

**THE DIRECT AND CROSS-EXAMINATION
OF OPPOSING EXPERTS IN AN
ALCOHOL-RELATED PERSONAL INJURY
RESIDENCE HALL CASE**

Presenters:

JOHN M. PARISI
Attorney at Law
Shamberg, Johnson & Bergman, Chartered
Overland Park, Kansas

And

LISA M. HUSON
General Counsel
Eastern Illinois University
Charleston, Illinois

Stetson University College of Law:

18th ANNUAL LAW & HIGHER EDUCATION CONFERENCE
Clearwater Beach, Florida
February 13-15, 1997

THE DIRECT AND CROSS-EXAMINATION OF OPPOSING EXPERTS
IN AN ALCOHOL-RELATED PERSONAL INJURY
RESIDENCE HALL CASE

This presentation consists of a direct and cross-examination of opposing experts who testified at the trial of an alcohol-related residence injury case in August of 1996. To the participants' knowledge, it represents one of very few such cases that have been tried before a court or jury. Participating are the plaintiff's expert, Donald D. Gehring, Ph.D., Professor of Law and Education, Bowling Green State University, Bowling Green, Ohio, and Kenneth L. Stoner, Ph.D., Director of Student Housing at the University of Kansas, Lawrence, Kansas. The plaintiff's attorney is John M. Parisi, of Shamberg, Johnson & Bergman, Chartered, Overland Park, Kansas. The defendant's attorney is Lisa M. Huson, General Counsel, Eastern Illinois University, Charleston, Illinois.

The accompanying materials contain a brief synopsis of the actual case of James Matthew Kimbrel v. Pittsburg State University and the Kansas Board of Regents filed in the District Court of Johnson County, Kansas. The case was tried before a jury in August of 1996. Dr. Gehring and Dr. Stoner were the testifying experts in the case. Both had given discovery depositions prior to their trial testimony. The plaintiff, James Matthew Kimbrel, was represented by John M. Parisi; and Lisa M. Huson, prior to leaving the Kansas State Attorney General's Office for Eastern Illinois University, represented Pittsburg State University.

We have provided a summary of the facts of the case from an actual pleading filed with the Court, Plaintiff's Memorandum in Opposition to the Defendant's Motion for Summary Judgment. The defendant's Motion for Summary Judgment was overruled by the trial court and the case proceeded to trial. Also provided is a copy of the Agreed Upon Pretrial Order which, under Kansas law, takes precedence over the initial pleadings (Petition and Answer) in the case, and controls the legal and factual issues to be determined at trial.

The key liability issues in the case were: (1) whether the

residence halls were adequately staffed, and (2) whether or not the university resident hall assistant(s) or hall director should have interdicted the plaintiff, James "Matt" Kimbrel, following a fire alarm when plaintiff alleged he was in an obviously intoxicated state. The plaintiff asserted that the University's failure to provide adequate staffing rendered the residence hall unsafe, and that the residence hall staff had an affirmative duty, pursuant to the Drug Free Schools and Communities Act, to take positive action to take control over the plaintiff who was obviously intoxicated. The defendant denied that such a duty existed under Kansas or federal law, and that even if it did, the residence halls were adequately staffed and the conduct of its residence hall staff was appropriate under the circumstances.

At the conclusion of the direct and cross-examination, we will inform you as to the outcome of the case. The intent of the presentation of this direct and cross-examination is to illustrate divergent views on the issue of the use of alcohol on campus and the potential liability of institutions of higher education as a result of student intoxication. This is an issue facing virtually all administrators in higher education. Secondly, the presentation will hopefully provide an insight into the adversarial process, an entertaining presentation of testimony from real life experts in the field, and a better understanding of the role of university counsel in the litigation process.

Nancy L. Ulrich, #11778
Larry J. Logback # 16608
Assistant Attorneys General
301 W. 10th
Judicial Center - 2nd
Topeka, Kansas 66612-1597

IN THE DISTRICT COURT OF JOHNSON COUNTY KANSAS
TENTH JUDICIAL DISTRICT

JAMES MATTHEW KIMBREL,

Plaintiff,

vs.

PITTSBURG STATE UNIVERSITY,
and KANSAS BOARD OF REGENTS,
and JOHN C. GLENNON, JR.

Defendants.

Case No. 95-C-739

DEFENDANTS PITTSBURG STATE UNIVERSITY AND THE KANSAS STATE
BOARD OF REGENTS MEMORANDUM IN SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT

I. NATURE OF THE CASE AND SUMMARY OF THE FACTS.

Plaintiff alleges three separate claims against defendants Pittsburg State University ("PSU") and the Kansas State Board of Regents: violation of the Drug-Free Schools and Communities Act Amendments of 1989; negligence based on the existence of a special relationship between PSU and defendant Glennon and/or between PSU and plaintiff; negligence based on a PSU's violation of its duties as a landlord toward its tenant. All three claims are based on the following facts.

Plaintiff was a second semester freshman at Pittsburg State University on the evening of March 10, 1993, when he and two friends left their dormitory rooms to go to a bar which served alcohol to minors. Plaintiff became intoxicated. When he returned to his residence hall, he

became verbally abusive toward other residents. One resident, John Glennon, came up behind plaintiff to grab him and drag him to his room; plaintiff and Glennon fell to the floor with plaintiff underneath Glennon. The residence hall staff returned from a meeting to find plaintiff in his room complaining of back pain. Plaintiff seeks to hold PSU liable under the three theories set forth, above, for the injuries he sustained from the fall.

II. ISSUES

A. Do the Drug-Free Schools and Communities Act Amendments of 1989 Create a Private Remedy for Students and Citizens Injured by Their Own Alcohol Use?

B. Did a Special Relationship Exist Between Plaintiff and PSU or Defendant Glennon and PSU such that PSU had a Duty to Protect Plaintiff from All Consequences of His Own Alcohol Consumption?

C. Did PSU Violate Its Duty to Keep its Residence Hall Reasonably Safe from the Consequences to Plaintiff of His Alcohol Consumption?

III. MATERIAL UNCONTROVERTED FACTS

A. Plaintiff

1. In the 1992-93 school year, plaintiff was a freshman at Pittsburg State University. Pl's Petition ¶ 10.

2. Plaintiff was eighteen years old when he was injured on March 11, 1993. Pl's depo., p.68.

3. Plaintiff lived in Dellinger Hall, a dormitory on the campus of PSU. Pl's Petition ¶ 10.

4. After the Fall semester, 1992, plaintiff was placed on academic probation, having earned three F's and one D in his first semester at PSU. Pl's depo., pp. 35-36.

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
TENTH JUDICIAL DISTRICT

JAMES MATTHEW KIMBREL,)
)
 Plaintiff,)
)
 vs.)
)
 PITTSBURG STATE UNIVERSITY,)
 KANSAS BOARD OF REGENTS,) Case No. 95-C-739
 and JOHN C. GLENNON, JR.,)
)
 Defendants.)

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
DEFENDANTS MOTION FOR SUMMARY JUDGMENT**

Plaintiff, James Matthew Kimbrel, by and through his attorneys of record, submits the following Memorandum in Opposition to Defendants Pittsburg State University's (hereinafter "PSU") and Kansas Board of Regents' (hereinafter "KBOR") Motion for Summary Judgment pursuant to K.S.A. 60-256 and Supreme Court Rule S. Ct. R. 141(a). For the reasons stated herein, defendants' Motion for Summary Judgment must be denied by this Court.

I. **STATEMENT OF THE CASE**

This is a personal injury action brought against PSU and the KBOR for permanent and devastating injuries sustained by James Matthew ("Matt") Kimbrel at Dellinger Residence Hall on the PSU campus on March 11, 1993. Plaintiff brings his action against these defendants pursuant to the Kansas Tort Claims Act ("KTCA"), K.S.A. 75-6101, et seq. (1989-1993 Supp.). Plaintiff's claims are based on: (1) PSU's violation of mandatory obligations to enforce the alcohol policy adopted pursuant to the Drug Free Schools and

Communities Act Amendment of 1989, 20 U.S.C. §§ 3172, et seq., 34 C.F.R. pt. 86 (1990) ("Drug Free Schools Act"); (2) the special relationship that existed between the plaintiff and PSU by virtue of PSU's status as a landlord and plaintiff's status as a tenant in Dellinger Hall; and (3) common law premises liability based upon PSU's failure to maintain the common area of the dorm in a reasonably safe condition as required by Kansas law. Plaintiff specifically claims that defendants were negligent by:

- (1) failing to enforce their mandatory alcohol policy;
- (2) allowing plaintiff to enter Dellinger Residence Hall in an intoxicated state, after which he was severely injured by another student, John C. Glennon, Jr.;
- (3) failing to provide adequate staff to maintain and control the common areas of Dellinger Hall; and
- (4) failing to maintain the common area of the dorm in a reasonably safe condition.

During the evening of March 10, 1993, and the early morning hours of March 11, 1993, Matt Kimbrel consumed alcoholic beverages in his dorm room at Dellinger Hall and in a nearby bar off campus. At approximately 2:00 a.m., he returned to Dellinger Hall after which a fire alarm went off. Matt vacated the building with the other students. While standing outside the building, he was observed by the Hall Director, Grant Thompson. Although he was reported to be obviously intoxicated by other students, and was loud and obnoxious, he was only told by Grant Thompson to quiet down and get back into the building. Matt Kimbrel proceeded to the third floor common area where he got into arguments with

other residents, started yelling, and began to throw things. Matt Kimbrel was reported to be obviously intoxicated by the students in the halls who observed him and told him to go to bed. No Resident Assistant ("RA") or other staff person was present in the common area of the third floor. After at least 25 minutes and perhaps as long as 45 minutes, John Glennon got up, came out of his room into the common area, grabbed Matt Kimbrel from behind, put him in a full nelson headlock and slammed Matt to the floor. Matt landed on his neck, with Glennon on top of him. His neck was broken and Matt was rendered permanently quadriplegic.

In October 1990, PSU and the KBOR enacted a mandatory alcohol policy pursuant to the Drug Free Schools Act, which prohibited the use, possession, or consumption of alcoholic beverages on PSU's campus or within PSU's student dormitories. PSU and KBOR violated their mandatory policy and federal law by not consistently enforcing the alcohol policy within Dellinger Residence Hall. Defendants also violated their mandatory alcohol policy, and the Drug Free Schools Act, when they failed to take the appropriate, required action when Matt Kimbrel entered Dellinger Hall after a fire alarm on March 11, 1993 in an obviously or visibly intoxicated state prior to being injured on the common area of the dorm.

PSU and KBOR failed to maintain the common area of the third floor of Dellinger Hall in a manner reasonably safe for the occupants of the hall. Specifically, defendants negligently failed to have adequate staff supervision of the dorm, despite the

repeated requests of the Dellinger Hall RA's to add additional RA's to the third, fourth, and fifth floors prior to Matt Kimbrel's injury. As a consequence of defendants' lack of due care under the circumstances, plaintiff was rendered permanently quadriplegic. This action was filed on January 20, 1995 against the above defendants. A common law action was also brought against John C. Glennon, Jr., for liability based on negligent, wanton or reckless conduct. Plaintiff's claims against John Glennon, Jr. have been settled and he is no longer a party to this lawsuit. The case is scheduled for trial to commence August 5, 1996. Defendants, on May 7, 1996, filed their Motion for Summary Judgment and plaintiff has filed his Memorandum in Opposition thereto.

II. SUMMARY OF ARGUMENT

In their Motion for Summary Judgment, defendants set forth three issues upon which they believe that they are entitled to judgment as a matter of Kansas law. However, defendants have mischaracterized and/or misunderstood the nature of plaintiff's claims and the legal issues raised in this case. The first issue framed by the defendants is whether plaintiff can proceed with a private right of action pursuant to the Drug Free Schools and Communities Act amendments of 1989 (hereafter "the Drug Free Schools Act"). Defendants' Memorandum in Support of Summary Judgment at p. 2. This issue is a red herring. Plaintiff has not pled a private right of action and does not seek a private remedy

under the Drug Free Schools Act. Rather, the jurisdictional basis for bringing a claim against these defendants is the Kansas Tort Claims Act, K.S.A. 75-6101, et seq. Consistent with a long line of Kansas cases interpreting the Tort Claims Act, the adoption of a mandatory alcohol policy by PSU pursuant to the Drug Free Schools Act created defendants' mandatory duty to comply with that policy. Defendants' failure to consistently enforce their policies subjects them to liability under the Kansas Tort Claims Act. See, Fudge v. City of Kansas City, 239 Kan. 369, 720 P.2d 1093 (1986).

The second issue framed by the defendants is whether a special relationship existed between PSU, Matt Kimbrel, or John Glennon, Jr., such that PSU had a duty to protect Matt Kimbrel "From All Consequences Of His Own Alcohol Consumption." Defendants' Memorandum in Support of Summary Judgment at p. 2. To the extent there is an issue in this case of whether or not a special relationship existed between PSU and its students which created a duty to protect them while occupying the common areas of the dorm, Kansas law has already decided that issue in plaintiff's favor. Nero v. Kansas State University, 153 Kan. 567, 861 P.2d 768 (1993). As a landlord, PSU had a duty to protect its residents from reasonably foreseeable injury. Based on the testimony of university officials (including Dr. Kurt Czupryn, the former Director of Residence Life, and Associate Vice President of Student Affairs at PSU in the relevant time period) and university documents establishing that intoxicated students posed a risk to

injury to themselves and others (including PSU's Alcohol Policy), it was foreseeable that underage students would consume alcohol in the dorms and would be injured. Therefore, based on this special relationship, the university is liable for its failure to protect dormitory residents from injury in the common areas of the residence halls, including Matt Kimbrel. See P.W. v. Kansas Dept. Of Social and Rehabilitation Services, 255 Kan. 827, 877 P.2d 430 (1994).

According to defendants, the third issue in this case is whether PSU violated its duty to keep the residence hall reasonably safe from the "Consequences to Plaintiff of His Alcohol Consumption." Defendants' Memorandum in Support of Summary Judgment at p. 2. Defendants have mischaracterized the legal issue by casting it entirely in terms of any comparative fault plaintiff Matt Kimbrel may have for his injuries. Whether Matt Kimbrel is partially to blame for his injuries is a factual question for the jury-not one that is to be decided as a matter of law by the court. By the very terms PSU has framed the issue, it admits that it has a duty under Kansas law to keep its residence hall reasonably safe for its students. See Nero, supra, 253 Kan. 567, 861 P.2d 768 (1993). The question of whether PSU violated that duty is a question of fact for the jury, precluding summary judgment. "Whether a duty exists is a question of law [citations omitted]. Whether the duty has been breached is a question of fact." C.J.W. v. State, 253 Kan. 1, 7, 853 P.2d 4 (1993), citing Durflinger v. Artiles, 234 Kan. 484, 488, 673 P.2d 86 (1983).

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
TENTH JUDICIAL DISTRICT

JAMES MATTHEW KIMBREL,)
)
Plaintiff,)
)
vs.) Case No. 95-C-739
)
PITTSBURG STATE UNIVERSITY and)
KANSAS BOARD OF REGENTS,)
)
Defendants.)

AGREED UPON PRETRIAL ORDER

1. Present date: Thursday, August 1, 1996.
2. Parties: The plaintiff, James Matthew "Matt" Kimbrel, is represented by John M. Parisi of Shamberg, Johnson & Bergman, Chartered, Overland Park, Kansas; Michael V. Madden of Southard, Fitts, McCafferty & Madden, Wichita, Kansas; and Peter J. Orsi, Wichita, Kansas. The defendant Pittsburg State University (PSU) is represented by Lawrence Logback, Kevin Chase, and William Scott Hesse of the Kansas Attorney General's Office, Topeka, Kansas.
3. Amendment of the Caption: Upon stipulation of the parties, the court has ordered that the caption in this case be amended to delete the name of John C. Glennon, Jr., as a defendant because he has settled all claims made against him and is no longer a party to the case. The parties have also stipulated and the court has ordered that the defendant Kansas Board of Regents (KBOR) shall be dismissed from the case, without prejudice.
4. The parties have agreed to the following stipulations and admissions:
 - (1) The court has jurisdiction over the parties and of the

subject matter.

(2) Venue is proper in Johnson County, Kansas.

(3) That the medical bills and expenses incurred to date as a result of Matt Kimbrel's injury on March 11, 1993, are in the amount of \$180,000.00, and were necessary and reasonable.

(4) Copies or originals of all medical records, medical films may be submitted into evidence without a foundation witness, subject to all other objections.

(5) Copies of and portions of medical literature and medical information may be offered into evidence instead of the original if the literature or information identifies the text, author, and publication date.

(6) Medical records, pharmacy records, and medical billings may be admitted without the necessity of a foundation witness subject to all other objections.

(7) An employee of PSU generated a report that concludes that there were twenty-one reported alcohol-related incidents within the residence halls at Pittsburg State University for the academic year 1991-92.

(8) Over the course of the next year, three Resident Assistants were added to the staff at Dellinger Hall for reasons unrelated to Matt Kimbrel's injury.

(9) Kansas colleges and universities, including PSU, have a responsibility to provide a clear statement that they will impose disciplinary sanctions for violations of their standards of conduct and to consistently enforce those sanctions.

(10) Freshman at PSU during the 1992-93 academic year were required to live in PSU residence halls unless: The student lived at home with parents or guardians and commuted (within 50 miles of the PSU Campus); the student was married and living with his/her spouse; the student was a veteran with one or more years of active service; the student was 21 years or older; the student was a transfer student and was transferring 24 hours of credit or more; other extenuating circumstances taken on a case-by-case basis.

(11) A frequently mentioned benefit of serving as a Resident Assistant during the academic year 1992-93 included having fond memories of good times, crazy situations, jokes, parties and antics.

(12) The student community to which Randy Shannon was assigned included the third floor at Dellinger Hall on March 11, 1993.

(13) By March, 1993, PSU residence hall officials knew someone was pulling fire alarms at Dellinger Hall but deny the characterization that this was a problem.

(14) Matt Kimbrel had not been a subject of any incident reports submitted by Resident Assistants at Pittsburg State University at any time prior to the events of March 11, 1993.

(15) New fire doors were installed in Dellinger Hall on the third floor no more than three years prior to March 11, 1993.

(16) Students would congregate in the common areas of the dormitory in the Spring of 1993.

(17) Some sources state that a student who consumed alcohol was at elevated risk for injury in the academic year 1992-93 at Pittsburg State University, as compared to a student who had not consumed alcohol.

(18) The ultimate physical capacity of the number of students who could be housed in Dellinger Hall did not change between 1992, 1993, and 1994 but state that the number of students who were housed there did change during that time.

(19) PSU became a member of the network of Drug-Free Colleges and Universities in 1988.

(20) PSU was a member of the network of Drug-Free Colleges and Universities on March 11, 1993.

(21) The area where Matt Kimbrel was initially injured on March 11, 1993, was a common area of the third floor of Dellinger Hall.

(22) The common area of third floor of Dellinger Hall was located adjacent to the elevators and contained couches and a television.

5. Plaintiff's claims:

This is a personal injury action brought against PSU and KBOR for permanent and devastating injuries sustained by Matt Kimbrel at Dellinger Residence Hall on the PSU campus on March 11, 1993. Plaintiff brings his action against these defendants pursuant to

the Kansas Tort Claims Act (KTCA), K.S.A. 75-6101, *et seq.* (1993 Supp.).

Plaintiffs claims are based on: (1) PSU's violation of mandatory obligations to enforce their alcohol policy adopted pursuant to the Drug Free Schools and Communities Act Amendment of 1989, 20 U.S.C. 3172, *et seq.*, 34 C.F.R. pt. 86 (1990) (Drug Free Schools Act); (2) the special relationship that existed between the plaintiff and PSU by virtue of PSU's status as a landlord and plaintiffs status as a tenant in Dellinger Hall; and (3) common law premises liability based upon PSU's failure to maintain the common area of the dorm in a reasonably safe condition as required by Kansas law.

During the evening of March 10, 1993, and the early morning hours of March 11, 1993, Matt Kimbrel consumed alcoholic beverages in his dorm room at Dellinger Hall and in a nearby bar off campus. At approximately 2:00 a.m., he returned to Dellinger Hall after which a fire alarm went off. Matt vacated the building with the other students. While standing outside the building, he was observed by the Hall Director, Grant Thompson. Although he was reported to be obviously intoxicated by other students, and was loud and obnoxious, he was only told by Grant Thompson to quiet down and get back into the building. Matt Kimbrel proceeded to the third floor common area where he got into arguments with other residents, started yelling, and began to throw things. Matt Kimbrel was reported to be obviously intoxicated by the students in the halls who observed him and told him to go to bed. No

Resident Assistant (RA) or other staff person was present in the common area of the third floor. After at least 25 minutes and perhaps as long as 45 minutes, John Glennon got up, came out of his room into the common area, grabbed Matt Kimbrel from behind, put him in a full nelson headlock and slammed Matt to the floor. Matt landed on his neck, with Glennon on top of him. His neck was broken and Matt was rendered a permanent quadriplegic.

Plaintiff specifically claims that defendants were negligent by:

- (1) failure to enforce their mandatory alcohol policy;
- (2) allowing plaintiff to enter Dellinger Residence Hall in an intoxicated state, after which he was severely injured by another student, John C. Glennon, Jr.;
- (3) failure to provide adequate staff to maintain and control the common areas of Dellinger Hall; and
- (4) failure to maintain the common area of the dorm in a reasonably safe condition.
- (5) failure to provide adequate staff in Dellinger Hall in Spring 1993 to provide a clean, safe, attractive, and comfortable physical facility;
- (6) failure to provide adequate training to the Dellinger Hall staff to recognize and handle intoxicated students;
- (7) failure to provide a sufficient number of RAs on the third floor of Dellinger Hall;
- (8) failure to have an RA located on the short wing of the third floor of Dellinger Hall to adequately control the common area of the dorm;
- (9) failure to take measures to provide adequate coverage on the short wing of the dorm after receiving complaints from the Dellinger Hall RAs that fire doors created an audio and visual barrier to their ability to supervise the common area;
- (10) failure of the RAs in Dellinger Hall to consistently enforce the PSU alcohol policy by allowing underage students

to simply pour out alcohol when encountered in the dorms without writing up an incident report; and

(11) failure to consistently enforce the PSU alcohol policy by allowing students to enter the dormitory in an obviously intoxicated state.

(12) failure to properly supervise dormitory residents during fire drills to insure that residents properly evacuated the building and returned safely to their rooms at the end of the fire drill on March 11, 1993.

6. PSU's defense:

On March 10, 1993, plaintiff was aware that consuming alcohol was a violation of state law and University policy. In spite of this knowledge, plaintiff still consumed alcohol illegally at Dellinger Hall and at a bar where he knew minors would be served alcohol. No member of PSU staff observed plaintiff consuming alcohol on campus on March 10, 1993.

During the evening of March 10, 1993 and March 11, 1993, plaintiff consumed more alcohol than he ever had previously. When plaintiff was observed by PSU staff after the fire alarm of March 11, 1993, plaintiff was walking under his own power. Though plaintiff was being loud, he quieted down when asked to by PSU staff. At the time, plaintiff did not appear to be intoxicated to such a degree that his health was in danger. While PSU staff was investigating the fire alarm, plaintiff became loud and attempted to start fights with other individuals. Plaintiff was then grabbed by defendant John Glennon and the two fell to the floor. Glennon got up off plaintiff and left the scene. After allowing plaintiff to lay on the floor for a short time, Anthony Johnson, Greg Nentrup and Chris Johnson carried to plaintiff's dorm room.

PSU is not responsible for plaintiff's injuries. Plaintiff and/or John Glennon and/or other individuals are responsible for any injuries that occurred on March 11, 1993.

PSU asserts that defendant Glennon owed a duty not to injure plaintiff by physically grabbing plaintiff, causing both he and plaintiff to fall to the floor which resulted in plaintiff's head hitting the lobby floor.

PSU asserts that Anthony Johnson, Greg Nentrup and Chris Johnson owed a duty to exercise reasonable care to plaintiff which was breached when they jointly moved plaintiff from the lobby of Dellinger Hall, down the hallway, and onto plaintiff's dorm room floor without first inquiring as to any physical injury plaintiff may have sustained as a result of his fall to the floor; without providing any support for plaintiff's head or neck when they moved him from the lobby; and without timely notifying University officials regarding plaintiff's condition.

Defendant PSU denies it was negligent in any manner toward plaintiff. Even if there is negligence, it must be compared to plaintiff's conduct and to that of plaintiff, Glennon, Anthony Johnson, Nentrup and Chris Johnson.

Defendant PSU is exempt from liability under the Kansas Tort Claims Act.

The PSU staff did not violate the terms of the Alcohol Abuse Prevention Policy adopted by PSU. When plaintiff was observed by the Hall Director immediately following the fire alarm on the morning of March 11, 1993, plaintiff was not in violation of any

federal, state or local laws relating to the possession or use of alcohol. Defendant did not have authority to prohibit plaintiff from entering the dormitory; furthermore, it had no authority to evict him that morning.

PSU's enforcement of its Alcohol Abuse Prevention Policy did not cause or contribute to Matt Kimbrel's injury. PSU had no duty to protect plaintiff from his own intentional unlawful actions.

PSU did not have a duty to protect plaintiff from John Glennon. John Glennon had never previously exhibited dangerous propensities while on campus.

Establishing a policy intended to prevent the use of alcohol and drugs on campus does not make PSU liable when an individual knowingly violates that policy and subsequently causes harm to themselves. Finally, defendants assert that they maintained their common areas in a manner which made them safe for reasonable use.

Assuming PSU had a duty, their actions, or failure to act, was not causally related to plaintiff's injuries.

Defendant Kansas Board of Regents was in no way responsible for the injuries to plaintiff and will seek to compare the negligence in the same manner as defendant PSU.

7. Total amount of damages claimed: Plaintiff claims damages in the monetary amount of \$7,500,000.00. These damages include loss of past and future earning capacity in the range of 1.2 to 2.5 million dollars; medical expenses to date of \$180,000.00; the cost of future medical and life care needs caused by his paralysis in the amount of 1.8 to 2.25 million dollars

(reduced to present value); and disability, disfigurement, loss of enjoyment of life, pain and suffering in the amount of \$2,700,000.00.

8. Questions of fact and law: The parties have set forth the questions of fact and law in their Amended Pretrial Questionnaires previously filed with the Court which are adopted by reference herein.

9. Discovery is complete.

10. Motions: The parties will file Motions in Limine prior to trial.

11. State any procedural problems which you have: The reading of depositions at trial and the potential for calling witnesses out of order.

12. List of witnesses. The parties have identified the following witnesses for trial:

- a. Dr. Gary Baker
- b. Matt Brown
- c. Dr. Kurt Czupryn
- d. Francis Dobernig-Mitchelson
- e. Dr. Jane Drazek
- f. Dr. Donald Gehring
- g. John C. Glennon, Jr.
- h. Shawn Jordan
- i. Marcia Hanak
- j. Lt. Howard Herring
- k. Darla Herman
- l. Kathy Howard
- m. Anthony Barton Johnson
- n. Chris Johnson
- o. Scott Jones
- p. Kent Kelso
- q. Rodney J. Kilpatrick
- r. Kelly Kimbrel
- s. Pam Kimbrel
- t. James Matthew "Matt" Kimbrel
- u. Eric Kimbrel

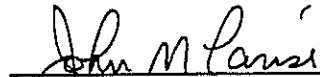
v. Michael Jeffrey Kimbrel
w. Stacy Kimbrel
x. Mike Kitchen
y. Bud Langston
z. Scott Merfen
aa. Wilma Minton
bb. Greg Nentrup
cc. Randy Shannon
dd. Dr. Kenneth Stoner
ee. Officer Swartz
ff. James S. Taylor
gg. L.G. Grant Thompson
hh. Dr. Donald R. Vogenthaler

13. List all exhibits you intend to offer at trial: The parties have exchanged exhibit lists that are attached hereto.

14. Trial assignment: This case is scheduled for trial commencing August 5, 1996. The estimated time for trial is ten (10) trial days.

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

By:

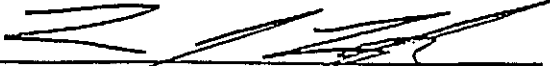

John M. Parisi, #14078
4551 W. 107th, Suite 355
Overland Park, KS 66207
Phone: (913) 642-0600
Fax: (913) 642-9629

SOUTHARD, FITTS, McCAFFERTY &
MADDEN

Michael V. Madden, SC#11906
221 S. Broadway, Suite 701
Petroleum Building
Wichita, KS 67202-4293
Phone: (316) 267-2871
Fax: (316) 262-1463

Peter John Orsi, SC#11742
Attorney and Counselor at Law
610 North Tyler Road
Wichita, Kansas 67212
Phone: (316) 729-8825
Fax: (316) 729-8771
ATTORNEYS FOR PLAINTIFF

CARLA J. STOVALL
Attorney General



Lawrence Z. Logback, No. 16508
Nancy L. Ulrich
Kevin D. Chase
Assistant Attorney General
Judicial Center, 2d Floor
301 West Tenth Avenue
Topeka, KS 66612
Phone: (913) 296-2215
Fax: (913) 296-6296
ATTORNEYS FOR DEFENDANTS

