

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
CIVIL ACTION NO. 5:06CV-173-R**

ABDALLA EL BANNAN,
Ancillary Administrator of the Estate
Of NADIA SHAHEEN, deceased

PLAINTIFF

V.

BURGESS HARRISON YONTS,

DEFENDANTS

MURRAY Pi, LLC, d/b/a NICK'S FAMILY SPORTS PUB,

LAKEE, INC.,

GARY WALLER INVESTMENTS, L.P., LTD.,

LAMBDA CHI ALPHA FRATERNITY INCORPORATED,

LAMBDA ETA CHAPTER OF LAMBDA CHI ALPHA,

LAMBDA CHI ALPHA HOUSE CORPORATION OF
MURRAY STATE UNIVERSITY, AND

LAMBDA ETA CHAPTER OF LAMBDA CHI ALPHA,
AN UNINCORPORATED ASSOCIATION COMPRISED OF THE
FOLLOWING STUDENT MEMBERS:
ZACHARY C. BAKER, LANDON O. BARROW, SETH B. BARROW,
JOSHUA BLAKEMORE, RICHARD E. BLALOCK, TODD R.
BROKER, JOHN L. CADWELL, ROSS D. CALLAHAN, CURRY J.
CATES, SEAN P. CLEMSON, DAVID M. COLLINS, JEREMY B.
COLLINS, SETH B. DARNELL, MICHAEL H. DENNIS, BRANDON
D. ELKINS, SCOTT J. ELLISON, MATTHEW ERNSTING, JAMES
W. GARRISON, JOHN H. GESENHUES, GRAHAM G. GOBIN,
TYLER C. GREEN, CLARK R. GWALTNEY, RYNE B. HAYNIE,
JARED C. HEMMER, CHRISTOPHER HENDERSON, ROBERT L.
HENGGE, NATHANIEL HICKLIN, TRISTAN L. HOLMES, RYAN K.
HOUSTON, PATRICK E. HOWELL, GREGORY S. HUMKEY,
TIMOTHY M. KANE, JONATHON B. KLOTZ, SEAN M. KNIPP,
RANDALL C. KUNKEL, THOMAS C. LAMBERT, BENJAMIN J.
LEMOND, VINCENT D. LUCIDO, JACOB M. LYON, NAVEEN P.
MAHTANI, MICHAEL R. MOSS, BLAKE A. MUNGER,
JOHNATHAN PARSONS, SKYLAR J. PHARRIS, RYAN T.
POLCZYNSKI, BOBBY D. POTTS, JOSHUA K. RAMSEY,

BRADLEY W. RIDEOUT, BRIAN T. ROTHE, DUSTIN SHEFFIELD,
RYAN M. SIEBERS, JAMES T. SKINNER, JONATHAN R. TABOR,
MITCHELL A. THOMAS, TREY M. VINCENT, GREGORY
VONNAHME, LEMUEL D. WATTS, AARON K. WEARE,
MARSHALL D. WELCH, MICHAEL S. WENTE, AND TREVOR B.
YOUNG.

COMPLAINT

Comes the Plaintiff, and for his Complaint against Defendants, states as follows:

I. PARTIES AND JURISDICTION

1. This is an action for the negligent and grossly negligent conduct of Defendants which resulted in the personal injuries and wrongful death of Nadia Shaheen on November 11, 2005, in Murray, Calloway County, Kentucky.

2. Plaintiff Abdalla El Bannan is the son of decedent Nadia Shahin (a/k/a Nadia Shaheen) and resides in Watertown, Massachusetts. By Order of the Calloway District Court, Probate Division, on May 8, 2006 (Case No. 06-P-96), Mr. El Bannan was appointed Ancillary Administrator for the Estate of his mother, Nadia Shaheen, who died intestate on November 11, 2005.

3. At the time of her death, Nadia Shaheen (DOB 11/17/42) was a citizen of Egypt who lawfully entered and remained in the United States until the time of her death on an F-1 Visa (temporary student). She resided in Murray, Calloway County, Kentucky, while attending Murray State University at the time of her death.

4. Burgess Harrison Yonts (hereinafter referred to as "Yonts") was a 20-year old Kentucky resident on or about November 11, 2005. His current residence is 232 Normal Circle, Greenville, Kentucky 42345.

5. Murray Pi, LLC, (hereinafter referred to as “Murray Pi”) is a limited liability company organized under Kentucky law pursuant to KRS 275.025. Its registered agent for the service of process is Hon. Thomas J. Keuler, 555 Jefferson Street, Suite 301, P. O. Box 929, Paducah, Kentucky 42002-0929. Murray Pi is identified by the Kentucky Alcoholic Beverage Control Board as a licensee to serve alcohol and operate as a “limited restaurant” d/b/a Nick’s Family Sports Pub.

6. Lakee, Inc.(hereinafter referred to as “Lakee”) is an Illinois corporation whose agent for service of process is Robert D. Lagore, 300 W. 10th Street, Metropolis, Illinois 62960-1506. Upon information and belief, Lakee, Inc. owns and/or operates Murray Pi, LLC and/or Nick’s Family Sports Pub in Murray, Kentucky.

7. Gary Waller Investments, L.P., LTD. (hereinafter referred to as “Waller”) is a Kentucky Limited Partnership whose agent for the service of process is Gary Waller, 301 Maple Street, Murray, Kentucky 42071. The Kentucky Alcoholic Beverage Control Board has identified Gary Waller Investments, L.P., LTD. as the lessee of the premises occupied by Nick’s Family Sports Pub. Accordingly, upon information and belief, Gary Waller Investments, L.P., LTD. was involved in the operation of Nick’s Family Sports Pub.

8. Lambda Chi Alpha Fraternity, Inc. (hereinafter referred to as “Lambda Chi National”) is an Indiana corporation whose registered agent for the service of process is Joseph Klimek, 8741 Founders Road, Indianapolis, Indiana 46268. On November 11, 2005, Lambda Chi National established, chartered, aided, assisted, controlled, directed, sponsored, supported, insured, and sanctioned the activities and operation of its Lambda Eta Chapter at Murray State University in Murray, Kentucky.

9. Lambda Chi Alpha House Corporation of Murray State University (hereinafter referred to as “Lambda Chi House”) is a Kentucky corporation whose agent for service of process is Hon. Richard W. Jones, 105 North 6th Street, Murray, Kentucky 42071. Upon information and belief, Lambda Chi House owned and insured the Fraternity House located at 1505 Main Street, Murray, Kentucky; Lambda Chi House controlled, directed, sponsored, sanctioned, aided, assisted, and supported the activities and operation of both Lambda Chi National, Lambda Eta Chapter, and its Fraternity members.

10. Lambda Eta Chapter of Lambda Chi Alpha, Inc. (hereinafter referred to as “Lambda Eta Chapter”) was previously known as Lambda Eta Chapter of Lambda Chi Alpha, Inc., a Kentucky corporation, incorporated in 1986, and administratively dissolved on November 3, 1997. On November 11, 2005, Lambda Eta Chapter was an association, whose membership is identified in Paragraph 11 below. Its agents for service of process are its officers and members identified below. Lambda Eta Chapter sponsored, assisted, aided, supported, promoted, sanctioned, controlled, and was otherwise involved in activities of its members at Lambda Chi House in Murray, Kentucky on November 11, 2005.

11. The following individuals were members of Lambda Chi National and/or Lambda Eta Chapter on November 11, 2005:

- a) Zachary C. Baker, 374 Old Lovers Lane, Murray, KY 42071;
- b) Landon O. Barrow, 1136-A Jones Sparkman, Murray KY 42071;
- c) Seth B. Barrow, 1904 Gatesborough, Murray, KY 42071;
- d) Joshua Blakemore, 5538 Franklin, Murray, KY 42071; P.O. Box 416, Dyersburg, TN 38025;
- e) Richard E. Blalock, 5736 St. Rt. 94 East, Murray, KY 42071;
- f) Todd R. Broker, 1308 Waterwood Dr., Mansfield, TX 76063;
- g) John L. Cadwell, 3477 Grasmere Dr., Lexington, KY 40503;

- h) Ross D. Callahan, 5647 Franklin, Murray, KY 42071; 467 Foxborough Ct., Versailles, KY 40383;
- i) Curry J. Cates, 1619 Miller St., Murray, KY 42071; 928 St. Rt. 2837, Clay, KY 42404;
- j) Patrick E. Clark, 710 A Bagwell Ct., Murray, KY 42071; 5907 Mercury Dr., Louisville, KY 40291;
- k) Sean P. Clemson, 1404 Garland Ct., Murray, KY 42071;
- l) David M. Collins, n/a;
- m) Jeremy B. Collins, 5617 St. Rt. 109 N., Clay, KY 42404;
- n) Seth B. Darnell, 1263 Almo Shiloh Rd., Murray, KY 42071;
- o) Michael H. Dennis, 1505 Main St., Murray, KY 42071; 95 W. Elm St., Clay, KY 42404;
- p) Brandon D. Elkins, 2184 Elm Grove Rd., Almo, KY 42020;
- q) Scott J. Ellison, 3736 Runnymede Dr., St. Charles, MO 63301;
- r) Matthew J. Ernsting, P. O. Box 73, Steeleville, IL 62288;
- s) James W. Garrison, 1309 Oak Hill Ct., Murray, KY 42071;
- t) John H. Gesenhues, 44 Hanover Pl., Ft. Thomas, KY 41075;
- u) Graham G. Gobin, 1136 Jones Sparkman Rd., Murray, KY 42071; 2443 Providence Rd., Providence, KY 42450;
- v) Tyler C. Green, 129 Arbor Ridge Dr., Mayfield, KY 42066;
- w) Clark R. Gwaltney, 446 Paradise Rd., Greenville, KY 42345;
- x) Ryne B. Haynie, 45 Sunset Ln., Camden, TN 38320;
- y) Jared C. Hemmer, 1326 Tiffany Apt. A, Murray, KY 42071; 24 Barrett Ct., Swansea, IL 62226;
- z) Christopher J. Henderson, P. O. Box 219, Perryville, KY 40460;
- aa) Robert L. Hengge, 23 Sturbridge, Cold Spring, KY 41076;
- bb) Nathaniel S. Hicklin, 3069 St. Rt. 630, Dixon, KY 42409;
- cc) Tristan L. Holmes, 620 Farmers Crossing, White Plains, KY 42464;
- dd) Ryan K. Houston, 1416 Oakhill Dr., Murray, KY 42071;
- ee) Patrick E. Howell, 1326 Tiffany Ln. #C, Murray, KY 42071; 525 W. 20th, Metropolis, IL 62960;
- ff) Gregory S. Humkey, 121 Elkhorn Bend, Midway, KY 40347;
- gg) Timothy M. Kane, 6n158 Creekside Dr., St. Charles, IL 60175;
- hh) Jonathon B. Klotz, P. O. Box 734, Brookport, IL 62910;
- ii) Sean M. Knipp, 138 Wilsonville Hgts., Fisherville, KY 40023;
- jj) Randall C. Kunkel, 1341 Walnut Way, Bowling Green, KY 42014;
- kk) Thomas C. Lambert, 1555 Oxford Dr., Murray, KY 42071;
- ll) Benjamin J. Lemond, 6612 Pinehurst Dr., Evansville, IN 47711;
- mm) Vincent C. Lucido, 2601 Banks Dr., Alton, IL 62002;
- nn) Jacob M. Lyon, 2239 E. Delaware St., Evansville, IN 47711;
- oo) Naveen P. Mahtani, 4244 Hart, Murray, KY 42071; 396 S. Bethel St., Russellville, KY 42276;
- pp) Michael R. Moss, 108 Old Dyer Trenton, Dyer, TN 38330;

- qq) Blake A. Munger, 1075 St. Rt. 121 N., Murray, KY 42071; 221 W. 424th Rd., East Prairie, MO 63845;
- rr) Johnathan D. Parsons, P. O. Box 451, Clay, KY 42404;
- ss) Skylar J. Pharris, 2345 Eastlawn Rd., Madisonville, KY 42431;
- tt) Ryan T. Polczynski, 9095 Lakeshore Ln., Nashville, IL 62203
- uu) Bobby D. Potts, 915 Cherokee Trl., Murray, KY 42071
- vv) Joshua K. Ramsey, 2295 Manitou Rd., Manitou, KY 42436
- ww) Bradley W. Rideout, PO Box 146, Poole, KY 42444
- xx) Brian T. Rothe, 967 John Thomas Rd., Manitou, KY 42436
- yy) Dustin T. Sheffield, 102 Coopertown Rd., Russellville, KY 42276
- zz) Ryan M. Siebers, 6 Norwood Ct., Edwardsville, IL 62025
- aaa) James T. Skinner, 1505 Main St., Murray, KY 42071; 301 Airport Rd., Providence, KY 42450
- bbb) Jonathan R. Tabor, 308 St. Rt. 56 East, Sebree, KY 42455
- ccc) Mitchell A. Thomas, 138 Geiger Lake Rd., Sturgis, KY 42459
- ddd) Trey M. Vincent, 519 Greenhill Dr., Benton, KY 42025
- eee) Gregory P. Vonnahme, 2110 Southwest Dr., Murray, KY 42071
- fff) Lemuel D. Watts, 231 Saddlebrook Ln., Hanson, KY 42413
- ggg) Aaron K. Weare, 905 Hartford Ct., Evansville, IN 47710
- hhh) Marshall O. Welch, 1322 Main St., Murray, KY 42071
- iii) Michael S. Wentz, 1505 Main St., Murray, KY 42071; 26 Tinsbury, Mattoon, IL 61938
- jjj) Trevor B. Young, 3365 Buttermilk Road, St. Charles, KY 42453;
- kkk) Burgess Harrison Yonts, 232 Normal Circle, Greenville, KY 42345.

The foregoing Lambda Chi National and/or Lambda Eta Chapter members (collectively referred to as “fraternity member(s)”) individually and/or collectively supported, organized, sponsored, assisted, promoted, sanctioned, controlled, and participated in the activities at the house on November 11, 2005.

12. This Court has jurisdiction of this case pursuant to 28 USC § 1332. The amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs. Under 28 USC § 1332(c)(2), Plaintiff is deemed to be a citizen of the state of his deceased mother. Under 28 USC § 1332(a)(2), Nadia Shaheen was a citizen of a foreign state (Egypt); Defendants are all citizens of various states of the

United States. Venue is properly before this Court under 28 USC § 1391(a)(2), because a substantial part of the events giving rise to this claim occurred in Murray, Calloway County, Kentucky.

II. FACTS

13. Prior to her death on November 11, 2005, Nadia Shaheen was a 62-year old Egyptian attorney and loving mother of three children, daughters Samaa El Bannan and Samah El Bannan, and son Abdalla El Bannan. She was enrolled as a student at Murray State University and was a December, 2005 degree candidate in TESOL (teaching English to speakers of other languages). After studying at the Computer Lab in the Curris Center, Nadia Shaheen was walking home during the early morning hours of Friday, November 11, 2005, when she was struck by the vehicle Yonts was driving near “Five Points.” Yonts recognized the seriousness of Nadia Shaheen’s injuries but failed to summon emergency medical help for her. Instead, Yonts tried to conceal his wrongful acts and then fled the scene of the crime, leaving Nadia Shaheen to suffer and then die mercilessly. Her body was discovered several hours later at approximately 6:30 a.m.

14. When Yonts struck and injured Nadia Shaheen, he was intoxicated. On January 27, 2006, Yonts was indicted by the Calloway Circuit Grand Jury for wanton murder, tampering with physical evidence, driving under the influence, and leaving the scene of an accident.

15. During the hours immediately preceding Nadia Shaheen’s fatal injuries, Yonts consumed alcohol at both Nick’s Family Sports Pub in Murray at the Lambda Chi Alpha Fraternity House in Murray. On November 11, 2005, Yonts was twenty (20) years old and was, therefore, a minor with respect to the consumption of alcohol (KRS 2.015).

Defendants and/or their agents, apparent agents, servants, or employees sold, gave, served, purchased, procured, delivered, provided, furnished, and/or obtained alcohol for/to Yonts; alternately, Defendants and/or their agents, apparent agents, servants, or employees aided, assisted, facilitated, and/or failed to prevent Yonts' consumption of alcohol in their presence, notwithstanding Yonts' minority.

16. During the hours immediately before Yonts struck and fatally injured Nadia Shaheen, Yonts' intoxication was observed and/or observable by Defendants and/or their agents, apparent agents, servants, or employees. Despite their actual and/or constructive knowledge of Yonts' intoxication, Defendants and/or their agents, apparent agents, servants, or employees continued to sell, give, purchase, procure, serve, deliver, provide, furnish, or made available alcohol for Yonts to consume; alternately, they failed to prevent Yonts from consuming additional alcohol and then driving his automobile while intoxicated.

17. The fatal injuries which Nadia Shaheen suffered resulted from the acts, omissions, breaches of duty, negligence, gross negligence, wanton conduct, negligence per se, and/or strict liability of all Defendants and their agents, ostensible agents, servants, or employees.

III. LIABILITY OF YONTS

18. On November 11, 2005, Yonts negligently operated his motor vehicle causing Nadia Shaheen to suffer fatal injuries, from which ultimately she died.

19. During the hours preceding Nadia Shaheen's fatal injuries on November 11, 2005, Yonts consumed excessive alcohol impairing his judgment and ability to operate his motor vehicle, and which resulted in the fatal injuries and death suffered by

Nadia Shaheen. Yonts was grossly negligent and wanton in the operation of his motor vehicle under these circumstances.

20. At the time of and following Nadia Shaheen's fatal injuries, Yonts exhibited extreme indifference for her life and/or engaged in oppressive, malicious, and/or wanton conduct, by failing to render aid to his victim, failing to call for emergency medical help for his victim, who suffered profound injuries, and/or by leaving his victim to suffer and die after attempting to conceal his crime and flee the scene.

IV. DRAM SHOP LIABILITY

21. Defendants Murray Pi, Lakee, Gary Waller, and/or Nick's Family Sports Pub were jointly and severally negligent in their sale, service, delivery, and/or provision of alcohol to Yonts in the hours immediately preceding Nadia Shaheen's fatal injuries on November 11, 2005.

22. Defendants Murray Pi, Lakee, Gary Waller, and/or Nick's Family Sports Pub were grossly negligent, willful, wanton, oppressive, and malicious in their sale, service, delivery, and/or provision of alcohol to Yonts in the hours immediately preceding Nadia Shaheen's fatal injuries on November 11, 2005.

23. Defendants Murray Pi, Lakee, Gary Waller, and/or Nick's Family Sports Pub violated the provisions of KRS 244.080, 244.085, 413.241, and/or 530.070, constituting negligence per se. The Defendants' violations of these statutes give rise to civil liability under KRS 446.070.

24. Defendants Murray Pi, Lakee, Gary Waller, and Nick's Family Sports Pub were jointly and severally engaged in the operation of Nick's Family Sports Pub for their mutual benefit. Alternately, said Defendants are liable for the acts of each other under

principles of actual and/or apparent agency, *respondeat superior*, and/or as joint venturers.

V. FRATERNITY LIABILITY

25. Defendants Lambda Chi National, Lambda Chi House, Lambda Eta Chapter, and all fraternity members negligently permitted, assisted, caused, induced, aided, abetted, promoted, and encouraged the consumption of alcohol by Yonts, a minor, and/or who was already intoxicated, despite the fact that his minority and intoxication was known, observed, and/or observable by Defendants.

26. During the hours immediately preceding Nadia Shaheen's fatal injuries on November 11, 2005, Defendants Lambda Chi National, Lambda Chi House, Lambda Eta Chapter, and all fraternity members negligently permitted, assisted, caused, induced, aided, abetted, promoted, and encouraged the consumption of alcohol by Yonts at Lambda Chi House in their presence. Said Defendants negligently supervised and/or failed to supervise and/or otherwise control the service or consumption of alcohol by Yonts on Lambda Chi's premises and/or in their presence. Said Defendants negligently failed to respond appropriately by taking reasonable precautions to protect the public from foreseeable harm when Yonts decided to leave Lambda Chi House during the early morning hours on November 11, 2005.

27. Defendants Lambda Chi National, Lambda Chi House, Lambda Eta Chapter, and all fraternity members violated KRS 530.070 and 244.085(3). Defendants are liable per se pursuant to KRS 446.070.

28. For the reasons stated in Paragraphs 25 – 27 above, the conduct of Defendants Lambda Chi National, Lambda Chi House, Lambda Eta Chapter, and all

fraternity members was malicious, oppressive, indifferent, willful, wanton, and grossly negligent during the hours immediately preceding Nadia Shaheen's fatal injuries on November 11, 2005.

29. Lambda Chi National chartered, established, aided, assisted, directed, controlled, sponsored, sanctioned, promoted, advised, trained, and insured the activities of Lambda Chi House, Lambda Eta Chapter, and/or the Defendant members. Lambda Chi National negligently supervised the Lambda Chi Chapter and its fraternity members.

30. Lambda Chi National enrolled and accepted members and chapters, and required them to act in conformity with Lambda Chi National rules. Lambda Eta Chapter and its fraternity members promoted the interests of Lambda Chi National, which derived economic benefit from the acts of its fraternity members and Lambda Eta Chapter. Lambda Chi National controlled, supervised, and managed the activities and operations of its Chapters and members. Accordingly, Lambda Chi National is liable for the acts, omissions, negligence, and gross negligence of Lambda Eta Chapter and the fraternity members (including Defendant Yonts) under principles of actual and/or apparent agency, joint venture, and/or equitable estoppel. Likewise, Lambda Eta Chapter and Lambda Chi House are liable for the acts, omissions, negligence, and gross negligence of its fraternity members (including Defendant Yonts) under principles of actual and/or apparent agency, joint venture, and/or equitable estoppel.

VI. DAMAGES

31. As a result of Defendants' conduct, Nadia Shaheen sustained injuries which culminated in her death after she endured an interminable period of physical pain

and mental suffering. Her estate incurred funeral and burial expenses, and suffered the destruction of her earning capacity.

32. The conduct of Defendants was malicious, oppressive, indifferent, willful, wanton, and grossly negligent, subjecting Defendants to liability for punitive damages.

33. WHEREFORE, Plaintiff prays for entry of judgment jointly and severally against Defendants, awarding him compensatory damages, punitive damages, costs, interest, expenses, and all such further relief to which he may appear to be entitled based upon the evidence, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

34. A trial by jury is demanded.

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