



**2003 PENNSYLVANIA STATEWIDE
HIGH SCHOOL MOCK TRIAL COMPETITION**

DOMINIQUE DAY

v.

KERRY KNIGHT

***SPONSORED BY THE YOUNG LAWYERS DIVISION
OF THE PENNSYLVANIA BAR ASSOCIATION***

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CASE QUESTIONS & CONTACT INFORMATION

Questions regarding these case materials should be sent to David Trevaskis at the Pennsylvania Bar Association (PBA). Questions will be answered in cooperation with the Statewide Mock Trial Executive Committee. Questions regarding mock trial procedure, including any involving the Rules of Competition or Rules of Evidence (Pa. Mock Trial Version), should be directed to your district or regional mock trial coordinators.

Answers to questions will be posted on the mock trial web site www.pabar.org under the Young Lawyers Division (YLD) link (direct access at www.pabar.org/yldstatewidemock.shtml). The questions and answers will be posted in a single supplemental memo, which will be continually updated.

You may begin submitting questions anytime. The deadline for submitting questions is **January 24, 2003**. The last update to the supplemental memo will be posted on **January 28, 2003**. The January 28, 2003, memo will become the official supplemental memo and may be used in the competition. Earlier dated copies may not be used. Please consult Rule of Competition B.4 regarding the evidentiary value teams are to give the official supplemental memo.

Questions must be sent in writing by one of the methods listed below. Please be sure to include return contact information in the event we need to reach you to clarify a question. **No questions will be considered unless submitted under this procedure.**

E-mail:	david.trevaskis@pabar.org
Fax:	717.238.7182
Regular Mail:	David Keller Trevaskis Pennsylvania Bar Association. 100 South Street PO Box 186 Harrisburg, PA 17108-0186

Teams without access to the web site can request paper or e-mail copies from Susan Donmoyer at the PBA (susan.donmoyer@pabar.org; 800.932.0311 ext. 2223). Please be sure to include your return address.

INTRODUCTION AND ACKNOWLEDGMENTS

Welcome to the 2003 Statewide High School Mock Trial Competition--one of the top high school academic competitions in the Commonwealth. The competition, begun in 1984, is sponsored by the Young Lawyers Division of the Pennsylvania Bar Association (PBA/YLD). The competition provides high school students with a firsthand experience of the American judicial system. It is one of a series of law-related and civic education programs conducted by the PBA to demystify the law for Pennsylvanians, including Freedom's Answer, I Signed the Constitution, Project PEACE, Law Day and Stepping Out for Seniors.

This year's case, *Day v. Knight*, is a civil action that centers around a party held March 2, 2002, attended by numerous high school students and other young adults over age 21. Plaintiff Dominique Day, then a high school junior and star basketball player, attended the party at which Day's coach, Defendant Kerry Knight, provided a one-half keg of beer. Plaintiff Day alleges Coach Knight acted negligently by furnishing beer, causing plaintiff to become intoxicated and allowing plaintiff to drive while intoxicated. Plaintiff Day was involved in a single vehicle accident on the drive home, suffering a broken leg. Coach Knight, who also attended the party until called away on an emergency, claims to have been vigilant in making sure no one under 21 drank beer. All events, characters and documents created for the 2003 case are fictional.

The 2003 mock trial case was initially drafted by Michael Burke, a 2002 graduate of the Temple University Beasley School of Law. Mr. Burke is an alumnus of the competition, having competed for Roman Catholic High School in Philadelphia, where he later served as a coach. William Higgins, Esq., from Bedford County, the incoming chair of the 2004 Mock Trial Committee, led a team of YLD members and others in rewriting the original problem draft. Mr. Higgins thanks Renee Mattei-Myers, Esq., Andrew Fick, Esq., Ryan Blazure, Esq., Lee Koch, Esq., and Amy Higgins for their help in preparing materials and proof reading the case.

Special thanks is extended to YLD Chair, Chuck Eppolito, Esq., YLD Chair-elect, the Honorable Todd Seelig, and longtime chair of the mock trial committee, Jane Meyer, Esq., for coordinating the case development. David Trevaskis, Esq., the PBA pro bono coordinator, Donna Adelsberger, Esq., a Montgomery County attorney, and Jennifer Branstetter at the PBA, provided invaluable assistance in reviewing the final draft of the case. Other members of the mock trial committee who provided insight and comments on the competition include the Honorable J. Michael Eakin, Alan Boynton, Esq., Susan Metcalfe, Esq., and Lisa Stine, Esq. Finally, we thank the wonderful support provided by PBA staffers Susan Donmoyer, Traci Klinger and Janell Malone-Klein.

We hope you find the materials interesting and wish you the best of luck!

.....
DOMINIQUE DAY,
 Plaintiff

v.

KERRY KNIGHT,
 Defendant

: **IN THE COURT OF COMMON PLEAS**
: **BARRISTER COUNTY, PENNSYLVANIA**
:
:
: **NO. 1000 CV 2002**
:
:
: **CIVIL ACTION - LAW**

.....
COMPLAINT

1. Plaintiff, Dominique Day, is an adult individual residing at 1400 Chaney Drive, Barristerville, PA.
2. Defendant, Kerry Knight, is an adult individual residing at 6413 Chamberlain Blvd., Barristerville, PA.
3. Defendant, Kerry Knight, is employed by Lyndon B. Johnson High School as a varsity basketball coach.
4. On Saturday, March 2, 2002, plaintiff was a guest at a party hosted and supervised by defendant, at the residence of Devin and Sethanne Richards, located at 516 Paterno Drive, Barristerville, PA.
5. At said party, the plaintiff, then a minor, was permitted to consume alcoholic beverages, namely beer, which were supplied by the defendant.
6. Defendant Knight did observe the intoxicated state of plaintiff prior to plaintiff departing the residence; however, defendant made no effort to stop plaintiff from operating his/her automobile.
7. While en route home, shortly after midnight, March 3, 2002, plaintiff was involved in a single vehicle automobile accident.
8. As a result of the accident, plaintiff sustained serious bodily injuries, including, but not limited to, a broken leg. Plaintiff was forced to expend monies in an attempt to cure him/herself. Plaintiff has sustained a great deal of pain and suffering as a result of the injuries sustained in the automobile accident.

COUNT I – NEGLIGENCE

9. Paragraphs 1 through 8 are incorporated by reference.
10. Defendant was negligent per se for serving and/or providing alcohol to plaintiff, a minor.
11. Defendant's negligence was the proximate cause of plaintiff's injuries.

WHEREFORE, plaintiff demands judgment in his/her favor and against defendant in excess of the jurisdictional limit.

July 3, 2002
Date

Attorney for Plaintiff

.....
DOMINIQUE DAY,
 Plaintiff

v.

KERRY KNIGHT,
 Defendant

: **IN THE COURT OF COMMON PLEAS**
: **BARRISTER COUNTY, PENNSYLVANIA**
:
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.....
DEFENDANT’S ANSWER TO COMPLAINT

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. Plaintiff was a guest at a party that was held at the home of Devin and Sethanne Richards’ parents. It is denied that defendant hosted and/or supervised said party.
5. Denied. Defendant did not permit plaintiff to consume alcoholic beverages and/or supply plaintiff with such alcoholic beverages.
6. Denied. At no time did defendant observe plaintiff in an intoxicated state or allow plaintiff to operate his/her automobile in such a state.
7. Admitted upon information and belief.
8. It is admitted plaintiff suffered a broken leg. After reasonable investigation, defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, therefore same are denied and strict proof is demanded at trial.

COUNT I – NEGLIGENCE

9. Defendant incorporates his/her answers to paragraphs 1 through 8 as if fully set forth herein at length.
10. This paragraph states a conclusion of law to which no responsive pleading is required. To the extent a response is required, defendant denies these allegations and demands strict proof at trial.

11. This paragraph states a conclusion of law to which no responsive pleading is required. To the extent a response is required, defendant denies these allegations and demands strict proof at trial.

NEW MATTER

12. Plaintiff has failed to state a claim upon which relief can be granted.

13. The injuries and/or damages asserted in this case, to the extent they are proven, were not caused by any actionable negligence on the part of defendant, but rather, were caused by factors, individuals or entities beyond defendant's control.

14. Plaintiff's injuries were caused, in whole or in part, by his/her own negligence, namely contributory negligence, including but not limited to, plaintiff's careless driving and/or intoxication.

WHEREFORE, defendant demands judgment in his/her favor and against plaintiff.

July 19, 2002

Date

Attorney for Defendant

.....
DOMINIQUE DAY,
 Plaintiff

v.

KERRY KNIGHT,
 Defendant

: **IN THE COURT OF COMMON PLEAS**
: **BARRISTER COUNTY, PENNSYLVANIA**
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PLAINTIFF’S REPLY TO NEW MATTER

12. This paragraph states a conclusion of law to which no responsive pleading is required. To the extent that a response is required, plaintiff denies these allegations and demands strict proof thereof at trial.
13. Denied. Strict proof is demanded thereof at trial.
14. Denied. Strict proof is demanded thereof at trial.

WHEREFORE, plaintiff demands judgment in his/her favor and against defendant in excess of the jurisdictional limit.

July 29, 2002
Date

Attorney for Plaintiff

APPLICABLE LAW

Statutory Law

Crimes Code Section 123. Selling or furnishing alcohol to minors.

(a) Offense defined. It shall be unlawful for anyone to intentionally and knowingly furnish, or purchase with the intent to furnish, any alcoholic beverage to a person who is less than 21 years of age. Violators of this section are guilty of a third degree misdemeanor and are subject to a fine of not less than \$1,000 for a first violation and \$2,500 for subsequent violations.

(b) Civil Liability. Any violation of subsection (a) constitutes negligence per se for the purpose of civil liability.

Crimes Code Section 126. Purchase or consumption of alcohol by minors.

(a) Offense defined. It shall be unlawful for anyone being less than 21 years of age to purchase or consume alcoholic beverages. Violators of this section are guilty of a summary offense and are subject to a fine of not more than \$500 and suspension of driver operating privileges.

Civil Code Section 987. Contributory Negligence Statute.

(a) General rule. -- In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff where the plaintiff's negligence was not greater than the causal negligence of the defendant.

(b) Any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

Common Law

Duty of Care of a Minor

Minors are under an obligation to exercise reasonable care; however, the reasonable care required of a minor is measured by that level of care which other minors of like age, experience, capacity and development would ordinarily exercise under similar circumstances. Minors over 14 years of age are presumed capable of negligence, the burden being placed on the minor to prove incapacity. This presumption persists whether the minor is a plaintiff or defendant. A "minor" is anyone under 18 years of age.

Negligence Defined

The legal term negligence, otherwise known as carelessness, is the absence of ordinary care that a reasonably prudent person would exercise in the circumstances here presented. Negligent conduct may consist either of an act or an omission to act when there is a duty to do so. In other words, negligence is the failure to do something that a reasonably careful person would do, or the doing of something that a reasonably careful person would not do, in light of all the surrounding circumstances established by the evidence in this case. It is for the jury to determine how a reasonably careful person would act in those circumstances.

.....
DOMINIQUE DAY,
Plaintiff

v.

KERRY KNIGHT,
Defendant

: **IN THE COURT OF COMMON PLEAS**
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OPINION

Currently before the court is a summary judgment motion filed by plaintiff Dominique Day. For the reasons set forth below, plaintiff's motion will be denied.

Background

Plaintiff Dominique Day claims that s/he was injured as a result of the negligent conduct of defendant Kerry Knight. Specifically, plaintiff Day alleges that on March 2, 2002, defendant Knight, plaintiff's high school basketball coach and an adult, acted negligently by furnishing beer to plaintiff, then a minor, causing plaintiff to become intoxicated. Plaintiff Day alleges that Coach Knight, aware of plaintiff's intoxicated state, was further negligent by failing to stop plaintiff from driving. Plaintiff Day wrecked his/her Jeep on the drive home and suffered a broken leg. Plaintiff Day seeks a jury trial in order to prove Coach Knight liable for causing the injuries.

Defendant Coach Knight denies s/he was negligent. In addition, Coach Knight has asserted as a defense that plaintiff Day was contributorily negligent by driving carelessly and/or driving while intoxicated.

Legal Discussion

Summary judgment is a means available to litigants for prompt and expeditious disposition of a controversy without a trial, when there is no dispute as to material facts and the party seeking judgment is entitled to judgment as a matter of law.¹ Since all relevant discovery has been concluded in this case, plaintiff Day's summary judgment motion is ready for decision.

¹ Rule of Civil Procedure 1035.1.

Plaintiff Day raises two issues in his/her summary judgment motion. First, plaintiff Day argues that since the record before this court clearly reveals that Coach Knight furnished alcohol to plaintiff, a minor, Coach Knight is negligent as a matter of law (per se) and plaintiff Day is entitled to judgment on the issue of Coach Day's negligence.

In order to prevail at trial, plaintiff Day has the burden of proving two things to the jury by a preponderance of evidence:

- (1) that Coach Knight was negligent and
- (2) that Coach Knight's negligence was the proximate cause in bringing about plaintiff's injuries.²

If plaintiff Day can prove both elements, then Coach Knight is liable for plaintiff Day's injuries.³

Plaintiff Day argues s/he need not prove this first element. Plaintiff asserts the record is indisputable that Coach Knight furnished alcohol to plaintiff when plaintiff was still a minor. Indeed, it is well established under our law that a person who intentionally and knowingly furnishes alcohol to a minor is negligent per se for the purpose of civil liability.⁴ This court disagrees, however, that there exist no disputed facts on this issue. The record is conflicting as to whether Coach Knight intentionally and knowingly furnished alcohol to plaintiff Day. Thus, plaintiff Day must prove this issue to a jury whose job it is to resolve all questions of fact.

Second, plaintiff Day argues Coach Knight is barred from raising the defense of contributory negligence. Plaintiff asserts that a 17-year-old minor can not be considered negligent under the law. Plaintiff is incorrect. Minors over 14 years of age are presumed capable of negligence, the burden placed upon the minor to prove incapacity.⁵ Furthermore, case law from this jurisdiction has held that where a minor brings a case against an adult alleging that the adult knowingly furnished alcohol to the minor, the defense of the minor's contributory negligence is available to the adult.⁶

Accordingly, this Court enters the following:

² Normally, a plaintiff must also prove damages; however, the parties' here have agreed that the issue of damages will be tried separately.

³ Of course, Coach Knight's liability is potentially limited if the jury finds plaintiff Day contributorily negligent.

⁴ Barrister Criminal Code § 123(b).

⁵ Kuhns v. Brugger, 135 A.2d 395 (Supreme Ct. 1957).

⁶ Congini v. Portersville Valve Co., 470 A.2d 515 (Supreme Ct. 1983).

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 Plaintiff

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PRE-TRIAL ORDER

AND NOW, this 3rd day of January, 2003, plaintiff Dominique Day's summary judgment motion is hereby DENIED. This case is scheduled for a one-day trial during the February/March 2003 Civil Trial Term.

BY THE COURT:

J. E. Meyer
Honorable J. E. Meyer

Distribution:
Plaintiff's counsel
Defendant's counsel

.....
DOMINIQUE DAY,
 Plaintiff

v.

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FACT STIPULATIONS

1. On the day of the party, Saturday March 2, 2002, Dominique Day and Taylor Montgomery were both 17 years old, and Devin Richards was 16 years old.
2. Up to 30 guests attended the party, although not all were present at the same time.
3. The half-keg of beer provided by Coach Kerry Knight for the party was Iron Rock Lite beer, 5% alcohol by volume. A half-keg contains 7.75 gallons, or 992 ounces. Guests were served beer from 12 ounce plastic cups.
4. Plaintiff is 5'10" tall and normal weight.
5. Coach Kerry Knight received two incoming calls on his/her mobile phone Saturday March 2, 2002: one at 8:07 p.m. and one at 10:19 p.m. (Source: Phone Co. Records)
6. One-eighth (1/8) inch of rain fell in Barristerville on March 2, 2002, and the last recording of precipitation was at 8:00 p.m. The temperature in Barristerville at 12:30 a.m. on March 3, 2002, was 43 degrees Fahrenheit. (Source: National Weather Bureau)
7. No other vehicles were involved in plaintiff's accident and no foreign impediments were found upon the road.

January 24, 2003

Attorney for Plaintiff

Attorney for Defendant

.....
DOMINIQUE DAY,
 Plaintiff

v.

KERRY KNIGHT,
 Defendant

: **IN THE COURT OF COMMON PLEAS**
: **BARRISTER COUNTY, PENNSYLVANIA**
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EVIDENTIARY STIPULATIONS

1. Issues of liability and damages will be tried separately (bifurcated) for the purposes of trial.
2. Plaintiff witness Fran Albert will be accepted as an expert in the area of highway design, as well as the area of accident investigation and reconstruction.
3. Defense witness Sgt. Shaun O'Connor will be accepted as an expert witness in the area of accident investigation and reconstruction.
4. Evidence that the plaintiff allegedly failed to wear a lap and shoulder restraint (seat belt) cannot be presented at trial for any purpose.
5. The parties have stipulated to the authenticity of the following items:
 - A. The Pleadings: Complaint, Answer with New Matter, Reply to New Matter
 - B. Exhibits A through D and their pre-markings, as indicated on the Exhibit List.

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

6. Any witness who demonstrates knowledge of the Richards' home may testify to the diagram of the home.

Attorney for Plaintiff

January 24, 2003

Attorney for Defendant

.....
DOMINIQUE DAY,
Plaintiff

v.

KERRY KNIGHT,
Defendant

: **IN THE COURT OF COMMON PLEAS**
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SPECIAL JURY INTERROGATORIES

(The plaintiff and defendant have submitted the following interrogatories to the trial judge. The trial judge will give these to the jury at the conclusion of trial for use by the jury in reaching its verdict. *These interrogatories may not be used as an exhibit during the mock trial competition.*)

To the Jury:

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

Question 1:

Do you find that defendant Coach Knight was negligent?
Yes _____ No _____

If your answer was "Yes", proceed to Question 2. If "No", plaintiff Day cannot recover and you should not answer any further questions and should return to the courtroom.

Question 2:

Was Coach Knight's negligence a proximate cause of plaintiff's harm?
Yes _____ No _____

If your answer was "Yes", proceed to Question 3. If "No", plaintiff Day cannot recover and you should not answer any further questions and should return to the courtroom.

Question 3:

Was plaintiff Day contributorily negligent?

Yes _____ No _____

If your answer was "Yes", proceed to Question 4. If "No", please return to the courtroom.

Question 4:

Was plaintiff Day's contributory negligence a proximate cause in bringing about plaintiff's own harm?

Yes _____ No _____

If your answer was "Yes", proceed to Question 5. If "No", please return to the courtroom.

Question 5:

You may only answer Question 5 if you answered "Yes" to all of the Questions listed above.

Percentage of causal negligence attributable to defendant Coach Knight _____%
Percentage of causal negligence attributable to plaintiff Day _____%

Your total must add up to 100%

Please return to the courtroom.

WITNESS LIST

These materials provide statements from three witnesses for each side. The plaintiff and defense may call only **two** of the three witnesses. The selection of which witnesses to use is up to each mock trial team, but must be communicated to the other side prior to the start of the trial. The failure to call a particular witness may be noted at trial and a negative inference may be made from that failure, as permitted in the Rules of Competition.

All witnesses can be played by either boys or girls. We do note that for this year's case, the gender chosen for plaintiff Dominique Day will determine whether the basketball team s/he plays on, and coached by defendant Knight, is a boys or a girls team.

If a mock trial team chooses not to call plaintiff Dominique Day, that team must still assign a gender to Dominique and communicate that information to the opposing mock trial team as required by the Rules of Competition.

For the Plaintiff:

Dominique Day	Plaintiff high school basketball player injured driving home from a party.
Taylor Montgomery	High school student who attended the party and was a passenger in plaintiff's Jeep when the accident occurred.
Fran Albert	Expert on both highway design and on accident investigation and reconstruction.

For the Defense:

Kerry Knight	Defendant high school basketball coach who provided a half-keg for the party.
Devin Richards	High school student manager for both varsity boys and girls basketball teams who hosted party, with adult sister Sethanne.
Sgt. Shaun O'Connor	Police officer who investigated plaintiff's accident and created the accident report. Also an expert on accident investigation and reconstruction.

47 Devin, the gracious host, asked me if I wanted a Coke. I sarcastically said, "I'll have a
48 beer instead." I didn't really think that Devin would bring me one, but sure enough, five minutes
49 later, there was a beer sitting in front of me on the coffee table. So I drank it. When it was empty,
50 I went to the keg and got a refill. I'm not sure if I got the refill before or after Coach left. I didn't
51 even know Coach was gone until Devin told me Coach had an emergency of some sort. Devin
52 also told me that the beer was only for older guests, but I thought Devin was just saying that to
53 be funny. Besides, everyone was drinking and having a great time. Soon Taylor joined me at the
54 keg and we were both getting pretty blitzed.

55

56 Not long after I learned Coach Knight was gone, the older players started to filter out to
57 Slam Dunks, a local sports bar. But there was plenty of beer, so Taylor and I and some others on
58 the 2002 teams decided to finish off the keg. Devin didn't really say anything about it but just
59 focused on cleaning up the house instead. I was amazed as to how many people drank so much
60 beer so fast. Many of the current players said that it was the first time they ever drank. I have to
61 admit though, it was not my first time.

62

63 The summer before, in 2001, I was vacationing with my relatives in the Poconos. I drank
64 two cases of beer with my older cousins and got very sick. I guess you could say I was drunk
65 because I became very confused and could not walk or carry on a conversation. My mom found
66 out and grounded me for a month.

67

68 It wasn't long before the keg was empty. Taylor needed a ride home and I agreed to
69 drive. Besides, I wanted to leave, I was not feeling well. I should have told Taylor I was too
70 drunk to drive, but I guess that is what they mean by hindsight being 20/20. Anyway, as we were
71 pulling on our jackets, standing near the keg, Coach Knight came in the back door. I was hoping
72 Coach wouldn't see me because I didn't want Coach to know I had been drinking. But Coach
73 came over and asked if I had. I must have looked drunk. I told Coach I only had one beer, even
74 though I had had many cups. I tried to act sober, but it's hard to fool Coach. Coach mumbled
75 something to me about his/her sister waiting outside.

76

77 At that point, Coach's attention turned to Devin. Coach got in Devin's face, arms flailing
78 and yelling, "Don't you realize I could lose my job over this." I didn't want to get caught up in
79 that hornet's nest, so I quickly grabbed my car keys from the TV and Taylor and I skirted out the
80 back door to my Jeep. At no point did Coach Knight try to stop me.

81

82 On the way home I wrecked my Jeep. I was driving north on Paterno Drive and just as I
83 approached Constitution Way, I crossed the road and hit a tree. I'm not sure what happened. I
84 guess I just missed the curve. I know I was going the speed limit, which I think was 35, since I
85 didn't want to get stopped. I know underage drinkers who drive can get long license
86 suspensions. Anyway, I scraped the side of my Jeep against the tree and broke my left leg.

87

88 I thought I would be arrested for DUI, but after Sergeant O'Connor asked me some
89 questions, the sergeant determined I was not intoxicated. I vaguely remember reciting the
90 alphabet backwards. I don't think I could do that sober! I guess I sort of dodged a bullet in that
91 sense; however, I spent the entire summer in a cast. Needless to say, we were immediately

92 knocked out of the 2002 playoffs. I probably will not be able to play basketball until February or
93 March 2003, if then. So much for my Division I scholarship.

94

95 Taylor has been a great friend since the accident. We've become really close, and we
96 attend weekly AA meetings. I'm thankful Taylor didn't get hurt. I don't talk to Devin much
97 anymore, although Devin did send me an e-mail apologizing, but I never responded.

98

99 I see Coach Knight occasionally at school, but with this lawsuit and everything, we don't
100 talk. I don't know why Coach brought a keg to a party where half the guests were underage, or
101 why Coach didn't take it home when s/he left early. No keg, no accident. It upsets me that the
102 school board didn't punish the Coach in any way. Of course, I didn't get punished either. The
103 board said it was a tragic situation and no good would come from any further sanctions..

104

105 November 1, 2002

106 Date

Dominique "Nique" Day

Dominique Day

WITNESS STATEMENT OF TAYLOR MONTGOMERY
Witness for the Plaintiff

1
2
3
4 My name is Taylor Montgomery, and I reside in Barristerville, Pennsylvania. I'm 18
5 years old and a senior at LBJ High School. I'm a member of the LBJ Players, the local theater,
6 and will be attending UCLA next year, majoring in theatre or film.
7

8 My brother, Todd, was the starting center for the 1997 boys team. I just never had the
9 talent for basketball, but I got to know Coach Knight through watching the '97 boys and girls
10 teams, and following them to Chocolatetown where they both won state titles. I also used to
11 attend Coach Knight's summer camps, back when I was trying to be like Todd, or "Big T," as
12 Coach calls him. Coach used to call me "Little T," much to my chagrin. Although I admire
13 Coach's success, I'm not a fan of Coach's controlling, dictatorial style. Everyone thought 2002
14 was going to be the year for a repeat, until Coach's star player, Dominique Day, broke his/her leg
15 on March 2, 2002, just before the playoffs started. 'Nique was having a dominant junior year,
16 much better than any year "Big T" ever had. 'Nique may never play basketball again.
17

18 When I was a freshman and sophomore, back before my clue phone rang, I had a bit of a
19 drinking problem. In fact, in my sophomore year, I drove drunk and miraculously survived a
20 nasty auto accident. I completed addiction therapy and hooked up with the drama club.
21 Probably saved my life. 'Nique was supportive, and, believe it or not, Coach Knight too. Devin
22 Richards also came to my aid. Devin is in my class and once thought, like myself, that s/he
23 could do basketball, too. Devin settled for being a student manager for the 2002 teams, kind of a
24 coach wannabe.
25

26 On Friday afternoon, March 1, 2002, LBJ held a pep rally for both the boys and girls
27 teams, prior to their final regular season home games. They wanted to parade the '97 teams
28 around again to "fire up" our teams for a second run at the ring. It was a motivational and
29 dramatic hit, if a bit banal. I mean, I even threw off my cloak of detached irony and got into it. I
30 was excited for 'Nique and Devin, excited about a second trip to Chocolatetown (and this time,
31 checking out the historic Hershey Theater). Coach Knight was hyper excited about hangin' with
32 the old team. Coach was pestering me with questions about whether my slacker brother was
33 coming home to collect more accolades and whether "Big T" knew what was up with all the
34 other "Titans" from the '97 teams.
35

36 According to script, both teams won Friday against the Penn State High "Lambs." On
37 Saturday night, Todd dragged me to the party at Devin's house for the 1997 and 2002 team
38 members. I knew there would be incessant reveling in "glory days." We arrived around 7:00
39 p.m. to help set up. Several of the '97 players who were there asked if Devin had beer plans, and
40 if not, they said they would scatter to Slam Dunks, a sports bar. Devin was concerned. Devin
41 had put a lot of effort into planning the party. Amazingly, Devin suggested one of us call Coach
42 Knight and see if Coach would bring a keg. Slack-jawed, I told Devin it was a stupid idea, but
43 Devin insisted and called Coach.
44

45 The next thing I knew, Coach Knight was wheeling in a keg and hooking it up to the tap
46 system. I didn't know what to think, but Coach Knight announced that no one under 21 was to

47 drink the beer. Coach stood by the keg all night, except for the three or four times Coach went to
48 the bathroom or outside to smoke a cig. Other than that, Coach acted very responsibly in making
49 sure no one under 21 was drinking. There was good food and music, and an equal mix of older
50 and younger players. I even lightened up and had a decent time, except I couldn't escape the
51 1997 season highlights shown on the big screen TV. Everything seemed copasetic.

52

53 All of the sudden, around 10:30 p.m., Coach got a mobile phone call that his/her sister
54 was in labor and Coach had to take her to the hospital. I thought for sure the party was over, but
55 Coach said s/he might be back, and that everyone should stay and have a good time. I couldn't
56 believe Coach was leaving the keg. It would have taken only a few minutes to load it into
57 Coach's minivan.

58

59 Shortly after Coach left, the older players headed to Slam Dunks, including my brother
60 Todd. Then 'Nique asked me if I wanted a beer. 'Nique said s/he was going for a refill. I said,
61 "a refill, when did you get a beer in the first place?" 'Nique just looked at me and laughed. I
62 followed 'Nique to the keg, and 'Nique poured me a beer. I did not know what to do. I know I
63 should have refused, but it was mighty tempting. I had been sober for 13 months. I thought I
64 could have just one. But then one became two, two became three, and so on. I did hear Devin
65 telling everyone, including 'Nique and myself, that Coach gave very specific instructions that no
66 one under 21 should drink. I am not sure if Devin had anything to drink. I was pretty hammered
67 myself, so I couldn't really say what anyone else was doing.

68

69 Pretty soon, the keg was empty, and I was feeling pretty woozy, so I asked 'Nique for a
70 lift. I didn't realize 'Nique was drunk, but I was in no condition to make that assessment. I
71 grabbed our jackets and, as we headed for the back door, Coach Knight walked in the back door.
72 Coach's sister had had false labor. Coach spotted 'Nique and said, "you look wasted." 'Nique
73 laughed in Coach's face. Then I saw Coach confront Devin at the keg immediately, screaming at
74 Devin and demanding to know why Devin had not called to report the underage drinking.

75

76 'Nique said to me, "we better go before it gets hotter in here," and we slipped out the
77 back door. We got in the Jeep and left. I remember putting on my seat belt as 'Nique backed
78 over the curb pulling out of the driveway. I dozed in and out, but I do remember that just prior to
79 the wreck, 'Nique seemed to forget to turn rounding a right curve on Paterno Drive. Thankfully,
80 I was not injured. I wish I could say the same for 'Nique.

81

82 The only positive thing about the accident is that 'Nique and I have become close. We
83 have both come to realize the danger of drinking and driving. I hope I can help 'Nique find
84 something to replace this hole in his/her life. It was truly a tragedy. There has been no neat
85 resolution, unfortunately, no denouement, as they call it in drama club. I wish I hadn't jumped
86 off the wagon that night. Maybe I would have noticed 'Nique was too drunk to drive, or maybe I
87 could have driven. Who really cares about the '97 teams anyway? Get on with life already.

88

89 Coach should have taken that keg upon leaving. Coach should have known better than to
90 leave a keg in a house full of underage kids. No keg, no broken leg.

91

92

93 November 1, 2002
94 Date

Taylor Montgomery
Taylor Montgomery

WITNESS STATEMENT OF FRAN ALBERT
Witness for the Plaintiff

1
2
3
4 My name is Fran Albert. I am 53 years old, and I reside in Eagle Township, PA. I am a
5 highway engineer employed by the firm of Higgins and Higgins as the senior engineer for
6 highway design. I received my bachelor's degree in engineering from Drexel University and my
7 master's degree from the University of Pittsburgh. I have worked in this field for 25 years. I have
8 lectured internationally on the subject of highway design. I have written hundreds of articles,
9 many of which have been published in "Road and Highways of the World," a well respected
10 industry publication. I have been named Citizen of the Year by the Eagle Township Citizen
11 League and received a Citation from the Eagle Township Board of Supervisors. I have testified
12 in court and been accepted as an expert on highway design over one hundred times. I also have
13 conducted accident investigation and reconstruction studies, in relation to highway design flaws,
14 in about a dozen cases. I have testified as an expert in accident investigation and reconstruction
15 twice.

16
17 I have focused my career studying the width necessary for a road to safely handle traffic.
18 The width of a road can raise quite a stir in the community, since neighbors frequently object to
19 the widening of a road for various reasons. It is essential when a road is constructed to take into
20 account the width necessary for a vehicle to safely negotiate the curves in the roadway, while at
21 the same time causing as little disruption as possible to the community around that particular
22 roadway.

23
24 Our firm was retained to review the accident that occurred in the early morning hours of
25 March 3, 2002, involving Dominique Day. I was assigned to the case due to my expertise in the
26 field.

27
28 I reviewed Sergeant O'Connor's police accident report and documents that accompanied
29 that report. Additionally, I reviewed maps of Paterno Drive and Constitution Way, and took
30 numerous measurements of those roadways. I also reviewed numerous photographs and traffic
31 flow reports prepared by the Department of Transportation, as well as reports of other accidents
32 that occurred near that intersection. Lastly, I reviewed the National Weather Report from March
33 2-3, 2002.

34
35 After careful examination of these items, I have come to the conclusions that the road on
36 which Dominique Day was traveling was properly designed for its intended use and that the
37 posted speed limit of 35 m.p.h. was proper in light of the road design. The road is wide enough
38 to allow a single lane of traffic to easily flow without interference from any natural or artificial
39 obstacles on either side of the roadway. The road was properly graded and did not have any
40 significant elevation issues. I assume the roadway was covered in standard asphalt material since
41 I was not supplied with any information to the contrary. Asphalt is what these types of roads are
42 usually covered with. It is my experience that these types of surfaces will sometimes get slippery
43 immediately before and after a rainfall since they do produce some oil naturally. I did notice that
44 the official weather report said that it had rained during the day of March 2, 2002; however, I do
45 not think that this is important here since there is no major water buildup noted in the police
46 report, and the weather report only indicated a small amount of rain had fallen - 1/8 inch.

47

48

With regard to speed, I calculated that the driver was traveling approximately 34 miles per hour at the point the vehicle left its proper lane of travel and crossed over to the south bound lane. My conclusion is based upon the Jeep's skid marks and the friction coefficient of the roadway, as well as measuring the point where the Jeep left the north bound lane and traveled over the south bound lane and first made impact with shrubbery.

53

54

Since there were no defects in the road, the road was properly posted at 35 m.p.h. and since the driver was not traveling over the posted speed limit, I must conclude that the accident was caused by the driver's impairment.

55

56

57

58

November 19, 2002

Fran Albert

59

Date

Fran Albert

1 **WITNESS STATEMENT OF DEFENDANT COACH KERRY KNIGHT**
2

3 My name is Kerry Knight, and I live in Barristerville. I am 35 years old, married, and
4 have five-year-old twins, Nate and Kate. I have coached the LBJ varsity basketball team for the
5 past 10 years. I was Dominique Day’s coach through his/her junior year.
6

7 It was a terrible thing that happened to Dominique following the get-together at the
8 Richards’ home, March 2, 2002. Dominique was our starting point guard. Not only could
9 Dominique score, but also pass and defend superbly, which I demand. Dominique had some of
10 the quickest reactions I’ve seen in a high schooler. I was confident that with my coaching,
11 Dominique could lead us to our second state title. Unfortunately, due to the accident, Dominique
12 missed the 2002 playoffs and we lost in the first round. I understand Dominique may not be
13 back until late in the 2003 season, if then.
14

15 I can’t help but feel somewhat responsible for the accident, but I firmly believe I was
16 acting responsibly that night. In mid-February 2002, my athletic director suggested we bring in
17 players from the 1997 state championship teams for a pep rally on Friday March 1. In
18 conjunction with the pep rally, I decided to arrange a get-together with players from the 1997
19 and 2002 teams at my home that Saturday night. I had been close with members from both 1997
20 teams and was anxious to catch up on their lives. Unfortunately, I couldn’t use my house
21 because my sister, who was staying with us, was soon expecting a baby.
22

23 Devin Richards, my invaluable student manager and an LBJ junior at the time, suggested
24 we use his/her house. Devin’s parents would be away but Devin indicated it was okay with them.
25 Devin is a bit of a “teachers pet,” always eager to please authority. Devin is very organized and
26 pays attention to details. These are qualities which might make Devin a good coach some day.
27

28 I was leery, but Devin assured me it was okay with Mr. and Mrs. Richards, especially
29 since Devin’s older sister, Sethanne Richards, was going to be there. Sethanne was a member of
30 the 1997 girls championship team. She was away at grad school, but was coming home for the
31 pep rally. Sethanne hadn’t played much in 1997, but was a great kid who had won the team
32 spirit award. Every team needs good soldiers like Sethanne. I was elated we had a place for the
33 get-together. Devin assured me there would be plenty of food and soft drinks. I trusted Devin to
34 organize it.
35

36 On Friday afternoon we had the big pep rally. The gym was packed. It brought a tear to
37 my eye. It spurred both varsity teams to victory that night. Dominique had a great game
38 defensively and numerous assists. Things were really shaping up for our team.
39

40 Early Saturday evening, Devin called me at home and told me some of the 1997 players
41 who were already there were asking if we were going to have beer. Devin got the impression
42 they would leave if there was no beer. I understood somewhat since I had been young once, too,
43 although I do not drink myself. Plus, all the ’97 players were 21 and older. Devin suggested I
44 pick up some beer for the get-together.
45

46 I had serious reservations, however, I wanted the older players to stick around, and quite
47 frankly, I wanted to spend some time with them. So, I told Devin I would get beer if Devin's
48 sister Sethanne okayed it with their parents. Shortly thereafter, around 8:00 p.m., I received a
49 mobile phone call from Mrs. Richards while I was driving to the get-together. Mrs. Richards
50 said it was up to me whether to serve beer and that she trusted my judgment.
51

52 I picked up a half-keg at Duff's Beer Distributor and arrived around 8:15 p.m. Devin
53 helped me set it up near the back door. I stressed to Devin that there would be absolutely no
54 underage drinking and to tell Sethanne the same. I even went so far as to post a sign on top of
55 the half-keg that said, "Do not drink if under 21." I expected my players to adhere to my
56 directives. I am very much a disciplinarian. Some people joke that I am related to Coach Bob
57 Knight, which I consider a compliment. Just to be careful, however, I collected car keys from
58 everyone who drove to the get-together and placed them in a small box on top of the TV. I
59 wanted to make sure that no one would drink and drive. I had control of the situation. In
60 addition, I planned to monitor who was drinking by standing in a central location near the keg. I
61 did not plan on having to leave early, however.
62

63 Things were going great! There was a great turnout; about half the guest were from the
64 1997 teams. Some of my current players were watching the '97 highlights on the TV and others
65 were getting pointers from the vets about how to deal with playoff pressure. I could see the fire
66 burning in their eyes. Dominique struck up a conversation with Chuck Eppolito, the MVP from
67 the 1997 boys team. Dominique was interested in Chuck's individual awards. Chuck was
68 explaining how much more gratifying it was to win a state title rather than an individual award. I
69 felt that this get-together was the greatest idea in the world.
70

71 I was busy catching up with the older players, who were drinking responsibly. I stood by
72 the half-keg the entire time where I could see everyone. Absolutely no one under 21 had even a
73 drop of beer while I was there. At 10:30 p.m., however, my mobile phone rang. My sister was
74 going into labor, three weeks early! I told her that I was on my way and quickly left. However,
75 before I left, I clearly instructed Devin to get Sethanne to watch the keg and make sure no one
76 under 21 drank any beer. I made Devin promise to make sure Sethanne did not let anyone drive
77 home drunk. I told Devin to give my mobile phone number to Sethanne, with instructions to call
78 if she needed me. I told Devin I would try to stop back if I could. I showed Devin where I had
79 collected the keys. I said a quick goodbye to the 1997 team members and told them to keep in
80 touch.
81

82 I drove my sister to the hospital, but it turned out to be false labor. It was around
83 midnight, so I decided to swing by the Richards house. I went in the front door and saw Devin
84 by the keg, which I noticed still had my sign on it. I walked over and Devin told me the older
85 players had gone to a sports bar approximately an hour earlier, after the half-keg was empty. As
86 I was talking to Devin, I saw Dominique, out of the corner of my eye, leaving out the back door
87 with Taylor Montgomery. I stopped Dominique and could smell beer on him/her. Upon inquiry,
88 Dominique said Sethanne had spilled beer on him/her. That sounded unlikely. I told Dominique,
89 "wait here!" and I confronted Devin immediately. Devin explained that after I left, some of my
90 players, including 'Nique, had begun drinking beer, even though Devin told them not to. Devin

91 said s/he tried to tell Sethanne to watch the keg, but Sethanne told Devin it wasn't her job to
92 "baby sit," and that Sethanne was heading to Slam Dunks.

93

94 As I was reprimanding Devin, Dominique and Taylor must have snuck out because I
95 went to find Dominique, but s/he had vanished. I had only spoken with Devin a moment. I
96 wanted to make sure Dominique was okay to drive. If Dominique had listened to me, this
97 accident would have never occurred. I didn't think Dominique was drunk. If I had, I would
98 have kept Dominique with me and driven Dominique home myself.

99

100 I can't believe Dominique is blaming me. I was only trying to build team morale. I guess
101 I learned a serious lesson. I am sick about Dominique's injury. This incident cost our team the
102 state title. If I had to do it again, I certainly would not bring a half-keg. Still, I don't feel I did
103 anything wrong: I was very clear about instructing everyone that the beer was only for the older
104 players.

105

106

October 1, 2002

107

Coach K. Knight

Coach Kerry Knight

WITNESS STATEMENT OF DEVIN RICHARDS
Witness for the Defense

1
2
3
4 My name is Devin Richards, and I am a 17-year-old senior at LBJ High. I'll be 18 next
5 May. I live at 516 Paterno Drive, in Barristerville, PA. I am the current student manager for
6 both the boys and girls varsity basketball teams. I hope to be a coach someday, like Coach
7 Knight.

8
9 The weekend of 'Nique's accident, March 1 and 2, 2002, was an exciting time for the
10 2002 LBJ Beagles boys and girls basketball teams. We were gearing up for a run at the state
11 titles. Although I didn't play, I was an integral part of our teams. I worked very hard as student
12 manager, doing whatever the coaches needed. I would do just about anything for Coach Knight.
13 Coach has been a mentor to me. The party at my house was supposed to be the final event to cap
14 off the weekend and send us soaring into the playoffs.

15
16 I knew Coach Knight was really looking forward to seeing all the players from the 1997
17 state title teams. A few weeks before, Coach told me s/he wanted to host a party on March 2nd
18 for the 1997 and 2002 teams, but had a guest staying at his/her home. I volunteered to hold the
19 party at my house. My parents were going to be away, but they said it would be okay so long as
20 my sister Sethanne was there. Sethanne assured my parents she would keep everything under
21 control. Sethanne had played (sparingly) on the '97 girls team and was going to be home from
22 grad school to attend the Friday pep rally. Coach seemed really excited about this arrangement. I
23 assured Coach I would organize the food and entertainment. I'm good at organizing.

24
25 People started arriving at my house around 7:00 p.m. on Saturday. Some members from
26 the 1997 team asked if I had any beer. They indicated that if not, they were going to leave early
27 and go to Slam Dunks, a local sports bar. I knew Coach Knight would be very disappointed if
28 that happened, so I called Coach and suggested that Coach pick up a keg of beer. I told Coach
29 that my parents had a tap refrigeration system. Coach seemed hesitant at first, but then agreed, so
30 long as my parents approved. I told Sethanne to call mom and dad in Atlantic City and get their
31 permission, which Sethanne did. I also assured Coach that Sethanne and I would help make sure
32 there was no underage drinking. I should have done a better job of that!

33
34 My folks must have approved because Coach Knight soon arrived with the keg, which I
35 helped carry in. Coach announced to everyone that no one under 21 was to drink from the keg.
36 Coach even took the keys of everyone who drove to the party to make sure that no one who
37 drank would drive. Coach put all of the keys in a small box on top of the television and taped a
38 note to the keg that said, "Do not drink if under 21."

39
40 Coach was having a great time, much more relaxed than at practice and games. Coach is
41 tightly wound and very strict with rules. Coach was socializing with everyone but was positioned
42 near the keg most of the night, which was located near the back door. As far as I know, Coach
43 only left the keg area one time, to use the restroom. Everything seemed to be going great. The
44 1997 team members were sharing their "war stories." Some of the guests were watching
45 highlights from the magical 1997 season on the big screen. We could almost taste the

46 championship as we partied the night away! That is, of course, until Coach got that emergency
47 call.

48

49 Coach Knight's sister had gone into early labor, and Coach had to take her to the hospital.
50 Coach went around quickly and said goodbye to everyone, then reminded me that there was to be
51 no underage drinking and to get my sister Sethanne to watch the keg. Coach told me s/he would
52 return if possible, and that I should not allow anyone to take their keys out of the box unless they
53 were sober. I assured Coach that I could be counted on. Coach instructed me to call, or have
54 Sethanne call, if there were any problems. I never did get a chance to relay Coach's messages to
55 Sethanne because, next thing I knew, the 1997 teams were leaving en masse for Slam Dunks,
56 including Sethanne.

57

58 All the younger players then collected around the keg. I don't know how things got out
59 of control so fast. I desperately tried to tell everyone, including 'Nique and Taylor, about Coach
60 Knight's instructions, but no one seemed to care. In fact, 'Nique told me, "I have to follow
61 Coach's rules all the time, not tonight." I should have called Coach. Soon enough the keg was
62 drained and everyone appeared to be drunk. I didn't know what to do.

63

64 I was really surprised Taylor had been drinking. Everyone knows that Taylor was a
65 recovering alcoholic. Taylor had been sober for over 13 months. I was not that surprised,
66 though, to see 'Nique drinking. 'Nique had bragged before about a drinking incident with
67 relatives the summer before, as if it was cool to drink and get sick as a dog.

68

69 I was relieved to see Coach Knight walk through the front door around midnight. The
70 first thing Coach saw was 'Nique, obviously drunk. Coach said something to 'Nique about
71 waiting there and then glared at me. Coach approached me, near the keg, shaking with anger. I
72 tried to explain that things got out of control and I didn't know what to do. Coach seemed to
73 understand and said "things happen, we just need to make sure that everyone gets home safely."
74 Coach then turned to where 'Nique had been standing, but 'Nique was gone.

75

76 A short while later, we found out that 'Nique had smashed the Jeep. I don't know if the
77 cause was 'Nique's intoxication or the road conditions, but I wish I had stopped 'Nique from
78 driving. I don't know when 'Nique retrieved the Jeep's keys. As a result of the accident, 'Nique
79 broke his/her leg and has not been able to play basketball since. Obviously, without 'Nique we
80 went down the first playoff round.

81

82 Coach did everything possible to stop the underage players from drinking. I know 'Nique
83 is still in high school, but 'Nique knows the difference between right and wrong. No one forced
84 'Nique to drink and drive. In fact, I reminded 'Nique several times that the beer was for the
85 1997 players. 'Nique was bent on breaking rules that night.

86

87 'Nique and I used to be great friends but not since the accident. I feel really bad about
88 everything that has happened to 'Nique. I should have made sure that 'Nique did not drive home
89 that night. I knew 'Nique had been drinking. I did send 'Nique an e-mail apologizing, but 'Nique
90 never responded.

91 It is a shame that things turned out the way they did, but it was not Coach Knight's fault.
92 I learned a very valuable lesson from all of this and that is that drinking and driving do not mix!
93 Luckily no one was killed, and I feel like we are all better people as a result of this tragedy.

94

95

96 October 4, 2002

Devin Richards

97 Date

Devin Richards

46 At that point I detected a slight odor of alcohol on the driver's breath but I was unable to
47 perform field sobriety tests due to the driver's condition. I did, however, ask the driver to recite
48 the alphabet backwards, which the driver successfully completed. The driver also correctly
49 answered questions about his/her identity. The driver was able to have a clear conversation with
50 me and did not appear to be intoxicated. The driver did yawn while I was present but denied
51 fatigue and did not appear drowsy. Once the ambulance arrived, the driver was transported to
52 Barristerville Hospital for treatment. The passenger also was taken to the hospital, but was
53 discharged shortly thereafter.

54

55 After a full investigation and thorough review, I have determined that the cause of the
56 accident was careless driving coupled with poor road conditions, as the road was slick from an
57 earlier thunderstorm. In my opinion, the driver was not under the influence of alcohol at the time
58 of the accident and alcohol did not factor into the cause of the accident.

59

60 October 4, 2002
61 Date

Sgt. Shaun O'Connor
Sergeant Shaun O'Connor

EXHIBITS

Exhibit A – Diagram of the Richards’ Residence, 1 page (*Separate Document*)

Exhibit B - Handwritten Note by Defendant Coach Kerry Knight, 1 page

(This exhibit is drawn to scale)

Exhibit C - Email from Devin Richards to Plaintiff Dominique Day, 1 page

Exhibit D - Police Accident Report prepared by Sgt. Shaun O’Connor, 8 pages (*Separate Document*)

DO NOT DRINK

IF UNDER 21!

EXHIBIT B

Day, Dominique

From: Devin Richards

To: Dominique Day

Sent: Sunday, March 3, 2002, 3:23 PM

Subject: Sorry!

'Nique:

I can't say how sorry I am for what happened last night. I just hope that you don't think that this was all my fault. I mean we made sure that all keys were kept in a safe place and Coach was there and everything. Then again, at some point you got your keys, I am not sure how? I know the party was at my house, so I guess it was my fault. I don't know --- I am just so confused.

I hope we can still be friends. *Get well soon.*

Dev

EXHIBIT C