1 Plaintiff: Gregory Thompson

2 Witness: Alice Baxter

3 Defense 1: William Hopkins

4 Defense 2: Pamela Smith

5

6 WARMUP

7

8 MR. THOMPSON: The record should reflect who is

9 present for this deposition. Present today we have the

10 witness, Alice Baxter.

11 Thank you for coming today, ma'am.

12 I / will state my appearance for the record at

13 this time. I am Gregory Thompson, attorney for the

14 plaintiff in this case.

15 Counsel, why don't you / state your

16 appearances for the record at this time.

17 MR. HOPKINS: Yes, thank you. William Hopkins,

18 attorney for the defendant, Olive Garden restaurant.

19 MS. SMITH: Good morning. I am / Pamela Smith,

20 attorney for the defendant, Five Star Cleaning Service.

21 MR. THOMPSON: All right. Thank you.

22 Before we begin with the questioning this

23 morning, is there anything // that we need to put on the

24 record?

25 MR. HOPKINS: No, I don't think so. I do have

1 questions, but I will wait my turn.

2 MR. THOMPSON: Oh, yes, / I understand. I meant

3 before we started.

4 MS. SMITH: I don't have anything before the

5 questioning, other than to see if the witness has any

6 questions of / us before we begin.

7 THE WITNESS: No, I don't. I just came because of

8 the subpoena.

9 MS. SMITH: That's right. Mr. Thompson subpoenaed

10 you today for the purpose of / taking your deposition, but

11 I believe we will probably all have a few questions for you

12 due to the litigation between

13 Mr. Sinclair and the / Olive Garden.

14 THE WITNESS: All right.

15 MR. THOMPSON: Well, if there is no objection, then

16 let's go ahead and start.

17 MR. HOPKINS: Yes, that's fine.

18 MS. SMITH: The witness has been already

19 sworn; / is that correct?

20 MR. HOPKINS: Yes.

21 EXAMINATION

22 BY MR. THOMPSON: Q. Good morning, ma'am. Would

23 you please state your name for the record.

24 A. Alice Baxter.

25 Q. Ma'am, we are here today for the / purposes of

1 taking your deposition regarding the case of Mr. Rick
2 Sinclair vs. Olive Garden Restaurant and
3 Five Star Cleaning Service.
4 A. I understand that.
5 Q. I / am representing Mr. Sinclair in his
6 personal injury lawsuit, and I have some questions for
7 you. You have already been sworn. I will advise
8 you // to please let me know if you don't understand any of
9 my questions so I can rephrase them.
10 Do you understand?
11 A. Yes.
12 Q. Do you have / any questions before we begin?
13 A. No, I don't.
14 Q. Ma'am, it is my understanding that you were
15 present at the restaurant and observed an accident on /
16 December 31, 1998; is that correct?
17 A. Yes, it is.
18 Q. Do you remember what time you arrived at the
19 restaurant that evening?
20 A. I believe we / got there about 5:00 o'clock.
21 It might have been a little bit earlier than that, but we
22 were supposed to meet there at about
23 5:00. /
24
25

1

2 Plaintiff: Gregory Thompson

3 Witness: Alice Baxter

4 Defense 1: William Hopkins

5 Defense 2: Pamela Smith

6

7 BEGIN EXAM

8

9 BY MR. THOMPSON: Q. Were you meeting friends or

10 family?

11 A. Yes, I was meeting a group of friends there to

12 celebrate the holidays.

13 Q. When you arrived at the restaurant, / did you

14 see any of your group already there?

15 A. Yes, I did. They were seated at a table and I

16 joined them right away.

17 Q. Where / were you sitting?

18 A. They have a big dining room, and then in the

19 back there is a section that is kind of separate. I

20 believe / they reserve it for private parties and functions

21 like that. There were plenty of people there that evening,

22 so they seated us back there.

23 Q. Is // that room separated by walls, or why do

24 you say it is another room?

25 A. You walk through the dining room, and then

1 there are stairs / that lead to the other room.

2 Q. Do you recall approximately how many stairs --

3 well, first, let me ask you this: Do you step down or /

4 step up to this other room?

5 A. Oh, I am sorry. The stairs lead up to the

6 private dining room.

7 Q. Do you recall how many stairs / there are?

8 A. I would say there are probably at least three

9 or four.

10 MR. HOPKINS: Excuse me for interrupting.

11 Did you say the stairs go up or / down into

12 this room?

13 THE WITNESS: You step up into the room.

14 MR. HOPKINS: Thank you.

15 BY MR. THOMPSON: Q. Now, do you remember the

16 accident that occurred on that evening?

17 A. Yes, I / do.

18 Q. Tell us what you remember happening.

19 A. Well, I remember being there talking to

20 friends when I heard this extremely loud crashing sound.

21 Q. What did / you do then?

22 A. I looked to see what had happened.

23 Q. And what did you observe?

24 A. I saw that a waiter had fallen on the stairs /

25 and there were a couple people on the floor.

1 Q. How many people did you see on the floor, do
2 you recall?
3 A. Well, I remember there // was the waiter, and
4 then either two or three other people that were with him.
5 Q. Were they all on the stairs or where did you /
6 observe these other people?
7 A. They were all piled on top of each other. I
8 subsequently determined the waiter was more on the stairs.
9 The other / people were down on the floor of the bigger
10 dining room.
11 Q. What transpired after that?
12 A. Initially, I was rather shocked and didn't
13 believe what just / transpired. My friends got up
14 immediately and hurried over to see what had happened. I
15 felt really embarrassed for the people involved.
16 Q. What do you / mean you felt embarrassed?
17 MR. HOPKINS: Objection. Nonresponsive.
18 MS. SMITH: I join in the objection. I object that
19 it is irrelevant how the witness felt.
20 MR. THOMPSON: Your objections are noted / for the
21 record.
22 MR. HOPKINS: That's fine. The record should
23 reflect that all objections are deemed reserved until
24 time of trial.
25 MS. SMITH: Can we have a stipulation to / that

effect?

MR. THOMPSON: Yes, I so stipulate.

MR. HOPKINS: No problem. So stipulated.

BY MR. THOMPSON: Q. Mrs. Baxter, what did you do after the accident?

A. We waited a few minutes, and / then just tried to see if we could do something to help.

Q. When you say a few minutes, are you sure it wasn't a few // seconds?

MR. HOPKINS: I object. Leading.

BY MR. THOMPSON: Q. Do you know how long it was after the accident before you got up from your table?

A. Well, it was really / pretty quickly. I mean, I heard the sound and noticed the people on the floor, and then I would say it was probably 30 seconds / before we got up.

Q. What distance from your table were the stairs?

A. My best estimate would be ten feet.

Q. Well, that's all we can ask / for is your best estimate. If you look around this room, do you see something that's approximately the same distance?

A. The plant in the corner. /

1

2 START TYPING

3

4 BY MR. THOMPSON: Q. You are pointing to the ficus

5 tree?

6 A. Yes, that's about how far the stairs would be

7 from where I am sitting here.

8 MS. SMITH: Counsel, I would / propose to stipulate

9 that the distance is approximately 20 feet.

10 MR. THOMPSON: Thank you.

11 MR. HOPKINS: So stipulated.

12 BY MR. THOMPSON: Q. Now, Mrs. Baxter, how long

13 had you been seated at the / table before the accident

14 happened?

15 A. I would say maybe about 15 minutes.

16 Q. Had you placed your order for dinner yet?

17 A. Oh, no. We were all / just talking and

18 visiting with each other. I hadn't seen some of these

19 people in a long time, so we were just enjoying the

20 company. //

21 Q. Subsequent to the waiter falling, did you have

22 any conversations with any of the people on the floor?

23 A. Yes, I did. I asked everyone if / they were

24 okay.

25 Q. Who did you specifically address?

1 A. Actually, the lady with the red hair is the
2 one I spoke to first. I asked her / if she was okay, and
3 then I began to assist her in standing upright.
4 Q. Who else did you speak with at that moment?
5 A. Well, after / the lady got up, I saw that the
6 man underneath her wasn't awake. I believe he apparently
7 slipped on the stairs and hit his head. /
8 MS. SMITH: Objection. Conclusion and speculation.
9 BY MR. THOMPSON: Q. Why do you believe that
10 Mr. Sinclair slipped on the stairs?
11 A. I eventually saw that there was some kind of
12 liquid / or fluid on the stairs. I just assumed that he
13 slipped.
14 MS. SMITH: Objection. Assumes facts not in
15 evidence. Move to strike the answer.
16 BY MR. THOMPSON: Q. Mrs. Baxter, when / you
17 walked up the steps to join your friends, did you happen to
18 notice anything on the steps at that time?
19 A. No. I don't remember / seeing anything, but I
20 don't remember really looking at all the steps.
21 Q. Don't you usually look at steps before you
22 walk on them?
23 A. Not always. // If I know where I am going, I
24 don't always pay attention to that. I was
25 probably more focused on seeing my friends.

1 Q. Did you / notice anything unusual about the
2 stairs when you approached them?
3 A. Afterwards, I did notice that they were very
4 bright. They looked like they were perhaps / new or
5 something.
6 MR. THOMPSON: Mr. Hopkins, I need just a few
7 minutes to review this new discovery you brought. If you
8 would like to begin your / examination, I can finish up
9 later.
10 MR. HOPKINS: Okay. That's fine. As long as
11 counsel has no objection.
12 MS. SMITH: That's fine. No objection.
13 EXAMINATION
14 BY MR. HOPKINS: Q. Ma'am, just to refresh your /
15 memory, I represent Olive Garden. I just have a few
16 questions for you.
17 Had you been to that Olive Garden prior to
18 that evening?
19 A. Definitely. / It is close to my home, so I
20 have been there on many occasions.
21 Q. When you were there previously, had you ever
22 been seated in / that back dining area that you labeled the
23 private party section?
24 A. Actually, I was trying to recall that. I
25 don't remember that I ever had, / but it is possible.

1 Whenever you have a larger party, they put you back there.
2 I have been there for birthdays before, so I am // sure
3 that I was seated there before.
4 Q. Presently here today, though, you don't
5 remember using those stairs prior to that evening?
6 A. I am positive that / I have, I just can't
7 specifically remember when.
8 Q. Mrs. Baxter, you testified the stairs appeared
9 new. Did they look different in some particular way?
10 A. No, / I meant that they appeared really clean
11 and shiny. They didn't look different like some new type
12 of equipment. That's not what I meant. The / stairs were
13 just clean and bright.
14 Q. During the time that you had been seated at
15 your table, did you notice anybody having trouble with
16 the / steps?
17 A. You mean just that night?
18 Q. While you were in the restaurant.
19 A. No, nothing stands out in my memory.
20 Q. Maybe I should ask you a / foundational
21 question first. Do you remember seeing anybody using the
22 stairs before the accident?
23 A. Sure. There were people seated next to us,
24 and then waiters / were bringing drinks to them.
25 Q. Did you personally observe waiters serving

1 drinks to the people around you?
2 A. Yes, I did.
3 Q. Did you order something to / drink yourself?
4 A. Yes, I did.
5 Q. Did you have any alcoholic beverages while you
6 were there?
7 A. I ordered a glass of wine, and the waiter
8 also // brought me a glass of water at the same time.
9 Q. I wanted to clarify something with you. I
10 believe you were previously interviewed by some /
11 investigators; is that correct?
12 A. Yes, I was interviewed. I don't know who it
13 was that was asking me questions, but I believe they were
14 from / the insurance company.
15 Q. Does the name Patrick York sound familiar to
16 you?
17 A. Not really. It was a tall man with glasses.
18 Q. Well, anyway, in a / prior interview you were
19 asked if you had observed anything on the stairs when you
20 approached that evening. Your answer was that you thought
21 you / had seen something shiny, perhaps water. Do you
22 remember that?
23 A. I don't believe I said it quite that way. I
24 responded the stairs were very / bright. I don't remember
25 any water on them.

1 Q. You didn't witness anybody spilling any
2 beverages on the stairs, did you?
3 A. No, I didn't.
4 Q. You testified / today that you observed a man
5 unconscious on the floor. Did you attempt to speak with
6 him?
7 A. No, he wasn't really able to talk.
8 Q. Did / you try to speak to Mr. Sinclair?
9 A. No. I was helping the woman up. I just
10 noticed that he was laying there. It looked like // he had
11 hit his head.
12 Q. Okay. Without guessing what possibly could
13 have happened to him, can you tell us if you actually
14 observed Mr. Sinclair / prior to the alleged accident?
15 A. I heard a sound. I shifted my attention and
16 looked over. They were all on the floor.
17 Q. You didn't personally / witness how they ended
18 up on the ground?
19 A. They must have fallen, that's all I can
20 imagine.
21 Q. My question, though, did you witness how
22 they / fell?
23 A. Not personally. I know the waiter was serving
24 at the table next to us, and then he departed down the
25 stairs. The next thing / I heard was the fall.

1 Q. Did you see the waiter prior to the alleged
2 accident?
3 A. Yes, he was serving our table and the table
4 next / to us.
5 Q. Did you have any conversation with him after
6 the accident?
7 A. No. Like I said, I was busy helping the
8 taller woman. There were / other people there who were
9 helping other people. The waiter was getting up and
10 picking up his tray and stuff.
11 Q. When you talked to the / waiter after the
12 accident, did he say anything about the accident?
13 MS. SMITH: Objection. Assumes facts not in
14 evidence. She testified that she didn't speak to
15 the // waiter after the accident.
16 MR. HOPKINS: I believe the testimony was that she
17 did speak to him while she was helping the woman. Perhaps
18 I misunderstood, but -- /
19 MR. THOMPSON: We can have the record read if you
20 want, but I think you are mistaken.
21 THE WITNESS: I didn't speak to him until after the
22 paramedics were / there.
23 BY MR. HOPKINS: Q. How long after the accident was
24 it that you spoke to the waiter?
25 A. I talked to him after the paramedics were

1 there when he / was serving our dinner.

2 Q. Are you saying that the waiter remained

3 working after the fall?

4 A. Yes, I believe so. He served our dinner after

5 that, / so I guess that he was still working.

6 Q. Did you have any conversation with him

7 regarding the accident, or was it just general conversation

8 pertaining / to your dinner?

9 A. I eventually asked him if he was okay. We

10 had, of course, ordered our dinner first, but it was

11 awkward. When he / served our dinner, I had to ask how he

12 was feeling. I was just worried about him.

13 MR. THOMPSON: Objection. Irrelevant. Move to

14 strike that part of / the answer.

15 BY MR. HOPKINS: Q. Do you remember the waiter's

16 name?

17 A. Yes, I do. His name is Steve.

18 Q. What was your discussion with Steve after the

19 accident?

20 A. I // asked him if he was okay. He told me

21 that he fell on the stairs because they were slippery.

22 MS. SMITH: Objection. Hearsay.

23 MR. THOMPSON: Well, this is a / deposition. I'm

24 sure the record will reflect your objection.

25 BY MR. HOPKINS: Q. Did Steve describe how he

1 allegedly slipped on the stairs?

2 MS. SMITH: Objection. Hearsay.

3 BY MR. HOPKINS: Q. You can answer the / question,

4 Mrs. Baxter.

5 A. He said that they had been polished that

6 morning and were extra slippery that night.

7 MR. HOPKINS: Nothing further at this time.

8 MS. SMITH: I have / a few questions, but did you

9 want to continue with your examination?

10 MR. THOMPSON: No. Please proceed. That's fine.

11 EXAMINATION

12 BY MS. SMITH: Q. Good morning, Mrs. Baxter.

13 A. Good morning.

14 Q. I am / the attorney for the maintenance

15 service in this litigation. I have a couple questions for

16 you, if you don't mind, ma'am.

17 A. Okay. Certainly.

18 Q. You just / testified the waiter at Olive

19 Garden related to you the stairway had been freshly

20 polished that morning. Do you remember if that's verbatim

21 what he / told you, or whether it was possibly something

22 different?

23 A. Steve told me the steps were very slippery.

24 He started down the stairs. The next thing / he

25 remembered, he landed on his back.

1 Q. Now, approximately --

2 A. Steve said that he hit the top step and his

3 foot went out from under him. // As he was falling down,

4 he lost control of his serving tray. It fell, hitting the

5 woman with the red hair.

6 Q. Well, if I understand / your testimony

7 correctly, you didn't actually see the accident. You just

8 heard it?

9 A. You could characterize it that way. I heard

10 the fall and then / the crash. It was obvious what had

11 happened, but I don't know all the particulars.

12 Q. Did you observe Mr. Sinclair prior to the

13 accident?

14 A. You / know, I'm not absolutely sure. He was

15 with the party next to us, but I don't remember talking to

16 him or anything.

17 Q. Well, I am / more asking whether you

18 personally observed him anywhere near the stairway at the

19 time of the accident.

20 A. I don't remember seeing him walking, but

21 he / landed on the ground directly underneath the woman.

22 He must have been right there.

23 Q. Okay. Did you see the woman prior to the

24 alleged accident / happening?

25 A. Again, I don't really recall that. I lifted

her off the ground, however.

Q. The fact that these people were on the ground, that's the / only way that you know that they were in the accident, right?

A. Yes, I guess so. I mean, I didn't see it happen, but it // did happen. I witnessed the aftermath of the accident.

Q. We understand that. We all appreciate your time in speaking to us. We are just trying / to get your observations and what you personally observed.

A. Okay. I am sorry.

Q. No, that's okay.

MR. THOMPSON: If I may interrupt. We realize that this is / a new situation for you and that you don't have your deposition taken every day.

THE WITNESS: No, that's true.

MR. THOMPSON: Counsel is just pointing out to you / that we just need your personal observations and what you witnessed. There is no right or wrong answer, we just need what you saw. We / appreciate your patience.

BY MS. SMITH: Q. Mrs. Baxter, you don't really know what caused the accident; is that correct?

A. That's right, not what caused it.

Q. You don't know / if the floor was slippery from cleaning, or whether the waiter perhaps spilled some

1 beverages on the stairway; is that correct?
2 A. That's correct.
3 Q. Did you / conduct any personal investigation
4 into what caused this accident or how people were injured,
5 if they were injured?
6 A. No, I did not. I just was / very careful in
7 walking out of the restaurant after Steve told me the
8 stairs were slippery.
9 MS. SMITH: No further questions at this time.
10 MR. THOMPSON: I have a // couple.
11 MR. HOPKINS: That's fine.
12 EXAMINATION
13 BY MR. THOMPSON: Q. Ma'am, did you communicate
14 with Mr. Sinclair, my client, after the accident?
15 A. I went to see him at the hospital, but I /
16 didn't talk to him at the restaurant.
17 Q. When you spoke to him, did he tell you what
18 caused the accident?
19 MS. SMITH: Objection. Hearsay. Irrelevant what
20 the / plaintiff told this witness.
21 MR. HOPKINS: I join in the objection.
22 BY MR. THOMPSON: Q. Ma'am, did Mr. Sinclair say
23 that he slipped on the stairs, or that he just stumbled /
24 down the stairs?
25 A. Mr. Sinclair said he doesn't really remember

what happened.

Q. Did you have other discussions with him?

A. No, sir, I don't recall any. /

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