

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

JOHNNY D. GILBERT, JR. and
ANNETTE GILBERT,

PLAINTIFFS

VS.

CASE NO. 60CV-20-

FRAWST L.L.C., d/b/a
SIX TEN CENTER,

DEFENDANT

COMPLAINT

NOW COME Plaintiffs, JOHNNY D. GILBERT, JR. and ANNETTE GILBERT, by and through their attorneys, and for their cause of action against Defendant, FRAWST L.L.C., d/b/a SIX TEN CENTER, state as follows:

INTRODUCTION

This is an action brought by Plaintiffs, JOHNNY D. GILBERT (hereafter “LT. GILBERT”) and ANNETTE GILBERT (hereafter “MRS. GILBERT”) (hereafter collectively “PLAINTIFFS”), against Defendant, FRAWST L.L.C., d/b/a SIX TEN CENTER, for violations of the Arkansas Dram Shop Act, Ark. Code Ann. § 16-126-101, *et seq.*, and for loss of consortium.

PLAINTIFFS seek monetary damages against FRAWST L.L.C., d/b/a SIX TEN CENTER for LT. GILBERT’s serious physical injuries, mental anguish, emotional distress and pain and suffering. PLAINTIFFS seek monetary damages for loss of consortium, lost wages, medical bills and other pecuniary losses.

PARTIES

1. PLAINTIFFS are, and at all relevant times were, residents of Pulaski County, State of Arkansas. At all relevant times, PLAINTIFFS were husband and wife, having been married on August 14, 1993. At all relevant times, PLAINTIFFS lived and worked in the City of Little Rock.

2. At all relevant times, including November 4, 2017, LT. GILBERT was a 33-year decorated veteran with the LRPD, who was honorably discharged from the United States Air Force in 1984 and who trained at the FBI National Academy. In November 2017, LT. GILBERT was assigned to the training division where he enjoyed imparting wisdom on young officers. He earned a Master of Public Administration degree. In November 2017, LT. GILBERT was an adjunct professor of Composition at the University of Arkansas at Little Rock.

3. At all relevant times, including November 4, 2017, MRS. GILBERT was employed full time as a trial court assistant for Pulaski County.

4. Defendant, FRAWST L.L.C., d/b/a SIX TEN CENTER (hereafter “FRAWST L.L.C.”), is a limited liability corporation, operating under the laws of the State of Arkansas. Upon information and belief, on or around 2013, FRAWST L.L.C. opened a business establishment called 610 Center (hereafter “610 Center” or “tavern”) which serves alcoholic beverages on premises and is located at 610 Center Street, Little Rock, Arkansas. At all relevant times, including November 2017, FRAWST L.L.C. owned, controlled and operated 610 Center, and further was a licensed alcohol vendor.

5. Upon information and belief, there are two (2) individuals who serve as managers of FRAWST L.L.C.: Larry Lamor Williams (hereafter “Williams”); and Timothy Royce Troup (hereafter “Troup”). Upon information and belief, Williams is, and at all relevant times was, also known as “Lamar.”

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and the subject matter of this litigation pursuant to Ark. Code Ann. §§ 16-4-101, 16-13-201 and 16-60-104.

7. Venue is proper in this county pursuant to Ark. Code Ann. §§ 16-60-116 and 16-60-104. All of the events of which PLAINTIFFS complain transpired in Pulaski County, Arkansas and the parties are all residents of, or situated in, Pulaski County, Arkansas.

610 CENTER BACKGROUND

7. 610 Center is located in downtown Little Rock in a geographic section of the city zoned largely for businesses and professional buildings, with relatively few residential addresses within walking distance.

8. In order to attract and accommodate downtown business guests—including those of 610 Center—and those patronizing professional buildings, there are many parking lots in the downtown area, as well as scores of parking lots immediately adjacent to, and directly across the street from, 610 Center (see Image 1 below):

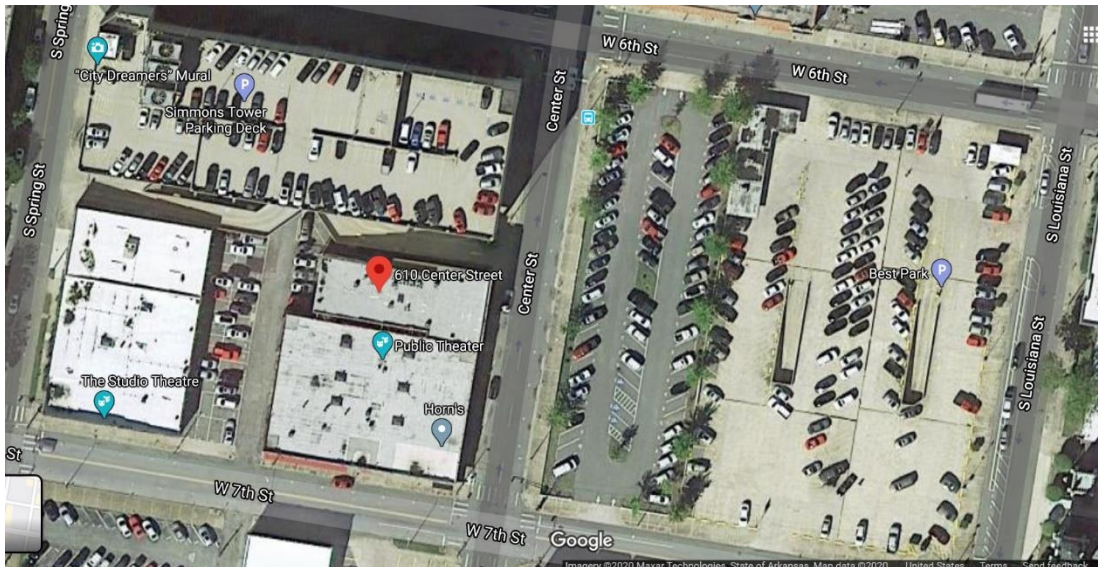


Image 1: 610 Center (pinned), located at 610 Center Street, Little Rock, AR

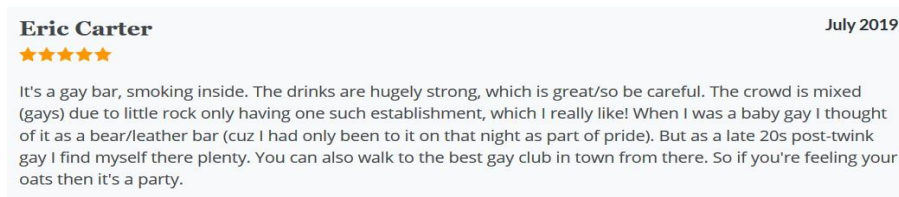
9. At all relevant times, including in November 2017, FRAWST L.L.C. knew or should have known that the parking lots surrounding 610 Center, along with the relative lack of nearby residential properties, enticed and induced guests of 610 Center to drive to the tavern, rather than walking or taking public transportation.

10. At all relevant times, including November 2017, 610 Center was a licensed vendor and retailer seller of alcoholic beverages.

OVERSERVING PRACTICES AT 610 CENTER

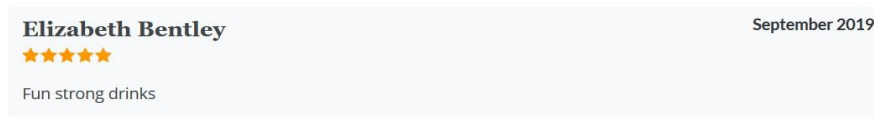
11. At all relevant times, including November 2017, 610 Center’s alcoholic drinks have a notoriously high alcoholic content which has actually caused some 610 Center guests to publicly warn others about the inherent danger created by bartenders who serve overly strong alcoholic beverages, reporting:

a) That “[t]he drinks are hugely strong, which is great/so be careful.”;

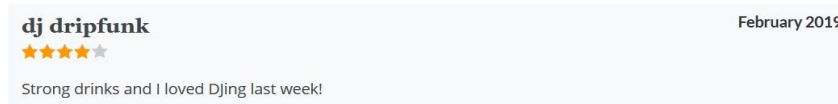


12. It is not the job of the guests of 610 Center to warn others about overly strong alcoholic beverages the tavern routinely serves but, regardless, the potency of the libations at 610 Center was, at all relevant times, well-publicized with guests reporting:

a) That 610 Center has “[f]un strong drinks”;



b) That 610 Center has “strong drinks”; and

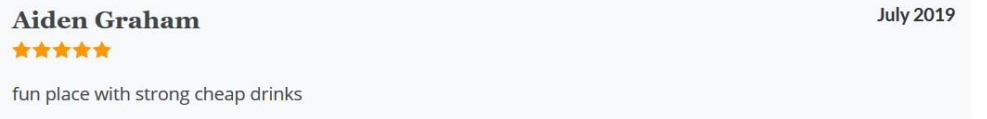


- c) That 610 Center’s “Bloody Mary, as others note, is pretty much vodka with a splash of mix.”

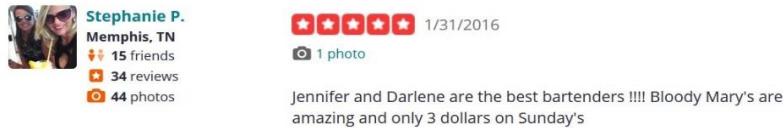


13. Not only do 610 Center’s drinks have high alcoholic content, but they are priced to encourage binge drinking. This reckless practice is expressly recognized by 610 Center guests who essentially advertise the dangerously low-priced alcoholic beverages feature for the ultimate benefit of 610 Center and report:

- a) That 610 Center is a “fun place with strong cheap drinks”; and



- b) That 610 Center’s “Bloody Mary’s are amazing and only 3 dollars on Sunday’s.”; and



- c) That 610 Center “will get you drunk. No shit.”



14. The cheap, strong drinks served to 610 Center guests by 610 Center bartenders, including Hipp and Ross, bestows an undue financial benefit to FRAWST L.L.C. and its owners,

in the form of increased numbers of paying guests and drinks served, and to 610 Center bartenders, in the form of inflated tips from appreciative and/or inebriated guests.

15. Indeed, for a mere \$9.00, a 610 Center guest can basically consume three (3) “huge” alcoholic drinks consisting largely of straight vodka. By providing drinks with high alcoholic content at extremely cheap prices, 610 Center willfully attracts patrons who seek to become inebriated as quickly as possible for as little money as possible.

16. 610 Center encourages and facilitates binge drinking.

17. Even casual *Yelp!* reviewers acknowledge the correlation between 610 Center’s recklessly strong drinks and its dangerously low drink prices, reporting:

- a) That the “[o]nly negative [about 610 Center’s brunch] would be that bloody Mary. Literally 50% vodka, which might not be a negative for many especially at \$4.”;



- b) That the “\$3 Bloody Mary’s” at 610 Center are served in “HUGE glasses” and there is “easy parking” in the area; and

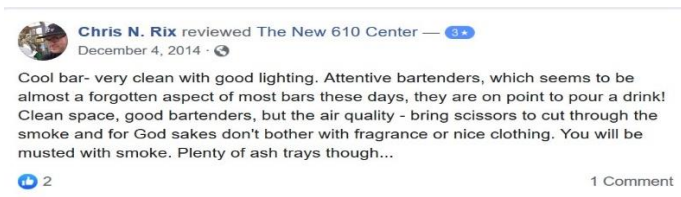


- c) That “[i]t’s also happy hour all day [at 610 Center], and the Bloody Mary’s are huge.”



18. At all relevant times, the overserving practices of 610 Center bartending staff, including Hipp and Ross, were appreciated by some of the guests of 610 Center, who reported:

- a) That the 610 Center bartenders are “[a]ttentive bartenders” who “are on point to pour a drink!”;



- b) That the 610 Center “bartenders know your drink,” particularly “Jordan and Logan.”;



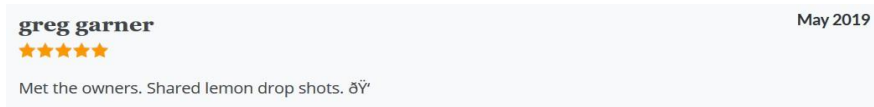
19. At all relevant times, including November 2017, FRAWST L.L.C. through its agents, employees and/or servants, including, but not limited to, Williams and Troup, were well aware of reckless overserving practices of the bartending staff at 610 Center, including, but not limited to, Hipp and Ross.

20. At all relevant times, including November 4-5, 2017, FRAWST L.L.C. through its agents, employees and/or servants, including, but not limited to, Williams and Troup, was well aware of this pattern of overserving by the bartending staff at 610 Center.

21. Indeed, at all relevant times, including in November 2017, FRAWST, LCC through its agents, employees and/or servants, including, but not limited to, Williams and Troup, had actual and constructive notice of the overserving practices of the bartending staff at 610 Center, including Hipp and Ross, because they often partook of the drunken festivities alongside their bartenders and guests.

22. 610 Center, through its agents, employees and/or servants, including, but not limited to, Williams and Troup, even partook in the informal partying atmosphere, drinking hard liquor on the premises with patrons who reported:

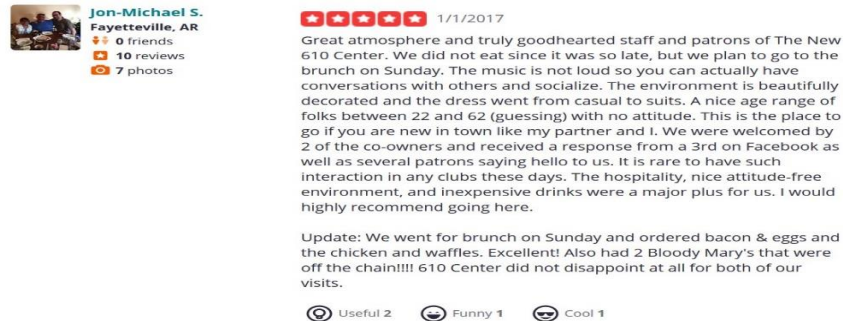
- a) That they “met the owners” and “[s]hared [alcoholic] lemon drop shots” with them;



- b) That they enjoyed the “large mixed drinks” and the owner who “was a life saver”;



- c) That they “were welcomed by 2 of the co-owners and received a response from a 3rd on Facebook” and enjoyed “inexpensive drinks”; and

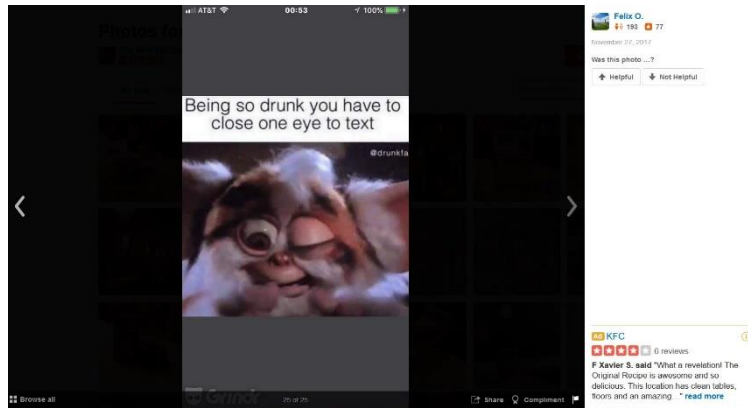


- d) That “[t]he owner Lamar is the Best!! And Louis and Jordan are wonderful friendly bartenders that make the best drinks”;



23. As to actual notice, FRAWST L.L.C. through 610 Center, even posts Facebook advertisements to 610 Center’s homepage celebrating the high level of intoxication 610 Center

promises its guests will achieve by patronizing the tavern, i.e., “[b]eing so drunk you have to close one eye to text.”



24. Furthermore, the reckless conduct of FRAWST L.L.C. which presents an unreasonably high risk of causing personal injury is reflected in the official records of the Little Rock Police Department (“LRPD”). These official City of Little Rock records strongly support PLAINTIFFS’ complaint allegations.

POLICE RESPONSES TO 610 CENTER FROM JANUARY 2012 TO PRESENT

25. Between January 20, 2012 and June 1, 2020, the LRPD responded to calls occasioned by activities occurring at 610 Center on fifty-seven (57) separate occasions. This means the LRPD was forced to handle incidents involving 610 Center at a rate more frequent than once every other month for almost nine (9) straight years. The calls received by LRPD concerning 610 Center over this timeframe involved: disorderly conduct; physical fights; “subject down” incidents; alleged drugging; and overserving incidents, among others.

26. At all relevant times, 610 Center guests become visibly intoxicated at such a reliable rate whereby, conceivably, criminals could prey upon departing 610 Center guests, understanding that the odds are good that the guests are inebriated, thus making it more likely that

they will not remember the details of a criminal encounter, nor be able to accurately describe their attacker(s).

27. In LRPD Incident No. 2012-118255, a 17-year-old cooperating individual working with LRPD investigators was served alcohol by a 610 Center bartender, establishing that the tavern served alcohol to an underage guest.

28. In LRPD Incident No. 2016-080088, an overserved 610 Center guest was mugged and assaulted on the street after he left the tavern inebriated.

29. In LRPD Incident No. 2017-007391, Hipp allegedly battered a 610 Center guest who called the police after he was thrown out of the tavern by Hipp because the guest was talking about Hipp's girlfriend. The reporting officer recommended the victim seek an arrest warrant for Hipp, a 610 Center employee.

30. In LRPD Incident No. 2017-140747, a 610 Center guest called the police because he believed he was drugged while consuming four (4) drinks at 610 Center. The guest told police that the following day he called 610 Center and spoke with one of the owners who explained that the owner had escorted the guest from the tavern and into his vehicle, which the guest did not remember.

31. Put another way, according to the victim in LRPD Incident No. 2017-140747, one of the owners of 610 Center helped an impaired guest leave the tavern and get behind the wheel of his car, a sequence of events the impaired guest did not remember and only learned upon speaking to the owner the following day.

32. In LRPD Incident No. 2018-108007, a female guest of 610 Center was punched in the face by a guest who later pulled out a gun and brandished it at other 610 Center guests.

33. In LRPD Incident No. 2019-010710, there was a “subject down” call made regarding a heavily intoxicated female 610 Center guest who was found by LRPD lying on the ground, crawling and unable to stand. MEMS was called and responded but the guest became hostile and aggressive toward the officers and EMTs before urinating on herself. The officers then arrested the guest.

34. In LRPD Incident No. 2019-072656, a female 610 Center guest told police that she was drugged while she drank two (2) alcoholic drinks at the bar before being found in the bathroom by her roommate. It took about an hour for the roommate to get a response from the guest but the guest eventually regained consciousness.

35. Administering drugs to an individual without the individual’s consent is third degree battery, a Class A misdemeanor.

36. In LRPD Incident No. 2019-097254, there was a “subject down” call made regarding a 610 Center guest in need of medical attention, with emergency medical services responding to the scene. The guest refused treatment from EMTs, resulting in a waste of medical resources.

37. In LRPD Incident No. 2019-135082, a call went out to LRPD concerning a 610 Center guest who was punched in the head which, in Arkansas, would constitutes third degree battery, a Class A misdemeanor.

38. In LRPD Incident No. 2015-147337, a 610 Center guest was transported by MEMS to Springhill Baptist Hospital in North Little Rock.

39. One of the reasons the recklessness at 610 Center continues unabated as of the date of the instant pleading is that the tavern gets preferential treatment because one of the owners, Williams, also works for the City of Little Rock as the communications manager. See City of

Little Rock Press Release, attached hereto as **Exhibit 1**. Indeed, 610 Center regularly enjoys advertising in City of Little Rock publications. See City of Little Rock Website Screenshot, attached hereto as **Exhibit 2**.

40. Therefore, at all relevant times, including November 2017, the police oversight that might otherwise serve to deter the reckless misconduct and pattern of alcoholic beverage overserving at 610 Center is not present.

NOVEMBER 4 AND 5, 2017

41. At all relevant times, Keith Hearnberger (hereafter “Hearnberger”) was a resident of Little Rock, living on South Schiller St. between 12th Street and W. Daisy L. Gaston Bates Dr.

42. On the evening of Friday, November 4, 2017, Hearnberger and four (4) of his friends, including Rickey Phillips (hereafter “Phillips”), attended a 7:30 p.m. symphonic showing of *Romeo and Juliet* at the Robinson Center, located at 426 W. Markham Street in Little Rock.

43. Upon information and belief, Phillips drank hard liquor prior to the show and during the show.

44. After the showing of *Romeo and Juliet*, at approximately 9:25 p.m., Hearnberger, Phillips and the others (hereafter the “group”) traveled to 610 Center with Hearnberger driving the group in his maroon Nissan Murano.

45. At all relevant times, including November 4-5, 2017, 610 Center was a liquor serving establishment and licensed alcohol seller.

46. The group arrived at 610 Center, entered and were seated at a table which was visible to 610 Center bartenders, Rance Logan Hipp (hereafter “Hipp”) and Jordan Ross (hereafter “Ross”), from behind the bar. Upon information and belief, Hipp is, and at all relevant times was, also known as “Logan.”

47. At approximately 9:26 pm, Phillips opened a bar tab with Hipp and/or Ross, using his credit card.

48. Phillips' tab reflected that fourteen (14) alcoholic beverages were purchased for the group over the course of the evening and early morning. These fourteen (14) alcoholic beverages included mixed drinks, beers and martinis, and several of the alcoholic beverages were consumed by Hearnberger at 610 Center within the eyesight of Hipp and Ross.

49. Throughout the evening and early morning, Hearnberger ordered drinks for himself at 610 Center from Hipp and/or Ross which he consumed within the clear visual range of Hipp and Ross, who were behind the bar and/or elsewhere in the tavern.

50. Upon information and belief, in addition to alcoholic beverages purchased for the group using Phillips' credit card tab, alcoholic beverages for the group were also purchased using cash or other means by other members of the group.

51. At some point during the evening of November 4, 2017, Phillips was visibly intoxicated in the tavern.

52. Phillips was visibly intoxicated in 610 Center in the early morning hours of November 5, 2017.

53. At some point during the evening of November 4, 2017, Hearnberger was visibly intoxicated in the tavern.

54. Hearnberger was visibly intoxicated in 610 Center in the early morning hours of November 5, 2017.

55. Due to the visible intoxication of Phillips, Hipp and Ross decided to "cut [Phillips] off," meaning to forbid him from drinking any more alcoholic beverages on the premises of 610 Center. Despite the visible intoxication of Hearnberger, however, neither Hipp nor Ross cut

Hearnsberger off. Rather, despite Hearnsberger's visual intoxication, Hipp and Ross allowed him to continue drinking throughout the evening of November 4, 2017 and the early morning hours of November 5, 2017.

56. Although Hipp and Ross cut Phillips off from drinking any more alcoholic beverages, they nonetheless kept his bar tab open so that the group could continue to purchase cheap, extremely strong alcoholic beverages. By keeping Phillips' bar tab open, Hipp and Ross helped the group amass a bar bill of \$99.50.

57. All told, on November 4-5, 2017, the group drank alcoholic beverages at 610 Center for approximately three (3) hours. On more than one occasion, Hearnsberger approached the bar and spoke directly with Hipp and/or Ross.

58. The group left 610 Center early in the morning of November 5, 2017, at approximately 12:30 a.m.

59. The group was so intoxicated from the alcoholic beverages they were served at 610 Center that none of them realized that Phillips' tab was never closed out or that they left his credit card behind at the tavern. After the group left, Hipp and/or Ross closed out Phillips' tab, giving themselves a generous \$30.00 dollar tip on the bar bill which consisted exclusively of alcoholic beverages and no food.

60. After Hearnsberger left 610 Center, he walked to his parked Nissan Murano and, intoxicated by the liquor he consumed at the tavern, drove the group to a Taco Bell restaurant located at 719 South Broadway, patronizing the drive-thru. As reflected in Taco Bell surveillance video, Hearnsberger ordered and received a large bundle of fast food for the group, and then pulled out of the Taco Bell drive-thru at approximately 12:41 am.

61. Approximately five (5) minutes after leaving Taco Bell, the maroon Nissan Murano driven by Hearnberger traveled at an accelerated rate of speed as it approached the intersection of W. Daisy L. Gatson Bates Dr. and S. Ringo St., westbound.

62. At approximately 12:46 am, as the vehicle driven by Hearnberger, who was intoxicated by the liquor he consumed at 610 Center, entered the intersection of W. Daisy L. Gatson Bates Dr. and S. Ringo St. at an accelerated rate of speed, it struck LT. GILBERT. LT. GILBERT was on duty as a LRPD police officer at the time, and he was in the process of crossing W. Daisy L. Gatson Bates Dr. on foot, northbound, to the east of S. Ringo St. when Hearnberger's vehicle hit him.

63. After striking LT. GILBERT, Hearnberger, in his Nissan Murano, aware of his intoxication, fled the scene in the vehicle, leaving LT. GILBERT lying in the street, bleeding and seriously injured.

64. Several of LT. GILBERT's officer colleagues witnessed the immediate aftermath of Hearnberger's vehicle striking LT. GILBERT and saw him lying in the street after the pedestrian-on-motor vehicle collision. These LRPD officers rendered aid to LT. GILBERT and called for EMS services and hospital transport. Due to the serious physical injuries caused by Hearnberger striking LT. GILBERT with his vehicle, LT. GILBERT required extensive life-saving treatment and was therefore transported to UAMS emergency department.

65. Following the incident, LRPD opened a hit-and-run investigation which was assigned Incident No. 2017-139260.

66. During the LRPD hit-and-run investigation in Incident No. 2017-139260, LRPD investigators questioned 610 Center bartenders Hipp and Ross about their recollections of serving

alcoholic beverages to Hearnberger and his friends at the tavern on the evening of November 4, 2017 and early morning of November 5, 2017.

67. On November 10, 2017, Hipp told investigators that he worked as a bartender at 610 Center on Saturday, November 4, 2017, starting at 6:00 pm, and that his shift ended at 2:00 am, on the morning of Sunday, November 5, 2017. He stated that worked with another bartender during that shift, namely, Ross.

68. Hipp confirmed that Hearnberger was present at 610 Center on the evening of November 4, 2017 and early morning of November 5, 2017.

69. Hipp stated that a bar tab was opened for Hearnberger's group at 9:26 pm and told investigators that the group drank fifteen (15) drinks while guests at 610 Center.

70. Hipp stated that at least one individual in the group was noticeably drunk. He stated that he was concerned that someone in the group might be driving and asked one of the members of the group—Phillips—if he was driving. He stated that Phillips responded that he was not driving.

71. On November 15, 2017, Ross told investigators that he worked as a bartender at 610 Center on Saturday, November 4, 2017, and that his shift ended in the early morning hours of Sunday, November 5, 2017, same as Hipp. Like Hipp, Ross confirmed that Hearnberger was present at 610 Center with a group of friends.

72. Ross told investigators that he remembered Hearnberger and Phillips approaching the bar together. Ross stated that he was aware that Phillips was buying drinks for the group. Ross confirmed that Hearnberger drank alcoholic beverages while at 610 Center. Ross stated that he and Hipp had to cut Phillips off due to Phillips' visible intoxication.

73. Ross stated that when the group left 610 Center in the early morning of November 5, 2017, they left Phillips' credit card behind. Ross stated that Phillips' credit card was still open when the group left, so the bartenders had to close out Phillips' tab after the group left. While Ross would not acknowledge seeing Hearnberger drinking alcoholic beverages at 610 Center during his shift, he conceded that Hearnberger "was there" at the bar. Ross then added: "Let's not be ignorant about it [Hearnberger] was drinking."

74. Ross admitted to LRPD detectives that after he learned about the hit-and-run accident and Hearnberger's alleged involvement in the accident, he was worried about overserving the group while they drank alcoholic beverages at 610 Center during Ross' shift.

75. On November 6, 2017, Hearnberger turned himself in to LRPD, accompanied by his criminal defense attorney.

76. During his visit to the LRPD, Hearnberger presented a written statement wherein he appeared to express sincere remorse for his actions in the hit-and-run. See Keith Hearnberger Statement, attached hereto as **Exhibit 3**. Hearnberger's statement was utterly silent, however, as to any factual aspects of his vehicle striking LT. GILBERT and also silent to any activities in which he engaged on the evening of November 4, 2017 and early morning of November 5, 2017, including his patronage of 610 Center. See Ex. 3.

77. As of the date of the filing of the instant pleading, despite the extensive damage to the right hood and passenger side of his Nissan Murano, Hearnberger claims that he does not recall realizing that he ran over LT. GILBERT, a 6' 3", 230 lb. uniformed law enforcement officer in a City-issued reflective safety vest.

78. The force with which Hearnberger's maroon Nissan Murano struck LT. GILBERT was so great that it caused major structural damage to the vehicle and nearly broke off the passenger side mirror completely (see Images 2-7 below):

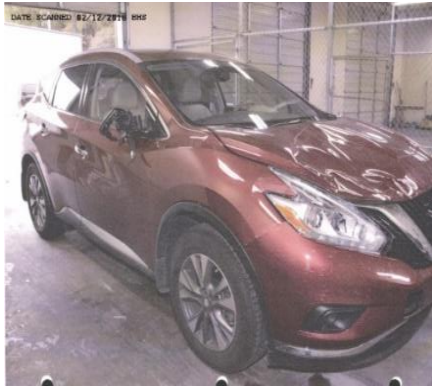


Image 2: damaged passenger side right quarter pane

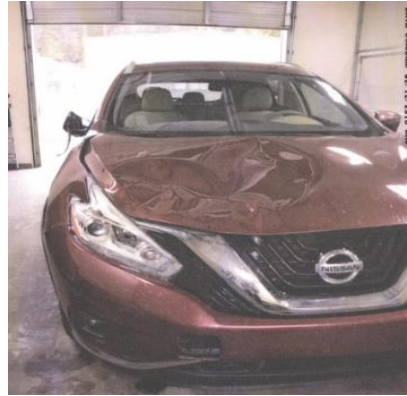


Image 3: damaged right side hood

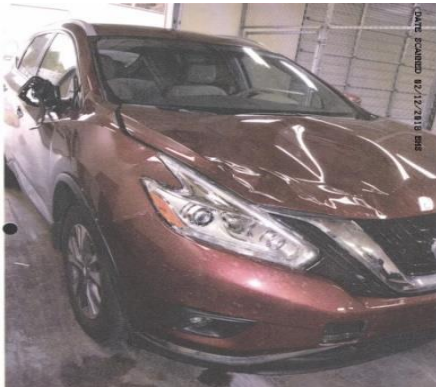


Image 4: passenger side damaged right quarter panel



Image 5: severely damaged passenger side mirror

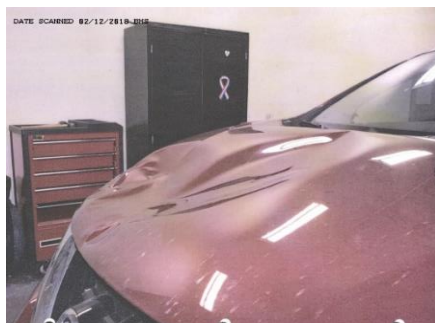


Image 6: damaged right side hood



Image 7: damaged right side hood and grill

79. Based on the post-accident photographs of Hearnberger's Nissan Murano, LT. GILBERT's body caused damage to the grill, passenger side hood and passenger side mirror,

meaning his body made contact with the front of the vehicle and over the right side of the hood and lower right side windshield.

80. Following the November 5, 2017 early morning hit-and-run, LT. GILBERT was emergently transported to UAMS where he was diagnosed with a traumatic brain injury (TBI), among countless other serious physical injuries, including a fractured skull, subdural hematoma, multiple facial fractures and intraventricular hemorrhaging. LT. GILBERT was in a coma for several days. LT. GILBERT was then an inpatient at UAMS for eleven (11) days before being transferred to Baptist Hospital where he remained until December 4, 2017.

81. For the next ten (10) grueling months, LT. GILBERT engaged in physical therapy at Timber Ridge Rehab. LT. GILBERT's medical bills from the facilities where he received medical treatment related to the November 5, 2017 hit-and-run currently total at least \$411,974.81 (UAMS \$117,562.91; Baptist Hospital \$62,436.90; and Timber Ridge \$231,975). LT. GILBERT was forced into an early medical retirement.

82. On November 4, 2017, LT. GILBERT earned \$80,891.20 and had aspirations of becoming chief of police at the time of his forced medical retirement. He was a well-respected lieutenant, police trainer and mentor. The very severe, life-threatening injuries suffered by LT. GILBERT on November 5, 2017 caused him permanent damage and took from him the proud career he loved and to which he devoted the majority of his life.

83. On or about May 16, 2019, in Pulaski County Circuit Court No. 60CR-18-481, Hearnberger pleaded guilty to second degree battery, Ark. Code Ann. §5-13-202, and guilty to duty to give info, remain at scene of accident and render aid, Ark. Code Ann. § 27-53-103, both Class D felonies. On or about May 16, 2019, Hearnberger was sentenced to one (1) year in prison.

84. Williams and Troup have possessed actual notice to the instant controversy as early as December 19, 2019 and March 22, 2018, respectively, and were advised to preserve all conceivable evidence in March 2018. See Actual Notice Correspondence to FRAWST L.L.C. Managers, attached hereto as **Exhibit 4**.

COUNT I—ARKANSAS DRAM SHOP STATUTE

85. PLAINTIFFS incorporate by reference the allegations as alleged in Paragraphs one (1) through eighty-four (84) and adopt each as set out herein word for word.

86. At all relevant times, 610 Center is and was a licensed vendor and retailer seller of alcoholic beverages.

87. At all relevant times, including November 2017, there existed in the State of Arkansas a statute commonly known as the Dramshop statute. The Dramshop statute involves the imposition of civil liability for the sale of alcohol to a clearly intoxicated person, providing in pertinent part:

In cases where it has been proven that an alcoholic beverage retailer knowingly sold alcoholic beverages to a person who was clearly intoxicated at the time of such sale or sold under circumstances where the retailer reasonably should have known the person was clearly intoxicated at the time of the sale, a civil jury may determine whether or not the sale constitutes a proximate cause of any subsequent injury to other persons. For purpose of this section, a person is considered clearly intoxicated when the person is so obviously intoxicated to the extent that, at the time of such sale, he presents a clear danger to others.

88. At all relevant times, including in November 2017, employees and agents of 610 Center who serve alcohol to patrons of 610 Center were trained to avoid overserving said patrons due to the inherent dangerousness and societal resource drains caused by inebriation. The risk of harm to the public at large by an intoxicated driver is not only foreseeable but beyond dispute.

89. Hearnberger was a clearly intoxicated person the majority of the time spent as a guest of 610 Center. Certainly, he was a clearly intoxicated person when he was served the majority of the drinks he consumed at the tavern.

90. The group was not assigned any wait staff during their time at 610 Center during the evening of November 4, 2017 or the early morning of November 5, 2017. Therefore, every single alcoholic beverage served to the group, including Hearnberger, was provided directly by 610 Center bartenders, Hipp and/or Ross, who were fully trained bartenders.

91. 610 Center's actions and omissions in overserving Hearnberger, an intoxicated person, caused the hit-and-run accident that resulted in serious physical injuries to LT. GILBERT. The actions and omissions of 610 Center, in a natural and continuous sequence, produced the damages of which PLAINTIFFS herein complain.

92. That there exists a nexus between the conduct of which PLAINTIFFS herein complain and their considerable damages. Specifically, a causal connection exists between the sale of liquor to Hearnberger, a clearly intoxicated person, and the subsequent serious physical injuries to LT. GILBERT, as well as the overall damages suffered by PLAINTIFFS.

WHEREFORE, PLAINTIFFS pray for judgment against FRAWST L.L.C., in an amount which will fully and fairly compensate PLAINTIFFS for damages suffered.

COUNT II—LOSS OF CONSORTIUM

93. PLAINTIFFS incorporate by reference the allegation as alleged in Paragraphs one (1) through ninety-two (92) and adopt each as set out herein word for word.

94. Loss of consortium is an actionable cause in the State of Arkansas.

95. Consortium is defined as the conjugal fellowship of husband and wife, and the right to each of the company, cooperation, affection and aid of the other in every conjugal relationship.

96. As a result of the acts and omissions of FRAWST L.L.C., by and through its agents, including Hipp and Ross, PLAINTIFFS, and each of them, suffered a loss of consortium, insofar as the serious injuries experienced by LT. GILBERT damaged PLAINTIFFS' right to the company, cooperation, affection and aid of each other.

WHEREFORE, PLAINTIFFS pray for judgment against FRAWST L.L.C., in an amount which will fully and fairly compensate PLAINTIFFS for damages suffered.

DAMAGES

97. PLAINTIFFS incorporate by reference the allegations as alleged in Paragraphs one (1) through ninety-six (96) and adopt each as set out herein word for word.

98. As a direct and proximate cause of the FRAWST L.L.C.'s conduct, PLAINTIFFS have suffered lost profits, pecuniary losses, all in an amount to be proven at trial of this matter.

99. As a direct and proximate cause of the FRAWST L.L.C.'s conduct, PLAINTIFFS experienced pain and suffering, humiliation, mental anguish and emotional distress, as well as an impairment of his reputation and standing in the community, all in an amount to be proven at trial of this matter.

JURY DEMAND

100. PLAINTIFFS incorporate by reference the allegations as alleged in Paragraphs one (1) through ninety-nine (99) and adopt each as set out herein word for word.

101. PLAINTIFFS request that this matter be tried before a fair and impartial jury of twelve (12) qualified citizens of Pulaski County, Arkansas.

WHEREFORE, PLAINTIFFS, JOHNNY D. GILBERT, JR. and ANNETTE GILBERT, pray the Court set this matter for trial by jury and, prays for monetary damages herein for the compensatory damages, the extreme and severe emotional distress, consequential damages, as well

as punitive damages, costs, attorney fees and for all other just and equitable relief to which they may be entitled.

Respectfully submitted,

/s/ Willard Proctor, Jr. _____

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