

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(CITY OF ST. LOUIS)

NOEL DEAN HANCOCK, INDIVIDUALLY, AND)
AND ON BEHALF OF ALL WRONGFUL DEATH)
STATUTORY BENEFICIARIES OF)
JOSHUA MORGAN HANCOCK, DECEASED,)

PLAINTIFF,)

VS.)

SM CORPORATION D/B/A MIKE)
SHANNON'S STEAKS AND SEAFOOD,)

SERVE REGISTERED AGENT:)

PAT SHANNON VAN MATRE)

620 MARKET STREET)

ST. LOUIS, MO 63101)

AND)

PATRICIA SHANNON VAN MATRE)

620 MARKET STREET)

ST. LOUIS, MO 63101)

AND)

EDDIE'S TOWING, LLC.)

SERVE REGISTERED AGENT:)

EDUARD SHAPSHOVICH)

2323 DRIFTWOOD PLACE)

ST. LOUIS, MO 63146)

AND)

JACOB EDWARD HARGROVE)

[REDACTED])
[REDACTED])

AND)

JUSTIN TOLAR)

[REDACTED])
[REDACTED])

DEFENDANTS.)

CAUSE No. 0722-CC01721

DIVISION No. 9

TRIAL BY JURY REQUESTED

FILED
2007 MAR 23 PM 4:28
COURT REPORTER
ST. LOUIS, MO

PETITION

NOW COMES Plaintiff, Noel Dean Hancock, Individually and for and on behalf of all Wrongful Death Statutory Beneficiaries of Joshua Morgan Hancock, Deceased, and files this, his Petition against the Defendants SM Corporation d/b/a Mike Shannon's Steaks and Seafood, Patricia Shannon Van Matre, Jacob Edward Hargrove, Eddie's Towing, LLC and Justin Tolar, states and alleges:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is an adult resident citizen of Tupelo, Lee County, Mississippi. He is the father of Joshua Morgan Hancock, Deceased, who died on April 29, 2007, and he is entitled to bring this action for Wrongful Death pursuant to § 537.080, et. seq., RSMo and all statutory survivors who are entitled to join in this action are aware of, and/or will be or haven been given notice of, the filing of this action.

2. Defendant SM Corporation d/b/a Mike Shannon's Steaks and Seafood ("Mike Shannon's") is a Missouri corporation created and existing under and by virtue of law with the capacity to sue and be sued, and at all times mentioned herein, operating by and through its agents, including apparent agents, servants, and employees acting within the course and scope of their employment, agency and service.

3. Defendant Patricia Shannon Van Matre is a resident of St. Louis, Missouri and at all times mentioned was acting individually, and as the agent, servant and employee of defendant SM Corporation.

4. Defendant Jacob Edward Hargrove is a resident of St. Louis, Missouri.

5. Defendant, Eddie's Towing, LLC, is a Missouri Limited Liability Company

created and existing under and by virtue of law with the capacity to sue and be sued, and at all times mentioned herein, operating by and through its agents, including apparent agents, servants, and employees acting within the course and scope of their employment, agency and service.

6. Defendant Justin Tolar is resident citizen of Collinsville, Illinois.

7. The acts and occurrences giving rise to this cause of action occurred and accrued in the City of St. Louis, Missouri.

FACTS COMMON TO ALL COUNTS

8. The decedent, Joshua Morgan Hancock, age twenty-nine, was at all times relevant hereto a pitcher for the St. Louis Cardinals baseball team.

9. On the evening of April 28, 2007, Joshua Morgan Hancock went to Defendant Mike Shannon's Restaurant. Upon information and belief, Joshua Morgan Hancock was a "regular" at Defendant Mike Shannon's Restaurant and regularly became visibly intoxicated at said establishment. Furthermore, Defendant Mike Shannon's seeks, invites, and benefits from the patronage of St. Louis Cardinals baseball players and other sports celebrities, many of whom regularly become visibly intoxicated on the premises.

10. On the night in question, Joshua Morgan Hancock remained at Defendant Mike Shannon's Restaurant for over three and a half hours and during this time, became visibly intoxicated. Defendant Mike Shannon's Restaurant, by and through its employees, continued to knowingly serve intoxicating liquor to Joshua Morgan Hancock even though he was visibly intoxicated. The intoxication of Joshua Morgan Hancock on said occasion was involuntary.

11. The manager of Defendant Mike Shannon's restaurant on the evening in question was Defendant Patricia Shannon Van Matre. The said Patricia Shannon Van Matre was aware

that Joshua Morgan Hancock was visibly intoxicated, and even after she had such knowledge, she knowingly allowed the restaurant staff to continue to serve alcoholic beverages to Joshua Morgan Hancock.

12. At approximately midnight, Joshua Morgan Hancock left Defendant Mike Shannon's Restaurant and began driving on Interstate 64, an open and public street, highway and thoroughfare in the City of St. Louis, Missouri.

13. At 12:28 a.m. on April 29, 2007, Defendant Tolar was driving down Interstate 64 in St. Louis, Missouri in his Geo Prism. Defendant Tolar negligently allowed this vehicle to crash into the concrete median separating eastbound and westbound traffic. Due to his negligence, the Geo Prism became stalled, and stopped in and blocking the left lane of Interstate 64.

14. At 12:31 a.m. on April 29, 2007, Defendant Hargrove, acting in the course and scope of his employment with Defendant Eddie's Towing, LLC, came upon the Geo Prism driving a 2004 GMC tow truck owned by Defendant Eddie's Towing. Defendant Hargrove negligently stopped the tow truck behind the Geo Prism, negligently blocking the left lane of Interstate 64 and negligently failed to provide adequate notice and warning to approaching motorists.

15. Joshua Morgan Hancock was driving down Interstate 64 in St. Louis, Missouri at approximately 12:49 a.m. on the morning of April 29, 2007. He was driving a rented Ford Explorer and was traveling in the left lane of traffic. Joshua Morgan Hancock crashed into the rear of the tow truck.

16. The aforescribed conduct and actions of the defendants, and each of them,

directly caused or directly contributed to cause the death of Joshua Morgan Hancock.

17. The above-described conduct of defendants, and each of them, showed complete indifference to or conscious disregard for the safety of others and damages for such aggravating circumstances should be assessed in such a sum as will serve to punish defendants and, and to deter defendants and others from like conduct in the future.

COUNT I

LIABILITY UNDER SECTION 537.053 RS Mo. (2007)

18. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 17 of this Petition.

19. As set forth above, on the evening of April 28, 2007, Joshua Morgan Hancock spent approximately three and a half hours at Defendant Mike Shannon's restaurant, and during that time, was continuously served alcoholic beverages by Defendant Mike Shannon's Restaurant staff.

20. Over this time period, Joshua Morgan Hancock became visibly intoxicated. Said intoxication on the part of Joshua Morgan Hancock was involuntary.

21. Defendant Mike Shannon's Restaurant, by and through its employees, continued to knowingly serve intoxicating liquor to Joshua Morgan Hancock even though he was visibly intoxicated. The actions of Mike Shannon's employees are imputed to Defendant Mike Shannon's under the theory of *respondeat superior*, and Defendant Mike Shannon's is vicariously liable for the damages suffered by the Plaintiff in this case

22. Further, Defendant Patricia Shannon Van Matre, the manager of Defendant Mike Shannon's restaurant on the evening in question, was aware that Joshua Morgan Hancock was

visibly intoxicated, and she knowingly allowed restaurant staff to continue to serve alcoholic beverages to Joshua Morgan Hancock even after she became aware of his intoxicated condition.

23. The actions of these Defendants were the proximate cause, or proximate contributing cause, of Joshua Morgan Hancock's death.

COUNT II

NEGLIGENCE

24. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 23 of the Complaint.

25. Defendant Tolar had a duty to operate his vehicle with the highest degree of care. Defendant Tolar breached that duty by negligently allowing his car to become stalled and stopped in the left lane of traffic and by negligently failing to move that car out of oncoming traffic. These actions were the proximate cause, or a proximate contributing cause, of Joshua Morgan Hancock's death.

26. Defendant Hargrove had a duty to operate the tow truck in question with the highest degree of care. Defendant Hargrove breached that duty by negligently parking his vehicle in the left lane of Interstate 64 and blocking oncoming traffic and failing to adequately warn approaching motorists. These actions were the proximate cause, or a proximate contributing cause, of Joshua Morgan Hancock's death.

27. At all times mentioned herein, Defendant Hargrove was acting in the course and scope of his employment with Defendant Eddie's Towing, LLC, which also owned the tow truck at issue. Defendant Hargrove's actions are imputed to Defendant Eddie's Towing LLC under the theory of *respondeat superior*, and Defendant Eddie's Towing is vicariously liable for the

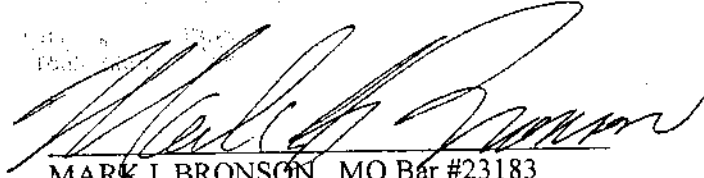
damages suffered by the Plaintiff in this case.

28. Defendant Eddie's Towing LLC is also liable for failing to properly train Defendant Hargrove, by failing to equip the tow truck with proper safety and warning devices, and for failing to properly maintain the tow truck. Said failures are the proximate cause, or a proximate contributing cause, of Joshua Morgan Hancock's death.

DAMAGES

29. As a result of the death of Joshua Morgan Hancock, his survivors suffered and sustained damages and are entitled to recover such damages as may be deemed fair and just for the death and loss thus occasioned, having regard to the pecuniary losses suffered by reason of the death, funeral expenses, and the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which the deceased's survivors have been deprived by reason of such death, and such damages as Joshua Morgan Hancock suffered between the time of injury and the time of death, and the aggravating circumstances attendant to the death should be considered; and all of such damages are greatly in excess of Twenty Five Thousand Dollars (\$25,000.00).

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, for such actual damages as are fair and reasonable and for damages for aggravating circumstances as may be fair and reasonable, together with statutory interest and their costs herein expended.



MARK I. BRONSON MO Bar #23183
NEWMAN BRONSON & WALLIS
2300 West Port Plaza Drive
St. Louis, MO 63146-3213
Tel: (314) 878-8200
Fax (314) 878-7839
mbronson@newmanbronson.com
ks@newmanbronson.com

CLAUDE F. CLAYTON, JR.
KEITH C. KANTACK
J. KRISTOPHER WHITE
CLAYTON O'DONNELL WALSH & DAVIS, PLLC
Post Office Box 755
Tupelo, MS 38802
Tel: (662) 620-7938
Fax: (662) 620-7939
cclayton@northmslaw.com
kkantack@northmslaw.com
kwhite@northmslaw.com

S. RAY HILL, III
CLAYTON O'DONNELL WALSH & DAVIS, PLLC
Post Office Box 676
Oxford, MS 38655
Tel: (662) 234-0900
Fax: (662) 234-3557
rhill@oxfordmslaw.com

ATTORNEYS FOR PLAINTIFF

Tupelo, MS 38802
Tel: (662) 620-7938
Fax: (662) 620-7939

