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CASE FILE D:

DAVID C. MARCH

v.

BROWN JUG TAVERN

WRONGFUL DEATH
DRAM SHOP ACT

**MARCH V. BROWN JUG TAVERN
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GENERAL INSTRUCTIONS

This is a civil wrongful death case, brought by the estate of Helen Gallagher against the Brown Jug Tavern under a Commercial-Server Liability (Dram Shop) Act. Plaintiff alleges that the Tavern served liquor to a visibly intoxicated patron, Oscar Bradley, who later struck Gallagher with his van as she crossed the street. Gallagher died after several days in the hospital. The defendant denies knowledge that the patron was intoxicated and alleges contributory negligence on the part of Gallagher. Plaintiff seeks damages for medical expenses, pain and suffering and lost income. The events took place in November two years ago in a fictional city called Bayshore, Columbia (population 150,000).

Potential Witnesses

Oscar T. Bradley -- intoxicated driver who killed Gallagher
Virginia Wagner -- eyewitness, Bradley's companion
Kathi Johnson -- tavern employee who served Bradley
Karen Tucker -- eyewitness
David March -- administrator of Gallagher's estate
Jane Moore -- professor of business, University of Columbia
Gerald Adams -- Bayshore police officer

Instructions for use as a full trial (without experts)

1. Plaintiff must call Oscar Bradley and Virginia Wagner as witnesses in his case-in-chief. He may call Gerald Adams or David March.
2. Defendant must call Kathi Johnson and Karen Tucker as witnesses in its case-in-chief. It may call Gerald Adams or David March.
3. The parties have stipulated:
 - a. The results of the breath test performed by Gerald Adams are admissible.
 - b. The value to Helen Gallagher's estate of her lost earning capacity is \$30,000 per year in which she would have worked full time, and \$0 for any year in which she would not have worked or would have worked only part-time.
4. Oscar Bradley has settled with David March for \$50,000 paid by Bradley's insurance company. Under Columbia law, the judge, not the jury, will handle reducing the final damage award to prevent double recovery by March.
5. The original attorneys have withdrawn from this case, citing conflicts of interest.

Instructions for use as a full trial (with experts)

1. Plaintiff must call Oscar Bradley, Virginia Wagner, and Gerald Adams as witnesses in his case-in-chief. He may call David March, but may call other witnesses only with the approval of the court.
2. Defendant must call Kathi Johnson, Karen Tucker, and Jane Moore as witnesses in its case-in-chief, and may call other witnesses only with the approval of the court.
3. The stipulations listed above do not apply.
4. The original attorneys have withdrawn from this case, citing conflicts of interest.

Note on Dates

All years in these materials are designated as follows: YR-0 refers to the present year, YR-1 refers to one year ago, YR-2 (the year in which the events happened) refers to two years ago, etc.

In the Monroe County Circuit Court
State of Columbia

DAVID C. MARCH, Administrator)	
of the estate of Helen Gallagher,)	Civil No. <u>4 2 4 4 9</u>
Plaintiff)	
)	
vs.)	
)	
Darlene McCormick, d/b/a THE)	
BROWN JUG TAVERN)	COMPLAINT
Defendant)	

Plaintiff for his claim for relief alleges and says that:

1. Plaintiff is the lawfully appointed administrator of the estate of Helen Gallagher, said appointment being made by the Monroe County Probate Court.
2. At the time of the accident described herein, plaintiff was a resident of Monroe County, State of Columbia.
3. At all times mentioned herein, the defendant, Darlene McCormick, was a resident of Monroe County, State of Columbia.
4. At all times mentioned herein, the defendant Darlene McCormick owned and operated a tavern in Monroe County, State of Columbia, known as the Brown Jug Tavern and was duly licensed by the State of Columbia to sell intoxicating alcoholic beverages to the general public at that location.
5. At all times mentioned herein, Darlene McCormick d/b/a The Brown Jug Tavern ("Brown Jug Tavern"), acted through its agents, servants and employees.
6. On November 8, YR-2, The Brown Jug Tavern sold and dispensed intoxicating alcoholic beverages to Oscar Thomas Bradley thereby causing Mr. Bradley to become intoxicated.
7. Once Mr. Bradley became intoxicated, The Brown Jug Tavern carelessly and negligently continued to sell and dispense to Mr. Bradley intoxicating alcoholic beverages in violation of Columbia State Statute §7-5-15.
8. On November 8, YR-2, after Mr. Bradley had become intoxicated, The Brown Jug Tavern carelessly and negligently evicted Mr. Bradley from the premises, which are ten miles from the nearest town, leaving Mr. Bradley with no

transportation except to drive his own car.

9. On November 8, YR-2, at approximately 11:30 p.m., Oscar Thomas Bradley was driving his automobile through the intersection of Washington and Kirkwood Streets in Bayshore, State of Columbia, while intoxicated, and struck Helen Gallagher who was crossing Washington Street within a marked crosswalk.
10. The intoxicated state of Oscar Thomas Bradley was a direct and proximate cause of the accident.
11. As a direct and proximate result of the negligent acts of the defendant, Helen Gallagher was killed.
12. As a direct result of the negligence of the defendant, Helen Gallagher was hospitalized for injuries and required to engage the services of doctors for treatment, medication and X-rays and by reason thereof, has incurred medical bills in the amount of \$16,095.00.
13. As a result of her death, Helen Gallagher's estate has been deprived of the amount she would have earned during her lifetime, which amount is reasonably worth \$3,000,000.
14. As a direct and proximate result of the negligence of the defendant, Helen Gallagher was in great pain and suffered for four days following the accident until her death, which is reasonably worth \$200,000.

WHEREFORE, the plaintiff David C. March prays for judgment against the defendant in an amount commensurate with her injuries, for the costs of this action, for trial by jury and for all other just and proper relief.

LERNER LAW OFFICE

By _____
Stanley Lerner
Attorney for Plaintiff

LERNER LAW OFFICE
3131 E. Third Street
Bayshore, Columbia
(811) 587-8423

In the Monroe County Circuit Court
State of Columbia

DAVID C. MARCH, administrator)	
of the estate of Helen Gallagher)	
<i>Plaintiff</i>)	Civil No. 42449
)	
vs.)	
)	ANSWER
Darlene McCormick, d/b/a)	
"THE BROWN JUG TAVERN",)	
<i>Defendant</i>)	

-
1. Defendant admits paragraph 1.
 2. Defendant admits paragraph 2.
 3. Defendant admits paragraph 3.
 4. Defendant admits paragraph 4.
 5. Defendant admits paragraph 5.
 6. Defendant denies the allegations contained in paragraph 6.
 7. Defendant denies the allegations contained in paragraph 7.
 8. Defendant denies the allegations contained in paragraph 8.
 9. Defendant denies the allegations contained in paragraph 9.
 10. Defendant denies the allegations contained in paragraph 10.
 11. Defendant denies the allegations contained in paragraph 11.
 12. Defendant denies the allegations contained in paragraph 12.
 13. Defendant denies the allegations contained in paragraph 13.
 14. Defendant denies the allegations contained in paragraph 14.

First Defense

15. Defendant says that if she should be found to be negligent in any of the respects set forth in the complaint, which she specifically denies, then Helen Gallagher was also negligent which proximately contributed to her death and the damages complained of in the complaint, in that Helen Gallagher was crossing Washington Street in a negligent manner, and failed to yield to a motor vehicle as required in section 9-4-88 of the Columbia Code.

Second Defense

16. Defendant says that if Helen Gallagher's negligence did not cause the accident that resulted in her death, then the sole proximate cause of the accident was the negligent driving of Oscar Thomas Bradley and is not the fault of defendant.

WHEREFORE, defendant prays that the court dismiss plaintiff's complaint and award defendant costs and expenses incurred herein.

Lynda A. Mitchell
Attorney for Defendant
HOUSTON MINNICK & DOS SANTOS
100 North Walnut
Bayshore, Columbia

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer was mailed, postage prepaid, to Stanley Lerner, 3131 E. Third Street, Bayshore, Columbia, attorney for plaintiff; this ___ day of _____, YR-1.

Lynda A. Mitchell

EXCERPTS FROM COLUMBIA STATUTES

§ 34-1-2. Action for wrongful death.-- When the death of a person is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefore against the latter, and the damages shall be in such an amount as may be determined by the court or jury, including, but not limited to, reasonable medical, hospital, funeral and burial expenses, such lost earnings as can reasonably be expected to accrue to the estate, and reasonable compensation for the decedent's pain and suffering not to exceed \$200,000.

§ 7-5-15. Liability for Furnishing Alcohol. -- A person who furnishes an alcoholic beverage to a person is liable in a civil action for damages caused by the impairment or intoxication of the person who was furnished the alcoholic beverage if:

- (a) the person furnishing the alcoholic beverage had knowledge that the person to whom the alcoholic beverage was furnished was visibly intoxicated at the time the alcoholic beverage was furnished; and,
- (b) the intoxication of the person to whom the alcoholic beverage was furnished was a proximate cause of the death, injury, or damage alleged in the complaint.

§ 9-4-87. Pedestrian's right-of-way at crosswalks. -- (a) When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

§ 9-4-88. Crossing at other than crosswalks. Every pedestrian crossing a roadway at any point other than within a marked crosswalk shall yield the right-of-way to all vehicles upon the roadway.

§ 9-4-180. Stopping Distances -- Judicial Notice. All courts of general jurisdiction in this state may take judicial notice of the following table:

Table of Average Speed and Stopping Distances (in feet)

For vehicles with brakes and tires in good condition on dry level pavement free from loose material. For wet pavement add 10% for all-season tires and ABS, 20% for all-season tires and no ABS, 30% for high-performance tires, and 40% for tires with visibly worn tread.

<u>SPEED IN:</u>		<u>AVERAGE STOPPING DISTANCES</u>				<u>TOTAL STOPPING DISTANCES</u>		
Miles per hour	Feet per second	Cars	Vans, SUVs & pickups	Trucks to 36 feet	Driver reaction time	Cars	Vans etc	Trucks
10	14.7	5	5	6	22	27	27	28
15	22.0	11	12	14	33	44	45	47
20	29.3	19	21	25	44	63	65	69
25	36.6	30	33	40	55	85	88	95
30	44.0	43	48	57	66	109	114	123
35	51.3	58	65	78	77	135	142	155
40	58.7	76	85	102	88	164	173	190
45	66.0	96	107	129	99	195	243	228
50	73.3	119	133	159	110	229	207	242
55	80.7	144	161	192	121	265	282	288
60	88.0	171	191	229	132	303	323	336
65	95.3	201	224	268	143	344	367	387
70	102.6	233	259	311	154	387	413	444
75	109.9	268	298	357	165	433	463	504
80	117.2	305	339	406	176	481	481	568
85	124.7	344	384	459	187	531	565	646
90	132.0	386	430	514	198	584	628	706

§ 34-2-67. Present value -- Judicial notice. In all cases in the courts of this state, judicial notice may be taken of the following present value table:

Present value of \$1.00 per year over a period of years

Number of years	Rate of return on investment			
	5%	6%	7%	8%
1	0.95	0.94	0.93	0.92
2	1.86	1.83	1.80	1.77
3	2.72	2.67	2.62	2.57
4	3.55	3.47	3.39	3.31
5	4.33	4.21	4.10	3.98
6	5.08	4.92	4.77	4.62
7	5.79	5.58	5.39	5.21
8	6.46	6.21	5.97	5.74
9	7.11	6.80	6.52	6.26
10	7.72	7.36	7.02	6.70
11	8.31	7.89	7.50	7.11
12	8.86	8.38	7.94	7.50
13	9.39	8.85	8.36	7.87
14	9.90	9.29	8.75	8.26
15	10.38	9.71	9.11	8.58
16	10.84	10.11	9.45	8.87
17	11.27	10.48	9.76	9.11
18	11.69	10.83	10.06	9.38
19	12.09	11.16	10.34	9.62
20	12.46	11.47	10.59	9.82
21	12.82	11.76	10.84	10.02
22	13.16	12.04	11.06	10.21
23	13.49	12.30	11.27	10.39
24	13.80	12.55	11.47	10.56
25	14.09	12.78	11.65	10.72
26	14.38	13.00	11.83	10.87
27	14.64	13.21	11.99	11.01
28	14.90	13.41	12.14	11.13
29	15.14	13.59	12.28	11.25
30	15.37	13.76	12.41	11.36
31	15.59	13.93	12.53	11.46
32	15.80	14.08	12.65	11.55
33	16.00	14.23	12.75	11.64
34	16.19	14.37	12.85	11.72
35	16.37	14.50	12.95	11.79
36	16.55	14.62	13.04	11.86
37	16.71	14.74	13.12	11.93
38	16.87	14.85	13.19	11.99
39	17.02	14.95	13.26	12.05
40	17.16	15.05	13.33	12.11

EXCERPT FROM THE DECISIONS OF THE COLUMBIA SUPREME COURT

Robin HICKMAN, Appellant
(Plaintiff below)

v.

BUD'S TRUCK STOP, Appellee
(Defendant below)

No. 487T4539

Supreme Court of Columbia

June 12, YR-4

DAUBER, Associate Justice

This action was brought under Columbia's new Commercial Server Liability Act, § 7-5-15, to recover damages from a restaurant for the off-premises actions of one of its patrons who had become intoxicated. The basic facts are: one Joseph Franklin spent several hours at the defendant's restaurant drinking beer. He left in a state of intoxication, got into his truck, and drove off. Several minutes later, he crossed the center line and hit plaintiff's car coming the other direction, causing serious injury to the driver. Franklin's blood alcohol level was 0.21 percent. Plaintiff sued Bud's Truck Stop under the Commercial Server Liability Act.

At the close of plaintiff's case, the trial judge directed a verdict for the defendant on the ground that the plaintiff had not shown that Bud's Truck Stop had knowledge that Franklin was intoxicated when it served him. Taken in the light most favorable to plaintiff, her evidence showed that although one waiter served Franklin throughout his stay, that person had no specific recollection of how many beers Franklin drank, nor was there any evidence that Franklin was visibly intoxicated. Plaintiff appeals from this ruling. This is our first opportunity to review this new legislation.

Plaintiff first argues that she should be entitled to a presumption that defendant had knowledge of Franklin's intoxication based on his high blood alcohol level. Plaintiff's expert testified that a person

with a blood alcohol concentration of 0.21% would be "very intoxicated," would have difficulty walking a straight line, and their speech would be slow and slurred. Based on this evidence, plaintiff argues that she should have been entitled to a presumption that Franklin would have been visibly intoxicated and that defendant's employees would have been aware of it. We disagree. The statute clearly states that defendants are liable only if they serve liquor to a person they know to be *visibly* intoxicated. This requires affirmative evidence from plaintiffs.

Plaintiff next argues that the evidence was sufficient to establish constructive knowledge on defendant's part. Defendant argues that the plaintiff must prove *actual* knowledge of Franklin's intoxication.

This is a case of first impression in Columbia. No consistent pattern appears in other states. Some require proof of actual, subjective knowledge (citations omitted). Others permit recovery upon proof merely of constructive knowledge, although precise definitions of constructive knowledge vary (citations omitted). An emerging middle ground appears to be the use of an "objective knowledge" standard -- whether a reasonable server of alcoholic beverage would have known the patron was intoxicated, or that there was a high probability of intoxication, based on all the circumstances of the case. See Ronald S. Beitman, *Practitioners' Guide to Liquor Liability Litigation* 1-23 (1987). We adopt the middle ground as the one most consistent with tort law's reasonable person standard.

Now we turn to the question whether plaintiff in the case before us introduced enough evidence to show that a reasonable server in the position of the defendant's employee would have known that Franklin was intoxicated at the time he was served additional alcohol. All the plaintiff proved was that Franklin was in fact intoxicated. No proof was offered that Franklin displayed any visible signs of intoxication, nor that he was served such a large quantity of alcohol in a short time so that intoxication was inevitable. Judgment affirmed.

B. P. D. AND M. C. S. D. OFFICER NARRATIVE REPORT

DATE OF ACCIDENT 11/9/YR-2 DATE OF REPORT 11/10/Yr-2

SPECIFIC LOCATION Kirkwood and Washington Streets

NAME(S) OF PARTIES Oscar T. Bradley

NAME OF OFFICER Gerald Adams DEPARTMENT BPD

NARRATIVE DESCRIPTION OF ACCIDENT:

Responded to call at 11:30 p.m. that there had been a traffic accident at Kirkwood and Washington Street. Proceeded to scene, arrived 11:31 p.m. Chevrolet van had struck pedestrian identified from drivers license as Helen Gallagher, Female age 28, 1012 S. Mitchell, Bayshore. Gallagher bleeding and unconscious, positioned under van with feet north and head south, approx. 55 feet south of crosswalk. Gallagher taken to Monroe County Hospital.

Driver of Vehicle No. 1 identified as Oscar Thomas Bradley, 701 S. Washington St., Bayshore, said that Gallagher had run out in front of him and that he had not seen her. Appeared intoxicated. Observed several empty beer cans inside vehicle.

Woman identified as Karen Tucker, 4626 Sunset Ave., Bayshore, said she had witnessed accident. She stated that Gallagher ran into Washington Street as Bradley had been turning left from Kirkwood to Washington.

Measured skidmarks to be 35 feet which started approximately 20 feet south of crosswalk.

Passenger in Vehicle No. 1, Virginia Wagner, 2505 Rock Creek Drive, Bayshore, said Gallagher crossing street from west to east when hit, not sure if in or out of crosswalk. Said she and Bradley had been drinking at the Brown Jug.

Administered NHTSA field sobriety tests following standard procedure. Also administered new Horizontal Gaze Nystagmus test. Suspect's eyes began to jerk at about 35 degrees, with jerking at maximum angle very distinct.

Bradley arrested for DUI. Intoximeter administered. BAC 0.17%.

Exhinitis:

1. Police accident report on standard form with diagram of scene
2. Sobriety exam resultsfor Bradley showing he was drunk
3. Monroe County map
4. Death certificate for Gallgher
5. Tucker's criminal record (minor)
6. Wagner's criminal record (minor)

1 David March)
2)
3 vs.)
4)
5 Brown Jug Tavern)
6

7 **DEPOSITION OF OSCAR T. BRADLEY**

8
9 DATE : April 18, YR-1

10
11 PLACE : Offices of Houston, Minnick & Dos Santos
12 100 North Walnut Street
13 Bayshore, Columbia
14

15 TIME BEGAN : 10:05 A.M.

16
17 APPEARANCES : For the Plaintiff, appears Stanley Lerner, Esq.
18 For the Defendant, appears Lynda A. Mitchell, Esq.
19

20 STENOGRAPHER : Dodie Bowman

21
22 TRANSCRIBED : Dodie Bowman

23
24 WHEREUPON THE WITNESS OSCAR T. BRADLEY WAS SWORN BY DODIE
25 BOWMAN, NOTARY PUBLIC

26
27 **EXAMINATION BY MR. LERNER**

28 Q: Would you please state your name, age and address.

29 A: Sure. I'm Oscar T. Bradley. I live at 701 South Washington Street,
30 Bayshore, Columbia. I'm thirty-one years old.

31 Q: Are you married?

32 A: Yes, I have a wife and family. We have two young children.

33 Q: What is your occupation?

34 A: I'm the assistant service manager for Rogers' Chevrolet.

35 Q: And, is that all you do? Is it your only job?

36 A: Yes.

1 Q: Do you have a criminal record?
2 A: No, absolutely not.
3 Q: Any prior traffic tickets?
4 A: Yes. Two stop sign violations when I was sixteen, and a couple of speeding
5 tickets and D.W.I.'s in the last few years.
6 Q: Did you plead guilty to all of them?
7 A: Yes.
8 Q: What is your social security number?
9 A: 303-99-0217.
10 Q: Did you go to college?
11 A: No. Just high school. I was in the auto mechanic's vocational program.
12 Q: Were you in the service?
13 A: Yes, the army for four years. I was stationed in Texas.
14 Q: When were you discharged?
15 A: Eight years ago this summer.
16 Q: Turning to November 9, YR-2, what time did you arrive at work?
17 A: Eight o'clock.
18 Q: Is that your usual starting time?
19 A: Yes.
20 Q: How long had you worked the day before?
21 A: My usual day -- 8:00 a.m. to 5:00 p.m.
22 Q: Were you taking any medication of any kind that day?
23 A: No.
24 Q: Do you have any health or eyesight restrictions on your drivers license?
25 A: No. I'm in good health.
26 Q: Tell me, please, in your own words, what you did on November 9 after
27 work.
28 A: I went home and changed. Then I went over to my girlfriend's house --
29 Virginia Wagner. She lives on Rock Creek Road. I got there about 7:00
30 p.m. We ate dinner and washed the dishes. Then we drank a few beers
31 and watched T.V.
32 Q: What time did you have the first beer?
33 A: I don't know. Maybe 8:30 or so.
34 Q: How many beers did you drink?
35 A: Four.
36 Q: How many did Ms. Wagner drink?

1 A: Maybe two or three. I'm not sure.
2 Q: When did you leave her house?
3 A: About 9:15.
4 Q: What did you do then?
5 A: We went to the Brown Jug Tavern.
6 Q: Where is that located?
7 A: Ten miles north of town on Route 1.
8 Q: How close is that to Bryant's Creek Road?
9 A: I'm not sure.
10 Q: What did you do?
11 A: We arrived about 9:30. We had a beer or two, then left to go home.
12 Q: Exactly how many beers did you have at the Brown Jug?
13 A: I think I had six.
14 Q: Regular 12-ounce beers?
15 A: Yeah.
16 Q: What time did you leave the bar?
17 A: I'm not sure. I would say about 11:15 p.m.
18 Q: Did you go directly from there to the intersection of Washington Street and
19 Kirkwood?
20 A: Yes.
21 Q: What were you driving?
22 A: My van.
23 Q: Was anyone in the van with you?
24 A: Yes. Ginny was.
25 Q: Who was driving?
26 A: I was.
27 Q: Were you drunk?
28 A: I'd say I was tipsy but not real drunk.
29 Q: How did you approach the intersection of Kirkwood and Washington?
30 A: From Kirkwood, going east-to-west.
31 Q: All right. You were going west on Kirkwood and you got to Washington, do
32 you recall a stop sign?
33 A: Yes, there's a stop sign at the corner.
34 Q: Did you come to a complete stop before you entered the intersection?
35 A: No, not exactly. I made, you know, a rolling stop.
36 Q: How was the traffic?

1 A: Pretty light. As I approached the corner, I think I remember a car went
2 across Kirkwood from north to south and another car came through the
3 intersection going east, then I turned left.

4 Q: What kind of vehicle was it that went by just before you turned?

5 A: A sedan of some sort, I'm not sure what kind.

6 Q: What were the weather conditions?

7 A: Cool and dry, a clear night.

8 Q: Was the intersection well lit?

9 A: Yeah.

10 Q: Did you turn left immediately after the car passed?

11 A: Yes.

12 Q: Did you make a gradual turn or sharp turn or what?

13 A: I made a sort of sharp turn onto Washington Street.

14 Q: Okay. Did you observe any people near the intersection?

15 A: Yes, I believe I remember seeing three people on the southwest corner
16 where the shoe store is.

17 Q: What were they doing?

18 A: Standing on the corner. I guess they were waiting to cross the street.

19 Q: Do you know for sure what direction they were facing?

20 A: No.

21 Q: Did you observe any other people on foot at that time?

22 A: No.

23 Q: Did you see a young woman in her twenties anywhere near the
24 intersection?

25 A: No.

26 Q: Did you see anyone crossing the street?

27 A: No.

28 Q: Mr. Bradley, will you describe in your own words what happened, starting
29 from the time you approached the intersection.

30 A: Well, I approached the intersection, slowed to almost a complete stop, and
31 made the turn and there was the sound of the impact, and I slammed on
32 the brakes.

33 Q: Where was your vehicle when you heard the impact?

34 A: I'm not exactly sure. I'd finished the turn, so I would say about at the
35 crosswalk or a few feet beyond it, that is, south of it.

36 Q: Did you see Ms. Gallagher crossing the street?

1 A: No, I did not. She must have run out in front of me.
2 Q: Did you have your brakes on prior to the impact?
3 A: No, sir. Well, I had them on as I approached the intersection, but then I
4 accelerated, so my foot was off the brake when the impact happened.
5 Q: What was the condition of your vehicle?
6 A: Very good. I keep it in good shape.
7 Q: What shape were the tires in?
8 A: They were relatively new, purchased in July, I think. They had less than
9 three thousand miles on them by my best guess.
10 Q: Had the brakes been adjusted within the preceding six months?
11 A: I adjusted them myself.
12 Q: What was the condition of the pavement?
13 A: I don't know.
14 Q: All right. Immediately after the impact what did you do?
15 A: Slammed on the brakes.
16 Q: What did you see in front of you?
17 A: Nothing -- just the street and parked cars.
18 Q: Did you see whether Ms. Gallagher was thrown into the air?
19 A: No. I didn't see it.
20 Q: Do you know your speed as you were making the turn?
21 A: Around fifteen miles an hour. I'm not sure.
22 Q: And your speed at the time of impact?
23 A: I don't know exactly. Maybe fifteen miles an hour.
24 Q: What's the speed limit?
25 A: 30 miles an hour.
26 Q: Had you had anything to drink since you left the tavern?
27 A: No.
28 Q: On November 9, YR-2, were you covered by liability insurance?
29 A: Yes, through Allstate.
30 Q: Do you know what the policy coverage was?
31 A: Um, no. The minimum required.
32 Q: Have you complied with all the conditions required by the policy, like filing
33 a report?
34 A: Yes.
35 Q: What was the first indication you had of Ms. Gallagher's presence?
36 A: The sound of the impact.

1 Q: At the impact, how far from the east curb were you?
2 A: I would say about ten feet from it or maybe a little more.
3 Q: As best you can tell, where on your van was the point of impact?
4 A: Left front, about one-third of the way across. By left, I mean the driver's
5 side.
6 Q: When you said you slammed on the brakes, will you describe that in more
7 detail?
8 A: I put force on the brake pedal as quickly and hard as I could, using my left
9 foot. The van has automatic transmission.
10 Q: What did you do next?
11 A: I jumped out and ran around to the front to see what I had hit.
12 Q: What did you see?
13 A: I saw the body of Ms. Gallagher, lying partly under the truck. She was on
14 her back, with her head and chest in the street and her legs under the
15 truck.
16 Q: What was she wearing?
17 A: I don't remember. I was pretty shook up. I'd never seen her coming. I
18 don't know where she came from.
19 Q: All right. Were there any marks on the front of your van?
20 A: There was a dent above the grill. I don't think it was there before. Sort of
21 level with the headlights.
22 Q: Can you draw a diagram for me?
23 A: I'll try. Here.
24 Q: Attach this as deposition exhibit one. Is this x-mark the point of the dent?
25 A: Yes.
26 Q: What did you do after you saw Ms. Gallagher?
27 A: I yelled to some people who had gathered to call the police. Then I knelt
28 down to see if she was still alive.
29 Q: Was she?
30 A: Yes.
31 Q: Was she conscious?
32 A: Yes.
33 Q: Did you say anything to her?
34 A: I said, "Where did you come from?"
35 Q: Did she say anything to you?
36 A: After a minute, she said something that sounded like, "Oh, God, oh, God"

1 David always told me to be more careful, that someday my carelessness
2 would get me killed." Then she asked me to call Dave, to get Dave for her.
3 I did not know then who she was talking about.

4 Q: Do you remember speaking to any bystanders after the accident?
5 A: I was very shaken. I don't remember talking to anyone until the police
6 officer questioned me.

7 Q: Do you know for sure if you said anything to anyone?
8 A: No, I have no idea.

9 Q: There were bystanders around after the accident?
10 A: Yes, there were people around.

11 Q: Let's go back for a minute, to the Brown Jug Tavern. You said you had six
12 beers. Were you at the bar or a table?
13 A: A table.

14 Q: Who served you?
15 A: Kathi. I don't know her last name. She's always there.

16 Q: Will you draw a diagram of the bar, indicating with a "B" where you were
17 sitting?
18 A: Sure.

19 BY MS. MITCHELL: Attach this diagram as deposition exhibit two.

20 Q: Does this wall in the center of the Tavern go all the way to the ceiling?
21 A: No. It has railings like a fence. It's solid up to about five feet, and then
22 has vertical slats of wood up to the ceiling.

23 Q: Can you see through it?
24 A: Sure. The slats are about two inches wide with about one inch of space
25 between them. Of course, it gets pretty dark and smoky some nights.

26 Q: Did Kathi say anything to you about your drinking?
27 A: Nope.

28 Q: In your opinion, did you become intoxicated while you were at the Brown
29 Jug?
30 A: Yeah, after about the fourth beer.

31 Q: Did you continue to drink after that?
32 A: Yeah, I ordered two more.

33 Q: Were you visibly intoxicated?
34 A: Probably -- I tend to get loud and rowdy.

35 Q: Why did you leave?
36 A: Kathi wouldn't serve me another beer. She said I was too drunk. I was

1 yelling at her to bring me another goddam beer. Then the bouncer came
2 over and told me to pay up and get out. He followed me to the door and
3 waited to make sure I left.

4 Q: Do you know this bouncer's name?

5 A: No. He doesn't work there anymore, either.

6 Q: Are you a regular patron of the Brown Jug?

7 A: Yep. I've been going there for years.

8 Q: Do you think you were at fault in Helen Gallagher's death?

9 A: Yes. I was driving drunk. It was those last couple of beers that put me
10 over the limit.

11 Q: Were you arrested?

12 A: Yeah. They put me in jail overnight because I blew a .165 on the
13 breathalyzer.

14 Q: Has the criminal case gone to trial?

15 A: No.

16 Q: Has your drivers license been suspended because of this incident?

17 A: Yes. It was suspended for one year but I have it back now.

18 Q: Did the police ask you to perform various field sobriety tests?

19 A: Yeah, walking a straight line and touching my nose, standing on one foot
20 and looking at a penlight.

21 Q: How did you perform?

22 A: I don't remember.

23 MR. LERNER: I have no further questions.

WHEREUPON IT WAS STIPULATED THAT READING AND SIGNING BY THE
WITNESS IS HEREBY WAIVED PURSUANT TO RULE 30(e).

**STATE OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLES**

**STATE OFFICE BUILDING
JEFFERSON CITY, COLUMBIA**

DRIVING RECORD OF

BRADLEY, OSCAR T.
DL 276998660
701 S WASHINGTON ST.

EXP 07 14 +1
BAYSHORE, COL

<u>DATE OF ARREST</u>	<u>LOCATION</u>	<u>DMV CODE</u>	<u>DISPOSITION</u>
08 15 -17 BAYSHORE PD	BAYSHORE, COL VIOL STOP SIGN	245	DISMISSED
10 09 -17 BAYSHORE PD	BAYSHORE, COL VIOL STOP SIGN	245	GUILTY
06 02 -14 COL STATE POL	BROWNSBURG, COL SPEEDING 65/55	110	GUILTY
12 18 -9 COL STATE POL	CHESTER, COL SPEEDING 70/55	112	GUILTY
07 15 -6 PENN STATE POL	PHILADELPHIA, PA SPEEDING 70/55	912	UNKNOWN
09 20 -5 BAYSHORE PD	BAYSHORE, COL DWI	501	GUILTY RECKLESS DR
05 09 -4 COL STATE POL	BAYSHORE, COL DWI	501	GUILTY
12 06 -3 MONROE CSD	BAYSHORE, COL DWI	501	GUILTY
11 09 -2 BAYSHORE PD	BAYSHORE, COL DWI	501	

THIS COPY OF THE RECORDS OF THE COLUMBIA DEPARTMENT OF MOTOR VEHICLES IS CERTIFIED AS AN ACCURATE COPY OF DEPARTMENT RECORDS.

DATE _____

SIGNED _____

TITLE: _____



SETTLEMENT AGREEMENT AND RELEASE

David March, being the lawfully appointed administrator of the Estate of Helen Gallagher, having received sufficient and valuable consideration, does hereby release and waive all pending and future claims against Oscar Thomas Bradley and the Allstate Insurance Company as his liability insurance carrier, arising out of the accident of November 9, YR-2, in which Helen Gallagher was killed.

It is an integral part of this agreement that the terms of the settlement and the amount of the consideration shall not be disclosed.

Signed:

David March
Administrator, Estate of Helen Gallagher

Date: _____

Oscar Thomas Bradley

Date: _____

Lynn F. Foltz
Allstate Insurance Company

Date: _____

1 DAVID MARCH)
2)
3 vs)
4)
5 BROWN JUG TAVERN)
6

7 **DEPOSITION OF VIRGINIA WAGNER**

8
9 DATE : May 6, YR-1
10 PLACE : Offices of Houston, Minnick & Dos Santos
11 100 N. Walnut Street
12 Bayshore, Columbia
13
14 TIME BEGAN : 2:20 p.m.
15
16 APPEARANCES : For the Plaintiff, appears Stanley Lerner, Esq.
17
18 For the Defendant, Lynda A. Mitchell, Esq.
19
20 STENOGRAPHER : Dodie Bowman
21
22 TRANSCRIBED : Dodie Bowman
23

24 WHEREUPON THE WITNESS VIRGINIA WAGNER WAS SWORN BY DODIE BOWMAN,
25 NOTARY PUBLIC
26

27 **EXAMINATION BY MS. MITCHELL**

28 Q: State your name and address, please.
29 A: Virginia Wagner, 2505 Rock Creek Road, Bayshore.
30 Q: Are you employed?
31 A: Yes, I work part-time at Osco's Drugstore, running a cash register.
32 Q: Are you married?
33 A: Divorced. I have two small children.
34 Q: Do they go to school?
35 A: No, they are too young.
36 Q: How old are you, Ms. Wagner.

1 A: 25 years old.
2 Q: Have you lived in Bayshore long?
3 A: All my life. I went to Bayshore High School.
4 Q: Did you go to college?
5 A: No.
6 Q: Ms. Wagner, were you in the company of Oscar Thomas Bradley on
7 November 9, YR-2, from approximately 7:00 p.m. to midnight?
8 A: Is that the day the accident happened, Thursday?
9 Q: Yes. Were you with Mr. Bradley?
10 A: Yes.
11 Q: Tell us, please, in your own words, what happened that day.
12 A: Oscar came over about 7:00 and we had dinner together. He's my
13 boyfriend. Then we went to the Brown Jug Tavern. We sat in one of the
14 back booths and had several more beers. I think I had four and Oscar had
15 six or seven, but I'm not sure. About 11:00, Oscar got pretty rowdy. Some
16 friends of his were sitting in another booth across the room, and he started
17 shouting to them. The waitress came over and told him twice to be quiet.
18 Oscar said he'd be quiet if she would bring him another beer. She did.
19 Q: Was Oscar drunk at this time?
20 A: Yes.
21 Q: Visibly drunk?
22 A: Not falling down or anything, but definitely loud and rowdy and beginning
23 to slur his words.
24 Q: Go on.
25 A: He drank his beer and started calling over to his friends again, and
26 shouting "goddam" this and "goddam" that, and the bouncer came over
27 and threw us out. We drove back into town. About 11:30, we got to
28 Kirkwood and Washington Street. Oscar ran through a stop sign, just
29 missed a car, turned left and hit a woman crossing the street. She was
30 thrown up into the air and down the street, then landed on the ground in
31 front of the van. She rolled over a few times and came to rest so that the
32 truck almost completely covered her body. There was blood all over the
33 road, and it was horrible. An ambulance came. They took her to the
34 hospital, but she looked dead to me. They arrested Oscar for drunk
35 driving and I drove the van home.
36 Q: Where were you when the van struck the woman? Tell us first whether

1 you knew her or recognized her.

2 A: No, I'd never seen her before that I know of. I read in the paper that her

3 name was Helen Gallagher, but the name didn't mean anything to me.

4 Q: Where were you exactly?

5 A: I was in the front passenger seat of Oscar's van. We had just turned onto

6 Washington Street. I guess the van was about six feet from the curb. We

7 were maybe 30 feet south of the crosswalk.

8 Q: Was anyone else around.

9 A: A couple of people.

10 Q: Do you know, by the way, what the speed limits are on Washington and

11 Kirkwood near there?

12 A: Yeah, I think it's thirty-five.

13 Q: Sorry to interrupt. Please describe exactly what you saw as you made the

14 turn onto Washington.

15 A: I was just looking in the direction of the intersection, just sort of watching

16 the traffic. I saw a man cross the street from right to left, that is, south

17 toward the shoe store.

18 Q: Go on.

19 A: Well, two cars were crossing Kirkwood headed south, and one of them

20 almost hit us because Oscar ran the stop sign.

21 Q: Did you see Ms. Gallagher? Which way was Ms. Gallagher going?

22 A: From east to west across Washington.

23 Q: Can you describe her?

24 A: Sure, she was a young woman, wearing a blue jacket and dark slacks, light

25 colored blouse, and red shoes. The jacket was buttoned because it was a

26 bit a chilly that night. Oh, and the blouse had a bow on it, I think. I have

27 a blouse like that which I wear a lot. Oh, and dark hair, but no coat.

28 Q: Glasses?

29 A: No, I don't think so.

30 Q: Was she carrying any purse or packages?

31 A: I don't remember anything but I can't be sure.

32 Q: Describe exactly how she crossed the street.

33 A: Well, she didn't cross it because she was hit by Oscar's van.

34 Q: Describe what you saw.

35 A: She was part way across the street in the crosswalk. Then we almost got

36 hit, so I looked away. When I looked back she was sort of running down

1 Washington like she was trying to get out of the way. Then Oscar just ran
2 her down. He must have been still looking at the car that almost hit us.
3 He hit Ms. Gallagher and she flew up in the air and was thrown down the
4 street, you know, towards the south. As I looked, she fell back down and
5 landed on the street and rolled over a few times. I could feel that Oscar hit
6 his brakes -- the rear end of the van rose up and I could hear the brakes
7 shrieking. The van came to rest so that it just covered her body
8 completely. You could only see her head.

9 Q: All right. What happened next?

10 A: A police car drove up, followed by an ambulance. They put the woman on
11 a stretcher and she was taken to the hospital. Then they made Oscar walk
12 a straight line and touch his fingers to his nose, and they took him
13 downtown. They told me to come get him in the morning, so I went home.

14 Q: Did Oscar drink at your house before you went out?

15 A: Yes. He had a couple of beers. I'm not exactly sure how many. We both
16 had a couple of beers.

17 Q: Was Oscar driving the whole time?

18 A: Yes.

19 Q: Did his driving scare you at all?

20 A: Not until we left the Brown Jug. That was a pretty wild ride back into
21 town. He was all over the road. I thought we'd both be killed for sure. He
22 had dropped the car keys about four times before he could even get the
23 van started.

24 Q: Did he drink anything after he left the Brown Jug?

25 A: Yes. He opened a beer, drank about half of it, and then threw it out the
26 window because it was warm.

27 Q: Had you been drinking?

28 A: Yeah. I'd probably had six beers that night. But I wasn't drunk.

29 Q: Which happened first, the impact or the sound of brakes?

30 A: I don't know. They happened about the same time.

31 Q: Do you know how fast Oscar was going?

32 A: No idea, but he didn't appear to be speeding, though.

33 Q: While you were at the scene of the accident, did you hear Ms. Gallagher
34 say anything?

35 A: No, and she didn't look like she was in any condition to say anything. I
36 thought she was dead.

1 Q: Did you hear Mr. Bradley say anything?

2 A: Yes. He kept repeating, "I never saw her, I never saw her, why did I have
3 that last beer?"

4 Q: Are you and Mr. Bradley still dating?

5 A: Yes.

6 Q: Has the fact that he killed someone affected your relationship?

7 A: Look, it was a tragedy and all that, and Oscar was drunk, but it was still
8 just an accident. I'm real sorry Mrs. Gallagher got killed, but it was night-
9 time and Oscar was distracted by the other cars and stuff, and she stepped
10 out in front of him. It was just an accident.

Q: That's all.

WHEREUPON IT WAS STIPULATED THAT READING AND SIGNING BY THE
WITNESS IS HEREBY WAIVED PURSUANT TO RULE 30(e).

1 David March)
2)
3 v.)
4)
5 The Brown Jug Tavern)

6
7 **DEPOSITION OF KATHI GENEVA JOHNSON**

8
9 DATE : April 24, YR-2
10 PLACE : Law Office of Stanley Lerner
11 3131 East Third Street
12 Bayshore, Columbia
13 TIME : 1:15 p.m.
14 PRESENT : Stanley Lerner, attorney for plaintiff
15 Lynda A. Mitchell, attorney for defendant
16 Diana Watts, certified stenographic recorder

17
18 THE WITNESS WAS FIRST DULY SWORN BY DIANA WATTS, WHEREUPON
19 THE FOLLOWING PROCEEDINGS WERE HAD:

20
21 Q: (By Mr. Lerner): State your name, address and occupation, please.

22 A: Kathi Geneva Johnson, 1033 Maxwell Lane, Bayshore. I am a waitress at
23 the Brown Jug Tavern.

24 Q: Were you at work on November 9, YR-2?

25 A: On the advice of my lawyer, I refuse to answer any more questions because
26 the answers might incriminate me.

27 Q: Lynda, is she going to assert the fifth to every question?

28 A (By Ms. Mitchell): Yes. If you'll agree to voluntarily terminate this
29 deposition and not seek any further discovery from Ms. Johnson, we will
30 supply you with a prepared statement; otherwise, you get nothing.

31 (By Mr. Lerner): Don't you have a conflict of interest? You represent the tavern.

32 (By Ms. Mitchell): Take it or leave it.

33 (By Mr. Lerner): Okay, we'll take it.

34
END OF DEPOSITION.

LAW OFFICES
HOUSTON, MINNICK & DOS SANTOS
A PROFESSIONAL CORPORATION

DONALD L. HOUSTON
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STATEMENT OF KATHI GENEVA JOHNSON

My name is Kathi Geneva Johnson, 1033 Maxwell Lane, Bayshore, Columbia. My date of birth is March 3, Yr-29. I am a waitress employed at the Brown Jug Tavern.

This statement concerns the events of November 9, Yr-2, in Monroe County, Columbia, occurring during the evening hours at the Brown Jug Tavern, located at the corner of State Highway number 1 and Bryants Creek Road. The statement is being prepared on May 2, Yr-1, at the offices of Houston, Minnick and Dos Santos, with advice of counsel, Lynda A. Mitchell. Lynda A. Mitchell has explained to me that she represents Darlene McCormick, owner of the Brown Jug Tavern, and that this raises the possibility of a conflict of interest. She has suggested to me that I seek the advice of independent counsel before preparing this statement, but I have decided to waive the conflict of interest and proceed on her advice.

I was born and raised in Wichita Falls, Kansas. When I was eighteen, I moved to Los Angeles to try to become either an actor or a model. I lived there for four years, during which I worked as a tour guide at Universal Studios and as a waitress. When I realized I was not going to break into the movies, I decided to return to school. I applied to several state universities, and got in to the University of Columbia. I am going to school part time and working at the Brown Jug Tavern to support myself. I rent a small house on Maxwell Lane and have a roommate, Becky DeWitte, who is also a student. I am currently classified as a junior, majoring in English. I would like to be a school teacher when I finish.

I was hired to work at the Brown Jug Tavern in the spring of YR-4. I do not recall who hired and trained me. I remember that they wanted to know if I had experience waitressing at a place that served liquor, and I said that I had. The first couple of nights that I worked, they had me team up with an experienced server and work a busy night -- St. Patrick's Day, I believe. They showed me how to recognize the kind of fake drivers licenses carried by college students. They also told me not to serve obviously intoxicated patrons. If I had any questions about whether a patron was intoxicated, I was to consult either the bartender or one of the bouncers. I asked if we had to keep track of the precise numbers of drinks a customer had and if there was a set limit to the number of drinks I could serve, because we had done it that way at the Baked Potato where I worked at in North

Hollywood. I was told no, that the important question was whether the person was visibly intoxicated.

The Brown Jug is one large room divided by a half wall in the middle. The half wall is like a large picket fence. From the bar, you can see sort of half images of the booth area. But from the corner of the bar where servers pick up their drink orders, you have a clear view into the booth area. The lighting is dim, but there is enough to see by. People want a little atmosphere, but they have to be able to read the menus. Each booth has a 40-watt bulb light.

I was working the evening shift at the Brown Jug Tavern on November 9, Yr-2. It was a Thursday night, and was moderately busy. I don't specifically remember who else was working that night. There would have been a bartender, a bouncer to check ID's at the door, a second server and a cook back in the kitchen. I was assigned the booths; the other server had the bar and the center table, but we'd help each other out if it got busy. From 9:00 pm until 11:15 p.m., most of the booths were full, with little turnover. I cannot recall specifically what anyone had to eat or drink, because we do not let our customers run tabs. You bring them a drink and they pay for it on the spot.

I am acquainted with Oscar Bradley and his girlfriend Ginny. Oscar is a regular. He's probably in the Brown Jug five nights a week. He's asked me out a few times, but I have always refused. Frankly, I am not interested in dating a drunk auto mechanic. Oscar drinks quite a lot, mostly beer, but he's a pretty big guy and does not usually show much effect from the beer. I assume he is probably an alcoholic, and everyone knows that they can tolerate a high level of alcohol without becoming impaired.

On November 9, Yr-2, Oscar and Ginny were at the Brown Jug. I think they arrived about 9:00 pm, but I'm not sure. I judge time by when the bar fills up and when it begins to empty out. It's usually pretty full by 9:00 pm. Oscar and Ginny got the last empty booth. I served them several beers over the next few hours, but I don't know how many. Oscar may have had as many as seven or eight. They did not order any food. They were there until a little after 11:00, when they left.

At no time did Oscar Bradley appear visibly intoxicated to me. I would not have served him if he had. That's company policy. I remember that his eyes looked a little red and watery, but it can get pretty smoky in there. Oscar stayed seated the whole time as far as I remember. He didn't stumble or break anything, or start a fight or do anything that drunks do. He did get boisterous at one point, shouting back and forth to a friend of his who was playing pool. I said something jokingly to him about the shouting, and he said he was just shouting for better service. He's always kidding around like that. At about 11:15, he ordered another beer. I told him I thought he had had enough, and he said "Yeah, I guess it's time to go home. I've got more beer in the van anyway." He asked how much he owed, and I told him he had already paid me. Then he and Ginny left, and I heard Ginny ask him if he

wanted her to drive, and he said no, he thought he could make it home. I watched them walk out and thought Oscar looked a little wobbly, but not real drunk. I've seen lots of guys in worse shape leave here and drive home.

Oscar Bradley has not been back to the Brown Jug much since the accident. I guess killing that woman must have shaken him up, so that he is drinking less.

I have read the foregoing statement carefully, and it is true and accurate to the best of my recollection.

Kathi G. Johnson

STATEMENT OF WITNESS
KAREN TUCKER

My name is Mrs. Karen Tucker. I live at 4626 Sunset Avenue, Apartment 15 here in Bayshore. I live with my daughter, Sally. I am 27 years old and divorced. I work from 7:30 a.m. to 4:30 p.m. at Crescent Donuts on South Walnut Street. I grew up here in Bayshore.

On Thursday, November 9, YR-2, I left work a little after four o'clock, and went to pick Sally up at the Southside day care center on Rogers Street. I dropped her off with my ex-husband who was taking her to visit her grandmother, so I had the whole weekend free. My ex-husband's name is Jason Tucker. He works for U-Haul as some kind of manager.

Thursday night, I went to Rocky's with two of my girlfriends, Erica Goodman and Donna May. We've known each other since high school. We had a few drinks and did some serious dancing. It's a great club for dancing. About 11:30 p.m. we left. Rocky's is on the corner of Fourth and Walnut Streets. We walked up to Kirkwood, and then east toward the Olde English Pub for a nightcap. We were on the south side of Kirkwood. We had just crossed Washington Street and gone about a half-block, when I realized I'd left my coat at Rocky's.

I turned around and headed back, and told Erica and Donna I would meet them at the Pub. They walked on ahead. When I turned around, I was next to the Federal Savings Bank. It was just 11:35. I'm certain of the time because I looked at the time and temperature sign outside Federal Savings Bank. As I turned around, I saw Oscar Bradley in a van across the street. He was stopped at the stop sign on Kirkwood, waiting to turn left. His left turn signal was on. I recognized him because he was an auto mechanic who had done some work on our car before my husband and I got divorced. I think it was in September, YR-8. There was other traffic, but I didn't pay a lot of attention to it. A car drove through the intersection on Kirkwood, going west to east, and then Mr. Bradley turned left. There was nothing unusual about his driving. His van passed in front of me. I had gone about two steps at this point, and was pretty much right in front of the bank about 50 feet from the intersection.

I did not see the actual accident because my view was blocked by the corner of the bank building. However, I am sure of two things. Ms. Gallagher was not in the crosswalk, because I was looking right at because I was about to cross it myself. Also, Mr. Bradley was not speeding. He was going maybe fifteen miles per hour. There was plenty of light at the corner. He was driving carefully and looked like he was in control of his van.

I was on the south side of Kirkwood, in front of the bank. I looked north and saw the van as I was walking toward Washington Street. The van turned left and drove south on Washington. I was looking at the intersection to see if any cars were coming. Then I looked straight ahead across the empty crosswalk. The van was just out of my sight because of the corner of the bank. At this time I heard a thump and a screech of tires that must have been Mr. Bradley hitting Ms. Gallagher.

I heard a scream and jumped forward a few steps. I saw Ms. Gallagher's purse fly into the air, and the back end of the van Mr. Bradley was driving screech to a stop. I do not remember seeing Ms. Gallagher's body at that time, but it may already have been under the van. I immediately ran over to the accident. Ms. Gallagher was lying partly under the van, and Mr. Bradley was trying to help her. He was obviously upset, and was saying she had stepped right out into his path, that he never saw her until it was too late. He said a couple of times that he should not have kept drinking after he left the bar. The comment was odd, because he did not seem drunk to me, but I was paying more attention to Ms. Gallagher.

I waited until the police officer arrived a few minutes later, and told him what I had seen. While we were talking an ambulance arrived and took her to the hospital. After I talked to the policeman, I went back to Rocky's and got my coat. Then I went to the Pub to join my friends.

I had never seen Miss Gallagher before, as far as I know. When I was at the scene, she appeared to be unconscious the whole time. I never heard her say anything.

December 6, YR-2

Karen Tucker

Statement taken by Griff Parry, investigator for Boston Casualty Insurance Company, at 4626 Sunset Avenue, Apartment 15, Bayshore, Columbia, on December 5, YR-2. Read and signed by witness on December 6, YR-2.

1 DAVID MARCH)
2)
3 vs)
4)
5 BROWN JUG TAVERN)

6
7 **DEPOSITION OF DAVID MARCH**

8
9 DATE : May 6, YR-1

10
11 PLACE : Offices of Houston, Minnick & Dos Santos
12 100 North Walnut Street
13 Bayshore, Columbia
14

15 TIME BEGAN : 1:00 p.m.

16 APPEARANCES : For the Plaintiff, appears Stanley Lerner, Esq.
17 For the Defendant, appears Lynda A. Mitchell, Esq.
18

19 STENOGRAPHER: Dodie Bowman
20

21 TRANSCRIBED : Dodie Bowman
22

23 WHEREUPON THE WITNESS DAVID MARCH WAS SWORN BY DODIE
24 BOWMAN, NOTARY PUBLIC
25

26 **EXAMINATION BY MS. MITCHELL**

27 Q: State your name and address.

28 A: David March, 1012 South Mitchell Street.

29 Q: Are you employed?

30 A: I am an associate professor of business economics at the University of
31 Columbia.

32 Q: Are you married?

33 A: No.

34 Q: How old are you?

35 A: 32.

36 Q: Where did you go to school?

1 A: Harvard undergraduate and Michigan graduate school. I have an M.B.A.
2 and a Masters in economics, both from Michigan.
3 Q: What was the nature of your relationship to Helen Gallagher?
4 A: We lived together before she was killed. She was a graduate student at the
5 university. We had lived together for three years before she died.
6 Q: Not married?
7 A: No.
8 Q: Any children?
9 A: No.
10 Q: All right. Tell me what you know about the accident on November 9, YR-2,
11 in which Ms. Gallagher was killed.
12 A: Not much. Helen was going out with some graduate student friends.
13 Q: Do you know where she would have gone?
14 A: No.
15 Q: Do you know why she was in the middle of Washington Street at 11:30
16 p.m.?
17 A: No.
18 Q: Did she have a history of mental problems?
19 A: No.
20 Q: Later that evening, did the police call to tell you she had been taken to the
21 hospital?
22 A: Yes. She was in intensive care. I rushed over to Monroe County Hospital.
23 Q: Did you talk to Officer Adams there?
24 A: I don't really remember. I know he was there, but I don't remember if I
25 talked to him. I was pretty upset.
26 Q: What happened at the hospital?
27 A: They let me in to see Helen for a few minutes.
28 Q: Was she conscious?
29 A: Yes, for a little while anyway.
30 Q: Did she say anything to you?
31 A: Yes.
32 Q: Please tell me everything you recall.
33 A: I held her hand and asked her how she felt. She said she was numb. I
34 asked her what happened. She said a van had run the stop sign, that she
35 had tried to get out of the way but had slipped. The rest was personal.
36 Q: Did she say where she had been when she was hit?

1 A: No. She just said she was crossing the street.
2 Q: I'm sorry, but I'll have to ask what else she said to you.
3 A: I tried to be brave and told her she would be all right. She shook her head
4 and said that she knew how badly she was hurt. She said she was sorry
5 that she hadn't been more careful, because now we were going to be
6 robbed of a life together. Then she closed her eyes and the nurse asked
7 me to leave. She never regained consciousness.
8 Q: What time was this?
9 A: I don't know.
10 Q: What happened next?
11 A: I cancelled my Friday classes, and pretty much stayed at the hospital until
12 she died on Sunday.
13 Q: Did you receive a bill from the hospital?
14 A: Yes.
15 Q: Yes. Is this bill the only one?
16 A: Yes.
17 Q: It indicates that \$12,876 was paid by insurance, and \$3219 is due?
18 A: Yes.
19 Q: How did you arrive at the figure of \$3 million for Gallagher's lost earnings?
20 Helen was not working.
21 A: She was a year away from her Ph.D. in economics. She planned to teach
22 in a university. Here at the University of Columbia, average salaries in the
23 economics department are around \$85,000 a year. She would have started
24 at age 29 or 30, giving her about forty years of employment to age 70.
25 That's about \$3,400,000. Most universities also provide about 20% fringe
26 benefits and retirement, so I added another \$700,000. If it costs about
27 \$30,000 a year for food, clothing, and shelter, you have to reduce the total
28 value to the estate by \$1.2 million. That leaves around \$3 million lost to
29 her estate.
30 Q: She did not have a job offer, did she?
31 A: No.
32 Q: Aren't jobs in universities hard to get?
33 A: Not in business and economics. Besides, she was one of the best graduate
34 students in the department.
35 Q: You're not in the economics department are you?
36 A: No, the business school.

1 Q: You said \$85,000 was the average salary. That's not a starting salary, is
2 it?

3 A: No. Starting salaries are half that. But senior salaries are \$110,000 or
4 more, so it averages out. That's what an average is.

5 Q: Who was the beneficiary in Ms. Gallagher's will?

6 A: I was. I am.

7 Q: So you will inherit everything that ends up in Gallagher's estate?

8 A: Yes.

9 Q: Oh, one more quick item. Can you explain the statement she made that
10 said "Dave always told me my carelessness would get me killed"?

11 A: She didn't say that to me, but she was probably referring to the fact that
12 she was a little absent-minded. I used to kid her about not paying
13 attention to stoplights and things like that, mostly when she was driving.

14 Q: What about when she was walking?

15 A: Well, she'd get absorbed in discussions about her work sometimes and not
16 pay attention. One time she walked into a mailbox when we were in the
17 midst of an argument about the proper way to calculate inflation for cost-
18 of-living increases.

19 Q: Anything else you wish to say?

20 A: No.

Q: No further questions.

WHEREUPON IT WAS STIPULATED THAT READING AND SIGNING BY THE
WITNESS IS HEREBY WAIVED PURSUANT TO RULE 30(e).



Monroe County Hospital

STATEMENT

PATIENT'S NAME AND ADDRESS

HELEN S GALLAGHER
1012 S MITCHELL ST
BAYSHORE COLUMBIA

ACCOUNT NUMBER

56 10294 D

INSURANCE INFORMATION

BC/BS 5108

DATE ADMITTED

11/09/YR-2

DATE DISCHARGED

11/13/YR-2

POSTING DATE	PHYSICIAN	DESCRIPTION	TOTAL CHARGES
11 09		AMBULANCE SERVICE	235.00
11 09		ICU DAILY CHARGE	1320.00
11 09	LESTER	RADIOLOGICAL SERVICES	380.00
11 09		WHOLE BLOOD UNITS	410.00
11 10		ICU DAILY CHARGE	1320.00
11 10	STEPANOVICH	SURGERY	4000.00
11 10		OPERATING ROOM CHARGE	4070.00
11 11		ICU DAILY CHARGE	1320.00
11 12		ICU DAILY CHARGE	1320.00
11 13		ICU DAILY CHARGE	1320.00
11 13	STEPANOVICH	ICU HOSP VISITS	400.00
12 08		BL CROSS 5108	12,876.00 CREDIT
		BALANCE DUE	3219.00

RE: MARCH V. BROWN JUG TAVERN

FROM: PAUL SWAIN

INVESTIGATION OF WITNESSES

As a result of investigation, the following information has come to light:

(1) Karen Tucker has two bad check convictions. She pleaded guilty to a violation of §224.5 on January 15, YR-5; and to a second charge on May 6, YR-5. In both cases she was fined \$10 and agreed to pay off the checks. There is a note in the court file on both cases that she admitted knowing she had insufficient funds when she wrote the checks. The January conviction was for \$25.86 check to Kroger's Grocery Store; the June conviction was for \$88.45 check to Tom Cherry Mufflers. Certified copies enclosed.

(2) Karen Tucker was divorced on the grounds of adultery (hers) on December 5, YR-6. Apparently Mr. Tucker claimed that he was not the father of a child, Sally, born in June, YR-7. Ms. Tucker got custody of the child.

(3) Virginia Wagner was convicted of felonious battery, §211.1 on November 5, YR-3. The complaint charges that she wounded a man named David Warren with a handgun. I could not track down Warren, but the arresting officer says that Wagner claimed Warren was trespassing and trying to break into the house when she was home alone. Warren was an old boyfriend and was acquitted of trespassing. The judge suspended sentence. Certified copy enclosed.

(4) The Brown Jug Tavern previously received a warning from the Columbia Alcoholic Beverages Control Commission for serving alcohol to intoxicated patrons. A copy is attached.

THE STATE OF COLUMBIA
THE ALCOHOLIC BEVERAGES CONTROL COMMISSION
300 CENTER STREET
JEFFERSON CITY, COLUMBIA

William A. Samuel
Commissioner

Tel (811) 722-5400

September 5, Yr-2

Ms. Darlene McCormick
ABC Unrestricted License No. 7465
The Brown Jug Tavern
P.O. Box 3535
Bayshore, Columbia

Dear Licensee:

The Commission has received notice from the Attorney General's Office that during the six month period January 1 to June 30, Yr-2, four adults and one minor who were arrested for Driving While Impaired have stated that they were last served alcoholic beverages at your establishment prior to their violation of the drunk driving laws.

The commission notes that your business has been cited a total of 15 times since we began keeping records in YR-5. We are placing you on notice that if further reports are forwarded, we will conduct an independent investigation of your premises to determine whether you are serving intoxicated persons in violation of Columbia Code § 7-5-15. Such investigation could lead to a hearing to suspend or revoke your license.

Sincerely,

ALCOHOLIC BEVERAGES CONTROL COMMISSION

By: _____

William A. Samuel

WAS/pmg

REPORT OF JANE S. MOORE, Ph.D.

Associate Professor
Department of Economics
University of Columbia

I am an associate professor with tenure in the economics department at the University of Columbia. I have a Ph.D. in economics from U.C.L.A., and I specialize in the areas of personal and family income and investments. I have written a basic textbook and published half a dozen articles. I have been asked by David March, a colleague in the business school, to calculate the present value to the estate of lost future earnings for an academic economist who would have worked for forty years. I calculate it to be \$836,657.45.

The hypothetical economist probably would earn \$7,384,144 in nominal dollars over the next forty-year period.

Current salaries for entry level assistant professors in economics departments range from \$40,000 to \$60,000 with a mean of \$47,800. Average salaries for tenured professors range from \$54,000 to \$85,000 with a mean of \$70,180. Final salaries the year before retirement range from \$70,000 to \$170,000 with a mean of \$106,120. Contributions to retirement plans by universities range from 7.6% to 15.0% of salary, with a mean of 9.0%.

The worse case scenario is that the hypothetical economist would start with compensation worth \$43,040 (\$40,000 salary plus 7.6% retirement contribution), average \$59,180 (\$55,000 plus 7.6%) and retire at \$75,320 (\$70,000 plus 7.6%). Under this scenario, he or she would average \$43,040 for the first six years (untenured) and \$59,190 for the next thirty-four years, for a total lifetime income in YR-O dollars of \$258,240 plus \$2,012,460, which equals \$2,270,700.

The best case scenario, assuming a \$60,000 starting salary, \$85,000 average, \$170,000 final, and 15% retirement, yields a total lifetime income in YR-O dollars of \$3,737,500.

The most likely scenario, using average compensation figures, yields a total lifetime income in YR-O dollars of \$2,913,483. Our hypothetical professor would earn \$47,800 plus 9% retirement contribution to start, which amount would not increase in real dollars until tenure six years later. After tenure, he or she would receive an average of \$70,180 plus 9% retirement. In his or her final year, he or she would receive \$106,120 plus 9%.

However, this figure must be corrected for inflation. Over the last forty years, inflation as calculated by the Consumer Price Index has averaged 5.0%, so salaries could be expected to increase in nominal terms by 5.0% a year. That would make the total lifetime compensation amounts of \$6,857,496 (worst case), \$11,287,220 (best case) and \$8,798,695 (average case).

According to the Federal Bureau of Labor Statistics, for two-income two-person families employing domestic help, each wage earner expends an average of 66% of their income on taxes, joint housing expenses, and personal consumption, and has 34% of his or her income for gifts, savings, and investments. Thus, the net loss to the person's estate is actually 34% of his or her lifetime income, or \$2,991,556 (average case).

This amount must be reduced to present value. This can be calculated by assuming that a lump-sum award is invested in a low-risk account, that an amount equal to 34% of the deceased's predicted income is withdrawn each year, and the balance is reinvested. At the end of the fortieth year, the account should contain exactly enough to withdraw the amount for that year leaving a balance of zero. Historically, low-risk investment could be expected to return about two percent more than inflation. Thus, since I used a five percent inflation rate, I would calculate the discount rate expecting the investment to yield a seven percent return.

Over forty years, the amount withdrawn each year adjusted for inflation would average \$74,789 ($\$2,991,556 \div 40$). Using a standard present value table, it would require a lump sum of \$996,636 ($\$74,789 \times 13.33$) to compensate the estate for the loss of the deceased's income.

Dr. Jane S. Moore

01/15/YR-0

SELECTED COLUMBIA PATTERN JURY INSTRUCTIONS

Preliminary Instructions

Members of the jury. This is a civil lawsuit brought on behalf of Helen Gallagher against the Brown Jug Tavern. It is based on a statute that prohibits commercial servers of alcoholic beverages from giving additional alcohol to visibly intoxicated patrons, and makes them liable for the subsequent conduct of those patrons if they violate this provision. Plaintiff alleges that the Tavern served alcohol to a visibly intoxicated Oscar Bradley whose van later struck and killed Helen Gallagher. Defendants allege that Bradley did not become visibly intoxicated until after he left the Tavern, and that Helen Gallagher was contributorily negligent in her own death.

Your function in this case is to decide, after considering all the evidence presented, what happened -- what the facts are -- and you are to apply the facts you find to the instructions of law I give you. You should use your common sense in considering the evidence, and you may draw reasonable inferences from the evidence.

My function as Judge is to preside over the trial: to rule on points of law and to instruct you on the law. It is our responsibility to see that this case is decided in accord with the facts and the law.

To begin the case the lawyers will make opening statements in which they tell you what they expect the evidence to be. This should help you to understand the evidence as it is presented through the witnesses later and make you aware of conflicts and differences that may arise in the testimony.

After opening statements, you will hear and see the evidence. It will come from witnesses and from exhibits.

You must not consider any evidence that is stricken or that you are told to disregard.

After all the evidence has been presented, the lawyers make their closing arguments.

There will be occasional recesses during the trial. During these recesses you must not discuss the case with anyone, including your fellow jurors.

Please keep an open mind as the evidence is presented. Remember that your job is to reach your verdict only after you have heard and considered all the evidence, the instructions of law, and the final arguments of the lawyers

All people in this trial are fictional, and the events take place in an imaginary city called Bayshore, in the state of Columbia.

Concluding Instructions and Charge to the Jury

Members of the Jury:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

The plaintiff has the burden to prove that Helen Gallagher died, that the defendant knowingly served liquor to an already intoxicated patron, and that such act was a proximate cause of the death of Helen Gallagher.

The defendant has the burden of proving, as an affirmative defense, that some contributory negligence on the part of Helen Gallagher was a proximate cause of her death.

In a civil case, whenever a party must prove something, they must prove it is true by a preponderance of the evidence. The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.

A proximate cause of injury is a cause which, in natural and continuous sequence, is a significant factor in producing the injury, and without which the injury would not have occurred.

The plaintiff, David March, seeks to establish that the Brown Jug Tavern violated the law that holds commercial servers of alcoholic beverages responsible for the actions of its intoxicated patrons. To prove his case, the plaintiff must prove the following propositions by a preponderance of the evidence:

1. A patron or guest on the defendant's premises was served intoxicating liquor;
2. The person was intoxicated when served;
3. The defendant knew or under the circumstances reasonably should have known that the person was intoxicated;
4. That patron or guest, while intoxicated, operated a motor vehicle;
5. The operation of a motor vehicle by the impaired person was reasonably foreseeable by the defendant; and
6. The operation of the automobile by the intoxicated person caused the plaintiff's death or injury within the scope of the foreseeable risk.

If you find for the plaintiff on the question of liability, you then must determine the amount of money which will fairly compensate for those damages which were proved by the evidence. You may consider:

1. The value of lost earnings and loss of earning capacity, considering the age, health and life expectancy of the deceased;
2. The reasonable expenses of medical care; and
3. The reasonable value of any pain and suffering experienced by the deceased before her death.

In calculating reasonable damages for future lost earnings, you may take into account the effects of inflation and you may assume that plaintiff will invest the lump sum you award so that normal interest dividends will accrue. Bear in mind that you are to award damages for future earnings that have been lost by Helen Gallagher's estate. David March is here only as Helen Gallagher's representative. He does not seek to recover any money that he personally has lost because of Gallagher's death.

The defendant Brown Jug Tavern seeks to establish that Helen Gallagher was contributorily negligent. To prove its case, the defendant must prove the following propositions by a preponderance of the evidence:

1. Helen Gallagher was contributorily negligent by failing to exercise ordinary care in crossing the street; and
2. Her own actions were a proximate cause of her death.

If you find that Helen Gallagher was contributorily negligent, you should reduce the damage award by an amount commensurate with her portion of responsibility for the accident.

It is now your turn to retire to the jury room to start your deliberations. Your verdict must be unanimous.

In the Circuit Court of Monroe County
State of Columbia

David C. March,)	
Plaintiff)	Civil Number 42449
)	
vs.)	VERDICT
)	
The Brown Jug Tavern,)	
Defendant)	

We the jurors of Monroe County find as follows:

1. Was the defendant liable? Yes ___ No ___
2. If so, what are the total damages? _____
3. Was Helen Gallagher contributorily negligent? Yes ___ No ___
4. If so, by what percentage must the damages be reduced? _____%
5. What are the total damages defendant must pay to plaintiff? _____

Jury Foreperson