

Chavez-Porter v. Sutton Case File

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Introduction

This wrongful death action is brought in Euphoria state court by Jeffrey Chavez-Porter, administrator of his deceased wife, Katherine Chavez-Porter's estate, against Charles T. Sutton and the Shrackle Construction Company (Shrackle). Chavez-Porter charges Sutton negligently drove his pick-up truck, struck Katherine Chavez-Porter crossing the street and caused her death. Chavez-Porter charges Sutton is either individually liable or was acting on business for the Company when the accident occurred. He seeks damages of five million dollars.

Sutton admits striking Ms. Chavez-Porter but claims she was crossing in the middle of the street, not in the crosswalk. Both defendants deny Sutton's negligence and allege contributory negligence by the deceased.

The Company's insurance policy provides \$1,500,000 coverage for employees acting within the scope of their employment. Sutton didn't have a liability insurance policy when the accident took place. Shrackle admits Sutton was working within the scope of his employment.

IN THE CIRCUIT COURT OF CEASER COUNTY
CIVIL DIVISION

Jeffrey Chavez-Porter,)
Plaintiff,)
)
vs.)
)
Charles T. Sutton, individually and in his)
capacity as an employee for Schrackle)
Construction Company)
)
and)
)
Schrackle Construction Company,)
Defendants.)
)
)

Complaint No. 198469

Plaintiff alleges:

1. Jurisdiction is based upon Chapter 69, Section 1, *et seq.* Chapter 70, Sections 1 and 2, *et seq.* (Euphoria Code 20XX-1 Edition).
2. Plaintiff is at all times mentioned a resident of Ceaser County in the State of Euphoria. Defendants, Sutton and Schrakle Construction Company (Schrakle), are residents of Ceaser County in the State of Euphoria.

3. At all times mentioned herein, Defendant Schrackle was a sole proprietorship with its principal place of business in Ceaser County, Euphoria.
4. At all times mentioned herein, defendant Charles Sutton was acting within the scope of his employment as an employee of the Schrackle Construction Company.
5. The collision which is the subject of this Complaint occurred on November 30, 20XX-1 in Ceaser County in the State of Euphoria.
6. Plaintiff is the husband of the deceased and brings this action on behalf of Katherine Chavez-Porter as the administrator of her estate.
7. On November 30, 20XX-1, at approximately 3:30 p.m., while on his way to an excavation site, the defendant, Charles T. Sutton, struck and fatally injured the deceased, Katherine Chavez-Porter. 8.Katherine Chavez-Porter was in the crosswalk traveling eastbound from the southwest corner of the intersection of Kirby and Mattis Streets in Euphoria City, when struck.
9. As a result of the injuries sustained in the collision on November 30, 20XX-1, Katherine Chavez-Porter died December 4, 20XX-1, at Barbara Rush City Hospital.
10. Defendant, Charles T. Sutton, had a duty to yield the right of way to a pedestrian crossing the roadway within the crosswalk.
11. Defendant, Charles T. Sutton, had a duty to exercise ordinary care to avoid striking Katherine Chavez-Porter.
12. The actions of defendant Charles T. Sutton in striking the deceased were wrongful and negligent.
13. The negligence of defendant Charles T. Sutton caused the death of Katherine Chavez-Porter.
14. The conduct of defendant Charles T. Sutton in striking Katherine Chavez-Porter was

wanton conduct and gross negligence.

15. Plaintiff is entitled to compensation in the amount of \$27,650.00 for expenses incurred for care, treatment, and hospitalization of Katherine Chavez-Porter, incident to the injuries she received when struck by the truck driven by defendant Charles T. Sutton.

16. Plaintiff is entitled to compensation in the amount of \$300,000.00 for pain and suffering caused by the wrongful death of Katherine Chavez-Porter.

17. Plaintiff is entitled to compensation in the amount of \$13,920.00 for the expenses of Katherine Chavez-Porter's funeral.

18. Plaintiff is entitled to compensation in the amount of \$389,400.00 for the loss of the expected net income of Katherine Chavez-Porter.

19. Plaintiff is entitled to compensation in the amount of \$630,000.00 for the loss of the services, protection, care and assistance of Katherine Chavez-Porter.

20. Plaintiff is entitled to compensation in the amount of \$702,000.00 for the loss of the society, companionship, comfort, guidance, and kindly offices of Katherine Chavez-Porter.

21. Plaintiff is entitled to punitive damages in the amount of \$900,000.00 for Charles T. Sutton's want on conduct and gross negligence in striking Katherine Chavez-Porter.

WHEREFORE, Plaintiff prays:

1. For compensatory damages in the amount of \$700,000.00;
2. For punitive damages in the amount of \$900,000.00
3. For costs herein and such further relief as is proper.

Tracey Chapman

Tracey Chapman
Attorney for Plaintiff

IN THE CIRCUIT COURT OF CEASER COUNTY

CIVIL DIVISION

Jeffrey Chavez-Porter,)
Plaintiff,)
)
vs.)
)
Charles T. Sutton, individually and in his capacity) ANSWER No. 198469
as an employee for Schrackle Construction)
Company,)
)
and)
)
Schrackle Construction Company,)
Defendants.)
)
)

Defendants, Charles T. Sutton and Schrackle Construction Company answer the Complaint as follows:

1. Defendants admit the allegations contained in paragraphs 1 - 5, 7, and 9.
2. Defendants deny the allegations contained in paragraphs 8, 12 - 21.
3. Defendants have no information or belief to admit or deny the allegations contained in paragraphs 6, 10, and 11 and on that basis deny them.

AFFIRMATIVE DEFENSES
(Contributory Negligence)

4. Katherine Chavez-Porter was not in the crosswalk when struck on November 30, 19XX-1.
5. Katherine Chavez-Porter had a duty to yield the right of way to all vehicles upon the roadway when she was crossing the roadway at a point other than within a marked crosswalk.
6. The actions of Katherine Chavez-Porter in crossing in the middle of Mattis Street and failing to yield the right of way were negligent.
7. The contributory negligence of Katherine Chavez-Porter was the cause of her death.

WHEREFORE, Defendants pray:

1. That Plaintiff take nothing by this action;
2. For costs of suit incurred.

M. Martin

M. Martin
Attorney for Defendants

Available Witnesses

Plaintiff: Michael Brach
Jeffrey Chavez-Porter
Marilyn Kahn
Daniel Sloan

Defendant: Charles Sutton
Juanita Willard
Victoria Gonzalez Willard
Alice Mallory

These witnesses are unavailable for trial:

Robert W. Glenn died June 9, 20XX.

Elmer E. Shrackle is on a month-long business trip in Mexico.

Euphoria Statutes

Chapter 70, Section 1

Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in the law for felony.

Chapter 70, Section 2

- A. Damages recoverable for death by wrongful act include:
- (1) Expenses for care, treatment and hospitalization incident to the injury resulting in death;
 - (2) Compensation for decedent's pain and suffering;
 - (3) The decedent's reasonable funeral expenses;
 - (4) The present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonable income expected, such as the:
 - (a) Net income of the decedent;
 - (b) Services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered;
 - (c) Society, companionship, comfort, guidance, kindly offices of the decedent to the persons entitled to the damages recovered.

TRAFFIC COLLISION REPORT

DATE	Date of Accident <u>11/30 20XX-1</u> Day of Week <u>Friday</u> Hour <u>3:28</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM																			
LOCATION	Accident occurred in <u>Cleaser</u> County, or town of <u>Euphorat City</u>																			
	Outside City or Town _____ Miles <input type="checkbox"/> N <input type="checkbox"/> E <input type="checkbox"/> S <input type="checkbox"/> W of _____ (City or Town) Limits Center																			
	On <u>Mettis</u> at its intersection with _____ Street or Hwy. no. _____																			
	If not at intersection, _____ <input type="checkbox"/> Miles <input checked="" type="checkbox"/> Feet <input type="checkbox"/> N <input type="checkbox"/> E <input type="checkbox"/> S <input type="checkbox"/> W From <u>Kirby</u> toward _____																			
ACCIDENT TYPE	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>1. Right</td><td>2. Left</td><td>3. Overturned</td><td>4. Other in road</td><td>5. Pedestrian</td><td>6. Other Motor Vehicle</td><td>7. Parked Vehicle</td><td>8. Train</td><td>9. Bicycle</td><td>10. Animal</td><td>11. Fixed Object</td><td>12. Other Object</td> </tr> </table>		1. Right	2. Left	3. Overturned	4. Other in road	5. Pedestrian	6. Other Motor Vehicle	7. Parked Vehicle	8. Train	9. Bicycle	10. Animal	11. Fixed Object	12. Other Object						
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No. of Vehicles Involved	Driver: <u>Charles T. Sutton</u> , 1701 W. Euphorat, City Date of Birth <u>8/13/XX-23</u>																			
VEHICLE NO. 1	Age <u>32</u> Sex <u>M</u> Race <u>W</u> Driving Experience <u>16</u> Years Driver's License <u>V311-5114-1161</u> <input checked="" type="checkbox"/> NONE <input type="checkbox"/> Member of Armed Forces <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																			
Amount of Damage	Veh: Year <u>20 XX-9</u> Make <u>Mazda</u> Color <u>WHT</u> Registration <u>237952B EUP XX-1</u> M.V. No. _____ Owned <u>Driver</u> By: _____ Parts Damaged _____ Drivable: <input type="checkbox"/> Yes <input type="checkbox"/> No Vehicle <input type="checkbox"/> Removed To <u>Destination</u> By _____																			
VEHICLE NO. 2 OR PEDESTRIAN	Driver or Pedestrian: <u>Katherine Chance-Porter</u> 718 Flower Drive City Date of Birth <u>4/23/XX-28</u> Age <u>28</u> Sex <u>F</u> Race <u>W</u> Driving Experience _____ Years Driver's License _____ <input type="checkbox"/> NONE <input type="checkbox"/> Member of Armed Forces <input type="checkbox"/> Yes <input type="checkbox"/> No Veh: Year _____ Make _____ Color _____ Registration _____ Number _____ State _____ Year _____ M.V. No. _____ Owned _____ By: _____ Parts Damaged _____ Drivable: <input type="checkbox"/> Yes <input type="checkbox"/> No Vehicle <input type="checkbox"/> Removed To _____ By _____																			
Amt. of Dam.	Other _____ Owner and Address _____ Property Damage _____																			
Injury Class	K. Killed _____ A. Visible sign of injury as bleeding wound, distorted member or had to be carried from scene _____ B. Other visible injury or bruises, abrasions, swelling, lumps, etc. _____ C. No visible sign of injury but complaint of pain or momentary unconsciousness _____																			
INJURED PERSONS	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Veh</th><th>Age</th><th>Sex</th><th>Race</th><th>Cl.</th><th>Name</th><th>Street or RFD</th><th>City</th><th>State</th></tr> </thead> <tbody> <tr> <td><u>P</u></td><td><u>28</u></td><td><u>F</u></td><td><u>W</u></td><td><u>A</u></td><td><u>Katherine C. Porter</u></td><td><u>718 Flower Dr.</u></td><td><u>City</u></td><td><u>State</u></td></tr> </tbody> </table> <p style="text-align: center;"><u>(Died 12-4-20XX-1 5:00 P.M.)</u></p>		Veh	Age	Sex	Race	Cl.	Name	Street or RFD	City	State	<u>P</u>	<u>28</u>	<u>F</u>	<u>W</u>	<u>A</u>	<u>Katherine C. Porter</u>	<u>718 Flower Dr.</u>	<u>City</u>	<u>State</u>
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<u>P</u>	<u>28</u>	<u>F</u>	<u>W</u>	<u>A</u>	<u>Katherine C. Porter</u>	<u>718 Flower Dr.</u>	<u>City</u>	<u>State</u>												
(Include fatally injured)																				
SKETCH	<div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p style="text-align: center;">CROSSWALK</p> </div> <div style="flex: 1; padding-left: 20px;"> <p>Injured taken to <u>City Hosp.</u></p> <p>Describe what happened: <u>#1 was south bound on Mettis after turning left from Kirby. He then struck pedestrian approx 30' south of pedss. crosswalk. #1 said he didn't see pedestrian until after he struck her. Witness had been in car just in front of #1 and saw pedss running across street westbound. Witness did not see actual contact.</u></p> <p><u>12/2/XX-1 witness called station and said pedss was in crosswalk</u></p> <p>Tire impressions prior to impact: No. <u>16'4"</u> No. 2 _____</p> <p>Distance of travel after impact: No. 1 <u>SAME</u> No. 2 _____</p> </div> </div>																			
WITNESSES	Name <u>Juanita L Willard</u> Address <u>1010 W. Kirby #15</u> City _____ Name <u>Yucky G. Willard</u> Address _____ City _____ Name <u>Mrs. Marilyn Kahn</u> Address <u>1910 Elder Lane</u> City _____																			
Arrests:	Name _____ Charges: _____ (Cit. No.) _____ Name _____ Charges: _____ (Cit. No.) _____																			
Sign Here	<u>Michael Brauch</u> 7319 _____ City _____ Officer's rank and title _____ Number _____ Department _____ Date of report <u>11/30/XX-1</u>																			

City Case No. _____ Authority for removal of vehicles.

Veh. 1 _____

Zone No. _____ Veh. 2 _____

Tract No. _____

If city vehicle or prop. dom. give name of liability ins. co. _____

Veh. 1 _____ Remarks: _____

Veh. 2 _____

POLICE ACTIVITY

Time Notified of Accident 11/30/XX-1 3:28 p.m.

Time Arrived at Scene 11/30/XX-1 3:31 p.m.

Source of information: _____ (Officer at scene, drivers contacted station, etc.)

ROADWAY FEATURE (Check if applicable)

2 Bridge or Underpass

3 Driveway

4 Alley Intersection

5 Intersection of Two Roadways

6 Non-Intersection Median Crossover

7 End or Beginning of Divided Highway

LOCALITY (Check one)

8 Business

10 Residential

11 School & Playground

12 Open Country

FIXED OBJECT STRUCK (Check first struck only)

1 Tree

2 Utility Pole

3 Fence or Fence Post

4 Guard Rail or Guard Post in Median

5 Guard Rail or Guard Post on Shoulder

6 Bridge

7 Underpass

8 Traffic island, curb, or median

9 Sign or Sign Post

10 Other Object

11 No object involved

ROAD CHARACTER (Check one)

1 Straight road—level

2 Straight road—hillcrest

3 Straight road—on grade

4 Sharp Curve—level

5 Sharp curve—hillcrest

6 Sharp curve—on grade

7 Other curve—level

8 Other curve—hillcrest

9 Other curve—on grade

ROAD CONDITION (Check one)

1 Dry

2 Wet

3 Oily

4 Muddy

5 Snowy

6 Icy

TRAFFIC CONTROL (Check one or more)

1 Stop Sign

2 Yield Sign

3 Stop and Go Signal

4 Flashing Signal with Stop Sign

5 Flashing Signal without Stop Sign

6 R. R. Gate and Flasher

7 R. R. Flasher

8 Officer

9 Other Device

10 No Control Present

11 Control not operating properly

12 Control not visible or legible

ROAD DEFECTS (Check one)

1 Loose material on surface

2 Holes, deep ruts

3 Low shoulders

4 Soft shoulders

5 Other defects

6 Road under construction

7 No defects

CONSTRUCTION (Check one)

1 Concrete

2 Smooth Asphalt

3 Coarse Asphalt

4 Gravel

5 Dirt or Sand

6 Other (Specify) _____

LIGHT CONDITION (Check one)

1 Daylight

2 Dusk

3 Dawn

4 Darkness (street lighted)

5 Darkness (street not lighted)

WEATHER (Check one)

1 Clear

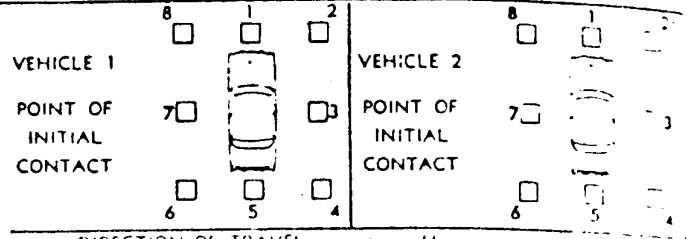
2 Cloudy

3 Raining

4 Snowing

5 Fog

6 Sleet or Hail



DIRECTION OF TRAVEL

VEH. 1 N E S W ON Mattis

VEH. 2 N E S W ON _____

VEHICLE TYPE

Vehicle 1 2

1 Car House Trailer Trailer

2 Taxicab

3 Truck—2 axes

4 Truck—3 axes

5 Truck Tractor and Semi-Trailer

6 Truck and Trailer

7 Bus (Specify) _____

8 Other (Describe) _____

9 Emergency Vehicle

VEHICLE CONDITION (Check one or more)

Vehicle 1 2

1 Defective brakes

2 Defective headlights

3 Defective rear lights

4 Defective steering

5 Defective tires

6 Other defective equipment (Specify) _____

7 Not known if defective

8 No defects detected

VISION OBSTRUCTION (Check one)

Driver 1 2

10 Windshield or windows

11 Buildings, signs, bushes, etc.

12 No vision obstruction

Posted speed limit _____ mph

Speed of vehicle 1 _____ mph

Speed of vehicle 2 _____ mph

VIOLATION INDICATED (Check one or more for each driver)

Driver 1 2

1 Exceeding stated limit

2 Failed to yield right of way

3 Drove left of center

4 Improper overtaking

5 Passed stop sign

6 Disregarded traffic signal

7 Followed too closely

8 Made improper turn

9 Improper or no signal

10 Improper parking location

11 Other improper driving (Describe) _____

12 No violation indicated

WHAT DRIVERS WERE DOING BEFORE ACCIDENT (NON-MOVING Vehicles)

Driver 1 2

10 Stopped in Travel Lane

11 Parked out of travel lanes

12 Parked in travel lanes (MOVING Vehicles)

1 Going straight ahead

2 Changing Lanes or Merging

3 Passing

4 Making right turn

5 Making left turn

6 Making U turn

7 Backing

8 Slowing or Stopping

9 Starting in Roadway

10 Parking

11 Leaving Parked Position

12 All Other

WHAT PEDESTRIAN WAS DOING (Check one)

1 Crossing at intersection

2 Crossing not at intersection

3 Coming from behind parked Vehicle

4 Walking in roadway with traffic

5 Walking in roadway against traffic

6 Getting on or off vehicle

7 Standing in roadway

8 Working in roadway

9 Playing in roadway

10 Lying in roadway

11 Other in roadway (Specify) _____

12 Not in roadway

APPARENT PHYSICAL CONDITION

Driver 1 2 or PED.

1 Ill

2 Fatigued

3 Asleep

4 Other Physical Impairment

5 Restriction not Complied with

6 Normal

7 Condition not known

APPARENT SOBRIETY

10 Had not been drinking

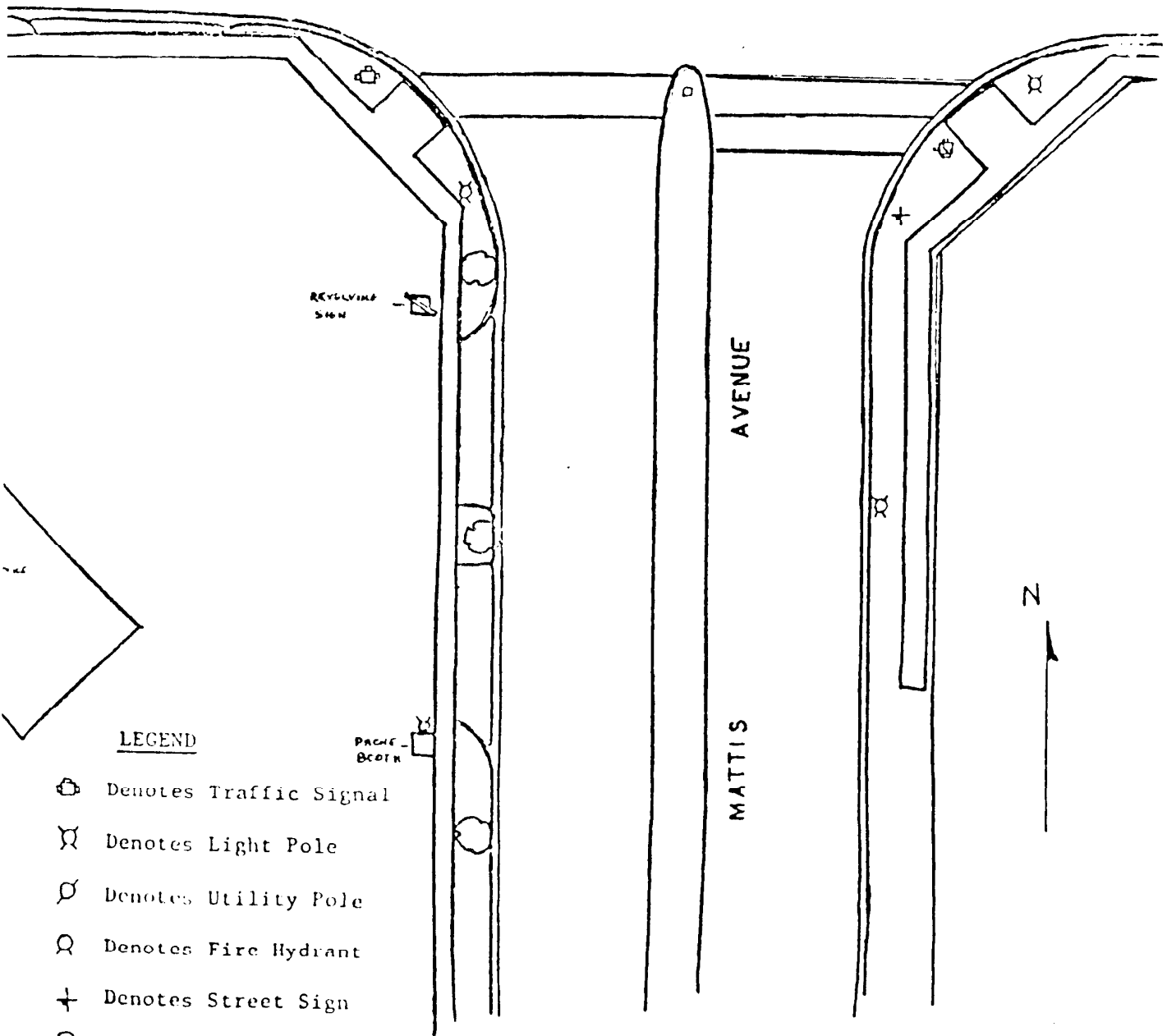
11 Drinking—Ability impaired

12 Drinking—Unable to determine impairment

13 Chemical test given

DRAWING OF INTERSECTION

KIRBY



LEGEND

- ⊕ Denotes Traffic Signal
- ⊗ Denotes Light Pole
- ⊙ Denotes Utility Pole
- ⊚ Denotes Fire Hydrant
- ⊕ Denotes Street Sign
- ⊕ Denotes Tree

RECYCLING SIGN

PAGE BOOTH

AVENUE

MATTIS

N

Statement of Juanita Willard

I, Juanita Willard, do declare:

On November 30, 20XX-1 at approximately 3:30 p.m. at the corner of Kirby and Mattis, I was stopped on the west side of Kirby waiting for the light to change to green. Mr. Sutton was in the left hand lane on the opposite side. The light changed to green and Mr. Sutton waited until I had crossed. With the light still green he turned south on Mattis. I actually didn't see him hit Ms. Chavez-Porter but he could not have been going fast because I was only a few feet from the intersection when my daughter said: "Mother, I think someone has been hit." We immediately turned around and went back to the accident.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1st day of December 20XX-1 at Euphoria City, County of Ceaser, State of Euphoria.

Juanita Willard
Juanita Willard

This statement was taken by defendant's investigator, D. Street, at Juanita Willard's home at 8:30 p.m. on November 30, 20XX-1.

Statement of Victoria Gonzalez Willard

I, Victoria Gonzalez Willard, do declare:

As I was coming home from school on November 30, 20XX-1, about 3:30 p.m.. My mother and I were going east on Kirby Avenue. We were stopped at the intersection and Mr. Sutton was on the opposite side in the left lane ready to made a left turn. We crossed the intersection and he waited for us to cross then proceeded to turn the corner. Ms. Chavez-Porter was about 20 feet south of the crosswalk headed towards the west. She had stepped off the median into the path of Sutton's vehicle. She was a little ways on the street when she was struck. I saw her purse fly in the air and Mr. Sutton put on his brakes.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 1st day of December 20XX-1 in Euphoria City, County of Ceaser, State of Euphoria.

Victoria Gonzales Willard

Victoria Gonzalez Willard

This statement was taken by defendant's investigator, D. Street, at Victoria G. Willard's home at 8:30 p.m. on November 30. 20XX-1.

Statement of Marilyn Kahn

1. My name is Marilyn J. Kahn. I live at 1910 Elder Lane, Euphoria City, Telephone 999/972-1213.
2. On November 30, 20XX-1, at approximately 3:20 p.m., I was driving my car and was stopped in the easterly northbound lane on Mattis Avenue at the intersection of Mattis Avenue and Kirby Avenue in Euphoria City. The light had turned yellow as I approached the intersection and I came to a complete stop with the front of my car just south of the crosswalk.
3. Just as I stopped, a small boy ran across the street from the west to east and barely avoided being struck by a car making a left turn from Kirby on to Mattis heading south. The boy came on across, and I heard the crossing guard who was standing on the southeast corner of the intersection speak to the boy and say something to the effect that "You have got to watch for cars." I then glanced back up at the light and my gaze went to the left where I saw a young woman with dark hair dressed in a white blouse, blue jacket, blue skirt and beige shoes starting to cross the street.
4. At that time, the young woman was walking at a normal gait and was not running. She was definitely in the cross walk and I saw her take two or three steps. I then glanced back up at the light and at that time I heard a thud. I looked up and saw the young woman flying through the air and then land with arms outstretched on the front of the truck. She then went backward as if doing a backward somersault and went under the truck. At that time I thought to myself "My God, stop, don't run over her again."
5. The truck driver appeared to be looking around immediately after the impact as though looking to see what he had hit. The truck stopped at a point approximately 50 or so feet south of the south line of Kirby. At the point where the truck stopped, the young woman was almost entirely underneath the truck. I definitely heard the thud before I heard the sound of any brakes shrieking. At the time of the thud, the front of the truck was about even with the front of my car and was not completely straightened out from making the left turn.
6. The sun at the time of the occurrence was extremely bright and was coming from a southwesterly direction, and I had to shade my eyes when I looked back to the scene after the truck came to a stop.
7. After the truck stopped, a man ran out of the station and the driver of the truck got out and went around to the front of the vehicle.

8. I do not know the Chavez-Porter family, Mr. Sutton, the driver of the truck, or anyone at Shrackle Construction Co.

9. I stayed at the scene for a couple of minutes and then went to the beauty salon at the Lincolnshire Shopping Plaza.

10. The following morning at approximately 8:30, I read the news in the Euphoria Gazette which reported that the young woman was running and was approximately 30 feet south of the cross walk. I then telephoned the police and advised them that I had witnessed the occurrence and that the young woman was in the crosswalk and was not running.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 4th day of December 20XX-1 at Euphoria City, County of Ceaser, State of Euphoria.


Matilyn J. Kahn

Statement of James Miller

December 12, 20XX-1

I am the owner operator of Jim Miller's Texaco,
1601 S Mattis, Euphoria City - I was working at the station
on 11-30-XX-1.

At approximately 3:30 p.m. on 11-30-XX-1, I was looking out
the ^{North} west bay of my station when I saw a dark haired
woman wearing a dress walking east on the south sidewalk
of Kirby Avenue. I looked at an employee to talk when I heard
a thump. I looked out and saw a pickup truck carrying a
body on the front of it. I sent an employee out to see if he
could be of help while I called the police and an ambulance.
After calling the police I went out to see if I could be of
help and saw the same woman that I'd seen earlier
walking east on Kirby Avenue on the pavement.

Witness Joseph Lucey
Dec 12, 20XX-1

Signed James Miller

Editor's Note: Miller's station is located on the southwest corner of Kirby and Mattis. This statement was taken by Joseph Lucey, an insurance adjuster for defendant, at Miller's station on December 12, 20XX-1 at about 11:00 a.m. The statement was written by Mr. Lucey. The signature is Miller's and the correction is also in his handwriting.

Statement of Alice Mallory

I am a school crossing guard at the intersection of Kirby Avenue and Mattis Street, Monday through Friday between the hours of 2:30 p.m. and 4:30 p.m.. At about 3:25 p.m., on the afternoon of the accident, I was standing at the crosswalk on the southeast corner of the intersection.

I noticed a young woman with a white hat and white flowered dress approaching me from the east. She was not walking directly towards me, but about 15 feet to the side of me, away from the curb. I stopped a small boy, who had crossed without my assistance, to give him a warning. As I was looking up, I heard the impact of the accident. The young woman never walked to the crosswalk where I was standing.

Alice Mallory

Alice Mallory

CORONER'S INQUEST

STATE OF EUPHORIA

)

Euphoria CITY, Euphoria

)

ss.

COUNTY OF CEASER

)

December 11, 20XX-1

In the Matter of

)

)

KATHERINE CHAVEZ-PORTER,

)

)

)

)

Deceased.

)

REPORT OF THE PROCEEDINGS

of a

CORONER'S INQUEST

Over the body of

KATHERINE CHAVEZ-PORTER

Conducted by

Charles W. Wilson Coroner

Ceaser County, Euphoria

at

Ceaser County Court House, Euphoria City, Euphoria

CORONER: Ladies and gentlemen, this is an Inquisition into the death of KATHERINE CHAVEZ-PORTER, age 28, who was a graduate student at the University of Euphoria, her home address was 718 Flower Drive in Euphoria City. She died at City Hospital on December 4, at 5:00 p.m., from injuries, head injuries, she received as a result of being struck by a pick-up truck at about 3:28 pm, on a city street in Euphoria City, Ceaser County. As near as I can tell, it happened on Mattis Avenue just south of Kirby about 52 feet south of the Kirby intersection and about 30 feet south of the sidewalk that she should have crossed on. And she apparently was running, and we have one witness here tonight that we'll call on who investigated this; Officer Michael Brach, if you will come forward, please.

MICHAEL BRACH, called as a witness herein by the Coroner, was by him first duly sworn, by him examined, and testified as follows, to wit:

Q. Would you state your name?

A. Michael Brach.

Q. And your occupation?

A. Police Officer for the Euphoria City Police Department.

Q. And on Nov. 30, did you investigate an accident on Mattis Avenue just south of Kirby?

A. Yes, sir, I did.

Q. And I understand that you are not assigned especially to traffic work but you were on patrol and responded to a call.

A. That's right.

Q. What was the weather that day, was it clear, or --

A. Yes, it was clear.

Q. Pavement dry?

A. The pavement was dry. The sun was shining.

- Q. And is that a four-lane road where this happened? In other words, could two cars be going south and two north at that particular spot?
- A. Yes, sir, they could.
- Q. With a median in between them?
- A. With a median in between them.
- Q. Now, how wide is that median, do you have any idea?
- A. No, I don't sir.
- Q. What direction was she traveling, from east to west or west to east?
- A. I have conflicting reports on that. I have two people who state that she was eastbound and one that says she was westbound.
- Q. This pick-up truck that was involved in this, what was the name of the man who owned and drove it?
- A. A Charles T. Sutton.
- Q. And what -- was he going straight ahead or had he just made a turn off of Kirby?
- A. He was making a left turn from Kirby on to Mattis, South Mattis.
- Q. And could he have been traveling at any excessive rate of speed?
- A. I don't believe so.
- Q. In that distance it would be pretty hard, I believe, the distance that was traveled.
- A. Yes, sir.
- Q. Now, did he say whether he saw this lady or not?
- A. No sir, he did not see her at all.
- Q. There are stop lights at that particular intersection?
- A. Yes, sir.

- Q. Did he have the green light or did he stop on the -- did he have the stop light and he started from a stop?
- A. He had the green light, had to wait for one car to pass before he made the turn.
- Q. Do you know what color clothing she was wearing?
- A. I believe she had on a blue skirt with a blue jacket and a white blouse.
- Q. Was she still at the scene when you arrived?
- A. Yes, sir.
- Q. And how far away were you when you received your call to go to the scene?
- A. I was in the 900 block of West Springfield Street when they directed me to the accident scene.
- Q. You were not too far away, then?
- A. No, sir.
- Q. And she was taken by ambulance to City Hospital at that time?
- A. Yes, sir.
- Q. Now, the driver of the pick-up truck had a valid driver's license, I presume?
- A. Yes, sir.
- Q. And there were no restrictions.
- A. No, sir.
- Q. And there was no one else hurt in this accident?
- A. No, sir.
- Q. Was there any evidence of any alcoholic beverages being consumed by either party?
- A. No, sir.
- Q. And there was just the party in the truck, the driver of the truck?
- A. Yes, sir.

- Q. And what is his occupation, do you happen to know that?
- A. I believe he works for a contractor.
- Q. Did he have work south of where this happened, going on at the time, or do you know that?
- A. I don't know where he was headed for, sir.
- Q. Now the pedestrian did not cross at the pedestrian crosswalk, is that true?
- A. I have two witness who say that she didn't and I have another two witnesses who say that she did.
- Q. Is there any evidence -- was there any evidence as to where she was -- the point of impact, did you ever find out approximately where in the street that was?
- A. I was unable to determine that. I looked for broken glass, other items, but there was none.
- Q. Would she have had any occasion to have been south of that intersection? Do you know where she had been or where she was going?
- A. I don't know, no. She lived west of that intersection and I have no idea what her travels were.
- Q. Did she have any children in school?
- A. I don't believe she had any children at all.
- Q. There is a school on up there as I understand.
- A. Yes, sir.
- Q. Elementary school. Do you have anything further you would like to add?
- A. To clear up the witnesses on the accident. At the time I made out the report that you are reading from right there, I only had three, and two of them placed Ms. Chavez-Porter out of the crosswalk and south of the intersection. However, the next day, when the

newspaper account of the accident came out, I had another lady call in and state that she saw it and this was wrong. And I've taken statements from her and the other witnesses there, plus the fact a gas station attendant saw her shortly before the accident. We took a statement from him, also.

Q. And he said that she was in the crosswalk?

A. Yes, sir.

Q. And what is the name of the gas station attendant and his address, do you have that?

A. That's Jim Miller's Texaco Station at 1601 South Mattis. And this was Jim Miller, himself, that gave you this statement? Yes, sir.

Q. And the other statement was given by whom?

A. A Marilyn J. Kahn. She lives at 1910 Elder Lane, that's E-l-d-e-r, in Euphoria.

Q. Were either one of these people acquainted with Mrs. Chavez-Porter?

A. As far as I know, no sir.

Q. Now, the persons who gave you the statements that she was not in the crosswalk, what were their names?

A. This was Mrs. Kahn, and Ms. Mallory.

Q. And where do they live and where were they--

A. I beg your pardon, my mistake, I have to find my other statements. It was Victoria Gonzalez Willard and Alice Mallory.

Q. Where was Victoria Willard when this accident happened, do you know that?

A. She was in a car that was driven by her mother, Ms. Juanita Willard, that was eastbound on Kirby at the time of the accident.

Q. And was she west of the stop light or east of the stop light?

A. At the time of the accident she would have to be east of the stop light, because it was --

- Q. She would have been looking back, then?
- A. Yes, sir.
- Q. Isn't that a little strange for a person to be looking -- what age person was that.
- A. Fifteen years old.
- Q. That was the only person who put her outside the crosswalk, right?
- A. No, sir.
- Q. Who was the other person?
- A. Alice Mallory, the crossing guard.
- Q. Where was she when this accident happened?
- A. On the southeast corner of the intersection.
- Q. Did she see the deceased before the accident?
- A. Yes, sir
- Q. Where was she (the deceased)?
- A. Approaching Ms. Mallory but approximately 15 feet from the curb.
- Q. Did Ms. Mallory escort Ms. Chavez-Porter across the street?
- A. No, sir.
- Q. The other two people are of age?
- A. Yes, sir.
- Q. And the person in Jim Miller's Oil Station would be looking almost directly across the intersection --
- A. That is correct.
- Q. (continuing) -- from the oil station. Where was he in the oil station area, do you know?
- A. He was at the western--or northwest bay area of the gas station at the time that he saw Mrs. Chavez-Porter.

- Q. That would put him almost in a direct line with the cross walk?
- A. Approximately.
- Q. (continuing) -- more so than in the south bay, as I understand that oil station.
- A. That's correct, sir.
- Q. Now, the other person, where were they?
- A. She was at the stop light facing north on Mattis at Kirby waiting for the light to change so she could go on through the intersection.
- Q. In other words, she was south of Mrs. Chavez-Porter when she would go across the crosswalk, is that correct?
- A. That is correct.
- Q. In other words, this first report that was written could conceivably be wrong?
- A. That's correct, sir.
- Q. That she probably was in the cross walk, to the best of your knowledge at the present time?
- A. I believe so.
- Q. From the witnesses you have talked to since that time?
- A. Yes, sir.
- Q. Now, have you talked to any other witnesses who saw this?
- A. No, sir, these are the only ones.
- Q. Is there any obstruction in that particular intersection that would cause a driver not to see a person?
- A. No, sir.
- Q. What year pick-up was this that struck Ms. Chavez-Porter?
- A. I believe it was a 20XX-9 Mazda.

Q. Would that have -- did you observe whether the windshield was clean or dirty and is the visibility as good on a 20XX-9 as it would be on a later model, we'll say?

A. I believe the visibility is as good as on a later model and the windshield was clean.

Q. Do any of the jurors have any questions they'd like to ask Officer Brach at this time? Do you have anything further you would like to add?

A. No, sir.

Q. On behalf of the People of this County and the State of Euphoria, I'd like to thank you for doing a fine job of investigation. You're excused.

(Witness excused)

CORONER: Members of the jury, that concludes the witnesses who we have in this particular death. I might remind you there is one of three ways that you can arrive at a verdict, by accident, suicide, or homicide; and if you will retire out this door and to your right to the library and render to me as Coroner of this County a verdict, I will certainly appreciate it.

THEREUPON, the jury retired, and thereafter returned, and the following proceeding were had:

CORONER: Members of the jury, have you reached a verdict?

FOREMAN: Yes.

CORONER: And what is that verdict, Mr. Foreman, just the part you have written?

(Jury's Verdict - Extract)

Death by accident.

CORONER: And this is signed by all the jurors?

FOREMAN: All the jurors.

CORONER: Thank you. That concludes this Inquisition.

Deposition of Charles Sutton - Excerpts

These excerpts are from the official transcript of the deposition of Charles T. Sutton, taken March 20, 20XX. Present were Charles T. Sutton; counsel for the plaintiff, Tracey Chapman; counsel for the defendant, M. Martin; and court reporter, Victor Fuentes.

Q. Would you please state your name, age and address.

A. Charles T. Sutton, 1701 West Johnston, Euphoria City, thirty-two.

Q. What is your business or occupation?

A. I am unemployed right now. When I can, I work for Shrackle Construction Co. They do excavations. I guess you'd say I'm a laborer.

Q. And, is your work limited solely to excavation?

A. Yes.

Q. All right. And how long have you been so employed?

A. Since 20XX-3 - September of 20XX-3.

Q. All right. And, what are your duties?

A. Well, I do general labor on the excavating crews. Sometimes I also check on other jobs or buy supplies, you know, off the job site.

Q. What time did you arise on the morning of November 30, 20XX-1?

A. Six forty-five.

Q. Is that your usual and customary time of arising?

A. Yes.

Q. Approximately how many hours sleep had you had the night before?

A. Seven.

Q. Were you taking any medication or drugs at that time?

A. No.

Q. How was the state of your health on that date?

- A. Fine.
- Q. Would you briefly describe for us what you did that day prior to 3:00 p.m.?
- A. First I went to the Shrackle office.
- Q. Where is that located?
- A. On Route 45 in Sommers Township. I got my orders and started and then went to the corner of John and Holiday Park and worked at that job for the remainder of the day.
- Q. All right. And, what was that job?
- A. We were installing a sewer and putting the finishing touches on a sewer we had installed there.
- Q. All right. And, how long did you stay at that job?
- A. Until approximately 2:30 p.m.
- Q. All right. Then, where did you go?
- A. To Euphoria Builders Supply.
- Q. Where is that located?
- A. At 30 East John, Euphoria City.
- Q. What, then, did you do?
- A. Picked up some material, talked to the - some of the people in the office there and one of my men came in. I talked to him for a few minutes and then proceeded to Greenbriar Manor.
- Q. All right. Now, you, at the time of this occurrence, you were going to Greenbriar Manor?
- A. That's right.
- Q. That is located on South Mattis Avenue?
- A. That's right.
- Q. How did you proceed from 30 East John Street to the intersection of Kirby and Mattis?

- A. As I recall, I left Builders Supply and went to First Street and turned south to Kirby, proceeded straight across Kirby.
- Q. Okay. And approximately what time did you leave Builders Supply?
- A. That would be difficult for me to say. I would say around three o'clock. I don't--I can't say.
- Q. And, about what time did you arrive at the intersection of Mattis and Kirby?
- A. That, I do not know for sure.
- Q. Did you go directly?
- A. Yes.
- Q. Did you have a job in progress at Greenbriar Manor?
- A. Yes.
- Q. What was the nature of that work?
- A. We were doing some excavating work for an inside sewer and addition they're putting on.
- Q. Was anyone with you at that time?
- A. No.
- Q. You have a sister who lives near Greenbriar Manor, don't you?
- A. Yes, actually she lives in the Greenbriar Manor subdivision.
- Q. Were you going to see her on that day?
- A. I thought I might stop by there after I checked on the excavating job.
- Q. Do you often visit your sister?
- A. Sure.
- Q. During the working day?
- A. Not usually, but that day was something special because she was having some problems. Her husband had walked out on her that morning.
- Q. Had you called your sister before going over there?

- A. I had talked to her on the phone in the morning and told her I would stop by in the afternoon for a few minutes.
- Q. Had you said what time?
- A. I guess I had mentioned between 3:00 and 4:00 in the afternoon.
- Q. Had you told her how long you were going to stay?
- A. I didn't know how long. I suppose I would stay as long as it took me to calm her down. She was pretty upset.
- Q. Were you upset by her problems?
- A. I guess I was a little, but I was kind of used to her problems. Her husband had walked out a couple of times before and always came back. I figured this fight would end the same way.
- Q. Did it?
- A. They are still separated.
- Q. As you got to the intersection of Mattis and Kirby, do you recall whether the traffic light was red or green in your favor?
- A. Green in my favor.
- Q. And, what were the traffic conditions at that time?
- A. I would say moderate traffic. The intersection was busy.
- Q. Did you come to complete stop at any time after you entered the intersection, itself?
- A. No.
- Q. Did you have to wait for any traffic to clear before you made your left turn?
- A. I slowed for a vehicle that went by.
- Q. Now, you were proceeding west on Kirby Avenue and were turning south on to Mattis?
- A. Yes.
- Q. And, you would have been turning left?

A. Yes.

Q. From where did you start your left turn?

A. I'm sorry, I don't understand.

Q. Were you in the southernmost, west-bound lane of Kirby at the time you started your turn?

A. Yes, I was, yes.

Q. And, did you make a gradual turn or sharp turn?

A. I made what I would consider a gradual turn to the east lane of Mattis - south-bound lane of Mattis.

Q. And, how many vehicles did you have to wait on to clear before you could complete your turn?

A. None.

Q. I believe you testified that you waited for one car to pass?

A. That - to complete my turn, you mean? I waited on one car as I was approaching the intersection. The vehicle - I slowed for that to clear the intersection.

Q. All right. That was just the one car?

A. Yes.

Q. Okay. Did you observe any school children at or near the intersection?

A. Yes.

Q. And, about how many children did you observe?

A. I believe three.

Q. All right. Where were they located?

A. They were on the corner of - it would have been the south -- it would have been the southwest corner of the corner -- where the Texaco station is.

Q. All right. They would have been on the southwest corner, then next to the Texaco station?

A. Yes.

Q. All right. And, were they standing or were they walking?

A. Standing.

Q. All right. Do you know what direction they were facing?

A. No.

Q. Did you observe a school crossing guard at that time?

A. Yes.

Q. Where was she located?

A. She was standing on the other corner.

Q. On the southeast corner?

A. Yes.

Q. Did you see any other pedestrians at that time?

A. No, sir.

Q. Do you know what color clothes the children had on?

A. No.

Q. Do you know the names of the children who you saw?

A. No.

Q. Mr. Sutton, would you describe for us, please, what happened from the time you approached the intersection until the actual impact occurred?

A. Well, I approached the intersection and made the turn and there was -- there were cars coming from the west and made the turn and there -- and the impact and that was it.

Q. Do you know approximately where the impact - the first impact occurred?

MR. MARTIN: With relation to what?

THE WITNESS: Yes.

Q. With relation to the south curbline of Kirby Avenue.

A. I would say that -- no. I don't know.

Q. Did you see Mrs. Chavez-Porter at any time prior to the impact?

A. No, sir.

Q. Did you apply your brakes at any time prior to the impact?

A. No, sir.

Q. What was the condition of your automobile at that time?

A. Fine.

Q. What type of a vehicle were you driving?

A. 20XX-9 Mazda.

Q. And, what type of license tags did you have on the truck?

A. Standard pick-up truck type.

Q. And, those are subject to inspection by the State of Euphoria?

A. Yes, they are.

Q. What is the date of the last inspection prior to November 30, 20XX-1.

A. I would have to check my records to find out.

Q. What was the condition of the tires on your vehicle at that time?

A. They were new - relatively new. They were purchased - I could check the date for you, but they were purchased not very long before. They had, I think, less than five thousand miles on them.

Q. And, had you had the brakes worked on at any time within the preceding six months?

A. Adjusted by myself, but that's all.

Q. And, would you characterize them as being in good working order?

A. Yes.

- Q. What was the condition of the pavement?
- A. Dry.
- Q. And, the weather conditions?
- A. Clear.
- Q. Was the sun shining?
- A. Yes.
- Q. What did you do after--immediately after the impact, when you were first aware that your vehicle stopped something-- struck something?
- A. Stopped--applied the brakes.
- Q. Were you able to observe anything at that time as to whether Mrs. Chavez-Porter went immediately under your truck or was thrown up in the air?
- A. No, sir, I wasn't.
- Q. Do you know approximately how far from the south curblineline of Kirby that your vehicle came to a rest?
- A. No, sir, but the officer has that measurement.
- Q. Do you know your approximate speed as you were in the process of making your turn?
- A. No, I don't. I would say around fifteen miles an hour.
- Q. As you were making your turn, did you observe any automobiles stopped on Mattis waiting for the light to turn?
- MR. MARTIN: Where?
- MR. MARTIN: Either south-bound or northbound.
- THE WITNESS: Would you repeat that? I'm sorry.
- Q. As you were making your turn, did you observe any vehicles stopped on Mattis waiting for the light to turn in their favor?
- A. Yes, I believe there were vehicles in the southbound lane of Mattis, waiting to turn, yes.

Q. All right. did you observe any vehicles in the north-bound lane of Mattis?

A. No, I did not.

Q. Had you consumed any alcoholic beverages on the date of November 30, 20XX-1?

A. No, sir.

Q. On that date were you covered by a policy of liability insurance?

A. No.

Q. Did you file personal income tax returns for the years 20XX-3 through 20XX-1?

A. Yes.

Q. And, did you file those either in Euphoria City at the proper time or in Ceaser City at the proper time?

A. Yes.

Q. What was your approximate adjusted gross income?

MR. MARTIN: You don't need to answer that. You can wrestle me for that over at the courthouse.

MS. CHAPMAN: I have no further questions.

EXAMINATION BY MR. MARTIN (Attorney for the defendant)

Q. Mr. Sutton, just to clarify some matters and pin it down here in the deposition, what was the first indication of the presence of Ms. Chavez-Porter that you had?

A. The impact.

Q. Was it a noise?

A. Yes.

Q. Can you tell us or do you remember where the front of your vehicle was with relation to the sidewalk on the south side of Kirby when you heard that sound?

A. I was in the eastern lane south-bound on Kirby or on Mattis, rather.

Q. And, can you tell us with relation to that sidewalk where the front of your vehicle was?

A. I was south of the sidewalk, I believe.

Q. And, when you say you were in the eastern lane, can you tell us is there a median strip?

A. Yes.

Q. In Mattis?

A. Yes.

Q. South of that intersection. Where was your vehicle with relation to that median strip?

A. I would say about four feet over the median strip.

Q. Four feet to the west of it?

A. Yes.

Q. Where did the sound of the impact come from with relation to the front part of your vehicle?

A. Left front.

Q. What did you do then?

A. Applied the brakes.

Q. When you say you applied the brakes, can you--what did you do?

A. I put force on the brake pedal.

Q. What kind of force?

A. As much as I could.

Q. What did the vehicle do?

A. Stopped.

Q. What did you do?

A. Jumped out.

Q. What did you see?

A. Well, after--I moved around the vehicle and saw Ms. Chavez-Porter lying under the --

Q. How was she lying under the truck?

A. Almost straight, with her head under the front bumper and her feet straight back.

Q. Was her head north or south?

A. South.

Q. Her feet were north?

A. Yes.

Q. Was her body lying in a north-south alignment with her head south?

A. Yes.

Q. Was she conscious?

A. Yes.

Q. Did you speak to her?

A. I spoke to her.

Q. What did you say?

A. I said, "Where did you come from?"

Q. Did she speak to you?

A. No. No.

Q. What did you do then?

A. Well, the police arrived almost immediately. We got a first aid kit out of my truck and applied a compress to her forehead and then we waited for the ambulance to come.

Q. Did the truck leave skid marks?

A. Yes.

Q. Do you know how long they were or did someone else measure them?

A. The police measured them.

Q. Where was your truck precisely when it stopped with relation to that median strip, again?
How far west of the median strip was it when it stopped?

A. I would --

Q. If you know.

A. I really don't know that.

Q. Only if you know. Did you examine your truck for marks?

A. Yes.

Q. What did you see?

A. There were some marks on the hood.

Q. Where were they precisely?

A. On the left-hand side of the hood near the division between the hood and the bumper - or, the hood and the fender.

MR. MARTIN: I have no other questions.

EXAMINATION BY MS. CHAPMAN (continued)

Q. Mr. Sutton, you mentioned a mark on the left front of the truck?

A. Yes.

Q. Would that be the driver's side or the passenger's side?

A. The driver's side.

Q. Were you at the scene when the deputy coroner arrived and took some photographs?

A. Yes, sir.

Document was thereupon marked Plaintiff's Exhibit No. 1 for identification.

Q. Mr. Sutton, I hand you a photograph which has been marked for purposes of identification as Plaintiff's Exhibit 1 -

A. Yes.

Q. (continuing) - and I would ask that you examine that. Does that photograph truly and accurately depict your automobile as it appeared sometime after 3:30 on the afternoon of November 30, 20XX-1?

A. Yes.

Q. The position the truck is in -- or, the car is in the photograph is not in the same position that it was at the time you initially stopped after the impact, is that true?

A. It should be.

Q. All right. Was your car moved back shortly after the police or the ambulance arrived?

A. Yes. We move it back to--

Q. Was the photograph taken before or after it was moved back?

A. I can't honestly say.

MR. MARTIN: If you don't know, say you don't know. That is the answer.

A. I don't know.

Q. I would call our attention to some dark splotches on the pavement just in front -

MR. MARTIN: I don't think there will be any contest. Obvious to me they moved the car back. Ms. Chavez-Porter isn't under it and I see the blood marks on the pavement, too, and I know the officer will testify that is a blood stain.

Q. All right. Do you recall, Mr. Sutton, whether the wheels on your truck were moved as your truck was pushed back?

A. I don't recall.

Q. You mentioned that as soon as you heard the thud, you applied brakes. Was your foot on the accelerator at the time you heard the impact?

A. I would -- I could not say for sure.

Q. Was it on the brake at the time you heard the impact?

MR. MARTIN: Tell her what your best recollection is.

A. My best recollection is it was on the brake.

Q. Do you recall why it would have been on the brake at the time you heard the impact?

A. Because I was going around the corner and I would have - my best recollection is it was on the brake simply as a precaution when you go around the corner.

Q. I believe you testified that the front of your vehicle was south of the sidewalk at the time you first heard the impact. Is that correct?

A. To the best of my recollection.

MS. CHAPMAN: I have no further questions.

MR. MARTIN: Thank you, Mr. Sutton.

Whereupon the witness was excused.

Deposition of Elmer Z. Shrackle - Excerpts

The following are excerpts from the official transcripts of the deposition of Elmer Z. Shrackle taken March 20, 20XX. Present were Elmer Z. Shrackle; counsel for plaintiff, Tracey Chapman; counsel for defendant, M. Martin; and court reporter, Victor Fuentes.

Examination by Ms. Chapman
(Attorney for Plaintiff)

Q. Would you state your name and address for the record?

A. Elmer Z. Shrackle, 69 West 14th Street, Euphoria City.

Q. What is your business or occupation?

A. I am the owner of Shrackle Construction Company.

Q. Is Shrackle Construction Company a corporation?

A. No, it is a sole proprietorship.

Q. What type of work does Shrackle Construction Company do?

A. Excavation contracting.

Q. Where are most of your job sites located?

A. In the Euphoria City area.

Q. How long have you owned Shrackle Construction Co.?

A. Since 20XX-20.

Q. Do you currently manage the day-to-day business of Shrackle Construction Company?

A. Yes.

Q. How long have you managed the day to day business at Shrackle Construction Co.?

A. Since 20XX-20.

Q. Has Charles T. Sutton ever worked for Shrackle Construction Co.?

A. Yes.

Q. When did you first employ Mr. Sutton?

A. In 20XX-3.

Q. Has he worked for you continuously since 20XX-3?

A. No. He has worked for me on and off since 20XX-3.

Q. In what capacity does Mr. Sutton work for you?

A. As a laborer.

Q. Have you been satisfied with Mr. Sutton's work for you?

A. Yes, he is a good worker and a loyal employee.

Q. Does Mr. Sutton have much responsibility while on a job?

A. Yes, he has almost complete responsibility while on a job.

Q. Do you ever have him purchase supplies for the job on which he works?

A. Yes.

Q. Do you ever have him check on jobs that are being handled by less experienced workers?

A. Yes.

Q. Do you usually provide Mr. Sutton with a company truck during working hours?

A. Yes.

Q. Did you provide him with a truck on the day of the accident?

A. No.

Q. Why not?

A. Because the truck that Mr. Sutton usually used on the job was in the repair shop.

Q. Do you own the truck that Mr. Sutton was driving at the time of the accident?

A. No.

Q. Did you ever own that truck?

A. Yes, but the company sold it to Mr. Sutton when we were getting some newer and larger trucks.

- Q. How long ago did you sell the truck to Mr. Sutton?
- A. About a year before the accident.
- Q. How much did you sell the truck for?
- A. \$5550.
- Q. Did Mr. Sutton use his truck all day long on the day of the accident?
- A. I assume so.
- Q. But you do not know for certain?
- A. That is correct.
- Q. What is Mr. Sutton's normal work day?
- A. From 7 a.m. until 3 p.m.
- Q. Is that normal hours in the excavation business?
- A. Yes.
- Q. Do you ever ask Mr. Sutton to work overtime?
- A. Yes, but most of the time he is free to go at 3 p.m.
- Q. Did you ever ask Mr. Sutton to check on the Greenbriar Manor job?
- A. Yes.
- Q. When?
- A. About a week before the accident.
- Q. Does Shackle Construction Company have an insurance policy?
- A. Yes.
- Q. What is the liability coverage?
- A. \$1,500,000.
- Q. Is Mr. Sutton currently working for Shackle Construction Company?
- A. No, but he still does work for us from time to time when there is work to be done and we are still on good terms

MS. CHAPMAN: I have no further questions. Do you have any?

MR. MARTIN: I have no questions. I guess that terminates the deposition. Thank you,
Mr. Shrackle.

Deposition of Jeffrey T. Chavez Porter - Summary

Jeffrey Chavez-Porter is 31 years of age and is a permanently disabled Veteran. His only sources of income have been from the Veterans Administration and the Social Security Administration.

He married Katherine Chavez-Porter, the deceased, eight years ago. They met at Purdue University, Indiana. Katherine was 28 years old at the time of the accident. She had a bachelor's degree from the University of Wisconsin, a master's degree in Mathematics from the University of Euphoria and was continuing coursework for her doctorate when she died.

Katherine was mathematician working in computer science. While she was a graduate student at Euphoria, she was employed by the University within a group called the Advanced Computation Conference. She was in charge of the linear programming work done on a new computer the group was building, the Nitae 3. She hoped to continue work at the ACC after getting her doctorate in computer science but, as people with her background are very much in demand, she would probably have had many offers, both in academic and industry, once she received her degree.

Katherine and Jeffrey had no children. They had a "fifty/fifty equal partnership" marriage. All their income was pooled and they shared household chores equally.

Deposition of Daniel Sloan - Summary

Dr. Sloan is 42 and a Professor of Computer Science at the University of Euphoria as well as director of the Advanced Computation Conference.

He holds bachelor's and master's degrees from the University of California and a Ph.D. from New York University, all in Applied Mathematics. Before coming to the University, he was in industry for 10 years with Westinghouse and IBM, including a period as manager of Westinghouse's advanced development in its aerospace division. He is a member of the Institute of Electrical and Aeronautical Engineers. In 20XX-15, he was selected for the Federation of Information Processing Society's annual prize for outstanding work in the field.

The Advanced Computation Conference is an inter-disciplinary research unit centering around applications of the computer. As director, he is responsible for all management of the business of the center, including personnel. He is active in recruitment of personnel and, in his capacity as a university professor, in the placement of personnel. He has been director of the Conference for three and one-half years. Before becoming director of the conference, Sloan was director of the Nitae 3 computer project, a predecessor research group.

Sloan has known Katherine Chavez-Porter for 6 years; he was her supervisor during her employment on both the Nitae 3 Project and the ACC. She began as a Research Assistant and progressed to Research Programmer and then Senior Research programmer. She worked only part-time once she resumed her graduate studies at Euphoria.

Sloan's opinion of Katherine's work was very high. He indicated he would have hired her to work with the ACC after she earned her degree. Upon completing her doctorate, Sloan testified Katherine could have earned a starting salary of \$50,000 in an academic position or as much as \$55,000-\$57,000 in industry.

Deposition of Robert W. Glenn - Excerpts

These excerpts are from the official transcript of the deposition of Robert W. Glenn taken April 9, 20XX. Present were Robert W. Glenn; counsel for plaintiff, Tracey Chapman; counsel for the defendant, M. Martin; and court reporter Victor Fuentes.

Examination by Ms. Chapman
(Attorney for Plaintiff)

Q. Would you state your name and address for the record, please?

A. Robert W. Glenn, 221 State Street, Euphoria City.

Q. What is your occupation?

A. I am an associate professor of economics at the University of Euphoria.

Q. Where did you obtain your education?

A. I was awarded a Bachelor of Science degree from the University of North Carolina and a Ph.D. in Economics from the University of Illinois.

Q. At what universities or schools have you been employed in a teaching capacity?

A. I have taught at both the University of Illinois and the University of Euphoria.

Q. How long did you teach at each of these universities?

A. I taught for three years at the University of Illinois and fourteen years at the University of Euphoria where I am currently teaching.

Q. What subjects have you taught?

A. I teach economics and I have taught nearly every course offered by the economics department at the University of Euphoria sometime during my fourteen years at the university of Euphoria, but my area of expertise is labor economics.

Q. Do you teach any graduate courses?

A. Yes, I teach both undergraduate and graduate courses and I direct graduate research.

- Q. Have you conducted research or published any article or books?
- A. Yes, I have conducted a great deal of research which I have analyzed in numerous articles.
- Q. Where have these articles been published?
- A. In various economic journals.
- Q. Could you please name a few of these journals.
- A. *The National Economic Journal, The American Journal of Economic Research, The Economic Quarterly and The American Economic Review.*
- Q. How many of your articles have been published?
- A. About eighteen or nineteen.
- Q. Have you received any grants to conduct research in economics?
- A. Yes, about 8 or 9 research grants since I have been at the University of Euphoria.
- Q. From what institutions did you receive these research grants?
- A. The National Science Foundation, The Social Science Research Council, The Center for Comparative Studies at the University of Euphoria and The Euphoria Law Enforcement Commission.
- Q. Mr. Martin, do you have any questions for Professor Glenn concerning his qualifications?
- Q. Yes, Mr. Glenn, Why did you leave the University of Illinois?
- A. Because I was tired of the cold Illinois winters and my wife and I wanted to move away from Illinois.
- Q. You left the University of Illinois because you were denied tenure, didn't you?
- A. No, I was not denied tenure. I had become very tired with the Economics Department at the University of Illinois and with Illinois in general. I applied to a number of other universities including the University of Euphoria and I withdrew my tenure application at the University of Illinois after I accepted the job offer at the University of Euphoria.
- Q. No further questions at the time.

Examination by Ms. Chapman

Q. Professor Glenn, have you prepared estimates concerning the loss of income to Jeffrey Chavez-Porter due to the death of his wife, Katherine Chavez-Porter?

A. Yes.

Q. What is the total amount of money which you project that Katherine Chavez-Porter would have earned had she not been struck down?

A. I projected that Katherine Chavez-Porter would have earned approximately \$1,921,760.00 over the course of her lifetime if she had taken an academic job and approximately \$2,026,590.00 if she had taken a job in private industry.

Q. How many years of earning potential did you include in your projections?

A. I based my projection upon 31 years of employment, that is, from 20XX until 20XX+32 when Katherine Chavez-Porter would have reached retirement age of 60 years.

Q. How much money did you project Katherine would have earned in 20XX?

A. \$6,560.00

Q. Based upon what information?

A. The \$6,560.00 would have been earned by working one-quarter time for three quarters of the year and one-half time for one quarter of the year at an annual salary of \$21,000. The projections for both frequency of employment and ratio of pay were obtained from Dr. Daniel Sloan of the University of Euphoria.

Q. How much money did you project Katherine Chavez-Porter would have earned in 20XX+1, the first year of full time employment after obtaining her degree?

A. \$45,000.00 if she took an academic job and \$47,500.00 if she took a job in private industry.

Q. Based upon what information?

A. These projections were obtained from Dr. Daniel Sloan of the University of Euphoria. However, I did use a 20XX+1 figure of \$47,500.00 in private industry even though Dr. Sloan contends that she could have earned as much as \$50,000 - 55,000 in 20XX+1 if she had obtained a position in private industry.

Q. What annual rate of increase did you use for computing Katherine's estimated annual income from 20XX+2 through 20XX+30?

A. 2.3% rate of increase.

Q. What did you base that projection upon?

A. The *Humanpower Report of the President*, U.S. Department of Labor and U.S. Department of Health, April, 20XX-1.

Q. Did you determine what the present discounted value would be of the \$1,921,760.00 to \$2,026,590.00 that you projected Katherine Chavez-Porter would have earned?

A. Yes, the present discounted value would have been \$912,050.00 if Katherine had been employed in an academic position and \$1,256,130.00 if she had taken a job in private industry.

Q. How did you arrive at those figures?

A. The discount rate is arrived at by comparing the rate of inflation as measured by the consumer price index with the expected income derived from investment of Katherine Chavez-Porter's projected future earning obtained in the present as measured by the rate of return on long term government securities. I utilized the Consumer Price Index from 20XX-28 to 20XX-2, as reported in the April, 20XX-1 *Humanpower Report of the President* and the rate of return on long term government securities from 20xx-28 to 20XX-2, as reported in the *U.S Board of Governors Report* issued by the Federal Reserve System to obtain the calculations to determine the present discounted value of Katherine Chavez-Porter's income.

Q. Did you determine what deductions should be made from the present discounted value of Katherine Chavez-Porter's projected income to obtain Katherine's net contribution to household welfare?

A. Yes. \$629,314.00 should be deducted if Katherine Chavez-Porter took an academic job and \$866,731 if she obtained employment in private industry.

Q. How did you obtain those figures?

A. Katherine's net contribution to household welfare, that is, what Jeffrey Chavez-Porter will lose monetarily as the result of his wife's death, would consist of her savings, her gifts and contributions, and one-half of the housing expenditures. Based upon information contained in the June, 20XX-2 Bureau of Labor Statistics Report concerning income distribution, the average family of two in the Chavez-Porters' projected income class, savings would average 21% of income, gifts and contributions would average 8% of income and one-half of housing expenditures would average 7% of income. The total income available to the household's discretionary use in any given year would therefore average 36%. This figure might be reduced another 5% to 31% if allowance is made for

domestic help. If the 31% figure is taken as the deceased's projected contribution for household welfare, this would mean that her projected income, discounted to present value, should be reduced by 69%, in order to estimate the net losses to Jeffrey Chavez-Porter caused by her death.

Q. What ultimately did you project would be the net loss of income to Jeffrey Chavez-Porter caused by the death of Katherine Chavez-Porter?

A. If Katherine Chavez-Porter had obtained an academic job, the net loss to Jeffrey Chavez-Porter caused by Katherine Chavez-Porter's death would have been \$282,736.00.00 which is the present discounted value of her projected income, \$912,050.00 minus the withdrawal from gross income of \$629,314.00. If Katherine Chavez-Porter had accepted a job in private industry, the net loss to Jeffrey Chavez-Porter caused by Katherine's death would have been \$389,402.00, which is the present discounted value of her projected income, \$1,256,133.00, minus the withdrawal from gross income of \$866,731.00

Q. Did you prepare a Report in connection with your projections of the net loss of income to Jeffrey Chavez-Porter caused by the death of Katherine Chavez-Porter?

A. Yes.

Q. Professor Glenn, I hand you a document which has been marked for purposes of identification as Plaintiff's Exhibit 2A-E.

A. Yes.

Q. (continuing) ...and I ask that you examine it. Are these the reports that you prepared?

A. Yes.

Q. Would it help explain your testimony if you used Exhibits 2A-E, marked for identification purposed, while testifying?

A. Yes.

Q. Can you briefly describe the contents of the report?

A. Yes, Chart A is the summary of the loss in income from 20XX through 20XX+30, caused by Ms. Chavez-Porter's death. Chart B is Ms. Chavez-Porter's prospective income stream to age 60 in academic and industrial employment at a 2.3% annual rate of increase in income. Chart C is the index of output per person hours in the private economy based upon the April, 20XX-1 *Humanpower Report of the President*. Chart D is the Consumer Price Index and Rate of Return on Long Term Government Securities from 20XX-28 -

20XX-2 based upon the April, 20XX-1 *Humanpower Report of the President* and the 20XX-1 *U.S. Board of Governors Report* from the Federal Reserve System. Finally, Chart E is the income distribution of the average family of two in the Chavez-Porter's projected income group as reported in the June, 20XX-2 Bureau of Labor Statistics Report.

MS. CHAPMAN: I have no further questions. Do you have any?

MR. MARTIN: Yes, Mr. Glenn, have you ever appeared before as a witness in a tort case?

A. Yes.

Q. How many times?

A. About ten or eleven.

Q. Have you always appeared as a witness for the plaintiff?

A. No, I appeared once as a witness for the defendant.

Q. Have you been paid each time that you appeared as a witness?

A. Yes.

Q. I have no further questions.

Report re Katherine Chavez-Porter

Robert W. Glenn
Associate Professor of Economics
University of Euphoria
Euphoria City, Euphoria

EXHIBIT 2A

Chart A

Summary of Economic Service Losses
Katherine Chavez-Porter, 20XX to 20XX+30

Appraisal: 20XX to 20XX+30 (31 years)

	<u>Academic</u>		<u>Industrial</u>	
	Nominal Amount in 000's	Present Discounted Value in 000's	Nominal Amount in 000's	Present Discounted Value in 000's
A. Income (in 000's)				
20XX	6.56	6.56	6.56	6.56
20XX+1 to 20XX+30	1,921.76	<u>912.05</u>	2026.59	<u>1,256.13</u>
		918.61*		1,262.69**
B. Withdrawals from Gross Income (69%)**		629.31		866.73
C. Net Loss to Jeffrey Chavez-Porter (A-B)		282.73		389.40

* See Chart B

** See Chart E and Comment

EXHIBIT 2A-E

Chart B

Prospective Income Stream of Katherine Chavez-Porter to Age 60
(Predicted Retirement Age) in Academic and Industrial Employment;
at 2.3% Annual Rate of Increase in Income.* (in thousands)

<u>Year</u>	<u>Nominal</u>		<u>Value at 20XX</u>		<u>Year</u>	<u>Nominal</u>		<u>Value at 20XX</u>	
	<u>Aca.</u>	<u>Ind.</u>	<u>Aca.</u>	<u>Ind.</u>		<u>Aca.</u>	<u>Ind.</u>	<u>Aca.</u>	<u>Ind.</u>
20XX	6.56***	-	6.56	-	20XX+16	63.34	66.80	29.14	30.73
20XX+1	45.00	47.50	42.75	45.12	20XX+17		64.80	68.34	28.51
	30.07								
20XX+2	46.03	48.59	40.95	44.22	20XX+18	66.29	69.91	27.84	29.36
20XX+3	47.09	49.71	40.50	42.75	20XX+19	67.81	71.52	27.12	28.61
20XX+4	48.19	50.85	39.52	41.70	20XX+20	69.37	73.16	26.36	27.80
20XX+5	49.29	52.02	38.45	40.58	20XX+21	70.97	74.85	25.55	26.95
20XX+6	50.44	53.21	37.83	39.91	20XX+22	72.60	76.57	24.68	26.03
20XX+7	51.62	54.44	36.65	38.65	20XX+23	74.27	78.33	24.51	25.85
20XX+8	52.81	55.69	35.91	37.87	20XX+24	75.98	80.13	23.55	24.84
20XX+9	54.02	56.97	34.57	36.46	20XX+25	77.73	81.98	23.32	24.59
20XX+10	55.26	58.28	33.71	35.55	20XX+26	79.52	83.86	22.27	23.48
20XX+11	56.53	59.62	32.79	34.58	20XX+27	81.35	85.79	21.96	23.16
20XX+12	57.83	60.99	32.38	34.15	20XX+28	83.22	87.76	21.64	22.82
20XX+13	59.17	62.40	31.36	33.07	20XX+29	85.13	89.78	20.43	21.55
20XX+14	60.53	63.83	30.87	32.55	20XX+30	87.09	91.85	20.03	21.13
20XX+15	61.92	65.30	30.34	32.00					

* Based upon information in Chart C

** Discount rate + 5% (a conservative estimate, supported by data contained in Chart D)

*** Arrived at by working one-quarter time for three quarters of the year and one-half time for one quarter of the year at an annual salary of \$21,000. all information with regard to present salary and future projections was obtained from Dr. Daniel Sloan of the University of Euphoria.

EXHIBIT 2C

Chart C

Index of Output per Person-Hour, in the Private Economy, Non-Farm, Non-Manufacturing

20XX-28 to 20XX-2

20XX-8 - 100

	<u>Index</u>	<u>% Change</u>		<u>Index</u>	<u>% Change</u>
20XX-28	58.2	-	20XX-14	83.3	3.3
20XX-27	59.2	1.8	20XX-13	86.5	3.9
20XX-26	61.8	4.4	20XX-12	88.7	2.6
20XX-25	65.3	5.7	20XX-11	91.5	3.1
20XX-24	66.4	1.7	20XX-10	93.5	2.2
20XX-23	67.2	1.2	20XX- 9	97.6	4.4
20XX-22	68.9	2.5	20XX- 8	100.0	2.5
20XX-21	70.9	3.0	20XX- 7	101.7	1.7
20XX-20	73.4	3.5	20XX- 6	100.0	-1.6
20XX-19	73.2	-2	20XX- 5	100.9	0.8
20XX-18	75.0	2.4	20XX -4	103.7	2.7
20XX-17	78.0	3.9	20XX- 3	106.3	2.5
20XX-16	79.8	2.3	20XX- 2	106.8	0.5
20XX-15	80.6	1.1			

Annual Rate of Increase
in Productivity (Average) 2.3%
in the Private Economy

Annual Rate of Increase in
Academic Income Yielding
\$90,000 after 30 years,
starting income of \$45,000 2.3%

Source (of above table) *Humanpower Report of the President*, U.S. Department of Labor and U.S. Department of Health, April, 20XX-1.

Chart D

Consumer Price Index and
Rate of Return on Long Term
Government Securities 20XX-28 to 20XX-2

	<u>CPI</u>	<u>Rate of Return</u>		<u>CPI</u>	<u>Rate of Return</u>
20XX-28	14.4	1.32	20XX-14	1.0	3.60
20XX-27	7.8	1.62	20XX-13	1.1	3.57
20XX-26	-1.0	1.43	20XX-12	1.2	3.72
20XX-25	1.0	1.50	20XX-11	1.3	4.06
20XX-24	7.9	1.93	20XX-10	1.7	4.22
20XX-23	2.2	2.13	20XX- 9	2.9	5.16
20XX-22	.8	2.56	20XX- 8	2.9	5.07
20XX-21	.5	1.83	20XX- 7	4.2	5.59
20XX-20	-.4	2.50	20XX- 6	5.4	6.85
20XX-19	1.5	3.12	20XX- 5	5.9	7.37
20XX-18	3.6	3.62	20XX- 4	4.3	5.77
20XX-17	2.7	2.90	20XX- 3	3.3	5.85
20XX-16	.8	4.33	20XX- 2	6.2	6.92
20XX-15	1.6	3.99			

Sources: *Humanpower Report of the President*, U.S Department of Labor, and the
U.S. Department of Health, Education and Welfare

U.S. Board of Governors, Federal Reserve System

EXHIBIT E

Chart E

Summary of Family Expenditures, Income and Savings by Family Size
(2 persons), and Income Class (\$40,000 and over), 20XX-4 to 20XX-3
North Central

	Average in \$	% of Money Income
Money Income, before taxes	45,850	100%
Taxes	9,170	20%
Money Income, after taxes	<u>36,680</u>	<u>80%</u>
Current Consumption	20,632	45%
(Housing Expenditures)	(6,419)	(14%)
Personal Insurance	2,292	5%
Gifts and Contributions	3,668	8%
Savings	9,628	21%

Source: Consumer Expenditures, North Central Region, Bureau of Labor Statistics Report 237-90
June, 20XX-2

Stipulations for Trial

It is hereby stipulated that:

1. Jeffrey T. Chavez-Porter is the husband of Katherine Chavez-Porter and the administrator of her estate and thus he is the proper plaintiff for this action.
2. The Hospital Report and Hospital Bill from Barbara Rush City Hospital meet the requirements of Rule 803 (6) of the Euphoria Rules of Evidence.
3. Katherine Chavez-Porter's funeral expenses are \$13,920.00. The funeral expenses are reasonable within the jurisdiction.
4. Robert W. Glenn is unavailable for trial in accordance with Rule 32 of the Euphoria Rules of Civil Procedure.
5. Katherine Chavez-Porter died December 4, 20XX-1 at Barbara Rush City Hospital as a result of injuries sustained in the collision on November 30, 20XX-1.
6. Katherine Chavez-Porter's medical expenses are reasonable within the jurisdiction.
7. All documents are duplicate originals under Euphoria Rules of Evidence 1002.

Final Jury Instructions

Instruction 1 - Introduction

Members of the jury, the evidence and arguments in this case have been completed, and I will now instruct you as to the law.

The law applicable to this case is stated in these instructions and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts, and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case. You must not be governed or influenced by sympathy or prejudice for or against any party in this case. Your verdict must be based on evidence and not upon speculation, guess or conjecture.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

You should also disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

Any evidence which was received for a limited purpose should not be considered by you for any other purpose.

You should consider all the evidence in the light of your own observations and experiences in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Instruction 2 - Opening Statements and Closing Arguments

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case, and should be confined to the evidence and to reasonable inferences to be drawn therefrom. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

Instruction 3 - Credibility of Witnesses

You are the sole judges of the credibility of the witnesses and of the weight to be given the testimony of each. In determining what credit is to be given any witness you may take into account his ability and opportunity to observe, his manner and appearance while testifying, any interest, bias or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence, and any other factors that bear on believability and weight.

Instruction 4 - Expert Witnesses

You have heard evidence in this case from witnesses who have testified as experts. The law allows experts to express opinions on subjects involving their special knowledge, training and skill, experience or research; but while their opinions are allowed to be given, it is entirely within the province of the jury to determine what weight shall be given their testimony. Jurors are not bound by the testimony of experts; their testimony is to be weighted as that of any other witness.

Instruction 5 - Circumstantial Evidence

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the fault or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

Instruction 6 - Concluding Instruction

The court did not in any way and does not by these instructions give or intimate any opinions as to what has or has not been proven in the case, or as to what are or are not the facts of the case.

No one of these instructions states all of the law applicable, but all of them must be taken, read and considered together as they are connected with and related to each other as a whole.

You must not be concerned with the wisdom of any rule of the law. Regardless of any opinions you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court.

Instruction 7 - Burden of Proof / Definition

When I say that a party has the burden of proof on any issue, or use the expression "if you find", "if you decide", or "by a preponderance of the evidence" I mean that you must be persuaded from a consideration of all the evidence in the case, that the issue on which a party has the burden of proving is more probably true than not true.

Any finding of fact you make must be based on probabilities, not possibilities. It may not be based on surmise, speculation or conjecture.

Instruction 8

The term "negligence" as used in these instructions means the failure to use that degree of care that an ordinarily careful and prudent person would use under the same or similar circumstances.

Instruction 9

The violation, if you find any, of a statute is negligence as a matter of law. Such negligence has the same effect as any other act of negligence.

Instruction 10

"Contributory negligence" means negligence on the part of the deceased.

Instruction 11

A legal cause of a death is a cause which, in a natural and continuous sequence, produces the injury, and without which the death would not have occurred.

Instruction 12

It is the duty of every person using a public street or highway, whether a pedestrian or a driver of a vehicle, to exercise ordinary care to avoid placing himself or others in danger and to exercise ordinary care to avoid a collision.

Instruction 13

A statute of the State of Euphoria provides:

(1) That the driver of a vehicle shall yield the right of way, slowing down or stopping if necessary, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when either the vehicle or the pedestrian is approaching that half of the roadway so closely that the pedestrian is in danger.

(2) That a pedestrian crossing a roadway at any point other than within a marked crosswalk shall yield the right of way to all vehicles upon the roadway.

This right of way, however, is not absolute but relative, and a duty to exercise ordinary care to avoid collisions, rests upon the party not having the right of way.

Instruction 14

In this action, the plaintiff, Jeffrey Chavez-Porter, has the burden of establishing by a preponderance of the evidence, all of the evidence of all of the facts necessary to prove the following issues:

First, that Charles T. Sutton was negligent;

Second, that the negligence of Charles Sutton was a legal cause of Katherine Chavez-Porter's death.

The defendants, Charles Sutton and Shrackle Construction Company have the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:

First, that the deceased, Katherine Chavez-Porter, was contributorily negligent.

Second, that the contributory negligence of Katherine Chavez-Porter was legal cause of her death.

Instruction 15

In the State of Euphoria, we have what is called a "pure comparative negligence" statute. The statute provides, as here pertinent: "in all actions hereafter brought for personal injuries, or where such injuries have resulted in death,....the fact that the person injured,....may have been guilty of contributory negligence shall not bar a recovery, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to the person injured..."

What this means is that the contributory negligence of the deceased Katherine Chavez-Porter, if any, would not bar the plaintiff's recovery. The statute directs you to apportion the responsibility and, thus, the damages in accordance with the relative fault of the parties. Therefore, the damages allowed to be recovered by the plaintiff should be diminished in proportion to the amount of negligence which was a legal cause of the deceased's death and which was attributed to the deceased, whether or not such negligence is greater than that of the defendant.

I ask that you first assign a percentage to your findings of negligence so that the percentages may later be applied to the amount of damages that you determine.

Please state your findings in the following form:

We find that the conduct of the deceased, Katherine Chavez-Porter, was ____% negligent.

We find that the conduct of the defendant, Charles T. Sutton, was ____% negligent.

The percentages should total 100%.

Instruction 16

If you find from the evidence that the conduct of the defendant, Charles T. Sutton, was negligent, then you must assess the amount of damages suffered by the plaintiff, Jeffrey Chavez-Porter. The total amount of damage that you find will then be multiplied by the percentage which you have assigned to defendant's negligence to determine the amount of damages actually awarded to the plaintiff, Jeffrey Chavez-Porter.

The burden of proving damages rests with the plaintiff, Jeffrey Chavez-Porter, and it is for you to determine whether damages have been proved by a fair preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess or conjecture.

Instruction 17

The damages recoverable include:

- (1) Expenses for care, treatment and hospitalization incident to the injury resulting in death;
- (2) Compensation for pain and suffering of the decedent, Katherine Chavez-Porter;
- (3) The reasonable funeral expenses of the decedent, Katherine Chavez-Porter;
- (4) The present monetary value of the decedent, Katherine Chavez-Porter, to the Plaintiff, Jeffrey Chavez-Porter, including but not limited to compensation for the loss of the reasonable expected:
 - (a) Net income of the decedent, Katherine Chavez-Porter
 - (b) Services, protection, care and assistance of the decedent, Katherine Chavez-Porter, whether voluntary or obligatory, to the plaintiff, Jeffrey Chavez-Porter
 - (c) Society, companionship, comfort, guidance, kindly offices of the decedent, Katherine Chavez-Porter, to the plaintiff, Jeffrey Chavez-Porter.

(5) Nominal damages if you find that there is no substantial loss or injury to be compensated.

Instruction 18

In addition to seeking compensatory damages, the plaintiff also seeks punitive damages. If you find from the preponderance of the evidence that Charles Sutton's conduct was negligent and further find that the defendant, Charles Sutton, wrongfully caused the death of the decedent, Katherine Chavez-Porter, through maliciousness, willful or wanton injury or gross negligence, then you may find punitive damages in such amount as you shall unanimously agree to be proper. The plaintiff would be entitled to any punitive damages which you may determine without regard to the percentage of negligence which you assign to the conduct of the defendant.

Instruction 19

In order to find gross negligence or willful or wanton injury, the conduct must be more than a mere failure to exercise ordinary care, more than any mere mistake resulting from inexperience, excitement or confusion and more than mere thoughtlessness or inadvertence or simple inattention.

Instruction 20

Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.

Willful or wanton conduct is conduct in which the actor has intentionally done an act of unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow.

HOSPITAL RECORDS

**Barbara Rush
City Hospital**

Report #043201

Sex F	Age 28	Date 11/30/XX-1	Religion	Time Admitted 5:30 PM	Time Discharge
Tel. No. 900-1271		Brought in by		Relationship	
Person Responsible for Minor (Address)				Tel. No.	

Blue Cross # 00172652	Subscriber's Name Porter	Medicare No & Category	Medex #	Aetna
Medicaid # & Suffix	Out of State Blue Cross Plan		Address	

Other Insurance () Group () Individual	Address	Industrial Accident () Yes () No	Employer (Name & Address)	Date of Original Injury
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CC	Medical Record Here <input type="checkbox"/> YES <input type="checkbox"/> NO
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ALLERGIES	Sec. Initial		
Vital Signs B.P. 100/55 P. 50 T. 98.6 R. 12	Name of Doctor caring for Patient Foster	Family Doctor Tasor	Nurse's Initial
<input type="checkbox"/> X-RAY <input type="checkbox"/> PKG <input type="checkbox"/> LAB <input type="checkbox"/> PHARM <input type="checkbox"/> M&S <input type="checkbox"/> TT BOOSTER <input type="checkbox"/> XYLOCAINE 0.5 CC <input type="checkbox"/> ACE BAND			

PATIENT CHARGES	<input type="checkbox"/> Accident Room Level 1	<input type="checkbox"/> Accident Room Level 2	<input type="checkbox"/> Follow-Up
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HISTORY Officer said patient was struck by a truck while crossing at the intersection of Kirby and Mattis.

EXAM In coma; unable to respond to verbal or physical stimuli. Multiple fractures and contusions. Profuse bleeding with severe head injuries. Pulse and heartbeat weak.

TREATMENT IV started. Heartbeat monitored. Fractures set.

DIAGNOSIS Patient struck by automobile (truck) in critical condition - 12/4/XX-1 Death caused by automobile accident

Disposition Patient	Referred to Dr./OPD	DL.	Hospital	Home	Other	Condition of Patient on Discharge DECEASED
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Certified as a true and correct copy of the original in the medical files of Marcy Douglas City Hospital.

Marilyn Berry
Marilyn Berry
Medical Records Librarian

Barbara Rush City Hospital

Euphoria City

HOSPITAL BILL

PATIENT: Katherine Chavez-Porter No. 043201

CONDITION ON RELEASE: Deceased

NEXT OF KIN: Jeffrey Chavez-Porter/Husband

INSURED [] NOT INSURED []

COSTS:	AMOUNT:
Ambulance Fee	500.00
Intensive Care Unit (5 days @ \$2,500)	12,500.00
Private Duty Nurse (5 days @ \$750)	3,750.00
Physician Services	10,900.00
TOTAL BILL	\$ 27,650.00

FOR HOSPITAL USE ONLY:

Patient died 12/4/XX-1 as result of auto accident. Send bill to Jeffrey Chavez-Porter.











