

24. During the performance of Fire It Up, the Defendant repeatedly commanded and directed the audience to disregard the Watchoverya Arena security guards and to fight and/or rush to the stage.

25. During the performance of Fire It Up, the Defendant repeatedly commanded and directed the audience to "burn the place down" and to "tear it all down, the walls to the ground."

26. Defendant's repeated directions and commands during Fire It Up incited audience members in assigned arena seating areas to breach security and join the festival seating audience on the concert floor.

27. Defendant's repeated directions and commands during Fire It Up incited the audience in the festival seating area to violently surge to the stage.

28. Defendant knew, or should have known, that it was likely that his/her incitements during the song Fire It Up would cause imminent lawless action by the audience.

29. As a direct and proximate result of Defendant's incitements, the audience in the festival seating area of the Watchoverya Arena surged forward.

30. As a direct and proximate result of Defendant's incitements, the audience surge caused Keith Gallo to be trampled and crushed resulting in severe head injury and asphyxiation, leading to his death.

31. By reason of Keith Gallo's death, his survivors have incurred funeral and burial expenses and have sustained severe pecuniary loss including support, comfort, counsel, services and companionship.

WHEREFORE, Plaintiffs Jon and Linda Gallo, as Executors of the Estate of Keith Gallo, and individually, seek judgment against the Defendant Riley Urbanski/ Skee Poll in an amount in excess of the jurisdictional minimums of this Court.

**COUNT 2: SURVIVAL ACTION / LIABILITY IN TORT**

32. Plaintiffs Linda and Jon Gallo incorporate Paragraphs 1 through 31 as if set forth at length.

33. Plaintiffs bring this action pursuant to the Wyoming Survival Act.

34. The occurrence of the aforesaid incident and resultant fatal injuries to Keith Gallo were caused by the Defendant as set forth above in Paragraphs 21 through 30.

35. As a direct and proximate result of Defendant's incitements, Keith Gallo sustained severe injuries that caused him great physical and mental pain and anguish and resulted in his death on July 5, 2003.

36. As a direct and proximate result of Defendant's incitements, Keith Gallo ceased to be a productive member of the workforce and thus a claim is made for lost wages.

37. By reason of his death, Keith Gallo's surviving relatives have incurred funeral and burial expenses and have sustained severe pecuniary loss including support, comfort, counsel, services and companionship.

WHEREFORE, Plaintiffs Jon and Linda Gallo, as Executors of the Estate of Keith Gallo, and individually, seek judgment against the Defendant Riley Urbanski/ Skee Poll in an amount in excess of the jurisdictional minimums of this Court.

Respectfully submitted,

/s/ \_\_\_\_\_  
Attorney For Plaintiffs

Dated: September 27, 2004

STATE OF WYOMING ) IN THE DISTRICT COURT  
 ) ss.  
COUNTY OF CLEARWATER ) FIRST JUDICIAL DISTRICT

LINDA GALLO and JON GALLO, )  
as Executors of the Estate of )  
KEITH GALLO, Deceased, and )  
Individually in their Own Right, )

Plaintiffs, )

v. )

No. 2004 CV 2419

RILEY URBANSKI, a/k/a SKEE )  
POLL, Individually and as sole )  
proprietor of THUGS & SKEES, )

Defendant. )

**DEFENDANT'S ANSWER WITH NEW MATTER**  
**TO PLAINTIFFS' AMENDED COMPLAINT**

COMES NOW the Defendant Riley Urbanski, d/b/a Thugs & Skees, a sole proprietorship, by and through his attorneys, and answers the paragraphs of Plaintiffs' Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

Factual Background

6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. It is admitted that the persons named in paragraph 16 survived the decedent. Proof of their damages is demanded at trial.

**COUNT 1: WRONGFUL DEATH / LIABILITY IN TORT**

17. Defendant incorporates his/her responses to Paragraphs 1 through 16 as if fully set forth here at length.

18. Admitted.

19. Admitted.

20. Admitted.

21. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the Defendant incited the audience.

22. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the lyrics from Fire It Up were likely to have incited imminent lawless conduct by audience members.

23. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the Defendant incited imminent lawless conduct.

24. This averment sets forth a legal conclusion to which no response is required.

25. Denied.

26. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the Defendant incited the audience in assigned seating areas.



27. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that the Defendant incited the festival seating audience.

28. This averment sets forth a legal conclusion to which no response is required.

29. This averment sets forth a legal conclusion to which no response is required.

30. It is admitted that the audience surge caused injuries to Keith Gallo as described. Otherwise, this averment sets forth a legal conclusion to which no response is required.

31. It is admitted that the Plaintiffs incurred funeral and burial expenses. Proof of damages for pecuniary loss is demanded at trial.

### **COUNT 2: SURVIVAL ACTION / LIABILITY IN TORT**

32. Defendant incorporates his/her responses to Paragraphs 1 through 31 as if fully set forth here at length.

33. Admitted.

34. This averment sets forth a legal conclusion to which no response is required. Defendant otherwise incorporates his/her responses to Paragraphs 21 through 30 as if fully set forth here at length.

35. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that Keith Gallo suffered any conscious pain and suffering.

36. This averment sets forth a legal conclusion to which no response is required. To the extent a response is necessary, it is denied that Keith Gallo was employed at the time of death, or that he had intentions to be employed.

37. It is admitted that the Plaintiffs incurred funeral and burial expenses. Proof of their damages for pecuniary loss is demanded at trial.

### **NEW MATTER**

38. Plaintiffs' action is barred by the First Amendment to the United States Constitution. The music performed by Defendant Riley Urbanski, as Skee Poll, on the evening of June 18, 2003, is protected speech for which Defendant cannot be punished through a civil action.

39. Watchoverya Arena was responsible for crowd security and is liable for the injuries and death caused to Keith Gallo.

40. Third parties in the crowd, not known to Defendant, are liable for the injuries and death caused to Keith Gallo.

41. Keith Gallo contributed to his own injuries by leaving his assigned seat in Section 110, Row A, Seat 1, and illegally entering the festival seating area at the Watchoverya Arena.

Respectfully Submitted

/s/ \_\_\_\_\_  
Attorney for the Defendant

October 15, 2004

STATE OF WYOMING ) IN THE DISTRICT COURT  
) ss.  
COUNTY OF CLEARWATER ) FIRST JUDICIAL DISTRICT

LINDA GALLO and JON GALLO,)  
as Executors of the Estate of )  
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Individually in their Own Right, )  
) )  
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No. 2004 CV 2419

RILEY URBANSKI, a/k/a SKEE )  
POLL, Individually and as sole )  
proprietor of THUGS & SKEES, )  
) )  
Defendant. )

**PLAINTIFFS' REPLY TO NEW MATTER**

COMES NOW, Plaintiffs, Linda and Jon Gallo, as Executors of the Estate of Keith Gallo, Deceased, and individually, by and through their attorneys, and respond to the new matters raised in the Defendant's Answer as follows:

38. It is denied that Plaintiffs' action is barred by the First Amendment. The music performed by Defendant on June 18, 2003, was not protected speech since the Defendant incited the audience. Speech that incites lawlessness is not protected by the First Amendment.

39. It is admitted that the Watchoverya Arena was responsible for crowd security. However, it is denied that Watchoverya Arena caused the death of Keith Gallo. Defendant's incitement of the audience was the sole cause of Keith Gallo's injuries and death.

40. It is denied that third parties in the audience were the cause of Keith Gallo's injuries and death. Defendant is solely responsible for inciting audience members onto the floor and for inciting them to push to the stage, directly resulting in Keith Gallo's injuries and death.

41. It is denied that Keith Gallo contributed to his own injuries by entering the festival seating area at the Watchoverya Arena. Defendant is solely liable for inciting and encouraging audience members, including Keith Gallo, to enter the floor area.

Respectfully Submitted

/s/ \_\_\_\_\_  
Attorney for Plaintiff

November 2, 2004

STATE OF WYOMING ) IN THE DISTRICT COURT  
) ss.  
COUNTY OF CLEARWATER ) FIRST JUDICIAL DISTRICT

LINDA GALLO and JON GALLO,)  
as Executors of the Estate of )  
KEITH GALLO, Deceased, and )  
Individually in their Own Right, )

Plaintiffs, )

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RILEY URBANSKI, a/k/a SKEE )  
POLL, Individually and as sole )  
proprietor of THUGS & SKEES, )

Defendant. )

**COURT’S ORDER ON MOTION FOR SUMMARY JUDGMENT**

Currently before the court is a summary judgment motion filed by defendant Riley Urbanski individually and in his/her capacity as sole proprietor of Thugs & Skees, a producer and promoter of music. Defendant is also known as the rap singer Skee Poll. For the reasons set forth below, defendant’s motion will be denied and this matter will be directed to a jury trial.

**Background**

On June 18, 2003, at a concert featuring Skee Poll, Keith Gallo was seriously injured when he was asphyxiated and trampled on the concert floor of the Watchoverya Arena. The injuries occurred when the crowd surged forward during the song Fire It Up. Keith Gallo was later determined to be brain dead. He died July 5, 2003, after his parents removed him from life support.

In January of 2004, Keith Gallo's parents, Linda and Jon Gallo, filed a Complaint under the wrongful death and survival statutes. That Complaint named as defendants Watchoverya Arena and Riley Urbanski. Watchoverya Arena was named as the owner of the venue and the party responsible for concert security. After both defendants had answered the Complaint and after discovery had been completed, Plaintiffs entered into and reached a settlement with Watchoverya Arena. Accordingly, the Plaintiffs filed an Amended Complaint September 27, 2004, solely against the defendant Riley Urbanski. Plaintiffs allege in their Amended Complaint that the Defendant caused the death of their son through his violent lyrics and commands for the crowd to –break through security

and rush the stage. Defendant has filed a motion for summary judgment seeking dismissal of Plaintiffs' Amended Complaint.

### **Legal Discussion**

Defendant first seeks summary judgment arguing that the Plaintiffs' cause of action for incitement is barred by the First Amendment since the song Fire it Up is protected speech and defendant is thus shielded from any potential liability.

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment's protection of our freedom of speech is applicable to each and every state through the Fourteenth Amendment. J.S. v. Bethlehem Area Sch. Dist., 807 A.2d 847 (Pa. 2001). The heart of the right to free speech is the "ineluctable relationship between the free flow of information and a self-governing people." Id. at 854. The First Amendment prevents government from proscribing speech because of disapproval of the ideas expressed. Id. Courts have jealously guarded the right to free speech. Id. The First Amendment protection of the freedom of speech and of the press is "not based on the naive belief that speech can do no harm but on the confidence that the benefits society reaps from the free flow and exchange of ideas outweigh the costs society endures by receiving reprehensible or dangerous ideas." Herceg v. Hustler Magazine, Inc., 814 F.2d 1017, 1024 (5th Cir. 1987).

While the freedom of speech is rightfully cherished, it is also clear that this right of free speech is not absolute at all times and under all circumstances. For example, certain types of speech can be regulated if they are likely to inflict unacceptable harm. These narrow categories of unprotected speech include: (1) obscene speech; (2) libel, slander, misrepresentation, perjury, false advertising, solicitation of crime, complicity by encouragement, conspiracy, and the like; (3) speech or writing used as an integral part of conduct in violation of a valid criminal statute; and (4) speech that incites imminent lawless action.

In this case, Plaintiffs have asserted the speech at issue incited others to imminent lawless action. This exception to First Amendment protection was addressed by the United States Supreme Court in Brandenburg v. Ohio, 395 U.S. 444 (1969). Under Brandenburg, a plaintiff seeking to hold a defendant liable for injuries caused by speech that incites, has the burden of proving, by a preponderance of evidence, that the speech (1) was directed or intended toward the goal of producing imminent lawless conduct, and (2) was likely to produce imminent lawless conduct. Brandenburg, at 447.

Summary judgment is appropriate only when there is no dispute as to the material facts and the party seeking judgment is entitled to prevail as a matter of law, without resort to trial. Only when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment. In this case, this court's review of the record indicates that there exists factual disputes as to whether Defendant's speech was directed or intended toward the goal of producing imminent lawless conduct and also whether Defendant's speech was likely to have produced such conduct. Thus, the issue of whether Defendant incited the crowd and caused Keith Gallo's death is for the jury to decide. As a result, Defendant's summary judgment motion is denied on this issue.

Defendant's second argument in favor of summary judgment is that third persons in the crowd were the intervening causes of Keith Gallo's death, thus severing any possible connection needed for the Plaintiffs to establish that the defendant was the cause of Keith Gallo's injuries.

Under Wyoming law, the fact that the acts of a third person or persons intervened between defendant's conduct and the plaintiff's injury does not automatically sever the causal connection necessary to establish liability. If the intervening act is a normal or foreseeable consequence of the situation created by the defendant's conduct then the defendant can still be held liable. This court's review of the record indicates that there exists a dispute of material fact as to whether the intervening acts by third persons who crushed and trampled Keith Gallo were a normal or foreseeable consequence of the situation created by Defendant's conduct. Thus, the issue of whether intervening forces were the cause of Keith Gallo's death is for the jury to decide. As such, Defendant is not entitled to summary judgment on this issue.

Accordingly, this Court enters the following:

**PRE-TRIAL ORDER**

AND NOW, this 12th day of December, 2004, Defendant's summary judgment motion is DENIED. This case is hereby scheduled for a one-day trial during the November 2005 Civil Trial Term.

BY THE COURT:

\_\_\_\_\_  
Honorable M. Sauerwald

Distribution:  
Plaintiff's counsel  
Defendant's counsel

## Applicable Law (Mock Trial Version)

**Burden of Proof:** In civil cases such as this one, the plaintiffs have the burden of proving their case by a preponderance of the evidence. In this case, the plaintiffs have the burden of proving that the defendant incited the crowd, and that the incitement was the factual cause of plaintiffs' harm.

**Incitement:** Speech incites if it (1) was directed or intended toward the goal of producing imminent lawless conduct and (2) was likely to produce imminent lawless conduct.

**Incite defined:** "Incite" means to arouse, stir up, urge, provoke, encourage, spur on, or goad.

**Disorderly conduct:** Disorderly conduct occurs when a person, with intent to cause public disturbance, disorder or alarm, or recklessly creating a risk thereof: (1) engages in violent or tumultuous behavior; (2) makes unreasonable noise; (3) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

**Contributory negligence:** General Rule -- In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

**Negligence defined:** the absence of ordinary care that a reasonably prudent person would exercise in the circumstances here presented. Negligent conduct may consist of either an act or a failure to act when there is a duty to act. To prove negligence a plaintiff must show the defendant had a duty, breached that duty, proximately caused the injury and the damages caused by the injury. A duty may be provided by law or relationship or may be created by a reasonably foreseeable outcome of events.



STATE OF WYOMING ) IN THE DISTRICT COURT  
 ) ss.  
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Plaintiffs, )

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RILEY URBANSKI, a/k/a SKEE )  
POLL, Individually and as sole )  
proprietor of THUGS & SKEES, )

Defendant. )

**Stipulations**

The parties have stipulated to the following:

1. Keith Gallo's injuries were caused by a combination of compressive asphyxiation and head trauma suffered during a crowd surge on June 18, 2003, at a Skee Poll concert in Reidville, Wyoming. Keith Gallo's death was a direct result of these injuries.
2. Keith Gallo's injuries occurred during the defendant's performance of the song Fire It Up.
3. Total capacity for the Watchoverya Arena concert on June 18, 2003 was 6,350. Total capacity for the festival seating area was 750. A total of 6,299 ticketed fans actually attended the Skee Poll concert June 18, 2003, including 746 fans admitted to the festival seating area.
4. Based upon review of all discovery materials, the parties agree that by the conclusion of the song Fire It Up, between 100 to 150 fans had entered the festival seating area from assigned seating areas and joined the festival seating crowd, making the total floor crowd between 846 and 896.
5. Issues of liability and damages will be tried separately (bifurcated) for the purposes of trial.

6. Defense witness D'Arcy Ace will be recognized as an expert in the field of crowd safety and crowd management.

7. Evidence of the settlement reached between Plaintiffs and Watchoverya Arena is not admissible at trial for any purpose.

8. The parties have stipulated to the authenticity of the following items:

A. The Pleadings: Amended Complaint, Answer with New Matter, Reply to New Matter.

B. Exhibits 1 through 4 and their pre-markings.

C. The statements of the witnesses.

The parties reserve the right to dispute any legal or factual conclusions based on these items and to make objections other than to authenticity.

/s/ \_\_\_\_\_  
Attorney for Plaintiffs

/s/ \_\_\_\_\_  
Attorney for Defendant

January 10 , 2005

STATE OF WYOMING ) IN THE DISTRICT COURT  
 ) ss.  
COUNTY OF CLEARWATER ) FIRST JUDICIAL DISTRICT

LINDA GALLO and JON GALLO,) )  
as Executors of the Estate of ) )  
KEITH GALLO, Deceased, and ) )  
Individually in their Own Right, ) )

Plaintiffs, ) )

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No. 2004 CV 2419

RILEY URBANSKI, a/k/a SKEE ) )  
POLL, Individually and as sole ) )  
proprietor of THUGS & SKEES, ) )

Defendant. ) )

**SPECIAL JURY INTERROGATORIES**

[At many trials, the judge provides interrogatories like these to the jury at the end of the trial. The jury is instructed to reach a verdict consistent with the answers it finds to the interrogatories. *A copy of these interrogatories may not be used as an exhibit during the mock trial competition.*]

**To the jury:**

To further clarify instructions given to you by the trial judge, you are being provided with the following verdict form. At the conclusion of your deliberations, one copy of this form should be signed by your foreperson and handed to the court clerk. This will constitute your verdict.

Question 1:

Was the speech used by the Defendant on June 18, 2003 directed or intended toward the goal of producing imminent lawless conduct by the audience?

Yes \_\_\_\_\_

No \_\_\_\_\_

If your answer is “Yes”, proceed to Question 2. If “No”, plaintiffs cannot recover and you should not answer any more questions and return to the courtroom.

Question 2:

Was the Defendant's speech likely to produce imminent lawless conduct?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is "Yes," proceed to Question 3. If "No," plaintiffs cannot recover and you should not answer any more questions and return to the courtroom.

Question 3:

Was the Defendant's speech a factual cause of Keith Gallo's injuries and ultimate death?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is "Yes," proceed to Question 4. If "No," plaintiffs cannot recover and you should not answer any more questions and return to the courtroom.

Question 4:

Was Keith Gallo contributorily negligent?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer was "Yes", proceed to Question 5. If "No", please proceed to Question 6 and also place a "n/a" in the blank space for the percentage of causal negligence attributable to Keith Gallo in Question 8.

Question 5:

Was Keith Gallo's contributory negligence a factual cause of his injuries and death?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer was "Yes", proceed to Question 6. If "No", please proceed to Question 6 and also place a "n/a" in the blank space for the percentage of causal negligence attributable to Keith Gallo in Question 8.

Question 6:

Was Watchoverya Arena negligent?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer was "Yes," proceed to Question 7. If you answered "No", please return to the courtroom, unless you answered "Yes" to Questions 4 and 5. If you did answer "Yes" to Questions 4 and 5, but "No" to this Question, please proceed to Question 8 and place a "n/a" in the blank space for the percentage of causal negligence attributable to Watchoverya Arena.

Question 7:

Was Watchoverya Arena's negligence a factual cause of Keith Gallo's injuries and death?

Yes \_\_\_\_\_

No \_\_\_\_\_

If your answer was "Yes," proceed to Question 8. If you answered "No", please return to the courtroom, unless you answered "Yes" to Questions 4 and 5. If you did answer "Yes" to Questions 4 and 5, but "No" to this Question, please proceed to Question 8 and place a "n/a" in the blank space for the percentage of causal negligence attributable to Watchoverya Arena.

Question 8:

You may only answer Question 8 if you answered "Yes" to all of the Questions above, (1 through 7), or if you answered "Yes" to Questions 1 through 5, or if you answered "Yes" to Questions 1 through 3 and Questions 6 and 7:

Percentage of causal negligence attributable to Defendant \_\_\_\_\_%

Percentage of causal negligence attributable to Keith Gallo \_\_\_\_\_%  
*(Fill in this line only if you answered Yes to Questions 4 and 5)*

Percentage of causal negligence attributable to Watchoverya Arena \_\_\_\_\_%  
*(Fill in this line only if you answered Yes to Questions 6 and 7)*

**Your total must add up to 100%**

---

**Jury Foreperson**

Please return to the Courtroom

## **WITNESS LIST**

The 2005 mock trial problem provides statements from two witnesses on each side. Each side must call each of these witnesses. All witnesses can be played by either boys or girls.

The named plaintiffs, parents Linda and Jon Gallo, are not included on the witness list. Teams representing the plaintiffs at trial are permitted, however, to sit **one** student at the plaintiffs' table to represent a plaintiff/parent. Additionally, teams representing the defense may choose to sit the defendant at the defense table. Please consult the Rules of Competition as to any limits on communications between counsel and those seated at counsel table.

### ***Plaintiffs***

1. Cameron Campbell
2. Chris Zimmerman

### ***Defense***

1. Riley Urbanski a/k/a Skee Poll
2. D'Arcy Ace

## Statement of Cameron Campbell

1  
2  
3 My name is Cameron Campbell. I'm nineteen years old and currently a freshman  
4 at the University of Wyoming. Keith Gallo and I were cousins. He died on July 5, 2003,  
5 from injuries caused while at a Skee Poll concert. He was only eighteen. We were both  
6 raised in Ridgetown, Wyoming and had been close since we were small. Keith would  
7 have been twenty years old today. My aunt and uncle are devastated. Same for Keith's  
8 little brother and sister, my cousins. I miss him. I loved Keith.

9  
10 Keith was basically good at everything he did: sports, school, music. You name it.  
11 He couldn't wait to get to college. He'd been accepted at the University of Wyoming  
12 beginning in Fall 2003. He wanted to study business, history and music and try to make  
13 the basketball team as a walk-on. Keith was one of the best people I knew. He always  
14 made everyone around him better. He even got me to take the SAT's. I was just going to  
15 get a job after school but I scored high and now I'm at UW. That's where Keith would  
16 be now if it weren't for Skee Poll.

17  
18 Keith loved music and wanted to be a performing artist. He did some metal-rap  
19 and performed at small clubs. He drew real diverse crowds and kept misogyny,  
20 homophobia and racism out of his stuff, just like Skee Poll. As a graduation present,  
21 Keith's parents scraped up some money and bought us both tickets to see Skee Poll on his  
22 Rap Mogul tour at the Watchoverya Arena in Reidville. They knew he loved Skee, and  
23 they wouldn't let him go when Skee toured here in 2000 and 2002 because he was too  
24 young. Keith thought the whole act was hot: the fact that Skee Poll grew up around here  
25 and rapped about the streets. He liked the whole rags to riches story line, the flashy cars,  
26 and the tough talk.

27  
28 Keith first became a Skee fan in 1999 when he was fourteen, when Skee came out  
29 with his first CD called Skee Poll. I know Skee's like a god in this area, but I'm  
30 lukewarm on Skee, no disrespect to my dear cousin, who had kind of a Skee obsession.  
31 The album Skee Poll is, was, Keith's second favorite of Skee's albums. That CD went  
32 Platinum, which is over one million copies sold. It was an amazing debut. Keith liked that  
33 it had both "body and mind"; raw, explosive energy but clever and thoughtful too. Keith  
34 did prefer the harder, more raw stuff like the song Riot. I personally liked Gil Scott's  
35 Revolution which was about what constructive things you can do with all that energy and  
36 anger.

37  
38 Keith didn't like Skee's second CD, Black Diamond (2002), too much. Keith  
39 didn't think it had much "body" or "mind." He thought it was self-indulgent and too  
40 toned down. Most songs were about Skee complaining how tough it was being a phat rich  
41 star. It was real tedious. Black Diamond sold only half of what the first album had. Keith  
42 did like one cut from Black Diamond, a song called Beat You Down. It was the only  
43 really raw emotional song on the CD; the only one with any "street cred" according to  
44 Keith.

45

1 Another song from Black Diamond was called FOS Crush. I hadn't recalled the  
2 song until I saw a TV report about Keith's death that mentioned the song. I remembered  
3 it was one of the few songs from Black Diamond I liked although I forget the lyrics and I  
4 never understood the title. But the TV reporter said that FOS crush stands for "front of  
5 stage crush"; that's how Keith died. I find that more than a little ironic. The local press  
6 really jumped all over Skee Poll then, blaming Skee for Keith's death.  
7

8 On June 18, 2003, we got to the show early to tailgate. We hung out in my  
9 parent's car and listened to Rap Mogul on the CD player. I drank a little bit of the vodka  
10 but Keith declined. Keith loved Rap Mogul and bought it the day it was released in April  
11 2003. It was his favorite CD. I disliked it a lot. It had too much gangsta rap in it; lots of  
12 tracks were about violence and making or spending money. You know, bang and bling.  
13 The songs have little artistic value. But I knew Keith understood the difference between  
14 listening to violent lyrics and being violent.  
15

16 Keith especially liked the songs Fire It Up, Riot2 and My Revenge. Right before  
17 we left the car, Keith listened to Fire It Up two times straight and screamed along with  
18 Skee Poll. Keith, who was often reserved and quiet, told me the song freed him in some  
19 way. It was like he had an alter ego who could let loose with songs like Fire It Up. It was  
20 very emotional for him. I wasn't thrilled about the lyrics or sound which included the DJ  
21 sampling in noises like gunfire, sirens and a martial beat. Even so, Fire It Up does have  
22 bottomless energy and really makes you want to move. About everybody in the parking  
23 lot seemed to be playing it and screaming along with Skee even though I'd never heard  
24 Fire It Up until that night.  
25

26 I thought the whole album, and especially the cut Fire It Up, was a gimmick to  
27 increase Skee's sales of Rap Mogul since the second album, Black Diamond, had tanked.  
28 It might not have been working anyway, since Rap Mogul was only doing a little better  
29 than Diamond. Skee was only able to sell out three half-stage shows at the Watchoverya  
30 Arena.  
31

32 We went inside at around 9:00 p.m. to catch the end of Babysweet, the opening  
33 act. We took our seats in Section 110, Row A, Seats 1 and 2, right behind the hockey rink  
34 wall. We were near the action but since we were so low, it was hard to see the stage.  
35 Keith hated where we were sitting. He told me he wished his parents could have afforded  
36 tickets for the festival seating in the front of the stage, but those tickets were three times  
37 as much as our \$30 tickets. Festival seating is an area with no seats, just open floor and  
38 kids packed like lemmings. We both knew Skee Poll shows had a reputation for frenzied  
39 floor crowds, even by Hip Hop standards, with lots of crowd surfing, moshing and even  
40 some violence. Crowd surfing is when someone is picked up and passed over the heads of  
41 the crowd. Moshing is kids body slamming into each other and can get real violent. I was  
42 kind of glad not to be there.  
43

44 The first half of the show was pretty much fun. I was surprised. Everyone was so  
45 pumped up our hometown hero was back in town. Skee did a nine-song set. There was  
46 some moshing and surfing on the floor in front of us but security was evicting them.



1 Keith was having a ball but he mentioned that we should get to the floor and join the  
2 action. That didn't seem likely since there were like a gazillion security guys the size of  
3 football players, all in fluorescent pink shirts, ringed around the floor looking directly at  
4 us. I've never seen so much security at the Watchoverya Arena, and I'd been there maybe  
5 ten times, including to some real frenzied shock rock bands like L7, Gwar and Insane  
6 Clown Posse. It seemed hopeless we could get to the floor, which was fine by me.

7  
8 The second set was also nine songs. Over the middle three, Skee started to really  
9 fire up the crowd. The body surfing and moshing were picking up too, keeping security  
10 real busy as the crowd frenzy grew. While rapping the sixth song, Beat You Down, Skee  
11 screamed in the chorus from Fire It Up while the DJ was sampling in some martial  
12 sounding music with occasional gunfire sounds. This really stirred up the moshers and  
13 they started pushing to create space for their pits. Keith yelled to me, "I can feel it, Skee's  
14 calling me up." That's not quite what I heard Skee say. But then, while doing the Fire It  
15 Up chorus a second time, a group of kids near us made this mass move to the floor. Some  
16 got caught but some got through and were chased by pink shirts in front of us. Just like  
17 that, Keith said "let's do it" and he jumped to the floor and I followed. We ran as fast as  
18 we could to the back of the floor crowd and melted in. My heart was pounding. Keith and  
19 I just looked at each and burst out laughing. He gave me this huge grin. I'll never forget  
20 that moment.

21  
22 Because of all the moshing, the floor was pulsating. It was exciting and felt  
23 slightly dangerous. We could still move in the crowd and we began to push our way  
24 closer to the stage. Beat You Down finished and we continued to push ahead. By the  
25 beginning of Riot2, we were near the middle of the floor crowd. At that point, the show  
26 was building and building, getting more and more intense. During Riot2 was the most  
27 frenzied crowd I had ever been in. Skee was preening all over the stage. The crowd was  
28 starting to pack together a little bit and we were getting pushed around a few feet this  
29 way and that. Then came Fire it Up.

30  
31 As soon as the crowd recognized the song, they went insane. We could still move  
32 around a little, although we were elbow to elbow. Unfortunately, things changed  
33 dramatically about midway through Fire It Up. The whole arena chanted the first stanza  
34 and the chorus. There was a noticeable surge forward to the stage as Skee screamed  
35 "fight to your stage." Skee absolutely owned the crowd; it was chanting along, raising  
36 fists and bobbing heads. I think the crowd would have jumped off a cliff had Skee told  
37 them to do so.

38  
39 Skee had just finished the second chorus when we felt the crowd push real hard  
40 again. We moved so quickly we couldn't control where we were standing. We got pushed  
41 about ten feet. At one point, I was lifted off my feet. It was scary and hard to breathe.  
42 Then things stabilized; however, just a moment later, during the third chorus, we felt this  
43 tremendous surge and were pushed forward. I grabbed for Keith's hand as the crowd was  
44 moving like a tidal wave. I was lifted up so high at one point I rose above the wave, then  
45 got churned back down. Then I lost Keith's hand.

1 The crowd's movement seemed to concentrate in on us and the crushing got more  
2 intense. I was feeling pressure from all directions but mostly from the back. The power of  
3 the crowd was incredible and it was very hot. Things were so tight I was struggling to  
4 breathe; I couldn't expand my lungs. It was terrifying. I thought for certain I would die.  
5 There was no movement where I was, just a crush. It seemed to go on forever, although I  
6 think it was only a few minutes. I felt like I would soon faint but soon there was some  
7 room coming from the front. After I caught my breath, I saw four or five people fall to  
8 the ground once there was room for them to fall. They all had apparently fainted but all  
9 got up within a minute or so. I couldn't find Keith, however. I could hear that Skee was  
10 into the last song, Gil Scott's Revolution. Skee didn't even have the courtesy to stop the  
11 concert after Keith was hurt.

12  
13 Then I saw Keith on the ground. I ran over and security appeared. I was crying  
14 and screaming. I nearly fainted again when I saw Keith. He was bleeding and his face  
15 was swollen. Someone in the crowd told me they were near him during the crush and  
16 that he had fainted, fallen to the ground, been trampled before others started tripping over  
17 and falling on him, unable themselves to get up. Security called for first aid and they  
18 arrived with a stretcher. Skee had finished by then and the house lights were up and the  
19 crowd was gawking at Keith as they left.

20  
21 I went to the hospital in the ambulance. Keith's parents came along a short while  
22 later. The next day, they told me Keith was brain dead. It was all such a blur. His parents  
23 made the excruciating decision to take him off life support and Keith died July 5, 2003.

24  
25 Skee Poll killed my cousin. This would never have happened had Skee not incited  
26 the crowd to rush the stage during Fire It Up. I think Skee wanted this crowd crush.  
27 Maybe Skee didn't want anybody killed, but Skee wanted the publicity to sell more Rap  
28 Mogul records. Singers do it all the time, like Janet Jackson's outfit malfunction at the  
29 2004 Super Bowl, or when Ozzy Osbourne bit the head off of a bat on stage. Those were  
30 publicity stunts. And they worked. They become more famous, or infamous, after that.  
31 Just like Skee Poll is now.

32  
33  
34 Signed and sworn to under oath on the 5<sup>th</sup> day of January, 2005.

35  
36 /s/ Cameron Campbell

37  
38  
39 Signed before me this 5<sup>th</sup> day of January, 2005.

40  
41 /s/ Jennie Jacoby, Notary Public

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## Statement of Chris Zimmerman

My name is Chris Zimmerman. I was employed as the crowd manager for the Watchoverya Arena from the time it opened in Reidville June 1998, through June 2004. Prior to that I held security positions at the Chocolate Center. I'm a 1989 graduate of the University of California, Los Angeles (UCLA) with a degree in security management. In June of last year, I took a more lucrative job as a crowd manager in Chicago.

The Watchoverya Arena is home to Flying Puffins hockey and Eagles Arena Football, as well as the host of many music concerts and other events. Over the years, I managed approximately 700 entertainment events, including about 150 music concerts there. I oversaw all security for Watchoverya Arena events, including crowd ingress and egress, and security in and around the arena; basically making sure all events were safe for the patrons. Our security staff includes uniformed and pink t-shirted security, hence our nickname, Pink Security.

Reidville's own Skee Poll was scheduled to play Watchoverya Arena June 18, 19 and 20, 2003, to three half-house concerts. It was originally three full-house crowds but sales sagged. This was only Skee's third stop on this tour having done two concerts each, earlier in June, in Richmond and Baltimore. We negotiated with Thugs & Skees on seating arrangements. Thugs & Skees is Skee's company which produced and promoted Rap Mogul. Thugs & Skees requested festival seating and we agreed. Watchoverya Arena retains veto power over whether festival seating is appropriate. Festival seating is basically open or standing only seating in front of the stage. It's pretty standard in the industry now so long as the audience can stand for an entire concert.

The total floor area available for festival seating was 60 by 60 feet (3600 square feet). That takes into account buffers between the floor crowd and the lower level on the sides, back and in front of the stage. There are some industry guidelines created by the National Fire Association (NFA) recommending that each fan requires between four to five square feet of room in a festival seating area. Thus, 750 festival seat tickets were issued. Total half-house capacity was 6,350.

I love managing crowds for heavy metal, shock rock, hardcore rap and the like because it's a challenge and requires more creativity than say managing Puffin games or Barry Manilow concerts. Those crowds are, frankly, boring and predictable. These concerts required extra preparation and flexibility on concert day. It's vital to know your performer and audience. This will determine your security needs.

In compiling data I needed for my security plan, I reviewed Skee Poll and his/her music. I knew a little bit about Skee since I'd managed four full-house sell outs during the 2000 debut tour and two full-house sellouts on the 2002 Black Diamond tour. Full house capacity is 10,000. I reacquainted myself with Skee's music and the proposed concert playlist. The first CD, Skee Poll, had some hard rap on it, but it was mixed with lighter, clever stuff too: mostly mainstream with some nice vocals and keyboard. I recalled that during the first tour, Skee had great rapport with the crowd, was very

1 charismatic and active and animated on stage. There were a few songs that caused some  
2 crowd frenzy up front, but Pink Security handled it. The second CD, Black Diamond  
3 from 2002, was timid and the concerts pretty uneventful. I took notes on a couple of  
4 songs.

5  
6 I thought Rap Mogul from 2003 was a departure from mainstream rap. Skee  
7 seemed to be flirting with gangsta rap; you know, dropping vocals, keyboard and guitar  
8 from many cuts and using the DJ more to sample in different tracks and street sounds,  
9 including occasional gunfire and sirens. It was well produced though and I could see that  
10 an audience would really respond to it. I'm not sure why the change. Some say it was to  
11 increase sales. Who knows. I can tell you from my experience, however, that the trend is  
12 declining audience share for hard core rap. I think Skee was caught in that cycle.

13  
14 Skee's proposed playlist included eighteen songs, plus an encore. The majority  
15 were from Rap Mogul. I saw a major problem with the song My Revenge. It's  
16 exceedingly violent and graphic, and too dangerous to be performed live. That's not my  
17 personal opinion – I don't ever bring that in to my assessments. I don't do this often, and  
18 I know this runs into free speech issues, but we told Thugs & Skees about our concerns  
19 and they agreed to replace it.

20  
21 Additionally, in order to compile data necessary for my security plan, I contacted  
22 the Richmond and Baltimore concert managers. I normally contact these people and take  
23 notes in order to get a feel for what the performer's earlier concerts were like. They  
24 confirmed what I already suspected; the most intense crowd reaction would be to Riot2  
25 and Fire It Up, numbers 16 and 17 on the playlist. Also of note was the 15th song, Beat  
26 You Down. All were pretty powerful and would be played consecutively. Out of these,  
27 Fire It Up was notable because it seemed to encourage or direct certain crowd reactions.  
28 Whenever a musician does this, we need to be extra vigilant. The other managers noted  
29 some concern when Skee played Fire It Up, noting there were substantial increases in  
30 attempts by fans to get to the festival areas and that both venues had to evict dozens of  
31 fans. Both managers reported that police at their venues also made a few arrests for  
32 disorderly conduct and the like. They suggested the situation was manageable though  
33 with a good ratio of security, something I already understood.

34  
35 Finally, I knew that this concert would be a challenge; Skee Poll's crowds are  
36 normally in their late teens and early twenties, are ethnically mixed, energetic,  
37 predominantly male, and coming to watch an aggressive and possibly provocative  
38 performer. This is the type of challenge I get for maybe four or five concerts per year.  
39 Like for shock rockers Audioslave, Marilyn Manson or a metal rap artist like Limp  
40 Bizkit, for instance.

41  
42 Based upon all this information, I chose a really high concert guard to fan ratio of  
43 1:40, or about 160 guards, even though this would cut into the Arena's profit. The general  
44 rule is a ratio of 1:100 for medium stuff like hockey games, 1:150 for mild stuff, like  
45 Barry Manilow. I decided to use the extra personnel mainly on the floor by adding to the  
46 ring we normally create right below the rink wall to keep fans off the floor. In addition,

1 we added another ring behind this first ring, something I never did before. I used our  
2 biggest and most experienced Pink Security guys in these rings. The rest of the extra floor  
3 security was stationed in front of the stage or within the edges of the floor crowd. They  
4 were responsible for keeping body surfing and moshing under control and keeping the  
5 floor crowd from the stage.

6  
7 I took other security measures including strict enforcement of underage drinking  
8 in the tailgate/parking area, body searches upon entry, no alcohol sales, and periodic  
9 announcements about evicting all body surfers and moshers. Pink Security staff was also  
10 directed to be extra vigilant near the end of the playlist and avoid provocative actions  
11 toward the crowd.

12  
13 During the show, I was located behind Section 109. Everything went smoothly  
14 through intermission. After intermission, there were only a couple of attempted breaches  
15 onto the floor but they were easily quelled. The crowd's mood was really stoked though  
16 by the middle of the second half of the concert. During the 15th song, Beat You Down,  
17 Skee added the chorus from Fire It Up at two places and had the DJ sample in sirens and  
18 gunfire to a martial-like beat. This wasn't in the recorded version and I didn't hear that  
19 Skee had done this in Richmond or Baltimore. I became a bit concerned. After the new  
20 chorus, there was increased movement from the upper levels. Fans started leaving their  
21 seats and collecting at the top of the stairways to the lower levels. Security was holding  
22 them off though and most were sent back to their seats. There was also increased crowd  
23 surfing and minor moshing injuries. There had been very little of either prior to Beat You  
24 Down.

25  
26 During one of the Fire It Up choruses in Beat You Down, kids in Section 110  
27 made a mass break for the floor. Four were caught immediately but four others got  
28 through the security rings and were pursued. They were caught, and all were evicted, but  
29 this created a temporary weakness in the rings and it was then that I saw two kids from  
30 Section 110, first row, run for the floor. I later learned this was Keith Gallo and his  
31 friend. The guards watching the festival crowd were informed to look for them and the  
32 ring was re-established in front of Section 110.

33  
34 My attention was then directed by security chatter to the stairways. There were  
35 some small groups forming in some of the stairways leading to the floor. I was in  
36 constant communication with the guards, working on resolving those problems. The  
37 show continued to build in intensity.

38  
39 Then came Fire it Up. When Skee started, the crowd roared. It was deafening.  
40 They screamed through the first chorus. This song hadn't even been released yet as a  
41 single and I was surprised the crowd knew it so well. I don't get surprised by much. I  
42 hadn't gotten a feel from either of the concert managers I spoke with that this song was  
43 this explosive. Plus, during the first chorus, Skee was extremely animated, more so than  
44 at any point up until then. Skee seemed to be directing the crowd to "fight to your stage"  
45 and "let loose all that rage." The fans on the stairways began to push down toward the  
46 floor and were lining up on the stairs.

1  
2 After Skee's second chorus, dozens of kids started to jump over the rink wall to  
3 the floor. Most were stopped, but they emboldened others and now fans in the front rows  
4 were also jumping over. Pink Security was doing all it could but I was afraid the crowd  
5 was starting to outnumber the pink shirts. During the third chorus, Skee let out a long yell  
6 to "fight to your stage." Then Skee directed the crowd to "rush forward to your stage and  
7 feel the scream." At that point, the breaches became endemic. There were by then  
8 hundreds of fans from the lower levels jumping over the rink wall to the floor. About one  
9 out of three were getting through. Later estimates from photos, discussions with our staff  
10 and eyewitnesses indicated that between approximately 100 to 150 fans successfully ran  
11 onto the floor at that time. Pink Security did an awesome job keeping the numbers that  
12 low.

13  
14 The floor area was big enough to contain the extras because of the buffers;  
15 however, these fans didn't just join in, they aggressively pushed forward into the crowd. I  
16 knew this could be trouble. I communicated with security at the front stage to move the  
17 barricades back against the stage, so as to provide room for the crowd to move forward  
18 and avoid a potential crushing. This seemed to relieve the pressure. Fortunately, by the  
19 end of Fire It Up, the breaches stopped and the floor crowd relaxed out of its frenzy. Pink  
20 Security intervened and turned a bunch of fans over to the police. Fifteen were arrested  
21 for disorderly conduct and three were ultimately convicted. I'm not sure what happened  
22 to the rest of the cases.

23  
24 I thought we had avoided disaster; however, I received a report about a number of  
25 people fainting. And then I heard about Keith Gallo. First aid staff said he was  
26 unconscious. I moved towards the stage area. I waited off stage until Skee Poll had  
27 finished Gil Scott's Revolution. By then, I had been told Keith was seriously injured.  
28 Skee came off stage to get ready for the encore and I told Skee there was a serious injury.  
29 Skee seemed shaken and agreed to skip the encore. We directed that the house lights be  
30 put up and I went out and told the audience there would be no encore because of an  
31 injury. Some of them actually booed, although given that it's Reidville, not  
32 unprecedented. Seven fans besides Keith Gallo were rendered unconscious and fainted  
33 during Fire It Up. They all regained breathing on their own. None were hospitalized.

34  
35 The next morning, I told Skee that Keith Gallo was brain dead. Skee said, "that's  
36 awful, send the family my condolences." After a long silence, Skee said "I guess we need  
37 to cancel the rest of the shows." I learned later that the whole Rap Mogul tour was  
38 canceled, although I did see in the trade papers Rap Mogul sales jumped considerably  
39 after June 18 and knowing what tour contracts are worth, this more than made up for lost  
40 touring revenue.

41  
42 Keith Gallo died under my watch. This will effect me forever. I can't tell you how  
43 sorry I am for Keith's family. I played everything by the book though. I never saw a  
44 crowd like this. It was like they were possessed. I never heard a performer so directly  
45 encourage a crowd to try to break through security or to get to the stage. I have no doubt  
46 that the crowd directly responded to each one of Skee's commands about getting to the

1 stage, and rushing forward. I can't imagine that Skee had no idea that the chorus from  
2 Fire It Up would not entice the crowd forward, especially after teasing the crowd with the  
3 Fire It Up chorus two songs earlier. Skee was indeed playing with fire. I can't believe  
4 Skee didn't know something was happening in the crowd. Even with the house lights  
5 down, performers can see into the front rows. In the end, it was a numbers game. There  
6 were more of them than there were of us. Skee pitted the crowd against us and  
7 encouraged that they act lawlessly.

8  
9 We got criticized in the press for allowing festival seating but it is here to stay and  
10 I followed the NFA's recommended guidelines in choosing floor capacity. I know there  
11 are stricter guidelines out there, like the one put out by consumer advocate D'Arcy Ace.  
12 But they are too draconian and haven't really been accepted industry-wide. Plus, only a  
13 few places outlaw festival seating. Cincinnati, for instance, doesn't permit it as a  
14 consequence of an ingress crushing incident prior to The Who's 1979 concert there left  
15 eleven dead from asphyxiation. There hadn't been a front of stage crushing death in the  
16 U.S. since 1991 when three died at an AC/DC concert in Salt Lake City. The main reason  
17 is because most venues follow the NFA guidelines on festival seating.

18  
19 In any event, it is not festival seating alone that causes injuries. It takes  
20 something, or someone, to incite the crowd and get it moving forward in a frenzied  
21 manner. Skee Poll's lyrics were the cause of this tragedy.

22  
23 Signed and sworn to under oath on the 5<sup>th</sup> day of January, 2005.

24  
25 /s/ Chris Zimmerman

26  
27  
28 Signed before me this 5<sup>th</sup> day of January, 2005.

29  
30 /s/ Jennie Jacoby, Notary Public

31

## Statement of Riley Urbanski / Skee Poll

1  
2  
3 I am Riley Urbanski, better known as Skee Poll. I'm 30 years old and my  
4 profession is rap artist and music producer. I've recorded three CDs: Skee Poll in 1999,  
5 Black Diamond in 2002 and Rap Mogul in 2003. Skee Poll sold 1.1 million, Diamond  
6 sold about a half million and Rap Mogul is still selling, now up to 1.4 million. In 2002, I  
7 created my own business, Thugs & Skees, a sole proprietorship. Thugs & Skees produces  
8 and promotes my stuff as well as three other music artists. Once upon a time I was very  
9 poor. Now I am very rich. Amazing.

10  
11 Most people know I'm from Reidville originally; the rough part of town. I'm from  
12 the other side of the tracks: it's gloom, it's doom. It's got that special American urban  
13 cocktail of poverty, violence and drugs. My escape growing up was hip hop. My favorites  
14 rappers were loud, gritty and authentic. I got a typical Reidville High education and then  
15 went to Temple University undergrad. In 1996, after only three years, I got my Bachelor  
16 of Music degree in voice performance and music theory. I knew I wanted a music career  
17 but I also knew the industry is virtually impossible to break into. But my education  
18 equipped me well, plus I'm a workaholic and a perfectionist. I gave myself four years to  
19 make it and went to work, selling myself, playing area clubs and doing odd jobs on the  
20 side to survive.

21  
22 In 1998, an old professor gave me the number for Shug Day, who was starting a  
23 recording label. I called and Ms. Day offered me a minimum wage job doing this and  
24 that. I jumped at it. At least I had a boot in the music industry door. I eventually got Shug  
25 to listen to one of my demos. She loved it and offered me the five-year contract. She  
26 helped me recruit a band and we finished my first CD, Skee Poll, in late 1999. I was  
27 really pleased with it. Shug managed to finesse a pretty mainstream sound from it. She  
28 pushed the fun, youthful stuff on it and I pushed for some stuff. It wasn't heavily  
29 promoted but caught on with East Coast cities and suburbs. It had cross-appeal to  
30 African-American, white, Hispanic, Asian, male, female, rich, poor ... you name it. The  
31 album got as high as eight on the hip hop charts. I toured in 2000 and ended up with the  
32 fifth highest grossing hip hop tour.

33  
34 Shug wasn't paying what I was worth so I sued to get out of my contract. While  
35 that was litigating, I took classes and got my MBA in early 2002. After my case with  
36 Shug settled, I started Thugs & Skees. I released my second CD, Black Diamond, in the  
37 Spring of 2002, under my new label. Looking back, I can see why it didn't do well.  
38 Between the litigation, school and starting the business, I didn't have enough time. Plus,  
39 it was self-indulgent; it was CZ, cubic zirconium, faux bling. Not surprisingly, tour  
40 revenue was lower than expected and Thugs & Skees struggled a little as a result. I  
41 vowed never to put out such a dog again.

42  
43 I worked tirelessly on Rap Mogul, my third CD, released in April 2003. I focused  
44 on getting back to who I was and where I came from. As a result, Rap Mogul was less  
45 mainstream. I cut down on the vocals, guitar and keyboard on most tracks and went with  
46 just DJ and drums. Sales were not my major concern. My goal was quality. Some thought



1 it a gimmick to go “gangsta.” That’s not fair criticism. To me, gangsta rap is about  
2 violence for violence’ sake, with liberal sprinklings of misogyny, racism and  
3 homophobia. That’s not my game. The reviews were mixed, but I didn’t care too much.  
4 Most of the criticism was for the cut My Revenge. It’s a very graphic fantasy piece about  
5 revenge against this cretin who assaulted my sister way back, and about others acting on  
6 those fantasies we all have. When Thugs & Skees negotiated this tour, we agreed not to  
7 do it live. I do have limits.

8  
9 I won’t deny Rap Mogul speaks to violence, just as I can’t deny who I am and  
10 where I came from. I’ve seen stuff you wouldn’t believe. I survived a whole lot of  
11 turmoil; broken everything: buildings, schools, families, people. That I am successful  
12 because I have this particular talent for the word is luck. My hometown loves my story  
13 cause they can say, “look, with a little hard work, anyone can make it.” But that’s a lie.  
14 You may succeed some places in America without talent or hard work, but that never  
15 happens for people from places like Reidville. There’s tons of good folks I knew who had  
16 talent and worked, but they got nothing for it. That success is random and conferred on so  
17 few is maddening. Everyone should be furious about that. This is my motivation and my  
18 life’s work is to stir things up. I love words and I love beat. And that I can make my  
19 living telling my stories and talking to those people I left behind, and educate others who  
20 have no idea, is an unbelievable blessing. Rap Mogul was about getting back to all this,  
21 and to the extent violence is part of that story, so be it.

22  
23 Rap Mogul did decently on the charts, better than Black Diamond, but not as good  
24 as Skee Poll. The tour started in June with two shows in Richmond, two in Baltimore,  
25 then three in Reidville. My people at Thugs & Skees negotiated crowd logistics and  
26 security with each venue, although I was occasionally involved. The Rap Mogul tour was  
27 to continue throughout the summer in fifteen more cities, but I canceled it after Keith  
28 Gallo died.

29  
30 The opening concerts in Richmond in early June were nerve racking. I had a new  
31 DJ, keyboardist and new backup vocalists, I was doing new stuff, plus I had to win back a  
32 lot of fans after the Black Diamond debacle. The first half of each concert was solid;  
33 however, the second half was near perfect. I discovered from the first four shows that  
34 Beat You Down, Riot2 and Fire It Up, played in a row, was near explosive. Fire It Up  
35 was evolving into the most successful live song I’ve done. It was becoming my signature  
36 song; one of those songs the crowd shouts out before I can rap the words. I was surprised  
37 since I hadn’t yet released it as a single.

38  
39 The tour was off to a good start but I strive for perfection. I hold a debriefing after  
40 every concert. This includes meeting the band, production people and arena people. We  
41 discuss what went right and wrong, any crowd problems, whatever. Regarding the  
42 festival seating, the Richmond dude indicated the crowds were manageable although  
43 really hyped. The Baltimore manager confirmed to me that during Fire It Up, there were  
44 some manageable crowd surges and that kids tried for the floor but they held them off  
45 and had to make a few arrests for disorderly conduct. In any event, the crowds were  
46 better than I could have ever expected.

1  
2 I had a lot of friends at the June 18th concert and there was definitely extra  
3 electricity in the air, even though the opening act bombed. The first half was  
4 unspectacular but solid. I had tweaked the first half playlist but was keeping the second  
5 half the same. The crowd kept its buzz though through intermission. Our second half was  
6 really tight and the crowd was spectacular. What a rush. Just like in Richmond and  
7 Baltimore, the crescendo started to build during Beat You Down.

8  
9 I wanted to take everything up a notch so during Beat You Down, I twice inserted  
10 the chorus from Fire It Up as a teaser to the crowd. I noticed it was having some effect up  
11 front. I could only see maybe ten rows or so into the crowd because the stage lights were  
12 in my eyes and the house lights down. The kids up front were really active, jumping up  
13 and down and pumping their fists. There was also some pretty frenzied mosh pits, surfers  
14 and some pushing near the front stage barricades. But there were a lot of pink shirts on  
15 the floor keeping control. More than were in Richmond and Baltimore.

16  
17 The crowd was pulsating by Riot2. It was maybe the best crowd I'd ever had.  
18 There is an amazing power an entertainer has over a crowd. Most people will never have  
19 any idea what that is like. I knew Fire It Up would make the place explode. Just like in  
20 Richmond and Baltimore, the crowd recognized Fire It Up immediately. They screamed  
21 the first stanza and chorus. I could hardly hear myself. The crowd was wild, but it didn't  
22 seem out of hand. I did notice some pushing up front during Fire It Up, but I was  
23 concentrating on the song. As it was, I had added a number of metal riffs after each  
24 chorus for the live performance to extend the song, just like I had done in Richmond and  
25 Baltimore.

26  
27 I ended with Gil Scott's Revolution because it suggests to the crowd what to do  
28 with its ferocity and anger. I want the crowd stoked, but I also want it to think that  
29 violence leads to rebirth. I know you can only do so much about telling your audience  
30 what to think. A real artist translates the personal into universal truths, and you have to let  
31 the audience realize those truths on their own. You can never know how people will  
32 perceive your language and it would be a conceit for any artist who thinks they can.

33  
34 I came off stage to get ready for the encore when Zimmerman told me there had  
35 been some serious injuries, I assumed from surfing or moshing. I was really upset and  
36 agreed to skip the encore. Zimmerman told the audience and the show ended.  
37 Zimmerman called the next morning and told me Keith Gallo had been declared brain  
38 dead. I decided to cancel the tour after that. I didn't learn until later that Keith Gallo's  
39 injuries were caused by crowd crushing. I learned that during Fire It Up, the pink security  
40 force lost control as a hundred or so kids got to the floor, including Keith Gallo.

41  
42 I've been accused of inciting the crowd with Fire It Up, both in this lawsuit and in  
43 the press. But all raucous songs, while maybe not inciting, are about getting the crowd to  
44 their feet, letting them release their energy. It's my goal to get the crowd to emotional  
45 freedom. Every band and performer lives for a crowd reaction like what I was getting on  
46 the Rap Mogul tour. From my perspective, the crowd responded like they did other

1 nights. There was nothing that distinguished what I was doing from any other performer  
2 doing an exciting arena song.

3  
4 It is my job is to entertain. It was Watchoverya Arena's job to control the crowd.  
5 It's a pretty simple division of labor. I'm a professional and I expect the professionals I  
6 deal with to be up to the task. Pink Security failed. If they couldn't handle it, then they  
7 shouldn't have approved festival seating. Every arena I've ever played has used festival  
8 seating, except Cincinnati, and I've never had any problem with it.

9  
10 Is it possible some fans hear the language from Fire It Up literally? Sure. But  
11 what of it. Nobody at my concerts literally tried to fire up the arenas, or literally tried to  
12 tear down the walls. Art has no single meaning. It can't. It's not my job to decide how the  
13 listener should hear my words. Sure, Fire It Up is edgy and angry, but it seems to me that  
14 the most reasonable interpretation is that it's a metaphor. It speaks about the  
15 establishment, about "the man" holding you down, finding inner fire or courage to get  
16 beyond limits. It's a metaphorical call to throw off shackles. It's ridiculous that I should  
17 have to guess at what my music should mean to others. If I do, the you've got self-  
18 censorship and I'm not planning on that anytime soon.

19  
20 I do want to explain another thing. I got criticized after Keith's death for having  
21 recorded a song called FOS Crush from Black Diamond. First of all, I didn't even play  
22 that on the Rap Mogul tour. And second, if you actually listen to the lyrics, it alludes to  
23 the tragedy in Denmark in 2000 when nine kids died during a front of stage crush at a  
24 Pearl Jam concert. Everyone in the music industry heard about that. Pearl Jam was  
25 exonerated but the tragedy almost caused them to quit. The song touched on the lives of  
26 kids snuffed out too early and the emotional effect on Pearl Jam.

27  
28 I was also accused by the press of deliberately starting a crowd disaster at my  
29 concert to improve my album and touring sales. That is grassy knoll conspiracy stuff. I  
30 canceled the tour after Keith Gallo died and I lost lots of revenue because of that. It is  
31 true that Rap Mogul record sales increased after Keith Gallo died but I haven't exploited  
32 it, the press has. They love death and rock and roll stories. It's absurd I would want to  
33 make even one cent on Keith Gallo's death. I am devastated that Keith died, and really  
34 nothing can describe the sadness and anguish I've felt over this. I offer my sympathy,  
35 prayers and compassion to his family and friends. I've lost friends who were way too  
36 young too. The loss of his life will impact mine forever.

37  
38 Signed and sworn to under oath on the 6th day of January , 2005.

39  
40  
41 /s/ Riley Urbanski

42  
43  
44 Signed before me this 6th day of January, 2005.

45 /s/ Jennie Jacoby, Notary Public

1  
2  
3 **Statement of D’Arcy Ace**

4 My name is D’Arcy Ace and I have been asked to render a professional opinion  
5 on the cause of Keith Gallo’s injuries, sustained at a concert staged by the rap artist Skee  
6 Poll on June 18, 2003. I am currently an independent consultant to the entertainment  
7 industry on issues of crowd control and safety. I received my doctorate in public security  
8 from the University of Wyoming in 1992, my masters in event planning and engineering  
9 from the University of Wyoming in 1986 and my B.A. in criminal justice from the  
10 University of Colorado in 1981. Currently, I operate a company called Crowd Safety  
11 Plans, or CSP, of which I am president and CEO. I have operated CSP since 1993. I  
12 suggest improvements through consulting and through my CSP website and monthly  
13 newsletter, available to subscribers. Additionally, I have presented dozens of seminars on  
14 concert safety at trade conventions throughout the U.S. and abroad, and been published in  
15 numerous trade and popular journals. I have testified or been deposed as an expert on  
16 concert crowd safety thirty times, most often on the side of the consumer-fan. I receive  
17 between \$150 and \$300 per hour, depending upon the services offered. I am being paid  
18 \$250 per hour for all work I do in this case.

19 My interest in crowd safety was piqued in 1979 when eleven young people died in  
20 Cincinnati during a crowd ingress crush prior to a concert by The Who. I felt compelled  
21 to become active and I spearheaded a group that persuaded Cincinnati to adopt guidelines  
22 for mass crowd gatherings and to outlaw general admission seating, also called festival  
23 seating. That incident should have, but didn’t, awake this country to the dangers of mass  
24 crowd gatherings. This usually comes as a shock to most people, but here in the U.S.,  
25 birthplace of rock and roll, the concert industry has never adopted any type of crowd  
26 safety guideline, rule, or standard for concerts and outdoor events. They are under no  
27 duty to report anything, and as result, concert injuries and deaths remain the music  
28 concert industry’s dirty little secret.

29  
30 The National Fire Association (NFA), which has created all sorts of guidelines for  
31 building safety, has ventured into this void with its own festival seating guidelines, but  
32 they have been adopted in a haphazard manner. Furthermore, it is my opinion that the  
33 NFA guidelines are deficient as regards festival seating. I publish my own Suggested  
34 Concert Crowd Safety Guidelines©. It is my hope that these Guidelines will one day be  
35 adopted nationally, and approximately fifteen municipalities have already done so. I  
36 testified before Congress in 1992 in favor of these Guidelines. Those hearings were  
37 prompted by the deaths of three young fans at a 1991 AC/DC concert in Salt Lake City.  
38 That was the last concert crushing death in the U.S. prior to Keith Gallo’s. Unfortunately,  
39 the industry had too much money and influence and the bill failed. As part of my work,  
40 my company compiles statistics on crowd injuries and deaths. I mostly discover such  
41 incidents through press reports and my vast contacts in the music concert industry. I  
42 know, however, that there are many incidents I don’t hear about and are quietly settled by  
43 the venue, promoter or artist.

44  
45 The main causes of injuries and death at music concerts are from crushing  
46 incidents, whether by ingress, egress or at the front of the stage, falls from upper level

1 seating areas, falls by crowd surfers, moshing injuries and assaults in and around the  
2 arena grounds. The injuries suffered by Keith Gallo were caused by a front of stage  
3 crush, or FOS crush, in the festival seating area. Festival seating is, of course, a  
4 misnomer. There is no actual seating. It is more accurately called festival standing. It  
5 brings in more money than assigned seating and it's a tempting way to oversell a show.  
6 Generally, you can fit twice as many fans into a festival seating area than into actual  
7 seats. Most fans prefer festival areas because it's where the fun and action are.

8  
9       There are two factors that come into play to create a crowd crushing disaster in a  
10 festival seating area. The first is crowd density and the second is a triggering event. As to  
11 density, or occupancy load, adults need about 20 square feet to move about freely in a  
12 public area. At 10 square feet, people move about on an "excuse me" basis. At 5 square  
13 feet, a person can stand without touching others but can't move freely. At 3 square feet,  
14 people cannot avoid touching each other. This is a threshold that should never be reached  
15 in public because it causes stress. At 2 square feet and below, there is potential for  
16 dangerous crowd forces and significant psychological stress.

17  
18       At about 1½ square feet per person, people lose control over movement and a  
19 phenomenon known as shock waves occur through the crowd causing sudden  
20 uncontrolled surges. The crowd becomes almost a fluid mass. Shock waves can lift  
21 people off of their feet, and sometimes out of their shoes and clothing, carrying them up  
22 to ten feet. Forces within a crowd crush can reach more than 1,000 pounds. Crowd mass  
23 can create phenomenal forces. At its most dense, it is almost impossible to stop. For  
24 instance, at Joseph Stalin's 1953 funeral in Russia, the crowd surge was so powerful that  
25 it lifted horses and crushed them to death, not to mention up to a thousand people. It is  
26 asphyxia, and not trampling, that is the most common cause of death and injury in crowd  
27 crushing situations. Asphyxia occurs when people fall and are stacked up vertically, or  
28 from horizontal pushing and leaning forces. The intense crowd pressures make breathing  
29 very difficult and the heat of surrounding bodies, as well as panic, causes weakness and  
30 fainting. Prolonged crushing can result in death by compressive asphyxiation. In this  
31 case, Keith Gallo died from a combination of compressive asphyxia and head trauma  
32 caused by trampling.

33  
34       The second factor required to create a crowd crush incident is some triggering  
35 event. There are two basic triggers, panic or craze. Panic is a logical response by a crowd  
36 that experiences a real or perceived threat such as an explosion, loud noise or severe  
37 weather, for example. A mass craze, on the other hand, is usually the result of a  
38 competitive rush to obtain a highly valued objective, such as getting closer to the  
39 entertainer. Festival seating concerts are notorious for causing this craze like competition  
40 for positions closer to the stage.

41  
42       With regard to this case, it is my opinion, within a reasonable degree of  
43 professional certainty, that the critical injuries sustained by Keith Gallo on June 18, 2003  
44 at the Watchoverya Arena resulted from Watchoverya Arena's failure to provide a safe  
45 crowd environment. Specifically, Watchoverya Arena failed to act reasonably by  
46 permitting too many people on the floor of the concert during the crowd-crushing

1 incident. Alternatively, Watchoverya Arena failed to act reasonably by permitting festival  
2 seating at a Skee Poll concert. As in most cases, I arrived at my opinion by conducting  
3 dozens of interviews with eyewitnesses, arena security personnel and review of any audio  
4 or visual aids available. Additionally, I spoke with the crowd managers from the earlier  
5 tour stops in Richmond and Baltimore and reviewed Skee Poll's music.  
6

7 The first failure by Watchoverya Arena was that it allowed too many fans onto the  
8 festival floor. Watchoverya Arena chose its 750 fan capacity figure by using the NFA  
9 guidelines, which suggest that each fan needs between 4 to 5 square feet of space. Seven-  
10 hundred and fifty fans in a 3,600 square foot area leaves each fan with 4.8 square feet of  
11 space. In reality, 746 ticketed fans were admitted and due to Watchoverya Arena's  
12 security failures, an additional 100 to 150 fans got onto the floor by the end of the song  
13 Fire It Up, leaving each fan with between only 4.25 and 4.0 square feet per fan. That is  
14 much too small an area for fans in a concert like the one given by Skee Poll.  
15

16 For a Skee Poll concert, or for any other performer in the hardcore rap genre, or  
17 the shock rock genre, for instance, the minimum square footage per fan should be no less  
18 than 7, or a total maximum floor occupancy load of 514 ticketed fans in this case. It is my  
19 professional opinion that at that occupancy load, there would have been too much space  
20 in the crowd for densities to build to the critical mass required to cause asphyxiation.  
21 Additionally, had the floor space been initially limited to 7 square feet per fan, or to 514  
22 fans or less, the addition of another 100 to 150 fans, like those who ran onto the floor  
23 during Fire It Up, would also probably not have created sufficient force to cause the types  
24 of injuries that were created with the larger occupancy load permitted by Watchoverya  
25 Arena.  
26

27 Watchoverya Arena failed to provide a safe environment by relying upon the  
28 NFA's guidelines of 4 to 5 square feet per fan. It's a cookie-cutter, one-size-fits-all  
29 guideline. The trend in setting festival seating crowd densities is to alter the square  
30 footage according to your crowd and performer. Square footage of 4 to 5 feet are the  
31 absolute minimum that should be permissible, and that figure should be used only for  
32 more mild floor crowds, say a bubble gum pop act, for instance. The audience certainly  
33 shrieks a lot but it is generally less aggressive. More aggressive performers, with younger  
34 and predominantly male crowds, clearly call for more space.  
35

36 The major reason for the increased space for each fan is that it greatly reduces the  
37 chance of a crushing incident should the fans surge to the stage for any reason. In this  
38 case, the extra space was required because the floor crowd did in fact surge to the stage  
39 during the song Fire It Up. Fire It Up is a highly energetic song and the Watchoverya  
40 Arena's crowd manager should have known that a crowd surge was possible during its  
41 performance. Another reason needed for the increased space for fans is that there are  
42 more mosh pits at these types of concerts and each pit requires more space as the crowd  
43 boundaries are constantly pushed.  
44

45 Alternatively, the second failure by Watchoverya Arena was approving festival  
46 seating in the first place, given the unique type of crowd Skee Poll was likely to draw.

1 The Watchoverya Arena staff should have known that, given a 750 fan capacity on the  
2 concert floor, they could not ensure crowd safety even with high ratios of guards to fans.  
3 It is true that Watchoverya Arena did employ a high guard to fan ratio of 1:40 and its  
4 Pink Security force has a solid reputation for competence. However, it was highly likely  
5 the crowd for Skee Poll would include young people, would be predominantly male, and  
6 motivated to attend a concert by an artist that some have characterized as a “gangsta”  
7 rapper. Many fans who buy tickets to the floor for concerts like this do so mainly to mosh  
8 or take part in other frenzied activities, making the floor a dangerous place. One of the  
9 unintended consequences of frenzied floor crowds is that those fans seated outside the  
10 festival area, the “have nots” so to speak, desperately want to join in. Plus, to the have  
11 nots, the buffer zones on the floor appear to be wasted space, there for the taking. Thus,  
12 the seated audience is extra motivated to get to the floor at this type of concert. This most  
13 certainly appears to have happened in this case.

14  
15 Finally, Skee Poll had given hints that s/he was a very charismatic entertainer and  
16 clearly had the potential for what I call the “Elvis Effect.” That is an almost messianic  
17 adulation for an entertainer and creates a kind of mass temporary insanity. While few  
18 entertainers or bands attain the Elvis Effect, the Watchoverya Arena and its concert  
19 manager should have recognized that Skee Poll had Elvis Effect-like potential,  
20 particularly since the concert was being held in Skee Poll’s hometown and also because  
21 there were indications from earlier tour concerts that Skee’s crowds were close to the  
22 verge of hysteria. In light of all these factors – the crowd makeup, the likelihood of a  
23 frenzied floor crowd, the enticement of the non-floor crowd by the floor crowd, a  
24 charismatic performer in his/her hometown and indications of earlier concert hysteria on  
25 the tour - the Watchoverya Arena should never have permitted festival seating for this  
26 Skee Poll concert.

27  
28 While FOS crushing deaths are rare, arenas and concert managers must ensure  
29 that there exists sufficient square footage so that crushing cannot occur if a crowd surge  
30 should occur. Alternatively, arenas and concert managers must be prepared to make the  
31 decision not permit such seating when they cannot ensure crowd safety. Had the  
32 Watchoverya Arena staff performed as it should have, Keith Gallo would still be alive.

33  
34 Signed and sworn to under oath on the 18<sup>th</sup> day of January , 2005.

35  
36 /s/ D’Arcy Ace

37  
38  
39 Signed before me this 18<sup>th</sup> day of January , 2005.

40  
41 /s/ Jennie Jacoby, Notary Public

## **EXHIBIT LIST**

**Exhibit 1 - Diagram of Watchoverya Arena and Half-House Seating Capacities**

**Exhibit 2 - Concert Ticket (*Separate Document*)**

**Exhibit 3 - Lyrics to “Fire it Up”**

**Exhibit 4 - Concert Playlist**



# EXHIBIT 1

## Watchoverya Arena Seating Diagram - Half House

6,350 Capacity



-Floor/Festival Seating  
750

-Lower Level (Aqua)  
2250

-Handicapped (Blue)  
200

-Upper Level (Red)  
3150

## **EXHIBIT 2**

### **Concert Ticket**

**[Exhibit 2 is a separate PDF document posted on the mock trial website. ]**

**EXHIBIT 3**  
**“Fire It Up” Written by Riley Urbanski**  
**© Thugs & Skees Inc. 2003**

I bear a witness, to the unfitness of this status quo  
All that I know all I've been a told a show, well I'll show  
With thrift commitment, as I slice through the throat to the belly of the beast  
I can't cease, A release, Rest, test, rest in peace.

I attack I'll go blow for blow with any clan  
In the front run it, as I chop and swing 'til no one can stand  
A fin in the water, I slice through liquids and sea  
Never a mother, never a father, never to be, never to be.

*Chorus:*

Fire it Up! Burn the Place Down  
Tear it all down, the walls to the ground  
Guardians be damned, fight to your stage  
My children let loose all that rage.  
Fire it Up! Burn the Town Down.  
All will rise up from the Burnt Ground.

Cuz Change brings the price of pain and my boots strapped go stomp  
Bring the agent of change to your brain trapped under  
Reigns, a network woven, fear is the main frame  
My spit, my fire, a flame they can't tame  
Feel the Flame!

*Chorus:*

Fire it Up! Burn the Place Down  
Tear it all down, the walls to the ground  
Guardians be damned, fight to your stage  
My children let loose all that rage.  
Fire it Up! Burn the Town Down.  
All will rise up from the Burnt Ground.

Death, destruction, chaos, mayhem We bear the torch  
Feel the scorch, learn or burn, join the team.  
Rush forward and feel the scream.

Disbelieve, you can't leave the circle of flames  
All y'all without no names break through the chains  
Sentinels of the gate, your fate awaits  
Fire it Up! Burn the Town Down.

*Chorus:*

Fire it Up! Burn the Place Down  
Tear it all down, the walls to the ground  
Guardians be damned, fight to your stage  
My children let loose all that rage.  
Fire it Up! Burn the Town Down.  
All will rise up from the Burnt Ground.

**EXHIBIT 4**  
**Playlist**  
**June 18, 2003 Skee Poll Concert**

- 1. Riot**
- 2. Fare N Square**
- 3. Pop Goes the Cristal**
- 4. Susquehanna Dreamin'**
- 5. Allegheny River Deep Six**
- 6. 911**
- 7. Six Feet Down**
- 8. Your Nightmare**
- 9. Smarty Jonze**
- Intermission**
- 10. Who's Your Mama?**
- 11. Bling Bling**
- 12. Scaredy Jonze**
- 13. Who's Your Daddy?**
- 14. Botox Nation**
- 15. Beat You Down**
- 16. Riot2**
- 17. Fire It Up**
- 18. Gil Scott's Revolution**