

**2012 JUDGE RICHARD N. WARE, IV  
MEMORIAL STATEWIDE HIGH SCHOOL  
MOCK TRIAL COMPETITION  
CASE MATERIALS**

***35th JUDICIAL DISTRICT COURT FOR THE PARISH OF GRANT***

***STATE OF LOUISIANA***

***BLAKE HANES***

***DOCKET NO. 2011-1914***

***VERSUS***

***DIVISION "A"***

***MORGAN SMITH***

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**PETITION FOR DAMAGES**

The petition of Plaintiff, Blake Hanes, a citizen and resident of Grant Parish, Bentley, Louisiana, residing at 109 Faircloth Drive, Bentley, Louisiana, 71417, by and through undersigned counsel, respectfully represents:

**1.**

Made defendant herein is Morgan Smith, a citizen and resident of Grant Parish, Bentley, Louisiana, residing at 485 Hooper Road, Bentley, Louisiana 71417.

**JURISDICTION AND VENUE**

**2.**

This is an action predicated upon negligence.

**3.**

The accident described below occurred in Grant Parish, Louisiana.

**4.**

This Court has both subject matter and personal jurisdiction over this action.

**5.**

Venue of this action in this judicial district is proper.

**FACTS**

**6.**

On the morning of April 15, 2010, Plaintiff, Blake Hanes, was a passenger in the front seat of a 2009 Chevrolet Malibu driven by Defendant, Morgan Smith.

**7.**

The Chevrolet Malibu traveled southbound on Stuart Lake Boulevard between approximately 12:00 a.m. and 12:30 a.m. on April 15, 2010.

**8.**

Defendant, Morgan Smith, negligently drove the car into a utility pole, injuring Plaintiff, Blake Hanes.

**9.**

At the time of the accident, Defendant, Morgan Smith, was text messaging while driving at the time the car drove off the road.

**10.**

Before the accident, the teenagers had been at a party where Defendant, Morgan Smith, had been drinking alcohol.

**11.**

At the time of the accident, Defendant, Morgan Smith, exceeded the posted speed limit of 40 miles per hour on Stuart Lake Boulevard.

**12.**

Plaintiff, Blake Hanes, was taken to Grant Parish Regional Hospital for evaluation and treatment of serious injuries to Plaintiff's right leg and ankle. Plaintiff suffered less severe injuries to the right arm and hand.

**13.**

Plaintiff, Blake Hanes, suffered severe and debilitating physical injuries as a result of the accident. Said injuries will be proven at trial.

**14.**

Plaintiff's damages include, but are not limited to, physical injuries, pain and suffering, both past and present, loss of future earnings, medical expenses, future disability and impairment, and mental and emotional distress.

**15.**

Plaintiff, Blake Hanes, is entitled to recover the full extent of Plaintiff's damages from Defendant as a result of Defendant, Morgan Smith's, negligence.

**16.**

Defendant violated Mock Trial Revised Statute 1234 and Grant Parish Local Ordinance 3.01 by operating a motor vehicle while reading, writing, or sending electronic text messages as described in this complaint.

**17.**

Defendant failed to operate the vehicle with due care by failing to pay proper attention and by driving in excess of the posted speed limit.

**18.**

Each of the violations alleged in paragraphs 16 and 17 above were the actual and proximate cause of Plaintiff's damages.

**19.**

Defendant owed Plaintiff a duty to operate Defendant's motor vehicle with reasonable care.

**20.**

Defendant breached Defendant's duty to Plaintiff by failing to exercise reasonable care under the circumstances and by failing to operate Defendant's motor vehicle in a reasonable manner.

**21.**

Defendant breached Defendant's duty to Plaintiff by speeding, failing to pay proper attention by text messaging while driving, and by driving carelessly.

**22.**

Defendant breached Defendant's duty by failing to avoid a collision with the utility pole when in the exercise of reasonable care Defendant could have done so.

**23.**

Defendant breached Defendant's duty by operating Defendant's motor vehicle with disregard for the safety of the Plaintiff, other passengers in the vehicle, and other users of the roadway.

24.

Each of the breaches of duty alleged in paragraphs 19-23 above and all of these breaches collectively were the actual and proximate cause of Plaintiff's damages.

**WHEREFORE** the Plaintiff Blake Hanes respectfully requests:

- (1) That this Court enter judgment for Plaintiff and against Defendant for compensatory damages including but not limited to:
  - a. Past and future medical expenses;
  - b. Past and future pain and suffering;
  - c. Loss future earning capacity;
  - d. Permanent disability;
  - e. Mental anguish and emotional distress;
  - f. Loss of enjoyment of life; and
  - g. Other general and special damages.
- (2) That this Court award Plaintiff such further relief to which Plaintiff is entitled.

Respectfully submitted,

By: \_\_\_\_\_

Attorneys for the Plaintiff

**35<sup>th</sup> JUDICIAL DISTRICT COURT**

**GRANT PARISH**

**STATE OF LOUISIANA**

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**ANSWER**

**NOW INTO COURT**, through undersigned counsel, comes Defendant, Morgan Smith, who, denying any and all liability, responds to the Petition for Damages filed by Plaintiff, Blake Hanes, as follows:

**1.**

The allegations in Paragraph 1 of the Petition for Damages are admitted.

**2.**

The allegations in Paragraph 2 of the Petition for Damages are admitted.

**3.**

Defendant denies the allegations contained in Paragraph 3 of the Petition for Damages for lack of sufficient information to justify a belief therein.

**4.**

The allegations in Paragraph 4 of the Petition for Damages are admitted

**5.**

The allegations in Paragraph 5 of the Petition for Damages are admitted

**6.**

The allegations in Paragraph 6 of the Petition for Damages are admitted

**7.**

The allegations in Paragraph 7 of the Petition for Damages are admitted.

**8.**

The allegations in Paragraph 8 of the Petition for Damages are denied as written.

**9.**

The allegations in Paragraph 9 of the Petition for Damages are denied.

**10.**

In response to the allegations contained in Paragraph 10 of the Petition for Damages, Defendant admits that Defendant had been at a party. However, any and all allegations that Defendant had been drinking alcohol at the party are denied.

**11.**

The allegations in Paragraph 11 of the Petition for Damages are denied.

**12.**

The allegations in Paragraph 12 of the Petition for Damages are denied for lack of sufficient information to justify a belief therein.

**13.**

Defendant can neither admit nor deny the allegations contained in Paragraph 13 of the Petition for Damages and demands proof thereof.

**14.**

Defendant can neither admit nor deny the allegations contained in Paragraph 14 of the Petition for Damages and demands proof thereof.

**15.**

The allegations in Paragraph 15 of the Petition for Damages are denied.

**16.**

The allegations in Paragraph 16 of the Petition for Damages are denied.

**17.**

The allegations in Paragraph 17 of the Petition for Damages are denied.

**18.**

The allegations in Paragraph 18 of the Petition for Damages are denied.

**19.**

The allegations in Paragraph 19 of the Petition for Damages are denied.

**20.**

The allegations in Paragraph 20 of the Petition for Damages are denied.

**21.**

The allegations in Paragraph 21 of the Petition for Damages are denied.

**22.**

The allegations in Paragraph 22 of the Petition for Damages are denied.

**23.**

The allegations in Paragraph 23 of the Petition for Damages are denied.

**24.**

The allegations in Paragraph 24 of the Petition for Damages are denied.

25.

Defendant denies that it owes Plaintiff any sum of money whatsoever or that the Plaintiff is entitled to any of the relief requested in the prayer for relief as set forth in the Petition for Damages.

26.

Defendant denies any and all remaining allegations in Plaintiff's Petition for Damages that were not responded to above.

27.

Defendant further responds to the Plaintiff's Petition for Damages by requesting a trial by jury of this suit.

### **AFFIRMATIVE DEFENSES**

And now, Defendant pleads the following AFFIRMATIVE DEFENSES in response to Plaintiff's Petition:

#### **FIRST AFFIRMATIVE DEFENSE**

The Petition for Damages fails to state a claim upon which relief can be granted against Defendant and should therefore be dismissed.

#### **SECOND AFFIRMATIVE DEFENSE**

Defendant affirmatively pleads that it is in no way guilty of negligence or fault, nor did it cause or contribute to the injuries alleged to have been sustained by Plaintiff.

#### **THIRD AFFIRMATIVE DEFENSE**

Defendant denies it is liable to the Plaintiff in this case.

#### **FOURTH AFFIRMATIVE DEFENSE**

Defendant exercised reasonable care under all of the circumstances for the Plaintiff and other passengers.

#### **FIFTH AFFIRMATIVE DEFENSE**

Defendant avers that if Plaintiff sustained injuries in the manner alleged in the Petition, which injuries are specifically denied, then the alleged injury or injuries occurred solely through the fault, negligence and want of due care on the part of the Plaintiff in a number of respects, all of which will be shown at trial of this cause, and for which Plaintiff can have no recovery against Defendant herein, or, in the alternative, for which Plaintiff's recovery should be appropriately reduced.

#### **SIXTH AFFIRMATIVE DEFENSE**

Defendant avers that if Plaintiff sustained injuries in the manner alleged in the Petition for Damages, which injuries are specifically denied, then the alleged injury or injuries occurred solely through the fault, neglect and want of due care on the part of third parties in a number of respects, all of which will be shown at the trial of this cause, and for which Plaintiff can have no recovery against Defendant or, in the alternative, for which Plaintiff's recovery should be appropriately reduced.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Defendant avers that the alleged accident and the alleged resulting injuries and damages sustained by Plaintiff resulted from independent, intervening, and/or superseding causes or acts, over which Defendant had neither control nor the right to control and for which Defendant is not liable.

**EIGHTH AFFIRMATIVE DEFENSE**

Alternatively, Defendant asserts that the Plaintiff was guilty of comparative fault in failing to exercise reasonable caution for Plaintiff's own safety and by assumption of the risk.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's pre-existing conditions serve to reduce any recovery for damages herein.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate the alleged damages.

**WHEREFORE**, Defendant, Morgan Smith, prays that the answer be deemed good and sufficient and after the lapse of legal delays and proceedings is had, there be judgment in its favor, dismissing the claims brought by Plaintiff with prejudice and at Plaintiff's cost.

Respectfully submitted,

By: \_\_\_\_\_

*Attorneys for Defendant*

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**AGREED STIPULATIONS**

1. All exhibits included in this problem are authentic and accurate in all respects. No objections as to the authenticity of the exhibits may be made. Exhibits may still be objectionable under the Mock Trial Rules of Evidence or require a proper foundation for admission.
2. No props may be used in lieu of evidence included with this packet. Teams may use markers, pens, pointers, or stick-ons to assist in the presentation of witness testimony concerning an exhibit, but no other demonstrative aids are permitted in the competition. Electronic equipment is not permitted.
3. Exhibits may be copied and enlarged for demonstrative purposes but shall not exceed 36" by 48" in size.
4. The Plaintiff's medical bills are reasonable and necessary for the degree of injury. The medical bills total \$33,917.37.
5. In accordance with Louisiana law, the accident report that is Exhibit 1 may not be introduced into evidence. It may, however, be used according to Rule 613 of the Mock Trial Rules of Evidence. Exhibit 1 consists of Exhibit 1A (a four-page exhibit) and Exhibit 1B (a one-page exhibit).
6. Exhibit 2, the judgment form regarding HL Johnson, is a certified copy of the conviction. Exhibit 2 is a one-page exhibit.
7. The teams may not argue the chain of custody pertaining to Exhibit 3, the cell phone records of Morgan Smith. Exhibit 3 is a two-page exhibit
8. Only a portion of the Plaintiff's medical record is provided as Exhibit 4 for trial, and teams may not argue concerning the absence of other pages of the medical record. Exhibit 4 is a two-page collective exhibit. The handwriting on the first page (the affidavit of the custodian of records for Grant Parish Regional Hospital) under the notary acknowledgment is presumed to be that of the notary public, and all remaining handwriting the first page is presumed to be that of Margaret Thiels, the custodian of

records for Grant Parish Regional Hospital. The handwriting on the second page is presumed to be that of Dr. Ashley Boudreaux.

9. All witness statements have been sworn to by the declarant and were given during the month of April 2010. The signatures on the witness statements and pleadings are omitted due to electronic delivery.
10. Participants may only cite evidence contained herein. Cross-reference to other mock trial problems is prohibited. Any similarities to true events are unintentional.
11. In the interests of time, only one defendant has been included. Teams may not argue that there is a missing witness or party to the litigation. Any comparative fault arguments must be limited to the relative fault of the parties.
12. Parties may not cite legal authority outside that presented in the problem, the Rules of the Competition, and the Mock Trial Rules of Evidence. Notice for admission of evidence has been given.
13. Stipulations may not be contradicted or challenged. However, it shall be the responsibility of the teams to bring the stipulations to the attention of the Court as the situation requires.

## **APPLICABLE STATUTES & ORDINANCES**

### **Mock Trial Revised Statute 1234: An act relating to operating a motor vehicle while reading, writing, or sending electronic messages**

(1) A person operating moving vehicles who, by means of an electronic wireless communications device send, reads, or writes a text message or email, is guilty of a traffic infraction. A person does not send, read, or write a text message or email when he or she reads, selects, or enters a phone number or name in a wireless communications device for the purpose of making a phone call.

(2) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of the motor vehicle statute or an equivalent local ordinance or some other offense.

### **Grant Parish Local Ordinance 3.01**

Text messaging while driving is prohibited. It is always dangerous to take your eyes off the road, but it is even worse when you are concentrating on composing and then sending a message at the same time. Some people claim they have the right to do this, but they don't have a right to risk the lives of those around them.

The Mock Trial Traffic Safety Commission has talked with teenagers about cell phones and intermediate drivers licenses. One-quarter of the teenagers that they spoke with admitted to text messaging while driving.

Text messaging while driving is clearly a problem. A man using his blackberry was recently responsible for an accident on I-5. Second degree negligent driving is the other infraction people can be charged with in these type of circumstances, but it difficult to prove, so this bill may be a deterrent.

### **Mock Trial Revised Statute 9876: An act relating to operating a motor vehicle or riding as a passenger in a motor vehicle without wearing a seatbelt**

(1) A person operating a motor vehicle or riding as a passenger in a motor vehicle (while the vehicle is moving) without wearing a seatbelt is guilty of a traffic infraction. Adults have the responsibility of restraining children (persons under the age of eight years) according to Mock Trial Statute 1001.

(2) Enforcement of this section by law enforcement officers may be accomplished by an officer with probable cause to believe that the person is operating a motor vehicle or riding as a passenger committed the offense of failing to wear a seatbelt in a motor vehicle. Failure to wear a seatbelt is a violation of this statute.

(3) Evidence that a person has failed to wear a seatbelt is not admissible by a

defendant against the plaintiff in a civil case unless:

- (a) the court first determines, in a hearing outside the presence of the jury, that the probative value of such testimony substantially outweighs the danger of unfair prejudice, confusion of the issues, or misleading the jury; OR
- (b) the court first determines, in a hearing outside the presence of the jury, that the plaintiff has opened the door to the testimony.

## RELEVANT LAW

### **Negligence**

The fundamental principal of tort liability is that every act by a person that causes damages to another requires the person by whose fault the damages occurred to repair the injured person. Negligence is defined as conduct which falls below the standard established by law for the protection of others against an unreasonable risk of harm. Stated differently, every person is responsible for the damages caused not merely by his act, but by his negligence, his imprudence, or his want of skill. Essentially, negligence is **the failure to exercise reasonable care under the circumstances**. Negligence is often determined through a duty-risk analysis. The four-prong inquiry of the duty-risk analysis is stated as follows:

- (1) Was the conduct in question a substantial factor in bringing about the harm to the Plaintiff, i.e., was it a cause-in-fact of the harm which occurred?
- (2) Did the defendants owe a duty to the Plaintiffs?
- (3) Was the duty breached?
- (4) Was the risk, and harm caused, within the scope of protection afforded by the duty breached?

In order for the four inquiries above to be answered affirmatively, the following five elements must be proven by the Plaintiff:

- (1) The defendant had a duty to conform his conduct to a specific standard (duty element);
- (2) The defendant failed to conform his conduct to the appropriate standard (breach of duty element);
- (3) The defendant's substandard conduct was a cause-in-fact of the Plaintiff's injuries (cause-in-fact element);
- (4) The defendant's substandard conduct was a legal cause of the Plaintiff's injuries (scope of liability or scope of protection element); and
- (5) Actual damages (damages element).

### **Negligence Per Se**

Negligence per se allowed negligence to be found where a statute was violated. However, negligence per se has been rejected in Louisiana. However, violations of statutes can be guides for liability in civil actions. A party who violated a statute will only be found liable if its actions in violating the statute (or ordinance) if the duty imposed by the statute contemplated protection against the particular harm caused by the violation of the statute.

## **Strict Liability**

Strict liability is the legal doctrine whereby harm that results from the conduct of a person or defect of a thing creates an unreasonable risk of harm to others, the person legally responsible under the applicable code articles for the supervision, care or guardianship of the person or thing may be held liable for the damage thus caused, despite the fact that no negligence on the part of the person is proven.

In very few instances does Louisiana law impose strict liability. The concept is often mistakenly applied to various claims. The error stems from a belief that damage claims requiring no proof of negligence are strict liability actions. More accurately, strict liability claims are special causes of action for which the requisite elements are different, by statutory definition, from the usual tort claims asserted pursuant to Louisiana's general negligence.

The injured person, the plaintiff in most instances, must prove that an unreasonably dangerous vice (either of a person or in a thing) caused damage and the damage resulted from the vice. Once it is proven that an unreasonably dangerous vice existed, the owner of the thing or guardian of the person can escape liability only if he shows the harm was caused by the fault of the victim (plaintiff), the fault of a third party, or by an irresistible force.

The vice must be a condition that imposes an unreasonable risk of harm to others. A determination of whether a thing presents an unreasonable risk of harm depends on the particular facts and circumstances of each strict liability case and should be made in light of all relevant moral, economic, and social considerations.

## **Blood Alcohol Tests**

There is no statutory presumption of intoxication in civil cases, but evidence of a blood alcohol reading does have probative value and may be considered by the trier of fact when determining if the driver's abilities were impaired.

## **Comparative Fault & Contributory Negligence**

The percentage of fault of all persons causing damage- including plaintiff, defendant, any party not named as a party to a suit, and any other third parties, must be determined at a trial. Such assignment of fault of all parties is known as the comparative fault system.

Contributory negligence is an affirmative defense which alleges that the plaintiff acted negligently and contributed to his own damages. If a plaintiff is found contributory negligent, any recovery will be reduced according to the plaintiff's own percentage of fault in the comparative fault scheme. The burden of proof for proving plaintiff's contributory negligence is on the defendant raising the plaintiff's contributory negligence as an affirmative defense.

### **Assumption of Risk**

Assumption of the risk occurs when a person consents to be exposed to a dangerous condition or activity. The defendant must prove by a preponderance of the evidence that, prior to the time of the injury, the plaintiff agreed to accept the particular risk of harm that caused the injury.

If the jury finds that the plaintiff has agreed to assume the risk of harm arising from negligent conduct on the part of the defendant, the jury should take that finding into consideration in apportioning fault. The jury should not apportion any fault to the plaintiff for assumption of risk if it determines that the defendant's conduct was willful, reckless or grossly negligent.

### **Preponderance of the Evidence**

In this action, the plaintiff has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the allegations contained in the plaintiff's complaint.

The defendant has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the affirmative defenses contained in the defendant's answer.

The term "preponderance of the evidence" means that amount of evidence that causes you to conclude that an allegation is probably true. To prove an allegation by a preponderance of the evidence, a party must convince you that the allegation is more likely true than not true.

If the evidence on a particular issue is equally balanced, that issue has not been proven by a preponderance of the evidence and the party having the burden of proving that issue has failed.

**BLAKE HANES**

**(Plaintiff)**

My name is Blake Hanes. I was born on February 14, 1992. I'm 18 now, and I live with my parents in Bentley, Louisiana Grant Parish. I'll probably be living with my parents for the rest of my life because of what Morgan Smith did to me last April. I remember everything about that night. It changed my life forever. I re-live every detail every single day. I had been at a party at Austin Crosher's house. I think it was in celebration of something ... maybe our school team won the soccer game or something. I never really paid much attention to sports at school. I pretty much kept to myself. I liked to draw a lot, so I spent most of my class time doodling. I had even won a couple of local art contests. I wanted to be a professional cartoonist, but that will never happen to me now because of the injuries I received in the car crash.

I didn't really know anyone in the car that well, but I was becoming closer to Morgan because we had been hanging out some. I knew Jean and Morgan were friends. Neither one of them had a reputation for partying, so I guess they had that in common. They had been hanging out at Austin's party together. I knew Alex because we'd run into each other at parties in the past. Alex could always be counted on to bring beer, and Alex could drink just about anyone under the table, which was fun to watch. Anyway, at about midnight, I heard someone say that people were going to get something to eat. I had a bit of a headache and was feeling kind of woozy. I thought food might help, so I decided to go. Also, I thought Morgan was sober, but since the accident, I've heard some people say that Morgan was drinking that night, so I guess it was because Morgan was drunk and texting that the accident happened. We were going pretty fast, too. I got in the front seat of Morgan's car. Before we got out of the driveway, Morgan told me to buckle up; I guess Morgan knew that Morgan was a bad driver. As we turned onto Stuart Lake Boulevard, Morgan's phone rang. Morgan looked at it and must have noticed a text

message. Morgan said something like “Taylor is driving me crazy.” Morgan seemed frustrated. Morgan kept messaging Taylor; it made me nervous.

Morgan was also driving too fast, so fast that I got a little sick to my stomach. I tried waving to get Morgan’s attention, but Morgan was engrossed in the phone. Just then, Morgan kind of tossed the phone at me; I think that Morgan dropped it because that was when Morgan had lost control of the car. I can’t remember the exact timing; I am a little fuzzy about the details there. The actual wreck is kind of a blur. I remember feeling like we were up in the air and then hitting something really hard. I must have been knocked out then, because I don’t remember anything else until the paramedics got me out of the car.

The first thing I remember was hearing one of them saying, “This one smells like the bottom of a keg.” Another one asked me, “How much did you have to drink?” Yes, I had been drinking. I don’t remember how much I’d had, probably five beers in the two hours that I was at the party. Still, I didn’t see the harm in it; I certainly didn’t plan on driving that night. Besides, I didn’t do anything wrong. Morgan’s the one who caused the accident. My injuries from the wreck were mostly concentrated on my right leg and foot, which were crushed in the accident. When I arrived in the hospital, I was in so much pain that I could hardly talk to the doctor. The doctor asked me lots of questions like how much it hurt, where it hurt, if I had been drinking, and things like that. I couldn’t move my toes on my right foot, and the paramedics had stabilized my leg on a board when I was on the stretcher. Eventually, I had to have surgery to insert a metal rod and pins in my leg, which the doctors say will eventually require replacement. The entire thing was very painful. Three of my ribs were broken on the right side, and I had a lot of pain when I took a breath. Also, I am right handed, and my right arm and hand were injured in the wreck, but

not as badly as my right leg and foot. I never used to have headaches, but now I have them about four times a week and medicine doesn't help.

To be a successful cartoonist, I need to be able to sit for long periods of time at the drawing board. However, because of the injuries I sustained, I cannot sit for long periods due to the pain in my legs and lower back. My hand bothers me some still, and of course, the headaches are terrible. My left knee was also injured in the wreck and gives me trouble to this day even though I was not treated for an injury to my left knee. I feel like my entire life has been ruined because of what Morgan did. I don't understand why Morgan wasn't paying attention and being careful while driving. I would not have cut loose at the party if I had known Morgan was going to do this. It almost cost me my life, and it certainly cost me the quality of my life.

**JEAN HEBERT**  
**(Witness for the Plaintiff)**

My name is Jean Hebert. I am currently a senior at Grant Prep High School, where I maintain a 4.1 GPA—higher than the standard 4.0 because I have taken a number of advanced placement courses. I plan on applying to a number of Ivy League schools; however, I do not yet know where I will be attending college.

Additionally, I play the saxophone in a band, and I am on the basketball team. Last May, the 11th I believe, our baseball team was playing the Georgetown Cardinals for the district baseball championship. It was a Friday night, and after the ball game, Austin Crosher had a party at his house. I left the baseball game with Alex Williams—just the two of us in the car. We went by Alex's house to get beer, and I sat in the car while Alex ran inside. Alex returned with the beer, but I don't know where Alex found it. This was around 9:45 pm. From Alex's, we went straight over to Austin's house, arriving about 10:00 pm. It was an average sized party, not overwhelming by any means. Everyone was doing what high school kids do at parties. At one point, I think some kids from Georgetown drove by, yelling and cursing, but nothing came of it. I did not drink any alcohol at the party because I try to stay in shape for basketball. I hope to play at college, and, although we had just finished our season, I figure that is my best shot at getting a scholarship to an Ivy League school.

Around midnight, some people started discussing running out to get a sackful of burgers. Alex, Morgan Smith, and Blake Hanes all decided they'd go out for Whatta Burger, so I joined in. The four of us got into Morgan's Chevrolet Malibu. Morgan was driving and Blake in the front. Alex was behind Blake. I was behind Morgan. Morgan had not been drinking, I'm sure of that. I am not sure why Morgan wasn't drinking, though.

Morgan and Taylor Bowling had been dating. I'm not sure if they were having problems or what, but it seemed like as soon as we got out of the driveway, Morgan began texting Taylor. I don't know what specifically the conversation was about, but Morgan always does this. It's actually pretty scary. I don't know what street we were on because I am not good with directions, but it wasn't more than a couple of minutes later that Morgan lost control of the car. We swerved to the left first, then to the right. As we went off to the right, we hit a curb and hit a utility pole on my side of the car. I'm sure that Morgan's texting caused the accident. You can't pay attention to the road when you are focused on something else and trying to text.

The front passenger door took the brunt of the impact. When the car stopped, I was able to get out of the car through the rear driver-side door, along with Alex. Morgan got out through the front driver's door. Blake appeared to be pretty badly injured. A passer-by stopped and called an ambulance. The paramedics were able to get Blake out of the front passenger seat, but Blake had to be taken to the hospital.

Officer Knight came to the scene, where he took statements from everyone. I told him exactly what I saw. I was not badly injured, mostly bruises. All my friends use "myfriendz" to stay in touch. I have seen Morgan's myfriendz page since this all happened. For a while, Morgan's screen name was "L3RND MY L3SSN." Also, Blake had approved a comment from Morgan where Morgan was saying how sorry Morgan was. Morgan also said in a comment that Morgan would "nvr twd agn." I knew what that meant. When we text and IM we take out vowels and abbreviate so that it's faster. Also, it keeps a POS—parent over shoulder—from knowing what we're saying so we can KPC—keep parents clueless.

**HL JOHNSON**  
**(Witness for the Plaintiff)**

My name is HL Johnson. I was riding in my friend's old black Ford minivan when I saw the one-car accident that occurred early in the morning on April 15, 2010 on Stuart Lake Boulevard.

My friend Brian lives off of Stuart Lake Boulevard. His street is Dogwood Avenue. We left his home on Dogwood Avenue and proceeded to the stop sign at the end of the road at the intersection with Stuart Lake Boulevard. We had been watching old re-runs of The Big Bang Theory, the ones where Leonard and Penny started going out, at Brian's house but decided it was time for a little fun.

There is a service station on the eastbound part of Dogwood Avenue, the part after you cross over Stuart Lake Boulevard from where Brian lives where I like to buy my lottery tickets. This girl from work won \$10,000 bucks a couple of months ago with a ticket from there, and that's the most of anyone I personally know. The most I ever won was \$40.00 and a few extra tickets. Brian and I had made a bet that I would win at least five dollars that night if we played pick three. I know, I know, that stuff will break you, but what's a little fun between friends? So, Brian was driving me to get a lottery ticket. My car was in the shop or I could have taken it. Brian is crazy-funny about his dinky van, and he never lets anyone else drive it. Calls her Licorice. I always make fun of him for that. He says if she breaks on him, he won't be able to deliver pizzas anymore.

When we were stopped at the stop-sign at the end of Dogwood Avenue, I looked to see if any traffic was coming from my left, which would be the southbound lanes of Stuart Lake Boulevard, before Brian proceeded to the median and continued across the northbound lanes of

Stuart Lake Boulevard. I was just hanging out in the passenger seat. You know, I am the world's worst "backseat driver." Even though I was sitting up front, I was still doing things you do when you drive. You know—like when we approached the intersection, looking for oncoming traffic and stuff.

I saw a car coming southbound, but it was pretty far away. There was plenty of time, it looked like, to cross the boulevard before that car would approach. The speed limit on Stuart Lake Boulevard is just 40 miles per hour in that section. Brian pulled the van into Stuart Lake Boulevard from the stop sign where we were stopped. He wasn't going very fast—you know, his ride is older and he treats her like a jewel. Even though we weren't going very fast, I was so surprised when I saw that the car was coming so fast. It was a lightly colored car, like an Accord or Camry or something, coming southbound on Stuart Lake Boulevard. It looked like they were going faster than 40 to me.

I could see into the vehicle even though it was nighttime. There were lights from the street lamp that is in the center of the road, and they really help light things up. Also, I think there may have been that faint blue glow from within the car, like a cell phone has at night when you're using it. I remember seeing that the driver was looking down. I never saw the driver look up, but I heard the loud noise of the car sliding with the brakes behind us right after we passed in front of it. In the mirror I could see that the car wound up in the grass and smashed into the utility pole. It crossed the curb and left Stuart Lake Boulevard a few feet south of where we crossed from Dogwood Avenue.

I called 911 right away and told the operator that there was a one-car accident on Stuart Lake Boulevard southbound from University Road. University Road is the nearest major intersection. I didn't mention Dogwood to the operator because a lot of people don't recognize

Dogwood Avenue. It's one of those smaller residential streets. We didn't wait to see what happened because I could see people exiting the vehicle and it didn't look like anyone was really badly hurt.

Also, I figured the police would be there in a minute or two and we'd just get in the way. When we came back by the wreck after buying lottery tickets, the police were there. The ambulance was there as well. We were able to travel down Dogwood without any problem.

I do not know any of the kids involved or their families. I do not wear glasses or contacts because I had laser vision correction surgery about a year ago. My vision is better than 20/20 since the surgery. It's amazing what they can do now.

Grant Parish hadn't had rain for about six weeks before the crash, which is totally abnormal for the middle of April. "April showers..." you know. But not so that year. Anyway, I remember noticing that water was on the asphalt in the southbound lanes where the irrigation system in the median had been watering the trees. When watering is necessary, they always water between midnight and two am. I appreciate Grant Parish's conscientiousness of conserving water. I remember an article in the paper where the Police Jury voted to set the timers for then because it avoids so much burn off.

I work in the laundry at Grant Parish Regional Hospital. I had just worked a double on that Friday, so I wasn't at work when Blake Hanes and the other kids were brought in after the wreck because I was off on Saturday. Sometimes I wait tables at my Grandma's restaurant, the Rusty Rooster, on Stuart Lake on the weekends as well, but I had the weekend off.

I really didn't want to testify in this case because I was afraid of being cross examined. (I have been to court once before, when I was charged with felony embezzlement about seven years ago.) But, without thinking, I opened my big mouth to the reporter, Hugh Dunnett, who was

covering the accident when I returned to work on Sunday at the hospital. He must have been checking on the one who was most seriously injured or something. I guess he never forgets a face or name, because he must have told the Plaintiff about me.

**JORDAN LEE**  
**(Witness for the Plaintiff)**

My name is Jordan Lee, and I am an Accident Reconstructionist specializing in rollover accidents. I reside in Plain Dealing, Louisiana which is over two hours from Grant Parish.

My job focuses on inspection and evaluation of motor vehicle traffic collision scenes, including collecting, photographing, measuring, recording and evaluating physical evidence from the road, environment, and vehicles to determine how collisions occurred. Where physical injury to occupants or pedestrians occurs, I evaluate those injuries in relation to determining subject motion during the collision process. I use data analyze motions of vehicles, occupants, and pedestrians, and utilize equations to determine time, distance, velocity and/or speed of collision.

I became an Accident Reconstructionist after working as a mechanical engineer for twelve years. I attended the University of Stratford for my bachelor's degree, and I received a Master of Science degree from Bayou State University in 1992. I am a member of the Society of Mechanical Engineers.

I am certified by the Accredited Coalition for Reconstruction of Traffic Accidents (ACRTA) as an accident reconstructionist. ACRTA requires me to take continuing education courses, and accreditation must be renewed every five years. There are only about 650 ACRTA accredited reconstructionist practicing in the US and Japan, but there are only three certified ACRTA accident reconstructionist in Louisiana. I work for five parishes in Louisiana, including the major metropolitan area of Shreveport. I also consult on other matters on a case by case basis.

I was not accepted to ACRTA for the first two times I took the examination. My application was approved, but I did not pass the practical portion of the exam the first two times I took the test. The practical portion is a staged collision, and you must answer typical questions

under a time constraint. ACRTA only lets applicants take the test three times, so I was so concerned that I would not pass that final time. But I finally passed! It's a good thing I passed this time, or Bob, my friend who has a close relationship with one of the panel members, would never let me live it down.

I am coming up for membership renewal next year with ACRTA, and experience testifying in cases like this does help with that process, but that is not why I am testifying here today.

About three years ago, I was a guest author in an article in *Wrecked*, a professional journal concerning accident reconstruction. I have never testified at trial, but I have given my deposition three times. I almost always testify for the plaintiff in civil cases because I have made friends with some of the big plaintiff firms in Louisiana. Of course, I am paid for my services, and my rate is \$250 per hour.

The Plaintiff contacted me to consider this case within two days of the collision. I did not go to the scene of the crash because it rained after the accident. Therefore, I felt that my time was better spent on the pictures, accident reports, witness statements, and measurements taken by law enforcement working the scene. I did not take the photographs that I used, but I assume that they came from investigators at the scene. The Plaintiff provided them to me. So you can understand the site, I want to explain the big factors. Stuart Lake Boulevard is an asphalt road in Bentley. It is a four-lane divided highway with trees and lights in the median. There are two northbound lanes and two southbound lanes. There are periodic openings for traffic to enter and exit to the east and west as it is a divided highway. The wreck occurred approximately one mile south of the intersection of University Road, which runs east and west. In addition to University Road, there

is an opportunity for east or westbound traffic to cross Stuart Lake Boulevard about 60 feet south of the location of the onset of the skid marks by way of Dogwood Avenue.

Although the speed of a vehicle can be determined by the length of its skid marks, the grade of the road and the condition of the tires must also be considered. Also, if the vehicle was still moving at the time of the impact, skid/speed formulas will only yield the minimum "original" speed. It is more likely than not that the vehicle was still moving at the time of the accident based on the muddy treads that were photographed in the grass, the skid marks, and the scuffs on the curb. According to the traffic report, there is a slight downhill grade as you approach the site of the wreck. I say slight because based on Officer Knight's measurements, it is only about one degree of slope, which results in a multiplier of 1.74%.

I sent another engineer with whom I work closely to the scene so he could measure the skids that were visible in the photographs provided to me. He discovered that the rear tires left a skid of 73 feet. The rear skids were more prevalent at the start of the marks. Based on this information, the vehicle was traveling at least 49 miles per hour at the onset of the skid marks. The speed limit is 40 mph on Stuart Lake Boulevard.

Therefore, it is more likely than not that the driver was speeding at the time the brakes were first applied.

I believe that the tire which was flat, on the right front wheel, was fully functional at the time of the crash. It is my professional opinion that this tire went flat after the strong force impact against the curb. It is also possible it was punctured by something on the roadway or in the grass. It would have been helpful if law enforcement had seen fit to preserve the tire for testing or test it themselves. I have done more than attend a seminar; I am an expert in reconstruction of motor vehicle collisions.

I am also aware that there has been discussion of texting as a cause or contributing cause of the accident. I cannot determine, using scientific evidence or to a reasonable degree of certainty, whether Morgan Smith was in fact texting. I have reviewed the cell phone records obtained by law enforcement from Morgan's phone. I am in agreement that the text messaging appears to be dated and timed to coincide with the wreck.

However, I simply cannot say whether Morgan was texting or someone else was texting using Morgan's phone. I will not risk my professional reputation saying otherwise. However, in accidents where only one person occupied the vehicle, cell phone records have proved informative. I have been working on a study concerning this topic. The study has not been reported yet, but I plan to send it to Wrecked. According to the preliminary findings of my research, teens spend 400 percent more time with their eyes off the road than when not text messaging. The study involved 20 participants who drove a simulated roadway which contained a number of events, including pedestrians emerging from behind parked cars, traffic lights, cars turning right in front of the driver's vehicle, a car following episode, and a lane change task. Retrieving and, in particular, sending a text message detrimentally affected the ability to respond to critical driving measures. Ability to maintain a driver's lateral position on the road and to detect and respond appropriately to traffic signs was significantly reduced.

**MORGAN SMITH**  
**(Defendant)**

My name is Morgan Smith. I'm 18 years old, and I live in Bentley, Louisiana (Grant Parish) with my mom and three younger sisters. I'm a senior in high school now, and I also deliver an early morning mail route. It means getting up at 4:00 and having to drive pretty fast on my rural route. (Yes, I've gotten two speeding tickets, but I was only going 10 miles an hour over the limit each time). Most of the time, I'm just barely making it through work in time for school, but I have to do it so I can stay home in the afternoons and watch my sisters until my mom gets home from work. I'm used to having to act like an adult. My dad was an alcoholic, and he died in a car crash after he'd been drinking. That's why I will never drink; I've seen what alcohol can do to a person and a family. Last April, our high school's baseball team won the district championship, and I went with my friend Jean to Austin's after-party. You know, most people think that all high school kids drink too much, do drugs, and act irresponsibly, but that's just not true. I'd say less than half of the people at the party were drinking. In fact, if I'd known that partiers like Blake and Alex were going to be there, I might not have even gone.

Anyway, I was getting uncomfortable around the few drunken people, so I was looking for a reason to leave. Also, I had promised to meet Taylor later that night.

Taylor Bowling and I had been dating for a few months. Taylor's sweet, but Taylor's the type who likes to keep in near constant communication, so even though I knew it was going to be late after the party, I said that I'd meet Taylor at the coffee shop. The coffee shop is open until 2:30 am on the weekends because so many people stay there late and use the wireless internet, sit by the fireplace and chat, and drink coffee. We hadn't set a time yet, so I was waiting to hear from Taylor about that.

I suggested to a couple of people that I might be interested in going to get something to eat. Actually, I suggested to Blake that Blake needed something to eat. Blake had clearly been drinking a lot, and I thought if there was some food in Blake's stomach, the alcohol might metabolize faster. My mom always tried to get my dad to eat while he was drinking. So, Blake, Alex, and Jean decided to ride in my car to go to Whatta Burger.

At the time, I was driving a 2009 Chevy Malibu. I had just gotten it, and I was still getting used to driving a five speed. Also, the Malibu was a lot bigger than the Toyota Corolla I'd been driving; I still hadn't figured out how to park it. We got in the car. I told Blake to buckle up, but I didn't check to make sure. We had just gotten out of the driveway when my phone rang with a message from Taylor.

I looked down and read the message. Taylor had written "adn...CB NOW." That means "Any day now. Call back now." All caps meant the message was serious; it's like yelling over the phone. I said, "Taylor's driving me crazy" because Taylor knew that we weren't supposed to meet until after the party, and Taylor hadn't even told me what time yet. While I will admit that I have been known to text and drive, because I was still getting used to the Malibu and because it was at night, I didn't think it would be good to respond. So, I hit reply, and then I tossed the phone to Blake. I asked Blake to type "ntwd," which means "no texting while driving." I wanted Taylor to understand that I'd be in touch as soon as I could.

Right after I gave the phone to Blake, I lost control of the car, so I don't know if Blake was able to type the message or not. I'm not sure what happened. I know that Alex thinks something might have run in front of the car, but I think that my right front tire might have blown out.

I'm very sorry about what happened to Blake, and I know that Blake will always blame me for the accident, but the accident wasn't caused by texting, drinking, or driving irresponsibly. It was just an accident. It happened, and I'm sorry, but I honestly don't believe I was doing anything wrong while I was behind the wheel. I answered all the questions that the officers asked me. I heard the passengers talking to the paramedics but I couldn't hear what they were saying. I also turned my cell phone over to the police because they wanted it during the investigation.

**ALEX WILLIAMS**

**(Witness for the Defendant)**

My name is Alex Williams, and I live and attend high school in Bentley. I am 17 years old. I am in the 12th grade at Grant Prep High School. I have been a B+ student in high school, and I plan on attending the University of Louisiana next fall. I have not yet decided what to major in.

Last April, our baseball team beat Georgetown for the District Championship. After the game, I left the stadium, and Jean Hebert rode with me. We went to my parents' house to pick up beer. My parents have an extra refrigerator outside where they normally keep it. I think I grabbed about eight beers – Fat Boy Ale, I think. Anyway, I made my way over to Austin Cosher's house about 11:00 pm. His parents were out of town on a business trip of some kind. We met our other friends there. In total, there were about 50 people at his house. Austin's house has a swimming pool, and some of the people were swimming.

When we arrived at Austin's, the party seemed to be in full swing. I immediately noticed Jessie was there, which is great because we've kind of had a thing going lately. About 12:30, some of us started to get hungry. There's a Whatta Burger nearby, so four of us got into Morgan Smith's car to head over there. I wasn't going to drive because I had already had three or four beers. Morgan drove because Morgan hadn't had anything to drink.

I sat in the back seat with Jacques, who also did not have anything to drink, but it was more for sports purposes. In the front passenger seat was Blake Hanes. I can't specifically remember if Blake was drinking, but, if I had to guess, I would say so. We left Austin's house in Morgan's 2009 silver Chevrolet Malibu. I was buckled in, but I have no idea if the others were as well. We turned left out of Austin's driveway onto Newman Road. After a couple of miles, we turned right onto Stuart Lake Boulevard.

Morgan had been texting something to Taylor Bowling—they also had something going. I saw Morgan typing at least one text while driving that night, but I know that Morgan handed the phone to Blake before the crash. I think Blake continued to text Taylor. About ten seconds after Morgan had given the phone to Blake, Morgan lost control of the car. We ran up on the curb and hit a telephone pole.

I don't know why Morgan lost control. It didn't feel like we were speeding. I'm not sure if something ran across the road or what. I saw that one of the tires was flat after the crash, but I don't know when it went flat. It was a pretty forceful impact. I was pretty shaken, but I managed to get out of the car. Jean and Morgan also were able to get out, Jean on my side. However, Blake appeared to be pretty badly injured. Because of the way the car hit the pole, the front passenger door couldn't open. I know that Blake was hurt pretty badly and was taken by ambulance to the Grant Parish Regional Hospital. I think it was because Blake wasn't wearing a seatbelt.

I remember that because at one point Blake had it on but in trying to turn around and talk to Jacques, Blake took it off. None of the rest of us had that kind of injury. I was wearing my seatbelt but I don't know if Morgan and Jean were wearing theirs.

A couple of minutes later, the police, and then an ambulance, arrived. Officer Knight with the Bentley Police Department took statements from us. I told Officer Knight exactly what happened.

**ADRIAN KNIGHT**  
**(Witness for the Defendant)**

My name is Adrian Knight, and I am a supervising officer with the City of Bentley's Police Department. I work all the major accidents in our jurisdiction. Recently, we started cracking down on the common problems caused by drivers in an effort to make Grant Parish's highways the safest in Louisiana. It helps that Grant Parish has a district attorney focusing on prosecuting traffic-related offenses, including DUI and reckless driving.

I grew up in Grant Parish. I played football at Grant Prep High School the year they won the state championship in 1984. I did not go to college. After police academy in Texas, I worked a few years with the Grant Parish Sheriff's Department, as well as doing part-time security, I was accepted to the Louisiana State Police. In my four as a trooper with the state police, I worked accidents on major highways within our state. I saw first-hand the effects of driver inattention. The last year I was there, I was usually the most experienced on a scene. I have completed a five-day training session on accident reconstruction. Those classes are in high demand for law enforcement officers, and that experience was one of the factors in my position with the Bentley Police Department. I would like to get further training so that I can apply to be certified as an accident reconstructionist with the Accredited Coalition for Reconstruction of Traffic Accidents. I could pick up a lot of extra work as a professional witness if I was certified.

In my last year with the LSP, I was asked to assist my supervisor, Lt. Roger Grimes, with preparing the LSP's contributions to the Governor's Strategy for Safer Highways Plan. The goal of the project was to reduce the fatality rate by ten percent by the end of 2008 based on data from 2002. The Plan focuses on things like construction zones, intersections, lane departures and driver behavior in effort to reduce injuries and fatalities associated with motor vehicle crashes on

Louisiana highways. My job was primarily to assemble statistics for that project, but I was honored to be a part. Things like rumble strips and median barriers are products of such safety initiatives.

In my years of law enforcement, I have learned that addressing driver behavior is a critical factor in reducing fatal and serious injury crashes. The statistics show that a large number of crashes are due to the impaired condition of the driver or driver errors. Drivers under the age of 21 (ages 15-20) continue to be over-represented in fatal and injury crashes. On a local level, I have organized a campaign for the high schools to learn that "Attention = Alive." My campaign is similar to "Click-It or Ticket," "Just Say No," and other similar awareness campaigns. The five major contributing factors for youthful drivers' crashes are speeding, crossing into the wrong side of the road, failure to yield, reckless driving, and drinking. Driver inattention is most often caused by fatigue, pre-occupation with other thoughts, or distractions such as grooming, eating, reading, cell phones, kids, or something outside of the vehicle. A review of crash data reveals that 37% of drivers made no pre-crash response. The likelihood that a driver will be aware of and take action to avoid an imminent crash decreases with age. Recently, we have seen a tremendous number of problems associated with young drivers' texting or talking on cell phones while driving. The legislature has tried to help with that problem in recent years.

"Attention = Alive" covers all these topics to increase awareness among Grant Parish teen drivers. I prepared the Uniform Traffic Accident Report in this case. I was called to examine the scene and evidence from a wreck that occurred at approximately 1:30 am on April 15, 2010 on Stuart Lake Boulevard in Grant Parish, Louisiana. I arrived within ten minutes of the accident because I happen to live nearby.

When I arrived, I saw a Chevrolet Malibu—a newer model and silver in color—smashed into a telephone pole at the right front quadrant. The telephone pole was located 4 feet from the side of the Boulevard, and there is a concrete curb between the pole and the road surface. From first glance it appeared that the car's front tire could have been a cause, because it looked like it was almost flat. However, later I opined that this was not the cause and probably happened when the car hit the curb just before hitting the telephone pole. The tire was not sent to a lab because I did not feel it was necessary.

The first thing I did was spend a few minutes talking with the two EMTs who were at the scene about what they did upon arrival. I was concerned that maybe Marcus Guidry, the driver for Grant Parish's ambulance service, did something silly to compromise this scene like he did back on Evangeline Lane about four months prior.

I don't think he did, though, because Chris Partridge said that he followed protocol completely and I have always found Chris to be trustworthy. Chris was the other EMT working that night. Chris and Marcus both confirmed that they had to rely on Blake's friends to tell them who Blake was because Blake was unable to answer their questions at arrival upon arrival to the scene.

Then, I started to collect and evaluate the physical evidence. I took measurements of some skid marks that were there. I think another police officer took the photographs of the skid marks—or at least I told Jason to take photographs. They should have been taken to the evidence room because I decided later that they were not that important. I did not review them in forming my opinion as my measurements were more essential.

As the lead accident investigator for Grant Parish Sheriff's Department, I interviewed witnesses at the scene. I did not interview Jean Hebert, despite what Jean told you. Another

officer may have interviewed Hebert, but I did not, and I have not seen such a statement. I personally interviewed Alex Williams and Morgan Smith. Alex helped me to understand the route that the youngsters took when they left Austin's home on Newman Road and where everyone was sitting in the car. Also, Alex was the first person to admit that there was a texting event within minutes of the crash. Alex said that Taylor was supposed to be dating Morgan, but with Blake in the mix, things had gotten interesting because Morgan's priorities had definitely changed. I interviewed Morgan after talking with Alex, and Morgan explained the texting in detail. Apparently, Taylor wanted more of Morgan's attention and was upset that Morgan was partying without Taylor. Taylor was texting to Morgan about this displeasure. Morgan told me that a few seconds before the accident Morgan said, "Blake, mind helping me out with this?" and tossed Blake the phone. Morgan didn't look at where the phone was heading as Morgan tossed it, so it hit the floorboard of the passenger's side. Blake retrieved it and started texting, asking Morgan what to type. However, Morgan wasn't sure what Blake wrote and if any message was actually sent. Morgan explained that before the accident, Morgan tried to stop the vehicle and hit the curb, which did slow the vehicle but not enough to keep it from hitting the pole. I never heard of this HL Johnson witness, so I never took a statement.

After the accident, Blake Hanes was transported to Grant Parish Regional Hospital by ambulance. I interviewed Blake at the hospital. I did not think Blake's memory of the accident was that good because of pain medication at the time of the interview and intoxication at the time of the crash. Blake told me that Blake drank a "couple" of beers at the party, but that's what everyone always says. Blake also said that Blake was wearing a seatbelt. At the time I interviewed Blake, Blake couldn't remember anything after pulling out of Austin's driveway onto Newman Road. I did not find Blake to be that helpful. Blake did say that nothing seemed

wrong with the car before the accident. I have investigated one other accident where a driver was possibly texting while driving. After looking at all the data in this case, I called a friend of mine who still works with the LSP for the inside scoop on the signs that a driver has been texting while driving just to make sure I had not overlooked something. The records I obtained indicate that the final text message was sent from Morgan's phone at approximately 1:11 am on April 15, 2010. From the language of the text itself, I believe that Blake actually typed the message because it has a different feel than the other texts, like it's from a different author. Also, Morgan's statement that Morgan was not texting is supported by the statement of at least one other passenger and Morgan. Based on my professional experience and the evidence I was able to consider, I believe that Morgan Smith was probably not distracted by texting at the time of the accident. I based my opinions on the testimony given by occupants of the vehicle, the cell phone records provided by the Defendant, and the evidence at the scene.

From the length and location of the skid marks, the damage to the vehicle, and based on my training, I calculated the speed of the vehicle to be about five miles per hour below the speed limit at the time of the crash. The weather was not a factor for necessitating a slower speed. In my professional opinion, the vehicle's speed was not a contributing factor in the crash. It was a single car accident so speed of impact really wasn't the issue.

Based on all the information I gathered, I believe the cause of the accident cannot be conclusively determined by scientific evidence. The skid marks indicate that the driver was aware that the car was going to collide with the pole in advance of the collision and was trying to stop, but the cause of the crash is unclear.

I did an NCIC check on Morgan as part of my investigation. There were no speeding tickets revealed in the records check.

**DR. ASHLEY BOUDREAUX**  
**(Witness for the Defendant)**

I am Dr. Ashley Boudreaux. I am 40 years old and I practice medicine at the Grant Parish Regional Hospital. I have three children whom I love and coming back to Grant Parish Regional Hospital is like a dream come true after having been in Kansas for eleven years. Some people say that the emergency room is too stressful, but I don't think so. I have always liked the constant challenge and change of the ER, even though we don't have it quite as glamorous as the ones on Grey's. I went to undergrad at Tulane University in New Orleans. After that, I went to medical school at the University of Oklahoma, followed by a general residency at Oklahoma and a few years in Kansas focusing on emergency medicine. I have been in emergency medicine for several years now.

I am aware that there was a serious car accident in Bentley on April 15, 2010 in the very early morning hours. I was working the ER at the time. Blake Hanes was brought into the ER by ambulance. I immediately met Blake at the ambulance drop-off, and Blake was lying on a stretcher.

Blake was in a lot of pain, which was obvious. As I always do with my patients, I questioned Blake in the regular course of triage and hospital admission. Blake had obviously been drinking. Law enforcement did not request a blood sample for testing blood alcohol levels, but I ordered one on my own initiative because I wanted to know whether BAC was having any effect on Blake's perception of pain. Blake's BAC about 3:30 am on April 15, 2010 was .09, which is legally intoxicated. Of course, it is clearly over the limit for minors.

Morgan Smith was also brought to the hospital—by law enforcement, though.

Morgan took a blood alcohol test as well. Morgan's blood was fine as there was no alcohol measured in Morgan's bloodstream. Morgan's test was about 3:45 am. on April 15, 2010. I remember that because Morgan was tested after Blake. I remember that when Blake came into the ER, pain was a big thing. But, Blake was talking a lot to me. I remember Blake asking me where Morgan was and whether Alex's parents were there. I didn't know who Morgan was until Morgan came to me for testing of the BAC by way of law enforcement. I am not sure, though, why Blake was so curious about Alex's parents.

In the course of taking a history and physical, I commonly ask my patients about the source of injury. It is important to know any details of the cause so that I can better assess the varying needs of treatment and diagnoses that might follow. In Blake's case, I recall that Blake didn't remember much from the crash. Blake was aware that the car collided with a pole on the right front quadrant, near where Blake was sitting. Blake couldn't get out of the car and required emergency personnel to assist. I don't think they had to use the jaws of life, though. Blake said that Morgan had been texting with someone named Taylor, but Blake got the phone from Morgan.

Blake's injuries were mostly concentrated on the right leg and foot, which were crushed in the accident. Blake could not move the toes on the right foot. Blake's leg was stabilized by paramedics using a board to hold it straight and still. I ordered tests and when we realized the scope of the injury and made sure that Blake was stable, I turned Blake over to a treating physician. I am only an ER doctor. I know that Blake eventually had to have surgery to insert a metal rod and pins in the leg. In the grand scheme of things, Blake's injuries are not that terrible. Really, Blake is lucky.

One of my kids is a teenager so I know about this texting stuff. My daughter, Ellie, is always texting with her friends. It's so full of symbols that I have to really work to read it. It scares me to death because I work the ER so I see terrible injuries and death as a consequence of vehicle accidents. I never want Ellie to "twd." I read the articles—I know what is going on.

I am not being paid to testify because I was subpoenaed. I would like to receive something for my trouble, however, because I am a little upset to be called as a witness because I had planned on going to Grand Isle this week with my children. We were going to have a lot of fun, and I don't see why you needed me to testify. I was just the ER doctor and the medical record speaks for itself.

## News Article

### ***The Town Talk***

***Grant Parish News***

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Nancy Dew, [ndew@thetowntalk.com](mailto:ndew@thetowntalk.com)  
Sunday, April 17, 2010

## **Accident Injures Teens TXTNG 2 BLAME?**

Four teens were traveling southbound on Stuart Lake Blvd. early Saturday morning when the 2009 model Chevrolet Malibu driven by Morgan Smith crashed into a telephone pole. Three other local teens were in the car as well. No other vehicles were involved.

The passengers and driver were taken to Grant Parish Regional Hospital to be evaluated and treated for injuries. The front seat passenger was the most seriously injured. Authorities question whether texting was involved. One passenger reported that the driver was texting at the time the vehicle skidded off the road and into the pole. Officer Knight stated, "This texting thing is getting out of control. The law says they can't do it while driving. PERIOD. But, we are seeing more and more of it, especially from teen drivers. "

Drinking may also be a cause in the crash according to paramedics at the scene. Officer Adrian Knight told reporters, "I am doing everything in my power to get to the bottom of this. If it was the tires, we want to know. If it was the speed, we want to know. If it was texting or drinking, we want to know it because someone should pay. We have to teach these kids a lesson." The driver and passengers are minors and thus were not consulted for comment. All the teens involved in the wreck attend Bentley High School in Grant Parish.

## INDEX OF EXHIBITS

Exhibit 1A Accident report drafted by Officer Knight (4 pages)

Exhibit 1B Diagram drafted by Officer Knight (1 page)

Exhibit 2 Judgment form of HL Johnson (1 page)

Exhibit 3 Cell phone records of Morgan Smith (3 pages)

Exhibit 4 Plaintiff's medical record (2 pages)