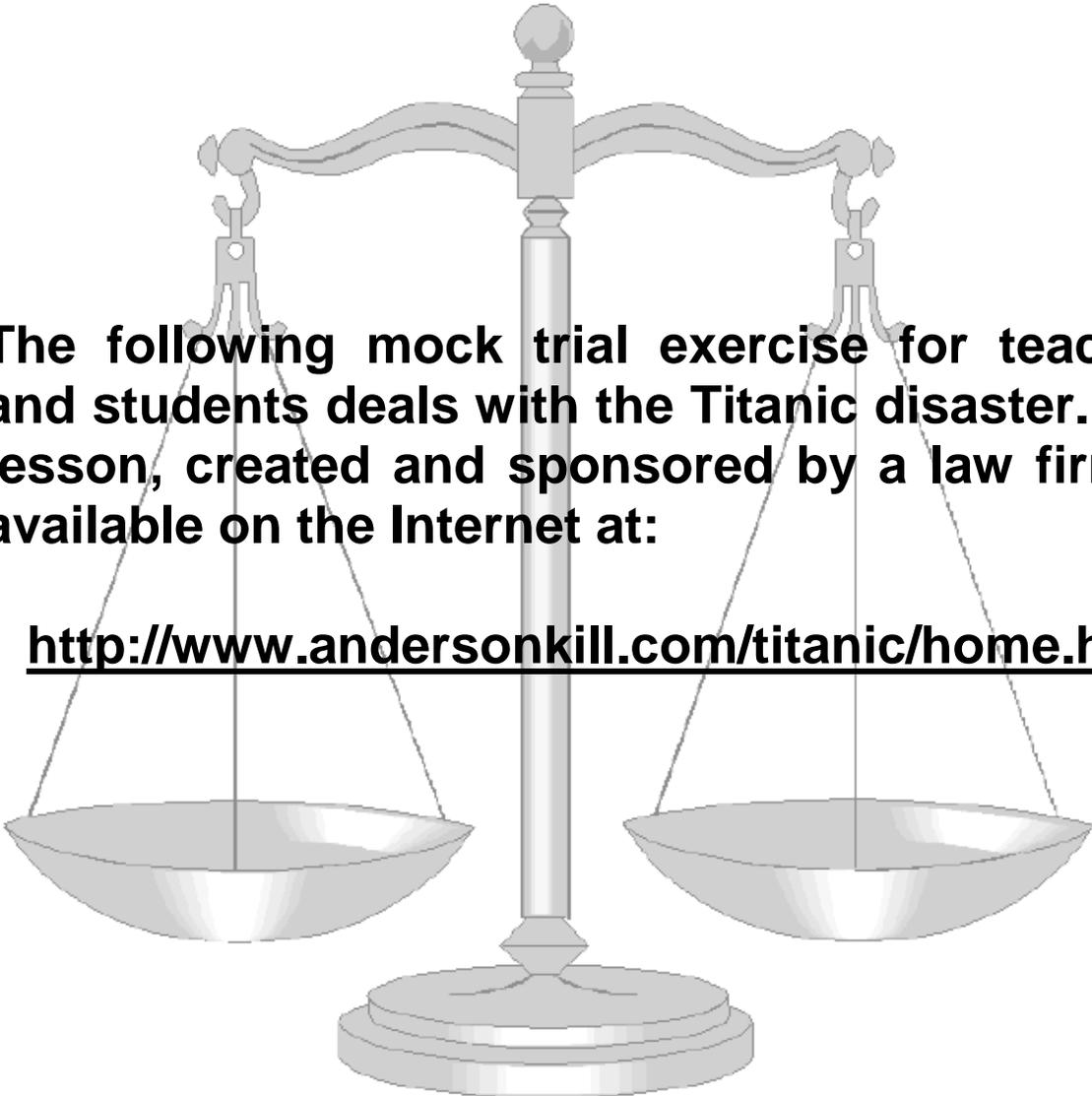


Titanic

Mock

Trial



The following mock trial exercise for teachers and students deals with the Titanic disaster. The lesson, created and sponsored by a law firm, is available on the Internet at:

<http://www.andersonkill.com/titanic/home.htm>

INTRODUCTION



Introduction



Welcome to Anderson Kill & Olick's Titanic mock trial site. Each year on Take Your Daughter to Work Day we conduct a mock trial to show our daughters and the daughters of many of our pro bono clients what we do each day. This year we staged the trial of The White Star Line, the operator of the R.M.S. Titanic. Our daughters were so interested in this trial, even more so than any of the previous mock trials we had done, that we decide to give everyone the opportunity to participate in this mock trial by posting trial materials on the Internet as part of our celebration of Law Day, May 1, 1998.



The Story for the most part is true. Hans Jensen and his fiancé, Carla Jensen were passengers on the Titanic along with Carla's uncle and cousin. Carla did have quarters in the single woman's section on the lower deck of the ship and did leave the Titanic in Life Boat 16. The evacuation process was supervised by Second Officer Lightoller, a witness in the mock trial. He was able to launch Collapsible Boat D, but this was the last lifeboat launched from the Titanic before it sank. As Boat D was being lowered past A-Deck, the other witness in the mock trial, Swedish Military Attaché Bjornstrom-Steffansson, really did dive into the partially full lifeboat. The amazing story of Officer Lightoller being sucked under by the sinking ship and then blown back to the surface by an exploding boiler is also true. The information about what happened to Hans Jensen that night is speculation, because neither he, nor either of Carla's relatives survived the sinking of the Titanic. The sinking of the Titanic deeply affected Carla and when she died in 1980 she was buried in the nightgown that she wore the night she was lowered in Lifeboat 16 into the dark, freezing waters of the North Atlantic.



To Use the Site start with the basic facts below, then decide how you are going to proceed. The site has information about [Hans Jensen](#), his fiancé [Carla Christine Jensen](#) who sues on Hans' behalf, the defendant [White Star Lines](#) and the witnesses, the Titanic's [Second Officer Lightoller](#) and [Swedish military attaché Bjornstrom-Steffansson](#). A memoranda of law explaining [negligence law](#) and White Star's [defenses to negligence](#) are on the website along with an [exhibit](#) showing where each party was as the ship was being evacuated. A set of [links](#) provides more information about Titanic, the U.S. judicial process, and Law Day. At the end of the testimony, the judge has a [jury charge](#) to read to the jurors and they have a [verdict sheet](#) to fill out and return to the judge. In addition, a [glossary](#) of trial related terms is included.

The materials can be used in many different ways by a variety of groups. While designed for classroom use, the materials can be used by a scout troop for law merit badges, by an after school program, such as computer or debate club, or even by summer camp or party. Younger students may be most interested in finding out about the Titanic and doing research on the Internet, while older students can explore

some of the more complex issues such as the jurisdiction of U.S. courts to decide cases between non-U.S. citizens. A [Teacher's Guide](#) provides more information about the [American Judicial Process](#) and ways to use the material.



THE FACTS: On Sunday, April 14, 1912, just four days after setting out on its first voyage with passengers aboard, the R.M.S.TITANIC passenger ship struck an iceberg off the coast of Newfoundland at 11:40 p.m., and subsequently sank at 2:20 a.m.

Of the 2,227 people aboard when the ship started its trans-Atlantic voyage, a total of 1,522 died in the disaster. Among the dead, was a 20-year-old named Hans Peder Jensen. Jensen's fiancé, Carla Christine Jensen was among the remaining 705 passengers ultimately rescued by the CARPATHIA liner, several hours later.

On the fateful evening, the ship's radio room received several ice-warning messages from other ships in the area; including the Baltic, the Caronia, the Amerika, and the Californian. According to the testimony of surviving officers, only the message from the Californian was posted in the chartroom.

At 9:20 p.m., Captain Smith retired for the evening, leaving Second Officer Lightoller in charge. Lightoller's watch was over at 10:00 and he then made his rounds of the ship before retiring to bed. Captain Smith was awoken at 11:40 p.m., by a grinding vibration, and proceeded to the bridge in his pajamas to investigate. He returned to his room, after a brief discussion with Third Officer Herbert Pitman about the noise. Ten minutes later, the severity of the situation was brought to Smith's attention by Fourth Officer Boxhall, who informed him that "the water was up to F-Deck in the Mail Room."

Upon receiving orders from Captain Smith, Second Officer Lightoller immediately began to load women and children into Lifeboats. During the next 2 ½ hours, many lifeboats left partially full. By 2:00 a.m., all but four lifeboats had been lowered, and every distress-flare had been fired.

At dawn on April 15th, 1912, the CARPATHIA arrived on the scene, and those who had not yet frozen in the icy, North Atlantic waters, were rescued.

TEACHER'S GUIDE



Teacher's Guide to Jensen v. White Star Lines

The movie, *Titanic*, starring Leonardo DiCaprio and Kate Winslet, has created great interest in the story of the Titanic. This site gives teachers a way to use the interest generated by the movie to illustrate how the American judicial system works. It was designed for teachers and students to participate in a mock trial involving the tragic story of the Titanic.

The case involves true facts of the Titanic's maiden voyage, which resulted in over 1500 fatalities. This Teacher's Guide will help you prepare your class for the trial by covering such issues as [Assignment of Roles](#), [Timing of the Trial](#), [Legal Issues](#) and [Skills](#).

Students need not be limited to just the facts presented on the website. They may add facts to their arguments from a variety of sources as long as they are consistent with the [mock trial facts](#) as we have prepared it. The story is based on actual people who were on the Titanic, but certain literary embellishments have been added, particularly as to what Hans Jensen did the night the Titanic sunk. Since neither he nor fiancée's male relatives survived the accident to tell their story, we have created a plausible possibility of what might have happened to them that night.



Assignment of Roles

The roles of the plaintiff, defendant, attorneys, bailiff, witnesses, and jurors should be assigned prior to the material being handed out. Listed below are the roles that may be assigned to students:

Plaintiff: [Carla Christine Jensen](#) (19) was the fiancée of twenty-one year old [Hans Peder Jensen](#). Despite the fact that both had the same last name, they were never married. They prepared wills before leaving on their trip naming each other executors. Carla, as executor of Hans' will is suing the owner of the Titanic, [White Star Lines](#), for negligence in operating the boat and causing the death of her fiancée.

Plaintiff Attorney(s): You may assign as many attorneys to represent Carla as needed. Attorneys can be assigned individually or as teams to handle particular witness' testimony, research, preparation, and document-drafting. You can even assign one class to represent the plaintiff and another to represent the defendants.

Defendant: [White Star Lines](#) - appears at trial by [Second Officer Charles Herbert Lightoller](#). Second Officer Lightoller was on-duty when the Titanic hit the iceberg and can testify about White Star

Lines' duty of care towards its passengers, whether this duty was breached and whether the breach caused the death of Hans Jensen.

Defendant's Attorney(s): You may assign as many attorneys to represent White Star Lines as needed. Attorneys can handle particular parts of the testimony, preparation, and document-drafting, if any.

Witness: Lieutenant Mauritz Hakan Bjornstrom-Steffanson - The Lieutenant was a Swedish Military attaché. Mauritz will testify about his interaction with the deceased, Hans Peder Jensen, prior to his jumping on to the last life boat to leave the ship, Collapsible Boat D, as it was being lowered away.

Bailiff: The role of the Bailiff is optional and requires a student to announce the beginning and ending of the proceeding, call witnesses, administer oaths and take the jury's verdict to the judge.

Jury: Between six and twelve students should be assigned to play the roles of jurors. Their deliberations can be public so students can see the interaction of jurors or private as in a real trial.

Judge: We recommend the teacher play the role of the judge. He or she should keep track of time, rule on admissibility of evidence and on any motions made.



Timing

The trial can be done in as little 45 minutes as set forth below, but works better if done over two days with research assigned before the first days hearing. A 2 day trial will also give students the feeling for the amount of preparation that goes on each day after the trial is over. The short trial can be done as follows:

Trial Preparation:	10 minutes
Opening Statements:	2 minutes for each party
Plaintiff's Case:	10 minutes
Defendant's Case:	10 minutes
Optional: Defendant's motion of directed verdict:	1 minute
Ruling on motion to dismiss for its case:	1 minute
Plaintiff's rebuttal of defenses	5 minutes
Closing Statements:	2 minutes for each party
Jury Deliberation:	5-10 minutes
Verdict and Judgment:	2 minutes

If witnesses do not get on and off quickly and are allowed to ramble, the trial could easily be two hours. The class should participate in a post-trial discussion about the issues involved and the positive and negative aspects of each party's representation.



Legal Issues

In order for the plaintiff to prevail in this case, all elements of [negligence](#) must be proven by a preponderance of the evidence. The defense counsel should raise [defenses](#) such as Hans contributory negligence, superseding cause that breaks the causal connection between White Star's negligent acts and Hans' death and assumption of the risk. The law applied in this case has some of the aspects of the law of New York during the year of 1912, which is much more pro-company than is today's law. For example, contributory negligence is no longer an absolute bar to plaintiff recovering. Most states now use some form of comparative negligence so that negligence by the plaintiff reduces the amount that the plaintiff can recover rather than barring all coverages as happens with contributory negligence. For older students, you may want to discuss the consequences for society if the jury decides not follow the law as set forth by the judge.



Skills and Subjects

This exercise was developed so that students could develop their public speaking skills, research abilities and writing techniques. You may require students to submit legal briefs outlining the analysis of their arguments prior to trial. Alternatively, after the jury has rendered its verdict, the class can write the judge's opinion, which must justify the jury's verdict. A third possibility would be to have your students prepare an appellate brief for either party arguing why the verdict should be overturned or upheld on appeal.

While this virtual trial teaches about the U.S. Judicial system, students will also learn about history at a time when classes in society and particularly European society, had a major effect on daily life and the way people behaved even in life threatening emergencies. Students will also use math skills to compute damages and to argue about which calculation methodology should be used. Damages can be made very complex, e.g. net inflation adjusted, after tax compensation or fairly simple years of life expectancy times present wages.

Ideally, this project should consist of both Internet and library research. Students will find lots of material on the Web and in books. For example, there are pictures of Carla Jensen on the web. (We did not find any pictures of Hans and face in the header image is a stand-in.) Some of the information the students will find is contradictory or wrong. Being able to distinguish reliable information from unreliable and implausible information is another important skill that can be developed through the mock trial. Obviously, things said in the Titanic movie by DiCaprio or Winslet are fictitious and inadmissible. While the Titanic movie was very well researched and is much more accurate than many "historical" movies, things such as the loading of the lifeboats and other scenes from the movie are not admissible evidence unless it can be shown by other evidence, such as the testimony of the witnesses that movie represents a true depiction of what actually happened (and even then most real courts would not allow such evidence.) You, acting as judge, can help students distinguish between admissible, reasonable, reliable information and speculation, gossip and hearsay.

If you want to make this a week long unit, you could, follow the following outline:

Titanic Trial Week Schedule

Monday: Discuss the Titanic and assign roles

Tuesday: Student research, interview witnesses

Wednesday: Prepare pre-trial motions and review testimony
Thursday: Preliminary hearing to rule on evidence and jury selection
Friday: Trial and verdict



Multi-class and non-classroom groups

In addition to working with a single class, you can also use this material with multiple classes participating. For example, you could have one class represent the plaintiff, another class could represent the defendant and witnesses could be drawn from a third class or even a different grade. Witnesses could also be other adults. With larger numbers of students, groups can be assigned to different duties such as interviewing witnesses, preparing motions, and library and Internet research

The website can also be used in non-classroom settings such as with scout troops for a law merit badge. Other groups that could use the material:

- Computer clubs emphasizing Internet research and putting briefs on the web
- Summer camps or at home on rainy days
- After school programs
- Theme parties for a variety of age groups
- Bar association law day functions

JUDICIAL PROCESS



The Judicial Process in the U.S.



Introduction to the U.S. Judicial Process

We have created this mock trial website to help illustrate in a fun interactive manner how the U.S. legal system works and the important role-played by the people who serve on juries. Our legal system cannot work if citizens don't participate. If you do not support the legal system by participating in it, then everyone suffers the consequences of a system in which only a few people determine what is right and wrong. Jury service is a crucial part of our system of justice. Americans expect our courts to decide fairly and are justly upset, when this does not happen, but try to imagine a world where judgements are rendered without citizen input and you expect the decision to be unfair.

At Anderson Kill & Olick, we believe that all of us need to contribute to our country by performing our civic obligations. One of our very important civic obligations is to participate as jurors in the legal system when called upon to serve. In providing this mock trial outline, we hope in some small measure to help educate students about our system of justice and the importance of jury service.



The American Legal System

As former colonists of Great Britain, the Founding Fathers of the United States adopted much of the legal system of Great Britain. We have a "common law," or law made by courts rather than a monarch or other central governmental authority like a legislature. The jury, a panel of ordinary citizens chosen to decide a case, is an integral part of our common-law system.

Use of juries to decide cases is a distinguishing feature of the American legal system. Few other countries in the world use juries as we do in the United States. Over the centuries, many people have believed that juries in most cases reach a fairer and more just result than would be obtained using a judge alone, as many countries do. Because a jury decides cases after "deliberations," or discussions, among a group of people, the jury's decision is likely to have the input from many different people from different backgrounds, who must as a group decide what is right.

Juries are used in both civil cases, which decide disputes among private citizens, and criminal cases, which decide cases brought by the government alleging that individuals have committed crimes. Juries are selected from the U.S. citizens and summoned (required by court order to appear for jury selection). "Panels," or consisting of set numbers, of jurors are called for each case requiring a jury.

The judge assigned to the case oversees the selection of jurors to serve as the jury for that case. In some states, prospective jurors are questioned by the judge; in others, they are questioned by the lawyers representing the parties under rules dictated by state law.



The Parties to a Civil Trial:

Plaintiff. The plaintiff is the person who begins the suit. In the complaint, the plaintiff states, or alleges, that he or she was injured by the conduct of another. The plaintiff usually is represented by a lawyer.

Defendant. The defendant is the individual sued by the plaintiff. The defendant usually is also represented by a lawyer. The defendant disputes the statements, or allegations, in the plaintiff's complaint or may admit the allegations, but argue that he or she has a valid defense to the claims such as self-defense.

The Judge. The judge decides which disputed facts (evidence), may be presented to the jury. The judge also tells the jury in "jury instructions" what the applicable law is. The judge decides the issues of law (see the glossary) in the case.

The Jury. The jury is a group of ordinary citizens selected to decide the case. A jury usually is made up of a group of six or twelve individuals, depending on state law. In most states, a jury must reach a unanimous verdict. That is, all members of the jury must agree with the decision. Some states allow for less than a unanimous verdict in some civil cases. If less than the required number of jurors agree, then the jury is a "hung jury." That means that the jury was unable to reach a decision. In that case, the case can be tried again.

Witnesses. Witnesses must have specific knowledge of what happened. Witnesses are generally not allowed to present hearsay testimony (such as gossip). Expert witnesses may not know the specific facts in the case but may use their specialized knowledge to help the jury understand complex evidence, such as the degree of intoxication that results from drinking certain amounts of liquor.

The Bailiff. The bailiff is a court officer charged with keeping order in the court and helping the jury. A bailiff also may oversee custody of prisoners while in court during criminal cases.

Additional terms are defined in the [glossary](#) and you can find out more information about the U.S. judicial system on the [links](#) page.

GLOSSARY



Glossary of Trial Terms

Glossary	
<u>Term</u>	<u>Definition</u>
Admission against interest	Statement by a party to the action that contradicts testimony or other evidence presented by that party in the case. An admission against interest is admissible evidence even though otherwise is hearsay.
Answer	A response by the defendant to the allegations made by the plaintiff in the complaint.
Breach	The breaking or violating of a duty that one owes to another person, as defined by law. A duty may be an affirmative act or an omission or failure to perform an act required by one's relationship to another.
Burden of proof	A party's obligation to establish by evidence certain facts necessary to prove that party's case. In a civil case, the plaintiff has the burden to prove by a "preponderance of the evidence" that he or she is entitled to recover or other relief.
Business record	A business record is a document maintained in the ordinary course of business. The party seeking to introduce the business record into evidence shows by evidence (usually oral), that the business record was made and kept in the ordinary course of business at or near the time of the transaction discussed in the document, by one having a duty to record. A business record is admissible even though it otherwise is hearsay.
Cause of action (or claim for relief)	A situation or state of facts that may entitle a party to recover.
Civil action	In general, any action that is not a criminal proceeding. All actions brought to enforce, redress, or protect private rights.

Closing argument (or summation)	A summary of the evidence and argument of the party's position at trial, made by the party's attorney. It does not constitute evidence.
Complaint	Initial pleading, commencing an action under statutory codes or rules of civil procedure. Complaints include statements of the court's jurisdiction and facts tending to show that the plaintiff is entitled to relief. A complaint may include different causes of action and may seek alternative forms of relief.
Contributory negligence	Actions by the plaintiff which constitute a breach of duty; a plaintiff's failure to protect himself or herself from injury contributed to the injury. If the defendant establishes contributory negligence by the plaintiff, the plaintiff is precluded by law from recovering any damages.
Credibility	That quality in a witness that renders him or her believable.
Defendant	The party sued by the plaintiff in a civil action.
Directed verdict	Verdict entered by trial judge when the party with the burden of proof has failed to present sufficient facts to establish its case and judge decides that the only one possible result that a reasonable jury would be to find the defendant not liable. A defendant is required to preserve certain arguments for appeal, to move for directed verdict when the plaintiff finishes its case. To preserve arguments for appeal, a plaintiff is required to move for a directed verdict when all of the evidence has been presented.
Duty	An obligation or conduct defined in the law as reasonable conduct in light of the perceived risk.
Elements	The constituent parts of a cause of action that the plaintiff must prove in order to prevail.
Exhibit	Documents, diagrams, or other objects presented as evidence in court during a trial or hearing as proof of facts of a party's position, identified by party and numbered, usually consecutively.
Hearsay	A type of testimony that relates not what a witness knows from personal knowledge but what others have told him or what he or she has overheard. It is a statement by someone other than the original speaker, and it is offered in evidence to prove the truth of the matter asserted. Hearsay generally is not admissible unless it falls under certain exceptions provided in the rules of evidence.

Issue of fact	A version of facts maintained by one party and challenged by another. Issues of fact are decided by triers of fact, usually juries.
Issue of law	An issue involving interpretation of law where the facts are not disputed and from which only one conclusion can be drawn. Issues of law are decided by judges, not juries.
Issue of law and fact	An issue involving both interpretation of the law and resolution of disputed factual issues.
Judgment	An official decision by a court deciding the respective rights and claims of parties to an action.
Jurisdiction	The power of a court to decide a matter in controversy presented to it. The existence of judicial jurisdiction assumes that the court has control over the matter in controversy and the parties.
Jury	A certain number of men and women, selected according to law, and sworn to consider and decide matters of fact presented to them.
Jury deliberations	The process by which a jury meets separately to decide matters presented to it based upon the legal principles (or "instructions") given by the court.
Jury instructions	A statement of the law made by the judge to the jury, informing the jury of the law that applies to the case.
Negligence	Failure to use such care as a reasonably prudent and careful person would use under similar circumstances, proximately causing injury to another.
Objection	A statement by a party in open court challenging evidence before it is presented to the jury.
Opening statement	A summary, presented by a party before the trial begins, of the evidence that the party anticipates will come into evidence.
Plaintiff	A person who brings a civil action against another and seeks redress for alleged civil (non-criminal) wrongs.
Preponderance of evidence	A standard of proof in civil cases in which the evidence as a whole shows more likely than not that the facts sought to be proved are more probable than not. A preponderance of evidence is determined not by the number of witnesses, but by the greater weight of all of the evidence, considered as a whole. A plaintiff must prove its case by a preponderance of the evidence in order to recover.

Proximate Cause	An event (including a failure to act) that produces, without any intervening cause, in the injury and without which the injury would not have occurred.
Summation (or closing statement)	A summary of the evidence and argument of the party's position at trial, made by the party's attorney. It does not constitute evidence.
Verdict	The formal decision or finding made by a jury, empanelled and sworn to decide a cause of action and reported to the court.
Verdict form	A form that sometimes is presented to a jury seeking answer to specific questions on the causes of action and possibly other issues raised by the parties.

PLAINTIFF



Estate of Hans Peder Jensen

Hans Peder Jensen was 20 years old when he boarded the White Star Line's R.M.S. Titanic. He was traveling with his fiancé [Carla Christine Jensen](#) who was a year younger than Hans. While they shared the same last name, they were not related and had not yet married. They both grew up in the town of Eskildstrup, Denmark.

Since Hans did not survive and his body was never found, all evidence of his actions on the night of the Titanic sinking come from the survivors.

Hans and Carla each signed a will before they left on Titanic. Hans' will has been brought from Denmark to New York City where the trial is taking place. His will names Carla as his sole heir and executor of his estate. As Hans' executor, Carla stands in Hans' place for bringing suit. Therefore, Hans' estate, by its representative, Carla Jensen, is the plaintiff in the suit against White Star Lines.

DEFENDANT



Estate of Hans Peder Jensen

Hans Peder Jensen was 20 years old when he boarded the White Star Line's R.M.S. Titanic. He was traveling with his fiancé [Carla Christine Jensen](#) who was a year younger than Hans. While they shared the same last name, they were not related and had not yet married. They both grew up in the town of Eskildstrup, Denmark.

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PLAINTIFF'S BRIEF

NEGLIGENCE

The tort of negligence is:

1. doing something that a person using ordinary care would not do, or
2. not doing something that a person using ordinary care would do. W. Page Keeton et al., Prosser and Keeton on the Law of Torts, §§ 28-31.

Ordinary care means the attention or skill that a reasonable person would use under similar circumstances. In order to prove negligence we must prove four elements:

1. that there is a duty of care owed to a person;
2. a breach of that duty occurred;
3. there is a reasonably close causal connection that causes injury (proximate cause); and
4. that injury causes actual damage or loss.

WHITE STAR LINES' DUTY TO ITS PASSENGERS

The first element of negligence is that the defendant owed a duty of reasonable care to a plaintiff, or to a class of which the plaintiff is a member. The White Star Line, as the owner and operator of the R.M.S. Titanic, clearly owed a duty of care to all of the passengers on its ship. The passengers paid to sail aboard the most luxurious passenger liner that had ever existed. Each and every passenger relied upon the Defendant, The White Star Line, to safely take them to New York. The White Star crew owed a duty of care to provide passengers with not only a room, food and heat, but most importantly a safe trip to their destination New York City.

WHITE STAR LINES' BREACH OF DUTY OF CARE

The second element of negligence requires that the defendant's breach of its duty by failing to conform to the required standard of care. A breach of duty occurs if the Defendant's conduct creates an unreasonable risk of harm to others. It is an objective test: whether a reasonable person would have conducted himself as the defendant did. It is **not** a subjective test, which would mean you would have to ask whether the crew thought they were behaving reasonably. The White Star Line and its agents, the crew of the Titanic, behaved in an unreasonable manner in many ways, all of which individually and collectively resulted in the most modern ship in the world, equipped with a modern radio, hitting a large iceberg on a clear night in calm seas.

CAUSATION OF FATAL INJURIES TO TITANIC'S PASSENGERS

The third element of negligence is that breach of duty is both the cause in fact and the legal or proximate cause of the plaintiff's injuries by the defendant. The plaintiff can show that the breach of duty is the cause in fact if, but for defendant's conduct, the plaintiff would not have been harmed. To show causation a plaintiff also must prove that Defendant's conduct was the proximate cause of the harm alleged by the plaintiff. *Atlantic Coast Line R. Co. v. Daniels*, 70 S.E. 203 (Ga. 1911). The Defendant can be liable only for the consequences of his negligence, which were reasonably foreseeable at the time he acted. *Id.* If the Defendant's breach of duty caused the Plaintiff's injury, but the

Defendant could not foresee that such breach of duty would result in the type of injury that the Plaintiff suffered then there is cause in fact, but no proximate cause. The crew certainly could have foreseen that operating a ship at night at a high rate of speed in iceberg infested waters could result in damage that would sink the ship and kill many passengers; and this was not the only cause of Mr. Jensen's death. There were many others.

DAMAGES TO JENSEN'S ESTATE

The final element of a cause of action for negligence is proof of actual damages from the defendant's negligence. Plaintiff's damages here include the emotional, physical, and financial loss suffered by Mr. Jensen's and to Miss Jensen, who as Mr. Jensen's sole heir will inherit the compensation to be paid to Mr. Jensen's. We will show that Mr. Jensen suffered:

1. the loss of his life,
2. the loss of a lifetime of lost wages of an excellent carpenter
3. the excruciating pain and suffering of freezing to death, and
4. the mental anguish of knowing he would die and that he would never see his fiancé again.

Plaintiffs also seek punitive damages to punish White Star for its wanton and reckless behavior of failing to properly operate and control the Titanic.

CONCLUSION

For the foregoing reasons, the Court should instruct the jury on the elements of negligence as set forth above.

Dated: _____

New York, NY

Respectfully submitted,

Attorney for the Estate of Hans Peder Jensen

DEFENDANT'S BRIEF

A. CONDUCT OF FELLOW PASSENGERS AS SUPERSEDING CAUSE: For example, when a thief steals a car with the keys in the ignition and runs over a pedestrian, the car's owner typically will not be liable for the pedestrian's injury. The thief's acts will supersede and cancel out the car owner's negligence in leaving his keys in his car. Thus, if a fellow passenger murdered Mr. Jensen in retaliation for a bad business, the murder would be a "superseding cause" and clearly, White Star Lines would not be liable for Mr. Jensen's murder. If Mr. Jensen's fellow passengers behaved in such a uncontrolled manner that Mr. Jensen decided on his own to step-in to try to control his fellow passengers, even though he had been told Second Officer Lightoller that no such assistance was needed, and as a result, the boat had to be launched without him then Defendant White Star Lines can not be liable for the actions of the fellow passengers or White Star Lines. Clearly, Lieutenant Bjornstrom-Steffansson was able to both control the crowd and still find room in a lifeboat; and Mr. Jensen could have also done so .

B. MR. JENSEN'S CONDUCT AS SUPERSEDING CAUSE OR ASSUMPTION OF THE RISK: Even if his fellow passenger's conduct was not a superseding cause canceling any negligence by The White Star Line, Mr. Jensen's own actions were a superseding cause. Mr. Jensen voluntarily chose to step out of Lifeboat D. Everybody that remained in Lifeboat D lived. There was no need for Mr. Jensen to leave the boat when additional women arrived, since the lifeboat was not full when it was lowered away. Mr. Jensen voluntarily "assumed the risk" of his actions and the resulting injury. A person "assumes the risk" of injury when, with full knowledge and understanding of an obvious danger, he voluntarily exposes himself to a known danger. In such a situation, the injured person cannot recover for injury resulting from that danger. Once again, Defendant White Star Line is not liable for Mr. Jensen's injuries.

The following example illustrates this principle. Imagine you are sitting in the stands along the first baseline at a major league baseball game. You know that particular batter is known for swinging late fouling balls down the first baseline. When one of the batters does hit a foul ball that hits you in the head. You cannot recover for your injury because, by attending the game, you assumed the risk that you might get hit. See Murphy v. Steeplechase Amusement Co., 166 N.E.2d 173 (N.Y. 1929).

Here, it is clear that Mr. Jensen "assumed the risk."

- First, he no doubt had knowledge of the risk or danger presented by not staying in the lifeboat.
- Second, as a twenty-one year-old of at least average intelligence, he understood that risk and danger.
- Third, he voluntarily exposed himself to that risk by declining to remain in the seat he occupied.

Because Mr. Jensen's actions that night reveal that he voluntarily assumed the risk that he might not survive, the Plaintiff cannot recover.

II. MR. JENSEN'S OWN CONTRIBUTORY NEGLIGENCE BARS PLAINTIFF'S CLAIM

Contributory negligence is fault by the Plaintiff, which in conjunction with the negligence of Defendant, causes Plaintiff's injury. Any amount of contributory negligence bars recovery, even a minuscule amount of negligence. For example, even if White Star was 99.9% negligent and Mr. Jensen was .01% negligent, the law bars Plaintiff from recovering against White Star. Thus, even though White Star may have been negligent and that negligence was the major part of the cause of Mr. Jensen's death, the Plaintiff may not recover if Mr. Jensen did anything that contributed to his own death. So, if Mr. Jensen died because he disregarded the directions of the crew and jumped overboard without his life jacket, or because of his drinking Mr. Jensen did not act at all time in a reasonable manner and such unreasonable action, even if slight, contributed to his death, Mr. Jensen's contributory negligence would bar any recovery by Plaintiff.

CONCLUSION

As the testimony has revealed, Mr. Jensen's conduct the night of April 14-15, 1912 demonstrates the acts of others, of Mr. Jensen, or of both, caused the death of Mr. Jensen. Alternatively, Mr. Jensen's own acts of negligence contributed to his own death. In either case, Plaintiff may not recover against White Star Lines.

Dated: _____

New York, NY

Respectfully submitted,

Attorney for White Star Lines

WITNESSES



Witnesses

There are three witnesses to Titanic sinking in the case of *Estate of Hans Jensen v. The White Star Line*. The witnesses, even Carla Jensen, have information that is helpful to both sides. So, either party may call any of the witnesses or this information favorable can be brought out on cross-examination. The witnesses have provided documents to the lawyers for the parties, which are linked below. In addition, we have linked some searches to help you get started with your on-line research. The three witnesses are:

[Carla Christine Jensen](#), the fiancée of Hans Peder Jensen. Carla is not only a witness, but also the executor of her fiancée's estate. Unlike a criminal trial, in a civil trial the parties to a trial can be made to testify, so Carla can not claim her fifth amendment rights against self incrimination unless she would be required to provide evidence of a crime by her. You will find a variety of information on the Web about Carla. Her name appears on many websites as this [Infoseek search](#) shows.

[Second Officer Charles Herbert Lightoller](#) was on watch from 6-10 pm. He played an important role in the evacuation as can be seen from this [Altavista search](#). As you will also see, all the sources do not agree about the various events of that night, but this is almost always the case when people try to remember dramatic events, before the invention of electronic recording.

[Lieutenant Mauritz Hakan Bjornstrom-Steffansson](#) is the Military Attaché in Sweden's New York Consulate. Information about him appears on many websites as shown by this [Excite search](#).

[Note: Mr. Bjornstrom-Steffansson behavior the night the Titanic sank in reality was somewhat different than is portrayed by these witnesses here. For the purposes of the virtual trial, you should disregard, any evidence gathered from outside sources that do not agree with one of the witnesses' accounts. Even among these three witnesses, however, each saw the behavior of the other party somewhat differently. Unless instructed otherwise, you can use outside sources to support any witnesses' account of the events of that night. You may call additional witnesses if there is time, but in order to present all the issues set forth in the jury charge, you will need to call each of these three witnesses.]

Carla Christine Jensen's Information for Her Attorney

*Prepared at the request of Counsel
Attorney Client Privilege*

You asked me to tell you what happened on the horrible trip on the Titanic.

I left Eskildstrup, Denmark with my fiancé, Hans Jensen, my brother, Svend, and my cousin, Niels, to travel to the United States. We all planned on living in Oregon. They were going to be carpenters in the City of Portland. We chose the Titanic as our means of travel because it was supposed to be "unsinkable" and "the safest boat in the world." We were very excited about being on such a new boat. On the ship, I stayed in a cabin on Deck F, in the back part of the boat with all the other single women. Hans, Svend, and Niels stayed on the other end of the boat.

Around midnight on April 14, 1912, I remember being awoken by a loud sound. I didn't think much of it, so I went back to sleep. Then, around 1:30 a.m., the girls in the next cabin came and woke me up. I could barely understand what they were saying. They told me that we had to leave the boat immediately because something had gone wrong. I only had time to put on a pair of stocking slippers and overcoat to cover my nightgown.

We rushed up the six decks from where our cabin was, to the lifeboat deck. As I got to the top of the stairs leading to the deck, I saw Hans. He was on his way to find me. Hans had been helping load passengers on the lifeboats for nearly an hour because there weren't enough seamen to load all of the passengers. But when he didn't see me after a short time, he started to get worried.

We headed towards the boat's railing and I could see that only women, children, and crewman were supposed to get on the lifeboats. Everyone was concerned, but no one was screaming. I could even hear the band playing, "Nearer My God to Thee!" When it was my turn to get on the boat, Hans told me that I'd probably be in New York a few days before him, but to wait for him. He gave me a hug, kiss on the forehead, and said he'd see me soon. After I sat down in the boat, he helped the seamen get the ropes unstuck and stood at the rail until I disappeared into the darkness. That was the last I ever saw of Hans.

I had known Hans since we were little, but we didn't pay attention to each other until he returned from his duty with the Danish Army. The only picture I have of him, he's in his cadet's uniform. He learned carpentry from my cousin Neil who said that Hans was going to be quite a success. Hans just had such a beautiful way of crafting wood. People from all over Eskildstrup admired his work. He even had a list of people that wanted to place furniture orders with him.

We decided to go to America because in Denmark Hans could only make about \$10 a week. But he had been told that for doing the same work in America, he could make over \$25 a week. We knew that America was growing rapidly and that good carpenters could make a lot of money if they did good work.

Second Officer Lightoller's Memo to the White Star's Lawyer

Prepared at the request of the White Star Line Counsel
Attorney Client Privilege

You asked me to write down what happened the night the Titanic sank.

BEGINNING OF MY WATCH

I came on duty that night promptly at 6:00 p.m. for my watch, which ends at 10:00 p.m. Around 7:30, when I finished my dinner, I noticed that the temperature had quickly dropped since I began my watch. However, the sky was still clear and the sea calm. Captain E.J. Smith remarked how cold it had gotten when he arrived on the bridge at 9:00 p.m. He told me to increase to 22-1/2 knots so that we could set the record. The day before we had made 536 miles.

DISCUSSION WITH CAPTAIN

The Captain and I discussed how navigating through this area was the most crucial part of the trip. Since we had received only one isolated ice warning from the ship, *Caronia*, I believed that there was very little ice around. After the Titanic sank, I learned we had received ice warnings from three other ships. I thought that if there were any icebergs in the vicinity, the light reflecting from the stars would allow us to see them. The Captain left the bridge around 9:20 p.m.

WARNING TO FELLOW OFFICERS

I instructed Sixth Officer Moody to let the other men know in subsequent watches that they should be on the look out for small chunks of ice, since at that time I only knew of one report of ice. By 10:00 p.m. my shift was over, so I gave First Officer Murdoch the ship's course and speed. I also mentioned the possibility of ice being in the area. I went to bed after completing my round of the ship. Around 11:40 p.m., as I was just closing my eyes, I felt a vibration. I ran to the deck to see what had happened. Although we didn't see anything, both Third Officer Pitman and I agreed that the ship had hit something.

LOADING LIFE BOATS 12 & 16

Around midnight, I was informed that F Deck by the mail room had been flooded. As soon as Captain Smith gave me the orders, I began loading women and children on to lifeboats. I remember seeing a passenger on the davits untying lines out of the corner of my eye. I called over to him and said it was not necessary that he help us. He responded that Officer Moody asked if him to work on these lines while Moody worked on the lines on the other end of the lifeboat. When we were done loading Life Boat 12, he jumped down and asked me if I had seen his fiancée, Carla Jensen. I smelled alcohol on his breath and asked him if he had been drinking. He told me his birthday was the next day, April 15th, and that he had had two drinks with his fiancée's relatives to celebrate. I corrected him and said that it was already his birthday, since it was now after midnight. I then asked what class his fiancé was

in and he said third class. I told him that I didn't know many passengers in third class, but that he'd better go look for her. As we were loading Life Boat 16, I saw Jensen kiss what I presumed to be his fiancé and help her into the boat.

COLLAPSIBLE BOAT D

I then went to assemble Collapsible Boat D. Because of the way the passengers began to act, several of the officers armed themselves with guns and encircled the boat, allowing only women to take seats. A Swedish military attaché named Bjornstrom-Steffansson tried to help control the crowd. But I could see that he was only interested in remaining near one of the last remaining lifeboats, because he kept looking over his shoulder at the boat. Jensen returned and began assisting us by controlling the crowd. I told him once again that we didn't need his help, but he did seem to be doing a good job.

I could tell that although Jensen wasn't the type to start a fight, he certainly wouldn't back down from one -- and I think the passengers knew that. As soon as it appeared there weren't anymore women to put on the boat, we decided to allow some of the men to get in, so I told Jensen to get aboard the boat. Just after Jensen got in, more women showed up, so I told everyone in Boat D to make room. There was a murmuring in the crowd as the men not on the boat realized there was still space in Boat D. When I said, "make room" Jensen and most of the other men jumped out and Jensen helped calm the crowd. I turned and ordered the men to start lowering the boat immediately so it wouldn't tip over and also because the lines were likely to tangle as the deck tilted more sharply. As the boat was lowered past A Deck, two men jumped on to the boat from the A Deck promenade. I sent two crewmen to follow the boat down. When I turned around, I did not see Jensen anywhere.

RESCUE

The water began to rise rapidly, so I jumped on to the roof of the officers' quarters to free Collapsible Boat B. The deck was now tilting steeply, so once the ropes were partially sawed through, Boat B broke away and flew into the water. One of the boat's funnels started to fall towards me so I jumped from the roof into the very icy water and ended up near a grate over an engine room air intake. The force of the water filling the air intake sucked me down against the grate as the boat went under. Luckily, the cold water rushing through the grate hit the boilers, which blew and blasted me back to the surface. I swam to Collapsible Boat B, which was upside down, and pulled myself on top of it with many other men, where most of us remained until the Cunard Lines' *Carpathia* arrived and took us aboard in the morning. I believe I was the last man pulled from the water alive.

Mauritz Hakan Bjornstrom-Steffansson's Letter to White Star Line Counsel

Lieutenant Mauritz Hakan Bjornstrom-Steffansson
Military Attaché
Consulate General of His Majesty Gustaf V
Kingdom of Sweden
New York, New York

General Counsel
The White Star Line
New York, New York

Sir:

It has come to my attention that Ms. Carla Jensen is suing your respected company and I believe that you would be interested in my recollection of the events of that night. I am the Military Attaché to the Consulate of the Government of Sweden in New York City. As such, I am experienced in reporting events accurately and objectively.

I have vivid recollections of the night the Titanic sank. That evening I was drinking lemonade in the first class smoking room with several other gentlemen. At 11:40, we all felt the boat slightly vibrate. The vibration was so slight as interrupt only momentarily my vigorous debate with Hugh Woolner about the changing world order. Our debate was interrupted by a White Star Line officer who told me that I needed to put my life jacket on immediately. Since I'm a military man, I obeyed the officer, put on my lifejacket, and went to see how I could help the other passengers.

As I approached the Boat Deck, I saw that it was busy with passengers from all classes, even passengers from the lower decks had ventured up. I immediately stood to and assisted the women and children in preparing to board the lifeboats. Hugh reassured the women as they were waiting to board. He joined me as I helped passengers such as Mrs. Edward Candee, into the boats.

I had been working on untangling the ropes of Lifeboat 12, which presented some difficulty due to their poor design, when this man, who I later learned was Hans Jensen, rudely pushed me out of the way. He jumped up on the rail and rashly untangled the ropes while hanging over open water. Officer Lightoller came over and told Jensen to get down from the railing. When he jumped down next me to where I stood waiting to explain to him how a gentleman behave, I was not surprised to smell alcohol on his breath, which no doubt gave him the courage to do such a foolish thing. Second Officer Lightoller must have smelled it too, because he asked Jensen who he was and if he had been drinking, before I had a chance to say anything.

While Officer Lightoller was reprimanding Jensen, I went over to comfort the distraught ladies. As I continued to comfort ladies, I saw over their shoulders Jensen kissing some woman who may have been this purported fiancé that has brought suit against you.

As we were accompanying the ladies towards the remaining lifeboats I heard a shot and saw that Second Officer Lightoller had his men in a ring around Boat D and some of them had their guns at the ready. Jensen was once again interfering with the officers duties by standing before them face toward the upset passenger, which resulting in his blocking the officers line of fire should the crowd become uncontrollable. Seeing how unruly the crowd had become, I told the passengers, a few of whom were even first class passengers, to back away and let the sailors do their job. I kept looking over my shoulder to make sure the sailors were assembling the boat properly. Jensen continued to interfere with the officers doing their job properly, but did keep the crowd far away enough from the officers so that they could readily use their sidearms were there a need to do so.

Once all the women in the immediate area had been loaded, Lightoller allowed certain men to board. Jensen quickly got on board. I hung back in case there were other women who needed to board, which as it turned out there were. When

Lightoller called for the passengers in the boat to make room, Jensen to my surprise, got out of the lifeboat rather than simply moving over like some other passengers. Once these women were boarded, unfortunately, Lightoller appeared to have lost his nerve and ordered the boat lowered, when I could clearly see there were empty seats in the boat. Jensen had gotten the men from the lower decks calmed down so there was nothing else for Hugh and I to do. This was the last I saw of Jensen.

I called to Hugh and we both went down the first class stairs to the A Deck where the boat was just passing in its descent to the water. We both decided it was best if we accompanied the women, since there was plenty of room and the women might need our help. I let Hugh jump first. With a short jump, I dropped a surprising distance into that part of the boat where there were no ladies. Our landing in the boat caused no serious disruption and we continued to assist in calming the ladies.

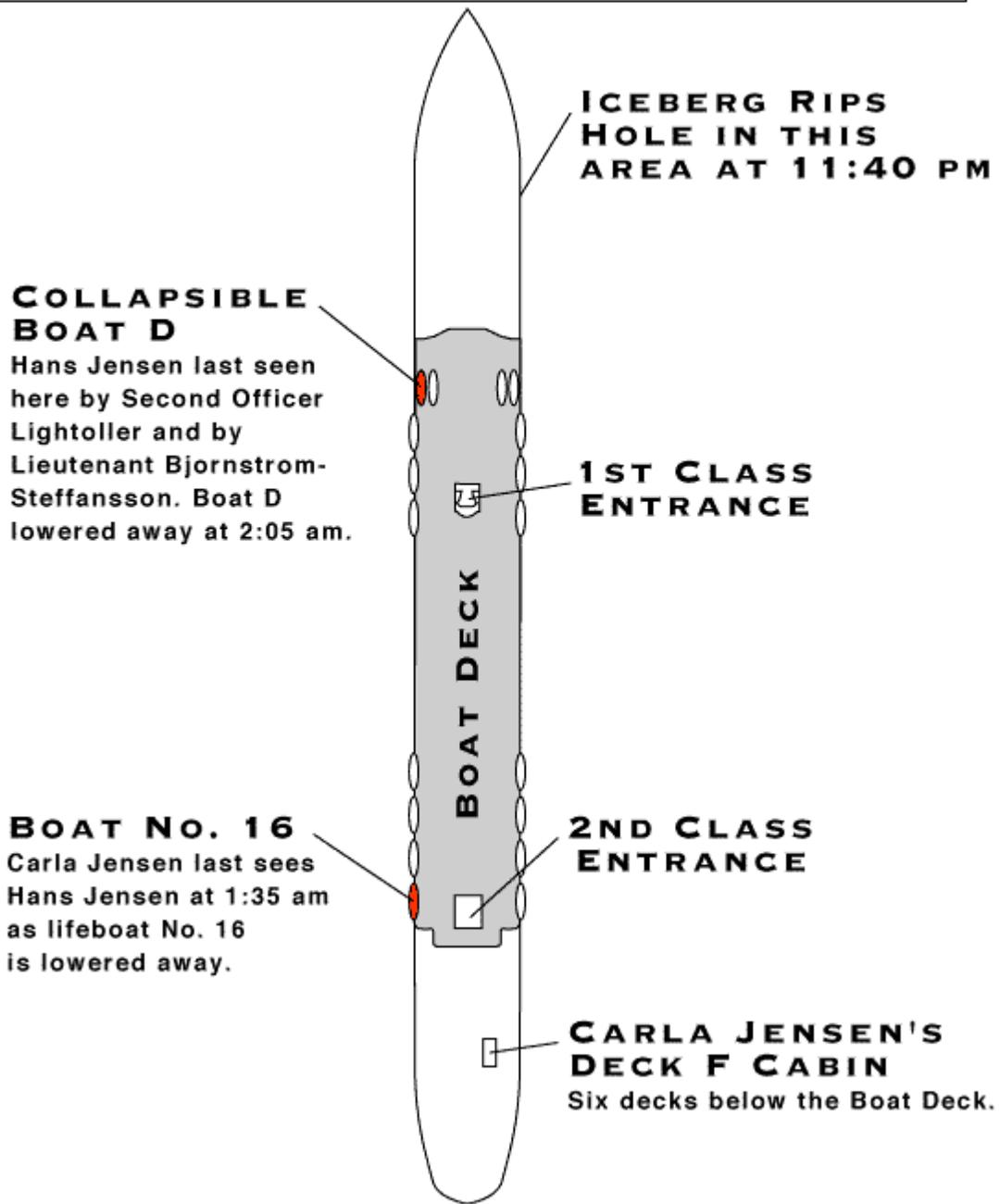
Please feel free to call on me if I can be of any service to your excellent line.

Your faithful servant,

Lieutenant Mauritz Hakan Bjornstrom-Steffansson Military Attaché Consulate General of His Majesty Gustaf V Kingdom of Sweden New York, New York

EXHIBIT

**JENSEN V. THE WHITE STAR LINE
PLAINTIFF'S EXHIBIT I.**



R.M.S. TITANIC

JURY CHARGE



Jury Charge

Members of the Jury, you are about to deliberate and decide the verdict in the case of Estate of Hans Jensen versus White Star Lines. You are hereby charged to obey the law as I will explain it to you. Your job is to determine what the true facts are and apply them to the law as I explain it to you. You are not to allow sympathy or animosity for either of the parties to this suit to sway your determination of the facts or your interpretation of the law. You must all decide unanimously whether the defendant, White Star Lines, should be liable for the claims made by the plaintiff, Carla Christine Jensen, Executor of the Estate of Hans Peder Jensen.

BURDEN OF PROOF - The Plaintiff has the burden of proof on all her claims, while the Defendant has the burden of proof on all of its defenses. A party must prove a claim or defense by a preponderance of the evidence. A preponderance of the evidence is to prove that something is more likely than not. In other words, a preponderance of the evidence means when the evidence on one side is greater than the evidence on the other side and makes you believe that the evidence is more likely true than not. If the evidence is evenly balanced, then you must decide against the party with the burden of proof.

JURY TO DETERMINE CREDIBILITY OF WITNESSES - You are the sole judges of the credibility of the witnesses. You alone are to determine whether to believe any witnesses. If there is any conflict in the testimony, it is your function to resolve the conflict and to determine where the truth lies. If you believe that any witness has shown himself to be biased or prejudiced, either for or against either side in this trial, you may consider whether such bias has affected the ability of that witness to tell the truth.

DUTY - You must decide if White Star Lines has a duty to exercise reasonable care to provide for its passengers safety. I hereby charge you that as a matter of law, White Star Lines has this obligation. You therefore must decide if White Star Line breached this duty through its negligence.

NEGLIGENCE - You must decide whether White Star Lines was negligent. Negligence is the failure to exercise reasonable or ordinary care. Thus, negligence is doing something a person using reasonable or *ordinary care* would not do, or *not doing something* a person using *ordinary care* would do.

CAUSE - If you decide White Star Lines was negligent you must decide if that negligence caused the injuries and damages suffered by Hans Peder Jensen. An injury or damage is caused by an act, or a failure to act, when a preponderance of the evidence shows, that the act or omission played a substantial part in bringing about the injury or damage. There may be more than one cause of an injury. Each person whose negligent act is a cause of an injury is responsible.

CONTRIBUTORY NEGLIGENCE DEFINED - Mr. Jensen's estate may not recover his damages if you find that his own negligence was a cause of his injury. The defendant has the burden of proving that the plaintiff's negligence was a cause of the plaintiff's injury.

SUPERSEDING CAUSE - If you decide that despite White Star Lines' negligence, that plaintiff voluntarily decided not to seek safety without reasonable excuse, or, if some third party's act intervened that resulted in White Star Lines' negligence no longer being the cause of Mr. Jensen's injury, then you shall decide for the defendant, White Star Lines. The defendant must prove by a preponderance of the evidence that such superseding cause happened. If the evidence is evenly balanced as to the intervening cause, you shall decide for the plaintiff.

DAMAGES - If you find for the plaintiff, then you shall award to the plaintiff a sum of money that will compensate his estate for all the damage suffered by him, which was caused by the negligence of the defendant. You should award any future earnings to the plaintiff for the lost wages of Hans Peder Jensen. In determining this amount, you may consider Mr. Jensen's health, physical ability and earning capacity at the time of his death.

After deciding these matters, you are instructed to fill out the Special Verdict Form and return it to me. Fail not to perform your duties faithfully, truly and with out prejudice. You may now retire to deliberate.

JURY VERDICT SHEET



Jury's Special Verdict Sheet

Jurors, after deliberation of all the testimony, documents and exhibits you are to carefully consider the evidence and come to a unanimous conclusion as to each question below:

Elements of the plaintiff's prima facie case of Negligence:

Negligence is a "tort," a private (non-criminal) wrong or injury. To prevail on a claim of negligence, a plaintiff must prove by a preponderance of the evidence the following four elements:

1. Duty of reasonable care to the injured party,
2. Breach by the defendant of the duty of reasonable care,
3. Proximate (legal) causation of the plaintiff's injuries (here, in this case, the cause of Mr. Jensen's wrongful death);
4. Damages.

1. Duty of Reasonable Care:

(a) Was Hans Peder Jensen a Foreseeable Plaintiff to The White Star Line?

Yes ____, No ____

(b) Did The White Star Line owe a duty of reasonable care to its passenger, Hans Peder Jensen?

Yes X, No ____ (The judge has determined that as a 'matter of law' The White Star Line owed Mr. Jensen a duty of reasonable care so you *need not decide this matter.*)

IF THE ANSWERS TO THE ABOVE QUESTIONS 1.(a) AND (b) ARE ANSWERED "YES" PROCEED TO THE NEXT QUESTION:

2. Breach of the Duty Owed:

Did The White Star Line breach the duty of care owed to Hans Peder Jensen?

Yes ____, No ____

IF THE ANSWER TO QUESTION 2 IS "YES" PROCEED TO THE NEXT QUESTION:

3. Causation:

(a) Factual Causation: ***But for*** the fact that Hans Peder Jensen was on board the TITANIC, would he have died?

Yes _____, No _____

(b) Proximate Causation: Was there a direct connection between the actions or omissions of the crew of The White Star Line and Jensen's death?

Yes _____, No _____

IF BOTH QUESTIONS ARE ANSWERED "YES" THEN PROCEED TO THE NEXT QUESTION:

4. Damages:

(a) In what amount, if any, is White Star Lines liable to pay the plaintiff for the ***wrongful death*** of Hans Peder Jensen?

Amount \$_____

(b) In what amount, if any, is The White Star Line liable to pay the plaintiff for loss of Hans Peder Jensen's ***future wages*** for the remainder of his work life?

Amount \$_____

(c) In what amount, if any, is White Star Lines liable to pay the plaintiff for the ***physical pain and suffering*** of Hans Peder Jensen prior to his death?

Amount \$_____

(d) In what amount, if any, is White Star Lines liable to pay the plaintiff for the ***mental anguish*** of Hans Peder Jensen prior to his death?

Amount \$_____

(e) In what amount, if any, is White Star Lines liable to pay plaintiff for ***punitive damages*** for wanton or reckless disregard in failing to properly perform its duties to plaintiff and to Hans Peder Jensen?

Amount \$_____

Defenses Available to White Star Lines:

1. Superseding Cause: Was an ***intentional act*** by any person other than an employee of White Star Lines that acted as a superseding cause of Hans Peder Jensen's death? (The intentional act could be by Hans Peder Jensen himself).

Yes _____, No _____

2. Contributory Negligence: Was Hans Peder Jensen, in any way, ***contributory negligent*** in his own death? If so, plaintiff

Yes _____, No _____

3. Assumption of the Risk: Did Hans Peder Jensen *assume the risk* of his own death?

Yes _____, No _____

Jurors, after you have come to a unanimous conclusion as to each question below, the completed verdict sheet must be returned to the judge or bailiff.