

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

JOYE WALFORD, individually,)
and as personal representative)
of the Estate of CHRISTOPHER)
WALFORD,)
)
Plaintiffs,)
)
v.)
)
ALAN BLIZARD,)
)
Defendant.)
_____)

Case No. 03-1758

Prepared by:

Tracy E. Leduc
Second District Court of Appeals
1005 E. Memorial Blvd.
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-and-
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JOYE WALFORD

v.

ALAN BLIZARD

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STATEMENT OF THE CASE

Joye Walford, individually and as personal representative of the Estate of Christopher Walford, has filed a wrongful death complaint against attorney Alan Blizard. The complaint alleges that Blizard was driving while intoxicated, lost control of his car, and collided with a car driven by Joye's husband, Christopher Walford, killing Christopher Walford instantly. Joye Walford seeks damages for the Estate as well as for herself personally.

Alan Blizard has filed an answer denying the allegations of the complaint and raising the affirmative defense of negligence of others not parties to this action.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. This case shall be tried on liability only. Should the plaintiffs prevail on liability, the question of damages shall be heard by the jury with additional evidence and additional jury instructions at a later date.
3. All witnesses called to testify who have in depositions identified the parties, other individuals, or tangible evidence can, if asked, identify the same at trial.
4. Each witness who gave a deposition agreed under oath at the outset of his/her deposition to give a full and complete description of what occurred and to correct the deposition for inaccuracies and completeness before signing the deposition.
5. All depositions were signed under oath.

6. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on the deposition does not comport with signatures or initials located on an exhibit.

7. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.

8. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.

9. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4)(C) and (D) and VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in rule VIII(4).

10. Each party must call the two witnesses listed as that party's witnesses on the witness list.

11. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

12. It is stipulated that no one shall attempt to contact the problem drafter, Tracy Leduc, about this problem. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

13. 2004 should be the current year in which this case comes to trial.

14. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the plaintiffs shall have four minutes to present any pretrial motions; (2) the defendant shall have four minutes to respond to the plaintiff's motion(s); (3) the defendant shall have four minutes to present any pretrial motions; and (4) the plaintiffs shall have four minutes to respond to the defendant's motion(s).

15. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions.

16. No team member is permitted to question any witness or argue to the jury the absence of the actual tie rod from Blizzard's car or photographs of the accident scene.

Substantive Matters

1. In the State of Lone Star, actions at law in circuit court require that the controversy exceed the sum of \$15,000, exclusive of interest, costs, and attorney's fees. Blizzard stipulates for purposes of the liability portion of this trial that the Estate's damages exceed \$15,000.

2. Motions to dismiss the complaint and motions for summary judgment have been denied by the trial court, and no further motions to dismiss or for summary judgment shall be argued or heard by the trial judge.

3. The State of Lone Star is a comparative negligence state. The jury shall apportion the percentage of negligence, if any, to the plaintiffs, the defendant, and any nonparty alleged by the defendant in its affirmative defenses as being responsible for the injuries.

4. In the case of Baker v. Menendez, 606 Lone Star 727 (Lone Star 1996), the Lone Star Supreme Court held that a jury is permitted to consider the liability of a nonparty, in addition to the liability of the parties, if the defendant has specifically named a nonparty in its affirmative defenses, has alleged how the nonparty caused or contributed to the plaintiff's injuries, and has offered evidence to the jury from which a jury could find negligence on the part of the nonparty.

5. Section 316.7734, Lone Star Statutes (2003), states:

(1)(a) If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. The testing required by this paragraph need not be incidental to a lawful arrest of the person.

.....

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer upon request for such information.

6. Section 316.193(1), Lone Star Statutes (2003), states:

A person is presumed to be driving under the influence if the person is driving or in actual physical control of a vehicle within this state and the person has a blood alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood.

7. The plaintiffs and defendant stipulate that their respective experts examined the damaged tie rod from Alan Blizard's Jaguar. While both experts agreed that there was some evidence consistent with the tie rod being cut, they were unable to conclusively determine whether the tie rod broke before or during the accident. This stipulation may be read to the jury at the request of either the plaintiff or the defendant.

WITNESS LIST

Witnesses for the Plaintiffs:

1. Dana Ford - Witness**
2. ViVi Villanti - Witness***

Witnesses for the Defendant:

1. Alan Blizard - Defendant*
2. Michael Rover - Witness*

Each team must call witnesses number 1 and 2 listed on its respective witness list.

* This person must be a male.

** This person may be a male or a female.

*** This person must be a female.

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Case No. 03-1758

COMPLAINT

Plaintiffs Joye Walford, individually and as personal representative of the Estate of Christopher Walford, sue defendant Alan Blizard and alleges:

GENERAL ALLEGATIONS

1. This is an action for damages that exceed \$15,000.
2. Joye Walford has been a resident of Travis County, State of Lone Star, since 1971.
3. Defendant Alan Blizard has been a resident of Travis County, State of Lone Star, since 1963.

4. The accident at issue in this case occurred in Travis County, State of Lone Star.

5. On August 1, 2003, Alan Blizzard was driving a motor vehicle owned by him on the public highways of Travis County, State of Lone Star.

6. Alan Blizzard had been drinking for several hours before the accident and was intoxicated at the time of the accident.

7. While driving on Hanley Road, Alan Blizzard lost control of his motor vehicle, causing it to hit the median, become airborne, and collide with a motor vehicle owned and operated by Christopher Walford.

8. Christopher Walford was killed instantly due to the impact of Blizzard's motor vehicle.

9. Joye Walford is Christopher Walford's spouse, and they have lived together as husband and wife since July 10, 1997.

10. On September 2, 2003, the probate division of the Travis County Circuit Court appointed Joye Walford as personal representative of the Estate of Christopher Walford.

11. In addition to Joye Walford, Christopher Walford is survived by his son, Grant Walford, and his daughter, Brooke Walford.

COUNT I - NEGLIGENCE

12. Plaintiff Joye Walford, individually, adopts and reaffirms the allegations of paragraphs 1 through 11 as if fully restated herein.

13. Defendant Alan Blizard had a duty to operate his motor vehicle safely and in compliance with the laws of the State of Lone Star.

14. Defendant Alan Blizard breached this duty by negligently operating his motor vehicle so as to cause a collision with the motor vehicle driven by Christopher Walford.

15. As a direct and proximate result of Blizard's negligence, Plaintiff Joye Walford, individually, has suffered damages.

WHEREFORE Plaintiff Joye Walford, individually, demands judgment for damages, including punitive damages, against Defendant Alan Blizard and demands a trial by jury.

COUNT II - NEGLIGENCE

16. Plaintiff Joye Walford, as the personal representative of the Estate of Christopher Walford, adopts and reaffirms the allegations of paragraphs 1 through 11 as if fully restated herein.

17. Defendant Alan Blizard had a duty to operate his motor vehicle safely and in compliance with the laws of the State of Lone Star.

18. Defendant Alan Blizzard breached this duty by negligently operating his motor vehicle so as to cause a collision with the motor vehicle driven by Christopher Walford.

19. As a direct and proximate result of Blizzard's negligence, the Estate of Christopher Walford has suffered damages.

WHEREFORE Plaintiff Joye Walford, as personal representative of the Estate of Christopher Walford, demands judgment for damages, including punitive damages, against Defendant Alan Blizzard and demands a trial by jury.

Filed this 5th day of September, 2003.



Bridget Remington, Esq.
1005 E. Memorial Blvd.
Flagstown, State of Lone Star 74010
(813) 555-2290
Lone Star Bar No. 115358
Attorney for Plaintiff Joye Walford

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ANSWER AND DEFENSES TO COMPLAINT

Defendant Alan Blizard, by and through his undersigned attorney, files this, his

Answer and Defenses to Complaint filed by Plaintiffs and states as follows:

1. Admit for jurisdictional purposes only.
2. Without knowledge; therefore deny.
3. Admit.
4. Admit.
5. Admit.
6. Deny.
7. Admit.

8. Admit.

9. Admit.

10. Admit.

11. Admit.

12. Defendant Alan Blizzard realleges his answers to paragraphs 1 through 11 as if fully set forth herein.

13. Admit.

14. Deny and demand strict proof thereof.

15. Deny and demand strict proof thereof.

16. Defendant Alan Blizzard realleges his answers to paragraphs 1 through 11 as if fully set forth herein.

17. Admit.

18. Deny and demand strict proof thereof.

19. Deny and demand strict proof thereof.

AFFIRMATIVE DEFENSE

Defendant Alan Blizzard, by and through his undersigned counsel, asserts the following affirmative defense to Plaintiffs' Complaint.

First Affirmative Defense

That on the date, time, and place set forth in the Complaint, the following person(s) contributed to the injury suffered by Plaintiffs Joye Walford:


(revised 3/8/04)

1. Mike's Garage and Body Shop, through its agents and employees, was negligent for failing to detect a damaged or worn tie rod on the left front of Defendant's motor vehicle, which tie rod broke, thus causing the accident.

2. Mike's Garage and Body Shop, through its agents or employees, was negligent for allowing David Jimenez to work on Defendant Alan Blizard's motor vehicle, knowing that David Jimenez held a grudge against Defendant Blizard.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Answer and Defenses to Complaint has been furnished by U.S. Mail to Bridget Remington, Esq., 1005 E. Memorial Blvd., Flagstown, State of Lone Star 74010 on this 19th day of September, 2003.



Stephanie Zimmerman, Esq.
7911 Liberty Lane
Flagstown, State of Lone Star 74010
(813) 555-0660
Lone Star Bar No. 102888
Attorney for Defendant Alan Blizard

DEPOSITION OF DANA FORD

Q. Please state your name.

A. My name is Detective Dana Ford.

Q. What is your address?

A. My business address is 103 Franklin Street, Flagstown, State of Lone Star. Lone Star Statutes do not require me to divulge my home address.

Q. How are you employed?

A. I am a detective with the City of Flagstown Police Department.

Q. How long have you been so employed?

A. I have been with the City of Flagstown Police Department since 1985. I began as a patrol officer and worked my way up to detective. I have been a detective since October 1999.

Q. Have you investigated auto accidents as part of your duties as an officer?

A. Yes, I have investigated over 200 auto accidents since joining the Flagstown Police Department.

Q. Have you been the lead detective on any auto accident cases?

A. Yes, I have been the lead detective on approximately 25 auto accident cases.

Q. Were you assigned a role in the investigation of the accident that killed Christopher Walford on August 1, 2003?

A. Yes, I was assigned to be the lead detective on that case.

Q. How did you first learn of the accident?

A. I was on call that evening, and I received a call at about 11:45 p.m. that an auto accident had occurred on Hanley Road in Flagstown. I was told that the accident involved a fatality. At that point, I headed to the scene to begin my investigation.

Q. What were the first steps in your investigation?

A. I drove to the scene and spoke with the patrol officer who had been first on the scene. He indicated that it was clear that the driver of the Toyota, who turned out to be Mr. Walford, was dead. Paramedics were at the scene preparing to take the other driver, who was Mr. Blizzard, from the scene by helicopter.

Q. Did you make any observations at the accident scene?

A. Yes, I noted the position of the two cars where they came to rest. I walked the entire area and discovered markings on the northbound side of the median that appeared to be where a car had hit the median and then traveled over the median.

Q. Was there any debris in that area?

A. I found several parts in that area that appeared to be from Mr. Blizzard's car. There was a hubcap laying on the median, and there were other smaller pieces of metal that I could not readily identify.

Q. Did you collect those parts?

A. I did, and we later turned them over to our evidence technicians to determine whether they actually belonged to Mr. Blizzard's car.

Q. Were the technicians able to make that determination?

A. Yes, they were, and they determined that the parts in question did come from Mr. Blizzard's car.

- Q. Can you describe Mr. Blizzard's car?
- A. I was a 1968 Jaguar - a true classic. It was blue and appeared to be in very good condition before the accident.
- Q. Did you locate any witnesses to the accident?
- A. Yes. I spoke with one witness who indicated that Mr. Blizzard was traveling at a high rate of speed and lost control of his vehicle as he passed Elm Street.
- Q. From your investigation, could you tell how the accident occurred?
- A. I was able to determine that Mr. Walford was driving south on Hanley Road in the left lane. Mr. Blizzard was traveling north on Hanley Road. Mr. Blizzard lost control of his car, and the car hit the median, became airborne, and crashed into the windshield of Mr. Walford's car. Mr. Walford was killed instantly. Mr. Blizzard's car then flipped and landed on its roof.
- Q. I am showing you what has been marked as Exhibit A. Can you identify this?
- A. Yes. It is a diagram that I drew of the accident scene shortly after I arrived.
- Q. What is depicted by Vehicle 1?
- A. That is Mr. Blizzard's car.
- Q. What is depicted by Vehicle 2?
- A. That is Mr. Walford's car.
- Q. What are these markings that appear to be small "x"s on the northbound side of the road?
- A. That is the area where the debris was found that was later connected to Mr. Blizzard's car.

- Q. What are the markings that appear to be small "p"s on the northbound side of the road at Elm Street?
- A. That is a pothole in the road. I noted that because it was fairly large for a pothole, and I thought it might have contributed to the accident.
- Q. While you were at the scene, what, if anything, did you learn about Mr. Blizzard's condition?
- A. When I arrived, Mr. Blizzard was being removed from his car. I could smell alcohol emanating from either inside the car or from Mr. Blizzard.
- Q. How strong was that odor?
- A. Not overpowering, but definitely noticeable.
- Q. After inspecting the scene, did you do any other investigation?
- A. Yes, I next went to the hospital where Mr. Blizzard had been taken.
- Q. What did you learn there?
- A. When I got to the hospital, I learned that Mr. Blizzard was still being treated by the trauma team. I requested that the hospital draw blood to determine whether Mr. Blizzard had been drinking that evening.
- Q. I am showing you what has been marked as Exhibit B. Do you recognize this?
- A. Yes, it is the blood chemistry report from the hospital.
- Q. Have you seen this report before?
- A. Yes. Because I ordered the blood draw, I received a copy of the report.
- Q. Does the report show when the blood was drawn?
- A. Yes, at 1:12 a.m. on August 2, 2003.

- Q. And when did the accident occur?
- A. The accident occurred at approximately 11:30 p.m. on August 1, 2003.
- Q. What is the blood alcohol level reported?
- A. The report shows that Mr. Blizzard's blood alcohol level was .06.
- Q. What is the legal blood alcohol limit in Lone Star?
- A. At a level of .08, the person is presumed intoxicated.
- Q. What other investigation did you do?
- A. I went to the impound lot and inventoried the contents of Mr. Blizzard's car.
- Q. What did you find?
- A. Most of the contents were simply the usual items you would find in someone's car. But I found two unusual items. I found a broken beer bottle in the back of the car. I also found a napkin in the car that led me to further investigation.
- Q. I am showing you what has been marked as Exhibit C. Do you recognize this?
- A. Yes, that is the napkin that I recovered from Mr. Blizzard's car.
- Q. After you found that napkin, what did you do?
- A. I went to the Point After Pub to see whether anyone there knew Mr. Blizzard.
- Q. What did you discover?
- A. At the Point After Pub, I interviewed Vivian Villanti. She was one of the waitresses working on the night of the accident.
- Q. What did you learn from Ms. Villanti?

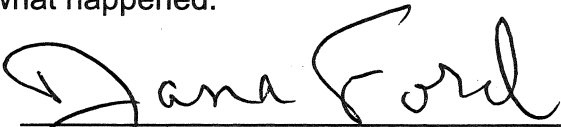
- A. According to Ms. Villanti, Mr. Blizzard had arrived at the bar around 7:30 p.m. with several friends and coworkers. Mr. Blizzard ordered numerous drinks for himself and also purchased rounds for everyone in the bar. He ran a tab and paid at the end of the evening. He left at around 11:15 p.m.
- Q. Did you do any other investigation?
- A. Yes. Once Mr. Blizzard regained consciousness, I interviewed him about his car. He was very upset about his car - much more concerned about the fact that his car was damaged than the fact that someone had died in the accident. In any event, I learned that he always had his car serviced at Mike's Garage and Body Shop. So I went to Mike's and interviewed the owner, Michael Rover.
- Q. What did you learn?
- A. Essentially, Mr. Rover indicated that he had worked on Mr. Blizzard's cars for years. He said that Mr. Blizzard treated this car like his child and was very finicky about what work was done, how it was done, and who worked on the car.
- Q. Did you ask Mr. Rover about the parts found on the road?
- A. No.
- Q. Why not?
- A. I wanted to see what our technicians determined.
- Q. Was Mr. Blizzard ever charged with any crime?
- A. Yes, he was charged with vehicular manslaughter.
- Q. Do you know the status of that charge?
- A. No, that is in the hands of the state attorney.
- Q. Did you conduct any further investigation?

- A. Yes. After Mr. Blizzard was released from the hospital and after he had been charged, I got a call from his attorney indicating that they had evidence that the accident was caused by a tie rod breaking on his car when he hit the pothole at Elm Street.
- Q. Did you act on that telephone call?
- A. Yes. We had our technicians go to Mike's Garage to inspect the damaged tie rod.
- Q. What did they determine?
- A. They could neither confirm nor deny that the tie rod came from Mr. Blizzard's car. They also could not determine whether the tie rod broke before the accident or as a result of the accident. They did indicate that the tie rod had markings on it that would be consistent with it being cut, but it also appeared to be in poor condition even without the break.
- Q. Did you reach any conclusions about how the accident occurred?
- A. Yes. I believe based on my investigation that Mr. Blizzard was driving while intoxicated and lost control of the car. Given the overall condition of Mr. Blizzard's car, I do not believe that the tie rod broke before the accident. I believe that it was broken during the accident. But even if the tie rod broke when Mr. Blizzard hit the pothole, I believe that he would have been able to maintain control of the car had he not been intoxicated.
- Q. Were you ever told about Mr. Blizzard's theory that David Jimenez cut the tie rod?
- A. Yes, I was told that story, but I do not believe it. Conspiracy theories just don't sit right with me. You have to be a much bigger fish than Mr. Blizzard for me to buy that someone is out to get you to the point of sabotaging your car.
- Q. Did you learn any other information in the course of your investigation?

A. Well, I learned that Mr. Blizzard was separated from his wife at the time of the accident. I learned that he had been depressed and that he had been compensating for this by partying. Because of this partying, he had had a falling out with his prior firm and was just recently out practicing on his own. Apparently, Mr. Blizzard blamed his wife for the separation and his firm for the falling out.

Q. Why did you believe this information was relevant?

A. In my mind, it confirmed that this accident was caused by Mr. Blizzard's drunk driving. His life was falling apart, and he was drinking to forget. It also confirmed that he will try to blame his own actions on others. It was a pattern that confirmed my suspicions about what happened.



Dana Ford

Sworn to and subscribed before me this
20th day of October, 2003.



Notary Public

DEPOSITION OF VIVI VILLANTI

Q. Please state your name.

A. Vivian Villanti, but my friends call me ViVi.

Q. What is your address?

A. I live at 6811 Oak Pond Trail, Apartment 12B, in Flagstown.

Q. How are you employed?

A. I am a waitress at the Point After Pub in Flagstown.

Q. How long have you worked there?

A. I have worked there since April 2001.

Q. Were you working on August 1, 2003?

A. Yes, I was.

Q. Did something happen that night that makes you recall that evening?

A. Yes, that was the night that Alan came in, got drunk, and killed someone.

Q. Okay, let's back up for a minute. Who is Alan?

A. Alan Blizard, the defendant.

Q. Do you know Mr. Blizard?

A. Yes, he came into the Point After Pub quite a bit, and I knew him from there. We also had a brief relationship last fall.

Q. What do you mean by a "brief relationship?"

- A. Well, Alan had just left his wife, and he came into the pub one night and things just went from there. We had a two-night stand. Then Alan broke it off. He told me that he only liked smart women and that I was not smart enough for him. But I tried to remain friendly with him. I really liked him, and I thought that if he got to know me better he would realize that I am smart. Of course, now that I know that he blames all his problems on other people, I am not so sure that I care to remain friends with him.
- Q. Turning back to August 1, 2003, what do you recall about that night?
- A. Well, Alan got there around 7:30 p.m. His paralegal and his secretary were with him, as were some of the guys that he hangs around with. They started buying drinks immediately.
- Q. What happened next?
- A. Well, Alan told me that he wanted to run a tab because they were celebrating his first big win in a case. They bought some appetizers – you know, wings and stuff – but mostly it was drinks.
- Q. Was he drinking all this himself?
- A. Oh no, he bought the drinks for everyone at his table. He also bought several rounds for everyone in the pub. But he had his fair share. He had definitely had too much to drink by the time they were ready to leave. I saw that his eyes were really glassy and bloodshot, and he was slurring his words. He also had trouble signing his credit card receipt.
- Q. Was Mr. Blizzard drinking bottled beer?
- A. No. He ordered numerous mixed drinks and several pitchers of beer on draught, but he did not have any bottled beer.
- Q. What time did Mr. Blizzard leave?
- A. I think it was a little after 11 p.m. I offered to drive Alan home because I knew he had had too much to drink, but he refused my offer. He made a comment about me only wanting to go home with him again and that really made me mad. I was just trying to help.

Q. I'm showing you what has been marked as Exhibit C. Do you recognize this?

A. Yes, it is a napkin from the Point After Pub.

Q. Do you recall Mr. Blizzard leaving with a napkin that night?

A. Not specifically, but he could have. He is usually at the Pub a couple of times a week, so he could have had it from before, too.

Q. I'm showing you what has been marked as Exhibit D. Do you recognize this?

A. Yes, it is Alan's bar tab from that night.

Q. How do you recognize it?

A. By the date, by my waitress ID on the slip, and by the amount. No one else even came close to having that large a tab that night.

Q. Is there some other document that would show exactly what drinks were purchased?

A. No. We just keep a running tab at the bar and show the total at the end of the night. The other things are itemized because the kitchen needs that information.

Q. Do you know how much of this bar total is for the drinks that Mr. Blizzard himself consumed?

A. No.

Q. When did you learn of the accident?

A. One of the televisions in the pub was tuned to a station showing news. At around 11:30 p.m., they had a breaking story about a fatal auto accident on Hanley Road. Since the Pub is on Hanley and I knew that Alan had to take Hanley to get home, I was concerned right away that he was involved.

Q. Do you know anything about the car Mr. Blizzard was driving?

A. Oh Lord, that car was his baby. He had a 1968 Jag that he just adored. He liked to show it off and liked nothing more than when people would ask him about it.

Q. Do you know about any problems with the car?

A. Well, when Alan and I were seeing each other last fall, the car had a problem with the brakes. But Alan's mechanic, Mike, fixed that. Mike was his friend, and Alan had paid him big bucks to work on that car. Whenever the car had a problem, Mike would stop everything and work on Alan's car. Mike would do anything for Alan.

Q. Other than the brakes, do you know of any other problems with the car?

A. No, that is the last problem that Alan mentioned to me. You would need to ask Mike about the car.

Q. Ms. Villanti, have you ever been convicted of a felony or a crime involving dishonesty or false statement?

A. I don't know about dishonesty. Like nine years ago, I was convicted of shoplifting. I was young and stupid and wanted something I could not afford. I don't think it was a felony. I got probation. Then, two years ago, I was convicted of DUI. I don't know whether that was a felony either. Since then, I have joined AA, and I don't drink.

Q. If you are a member of AA, why do you work in a bar?

A. To be honest, it is the only job I could get. I quit high school after 10th grade, and it's hard to find a job. So every day is a struggle.

Q. Do you have any relationship with Mr. Blizzard now?

A. Not since that night. I was really mad about the way he dumped me, thinking I was not smart enough for him. If he was so smart, he would not have been driving drunk and he would not have killed someone. I think he has finally gotten what was coming to him. But I feel really sorry for the family he destroyed.

Vivian Villanti
Vivian Villanti

Sworn to and subscribed before me this
21st day of October, 2003.

Lola Mendez
Notary Public

DEPOSITION OF ALAN BLIZARD

Q. Please state your name for the record.

A. Alan Blizard.

Q. What is your current address?

A. 425 North Oak Tree Loop in Flagstown, State of Lone Star.

Q. Mr. Blizard, how are you employed?

A. I am an attorney in Flagstown. I have my own practice.

Q. How long have you been an attorney?

A. Since 1997.

Q. What types of cases do you handle?

A. I do pretty much anything that walks in the door, but most of my practice involves representing people who have been injured by others.

Q. How long have you had your own practice?

A. Since September 2002.

Q. Where did you work before that?

A. Before that, I worked for the firm of Parker, Patterson, & Ryder, P.A., where I had worked since becoming an attorney.

Q. Do you recall a client named Elroy Fudd?

A. Yes. I represented Mr. Fudd in a case he had against Caskets-R-Us.

Q. Turning now to August 1, 2003, do you recall that day?

- A. Yes I do. That is the day that I won Mr. Fudd's case.
- Q. What else happened that day?
- A. At the end of the day, I took my paralegal and secretary to the Point After Pub to celebrate. I also called some of my friends to join us. The Fudd case was my first big win out on my own, and I wanted to have a good time.
- Q. Did you buy drinks at the pub?
- A. Sure. But I did not drink all that I bought. I bought all the food and drinks for my friends and paralegal and secretary, and I bought several rounds for everyone in the pub. It was a big win. I was feeling generous.
- Q. What time did you get to the pub?
- A. I think it was around 8 p.m. I know we worked late to try to get all the paperwork finished.
- Q. When did you leave?
- A. I think it was around 11 p.m.
- Q. Were you impaired at that time?
- A. No. I had stopped drinking anything at around 10 p.m. I was fine.
- Q. Do you recall Vivi Villanti offering you a ride?
- A. Yes. Vivi is a problem. When my wife first left me, I spent a couple evenings with Vivi. Apparently, she thought that she was going to be the next Mrs. Blizzard. Since then, I have not been able to keep her away from me. She came up and offered to drive me home, but I knew that she was just hoping that we could spend another night together. You know the type – high school dropout who wants to make good as a trophy wife with a successful man.

Q. I'm showing you what has been marked as Exhibit D. Do you recognize this?

A. Sure. It is my tab from the pub the night of the accident. It shows how much I spent, but like I said, that was not all for me.

Q. What do you remember about the accident?

A. I remember driving north on Hanley Road. I hit a pothole and felt something snap. Then I lost all control of the car. I hit the median and that sent the car airborne. I don't remember anything after that until I woke up in the hospital three days later.

Q. Did you suffer any injuries in the accident?

A. Yes. Both my legs were broken. I had several facial fractures. I was also in a halo because I had fractured vertebrae. I spent six weeks in rehab, and I have just been able to return to work. Right now, I am just glad to be alive.

Q. Did you ever learn anything about what you felt snap before the accident?

A. Yes. Once I was able, I arranged to have my car taken to Mike's Garage and Body Shop. Mike has done all my mechanic work for years. He found a broken tie rod on the left front. Apparently, that rod controls the steering for that tire, and when that rod broke, I lost all steering control.

Q. Could Mike tell why the rod broke?

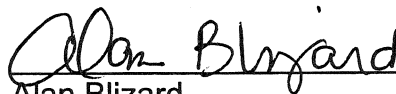
A. He said that the rod looked like it had been cut part way through. I did not understand that. When I asked him more about it, he admitted that he had allowed one of his employees, David Jimenez, to work on the car the last time it was in, which was about a week before the accident.

Q. Why was that important?


A. I had represented David Jimenez in a job discrimination case right after I left Parker, Patterson, & Ryder. David was not cooperating with me, and I told him to find a new attorney. I believe that David held a grudge against me and that he may have done this to get back at me.

- Q. Why would he have held a grudge?
- A. I don't know. He was very upset when I got off his case. He told me I would pay. I think this was his opportunity. I believe he cut most of the way through the tie rod knowing that it would break later and that no one would suspect him.
- Q. In the week before the accident, did you call Mike to report any problems with your car?
- A. No.
- Q. Did you ever tell Mike in the week before the accident that something "felt funny" but that you would bring the car in later?
- A. No. I never called Mike with anything like that, and I would never let a problem linger with my car. This car is my baby. I take excellent care of it. I would just never do that.
- Q. Have you ever been in trouble with the law?
- A. Not really. Last fall, I was charged with passing a bad check. That is what resulted in my leaving Parker, Patterson, & Ryder. But I made good on the check and the charges were dropped.
- Q. Is there anything else that you can tell us about the accident?
- A. This accident is not my fault. My insurance company will pay the Walfords, but this is not my fault. I was not drunk. My car was sabotaged. And if I lose, I will sue Mike for allowing that guy to work on my car.
- Q. What will happen if you are found guilty either at the criminal trial or in this case?

A. If it is determined that I was driving while intoxicated, I could be suspended from practicing law or even disbarred. But I don't have to worry about that. I know that I was not drunk, and no one can prove that I was.


Alan Blizzard

Sworn to and subscribed before me this
23rd day of October, 2003.


Notary Public

DEPOSITION OF MICHAEL ROVER

- Q. Please state your name for the record.
- A. My name is Michael Rover.
- Q. How are you employed?
- A. I own and operate Mike's Garage and Body Shop here in Flagstown.
- Q. How long have you owned and operated Mike's Garage and Body Shop?
- A. Since 1992.
- Q. Do you have a customer named Alan Blizzard?
- A. Yes.
- Q. How did you become involved with Mr. Blizzard?
- A. I've known Alan since we were kids. We went to grade school together. He loves classic cars, and he has always brought them to me to work on.
- Q. Have you ever worked on Mr. Blizzard's 1968 Jaguar?
- A. Yes, I have worked on it since he got it. He loves that car. He really babies it and spares no expense. That is why I was so surprised when I talked to him before the accident.
- Q. What do you mean?
- A. Alan had had the car in my shop about a week before the accident. Then three or four days later, Alan called and said that the Jag felt like it was driving funny. When I asked him what he meant, he said the steering just felt loose. I told him to come right in because a Jag's handling is always really tight. But he told me that he was really busy and that he could not do it. He said he would bring the car in sometime the next week. I was floored. He never waited for stuff like that. Then, just two or three days later, the accident happened.

- Q. What work did you do on the car when it was in the shop the week before the accident?
- A. I did not do the work myself. Normally, I work on Alan's car personally, but I had some problems that week and I asked my best mechanic, David Jimenez, to work on Alan's car. David changed the oil, changed the fan belt, and checked all the fluids. He also rotated and balanced the tires.
- Q. Did he do anything else?
- A. Usually we do a visual inspection of the car and the parts as we are doing the other work. David would have been able to see the tie rods when he rotated the tires. He did not report any problems.
- Q. I'm showing you what has been marked as Exhibit E. Do you recognize this?
- A. Yes, it is the receipt for the work done the week before the accident.
- Q. What is this note about rust?
- A. Apparently, David had seen some rust on some of the parts when he rotated the tires. I mentioned this to Alan when he picked up the car, but he said he would take care of it next time.
- Q. What happened after the accident?
- A. I did not see the car until around the middle of August. At that point, while I was inspecting the damage from the accident, I discovered that the left front tie rod was broken.
- Q. Could you tell why it broke?
- A. No, but "broken" isn't really the right word. It actually looked cut.
- Q. Do you think this happened during the accident?
- A. No. The break was too clean and neat. It really looked as if someone had taken a drill or dremel to it and cut part way through.

- Q. Could the rust have caused the problem?
- A. I doubt it, but I guess it's possible. But I don't know that the tie rod itself had rust. David did not say which parts.
- Q. If David had cut the tie rod, how could that have caused this accident?
- A. If the tie rod was cut part way through and that tire hit something that would jar it, it could cause the tie rod to break the rest of the way. Then, the driver would lose control of the steering. But a broken tie rod would not affect your ability to brake – only to steer.
- Q. Did you know about the problems between David and Alan?
- A. Well, I knew that Alan had represented David in some kind of case against David's former employer, and I knew that Alan had gotten off the case. I knew that David was angry, but I would not have ever thought that he might sabotage a car.
- Q. When Alan learned that David had worked on the car, did he ask you about it?
- A. No, but he became really furious. He told me that I would never work on his car again and that he would do what he could to put me out of business. Then, during the second week of September, he came in and told me that he had been sued because of the accident and that they were accusing him of driving drunk. He said that if the tie rod caused the accident, he would be off the hook. He had me work on his car that day, and he even referred two new customers to me since that time.
- Q. What do you think caused the accident?

A. Well, I was not there. But I cannot believe that Alan would drive drunk. He loved that car too much to risk anything happening to it. I just don't think that he would have driven if he had had too much to drink. So I guess it was the tie rod.

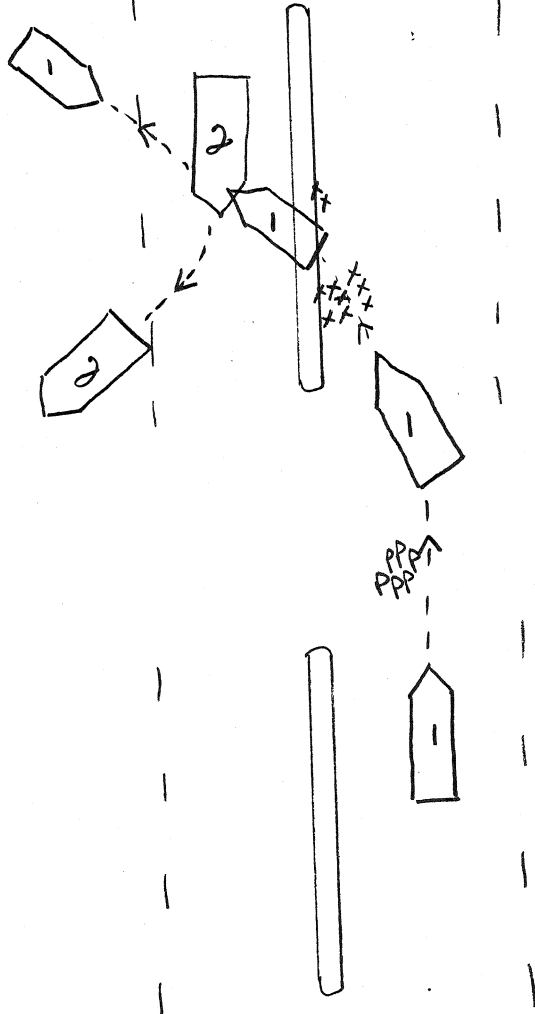
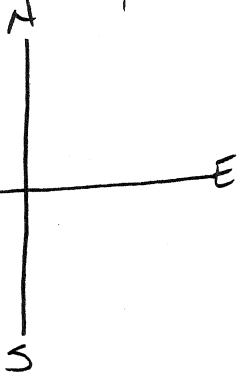
Michael Rover
Michael Rover

Sworn to and subscribed before me this
22nd day of October, 2003.

Lola Mendez
Notary Public

HANLEY ROAD

OAK STREET



ELM STREET

Exhibit A

Flagstown General Hospital
2712 Memorial Highway
Flagstown, Lone Star 74010

Patient: Alan Blizard
425 N. Oak Tree Loop
Flagstown, Lone Star 74111
DOB: 12/11/63
Patient ID: 7713201
Patient Room: ER
Insurance: Unk.

LABORATORY REPORT

BLOOD ALCOHOL TEST

DATE DRAWN: 8/2/03
TIME DRAWN: 01:12 a.m.
DRAWN BY: Jones, B.
REQUESTED BY: Ford, D. (FPD)
TESTED BY: Smith, J.

ETOH

0.06 gr/100mL

SIGNED: 

DATE: 8/02/03

Exhibit B

*Point After Pub
6200 Hanley Road
Flagtown, Lone Star*

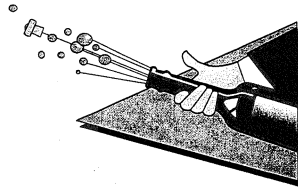


Exhibit C

CHECK # 4453 DATE 08/01/03
TABLE # 15 TIME 11:08 p.m.
SERVER VV # GUESTS 5

ITEMS ORDERED AMOUNT

1 HOT WINGS - 50 12.99
1 BURGER w/chips 4.99
1 ULTIMATE NACHOS 7.99
1 CHEESE FRIES w/chili 7.49
1 JALAPENO POPPERS 5.99
1 BURGER w/fries 4.99

BAR 225.50

SUBTOTAL 269.94
TAX 16.20

TOTAL DUE 286.14

Point After Pub - Flagstown, Lone Star
(813) 555-PUNT
THANK YOU FOR DINING AT
** POINT AFTER PUB **

Gratuity not included

Exhibit D

Invoice No. 7998

Mike Garage And Body Shop

5420 Patriot Street
Flagstowm, Lone Star 74010
(123) 336-8688

Date: 7/24/03

Customer: Aidan Blizard
425 N. Oak Tree Loop
Flagstowm

Vehicle: 1968 Jag

Work Done:	Price:
① lube/oil / filter / fluid check	
② rotate / balance tires	
③ change out fan belt	
note: rust appearing on some	
parts in undercarriage	
Tax	
Total	\$ 75.00

I accept repairs and agree to pay the total charge.
Aidan Blizard Date: 7/24/03
Customer's Signature

Exhibit E

PRELIMINARY JURY INSTRUCTIONS

You have now been sworn as the jury to try this case. This is a civil case involving a disputed claim or claims between the parties. Those claims and other matters will be explained to you later. By your verdict, you will decide the disputed issues of fact. I will decide the questions of law that arise during the trial, and before you retire to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. It is your responsibility to determine the facts and to apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have the opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered by you either as evidence in the case or as your instruction on the law. Nevertheless,

these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention. Following the final arguments by the attorneys, I will instruct you on the law.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you retire to the jury room to consider your verdict.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection. If I overrule an objection to a question, the witness will answer the question. If I sustain an objection, the witness will not answer, but you must not speculate on what might have happened or what the witness might have said had I permitted the witness to answer the question. You should not draw any inference from the question itself.

During the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration by me alone. It is impossible for me to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

At this time, the attorneys for the parties will have an opportunity to make their opening statements, in which they may explain to you the issues in this case and give you a summary of the facts they expect the evidence will show.

FINAL JURY INSTRUCTIONS

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received into evidence, and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and

opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in light of your own experience and common sense.

The issues for your determination on the negligence claim of Joye Walford against Alan Blizzard are whether Alan Blizzard was negligent in operating the motor vehicle he was driving and, if so, whether such negligence was a legal cause of the loss, injury, or damage suffered by Joye Walford and/or the Estate of Christopher Walford.

“Negligence” is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either of doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

Negligence is a legal cause of loss, injury, or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury, or damage so that it can reasonably be said that but for the negligence the loss, injury, or damage would not have occurred.

If the greater weight of the evidence does not support the claim of Joye Walford and/or the Estate, then your verdict should be for Alan Blizzard. "Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in this case. However, if the greater weight of the evidence supports either Joye Walford's individual claim or the Estate's claim, then you should consider the defenses raised by Alan Blizzard.

Alan Blizzard has raised a defense in this case which permits you, the jury, to determine whether persons who are not parties to this lawsuit may have also contributed to the injuries of Joye Walford and/or the Estate. If you find that Mike's Garage and Body Shop or its agents or employees were negligent either by not detecting the damaged tie rod or by actually tampering with the tie rod and that this negligence caused or contributed to Joye Walford's injury and/or the Estate's injury, you should determine what percentage of the total fault is chargeable to Mike's Garage and Body Shop.

At this point in the trial, you, as jurors, are deciding only if Alan Blizzard was negligent and if Mike's Garage and Body Shop was negligent. You will first return a verdict on that issue. If you find that Alan Blizzard was at fault to any degree, at that time, you will hear additional argument from the attorneys and you will hear additional witnesses testify concerning damages.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party.

When you retire to the jury room, you should select one of your members to act as foreperson, to preside over your deliberations, and to sign your verdict. Your verdict must be unanimous; that is, your verdict must be agreed to by each of you. You will be given a verdict form, which I shall now read and explain to you.

(READ VERDICT FORM)

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

JOYE WALFORD, individually,)
and as personal representative)
of the Estate of CHRISTOPHER)
WALFORD,)
Plaintiffs,)
v.)
ALAN BLIZARD,)
Defendant.)
_____)

Case No. 03-1758

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of Alan Blizard in operating his motor vehicle which was a legal cause of damage to Joye Walford individually?

YES _____

NO _____

2. Was there negligence on the part of Alan Blizard in operating his motor vehicle which was a legal cause of damage to the Estate of Christopher Walford?

YES _____

NO _____

If your answers to questions 1 and 2 are NO, your verdict is for Alan Blizard, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to either question 1 or 2 is YES, please answer questions 3 and 4.

3. Was there negligence on the part of Mike's Garage and Body Shop which was a legal cause of damage to Joye Walford?

YES _____

NO _____

4. Was there negligence on the part of Mike's Garage and Body Shop which was a legal cause of damage to the Estate of Christopher Walford?

YES _____

NO _____

If your answers to questions 3 and 4 are NO, you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to either question 3 or 4 is YES, please answer question 5.

5. Please state the percentage of fault, if any, which was the legal cause of Joye Walford's injury and/or the Estate's injury that you charge to:

Alan Blizzard _____%

Mike's Garage and Body Shop _____%

The total of the two percentages must equal 100%.

SO SAY WE ALL this _____ day of _____, 2004.

Foreperson