

2014

OTLA Cup

OTLA Cup 2014

Official Rules

General

1. In these rules, "Committee" means the OTLA Cup Committee comprised of the Coaches and at least one representative of OTLA. Coaches who protest a decision may present the case for their team but will not vote. Coaches whose team is affected by the protest will not vote but may present a counter argument.
2. The competition involves the trial of a civil action. The competition materials, which may include, *inter alia*, pleadings, witness statements, statements of agreed facts and physical evidence, will be selected and prepared by the Committee in advance of the competition. All rounds of the competition will use the same materials.
3. The competition is open to students in first, second or third year. The language of the competition is English.
4. Competitors must compete in a team of two.

Travel & Accommodation Costs

5. OTLA will cover reasonable travels costs (train, mileage reimbursement and possibly economy airfare for farthest team) for each team including four students and one coach.
6. OTLA covers two double rooms for student teams and one room for a coach per each out-of-town team.
7. OTLA covers dinner with all the participants on the evening before the competition, along with breakfast and lunch on competition day.

The Trial Process

8. Each round of the competition is in the form of a trial of the action, using the competition materials. There shall be no motions in the trial.
9. The teams shall meet with the judge in chambers prior to the trial of the action to discuss the format of the jury questions. Teams are encouraged to speak with each other in advance in an attempt to arrive at consensus regarding jury questions. The judge may either accept the jury questions as agreed upon by the parties (teams) or impose such questions as may be appropriate.

10. Each trial shall consist of the following phases:

Opening Statements	12 minutes (per team)
Direct Examinations	8 minutes (each witness/per team)
Cross Examinations	5 minutes (each witness/per team)
Redirect	2 minutes (each witness/per team)
Closing Statements	12 minutes (per team)
11. Defence counsel may choose to make an opening statement either following the plaintiff's opening statement or prior to advancing evidence in chief.
12. The trial judge shall have the discretion to grant a brief extension to any of the time limits provided that the exercise of discretion is used to create fairness for the competitors.
13. Each competitor must perform either an opening or closing statement but not both, and each competitor must perform an examination in chief or a cross-examination.
14. Each team is required to provide its own witness(es) for the examination in chief. The witness cannot be a competitor. The witness is required to review the competition materials carefully and fully conform with the information they divulge in the examination. There shall be no contact between competitors and **opposing** witnesses.
15. Witnesses are to remain true to their assigned character and are to remain true to the facts set out in their own statements.
16. Except for the Defendant and the Plaintiff the witnesses are not to see the evidence of the other witnesses. There will be an exclusion order in effect for witnesses, excepting the parties. Plaintiff's counsel shall make the request for the order excluding witnesses at the outset of the trial before opening statements begin.
17. The only admissible evidence is that provided in the competition materials.
18. During a trial coaching of the competitors will be permitted.

Judging

19. The purpose of the competition is to develop and demonstrate trial and advocacy skills. The actual merits of each team's case are irrelevant and should not influence the judging process. While the jury shall render a verdict touching on both liability and damages, such verdict is not dispositive of the question of best advocate and best team.
20. The trial will be held on Saturday, March 1, 2014. The panel, comprised of one judge and a panel of jurors, shall judge the trial.

Case Synopsis

July 1, 2012, was a beautiful day. Ursula Cook owned a beautiful Malibu wakeboard boat and was all set to take it out on the water after it had been serviced at a marine company called “The Boat Company Inc.”

Ursula had been invited to a party hosted by Melvin Beerstein. Other people at the party included employees from Melvin’s business, Waterworld. Everybody at the party was drinking beer while playing a game called Beer Pong. Several people in the group decided to go waterskiing on Lake Huron, where Ursula had her boat at the Grand Bend marina.

David Jones offered to drive the boat, which was fine with Ursula. The plaintiff Ariel Cousteau was the first water-skier. She got up but fell back into the water. When David Jones drove the boat back to pick Ariel up, he ran into her. To complicate matters, the propeller detached from the boat and struck Ariel. The impact of the boat and the propeller caused serious injuries to her. She was rushed to the hospital.

Ursula took the boat back to The Boat Company. She was concerned about why the propeller would have detached. The propeller of the boat in question was in need of replacement according to The Boat Company, who recommended replacement at a price that Ursula refused to authorize. Ursula did not authorize the replacement, so The Boat Company re-attached the propeller. Unbeknownst to her, The Boat Company discovered left-over parts including the cotter pin that held the propeller in place. These parts were found on the shop floor where Ursula’s boat had been serviced. The Boat Company failed to tell her that they did not attach the cotter pin.

ONTARIO TRIAL LAWYERS COURT OF JUSTICE

B E T W E E N:

ARIEL COUSTEAU

Plaintiff

- and -

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK and THE BOAT COMPANY
INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff lawyers or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in the Court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

If you wish to defend this proceeding but are unable to pay legal fees, Legal Aid may be available to you by contacting a local Legal Aid office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by:
Registrar

TO: David Jones
Windsor, Ontario

AND TO: Melvin Beerstein
London, Ontario

AND TO: Ursula Cook
Kingston, Ontario

AND TO: The Boat Company Inc.
Toronto, Ontario

CLAIM

1. The Plaintiff claims:

- (a) general damages in the amount of \$150,000.00;
- (b) Future Loss of Income and Cost of Care in the amount of \$800,000.00;
- (c) pre-judgment interest in accordance with the provisions of the Courts of Justice Act;
- (d) the costs of this action together with the applicable H.S.T thereupon;
- (e) such further and other relief as to this Honourable Court may seem just.

2. The Plaintiff, Ariel Cousteau (“Ariel”), resides in the City of Ottawa, in the Municipality of Ottawa-Carleton and at all material times was water skiing behind a motor boat.

3. The Defendant, David Jones, (“Jones”) is an individual residing in the City of Windsor, in the Municipality of Ottawa-Carleton and at all material times was the operator of the motor boat.

4. The Defendant, Melvin Beerstein, (“Beerstein”) resides in the City of London, in the County of Middlesex and hosted a party at his home before the parties went water-skiing.

5. The Defendant, Ursula Cook, (“Cook”) is an individual residing in the City of Kingston, in the County of Frontenac and at all material times was the owner of the motor boat.

6. The Defendant, The Boat Company Inc. (hereinafter referred to as "Boat Company"), is a corporation based in Toronto, Ontario, duly incorporated pursuant to the laws of Ontario and at all material times was in the business of boat repairs

7. On Saturday, July 1st, 2012, Beerstein hosted a party at his residence at 88 Riverside Drive in London. The Plaintiff says excessive alcohol was served to the guests including Jones and Cook. The Defendant Beerstein instigated and ran a game called 'Beer Pong,' encouraging patrons, including Jones and Cook, to consume beer until totally intoxicated. Beerstein then encouraged them to go waterskiing.

8. The Plaintiff, without knowledge of the Beerstein party, states she was water-skiing behind a motor boat being operated by Jones at a time immediately after the time the beer party must have occurred. While waterskiing she fell into the water. When attempting to retrieve her from the water Jones so negligently operated the aforesaid motor boat as to strike her with the boat. The propeller was then detached from the boat and struck the plaintiff causing serious, permanent and grievous bodily injury.

9. The Plaintiff states that the boat being operated by Jones was at all material times owned by the Defendant, Cook.

10. The Plaintiff further states that Jones was an inexperienced operator of motor boats and was at all material times under the supervision of the Defendant, Cook.

11. The Plaintiff states that the Defendant, Cook, is vicariously responsible for the acts and omissions of the Defendant, Jones.

12. The Plaintiff states that prior to July 1, 2012, the Defendant, Cook had taken the motor boat to the premises of the Boat Company, where replacement of the propeller was recommended. When Ursula refused to authorize the replacement, the Boat Company re-attached the propeller. They did not re-attach the propeller properly.

13. The Plaintiff states that the aforementioned casualty occurred solely as a result of the negligence of the Defendants, the particulars of which include but are not limited to the following:

A. As against the Defendant Jones, for whom in law the Defendant Cook, is responsible:

- (a) He was operating the motor boat at an excessive rate of speed considering the circumstances;
- (b) He was driving at such a rate of speed that he could not maintain control of the motor boat within his range of vision;
- (c) He was operating a boat while intoxicated contrary to Federal legislation and safe boating practice;
- (d) He failed to keep his motor boat under proper control;

- (e) On the occasion in question he was a driver lacking in reasonable skill and self-command and ought not to have attempted to operate a motor boat.
- (f) He failed to give any warning of the approach of his motor boat though such warning was reasonably necessary under the circumstances;
- (g) He failed to cut the throttle on the motor boat in a timely fashion or more particularly when it became evident that the motor boat would come within close proximity to the Plaintiff;
- (h) He failed to slow down, stop or turn to the left or the right so as to avoid a collision with the Plaintiff;
- (i) He failed to take reasonable care to avoid a collision which he saw or should have seen was likely to happen;
- (j) He failed to exercise due care and skill in the management of the motor boat;
- (k) He had the last clear chance to avoid the collision but failed to do so;
- (l) He failed to yield the right of way to a swimmer in the water when he knew or ought to have known that it was reasonable and necessary to do so.

B. As against the Defendant Cook:

- (a) She permitted an operator lacking in reasonable skill and self-command to have care and control of her motor boat when she knew or ought to have known that it was unsafe and dangerous to do so while she knew or ought to have known he was intoxicated;
- (b) She failed to ensure that the Defendant Jones had any or sufficient qualifications to operate her motor boat;
- (c) She failed to provide the Defendant Jones with any or reasonable instructions on the safe operation of her motor boat;
- (d) She failed to properly supervise the Defendant Jones in the operation of her motor boat;
- (e) She failed to intervene when it was reasonable and necessary to do so to prevent injury to a swimmer in the water or more particularly the Plaintiff;
- (f) In the alternative she had the last clear chance to avoid the collision and failed to do so.

C. As to the negligence of the Defendant Boat Company:

- (a) It failed to replace the cotter pin, which would have prevented the propeller from detaching from the boat; and
- (b) It failed to warn of the fact that the cotter pin was not connected, therefore permitting the propeller from detaching from the boat;

- (c) failed to warn that they found the cotter pin after they replaced the propeller; and,
- (d) they failed to ensure that their employees were properly licenced and competent.

D. As to Beerstein:

- a) He encouraged and permitted the Defendants Jones and Cook to become extremely intoxicated at his home and did not stop them from going boating and water-skiing;
- b) He knew, or ought to have known, that the Defendants, while exceptionally drunk, were likely to cause injury or harm to themselves;
- c) He fostered and encouraged a drinking game which he knew had as its purpose the complete and total intoxication of those who were encouraged by him to participate in it;
- d) Having conducted and encouraged such conduct he had a positive duty to prevent Jones and Cook from boating, driving, etc. and should have taken steps to prevent them from doing so until they regained sobriety; and,
- e) He failed to take reasonable care for a social host who actively promoted intoxication at his home.

14. As a result of being struck by the motor boat and its propeller the Plaintiff sustained serious, permanent and grievous bodily injury including the following:

- (a) bruising and contusions to her left shoulder;
- (b) fractured right femur;
- (c) bruising and contusions to her right outer thigh;
- (d) a laceration 12 inches in length and 3 inches in depth on her right outer thigh;
- (e) formation of intra-muscular calcium deposits in her right outer thigh;
- (f) permanent disfigurement to her right outer thigh;
- (g) the development of spider veins and varicose veins in her right outer thigh.

15. The aforesaid injuries and disfigurement have been accompanied by great pain and suffering and loss of enjoyment of life. The Plaintiff's ability to engage in her vocational and avocational pursuits as she did prior to the collision are greatly reduced and further exacerbates her loss of enjoyment of life.

16. The disfigurement associated with the laceration to the Plaintiff's right thigh has caused and continues to cause tremendous embarrassment, loss of self-esteem and self-confidence, all of which further exacerbate her pain, suffering and loss of enjoyment of life.

17. The aforesaid injuries have caused the Plaintiff to suffer reduced functional ability, which in turn has and will continue to cause her to suffer a loss of income, loss of competitive advantage and loss of earning capacity. The particulars of which are not as yet available but shall be provided prior to the trial of the action.

18. The aforesaid injuries have and continue to cause the Plaintiff to be put to expenses associated with medical treatment, rehabilitation and other forms of health care including pain medication. The particulars of her out of pocket expenses in respect of these injuries shall be provided prior to the trial of the action.

DATE: January 9, 2013

Counsel A

Solicitors for the Plaintiff
Ariel Cousteau

Cousteau v. Jones, et al.

Court File No.: 12/005

**ONTARIO
TRIAL LAWYERS COURT OF JUSTICE**
Proceedings Commenced at LONDON

STATEMENT OF CLAIM

Counsel A
Ottawa

Solicitors for the Plaintiff
Ariel Cousteau

ONTARIO TRIAL LAWYERS COURT OF JUSTICE

B E T W E E N:

ARIEL COUSTEAU

Plaintiff

-and-

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK and THE BOAT COMPANY
INC.

Defendants

STATEMENT OF DEFENCE AND CROSSCLAIM OF THE DEFENDANT, DAVID JONES

1. The Defendant, David Jones, admits the allegations contained at paragraphs 2, 3 4, 5, and 6 of the Statement of Claim.

2. The Defendant, David Jones, denies the allegations contained at paragraphs 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Statement of Claim and puts them to the strictest proof thereof.

3. The Defendant, David Jones, states that all material times he conducted himself in a careful and prudent fashion.

4. This Defendant states and the fact is that if the Plaintiff injured herself as a result of the detached propeller (which is not admitted but specifically denied) then such incident was solely

the result of the negligence of the Plaintiff, some particulars of which include but are not limited to the following:

- a) She permitted herself to water-ski in a state of intoxication so extreme as to deprive her of any reasonable ability to care for her own safety;
- b) She took no or inadequate care in water-skiing;
- c) She used improper or was not wearing proper safety wear/equipment/gear and water skis;
- d) She assumed the risk of water-skiing herself;
- e) She had the last clear chance to avoid the incident but failed to do so;
- f) She failed to let go of the cord attached to the boat;
- g) She moved from a place of safety to a place of danger without first ascertaining that she could do so safely;
- h) She did not take any and/or adequate care for her own safety;
- i) She did not keep a proper lookout;
- j) She was paying little or no attention to her surroundings on the day of the incident.

5. In the alternative, the Plaintiff caused or contributed to her injuries, and any claim for damages resulting there from must be reduced by the degree to which the Plaintiff's damages were the result of her own acts and omissions. This Defendant pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended.

6. This Defendant's pleading states that if the Plaintiff sustained injuries, which are not admitted but specifically denied, then such injuries were a result of medical or psychological conditions pre-existing the subject incident which occurred on July 1, 2012.

7. In the alternative, if the Plaintiff was injured, which is not admitted but is expressly denied, any such injuries were caused by the negligence of the Defendants, Melvin Beerstein (hereinafter referred to as "Beerstein"), Ursula Cook (hereinafter referred to as "Cook"), and The Boat Company Inc. (hereinafter referred to as "Boat Company") in that regard the Defendant pleading adopts the allegations against them set out at paragraphs 13 B, C, and D of the Statement of Claim.

8. This Defendant denies that the Plaintiff is entitled to pre-judgment interest by reason that they have failed to provide this Defendant with documentation and information permitting this Defendant to adequately assess the value of her claims and permitting her to advance monies pursuant to the *Insurance Act*. This Defendant further pleads that the Plaintiff is not entitled to any pre-judgment interest under Section 128 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended, for any period of time before the Plaintiffs served the Notice under Clause 258.31(b) of the *Insurance Act*, R.S.O. 1990, Chapter I.8, as amended.

9. This Defendant's pleading therefore submits that the claim be dismissed with costs to this Defendant on a substantial indemnity scale.

CROSSCLAIM

10. The Defendant, David Jones/Plaintiff by Crossclaim claims against the Defendants, Beerstein, Cook, and the Boat Company :

- a) Contribution and indemnity in respect of any damages found owing to the Plaintiff that this Honourable Court might order this Defendant to pay the Plaintiff;
- b) His costs of this Crossclaim;
- c) His costs of the main action;
- d) Prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, chapter C.43 and any amendments thereto;
- e) Such further and other relief as the nature of this Crossclaim may require and this Honourable Court deem just.

11. This Defendant/Plaintiff by Crossclaim pleads and adopts the allegations as against the Defendants, Beerstein, Cook, and the Boat Company as set out at paragraphs 13 B, C, and D of the Statement of Claim.

12. This Defendant/Plaintiff by Crossclaim proposes that this Crossclaim be tried along with the main action.

Date: February 9, 2013

TO: Counsel A
Solicitors for the Plaintiff,
Ariel Cousteau

AND TO: Counsel C
Solicitors for the Defendant,
Melvin Beerstein

AND TO: Counsel D
Solicitors for the Defendant,
Ursula Cook

AND TO: Counsel E
Solicitors for the Defendant,
The Boat Company Inc.

Cousteau v. Jones, et al.

Court File No.: 12/005

**ONTARIO
TRIAL LAWYERS COURT OF JUSTICE
Proceedings Commenced at LONDON**

**STATEMENT OF DEFENCE AND
CROSSCLAIM OF THE DEFENDANT**

**Counsel B
Windsor**

Solicitors for the Defendant
David Jones

ONTARIO TRIAL LAWYERS COURT OF JUSTICE

B E T W E E N:

ARIEL COUSTEAU

Plaintiff

-and-

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK and THE BOAT COMPANY
INC.

Defendants

STATEMENT OF DEFENCE and CROSSCLAIM OF THE DEFENDANT, MELVIN BEERSTEIN

1. The Defendant, Melvin Beerstein, admits the allegations contained at paragraphs 2, 3 4, 5, and 6 of the Statement of Claim.

2. The Defendant, Melvin Beerstein, denies the allegations contained at paragraphs 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Statement of Claim and puts them to the strictest proof thereof.

3. The Defendant, Melvin Beerstein, states that all material times he conducted himself in a careful and prudent fashion.

4. This Defendant states and the fact is that if the Plaintiff injured herself as a result of the detached propeller (which is not admitted but specifically denied) then such incident was solely

the result of the negligence of the Plaintiff, some particulars of which include but are not limited to the following:

- a) She permitted herself to water-ski in a state of intoxication so extreme as to deprive her of any reasonable ability to care for her own safety;
- b) She took no or inadequate care in water-skiing;
- c) She used improper or was not wearing proper safety wear/equipment/gear and water skis;
- d) She assumed the risk of water-skiing herself;
- e) She had the last clear chance to avoid the incident but failed to do so;
- f) She failed to let go of the cord attached to the boat;
- g) She moved from a place of safety to a place of danger without first ascertaining that she could do so safely;
- h) She did not take any and/or adequate care for her own safety;
- i) She did not keep a proper lookout;
- j) She was paying little or no attention to her surroundings on the day of the incident.

5. In the alternative, the Plaintiff caused or contributed to her injuries, and any claim for damages resulting there from must be reduced by the degree to which the Plaintiff's damages were the result of her own acts and omissions. This Defendant pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended.

6. This Defendant's pleading states that if the Plaintiff sustained injuries, which are not admitted but specifically denied, then such injuries were a result of medical or psychological conditions pre-existing the subject incident which occurred on July 1, 2012.

7. In the alternative, if the Plaintiff was injured, which is not admitted but is expressly denied, any such injuries were caused by the negligence of the Defendants, Ursula Cook (hereinafter referred to as "Cook"), David Jones (hereinafter referred to as "Jones"), and The Boat Company Inc. (hereinafter referred to as "The Boat Company"), in that regard the Defendant pleading adopts the allegations against them set out at paragraphs 13 A, B, and C of the Statement of Claim.

8. This Defendant denies that the Plaintiff is entitled to pre-judgment interest by reason that they have failed to provide this Defendant with documentation and information permitting this Defendant to adequately assess the value of her claims and permitting her to advance monies pursuant to the *Insurance Act*. This Defendant further pleads that the Plaintiff is not entitled to any pre-judgment interest under Section 128 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended, for any period of time before the Plaintiffs served the Notice under Clause 258.31(b) of the *Insurance Act*, R.S.O. 1990, Chapter I.8, as amended.

9. This Defendant's pleading therefore submits that the claim be dismissed with costs to this Defendant on a substantial indemnity scale.

CROSSCLAIM

10. The Defendant, Melvin Beerstein/Plaintiff by Crossclaim claims against the Defendants, Cook, Jones, and The Boat Company:

- a) Contribution and indemnity in respect of any damages found owing to the Plaintiff that this Honourable Court might order this Defendant to pay the Plaintiff;
- b) His costs of this Crossclaim;
- c) His costs of the main action;
- d) Prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, chapter C.43 and any amendments thereto;
- e) Such further and other relief as the nature of this Crossclaim may require and this Honourable Court deem just.

11. This Defendant/Plaintiff by Crossclaim pleads and adopts the allegations as against the Defendants, Jones, Cook, and the Boat Company as set out at paragraphs 13 A, B, and C of the Statement of Claim.

12. This Defendant/Plaintiff by Crossclaim proposes that this Crossclaim be tried along with the main action.

Date: February 9, 2013

TO: Counsel A
Solicitors for the Plaintiff,
Ariel Cousteau

AND TO: Counsel B
Solicitors for the Defendant,
David Jones

AND TO: Counsel D
Solicitors for the Defendant,
Ursula Cook

AND TO: Counsel E
Solicitors for the Defendant,
The Boat Company Inc.

Cousteau v. Jones, et al.

Court File No.: 12/005

**ONTARIO
TRIAL LAWYERS COURT OF JUSTICE
Proceedings Commenced at LONDON**

**STATEMENT OF DEFENCE AND
CROSSCLAIM OF THE DEFENDANT**

**Counsel C
Western**

Solicitors for the Defendant
Melvin Beerstein

ONTARIO TRIAL LAWYERS COURT OF JUSTICE

B E T W E E N:

ARIEL COUSTEAU

Plaintiff

-and-

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK and THE BOAT COMPANY
INC.

Defendants

STATEMENT OF DEFENCE and CROSSCLAIM OF THE DEFENDANT, URSULA COOK

1. The Defendant, Ursula Cook, admits the allegations contained at paragraphs 2, 3, 4, 5, and 6 of the Statement of Claim.

2. The Defendant, Ursula Cook, denies the allegations contained at paragraphs 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Statement of Claim and puts them to the strictest proof thereof.

3. The Defendant, Ursula Cook, states that all material times she conducted herself in a careful and prudent fashion.

4. This Defendant states and the fact is that if the Plaintiff injured herself as a result of the detached propeller (which is not admitted but specifically denied) then such incident was solely

the result of the negligence of the Plaintiff, some particulars of which include but are not limited to the following:

- a) She permitted herself to water-ski in a state of intoxication so extreme as to deprive her of any reasonable ability to care for her own safety;
- b) She took no or inadequate care in water-skiing;
- c) She used improper or was not wearing proper safety wear/equipment/gear and water skis;
- d) She assumed the risk of water-skiing herself;
- e) She had the last clear chance to avoid the incident but failed to do so;
- f) She failed to let go of the cord attached to the boat;
- g) She moved from a place of safety to a place of danger without first ascertaining that she could do so safely;
- h) She did not take any and/or adequate care for her own safety;
- i) She did not keep a proper lookout;
- j) She was paying little or no attention to her surroundings on the day of the incident.

5. In the alternative, the Plaintiff caused or contributed to her injuries, and any claim for damages resulting there from must be reduced by the degree to which the Plaintiff's damages were the result of her own acts and omissions. This Defendant pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended.

6. This Defendant's pleading states that if the Plaintiff sustained injuries, which are not admitted but specifically denied, then such injuries were a result of medical or psychological conditions pre-existing the subject incident which occurred on July 1, 2012.

7. In the alternative, if the Plaintiff was injured, which is not admitted but is expressly denied, any such injuries were caused by the negligence of the Defendants, David Jones (hereinafter referred to as "Jones"), Melvin Beerstein (hereinafter referred to as "Beerstein"), and The Boat Company Inc. (hereinafter referred to as "Boat Company") in that regard the Defendant pleading adopts the allegations against them set out at paragraphs 13 A, C, and D of the Statement of Claim.

8. This Defendant denies that the Plaintiff is entitled to pre-judgment interest by reason that they have failed to provide this Defendant with documentation and information permitting this Defendant to adequately assess the value of her claims and permitting her to advance monies pursuant to the *Insurance Act*. This Defendant further pleads that the Plaintiff is not entitled to any pre-judgment interest under Section 128 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended, for any period of time before the Plaintiffs served the Notice under Clause 258.31(b) of the *Insurance Act*, R.S.O. 1990, Chapter I.8, as amended.

9. This Defendant's pleading therefore submits that the claim be dismissed with costs to this Defendant on a substantial indemnity scale.

CROSSCLAIM

10. The Defendant, Ursula Cook/Plaintiff by Crossclaim claims against the Defendants, Jones, Beerstein, and the Boat Company :
- a) Contribution and indemnity in respect of any damages found owing to the Plaintiff that this Honourable Court might order this Defendant to pay the Plaintiff;
 - b) Her costs of this Crossclaim;
 - c) Her costs of the main action;
 - d) Prejudgment interest pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, chapter C.43 and any amendments thereto;
 - e) Such further and other relief as the nature of this Crossclaim may require and this Honourable Court deem just.
11. This Defendant/Plaintiff by Crossclaim pleads and adopts the allegations as against the Defendants, Jones, Beerstein, and the Boat Company as set out at paragraphs 13 A, C, and D of the Statement of Claim.
12. This Defendant/Plaintiff by Crossclaim proposes that this Crossclaim be tried along with the main action.

Date: February 9, 2013

TO: Counsel A
Solicitors for the Plaintiff,
Ariel Cousteau

AND TO: Counsel B
Solicitors for the Defendant,
David Jones

AND TO: Counsel C
Solicitors for the Defendant,
Melvin Beerstein

AND TO: Counsel E
Solicitors for the Defendant,
The Boat Company Inc.

Cousteau v. Jones, et al.

Court File No.: 12/005

**ONTARIO
TRIAL LAWYERS COURT OF JUSTICE**
Proceedings Commenced at LONDON

**STATEMENT OF DEFENCE AND
CROSSCLAIM OF THE DEFENDANT**

**Counsel D
Kingston**

Solicitors for the Defendant
Ursula Cook

ONTARIO TRIAL LAWYERS COURT OF JUSTICE

B E T W E E N:

ARIEL COUSTEAU

Plaintiff

-and-

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK and THE BOAT COMPANY
INC.

Defendants

STATEMENT OF DEFENCE and CROSSCLAIM OF THE DEFENDANT, THE BOAT COMPANY INC.

1. The Defendant, The Boat Company Inc. admits the allegations contained at paragraphs 2, 3, 4, 5, and 6 of the Statement of Claim.

2. The Defendant, The Boat Company, denies the allegations contained at paragraphs 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Statement of Claim and puts them to the strictest proof thereof.

3. The Defendant, The Boat Company, states that all material times it conducted itself in a careful and prudent fashion, and hired properly trained employees to carry out their work.

4. This Defendant states and the fact is that if the Plaintiff injured herself as a result of the detached propeller (which is not admitted but specifically denied) then such incident was solely

the result of the negligence of the Plaintiff, some particulars of which include but are not limited to the following:

- a) She permitted herself to water-ski in a state of intoxication so extreme as to deprive her of any reasonable ability to care for her own safety;
- b) She took no or inadequate care in water-skiing;
- c) She used improper or was not wearing proper safety wear/equipment/gear and water skis;
- d) She assumed the risk of water-skiing herself;
- e) She had the last clear chance to avoid the incident but failed to do so;
- f) She failed to let go of the cord attached to the boat;
- g) She moved from a place of safety to a place of danger without first ascertaining that she could do so safely;
- h) She did not take any and/or adequate care for her own safety;
- i) She did not keep a proper lookout; and,
- j) She was paying little or no attention to her surroundings on the day of the incident.

5. In the alternative, the Plaintiff caused or contributed to her injuries, and any claim for damages resulting there from must be reduced by the degree to which the Plaintiff's damages were the result of her own acts and omissions. This Defendant pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended.

6. This Defendant's pleading states that if the Plaintiff sustained injuries, which are not admitted but specifically denied, then such injuries were a result of medical or psychological conditions pre-existing the subject incident which occurred on July 1, 2012.

7. In the alternative, if the Plaintiff was injured, which is not admitted but is expressly denied, any such injuries were caused by the negligence of the Defendants, Ursula Cook (hereinafter referred to as "Cook"), David Jones (hereinafter referred to as "Jones"), and Melvin Beerstein (hereinafter referred to as "Beerstein"), in that regard the Defendant pleading adopts the allegations against them set out at paragraphs 13 A, B, and D of the Statement of Claim.

8. This Defendant denies that the Plaintiff is entitled to pre-judgment interest by reason that they have failed to provide this Defendant with documentation and information permitting this Defendant to adequately assess the value of her claims and permitting her to advance monies pursuant to the *Insurance Act*. This Defendant further pleads that the Plaintiff is not entitled to any pre-judgment interest under Section 128 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended, for any period of time before the Plaintiffs served the Notice under Clause 258.31(b) of the *Insurance Act*, R.S.O. 1990, Chapter I.8, as amended.

9. This Defendant's pleading therefore submits that the claim be dismissed with costs to this Defendant on a substantial indemnity scale.

CROSSCLAIM

10. The Defendant, The Boat Company Inc./Plaintiff by Crossclaim claims against the Defendants, Cook, Jones, and Beerstein:

- a) Contribution and indemnity in respect of any damages found owing to the Plaintiff that this Honourable Court might order this Defendant to pay the Plaintiff;
- b) Its costs of this Crossclaim;
- c) Its costs of the main action;
- d) Prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, chapter C.43 and any amendments thereto;
- e) Such further and other relief as the nature of this Crossclaim may require and this Honourable Court deem just.

11. This Defendant/Plaintiff by Crossclaim pleads and adopts the allegations as against the Defendants, Jones, Beerstein, and Cook as set out at paragraphs 13 A, B, and D of the Statement of Claim.

12. This Defendant/Plaintiff by Crossclaim proposes that this Crossclaim be tried along with the main action.

Date: February 9, 2013

TO: Counsel A
Solicitors for the Plaintiff,
Ariel Cousteau

AND TO: Counsel B
Solicitors for the Defendant,
David Jones

AND TO: Counsel C
Solicitors for the Defendant,
Melvin Beerstein

AND TO: Counsel D
Solicitors for the Defendant,
Ursula Cook

Cousteau v. Jones, et al.

Court File No.: 12/005

**ONTARIO
TRIAL LAWYERS COURT OF JUSTICE**
Proceedings Commenced at LONDON

**STATEMENT OF DEFENCE AND
CROSSCLAIM OF THE DEFENDANT**

**Counsel E
Osgoode**

Solicitors for the Defendant
The Boat Company

ONTARIO TRIAL LAWYERS COURT OF JUSTICE

BETWEEN:

ARIEL COUSTEAU

Plaintiff

-and-

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK
and THE BOAT COMPANY INC.

Defendants

This is the Examination for Discovery of **ARIEL COUSTEAU**, the Plaintiff herein, taken before **T.Ruth B. Known, C.C.R.**, at the offices of **SPILLIT REPORTING SERVICES**, 100 Queen Street, Ottawa, Ontario, on the 3rd day of June, 2013.

A P P E A R A N C E S:

Counsel A,	-- for the Plaintiff
Counsel B,	-- for the Defendant David Jones
Counsel C,	-- for the Defendant Melvin Beerstein
Counsel D,	-- for the Defendant Ursula Cook
Counsel E,	-- for the Defendant The Boat Company

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ARIEL COUSTEAU, sworn:

EXAMINATION BY Counsel B:

1. Q. Good morning, you're Ariel Cousteau?

A. Right.

2. Q. And you go by Ariel?

A. Yes.

3. Q. Are you still at 10 Catherine Street?

A. Yes.

4. Q. You're aware that we're here today because of a boat collision that occurred July 1, 2012; is that right?

A. That's right.

5. Q. All right. Can you recall what day of the week that was, Ariel?

A. No, I can't recall what day.

6. Q. It says in the hospital record, Sunday. Does that sound right?

A. Yes.

7. Q. Do you recall approximately what time it occurred?

A. About two o'clock.

8. Q. And you were driving what sort of vehicle? Do you know the type of car?

THE DEPONENT: I was waterskiing.

COUNSEL B: Right, okay.

BY Counsel A:

9. Q. Someone in your office pack the wrong file, counsel?

A. I was waterskiing.

By Counsel B:

10. Q. And is Gordon your husband?

A. No. I'm not married.

11. Q. Ah. Let's try again. You were waterskiing?

A. Yes.

12. Q. Who was the driver of the boat pulling you?

A. Davy Jones.

13. Q. Who owned the boat?

A. Captain Cook.

14. Q. Is that Ursula Cook?

A. Yes.

15. Q. Okay. Now, did Davy Jones have permission to drive the boat?

A. Yes.

16. Q. Okay. Can you describe the boat?

A. Not really. White. It was a motor boat for skiing. That's all I know.

17. Q. All right. Had you ever been out in a boat with Davy or Captain Cook before?

A. I'd been out with Captain Cook a number of times. She's a regular at Waterworld where I work.

I'm pretty sure she's in the Coast Guard.

18. Q. What do you know about her boating experience?

A. If she doesn't know it, it's probably not worth knowing. She knows everything about boats and being on the water.

19. Q. What about Davy's experience?

A. He's a klutz. Don't get me wrong, I love the guy, but he can't even open his locker at school without breaking it.

20. Q. All right, so you knew him before?

A. Yeah, he goes to university with me.

21. Q. Right.

A. He's the only guy at school with a car but he's so bad I won't drive with him.

22. Q. Where?

A. Anywhere.

23. Q. Okay. What about Davy's experience with boats? What do you know about that?

A. Oh, sorry. Not too much. This was the first time either of us had been on Captain Cook's boat.

24. Q. Okay. How was it that you came to be on her boat?

A. Well, she lectures at Waterworld on small craft safety. She was there on July 1st and gave a

Coast Guard talk on how to handle waves and stuff. I'm a mermaid, so I wasn't really listening. I got talking to her after she finished and she said she was going out on her boat, would I like to come. I said sure.

25. Q. You didn't have to work that day?

A. Naw. I'd whacked the hell out of my leg the day before and it was too sore to get the mermaid costume on, so Phil, my supervisor, said I could have the day off.

25a) Q. What happened prior to the boating incident?

A. While we were waiting to go out on Capt. Cook's boat we were sitting around with some of the other people at Waterworld, including the owner Melvin Beerstein. While we were waiting Beerstein had a case of beer. He had obviously been drinking and he asked us all if we would like to share in the cases of beer that were in the trunk of his car. He brought out a case of beer and told us that we should try playing beer pong. I remember David Jones was there. I accepted a beer and started to drink it slowly. Melvin and David sat down and started joking around about playing beer pong. Melvin got paper cups out of the back of his car and while we were sitting on the dock at Waterworld in plain sight of

Capt. Cook they began to play. Viewers on the dock cheered them on. I don't recall how many beers they went through. They took turns throwing the ball into the opposing cups that were full beer and then the other side chugged the beer. I am certain that both of them had several beers. Both seemed to be intoxicated although David said he wasn't. As I said David is a klutz so it was hard to tell whether he was drunk or just his usual unstable self. Melvin on the other hand was clearly getting drunk. I had one beer in total during the whole 30 to 40 minutes they were playing.

26. Q. How'd you hurt your leg?

A. It was nothing. We get in our mermaid outfits in the back and jump in the pool from there. Once you have those tails on it's hard to keep your balance. I stumbled and landed on my right side smack dab on the edge of the pool. I was alright to finish the show but it hurt like hell the next day, the Friday.

27. Q. You mean the day you were too sore to work but alright to go waterskiing? Does that sound right?

A. It got better.

28. Q. How did Davy get involved?

A. I don't know.

29. Q. All right. So you left Waterworld and went out on Captain Cook's boat. Where did you go?

A. She has a slip at the marina in Grand Bend. We drove out there and went out on the lake.

30. Q. Did you discuss plans?

A. We were going to waterski on the lake near the marina.

31. Q. Did you?

A. Davy did for a while. Captain Cook drove, I spotted. Then we switched and I drove for a bit and she spotted.

32. Q. Did she give you instruction on how to operate the boat?

A. No. I told her I was fine. I've been around boats long enough to drive one.

33. Q. Okay. What happened then?

A. Well, we switched and I skied for a bit.

34. Q. How long?

A. Not long. It was pretty boring near the marina so I ditched and asked Captain Cook if we could go out on the big water.

35. Q. She was alright with that?

A. Not at first but she gave in and said yes.

36. Q. What was her concern?

A. Waves.

37. Q. Who was driving the boat while you were skiing?

A. It was Captain Cook while we were inear the marina.

38. Q. Did you go farther out?
A. Yes.
40. Q. What was it like when you went further out
A. It was wild. The waves just come at you. Four, five feet high if the wind's blowing.
41. Q. Okay. Was it? You know, blowing?
A. Yes, it always blows out there. But not too bad that day.
42. Q. What were the waves like?
A. Foot and a half, two feet. Excellent for jumping.
43. Q. On skis, you mean?
A. Yes.
44. Q. Okay.
A. You can jump them with the boat too.
45. Q. Did you ski your way out there?
A. Yes.
46. Q. As you pass through the gap, are there any docks on the shore?
A. The Pattersons have a place just this side of the marina. On the south side.
47. Q. Okay. So were they out on their dock?

A. Yes. I guess. I don't really remember.

48. Q. All right. What happened next?

A. I'm skiing having a good time and I look up and Davy's driving. I wasn't keen on the idea but if it was alright with Captain Cook, it was alright with me. I took a tumble over a huge wave. Davy circled back to get me and ran me over. I'm not too clear on the rest.

49. Q. I have to orient myself in terms of where you are in the water. Can you see Patterson's dock from where you are after you ditched?

A. Don't think so. Not from where I am in the water. Course the boat's still moving. So you might have been able to see the dock from the boat as it swung back to get me.

50. Q. Okay. So you're in the water. Do you see what's happening in the boat as they come back to get you?

A. Yes. Davy's driving and looks frightened to death. I couldn't see the Captain but then again I'm sitting in the water. They came up on my right and just as they were about to pass, a huge wave came by and pushed the boat toward me. That was when I saw Captain Cook. She was hopping around at that point. All of a sudden I was hit so hard by the boat propeller.

51. Q. Did you do anything to avoid getting hit?

A. You ever been waterskiing?

52. Q. Okay. It's important for me to ask the questions and you to answer them. I need to understand how far away the boat is when the wave hits and how fast the boat was going at that point.

A. Ten feet. Six feet. Close. The boat was going fairly slow. It was still slowing down when the wave hit.

53. Q. Okay. Did either of them talk to you after?

A. Davy kept saying he was sorry. Said he had no idea what to do and just froze.

54. Q. What about Ursula?

A. She hasn't said a word to me since this happened.

55. Q. Okay.

A. She kept yelling at Davy after that he should have cut the throttle. I remember that.

56. Q. Right. Okay. And then they pulled you out. What injuries did you have then?

A. I was in shock. But then I couldn't really see my head. It wasn't until my leg started bleeding in the boat that I realized I was cut. Most of the pain started the next day.

57. Q. Right. And what pain did you have?

A. My head of course, where my scalp was ripped. My left shoulder hurt like hell. And my right thigh.

58. Q. What treatment did you get?

A. Painkillers at the first hospital. Surgery to repair my fractured femur and to close my leg and head at the second. Dr. Street did that. Physiotherapy for my shoulder and leg, then tissue expanders for my scalp.

59. Q. Did you go back to work at Waterworld?

A. The shoulder and leg hurt too much to swim for all of July and August.

60. Q. How are they now?

A. Alright. The orthopaedic surgeon says I'll have ongoing problems with my right leg for the rest of my life. My leg will never be the same.

61. Q. Medication?

A. Blood thinners. To prevent clotting. And some pills to keep calcium from building up in my right leg.

62. Q. No pain killers or anti-inflammatories?

A. I'm not a pill person. I take some homeopathic medicine when the pain flares up.

63. Q. Were there any bruises?

A. Yes. Some on my right leg. But they were mixed in with the bruise from where I fell and you

couldn't really tell one from the other.

64. Q. Same spot on your leg?

A. Pretty much.

65. Q. Okay. Tell me about the scars.

A. What's to tell? They're ugly. I'm supposed to be a Phys.Ed. teacher. I'm not too keen on the idea of running around in shorts all day with a twelve inch purple gash down my leg. But the head's worse.

66. Q. What is Dr. Plant saying about your scalp injury?

A. He says he can maybe graft donor scalp on later. I have to tell you though, I don't like the idea of having some dead guy's hair growing on my head. Besides, there's no guarantee it would work.

67. Q. Are you going to explore it further?

A. Nope. Too gross.

68. Q. What does Dr. Plant say about the chances of success of transplant?

A. It doesn't really matter does it? I already said that I'm not doing it.

69. Q. I'm told the chance of success is 98%. Is that what he told you?

A. Once again, it doesn't matter but yes, that's what he told me.

70. Q. I understand that Dr. Plant removed some varicose veins from your right leg.

A. Yes

71. Q. You're not suggesting that they were caused by this accident?
- A. I think they were.
72. Q. Did you return to school this term?
- A. No.
73. Q. Why not?
- A. My leg hurts too much.
74. Q. Where?
- A. I don't understand what you mean.
75. Q. What's causing the pain?
- A. The pain is right where the calcium nodule is growing.
76. Q. Is there any other reason that you didn't go back to school this term other than pain from the calcium nodule?
- A. No. Isn't that enough? I'm a Phys. Ed. Teacher.
77. Q. Okay, so if the calcium nodule wasn't there, do you think you could go to school and carry on with your life?
- A. Yes. As long as I had a hat on.
78. Q. Ariel, I understand that you have had to cancel a trip to Australia as a result of this accident?
- A. Yes.

79. Q. When were you scheduled to leave?
A. Next May. After final exams.
80. Q. How much did the trip cost?
A. It was just the return flight. My friend Gillian and I were going to travel around the country and stay in youth hostels.
81. Q. Sounds great. For how long?
A. About six months. A year maybe.
82. Q. And then what?
A. Work I guess.
83. Q. Teaching around here?
A. Probably not around here. The job market is apparently not great right now. The idea was to wait it out and hopefully something would come up. If not, there's apparently always work up north for anyone who doesn't mind mosquitoes.

Counsel A: That's great. That's it, Ariel.
Subject to the questions refused, taken under advisement and the undertakings, I guess there were none, and questions which may arise therefrom, those are all my questions.

--- ADJOURNED.

THIS IS TO CERTIFY that the foregoing is a true and accurate transcription from my recordings made herein, to the best of my skill and ability.

T.Ruth B. Known, C.C.R.

A Commissioner, etc.,
Province of Ontario,
for oral examinations conducted out of court only.

Expires January 22, 2014.

Photostat copies of this Second Copy of this transcript are not certified and have not been paid for unless they bear the original signature of Ruth A. Graham, and accordingly are in direct violation of Ontario Regulations 587/91, Courts of Justice Act, January 1, 1990.

ONTARIO TRIAL LAWYERS COURT OF JUSTICE

B E T W E E N:

ARIEL COUSTEAU

Plaintiff

-and-

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK and THE BOAT COMPANY
INC.

Defendants

This is the Examination for Discovery of **DAVID JONES**, one of the Defendants herein, taken before **T. Ruth B. Known, C.C.R.**, at the offices of **SPILLIT REPORTING SERVICES**, 200 Victoria Avenue, Windsor, Ontario, on the 20th day of September, 2013.

A P P E A R A N C E S:

Counsel A,	-- for the Plaintiff
Counsel B,	-- for the Defendant David Jones
Counsel C,	-- for the Defendant Melvin Beerstein
Counsel D,	-- for the Defendant Ursula Cook
Counsel E,	-- for the Defendant The Boat Company

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David Jones, sworn

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DAVID JONES, sworn:

EXAMINATION BY Counsel A:

1. Q. Good morning, you're David Jones?
A. Right.
2. Q. And you go by Davy?
A. David's fine.
3. Q. Are you still at 20 Mariners Street in Windsor?
A. Yes.
4. Q. You're aware that we're here today because of a boat collision that occurred July 1, 2012?
A. Sure.
5. Q. You were driving a boat belonging to Ursula Cook?
A. I didn't know that was her first name but yes, I was driving.
6. Q. Why don't you remember her first name?
A. Everyone calls her Captain.
7. Q. Do you recall approximately what time the accident occurred?
A. Two o'clock or so.
8. Q. This accident happened on Lake Huron?
A. Yes. Just a little beyond the Grand Bend marina.
9. Q. How did you meet Ms. Cook?
A. I was at her safety lecture at Waterworld that morning.
10. Q. Why?
A. I've always been interested in small watercraft. After the lecture, I heard the Captain invite Ariel out for a ride. Captain Cook has a beautiful yellow Searay. I asked if I could go and the Captain said yes.
11. Q. Did you have any prior experience with boats?
A. Mostly as a passenger.
12. Q. How did you meet Melvin Beerstein?
A. He goes by Beerman. He owns Waterworld.
13. Q. I understand there was some drinking going on before you went on the boat?
A. Beerman showed up after the lecture. He was wasted. Apparently July 1 is some sort of holiday, the whole office was out celebrating. He brought a couple cases of beer down to the dock. Beerman had

schooled me at beer pong on May two-four and won 100 bucks off me. I was pissed. When he showed up falling over himself I figured I could win my money back easy. We played for a bit before the Captain told us to board her boat.

14. Q. How many drinks did you have before boarding the boat?

A. Tough to say. I wasn't drunk or nothing. I didn't have much. Maybe three or four.

15. Q. Did Ariel have anything to drink?

A. Yes. She had a few. I remember her chugging one right before we drove to the marina.

16. Q. Where was Captain Cook?

A. She was hanging out on the dock, laughing at Beerman.

17. Q. So you went waterskiing in the lake?

A. Yes. Ariel and I. I went first and then Ariel. She was afraid the water would be too cold but once I was in, she realized that it wasn't all that bad.

18. Q. Then you went further out onto the lake?

A. Yes.

19. Q. Why?

A. Ariel was keen on catching some air off the waves on the open water, past the marina.

20. Q. Okay. What did Ursula say about that?

A. She said no initially but it's hard to say no to Ariel when she really wants something.

21. Q. Why didn't she want to go too far away from the marina?

A. She thought the waves would be too much for the boat.

22. Q. And were they?

A. No. The wind wasn't too bad at all. At least at first. It picked up though. Particularly just before Ariel got hurt.

23. Q. What do you know about Ursula's boating experience?

A. She's an authority. I was really hoping she'd give me some pointers.

24. Q. What do you mean?

A. Well, once we got out on the open lake it seemed like the waves weren't all that bad. It was like

glass at first. I asked the Captain if I could drive and she let me. But then she stripped down to her bathing suit and sat in the back.

25. Q. She was the spotter then?

A. I suppose. Would've been hard to be a spotter with your nose in a book though.

26. Q. Did you tell Ursula that you had little experience driving a boat?

A. No.

27. Q. Why not?

A. She wouldn't have let me drive.

28. Q. Did you ask her for help once you got behind the wheel?

A. I didn't think she was all that open to conversation.

29. Q. How do you know if you didn't ask?

A. She had the straps of her top undone and I wasn't feeling all that comfortable with the idea of approaching her.

30. Q. How long did you drive before the accident happened?

A. It wasn't long at all - ten minutes maybe.

31. Q. What happened?

A. I didn't really notice the wind pick up but all of a sudden the waves were big enough for Ariel to catch air. She took a tumble. I saw her go down and turned to go back for her. The Captain had done it a couple of times earlier and I just tried to do what she had done. I was in the middle of pulling up beside Ariel when this big wave pushed the boat onto her. All of a sudden the propeller detached from the boat and struck Ariel. Next thing I knew, the Captain was pushing me out of the way and we were dragging Ariel into the boat.

32. Q. Did you cut the throttle as you approached Ariel?

A. I was slowing down but no one told me I was supposed to cut the throttle completely.

33. Q. I thought you said you had watched the Captain retrieve Ariel a couple of times before?

A. Yeah, well there's a lot to it. I don't remember her cutting the throttle.

34. Q. If Ursula gives evidence that she gave you specific instructions on how to operate the boat would you deny that?

- A. No. She told me the basics. But she didn't say I had to cut the throttle picking up a skier. Not until afterwards anyway.
35. Q. Pardon?
- A. She screamed at me the whole way in to dock about it.
36. Q. Have you discussed how this accident occurred with anyone other than the parties to this action?
- A. Mr. Patterson saw it. He was on his dock out by the marina.
37. Q. What does he say?
- A. He says I approached Ariel too fast and from the wrong side given the direction the wind was blowing. And he says that the Captain should have been beside me and not sitting tanning in the back.
38. Q. How far were you from his dock when you hit Ariel?
- A. Three, four hundred metres.
39. Q. Isn't the Patterson property on the inner harbour?
- A. Yes. But it's the closest one to the point.
40. Q. How far is it from Patterson's dock to the Gap?
- A. About fifty metres.
41. Q. Did Mr. Patterson tell you what he saw before or after you told him what happened?
- A. I can't remember. After, I think.
42. Q. Are there any trees on the point?
- A. Great big pines.
43. Q. Wouldn't those pines have blocked Mr. Patterson's view?
- A. Yes. I think he said he could see through the trunks. There's not much underbrush.
44. Q. You worked at Waterworld for the summer too right?
- A. Yes.
45. Q. You filled out an application for employment?
- A. Yes.
46. Q. And on your application you indicated that you completed your Power Squadron course, didn't you?
- A. Yes.
47. Q. But you've never attended the Power Squadron course have you?

- A. No.
48. Q. Why did you do that?
- A. You have to have it to get the job I had. But you never have to use it. We're never on navigable water at Waterworld.
49. Q. If Ursula Cook knew that it was a requirement for your job, then it would have been reasonable for her to assume that you had it, wouldn't it?
- A. Yes.

Counsel B: That's it, Davy. Subject to the questions refused, taken under advisement and the undertakings, and questions which may arise therefrom, those are all my questions.

--- ADJOURNED.

THIS IS TO CERTIFY that the foregoing is a true and accurate transcription from my recordings made herein, to the best of my skill and ability.

T. Ruth B. Known, C.C.R.

**A Commissioner, etc.,
Province of Ontario,
for oral examinations conducted out of court only.**

Expires January 22, 2014.

Photostat copies of this Second Copy of this transcript are not certified and have not been paid for unless they bear the original signature of Ruth A. Graham, and accordingly are in direct violation of Ontario Regulations 587/91, Courts of Justice Act, January 1, 1990.

ONTARIO TRIAL LAWYERS COURT OF JUSTICE

BETWEEN:

ARIEL COUSTEAU

Plaintiff

-and-

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK and THE BOAT COMPANY
INC.

Defendants

This is the Examination for Discovery of **MELVIN BEERSTEIN**, one of the Defendants herein, taken before **T.Ruth B. Known, C.C.R.**, at the offices of **SPILLIT REPORTING SERVICES**, 300 Wellington Street, London, Ontario, on the 20th day of September, 2013.

A P P E A R A N C E S:

Counsel A,	-- for the Plaintiff
Counsel B,	-- for the Defendant David Jones
Counsel C,	-- for the Defendant Melvin Beerstein
Counsel D,	-- for the Defendant Ursula Cook
Counsel E,	-- for the Defendant The Boat Company

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Melvin Beerstein, affirmed:

EXAMINATION BY Counsel A:

1. Q. Good morning, state your name for the record?
A. Melvin Beerstein
2. Q. Where do you reside?
A. Kingston.
3. Q. What do you do for a living?
A. I own Waterworld.
4. Q. As a sole proprietorship?
A. Yes.
5. Q. Were you at Waterworld on July 1, 2012?
A. Yes.
6. Q. Were you there that day?
A. Yes. A group of us met for our annual office party at my house.
7. Q. Did you bring any alcohol with you?
A. I brought a case of beer down to my dock.
8. Q. You know Ariel Cousteau?
A. Yes. She works at Waterworld. But she had been off after her fall the day before. She mangled her leg good.
9. Q. Did Ariel have anything to drink?
A. Probably. I was not really paying attention to who was drinking what. I brought out a case or two of beer and people grabbed them.
10. Q. Did you charge them for the beers?
A. No, I want people to have fun. We have these parties a lot, I bring the beer. We like it when people get crazy. That is why they call me Beerman.
11. Q. How about David Jones, was he drinking?
A. That I remember. We were playing beer pong. Davy had a bunch of beers with me. I think he was trying to win his money back from last time we played.
12. Q. How long were you drinking for before they went on the boat.
A. No clue, but it was not right away.
13. Q. Did you know that Davy was going to be going on the boat before you started drinking?
A. I can't remember. He is into Ariel, but she is not really into him. He left our game to go on the boat with her.
14. Q. Did he appear drunk when he got on the boat?

A. I am sure he was. We had played beer pong for a while and I was feeling pretty good so he must have been too. It's hard to tell with Davy since he is always falling over things even when he isn't drinking.

15. Q. Did you witness the boat accident?

A. No.

16. Q. Do you have any information, knowledge or belief about how much alcohol Ariel had at the party?

A. Afterwards, a friend told me that she had a few beers.

17. Q. Do you know the boat's owner, Captain Cook?

A. No.

Counsel A: Thank you. Subject to the questions refused, taken under advisement and the undertakings, and questions which may arise therefrom, those are all my questions.

--- ADJOURNED.

THIS IS TO CERTIFY that the foregoing is a true and accurate transcription from my recordings made herein, to the best of my skill and ability.

T.Ruth B. Known, C.C.R.

A Commissioner, etc.,
Province of Ontario,
for oral examinations conducted out of court only.

Expires January 22, 2014.

Photostat copies of this Second Copy of this transcript are not certified and have not been paid for unless they bear the original signature of Ruth A. Graham, and accordingly are in direct violation of Ontario Regulations 587/91, Courts of Justice Act, January 1, 1990.

ONTARIO TRIAL LAWYERS COURT OF JUSTICE

BETWEEN:

ARIEL COUSTEAU

Plaintiff

-and-

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK and THE BOAT COMPANY
INC.

Defendants

This is the Examination for Discovery of **URSULA COOK**, one of the Defendants herein, taken before **T.Ruth B. Known, C.C.R.**, at the offices of **SPILLIT REPORTING SERVICES**, 257 Division Street, Kingston, Ontario, on the 20th day of September, 2013.

A P P E A R A N C E S:

Counsel A,	-- for the Plaintiff
Counsel B,	-- for the Defendant David Jones
Counsel C,	-- for the Defendant Melvin Beerstein
Counsel D,	-- for the Defendant Ursula Cook
Counsel E,	-- for the Defendant The Boat Company

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URSULA COOK, sworn:

EXAMINATION BY Counsel A:

1. Q. Good morning, you're Captain Ursula Cook?
A. Right.
2. Q. You're employed with the Coast Guard?
A. Eighteen years.
3. Q. And you live at 60 Water Street in Kingston?
A. Yes.
4. Q. You're aware that we're here today because of a boat collision that occurred July 1, 2012?
A. Yes.
5. Q. You were the owner and a passenger in the boat that struck Ariel Cousteau?
A. Yes.
6. Q. Who was driving when the accident occurred?
A. A young man named David Jones.
7. Q. Where had you met David?
A. Waterworld. As part of my Coast Guard duties I lecture the staff there on water safety. David is one of their waterway patrollers and operates a personal watercraft. He attends my lectures regularly.
8. Q. What is your experience with watercraft?
A. I teach small watercraft safety courses throughout the Province of Ontario and I have done so for over fifteen years. I am familiar with every conceivable form of floating object known to our species. If it floats, I know about it.
9. Q. What do you know about David's qualifications?
A. He works at Waterworld. Power Squadron Course is their minimum qualification. If they hired him, he has that at least. He is attentive at lectures and answers questions with enthusiasm and more importantly, correctly. On the day of the accident, he asked for permission to handle my craft. Based on my prior observations and my understanding of his qualifications, erroneous as they turned out to be, I felt it appropriate for him to do so.
10. Q. Did you provide Mr. Jones with any instructions on handling your craft before you let him drive?
A. Indeed I did. I explained to him the basics of how the craft was maneuvered. I stressed that he must not exceed the speed indicated by the skier as being appropriate and I cautioned him that he must cut the

throttle to the vessel if, at any time, he felt a swimmer was in too great proximity to the boat.

11. Q. Did he understand your instructions?
A. I have specific recollection of Mr. Jones nodding in the affirmative when asked if he understood my instructions.
12. Q. So you went waterskiing in Lake Huron?
A. Yes. Then far out past the marina at Ms. Cousteau's insistence.
13. Q. I understand that you wanted to stay closer to the marina?
A. True. I am not fond of the wind and it can sometimes be quite windy out on the lake.
14. Q. It wasn't because of any danger presented to skiers or your boat in heavier waters?
A. Certainly not.
15. Q. Okay. What did you do once Mr. Jones began driving the boat?
A. I stood to the rear of his right shoulder and observed both his driving and the actions of the skier in the water, Ms. Cousteau.
16. Q. If Mr. Jones suggests that you sat in the back and read a book, that would be incorrect?
A. Pure poppycock.
17. Q. And if he says that you were tanning in the back?
A. Nonsense.
18. Q. What happened?
A. Rather than cutting throttle as instructed, Mr. Jones accelerated when approaching Ms. Cousteau. All of a sudden the propeller detached from the boat and hit Ms. Cousteau.
19. Q. What were the wave conditions at the time?
A. The waves were of no consequence. Certainly no more than a gentle swell.
20. Q. What was the condition of the boat?
A. It was in good condition except I had recently taken it in to a place called the Boat Company to have the propeller checked out.
21. Q. What was the problem with the propeller?
A. It had been making a weird noise so I took it in to the Boat Company. They recommended replacing the propeller but wanted an exorbitant amount of money. I did

not authorize the work and asked them to put the propeller back on so I could leave. I only found out after the accident that there were parts that they did not replace for the propeller - something with the cotter pin not being put back.

22. Q. When did you take it in?

A. I don't remember exactly, sometime at the beginning of boat season.

23. Q. And when would that have been?

A. I guess around May of that year.

24. Q. Do you have any documentation with relation to the boat repairs.

A. I do somewhere.

Q. Can you find it please and give it to your lawyer.

A. Sure.

U/T TO PROVIDE COPIES OF DOCUMENTATION WITH RELATION TO THE BOAT REPAIRS

25. Q. I understand that there was some drinking taking place on the dock before Mr. Jones and Ms. Cousteau drove out to the marina and boarded the boat?

A. There was lots of commotion on the dock. I didn't notice any drinking.

26. Q. I anticipate we will hear evidence from Ariel and Davy that they had some beer before boarding the boat and that you saw this. Do you agree?

27. A. Balderdash. I would not have let either of them ski or drive my boat if they had a sip of beer.

28. Q. Anything else to add today?

A. I suppose things might have turned out differently if Ms. Cousteau had not tried to swim to the boat. She practically swam underneath the bow as we approached, that's all.

Counsel A: Thank you Captain. Subject to the questions refused, taken under advisement and the undertakings, and questions which may arise therefrom, those are all my questions.

--- ADJOURNED.

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T.Ruth B. Known, C.C.R.

A Commissioner, etc.,
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ONTARIO
TRIAL LAWYERS COURT OF JUSTICE

B E T W E E N:

ARIEL COUSTEAU

Plaintiff

- and -

DAVID JONES, MELVIN BEERSTEIN, URSULA COOK and THE BOAT COMPANY
INC.

Defendants

This is the Examination for Discovery of **MARY OCEAN** on behalf of the Boat Company, one of the Defendants herein, taken before **T.Ruth B. Known, C.C.R.**, at the offices of **SPILLIT REPORTING SERVICES**, 300 Bay Street, Toronto, Ontario, on the 20th day of September, 2013.

A P P E A R A N C E S:

Counsel A,	-- for the Plaintiff
Counsel B,	-- for the Defendant David Jones
Counsel C,	-- for the Defendant Melvin Beerstein
Counsel D,	-- for the Defendant Ursula Cook
Counsel E,	-- for the Defendant The Boat Company

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MARY OCEAN, sworn:

EXAMINATION BY Counsel A:

1. Q. Good morning, you're Mary Ocean?
A. Right.
2. Q. You're employed with the Boat Company Inc. and you understand that your answers are binding on this defendant?
A. Yes.
3. Q. And you live at 55 Dock Street in Toronto?
A. Yes.
4. Q. You're aware that we're here today because of a boat collision that occurred July 1, 2012?
A. Yes.
5. Q. You are a manager at the Boat Company Inc.?
A. Yes.
6. Q. How long have you been working there?
A. 10 years.
7. Q. And what exactly do you do?
A. I oversee the regular operations of the business, I supervise the staff, oversee that the repairs are done right.
Q. How many people work at the boat company?
A. We have two licenced mechanics, and we had a summer student for the summer 2012.
Q. What training would these staff members get?
A. The mechanics are required to be licenced and they go through a period of specialized school for boat mechanic repairs, special training for Searay boats. The summer student was my boyfriend's 15-year-old son. He likes boats and Searays especially.
8. Q. What kind of repairs is the Boat Company working on?

A. We mostly do repairs on motor boats, every once in a while we get some sail boats and yachts to work on.

9. Q. Do you recall Ursula Cook coming in to have her boat repaired in the Summer of 2012?

A. Yes I do.

10. Q. Tell me what you remember?

A. She brought in her boat because it was making a strange noise around the propeller area. I had one of my mechanics take a look at it and he said that the propeller needed to be replaced. Because this wasn't a routine type of thing I called Ursula to come in and talk to me about it.

11. Q. Did she come in?

A. Yes she came in and I explained the situation to her. I told her that it was going to cost about five to seven hundred for the part and a few hundred dollars for the work.

12. Q. Was the work completed?

A. No she freaked out on me, said we were trying to rip her off and she wanted the propeller put back on the boat. She wanted the boat back immediately.

Q. What happened next?

A. I directed the student to put the propeller back on.

Q. Why the student not the mechanics?

A. She demanded it right away and the mechanics were out. We needed it back on as she was waiting for it and was very angry.

13. Q. Do you recall any other discussions with Ursula Cook?

A. Yes, I told her that it was very dangerous to operate her boat without replacing that propeller. Also - when the store opened after Canada Day one of the

mechanics found a cotter pin in the area where the boats had been. We contacted all the customers we recently saw, and when we spoke with Ursula we found out that there had been an accident.

14. Q. Do you have any documentation with relation to the boat repairs?

A. I have an estimate for the replacement of the propeller.

Q. Can you find it please and give it to your lawyer.

A. Sure

U/T TO PROVIDE COPIES OF THE INVOICE

Counsel A: Subject to the questions refused, taken under advisement and the undertakings, and questions which may arise therefrom, those are all my questions.

--- ADJOURNED.

E. Hanks - 3

THIS IS TO CERTIFY that the foregoing is a true and accurate transcription from my recordings made herein, to the best of my skill and ability.

T.Ruth B. Known, C.C.R.
A Commissioner, etc.,

Province of Ontario,
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587/91, Courts of Justice Act, January 1, 1990.

WITNESS STATEMENT – WILLIAM PATTERSON

I am William Patterson and I live at 24 Shoreline Drive in Grand Bend. My house is the last one to the south before you get to the marina. The marina is only about fifty metres from the end of my dock. The marina and Lake Huron make up a really popular recreation spot, and tourists and people from London come here for boating and water sports all the time. From my home, it's about fifty metres through a beautiful pine forest to the shore. All of the land behind my home is parkland and there are no houses there. From my dock, I can see northwest out into the lake and the mouth of the marina. The water on the lake is usually calm but it can change dramatically throughout the day. I can also see the lake through the trees. It depends on humidity and that sort of thing. I could see fairly well on July 1st even though it was very muggy.

I was sitting on my dock at around two p.m. when Captain Cook went by with her boat. She had two passengers with her. One was skiing. I didn't know either of them.

Surprisingly enough there were few boats on the lake that day and that's why I remember this little blue boat. It was going in circles and the young woman on skis appeared to be having a tremendous time even though the water was very rough. I wasn't sure they should stay out there. But they did and sure enough the skier fell. Captain Cook was sitting in the back, reading a book I think. I don't believe she was watching and I think the young lad driving the boat had difficulty finding the skier. It looked to me as though the driver didn't see the one in the water until too late and simply ran her over. Captain Cook was upset when she realized what had happened. She was still tearing a strip off him as they drove past on their way back into the harbour.

I have read the foregoing one page and certify that it is true.

Witness

William Patterson

The Boat Company

ESTIMATE

Toronto, Ontario

Date: 30-Jun-12

Invoice # 12345

Client:

Ursula Cook
London, Ontario

Estimated

Completion Date: 30-Jun-12

DESCRIPTION	HOURS	RATE	AMOUNT
general servicing propeller inspection			\$ 200.00 100
		Subtotal	\$ 300.00
		HST	\$ 39.00
		TOTAL	\$ 339.00

NOTE: THIS IS NOT AN INVOICE

PRICE IS AN ESTIMATE ONLY AND SUBJECT TO CHANGE UPON COMPLETION OF WORK

OFFICIAL INVOICE PROVIDED AND DUE IMMEDIATELY UPON COMPLETION OF WORK

*NOTE: CUSTOMER
TOLD NOT TO
TAKE BOAT OUT
UNTIL REPAIRED*

(m)

The Boat Company

INVOICE

Toronto, Ontario

Date: 30-Jun-12

Invoice # 12345

Bill To:

Ursula Cook
London, Ontario

For:

Services Rendered: 30-Jun-12

DESCRIPTION	HOURS	RATE	AMOUNT
general servicing			\$ 200.00
propeller inspection			100
		Subtotal	\$ 300.00
		HST	\$ 39.00
		TOTAL	\$ 339.00

invoice due upon pick up
PAID IN FULL -BY CHEQUE

2014 Jury Questions

1. Do you find any negligence on the part of the Defendant, David Jones?
Yes or No? (circle one)
2. Do you find any negligence on the part of the Defendant, Melvin Beerstein?
Yes or No? (circle one)
3. Did you find any negligence on the part of the Defendant, Ursula Cook?
Yes or No? (circle one)
4. Do you find any negligence on the part of the defendant, The Boat Company?
Yes or No? (circle one)
5. Do you find any negligence on the part of the plaintiff, Ariel Cousteau?
Yes or No? (circle one)
6. If you answered yes to question one, what percentage of responsibility do you assign to David Jones?
_____ %
7. If you answered yes to question two, what percentage of responsibility do you assign to Melvin Beerstein?
_____ %
8. If you answered yes to question three, what percentage of responsibility do you assign to Ursula Cook?
_____ %
9. If you answered yes to question four, what percentage of responsibility do you assign to The Boat Company?
_____ %

10. If you answered yes to question five, what percentage of responsibility do you assign to Ariel Cousteau?
11. If you answered yes to either of question one, two, three or four, do you find that Ariel Cousteau is entitled to damages?

Yes or No? (circle one)

12. If you answered yes to question 11, what amount of damages do you award the Ariel Cousteau?

\$ _____

2014 Cross-Examination Schedule

Plaintiff: Ariel Cousteau (Ottawa) → Cross-examination by Windsor and Osgoode

Defence 1: David Jones (Windsor) → Cross-examination by Ottawa and Western

Defence 2: Melvin Beerstein (Western) → Cross-examination by Osgoode and Kingston

Defence 3: Ursula Cook (Kingston) → Cross-examination by Windsor and Western

Defence 4: The Boat Company Inc. (Osgoode) → Cross-examination by Kingston and Ottawa