



AMERICAN
ASSOCIATION *for*
JUSTICE

STAC
STUDENT TRIAL
ADVOCACY
COMPETITION

**2016 NATIONAL
STUDENT TRIAL ADVOCACY
COMPETITION
(STAC)**

OFFICIAL RULES

and

FACT PATTERN

Endowed by Baldwin & Baldwin, LLP

Important Dates:

Requests for fact pattern clarification due: January 13, 2016
Team Participant Registration due (students must be AAJ members): January 29, 2016
Regional Competitions: March 10 – 13, 2016
National Final Competition: March 31 – April 3, 2016

AAJ's 2016 Fact Pattern is authored by A. Michael Gianantonio of Pittsburgh, PA.
AAJ extends its thanks and appreciation to Mr. Gianantonio for
developing the 2016 Fact Pattern.

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Please note:

Information regarding the 2016 Student Trial Advocacy Competition is available at www.justice.org/STAC and will be updated frequently.

All questions and correspondence should be addressed to:

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GENERAL INFORMATION

One of AAJ's goals is to inspire excellence in trial advocacy through training and education for both law students and practicing attorneys. One way AAJ accomplishes this goal is by sponsoring a national student mock trial competition. This is an exceptional opportunity for law students to develop and practice their trial advocacy skills before distinguished members of the bar and bench.

Because the purpose of this competition is to give law students the opportunity to develop their trial skills, the actual merits of the plaintiff's case and the defendant's case presented are irrelevant to this purpose. Competition rounds are decided not on the merits of a team's side but on the quality of a team's advocacy.

Requests for Clarification

Requests for clarifications of the rules or fact pattern must be submitted via an online survey no later than 5:30 p.m. (EST) on January 13, 2016. A link to the survey will be posted online at www.justice.org/STAC after the fact pattern is released. *Each school is limited to five (5) questions.* No school, regardless of the number of teams it has in the competition, may submit more than five questions. Each subpart of a question is counted as a question.

RULE VIOLATION AND FILING OF COMPLAINTS

A competitor or coach violating any of the rules governing the national Student Trial Advocacy Competition may be penalized or disqualified. If a team wants to file a complaint under the rules, the team's coach should immediately notify the regional coordinator at a regional competition or the final round coordinator at the final competition. The coordinator will review the complaint and make a ruling, which shall be binding for that round of competition. The coordinator's rulings will be governed by the rules of the competition and the objectives of the program.

Complaints after a regional competition or after the national competition must be filed in writing with Emmah Schramke at the address on page 2 no later than the seven (7) days following the last day of the regional or final round, as appropriate. The AAJ Law Student Services Committee will promptly consider and rule on any such complaints.

LAW SCHOOL AND STUDENT ELIGIBILITY

The competition is open to all law schools nationwide. A law school may enter up to two teams. Each team shall be comprised of four law students. A school's selection method of its trial team(s) is left for the school to determine. However, for a student to be eligible, he or she must be enrolled for a J.D. degree and be a law student member of AAJ.

Students who graduate in December 2015 are eligible to participate only if the competition counts toward their credits for graduation and they will not be admitted to practice prior to March 2016.

Each student participant must be an AAJ student member by January 29, 2016 in order to participate.

REGISTRATION PROCEDURES

Refund Policy

Requests for a refund of a school's registration fee were due in writing before November 13, 2015. It is inevitable that a few teams drop out of the competition in the months leading up to the regionals. Teams placed on the waiting list because the competition is full will be contacted for participation in the order that their registrations were received. Teams on the waiting list will also be issued a refund check if it is determined that the team will not be competing. Schools that registered two teams but are only able to enter one team because the competition is full will receive a refund of the registration fee for the second team.

AAJ Law Student Membership and Student Team Registration

Student team members must be AAJ members by January 29, 2016 in order to participate. This year, all students must verify their membership and register for their respective team online at www.justice.org/STACParticipantRegistration. AAJ Law Student membership dues are \$15. If you have any questions about AAJ's law student membership, or if you have any trouble becoming a member online, please call AAJ's member hotline at (202) 965-3500, ext. 8611. If you have any questions about registering as a STAC team member, please call Emmah Schramke, STAC Manager, ext. 2864.

Coach Registration

AAJ must receive the names of the coach for each team. A coach must accompany each team to the regional competitions. A coach may be a law student, but may not be a student who is competing in the competition. Coaches do not need to be members of AAJ, and should not register for the STAC event. Coaches, and other administrators traveling with the team, must complete an online survey listing the team coach that will be travelling with the team by January 29, 2016. This is the information that will be sent to the regional coordinators to communicate logistics onsite.

Student Substitution Policy

Substitution of team members after January 29, 2016 is not permitted except in the case of personal emergencies. Requests for substitution after the January 30 deadline must be made in writing with an explanation of why the substitution is needed and sent to Emmah Schramke at AAJ for consideration. These requests can be made to STAC@justice.org.

REGIONAL AND FINAL COMPETITION ASSIGNMENTS

Entering teams will be assigned to one of 14 regional competitions based on geographical convenience *to the extent possible*. Teams from the same law school will be assigned to the same region. If a school's second team is waitlisted, there is no guarantee that second team will be sent to the same region as the first team. Teams will be notified of any date changes when regional assignments are made. Please remember that a school's second team will not be officially registered until one team from each law school has entered the mock trial competition. Then the second teams will be registered on a first-come, first-served basis until all the team slots are filled. If you paid for two teams and only one team is able to participate, you will receive a refund for the second team.

In order to officially compete in the competition, a team **must** receive its regional assignment. If a team is not informed by AAJ that it is able to compete, that team is not registered for the competition.

Coaches

A coach must accompany each team to the regional and the final competitions. The coach for a team that goes to the final competition does not have to be the person who coached the team at the regional competition.

A coach may be a law student, but may not be a student who is competing in the competition.

Only team coaches are permitted to attend the coaches' meeting. If a coach is unable to attend, he or she must notify AAJ and the regional coordinator. Only then can students be permitted to attend in the coach's absence.

Team Expenses

Travel expenses for the regional and final competitions are the responsibility of the participants. Teams competing in past competitions have obtained funds from law school deans and alumni associations, members of the local legal community, state and local trial associations, and AAJ law school chapters.

COMPETITION FORMAT

This is a trial skills competition. There is no motion or trial brief writing component. Each team will consist of four law students. Two students will be advocates and two students will play the witnesses for their side in each round. Advocates and witnesses may change their roles from round to round, but roles must remain consistent throughout each individual trial.

In the regional competitions:

- Each team will compete in three qualifying rounds
- The top four teams from the qualifying rounds will advance to a single elimination semifinal round
- The top two teams from the semifinal round will advance to a single elimination final round to determine which one team will advance to the National Final Competition

In the final competition:

- Each team will compete in three qualifying rounds
- The top eight teams from the qualifying rounds will advance to a single elimination quarter-final round
- The top four teams from the quarter-final round will advance to a single elimination semifinal round
- The top two teams from the semifinal round will advance to a single elimination final round

Regional Team Pairings in Qualifying Rounds

Pairing of teams in the qualifying rounds will be at random and conducted during the coaches' meeting prior to each competition. Teams may also be pre-assigned by the regional coordinator prior to the coaches' meeting; this practice is at the discretion of the regional coordinator. Each team will represent both plaintiff and defendant in the first two rounds. No two teams shall compete against each other more than once in the qualifying rounds. Teams from the same school will not compete against each other during any of the rounds of the regional competition or in the qualifying rounds of the national final competitions.

Team Rankings in All Other Rounds

In the semifinal round, the first-ranked team will meet the fourth-ranked team, and the second-ranked team will meet the third-ranked team.

Regional semifinal round (Normal pairings: 1 v. 4; 2 v. 3)

Situation 1: Teams ranked 1 and 4 are from the same school

New pairings: 1 v. 3; 2 v. 4

Situation 2: Teams ranked 2 and 3 are from the same school

New pairings: 1 v. 3; 2 v. 4

The ranking of teams to determine the semifinalists and finalists will be determined by the following factors (in this order):

1. Win/loss record
2. Number of winning votes
3. Number of total points awarded to the team

Each succeeding criterion above will be used only if the prior criterion does not fully rank the teams, and will be used only to break ties created by the use of the prior criterion. In the event that all three of these criterion are tied, the regional coordinator will announce a tie-breaker.

If paired regional semifinal teams have met in the qualifying rounds, they will each represent different sides than in the previous meeting. If they have not yet met, each team will take the side they represented only once in qualifying rounds. If matched teams represented the same side only once, the winner of a coin toss will choose sides.

In the regional finals, the teams will represent a different side than in the semifinal round. If two opposing teams each represented the same side in the semifinal round, the winner of a coin toss will choose sides. The two regional finals teams will represent a different side than in the semifinal round. If matched teams in the final round represented the same side in the semifinal round, the winner of a coin toss will choose sides.

When an odd number of teams compete at a regional competition, one randomly chosen team will receive a “bye” in each qualifying round. For ranking purposes, a bye will count as a win and the team with the bye will be deemed to have had three votes and the points equal to the average of the team’s points from the two other qualifying rounds.

NATIONAL FINALS

Quarter-final round (Normal pairings: 1 v. 8; 2 v. 7; 3 v. 6; 4 v. 5)

Situation 1: Teams ranked 1 and 8 are from the same school
New pairings: 1 v. 7; 2 v. 8; 3 v. 6; 4 v. 5

Situation 2: Teams ranked 2 and 7 are from the same school
New pairings: 1 v. 7; 2 v. 8; 3 v. 6; 4 v. 5

Situation 3: Teams ranked 3 and 6 are from the same school
New pairings: 1 v. 8; 2 v. 7; 3 v. 5; 4 v. 6

Situation 4: Teams ranked 4 and 5 are from the same school
New pairings: 1 v. 8; 2 v. 7; 3 v. 5; 4 v. 6

Semifinal round (Normal pairings: 1 v. 4; 2 v. 3)

Situation 1: Teams ranked 1 and 4 are from the same school
New pairings: 1 v. 3; 2 v. 4

Situation 2: Teams ranked 2 and 3 are from the same school
New pairings: 1 v. 3; 2 v. 4

If teams from the same school are matched to compete based on rank in the semifinal and final rounds of a regional competition, regional hosts will re-pair teams according to the following scenarios:

Determination of Team Representation

If the four national and regional semifinal teams have already met in the qualifying rounds, they will represent different sides from the previous confrontation. If they have not yet met, each team will take the side they represented only once in qualifying rounds. If matched teams represented the same side only once, the winner of a coin toss will choose sides.

The national finals semifinal teams will represent a different side than in the quarter-final round. If matched teams represented the same side in the quarter-final round, the winner of a coin toss will choose sides. The two national final teams will represent a different side than in the semifinal round. If matched teams represented the same side in the semifinal round, the winner of a coin toss will choose sides.

THE TRIAL

The competition this year involves the trial of a civil lawsuit. The same fact pattern will be used in the regional and final competitions. The trial judge previously ruled that the case would be bifurcated, and the case being tried in the competition is the first phase of the case—the liability phase. Only evidence relevant to the liability issue will be received. There are no pending third-party claims.

The Federal Rules of Evidence (FRE) and Federal Rules of Civil Procedure (FRCP) are the applicable rules of evidence and civil procedure. Only these rules, and the law provided in the fact pattern, shall be used in argument. Specifically, no statutory, regulatory, or case law shall be cited unless such law is provided in the fact pattern.

Students may argue based upon the comments or advisory notes to the Federal Rules of Evidence but may not cite the cases contained therein. No written briefs or motions, trial notebooks, or other written materials may be presented to the judge hearing a case.

No pretrial motions of any kind are allowed.

Motions for a judgment as a matter of law and evidentiary objections are permitted.

The trial will consist of the following phases by each team in this order:

- Opening statements for plaintiff followed by defendant
- Plaintiff's case-in-chief
 - Plaintiff's direct of plaintiff's witness #1
 - Defendant's cross of witness
 - Plaintiff's redirect of witness
 - Similar for plaintiff's witness #2
- Defendant's case-in-chief
 - Defendant's direct of defendant's witness #1
 - Plaintiff's cross of witness

- Plaintiff's redirect of witness
- Similar for defendant's witness #2
- Closing argument
 - Plaintiff's closing
 - Defendant's closing
 - Plaintiff's rebuttal closing

Each side is limited to two live witnesses whom they may call in any order.

- Plaintiff must call Quinn Chase and Sidney Crosby.
- Defendant must call Max Petunia and Jean Malkin.

The trial has six (6) major advocacy opportunities for each team: opening statement; direct/redirect examinations (2); cross-examinations (2); and closing argument. Each member of a team must handle three of the six opportunities. Opening statement and closing argument may not be done by the same person, and may not be split between team members. Each team member must do a direct and cross.

During the competition, each team will represent both parties. Pairing in the qualifying rounds will be at random, with each team representing both plaintiff and defendant at least once in the three rounds.

Except in the final round, the courtrooms will be off-limits to all team members, coaches, friends, and family members who are not associated with either team competing, unless their team has already been eliminated from the competition.

No team may receive any coaching from anyone in any form during a round, including any recesses or breaks. The regional or national coordinator, as applicable, has the authority to punish any violation of this rule by disqualifying the team from the remainder of the competition.

A team may record its trial if: (1) no additional lighting is required; (2) recording of the trial does not interfere with or delay its conduct; and, (3) all participants of the round, including the presiding and scoring judges and the regional or national coordinator, as applicable, agree. All recordings are subject to the local courthouse policy and discretion.

Timing of the Trial

- Each team will have 80 minutes to complete its argument; time will be stopped during objections.
- The time limit will be strictly enforced, although it is not necessary that all time allotted be used.
- There will be no time limits for specific aspects of the trial.
- Time on cross-examination is charged against the team conducting the cross-examination.
- Time will be stopped for objections and responses to objections.
- Performance at trial will be evaluated by a panel of judges and/or attorneys, one of whom will preside over the trial as Judge, making rulings as necessary, and the remainder (up to three) of whom will act as the jury.

Facts Outside the Record

Advocates must confine the questions, and witnesses must confine their answers, to the facts given in the fact pattern and inferences which may reasonably be drawn therefrom, with the following qualifications:

- (1) A reasonable inference is not any fact that a party might wish to be true; rather, it is a fact that is likely to be true, given all the facts in the case; and
- (2) No inferred fact may be material, which is defined (a) as a fact that changes the merits of either side of the case or (b) that bears on the credibility of any witness or litigant. The latter is defined to include any background information about a witness or litigant.

Except during closing argument, no party may make an objection that the opposing team is going outside the record. Instead, a party may address instances of testimony outside the record by means of impeachment of the offending witness or by contradiction using another witness or document.

When true and if asked, witnesses must admit that the “facts” they have testified to are not in their deposition or otherwise in the record: “yes, I did not say that in my deposition.” Witnesses may not qualify this response; for example, a witness may not say he or she was not asked about the issue at deposition or that the facts were contained in some portion of the deposition omitted from the record.

Like all officers of the court, coaches and team members must play fairly and ethically. This is a competition about trial advocacy skills – doing what you can with the facts provided and the witnesses in the courtroom. The coordinators will instruct the judges on the significance of impeachment efforts and that they may take unfair additions or changes to the record into account in their scoring of the witness’s team.

Witnesses

Any witness may be played by a person of either gender. Before the opening statement, each team should notify the other team of the gender of each witness they intend to call and any witness they could call but are choosing not to call.

Expert witnesses are assumed to have access to and have read all documents in the fact pattern. A lay witness can only attest to his or her deposition and related exhibits.

All depositions are signed and sworn. The same attorney conducting direct examination of a witness shall also conduct any redirect examination.

The only lawyer who may object during witness testimony is the lawyer who will be examining that witness.

Witnesses may not be recalled. Witnesses will not be sequestered.

JURY INSTRUCTIONS

The instructions provided in the fact pattern are the only instructions that will be given. The instructions are the only statements of the applicable substantive law. Instructions will not be eliminated or modified. No additional instructions may be tendered or will be given.

EXHIBITS

The use of demonstrative evidence is limited to that which is provided in the fact pattern, but participants are free to enlarge any diagram, statement, exhibit, or portion of the fact pattern if it is identical to the item enlarged, or if any changes provide no advantage to the party intending to use it.

Subject to rulings of the court, counsel and witnesses may draw or make simple charts or drawings in court for the purpose of illustrating testimony or argument. These materials may not be written or drawn in advance of the segment during which they are being used.

No demonstrative evidence, including charts or drawings, may reflect facts outside the record. Participants must clear all demonstrative evidence with the regional or national coordinator, as applicable, at the coaches' meeting preceding the competition.

All exhibits are stipulated as authentic and genuine for purposes of trial.

SCORING CRITERIA

Performances at trial will be evaluated by a panel of three judges and/or attorneys, one of whom will preside as the trial judge, with the others sitting as jurors. The trial judge will rule on any objections or motions for judgment as a matter of law.

Each member of the jury may award up to ten points in each phase of trial for each party. A sample score sheet is attached.

If at the end of the trial, an evaluator awards the same number of points to both the plaintiff and the defendant, the evaluator will award one additional point to either the plaintiff or the defendant for effectiveness of objections and/or overall case presentation in order to break the tie.

Evaluators have been instructed not to score teams on the merits of the case.

The following criteria for scoring trial performances are set forth to assist both judges and student advocates. Evaluators are not limited to these criteria and may consider other aspects of strategy, technique, and so forth, which they view as important.

Evaluator Shortage

For each match, there must be three votes from evaluators. In the event that, due to circumstances beyond AAJ's control, there are not three evaluators in a particular match, "ghost" evaluator(s) will be used to score the round. The vote of a ghost evaluator is determined by calculating the average of all other evaluators in the session.

Suggested Evaluation Criteria

OPENING STATEMENT

Did Counsel:

1. Generally confine statement to an outline of the evidence that would be presented?
2. Clearly present counsel's theory of the case?
3. Persuasively present counsel's theory of the case?
4. Personalize self and client?
5. Allow opposing attorney to make argument during opening statement?
6. Make unnecessary objections?

EXAMINATION OF WITNESSES

Did Counsel:

1. Ask questions that generated minimal valid objections?
2. Make/fail to make objections with tactical or substantial merit?
3. Respond appropriately to objections?
4. Know the rules of evidence and express that knowledge clearly?
5. Develop rapport with the witness?
6. Maintain appropriate general attitude and demeanor?
7. Address the court and others appropriately?
8. Demonstrate awareness of ethical considerations?

Did Direct-Examiner:

9. Use leading questions unnecessarily?
10. Develop testimony in an interesting and coherent fashion?
11. Follow up on witness' answers?
12. Present the witness in the most favorable light?

Did Cross-Examiner:

13. Appropriately use leading questions?
14. Control witness?
15. Follow up on answers and elicit helpful testimony?
16. Use impeachment opportunities?

CLOSING ARGUMENT

Did Counsel:

1. Present a cohesive theory of the case, pulling all the positive arguments together?
2. Deal effectively with the weakness(es) in his or her own case?
3. Make an argument that was persuasive?
4. Have an effective style of presentation?
5. Utilize the law effectively in the argument?
6. Inappropriately interrupt the argument of the opposing counsel?
7. Properly confine rebuttal to rebuttal matters?
8. Effectively counter the opponent's speech in rebuttal

Discrepancies in Remaining Match Time

Often, bailiffs are unavailable to keep time for rounds. In such cases, one or more judges in each match should be instructed to keep time according to the timekeeping rules. Additionally, judges may ask the respective teams to assist with this process. Teams may also

keep track of time used for their own purposes. They may not, however, report their time used or that of an opposing team to the bailiff or judge for any purpose, unless they were instructed to do so. Moreover, time use improperly reported by any team may not be considered or used by a bailiff or judge for any purpose.

Notwithstanding this limitation, in the event that the match judge or judges declare the time remaining as less than the team requires for closing or other parts of the trial, the coach or team member (whoever records the time discrepancy¹) should immediately consult with the Regional Coordinator during the break, who should then evaluate the circumstances and decide the amount of time remaining. Neither the team coach nor the team member should discuss the discrepancy with the match judge. Should the team be unable to consult with the Regional Coordinator before completion of the trial and the team requires additional time to complete the trial, the team may elect to complete the trial beyond the time allotted. When the trial is complete, the time will be evaluated by the Regional Coordinator. The team will lose two points from the number of total overall points for that round (as tallied on the ‘Trial Score Sheet’) for every five minutes—or fraction thereof—of time in excess of its allotment.

Viewing of Score Sheets by Teams

Viewing of the score sheets is done at the discretion of the Regional Coordinator. Each team will have the right to view their score sheets for each round. Team coaches may only view score sheets once the third round has commenced. This should be done one team at a time. Participating students should be unaware of how they were scored until the qualifying rounds are completed, and the semi-final teams are announced. Teams are not allowed to take score sheets with them or make any markings to the score sheets. Teams may view score sheets only in the presence of the Regional Coordinator. If team coaches require a copy of their score sheets, they should notify the Regional Coordinator and email AAJ staff.

¹ Note that coaches and team members may not communicate during rounds



**2016 STUDENT TRIAL ADVOCACY COMPETITION (STAC)
JUDGE'S SCORE SHEET**

Teams are to be scored on their trial skills only, NOT on the merits of the case.

Do not give half-points. Do not tie teams. There must be a winner.

Do not write your name on this score sheet, and do not share your score with the participating students or coaches.

ROUND:

REGIONAL LOCATION: _____

TEAM _____ -- PLAINTIFF

Good

Average

Poor

Opening Statement	10	9	8	7	6	5	4	3	2	1
Direct Exam of Plaintiff's Lay Witness	10	9	8	7	6	5	4	3	2	1
Direct Exam of Plaintiff's Expert Witness	10	9	8	7	6	5	4	3	2	1
Cross Exam of Defendant's Lay Witness	10	9	8	7	6	5	4	3	2	1
Cross Exam of Defendant's Expert Witness	10	9	8	7	6	5	4	3	2	1
Summation	10	9	8	7	6	5	4	3	2	1

Total points awarded to PLAINTIFF _____

TEAM _____ -- DEFENDANT

Good

Average

Poor

Opening Statement	10	9	8	7	6	5	4	3	2	1
Cross Exam of Plaintiff's Lay Witness	10	9	8	7	6	5	4	3	2	1
Cross Exam of Plaintiff's Expert Witness	10	9	8	7	6	5	4	3	2	1
Direct Exam of Defendant's Lay Witness	10	9	8	7	6	5	4	3	2	1
Direct Exam of Defendant's Expert Witness	10	9	8	7	6	5	4	3	2	1
Summation	10	9	8	7	6	5	4	3	2	1

Total points awarded to DEFENDANT _____



AMERICAN ASSOCIATION FOR JUSTICE

MISSION

The Mission of the American Association for Justice is to promote a fair and effective justice system—and to support the work of attorneys in their efforts to ensure that any person who is injured by the misconduct or negligence of others can obtain justice in America’s courtrooms, even when taking on the most powerful interests.

ABOUT TRIAL LAWYERS

Trial lawyers ensure access to the civil justice system for the powerless in America: working families, individual workers, and consumers who often lack the resources to take their grievances to court.

Trial lawyers play a valuable role in protecting the rights of American families. They champion the cause of those who deserve redress for injury to person or property; they promote the public good through their efforts to secure safer products, a safe workplace, a clean environment and quality health care; they uphold the rule of law and protect the rights of the accused; and they preserve the constitutional right to trial by jury and seek justice for all.

Some of the types of cases our attorneys handle include:

- A child paralyzed after being struck by a drunk driver;
- A young woman unable to have children because of a medical mistake;
- A person denied a promotion due to racial discrimination;
- An elderly man injured in a nursing home; and,
- A community whose water was made toxic by a local manufacturer.

ABOUT AAJ

As one of the world’s largest trial bars, AAJ promotes justice and fairness for injured persons, safeguards victims’ rights—particularly the right to trial by jury—and strengthens the civil justice system through education and disclosure of information critical to public health and safety. With members worldwide, and a network of U.S. and Canadian affiliates involved in diverse areas of trial advocacy, AAJ provides lawyers with the information and professional assistance needed to serve clients successfully and protect the democratic values inherent in the civil justice system.

Six Benefits

to American Association for Justice Law Student Membership You Can Put to Work Today!

1.

Network with America's premier trial lawyers through **AAJ's Membership Directory**.

2.

Trial magazine's digital version gives you the latest developments in civil litigation, current tort and consumer law verdicts, and other career-enhancing information.

3.

AAJ's annual **Student Trial Advocacy Competition (STAC)** gives you the opportunity to participate in the nation's premier mock trial before sitting judges and practicing trial lawyers.

4.

AAJ Annual and Winter Conventions allow you to attend information-packed workshops and Continuing Legal Education (CLE)-approved education sessions on all aspects of trial law from those at the top of their field. You will have the opportunity to attend social events and meet attorneys in all stages of their professional careers. Visit www.justice.org/convention to learn more.

5.

Attend select **AAJ Continuing Legal Education** courses for only the price of the reference materials. AAJ Education seminars and teleseminars will give you insight into different practice areas, how to be an effective advocate, and prepare you for life after law school.

6.

AAJ Law Student Member scholarships and awards help you pay down student loans. Start laying the groundwork today for the successful career you look forward to tomorrow. Visit www.justice.org/lawstudents for information on law school scholarships and networking opportunities.

For just **\$15 a year**, you can invest in an American Association for Justice, formerly the Association of Trial Lawyers of America (ATLA®), Law Student Membership. That's a small price to pay for the kind of trial lawyer contacts, educational opportunities, and access to information you'll enjoy as a member of the world's largest trial lawyer bar.



777 6th Street NW, Suite 200, Washington, DC 20001 • www.justice.org
800-424-2727 or 202-965-3500, ext. 8611

American Association for Justice Law Student Member Scholarships and Awards

The Richard D. Hailey Law Student Scholarship

AAJ's Minority Caucus awards \$5,000 scholarships to first-, second-, and third-year African American, Hispanic, Asian American, Native American, and Biracial Law Student Members.

Trial Advocacy Scholarship

Open to all second- and third-year AAJ Law Student Members, this \$3,000 scholarship is awarded to the applicant who best demonstrates the following: commitment to AAJ and its mission; a desire to represent victims; interest and skill in trial advocacy; and financial need.

Leesfield Scholarship

Sponsored by AAJ and AAJ member Ira Leesfield, this scholarship awards \$2,500 to a Law Student Member to subsidize attendance at AAJ's Annual Convention. Available to first- and second-year AAJ Law Student Members.

Mike Eidson Scholarship

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2016 AAJ Fact Pattern

QUINN CHASE

v.

PETUNIA ENTERPRISES, LLC

D/B/A MONTANA MAX'S GOOD TIMES SALOON®

**Prepared by A. Michael Gianantonio
of Robert Peirce & Associates**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STEELTON

QUINN CHASE;

Plaintiff,

v.

PETUNIA ENTERPRISES, LLC
d/b/a MONTANA MAX'S GOOD
TIMES SALOON;

Defendant.

COMPLAINT

AND NOW, comes Plaintiff, Quinn Chase, and files the within Complaint, the following of which is a statement:

I. PARTIES

1. Plaintiff, Quinn Chase, is an adult individual residing at 6711 Stark Lane, Penns Woods in the District of Steelton.

2. Defendant, Petunia Enterprises, LLC (Petunia), doing business as Montana Max's Good Times Saloon (the Saloon), is a District of Steelton limited liability company with a registered address of 2500 Francis Daley Building, 707 Grant Street in the District of Steelton.

II. FACTS

3. At all times relevant hereto, Defendant was engaged in the business of selling and serving alcoholic beverages to its patrons.

4. On the evening of January 7, 2013, and the morning of January 8, 2013, Al Overton was a patron at the Saloon. During that time Al Overton consumed large amounts of alcohol and became visibly and noticeably intoxicated.

5. Petunia, through its agents, servants, and/or employees served, and continued to serve, alcoholic beverages to Al Overton while he was visibly and noticeably intoxicated.

6. While a patron at the Saloon, Al Overton demonstrated signs of visible intoxication which include, but are not limited to, staggering, slurring words, and vomiting on other patrons.

7. Petunia, through its agents, servants, and/or employees knew, or should have known, that Al Overton was visibly intoxicated.

8. Max Petunia, the Saloon's owner, was working on the night of January 7, 2013, and the morning of January 8, 2013.

9. Max Petunia was notified of Al Overton's condition, but Max Petunia did not perform sufficient investigation to determine if Al Overton was intoxicated and/or should have continued to be served additional alcohol.

10. Alternatively, Petunia did not have adequate practices, policies, and/or procedures to ensure that visibly intoxicated patrons such as Al Overton are not served alcohol.

11. As such, Petunia's agents, servants, and/or employees were not sufficiently trained to identify visibly intoxicated patrons and to refuse to serve visibly intoxicated patrons.

12. Petunia's agents, servants, and/or employees permitted Al Overton to leave the bar on the morning of January 8, 2013, despite the fact that Al Overton was visibly intoxicated.

13. After consuming exorbitant amounts of alcoholic beverages and despite being visibly intoxicated, Al Overton entered his automobile and attempted to drive home.

14. While driving home, Al Overton lost control of his automobile, swerved into oncoming traffic and collided at great velocity with Plaintiff's automobile, causing Plaintiff to sustain injury as described more thoroughly herein.

15. For the reasons described herein, Defendant is liable to Plaintiff for the harm and injuries sustained by Plaintiff on January 8, 2013.

**COUNT I
Negligence**

16. Plaintiff incorporates by reference all previous Paragraphs of the Complaint as if set forth in their entirety herein.

17. Defendant had a duty to ensure that it did not serve visibly intoxicated patrons.

18. Defendant knew, or should have known, that Al Overton was visibly intoxicated.

19. Despite the fact that Defendant knew, or should have known, that Al Overton was visibly intoxicated, Defendant breached its duties in the following particulars:

- a. Defendant, its servants, agents, and/or employees continued to serve alcohol to Al Overton despite the fact that Al Overton was visibly intoxicated;
- b. Defendant failed to have in place proper practices, policies, and/or procedures to ensure that it did not serve alcohol to visibly intoxicated patrons; and
- c. Defendant, its servants, agents, and/or employees, despite the fact that they knew, or should have known, that Al Overton was visibly intoxicated,

permitted Al Overton to operate an automobile on the morning of January 8, 2013.

20. Defendant's negligence caused Plaintiff to suffer great harm insofar as Plaintiff:

- a. Sustained a fracture of the femur;
- b. Sustained a fracture of the collar bone;
- c. Sustained a ruptured spleen, thus making Plaintiff less capable of fighting illness and infection; and
- d. Sustained a closed head injury.

21. As a direct and proximate result of Defendant's negligence, Plaintiff sustained and will continue to sustain injuries and damages.

WHEREFORE, Plaintiff demands judgment against Defendant, in an amount in excess of the prevailing arbitration limits, exclusive of prejudgment interest, post-judgment interest, and costs; for punitive damages; and for such other relief as this Court seems fit to award.

Respectfully submitted

/s/ S. Scooter Simon
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STEELTON

QUINN CHASE;

Plaintiff,

v.

PETUNIA ENTERPRISES, LLC
d/b/a MONTANA MAX'S GOOD
TIMES SALOON;

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

AND NOW, comes Defendant, Petunia Enterprises, LLC d/b/a Montana Max's Good Times Saloon, and files the within Answer and Affirmative Defenses, the following of which is a statement:

ANSWER

1–2. The averments of Paragraphs 1–2 of Plaintiff's Complaint are admitted.

3. The averments of Paragraph 3 of Plaintiff's Complaint are denied as stated.

Montana Max's Good Times Saloon (Max's) is a full service restaurant and bar. Max's has a full service kitchen, bar, and entertainment area with today's most modern video games and other video entertainment devices.

4–6. The averments of Paragraphs 4–6 of Plaintiff's Complaint are denied as stated. While it is admitted that Al Overton was a patron at Max's on the evening of January 7, 2013, and the morning of January 8, 2013, Al Overton was not visibly and/or noticeably intoxicated. To the contrary, Al Overton was lucid, conversant, and displayed the traits associated with a sober patron. While it is admitted that Al Overton did vomit, the same was the result of a stomach illness and not alcohol consumption.

7. The averments of Paragraph 7 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that that a response is deemed necessary, it is denied that Al Overton was intoxicated and/or served alcohol while intoxicated.

8. The averments of Paragraph 8 of Plaintiff's Complaint are admitted.

9. The averments of Paragraph 9 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is deemed necessary, Max's incorporates by reference as if set forth herein its Answer to Paragraphs 4–6 of Plaintiff's Complaint.

10–11. The averments of Paragraphs 10–11 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is deemed necessary, Max's adequately trains its employees in spotting and denying service to visibly intoxicated patrons (VIPs).

12. The averments of Paragraph 12 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is deemed necessary, Max's incorporates by reference herein its Answer to Paragraph 7 of Plaintiff's Complaint.

13. The averments of Paragraph 13 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is deemed necessary, Al Overton was not intoxicated when he left the Max's on the morning of January 8, 2013. Moreover, in the alternative, to the extent that he was intoxicated, Max's did not, nor could have known, that Al Overton intended to drive upon his departure.

14. Max's is without information sufficient to admit or deny the averments of Paragraph 14 of Plaintiff's Complaint. As such, the averments are denied.

15. The averments of Paragraph 15 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

**COUNT I
Negligence**

16. Max's incorporates by reference Paragraphs 1-15 of its Answer to Plaintiff's Complaint as if set forth in their entirety herein.

17-21. The averments of Paragraph 15 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to set forth a cause of action upon which relief may be granted.
2. Plaintiff's Complaint is barred by Plaintiff's own negligence.
3. Plaintiff's claims were caused or contributed by the superseding and intervening acts of persons, entities, or circumstances beyond the control of Max's.
4. Plaintiff has failed to mitigate damages.

Respectfully submitted

/s/ Lizzie Chippeto

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
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Plaintiff,

v.

PETUNIA ENTERPRISES, LLC
d/b/a MONTANA MAX'S GOOD
TIMES SALOON;

Defendant.

STIPULATIONS

AND NOW, comes the parties to this matter, and file the within Stipulations to be used at Trial, which shall have the binding effect of being taken as established facts if so offered:

1. Al Overton was cleared of all charges of driving under the influence due to a defect found in the breathalyzer used by the investigating police force.
2. The defect in the breathalyzer yielded a potential error rate of +/- .03.
3. Al Overton's blood alcohol content (BAC) is admissible during the within trial.
4. Al Overton's insurance carrier tendered its policy limits before the instant action was filed.
5. Plaintiff's automobile insurance carrier tendered the underinsured motorist's automobile policy limits before the instant action was filed.
6. Plaintiff accepted both tenders.

7. Al Overton was deposed, but has since left the jurisdiction. He is unavailable to testify, as that term is defined by the Federal Rules of Civil Procedure and the Federal Rules of Evidence, and not subject to the subpoena power of this jurisdiction at the trial of this matter.

8. The parties agree that Mr. Overton's deposition may be used at trial and the deposition testimony itself is not subject to a hearsay objection. As such, the deposition testimony may be used for any purpose so long as the intended use is otherwise admissible under the Federal Rules of Evidence.

9. On Monday, January 7, 2013, the NCAA BCS College Football Championship was played between Springstream University and Carlsare State.

10. The maximum occupancy capacity for the Max's is 250 occupants.

11. The maximum occupancy capacity is established by District of Steelton's Chief of Fire Safety.

12. Max's occupancy was exceeded by nearly thirty patrons.

13. Max's was not cited under Steelton's Liquor Control Laws for any conduct on the evening of January 7, 2013, or the morning of January 8, 2013.

14. Steve Barth, Chad Shannon, and Mark Troyan could not be located for their depositions by either party.

15. The District Court for the District of Steelton follows the Federal Rules of Evidence.

16. The District Court for the District of Steelton follows the Federal Rules of Civil Procedure.

17. The depositions are signed and sworn to by each respective deponent as being accurate and authentic.

18. The expert reports were produced by the parties simultaneously before trial. Experts have reviewed all documents contained within this case file and may testify to the same; however, the expert's testimony is limited by the applicable Rules of Civil Procedure.

19. The expert reports have been prepared and signed by each respective expert.

18. Plaintiff must call Quinn Chase and Sidney Crosby as witnesses.

19. Defendant must call Max Petunia and Jean Malkin as witnesses.

20. This case has been bifurcated into a liability phase and a damages phase.

For purposes of this trial, the parties will try the liability phase only.

21. Sidney Crosby and Jean Malkin are deemed qualified as experts to render opinions in the fields of hospitality and service of alcohol.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STEELTON

QUINN CHASE;

Plaintiff,

v.

PETUNIA ENTERPRISES, LLC
d/b/a MONTANA MAX'S GOOD
TIMES SALOON;

Defendant.

JOINT EXHIBIT LIST

AND NOW, come the parties to this matter, by and through their respective counsel, and submit the following proposed joint exhibit list. The parties agree the identified exhibits are authentic and admissible subject to objection on grounds that the proposed exhibit is otherwise inadmissible under the pertinent rules of evidence.

1. Police Incident Report for January 8, 2013 and drawing of the accident scene.
2. Pertinent entries from Bad Dog Overton's Fakebook social media site on January 7, 2013 and January 8, 2013
3. Pertinent entries from Overtine 4040's Twister social media site on January 7, 2013 and January 8, 2013
5. Pertinent Sections of Steelton Liquor Control Board Statute and Regulations
6. Pertinent Sections of Max's Policies and Procedures Manual
7. Jean Malkin and Sidney Crosby's CVs and expert reports.

1 **Deposition of Quinn Chase**

2 And now, this 27th day of August, 2014, Quinn Chase, being duly sworn by the
3 undersigned appeared at the offices of Beau, Bo and Bogey, for the purposes of
4 deposition by oral questioning.

5 (Questioning by Lizzie Chippeto)

6 Q. Good morning. We met earlier today before your deposition, but for purposes of
7 the record, can you please state your name?

8 A. Sure, my name is Quinn Chase.

9 Q. And where do you live?

10 A. Right now I am a graduate student at Springstream University. I live at 33 E Street,
11 Asbury Park, New Jersey.

12 Q. Why Springstream?

13 A. I have always been such a big fan of their football team. Who wouldn't be? I mean
14 you have Big Man Clarence Clements, Little Steven von Zin and Mad Max
15 Windburg. Plus, it does not hurt that it's a great school. Also, my girlfriend,
16 Rosalita, goes there as well, so that does not hurt either.

17 Q. At the time of the accident, where did you live?

18 A. I lived here in Steelton. I was a junior at Steelton State, which is still the best
19 college in the country, despite that whole baseball thing, if you ask me. I think it
20 just made the community stronger.

21 Q. Who do you live there with?

22 A. I had an apartment off campus with my roommate and best friend, Shane Edge.

23 Q. Anybody else?

24 A. No, not really.

1 Q. What do you mean by not really?

2 A. Well, because we lived off campus, we had a lot of people stay with us. We were
3 also known for throwing some pretty big parties back in those days.

4 Q. How big?

5 A. Huge. Probably averaged over 100 people. In fact, the night of the accident we
6 were having a huge party for the big game.

7 Q. Which big game is that?

8 A. It was the NCAA BCS Championship game. I am so glad they have a playoff now.

9 Q. Oh, I remember that game, if I recall correctly, your Wolves took a pretty big
10 beating. I take it you were not in the best of moods?

11 A. I kind of expected it. That Carlasare team was really good.

12 Q. How many people were at that party?

13 A. Probably about 75. People kept coming in and out all night.

14 Q. Did you have alcohol at the party?

15 A. I mean, of course. We only had beer, but people brought a lot of their own stuff.

16 Q. What kind of stuff?

17 A. There was everything from cheap rum to Bad Dog 40/40. I remember somebody
18 even had a bottle of Jimmy Runner Blue, which was pretty crazy considering that
19 stuff was \$200.00 a bottle. I definitely had to try that.

20 Q. Which actually brings me to my next question; other than the scotch, did you have
21 anything to drink that night?

22 A. No, not really.

23 Q. Again, what do you mean by not really?

1 A. I had a shot of the scotch. I mean, I did not shoot it. You don't chug that stuff. I
2 enjoyed it by sipping it for about an hour.

3 Q. Okay, anything else? I mean, it was a pretty big game and your team was not doing
4 well?

5 A. I already told you, I expected that was going to happen. Anyway, no. Well, yes, I
6 guess. We tapped the keg at seven and . . .

7 Q. I don't mean to interrupt, but A.M. or P.M.?

8 A. P.M. sir. We are not savages.

9 Q. I did not mean to imply anything, we need to make sure the record is clear.

10 A. Okay. Anyway, the party did not start until later, but I did not have anything until
11 we tapped the keg. That night, in addition to the scotch, I probably had a total of
12 four to five beers.

13 Q. How do you know you did not drink more than that?

14 A. I had a bit of date after the game. I did not want to be drunk for that. Did not want
15 to make a bad impression.

16 Q. And then you drove?

17 A. You say it like it was wrong for me to drive.

18 Q. No, you said you drank some alcohol, and we know you were driving at the time
19 of the accident, I was just trying to figure out what happened that evening.

20 A. Well, I was not drunk. Not even a little bit. Just because somebody has some
21 drinks, it does not mean they can't drive. I mean, the officer at the scene even asked
22 me and I told him, but he did not give me a breathalyzer test.

23 Q. Can you tell me about the accident itself?

1 A. Well, like I said, I had a date with Chris. I was driving to meet Chris who was at
2 Montana Max's. I was on my way there when my phone rang. I answered the call,
3 because I have Bluetooth and I do not need to use the actual handset.

4 Q. Who was it?

5 A. It was Chris. Chris asked me to meet somewhere else. Chris was leaving Max's
6 because there were too many drunks there.

7 Q. Do you know what Chris meant?

8 By attorney Simon:

9 Object to the form. You can answer.

10 A. Do I answer?

11 Q. Yes.

12 A. It was Montana Max's Mexican Monday, which means that they had \$1.00
13 margaritas and \$0.50 Coronas. I guess that, combined with the game, meant people
14 were getting really drunk.

15 Q. Have you ever been to Mexican Monday?

16 A. Once, but I left. I did not really care for the bar. It was a bit too much for me.

17 Q. What do you mean by too much?

18 A. There was a lot of out of control drinking. People were getting sloppy. I left after
19 a drink.

20 Q. Do you remember when that was?

21 A. It was a while before the accident. The night before Thanksgiving. We call that
22 amateur night. Everybody goes out because everybody comes home for the
23 holiday.

1 Q. How long did the phone call last?

2 A. I am not sure.

3 Q. What do you mean? Can you explain?

4 A. I was hit by another car.

5 Q. You were on the phone when you were hit?

6 A. Yes.

7 Q. What can you tell me about the collision?

8 A. I was essentially T-boned. I was proceeding through the intersection right
9 alongside Max's. There is a traffic light there on the main street. The exit for
10 Max's parking lot is right there. I had the green light and traffic was moving in
11 front of me. All of sudden this car just came out of the parking lot and ran right
12 into me.

13 Q. Are you familiar with that lot?

14 A. Not really.

15 Q. Can you describe the road there? Are you familiar with that?

16 A. Sure, that is a main road through town. It is straight. There are a lot of street lights.

17 Q. Are there any obstructions on the side of the road that you are aware of?

18 A. No, there are not.

19 Q. Do you know if anything was blocking the driver's line of sight?

20 By attorney Simon:

21 Object to the form. You can answer.

22 Q. Let me rephrase. Did you see anything on the side of the road that blocked your
23 view of the parking lot?

1 A. No, I did not.

2 Q. What happened after you were hit?

3 A. I don't remember much. I was taken to the hospital. I had some broken bones. It
4 took me a while to recover.

5 Q. How did that affect you?

6 A. Other than the pain, I missed a semester of school. I had some concussion problems
7 in the past and I just thought it would be better if I took a medical leave while I
8 recovered.

9 Q. What can you tell me about the concussion problem?

10 A. I used to play hockey. I was pretty good but I took a hit once and I never really
11 recovered.

12 Q. Two o'clock in the morning is a little late for a first date, isn't it?

13 A. It was an odd time yes, but that is just the way things shook out that night.

14 Q. Okay, thank you, those are all of the questions that I have for you.

15 A. Thank you.

16 WHEREUPON the deposition was concluded.

1 **Deposition of Max Petunia**

2 And now, this 28th day of August, 2014, Max Petunia, being duly sworn by the
3 undersigned appeared at the offices of Brody and Brody for the purposes of
4 deposition by oral questioning.

5 (Questioning by S. Scooter Simon)

6 Q. Please state your name for the record?

7

8 A. My name is Max Petunia.

9 Q. How old are you?

10 A. I am 42.

11 Q. Where do you live?

12 A. Here in Steelton. 178 Clay Street.

13 Q. What about Petunia Enterprises, LLC? What can you tell me about that?

14 A. It is a Steelton limited liability company.

15 Q. What is the business address?

16 A. That would be the restaurant location. 707 Grant Street. That is actually right off
17 of Route 60, which is the main drag through town.

18 Q. Any other owners of the LLC?

19 A. No, it is just me.

20 Q. And you are insured?

21 A. Yes, I believe you have my policies. We have a commercial general liability,
22 property damage, and umbrella policy.

23 Q. It is my understanding that your CGL carrier has not covered you for this event?

24 A. There is litigation pending. That is all that I really know.

1 Q. And what is the purpose of the LLC?

2 A. The company owns the restaurant. Montana Max's Good Times Saloon.

3 Q. Can we just refer to it as Max's today?

4 A. Yes, that is fine. That is what most folks call it anyway.

5 Q. Thank you. Tell us a little about the history of Max's.

6 A. Sure. I opened a sports bar at the location about 15 years ago when those things
7 first became popular. However, after a few great years, things started to take a
8 downturn, especially when the Steelton Buccos left town. I then shut the place
9 down and rebranded it as Montana Max's. It was a great fit for the college
10 atmosphere of the town.

11 Q. What do you mean by that?

12 A. We offer something different than the other bars. We set ourselves apart as a great
13 place to let off some steam and do some things you can't do other places. We have
14 a ton of arcade games and other things that let our customers win some prizes at the
15 end of the night. We have Mexican Monday, which is really popular.

16 Q. Oh, is that the night that everybody comes out to get drunk?

17 By Attorney Chippeto

18 Objection. That is entirely inappropriate.

19 A. I will answer the question.

20 By Attorney Chippeto

21 You really shouldn't.

22 A. No, that is okay. That is the night that we have about fifteen different Mexican
23 dishes on sale half off, free salsa and chips, and we have drink specials on one of

1 our pricier beers and most expensive mixed drinks. There are a lot of college kids
2 that come in here that can't normally get these meals or drinks. It is a big deal to
3 them. That is why we push the training so much with respect to the drinks.

4 Q. We will get to the training in the second. Have you ever had any issues before with
5 people getting drunk in your bar and causing any trouble or getting into any
6 accidents?

7 A. No.

8 Q. Are you sure? Because I pulled some police reports, and it looks like there were
9 six fights at your bar over the past four years.

10 A. Fights? Fights happen everywhere. I am pretty sure I know what you are talking
11 about though. In fact, I am glad you brought those up. The reason that you found
12 police reports is because we immediately get the police involved as soon as we
13 think there is going to be a problem. I think you will see that in our policies and
14 procedure manual.

15 Q. Here is the manual, which we have marked as Exhibit F. First, is this your policies
16 and procedures manual?

17 A. Yes.

18 Q. And can you tell me which section you referring to?

19 A. Yes, it is section seven.

20 Q. And while it is all well and good that you get the police involved, what do you do
21 about stopping the fights before they begin?

22 A. We do everything that we can. In fact, I am not aware of any fights that started
23 because alcohol was involved. In fact, most of the fights, you know the six over

1 the past four years, have been about which sports team is better and a couple have
2 been over dates. I am not aware of any incidents in our restaurant that have started
3 as a result of serving too much alcohol.

4 Q. You mean other than the one with Al Overton?

5 A. No, I include that one. I was there that night. We did not do anything wrong.

6 Q. I will get into what happened that night in a moment, but I want to talk to you about
7 your training. It is my understanding that you use TIPS?

8 A. Yes.

9 Q. What is your understanding of TIPS?

10 A. It is a training program where our staff is educated on the dangers of serving VIPs.

11 Q. What are VIPs?

12 A. Visibly intoxicated patrons.

13 Q. Who does the teaching?

14 A. We bring in an outside consultant every six months to train anybody who has been
15 hired in the interim. We use Quality TIPS, or, as they like to be called, Q-TIPS.

16 Q. Are you present for these training sessions?

17 A. Most times. If I am not, my general manager will be there.

18 Q. And what is taught there, other than the spotting of VIPs?

19 A. We are instructed on how to turn VIPs away from the bar and we are instructed on
20 ways to determine if they are driving. Essentially, we keep a list of the local cab
21 services and some Lyber drivers.

22 Q. What is Lyber?

23 A. It is a rideshare service.

1 Q. Okay, so if I understand correctly, you have employees that are trained by Q-TIPS
2 every six months; what happens when an employee is hired after training?

3 A. We have a very rigorous training program with new hires. They are not simply
4 turned loose. New bartenders and servers shadow other veteran servers. The
5 veteran servers are specifically instructed to demonstrate who should and should
6 not be served alcohol.

7 Q. And I assume this is what I am seeing in section seven of your policies and
8 procedures.

9 A. Yes, exactly. Also, many of the servers that we hire come from other places where
10 they have been trained before.

11 Q. What about the shot girls, what are they called again?

12 A. You mean our Ms. Mischievous girls?

13 Q. Yes, tell me about them.

14 A. On some of the nights we expect bigger crowds, we have shot girls walking around
15 selling pre-poured shots. To be honest, those things are pretty watered down.

16 Q. Are they trained on the procedures for spotting and deterring VIPs?

17 A. Not always, unfortunately. They work so randomly, and often we get new ones
18 very frequently. However, they are not allowed to sell multiple shots to the same
19 guest.

20 Q. Were you there on the night of January 7, and morning of January 8, 2013?

21 A. Yes.

22 Q. Do you remember seeing Mr. Overton?

23 A. Yes.

1 Q. Tell me what you remember.

2 A. This kid came in with his friends. It was his twenty-first birthday. The group kept
3 talking about how they were going to do 21 shots. I overheard it several times and
4 I told the staff to keep an eye out for them. This is not the first time somebody said
5 they were going to try that. It never really happens, I took it as a boast.

6 Q. Do you know if he drank before midnight?

7 A. Not to my knowledge. I also spoke with my staff. None of them believe he was
8 served before then either.

9 Q. What about after midnight?

10 A. It seemed to be his plan to get a shot from each of the Ms. Mischievous girls that
11 were working. However, I do not think he had more than four shots and a beer
12 before he and his friends got into a fight.

13 Q. Do you know what they got into a fight about?

14 A. It seemed as though one of them inappropriately touched the shot girl and tried to
15 blame the Overton kid. He got mad and took off. That was between 1:30 and 2:00.

16 Q. And he was allowed to leave?

17 A. Sure. He did not appear to be intoxicated. He said he had a ride. He got into an
18 argument with the bouncer, knocked over a couple of employees' trays, and was
19 escorted out. As he was being led out, he was screaming that Max's was a "shitty
20 excuse for a bar" and that he was getting a ride someplace else.

21 Q. And you did not think to call him a cab?

22 A. No, he said he had a ride.

23 Q. What about the fact that he held up his keys and said "See you later suckers?"

1 A. Nobody really understood what he meant by that.

2 Q. What happened next?

3 A. Everybody went back inside and we assumed he got a ride home.

4 Q. Did Al Overton vomit while in Max's?

5 A. Yes, but one of the employees heard him complaining of a stomachache and saying

6 he must have eaten something bad a few times.

7 Q. Do you sell bottles of Bad Dog at your bar?

8 A. No.

9 Q. How do you get out of your parking lot?

10 A. There is a dedicated exit lane regulated by a traffic light.

11 Q. Can you turn right on red?

12 A. Yes.

13 Q. Which way is Michigan Mike's?

14 A. It is to the left.

15 Q. Is that a competitor?

16 A. Yes, the owner and I do not like each other very much. Their general manager tried

17 to steal a bunch of my employees.

18 Q. Thank you, I have no further questions.

19 WHEREUPON the deposition was concluded

1 **Deposition of Al Overton**

2 And now, this 14th day of February, 2014, Al Overton, being duly sworn by the undersigned
3 appeared at the offices of Brody and Brody for the purposes of deposition by oral
4 questioning.

5 (Questioning by S. Scooter Simon)

6 Q. Please state your name for the record.

7 A. My name is Al Overton.

8 Q. Mr. Overton, where do you live?

9 A. I just moved to Lone Star.

10 Q. So you no longer live in Steelton.

11 A. That's right. I just needed to get out of there after everything that happened.

12 Q. What do you mean by that?

13 A. The accident, me being wrongfully accused of doing something bad. I have never
14 been in trouble in my life and they wanted to pin me for drunk driving.

15 Q. Weren't those charges dismissed?

16 A. They were. But everywhere I go, all I can hear is I am the kid that messed up
17 Quinn.

18 Q. So it is your position that you were not drunk that night?

19 A. Not even in the slightest. I do not remember much about that evening. I did hit my
20 head pretty badly in the accident. I had a pretty bad concussion.

21 Q. But the police report says you were uninjured. Is it wrong?

1 A. Come on, I am not going to complain about bumping my head when Quinn was all
2 banged up. And then I got pulled out of the car, handcuffs were slapped on, and I
3 was told I was being arrested for drunk driving.

4 Q. My understanding is that your BAC was .12.

5 A. That is what the machine said, but that thing was defective. The charges were
6 dropped and my name was cleared.

7 Q. You did get charged with disobeying a traffic signal and reckless driving though?

8 A. Yes, but I was not going to fight that after avoiding the DUI charges. I did not do
9 anything wrong, but I did not want to tempt fate.

10 Q. What do you remember about that night? Let's start with when you got to Max's.

11 A. We got there around 10:00 or 10:30. The football game was on and we were getting
12 ready to celebrate my birthday.

13 Q. Who is "we?"

14 A. Just some of my friends. Steve Barth, Chad Shannon, and Mark Troyan.

15 Q. Do you know where those guys are now?

16 A. No idea. They just kind of fell off the face of the earth. We had a pretty big falling
17 out that night.

18 Q. Okay, I will ask you about that in a moment, but first, did you have anything to
19 drink before midnight.

20 A. No sir, pretty much the whole bar knew it was my 21st birthday. My friends kept
21 telling everybody that I was going to do 21 shots.

22 Q. That was not part of the plan?

23 A. It was not part of my plan. I just wanted to get my first legal beer and some shots.

1 Q. Was it in your plan to drive that night?

2 A. No.

3 Q. Then why did you have your keys to your car?

4 A. I live on the other side of town. Those guys got there together and I was going to
5 get a ride home with them or with Lyber.

6 Q. Okay, have you ever had alcohol before your twenty-first birthday?

7 A. A little, a beer here and there. I have never had any hard liquor.

8 Q. Have you ever been drunk?

9 A. Maybe once or twice.

10 Q. Have you ever driven while drunk?

11 A. Never.

12 Q. Not even on the night of the accident?

13 A. No, sir, I did not.

14 Q. Tell me what happened at midnight.

15 A. Well, I told my friends that I was not doing 21 shots. That was crazy. So we
16 compromised by doing a shot from each of the shot girls that were working that
17 night. There were eight or so shot girls working that night.

18 Q. Do you know how many shots you had?

19 A. Five or six.

20 Q. And you still say you were not drunk.

21 A. I was not. It was over the course of two hours. I had a beer that I was nursing the
22 whole time and I did a shot about every 15 minutes.

23 Q. How much do you weigh?

- 1 A. I am about 185.
- 2 Q. Is that the same at the time of the accident?
- 3 A. No, I have lost some weight. I was around 225 then.
- 4 Q. What happened with your friends that night?
- 5 A. They were extremely aggressive and rude to the shot girls. They kept trying to grab
- 6 them and blame it on me. Finally, I had enough and yelled at them and tried to
- 7 leave.
- 8 Q. What happened when you tried to leave?
- 9 A. The bouncers confronted me and told me to get out because I was harassing the
- 10 shot girls. I got thrown out.
- 11 Q. Did you know Max Petunia?
- 12 A. Sure, everybody knows Montana Max.
- 13 Q. Did you see Max there?
- 14 A. Yes.
- 15 Q. Did you and Max interact at all that night?
- 16 A. Max yelled at the bouncers to kick me out. Max said he did not need some kid who
- 17 had his first pop getting sloppy and ruining the night.
- 18 Q. What happened next?
- 19 A. I held up my keys and said I was going to Michigan Mike's.
- 20 Q. Why did you do that?
- 21 A. Everybody knows Max hates that place. Those two have been involved in some
- 22 epic battles over customers.
- 23 Q. Did you leave right away?

- 1 A. No, I sat in my car for about 20 to 25 minutes trying to cool down.
- 2 Q. Did you have anything else to drink?
- 3 A. Do you mean booze?
- 4 Q. Yes.
- 5 A. No.
- 6 Q. What about the half empty bottle of Bad Dog in your back seat?
- 7 A. I did not have any of that to drink.
- 8 Q. What color was it?
- 9 A. Purple.
- 10 Q. And didn't you have purple stains on your shirt when you were arrested?
- 11 A. That was from one of the shots in the bar.
- 12 Q. What do you remember about the accident?
- 13 A. Not much. I was sitting at the light. It was red. I looked both ways, I did not see
- 14 any cars coming so I pulled out.
- 15 Q. You are telling me you did not see Quinn's car?
- 16 A. No, it came out of nowhere.
- 17 Q. Do you use social media?
- 18 A. Yes.
- 19 Q. What do you use?
- 20 A. I am on Fakebook and Twister.
- 21 Q. How could I find you on Fakebook?
- 22 A. My page is named Al Overton.
- 23 Q. And Twister?

1 A. Overtine 4040

2 Q. To your knowledge, have your Twister or Fakebook page ever been hacked?

3 A. No.

4 Q. So if I were to look at anything posted on those pages, it would have been posted
5 by you?

6 A. I assume so.

7 Q. Thank you, I have no further questions.

8 WHEREUPON the deposition was concluded.

October 15, 2015

S. Scooter Simon, Esquire
Brody & Brody
21 Three Rivers Place
District of Steelton, USA 12345

Re: Chase v. Montana Max

Dear Mr. Simon:

You have asked me to render an opinion as to whether or not Montana Max's Good Times Saloon was negligent in serving Al Overton and permitting him to leave the bar and drive. In summary, it is my opinion, within a reasonable degree of professional certainty, that Montana Max's knew, or should have known, that Al Overton was intoxicated when it served him with alcohol and therefore Montana Max's conduct fell below the standard of care of a reasonable bar owner. Further, because Montana Max's knew, or should have known, that Al Overton was intoxicated, Montana Max's actions in permitting Al Overton to leave the bar and drive fell below the standard of care.

In preparation of authoring these opinions, I have reviewed the depositions of Quinn Chase, Montana Max, and Al Overton. I have also reviewed all of the photographs produced in this case, the social media documents, Montana Max's policy and procedures, and the police report. In addition to these materials, I have used my experience, training, and professional knowledge in arriving at my opinions. While I have already provided you with the summary of my opinions, please let me explain the underlying basis for reaching them.

FACTS

Based upon my review of the materials provided, Al Overton arrived with a group of friends at Montana Max's at approximately 10:30 p.m. on the night of Monday, January 7, 2013. Al Overton's twenty-first birthday was January 8, 2013. It is not entirely clear as to whether or not Al Overton had any alcohol before midnight, but it does not appear likely. Upon arrival, Al Overton's friends were boasting how Al Overton was turning 21 and that he was going to shoot 21 shots of alcohol that night in celebration. The evidence indicates that the group of friends told multiple employees and patrons of the bar.

It is known that at midnight, Al Overton began consuming alcohol. My understanding is that Al Overton began taking shots from various Montana Max's Ms. Mischievous girls. These are what are commonly termed "shot girls" in the industry. These are usually young and attractive girls who patrol the bar area selling shots of liquor. Montana Max's had eight shot girls working that night, each selling a different kind of shot. I know that Al Overton had at least six shots.

At some point between 1:30 and 2:00 a.m., Al Overton got into an open and hostile argument with his friends. He stumbled toward the door, said something to the bouncers, and was apparently escorted out of the bar. He then got into his vehicle, ran a red light, and slammed into Quinn Chase's vehicle.

RESPONSIBLE SERVICE OF ALCOHOL

In Steelton, it is illegal to operate a motor vehicle with a blood alcohol content (BAC) of .08 or above. It is undisputed that Al Overton did not have any alcohol prior to midnight on January 8, 2013. Therefore, prior to leaving Max's, all of the alcohol consumed by Al Overton was consumed on the bar's premises. I am aware there was an empty bottle of Bad Dog found in the back seat of Al Overton's car following the accident, but there is no evidence that Al Overton consumed any of the Bad Dog prior to the accident. Approximately 65 minutes after the accident, Al Overton's BAC was .12. However, it is my understanding that Al Overton had little experience with alcohol before his twenty-first birthday, so he was mostly unfamiliar with the effects of alcohol.

Max's claims that it has trained and certified its servers, bartenders, and shot girls in Training for Intervention Procedures, which is known as TIPS, and widely used within the hospitality industry. The Steelton Liquor Control Board encourages the use of See Times to Oppose Problems, or STOP, and most restaurants and bars in Steelton use STOP, though there is not much substantive difference between the two.

TIPS focuses on information, skills training, and practice and rehearsal. Employees are educated on visible signs of intoxication, the meaning of BAC, absorption rate factors, and methods of preventing alcohol-related incidents. The employees are then given the opportunity through role playing exercises to test their skills. Although Max's utilized this method, it trained new employees only once every six months. It had been approximately five months since the last training session at the time of vehicle accident at issue in this case and many of the shot girls had not been trained as they were hired over the holiday break.

Max's employees had multiple opportunities to prevent Al Overton from becoming intoxicated and subsequently driving. First, Al Overton and his friends told multiple employees how Al Overton was going to do 21 shots for his birthday. A reasonable bar owner would have asked the party to leave at that time knowing full well that no reasonable person would be able to consume 21 shots safely. Further, upon the date turning to January 8, Al Overton's birthday, Al Overton and his friends became singularly focused on performing a shot with each of the shot girls. Having never really consumed alcohol before, the alcohol would most likely have had a profound effect, although it is clear that each individual will react with chemical substances in a non-uniform fashion.

Next, Al Overton became visibly agitated got into a fight with his friends. Although I am uncertain as to what the fight was about, Al Overton was apparently so intoxicated that he stumbled and knocked over a tray of drinks. He then vomited, got into an argument with a bouncer, and was escorted out. He told the bouncers that he did not want to drink

at their “shitty excuse for a bar” and said he was driving to Michigan Mike’s Marvelous Malts, a local microbrew.

It is my opinion, within a reasonable degree of professional certainty, that Max’s failure to refuse to serve Al Overton and his party upon hearing their boastful representations that they were going to do 21 shots fell below the standard of care. Further, Max’s failure to train its shot girls to recognize the signs of intoxication and instructing them not to serve individuals that appeared to be intoxicated violated the standard of care.

Further, when Al Overton became violent, sick, and knocked over a tray of drinks, Max’s had the opportunity to prevent Al Overton from driving by calling a cab or other driving service. I do recognize that it is possible Al Overton may have gotten sick from bad food. Finally, the bouncers that escorted Al Overton from the bar were specifically aware that he was going to be driving but did nothing to stop it.

Had Max’s acted to either prevent Al Overton from consuming alcohol and/or driving, Al Overton would not have caused the accident on the morning of January 8, 2013.

My opinions are offered within a reasonable degree of professional certainty.

Very truly yours,

Sidney Crosby

**CURRICULUM VITAE
SIDNEY CROSBY**

Professional Address: 87 Igloo Dr.
Steelton

Home Address: 269 Field Club Circle
Steelton

Education: BA Hotel and Hospitality Management
2008 Steelton State

Work Experience: 2008-2012 Assistant Manager
TGI McAppleChili's Outback Steaks

2012-Present General Manager Michigan Mike's

2010-Present Certified STOP training instructor

Certifications: 2008 Advanced STOP Techniques

2010 Mixologist Certificate

Publications: 2009 "Are your regulars a liability?"
Bars Weekly

2010 "STOP using TIPS"
Hotel and Bar Reporter

2011 "Specialty Drinks: A Recipe for
Disaster?"
Bartenders Journal

October 15, 2015

Lizzie Chippeto, Esquire
Beau, Bo and Bogey
1919 Dark Tower Rd.
District of Steelton, USA 12345

Re: Montana Max's Alleged Liability for Al Overton

Dear Ms. Chippeto:

I have reviewed the information that you have provided regarding this matter. That information included all of the deposition transcripts taken in this case and those exhibits on the joint exhibit list. Based upon that information, I have been able to determine that Montana Max's did not violate the standard of care with respect to serving alcohol to Al Overton.

Al Overton was involved in a motor vehicle accident on the morning of January 8, 2013 after leaving Montana Max's. Following the accident, though it is not clear exactly what time, Al Overton was given a breathalyzer test. That breathalyzer test indicated that Al Overton's blood alcohol content (BAC) was .12. From the records, it appears that the breathalyzer was given at least one hour after Al Overton stopped drinking, but most likely closer to the two-hour mark. The question, however, involves whether or not Al Overton displayed signs of intoxication at the time he was still a patron of Montana Max's.

To that end, his BAC would depend on the amount of alcohol that was consumed, how much food was in his stomach, and the rate of metabolism of alcohol. If Al Overton was still absorbing alcohol and had food in his stomach, his BAC would not have peaked until after the time of the accident. It is certain from the record that Al Overton's BAC at the time he was inside Montana Max's is unknown, but it is clear that it was .00 as late as 12:00 a.m. on the morning of January 8, 2013.

Al Overton testified that he had five or six shots and one beer in an approximately two-hour time period. Although his BAC was certainly increasing, he would not have demonstrated signs of intoxication while at Max's. A person that has any experience with alcoholic beverages generally needs to reach a BAC of .15 before demonstrating obvious signs of intoxication.

In that regard, my review of the record reveals that Al Overton did nothing that would warrant Max's or its personnel to suspect that he was intoxicated. While there is evidence that Al Overton did vomit and get into a heated exchange, those actions are explained by the fact that Al Overton ate something that did not sit well with him. Further,

Al Overton's temper flaring was not a result of too much alcohol but of being unjustly accused of touching a woman that he did not touch.

Finally, Max's policies and procedures manual adequately prepares Max's employees on an appropriate method for monitoring alcohol consumption and excessive consumption. The policies specifically break down the manner in which alcohol is processed by the body and demonstrate what happens once the liver begins processing alcohol. The policies specifically instruct employees not to serve customers alcohol who, despite what an estimated BAC may be, display signs of intoxication. While not each and every employee was trained on January 7 and 8, 2013, there was enough overlap to ensure that the policies were properly followed.

Taking all of these facts into consideration, it is my opinion, within a reasonable degree of professional certainty that Max's did nothing wrong on the night of January 7, 2013, and the morning of January 8, 2013. Max's has adequate procedures to prevent service of intoxication to visibly intoxicated patrons, and nothing within those procedures warranted Max's from refusing to provide alcohol to Al Overton.

Very truly yours,

Jean Malkin

JEAN MALKIN, Ph.D

480 Pennsylvania Ave.

Steelton

Education

B.S. Pharmacy and Hospitality, Steelton State 1995

M.S. Toxicology, Steelton State 1997

Ph.D. Pharmaceutical Chemistry, Steelton State 2000

Employment History

BUFFALO WACKY WINGS 2013 – Present

Retained by national restaurant and bar chain to implement and supervise alcohol training in multiple locations across the United States and select locations in Canada.

Developed employee handbook and operating procedures for appropriate alcohol monitoring and consumption.

WISTEN HOTELS 1999 – 2013

TIPS Instructor for regional hotel chain. Required travel to hotel locations to provide education and instruction on service of intoxicated patrons.

Commonwealth of Steelton Driver's Accident Report

Exhibit A

FORWARD THIS REPORT WITHIN 5 DAYS TO THE Steelton
BUREAU OF HIGHWAY SAFETY AND TRAFFIC ENGINEERING

DEPARTMENT OF TRANSPORTATION,

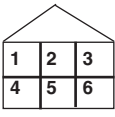
TIME	Date of Accident (Month - Day - Year) January 8, 2013	County Steelton	Day of Week Tuesday	Hour (AM/PM) 0230	Check if Hit-Run <input type="checkbox"/>	
	SEVERITY : Was Towing Required? UNIT 1: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO UNIT 2: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Number of Vehicles Involved 2	Number Injured 1	Number Killed 0	
LOCATION	TO PROPERLY LOCATE ACCIDENTS, USE AS LANDMARKS; SR SEGMENT NUMBERS, MILEPOSTS; INTERSECTION OF TWO HIGHWAYS; CITY, BOROUGH, TOWNSHIP, OR COUNTY LINES.	City - Borough - Township Steelton	On: (Street Name or Highway Number) 707 Grant St. SR 60			
		At Intersection With: Parking lot to Max's	If Not At Intersection : _____ Feet N S E W Of Station Marker - Intersection - Etc...			
VEHICLE - NO 1	Operator's Name (First, Middle, Last) Mr. Al Overton Mrs. _____ Miss _____		Date of Birth 1/8/1992	Operator's License Number and State DS4708936		
	Address (Street, City, State, Zip Code) 430 Sharon Ave, Steelton		Vehicle License Number and State DS BADDAWG			
	Owner's Name (First, Middle, Last) Mr. SAME Mrs. _____ Miss _____		Year 96	Make Ford	Model Taurus	
	Address (Street, City, State, Zip Code)		TITLE OR OUT-OF-STATE VIN			

USE THE FOLLOWING SECTION TO RECORD VEHICLE NUMBER 2, PEDESTRIAN, OR OTHER PROPERTY

OTHER	Operator's Name (First, Middle, Last) Mr. Quinn Chase Mrs. _____ Miss _____		Date of Birth 11/22/1991	Operator's License Number and State DS6254738		
	Address (Street, City, State, Zip Code) 1024 Lancaster Rd., Steelton		Vehicle License Number and State DS UND#1			
	Owner's Name (First, Middle, Last) Mr. SAME Mrs. _____ Miss _____		Year 11	Make Mazda	Model 3	
	Address (Street, City, State, Zip Code)		TITLE OR OUT-OF-STATE VIN			
	Description of Damaged Property None other than vehicles		Check If State Owned Property <input type="checkbox"/>			

IF MORE VEHICLES/PEDESTRIANS/OCCUPANTS ARE INVOLVED USE ADDITIONAL REPORTS.

PERSONS INVOLVED	NAME	AGE	SEX	VEH.NO.	INJURY CLASS	ACTIVE RESTRAINT	INJURY TYPE	SEATING POSITION	ACTIVE RESTRAINT	PASSIVE RESTRAINT
		Al Overton	21	M	1	0 - No INJURY	0 - NONE	0	1	0
	Quin Chase	22		2	1 - DEATH	1 - SHOULDER HARNESS ONLY	2	1	0	1
					2 - MAJOR INJURY	2 - SEAT BELT ONLY				
					3 - MODERATE INJURY	3 - COMBINATION (HARNESS & BELT)				
					4 - MINOR INJURY	4 - CHILD RESTRAINT				
					9 - UNKNOWN	7 - MOTORCYCLE HELMET				
					POSITION	8 - OTHER				
					1 - DRIVER	9 - UNKNOWN				
					2-6 - PASSENGER	PASSIVE RESTRAINT				
					7 - PEDESTRIAN	0 - NONE OR PEDESTRIAN				
					8 - OTHER	1 - AIRBAG (DEPLOYED)				
						2 - AIRBAG (NOT DEPLOYED)				
						3 - AUTOMATIC SEAT BELT				
						8 - OTHER				
						9 - UNKNOWN				



Insurance Information	Company Progression	Insurance Information	Company County Barn
Unit 1	Policy No. 123456789	Unit 2	Policy No. unknown STAC 40

WEATHER:

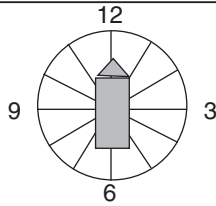
Rain Snow Clear Foggy Other

ROADWAY:

Wet Snowy Dry Icy Rain

0 = None
 1 = 1 o'clock
 2 = 2 o'clock
 3 = 3 o'clock
 4 = 4 o'clock
 5 = 5 o'clock
 6 = 6 o'clock
 7 = 7 o'clock
 8 = 8 o'clock
 9 = 9 o'clock

10 = 10 o'clock
 11 = 11 o'clock
 12 = 12 o'clock
 13 = Top of Vehicle
 14 = Vehicle Undercarriage
 15 = Use when the initial impact was with a towed unit (such as utility trailer vehicle, horse van, etc...)
 99 = Unknown



VEHICLE NUMBER 1:

INITIAL IMPACT POINT 11-12
 LEGAL SPEED 5 MPH
 ESTIMATED SPEED 7-10 MPH

VEHICLE NUMBER 2:

INITIAL IMPACT POINT 3-4
 LEGAL SPEED 35 MPH
 ESTIMATED SPEED 30 MPH

INSTRUCTIONS:

1. Draw Diagram As Clearly As You Can.
2. Show Your Vehicle As Number 1.
3. Label All Streets, Highways, and Landmarks.
4. Draw An Arrow In Circle Below So It Points North.
5. Complete Narrative.

Indicate North By Arrow



See attached

GIVE A DETAILED DESCRIPTION OF THE ACCIDENT IMMEDIATELY PRIOR TO IMPACT, AT IMPACT, AND IMMEDIATELY AFTER IMPACT, REFER TO VEHICLES BY NUMBERS

Vehicle 1 was exiting parking lot of Max's bar. Vehicle 1 was at a traffic light that was red for Vehicle 1's direction of travel. Vehicle 1 was permitted to turn right on red. Vehicle 1 appeared to turn right on red, exited the parking lot and ran into Vehicle 2. Vehicle 2 was progressing on Grant St. toward Max's bar. Vehicle 2 was struck broad side by Vehicle 1. Both vehicles came to a complete stop.

SIGNATURE

DATE

POLICE INVESTIGATED: YES NO

If Yes, Name of Police Department: SPD

COMMONWEALTH OF STEELTON

Driver's Accident Report

The Driver's Accident Report Form is required to be completed by **ALL** drivers involved in motor vehicle traffic accidents occurring within the Commonwealth of Steelton and involves:

- (1) **injury** to or **death** of any person; or
- (2) damage to any vehicle involved to the extent that it cannot be driven under its own power in its customary manner without further damage or hazard to the vehicle, other traffic elements, or the roadway, and therefore requires **towing**.

The primary objective of this Form is to obtain information which can be used to develop accident prevention and reduction programs aimed at reducing accidents and accident losses. In order for these programs to succeed, every attempt must be made to obtain the information for all items listed on the Report Form. Compliance with the following instructions will help to assure that the Report is filled out completely and accurately.

A copy of the completed Accident Report should be retained for your records. If copies are requested from the Department of Transportation, a fee of \$5.00 per copy will be required to cover our processing costs.

GENERAL INSTRUCTIONS FOR COMPLETING DRIVER'S ACCIDENT REPORT

Use a ballpoint pen and print all required information. Fill in every block applicable. The Form is self-explanatory. However, the following guidelines should be utilized:

- 1. For the Accident Location** - - - Be sure to indicate the name of the City, Borough, or Township where the accident occurred as well as the Street name or Highway Route Number. If the accident occurred at an intersection, identify the name of the Street or Highway Route Number of the intersecting Roadway.

If the accident did not occur at an Intersection, please use the nearest Cross Street, Mile Posts, or Segment Markers. Segment Markers are signs erected along the roadside. Where possible, the signs are placed at physical features such as bridges, pipes, or intersections. Mile Posts are generally erected along the roadside of Interstates. Do not use House Numbers, Utility Poles, etc. as reference points.
- 2. For the Vehicles, Drivers and Pedestrians** - - - Copy information about drivers and vehicles directly from the official **Driver's License, Vehicle Registration Card, and Proof of Financial Responsibility Card.**
- 3. Persons Involved** - - - Record the names and addresses of all occupants (including Drivers) in the vehicles involved and **ALL INVOLVED PEDESTRIANS** regardless of injury severity. Begin with the Driver of Unit 1, then list the other occupants of Unit 1, if any. Repeat the procedure with any other units.
- 4. Injury, Seating Position, Safety Restraints** - - - If applicable, select the appropriate codes for all occupants and pedestrians for the type of injury incurred, seating positions of all occupants, and the type of safety device used.
- 5. Damage Area of Vehicle** - - - Select the appropriate code for the Initial Impact Point for each vehicle involved. To indicate the impact area, use clock points as shown at the vehicle representation on the back of the report.
- 6. Speed Limit and Travel Speed** - - - Enter the speed limit of the roadway at the accident site. If the speed limit is not posted, write NP.
Enter your estimate of the travel speed of each vehicle immediately before the accident.
- 7. For the Accident Diagram** - - - The diagram is a visual representation of the accident location and the events that occurred. Show the movement of the vehicles, identify the roadways and be sure to include the North Arrow displayed on the back of the Report Form.
- 8. For the Narrative** - - - Describe the actions of all involved persons and vehicles before, during and after the collision. Be as factual as possible and use the same Unit Numbers as those on the front of the Report to identify the vehicles and pedestrians. Avoid such brief narratives as "Unit 1 hit Unit 2".

IF MORE THAN TWO (2) VEHICLES ARE INVOLVED, OR ADDITIONAL SPACE IS NEEDED FOR OCCUPANTS, PLEASE USE ANOTHER FORM TO CAPTURE THE REQUIRED INFORMATION. IN THESE CASES, STAPLE REPORTS TOGETHER BEFORE SUBMISSION.

Max S

Parking Lot

Parking Lot

SR 60



Three way traffic signal



Save

About

- Born: Steelton
- Family: Only my Bros!
- (edit and add as many lines as you like!)



Bob Daley

1/8/2013

Do you need a ride? I heard things got pretty crazy. Too many shots!

Like · Comment · Edit · Delete



Al Overton

I did not have too much to drink. Just in the car looking at the Dog. Might drive out of here.

Like · Edit · Delete



Al Overton

1/7/2013

Its the big day, finally going to be 21!

Like · Comment · Edit · Delete

Liked by you, Fakebook and 25 others



Steve Barth 21 shots, BAD DOG!!!

Like · Edit · Delete

Liked by Mike Gianantonio, Fakebook and 25 others



Chad Shannon 21!!!!!!

Like · Edit · Delete



Lynn Overton Be careful tonight baby, please do not do 21 shots

Like · Edit · Delete



Al Overton I am not going to do 21 shots, mom. I will be careful!

Like · Edit · Delete



Lynn Overton Just use your head

Like · Edit · Delete



Mark Troyan 21 Shots!!

Like · Edit · Delete

twister

Going out for my 21st! Going to finish the night off with some Bad Dog!!!

01/07/13, 10:30 pm via Tweetdeck



Overtine4040

Al Overton

Selection Policies and Procedures

SECTION 7 Alcohol Service—Intoxicated Patrons

Montana Max’s strives to be a responsible corporate citizen and exemplary member of the community. As employees, you are the first line of defense to ensure that customers have a good time but do not put themselves or other members of the community in danger.

7.1 We Sell Alcohol to the General Public. We are fully licensed and authorized to do so by Steelton. But, we cannot sell alcohol if we do not do so responsibly. We can get fined and you could lose your job.

7.1.1. Alcohol and the Body. You cannot sell alcohol without understanding what alcohol does to the human body. How is alcohol absorbed into the body and what can we do to make sure our guests do not absorb too much?

When a guest takes a drink of alcohol, it is important to remember that five percent is absorbed in the mouth; twenty percent is absorbed through the stomach lining and the rest is generally absorbed by the small intestines. While alcohol is absorbed in multiple places, it can only be eliminated by the liver. The liver is capable of removing approximately one drink every hour. As such, any excess alcohol remains in the bloodstream until such time that the liver is able to remove it.

7.2 BAC. It would be unreasonable to expect you to track each guest’s BAC. Nor, are you legally required to do so. However, taking what we just learned about the body’s consumption of alcohol, you can estimate BAC and successfully monitor other signs of intoxication as to make necessary decisions as to service. REMEMBER, this is only a guide. There are other factors that may affect BAC.

Men and Women After One Hour of Drinking

BODY WEIGHT IN POUNDS								
DRINKS	120	140	160	180	200	220	240	260
1	.01	.01	.01	.01	.00	.00	.00	.00
2	.05	.04	.03	.03	.02	.02	.02	.01
3	.08	.06	.05	.05	.04	.04	.03	.03
4	.11	.09	.08	.07	.06	.05	.05	.04
5	.14	.12	.10	.09	.08	.07	.06	.06
6	.17	.15	.13	.11	.10	.09	.08	.07
7	.20	.17	.15	.13	.12	.10	.09	.09
8	.23	.20	.17	.15	.13	.12	.11	.10
9	.27	.23	.20	.17	.15	.14	.13	.11
10	.30	.25	.22	.19	.17	.15	.14	.13

DISCLAIMER: THIS CHART IS TO BE USED AS A TOOL AND DOES NOT GUARANTEE A SPECIFIC BAC

It is important to note that BAC continues to rise after every consecutive hour that alcohol is served.

7.2.1 Factors Affecting BAC. Remember, that a person's body type and age all affect a person's susceptibility to intoxication. People with a higher percentage of body fat are more susceptible to intoxication than those who are lean.

- A person that is angry or under stress may experience reduced blood flow to the abdomen which, in turn, will slow absorption of alcohol. Upon returning to a calm state, blood flow will normalize and a person may experience an increase in BAC;
- Medications can impact the rate of alcohol absorption;
- Food will keep alcohol in the stomach longer and therefore will decrease absorption time; and
- Carbonated beverages may speed the rate at which alcohol is absorbed.

7.3 Assessing Alcohol Intake. Always count the number of drinks served to a patron while simultaneously observing their behavior. Also make sure to know the kind of drink. Some drinks served here at Max's have higher alcohol content than others.

7.3.1 Bar Tabs. Bar tabs can be used to keep track of a guest's drinks. Each time a party orders a drink, place a receipt in a clean high ball glass in front of that party. Every time a new drink is ordered, remove the old tab and a replace with the new tab so an accurate count can be made.

7.3.2 Wandering Guests. At times, guests will move about the restaurant. Under these circumstances, behavioral observation must be the prime source of information gathering.

7.4 Observing Behavior.

7.4.1 Observation of Guests. Change of behavior is one of the best indicators of intoxication. For instance, a guest that enters the restaurant and is quiet who then suddenly becomes boisterous and loud after a drink or two should be observed carefully.

7.4.2 Relaxed Inhibitions. If a guest becomes overly friendly, depressed, loud or rude, begin careful observation of that guest to ensure he or she is not served if intoxicated.

7.4.3 Impaired Motor Coordination. This is perhaps one of the most obvious tells of an intoxicated patron. When a guest begins stumbling, tripping, spilling drinks, or slurring their speech, he or she should not be served any further alcohol.

7.5 Preventing Intoxication. There are many ways for you to prevent guest intoxication.

- It is company policy to have full kitchen service until 30 minutes before last call. Food will slow down alcohol consumption;
- Provide guests with ice water and attempt to sell non-alcoholic drinks;
- Be aware of special events like birthday parties, especially 21st birthday parties; and
- Other than a shot and a beer, never sell two drinks at one time to the same guest.

7.6 Procedure for Intoxicated Guests Who Attempt to Leave. You should never let a guest that you suspect to be intoxicated leave the premises. Always suggest calling a cab or having a friend take them home. Provide free food until their ride arrives. However, should a guest be agitated but not intoxicated, make every effort to remove the guest as soon as possible.

Pertinent Sections of Steelton Liquor Control Board Statute and Regulations

Section 493

It shall be unlawful--

(1) Furnishing liquor or malt or brewed beverages to certain persons. For any licensee or the board, or any employee, servant, or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, or to any minor. Provided further, that notwithstanding any other provision of law, no cause of action will exist against a licensee or the board or any employee, servant, or agent of such licensee or the board for selling, furnishing, or giving any liquor or malt or brewed beverages or permitting any liquor or malt or brewed beverages to be sold, furnished, or given to any insane person, any habitual drunkard or person of known intemperate habits unless the person sold, furnished or given alcohol is visibly intoxicated or is a minor.

(2) Liability. No licensee shall be liable to third persons on account of damages inflicted upon them off of the licensed premises by customers of the licensee unless the customer who inflicts the damages was sold, furnished, or given liquor or malt or brewed beverages by the said licensee or his agent, servant, or employee when the said customer was visibly intoxicated.

Section 494--Penalties

Any person who shall violate any of the provisions of this article, except as otherwise specifically provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), and on failure to pay such fine, to imprisonment for not less than one month, nor more than three months, and for any subsequent offense, shall be sentenced to pay a fine not less than three hundred dollars (\$300), nor more than five hundred dollars (\$500), and to undergo imprisonment for a period not less than three months, nor more than one year, or both. If the person, at or relating to the licensed premises, violates section 493(1), he shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment for a period not less than three months, nor more than one year, or both.

Section 3809

Restriction on alcoholic beverages.

(a) General rule.--Except as set forth in subsection (b), an individual who is an operator or an occupant in a motor vehicle may not be in possession of an open alcoholic beverage container or consume an alcoholic beverage in a motor vehicle while the motor vehicle is located on a highway in this Commonwealth.

(b) Exception.--This section does not prohibit possession or consumption by any of the following:

- (1) A passenger in the passenger area of a motor vehicle designed, maintained, or used primarily for the lawful transportation of persons for compensation. This paragraph includes buses, taxis, and limousines.
- (2) An individual in the living quarters of a house coach or house trailer.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STEELTON

QUINN CHASE;

Plaintiff,

v.

PETUNIA ENTERPRISES, LLC
d/b/a MONTANA MAX'S GOOD
TIMES SALOON;

Defendant.

JURY INSTRUCTIONS

BELIEVABILITY OF WITNESSES GENERALLY

As judges of the facts, you decide the believability of the witnesses' testimony. This means that you decide the truthfulness and accuracy of each witness' testimony and decide whether to believe all, or part, or none of that witness' testimony. The following are some of the factors that you may and should consider when determining the believability of the witnesses and their testimony:

- a. How well could each witness see, hear, or know the things about which he or she testified?
- b. How well could the witness remember and describe those things?
- c. Was the ability of the witness to see, hear, know, remember, or describe those things affected by age or by any physical, mental, or intellectual deficiency?
- d. Did the witness testify in a convincing manner? How did the witness look, act, and speak while testifying?

- e. Was the testimony uncertain, confused, self-contradictory, or presented in an evasive manner?
- f. Did the witness have any interest in the outcome of the case, or any bias, or any prejudice, or any other motive that might have affected his or her testimony?
- g. Was a witness' testimony contradicted or supported by other witnesses' testimony or other evidence?
- h. Does the testimony make sense to you?
- i. If you believe some part of the testimony of a witness to be inaccurate, consider whether that inaccuracy cast doubt upon the rest of that same witness' testimony. This may depend on whether the inaccuracy is in an important matter or in a minor detail.
- j. You should also consider any possible explanation for the inaccuracy. Did the witness make an honest mistake or simply forget, or was there a deliberate attempt to present false testimony?
- k. If you find that a witness intentionally lied about a significant fact that may affect the outcome of the trial, you may, for that reason alone, choose to disbelieve the rest of that witness' testimony. But, you are not required to do so.
- l. As you decide the believability of each witness' testimony, you will at the same time decide the believability of other witnesses and other evidence in the case.
- m. If there is a conflict in the testimony, you must decide which, if any, testimony you believe is true.

As the only judges of believability and facts in this case, you, the jurors, are responsible for giving the testimony of every witness, and all the other evidence, whatever credibility and weight you think it is entitled to receive.

EXPERT TESTIMONY

During the trial you have heard testimony from both *fact* witnesses and *expert* witnesses. To assist juries in deciding cases such as this one, involving scientific, technical, or other specialized knowledge beyond that possessed by a layperson, the law allows an expert witness with special education and experience to present opinion testimony.

An expert witness gives his or her *opinion*, to a reasonable degree of professional certainty, based upon the assumption of certain facts. You do not have to accept an expert's opinion just because he or she is considered an expert in his or her field.

In evaluating an expert witness' testimony and in resolving any conflicting expert witness' testimony, you should consider the following:

- a. The witness' knowledge, skill, experience, training, and education;
- b. Whether you find that the facts the witness relied upon in reaching his or her opinion are accurate; and,
- c. All the believability factors I have given to you.

EXPERT OPINION—BASIS FOR OPINION GENERALLY

In general, the opinion of an expert has value only when you accept the facts upon which it is based. This is true whether the facts are assumed hypothetically by the expert, or they come from the expert's personal knowledge, from some other proper source, or from some combination of these.

WEIGHING CONFLICTING EXPERT TESTIMONY

In resolving any conflict that may exist in the testimony of expert witnesses, you are entitled to weigh the opinion of one expert against that of another. In doing this, you should consider the relative qualifications and reliability of the expert witnesses, as well as the reasons for each opinion and the facts and other matters upon which it was based.

CONFLICTING TESTIMONY

You may find inconsistencies *within* the testimony of a single witness, or conflicts *between* the testimony of several witnesses. Conflicts or inconsistencies do not necessarily mean that a witness intentionally lied. Sometimes two or more persons witnessing the same incident see, hear, or remember it differently. Sometimes a witness remembers incorrectly or forgets. If the testimony of a witness seems inconsistent within itself, or if the testimony given by several witnesses conflicts, you should try to *reconcile* the differences. If you cannot reconcile the differences, you must then decide which testimony, if any, you believe.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

The evidence presented to you may be either *direct* or *circumstantial evidence*. *Direct evidence* is testimony about what a witness personally saw, heard, or did. *Circumstantial evidence* is testimony about one or more facts that logically lead you to believe the truth of another fact. You should consider both *direct* and *circumstantial* evidence in reaching your verdict. You may decide the facts in this case based upon circumstantial evidence alone.

VICARIOUS LIABILITY (EMPLOYER ALONE SUED— RELATIONSHIP NOT IN DISPUTE)

It is admitted that the staff at Montana Max's were the employees of the defendant and at the time of the occurrence, were then and there engaged in furthering defendant's interests, activities, affairs, or business. In such circumstances, the defendant as the employer is liable for any negligent acts or omissions of its employees.

EMPLOYER LIABILITY FOR NEGLIGENT SUPERVISION OF EMPLOYEE

A person conducting activity through servants or other agents is liable for harm to others if the person is negligent or reckless in supervising the activity or in permitting, or failing to prevent, negligent or other wrongful conduct by persons who are its employees, servants, or agents, upon premises under his or her control.

In determining whether Montana Max's was negligent in supervising its employees, servants, or agents, you should consider whether Montana Max's knew or should have known that its employees were engaging in behavior or conduct that rendered him or her unfit or incompetent to work in the position at Montana Max's.

NEGLIGENCE—DEFINITION

In this case you must decide whether the Defendant was negligent. I will now explain what negligence is. A person must act in a reasonably careful manner to avoid injuring others. The care required varies according to the circumstances and the degree of danger at a particular time. You must decide how a reasonably careful person would act under the circumstances established by the evidence in this case. A person who does something a reasonably careful person would not do under the circumstances is negligent. A person also can be negligent by failing to act. A person who fails to do something a reasonably careful person would do under the

circumstances is negligent.

STANDARD OF CARE

In order to meet his or her burden of proof under the dram shop law, Plaintiff must prove that:

- a. An employee or agent of Montana Max's served alcohol to someone at a time that that person was visibly intoxicated. Whether someone is "visibly intoxicated" depends not on blood alcohol content or number of drinks, but rather on apparent signs of intoxication like bloodshot eyes, slurred speech and staggering. Plaintiff may prove visible intoxication through circumstantial evidence, like blood alcohol measures or a guilty plea to a DUI; and,
- b. Montana Max's decision to serve alcohol to Al Overton caused plaintiff's injuries.

BURDEN OF PROOF

In civil cases, the Plaintiff has the burden of proving his claims.

The Plaintiff must prove his or her claims by a legal standard called "a preponderance of the evidence." Preponderance of the evidence means the claim is more likely true than not.

If, after considering all the evidence, you find the Plaintiff's claims are more likely true than not, you must find for the Plaintiff.

Think about an ordinary balance scale with a pan on each side to hold objects. Imagine using the scale as you deliberate in the jury room. Place all the evidence favorable to the Plaintiff in one pan. Place all the evidence favorable to the Defendant in the other. If the scales tip, even slightly, to the Plaintiff's side, then, you must find for the Plaintiff. If, however, the scales tip even slightly on the Defendant's side, or if the two sides balance, then you must find for the Defendant.

In this case, the Plaintiff has the burden of proving the following claims:

- a. The Defendant was negligent;
- b. The Defendant's negligence was a factual cause in bringing about the harms or damages; and

FACTUAL CAUSE

In order for Plaintiff to recover in this case, Defendant's negligent conduct must have been a factual cause in bringing about harm. Conduct is a factual cause of harm when the harm would not have occurred absent the conduct. To be a factual cause, the conduct must have been an actual, real factor in causing the harm, even if the result is unusual or unexpected. A factual cause cannot be an imaginary or fanciful factor having no connection or only an insignificant connection with the harm.

To be a factual cause, Defendant's conduct need not be the only factual cause. The fact that some other causes concur with the negligence of the Defendant in producing an injury does not relieve the defendant from liability as long as his or her own negligence is a factual cause of the injury.

VIOLATION OF STATUTE—NEGLIGENCE PER SE

The law provides that Max's is obligated to certain state regulations pertaining to Max's service of alcohol. The regulations preclude Max's from serving alcohol as follows:

Max's, or any employee, servant, or agent of Max's, or any other person, to sell, furnish, or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated. However, Max's will not be liable to third persons on account of damages inflicted upon them off of Max's premises by customers of Max's unless the customer

who inflicts the damages was sold, furnished, or given liquor or malt or brewed beverages by Max's or its agent, servant, or employee when said customer was visibly intoxicated.

If you find that Max's violated these regulations, you must find that Max's was negligent.

If you find that Max's did not violate these regulations, then you must still decide whether Max's was negligent because they failed to act as a reasonably careful person would under the circumstances established by the evidence in this case.

COMPARATIVE NEGLIGENCE

Defendant claims that Plaintiff was negligent and Plaintiff's negligence was a factual cause of Plaintiff's injury. Defendant has the burden of proving by a fair preponderance of the evidence that Plaintiff was negligent and that the Plaintiff's negligence was a factual cause of the plaintiff's harm. Plaintiff does not have the burden to prove he was *not* negligent. The burden is not on Plaintiff to prove his or her freedom from negligence. You must determine whether Defendant has proven that Plaintiff, under all the circumstances, failed to use reasonable care for his or her own protection.

DEPOSITION TESTIMONY

The testimony of a witness, who for some proper reason cannot be present to testify in person, may be presented in alternate form. Such testimony is given under oath and in the presence of attorneys for the parties, who question the witness. A court reporter takes down everything that is said and then transcribes the testimony. This form of testimony is entitled to neither more nor less consideration by the jury because of the manner of its submission.

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FOR THE DISTRICT OF STEELTON

QUINN CHASE;

Plaintiff,

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PETUNIA ENTERPRISES, LLC
d/b/a MONTANA MAX'S GOOD
TIMES SALOON;

Defendant.

VERDICT FORM

You must decide whether either party was negligent and whether that negligence was a factual cause of injury

I will now read you the questions on the verdict form that you must answer to arrive at a proper verdict:

Question 1:

Was Petunia Enterprises, LLC negligent? Please answer:

Yes___ No___

If you answer Question 1 "Yes," go to Question 2.

If you answer Question 1 "No," Quinn Chase cannot recover and you should not answer any further questions. Tell the court officer you have reached a verdict.

Question 2:

Was the negligence of Petunia Enterprises, LLC a factual cause of any harm to Quinn Chase?

Yes___ No___

If you answer Question 2 “Yes,” go to Question 3.

If you answer Question 2 “No,” Quinn Chase cannot recover and you should not answer any further questions. Please tell the court officer you have reached a verdict.

Question 3:

Was Quinn Chase negligent?

Yes___ No___

If you answer Question 3 “Yes,” go to Question 4.

If you answer Question 3 “No,” go to Question 5.

Question 4:

Was Quinn Chase’s negligence a factual cause of any harm to Quinn Chase?

Yes___ No___

Question 5:

Taking the combined negligence that was a factual cause of any harm to Quinn Chase as 100 percent, what percentage of that negligence do you attribute to Quinn Chase and what percentage do you attribute to Petunia Enterprises, LLC?

Percentage of negligence attributable to Quinn Chase: _____%

Percentage of negligence attributable to Petunia Enterprises, LLC: _____%

Total 100%

If you have found Quinn Chase's percentage is greater than 50 percent, Quinn Chase cannot recover and you should not answer any other questions. Please tell the court officer you have reached a verdict.