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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-20-55

Caitlin Elizabeth Braun,

Appellant,

v.

The Ben Arnold Sunbelt
Beverage Company of South
Carolina, L. P., Two Heels,
Inc. d/b/a State Street Pub and
Sunbelt Golf Development,
Inc., d/b/a Indian River Golf
Course, Defendants,

Respondent.

Of whom The Ben Arnold
Sunbelt Beverage Company of
South Carolina, L.P. is the
Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Caitlin Elisabeth Braun,

Plaintiff,

vs.

The Ben Arnold Sunbelt Beverage Company of
South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub and Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
DOCKET NO. 13-CP-20-55

ORDER GRANTING DEFENDANT BEN
ARNOLD SUNBELT BEVERAGE COMPANY
OF SOUTH CAROLINA, L.P.'S MOTION FOR
SUMMARY JUDGMENT

This matter came before the Court on Thursday, February 20, 2014 in Winnsboro, South Carolina. Specifically before the Court was the Joint Motion of Defendants Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., and Sunbelt Golf Development, Inc. d/b/a Indian River Golf Course. Appearing on behalf of the Plaintiff Caitlin Elisabeth Braun were H. Ronald Stanley, Esquire and Jerry L. Finney, Esquire. Appearing on behalf of the Defendant Sunbelt Golf Development, Inc. d/b/a Indian River Golf Course was Daniel R. McCoy, Esquire. Appearing on behalf of the Defendant Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., was John E. Cuttino, Esquire. The Defendant Two Heels, Inc. d/b/a State Street Pub was dismissed prior to the hearing of this Motion.

FACTUAL BACKGROUND

This case arises from an automobile accident which occurred in Lexington County on May 16, 2011. The material facts are undisputed. Plaintiff Caitlin Braun, then a 24 year old part-time bartender and college graduate with an earned Bachelor of Science degree in



Hospitality Management, had been working as a beverage hostess at a charity golf tournament at the Indian River Golf Course in Lexington County. The Defendant Ben Arnold Sunbelt Beverage Company of South Carolina, L.P. was one of many beverage alcohol distributors who agreed to provide beverage products at the tournament site. During the tournament, Plaintiff Caitlin Braun tended a vendor table on the golf course, from which she provided and poured small "tasting" amounts of various alcoholic beverage products for passing golfers to sample if they so chose. By her own admission in her Complaint and deposition, Plaintiff Braun also consumed alcoholic beverages during the day.

Well after the tournament concluded and Plaintiff Braun's responsibilities at the tournament had ended, Braun was driving her personal car on a roadway near the golf course where the tournament had been held. While operating her vehicle under the influence of alcohol and/or other drugs, Plaintiff Braun crossed the center line of a two-lane road at a high rate of speed and struck head-on an oncoming vehicle operated by Devin Shumate. Shumate was gravely injured in the collision and his four (4) year old daughter Gabriella was killed.

Plaintiff Braun was thereafter charged with violating South Carolina's felony DUI statutes and, in addition, was named as a Defendant in civil actions brought by Shumate in the Fairfield County, South Carolina Court of Common Pleas (2011-CP-20-301 and 2011-CP-20-302) for his injuries, and for the death of his daughter Gabriella. The civil actions were eventually settled at mediation. On February 8, 2012, Braun pled guilty to one charge of Felony DUI (S.C. Code 56-5-2945). On August 7, 2012, Braun was sentenced to eighteen (18) months in prison and assessed a fine of \$10,100.00 (Ten Thousand One Hundred Dollars).

Plaintiff Braun brings the current action against Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., asserting a sole cause of action for negligence against it, contending it

breached duties allegedly owed to her, which she claims have resulted in personal injury and other damages to her for which she seeks to be compensated.

PROCEDURAL HISTORY

Defendants Ben Arnold Sunbelt Beverage Company of South Carolina, L.P (hereinafter "Ben Arnold") and Sunbelt Golf Development, Inc. d/b/a Indian River Golf Course (hereinafter "Indian River") filed a Joint Motion for Summary Judgment.

Specifically, Defendant Ben Arnold moved for summary judgment on the following seven (7) grounds, each of which was argued to the Court:

1. In pleading guilty to one charge of Felony DUI, Plaintiff Braun has admitted her legal responsibility for the automobile accident on May 16, 2011 from which her alleged injuries and damages arise. Therefore, she is estopped judicially and collaterally from now denying her liability for this accident and the damages she alleges result therefrom.
2. Having admitted her fault and liability for the accident of May 16, 2011 which gives rise to her damage claims, Plaintiff Braun is negligent as a matter of law and to such a degree that her claims are barred.
3. In her pleadings previously filed with this Court in "Shumate vs. Braun, et al.", Fairfield County Civil Action No. 2011-CP-20-301 and "Shumate vs. Braun, et al.", Fairfield Civil Action No. 2011-CP-20-302, Plaintiff (then Defendant) Braun denied that Ben Arnold was negligent as she now alleges. Therefore, she is estopped judicially and collaterally from pursuing the same negligence claims against these Ben Arnold, which she previously denied.

4. The Releases and Stipulations of Dismissal executed by Plaintiff in "Shumate vs. Ben Arnold, et al.", Fairfield County Civil Action No. 2011-CP-20-301 and "Shumate vs. Ben Arnold, et al.", Fairfield Civil Action No. 2011-CP-20-302, bar the claims of Plaintiff Braun against Defendant Ben Arnold.

5. Plaintiff Braun cannot recover as a matter of law, for her claim of "loss of liberty and freedom due to her incarceration for Felony DUI resulting from the death of an occupant in the vehicle that was struck by the Plaintiff", because the Plaintiff Braun voluntarily pled guilty to Felony DUI, admittedly knowing that incarceration would be a mandatory element of her sentence.

6. South Carolina does not recognize the cause of action Plaintiff purports to assert against Defendant Ben Arnold for injuries she sustained as a result of intoxication claimed to have been facilitated by Defendants and, therefore, Plaintiff's Complaint should be dismissed with prejudice.

7. In the alternative, and assuming as true the allegations of Plaintiff's Complaint which allege that her relationship with Ben Arnold was that of employee-employer, Plaintiff's sole and exclusive remedy against Defendant Ben Arnold is a Workers' Compensation claim and, therefore, this Complaint should be dismissed.

Plaintiff Braun concedes that the claim against Defendant Ben Arnold rests on the assertion that Defendant Ben Arnold had a legal duty to monitor her during the tournament and/or to prevent her from drinking to intoxication. This Court has considered all the submissions and arguments from the parties. Based on all items in the record before it, the Court orders as follows:

RULING

Rule 56(c) SCRPC, provides that summary judgment shall be granted if there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Quality Towing Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009) (internal citations omitted). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Trico Surveying Inc. v. Godley Auction Co.*, 314 S.C. 542, 431 S.E.2d 565 (1993); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). In response to a Motion for Summary Judgment, a nonmoving party may not rest upon the mere allegations of its pleadings. Rule 56(e) SCRPC.

Plaintiff Braun's Complaint consistently and repeatedly asserts her alleged employment relationship with Ben Arnold, and suggests that employment relationship gave rise to duties Ben Arnold allegedly owed her, but breached. Viewing those allegations in the light most favorable to the Plaintiff as alleged in the Complaint, and only for the purpose of this Motion, Braun's sole remedy against Ben Arnold as her employer is the South Carolina Worker's Compensation Act, not a civil lawsuit such as this. This alone is grounds for granting summary judgment in favor of Defendant Ben Arnold.

Further, even if Plaintiff Braun's relationship with Ben Arnold was not that of an employee-employer subject to the Workers' Compensation Act, South Carolina law does not recognize the cause of action Braun attempts to assert against Ben Arnold in this circumstance.

Braun's sole cause of action against Defendant Ben Arnold is one for negligence. Braun has alleged that Defendant Ben Arnold had a duty to monitor her actions to prevent her from drinking to intoxication. Her Complaint alleges she became intoxicated by consuming beverage alcohol while tending Ben Arnold's vendor table earlier in the day on which the accident occurred, and further claims that Defendant Ben Arnold was negligent in failing to monitor and control Braun's alcohol use and failing to prevent her from becoming intoxicated.

To maintain a cause of action for negligence, a plaintiff has the burden of proving the following: (1) a duty on the part of the defendant, (2) breach of that duty by an act or omission or commission and (3) that such breach of duty was the proximate cause of the plaintiff's injuries. *Sherrill v. Southern Bell Telephone & Telegraph Co.*, 260 S.C. 494, 197 S.E.2d 283 (1973). A negligence *per se* action is simply a subset of traditional negligence suits; a plaintiff still has the burden of proving the three essential elements in addition to the existence of a statute that establishes a duty apart from any common law duty. *See Freeman v. Colwell Mortgage Corp.*, 297 S.C. 335, 342, 377 S.E.2d 108, 110-11 (Ct. App. 1989).

South Carolina has never recognized a general common law duty for a person or business to prevent an adult from becoming intoxicated and injuring himself because of their alcohol intoxication. Our Courts have concluded that it is the consumption of the alcohol, and not its *supply*, that is the focus of the liability analysis. *See Tobias v. Sports Club, Inc.*, 323 S.C. 345, 348, 474 S.E.2d 450, 451 (Ct. App. 1996) (citing 45 Am. Jur. 2d *Intoxicating Liquors* § 553 (1969)) (subsequent history omitted). The Supreme Court of South Carolina has explained that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92, 504 S.E.2d 318, 320 (1998).

Furthermore, the Supreme Court of South Carolina has held that South Carolina does not recognize a 'first party' cause of action against establishments by an intoxicated adult predicated on an alleged violation of S. C. Code Ann. §§ 61-5-30 and/or 61-9-410. *See Tobias*, 332 S.C. 90, 504 S.E.2d 318 (recognizing an absolute bar to "'first party' cause[s] of action against [a] tavern owner by an intoxicated adult predicated on an alleged violation of [alcohol control statutes,]" and elaborating that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct"); *Lydia v. Horton*, 355 S.C. 36, 583 S.E.2d 750 (2003) (relying on *Tobias* to bar plaintiff's recovery where plaintiff, who drove a vehicle after becoming voluntarily intoxicated and sustained injuries in a car accident, sued the person who loaned plaintiff the car under a theory of negligent entrustment).

Finally, the South Carolina Court of Appeals has ruled that a social host incurs no liability to either first or third parties injured by an intoxicated guest over the age of twenty-one (21) years old. *See Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct. App. 1986) (holding that a driver had no cause of action in negligence against a social host who gratuitously served alcohol to an intoxicated adult guest who subsequently caused an automobile collision, injuring the driver, even if host knew or ought to have known the guest intended to drive motor vehicle); *Marcum v. Bowden*, 372 S.C. 452, 643, S.E.2d 85 (2007) (same proposition).

Here, Plaintiff alleges she became intoxicated by consuming beverage alcohol products while she was promoting beverage products to golfers on the golf course during the tournament. It is undisputed that Braun was of legal drinking age and was serving herself the beverage alcohol. She then caused herself injury through her own actions by later driving under the influence—a charge she voluntarily and knowingly pled guilty to in the criminal case brought

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against her by the State of South Carolina. South Carolina Courts have consistently refused to recognize the duty that Plaintiff is attempting to impose on Defendant Ben Arnold. Because Plaintiff's Complaint fails to assert any recognizable duty owed to the Plaintiff by Defendant Ben Arnold, nor any accepted cause of action, Defendant Ben Arnold's Motion for Summary Judgment is **GRANTED**. Further, because this Court's ruling is based upon the threshold grounds of #6 and #7 set forth previously herein, the remaining grounds are moot and are not addressed by this Order at this time. An analysis of Defendant Ben Arnold's additional grounds in support of its Motion was not necessary for this Order but the other grounds appearing in the Record as argued by Defendant Ben Arnold support summary judgment.

THEREFORE, IT IS HEREBY ORDERED that Ben Arnold Sunbelt Beverage Company of South Carolina, L.P.'s Motion for Summary Judgment is **GRANTED**, and Plaintiff's Complaint against it is hereby dismissed with prejudice.

AND IT IS SO ORDERED.



The Honorable R. Knox McMahon
Presiding Judge

April 24, 2014

Winnsboro, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-20-55

Caitlin Elizabeth Braun,)
)
Plaintiff,)

vs.)

The Ben Arnold Sunbelt Beverage)
Company Of South Carolina, L.P.,)
Two Heels, Inc., D/B/A State Street Pub,)
And Sunbelt Golf Development, Inc.)
D/B/A Indian River Golf Course)
)
Defendants.)

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER**

DETTI
CLERK OF COURT
FAIRFIELD COUNTY
JUN 2 10 12 AM

This matter is before the Court to address Plaintiff's Motion, pursuant to Rule 59(e) SCRCF, for Reconsideration as to the Order Granting Summary Judgment To Defendant, Ben Arnold Company of South Carolina, L.P. A hearing on Defendant's Summary Judgment Motion was held in Fairfield County on February 20, 2014, and an Order Granting Defendant's Motion was issued on April 24, 2014. The Court has reviewed the Plaintiff's Motion for Reconsideration and finds that oral arguments would not assist in this matter and finds that any additional hearing would be redundant and unnecessary.

Therefore it is **ORDERED** that the Plaintiff's Motion for Reconsideration is **DENIED** and the prior ruling is reaffirmed in toto.


The Honorable R. Knox McMahon
Presiding Judge, Sixth Judicial Circuit

Lexington, South Carolina
May 30, 2014

The South Carolina Court of Appeals

Caitlin Elisabeth Braun, Appellant,

v.

The Ben Arnold Sunbelt Beverage Company of South
Carolina, L.P., Two Heels, Inc. d/b/a State Street Pub and
Sunbelt Golf Development, Inc. d/b/a Indian River Golf
Course, Defendants,

Of whom The Ben Arnold Sunbelt Beverage Company of
South Carolina, L.P. is the Respondent.

Appellate Case No. 2014-001567

ORDER

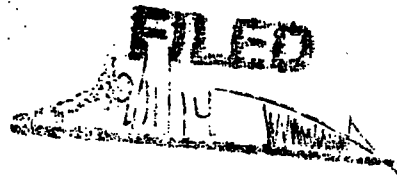
Because counsel for Appellant has certified that he received written notice of the entry of the order on July 16, 2014, and he served the notice of appeal on July 18, 2014, Respondent's motion to dismiss for untimely service is denied.

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FOR THE COURT

Columbia, South Carolina

cc:

Henry Ronald Stanley, Esquire
Jerry Leo Finney, Esquire
John Edward Cuttino, Esquire



STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Devin Shumate and Dacia Shumate, as Personal
Representatives of the Estate of Gabriella
Shumate,

Plaintiff(s),

vs.

The Ben Arnold Sunbelt Beverage Company of
South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub, Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course and Caitlin
Elisabeth Braun,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
) Docket No. 11-CP-20-00302
)
)
)

ORDER FOR APPROVAL OF SETTLEMENT

2012 JUN 15 A 11:38
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

This matter came to be heard before me on June 12, 2012 at the Lancaster County Courthouse. Plaintiffs and the attorneys for all parties appeared. A Petition by the Personal Representatives, Devin Shumate and Dacia Shumate, sets forth the essential allegations along with the Complaint that was filed in this action. It appears that the parties have reached and agreed upon a resolution of the matter and now request this Court to approve the settlement.

On May 16, 2011 Gabriella Shumate, a minor, was a passenger in an automobile being operated by her father, Devin Shumate, on Ramblin Road in West Columbia, South Carolina. The Shumate vehicle was struck at a high rate of speed by a vehicle being operated by the Defendant Caitlin Braun. As a result, the minor Gabriella Shumate was injured and expired almost immediately from her injuries. The Complaint sets forth the acts and omissions of the Defendants which allegedly led to Gabriella Shumate's death and seeks actual, special, consequential, and punitive damages.

The Personal Representatives, Devin Shumate and Dacia Shumate, were sworn and testified that they have reviewed the terms of the Petition and understand and agree with the terms of the settlement. They also testified that they are satisfied with the advice rendered by their legal counsel and, under the circumstances, believe the settlement to be fair and thus request this Court's approval.

It appears to the Court, based upon the testimony, a review of the file, the representations of the Plaintiff Personal Representatives, and the recommendation of the attorneys for the Plaintiff Personal Representatives, that the settlement is fair and reasonable and in the best interest of the beneficiaries and the Estate of the decedent. The Court therefore agrees and approves the settlement. The Personal Representatives are hereby authorized to execute the necessary documents to end this litigation and release the Defendants, their employees, and insurers.

Now, therefore, it is ORDERED, ADJUDGED, and DECREED that the Court does hereby approve the settlement of this action as to the Defendants for the total sum of _____ allocated for the wrongful death cause of action.

It is further ORDERED, ADJUDGED, and DECREED that this Court hereby authorizes and directs the Plaintiffs, as Personal Representatives of the Estate of Gabriella Shumate, deceased, upon receipt of

... to execute and deliver the necessary documents to release the Defendants, their employees, and insurers from any and all claims of whatsoever nature and kind arising out of, or in any way connected with the care, alleged pain and suffering, and/or wrongful death of Gabriella Shumate. Upon the execution of such agreement, Defendants shall be fully released

from and protected against any and all claims, demands, causes of action, judgments or liability of whatsoever nature and kind in law or in equity arising out of or in any way connected with the alleged injuries to and death of Gabriella Shumate.

It is further ORDERED, that upon the joint request of all parties and to protect the confidentiality of the amount of the settlement, the Clerk of Court of Fairfield County is instructed to permanently seal the Petition and Order, as well as any other public portions of the file which indicate the amount for which this case was settled.

Finally, it is further ORDERED that the Complaint in this case be dismissed with prejudice, and that all matters and things contained therein are *res judicata* between the parties and their heirs, successors, and assigns.

IT IS SO ORDERED.


The Honorable Paul M. Burch
Sixth Judicial Circuit, Court of Common Pleas

Lancaster, South Carolina

June 12th, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD) CASE NO.: 2013-CP-20-0055

CAITLIN ELISABETH BRAUN)
)
) TRANSCRIPT OF RECORD
vs.)
)
)
BEN ARNOLD SUNBELT)
)
BEVERAGE COMPANY OF)
)
SOUTH CAROLINA, L.P.,)
)
ET AL)

FEBRUARY 20, 2014
WINNSBORO, SOUTH CAROLINA

BEFORE THE HONORABLE KNOX MCMAHON

APPEARANCES:

HENRY RONALD STANLEY, ESQUIRE
COLUMBIA, SOUTH CAROLINA

JERRY LEO FINNEY, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEYS FOR THE PLAINTIFF

JOHN EDWARD CUTTINO, ESQUIRE
COLUMBIA, SOUTH CAROLINA

DAN MCCOY, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEYS FOR THE DEFENDANTS

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(No Exhibits)

1 THE COURT - Number 10, 2013-CP-20-0055, Braun v.
2 Ben Arnold Sunbelt. Let's see, we have Mr. Cuttino or
3 Cuttino.

4 MR. CUTTINO - Yes, Cuttino.

5 THE COURT - Cuttino ---

6 MR. CUTTINO - Yes, sir.

7 THE COURT - --- for the Defendant, Ben Arnold.
8 Is that right? For Ben Arnold.

9 MR. CUTTINO - Yes, sir.

10 THE COURT - And yes, sir, your name?

11 MR. MCCOY - Dan McCoy, I'm here for Sunbelt
12 Indian River Golf Development doing business as Indian
13 River Golf Course.

14 THE COURT - Are Sunbelt and Indian Rivers the
15 same?

16 MR. MCCOY - Yes, Your Honor, they're doing
17 business as.

18 MR. CUTTINO - Your Honor, there are two Sunbelts
19 actually. They are not related. Sunbelt Golf and Ben
20 Arnold Sunbelt are not in any way related.

21 THE COURT - And then Plaintiff is Mr. Finney?

22 MR. FINNEY - Good morning, Your Honor.

23 MR. STANLEY - And Ron Stanley, Your Honor.

24 THE COURT - Mr. Stanley.

25 MR. STANLEY - Yes, sir.

1 THE COURT - Good morning, Mr. Finney. How are
2 you?

3 MR. FINNEY - Doing well. Hope you are, Your
4 Honor.

5 THE COURT - Yes, sir. All right, now, this is
6 the Defendant's Motion for Summary Judgment. I'll be glad
7 to hear from you, Mr. Cuttino?

8 MR. CUTTINO - Yes, sir. Your Honor, I've been
9 introduced and you know the Defendant that I represent.
10 there is a Defendant I believe that has settled out of this
11 case and that is Two Heels. Is that correct?

12 Mr. STANLEY - That is correct, Your Honor.

13 MR. CUTTINO - All right, sir. They at one time
14 were a party to this motion; they are not anymore, so
15 they're out of the case. My client is Ben Arnold Sunbelt
16 Beverage; it is an operation here in Winnsboro; it's a
17 beverage/alcohol distributor, well-known state-wide
18 regional.

19 THE COURT - How long they been in Fairfield
20 County?

21 MR. CUTTINO - Quite some time. I don't ---

22 THE COURT - I always thought they were on
23 Gillespie Street in Columbia. When I was in ---

24 MR. CUTTINO - Well, they had -- they had a
25 warehouse there ---

1 THE COURT - Sir?

2 MR. CUTTINO - They had a warehouse there at one
3 time.

4 THE COURT - Yes, sir. I don't know why I knew
5 that fact, but be that as it may, go right ahead.

6 MR. CUTTINO - Yes, sir, they have an operation
7 down here on the highway as you may have passed it coming
8 in today. The incident that gives rise to this case that
9 we are trying to get the Court to issue summary judgment
10 order on is this, fairly simple, and I don't think the
11 facts are in dispute. On May the 26th, 2011, the Plaintiff
12 in this case, Caitlin Braun, was the driver of a car. She
13 was admittedly intoxicated; she was driving at a high rate
14 of speed, crossed the centerline; she was in her own
15 vehicle -- crossed the centerline, struck another car head-
16 on, killed a four-year old girl and grievously wounded or
17 injured that four-year old girl's father who was driving
18 the vehicle. Subsequently, she pled guilty to Felony DUI
19 and served time in prison, may be still in prison, I'm not
20 sure. The present case -- that's the transaction out of
21 which this case arises believe it or not. The present case
22 finds Ms. Braun as Plaintiff. She is seeking damages from
23 these Defendants for injuries she received in that accident
24 that she pled guilty to the DUI out of. For a variety of
25 reasons I'm asking the Court to grant summary judgment. We

1 do not believe that for many legal reasons this case ought
2 to go any further. I've submitted a memorandum, but if
3 you'd allow me to go a little bit more into the background,
4 because I think the procedural background is very important
5 to the Court's decision here. On the date of the accident
6 Ms. Braun was 24 years old, an adult; she's a college
7 graduate; she's actually a bartender. She had been trained
8 in bartending; she had some alcohol safety courses; she
9 worked down in Five Points, and she actually had a
10 bachelor's degree from the University in Hospitality
11 Management, which, as you know, involves operations of
12 restaurants, bars, things of that nature. She had been
13 engaged by Ben Arnold Company to work as a beverage hostess
14 at a charity golf tournament that took place in Lexington
15 County, and these other Defendants had various roles in
16 this golf tournament. It was sort of an industry type of
17 golf tournament. There were lots of other bartenders
18 there, lots of other folks who were in the alcohol service
19 industry participating in the tournament. It was to raise
20 money actually for somebody who was injured. As is
21 customarily the practice, there are lots of vendors at
22 these tournaments and the golf course hosted the
23 tournament. The party that's been dismissed or has settled
24 was going to host some after party. I think they actually
25 organized the tournament. Ben Arnold was one of the

1 vendors and they would per the usual protocol set up a
2 table on a hole so that as golfers passed, they could
3 sample new types of product if they so chose. These things
4 weren't for sale; they were complimentary if somebody
5 wanted to take them, and there were lots of other vendors
6 out there too, Budweiser, other, you know, brands. Ms.
7 Braun was engaged to stand at that table and be a hostess,
8 serve them; if somebody came by and wanted something to
9 drink, it was her job to pour the drink, and they were not
10 drinks like you would get at a restaurant; they were
11 smaller portions, tasting portions. Now, throughout the
12 course of the day, according to her own testimony, Ms.
13 Braun herself drank. She wasn't forced to; she wasn't
14 required to, but she says she did. The tournament ended
15 about 5:00 o'clock in the afternoon, and at about 7:30 or
16 8:00 -- and at about 5:00 or so when the tournament ended,
17 her responsibility was over. We're not really sure where
18 she went. She says she can't remember, but at about 7:30
19 or so in the vicinity of this golf course she was involved
20 in this accident. She was thereafter charged with Felony
21 DUI Death in Great Bodily Injury. She was also named as a
22 Defendant in civil cases that were filed here in Fairfield
23 County. She was a Defendant; Ben Arnold Beverage Company
24 was a Defendant; Sunbelt Golf was a Defendant and now
25 dismissed a bar was a Defendant. Those civil cases were

1 mediated and eventually settled. Thereafter on February
2 the 8th, Ms. Braun pled guilty to Felony DUI with Death. In
3 August she was sentenced to 18 months in prison and a fine,
4 and as far as I know has served that time. Now, despite in
5 the civil proceedings and the pleadings that she filed and
6 in her guilty plea, despite her acknowledgement that she is
7 guilty, was guilty, did what she did, caused this accident,
8 was intoxicated, she's now a Plaintiff, and she is a
9 Plaintiff in this case asserting negligence, one negligence
10 claim against all the Defendants, basically alleging that
11 those Defendants owed her some duties that they breached,
12 and they are responsible for her being in this accident,
13 and she is seeking monetary damages from them as a result.
14 Our motion and the memo sets forth a number of grounds,
15 legal grounds by which we think support a motion for a
16 summary judgment. I'd like to just touch on those.
17 Inevitably, and this takes me back to some nightmares of
18 law school, but the issues of collateral estoppel, res
19 judicata and judicial estoppel are all necessarily involved
20 here. Sometimes the lines are not completely clear, but I
21 would remind the Court that this is a -- this is a legal
22 motion. This a motion that we see as on the law based on
23 things that have happened. There may be some disputes
24 about pieces of fact, but quite frankly, none of those
25 disputes about any of those pieces of facts affects our

1 view of what the law is and what has already taken place.
2 Our first ground is this: Ms. Braun admitted her legal
3 responsibility for the accident on May the 16th, 2011 as
4 part of her guilty plea. She's therefore now estopped in
5 several respects from denying her responsibility in this
6 accident again. As part of this claim, she has asserted
7 that it was not her negligence, but it was the negligence
8 of others that caused her to be in this accident. I have
9 cited numerous pieces of her guilty plea transcript and her
10 sentencing hearing transcript in which with retained
11 counsel, which was Mr. Finney, as I recall, at her side she
12 answered all the questions that Circuit Judge always asks a
13 guilty pleaing Defendant pleading freely, voluntarily, do
14 you know what this means, did you do this, has anybody
15 promised you anything or all of those, and she, of course,
16 answered them all affirmatively enough to support the
17 Judge's decision to accept her guilty plea. As part of her
18 sentencing hearing, we know that she had written a letter
19 to the family of the little girl who was killed
20 apologizing, acknowledging her fault. I have some excerpts
21 in the memo about that, and the bottom line, in fact, is
22 this, as part of her guilty plea, she necessarily admitted
23 to the elements of the charge of Felony DUI with Death.
24 They are driving a vehicle while under the influence of
25 alcohol or drugs, doing an act forbidden by law or

1 neglecting a duty imposed by law, and that that neglect was
2 the proximate cause of great bodily injury or death to
3 another person in that accident. There was no escaping
4 that she acknowledges those, yet today she is in urt
5 seeking money from the Defendants for this accident that
6 she has already admitted she caused. A significant thing
7 to note is this. She did not plead no contest. She did
8 not have any sort of conditional plea. She pled guilty.
9 She could have had a trial. Judge Cooper explained to her
10 that she could've had a trial and as part of that trial she
11 could've, you know, brought in witnesses and presumably
12 they could've said it wasn't her fault, someone else made
13 her do this. She could have made a lot of evidence that
14 she did not make to escape liability, but she pled guilty,
15 and she did that voluntarily and knowingly. Now she is in
16 Court taking the position that this is not her
17 responsibility; she was injured at the hands of somebody
18 else, and we believe that at a minimum she is precluded
19 from taking that position. We also assert to the Court
20 that judicial estoppel here should be of interest to the
21 Court. Judicial estoppel as I understand it is not really
22 to prevent misbehavior or the bad conduct of another party
23 taking advantage one party. It is a -- it is a doctrine
24 that upholds and is geared to the dignity and the sanctity
25 of the Court. In this circumstance we believe that Ms.

1 Braun in her position, pleading guilty, pleading guilty for
2 a reason presumably so that she would, you know, receive a
3 sentence less than the maximum, receiving a sentence less
4 than the maximum, now taking an inconsistent position with
5 this Court and saying that she is entitled to financial
6 damages from someone else for this accident -- I know the
7 word fraud in perpetrating a fraud on the Court are strong
8 terms, but I can't think of any scenario other than that by
9 which to describe it. She in this Court took -- well, she
10 pled guilty in Lexington County, because she was charged
11 there, but in pleadings filed in this Court took the
12 position that she couldn't remember, and then she
13 ultimately pled guilty; now she says it was not her fault.

14 THE COURT - She didn't plead guilty under Alford.

15 MR. CUTTINO - No, sir. So she's also, Your
16 Honor, bound by her factual admissions in her guilty plea.
17 I think that's well set of law; I cited the case of
18 Cauthren -- it's in my memorandum -- that suggest that you
19 can't go to Court under oath and plead guilty -- plead
20 guilty to elements of something and then decide later that
21 you want to take a different position when it suits you
22 when maybe when money's involved. She's bound by those
23 admissions. The second general ground, Your Honor, is that
24 having admitted her fault in so many different ways on so
25 many different occasions, she has admitted in essence her

1 negligence as a matter of law, and as nothing -- if nothing
2 else, should be ruled negligent as a matter of law in this
3 civil case that is pending here in Fairfield County.
4 Clearly one of the elements of the Felony DUI statute was
5 an acknowledgement that her violation of the statute and/or
6 neglect caused the accident and she has admitted to that.
7 Another interesting feature in the third grounds, Your
8 Honor, is that in pleadings that she previously filed with
9 this Court, she denied that these Defendants were
10 negligent. Now, you have exhibits before you which are the
11 pleadings previously, the Shumate cases are the cases that
12 were the civil cases brought for the death of a little
13 girl. In the Shumate cases there were a series of
14 allegations of negligence against my client, against the
15 client that settled and against Sunbelt Golf. She denied
16 all of those allegations of negligence in her Answer filed
17 with the Court. In this case her complaint is in essence a
18 copy of the Shumate's complaint and the allegations of
19 negligence that were in the Shumate complaint. Those very
20 same allegations that she denied in the Shumate civil
21 proceedings she now asserts affirmatively as the basis for
22 her claims against my clients in these cases. Again, the
23 issues of collateral estoppel, claim for collusion, a issue
24 for collusion and judicial estoppel I think are pertinent.
25 This is a person who has when it suited her took one

1 position and now when there is money potentially to be had,
2 takes a completely opposite position, not just an
3 inconsistent position, the opposite position. Your Honor,
4 if I may, I yield to Mr. McCoy who would like to speak to
5 the issue of the Order of the Court subsequent to the
6 settlement of the Shumate cases. There's some language in
7 that -- in that Order that we think applies.

8 THE COURT - Yes, sir?

9 MR. MCCOY - Your Honor, Dan McCoy. The --
10 continuing with what Co-Defendant's counsel's discussion of
11 the claim, one of the additional reasons that we believe
12 we're entitled to summary judgment would be based on the
13 Order issued by the Court in the Shumate case and -- which
14 was binding to all the parties for that settlement. As
15 part of the Shumate case, as was discussed and as part of
16 this case, the facts are not disputed. The Plaintiff in
17 this case was the Defendant in that case. There was
18 intoxicated, driving her car, caused the accident that
19 resulted in the injury or death of the Shumate Plaintiff in
20 that case. Entering into settlement, the parties were very
21 careful in negotiating the settlement and reached a
22 settlement of a confidential amount. Because of the nature
23 of the claims being a death and a four-year old involved,
24 the Court had to approve the settlement, and on June 12th,
25 2012, this Court heard the settlement proposal, had

1 conducted a discussion in an evaluation of the settlement
2 terms that were negotiated and agreed to between the
3 parties and approved the settlement. In approving the
4 settlement, the Court memorialized the agreement and the
5 intent of the parties in that settlement. The Order for
6 approval of the settlement is attached to our memorandum as
7 Exhibit G, redacted only to -- only for the confidentiality
8 of the amount of the settlement per the agreements and
9 Order, but the pertinent parts of that explain that upon
10 the execution of the release, the Defendants shall be fully
11 released from and protected against any and all claims
12 whatsoever of any kind in law or in equity arising out of
13 or in any way connected with the alleged injuries to the --
14 injuries to and death of Gabriella Shumate. There's no
15 question that the claims now being asserted are the exact
16 claims that are arising out of and are in connection to the
17 injuries and death of Gabriella Shumate. The Order is
18 clear that the Defendants shall be fully released and
19 protected against any and all claims. The Plaintiff in
20 this case, Plaintiff Braun, was a Defendant in that case;
21 so were all of the other named Defendants in this case that
22 Ms. Braun has brought. That clearly is setting out the
23 fact that the parties intended for all Defendants to be
24 protected against any further adjudication of issues
25 between the parties at all involved in the Shumate case.

1 The intent is clear. It does not say that they shall be
2 released, fully released and protected against any and all
3 claims that the Plaintiff may bring. It says, any and all
4 claims whatsoever of any nature and any kind arising out of
5 or in any way connected to this action. Ms. Braun was a
6 Defendant. She had the opportunity to participate in that
7 negotiation. She had the opportunity to raise cross claims
8 if she liked, and as part of the settlement that was
9 carefully crafted and carefully entered into between the
10 Defendants, the language of the Order reflects the intent
11 of the parties. Because it is made clear by the language
12 of the Order that the Defendants, including which -- who
13 are now the Defendants now will be protected from any and
14 all claims arising out of that incident. For that reason,
15 we believe we're entitled to summary judgment. Oh, and
16 also with the final paragraph of the Order explains,
17 finally, it is further ordered that the complaint in this
18 case be dismissed with prejudice and that all matters and
19 things contained therein are res judicata between the
20 parties and their heirs, successors and assigns. As Co-
21 Defendant's counsel has pointed out, Plaintiff Braun's
22 complaint is verbatim in the allegations, a carbon copy of
23 the complaint of the Shumates, and the Order cannot be more
24 clear that all matters and things contained therein are res
25 judicata between the parties. Ms. Braun was a party, as

1 are the Defendants that she has filed this action against.
2 The release is clear and in reflecting the intent of the
3 settling parties in that action that no -- that that was
4 going to extinguish all claims that any party in that
5 action may have against any party in that action. And we
6 believe that for that reason we're entitled to summary
7 judgment. I -- just to -- okay. I may go out of order
8 just slightly in our memorandum, and if I could skip ahead
9 just to the next point that I would like to discuss, which
10 would be that -- that the second reason that I feel that
11 we're entitled to summary judgment, is plainly, South
12 Carolina does not recognize the claims brought by Plaintiff
13 Braun in this action. Plaintiff's singular cause of action
14 against the Defendants in this action is for negligence.
15 As explained by Co-Defendant's counsel, she is basically
16 saying that though she got drunk by her own hand, pouring
17 the alcohol into her own mouth, the golf course, the liquor
18 distributor and the bar who was organizing the event, had a
19 duty to keep her from drinking to intoxication. South
20 Carolina and The South Carolina Supreme Court clearly state
21 that that is not the law in South Carolina. To be
22 specific, in Tobias v. Swartz Club, Inc., 332 SC 90, the
23 South Carolina Supreme Court found and held that South
24 Carolina does not recognize a first party cause of action
25 in essentially a dram shop issue. Why? Because South

1 Carolina, number one, has never recognized the general
2 common law duty to avoid the provision of intoxicating
3 drinks to an adult, whether they are intoxicated already or
4 not. There's no common law duty in South Carolina that
5 requires an establishment or a social host or anyone to
6 forego providing alcoholic beverages to an adult, whether
7 they're intoxicated or whether they're completely sober.
8 The reasoning is, and the Court of Appeals in its review of
9 Tobias, stated that the justification for that reason has
10 been given, that is the drinking of alcoholic and not its
11 supply that is the intoxication. The South Carolina
12 Supreme Court has explained that the public policy is not
13 served by allowing the intoxicated adult patron to maintain
14 a suit for injuries which resulted from his own conduct.
15 That is what Ms. Braun is essentially doing. She's saying,
16 I was drunk; somebody else was responsible for it, and now
17 I've injured myself and somebody else needs to be held
18 responsible. South Carolina says that's not allowed.
19 Furthermore, the Supreme Court of South Carolina held that
20 South Carolina does not recognize a first party cause of
21 action against establishments by an intoxicated adult
22 predicated on an alleged violation of the statutes that
23 would be there to prevent an establishment from over-
24 serving an already intoxicated person. The South Carolina
25 Supreme Court said we don't recognize a first party claim

1 for that, while we will reserve a third party, an innocent
2 third party's claim as in the Shumate case. Ms. Braun
3 being the guilty, intoxicated first party could not
4 maintain a claim, while the Shumate's can, the innocent
5 third party, because those statutes are there to protect
6 the general public, not to protect the person who's getting
7 them self drunk. The South Carolina Court is clear and
8 that it recognizes an absolute bar to the first party cause
9 of action against a tavern entered by an intoxicated adult
10 predicated on alleged violation of the alcohol statutes.
11 That Tobias case is very similar to the case here. In that
12 case a Plaintiff was playing golf all day, had been on the
13 golf course drinking, then continued on to bars beyond that
14 and continued to be intoxicated after drinking for an
15 extended period of time, got into his car, decided to
16 drive, crossed the centerline, hit a car head-on severely
17 injuring the driver and killing a passenger just like in
18 this case. In bringing the action against the last bar
19 that served him, his complaint was they knew I was
20 intoxicated, yet they still continued to serve me. The
21 South Carolina Supreme Court said, that doesn't matter;
22 this first party claim is not -- is not allowed in South
23 Carolina, and because Ms. Braun is bringing this claim in
24 South Carolina, clearly the law is that she does not have a
25 lawful right to do so, and as a matter of law, Defendants

1 are all entitled to summary judgment in this case. My
2 final point before I let my Co-Defendant's counsel and
3 joint mover in this motion finish, my last point is that,
4 and in the alternative, taking all of Plaintiff's
5 allegations in the complaint as true, the only cause of
6 action that she may possibly bring would be a cause of
7 action under the Worker's Compensation Act. In South
8 Carolina the Worker's Compensation Act is the exclusive
9 remedy against an employer for an employee's work-related
10 accident. The Supreme Court has stated that any doubts as
11 to a worker's status should be resolved in favor of
12 including him or her under the Worker's Compensation Act,
13 and that the exclusivity provision of the Act implies both
14 to direct employees and those termed statutory employees
15 under the Act, basically saying if there is -- if the
16 person is employed, their direct employer -- by the direct
17 employer or anybody that would be considered statutory
18 employer. For example: in a construction matter, if a
19 general contractor hires a subcontractor to build a
20 property, an employee of the subcontractor gets injured,
21 the subcontractor doesn't have worker's compensation
22 insurance -- that would be the direct employer -- that the
23 act would then allow them to reach over the subcontractor
24 and go to the general contractor as a statutory employer.
25 Anybody, whether you're seeking it as a direct employer or

1 a statutory employer, would be considered an employer under
2 the Worker's Compensation Act. Here, Plaintiff has
3 asserted multiple times that she was an employee hired to
4 work at a terminal. Considering the allegations in the
5 complaint in the light most favorable to the non-moving
6 party, the Plaintiff, and assuming only for the purpose of
7 this motion that they are true, Ms. Braun's exclusive
8 remedy as an employee would be a worker's compensation, and
9 it's also for that reason that we believe we're entitled to
10 summary judgment and we'd ask this Court to dismiss the
11 complaint. To finish up the arguments, I'd like to turn it
12 back to Co-Defendant's counsel for just one or two more
13 points.

14 THE COURT - All right, thank you.

15 MR. CUTTINO - Your Honor, the last point I want
16 to make, personally I find perhaps the most shocking claim
17 or but perhaps the most revealing of this Plaintiff's
18 intent, as part of her complaint now, one of the damages
19 that she seeks, and I quote -- this is cited in the memo -
20 loss of liberty and freedom due to her incarceration of
21 Felony DUI resulting from the death of an occupant in the
22 vehicle that was struck by the Plaintiff, because the
23 Plaintiff Braun voluntarily plead guilty. Now, she says as
24 a direct and proximate result of the Defendant's grossly
25 negligent, reckless, willful, wantonness and other

1 omissions, she sustained significant damages, including but
2 not limited to loss of liberty and freedom due to her
3 incarceration for Felony DUI. Your Honor, as part of her
4 guilty plea and as part of her sentencing plea, Judge
5 Cooper went over with her on multiple occasions, as is
6 evidenced by the exhibits I've submitted, the transcripts
7 of those proceedings, that she would receive -- she could
8 under law receive a maximum of 25 years, but that she would
9 receive nothing less than one year, because that is the
10 law. It cannot be suspended. It is a mandatory sentence
11 as Your Honor knows. She now says that because she pled
12 guilty and she was in this accident, one of the elements of
13 her damages is that she had to spend time in jail. Your
14 Honor, she sought the guilty plea. She asked for the
15 guilty plea. She hoped the Court would accept it. She
16 knew as part of that under oath with the advice of counsel
17 that she would be sentenced to prison, and she was. So for
18 her now to take the Court's time asking for an award of
19 damages for having had to spend time in prison, among other
20 things I find shocking, I think judicial estoppel is
21 perfect remedy to preclude and prevent this sort of claim
22 from going forward and we would ask the Court to grant
23 summary judgment on that issue alone in addition to the
24 other things we have requested.

1 THE COURT - Thank you. Thank you very much. All
2 right, Mr. Stanley, Mr. Finney?

3 MR. STANLEY - Thank you. May it please the
4 Court, Your Honor. With respect to the facts in this
5 case, what counsel did not go into was there are additional
6 factors behind the employment of this young lady. First of
7 all, Ben Arnold, they would go out and employee these
8 attractive young ladies to come in dressed skimpily -- a
9 requirement was that they come in with a tight tank top,
10 short, short pants and help Ben Arnold promote these
11 alcoholic beverages that they were seeking to sell. So at
12 this particular golf tournament, they employed Caitlin to
13 come in and to help them sell, to promote their product;
14 the product that they were seeking to promote was this
15 Three Olive Vodka, and they hired Caitlin and another young
16 lady by the name of Teresa to come and work this golf
17 tournament, and what they were to do was to dress
18 provocative -- I can't say that word -- to dress
19 attractively, to frolic, to flirt and to drink with the
20 golfers. It was Caitlin's testimony that there would be a
21 lot of older men that would be ---

22 THE COURT - What do you mean older men?

23 MR. STANLEY - Like me and Mr. Finney.

24 THE COURT - I wanted to clarify that for the
25 record.

1 MR. STANLEY - Like me and Mr. Finney, Your Honor,
2 but there would be a lot of older golfers that would be
3 coming through and Caitlin was stationed at a particular
4 hole, and it was her job to -- to frolic with these
5 golfers, to -- they -- they would take photographs with
6 them; these golfers would hug on them with these tank tops
7 on, these short, short pants, and they were encouraged,
8 insisted -- it was insisted that they drink with the
9 golfers. They were coerced and they were required to drink
10 with the golfers. And this particular day, it is May 16,
11 2011; it is hot; these young ladies are out there and they
12 are drinking constantly as each group of golfers would come
13 by their hole. Caitlin's testimony is that during the
14 course of the day, she probably had 15 or 16, 20 or more
15 shots of Three Olive Vodka with these golfers. Ben Arnold
16 had three managerial type employees that were present.
17 These managerial employees would constantly come around to
18 the tent where Caitlin was located; they would drink with
19 her, because they, too, would drink with the golfers, and
20 they would drink with her; they knew she was drinking; they
21 encouraged, they insisted, they required -- her job was to
22 frolic, to flirt and to drink. Now, this is different from
23 the classic dram shop case where the patron goes to the bar
24 and the patron is sitting there and being served. Caitlin
25 is not the patron of the bar; Caitlin is not sitting there

1 at the bar being served. Caitlin is doing the serving and
2 Caitlin is doing the drinking with the people who were
3 being served because it is her job. Now, that takes this
4 out of the classic case. There is no South Carolina case,
5 Your Honor. Counsel mentioned the Tobias case. I'm well
6 familiar with the Tobias case. The Tobias case is
7 different. In the Tobias case, the Plaintiff went to the
8 bar; the Plaintiff was already intoxicated, and the
9 Plaintiff was served at the bar, and the Plaintiff
10 continued to be served. He left, got in his car, involved
11 in an accident. What is the difference? The difference is
12 is that the Plaintiff in that case was a patron and the
13 Plaintiff was voluntarily consuming this alcohol. The
14 Plaintiff was not working; there's no one requiring the
15 Plaintiff in that case to consume. The Plaintiff was
16 voluntarily consuming this extraordinarily amount of
17 alcohol and becomes intoxicated. In Caitlin's case Caitlin
18 is working for tips; she's not being paid. You come here
19 and you look good, you frolic, and the more you drink with
20 these golfers, the more tips you make. It was her
21 testimony that after this accident she had made
22 approximately a hundred dollars in tips, so obviously she
23 did a good job of frolicking and engaging these golfers as
24 required by Ben Arnold. Now, if Ben Arnold is going to
25 require these ladies to come and insist and encourage and

1 coerce them to drink with these golfers, then Ben Arnold
2 has a duty to, one, train these young ladies about alcohol
3 limits in terms of how much they should consume, or Ben
4 Arnold needs to police and supervise these young ladies
5 better. Your Honor, we think it is a jury question in this
6 case as to whether or not Caitlin voluntarily consumed this
7 alcohol and should now be charged with responsibility for
8 her actions or whether or not because of Ben Arnold's
9 actions here that it becomes a jury question as to whether
10 or not Caitlin is entitled to be compensated. Now, counsel
11 says that -- trying to find their motion, Your Honor, so I
12 can address each element ---

13 THE COURT - Yes, sir.

14 MR. STANLEY - Your Honor, give me one moment.

15 THE COURT - Certainly.

16 MR. STANLEY - I have it. Their first ground for
17 summary judgment deals with the fact that she was legally
18 responsible for the accident and she should be estopped.
19 Well, as the Court well knows, there could be more than one
20 cause when it comes to negligence. Now, what we do know
21 here, that Caitlin was certainly behind the wheel and
22 Caitlin was intoxicated at the time of the accident, but
23 our position is that we've got to go behind that, we've got
24 to go further back in the chain here, and our argument is
25 that but for the action of Ben Arnold in terms of

1 encouraging, coercing and insisting and requiring that she
2 become intoxicated, that she drink and become intoxicated,
3 this accident would not have happened. So Caitlin
4 certainly was a party to eventually causing the accident,
5 but Ben Arnold is also responsible for the accident, but --
6 - because but for their participation here, this accident
7 would not have happened. Now, in a trial of this case
8 certainly we would expect counsel to raise Caitlin's
9 involvement as contributory negligence, as comparative
10 negligence, and a jury may determine that Caitlin was more
11 negligent than Ben Arnold, but we think that that is where
12 the jury question is. We take the position, and our
13 position is that Ben Arnold was also negligent towards
14 Caitlin. They owed a duty to Caitlin not to encourage and
15 insist to require Caitlin to become inebriated to a
16 position that she becomes involved in this very devastating
17 accident. In a trial of this case, a jury can decide
18 whether or not Ben Arnold's negligence outweighs Caitlin's
19 negligence. That's the issue, but that's a jury issue, and
20 we think that that is not an issue for this Court to
21 determine, in fact, who is more negligent than the other.
22 That is for the jury to decide, and we think that with
23 respect to their first argument that it is a jury issue as
24 to whose negligence outweighs the other, because we think
25 that there is an innovating act, and that innovating act is

1 the actions of Ben Arnold. With respect to the third
2 argument that in a previous action in her Answer, Caitlin
3 denied all of these allegations. Your Honor, that's an
4 unverified Answer. Caitlin was represented by counsel.
5 Counsel provided an Answer on behalf of his client like we
6 all do. We all in terms of responding to a complaint,
7 provide an Answer usually independent of out client.
8 That's what happened here. If it was a verified Answer,
9 certainly she would be held to what is set forth in the
10 Answer, but under Rule 11, Rule 11 does not require that
11 the Answer be verified. In this case the Answer was not
12 verified. It can be under Rule 11, but Mr. Grantland who
13 represented Caitlin did not require Caitlin to verify the
14 Answer, so Caitlin is not bound by what Mr. Grantland set
15 forth in his Answer in this case, and so we think that
16 number three certainly has no weight with regard to trying
17 to hold Caitlin to be responsible for the terms set forth
18 in her Answer. The release argument that they're raising
19 in number four, this is in the Shumate case, and in the
20 Shumate case, the Shumate is bringing the lawsuit against
21 all these Defendants. The case is settled and typically
22 what happens? The Shumates release everyone and the Order
23 basically says that the Shumates can't bring another action
24 that arise -- that arises out of these -- this accident.
25 There is nothing that prohibits Caitlin from bringing an

1 action. Caitlin hasn't released anyone. In fact,
2 Caitlin's signature doesn't even appear on the release or
3 any of the settlement documents. Caitlin wasn't present,
4 and so Caitlin cannot through her absence and through her
5 not -- lack of participation in any of the settlement
6 documents now be held to -- not being able to bring an
7 action of her own. She hasn't released them, Your Honor,
8 and so number four -- if they can show us a release that
9 Caitlin has signed releasing these parties, then I think it
10 would be applicable. And then with respect to Caitlin's
11 argument that she's entitled to be compensated as an
12 element of damages for a loss of liberty -- that is exactly
13 what it is, Your Honor. That is one of the many elements
14 of damages. Caitlin was injured in this accident, suffered
15 severe injuries to her hip, her leg. She has multiple
16 scars and lacerations from this accident. So what we have
17 raised as an element of damages, as all of those physical
18 injuries that she suffered, and in addition to that, we
19 raise the fact that we think that she's entitled to be
20 compensated for the loss of her liberty, because but for,
21 here again, the action of Ben Arnold in encouraging,
22 coercing and requiring her to drink with the patrons, this
23 accident would not have happened. Now, a jury may decide
24 that that is not an element of damages that we think she's
25 entitled to recover on, and that's within the prerogative

1 of a jury, but certainly we have a right to set that up in
2 our complaint which is what we have done, and they are not
3 entitled to summary judgment because we have set forth an
4 element of damages that they don't think that she should be
5 compensated for. That's for the jury to decide. And, Your
6 Honor, we think that we have basically -- if -- this
7 complaint clearly sets forth the basis of a legitimate
8 claim in South Carolina. The South Carolina Supreme Court
9 in the Tobias case and in the -- I think it was the Marcus
10 case that dealt with under-aged drinking with social hosts,
11 they have not addressed this issue. This is a different
12 issue. In all of those cases the alcohol -- the person
13 receiving and drinking alcohol was doing it on a voluntary
14 basis. That's not what we have here. Caitlin was doing it
15 as a condition and requirement of her employment. That
16 makes a difference, and we think that's significant. They
17 made her drunk in this case. In the other case the
18 intoxicated person, first party person made them self
19 drunk, but in this case it's different. It's a case of
20 first impression. And we would ask the Court to deny this
21 motion for summary judgment and allow this matter to go
22 forward.

23 THE COURT - Did the issue -- I haven't read the
24 transcript of Judge Cooper -- Ms. Braun's guilty plea. Did
25 these issues come up as mitigation during the presentation

1 of the guilty plea? As I say, I haven't read the
2 transcript yet, because I didn't have it. I didn't have
3 access to the transcript; I read the brief. Do you recall?

4 MR. STANLEY - I don't recall, Your Honor. Now,
5 Mr. Finney did represent her in the criminal matter, and I
6 don't know if he recalls. Do you recall?

7 MR. FINNEY - Court's indulgence just a moment,
8 Your Honor. (Pause) May it please the Court.

9 THE COURT - Yes, sir.

10 MR. FINNEY - Your Honor, my recollection, and
11 we've got the transcript right here, but my recollection
12 would be that I remember telling Judge Cooper during the
13 guilty plea that Caitlin, just like Mr. Stanley had said to
14 Your Honor, was required to do all of these things, that
15 that's what put it into motion, and it was used as facts
16 during the guilty plea, and I think you will find that in
17 the transcript. In fact, I remember and recall that I used
18 the analogy of, if you get in a car and the car speedometer
19 starts at zero and it might end at a hundred and twenty
20 miles an hour, that the -- that the requirement of the law
21 that she do a minimum of one year is closer to that zero,
22 and then if you look at any of her facts throughout --
23 after, you know, she -- after this happened, that if she
24 had gotten arrested again or had mouthed off at somebody or
25 had violated her bond, that, you know, that would increase

1 the speedometer to put her closer to the maximum sentence,
2 but that she hadn't done anything, and that it would be
3 closer to the minimum, and that her actions alone were not
4 the actions of a person, and I used the direct facts that
5 Mr. Stanley has said. Her actions weren't the actions of
6 someone who went down to Five Points or went to the Vista
7 and voluntarily got drunk, that she -- this was a different
8 situation, that she had gotten this alcohol by way of a
9 requirement of her duties to pour this alcohol and drink
10 with the golfers, dress a certain way, provocatively, and
11 all in the name of forwarding this vodka that the
12 Defendants were trying to put out there. And so, yes, sir,
13 that was brought up during the guilty plea.

14 THE COURT - Thank you. Thank you very much.

15 MR. FINNEY - Yes, sir.

16 THE COURT - Anything further, Mr. Stanley?

17 MR. STANLEY - Nothing further from us, Your
18 Honor.

19 THE COURT - Mr. McCoy?

20 MR. MCCOY - Your Honor, just a few quick points
21 and I'll let co-defense counsel address some for his
22 client. First, it appears -- again, I'm here to represent
23 Sunbelt Golf Development doing business as Indian River
24 Golf Course. The Defendants are not hand and hand when it
25 comes to what their actions were during the day. We're

1 merely the golf course. As you can see, Plaintiff's claims
2 of all these negligent actions in forcing her to do this,
3 in forcing her to do that, do not involve my client. My
4 client is merely a piece of land they were hosting a golf
5 tournament. We didn't have any -- any say in what she
6 wore, what she drank, what she did. So they were merely
7 standing on our course, so I just wanted to -- even those
8 it is a joint motion, I wanted to kind of let the Court see
9 that there are separate duties in what the Defendants were
10 participating in, and ours was that of the golf course
11 cite. Also, just to address the Order issue where
12 Plaintiff's counsel just explained that there is no release
13 and everybody could've had everybody else sign a release
14 and typically in a global settlement, Your Honor, the
15 Defendants often get together; some Defendants pay more;
16 some Defendants pay less, and all of this -- everything is
17 taken into consideration when the Order is drafted to
18 specifically reflect the intent, others paying less, others
19 paying more, we're all paying together, we're ending it,
20 we're resolving the dispute, and all the Defendants will be
21 released from all claims, and all parties -- all the
22 actions arising out of this will be held as res judicata,
23 between all the Defendants. There's a reason that the
24 language was specifically drafted like that in the Order,
25 and it was to specifically reflect the intent of the

1 parties in the negotiation of settlement in that underlying
2 case. Number two, talking about Tobias case, again,
3 whether it's a case of first impression or not, I would
4 argue that it is not. I would argue that it is a first
5 party cause of action bringing negligence for somebody
6 having, you know, providing somebody too much alcohol. In
7 this situation, like a social guest, but we're not her
8 employer. We may have been her statutory employer if her
9 direct employer didn't have worker's compensation insurance
10 under the Act; we may have been considered statutory
11 employer bringing us within the Act, too, however, we're
12 not her direct employer. So if anything, as a person
13 taking the alcohol freely, nothing to do with us, providing
14 it to herself, if she's not -- if she doesn't fall under
15 the Tobias case as a first party dram shop action, then
16 clearly social -- social host do not have any liability
17 even to third party Plaintiffs, let alone first party
18 Plaintiffs. We weren't selling her the alcohol; we weren't
19 providing her the alcohol; we didn't instruct her to drink
20 the alcohol, merely let her stand on the golf course and
21 provide the alcohol to participants of the golf tournament.
22 So at best, the Tobias case is binding on the fact that
23 there's no -- she's a first party Plaintiff bringing --
24 essentially a dram shop action, and third, over and over
25 again, Plaintiff's counsel continues to say because of her

1 employment she was required to do this; her boss, her
2 employer, required her to do that. Well, Your Honor, it
3 may be that her employer required her to do things, but at
4 the end of the day, the sole, exclusive remedy for an
5 employment issue between an employee and an employer,
6 whether a direct employer as Ben Arnold or a statutory
7 employer, which I believe the golf course would be
8 considered, if they're considered anything, would be a
9 worker's compensation claim.

10 THE COURT - Thank you.

11 MR. MCCOY - And then I'll pass it to Co-
12 Defendant's counsel at this time.

13 MR. FINNEY - May it please the Court, Your Honor.
14 Very, very briefly, very briefly. Your Honor, you asked me
15 a question that I had not come to Court prepared for, but I
16 found it. I want you to do know that it is in the
17 transcript. I'm reading now, Your Honor, the Defendant's
18 memorandum in support of a joint motion for summary
19 judgment, in their memorandum, they attached a transcript.
20 I was just sitting here and I found this to be interesting,
21 and in that transcript -- I can't tell you what page this
22 is, because the pages aren't numbered, but in that
23 transcript, Your Honor, this is me talking to Judge Cooper
24 at the guilty plea, and I quote, "they did not provide her
25 with any food; they just provided her with alcohol. They

1 wanted her because she's pretty" - I'm talking about Ben
2 Arnold. "They wanted her to serve drinks to customers out
3 there, and they wanted her to drink with the customers out
4 there, all in the name of profit, and so she -- and she did
5 that so that she could get paid and get tips and look good
6 and to drink with the golfers. When she was done, they
7 sent her home. Budweiser was also out there that day with
8 girls hired to do the same job as Caitlin, to drink with
9 golfers, however, when they were done, they were taken home
10 in a cab provided by Budweiser. Budweiser knew their
11 responsibility; they accepted their responsibility; Ben
12 Arnold did not; they did nothing". This was at the guilty
13 plea. Your Honor, it goes on, and I'm not going to read
14 this word-for-word, but the very next paragraph says, Your
15 Honor, I equate this to an example; I brought Stephanie
16 with me, and as coincidence would have it, Stephanie who is
17 my associate who argued a motion in front of you just a few
18 minutes ago is sitting right here in the courtroom.
19 Stephanie, my associate is my employee. Your Honor, if I
20 were to provide -- and this was the example I gave in Court
21 - if I'm the president and CEO of the Finney Law Firm and I
22 required Stephanie to drink to promote my business, well, I
23 am certainly putting my neck on the line for anything that
24 comes after that, because we all know what happens when
25 people get intoxicated; terrible things can happen. We all

1 -- we see it in Court all the time. And so based on that,
2 Your Honor, that's the responsibility that we think that
3 Ben Arnold should have taken and they took no
4 responsibility in this case.

5 THE COURT - Mr. McCoy made some points though as
6 far as his client is concerned. Both you and Mr. Stanley
7 seem focused on Ben Arnold and really haven't addressed Mr.
8 McCoy's client.

9 MR. STANLEY - Your Honor, I would agree with that
10 ---

11 THE COURT - I was just making that observation.

12 MR. STANLEY - Yes, sir, and you know, what we
13 have said about Mr. McCoy's client is very limited on page
14 9 of our complaint, and basically with Mr. McCoy's client
15 it is a failure to monitor, a failure to control what was
16 happening on their golf course. Now, you know, whether or
17 not that rises to the level would be a question for we
18 think again for a jury to decide, whether or not there's
19 any duty or obligation on them to monitor, to control, to -
20 -- they knew -- when you give these tournaments on your
21 golf course, they knew what the deal was. There's going to
22 be a lot of drinking; there's going to be a lot of
23 encouraging golfers to drink by these attractive girls, and
24 we think that there was a duty on their part to monitor and

1 to supervise control of what was happening on their golf
2 course.

3 THE COURT - Thank you. Mr. Cuttino?

4 MR. CUTTINO - Yes, sir. I'd like to direct those
5 back to grounds of my motion. We've had a lot of
6 entertaining discussion about facts, some of which, quite
7 frankly, aren't even in the realm of truth. I'm not
8 suggesting these gentlemen are intentionally misleading
9 you. I sat through a six-hour deposition of Ms. Braun in
10 the civil case; neither one of them were present. I can
11 tell you that most of her testimony at that time was prior
12 to her guilty plea, as I recall it, and she couldn't
13 remember anything; she couldn't remember anything, couldn't
14 remember anything about drinking or how many drinks or
15 couldn't remember where she was at a certain time. Of
16 course, that was a convenient thing for her to be able to
17 testify to prior to pleading guilty. Judge, the issue is
18 whether, based on what she has already admitted, positions
19 she has already taken, benefit she has already received
20 from taking certain positions, whether due to that she is
21 estopped from ever asserting negligence. We can -- we can
22 make up all sorts of factual questions if you ever get to
23 negligence. Our position is, this person should never be
24 permitted to assert this claim, whether it's in negligence
25 or contract or outrage or whatever it is, she has boxed

1 herself in by seeking the benefit of a guilty plea, seeking
2 the benefit of the system, taking positions that now she
3 says don't matter. I don't think I have ever heard in
4 Court someone say what I put in my Answer doesn't really
5 matter, it doesn't count. As primarily a civil defense
6 attorney who has filed probably tens of thousands of
7 Answers, that's news to me. I'm always afraid that it
8 matters more maybe than I even know, and if I've left
9 something out, there's a consequence; if I put something
10 in, there's a consequence. So for her to say to this Court
11 that the Answer doesn't matter now that I want money, I
12 think is just -- is just reprehensible. Mr. Stanley talks
13 about the effect of the release and the fact that she's not
14 on the release; that's right. She's on the Order. She's
15 on the Order that Judge Burch issued that nobody appealed
16 from, that everybody saw and that he issued as to every
17 Defendant and Plaintiff in the Shumate's case. And he used
18 the word, res judicata as to all claims. That's in your
19 documents there. So to suggest that it's just of no
20 consequence is -- is fantasy. These suggestions and I --
21 this is a little off the point, but quite frankly, as an
22 officer of the Court, I can't stand here and let my client
23 be bruised by something that I know is not true. This
24 suggestion that she was required to dress provocatively I
25 think is preposterous. First of all, it was May; it was

1 hot; you don't wear a fur coat or long pants at a golf
2 course where you're going to be all day long, was dressed
3 like all the other -- probably most of the golfers.
4 Secondly, the notion that as a -- as a term of employment
5 she was forced to drink -- she's an adult. The evidence in
6 the underlying case was that she was college-educated,
7 bartender-trained, had passed alcohol safety courses. She
8 is not a fraternity pledge who was required as a right of
9 initiation to do this. She was a grown woman, and much
10 like our mama's used to tell us, if somebody told you to
11 jump off a cliff, would you do it? Really and truly if she
12 had been required to drink to excess, do we think that
13 happened? She remarkably, and I think probably
14 significantly, was the only person that night that had a
15 wreck that left that golf course. She was the only person
16 that killed a four-year old. She was the only person
17 operating her car, and this accident took place several
18 hours after the tournament had ended and everyone had left.
19 This issue of her employment, we can make that a fact
20 issue, but I have yet to hear why this is not -- if she is
21 indeed an employee of ours, as they allege, why this is not
22 a worker's compensation case. You cannot -- you cannot
23 argue that as a part of your employment you are required
24 and forced to do all these things by your employer as part
25 of the deal and then have a civil suit, unless I have

1 missed something. I think that the Court is actually being
2 asked to create an escape route for this lady and a new
3 cause of action in the process. We say you don't get to
4 negligence, Your Honor, because the position she's taking
5 she's estopped collaterally, through judicial estoppel and
6 through res judicata from pursuing this case regardless of
7 its merits, regardless of whatever factual questions they
8 want to pick up down the road about what happened.

9 THE COURT - Thank you. Separate propose Orders
10 in 15 days, the same as to Mr. Finney and Mr. -- I don't
11 mean separate between Mr. Finney and Mr. Stanley --
12 addressing Defendants separately. Thank you very much.
13 The Court will be in recess.

14 MR. FINNEY - Thank you, Your Honor.

15 THE COURT - Thank you.

16 (End of transcript)

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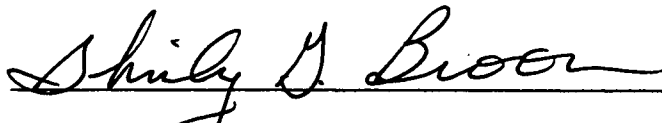
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 42 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Caitlin Elisabeth Braun vs. Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., et al, as taken by me in the Court of Common Pleas for the Sixteenth Judicial Circuit on the 20th day February, 2014, and provided by me this the 7th day of Nov., 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.

A handwritten signature in cursive script, reading "Shirley D. Broom", is written over a horizontal line.

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina.

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON ___) 2012-GS-32-00395

STATE OF SOUTH CAROLINA)
)
) vs. TRANSCRIPT OF RECORD
)
CAITLIN BRAUN)

) DEFENDANT ___)

February 8, 2012
Lexington, South Carolina

B E F O R E:

THE HONORABLE THOMAS W. COOPER, JR., JUDGE.

A P P E A R A N C E S:

RICK COLLINS, ASSISTANT SOLICITOR
Attorney for the State

JERRY L. FINNEY, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

DEFENDANT:

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CAITLIN BRAUN

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EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: Caitlin Braun.

2 Indictment 2012-GS-32-395, State versus Caitlin
3 Elizabeth Braun, indicted for felony driving under the
4 influence with a death result. She is pleading as
5 charged. The indictment has been true-billed and she is
6 represented by Mr. Finney.

7 Raise your right hand, please.

8 CAITLIN BRAUN, after being duly sworn, testified
9 as follows:

10 THE COURT: All right. Mr. Collins, what do we
11 have?

12 MR. COLLINS: Your Honor, Ms. Braun stands
13 before you today originally charged with felony DUI
14 involving a death and felony DUI involving great bodily
15 injury. In exchange for a plea of guilty today, after
16 consultation with victims, who are present here today,
17 Your Honor, the State's agreed to allow her to plead to
18 the felony DUI involving a death and dismissing the great
19 bodily injury.

20 THE COURT: Thank you.

21 Mr. Finney, does Ms. Braun understand the nature
22 of these charges, the significance of her guilty plea to a
23 felony DUI charge, the possible sentence she can receive,
24 and the ancillary effects of this guilty plea, and her
25 constitutional rights, including that of a trial? Does

1 she seem to understand all of those things as far as you
2 know?

3 MR. FINNEY: Yes, sir, Your Honor.

4 THE COURT: She indicates that she wishes to
5 plead guilty to the charge?

6 MR. FINNEY: She does.

7 THE COURT: Thank you.

8 Ms. Braun, when you enter a plea of guilty to
9 felony driving under the influence resulting in death, you
10 can get up to 25 years in jail. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You must receive a sentence of at
13 least one year in jail, no part of that can be suspended.
14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Whatever sentence you receive, you
17 have to serve at least 85 percent of it before you will be
18 considered to be released into the community. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You can be fined from ten to \$25,000
22 as a result of your plea here today. Do you understand
23 that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: It's actually \$25,100.

1 Your license will be suspended. There are all
2 sorts of other ancillary effects or provisions that will
3 be attached to a sentence in this regard as a result of
4 your plea. Do you understand all of that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: When you enter this plea, Ms. Braun,
7 you have to give up your constitutional right to remain
8 silent. No one can make you testify against yourself. No
9 one can force you to admit that you're guilty of the
10 charge. But if you plead guilty, you have to give up your
11 right to remain silent, you have to tell me that you're
12 guilty as a part of this process. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You have a right to a jury trial, to
15 let a jury decide whether you're guilty of the charge or
16 not. You don't have to try to convince the jury that
17 you're not guilty, the State has to convince the jury that
18 you are guilty. But if you plead guilty, you don't get a
19 jury trial, you give up that right. Do you understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you had a trial, Mr. Finney would
23 have the right to question the State's witnesses who would
24 testify against you, and you could call witnesses of your
25 own to testify for you and tell your side of story. But

1 when you plead guilty, he doesn't get to question
2 witnesses and you don't get to call witnesses, you give up
3 that right. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you understood these rights
6 that I've just explained to you, Ms. Braun?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do I need to go over any of them
9 with you again?

10 THE DEFENDANT: No, sir.

11 THE COURT: This is a serious offense in the
12 eyes of the law. That means that in the eyes of the law
13 you use up today one of the two strikes -- three strikes
14 that the law gives you for serious offenses.

15 It's probably not necessary, but you don't
16 appear to be the person who's going to live a life of
17 crime, but nonetheless, if a person commits three serious
18 offenses, in the eyes of the law they are not eligible for
19 parole, they go to jail for life without possibility of
20 parole. This is one of those three strikes. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The indictment charges you with
24 felony driving under the influence resulting in death and
25 it says that on May the 16th of last year in Lexington

1 County while you were under the influence of alcohol or
2 drugs or some combination of those things, to the extent
3 that your ability to drive was materially impaired, you
4 violated the law and were speeding, perhaps among other
5 things, resulting in an accident which caused the death to
6 Gabrielle S. Shumate -- is it Shumate?

7 MR. FINNEY: Yes, sir, Your Honor.

8 THE COURT: Gabrielle Shumate, all of course in
9 violation of the law.

10 You're charged with felony driving under the
11 influence resulting in the death of Miss Shumate. Do you
12 understand that charge?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How do you plead to the charge?

15 THE DEFENDANT: I plead guilty.

16 THE COURT: Has anybody promised you anything or
17 held out any hope of reward to get you to plead guilty to
18 the charge?

19 THE DEFENDANT: No, sir.

20 THE COURT: Has anyone threatened you or forced
21 you to make you plead guilty to the charge?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you pleading guilty freely and
24 voluntarily?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you made up your own mind to
2 plead guilty to this charge?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you satisfied with everything
5 that Mr. Finney has done for you as your lawyer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has he done everything you've asked
8 him to do?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you had enough time to talk
11 with him about these things?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you understood those talks?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need any more time right now
16 to talk with him anymore?

17 THE DEFENDANT: No, sir.

18 THE COURT: You'll have ten days from the date
19 of sentencing, Ms. Braun, ten days from the date of
20 sentencing to appeal your guilty plea and your sentence.
21 You'll have to file a notice with this court within ten
22 days if you wish to appeal. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Thank you.

25 Mr. Collins.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

)
) COURT OF GENERAL SESSIONS
) 2012-GS-32-00395
_)

STATE OF SOUTH CAROLINA

vs.

CAITLIN BRAUN

DEFENDANT

)
)
) TRANSCRIPT OF RECORD
)
)
_)

August 7, 2012
Lexington, South Carolina

B E F O R E:

THE HONORABLE THOMAS W. COOPER, JR., JUDGE.

A P P E A R A N C E S:

RICK COLLINS, ASSISTANT SOLICITOR
Attorney for the State

JERRY L. FINNEY, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

DEFENDANT:

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CAITLIN BRAUN

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EXHIBITS

(There were no exhibits marked.)

1 the great things that life has to offer. Every time I'm
2 about to smile, it's not the same anymore because
3 Gabrielle is constantly on my mind. I took away her
4 chance to be happy, so I feel even more guilty when
5 something makes me smile.

6 In the few times I've seen you, I see the
7 strength in both of you that just allow you both to smile,
8 to live on for your daughter and her brothers. I believe
9 Gabrielle smiles while she looks down upon her family, and
10 I'm able to find peace in that.

11 I've been talking to a friend of mine in South
12 Carolina who lost her brother in a car accident when she
13 was younger. We're discussing the formation of a program
14 that involves speaking to high school students about the
15 dangers of drinking and driving.

16 Since the accident last year, I've lost a young
17 cousin to leukemia, a friend to an accident that involved
18 drinking, a friend who was hit by a drunk driver, and most
19 recently I lost a friend in the state who took his own
20 life. I want this program to focus on the dangers of
21 drinking but also touch on the importance of life and how
22 it's not worth jeopardizing anyone's life, rather it be
23 for a good time, a job, peer pressure, or whatever it may
24 be. People need to realize how precious life is and count
25 their blessings every day.

1 To me, myself, and my family, I want to make a
2 promise to you, as Gabrielle's family, that this tragedy
3 will have a positive effect on many lives.

4 When this first happened I was so ashamed of
5 myself -- and still am -- that I didn't want to talk about
6 it for the reason of being judged, but I quickly learned
7 that that doesn't matter. I accept my responsibility.
8 This is my reality now. And people can judge all they
9 want, but if they learn from it and pass it along, it's
10 worth it. If telling a complete stranger this story of
11 how Gabrielle's life was unfairly taken from her will save
12 others from making a similar mistake, I'll tell the world.

13 I believe that awareness can be the best form of
14 prevention. I told people I barely know and I hope them
15 knowing or telling another will save lives in the memory
16 of Gabrielle. I will forever regret the decisions I made
17 on May 16th, 2011.

18 I want you to know, Dacia and Devin, that you
19 truly are my heroes, and I hope that's okay with you. If
20 you can have the strength of getting through this horrible
21 heartbreak you must have endured with the attitude that
22 you've had since the beginning, I can get through my
23 sentence. It's harder knowing every day what I did and
24 the pain I've caused than knowing what lies ahead for me.

25 I can't even imagine what it's like to lose your

1 child since I'm not a mother, but one day I hope I am
2 given that chance and can have a family like yours.
3 Your strength has given me more strength, and I thank you
4 for that. I only hope I can give you something in return.

5 God bless you and your family.

6 THE COURT: Thank you.

7 MR. FINNEY: Thank you, Your Honor.

8 THE COURT: Mr. Finney.

9 MR. FINNEY: May it please the Court.

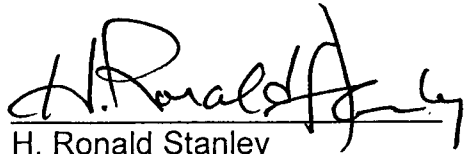
10 THE COURT: Yes, sir.

11 MR. FINNEY: Your Honor, the legislature has
12 seen fit on felony DUI cases to give a circuit court judge
13 a range, a sentencing range, from one year, I think, up to
14 25 years.

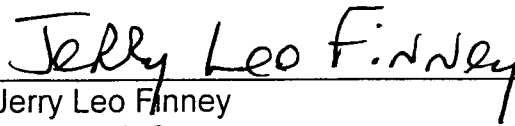
15 THE COURT: That's right.

16 MR. FINNEY: Your Honor, if you would indulge me
17 and look at that range as a meter and a needle indicating
18 on that meter the minimum to the maximum, I would like to
19 start out my presentation to the Court by suggesting
20 respectfully to the Court why I believe Caitlin, her
21 needle is on the minimum, and it has remained on the
22 minimum from the very beginning.

23 Your Honor, immediately after this tragic event
24 occurred, Caitlin Braun woke up in the hospital.
25 Someone -- I don't know who -- contacted her mother, who



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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

Dated: 2/4/13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	Case No.:
	)	
CAITLIN ELISABETH BRAUN,	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE BEN ARNOLD SUNBELT	)	COMPLAINT
BEVERAGE COMPANY OF SOUTH	)	(JURY TRIAL DEMANDED)
CAROLINA, L.P., TWO HEELS, INC.,	)	
D/B/A STATE STREET PUB, AND	)	
SUNBELT GOLF DEVELOPMENT,	)	
INC. D/B/A INDIAN RIVER GOLF	)	
COURSE,	)	
DEFENDANTS.	)	
	)	

The plaintiff, above named, complaining of the defendants herein would respectfully show unto this Court:

1. That the plaintiff is a resident of the County of Richland, State of South Carolina.
2. That the defendant, The Ben Arnold Sunbelt Beverage Company of South Carolina, L. P., (hereinafter referred to as "Arnold") is a limited partnership duly organized pursuant to the laws of the State of Delaware and having authority to conduct business in the State of South Carolina with its principal place of business in the County of Fairfield, State of South Carolina.
3. That the defendant, Two Heels, Inc., doing business as State Street Pub, (hereinafter referred to as the "Pub") is an eleemosynary corporation duly organized and incorporated pursuant to the laws of the State of South

Carolina and having its principal place of business in the County of Lexington, State of South Carolina.

4. That the defendant, Sunbelt Golf Development, Inc., doing business as Indian River Golf Course (hereinafter referred to as the "Golf Course") is a corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having its principal place of business in the County of Lexington, State of South Carolina.
5. That upon information and belief, this court has jurisdiction over the parties and the subject matter of this case and venue is proper in the County of Fairfield, State of South Carolina.

Factual Background

6. That the Pub is a bar or drinking establishment whose principal business is the sale of alcoholic beverages to its patrons at its business location in the City of West Columbia, State of South Carolina.
7. That from time to time, the Pub sponsors golf tournaments to promote its business with its customers and/or to raise funds for charitable causes.
8. That the Pub planned and held such a golf tournament on May 16th, 2011 at the Golf Course.
9. That in connection with the planning and staging of the golf tournament, the Pub solicited some or all of its customary beverage suppliers to provide alcoholic and other beverages for the golfers participating in the tournament while at the same time giving the beverage suppliers the

opportunity to promote the consumption of their products by the participants in the golf tournament and the public at large.

10. That Arnold is now and has been for many years a large wholesale supplier of alcoholic beverages, principally hard liquors, to retail establishments in the business of selling alcoholic beverages to the general public in South Carolina. In the course of its business, Arnold was, at the time of the golf tournament, a wholesale supplier of alcoholic beverages, principally hard liquors, to the Pub and agreed to promote its products by providing free samples of its product to participants in the golf tournament.
11. That in the furtherance of its product promotion in connection with the golf tournament, in addition to its full time employees and agents, Arnold employed two or more attractive young women to participate in and work the promotion efforts at the Golf Course. One of the additional persons employed by Arnold was the plaintiff.
12. That as is customary with Arnold in the promotion of its products at golf tournaments, Arnold, through its employees and agents, expressly and/or impliedly and/or tacitly encouraged and/or approved the attractive young women, including the plaintiff, employed for the promotion effort at the golf tournament, to proactively engage in frolicking with the tournament participants, including drinking shots of Three Olive Vodka with the golf tournament players.
13. That the plaintiff, in furtherance of her work at the tournament and at the

encouragement, insistence and requirements of defendant, Arnold, drank alcoholic beverages with the tournament players and others during the course of the golf tournament. Moreover, during the tournament and/or at the conclusion of the tournament, the plaintiff drank alcoholic beverages with other employees of Arnold, including supervisory employees of Arnold. As a consequence, at the conclusion of the tournament, or shortly thereafter, the plaintiff had become very intoxicated.

14. That notwithstanding the fact that the plaintiff was employed by Arnold to promote its beverages, including Three Olive Vodka, and Arnold expressly and/or impliedly and/or tacitly approved, encouraged and required the plaintiff to drink alcoholic beverages during the course of her work and thereafter, Arnold did not provide any form of training whatsoever to the plaintiff regarding the safe use of its products and did not provide any form of supervisory control to assure the safety of the plaintiff with respect to the plaintiff's obviously inebriated condition following the golf tournament. In fact, Arnold through its employees, including supervisory personnel, caused the plaintiff's inebriated condition by drinking shots of alcoholic beverages with her during or following the golf tournament when they knew or should have known that the plaintiff was intoxicated to the point of being unable to safely operate her vehicle.
15. That in spite of all of the foregoing facts, Arnold, through its employees and agents, including supervisory personnel, allowed the plaintiff to

leave the golf course in a highly intoxicated condition while driving her automobile. Shortly after leaving the golf course, the plaintiff while driving her vehicle left her proper lane of travel and crashed head on into the path of an oncoming vehicle. The collision resulted in serious personal injuries to the plaintiff and to the occupants of the oncoming vehicle including the death of a minor child in the oncoming vehicle.

16. The Pub, as sponsor of the golf tournament, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including the plaintiff, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during or after the golf tournament. Notwithstanding its awareness, the Pub took no steps to supervise the participants, including the plaintiff and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the participants, the plaintiff, and the general public following the conclusion of the tournament.
17. That the Golf Course, on whose premises the golf tournament was held, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including the plaintiff, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during, or after the golf tournament. Notwithstanding its awareness, the Golf Course took no steps to supervise the participants, including the plaintiff and other

beverage supplier personnel, or to establish a protocol or plan to assure the safety of the participants, the plaintiff, and the general public following the conclusion of the tournament.

18. That the plaintiff is informed and believes that the defendants were negligent, grossly negligent, reckless, willful, and wanton in one or more of the following particulars, to wit:

a) As to Defendant Arnold:

- (1) In failing to train the plaintiff for her assigned duties involving the use and disbursement of significant amounts of alcoholic beverages;
- (2) In expressly, impliedly and/or tacitly approving, encouraging, insisting and requiring the plaintiff to consume alcoholic beverages with the patrons at the golf tournament;
- (3) In permitting its supervisory personnel on the premises to consume alcoholic beverages with the plaintiff thus diminishing their ability to properly supervise and monitor the plaintiff;
- (4) In failing to supervise, monitor and control the alcohol use of the plaintiff during the course and scope of her employment;
- (5) In failing to prevent the plaintiff from becoming grossly intoxicated during the course and scope of her employment;
- (6) In requiring, encouraging and insisting that the plaintiff consume an unreasonable amount of alcoholic beverages in the furtherance of its business thereby creating an unreasonable risk of harm and injury to the plaintiff.
- (7) In permitting the plaintiff to drive a motor vehicle after she became grossly intoxicated during the course and scope of her employment; and
- (8) In otherwise failing to use due care under the circumstances then and there prevailing.

b) As to Defendant Pub:

- (1) In failing to monitor and control the plaintiff while she was engaged in the prolific consumption of alcoholic beverages for the advancement of the defendant's business interest.
- (2) In permitting the plaintiff to become grossly intoxicated without adequate safeguards in place to avoid the significant harm that the plaintiff was exposed to by being intoxicated; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Golf Course:

- (1) In failing to monitor and control the plaintiff while she was engaged in the prolific consumption of alcoholic beverages for the advancement of the defendant's business interest.
- (4) In permitting the plaintiff to become grossly intoxicated without adequate safeguards in place to avoid the significant harm that the plaintiff was exposed to by being intoxicated; and
- (5) In otherwise failing to use due care under the circumstances then and there prevailing.

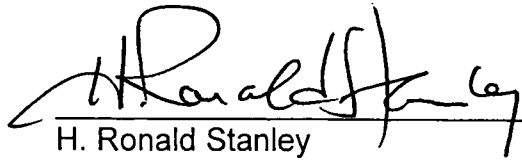
19. That as a direct and proximate result of the Defendants' negligent, grossly negligent, reckless, willful, and wanton acts or omissions, the plaintiff sustained significant damages including, but not limited to:

- a) Serious, significant and permanent personal injuries;
- b) Extreme pain and suffering and mental anguish;
- c) Medical expenses and treatment;
- d) Lost income;
- e) Loss of enjoyment of life; and
- f) Loss of liberty and freedom due to her incarceration for felony DUI resulting from the death of an occupant in the vehicle that was struck by the plaintiff.

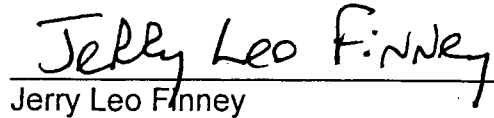
20. That the plaintiff is entitled to judgment against the defendants, jointly and severally, for compensatory damages in an amount to be proven at trial.
21. That the plaintiff is also entitled to recover punitive damages from the defendants, jointly and severally, in an amount to be proven at trial based on the defendants' grossly negligent, willful, wanton and reckless conduct.

WHEREFORE, the plaintiff prays for judgment as follows:

- (1) Compensatory damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (2) Punitive damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (3) Costs associated with this action from all Defendants; and
- (4) Such other and further relief as the Court may deem just and proper.



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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

Dated: 2/4/13

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Caitlin Elisabeth Braun,

Plaintiff(s),

vs.

The Ben Arnold Sunbelt Beverage Company of
South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub and Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
DOCKET NO. 13-CP-20-55

ANSWER OF DEFENDANT
BEN ARNOLD SUNBELT BEVERAGE
COMPANY OF SOUTH CAROLINA L.P.
(Jury Trial Demanded)

The Defendant, Ben Arnold Sunbelt Beverage Company of South Carolina, L.P. , in Answer to the Complaint, would respectfully show unto the Court:

FOR A FIRST DEFENSE

1. That each and every allegation of the Complaint not hereinafter specifically admitted is denied.
2. The allegations of Paragraph 1 are denied, upon information and belief.
3. The allegations of Paragraph 2 are admitted.
4. This Defendant lacks knowledge or information sufficient to form an opinion or belief as to the allegations of Paragraphs 3 and 4 and therefore denies the same, demanding strict proof thereof.
5. In response to Paragraph 5, this Defendant denies the same and asserts that the proper venue for this action is Lexington County, South Carolina.
6. The allegations of Paragraphs 6, 7, and 8 are admitted, upon information and belief.

7. This Defendant admits only so much of Paragraph 9 as alleges that the Pub solicited certain beverage distributors/wholesalers to provide promotional tastings of alcoholic beverages at the tournament. However, this Defendant lacks sufficient knowledge or information upon which to form an opinion or belief as to the remainder of the allegations of Paragraph 19, and therefore denies the same, demanding strict proof thereof.

8. This Defendant admits so much of Paragraph 10 as alleges that it does now, and has for many years operated as a distributor/wholesaler of alcoholic beverages to retail establishments and further, that at the time of the golf tournament in question, it was in business as a distributor/wholesaler of alcoholic beverages to various retail establishments, including the Pub. Further, this Defendant admits that, pursuant to a request from the Pub, it agreed to be present at the charity golf tournament for the purpose of participating in the promotion of various products to golf tournament participants, in furtherance of the charity tournament and as an amenity thereto. However, the remainder of the allegations of Paragraph 10 are denied and strict proof demanded thereof.

9. This Defendant admits so much of Paragraph 11 as alleges that it engaged Defendant Caitlin Braun, on a one-day basis, to participate in its promotional activities at the tournament. However, the remainder of the allegations of Paragraph 11 are denied and strict proof demanded thereof.

10. The allegations of Paragraph 12 are denied.

11. In response to Paragraph 13, this Defendant admits, upon information and belief, that Caitlin Braun was observed appearing to consume beverages on occasion during the several hours duration of the golf tournament. However, the remainder of the allegations of Paragraph 13 are denied.

12. The allegations of Paragraphs 14 and 15 are denied.

13. This Defendant lacks sufficient knowledge or information upon which to form an opinion or belief as to the allegations of Paragraphs 16 and 17 and therefore denies the same, demanding strict proof thereof.

14. In response to Paragraph 18, this Defendant denies the allegations of Paragraph 18(a)(1) through (8). Further, this Defendant lacks sufficient knowledge or information upon which to form an opinion or belief as to the allegations of Paragraph 18(b)(1) through (3) and 18(c)(1) through (3).

15. The allegations of Paragraphs 19(a) through (f), 20, and 21 are denied.

FOR A SECOND DEFENSE

16. The Complaint fails to state facts sufficient to constitute a cause of action, in full or in part, against this Defendant and therefore, the action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

17. This action has been brought in an improper venue and therefore should be dismissed pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure or, in the alternative, venue transferred to Lexington County, South Carolina.

FOR A FOURTH DEFENSE

18. If the Plaintiff suffered any injuries or damages, the proximate cause of said injuries and damages was the intervening/superseding negligence, recklessness, willfulness, and wantonness

of persons or entities other than this Defendant, and over which this Defendant had no control. Therefore, this Defendant bears no liability to the Plaintiffs in any sum whatsoever.

FOR A FIFTH DEFENSE

19. Plaintiffs' damages, if any, were solely and proximately caused by the acts and/or omissions of others, including but not limited to the co-Defendants, over which this Defendant had no control or right to control, and therefore, the Plaintiff is not entitled to any recovery against this Defendant.

FOR A SIXTH DEFENSE

20. This Defendant alleges that even if it was careless, negligent, grossly negligent, willful, wantonness, or reckless, which this Defendant denies, the Plaintiff's careless, grossly negligent, willful, wanton and reckless conduct greater than 50% of the alleged negligence of this Defendant, and therefore this Defendant pleads the comparative negligence and the assumption of risk of the Plaintiff as a complete bar to this action.

FOR A SEVENTH DEFENSE

21. That if it is determined that this Defendant was negligent as alleged in the Complaint, which is denied, then the negligence of the Plaintiff should be compared to that of this Defendant and the negligence of any others, and any damages awarded to the Plaintiff, if any at all, should be apportioned by the amount of the Plaintiff's own fault and negligence in accordance with the comparative and common and statutory law of the State of South Carolina.

FOR AN EIGHTH DEFENSE

22. Any recovery by the Plaintiff must be apportioned, pro-rated, reduced, or offset by amounts the Plaintiff has received, will receive, or become entitled to receive from others, whether by settlement or judgment or other payment, for the same injuries and damages claimed in this lawsuit.

FOR A NINTH DEFENSE

23. This Defendant invokes the application of the South Carolina Contribution Among Tortfeasors Act, S.C. Code Ann., Section 15-38-15 (2005) and submits that the damages for which Plaintiff seeks recovery against it must be limited to the percentage of fault, if any, attributable to the conduct of this Defendant.

FOR A TENTH DEFENSE

24. Any award or assessment of punitive damages as prayed for by Plaintiff would violate the Constitutional rights of this Defendant as enumerated under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and similar provisions of the South Carolina Constitution, so as to bar the Plaintiff from the recovery of any such damage.

FOR AN ELEVENTH DEFENSE

25. There has been no concert of action between this Defendant and any of the other named Defendants. The Defendants are thus not joint tortfeasors and, therefore, this Defendant may not be held jointly and severally liable with the other Defendants.

FOR A TWELFTH DEFENSE

26. The Plaintiff has previously admitted that she voluntarily consumed intoxicating beverages prior to the automobile accident referred to in the Complaint and further, that she voluntarily and willingly operated her vehicle while impaired and under the influence of intoxicating beverages, all in violation of the laws of the State of South Carolina. Accordingly, this Defendant pleads the Plaintiff's assumption of the risk and comparative negligence as a complete bar to this action.

FOR A THIRTEENTH DEFENSE

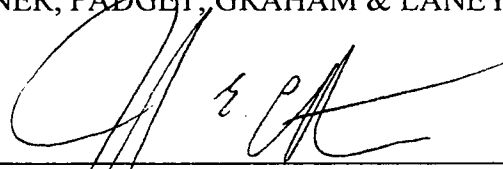
27. That by way of the Settlement and Confidentiality Agreement and Release of All Claims executed in South Carolina Civil Action #: 2001-CP-20-301 and 2011-CP-20-302 the, "agents, servants, representatives, employees," of this Defendant were released from future claims, and therefore this Defendant asserts the affirmative defense of release as a complete bar to this action.

FOR A FOURTEENTH DEFENSE

28. That the claims asserted by the Plaintiff have either been previously disposed of, or the Plaintiff has waived her right to assert said claims, and therefore this Defendant pleads the affirmative defenses of *res judicata* and waiver as a complete bar to this action

Wherefore having fully answered the Complaint, it is respectfully requested the same be dismissed with costs.

TURNER, PADGET, GRAHAM & LANEY



John E. Cuttino
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(803) 227-4271
E-Mail: JCuttino@TurnerPadget.com
ATTORNEYS FOR DEFENDANT
THE BEN ARNOLD SUNBELT BEVERAGE
COMPANY OF SOUTH CAROLINA, L.P.

March 29, 2013

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2011-CP-20-302

Devin Shumate and Dacia Shumate as
Personal Representatives of the Estate of
Gabriella Shumate,

Plaintiffs,

vs.

The Ben Arnold Sunbelt Beverage
Company of South Carolina, L.P.,
Two Heels, Inc. d/b/a State Street Pub,
Sunbelt Golf Development, Inc. d/b/a
Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

SUMMONS
(Jury Trial Demanded)

2011 JUL 28 P 12:31
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

TO: THE DEFENDANTS, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint of the Plaintiffs in this matter, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office located at 3618 D Sunset Boulevard, West Columbia, South Carolina, 29169, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TAYLOR LAW FIRM LLC


HENRY H. TAYLOR

HEATH P. TAYLOR

3618 Sunset Boulevard, Suite D
West Columbia, South Carolina 29169

Telephone: 803/ 926-2205

Telecopier: 803/ 926-4966

Attorneys for the Plaintiffs

West Columbia, South Carolina

July 28, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS

FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2011 - CP - 20 - 302

Devin Shumate and Dacia Shumate as)
Personal Representatives of the Estate of)
Gabiella Shumate,)

Plaintiffs,)

vs.)

The Ben Arnold Sunbelt Beverage)
Company of South Carolina, L.P.,)
Two Heels, Inc. d/b/a State Street Pub,)
Sunbelt Golf Development, Inc. d/b/a)
Indian River Golf Course and)
Caitlin Elisabeth Braun,)

Defendants.)

COMPLAINT
(Jury Trial Demanded)

2011 JUL 28 P 12:31
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

The Plaintiffs above named complaining of the Defendants herein, would respectfully show unto this Court:

The Parties

1. The Plaintiffs Devin Shumate and Dacia Shumate are citizens and residents of the County of Lexington, State of South Carolina and by Certificate of Appointment of the Lexington County Probate Court dated July 27, 2011 are duly appointed, qualified, and acting personal representatives of the estate of Gabriella Shumate, deceased, who died intestate in the manner alleged below on May 16, 2011.

2. The Plaintiffs bring this action pursuant to S.C. Code Ann. § 15-51-10 et seq. for the benefit of the statutory beneficiaries of Gabriella Shumate, deceased, as designated by S.C. Code Ann. § 15-51-20, naming themselves as father and mother to the decedent to recover for damages, injuries, and losses sustained by reason of the wrongful death of Gabriella Shumate.

3. The Plaintiffs are informed and believe that the Defendant The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., (hereinafter referred to as "Arnold") is a limited partnership duly organized pursuant to the laws of the State of Delaware but having authority to conduct business in the State of South Carolina and having its principal place of business in the County of Fairfield, State of South Carolina.

4. The Plaintiffs are informed and believe that the Defendant Two Heels, Inc. doing business as State Street Pub (hereinafter referred to as the "Pub") is an eleemosynary corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having its principal place of business in the County of Lexington, State of South Carolina.

5. The Plaintiffs are informed and believe that the Defendant Sunbelt Golf Development, Inc. doing business as Indian River Golf Course (hereinafter referred to as the "Golf Course") is a corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having its principal place of business in the County of Lexington, State of South Carolina.

6. The Plaintiffs are informed and believe that the Defendant Caitlin Elisabeth Braun (hereinafter referred to as "Braun") was at the time of the incident giving rise to this action a resident and citizen of the County of Richland, State of South Carolina, but is now a resident and citizen of the State of New Jersey.

7. Upon information and belief, this court has jurisdiction over the parties and the subject matter of this case and venue is proper in the County of Fairfield, State of South Carolina.

Factual Background

8. The Pub is a bar or drinking establishment whose principal business is the sale of

alcoholic beverages to its patrons at its business location in the City of West Columbia, State of South Carolina.

9. From time to time, the Pub sponsors golf tournaments to promote its business with its customers and/or to raise funds for charitable causes.

10. The Pub planned and held such a golf tournament on May 16th, 2011 at the Golf Course.

11. In connection with the planning and staging of the golf tournament, the Pub solicited some or all of its customary beverage suppliers to provide alcoholic and other beverages for the golfers participating in the tournament while at the same time giving the beverage suppliers the opportunity to promote the consumption of their products by the participants in the golf tournament and the public at large.

12. Arnold is now and has been for many years a large wholesale supplier of alcoholic beverages, principally hard liquors, to retail establishments in the business of selling alcoholic beverages to the general public in South Carolina. In the course of its business, Arnold was, at the time of the golf tournament, a wholesale supplier of alcoholic beverages, principally hard liquors, to the Pub and agreed to promote its products by providing free samples of its product to participants in the golf tournament.

13. In the furtherance of its product promotion in connection with the golf tournament, in addition to its full time employees and agents, Arnold employed two or more attractive young women to participate in and work the promotion efforts at the Golf Course. One of the additional persons employed by Arnold was Braun.

14. As is customary with Arnold in the promotion of its products at golf tournaments, Arnold, through its employees and agents, expressly and/or impliedly and/or tacitly encouraged

and/or approved the attractive young women, including Braun, employed for the promotion effort at the golf tournament, to proactively engage in frolicking with the tournament participants, including drinking shots of Three Olive Vodka with the golf tournament players.

15. Braun, in furtherance of her work at the tournament, drank alcoholic beverages with the tournament players and others during the course of the golf tournament. Moreover, during the tournament and/or at the conclusion of the tournament, Braun drank alcoholic beverages with other employees of Arnold, including supervisory employees of Arnold. As a consequence, at the conclusion of the tournament, or shortly thereafter, Braun had become very intoxicated.

16. Notwithstanding the fact that Braun was employed by Arnold to promote its beverages, including Three Olive Vodka, and Arnold expressly and/or impliedly and/or tacitly approved of Braun's drinking of alcoholic beverages during the course of her work and thereafter, Arnold did not provide any form of training whatsoever to Braun regarding the safe use of its products and did not provide any form of supervisory control to assure the safety of Braun and the general public with respect to Braun's obviously inebriated condition following the golf tournament. In fact, Arnold through its employees, including supervisory personnel, contributed to Braun's inebriated condition by drinking shots of alcoholic beverages with her during or following the golf tournament when they knew or should have known that Braun was intoxicated to the point of being unable to safely operate her vehicle.

17. In spite of all of the foregoing facts, Arnold, through its employees and agents, including supervisory personnel, allowed Braun to leave the golf course in a highly intoxicated condition while driving her automobile. Shortly after leaving the golf course, Braun while driving at a very high rate of speed, left her proper lane of travel and crashed head on into an

oncoming vehicle driven by Devin Shumate. The collision resulted in the death of Gabriella Shumate, the four year old daughter of Devin and Dacia Shumate, who was a passenger in the vehicle being driven by Devin Shumate.

18. The Pub, as sponsor of the golf tournament, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including Braun, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during or after the golf tournament. Notwithstanding its awareness, the Pub took no steps to supervise the participants, including Braun and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the participants and the general public following the conclusion of the tournament.

19. The Golf Course, on whose premises the golf tournament was held, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including Braun, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during, or after the golf tournament. Notwithstanding its awareness, the Golf Course took no steps to supervise the participants, including Braun and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the participants and the general public following the conclusion of the tournament.

For a First Cause of Action as to All Defendants
(Negligence)

20. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

21. The Defendants were negligent, grossly negligent, reckless, willful, and wanton in one or more of the following particulars to wit:

a) As to Defendant Arnold:

- (1) In hiring Braun prior to assessing whether or not Braun was qualified for employment;
- (2) In failing to train Braun for her assigned duties involving the use and disbursement of significant amounts of alcoholic beverages;
- (3) In expressly, impliedly and/or tacitly approving that Braun consume alcoholic beverages with the patrons at the golf tournament;
- (4) In permitting its supervisory personnel on the premises to consume alcoholic beverages with Braun thus diminishing their ability to properly supervise, monitor and control Braun;
- (5) In failing to supervise, monitor and control the alcohol use of Braun during the course and scope of her employment;
- (6) In failing to prevent Braun from becoming grossly intoxicated during the course and scope of her employment;
- (7) In entrusting Braun with a tool of its trade, namely alcoholic beverages, that created an unreasonable risk of harm to the public;
- (8) In permitting Defendant Braun to drive a motor vehicle after becoming grossly intoxicated during the course and scope of her employment; and
- (9) In otherwise failing to use due care under the circumstances then and there prevailing.

b) As to Defendant Pub:

- (1) In failing to monitor and control those persons, including Braun, engaged in the prolific consumption of alcoholic beverages whose presence it requested to promote the goodwill of its business and otherwise advance its business interests;
- (2) In permitting individuals, including Braun, to become grossly intoxicated without adequate safeguards in place to avoid the significant harm to the public created by intoxicated persons operating motor vehicles; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Golf Course:

- (1) In failing to monitor and control those persons, including Braun, engaged in the prolific consumption of alcoholic beverages whose presence it permitted to promote the goodwill of its business and otherwise advance its business interests;
- (2) In permitting individuals, including Braun, to become grossly intoxicated without adequate safeguards in place to avoid the significant harm to the public created by intoxicated persons operating motor vehicles; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Braun:

- (1) In operating her vehicle while in a grossly intoxicated state;
- (2) In becoming grossly intoxicated;
- (3) In failing to maintain proper control of her vehicle;
- (4) In failing to drive her vehicle in the proper lane of travel;
- (5) In causing a collision with the vehicle in which Gabriella Shumate was a passenger;
- (6) In failing to properly apply her brakes;
- (7) In failing to maintain a proper lookout;
- (8) In otherwise failing to use due care under the circumstances then and there prevailing.

All of which were a direct and proximate cause of the injuries and damages complained of herein.

22. As a direct and proximate result of the Defendants' negligent, grossly negligent, reckless, willful, and wanton acts or omissions, the Plaintiffs, on behalf of the Estate of Gabriella Shumate, sustained significant damages including, but not limited to :

- a) Pecuniary loss;
- b) Mental shock and suffering;
- c) Wounded feelings;
- d) Grief and sorrow;
- e) Loss of consortium;
- f) Loss of income of the decedent;
- g) Funeral expenses; and
- h) Have been otherwise damaged all to their detriment.

23. The Plaintiffs are entitled to judgment against the Defendants, jointly and severally, for compensatory damages in an amount to be proven at trial.

24. The Plaintiffs are also entitled to recover punitive damages from the Defendants, jointly and severally, in an amount to be proven at trial based on the Defendants' grossly negligent, willful, wanton and reckless conduct.

For a Second Cause of Action as to Defendant Arnold
(Negligent Supervision)

25. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

26. At all times relevant hereto, Braun, while acting as an employee of Arnold, was using a chattel of Arnold, namely alcoholic beverages.

27. At all times relevant hereto, Arnold knew or had reason to know that it had the ability to control Braun.

28. At all times relevant hereto, Arnold knew or had reason to know of the necessity and opportunity for exercising control over Braun due to the excessive amounts of alcohol consumed by Braun.

29. Based upon its failure to properly and adequately control and supervise Braun and in entrusting Braun with a tool of its trade, namely alcoholic beverages, that created an undue risk of harm to the public, Arnold is liable to the Plaintiffs under the doctrine of negligent supervision.

30. As a direct and proximate result of the Arnold's negligent supervision of Braun, the Plaintiffs, on behalf of the Estate of Gabriella Shumate, have been damaged as alleged above.

31. The Plaintiffs are entitled to judgment against Arnold for compensatory damages in an amount to be proven at trial.

32. The Plaintiffs are also entitled to recover punitive damages from Arnold in an amount to be proven at trial based on Arnold's grossly negligent, willful, wanton and reckless conduct.

For a Third Cause of Action as to Defendant Arnold
(Respondeat Superior)

33. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

34. At all times relevant hereto, Braun was acting as an employee and agent of Defendant Arnold and was acting within the course and scope of her employment.

35. During the golf tournament, Braun consumed excessive amounts of alcoholic beverages.

36. Said consumption of alcoholic beverages by Braun was reasonably necessary and expressly, impliedly and/or tacitly suggested and/or approved by Arnold and was in furtherance of the business of Arnold by promoting the consumption of its alcoholic beverage products.

37. As a direct and proximate result of Braun's excessive alcohol consumption while in the course and scope of her employment with Arnold, Braun was unable to safely operate her

vehicle causing the collision referenced herein.

38. Based thereon, Arnold is liable to the Plaintiffs as the employer of Braun under the doctrine of *respondeat superior*.

39. As a direct and proximate result of the Braun's negligence while in the course and scope of her employment with Arnold, the Plaintiffs, on behalf of the Estate of Gabriella Shumate, have been damaged as alleged above.

40. The Plaintiffs are entitled to judgment against Arnold for compensatory damages in an amount to be proven at trial.

41. The Plaintiffs are also entitled to recover punitive damages from Arnold in an amount to be proven at trial based on Arnold's grossly negligent, willful, wanton and reckless conduct.

WHEREFORE, the Plaintiffs pray for judgment as follows:

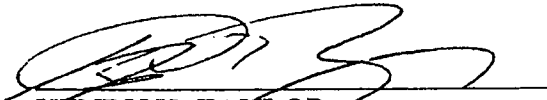
a) As to the First Cause of Action:

- (1) Compensatory damages in a an amount to be proven at trial against all Defendants, jointly and severally;
- (2) Punitive damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (3) Costs and expenses associated with this action from all Defendants; and
- (4) Such other and further relief as the Court may deem just and proper.

b) As to the Second and Third Causes of Action:

- (1) Compensatory damages in a an amount to be proven at trial against Arnold;
- (2) Punitive damages in an amount to be proven at trial against Arnold;
- (3) Costs and expenses associated with this action from Arnold; and
- (4) Such other and further relief as the Court may deem just and proper.

TAYLOR LAW FIRM LLC

A handwritten signature in dark ink, appearing to read 'H. Taylor', is written over a horizontal line.

HENRY H. TAYLOR

HEATH P. TAYLOR

3618 Sunset Boulevard, Suite D

West Columbia, South Carolina 29169

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Attorneys for the Plaintiffs

West Columbia, South Carolina

July 28, 2011

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2011 - CP - 20 - 301

Devin Shumate and Dacia Shumate,

Plaintiffs,

vs.

The Ben Arnold Sunbelt Beverage
Company of South Carolina, L.P.,
Two Heels, Inc. d/b/a State Street Pub,
Sunbelt Golf Development, Inc. d/b/a
Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

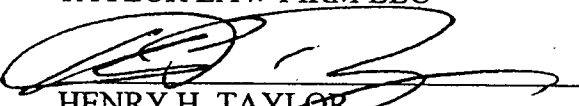
SUMMONS
(Jury Trial Demanded)

2011 JUL 28 P 12:28
FAIRFIELD COUNTY
CLERK OF COURT
PETTY IN RECKHAM

TO: THE DEFENDANTS, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint of the Plaintiffs in this matter, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office located at 3618 D Sunset Boulevard, West Columbia, South Carolina, 29169, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TAYLOR LAW FIRM LLC


HENRY H. TAYLOR
HEATH P. TAYLOR

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West Columbia, South Carolina

Attorneys for the Plaintiffs

July 28, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2011-CP-20-301

Devin Shumate and Dacia Shumate,)
)
Plaintiffs,)

vs.)

The Ben Arnold Sunbelt Beverage)
Company of South Carolina, L.P.,)
Two Heels, Inc. d/b/a State Street Pub,)
Sunbelt Golf Development, Inc. d/b/a)
Indian River Golf Course and)
Caitlin Elisabeth Braun,)
)
Defendants.)

COMPLAINT
(Jury Trial Demanded)

2011 JUL 28 P 12:28
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO RECKHAM

The Plaintiffs above named complaining of the Defendants herein, would respectfully show unto this Court:

The Parties

1. The Plaintiffs Devin Shumate and Dacia Shumate are citizens and residents of the County of Lexington, State of South Carolina.
2. The Plaintiffs are informed and believe that the Defendant The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., (hereinafter referred to as "Arnold") is a limited partnership duly organized pursuant to the laws of the State of Delaware but having authority to conduct business in the State of South Carolina and having its principal place of business in the County of Fairfield, State of South Carolina.
3. The Plaintiffs are informed and believe that the Defendant Two Heels, Inc. doing business as State Street Pub (hereinafter referred to as the "Pub") is an eleemosynary corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having

its principal place of business in the County of Lexington, State of South Carolina.

4. The Plaintiffs are informed and believe that the Defendant Sunbelt Golf Development, Inc. doing business as Indian River Golf Course (hereinafter referred to as the "Golf Course") is a corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having its principal place of business in the County of Lexington, State of South Carolina.

5. The Plaintiffs are informed and believe that the Defendant Caitlin Elisabeth Braun (hereinafter referred to as "Braun") was at the time of the incident giving rise to this action a resident and citizen of the County of Richland, State of South Carolina, but is now a resident and citizen of the State of New Jersey.

6. Upon information and belief, this court has jurisdiction over the parties and the subject matter of this case and venue is proper in the County of Fairfield, State of South Carolina.

Factual Background

7. The Pub is a bar or drinking establishment whose principal business is the sale of alcoholic beverages to its patrons at its business location in the City of West Columbia, State of South Carolina.

8. From time to time, the Pub sponsors golf tournaments to promote its business with its customers and/or to raise funds for charitable causes.

9. The Pub planned and held such a golf tournament on May 16th, 2011 at the Golf Course.

10. In connection with the planning and staging of the golf tournament, the Pub solicited some or all of its customary beverage suppliers to provide alcoholic and other beverages

for the golfers participating in the tournament while at the same time giving the beverage suppliers the opportunity to promote the consumption of their products by the participants in the golf tournament and the public at large.

11. Arnold is now and has been for many years a large wholesale supplier of alcoholic beverages, principally hard liquors, to retail establishments in the business of selling alcoholic beverages to the general public in South Carolina. In the course of its business, Arnold was, at the time of the golf tournament, a wholesale supplier of alcoholic beverages, principally hard liquors, to the Pub and agreed to promote its products by providing free samples of its product to participants in the golf tournament.

12. In the furtherance of its product promotion in connection with the golf tournament, in addition to its full time employees and agents, Arnold employed two or more attractive young women to participate in and work the promotion efforts at the Golf Course. One of the additional persons employed by Arnold was Braun.

13. As is customary with Arnold in the promotion of its products at golf tournaments, Arnold, through its employees and agents, expressly and/or impliedly and/or tacitly encouraged and/or approved the attractive young women, including Braun, employed for the promotion effort at the golf tournament, to proactively engage in frolicking with the tournament participants, including drinking shots of Three Olive Vodka with the golf tournament players.

14. Braun, in furtherance of her work at the tournament, drank alcoholic beverages with the tournament players and others during the course of the golf tournament. Moreover, during the tournament and/or at the conclusion of the tournament, Braun drank alcoholic beverages with other employees of Arnold, including supervisory employees of Arnold. As a consequence, at the conclusion of the tournament, or shortly thereafter, Braun had become very

intoxicated.

15. Notwithstanding the fact that Braun was employed by Arnold to promote its beverages, including Three Olive Vodka, and Arnold expressly and/or impliedly and/or tacitly approved of Braun's drinking of alcoholic beverages during the course of her work and thereafter, Arnold did not provide any form of training whatsoever to Braun regarding the safe use of its products and did not provide any form of supervisory control to assure the safety of Braun and the general public with respect to Braun's obviously inebriated condition following the golf tournament. In fact, Arnold through its employees, including supervisory personnel, contributed to Braun's inebriated condition by drinking shots of alcoholic beverages with her during or following the golf tournament when they knew or should have known that Braun was intoxicated to the point of being unable to safely operate her vehicle.

16. In spite of all of the foregoing facts, Arnold, through its employees and agents, including supervisory personnel, allowed Braun to leave the golf course in a highly intoxicated condition while driving her automobile. Shortly after leaving the golf course, Braun while driving at a very high rate of speed, left her proper lane of travel and crashed head on into an oncoming vehicle driven by Devin Shumate. The collision resulted in serious personal injuries to Devin Shumate.

17. The Pub, as sponsor of the golf tournament, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including Braun, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during or after the golf tournament. Notwithstanding its awareness, the Pub took no steps to supervise the participants, including Braun and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the

participants and the general public following the conclusion of the tournament.

18. The Golf Course, on whose premises the golf tournament was held, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including Braun, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during, or after the golf tournament. Notwithstanding its awareness, the Golf Course took no steps to supervise the participants, including Braun and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the participants and the general public following the conclusion of the tournament.

For a First Cause of Action as to All Defendants
(Negligence)

19. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

20. The Defendants were negligent, grossly negligent, reckless, willful, and wanton in one or more of the following particulars to wit:

a) As to Defendant Arnold:

- (1) In hiring Braun prior to assessing whether or not Braun was qualified for employment;
- (2) In failing to train Braun for her assigned duties involving the use and disbursement of significant amounts of alcoholic beverages;
- (3) In expressly, impliedly and/or tacitly approving that Braun consume alcoholic beverages with the patrons at the golf tournament;
- (4) In permitting its supervisory personnel on the premises to consume alcoholic beverages with Braun thus diminishing their ability to properly supervise, monitor and control Braun;
- (5) In failing to supervise, monitor and control the alcohol use of

Braun during the course and scope of her employment;

- (6) In failing to prevent Braun from becoming grossly intoxicated during the course and scope of her employment;
- (7) In entrusting Braun with a tool of its trade, namely alcoholic beverages, that created an unreasonable risk of harm to the public;
- (8) In permitting Defendant Braun to drive a motor vehicle after becoming grossly intoxicated during the course and scope of her employment; and
- (9) In otherwise failing to use due care under the circumstances then and there prevailing.

b) As to Defendant Pub:

- (1) In failing to monitor and control those persons, including Braun, engaged in the prolific consumption of alcoholic beverages whose presence it requested to promote the goodwill of its business and otherwise advance its business interests;
- (2) In permitting individuals, including Braun, to become grossly intoxicated without adequate safeguards in place to avoid the significant harm to the public created by intoxicated persons operating motor vehicles; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Golf Course:

- (1) In failing to monitor and control those persons, including Braun, engaged in the prolific consumption of alcoholic beverages whose presence it permitted to promote the goodwill of its business and otherwise advance its business interests;
- (2) In permitting individuals, including Braun, to become grossly intoxicated without adequate safeguards in place to avoid the significant harm to the public created by intoxicated persons operating motor vehicles; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Braun:

- (1) In operating her vehicle while in a grossly intoxicated state;
- (2) In becoming grossly intoxicated;
- (3) In failing to maintain proper control of her vehicle;
- (4) In failing to drive her vehicle in the proper lane of travel;
- (5) In causing a collision with the vehicle driven by Devin Shumate;
- (6) In failing to properly apply her brakes;
- (7) In failing to maintain a proper lookout;
- (8) In otherwise failing to use due care under the circumstances then and there prevailing.

All of which were a direct and proximate cause of the injuries and damages complained of herein.

21. As a direct and proximate result of the Defendants' negligent, grossly negligent, reckless, willful, and wanton acts or omissions, Plaintiff Devin Shumate, sustained significant damages including, but not limited to :

- a) Serious, significant and permanent personal injuries;
- b) Extreme pain and suffering;
- c) Medical expenses and treatment;
- d) Lost income;
- e) Loss of enjoyment of life; and
- f) Has been otherwise damaged all to their detriment.

22. Plaintiff Devin Shumate is entitled to judgment against the Defendants, jointly and severally, for compensatory damages in an amount to be proven at trial.

23. Plaintiff Devin Shumate is also entitled to recover punitive damages from the

Defendants, jointly and severally, in an amount to be proven at trial based on the Defendants' grossly negligent, willful, wanton and reckless conduct.

For a Second Cause of Action as to Defendant Arnold
(Negligent Supervision)

24. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

25. At all times relevant hereto, Braun, while acting as an employee of Arnold, was using a chattel of Arnold, namely alcoholic beverages.

26. At all times relevant hereto, Arnold knew or had reason to know that it had the ability to control Braun.

27. At all times relevant hereto, Arnold knew or had reason to know of the necessity and opportunity for exercising control over Braun due to the excessive amounts of alcohol consumed by Braun.

28. Based upon its failure to properly and adequately control and supervise Braun and in entrusting Braun with a tool of its trade, namely alcoholic beverages, that created an undue risk of harm to the public, Arnold is liable to Plaintiff Devin Shumate under the doctrine of negligent supervision.

29. As a direct and proximate result of the Arnold's negligent supervision of Braun, Plaintiff Devin Shumate has been damaged as alleged above.

30. Plaintiff Devin Shumate is entitled to judgment against Arnold for compensatory damages in an amount to be proven at trial.

31. Plaintiff Devin Shumate is also entitled to recover punitive damages from Arnold in an amount to be proven at trial based on Arnold's grossly negligent, willful, wanton and reckless conduct.

For a Third Cause of Action as to Defendant Arnold
(Respondeat Superior)

32. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

33. At all times relevant hereto, Braun was acting as an employee and agent of Defendant Arnold and was acting within the course and scope of her employment.

34. During the golf tournament, Braun consumed excessive amounts of alcoholic beverages.

35. Said consumption of alcoholic beverages by Braun was reasonably necessary and expressly, impliedly and/or tacitly suggested and/or approved by Arnold and was in furtherance of the business of Arnold by promoting the consumption of its alcoholic beverage products.

36. As a direct and proximate result of Braun's excessive alcohol consumption while in the course and scope of her employment with Arnold, Braun was unable to safely operate her vehicle causing the collision referenced herein.

37. Based thereon, Arnold is liable to Plaintiff Devin Shumate as the employer of Braun under the doctrine of *respondeat superior*.

38. As a direct and proximate result of the Braun's negligence while in the course and scope of her employment with Arnold, Plaintiff Devin Shumate has been damaged as alleged above.

39. Plaintiff Devin Shumate is entitled to judgment against Arnold for compensatory damages in an amount to be proven at trial.

40. Plaintiff Devin Shumate is also entitled to recover punitive damages from Arnold

in an amount to be proven at trial based on Arnold's grossly negligent, willful, wanton and reckless conduct.

For a Fourth Cause of Action as to All Defendants
(Loss of Consortium)

41. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

42. The Plaintiffs are married to each other and have been married for eleven years.

43. As a direct and proximate result of the negligent, grossly negligent, reckless, willful and wanton conduct on the part of the Defendants, Plaintiff Dacia Shumate has lost society, companionship, services and affection from Plaintiff Devin Shumate.

44. Plaintiff Dacia Shumate is entitled to judgment for compensatory damages from the Defendants, jointly and severally, based on the loss of society, companionship, services and affection in an amount to be proven at trial.

45. Plaintiff Dacia Shumate is also entitled to recover punitive damages from the Defendants, jointly and severally, in an amount to be proven at trial based on the Defendants' grossly negligent, willful, wanton and reckless conduct.

WHEREFORE, the Plaintiffs pray for judgment as follows:

a) As to the First Cause of Action:

- (1) Compensatory damages in a an amount to be proven at trial against all Defendants, jointly and severally;
- (2) Punitive damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (3) Costs and expenses associated with this action from all Defendants; and
- (4) Such other and further relief as the Court may deem just and proper.

b) As to the Second and Third Causes of Action:

- (1) Compensatory damages in a an amount to be proven at trial against Arnold;
- (2) Punitive damages in an amount to be proven at trial against Arnold;
- (3) Costs and expenses associated with this action from Arnold; and
- (4) Such other and further relief as the Court may deem just and proper.

a) As to the Fourth Cause of Action:

- (1) Compensatory damages in a an amount to be proven at trial against all Defendants, jointly and severally;
- (2) Punitive damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (3) Costs and expenses associated with this action from all Defendants; and
- (4) Such other and further relief as the Court may deem just and proper.

TAYLOR LAW FIRM LLC



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Attorneys for the Plaintiffs

West Columbia, South Carolina

July 28, 2011

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Devin Shumate and Dacia Shumate,

Plaintiffs,

v.

The Ben Arnold Sunbelt Beverage Company
of South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub, Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-20-00301

**ANSWER OF DEFENDANT OF CAITLIN
ELISABETH BRAUN**

**TO: HENRY TAYLOR, ESQUIRE AND HEATH TAYLOR, ESQUIRE, ATTORNEYS
FOR THE PLAINTIFF AND THE PLAINTIFF ABOVE NAMED:**

Defendant Caitlin Elisabeth Braun, hereinafter Defendant Braun, answering the
Plaintiffs' Complaint herein would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of Plaintiffs' Complaint not
hereinafter specifically admitted.

2. Paragraphs 1 through 6 are admitted.

3. Paragraphs 7 through 11 are unknown and therefore denied.

4. As to Paragraph 12, Defendant admits that she was employed by Defendant
Arnold at the time of the accident.

5. As for Paragraphs 13 through 16, Defendant admits that on or about May 16,
2011, she was involved in an accident with the Plaintiffs. Otherwise, the allegations in
Paragraphs 13 through 16 are denied.

6. Paragraphs 17 and 18 are unknown and therefore denied.

FOR A FIRST DEFENSE AS TO THE FIRST CAUSE OF ACTION

7. Paragraphs 19 through 23 are denied.

FOR A FIRST DEFENSE AS TO THE SECOND CAUSE OF ACTION

8. The allegations in Paragraphs 24 through 31 are not directed toward Defendant Braun and therefore require no response.

FOR A FIRST DEFENSE AS TO THE THIRD CAUSE OF ACTION

9. The allegations in Paragraphs 32 through 40 are not directed toward Defendant Braun and therefore require no response.

FOR A FIRST DEFENSE AS TO THE FOURTH CAUSE OF ACTION

10. Paragraphs 41 through 45 are denied.

FOR A SECOND DEFENSE

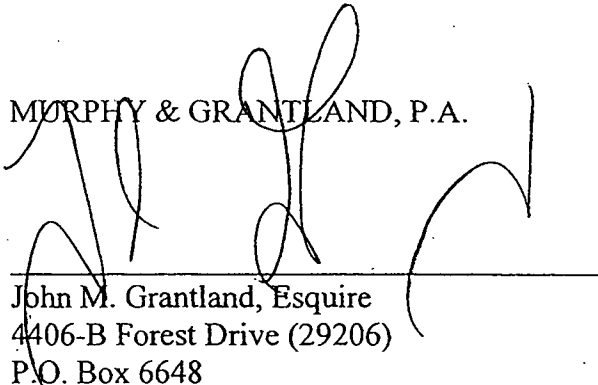
11. This Defendant would show, upon information and belief, that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right;

the Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, this Defendant prays that the Plaintiffs' Complaint be dismissed with costs.

A jury trial is demanded.

MURPHY & GRANTLAND, P.A.



John M. Grantland, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100

Attorney for Defendant Caitlin Elisabeth Braun

Columbia, South Carolina
August 26, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FAIRFIELD

CIVIL ACTION NO: 2011-CP-20-00302

Devin Shumate and Dacia Shumate as
Personal Representatives of the Estate of
Gabriella Shumate,

Plaintiffs,

v.

The Ben Arnold Sunbelt Beverage Company
of South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub, Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

**ANSWER OF DEFENDANT CAITLIN
ELISABETH BRAUN**

**TO: HENRY TAYLOR, ESQUIRE AND HEATH TAYLOR, ESQUIRE, ATTORNEYS
FOR THE PLAINTIFF AND THE PLAINTIFF ABOVE NAMED:**

Defendant Caitlin Elisabeth Braun, hereinafter Defendant Braun, answering the
Plaintiff's Complaint herein would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted.
2. Paragraphs 1 through 7 are admitted.
3. Paragraphs 8 through 14 are unknown and therefore, denied.
4. As to Paragraphs 15 through 17, the Defendant admits that on or about May 16, 2011, she was involved in an accident with the Plaintiffs. Otherwise, Paragraphs 15, 16 and 17 are denied.
5. Paragraphs 18 and 19 are denied.

FOR A FIRST DEFENSE AS TO THE FIRST CAUSE OF ACTION

6. Paragraphs 20 through 24 are denied.

FOR A FIRST DEFENSE AS TO THE SECOND CAUSE OF ACTION

7. The allegations in Paragraphs 25 through 32 are not directed toward Defendant Braun and therefore require no response.

FOR A FIRST DEFENSE AS TO THE THIRD CAUSE OF ACTION

8. The allegations in Paragraphs 33 through 41 are not directed toward Defendant Braun and therefore require no response.

FOR A SECOND DEFENSE

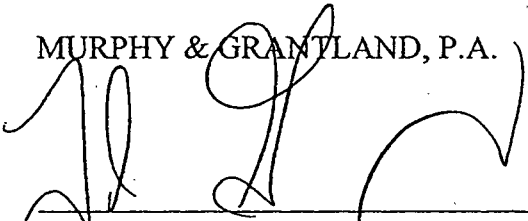
9. This Defendant would show, upon information and belief, that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for

awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, this Defendant prays that the Plaintiffs' Complaint be dismissed with costs.

A jury trial is demanded.

MURPHY & GRANTLAND, P.A.



John M. Grantland, Esquire
4406-B Forest Drive (29206)
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Attorney for Defendant Caitlin Elisabeth Braun

Columbia, South Carolina
August 26, 2011

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Caitlin Elisabeth Braun,

Plaintiff(s),

vs.

The Ben Arnold Sunbelt Beverage Company of)
South Carolina, L.P., Two Heels, Inc. d/b/a)
State Street Pub and Sunbelt Golf Development,))
Inc. d/b/a Indian River Golf Course)

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
DOCKET NO. 13-CP-20-55

DEFENDANTS' JOINT
MOTION FOR SUMMARY JUDGMENT

TO: H. RONALD STANLEY AND JERRY LEO FINNEY, ATTORNEYS FOR THE
PLAINTIFF CAITLIN ELISABETH BRAUN:

You will please take notice that the Defendants, by and through their undersigned counsel, hereby move the Court pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment in their favor on the Plaintiff s claims. Specifically, this Motion is made on the following grounds.

1. Plaintiff has admitted her legal responsibility for the automobile accident on May 16, 2011 from which her alleged injuries and damages arise. Therefore, she is estopped judicially and collaterally from now denying her liability for this accident and the damages she alleges result therefrom.

2. Having admitted her fault and liability for the accident of May 16, 2011 which gives rise to her damage claims, Plaintiff Braun is negligent as a matter of law and to such a degree that her claims are barred.

3. In pleadings previously filed with this Court, Plaintiff Braun denied that these Defendants were negligent as she now alleges. Therefore, she is estopped judicially and collaterally from pursuing these identical negligence claims against these Defendants, which she previously denied.

4. The Releases and Stipulations of Dismissal executed in "Shumate vs. Ben Arnold, et al.", Fairfield County Civil Action No. 2011-CP-20-301 and "Shumate vs. Ben Arnold, et al.", Fairfield Civil Action No. 2011-CP-20-302, bar the claims of Plaintiff Braun against these Defendants.

5. Plaintiff Braun cannot recover as a matter of law, for her claim of "loss of liberty and freedom due to her incarceration of felony dui resulting from the death of an occupant in the vehicle that was struck by the Plaintiff ' because the Plaintiff Braun voluntarily pled guilty to felony DUI, admittedly knowing that incarceration would be a mandatory element of her sentence.

Prior to the hearing of this Motion, the Defendants will submit additional items into the record, including but not limited to a Memorandum in Support of Motion for Summary Judgment, Pleadings, depositions, discovery responses, and Affidavits which all, taken together, will establish that there is genuine issues to material fact and that these Defendants are entitled to judgment in their favor as a matter of law.

AND IT IS SO MOVED.

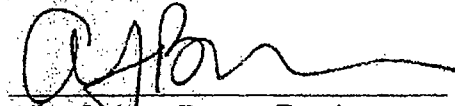
We So Move:

Date: September ____, 2013

Robert Curt Calamari, Esquire
Nelson Mullins Riley & Scarborough
3751 Robert M Grissom Pkwy
Myrtle Beach, SC 29577
(843) 448-3500

bob.calamari@nelsonmullins.com

Attorney for Sunbelt Golf Development, Inc. d/b/a Indian River Golf Course



Allen Jackson Barnes, Esquire
Allen Jackson Barnes Attorney at Law LLC
Post Office Box 2838
Sumter, South Carolina 29151
803-840-6327 (Phone)

jack@ajbfirm.com

Attorney for Two Heels, Inc. d/b/a State Street Pub

Date: September 30, 2013

John E. Cuttino, Esquire
TURNER PADGET GRAHAM & LANEY, P.A.
Post Office Box 1473
Columbia, South Carolina 29202
(803) 227-4271

JCuttino@TurnerPadget.com

*Attorneys for Defendant The Ben Arnold
Sunbelt Beverage Company of South
Carolina, L.P.*

Date: September ____, 2013

provided and poured small amounts of various beverage products for passing golfers to sample if they so chose.

Several hours after the tournament concluded and Plaintiff Braun's work responsibilities had ended, Braun was driving her personal car on a roadway near the golf course where the tournament had been held. It is undisputed she was operating her vehicle illegally while under the influence of alcohol and/or other drugs and while doing so, she crossed the center line of a two-lane road at a high rate of speed, and struck head-on an oncoming vehicle operated by Mr. Devin Shumate. Shumate was gravely injured in the collision but worse, his four (4) year old daughter Gabriella was killed on the scene.

Braun was thereafter charged with violating South Carolina's felony DUI statutes and, in addition, was named as a Defendant in civil actions brought by Mr. Shumate in the Fairfield County, South Carolina Court of Common Pleas (2011-CP-20-301 and 2011-CP-20-302) for his injuries, and for the death of his young daughter. The civil actions were eventually settled at mediation. On February 8, 2012, Braun pled guilty to one charge of Felony DUI. On August 7, 2012, Ms. Braun was sentenced to eighteen (18) months in prison and assessed a fine of \$10,100.00.

Despite her prior public acknowledgments of guilt and acceptance of responsibility for this accident, Plaintiff Caitlin Braun brings the current action sounding in *negligence* against these Defendants, contending that they breached "duties" allegedly owed to her, which she claims have resulted in personal injury and other damages to her.

LEGAL ANALYSIS

For the reasons explained below, Defendants respectfully request that this Court grant summary judgment in favor of Defendants as to all claims asserted in the Complaint.

I. Plaintiff has admitted her legal responsibility for the automobile accident on May 16, 2011 from which her alleged injuries and damages arise. Therefore, she is estopped judicially and collaterally from now denying her liability for this accident and the damages she alleges result therefrom.

Braun's claims against the Defendants sound in *negligence*. She claims the Defendants breached duties they supposedly owed to her, which resulted in her automobile accident of May 16, 2011 which, in addition to injuring Devin Shumate and killing Gabriella Shumate, caused Braun to sustain personal injury and damage. Though she now asserts it was the negligence of *others* (the Defendants) which caused her injury, she freely acknowledged her own fault, guilt, and responsibility for her actions on May 26, 2011 and the accident resulting from those actions; the same accident she now disclaims responsibility for in an effort to recovery money from the Defendants.

On February 8, 2012, Braun pled **guilty** to one count of Felony DUI involving death per South Carolina Code 56-5-2945. The transcript of that guilty plea hearing (**Exhibit A**) clearly establishes that Braun, with her retained legal counsel at her side, freely, knowingly, and voluntarily pled guilty as charged.

On August 7, 2012, Plaintiff Braun was **sentenced** pursuant to her February 8, 2012 guilty plea. At her sentencing and with her attorney present, Braun spoke voluntarily to the Court and the Shumate family. A copy of her sentencing hearing transcript is attached (**Exhibit B**). During her comments, she voluntarily and willingly said: "***I accept my responsibility.***" (P. 27 - line 7); "***I will***

forever regret the decisions I made on May 16, 2011” (P. 27 - line 17); “It’s harder knowing everyday what I did and the pain I’ve caused than knowing what lies ahead for me.” (P.27 - line 24).

Prior to her sentencing, Braun authored a letter to the Shumate family (**Exhibit C**) in which she wrote she was *“sorry for the pain and tears I have caused”, “I feel so guilty”, “I would do anything to go back and change that day,” and “I can’t believe my actions caused such good people so much pain.”*

In *State of South Carolina vs. Easler*, 322 S.C. 333, 471 S.E.2d 745, the Court stated that a conviction for violating South Carolina’s Felony DUI statute requires proof of three (3) elements: 1) the act of driving a vehicle while under the influence of alcohol and/or drugs, 2) the act of doing an act forbidden by law or neglecting a duty imposed by law, and 3) that the act or neglect is the proximate cause of great bodily injury or death to another person.

By freely and voluntarily pleading guilty to Felony DUI (and admitting to the necessary elements), Braun cannot now deny her own liability in this civil proceeding. *See Cothran vs. Brown*, 357 SC 210, 592 SE2d 629 (2004); *Doe vs. Doe*, 346 SC 145, 551 SE2d 257 (2001).

Braun is judicially estopped from denying her liability for the May 26, 2011 accident and from her present attempt to profit from it. In *Cothran*, the Court held that “judicial estoppel” is an equitable concept which prevents a litigant from asserting a position inconsistent with, or in conflict with one the litigant has previously asserted in the same or related proceeding. It further articulates five (5) elements which are necessary for the doctrine of judicial estoppel to apply: 1) two inconsistent positions taken by the same parties in privity with another, 2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other, 3) the party taking the position must have been successful in maintaining that position and have received

some benefit, 4) the inconsistency must be part of an intentional effort to mislead the Court, and 5) the two positions must be totally inconsistent. As will be demonstrated at the argument of this Motion, these elements are present.

Further, by virtue of the factual admissions inherent in her guilty plea that she is criminally responsible for the accident which resulted in Gabriella Shumate's death, Braun is also collaterally estopped from denying liability for the accident in this civil proceeding.

II. Having admitted her fault and liability for the accident of May 16, 2011 which gives rise to her damage claims, Plaintiff Braun is negligent as a matter of law and to such a degree that her claims are barred.

As part of her guilty plea to Felony DUI, Braun necessarily admitted to driving under the influence of intoxicants, an act which is forbidden by law, and that her acts were the proximate cause of death to another person. *These admissions arise from the very same accident which Braun now claims caused her own injury and damage.* Further, as noted in Paragraph 1 hereinabove, Braun, on numerous occasions, has admitted fault and liability for this accident. It is inescapable that she is negligent as a matter of law.

III. In her pleadings previously filed with this Court, Plaintiff Braun denied that these Defendants were negligent as she now alleges. Therefore, she is estopped judicially and collaterally from pursuing the same negligence claims against these Defendants, which she previously denied.

In the underlying Shumate cases, Braun filed Answers in which she affirmatively **denied** virtually all of the Shumates' factual and legal allegations against these Defendants. However, now that she is positioned as a **Plaintiff**, Braun has taken a totally opposite position in her Complaint; she has simply re-alleged verbatim those same allegations and now **asserts** them against these Defendants. The Shumate Complaints are attached as **Exhibit D**; Braun's Answers thereto are attached as **Exhibit E**, and Braun's present Complaint is attached as **Exhibit F**. To permit a party to take such a completely inconsistent position is to allow the Court to be misled or worse, defrauded. Braun, now a Plaintiff, should be estopped from pursuing these same negligence claims she previously denied.

IV. The Releases and Stipulations of Dismissal executed in "Shumate vs. Ben Arnold, et al.", Fairfield County Civil Action No. 2011-CP-20-301 and "Shumate vs. Ben Arnold, et al.", Fairfield Civil Action No. 2011-CP-20-302, bar the claims of Plaintiff Braun against these Defendants.

In the underlying Shumate cases, the defendants, including Caitlin Braun, entered into a confidential settlement with Plaintiff Shumates which served to end the dispute and extinguish all claims arising out of or in any way connected to the alleged injuries to and death of Gabriella Shumate. The settlement was heard before this Court on June 12, 2012, the terms which were negotiated and agreed to by the parties were discussed, and this Court approved the settlement. An Order was issued memorializing the terms and binding the parties to the agreement and release of claims. The Order, redacted to maintain the confidentiality of the agreed to settlement amount, is attached as **Exhibit G**. That Order states,

Upon execution of [the release], Defendants shall be fully released from and protected against any and *all claims*, demands, causes of action, judgments or liability of whatsoever nature and kind in law or in equity arising out of or in any way connected with the alleged injuries to and death of Gabriella Shumate.

The Order goes on to state,

Finally, it is further ORDERED that the Complaint in this case be dismissed with prejudice, and that all matters and things contained therein are *res judicata* between the parties and their heirs, successors, and assigns.

In negotiating the settlement, the intent of the parties was to extinguish any claims that any party may have arising out of the injuries to and death of Gabriella Shumate. The Court's Order clearly reflects that intent.

As a named party in the Shumate case, Ms. Braun had the opportunity to assert all claims and defenses available. The claims she has brought against Defendants in this action all arise out of the incident causing injuries to and death of Gabriella Shumate and are taken and restated, verbatim, from Plaintiff Shumates' Complaint. As all of the parties in this action were parties in the Shumate case, these claims were available to Ms. Braun to assert then as cross-claims against Defendants. It is made clear by the language in the Order that any and all claims between the parties have been extinguished. Plaintiff Braun is now attempting to circumvent the agreements and Court Order issued in the Shumate case by asserting Plaintiffs Shumates' claims against Defendants. As all of Plaintiff Braun's claims are claims that are arising out of and connected to the alleged injuries to and death of Gabriella Shumate, they

have already been released by this Court's Order and Plaintiff Braun's Complaint should be dismissed.

- V. Plaintiff Braun cannot recover as a matter of law, for her claim of “loss of liberty and freedom due to her incarceration of felony DUI resulting from the death of an occupant in the vehicle that was struck by the Plaintiff” because the Plaintiff Braun voluntarily pled guilty to felony DUI, admittedly knowing that incarceration would be a mandatory element of her sentence.

In her Complaint at paragraph 19, Plaintiff Braun alleges that “*as a direct and proximate result of the Defendants’ negligent, grossly negligent, reckless, willful and wantonness acts or omissions, the Plaintiff sustained significant damages including and not limited to.....loss of liberty and freedom due to her incarceration for felony DUI resulting from the death of an occupant in the vehicle that was struck by the Plaintiff.*” In bringing this action, Braun seeks not only to blame the Defendants for her incarceration, but seeks compensation from them for it. The hypocrisy of Plaintiff’s position is revealed in the transcript of her guilty plea of February 8, 2012 (**Exhibit A**) when Judge Thomas W. Cooper, Jr. advised her that if she pled guilty, she could receive up to 25 years in jail (P. 4 - line 10) and by law would receive a sentence of at least one (1) year in jail (P. 4 - line 13) which could not be suspended. She was repeatedly advised of her right to have a jury trial and to let a jury decide whether she was guilty of the charge or not. (P. 5 - line 16) At her sentencing hearing on August 7, 2012 (**Exhibit B**) Judge Cooper again advised her that her prison sentence would be a minimum sentence of one year or a maximum sentence of 25 years (P. 4 - lines 14-17). Nonetheless, Braun voluntarily pled guilty, accepted the sentence of the Court, did not appeal, and

was imprisoned. In sum, **Braun sought the guilty plea which she clearly knew and admitted under oath would result in her imprisonment.** The Court cannot now allow her to claim that others are legally responsible for her incarceration and that she is due compensation for that incarceration. Such a claim is without legal basis, and should be dismissed.

VI. Because South Carolina does not recognize the first party cause of action Plaintiff has brought against Defendants for injuries she sustained as a result of intoxication claimed to have been facilitated by Defendants, Plaintiff's Complaint should be dismissed with prejudice.

Plaintiff's singular cause of action against Defendants' is a cause of action for *negligence*. Plaintiff has asserted that each of the Defendants was aware or should have been aware of her consumption of alcoholic beverages, but did not take any steps to prevent Plaintiff from becoming dangerously intoxicated. The allegations in Plaintiff's Complaint show that Braun, an adult of lawful drinking age, became intoxicated voluntarily and by her own hand through the ingestion of alcohol. Plaintiff is now asserting that Defendant's were negligent in, among other things, failing to monitor and control the alcohol use of Plaintiff and failing to prevent her from becoming intoxicated.

To maintain a cause of action for negligence, a plaintiff has the burden of proving the following: (1) a duty on the part of the defendant, (2) breach of that duty by an act or omission or commission and (3) that such breach of duty was the proximate cause of the plaintiff's injuries. *Sherrill v. Southern Bell Telephone & Telegraph Co.*, 260 S.C. 494, 197 S.E.2d 283 (1973). A negligence *per se* action is simply a subset of traditional negligence suits. The plaintiff still has the burden of proving the three essential elements, but the existence of a statute establishes a duty apart

from any common law support for the duty. See *Freeman v. Colwell Mortgage Corp.*, 297 S.C. 335, 342, 377 S.E.2d 108, 110-11 (Ct. App. 1989).

Here, Braun asserts that the Defendants owed her a duty to prevent her from becoming overly intoxicated and injuring herself. However, South Carolina has consistently refused to impose such a duty on the owner of an establishment or a social host in multiple cases.

South Carolina has never recognized a general common law duty to avoid the provision of intoxicating drinks to an adult. The justification has been given that it is the drinking of the alcohol, and not its supply, that is the intoxication. See *Tobias v. Sports Club, Inc.*, 323 S.C. 345, 348, 474 S.E.2d 450, 451 (Ct. App. 1996) (citing 45 Am. Jur. 2d *Intoxicating Liquors* § 553 (1969)) (subsequent history omitted). The South Carolina Supreme Court has explained that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92, 504 S.E.2d 318, 320 (1998).

Furthermore, the Supreme Court of South Carolina has held that South Carolina does not recognize a 'first party' cause of action against establishments by an intoxicated adult predicated on an alleged violation of S. C. Code Ann. §§ 61-5-30 and/or 61-9-410. See *Tobias*, 332 S.C. 90, 504 S.E.2d 318 (recognizing an absolute bar to "'first party' cause[s] of action against [a] tavern owner by an intoxicated adult predicated on an alleged violation of [alcohol control statutes,]" and elaborating that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct"); *Lydia v. Horton*, 355 S.C. 36, 583 S.E.2d 750 (2003) (relying on *Tobias* to bar plaintiff's recovery where plaintiff, who drove a vehicle after becoming voluntarily intoxicated and sustained injuries in a car accident, sued the person who loaned plaintiff the car under a theory of negligent entrustment).

Finally, the South Carolina Court of Appeals has ruled that a social host doesn't even have statutory liability to third parties injured as a result of an adult guest's intoxication. *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct. App. 1986). In *Garren*, the employer had hosted a party where it served alcohol to a guest after he was intoxicated. The guest then collided with the plaintiff's automobile and injured the plaintiff. In analyzing South Carolina common law, the Court held that a driver had no cause of action in negligence against a social host who served alcohol to an intoxicated adult guest who subsequently caused an automobile collision, injuring the driver, even if host knew or ought to have known the guest intended to drive motor vehicle.

In its opinion, the court found that South Carolina would adhere to the common law view of non-liability of social hosts when third parties are injured when a social host serves alcohol to an adult guest. Where there is not even liability to injured third parties, there surely is no liability to first party plaintiffs.

Here, the Complaint is clear that Plaintiff became intoxicated by, as an adult, voluntarily consuming beverage alcohol. At no time did Plaintiff pay for any of the alcohol. Plaintiff was of drinking age and was serving herself the alcohol she was ingesting that day. Plaintiff then caused herself injury through her own actions. South Carolina Courts have refused, over and over again, to recognize the duty that Braun is attempting to impute on Defendants. Because Plaintiff's Complaint fails to assert any recognizable duty was owed by Defendants, Plaintiff's Complaint should be dismissed.

VII. Taking as true Plaintiff's allegation that she was an "employee", her sole and exclusive remedy would be a Workers Compensation claim and, therefore, her Complaint should be dismissed

In South Carolina, "[t]he Workers' Compensation Act is the exclusive remedy against an employer for an employee's work-related accident or injury." *Poch v. Bayshore Concrete Prods./South Carolina Inc.*, 405 S.C. 359, 361, 474 S.E.2d 757, 761 (2013). "The exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury." *Id.* "Any doubts as to a worker's status should be resolved in favor of including him or her under the Worker's Compensation Act." *Id.* Moreover, "[t]he exclusivity provision of the Act applies both to 'direct' employees and to those termed 'statutory employees' under § 42-1-400." *Id.*

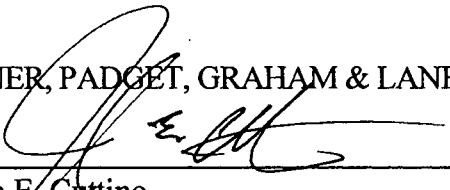
Here, in her Complaint, Plaintiff asserted multiple times that she was an employee hired to work at the tournament. Considering the allegations of the Complaint in the light most favorable to the Plaintiff and assuming only for the purpose of this Motion that they are true, Braun's exclusive remedy as an "employee" lies in filing a Workers Compensation claim. For this reason, Plaintiff's Complaint should be dismissed.

CONCLUSION

The material facts of this case are undisputed. Summary judgment is designed to expedite cases where claims asserted fail as a matter of law as Plaintiff's claims do in this case. Therefore, based on the foregoing, Defendants respectfully request this Honorable Court to grant Defendants' Joint Motion for Summary Judgment and dismiss Plaintiff's Complaint.

Respectfully submitted this 19th day of February, 2014.

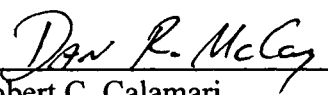
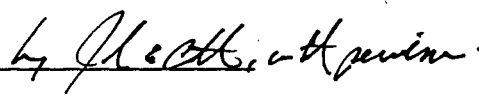
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Myrtle Beach, South Carolina

February 19, 2014

EXHIBIT A

)
) COURT OF GENERAL SESSIONS
) 2012-GS-32-00395

)
)
) TRANSCRIPT OF RECORD

B E F O R E:

A P P E A R A N C E S:

JERRY L. FINNEY, ESQ.
Attorney for the Defendant

136

I N D E X

DEFENDANT:	PAGE
CAITLIN BRAUN	3

EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: Caitlin Braun.

2 Indictment 2012-GS-32-395, State versus Caitlin
3 Elizabeth Braun, indicted for felony driving under the
4 influence with a death result. She is pleading as
5 charged. The indictment has been true-billed and she is
6 represented by Mr. Finney.

7 Raise your right hand, please.

8 CAITLIN BRAUN, after being duly sworn, testified
9 as follows:

10 THE COURT: All right. Mr. Collins, what do we
11 have?

12 MR. COLLINS: Your Honor, Ms. Braun stands
13 before you today originally charged with felony DUI
14 involving a death and felony DUI involving great bodily
15 injury. In exchange for a plea of guilty today, after
16 consultation with victims, who are present here today,
17 Your Honor, the State's agreed to allow her to plead to
18 the felony DUI involving a death and dismissing the great
19 bodily injury.

20 THE COURT: Thank you.

21 Mr. Finney, does Ms. Braun understand the nature
22 of these charges, the significance of her guilty plea to a
23 felony DUI charge, the possible sentence she can receive,
24 and the ancillary effects of this guilty plea, and her
25 constitutional rights, including that of a trial? Does

1 she seem to understand all of those things as far as you
2 know?

3 MR. FINNEY: Yes, sir, Your Honor.

4 THE COURT: She indicates that she wishes to
5 plead guilty to the charge?

6 MR. FINNEY: She does.

7 THE COURT: Thank you.

8 Ms. Braun, when you enter a plea of guilty to
9 felony driving under the influence resulting in death, you
10 can get up to 25 years in jail. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You must receive a sentence of at
13 least one year in jail, no part of that can be suspended.
14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Whatever sentence you receive, you
17 have to serve at least 85 percent of it before you will be
18 considered to be released into the community. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You can be fined from ten to \$25,000
22 as a result of your plea here today. Do you understand
23 that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: It's actually \$25,100.

1 Your license will be suspended. There are all
2 sorts of other ancillary effects or provisions that will
3 be attached to a sentence in this regard as a result of
4 your plea. Do you understand all of that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: When you enter this plea, Ms. Braun,
7 you have to give up your constitutional right to remain
8 silent. No one can make you testify against yourself. No
9 one can force you to admit that you're guilty of the
10 charge. But if you plead guilty, you have to give up your
11 right to remain silent, you have to tell me that you're
12 guilty as a part of this process. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You have a right to a jury trial, to
15 let a jury decide whether you're guilty of the charge or
16 not. You don't have to try to convince the jury that
17 you're not guilty, the State has to convince the jury that
18 you are guilty. But if you plead guilty, you don't get a
19 jury trial, you give up that right. Do you understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you had a trial, Mr. Finney would
23 have the right to question the State's witnesses who would
24 testify against you, and you could call witnesses of your
25 own to testify for you and tell your side of story. But

1 when you plead guilty, he doesn't get to question
2 witnesses and you don't get to call witnessed, you give up
3 that right. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you understood these rights
6 that I've just explained to you, Ms. Braun?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do I need to go over any of them
9 with you again?

10 THE DEFENDANT: No, sir.

11 THE COURT: This is a serious offense in the
12 eyes of the law. That means that in the eyes of the law
13 you use up today one of the two strikes -- three strikes
14 that the law gives you for serious offenses.

15 It's probably not necessary, but you don't
16 appear to be the person who's going to live a life of
17 crime, but nonetheless, if a person commits three serious
18 offenses, in the eyes of the law they are not eligible for
19 parole, they go to jail for life without possibility of
20 parole. This is one of those three strikes. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The indictment charges you with
24 felony driving under the influence resulting in death and
25 it says that on May the 16th of last year in Lexington

1 County while you were under the influence of alcohol or
2 drugs or some combination of those things, to the extent
3 that your ability to drive was materially impaired, you
4 violated the law and were speeding, perhaps among other
5 things, resulting in an accident which caused the death to
6 Gabrielle S. Shumate -- is it Shumate?

7 MR. FINNEY: Yes, sir, Your Honor.

8 THE COURT: Gabrielle Shumate, all of course in
9 violation of the law.

10 You're charged with felony driving under the
11 influence resulting in the death of Miss Shumate. Do you
12 understand that charge?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How do you plead to the charge?

15 THE DEFENDANT: I plead guilty.

16 THE COURT: Has anybody promised you anything or
17 held out any hope of reward to get you to plead guilty to
18 the charge?

19 THE DEFENDANT: No, sir.

20 THE COURT: Has anyone threatened you or forced
21 you to make you plead guilty to the charge?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you pleading guilty freely and
24 voluntarily?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you made up your own mind to
2 plead guilty to this charge?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you satisfied with everything
5 that Mr. Finney has done for you as your lawyer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has he done everything you've asked
8 him to do?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you had enough time to talk
11 with him about these things?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you understood those talks?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need any more time right now
16 to talk with him anymore?

17 THE DEFENDANT: No, sir.

18 THE COURT: You'll have ten days from the date
19 of sentencing, Ms. Braun, ten days from the date of
20 sentencing to appeal your guilty plea and your sentence.
21 You'll have to file a notice with this court within ten
22 days if you wish to appeal. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Thank you.

25 Mr. Collins.

1 MR. COLLINS: Thank you, Your Honor.

2 MR. FINNEY: And may it please the Court, Your
3 Honor. Please excuse me for interrupting, Your Honor.

4 And I thank you for letting my client know she
5 has ten days from the date of sentencing because I should
6 have taken the liberty of saying at the beginning of this
7 that we've agreed to defer sentencing until, I think,
8 about mid-June, no later than mid-June.

9 MR. COLLINS: There would be no opposition from
10 the State on that, Your Honor.

11 THE COURT: All right. Okay.

12 MR. FINNEY: Thank you, Your Honor.

13 THE COURT: Mr. Collins.

14 MR. COLLINS: Your Honor, if I may approach.

15 THE COURT: Yes, sir.

16 MR. COLLINS: Your Honor, May 16, 2011,
17 approximately 8 p.m., the defendant, Ms. Caitlin Braun,
18 who stands before you today, while driving a 2002 Nissan,
19 was traveling northbound on Rambling Road in Lexington
20 County at approximately 60 to 66 miles an hour in a
21 properly posted 35 mile an hour zone. Her vehicle went
22 off the right side of the road and then back on, crossing
23 over into the southbound lanes, striking head on a 2002
24 Kia then driven by Mr. Devin Shumate, who's present here
25 in the courtroom today. That vehicle was also occupied by

1 in the courtroom today. That vehicle was also occupied by
2 Gabrielle Shumate, the then four-year-old daughter of
3 Devin and Dacia, who again are both present.

4 As a result of the collision, Your Honor,
5 Mr. Shumate suffered significant injuries which would be
6 classified as significant bodily injury, great bodily
7 injury under the eyes of the law, and as stated
8 previously, Gabrielle Shumate was killed as a direct and
9 proximate cause of the accident.

10 The subsequent investigation revealed that
11 Ms. Braun had been drinking alcohol prior to the accident.
12 Her blood alcohol content level was .16, and also tested
13 positive for marijuana.

14 Your Honor, she has no criminal history.

15 THE COURT: All right.

16 MR. COLLINS: She had also, Your Honor, as Mr.
17 Finney had previously stated, Ms. Braun also suffered
18 significant injuries during this accident. I believe that
19 she's under medical -- receiving medical treatment as we
20 speak, which is the basis for the State not opposing the
21 deferment of the sentence. I think she has some ways to
22 go before she can be medically released.

23 THE COURT: Okay. Mr. Collins, of course, at
24 this juncture normally I would now hear from the victims
25 in aggravation and anybody else from State. If I'm going

1 thing for me to do after I've qualified the plea, asking a
2 couple of questions here, to defer matters in aggravation
3 and mitigation until the date of sentencing. What says
4 the State?

5 MR. COLLINS: We've discussed the possibility
6 with the victims of both those scenarios, Your Honor.
7 They are prepared to speak today and perhaps have the
8 sentencing issued by written order, or they're more than
9 willing to revisit the issue as well. And the time frame
10 that the State would -- the longest we'd be willing to go,
11 Your Honor, is the second week in June. Of course, the
12 family needs some sort of closure date.

13 THE COURT: I understand.

14 MR. COLLINS: Again, they're open to either
15 scenario, Your Honor. They are here ready, willing, and
16 able to address the Court, or they can come back in June,
17 whichever one. I think they would hopefully -- or they
18 would choose --

19 THE COURT: I will let them choose. You check
20 with them and tell me which they prefer to do.

21 (Pause.)

22 MR. COLLINS: Your Honor, they've chosen to
23 choose the date of sentencing.

24 THE COURT: Okay. And, frankly, folks, that's
25 the more sensible thing to do. I would prefer to hear all

1 of that in a single context, but I was not going to put
2 you through if you were not willing to do it.

3 All right. I'll defer the matters from the
4 State on aggravation and other matters regarding the
5 sentencing and things of that nature.

6 Mr. Collins, I think you indicated that
7 Ms. Braun has no other criminal record; is that right?

8 MR. COLLINS: There's nothing on her criminal
9 history and nothing on her driving history. This is the
10 only offense, Your Honor.

11 THE COURT: All right. Thank you.

12 I will accept the plea. Ms. Braun understands
13 what she's doing. There's obviously a substantial factual
14 basis for it. Ms. Braun has had the services of a
15 competent lawyer that she's satisfied with and she
16 understands what she's doing.

17 I will, therefore, defer sentencing. And I
18 will -- before I leave here today, my calendar's in my
19 chambers. I'll put my head together with you-all and
20 arrange for a time to come back here no later than
21 mid-June to complete the sentencing process.

22 MR. COLLINS: Thank you, Your Honor.

23 THE COURT: Ms. Braun is out on bond, I take it?

24 MR. FINNEY: Yes, sir, Your Honor. And I
25 checked with her bondsperson and she said that that's fine

1 with her, for her to remain out on bond during the
2 pendency of the deferment.

3 And, Your Honor, do you want me to hang around
4 the courthouse today or would you like to just get in
5 touch with me? I'm sure Mr. Collins and I can just get in
6 touch with you --

7 THE COURT: That will be fine.

8 MR. FINNEY: -- and pick a date.

9 THE COURT: That will be fine. If you have to
10 leave, perhaps -- I'm running sort of a crazy schedule
11 today. I want to be sure that whatever date we pick, of
12 course, that it's acceptable to Mr. Collins, his victims,
13 and his officers, and as well as to you and your folks.

14 MR. FINNEY: Mr. Collins and I will be happy to
15 work that out, Your Honor.

16 And, finally, Your Honor, do you need to put on
17 the record that you take exclusive jurisdiction of this
18 case?

19 THE COURT: If you-all wish for me to continue
20 to have jurisdiction of this until the sentencing, of
21 course, I'm willing to do that. If both sides agree to
22 that, I'll do that.

23 MR. FINNEY: Yes, sir, we so agree.

24 THE COURT: All right. On the sentence sheet,
25 I'll simply note that the plea has been qualified and

1 accepted today. Sentencing will be deferred until no
2 later than mid-June.

3 Thank you.

4 MR. COLLINS: Thank you, Your Honor.

5 MR. FINNEY: Thank you, Your Honor.

6 (The proceedings were concluded for the day.)

7 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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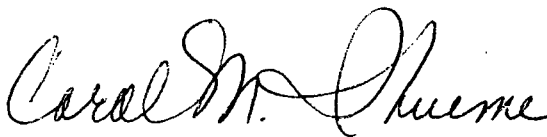
1 CERTIFICATE OF REPORTER

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4 STATE OF SOUTH CAROLINA)
5 COUNTY OF LEXINGTON)
6
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 8th day of
15 February, 2012.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19
20 May 4, 2013

21 
22

23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

EXHIBIT B

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON ___) 2012-GS-32-00395

STATE OF SOUTH CAROLINA)
)
) vs. TRANSCRIPT OF RECORD
)
CAITLIN BRAUN)

) DEFENDANT ___)

August 7, 2012
Lexington, South Carolina

B E F O R E:

THE HONORABLE THOMAS W. COOPER, JR., JUDGE.

A P P E A R A N C E S:

RICK COLLINS, ASSISTANT SOLICITOR
Attorney for the State

JERRY L. FINNEY, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

DEFENDANT:	PAGE
CAITLIN BRAUN	3

EXHIBITS

(There were no exhibits marked.)

1 THE COURT: Mr. Solicitor, you can call your
2 case.

3 MR. COLLINS: Thank you, Your Honor.

4 Your Honor, this is Indictment No.
5 2012-GS-32-00395, the State of South Carolina versus
6 Ms. Caitlin Braun. The charge is felony DUI involving a
7 death.

8 Your Honor, on Wednesday, February 8, 2012, Your
9 Honor previously accepted a guilty plea involving this
10 charge from Ms. Braun by and through her attorney,
11 Mr. Finney.

12 She was originally charged with felony DUI
13 involving a death, one count; another count, felony DUI,
14 great bodily injury involving Mr. Devin Shumate, who is
15 present here in the courtroom today. In exchange for her
16 guilty plea then, the State agreed to dismiss the great
17 bodily injury, again, in exchange for her plea of guilty
18 to the felony DUI death.

19 Your Honor retained jurisdiction. We stand here
20 today before Your Honor for the sentencing of Ms. Braun.

21 Both Devin Shumate, the father of Gabrielle
22 Shumate and Dacia Shumate, the mother, both are here
23 today, Your Honor, and do wish to address the Court.

24 THE COURT: All right. Thank you.

25 Madam Clerk, if you'll swear Ms. Braun, please.

1 THE CLERK: Raise your right hand, please.

2 CAITLIN BRAUN, after being duly sworn, testified
3 as follows:

4 THE COURT: Mr. Finney, since our appearance
5 here first on February 8th of this year, has anything
6 changed in the mental status of Ms. Braun, her mental
7 capacity, her ability to distinguish right from wrong, her
8 competency to complete this plea? Has any of that come to
9 your attention in the meantime that would bring any of
10 those things into question?

11 MR. FINNEY: No, Your Honor.

12 THE COURT: Thank you.

13 Ms. Braun, you recall from our discussions back
14 in February of this year, I advised you as to possible
15 sentences that could be imposed in response to your guilty
16 plea, a minimum sentence of one year, a maximum sentence
17 of 25 years, and whatever the sentence is, at least 85
18 percent of it has to be served before you can be eligible
19 for parole -- or for release, I'm sorry -- a fine that
20 can't be reduced below \$10,100, loss of license, a serious
21 offense in the eyes of the law. Do you recall those
22 things that I discussed with you at that time?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And since that time, Ms. Braun, has
25 anything changed in your circumstance that would cause you

1 to have any difficulty understanding what we're talking
2 about today and the consequences of your guilty plea?

3 THE DEFENDANT: No, sir.

4 THE COURT: Thank you.

5 On February 8th, I accepted the guilty plea and
6 deferred sentencing until today. Actually, we scheduled
7 it at an earlier date and postponed it until today's date
8 since I was going to be here for this term of court. At
9 that time I indicated that I would wait until today to
10 hear matters in aggravation -- that is matters from the
11 State -- as well as matters in mitigation -- that is
12 issues from the defendant before I impose sentence.

13 Mr. Collins, in that regard, I'll be glad now to
14 hear from the State on the issue of sentencing.

15 MR. COLLINS: Beg the Court's indulgence, Your
16 Honor.

17 THE COURT: Okay.

18 (Pause.)

19 MR. COLLINS: Thank you, Your Honor.

20 Your Honor, it always been the family's position
21 that we are neither in a position to recommend any
22 sentence nor impose whatever the Court does decide is just
23 and proper.

24 THE COURT: All right, sir.

25 MR. COLLINS: Is now the time you'd like to hear

1 from them, Your Honor?

2 THE COURT: Yes. I would like to hear, first of
3 all, from you to remind me again of the circumstances
4 surrounding this event, and I don't have my notes with me,
5 frankly, from my earlier time.

6 MR. COLLINS: Very well, Your Honor.

7 May 16th, 2011, approximately 8 p.m., Ms. Braun,
8 while driving a 2002 Nissan, was traveling northbound on
9 Rambling Road in Lexington County at an estimated speed of
10 between 60 and 66 miles per hour in a properly posted 35
11 mile an hour speed zone. Ms. Braun's vehicle then dropped
12 off the right side of the road. In response Ms. Braun
13 overcorrected, causing her to veer into the southbound
14 lane of traffic, striking a 2012 Kia head on, then driven
15 by Mr. Devin Shumate and occupied by his four-year-old
16 daughter, Gabrielle Shumate.

17 This collision directly and proximately caused
18 Gabrielle Shumate to suffer fatal injuries and Mr. Devin
19 Shumate to suffer injuries that would classify as great
20 bodily injury under 56-5-2945(B).

21 The defendant was subsequently arrested and
22 charged with felony DUI with great bodily injury and
23 felony DUI resulting in death. The investigation did
24 continue.

25 A blood sample was drawn from Ms. Braun. Her

1 BAC level was a .16, Your Honor.

2 She had no criminal history and no driving
3 infractions prior to this incident.

4 THE COURT: All right. Thank you.

5 Now I'll be glad to hear from Mr. and
6 Mrs. Shumate.

7 Ms. Shumate.

8 MRS. SHUMATE: Thank you, Your Honor.

9 My daughter Gabrielle Jewel was born on
10 April 26, 2007. Ella was an exuberant, precocious
11 four-year-old who instantly stole hearts with crystal
12 clear blue eyes and her vivacious princess spirit. She
13 expected all to pay attention to her and attended to all,
14 making everyone her friend.

15 In many ways Ella was a normal girl. She loved
16 to run, ride her bicycle, play dressup, and play with her
17 baby dolls. But to those who knew her, she was far from
18 typical.

19 Ella was wise beyond her years and quite
20 adventurous. She had no fear. She loved to climb the
21 rock wall at the zoo, loved to swim, and tried to do
22 everything she saw her older brothers do.

23 Ella loved to dance and sing and often would
24 dance around our house. She loved babies and wanted
25 nothing more than to grow up and be a mommy.

1 She loved her brothers and especially her daddy.
2 She loved to read. She had an infectious laugh and loved
3 to make those around her laugh. Life was always an
4 adventure with Gabrielle.

5 Ella was tragically taken from us on May 16,
6 2011, when the vehicle she was riding in was hit by
7 Caitlin Braun's car. Caitlin was driving drunk. As I was
8 made aware of the accident, I rushed to the hospital, and
9 I walked in to the emergency room to find my only daughter
10 there on the table trying to be resuscitated, but she was
11 already gone. The doctors called her time of death and I
12 was left alone in the room with my daughter.

13 During times like those, one would typically
14 turn to their spouse to help them start healing and
15 planning for funeral arrangements, but I began forging
16 alone as my husband was severely injured in this incident.
17 I was the one that had to tell my husband our daughter did
18 not make it. I had to decide what to do next. I was the
19 one that had to go to the funeral home and dress our
20 precious daughter to prepare her for burial, all while my
21 husband tried to heal enough just to be able to attend his
22 daughter's funeral.

23 I know I will see my daughter again after this
24 life, but there isn't a day that goes by that we don't
25 miss her physical presence in our home. There is a void

1 that cannot be filled. Nothing can replace her. Her
2 brothers miss playing with her, making her laugh and being
3 around her. I don't get to paint her nails or do her
4 hair. I don't get to dance around the house with her or
5 attend her ballet recitals.

6 I miss her hugs and kisses and when she would
7 tell me she loved me when I would tuck her in bed at
8 night. We miss her infectious laugh, her vivacious
9 spirit, and the adventure that she brought to our home.

10 THE COURT: Mr. Shumate.

11 MR. SHUMATE: Your Honor, if it's okay with you,
12 our 8-year-old son has a short statement he'd like to read
13 as well.

14 THE COURT: We'll be glad to hear it.

15 What's your name, young man?

16 MR. ANSON SHUMATE: My name is Anson Shumate.

17 MR. SHUMATE: Anson Shumate.

18 THE COURT: Anson.

19 MR. ANSON SHUMATE: I am eight years old, and
20 Ella was my little sister.

21 The night the accident happened, I was home when
22 my mom got a phone call from someone, and when she got off
23 the phone, my brother Tanner and I kneeled down and said a
24 prayer with mom. My mom said that Dad and Ella were
25 alive, and I thought they would be in the hospital with

1 broken bones, so I was sad. And then my parents told me
2 that Ella died the next day when I visited my dad in the
3 hospital.

4 I was happy and sad. I was happy because Ella
5 sometimes said she wanted to live with Heavenly Father and
6 Jesus, and she got her wish. I was sad because she
7 wouldn't be with us anymore. I know I will see her again,
8 though.

9 THE COURT: Thank you, Anson.

10 How old is Anson?

11 MR. SHUMATE: Eight years old.

12 Your Honor, on behalf of my family, I want to
13 recognize the professional and compassionate assistance of
14 Heath and Henry Taylor of the Taylor Law Firm as they
15 helped us traverse this very difficult legal process that
16 we had no previous experience in. Also, Mr. Finney has
17 been very respectful and sincere as we have worked
18 together to get to this point. These men give all
19 attorneys a good name.

20 When I was laying on my back in the emergency
21 room the night of the accident, I learned from my wife
22 that my only daughter had died. The next day I learned
23 the accident was caused by drunk driver who was seriously
24 drunk. The following week I learned some of the details
25 that led up to the accident and I've come to understand

1 that with regards to drunk driving, our society has major
2 problems.

3 Before we learned Caitlin's name, we personally
4 forgave her. We try to live our lives as good Christians
5 and believe Jesus Christ when he said, I will forgive whom
6 I will forgive, but of you it is required to forgive all
7 men. That was made easier for us as Caitlin apologized to
8 us from the very beginning. Dacia and I have gone and
9 done all we can to help her seek a modest bond and return
10 to New Jersey to live with her family for the last 15
11 months as we awaited this day.

12 However, despite our personal feelings towards
13 Ms. Braun, we understand that in our law, mercy cannot rob
14 justice. Where a law is broken, a price must be paid.
15 Without the law of justice, our society would be lawless
16 anarchy. We must all follow the law or pay the price.
17 For this purpose, we are here today and are humbled by the
18 gravity of this situation.

19 As we've become involved with the drunk driving
20 situation in this state, we have learned that this is an
21 epidemic that is currently treated more lightly than we
22 feel is necessary.

23 Ella and I were driving home from dropping
24 dinner guests off at our home and did nothing wrong to put
25 us in this situation. This accident left me with several

1 broken bones, three permanent steel plates, eight metal
2 pins, 24 screws, and 76 staples. I struggled to progress
3 from a hospital bed to a wheelchair to a walker and then a
4 cane; however, unlike my daughter Ella, I survived the
5 accident. She was a loving four-year-old girl who
6 deserved to go to college, to marry, to have children of
7 her own. She had a long life ahead of her.

8 Minutes before the accident, Caitlin was in a
9 parking lot drinking with two other individuals. After
10 Caitlin left in her car, one man chased after her and by
11 his own admission, was driving over 75 mile an hour on the
12 same road we were hit on. In an unbelievable act of
13 cowardice, he was one of the first to come up to the
14 accident, and instead of stopping to lend assistance,
15 turned and drove away for fear of being arrested for
16 driving drunk. The other person who drank with Caitlin
17 received a DUI the very next day for doing the same thing
18 two days in a row.

19 The National Highway Traffic Safety
20 Administration ranks South Carolina as the worst state in
21 the country with regards to the number of traffic deaths
22 that DUI related. South Carolina is dead last.

23 Now, my family and I came from Washington state
24 two and a half years ago, but we sincerely enjoy living
25 here and plan to live here as long as we can and are

1 committed to doing all we can to help this problem in this
2 Palmetto state. We have all seen the recent deaths of
3 other children that have resulted from drunk drivers in
4 Lexington County. Sadly, even our own county-elected
5 Solicitor has been found guilty of drunk driving. For
6 each conviction of drunk driving, who knows how many go
7 undetected by our understaffed police force.

8 Many people have asked us what we felt would be
9 a fair sentence for Ms. Braun. Our position is that it's
10 not up to us. Our duty is to forgive and the Court's duty
11 is to hold accountability to the law. But mercy cannot
12 rob justice.

13 We have been praying for you, Judge Cooper, that
14 you'll be able to issue a fair and just penalty, not a day
15 more and not a day less.

16 We hope that Ms. Braun would never drink again,
17 and that while the demands of justice are being met, she
18 can be a voice to prevent others from making this same
19 deadly mistake.

20 THE COURT: Thank you, Mr. Shumate.

21 Mr. Collins, anything further?

22 MR. COLLINS: Nothing further, Your Honor.

23 THE COURT: Thank you.

24 Mr. Finney, I previously accepted this plea.
25 I'll be glad now to hear from you and from anybody on

1 Ms. Braun's behalf.

2 MR. FINNEY: Thank you, Your Honor.

3 Your Honor, I'm going to start off very briefly
4 and then I'm going to turn it over to some people that
5 want to talk to you.

6 But, Your Honor, I have now been a licensed
7 attorney for just a few months shy of 20 years, and I'd
8 like to say that is the most stirring presentation I have
9 ever heard on any type of guilty plea or sentencing in my
10 career. Even before I became licensed as an attorney, I
11 saw a lot of things in court, and I was quite moved by
12 that.

13 Your Honor, with that being said, there are some
14 people here that are present -- if you-all could stand up,
15 please -- and if you would introduce yourself. Kind of
16 give your name and who you are, what's your relationship
17 to Caitlin. Speak loudly so Judge Cooper can hear you,
18 please.

19 We'll start with you.

20 MS. DURANT: I'm Tasha Durant.

21 THE COURT: I'm sorry, your name again, please?

22 MS. DURANT: Tasha Durant.

23 THE COURT: All right. Ms. Durant.

24 MS. DURANT: And I'm Caitlin's best friend. I'm
25 here to support her.

1 MS. KALEC: I'm Joan Kalec. My son dated
2 Caitlin for a year. I've known her for four years and I'm
3 here to speak on her behalf.

4 MR. BRAUN: My name is Eric Braun. I'm
5 Caitlin's brother. I'm just here for her support. I
6 wanted to let her know that I love her. And I'd like to
7 thank the Shumates for forgiving her.

8 MS. FRANZ: I'm Barbara Franz. I'm Caitlin's
9 grandmother. I'm here on her behalf.

10 MS. HINES: I'm Peggy Hines, and I'm here to
11 support Barbara, who is a friend of mine.

12 MR. FINNEY: Why don't we go ahead and start.

13 MS. KALEC: From there?

14 MR. FINNEY: Yeah, I think you have to do it
15 from there.

16 MS. KALEC: Excuse me for just a second as I
17 regain my composure.

18 THE COURT: I'm sorry. Your name again, please,
19 ma'am?

20 MS. KALEC: Joan Kalec. It's K-A-L-E-C.

21 THE COURT: Thank you.

22 MS. KALEC: I have known Caitlin for four years,
23 and not once have I ever seen her be disrespectful. I've
24 never seen her drink. I've never seen her when she was
25 inebriated or intoxicated.

1 When I got the phone call that this had
2 happened, I knew that there was no way that Caitlin Braun
3 was driving that car. I was shocked. My son called me
4 and he said, "Momma, you're not going to believe this,"
5 and he told me what happened, and I just could not believe
6 it.

7 Caitlin has always been the most respectful,
8 most kind person that I've met. My son dated her for a
9 year and I really thought that she was going to be the
10 one, but unfortunately they parted ways.

11 When I was shy of my 21st birthday, I, too, lost
12 a sibling. My 19-year-old brother was killed ten days
13 after his 19th birthday. He didn't get to grow up and he
14 didn't get to marry, but fortunately, that was not the
15 cause. A tire blew out on the car and the car flipped and
16 he died from a traumatic head injury. However, I have
17 experienced that.

18 I've never lost a child, and by God's grace I
19 never will, and I feel deeply for you-all and for you boys
20 because you lost your sister like I lost my brother, and I
21 understand how you feel, but I'll never understand how her
22 parents feel.

23 Years ago after my brother died I have often --
24 he was not wearing his seat belt. And as I've watched my
25 teenage daughter grow up, I've seen different things, DUI,

1 kids texting, all these new issues have come up.

2 I thought that Caitlin was going to have to pay
3 some type of restitution, and I have presented a proposal
4 to her to work with me to do a program for the State of
5 South Carolina. We can start out small in Lexington
6 County. It will entail working with the Highway Patrol,
7 MADD, other agencies to do to a program for high schools
8 that will have real people and real situations, real
9 offenders, real victims that will go and speak in front of
10 a high school, high-school students ninth through twelfth
11 grade, to share with them what happened and show them what
12 can result from drinking and driving, texting, doing
13 social networking on the phone while you're driving,
14 talking with friends. And I would very much like to
15 implement that with Caitlin's help.

16 I've never done it because the time wasn't
17 right, but now I think the time is perfect. It will take
18 about a year and we would be able to start doing something
19 around prom and graduation time. We have a lot of people
20 in Lexington County that I know would be glad to assist us
21 with this program.

22 If every -- they always say that if one good
23 thing can come out a bad thing, then something -- then
24 it's good. And, unfortunately, this was a horrendous
25 situation. But if we could just save one life with this

1 program, I think it will be worth every minute of time
2 that we put into it.

3 THE COURT: Thank you, Ms. Kalec.

4
5 MS. FRANZ: My grandson's going to read what I
6 wrote.

7 THE COURT: Yes, ma'am. Your name again,
8 please, ma'am?

9 THE DEFENDANT: Barbara Franz, Caitlin's
10 grandma.

11 MR. BRAUN: I want the Court to know the remorse
12 and sorrow my granddaughter's feeling for the Shumate
13 family. This was a terrible accident that she's been
14 living with mentally and physically for the past year and
15 the rest of her life. She wants to get out there and talk
16 to others about drinking and driving, and she also wants
17 to help people with physical injuries.

18 She's going to school in New Jersey for her
19 doctorate in physical therapy while she's working as an
20 administrative assistant for a physical therapist.

21 Please give her a chance to go out and help
22 others by giving her the least sentencing you can.

23 MR. FINNEY: Your Honor, at this time I would
24 like for Caitlin's mother to address the Court.

25 THE COURT: Ms. Braun.

1 MS. GRIFFITH: I'm JoAnn Griffith.

2 THE COURT: Ms. Griffith.

3 MS. GRIFFITH: I have several letters here from
4 friends and family, and if it's okay with you, I'd like to
5 tell you a little bit what each person has said.

6 THE COURT: That will be fine.

7 MS. GRIFFITH: The first letter is from her
8 boyfriend, Dr. Joseph Comesa, who is a physical therapist,
9 and they met in April of this year while they were both
10 taking a CPR class. He was renewing his license.

11 He -- I won't read the whole thing.

12 I guess you're going to pass those up, right?

13 MR. FINNEY: Yes, ma'am.

14 MS. GRIFFITH: He has told me, and he says in
15 this letter, that Caitlin has been a positive influence on
16 him. She has been upbeat. She has talked to him about
17 the remorse that she feels. He has tried to help her find
18 answers for why this happened to the Shumates and to her.
19 He has counseled her and he's helped her with her
20 injuries. He continues to help her with her ankle and her
21 hip.

22 Caitlin's dad had bought a plane ticket to come
23 down here to be here, but unfortunately, he has to have
24 emergency surgery on Thursday. And if it's okay, I'd like
25 to read his whole letter.

1 THE COURT: Okay.

2 MS. GRIFFITH: He says, "Please accept my
3 apology for my absence at Caitlin's sentencing. Emergency
4 surgery has prevented my attendance.

5 I wanted nothing more than to be there for my
6 daughter on a day that will greatly affect her future. At
7 the same time, I want to meet the parents that lost their
8 daughter in this tragedy and yet has stayed so strong
9 through something so difficult." And he wants to pass his
10 condolences to you.

11 "On behalf of my daughter, I have observed
12 behavior that has demonstrated respect, responsibility,
13 good character, and of course great remorse for her
14 actions. Caitlin has been carrying out productive
15 activities in order to continue to be a valuable member of
16 her community. She continues to attend college and work
17 at a physical therapy facility, and she looks forward to
18 attending graduate school and pursuing a career in
19 physical therapy in order to help others."

20 "It is my belief that the sooner Caitlin returns
21 to society, the sooner her contributions will be of a
22 positive and generous nature."

23 "Respectfully, please show Caitlin mercy when
24 you decide her sentence. Thank you for the opportunity to
25 express my thoughts, and once again, I am truly sorry I'm

1 unable to be present in her courtroom."

2 I have a letter here from my sister, her Aunt
3 Carolyn, and it has similar sentiments as her dad.

4 Her boss also has written a letter talking about
5 her positive attitude and how friendly she's been to the
6 patients that have come in and the respect that she last
7 shown.

8 My brother, who is a physical's assistant in
9 Pennsylvania, has similar sentiments.

10 I have -- we have two friends, two family
11 friends, Jason and Timothy Schussler. Jason has only
12 known Caitlin for a little over a year, and he asks for
13 your mercy and how much she has shared with him and the
14 strength that she has shown and has tried to draw off of
15 what has happened, and Tim has said the same thing.

16 The last letter I'd also like to read, if it's
17 okay with you. It's from my brother, who is a minister,
18 and has counseled my daughter over the last year.

19 And he says, "I'm writing on behalf of my niece
20 Caitlin Braun, and as a family, we were all devastated by
21 the car accident last year, in which Caitlin was involved,
22 that unfortunately took the life of a small child. Our
23 hearts were broken for the family who lost their precious
24 daughter due to a mistake that my niece made, a mistake
25 which she deeply regrets."

1 "I have had multiple opportunities to see
2 Caitlin over the last year and observe her life. I
3 believe that she has been changed forever from this tragic
4 event. Since the accident, I have seen how she has taken
5 the opportunity to grow closer to her family and how her
6 relationship with her mom, my sister, has changed for the
7 positive."

8 "Caitlin has always been re-examining her values
9 in general. She has expressed that she views life
10 differently since the accident and that her priorities
11 have changed for the better. She seems to understand the
12 importance of family and faith and their role in her life.
13 Caitlin has been attending church more regularly and seems
14 to be searching for answers to many of life's difficult
15 questions."

16 "I've recently talked with her personally and
17 asked about regrets, lessons she has learned, and the
18 importance of creating something positive from this event.
19 From my conversation, I'm convinced that Caitlin does feel
20 very sorry for what happened."

21 "She wants to find something positive she can
22 accomplish with her life and hopes to use this experience
23 to warn others of the consequence of poor choices. She
24 believes that she has been given a gift, a second chance,
25 and wants to achieve something positive with the chance

1 she has been given."

2 "We, as a family, do understand that due to her
3 actions, that some consequences are inevitable, but we do
4 hope the courts will exercise some leniency and grace
5 toward her sentencing."

6 "We all hope Caitlin can soon start to move
7 forward with rebuilding her life and begin to work toward
8 achieving the goal that she has set before herself of
9 helping others and make better choices by sharing her
10 story."

11 "Respectfully, Reverend David Griffith."

12 When I had Caitlin, I never expected to have to
13 help her through an event like this. From the day that I
14 arrived down here after the accident, and as recently as
15 this morning, we've talked about what she's learned, how
16 she feels, and that she needs to take the grace that the
17 Shumates have shown her. And being from the New York area
18 we don't see this very often, but we're very, very
19 thankful for the kindness you have shown both of us, but
20 particularly my daughter.

21 She has always told me she wants to have
22 children of her own, and the thought that she took
23 someone's child away from them weighs very heavy on her
24 mind. She wants to repay this and she has told me that
25 she will spend the rest of her life making up for the loss

1 that the Shumates have experienced.

2 We both have passed along our condolences many
3 times, and we will do that the rest of our lives. We will
4 always think of them, and I just ask you to show my
5 daughter some mercy and let her move on and show how she
6 is going to repay society and pay their kindness forward.

7 Thank you.

8 THE COURT: Thank you, Ms. Griffith.

9 MR. FINNEY: Thank you, Your Honor.

10 Your Honor, at this time I would like Caitlin to
11 address the Court.

12 THE COURT: Ms. Braun.

13 THE DEFENDANT: I just want to say something to
14 the Shumate family.

15 I hope you guys are doing well. I think about
16 Gabrielle and your family every day. And as every May
17 16th approaches, it's going to be hard to think of all the
18 pain I've caused your family all this time.

19 The few times I've met you, you seem like the
20 strongest people I've ever met. I did not know that
21 people like you existed in this world. Your forgiveness
22 and acceptance of me has given me faith in the goodness of
23 people. I don't think I'm even capable of accepting how
24 truly blessed I am that you have forgiven me. It's
25 because of you that I believe in miracles.

1 I understand that your forgiveness is not
2 because you think that I deserve it, because you don't
3 know me, but because that's the type of people you are.
4 To accept and embrace a complete stranger who has caused
5 your family so much pain shows so much strength.

6 I did not know Gabrielle, but I'm sure she would
7 have grown up to be a beautiful and amazing young woman
8 because of the family she has. I hate myself every day
9 knowing that you won't be able to share so many important
10 moments in your daughter's life.

11 Dacia, I'm so sorry you'll never be able to take
12 Gabrielle shopping and teach her about makeup and boys.

13 And, Devin, I'm so sorry I took away the
14 opportunity for you to walk your beautiful daughter down
15 the aisle when she marries the man of her dreams.

16 Even though these precious moments have been
17 stolen from you, I pray every day and night that you,
18 Gabrielle's brothers and her family, have found peace.
19 I've always tried to appreciate every little gift that
20 life has given us because I believe that's what brings
21 true happiness. I hope that your family has found, and
22 will continue to find, that happiness everyday, even
23 though Gabrielle is no longer with you.

24 I would do and give anything to bring her back
25 or trade places with her. She deserved to experience all

1 the great things that life has to offer. Every time I'm
2 about to smile, it's not the same anymore because
3 Gabrielle is constantly on my mind. I took away her
4 chance to be happy, so I feel even more guilty when
5 something makes me smile.

6 In the few times I've seen you, I see the
7 strength in both of you that just allow you both to smile,
8 to live on for your daughter and her brothers. I believe
9 Gabrielle smiles while she looks down upon her family, and
10 I'm able to find peace in that.

11 I've been talking to a friend of mine in South
12 Carolina who lost her brother in a car accident when she
13 was younger. We're discussing the formation of a program
14 that involves speaking to high school students about the
15 dangers of drinking and driving.

16 Since the accident last year, I've lost a young
17 cousin to leukemia, a friend to an accident that involved
18 drinking, a friend who was hit by a drunk driver, and most
19 recently I lost a friend in the state who took his own
20 life. I want this program to focus on the dangers of
21 drinking but also touch on the importance of life and how
22 it's not worth jeopardizing anyone's life, rather it be
23 for a good time, a job, peer pressure, or whatever it may
24 be. People need to realize how precious life is and count
25 their blessings every day.

1 To me, myself, and my family, I want to make a
2 promise to you, as Gabrielle's family, that this tragedy
3 will have a positive effect on many lives.

4 When this first happened I was so ashamed of
5 myself -- and still am -- that I didn't want to talk about
6 it for the reason of being judged, but I quickly learned
7 that that doesn't matter. I accept my responsibility.
8 This is my reality now. And people can judge all they
9 want, but if they learn from it and pass it along, it's
10 worth it. If telling a complete stranger this story of
11 how Gabrielle's life was unfairly taken from her will save
12 others from making a similar mistake, I'll tell the world.

13 I believe that awareness can be the best form of
14 prevention. I told people I barely know and I hope them
15 knowing or telling another will save lives in the memory
16 of Gabrielle. I will forever regret the decisions I made
17 on May 16th, 2011.

18 I want you to know, Dacia and Devin, that you
19 truly are my heroes, and I hope that's okay with you. If
20 you can have the strength of getting through this horrible
21 heartbreak you must have endured with the attitude that
22 you've had since the beginning, I can get through my
23 sentence. It's harder knowing every day what I did and
24 the pain I've caused than knowing what lies ahead for me.

25 I can't even imagine what it's like to lose your

1 child since I'm not a mother, but one day I hope I am
2 given that chance and can have a family like yours.
3 Your strength has given me more strength, and I thank you
4 for that. I only hope I can give you something in return.

5 God bless you and your family.

6 THE COURT: Thank you.

7 MR. FINNEY: Thank you, Your Honor.

8 THE COURT: Mr. Finney.

9 MR. FINNEY: May it please the Court.

10 THE COURT: Yes, sir.

11 MR. FINNEY: Your Honor, the legislature has
12 seen fit on felony DUI cases to give a circuit court judge
13 a range, a sentencing range, from one year, I think, up to
14 25 years.

15 THE COURT: That's right.

16 MR. FINNEY: Your Honor, if you would indulge me
17 and look at that range as a meter and a needle indicating
18 on that meter the minimum to the maximum, I would like to
19 start out my presentation to the Court by suggesting
20 respectfully to the Court why I believe Caitlin, her
21 needle is on the minimum, and it has remained on the
22 minimum from the very beginning.

23 Your Honor, immediately after this tragic event
24 occurred, Caitlin Braun woke up in the hospital.
25 Someone -- I don't know who -- contacted her mother, who

1 contacted me, and I was involved in this case from the
2 very beginning.

3 Caitlin's mom came down to South Carolina, and
4 after Caitlin was able to get out of the hospital, she was
5 not arrested and charged. She was able to return to New
6 Jersey, not being charged with anything. Once the
7 authorities contacted me and told me that she needed to
8 come back and turn herself in, she immediately did so.
9 That's why that needle, in my presentation, stays on that
10 minimum.

11 She turned herself in to authorities after
12 returning to Lexington, after returning from New Jersey.
13 She cooperated with police in their investigation without
14 fail. While she was out -- she had two bond hearings.
15 One bond hearing was down at the magistrate court. And
16 then instead of Caitlin getting bond -- and the Shumates
17 were there, everybody was there -- and just leaving, we
18 let the circuit judge know that she needed to leave the
19 state because they live in New Jersey. So we came up here
20 to circuit court and had a circuit court hearing and then
21 we left and went to New Jersey.

22 Judge, I'd like to tell you something. At both
23 the bond hearing and at that circuit court hearing, my
24 client and her mother embraced Mr. and Mrs. Shumate. And
25 it was such a powerful moment that it brought me to tears

1 right out in the lobby here at this courthouse.

2 Your Honor, that act of forgiveness and that act
3 of not hating, you don't have to be from New York to have
4 to find that to be rare. You can be right here in South
5 Carolina and see that that's such a rare and moving thing.
6 And it gave me an enormous amount of respect for the
7 Shumates.

8 And I'll tell you, I don't think I've ever been
9 complimented in the courtroom by anyone on the opposite
10 side for representing the legal profession well. And I
11 take that very, very seriously, and I appreciate that
12 compliment more than you will know. And I'm sure I speak
13 for all the lawyers involved in this case.

14 Your Honor, after that, my client was able to
15 return to New Jersey, live with her mom. During that time
16 after she -- she continued to follow up with all of her
17 court appearances here. When the Solicitor told her it
18 was time -- told me it was time for her to plead, she
19 immediately traveled back here, pled in front of Your
20 Honor. There's never been a delay in anything. Again,
21 Your Honor, that needle stays on the minimum.

22 After she entered her plea, while awaiting
23 sentencing, Caitlin was sued due to this accident along
24 with her employer, Ben Arnold. In that lawsuit, Caitlin's
25 deposition was the only deposition taken, period. She

1 went through a six-hour deposition, where the lawyer on
2 the other side questioned her up and down and belittled
3 her and -- I mean, it was a full-on deposition of this
4 individual, Caitlin Braun. And she testified.

5 She didn't have to, Your Honor. She could have
6 invoked and said, you know, I'm taking the Fifth. I've
7 got charges pending against me. She didn't. She was
8 deposed because she -- we wanted to help the Shumates.
9 And due to her testimony, her sole testimony, that case
10 settled to everyone's satisfaction.

11 Your Honor, so that -- again, the needle stays
12 on minimum.

13 Let me tell you what this case is not. This
14 case is not a case of a young girl who maybe went down to
15 Five Points or the Vista and ran up a \$300 tab and her
16 friends tried to take her car keys away from her and she
17 said no and got in the car and left. You know, this case
18 is not about a girl who lied to the police, tried to cover
19 up evidence, lied about evidence, and the police were able
20 to get evidence after she gave a statement saying, A, and
21 they found out A was a lie and confronted her with B.

22 You know, this is not about a girl who refused
23 to accept responsibility, and this is not about a girl who
24 is alone in her actions. Ben Arnold certainly was a party
25 involved in what kind of sent this train out of the

1 station. And we're not saying that, Your Honor, to shirk
2 responsibility from Caitlin.

3 And, Your Honor, the Shumates sued Ben Arnold,
4 and Caitlin gave a deposition -- and Caitlin was sued in
5 this matter as well. She gave deposition testimony, and
6 that case is now resolved. But the point is, Your Honor,
7 if she had done any of those things, lied to the police,
8 manufactured evidence, all those things, well, then that
9 needle would begin to rise and head towards the maximum
10 side of that range. Because she didn't do that, Your
11 Honor, I believe that needle stays on minimum.

12 Your Honor, I want you to be aware, and I don't
13 think you are aware -- and I don't think you would have a
14 reason to know -- that in that civil case -- and I think
15 this is undisputed -- Ben Arnold gave her a job that day
16 to work on the golf course. They did not provide her with
17 any food. They just provided her with alcohol.

18 They wanted her because she's pretty. They
19 wanted her to serve drinks to the customers out there, and
20 they wanted her to drink with the customers out there, all
21 in the name of profit. And she did that so that she could
22 get paid and get tips and to look good and to drink with
23 the golfers. When she was done, they sent her home.

24 Budweiser was also out there that day with girls
25 hired to do the same job as Caitlin, to drink with

1 golfers. However, when they were done, they were taken
2 home in a cab provided by Budweiser. Budweiser knew their
3 responsibility, they accepted their responsibility. Ben
4 Arnold did not, and they did nothing.

5 Your Honor, I equate this to an example. I
6 brought Stephanie with me. Stephanie's my associate,
7 she's also my employee.

8 Your Honor, if I were to be in a convention with
9 lawyers and I wanted Stephanie to use her good looks to go
10 and drink with other lawyers so that they could refer us
11 business, and I provided her with the opportunity to drink
12 and I suggested that she do it and didn't give her any
13 food and she did it, well, guess what, Your Honor? I
14 don't think there's anything illegal about that. People
15 may not like that, but it's goes on in our society.

16 But the problem is, is that if I'm like
17 Budweiser, I'm going to provide Stephanie with an
18 opportunity to get home safely, or I'm going to provide
19 her an opportunity to go somewhere and have some shelter
20 so that she can sleep it off and not harm anyone else.
21 That's being a responsible employer. That's what
22 Budweiser did on the very day of this event.

23 Ben Arnold didn't do that. Ben Arnold took the
24 responsibility, hey, thanks a lot, good luck getting home.
25 And then Caitlin got in her car and this terrible tragedy

1 happened.

2 Your Honor, from the very beginning, as I told
3 the Court, she's accepted responsibility. She's made an
4 effort to better herself through education, volunteer
5 work, school. She wanted to let her actions be a lesson
6 for younger girls, for example, what could happen. She
7 sought forgiveness and acceptance from the Shumates. And
8 during her deposition, she never exercised her right to
9 remain silent. I've covered that.

10 Your Honor, I want to -- I think it's without
11 argument that everything Caitlin's done from the moment
12 this terrible tragedy happened until the moment that she's
13 standing in front of the Court today suggests that that
14 needle has remained on the minimum, which is what the
15 legislature has given a circuit judge to consider when
16 sentencing.

17 Your Honor, but now in closing, I just want to
18 focus on the Shumates, which everybody has always focused
19 on.

20 You know, Your Honor, I don't need these notes
21 for this. I'm holding in my hand, Your Honor, this is my
22 grandfather's pocket watch. This is my mother's pocket
23 watch. It was given to me when he died. I have brought
24 this pocket watch to court with me on two occasions: One
25 is when I was representing an innocent man charged with

1 murder in Richland County, and the other is here today.

2 Your Honor, the power of family, I really
3 admired my grandfather. He was not a rich man, he was not
4 a famous man, but he was a good person to be around. You
5 just didn't want to leave his presence when he was around.
6 He was a farmer.

7 You know, Your Honor, I heard young Mr. Shumate,
8 eight years old, address the Court. What an amazing thing
9 to do. I don't know if my ten-year-old would be able to
10 do that. I would hope that he would be. And I know,
11 because I was raised by a good mother and father, that the
12 reason why he was able to do that is because he has a good
13 mother and father, and that's what it is about in our
14 society.

15 I represent a lot of people, Judge, who don't
16 have a clue as to what good judgment is, or good common
17 sense is, because they didn't have the benefit of a good
18 mother and father.

19 In fact, I'm married, I have three children, but
20 I'm going to tell you, Judge, and I'll take on anybody who
21 wants criticize this, but I think the most valuable thing
22 in my life is my mom and daddy, having a good mom and
23 daddy to raise me up.

24 And I'm not saying you have to have a momma and
25 daddy. You can have a good momma. You can have a good

1 daddy. You can have a good uncle. Somebody has got to
2 put some sense into your head so that you can be a fine
3 upstanding citizen. And the Shumates are certainly that.
4 And the evidence of that is their son coming up to this
5 podium and being strong enough to address the Court at
6 eight years old. Just imagine what he's going to do when
7 he's 20, 30 years old if he can do that at eight. I think
8 those are fine people, and that's about all you need to
9 see.

10 You know, Your Honor, the book of John says,
11 Whoever says he is in the light and hates his brother is
12 still in darkness. It goes on to say, But whoever hates
13 his brother is in the darkness and walks in the darkness
14 and does not know where he is going because the darkness
15 has blinded his eyes.

16 You know, Your Honor, I think the Shumates are a
17 living example to all of us, all of us, that hate
18 destroys, hate divides, hate doesn't help society move
19 forward. Forgiveness does. Love does. And they are
20 living examples to all of us as to how to deal with these
21 situations appropriately.

22 And I -- you know, it's wonderful to be able to
23 stand here and be in their presence to say and recognize
24 to them how special they are, but we got to get more
25 people this way, because that's not the norm in court.

1 The norm in court is to come in here -- particularly as
2 victims -- and hate and be divisive and let it control
3 you, and that's not getting anybody anywhere.

4 Your Honor, I'm going to wrap up my presentation
5 by saying that Caitlin, Your Honor, has done everything a
6 person is supposed to do when they make a poor decision.
7 She has had the benefit of good upbringing. She was
8 not -- you don't see her standing before you all tatted up
9 and with the long criminal record, you know, suggesting
10 that there's been some problems. Caitlin's a -- Caitlin
11 went to USC, Judge, on a scholarship, graduated. She's
12 smart. She was brought up right. She made a poor choice,
13 and she's getting ready to pay the price for it right now.

14 I'd ask you, Judge, that she's done everything
15 in her life before this tragic event and after this tragic
16 event -- people like Caitlin, sometimes not because
17 they're criminals, but because they're just scared, they
18 run to New Jersey and we've got to go get them, or they
19 lie about things because they're just scared. She didn't
20 do any of that, and I think that speaks well to her
21 character.

22 I think that needle has remained on the minimum,
23 and I would hope that you would find the same.

24 Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Finney.

1 It's no secret in the job that we have, that
2 sentencing in felony DUI cases is the most difficult of
3 all sentencing options that judges are given, because in
4 every felony DUI case resulting in death, obviously by
5 definition a life has been lost, a precious life to the
6 loved ones of the person who died in every case, perhaps
7 not always with the promise of Gabrielle or her vivacity
8 or her wonderful potential, but always a life that is
9 precious to the ones who love it, and that life is taken
10 away. In every case for felony DUI, that life has been
11 taken away because someone drove while they were
12 intoxicated and did an act that the law does not allow.

13 The General Assembly, in spite of the
14 similarities that surround every case of felony DUI, have,
15 as Mr. Finney suggested, imposed a wide range of
16 discretion upon a judge: One year to 25 years.

17 As a judge over these last 20 years, I have from
18 time to time railed out when I thought that discretion was
19 taken away in cases involving minimum mandatory sentences
20 that had to be imposed. Frankly, when I'm confronted with
21 the type of decision that I have to make today, I wish
22 that the General Assembly had taken away some of my
23 discretion. I wish that I did not have the choice of
24 deciding whether one year or 25 years, or even where in
25 between, Ms. Braun should be sentenced, to address all of

1 the things that a sentence is supposed to address.

2 The tragic, the irreplaceable loss, as
3 Ms. Shumate said, a loss that cannot be replaced, a void
4 that can never be filled on the one hand, and yet to
5 address a life that except for that indiscretion on
6 May 16th of last year has been a model life. Mr. Collins
7 has said, no prior driving offense, no prior criminal
8 record. For a 25-year-old, that's somewhat unusual.

9 But perhaps more than what she has not done, and
10 that is not violated the law, what she has done is equally
11 impressive. And you-all have heard that as I have heard
12 it today.

13 Of course, it is not those things that brings
14 her here today. The thing that brings her here today is
15 that poor judgment on May the 16th of last year. And how
16 in some way do we take out that one moment in her life and
17 impose a sentence that addresses that moment in her life
18 and the loss it's caused without doing more harm than
19 good?

20 Criminologists tell us that there are three
21 purposes generally recognized to be served by punishment.
22 The first of those purposes is rehabilitation; that is, to
23 allow the incarcerated individual a chance to learn a
24 trade, to correct his or her bad habits, to be returned to
25 society as a useful member.

1 Rehabilitation is not a factor in Ms. Braun's
2 life. She has been rehabilitating herself to the extent
3 she needs it since this incident occurred a little over a
4 year ago. There's nothing that our prison system can
5 possibly do that would serve to rehabilitate her further.

6 Another and perhaps the least appropriate
7 measure that sentencing is designed to address is
8 retribution. The Shumates have graciously and
9 magnanimously indicated that they're not after
10 retribution. They have forgiven. They don't seek revenge
11 for the terrible loss that they have suffered because they
12 realize the emptiness of revenge and the fruitlessness of
13 it.

14 The third consideration that criminologists tell
15 us should be a factor in deciding sentences is that of
16 deterrence. What is the type of sentence that would serve
17 to deter Ms. Braun and others from committing some similar
18 offense in the future?

19 As much as that sounds like a laudable goal, and
20 as much as it is, in most of the situations that we see in
21 this courtroom, deterrence doesn't always accomplish the
22 purposes that it is designed to accomplish.

23 In the most dramatic of crimes, those which
24 carry life imprisonment or the death penalty, in my
25 experience in the time that I've been on the bench, I've

1 not known any of those individuals who were sentenced to
2 the death penalty, and I've had the unfortunate occasion
3 of having to do that more times than I would like -- once
4 is more than I would like -- but not one of those
5 individuals were deterred by the prospect of the death
6 penalty, not a one of them had given a thought to the
7 consequences of their action before they did it.

8 The prospect of prison, the prospect of
9 incarceration, quite frankly, in any level is more of a
10 deterrent to people like Ms. Braun than it is to people
11 who commit the most serious of offenses, the death penalty
12 offenses specifically, the life imprisonment offenses
13 specifically.

14 And, paradoxically, it's people like Ms. Braun
15 to whom perhaps the least imprisonment is the same
16 deterrent than a much larger sentence would be for someone
17 who is situated in a different environment.

18 And so I struggle still, even having given
19 consideration to these things, and as I look through the
20 events of all of this and try to figure out what is it
21 that makes this a 25-year sentence or what makes it a
22 one-year sentence, obviously the needle does tend more to
23 the minimum than it does to the maximum, or even to the
24 middle.

25 The only aspect frankly that moves this needle

1 from the minimum is the fact that the blood alcohol
2 reading in this particular case was more than the minimum,
3 .16 under these circumstances, and so I take that into
4 account, quite frankly, as I try to decide what to do
5 under these circumstances.

6 There is no way that I can pass a sentence that
7 will address the loss that the Shumates have suffered.
8 There is no sentence that does justice to that. And so I
9 cannot pass a sentence, then, that is going to act as if
10 it is in some way proportionate to the loss that they have
11 suffered. No sentence would be proportionate to it. And
12 so proportionality then is not something that one year or
13 25 years will address.

14 If we had to pass a sentence that was
15 proportionate, we would have to pass a sentence of life
16 imprisonment, take Ms. Braun's life for the life that has
17 been caused -- for the loss that has been caused.

18 And I say that because I don't want the Shumates
19 to think for one moment that this Court is not cognizant
20 to some extent of loss which they have suffered. I cannot
21 begin to appreciate that loss.

22 I have a granddaughter, who reminded me as
23 Ms. Shumate was talking, of Gabrielle. Almost the same
24 age. She will be four in two months. She is blond, she's
25 blue-eyed, she's vivacious, she precocious. Thankfully, I

1 have not had to confront the terrible void that is in
2 their lives.

3 I have grandsons, one the same age as young
4 Anson. He couldn't have done what he did either.

5 I have a daughter just a little bit older than
6 Caitlin. And so I find myself on both sides of this issue
7 and in my own personal experience and I try to think of
8 how I would react if I was in the position of any of these
9 parents on either side of this aisle.

10 I tell all of you those things so that you'll
11 understand, whether you agree with what I do or disagree
12 with what I do, I want you to know that it is not
13 arbitrary. It does not come out of some throwing a dart
14 at a board or some cold, insensitive rationale. It is
15 something that I feel and I hope addresses these issues
16 that I've already spoken to.

17 Ms. Braun, the sentence of the Court is that you
18 be committed to the State Department of Corrections for a
19 period of 18 months and pay a fine of \$10,100.

20 As a consideration of your community release,
21 you will develop a program directed toward youth and young
22 adults regarding the dangers of driving under the
23 influence and careless and inattentive driving while
24 you're on community supervision.

25 I cannot put you on probation. This is an

1 offense that does not allow probation. It does provide
2 for community supervision, a period of time in which you
3 will in effect be on probation and be subject to being
4 rearrested. It is during that period of time that I'm
5 going to give you a chance that to in some way address the
6 loss that you have caused in a more positive way.

7 Thank you.

8 MR. FINNEY: Thank you, Your Honor.

9 MR. COLLINS: Thank you, Judge.

10 (The proceedings were concluded.)

11 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF LEXINGTON)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 7th day of
15 August, 2012.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 May 4, 2013

21 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

EXHIBIT C

To the Shumate Family,

For the past two months I've been wanting to say so much to your family, but don't know how to quite say it. I know nothing I say will take away your pain even though that's all I want to do. I am beyond sorry for the pain and tears I have caused. I wish I could take it all away and reunite you with Gabriella. When I woke up in the ICU and asked the nurse if there was anyone else involved in the accident, she told me a little girl and her father. My heart sank. I asked if they were ok, she just looked down, and my heart broke. I will never forget that feeling. And even though I don't remember that night, I will never forget it. My heart breaks every day for Gabriella and your family.

It's not fair that I get to wake up every day and be with my family when I took that away from your beautiful little girl. I ask God every day why he took her and not me instead. I feel so guilty that her life ended way too soon and would do anything to have switched places. I think about that every day, wishing it was my life and not hers that ended so suddenly. Then I feel guilty for wishing pain upon my own family, but at least a little girl would have had a chance to experience a life she deserved.

I would do anything to go back and change that day. No one deserves to experience a loss like this, and even though I never got the chance to meet Gabriella, a huge part of me passed on with her. Someone at the hospital told my mother that your family had prayed for me in Mr. Shumate's room. I can't believe my actions caused such good people so much pain. I had always gone through life accepting the good and bad things, believing that what's supposed to happen will happen because everything happens for a reason. But I cannot understand why my actions caused the innocent life of a beautiful little girl to be taken. I don't understand why I not only survived the accident, but lived to cause such pain. I wish every day that what I did didn't have to affect so many other lives. People go through life making plenty of mistakes, mistakes that they learn from and then move on. I will never move on from what my actions have caused because I know this has greatly affected your lives and I will never forgive myself for that.

Although I can't explain or understand it, I will spend the rest of my life making sure Gabriella's life was not taken for nothing. I know I owe this to her and your family. She is the reason I will be using my scars and horrible experience to educate others and hopefully prevent them from making similar mistakes. Even though I wish I could do anything to give you back your little girl, I promise to make sure Gabriella's story will help others and hopefully save a few lives. I am so sorry Gabriella is no longer with her family. I hope the fact that she is looking down from Heaven comforts you through these times. I talk to her often and hope that is ok with you. I tell her how sorry I am even though I don't deserve her forgiveness. Mr. Shumate, I hope you are healing well and fast. I wish your family the best with all my heart. You are always in my prayers. God bless.

Sincerely,
Caitlin

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2011 - CP - 20 - 301

Devin Shumate and Dacia Shumate,)

Plaintiffs,)

vs.)

The Ben Arnold Sunbelt Beverage)
Company of South Carolina, L.P.,)
Two Heels, Inc. d/b/a State Street Pub,)
Sunbelt Golf Development, Inc. d/b/a)
Indian River Golf Course and)
Caitlin Elisabeth Braun,)

Defendants.)

SUMMONS

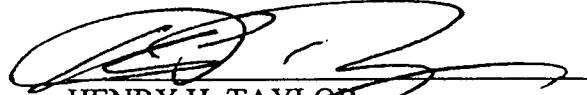
(Jury Trial Demanded)

2011 JUL 28 P 12:28
FAIRFIELD COUNTY
CLERK OF COURT
RETTY IN RECKHAM

TO: THE DEFENDANTS, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint of the Plaintiffs in this matter, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office located at 3618 D Sunset Boulevard, West Columbia, South Carolina, 29169, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TAYLOR LAW FIRM LLC



HENRY H. TAYLOR

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3618 Sunset Boulevard, Suite D

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West Columbia, South Carolina

Attorneys for the Plaintiffs

July 28, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2011 - CP - 20 - 301

Devin Shumate and Dacia Shumate,)
)
Plaintiffs,)

vs.)

The Ben Arnold Sunbelt Beverage)
Company of South Carolina, L.P.,)
Two Heels, Inc. d/b/a State Street Pub,)
Sunbelt Golf Development, Inc. d/b/a)
Indian River Golf Course and)
Caitlin Elisabeth Braun,)
)
Defendants.)

COMPLAINT
(Jury Trial Demanded)

2011 JUL 28 P 12:28
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BICKHAM

The Plaintiffs above named complaining of the Defendants herein, would respectfully show unto this Court:

The Parties

1. The Plaintiffs Devin Shumate and Dacia Shumate are citizens and residents of the County of Lexington, State of South Carolina.
2. The Plaintiffs are informed and believe that the Defendant The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., (hereinafter referred to as "Arnold") is a limited partnership duly organized pursuant to the laws of the State of Delaware but having authority to conduct business in the State of South Carolina and having its principal place of business in the County of Fairfield, State of South Carolina.
3. The Plaintiffs are informed and believe that the Defendant Two Heels, Inc. doing business as State Street Pub (hereinafter referred to as the "Pub") is an eleemosynary corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having

its principal place of business in the County of Lexington, State of South Carolina.

4. The Plaintiffs are informed and believe that the Defendant Sunbelt Golf Development, Inc. doing business as Indian River Golf Course (hereinafter referred to as the "Golf Course") is a corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having its principal place of business in the County of Lexington, State of South Carolina.

5. The Plaintiffs are informed and believe that the Defendant Caitlin Elisabeth Braun (hereinafter referred to as "Braun") was at the time of the incident giving rise to this action a resident and citizen of the County of Richland, State of South Carolina, but is now a resident and citizen of the State of New Jersey.

6. Upon information and belief, this court has jurisdiction over the parties and the subject matter of this case and venue is proper in the County of Fairfield, State of South Carolina.

Factual Background

7. The Pub is a bar or drinking establishment whose principal business is the sale of alcoholic beverages to its patrons at its business location in the City of West Columbia, State of South Carolina.

8. From time to time, the Pub sponsors golf tournaments to promote its business with its customers and/or to raise funds for charitable causes.

9. The Pub planned and held such a golf tournament on May 16th, 2011 at the Golf Course.

10. In connection with the planning and staging of the golf tournament, the Pub solicited some or all of its customary beverage suppliers to provide alcoholic and other beverages

for the golfers participating in the tournament while at the same time giving the beverage suppliers the opportunity to promote the consumption of their products by the participants in the golf tournament and the public at large.

11. Arnold is now and has been for many years a large wholesale supplier of alcoholic beverages, principally hard liquors, to retail establishments in the business of selling alcoholic beverages to the general public in South Carolina. In the course of its business, Arnold was, at the time of the golf tournament, a wholesale supplier of alcoholic beverages, principally hard liquors, to the Pub and agreed to promote its products by providing free samples of its product to participants in the golf tournament.

12. In the furtherance of its product promotion in connection with the golf tournament, in addition to its full time employees and agents, Arnold employed two or more attractive young women to participate in and work the promotion efforts at the Golf Course. One of the additional persons employed by Arnold was Braun.

13. As is customary with Arnold in the promotion of its products at golf tournaments, Arnold, through its employees and agents, expressly and/or impliedly and/or tacitly encouraged and/or approved the attractive young women, including Braun, employed for the promotion effort at the golf tournament, to proactively engage in frolicking with the tournament participants, including drinking shots of Three Olive Vodka with the golf tournament players.

14. Braun, in furtherance of her work at the tournament, drank alcoholic beverages with the tournament players and others during the course of the golf tournament. Moreover, during the tournament and/or at the conclusion of the tournament, Braun drank alcoholic beverages with other employees of Arnold, including supervisory employees of Arnold. As a consequence, at the conclusion of the tournament, or shortly thereafter, Braun had become very

intoxicated.

15. Notwithstanding the fact that Braun was employed by Arnold to promote its beverages, including Three Olive Vodka, and Arnold expressly and/or impliedly and/or tacitly approved of Braun's drinking of alcoholic beverages during the course of her work and thereafter, Arnold did not provide any form of training whatsoever to Braun regarding the safe use of its products and did not provide any form of supervisory control to assure the safety of Braun and the general public with respect to Braun's obviously inebriated condition following the golf tournament. In fact, Arnold through its employees, including supervisory personnel, contributed to Braun's inebriated condition by drinking shots of alcoholic beverages with her during or following the golf tournament when they knew or should have known that Braun was intoxicated to the point of being unable to safely operate her vehicle.

16. In spite of all of the foregoing facts, Arnold, through its employees and agents, including supervisory personnel, allowed Braun to leave the golf course in a highly intoxicated condition while driving her automobile. Shortly after leaving the golf course, Braun while driving at a very high rate of speed, left her proper lane of travel and crashed head on into an oncoming vehicle driven by Devin Shumate. The collision resulted in serious personal injuries to Devin Shumate.

17. The Pub, as sponsor of the golf tournament, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including Braun, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during or after the golf tournament. Notwithstanding its awareness, the Pub took no steps to supervise the participants, including Braun and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the

participants and the general public following the conclusion of the tournament.

18. The Golf Course, on whose premises the golf tournament was held, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including Braun, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during, or after the golf tournament. Notwithstanding its awareness, the Golf Course took no steps to supervise the participants, including Braun and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the participants and the general public following the conclusion of the tournament.

For a First Cause of Action as to All Defendants
(Negligence)

19. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

20. The Defendants were negligent, grossly negligent, reckless, willful, and wanton in one or more of the following particulars to wit:

a) As to Defendant Arnold:

- (1) In hiring Braun prior to assessing whether or not Braun was qualified for employment;
- (2) In failing to train Braun for her assigned duties involving the use and disbursement of significant amounts of alcoholic beverages;
- (3) In expressly, impliedly and/or tacitly approving that Braun consume alcoholic beverages with the patrons at the golf tournament;
- (4) In permitting its supervisory personnel on the premises to consume alcoholic beverages with Braun thus diminishing their ability to properly supervise, monitor and control Braun;
- (5) In failing to supervise, monitor and control the alcohol use of

Braun during the course and scope of her employment;

- (6) In failing to prevent Braun from becoming grossly intoxicated during the course and scope of her employment;
- (7) In entrusting Braun with a tool of its trade, namely alcoholic beverages, that created an unreasonable risk of harm to the public;
- (8) In permitting Defendant Braun to drive a motor vehicle after becoming grossly intoxicated during the course and scope of her employment; and
- (9) In otherwise failing to use due care under the circumstances then and there prevailing.

b) As to Defendant Pub:

- (1) In failing to monitor and control those persons, including Braun, engaged in the prolific consumption of alcoholic beverages whose presence it requested to promote the goodwill of its business and otherwise advance its business interests;
- (2) In permitting individuals, including Braun, to become grossly intoxicated without adequate safeguards in place to avoid the significant harm to the public created by intoxicated persons operating motor vehicles; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Golf Course:

- (1) In failing to monitor and control those persons, including Braun, engaged in the prolific consumption of alcoholic beverages whose presence it permitted to promote the goodwill of its business and otherwise advance its business interests;
- (2) In permitting individuals, including Braun, to become grossly intoxicated without adequate safeguards in place to avoid the significant harm to the public created by intoxicated persons operating motor vehicles; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Braun:

- (1) In operating her vehicle while in a grossly intoxicated state;
- (2) In becoming grossly intoxicated;
- (3) In failing to maintain proper control of her vehicle;
- (4) In failing to drive her vehicle in the proper lane of travel;
- (5) In causing a collision with the vehicle driven by Devin Shumate;
- (6) In failing to properly apply her brakes;
- (7) In failing to maintain a proper lookout;
- (8) In otherwise failing to use due care under the circumstances then and there prevailing.

All of which were a direct and proximate cause of the injuries and damages complained of herein.

21. As a direct and proximate result of the Defendants' negligent, grossly negligent, reckless, willful, and wanton acts or omissions, Plaintiff Devin Shumate, sustained significant damages including, but not limited to :

- a) Serious, significant and permanent personal injuries;
- b) Extreme pain and suffering;
- c) Medical expenses and treatment;
- d) Lost income;
- e) Loss of enjoyment of life; and
- f) Has been otherwise damaged all to their detriment.

22. Plaintiff Devin Shumate is entitled to judgment against the Defendants, jointly and severally, for compensatory damages in an amount to be proven at trial.

23. Plaintiff Devin Shumate is also entitled to recover punitive damages from the

Defendants, jointly and severally, in an amount to be proven at trial based on the Defendants' grossly negligent, willful, wanton and reckless conduct.

For a Second Cause of Action as to Defendant Arnold
(Negligent Supervision)

24. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

25. At all times relevant hereto, Braun, while acting as an employee of Arnold, was using a chattel of Arnold, namely alcoholic beverages.

26. At all times relevant hereto, Arnold knew or had reason to know that it had the ability to control Braun.

27. At all times relevant hereto, Arnold knew or had reason to know of the necessity and opportunity for exercising control over Braun due to the excessive amounts of alcohol consumed by Braun.

28. Based upon its failure to properly and adequately control and supervise Braun and in entrusting Braun with a tool of its trade, namely alcoholic beverages, that created an undue risk of harm to the public, Arnold is liable to Plaintiff Devin Shumate under the doctrine of negligent supervision.

29. As a direct and proximate result of the Arnold's negligent supervision of Braun, Plaintiff Devin Shumate has been damaged as alleged above.

30. Plaintiff Devin Shumate is entitled to judgment against Arnold for compensatory damages in an amount to be proven at trial.

31. Plaintiff Devin Shumate is also entitled to recover punitive damages from Arnold in an amount to be proven at trial based on Arnold's grossly negligent, willful, wanton and reckless conduct.

For a Third Cause of Action as to Defendant Arnold
(Respondeat Superior)

32. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

33. At all times relevant hereto, Braun was acting as an employee and agent of Defendant Arnold and was acting within the course and scope of her employment.

34. During the golf tournament, Braun consumed excessive amounts of alcoholic beverages.

35. Said consumption of alcoholic beverages by Braun was reasonably necessary and expressly, impliedly and/or tacitly suggested and/or approved by Arnold and was in furtherance of the business of Arnold by promoting the consumption of its alcoholic beverage products.

36. As a direct and proximate result of Braun's excessive alcohol consumption while in the course and scope of her employment with Arnold, Braun was unable to safely operate her vehicle causing the collision referenced herein.

37. Based thereon, Arnold is liable to Plaintiff Devin Shumate as the employer of Braun under the doctrine of *respondeat superior*.

38. As a direct and proximate result of the Braun's negligence while in the course and scope of her employment with Arnold, Plaintiff Devin Shumate has been damaged as alleged above.

39. Plaintiff Devin Shumate is entitled to judgment against Arnold for compensatory damages in an amount to be proven at trial.

40. Plaintiff Devin Shumate is also entitled to recover punitive damages from Arnold

in an amount to be proven at trial based on Arnold's grossly negligent, willful, wanton and reckless conduct.

For a Fourth Cause of Action as to All Defendants
(Loss of Consortium)

41. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

42. The Plaintiffs are married to each other and have been married for eleven years.

43. As a direct and proximate result of the negligent, grossly negligent, reckless, willful and wanton conduct on the part of the Defendants, Plaintiff Dacia Shumate has lost society, companionship, services and affection from Plaintiff Devin Shumate.

44. Plaintiff Dacia Shumate is entitled to judgment for compensatory damages from the Defendants, jointly and severally, based on the loss of society, companionship, services and affection in an amount to be proven at trial.

45. Plaintiff Dacia Shumate is also entitled to recover punitive damages from the Defendants, jointly and severally, in an amount to be proven at trial based on the Defendants' grossly negligent, willful, wanton and reckless conduct.

WHEREFORE, the Plaintiffs pray for judgment as follows:

a) As to the First Cause of Action:

- (1) Compensatory damages in a an amount to be proven at trial against all Defendants, jointly and severally;
- (2) Punitive damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (3) Costs and expenses associated with this action from all Defendants; and
- (4) Such other and further relief as the Court may deem just and proper.

b) As to the Second and Third Causes of Action:

- (1) Compensatory damages in a an amount to be proven at trial against Arnold;
- (2) Punitive damages in an amount to be proven at trial against Arnold;
- (3) Costs and expenses associated with this action from Arnold; and
- (4) Such other and further relief as the Court may deem just and proper.

a) As to the Fourth Cause of Action:

- (1) Compensatory damages in a an amount to be proven at trial against all Defendants, jointly and severally;
- (2) Punitive damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (3) Costs and expenses associated with this action from all Defendants; and
- (4) Such other and further relief as the Court may deem just and proper.

TAYLOR LAW FIRM LLC



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Attorneys for the Plaintiffs

West Columbia, South Carolina

July 28, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2011-CP-20-302

Devin Shumate and Dacia Shumate as)
Personal Representatives of the Estate of)
Gabriella Shumate,)

Plaintiffs,)

vs.)

The Ben Arnold Sunbelt Beverage)
Company of South Carolina, L.P.,)
Two Heels, Inc. d/b/a State Street Pub,)
Sunbelt Golf Development, Inc. d/b/a)
Indian River Golf Course and)
Caitlin Elisabeth Braun,)

Defendants.)

SUMMONS

(Jury Trial Demanded)

2011 JUL 28 P 12:31
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

TO: THE DEFENDANTS, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint of the Plaintiffs in this matter, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office located at 3618 D Sunset Boulevard, West Columbia, South Carolina, 29169, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TAYLOR LAW FIRM LLC



HENRY H. TAYLOR

HEATH P. TAYLOR

3618 Sunset Boulevard, Suite D

West Columbia, South Carolina 29169

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Attorneys for the Plaintiffs

West Columbia, South Carolina

July 28, 2011

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2011-CP-20-302

Devin Shumate and Dacia Shumate as
Personal Representatives of the Estate of
Gabiella Shumate,

Plaintiffs,

vs.

The Ben Arnold Sunbelt Beverage
Company of South Carolina, L.P.,
Two Heels, Inc. d/b/a State Street Pub,
Sunbelt Golf Development, Inc. d/b/a
Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

COMPLAINT
(Jury Trial Demanded)

2011 JUL 28 P 12:31
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

The Plaintiffs above named complaining of the Defendants herein, would respectfully show unto this Court:

The Parties

1. The Plaintiffs Devin Shumate and Dacia Shumate are citizens and residents of the County of Lexington, State of South Carolina and by Certificate of Appointment of the Lexington County Probate Court dated July 27, 2011 are duly appointed, qualified, and acting personal representatives of the estate of Gabriella Shumate, deceased, who died intestate in the manner alleged below on May 16, 2011.

2. The Plaintiffs bring this action pursuant to S.C. Code Ann. § 15-51-10 et seq. for the benefit of the statutory beneficiaries of Gabriella Shumate, deceased, as designated by S.C. Code Ann. § 15-51-20, naming themselves as father and mother to the decedent to recover for damages, injuries, and losses sustained by reason of the wrongful death of Gabriella Shumate.

3. The Plaintiffs are informed and believe that the Defendant The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., (hereinafter referred to as "Arnold") is a limited partnership duly organized pursuant to the laws of the State of Delaware but having authority to conduct business in the State of South Carolina and having its principal place of business in the County of Fairfield, State of South Carolina.

4. The Plaintiffs are informed and believe that the Defendant Two Heels, Inc. doing business as State Street Pub (hereinafter referred to as the "Pub") is an eleemosynary corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having its principal place of business in the County of Lexington, State of South Carolina.

5. The Plaintiffs are informed and believe that the Defendant Sunbelt Golf Development, Inc. doing business as Indian River Golf Course (hereinafter referred to as the "Golf Course") is a corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having its principal place of business in the County of Lexington, State of South Carolina.

6. The Plaintiffs are informed and believe that the Defendant Caitlin Elisabeth Braun (hereinafter referred to as "Braun") was at the time of the incident giving rise to this action a resident and citizen of the County of Richland, State of South Carolina, but is now a resident and citizen of the State of New Jersey.

7. Upon information and belief, this court has jurisdiction over the parties and the subject matter of this case and venue is proper in the County of Fairfield, State of South Carolina.

Factual Background

8. The Pub is a bar or drinking establishment whose principal business is the sale of

alcoholic beverages to its patrons at its business location in the City of West Columbia, State of South Carolina.

9. From time to time, the Pub sponsors golf tournaments to promote its business with its customers and/or to raise funds for charitable causes.

10. The Pub planned and held such a golf tournament on May 16th, 2011 at the Golf Course.

11. In connection with the planning and staging of the golf tournament, the Pub solicited some or all of its customary beverage suppliers to provide alcoholic and other beverages for the golfers participating in the tournament while at the same time giving the beverage suppliers the opportunity to promote the consumption of their products by the participants in the golf tournament and the public at large.

12. Arnold is now and has been for many years a large wholesale supplier of alcoholic beverages, principally hard liquors, to retail establishments in the business of selling alcoholic beverages to the general public in South Carolina. In the course of its business, Arnold was, at the time of the golf tournament, a wholesale supplier of alcoholic beverages, principally hard liquors, to the Pub and agreed to promote its products by providing free samples of its product to participants in the golf tournament.

13. In the furtherance of its product promotion in connection with the golf tournament, in addition to its full time employees and agents, Arnold employed two or more attractive young women to participate in and work the promotion efforts at the Golf Course. One of the additional persons employed by Arnold was Braun.

14. As is customary with Arnold in the promotion of its products at golf tournaments, Arnold, through its employees and agents, expressly and/or impliedly and/or tacitly encouraged

and/or approved the attractive young women, including Braun, employed for the promotion effort at the golf tournament, to proactively engage in frolicking with the tournament participants, including drinking shots of Three Olive Vodka with the golf tournament players.

15. Braun, in furtherance of her work at the tournament, drank alcoholic beverages with the tournament players and others during the course of the golf tournament. Moreover, during the tournament and/or at the conclusion of the tournament, Braun drank alcoholic beverages with other employees of Arnold, including supervisory employees of Arnold. As a consequence, at the conclusion of the tournament, or shortly thereafter, Braun had become very intoxicated.

16. Notwithstanding the fact that Braun was employed by Arnold to promote its beverages, including Three Olive Vodka, and Arnold expressly and/or impliedly and/or tacitly approved of Braun's drinking of alcoholic beverages during the course of her work and thereafter, Arnold did not provide any form of training whatsoever to Braun regarding the safe use of its products and did not provide any form of supervisory control to assure the safety of Braun and the general public with respect to Braun's obviously inebriated condition following the golf tournament. In fact, Arnold through its employees, including supervisory personnel, contributed to Braun's inebriated condition by drinking shots of alcoholic beverages with her during or following the golf tournament when they knew or should have known that Braun was intoxicated to the point of being unable to safely operate her vehicle.

17. In spite of all of the foregoing facts, Arnold, through its employees and agents, including supervisory personnel, allowed Braun to leave the golf course in a highly intoxicated condition while driving her automobile. Shortly after leaving the golf course, Braun while driving at a very high rate of speed, left her proper lane of travel and crashed head on into an

oncoming vehicle driven by Devin Shumate. The collision resulted in the death of Gabriella Shumate, the four year old daughter of Devin and Dacia Shumate, who was a passenger in the vehicle being driven by Devin Shumate.

18. The Pub, as sponsor of the golf tournament, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including Braun, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during or after the golf tournament. Notwithstanding its awareness, the Pub took no steps to supervise the participants, including Braun and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the participants and the general public following the conclusion of the tournament.

19. The Golf Course, on whose premises the golf tournament was held, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including Braun, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during, or after the golf tournament. Notwithstanding its awareness, the Golf Course took no steps to supervise the participants, including Braun and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the participants and the general public following the conclusion of the tournament.

For a First Cause of Action as to All Defendants
(Negligence)

20. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

21. The Defendants were negligent, grossly negligent, reckless, willful, and wanton in one or more of the following particulars to wit:

a) As to Defendant Arnold:

- (1) In hiring Braun prior to assessing whether or not Braun was qualified for employment;
- (2) In failing to train Braun for her assigned duties involving the use and disbursement of significant amounts of alcoholic beverages;
- (3) In expressly, impliedly and/or tacitly approving that Braun consume alcoholic beverages with the patrons at the golf tournament;
- (4) In permitting its supervisory personnel on the premises to consume alcoholic beverages with Braun thus diminishing their ability to properly supervise, monitor and control Braun;
- (5) In failing to supervise, monitor and control the alcohol use of Braun during the course and scope of her employment;
- (6) In failing to prevent Braun from becoming grossly intoxicated during the course and scope of her employment;
- (7) In entrusting Braun with a tool of its trade, namely alcoholic beverages, that created an unreasonable risk of harm to the public;
- (8) In permitting Defendant Braun to drive a motor vehicle after becoming grossly intoxicated during the course and scope of her employment; and
- (9) In otherwise failing to use due care under the circumstances then and there prevailing.

b) As to Defendant Pub:

- (1) In failing to monitor and control those persons, including Braun, engaged in the prolific consumption of alcoholic beverages whose presence it requested to promote the goodwill of its business and otherwise advance its business interests;
- (2) In permitting individuals, including Braun, to become grossly intoxicated without adequate safeguards in place to avoid the significant harm to the public created by intoxicated persons operating motor vehicles; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Golf Course:

- (1) In failing to monitor and control those persons, including Braun, engaged in the prolific consumption of alcoholic beverages whose presence it permitted to promote the goodwill of its business and otherwise advance its business interests;
- (2) In permitting individuals, including Braun, to become grossly intoxicated without adequate safeguards in place to avoid the significant harm to the public created by intoxicated persons operating motor vehicles; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Braun:

- (1) In operating her vehicle while in a grossly intoxicated state;
- (2) In becoming grossly intoxicated;
- (3) In failing to maintain proper control of her vehicle;
- (4) In failing to drive her vehicle in the proper lane of travel;
- (5) In causing a collision with the vehicle in which Gabriella Shumate was a passenger;
- (6) In failing to properly apply her brakes;
- (7) In failing to maintain a proper lookout;
- (8) In otherwise failing to use due care under the circumstances then and there prevailing.

All of which were a direct and proximate cause of the injuries and damages complained of herein.

22. As a direct and proximate result of the Defendants' negligent, grossly negligent, reckless, willful, and wanton acts or omissions, the Plaintiffs, on behalf of the Estate of Gabriella Shumate, sustained significant damages including, but not limited to :

- a) Pecuniary loss;
- b) Mental shock and suffering;
- c) Wounded feelings;
- d) Grief and sorrow;
- e) Loss of consortium;
- f) Loss of income of the decedent;
- g) Funeral expenses; and
- h) Have been otherwise damaged all to their detriment.

23. The Plaintiffs are entitled to judgment against the Defendants, jointly and severally, for compensatory damages in an amount to be proven at trial.

24. The Plaintiffs are also entitled to recover punitive damages from the Defendants, jointly and severally, in an amount to be proven at trial based on the Defendants' grossly negligent, willful, wanton and reckless conduct.

For a Second Cause of Action as to Defendant Arnold
(Negligent Supervision)

25. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

26. At all times relevant hereto, Braun, while acting as an employee of Arnold, was using a chattel of Arnold, namely alcoholic beverages.

27. At all times relevant hereto, Arnold knew or had reason to know that it had the ability to control Braun.

28. At all times relevant hereto, Arnold knew or had reason to know of the necessity and opportunity for exercising control over Braun due to the excessive amounts of alcohol consumed by Braun.

29. Based upon its failure to properly and adequately control and supervise Braun and in entrusting Braun with a tool of its trade, namely alcoholic beverages, that created an undue risk of harm to the public, Arnold is liable to the Plaintiffs under the doctrine of negligent supervision.

30. As a direct and proximate result of the Arnold's negligent supervision of Braun, the Plaintiffs, on behalf of the Estate of Gabriella Shumate, have been damaged as alleged above.

31. The Plaintiffs are entitled to judgment against Arnold for compensatory damages in an amount to be proven at trial.

32. The Plaintiffs are also entitled to recover punitive damages from Arnold in an amount to be proven at trial based on Arnold's grossly negligent, willful, wanton and reckless conduct.

For a Third Cause of Action as to Defendant Arnold
(Respondeat Superior)

33. The Plaintiffs hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim herein.

34. At all times relevant hereto, Braun was acting as an employee and agent of Defendant Arnold and was acting within the course and scope of her employment.

35. During the golf tournament, Braun consumed excessive amounts of alcoholic beverages.

36. Said consumption of alcoholic beverages by Braun was reasonably necessary and expressly, impliedly and/or tacitly suggested and/or approved by Arnold and was in furtherance of the business of Arnold by promoting the consumption of its alcoholic beverage products.

37. As a direct and proximate result of Braun's excessive alcohol consumption while in the course and scope of her employment with Arnold, Braun was unable to safely operate her

vehicle causing the collision referenced herein.

38. Based thereon, Arnold is liable to the Plaintiffs as the employer of Braun under the doctrine of *respondeat superior*.

39. As a direct and proximate result of the Braun's negligence while in the course and scope of her employment with Arnold, the Plaintiffs, on behalf of the Estate of Gabriella Shumate, have been damaged as alleged above.

40. The Plaintiffs are entitled to judgment against Arnold for compensatory damages in an amount to be proven at trial.

41. The Plaintiffs are also entitled to recover punitive damages from Arnold in an amount to be proven at trial based on Arnold's grossly negligent, willful, wanton and reckless conduct.

WHEREFORE, the Plaintiffs pray for judgment as follows:

a) As to the First Cause of Action:

- (1) Compensatory damages in a an amount to be proven at trial against all Defendants, jointly and severally;
- (2) Punitive damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (3) Costs and expenses associated with this action from all Defendants; and
- (4) Such other and further relief as the Court may deem just and proper.

b) As to the Second and Third Causes of Action:

- (1) Compensatory damages in a an amount to be proven at trial against Arnold;
- (2) Punitive damages in an amount to be proven at trial against Arnold;
- (3) Costs and expenses associated with this action from Arnold; and
- (4) Such other and further relief as the Court may deem just and proper.

TAYLOR LAW FIRM LLC

A handwritten signature in black ink, appearing to read 'H. Taylor', is written over a horizontal line.

HENRY H. TAYLOR

HEATH P. TAYLOR

3618 Sunset Boulevard, Suite D

West Columbia, South Carolina 29169

Telephone: 803/ 926-2205

Telecopier: 803/ 926-4966

Attorneys for the Plaintiffs

West Columbia, South Carolina

July 28, 2011

EXHIBIT E

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Devin Shumate and Dacia Shumate,

Plaintiffs,

v.

The Ben Arnold Sunbelt Beverage Company
of South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub, Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-20-00301

**ANSWER OF DEFENDANT OF CAITLIN
ELISABETH BRAUN**

**TO: HENRY TAYLOR, ESQUIRE AND HEATH TAYLOR, ESQUIRE, ATTORNEYS
FOR THE PLAINTIFF AND THE PLAINTIFF ABOVE NAMED:**

Defendant Caitlin Elisabeth Braun, hereinafter Defendant Braun, answering the
Plaintiffs' Complaint herein would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted.
2. Paragraphs 1 through 6 are admitted.
3. Paragraphs 7 through 11 are unknown and therefore denied.
4. As to Paragraph 12, Defendant admits that she was employed by Defendant Arnold at the time of the accident.
5. As for Paragraphs 13 through 16, Defendant admits that on or about May 16, 2011, she was involved in an accident with the Plaintiffs. Otherwise, the allegations in Paragraphs 13 through 16 are denied.

6. Paragraphs 17 and 18 are unknown and therefore denied.

FOR A FIRST DEFENSE AS TO THE FIRST CAUSE OF ACTION

7. Paragraphs 19 through 23 are denied.

FOR A FIRST DEFENSE AS TO THE SECOND CAUSE OF ACTION

8. The allegations in Paragraphs 24 through 31 are not directed toward Defendant Braun and therefore require no response.

FOR A FIRST DEFENSE AS TO THE THIRD CAUSE OF ACTION

9. The allegations in Paragraphs 32 through 40 are not directed toward Defendant Braun and therefore require no response.

FOR A FIRST DEFENSE AS TO THE FOURTH CAUSE OF ACTION

10. Paragraphs 41 through 45 are denied.

FOR A SECOND DEFENSE

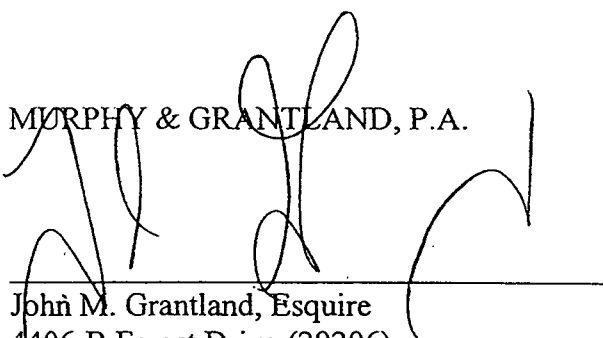
11. This Defendant would show, upon information and belief, that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right;

the Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, this Defendant prays that the Plaintiffs' Complaint be dismissed with costs.

A jury trial is demanded.

MURPHY & GRANTLAND, P.A.



John M. Grantland, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100

Attorney for Defendant Caitlin Elisabeth Braun

Columbia, South Carolina
August 26, 2011

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Devin Shumate and Dacia Shumate,

Plaintiffs,

v.

The Ben Arnold Sunbelt Beverage Company
of South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub, Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-20-00301

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant Caitlin Elisabeth Braun, do hereby certify that on August 26, 2011, I have served a copy of the foregoing ANSWER OF DEFENDANT CAITLIN ELISABETH BRAUN in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

Henry Taylor, Esquire
Heath Taylor, Esquire
Taylor Law Firm
3618 Sunset Boulevard
Suite D
West Columbia, SC 29169

Jerry L. Finney, Esquire
The Finney Law Firm, Inc.
2117 Park Street
Columbia, SC 29201

John E. Cuttino, Esquire
Turner Padgett Graham & Laney, P.A.
1901 Main Street
P.O. Box 1473
Columbia, SC 29202



Joyce Linker, Legal Assistant to
John M. Grantland, Esquire

Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FAIRFIELD

CIVIL ACTION NO: 2011-CP-20-00302

Devin Shumate and Dacia Shumate as
Personal Representatives of the Estate of
Gabriella Shumate,

Plaintiffs,

v.

The Ben Arnold Sunbelt Beverage Company
of South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub, Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

**ANSWER OF DEFENDANT CAITLIN
ELISABETH BRAUN**

**TO: HENRY TAYLOR, ESQUIRE AND HEATH TAYLOR, ESQUIRE, ATTORNEYS
FOR THE PLAINTIFF AND THE PLAINTIFF ABOVE NAMED:**

Defendant Caitlin Elisabeth Braun, hereinafter Defendant Braun, answering the
Plaintiff's Complaint herein would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted.
2. Paragraphs 1 through 7 are admitted.
3. Paragraphs 8 through 14 are unknown and therefore, denied.
4. As to Paragraphs 15 through 17, the Defendant admits that on or about May 16, 2011, she was involved in an accident with the Plaintiffs. Otherwise, Paragraphs 15, 16 and 17 are denied.
5. Paragraphs 18 and 19 are denied.

FOR A FIRST DEFENSE AS TO THE FIRST CAUSE OF ACTION

6. Paragraphs 20 through 24 are denied.

FOR A FIRST DEFENSE AS TO THE SECOND CAUSE OF ACTION

7. The allegations in Paragraphs 25 through 32 are not directed toward Defendant Braun and therefore require no response.

FOR A FIRST DEFENSE AS TO THE THIRD CAUSE OF ACTION

8. The allegations in Paragraphs 33 through 41 are not directed toward Defendant Braun and therefore require no response.

FOR A SECOND DEFENSE

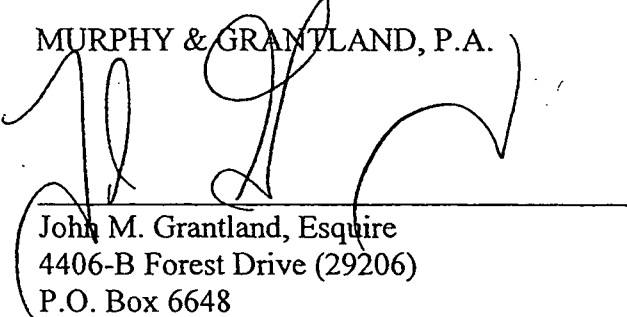
9. This Defendant would show, upon information and belief, that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for

awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, this Defendant prays that the Plaintiffs' Complaint be dismissed with costs.

A jury trial is demanded.

MURPHY & GRANTLAND, P.A.



John M. Grantland, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100

Attorney for Defendant Caitlin Elisabeth Braun

Columbia, South Carolina
August 26, 2011

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Devin Shumate and Dacia Shumate as
Personal Representatives of the Estate of
Gabriella Shumate,

Plaintiffs,

v.

The Ben Arnold Sunbelt Beverage Company
of South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub, Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-20-00302

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys
for Defendant Caitlin Elisabeth Braun, do hereby certify that on August 26, 2011, I have served a
copy of the foregoing ANSWER OF DEFENDANT CAITLIN ELISABETH BRAUN in
connection with the above-referenced case placing same in the U.S. mail, postage paid to:

Henry Taylor, Esquire
Heath Taylor, Esquire
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3618 Sunset Boulevard
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West Columbia, SC 29169

Joyce Linker, Legal Assistant to
John M. Grantland, Esquire

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Devin Shumate and Dacia Shumate as
Personal Representatives of the Estate of
Gabriella Shumate,

Plaintiffs,

v.

The Ben Arnold Sunbelt Beverage Company
of South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub, Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course and
Caitlin Elisabeth Braun,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-20-00302

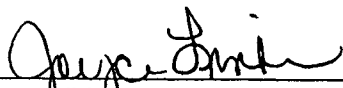
CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys
for Defendant Caitlin Elisabeth Braun, do hereby certify that on August 26, 2011, I have served a
copy of the foregoing ANSWER OF DEFENDANT CAITLIN ELISABETH BRAUN in
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1901 Main Street
P.O. Box 1473
Columbia, SC 29202


Joyce Linker, Legal Assistant to
John M. Grantland, Esquire

Columbia, South Carolina

EXHIBIT F

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

CAITLIN ELISABETH BRAUN,
Plaintiff,

vs.

THE BEN ARNOLD SUNBELT
BEVERAGE COMPANY OF SOUTH
CAROLINA, L.P., TWO HEELS, INC.,
D/B/A STATE STREET PUB, AND
SUNBELT GOLF DEVELOPMENT,
INC. D/B/A INDIAN RIVER GOLF
COURSE,
DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

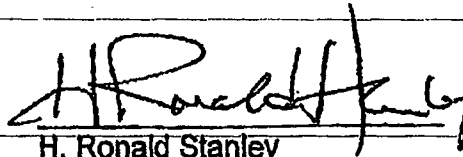
Case No.: 2013-CP-20-55

SUMMONS

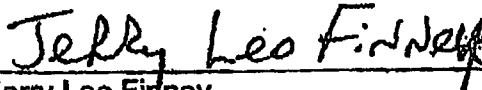
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM
FEB 11 A 11:39

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at 1418 Park Street, Columbia, South Carolina, within thirty (30) days, thirty-five (35) days if service is by certified mail, exclusive of the day of said service, and if you fail to answer, appear or defend this action within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



H. Ronald Stanley
1418 Park Street
Post Office Box 7722
Columbia, South Carolina 29202
(803) 799-4700



Jerry Leo Firney
2117 Park Street
Columbia, South Carolina 29201
(803) 254-7408

ATTORNEYS FOR PLAINTIFF

- Columbia, South Carolina

Dated: 2/4/13

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

CAITLIN ELISABETH BRAUN,
Plaintiff,

vs.

THE BEN ARNOLD SUNBELT
BEVERAGE COMPANY OF SOUTH
CAROLINA, L.P., TWO HEELS, INC.,
D/B/A STATE STREET PUB, AND
SUNBELT GOLF DEVELOPMENT,
INC. D/B/A INDIAN RIVER GOLF
COURSE,
DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No.: 2013-CP-20-55

COMPLAINT
(JURY TRIAL DEMANDED)

FILED FEB - 7 A 11:30
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKH

The plaintiff, above named, complaining of the defendants herein would respectfully show unto this Court:

1. That the plaintiff is a resident of the County of Richland, State of South Carolina.
2. That the defendant, The Ben Arnold Sunbelt Beverage Company of South Carolina, L. P., (hereinafter referred to as "Arnold") is a limited partnership duly organized pursuant to the laws of the State of Delaware and having authority to conduct business in the State of South Carolina with its principal place of business in the County of Fairfield, State of South Carolina.
3. That the defendant, Two Heels, Inc., doing business as State Street Pub, (hereinafter referred to as the "Pub") is an eleemosynary corporation duly organized and incorporated pursuant to the laws of the State of South

Carolina and having its principal place of business in the County of
Lexington, State of South Carolina.

4. That the defendant, Sunbelt Golf Development, Inc., doing business as Indian River Golf Course (hereinafter referred to as the "Golf Course") is a corporation duly organized and incorporated pursuant to the laws of the State of South Carolina and having its principal place of business in the County of Lexington, State of South Carolina.
5. That upon information and belief, this court has jurisdiction over the parties and the subject matter of this case and venue is proper in the County of Fairfield, State of South Carolina.

Factual Background

6. That the Pub is a bar or drinking establishment whose principal business is the sale of alcoholic beverages to its patrons at its business location in the City of West Columbia, State of South Carolina.
7. That from time to time, the Pub sponsors golf tournaments to promote its business with its customers and/or to raise funds for charitable causes.
8. That the Pub planned and held such a golf tournament on May 16th, 2011 at the Golf Course.
9. That in connection with the planning and staging of the golf tournament, the Pub solicited some or all of its customary beverage suppliers to provide alcoholic and other beverages for the golfers participating in the tournament while at the same time giving the beverage suppliers the

opportunity to promote the consumption of their products by the participants in the golf tournament and the public at large.

10. That Arnold is now and has been for many years a large wholesale supplier of alcoholic beverages, principally hard liquors, to retail establishments in the business of selling alcoholic beverages to the general public in South Carolina. In the course of its business, Arnold was, at the time of the golf tournament, a wholesale supplier of alcoholic beverages, principally hard liquors, to the Pub and agreed to promote its products by providing free samples of its product to participants in the golf tournament.
11. That in the furtherance of its product promotion in connection with the golf tournament, in addition to its full time employees and agents, Arnold employed two or more attractive young women to participate in and work the promotion efforts at the Golf Course. One of the additional persons employed by Arnold was the plaintiff.
12. That as is customary with Arnold in the promotion of its products at golf tournaments, Arnold, through its employees and agents, expressly and/or impliedly and/or tacitly encouraged and/or approved the attractive young women, including the plaintiff, employed for the promotion effort at the golf tournament, to proactively engage in frolicking with the tournament participants, including drinking shots of Three Olive Vodka with the golf tournament players.
13. That the plaintiff, in furtherance of her work at the tournament and at the

encouragement, insistence and requirements of defendant, Arnold, drank alcoholic beverages with the tournament players and others during the course of the golf tournament. Moreover, during the tournament and/or at the conclusion of the tournament, the plaintiff drank alcoholic beverages with other employees of Arnold, including supervisory employees of Arnold. As a consequence, at the conclusion of the tournament, or shortly thereafter, the plaintiff had become very intoxicated.

14. That notwithstanding the fact that the plaintiff was employed by Arnold to promote its beverages, including Three Olive Vodka, and Arnold expressly and/or impliedly and/or tacitly approved, encouraged and required the plaintiff to drink alcoholic beverages during the course of her work and thereafter, Arnold did not provide any form of training whatsoever to the plaintiff regarding the safe use of its products and did not provide any form of supervisory control to assure the safety of the plaintiff with respect to the plaintiff's obviously inebriated condition following the golf tournament. In fact, Arnold through its employees, including supervisory personnel, caused the plaintiff's inebriated condition by drinking shots of alcoholic beverages with her during or following the golf tournament when they knew or should have known that the plaintiff was intoxicated to the point of being unable to safely operate her vehicle.

15. That in spite of all of the foregoing facts, Arnold, through its employees and agents, including supervisory personnel, allowed the plaintiff to

leave the golf course in a highly intoxicated condition while driving her automobile. Shortly after leaving the golf course, the plaintiff while driving her vehicle left her proper lane of travel and crashed head on into the path of an oncoming vehicle. The collision resulted in serious personal injuries to the plaintiff and to the occupants of the oncoming vehicle including the death of a minor child in the oncoming vehicle.

16. The Pub, as sponsor of the golf tournament, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including the plaintiff, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during or after the golf tournament. Notwithstanding its awareness, the Pub took no steps to supervise the participants, including the plaintiff and other beverage supplier personnel, or to establish a protocol or plan to assure the safety of the participants, the plaintiff, and the general public following the conclusion of the tournament.

17. That the Golf Course, on whose premises the golf tournament was held, was well aware or through reasonable observations, should have been well aware of the prolific drinking of alcoholic beverages by the players and others, including the plaintiff, participating in the promotional efforts of the beverage suppliers at the golf tournament, before, during, or after the golf tournament. Notwithstanding its awareness, the Golf Course took no steps to supervise the participants, including the plaintiff and other

~~beverage supplier personnel, or to establish a protocol or plan to assure~~
the safety of the participants, the plaintiff, and the general public
following the conclusion of the tournament.

18. That the plaintiff is informed and believes that the defendants were negligent,
grossly negligent, reckless, willful, and wanton in one or more of the
following particulars, to wit:

a) As to Defendant Arnold:

- (1) In failing to train the plaintiff for her assigned duties involving the use and disbursement of significant amounts of alcoholic beverages;
- (2) In expressly, impliedly and/or tacitly approving, encouraging, insisting and requiring the plaintiff to consume alcoholic beverages with the patrons at the golf tournament;
- (3) In permitting its supervisory personnel on the premises to consume alcoholic beverages with the plaintiff thus diminishing their ability to properly supervise and monitor the plaintiff;
- (4) In failing to supervise, monitor and control the alcohol use of the plaintiff during the course and scope of her employment;
- (5) In failing to prevent the plaintiff from becoming grossly intoxicated during the course and scope of her employment;
- (6) In requiring, encouraging and insisting that the plaintiff consume an unreasonable amount of alcoholic beverages in the furtherance of its business thereby creating an unreasonable risk of harm and injury to the plaintiff.
- (7) In permitting the plaintiff to drive a motor vehicle after she became grossly intoxicated during the course and scope of her employment; and
- (8) In otherwise failing to use due care under the circumstances then and there prevailing.

b) As to Defendant Pub:

- (1) In failing to monitor and control the plaintiff while she was engaged in the prolific consumption of alcoholic beverages for the advancement of the defendant's business interest.
- (2) In permitting the plaintiff to become grossly intoxicated without adequate safeguards in place to avoid the significant harm that the plaintiff was exposed to by being intoxicated; and
- (3) In otherwise failing to use due care under the circumstances then and there prevailing.

c) As to Defendant Golf Course:

- (1) In failing to monitor and control the plaintiff while she was engaged in the prolific consumption of alcoholic beverages for the advancement of the defendant's business interest.
- (4) In permitting the plaintiff to become grossly intoxicated without adequate safeguards in place to avoid the significant harm that the plaintiff was exposed to by being intoxicated; and
- (5) In otherwise failing to use due care under the circumstances then and there prevailing.

19. That as a direct and proximate result of the Defendants' negligent, grossly negligent, reckless, willful, and wanton acts or omissions, the plaintiff sustained significant damages including, but not limited to:

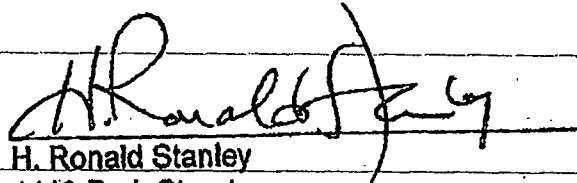
- a) Serious, significant and permanent personal injuries;
- b) Extreme pain and suffering and mental anguish;
- c) Medical expenses and treatment;
- d) Lost income;
- e) Loss of enjoyment of life; and
- f) Loss of liberty and freedom due to her incarceration for felony DUI resulting from the death of an occupant in the vehicle that was struck by the plaintiff.

20. That the plaintiff is entitled to judgment against the defendants, jointly and severally, for compensatory damages in an amount to be proven at trial.

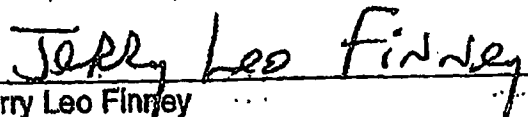
21. That the plaintiff is also entitled to recover punitive damages from the defendants, jointly and severally, in an amount to be proven at trial based on the defendants' grossly negligent, willful, wanton and reckless conduct.

WHEREFORE, the plaintiff prays for judgment as follows:

- (1) Compensatory damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (2) Punitive damages in an amount to be proven at trial against all Defendants, jointly and severally;
- (3) Costs associated with this action from all Defendants; and
- (4) Such other and further relief as the Court may deem just and proper.



H. Ronald Stanley
1418 Park Street
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(803) 799-4700



Jerry Leo Finney
2117 Park Street
Columbia, South Carolina 29201
(803) 254-7408

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

Dated: 2/4/13

EXHIBIT G

STATE OF SOUTH CAROLINA

COUNTY OF Fairfield

Devin Shumate, et al.

☐ Plaintiff

v.

Ben Arnold Sunbelt, et al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

11-CP-20-302

2012 JUN 05 A 11:38

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Plaintiff's Attorney:

Heath Taylor, Esquire Bar No.

Address:

Phone

e-mail:

Fax:

other:

Defendant's Attorney:

John E. Cuttino, Esquire Bar No.

Address: Post Office Box 1473

Columbia, SC 29202

Phone: 803-227-4271 fax: 803-400-1472

e-mail: JCuttino@turnerpadget.com

other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Order for Approval of Settlement

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted 6-14-12

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: Betty Jo Beckham

Date Filed:

6/15/12

☒ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Devin Shumate and Dacia Shumate, as Personal
Representatives of the Estate of Gabriella
Shumate,

Plaintiff(s),

vs.

The Ben Arnold Sunbelt Beverage Company of
South Carolina, L.P., Two Heels, Inc. d/b/a
State Street Pub, Sunbelt Golf Development,
Inc. d/b/a Indian River Golf Course and Caitlin
Elisabeth Braun,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
) Docket No. 11-CP-20-00302
)
)
)

ORDER FOR APPROVAL OF SETTLEMENT

2012 JUN 15 A 11:38
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

This matter came to be heard before me on June 12, 2012 at the Lancaster County Courthouse. Plaintiffs and the attorneys for all parties appeared. A Petition by the Personal Representatives, Devin Shumate and Dacia Shumate, sets forth the essential allegations along with the Complaint that was filed in this action. It appears that the parties have reached and agreed upon a resolution of the matter and now request this Court to approve the settlement.

On May 16, 2011 Gabriella Shumate, a minor, was a passenger in an automobile being operated by her father, Devin Shumate, on Ramblin Road in West Columbia, South Carolina. The Shumate vehicle was struck at a high rate of speed by a vehicle being operated by the Defendant Caitlin Braun. As a result, the minor Gabriella Shumate was injured and expired almost immediately from her injuries. The Complaint sets forth the acts and omissions of the Defendants which allegedly led to Gabriella Shumate's death and seeks actual, special, consequential, and punitive damages.

The Personal Representatives, Devin Shumate and Dacia Shumate, were sworn and testified that they have reviewed the terms of the Petition and understand and agree with the terms of the settlement. They also testified that they are satisfied with the advice rendered by their legal counsel and, under the circumstances, believe the settlement to be fair and thus request this Court's approval.

It appears to the Court, based upon the testimony, a review of the file, the representations of the Plaintiff Personal Representatives, and the recommendation of the attorneys for the Plaintiff Personal Representatives, that the settlement is fair and reasonable and in the best interest of the beneficiaries and the Estate of the decedent. The Court therefore agrees and approves the settlement. The Personal Representatives are hereby authorized to execute the necessary documents to end this litigation and release the Defendants, their employees, and insurers.

Now, therefore, it is ORDERED, ADJUDGED, and DECREED that the Court does hereby approve the settlement of this action as to the Defendants for the total sum of _____ allocated for the wrongful death cause of action.

It is further ORDERED, ADJUDGED, and DECREED that this Court hereby authorizes and directs the Plaintiffs, as Personal Representatives of the Estate of Gabriella Shumate, deceased, upon receipt of _____ to execute and deliver the necessary documents to release the Defendants, their employees, and insurers from any and all claims of whatsoever nature and kind arising out of, or in any way connected with the care, alleged pain and suffering, and/or wrongful death of Gabriella Shumate. Upon the execution of such agreement, Defendants shall be fully released

from and protected against any and all claims, demands, causes of action, judgments or liability of whatsoever nature and kind in law or in equity arising out of or in any way connected with the alleged injuries to and death of Gabriella Shumate.

It is further ORDERED, that upon the joint request of all parties and to protect the confidentiality of the amount of the settlement, the Clerk of Court of Fairfield County is instructed to permanently seal the Petition and Order, as well as any other public portions of the file which indicate the amount for which this case was settled.

Finally, it is further ORDERED that the Complaint in this case be dismissed with prejudice, and that all matters and things contained therein are *res judicata* between the parties and their heirs, successors, and assigns.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Paul M. Burch", written over a horizontal line.

The Honorable Paul M. Burch
Sixth Judicial Circuit, Court of Common Pleas

Lancaster, South Carolina

June 12th, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	DOCKET NO. 13-CP-20-55
	)	
Caitlin Elisabeth Braun,	)	
	)	DEFENDANT BEN ARNOLD SUNBELT
Plaintiff,	)	BEVERAGE COMPANY OF SOUTH
	)	CAROLINA, L.P.'S MEMORANDUM IN
vs.	)	OPPOSITION TO PLAINTIFF'S MOTION FOR
	)	RECONSIDERATION
The Ben Arnold Sunbelt Beverage Company of	)	
South Carolina, L.P., Two Heels, Inc. d/b/a	)	
State Street Pub and Sunbelt Golf Development,	)	
Inc. d/b/a Indian River Golf Course	)	
	)	
Defendants.	)	

**TO: H. RONALD STANLEY, ESQ., and JERRY L. FINNEY, ESQ., ATTORNEYS
FOR PLAINTIFF**

Defendant Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., (hereinafter "Ben Arnold") submits this memorandum in opposition to Plaintiff's Rule 59(e) Motion to Alter or Amend the Court's April 25, 2014 Order granting summary judgment to Ben Arnold. For the reasons set forth below, as well as those set forth in the Defendants' original Joint Memorandum in Support of Summary Judgment, Plaintiff's Motion should be denied.

STANDARD OF REVIEW

Rule 59(e) of the *South Carolina Rules of Civil Procedure* allows a party to move for an order altering or amending a judgment. The decision to grant or deny a Rule 59(e) SCRCF motion is within the sound discretion of the trial court. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (App. 2012), *reh'g denied, cert dismissed*. "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Stearns Bank Nat. Ass'n v.*

Glenwood Falls, LP, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007) (quoting *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006)). A party cannot use a motion to alter or amend a judgment to present to the trial court an issue that the party could have raised prior to judgment but did not. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002); *Mailsources, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

A motion to alter or amend is typically only granted where the moving party shows that there is a clear factual error to be corrected. *See Doe v. Doe*, 324 S.C. 492, 478 S.E.2d 854 (Ct. App. 1996); *see also Ruscavage v. Zuratt*, 831 F.Supp. 417 (E.D. Pa. 1993) (stating that the purpose of a motion to alter or amend is to correct “manifest errors of law or fact or to present newly discovered evidence”). As the federal courts have recognized, “reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396 (4th Cir. 1998).

ARGUMENT

Ben Arnold incorporates and again relies upon its original Joint Memorandum in Support of the Motion for Summary Judgment. Further, Ben Arnold responds to the Plaintiff’s Rule 59(e) Motion as set forth below.

1. **Plaintiff’s Newfound Reliance on the “Going and Coming Rule” Is Misplaced and Is Insufficient to Warrant any Alteration of the Court’s Order. Thus, the Order Granting Summary Judgment Should Stand**

Ben Arnold respectfully submits that Plaintiff’s first ground for relief, which asserts that the so-called “going and coming rule” of South Carolina Workers’ Compensation law makes the Workers’ Compensation Act inapplicable, is without merit.

South Carolina employs a two-pronged test in determining whether an injury is compensable under the Act. The injury must both “arise out of” the employment and be in “the course of” the employment. *Kinsey v. Champion Am. Serv. Center*, 268 S.C. 177, 182, 232 S.E.2d 720, 722 (1977). Therefore, it must first be established there was an employer-employee relationship and that the incident happens because of the employment. *See Edens v. Bellini*, 359 S.C. at 442, 597 S.E.2d at 868 (noting coverage under the Act is dependent on the existence of an employer-employee relationship); *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 656 S.E.2d 753 (Ct. App. 2007) (noting an accident arises out of employment when the employment is a contributing proximate cause of the accident). Once the “arising out of” prong is established, the Commission is then charged with determining whether the injury sustained was in the course of the employment. *See Whitworth v. Window World, Inc.*, 377 S.C. 637, 661 S.E.2d 333 (2008) (addressing whether the employee’s injuries were compensable under scope and course of employment). Finally, whether or not an employer-employee relationship exists is a jurisdictional question, and “[i]t is the policy of South Carolina courts to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers’ Compensation Act.” *Collins v. Charlotte*, 400 S.C. 50, 56, 732 S.E.2d 630, 633 (Ct. App. 2012).

First, it is inescapable that the Plaintiff’s own Complaint clearly and repeatedly alleges she was an “employee” of Ben Arnold and that her accident and injury arose from that employment. Numerous allegations of her Complaint belie Plaintiff’s contention that she is somehow exempt from the Workers’ Compensation Act, and several even use terms deeply ingrained in Workers’ Compensation law which are used as the basis for establishing the compensability of claims under the Act. For example, at Paragraph 14 of her Complaint, Plaintiff alleges that Ben Arnold “*encouraged and required the plaintiff to drink alcoholic*

beverages during the course of her work....”; at Paragraph 15 she alleges that “*Arnold, through its employees including supervisory personnel, allowed the plaintiff to leave the golf course in a highly intoxicated condition while driving her automobile.*”; at Paragraph 18(4) she alleges that Ben Arnold failed “*to supervise, monitor, and control the alcohol use of the plaintiff during the course and scope of her employment,*”; at Paragraph 18(5) she alleges that Ben Arnold failed “*to prevent the plaintiff from becoming grossly intoxicated during the course and scope of her employment,*”; and at Paragraph 18(7) she alleges that Ben Arnold was at fault for “*permitting the plaintiff to drive a motor vehicle after she became grossly intoxicated during the course and scope of her employment.*”

Yet, there is no evidence the Plaintiff has ever pursued a Workers’ Compensation claim in the more than three (3) years that have passed since this accident, despite having ample opportunity to do so. She now asks this Court to permit her to circumvent the Act altogether, and declare that the Act has no application to her circumstance.

The General Assembly has vested the Workers’ Compensation Commission (“the Commission”) with exclusive original jurisdiction over employees’ work-related injuries. *Posey v. Proper Mold & Eng’g, Inc.*, 378 S.C. 210, 223, 661 S.E.2d 395, 402 (Ct. App. 2008). The Act contains an “exclusivity provision,” which provides the exclusive remedy against an employer for an employee’s work-related accident or injury.¹ *Edens v. Bellini*, 359 S.C. 433, 441, 597 S.E.2d 863, 867; *Fuller v. Blanchard*, 358 S.C. 536, 541, 595 S.E.2d 831, 833 (2004). The

¹ Specifically, the Act states

The rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept *compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death.*

S.C. Code Ann. § 42-1-540 (1985) (emphasis added).

exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. *Edens*, 359 S.C. at 442, 597 S.E.2d at 868; *Tatum v. Med. Univ. of S.C.*, 346 S.C. 194, 552 S.E.2d 18 (2001). Here, Plaintiff appears to misconstrue the nature of the “course and scope of employment” analysis—such analysis is performed by the Commission to determine if an injury is compensable, not if the Act applies to the employee-employer relationship itself.

Plaintiff has repeatedly asserted, and has never denied, that she was an employee of Ben Arnold and that any alleged injury she sustained was a direct result of that employment relationship. Yet she pursued no Workers’ Compensation claim against Ben Arnold, but now essentially asks this Court to make a factual finding that her injury did not occur during the course of her employment when it likely lacks jurisdiction to do so. *See Posey, supra*.

In *Whitworth*, the case upon which Plaintiff relies, the Supreme Court was addressing the “going and coming rule” in the context of the of the “course of employment” analysis on appeal from an original decision of the Commission, not from a circuit court in a civil lawsuit. 375 S.C. 637, 661 S.E.2d 333. Perhaps even more significantly, Plaintiff is in fact attempting to use the so-called “going and coming rule” as a defense to being subject to the Workers’ Compensation Act. However, the intended purpose of the “rule” seems to be as an *employer’s defense to the compensability of a Workers’ Compensation claim*, not as a civil Plaintiff’s exemption from the Workers’ Compensation Act. Indeed, the “going and coming rule” is a Workers’ Compensation concept which operates to bar compensation to claimants whose injuries arise outside of the course and scope of their employment. *See* 32 Am. Jur. Proof of Facts 2d 199 (Originally published in 1982) (noting it is a generally recognized rule in workers’ compensation cases that

injuries incurred by an employee while going to or returning from his regular place of work are not compensable).

Even so, there are numerous recognized exceptions to the “going and coming rule,” which the Commission can consider in determining the facts and compensability of any claim. Included in these exceptions are those for “travelling employees,” who are required to travel as part of their job. *See Collins v. Charlotte*, 400 S.C. 50, 732 S.E.2d 630 (Ct. App. 2012) (noting it is well-settled that traveling employees are generally within the course of their employment from the time they leave home on a business trip until they return, for the self-evident reason that the traveling itself is a large part of the job). Here, it is undisputed that the Plaintiff was hired to work at a location that was not Ben Arnold’s property; it was a private golf course. These exceptions, and whether they are applicable to this circumstance considering the nature of Plaintiff’s employment with Ben Arnold, should be decided by the Commission. In this instance, the Commission was denied the opportunity to hear the facts because the Plaintiff inexplicably did not pursue a Workers’ Compensation claim.

But perhaps even more remarkable and troubling is the fact that, while the Plaintiff desperately wants the “going and coming rule” to deprive the Workers’ Compensation Commission of jurisdiction and/or defeat the potential compensability of her claim under the Workers’ Compensation Act, the Plaintiff’s own deposition testimony is devoid of any evidence about her intentions and destination while driving her car at the time of the accident—facts which are certainly needed to support her position. In her deposition, Plaintiff repeatedly testified about her inability to recall the events of the day of the accident after about 11 A.M., her inability to recall what time the golf tournament ended, her inability to recall whether she remained in the parking lot of the golf course with others at the end of the tournament, her

inability to recall getting into her car to drive out of the parking lot, her inability to recall actually driving her vehicle at the time of the accident, and her admitted lack of evidence that Ben Arnold or its employees knew she was impaired and permitted her to drive anyway. (See Plaintiff's Deposition Transcript of March 12, 2012, pp. 201-232). Without such evidence, she has no basis for even claiming the applicability of the "going and coming rule."

Of additional interest to this Court, and weighing squarely against the Plaintiff's position, is the 1995 Iowa case of *2800 Corporation vs. Bottoms Up Lounge*, 528 N.W.2d 124 (Iowa 1995). In that case, the Supreme Court of Iowa noted an exception to Iowa's "going and coming rule," and awarded Workers' Compensation benefits to an intoxicated exotic dancer who was injured in an automobile accident after becoming intoxicated while working for her employer, a bar which required dancers to encourage patrons to buy them drinks. This case clearly demonstrates that Plaintiff's allegations, if meritorious at all, support a workers' compensation claim, not a civil lawsuit against her employer.

Plaintiff's assertions regarding the Act's lack of applicability is wholly unfounded and in contradiction to South Carolina law and the facts that she herself has alleged. Thus, the Order for summary judgment should not be altered.

2. South Carolina Law Regarding an Intoxicated Adult's Potential Legal Claims Against Others is Well-Settled and the Plaintiff's Attempt to Distinguish the Present Facts is 1) Fundamentally Flawed and 2) An Attempt to Get the Court to Create a New Cause of Action Under South Carolina Law. Thus, the Order Granting Summary Judgment Should Stand

Even assuming *arguendo* that Plaintiff may bring her claim outside of the Workers' Compensation Act, which Ben Arnold denies, Ben Arnold further asserts that Plaintiff's second ground for relief in its Rule 59(e) Motion is actually a request for this Court to create a new and

heretofore unrecognized cause of action, imposing a new civil duty on an employer outside the Workers' Compensation Act. Such a request is completely without merit and the Order granting summary judgment should stand.

First, Plaintiff's contention that *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 504 S.E.2d 318 (1998)², and *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct. App. 1986) are inapplicable to the circumstances at bar is perplexing. The *Garren* decision held that under South Carolina common law, a third-party plaintiff had no cause of action in negligence against a social host who served alcohol to an intoxicated adult guest who then subsequently caused an automobile collision, even if the host knew or ought to have known the guest intended to drive the motor vehicle. The *Tobias* decision, building upon the *Garren* decision some ten (10) years prior, specifically held that South Carolina does not recognize a "first party" cause of action against a tavern owner by an intoxicated adult predicated on an alleged violation of the alcohol control statutes. Read together, *Tobias* and *Garren* reflect South Carolina's stance on legal liability for adult intoxication, and make it clear that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which resulted from his own conduct." *Tobias*, 332 S.C. at 92, 504 S.E.2d at 320 (1998). This well-established public policy is in fact extremely relevant to the case at bar.

Plaintiff, a twenty-four (24) year old adult at the time of her injury, now attempts to somehow distinguish the rulings in *Tobias* and *Garren* and the multitude of shortcomings and fundamental unfairness attendant to legal claims by adults who knowingly and voluntarily intoxicate—and subsequently injure—themselves. In fact, the Plaintiff is unable to make any meaningful distinction between her case and the prior decisions of South Carolina's courts.

² The Court also relied upon the Court of Appeals' *Tobias* opinion, found at 323 S.C. 345, 474 S.E.2d 450 (Ct. App. 1996).

Moreover, in light of *Tobias* and *Garren*, Plaintiff has failed to establish what, if any, duty Ben Arnold owed the adult Plaintiff necessary to sustain her negligence cause of action. *See Edwards v. Lexington Cnty. Sheriff's Dep't*, 386 S.C. 285, 290, 688 S.E.2d 125, 128 (2010) (“Without a duty, there is no actionable negligence.”); *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 781 (Ct. App. 2010) (“First, the court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, the defendant is entitled to a judgment as a matter of law.”). In clear contravention of prior South Carolina court decisions, Plaintiff now attempts to create a new common duty supposedly owed by an employer to an adult Plaintiff—one that has never previously been recognized by our appellate courts or the General Assembly.

The Plaintiff’s Rule 59(e) Motion acknowledges there is “*no case law in South Carolina authorizing a claim by an employee against an employer if and when an employer negligently causes the intoxication of the employee.*” That there is no such law is not surprising given the scope and applicability of the Workers’ Compensation Act and the prior case law clearly disfavoring an adult’s ability to hold others legally liable for his/her voluntary intoxication and subsequent injury. Further, Ben Arnold respectfully submits that it is not the province of the Circuit Court to create such new law. Rather, it would seem such new legal duties are more properly created by the General Assembly and/or the appellate courts.

Finally, Ben Arnold notes that other jurisdictions have refused to impose a duty on an employer in similar circumstances and rejected first-party recovery for an employee’s voluntary intoxication. *See, e.g., Edwards v. Silva*, 32 S.W.3d 713 (Tex. Ct. App. 2000) (holding that the employer did not affirmatively control employee’s behavior such that the employer owed employee duty to prevent him from injuring himself due to intoxication); *Theis v. Cooper*, 753

P.2d 1280 (Kan. 1988) (holding employer owed no duty to third party for tortious acts of employee who, after consuming alcohol on employer's premises, left employer's premises and injured a third party). These representative cases, in conjunction with South Carolina's clearly established public policy, further establish that Ben Arnold owed no duty to Plaintiff in this circumstance. Therefore, the Order granting summary judgment should stand and Plaintiff's Rule 59(e) motion should be denied.

CONCLUSION

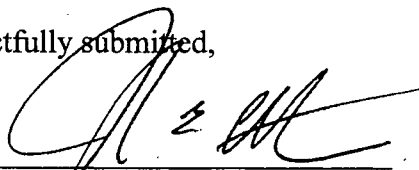
Plaintiff's stated grounds for reconsideration are contradictory and insufficient to warrant relief under Rule 59(e) SCRCF. On the one hand, she fully embraces her "employer-employee relationship" in an effort to get the Court to establish a new common law duty of her employer. But at the same time, Plaintiff insists she, as an employee, is not subject to the Workers' Compensation Act because of the alleged applicability of the "going and coming rule." She cannot have it both ways. The Plaintiff is either an employee whose injury is to be remedied pursuant to the provisions of the Workers' Compensation Act, or she is an employee who is asking the Court to create and impose a heretofore unrecognized common law duty on her employer, Ben Arnold, so that she may pursue her remedy in the Court of Common Pleas.

Further, the Plaintiff attempts to lure the Court into relying on what "may" be later learned through discovery or proven at trial. Rule 56(e) SCRCF is abundantly clear that in opposition to a motion for summary judgment, "*an adverse party may not rest upon the mere allegations or denials of his pleading[,]*" but by affidavit or otherwise must set forth facts specific showing there is a genuine issue for trial. *See* Rule 56(e) SCRCF. In this case, the Plaintiff did not testify at the hearing, nor did she ask to do so, nor did she submit an affidavit.

In fact, the only “*evidence*” (as opposed to mere arguments of counsel) submitted to the Court was that submitted by the Defendant Ben Arnold. Plaintiff simply did not put forth any evidence to the Court that would meet the standard for successfully opposing a motion for summary judgment.

For the foregoing reasons and those submitted in the Defendants’ Joint Memorandum in Support of their Motion for Summary Judgment, Ben Arnold respectfully submits that Plaintiff’s Rule 59(e) Motion should be denied and the Order granting Defendant summary judgment should stand unaltered.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT
BEN ARNOLD SUNBELT BEVERAGE
COMPANY OF SOUTH CAROLINA, L.P.

May 29, 2014

7
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-20-55

Caitlin Elizabeth Braun,

Appellant,

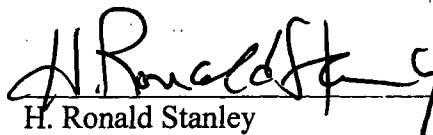
v.

The Ben Arnold Company of
South Carolina, L. P.,

Respondent.

NOTICE OF APPEAL

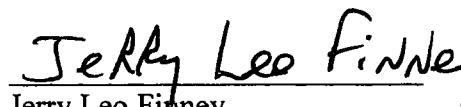
Caitlin Elizabeth Braun appeals the order of the Honorable R. Knox McMahon dated May 30, 2014. Appellant received written notice of entry the Order denying Appellant's Motion for Reconsideration on July 16, 2014.



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July 18, 2014

Other Counsel of Record:
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RECEIVED

JUL 21 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-20-55

Court of Appeals Case No.: 2014-001567

Caitlin Elisabeth Braun, ... Appellant

v.

The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P.,
Two Heels, Inc. d/b/a State Street Pub and Sunbelt Golf Development,
Inc. d/b/a Indian River golf Course, Defendants,

Of whom The Ben Arnold Sunbelt Beverage Company of
South Carolina, L.P. is the Respondent, ... Respondent,

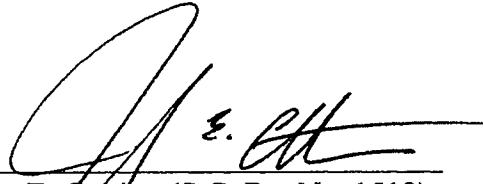
RESPONDENT BEN ARNOLD SUNBELT BEVERAGE COMPANY OF SOUTH
CAROLINA, L.P.'S MOTION TO DISMISS APPEAL

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ATTORNEYS FOR RESPONDENT THE
BEN ARNOLD SUNBELT BEVERAGE
COMPANY OF SOUTH CAROLINA, L.P.

The undersigned, as attorneys for Respondent The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., (hereinafter "Ben Arnold"), hereby moves this Court for an order dismissing Appellant Caitlin Elisabeth Braun's Notice of Appeal pursuant to Rules 203(b) and 260(a) of the South Carolina Appellate Court Rules. The grounds for this motion are that Appellant's Notice of Appeal is untimely, thus the Court of Appeals is without jurisdiction to entertain this appeal, and the appeal should be dismissed.

AND IT IS SO MOVED.

A handwritten signature in black ink, appearing to read 'J. E. Cuttino', is written over a horizontal line.

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ATTORNEYS FOR RESPONDENT
BEN ARNOLD SUNBELT BEVERAGE
COMPANY OF SOUTH CAROLINA, L.P.

July 28, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-20-55

Court of Appeals Case No.: 2014-001567

Caitlin Elisabeth Braun, ... Appellant

v.

The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P.,
Two Heels, Inc. d/b/a State Street Pub and Sunbelt Golf Development,
Inc. d/b/a Indian River golf Course, Defendants,

Of whom The Ben Arnold Sunbelt Beverage Company of
South Carolina, L.P. is the Respondent, ... Respondent,

RESPONDENT BEN ARNOLD SUNBELT BEVERAGE COMPANY OF SOUTH
CAROLINA, L.P.'S MEMORANDUM IN SUPPORT OF ITS
MOTION TO DISMISS APPEAL

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ATTORNEYS FOR RESPONDENT THE
BEN ARNOLD SUNBELT BEVERAGE
COMPANY OF SOUTH CAROLINA, L.P.

Respondent Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., (hereinafter "Ben Arnold") submits this Memorandum in Support of its Motion to Dismiss Plaintiff/Appellant Caitlin Elisabeth Braun's Notice of Appeal.

I. FACTUAL AND PROCEDURAL HISTORY

In this attempted appeal, Appellant seeks to challenge the Circuit Court's Order granting summary judgment to the Respondent Ben Arnold. Specifically, Circuit Judge Knox McMahon's Order granting summary judgment to Respondent Ben Arnold was filed on April 25, 2014. Thereafter, Appellant filed a Motion for Reconsideration pursuant to Rule 59(e). Respondent Ben Arnold then filed and served its memorandum in opposition to the Motion for Reconsideration on May 29, 2014. Circuit Judge McMahon's Order denying Appellant's Motion for Reconsideration was issued on Friday, May 30, 2014. That Order was then entered/filed by the Fairfield County Clerk of Court on Monday, June 2, 2014. That same day (June 2, 2014), the Order was placed in the U. S. Mail to counsel for all parties as evidenced by the Clerk of Court's a Certificate of Service . (See Certificate of Service and Order, attached as Exhibit 1).

Counsel for all Defendants (including those not participating in this appeal) received the Clerk of Court's mailed Order within one week of it being mailed on June 2, 2104. Counsel for Respondent Ben Arnold (John E. Cuttino) was traveling out of state from June 2-8, 2014, but the envelope from the Fairfield Clerk of Court containing the Order was present in his Columbia, South Carolina office when he returned on Monday, June 9, 2014. Clearly, that mailing actually arrived in his office no later than Friday, June 6th, 2014. Counsel for Defendant Sunbelt Golf Development, Inc. d/b/a Indian

River Golf Course received the Order in his Myrtle Beach, South Carolina office on June 4, 2014. Counsel for Defendant Two Heels, Inc. d/b/a State Street Pub received the Order in his Sumter, South Carolina office on June 5, 2014. (*See* Affidavit of John E. Cuttino, attached as Exhibit 2).

However, Appellant's Notice of Appeal asserts that "Appellant received written notice of entry of the Order denying Appellant's Motion for Reconsideration on July 16, 2014" which is forty-four (44) days after the June 2, 2014 Order was mailed to her counsel's correct business address in Columbia, South Carolina, and approximately six (6) weeks after it was received by all defense counsel. Appellant filed and served her Notice of Intent to Appeal on July 18, 2014.

II. ARGUMENT

Appellant's Notice of Appeal is untimely and should therefore be dismissed. Rule 203(b)(1), SCACR requires that a notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 260(a), SCACR. Furthermore, Rule 263(b) SCACR expressly states an appellate court cannot extend the time period for filing an appeal. *See* Rule 263(b), SCACR ("[T]he time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or

by any judge or justice thereof.”). *See also* Rule 6(b), SCRCR (“The time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order.”).

“[S]ervice of the Notice of Appeal is a jurisdictional requirement, and [appellate courts] ha[ve] no authority to extend or expand the time in which the Notice of Appeal must be served.” *Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000). Thus, a party’s failure to comply with Rule 203(b), SCACR “divests this court of subject matter jurisdiction and results in dismissal of the appeal.” *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct.App.1999)). “The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); *See also Panhorst v. United States*, 241 F.3d 367, 369-70 (4th Cir. 2001) (noting that the United States Supreme Court has repeatedly emphasized that the requirement of a timely notice of appeal is “mandatory and jurisdictional.”) (quoting *Browder v. Director, Dep’t of Corrections*, 434 U.S. 257, 264, 98 S.Ct. 556 (1978)).

Furthermore, “[e]vidence that a letter is properly addressed and mailed raises a presumption it was received by the addressee[.]” *Foster v. Ford Motor Credit Co.*, 302 S.C. 450, 452, 395 S.E.2d 440, 441 (1990); *see also Williams v. Fulmer*, C/A 8:09-1044-PMD, 2009 WL 2421791 (D.S.C. July 31, 2009) (“The envelope in which the Order was mailed was not returned undelivered, thus it is presumed that Plaintiff received his copy

of the Order.”). If the date of receipt is unknown or disputed, case law and Rule 6, SCRCF provides a presumption that service by regular mail is received within five (5) days. See Rule 6(e), SCRCF (“Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.”); see also *Nguyen v. Inova Alexandria Hosp.*, 187 F.3d 630 (4th Cir. 1999) (noting if the date is unknown, however, it is presumed that service by regular mail is received within three days pursuant to Rule 6(e) of the Federal Rules); see also *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 148, n. 1, 104 S.Ct. 1723, 1724 (1984) (suggesting that Rule 6(e) applies when parties dispute the date of receipt).

Finally, a party cannot deny receipt of mail due to the party’s failure to open and/or retrieve the mail. See, e.g., *Kramer v. Labor & Indus. Review Comm’n*, 605 N.W.2d 664 (Wisc. Ct. App. 2000) (“[Plaintiff’s] lack of diligence in checking his post office box will not erase the fact that the notice of hearing was mailed, delivered and received at [Plaintiff’s] last known address. He cannot base his claim for relief upon his neglect of a common responsibility.”); *Hagin v. Fireman’s Fund Ins. Co.*, 353 P.2d 1029, 1032 (Ariz. 1960) (noting that where plaintiffs let their mail accumulate, and all that plaintiffs had to do was to open their mail, they are charged with constructive notice of the knowledge which this letter attempted to convey). Rather, “a party has a duty to monitor the progress of his case.” *Goodson v. Am. Bankers Ins. Co. of Florida*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). Indeed, “it is the duty of litigants and

their counsel to keep themselves advised of the developments and status of their case or cases.” *Poston v. State Highway Dep’t*, 192 S.C. 137, 5 S.E.2d 729, 731 (1939).

In this case, all defendants, through their counsel, received notice of Circuit Judge McMahon’s Order Denying Appellant’s Motion to Reconsider either on June 4, June 5, or June 9, 2014, while Appellant contends she did not receive notice of the entry of the Order until July 16, 2014, almost six (6) weeks after the last Defendant (Ben Arnold) received it, and a total of forty-four (44) days after it was mailed from the Fairfield County Clerk’s office. There is no evidence the Clerk of Court’s mailing to Appellant’s counsel was returned unopened, to the Clerk or U.S Postal Service. Thus, pursuant to Rule 6, SCRCF, Appellant should be presumed to have received the Order it seeks to appeal from as of Monday, June 9, 2014, at the latest. (Five days after the June 2 mailing of the Order would be Saturday, June 7, thus the next business day per Rule 6(a), SCRCF is Monday, June 9). Clearly, Appellant’s attempt to file and serve her Notice of Appeal is untimely and the appeal should be dismissed.

Moreover, if the Appellant contends it is significant or dispositive that she personally did not receive notice of entry of the Order, (as opposed to receipt by her counsel of record), such argument is irrelevant and unavailing. *See* Rule 5(b), SCRCF (“Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court.”); *see also Motley v. Williams*, 374 S.C. 107, 112, 647 S.E.2d 244, 247 (Ct. App. 2007) (“Acts of an attorney are directly attributable to and binding upon the client.”). Because Appellant is represented and therefore acts through her counsel, any contention that she received notice of the Order

on a later date than her counsel of record did, is of no significance and cannot operate to extend the time for filing the Notice of Appeal. The appeal is untimely and should be dismissed.

III. CONCLUSION

Counsel for Respondent Ben Arnold has no evidence, and is loathe to suggest, that Appellant's counsel has made any misrepresentation to the Court. Nonetheless, the extreme difference in the dates on which the Circuit Court's Order was received by Appellant and Respondent/Defendants seems implausible and unexplainable. The issue is a matter of jurisdiction for the Court.

For the foregoing reasons, Ben Arnold respectfully submits that Appellant's Notice of Appeal should be dismissed as untimely.

Respectfully submitted,



John E. Cutino (S.C. Bar No. 1519)
Jessica A. Waller (S.C. Bar No. 100256)
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1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
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Telephone: (803) 779-1833
Facsimile: (803) 779-1767
ATTORNEYS FOR RESPONDENT
BEN ARNOLD SUNBELT BEVERAGE
COMPANY OF SOUTH CAROLINA, L.P.

July 28, 2014

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2000055

Caitlin Elisabeth Braun

Two Heels Inc

State Street Pub

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

6/2/2014

Date

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-20-55

Court of Appeals Case No.: 2014-001567

Caitlin Elisabeth Braun, ... Appellant

v.

The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P.,
Two Heels, Inc. d/b/a State Street Pub and Sunbelt Golf Development,
Inc. d/b/a Indian River golf Course, Defendants,

Of whom The Ben Arnold Sunbelt Beverage Company of
South Carolina, L.P. is the Respondent, ... Respondent,

AFFIDAVIT OF JOHN E. CUTTINO

John E. Cuttino (S.C. Bar No. 1519)
Jessica A. Waller (S.C. Bar No. 100256)
GALLIVAN, WHITE & BOYD, P.A
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
Telephone: (803) 779-1833
Facsimile: (803) 779-1767

ATTORNEYS FOR RESPONDENT THE
BEN ARNOLD SUNBELT BEVERAGE
COMPANY OF SOUTH CAROLINA, L.P.

AFFIDAVIT OF JOHN E. CUTTINO

Personally appeared before me, John E. Cuttino, Attorney who after being duly sworn upon his oath, deposes and states as follows:

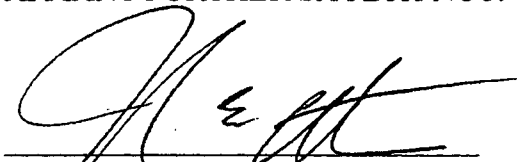
1. My name is John E. Cuttino. I am over twenty-one(21) years of age and am competent to testify to the matters stated herein.
2. I have been a licensed attorney in the State of South Carolina for over thirty-one (31) years.
3. I represent Respondent Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., ("Ben Arnold") in this matter.
4. The Court of Common Pleas for Fairfield County (Judge Knox McMahon) granted Ben Arnold's Motion for Summary Judgment on April 25, 2014.
5. Thereafter, Plaintiff/Appellant Caitlin Braun filed a Motion for Reconsideration of Judge McMahon's Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.
6. I, as counsel for Ben Arnold, filed a Memorandum in Opposition to Appellant's Motion for Reconsideration on May 29, 2014.
7. I was traveling outside the State of South Carolina during the period of June 2-June 8, 2014. Upon my return to my office in Columbia, South Carolina on Monday, June 9, a copy of Circuit Judge McMahon's Order denying Appellant's Motion for Reconsideration was in my unopened mail, having been mailed to me by the Fairfield County Clerk of Court.
8. I have personally conferred with counsel for the other two defendants in this matter in order to determine when they each received the mailing from the Fairfield County

Clerk of Court containing Circuit Judge McMahon's Order that is now appealed from. Mr. Robert Calamari, counsel for defendant Sunbelt Golf Development, Inc. d/b/a Indian River Golf Course informed me that he received a copy of the Order on June 4, 2014 in his Myrtle Beach, South Carolina office. Mr. A. Jackson Barnes, counsel for defendant Two Heels, Inc. d/b/a State Street Pub informed me that he received a copy of the Order on June 5, 2014 in his Sumter, South Carolina office.

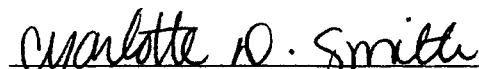
9. Due to the time constraints involved in filing Ben Arnold's Motion to Dismiss, I was unable to obtain sworn affidavits from Mr. Calamari and Mr. Barnes, but will do so if the Court so requires.

10. I declare under the penalties of perjury that the foregoing statements are true and correct to the best of my knowledge.

AFFIANT FURTHER SAYETH NOT.


John E. Cuffino

SWORN TO BEFORE ME
THIS 28 DAY OF July, 2014


Notary Public for South Carolina
My Commission Expires 10/23/22

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2000055**

Caitlin Elisabeth Braun

Two Heels Inc

State Street Pub

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

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Circuit Court Judge

Judge Code

6/2/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on **June 2, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **June 2, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Henry Ronald Stanley
1418 Park St.
Columbia, SC 29201

John Edward Cuttino
PO Box 7368
Columbia, SC 29202
Allen Jackson Barnes
PO Box 2838
Sumter, SC 29151-2838
Robert Curt Calamari
PO Box 3939
Myrtle Beach, SC 29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Betty Jo Beckham

Court Reporter

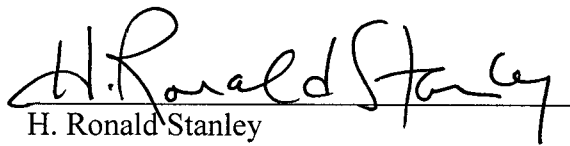
Betty Jo Beckham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



H. Ronald Stanley
Post Office Box 7722
Columbia, SC 29202
(803) 799-4700

Jerry Leo Finney
2117 Park Street
Columbia, SC 29201
(803) 254-7408
Attorneys for Appellant

January 2, 2015

Columbia, South Carolina

RECEIVED

JAN 30 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-20-55

Caitlin Elizabeth Braun,

Appellant,

v.

The Ben Arnold Sunbelt
Beverage Company of South
Carolina, L. P., Two Heels,
Inc. d/b/a State Street Pub and
Sunbelt Golf Development,
Inc., d/b/a Indian River Golf
Course, Defendants,

Respondent.

Of whom The Ben Arnold
Sunbelt Beverage Company of
South Carolina, L.P. is the
Respondent.

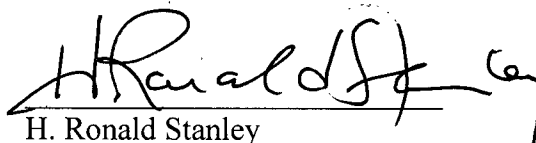
RECEIVED

JAN 30 2015

SC Court of Appeals

CERTIFICATE OF SERVICE

I certify that I have on the 7th day of January, 2015, I served the **RECORD ON APPEAL** by hand delivering (1) copy of the same to Respondent's Attorney of record, John E. Cuttino, Esquire, 1201 Main Street, Suite 1200, Columbia, South Carolina 29201.



H. Ronald Stanley
Post Office Box 7722
Columbia, SC 29202
(803) 799-4700

January 30, 2015

ATTORNEY FOR APPELLANT