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Travis County District Court - 345th ;Judge F. Scott McCown; 95-04352.; Juan M. Balderas, Julie Balderas vs. Spiridon Karamalegos, Catherine Christ and Joy Club of Austin, Inc.

P - Tom C. McCall of McCall & Ritchie, Austin; Britton D. Monts, Dallas; D - Spencer G. **Markle** & Sheryl W. O'Briant of **Markle**, Ramos & Zito, Houston

Dram Shop/Neg./Gross Neg. - Juan Balderas, 34, spent 11 hours drinking and enjoying the show at the Joy Club, a topless bar in Travis County, on 9-30-94. It was alleged that he had more than 30 alcoholic beverages and became obviously intoxicated while in the club. Further, he was permitted to leave and drive his own vehicle despite his obvious intoxication. Minutes after he left, he was involved in a one-vehicle accident his Suburban hit a concrete barrier on the freeway. It was undisputed that Balderas drove although he claimed to have no recollection of driving or leaving the club itself due to his extreme intoxication .18% serum blood alcohol. Defs contended Balderas did not appear obviously intoxicated when he was served his last beverage. They did admit he was obviously intoxicated at the time he tried to leave. The security guard made him hand his keys to his companion, Danny Miller. The security guard testified Miller didn't appear intoxicated, but the guard failed to follow the two outside. Defs also argued contributory negligence for becoming intoxicated and driving while intoxicated. Plt. noted Danny Miller was at the bar the same amount of time and had approximately the same number of drinks. Mr. Balderas, who was LifeFlighted from the scene, suffered compound, comminuted fractures of both tibias and fibulas. He underwent multiple surgeries on both legs including open reductions with internal fixation. He also had a skull fracture which required surgical repair. He had approximately \$42,200 in past medical, claimed \$25,000 future medical for removal of hardware. He claimed \$490,000 in past and future economic loss (he's a self-employed mechanic). Karamalegos and Christ were sued because they were owners of the club and their names were on the liquor license.

Plaintiff - Gerald Casenave, PhD, vocational economist, Dallas; Maurice Dennis, PhD, Dram Shop and alcohol impairment expert, College Station; Cheryl Peyton, Toxicologist, DPS, Austin; David Turner, Plastic Surgery, Austin (video deposition); Defendant - None

C01-22;Week of 09-29-1997.; Jury found Joy Club 10%, Plt. 90% negligent. Bifurcated trial, actual damages and gross negligence were predicated and not answered. 10 - 2 (6 day trial) Pre-trial demand: \$225,000; Asked of jury: \$1,500,000 actuals; Pre-trial offer: \$50,000; Carrier: Paradigm Insurance Co..

Plt. was never charged with DWI. Neither Plt. nor Miller had their seat belts on. Miller suffered a closed head injury, experienced a full recovery. He settled with the Plt's liability carrier for its \$25,000 policy limit. He settled with the Joy Club for \$12,000. Plt's attorney told the jury in closing arguments that Def. counsel has won every Dram Shop case they have tried, "now it's time a bar should be held accountable."