

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. /

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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

1 effect?

2 MR. THOMPSON: Yes, I so stipulate.

3 MR. HOPKINS: No problem. So stipulated.

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

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

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

10 MR. HOPKINS: I object. Leading.

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

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

17 Q. What distance from your table were the stairs?

18 A. My best estimate would be ten feet.

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

22 A. The plant in the corner. /

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START TYPING

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

A. Yes, that's about how far the stairs would be from where I am sitting here.

MS. SMITH: Counsel, I would / propose to stipulate that the distance is approximately 20 feet.

MR. THOMPSON: Thank you.

MR. HOPKINS: So stipulated.

BY MR. THOMPSON: Q. Now, Mrs. Baxter, how long had you been seated at the / table before the accident happened?

A. I would say maybe about 15 minutes.

Q. Had you placed your order for dinner yet?

A. Oh, no. We were all / just talking and visiting with each other. I hadn't seen some of these people in a long time, so we were just enjoying the company. //

Q. Subsequent to the waiter falling, did you have any conversations with any of the people on the floor?

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

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

1 her off the ground, however.

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

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

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

11 A. Okay. I am sorry.

12 Q. No, that's okay.

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

16 THE WITNESS: No, that's true.

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

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

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

24 Q. You don't know / if the floor was slippery  
25 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

1 what happened.

2 Q. Did you have other discussions with him?

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

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