

A.C. SLATER	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
KELLY KAPOWSKI	*	BAYSIDE COUNTY
Defendant	*	Case No.:
* * * * *	* * * * *	* * * * *

COMPLAINT

NOW COMES the Plaintiff, A.C. Slater, (hereinafter referred to as “The Plaintiff”), by and through

Plaintiff’s Counsel, and respectfully states to this Honorable Court:

COUNT I

1. 1. That on or about September 4th, 2015, the Plaintiff was the driver of an automobile traveling at or near Route 50 near the intersection with Max’s, a public roadway located in Bayside County, Maryland.
2. 2. That the Plaintiff was making a left hand turn out of the parking lot of Max’s, located at Max Point Road, in an effort to ultimately be traveling westbound on Route 50.
3. 3. That Defendant Kelly Kapowski, (hereinafter referred to as “The Defendant”), was driving in a careless, reckless, and negligent fashion, while traveling eastbound on Route 50 and struck the Plaintiff’s vehicle on the driver’s side of Plaintiff’s vehicle, near the aforementioned location, causing a collision.
4. 4. Plaintiff alleges that as a result of the Defendant’s negligence the plaintiff was painfully and permanently injured about the head, body and limbs, suffered shock to his nervous system, incurred hospital and medical expenses in the past and will incur hospital and medical expenses in the future, lost time from work and will suffer and permanent loss of earning capacity in the future and the plaintiff was otherwise injured.
5. 5. The Defendant had a duty of care to devote full time and attention to his/her driving, keep a proper look out, keep the motor vehicle under control, yield right of way, obey the red light, drive at a reasonable speed under the circumstances and weather conditions at the time, and follow all the laws of the State of Maryland.

6. The Defendant was careless, reckless, and negligent and breached that duty when (s)he failed to devote full time and attention to his/her driving, failed to keep a proper look out, failed to keep the motor vehicle under control, failed to yield right of way, failed to obey the traffic control device, failed to drive in a safe and proper fashion, failing to drive in a safe and proper fashion, failed to drive at a reasonable speed under the circumstances and weather conditions at the time, and failed to follow all the laws of the State of Maryland and the defendant was otherwise negligent
7. The Plaintiff alleges that all of his/her injuries, damages and losses were caused directly by the negligence of the defendant without any negligence on the part of the plaintiff thereunto contributing.

WHEREFORE, the Plaintiff demands judgment against the Defendant in the amount in excess of \$75,000.00, plus costs of this suit.

Respectfully submitted.
Plaintiff's Counsel

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 3rd day of November 2016, a copy of the Plaintiff's Complaint was mailed first class, postage prepaid to the Attorney for the Defendant.

Plaintiff's Counsel

A.C. SLATER	*	IN THE
	*	Circuit Court
v.	*	FOR
KELLY KAPOWSKI	*	BAYSIDE COUNTY

* * * * *

ANSWER TO COMPLAINT

The Defendant, Kelly Kapowski, by Defense Counsel, answers the Plaintiff's Complaint and says:

1. The Defendant generally denies liability.
2. The Defendant asserts the affirmative defense of contributory negligence.
3. The Defendant asserts the affirmative defense of assumption of risk.

Respectfully submitted.

Defense Counsel

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 18th day of November, 2016, a copy of the Defendant’s Answer was mailed first class, postage prepaid to the Attorney for the Plaintiff.

Defense Counsel

<p>A.C. SLATER</p> <p style="text-align: center;">Plaintiff</p> <p>v.</p> <p>KELLY KAPOWSKI</p> <p style="text-align: center;">Defendant</p> <p>● * * * * *</p>	<p>*</p>	<p style="text-align: right;">IN THE</p> <p style="text-align: right;">CIRCUIT COURT</p> <p style="text-align: right;">FOR</p> <p style="text-align: right;">BAYSIDE COUNTY</p> <p style="text-align: right;">Case No.:</p>
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COUNTER-CLAIM

NOW COMES the Defendant Kelly Kapowski, (hereinafter referred to as “The Defendant”), by and through Defendant’s Counsel, respectfully states to this Honorable Court:

COUNT I

1. That on or about September 1, 2015, the Defendant was the seat-belted driver of an automobile traveling at or near Route 50 near the intersection with Max's, a public roadway located in Bayside County, Maryland.
2. On or about September 1, 2015, the Defendant was sixteen years old and a minor.
3. That the Defendant was traveling eastbound on Route 50.
4. That the Plaintiff, A.C. Slater, (hereinafter referred to as "The Plaintiff"), was driving in a careless, reckless, and negligent fashion, and while attempting a left turn out of the parking lot with a red light for Max's, located at Max Point Road, failed to yield right of way at the red light, and caused a collision between Plaintiff and Defendant's vehicles;
5. Defendant alleges that as a result of the Plaintiff's negligence, the Defendant was painfully and permanently injured suffered shock to his nervous system, incurred hospital and medical expenses in the past and will incur hospital and medical expenses in the future, and will suffer and permanent loss of earning capacity in the future and the plaintiff was otherwise injured.
6. The Plaintiff had a duty of care to devote full time and attention to his/her driving, keep a proper look out, keep the motor vehicle under control, yield right of way at the stop sign, obey the traffic control device, drive at a reasonable speed under the circumstances and weather conditions at the time, and follow all the laws of the State of Maryland.
7. The Plaintiff was careless, reckless, and negligent and breached that duty when (s)he failed to devote full time and attention to his/her driving, failed to keep a proper look out, failed to keep the motor vehicle under control, failed to obey the red light, failing to drive in a safe and proper fashion, failed to drive at a reasonable speed under the circumstances and weather conditions at the time, and failed to follow all the laws of the State of Maryland and the Plaintiff was otherwise negligent
8. The Defendant alleges that all of his/her injuries, damages and losses were caused directly by the negligence of the Plaintiff without any negligence on the part of the Defendant thereunto contributing.

WHEREFORE, the Defendant demands judgment against the Plaintiff in the amount in excess of \$750,000.00, plus costs of this suit.

Respectfully submitted.

Defense Counsel

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 18th day of November, 2016, a copy of the Defendant's Counter-claim was mailed first class, postage prepaid to the Attorney for the Plaintiff.

PLAINTIFF NAME	<i>Defense Counsel</i>	IN THE
	*	
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
DEFENDANT NAME	*	BAYSIDE COUNTY
Defendant	*	Case No.:
* * * * *	* * * * *	* * * * *

ANSWER TO COUNTER-CLAIM

The Plaintiff, A.C. Slater, by Plaintiff's Counsel, answers the Defendant's Counter-claim and says:

- 1 The Plaintiff generally denies liability.
- 2 The Plaintiff asserts the affirmative defense of contributory negligence.
- 3 The Plaintiff asserts the affirmative defense of last clear chance.
- 4 The Plaintiff asserts the affirmative defense of assumption of risk.

Respectfully submitted.

Plaintiff's Counsel

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 30th day of November 2016, a copy of the Plaintiff's Answer to Counter-Claim was mailed first class, postage prepaid to the Attorney for the Defendant.

Plaintiff's Counsel

STIPULATIONS

- I. The parties have agreed to the verdict as to damages depending on the court's decision on liability. The only question is whether one party, neither party, or both parties are liable; Who prevails depends on the court's findings as to negligence, contributory negligence, last clear chance and assumption of risk.
- II. The injuries suffered by both parties and outlined in their respective medical bills (Exhibits 1 & 2) were entirely caused by the automobile accident on September 4, 2015.

The parties hereby agree and stipulate that the Medical Bills are linked to this action and the medical treatment given therein was solely related to this car accident and no other incidents or pre- or post-incident conditions. Further, the parties agree and stipulate to all of the information contained within the medical bills in this case and the adequacy of the bills. As such, each party to this case can testify to their injuries and treatments, consistent with the rules of evidence and fact pattern materials, including the medical bill and each party may discuss in closing the monetary amount they are seeking if the court finds that the opposing party is liable. Below is the law on damages that both parties can argue:

Damages

10:1 Introductory Statement

If you find for the plaintiff on the issue of liability, then you must consider the question of damages. It will be your duty to determine what, if any, award will fairly compensate the plaintiff.

The plaintiff has the burden to prove by a preponderance of the evidence each item of damage claimed to be caused by the defendant. In considering the items of damage, you must keep in mind that your award must adequately and fairly compensate the plaintiff. However, an award should not be based on guesswork.

10:2 Compensatory Damages for Bodily Injury

In an action for damages in a personal injury case, you shall consider the following:

- (1) The personal injuries sustained and their extent and duration;
- (2) The effect such injuries have on the overall physical and mental health and well-being of the plaintiff;
- (3) The physical pain and mental anguish suffered in the past and that with reasonable probability may be expected to be experienced in the future;
- (4) The disfigurement and humiliation or embarrassment associated with such disfigurement;
- (5) The medical and other expenses reasonably incurred in the past and that with reasonable probability may be expected in the future;
- (6) The loss of earnings in the past and such earnings or reduction in earning capacity that with reasonable probability may be expected in the future.

Affidavit of A.C. Slater, Plaintiff

1. I am twenty six years old.
2. I live at 3636 Crab Cracking Court in Bayside County, Maryland.
3. I am a high school Civics teacher at Valley High School in Bayside County, Maryland. I teach juniors and seniors.
4. I have been dating my partner, L.T. "Turtle" for two years, off and on.
5. Friday, September 4th, 2015 was a horrible day. It had started off okay. I met Turtle at our local diner, The Max, for breakfast.
6. At the Max, we ran into Turtle's ex, and ended up getting in a huge argument.
7. I was so angry; I stormed out of the Max. Little did I know, my day was only going to get worse.
8. At that moment, I didn't know where I was going, all that I could think about was getting as far away from Turtle as I possibly could.
9. I was driving my blue 2005 Ford Focus.
10. I was making a left hand turn out of the Max's parking lot, when the defendant drove straight into me.
11. I definitely felt that I had more than enough time to make the turn safely.
12. I remember approaching the intersection and my light was green. I do recall my light changed to yellow before I got to the crosswalk. I'm not great with distances but I believe I was somewhere around 15 feet from the crosswalk when the light changed. I could be wrong but I really feel like that is right. I base that distance on feeling like I was a couple of car lengths away from the intersection when the light changed from green to yellow. I don't believe I was going above 20 mph; my car just doesn't have that kind of pickup. I guess it's possible I was going faster. It's not like I was looking at my speedometer. I definitely felt it would have just been safer to continue through the yellow than jam on my breaks because I know at that point I would have just come to a stop in the road anyway. Besides, I'm sure the light was still yellow when I was driving through the intersection. I remember way back to Driver's Ed. that you have the right of way if you enter the intersection while the light is still yellow.
13. The last thing that I remember is looking out the window and seeing a silver Volvo barreling toward my car. I couldn't see if the driver was holding anything.
14. I suffered a broken left arm, broken neck, herniated disk, and trauma to my spinal cord.
15. I have already incurred over \$400,000 in medical expenses. My doctors have informed me that I will need two additional surgeries, so I anticipate that I will be spending even more in the next few years.
16. I usually wear my seatbelt but I can't recall if I had it on at the time of the accident.
17. It took me months and several painful surgeries to be able to walk again, and for a while my doctors were not sure that I ever would.
18. As a high school teacher, I am very concerned with the problem of teenaged drivers texting while they are behind the wheel. I see it all the time in our school's parking lot.

19. The defendant should have known not to be using a hand held phone while driving. At Valley, and every school in the county, we make it a point to educate students about this issue. During the 2014-15 school year, we held an assembly on the topic.
20. We had the mother of a former student who was killed due to distracted driving speak to the student body and it was very powerful. I know that she spoke at Bayside High as well.
21. After the assembly, teachers were given pamphlets, which described the dangers of distracted driving to distribute to homeroom students. I followed up with a classroom discussion on the topic.
22. Since the accident occurred the weekend before the first day of school, I was forced to be out of school for the first few months of the year, which I think is the most important time to establish relationships with students. Being out of the classroom caused me to fall into a depression.
23. My principal had to call around to find a substitute at the last minute. I have heard from many students and parents that the one they found was not up to the job.
24. To top it off, Turtle and I broke up. It was probably for the best though. No one ever seemed to make me as angry as Turtle did.
25. It really upsets me that my students' learning was impacted by the irresponsibility of one young person.

Avery Chris Slater

Avery Chris Slater

Affidavit of Sam “Skretch” Powers, Witness for the Plaintiff

1. I am fifteen years old and a sophomore at Bayside High School in Bayside, Maryland.
2. I reside with my mom and two brothers at 2323 Golden Gate Lane in Bayside, Md.
3. I have pretty good grades – mostly B’s with a C here and there. My mom is always on me about my schoolwork, but soccer is the only reason I care about my grades at all.
4. I spent most of the summer at a nearby youth camp, working as a counselor’s assistant with some of the younger kids.
5. On Friday, September 4th, 2015 I was riding in the front passenger seat of Kelly Kapowski’s car.
6. Kelly, a senior named Jessie Spano, and I were headed down Route 50 on our way to Ocean City for the last weekend of summer before school started. I was in the front seat and Jessie was in the back.
7. As usual, fall soccer had started a couple of weeks before school began. Coach was scheduling at least one, if not two practices a day since mid-August. I had landed on varsity in my sophomore year which I was super excited about.
8. I was actually really surprised that Kelly invited me to go with them. My mom is friends with her mom. That’s the only reason my mom even allowed me to drive to the beach with them. I always wanted to be friends with them but I never thought that they liked me very much.
9. I thought that we were having a good time. We had my playlists hooked up to the car, and we were all singing along. Jessie was glued to her/his phone as usual. S(he) literally never puts it down.
10. After the crash, when A.C Slater’s lawyer showed me the texts that Jessie and Kelly were sending to each other (Exhibit 4) on the ride down to the beach, I realized that they had only brought me along as a joke, to make fun of me.
11. I think they were really cruel, and I am still very hurt.
12. It seems to me that Jessie should be held accountable, too. Jessie knew that Kelly was driving and continued to send her/him text messages. Why couldn’t they just wait until we got to Ocean City to talk?
13. I know that everybody texts and drives and no one really thinks that it is a big deal. But obviously it is.
14. Honestly, Kelly seems more upset that her/his car was totaled than that people got hurt.
15. Kelly’s phone was beeping a lot right before the accident. With all of the beeping, I could tell really quick when Kelly was getting a text as opposed to a phone call. On the incident date, I didn’t know who was sending Kelly messages. It turns out, Jessie was texting Kelly from the back seat of the same car, and the text messages were really rude. I was pretty uncomfortable with Kelly getting texts while driving but I didn’t know them that well, so I didn’t say anything. I also remember Kelly texting while the car was stopped at other red lights but not all of Kelly’s texts were made while the car was stopped.
16. I remember that Kelly received a text right before we crashed because Kelly’s text message tone is super annoying.
17. Just prior to the accident, but definitely after I heard that annoying text tone on Kelly’s phone, I was looking straight ahead out of the front window of our car. I wasn’t paying too much attention to the street light at that moment. I do remember seeing in my peripheral vision that Kelly was holding his/her phone at shoulder height but I’m not sure if (s)he was actually looking at it.

18. The last time that I looked at our light, it was red. There could have been time for the light to change to green before we got to the light but I don't remember if our light changed from red to green before we got to that intersection.
19. I saw that we were about to crash into a blue car and I know I screamed, "Kelly look out!" It was too late, though.
20. I also remember it feeling like a really forceful crash – way harder than I would think it would feel to hit a car at 30 or 40 miles an hour. The only other car accident of any kind that I have been in was when I was a passenger in my mom's car and she was rear-ended by someone who didn't stop at a light. I do remember from that case that the driver of the other vehicle was going about 10 mph. I wasn't injured in that crash too badly/ just a little whiplash.
21. I remember thinking the car had caught fire because there was smoke everywhere. I think I screamed at Jessie and Kelly that we needed to get out of the car, but then I realized that it was from the airbags.
22. I feel like it took a minute or two to fully realize what had happened. I think I was in shock. Kelly didn't say anything, and I got so scared when I saw s(he) was knocked out. I kept calling Kelly's name to bring him/her to, but (s)he didn't move. Jessie had already jumped out of the car.
23. I had a really bad case of whiplash. I had to wear a neck brace for a few weeks, and I wound up missing the first four weeks of soccer, which was really annoying. My mom says that I am lucky to be alive.
24. I haven't hung out with Kelly or Jessie since the accident. Whenever I see them at school, they totally ignore me.
25. I think that Kelly and Jessie are mad that I told everyone at school that they were texting while Kelly was driving. I swear that I only did it so other people would stop texting and driving.

Sam Powers

Sam Powers

Affidavit of Stacey Carosi, Ph.D., Witness for the Plaintiff

1. I am 38 years old.
2. After getting my Bachelors in Science in Engineering from U.M.B.C. in 2001, I went on to Purdue University's School of Engineering where I got my Masters, in 2003, and then ultimately my Ph.D., in 2007, both in Industrial Engineering, specifically with regards to Human Factors.
3. After I got my Ph.D., I worked for Northrop Grumman. My job title the entire time I was there was Human Factors Engineer. My first two years there, my work included assessing situation awareness and workload for pilots operating unmanned vehicles (drones) and I conducted usability experiments for U.S. Navy helicopters. For the next four years, my primary responsibilities were designing and evaluating software user interfaces, conducting usability experiments, evaluating statistical results, and presenting findings. I also conducted human factors evaluations of military products and equipment.
4. I am currently a Professor of Industrial and Systems Engineering at Rutgers University. I started working there 4 years ago.
5. In 2014, I received a competitive research grant from the Chesapeake Highway Safety Organization, to study driver performance and distracted driving.
6. The product of my grant was a peer-reviewed article, that I wrote and published in 2016, entitled *Calling All Drivers*.
7. I launched the #Waittillyougetthere Campaign and consulted with Oprah on her No Phone Zone campaign.
8. I now get to travel the country, speaking out about the dangers of distracted driving. The notoriety is nice but I'm glad it can be on such an important subject.
9. My salary as a tenured member of the faculty of Rutgers is \$90,000.00.
10. I have written a number of magazine pieces and been interviewed by newspaper and television reporters. Every time I give an interview, I get more and more lawyers calling me to ask if I will testify for them.
11. During the last 5-10 years, I have been consulted in over 100 cases and, out of those 100 consultations, I have testified in 30 trials around the country, always for the victims of a car accident involving impact by someone who was driving distracted by their cell phone usage. In each of those trials, I have been admitted as an expert in the field of "Human Factors."
12. I average around \$100,000 per year rendering opinions for lawyers and testifying as necessary. When I am consulted by attorneys, I charge an initial retainer fee of \$5,000 to review a case, write up any reports and/or affidavits and for all pretrial consultations. If I need to appear in court or for depositions, I charge \$5,000 for each day that I have to appear. I never appear in court without my fee being paid first. I have not ever been contacted by a party on the other side of a distracted driving case but I'd be happy to speak with any party that contacts me.
13. "Human Factors" is the scientific study of human physical and mental capabilities and limitations and the application of that knowledge to (1) the investigation of human interaction with technology and their environment, and (2) the design of human-centered systems and technology.
14. One aspect of this field of study is analyzing the concerning issue of Distracted Driving. Distracted Driving occurs when a driver's attention is diverted from the activities critical for safe driving toward a competing activity. Physical ways to be distracted are (1) Visual (eyes off the road), (2) Manual (hands off the wheel), and (3) Cognitive (mind off the road). Common effects

of distracted driving are (1) Increased time that eyes are off road, (2) Increased reaction time to hazards, (3) Increased braking reaction time, (4) Greater speed variability and slower mean speed, (5) Increased lane deviations and lane departures, (6) Close car following, and (7) Impaired decision making and response selection.

15. There are varying levels of distraction but all can have an impact on our driving. There are mild distractions like listening to the radio in your car. There are moderate dangers like talking on hands-free phone. And there are high dangers like talking on your phone or texting.
16. I feel strongly that Distracted Driving is the new drunk driving. Arguably, drivers who are texting are equally as impaired as drivers under the influence of alcohol or drugs.
17. When you consider the risk utility test, which balances the risk of harm and severity of harm against the utility of having a phone in one's car- it is clear that safety must come first.
18. Research has found that talking or texting on a cell phone reduces the amount of brain activity associated with driving by 37%.
19. Other experts have estimated that 5 seconds is the average time that a texter takes their eyes off the road when driving. While that may not sound like a lot of time, a car driving at 55 mph will cover the length of a football field during that span.
20. The reason that driver cell phone use is so dangerous boils down to human reaction time. A driver has to notice a hazard, appreciate the danger, and then take the appropriate action. Whether a driver is alert shortens the reaction time. According to federally funded reports, it take less than one second for an alert driver to appreciate a danger, but it can take between 1.0 and 2.0 seconds for a distracted driver to react. In other words, if a car, as in this case, drives into the path of another vehicle, and an attentive and a distracted driver see it at the same distance back from the offending car, the distracted driver will take at least one second more to process the danger, and to react to it. That reaction could include hitting the brakes, or swerving to avoid the car in the roadway.
21. Without that additional time to check to see if there is a car in the neighboring lane, or to apply the brakes, tragedies like the one that happened here are all too common.
22. Consider these statistics; in 2013, 3,154 people were killed in accidents caused by distracted driving, and 424,000 were injured. 52,734 of those crashes were in Maryland, and in 2013, 166 people across Maryland lost their lives to distracted driving. 16 people die every day in the United States due to texting while driving. It poses a substantial threat to public health and safety.
23. You are four times as likely to get into an accident serious enough to injure yourself if you are using a hand held device while driving and you are 23 times more likely to get into an accident if you are texting.
24. As though the loss of life/injuries were not enough, distracted drivers caused over 22 billion dollars in property damage.
25. We should all view driving like flying in a plane. It is a time when you cannot send or receive any calls or messages.

26. We live in a culture that values and expects immediate responses. Someone sends an email at 3am and they expect the recipient to reply immediately. These social and professional influences are really impacting safety on our highways.
27. People are not taking this seriously enough. I was outraged to learn that 56 citations have been issued to *school bus drivers* in Maryland for texting while driving. Can you imagine the backlash if 56 bus drivers had been caught drinking and driving while responsible for getting children to school safely?
28. I reviewed the witness affidavits and officer's police report before formulating my opinion in this case. If any of the information contained in those reports is not accurate, I reserve the right to modify my opinion.
29. I am aware that Kelly Kapowski's text message history shows back and forth texts in the minutes leading up to the accident. Also, according to Sam Powers, Kapowski's phone was at shoulder height in Kapowski's hand just before the accident; creating the strong likelihood that Kapowski was reading a text just before the accident, and at a minimum was distracted in some kind of way by not having both hands on the wheel. If Kapowski was looking at his/her phone, this would have delayed Kapowski's reaction time because (s)he would not have been able to perceive much around him/her other than the information on his/her phone screen. At a minimum, this distraction would have caused Kapowski's vehicle to travel further than it would have, had Kapowski already been looking at the road and have observed Slater's vehicle in the intersection sooner.
30. Feet per second is a unit of speed. Someone traveling 1 foot per second is traveling approximately 0.682 miles per hour. To figure out how far someone traveled that is going a certain speed, it's a simple use of cross-multiplication if you know either how far a car traveled or how fast a car was going.
31. The "Braking/Stopping Distances" chart is a very handy tool that I use. This chart is generally accepted in the relevant scientific community. It provides important information in these types of cases.
32. Both cars involved in this accident are average size cars. I just wanted to mention that because the "Braking/Stopping Distances" chart has a calculation that relates to average size cars. Based on my training and education as relates to this chart, an average car is 15 feet long.
33. During one second of time, a vehicle going 35 miles per hour travels about $51 \frac{1}{3}$ feet. During one second of time, a vehicle going 20 miles per hour travels about $29 \frac{1}{3}$ feet. During one second of time, a vehicle going 10 miles per hour travels about 14.7 feet.
34. The accident in this case took place approximately 20 feet into the intersection past the crosswalk that Kapowski crossed, and approximately 24 feet past the crosswalk that Slater's vehicle crossed.
35. If Kapowski was traveling 35 mph prior to the accident, and was not distracted, Kapowski would have needed on average 136 feet to stop and avoid hitting Slater's car. Change the speed in that equation to 20 mph, and Kapowski would have needed 63 feet to avoid hitting Slater's car.
36. If you change one variable, and add in that Kapowski was looking at his/her phone while driving for at least 1 second, at 35 mph, Kapowski would have needed 187.3 feet to avoid hitting Slater. Same amount of delay at 20 mph and Kapowski would have needed 92.3 feet to avoid hitting Slater.
37. Subtract from both of the numbers in #36 the 20 feet into the intersection where the accident took place, and we can extrapolate that Kapowski was going to hit Slater's vehicle almost to a

mathematical certainty if (s)he was looking at his/her phone for a minimum of 1 second and was within 167.3 feet of the intersection going 35 mph or 72.3 feet of the intersection going 20 mph.

38. For whatever it is worth, I am also aware that the Plaintiff stated that his/her light changed to yellow at some point. Given that the yellow light at this intersection lasts 3 seconds, if Slater was traveling at a speed of 20 mph, Slater's vehicle would need to have been within 87.9 feet when the light first turned to yellow in order to have a chance of entering the intersection while the light was still yellow. Or, to put it in another way, if Slater had been 88 feet or more before the intersection when the light changed to yellow, and was traveling 20 mph, then (s)he would have entered the intersection when it was red.
39. Again, just for full mathematical purposes, if Slater was traveling at a speed of 10 mph, Slater's vehicle would need to have been within 44.1 feet when the light first turned to yellow in order to have a chance at entering the intersection while the light was still yellow. Or put in another way, if Slater had been more than 44.1 feet before the intersection when the light changed to yellow, and was traveling 10 mph, then (s)he would have entered the intersection when it was red.
40. Based on my calculations above in #38 and #39, if Slater was traveling between 10 and 20 mph and his/her car was within 15 feet from the intersection when the light switched from green to yellow, then Slater's testimony is consistent with someone who would have entered into the intersection while the light was still yellow.
41. Based on all of my knowledge, training, and experience, plus my awareness of the facts of this case from the other affidavits, it is my opinion that Kelly Kapowski's likely use of his/her phone while driving caused him/her to fail to perceive that A.C. Slater was in the intersection. Additionally, there is mathematical proof that demonstrates how A.C. Slater could have entered the intersection while Slater's light was still yellow. Regardless, based on the fact that Zach/Zacharia Morris' car in Lane 2 was able to avoid Slater's car, this information suggests to me how someone who was not distracted was able to avoid this accident. My only hesitation in this opinion, in addition to any change in the facts told to me pretrial, are those 4 cars in Lane 2 of Route 50 and whether or not that blocked Kelly Kapowski's view on the right side of the upcoming intersection and his/her ability to see Slater's car coming from his/her right to left, regardless of whether Kapowski was distracted or not.

Stacey Carosi

Stacey Carosi

Affidavit of Kelly Kapowski, Defendant

1. I am seventeen years old and a junior at Bayside High School in Bayside County, Maryland.
2. I live with my parents and sister at 5437 River Terrace Drive in Bayside, MD.
3. Before the accident, I was a varsity soccer player.
4. On September 4th, 2015, I was driving my 2013 Volvo XC60 Station Wagon to Ocean City for Labor Day weekend.
5. I had only had the Volvo for about two weeks. My parents bought it from our next door neighbor, and I was so excited to have my own car, even though it was a station wagon.
6. I had two passengers in my car, my friend Jessie Spano in the back and a kid named Skreetch in the front, who we didn't know that well but were giving a ride to the beach. We were looking forward to our last carefree weekend before the school year kicked in. Skreetch was in the front passenger seat, and Jessie was sitting right behind Skreetch.
7. I know Skreetch thinks the texts we sent were mean, but we were just joking around. That is how Jessie and I are when we get together.
8. I want to be honest with everyone: to the extent that it looks like there was texting coming from my phone minutes prior to the accident, I would only have read and sent texts while my car was stopped at red lights. I would not read or send texts while my car is in motion.
9. I don't think that it is right that everyone got to read my personal text messages after the crash. I gave Officer Belding my phone at the hospital, so that (s)he could see that I was not texting during the accident. The whole world wasn't supposed to invade my privacy.
10. My whole life is on my phone. Now everyone at school knows about the messages I sent to Jessie, and some kids have even said "we got what we deserved." I can't believe how harsh people can be.
11. Before the accident, I had no points on my license, not even a ticket. Now I can't even drive myself to my part-time job.
12. I passed my driver's test on the first try, on my sixteenth birthday, April 1st, 2014.
13. My parents take safety seriously. Before I could get a car they had me attend the Mellon Computing Driving Academy, in addition to the Drivers Ed. classes I took at Bayside.
14. In the minutes leading up to the crash, I wasn't going above the speed limit, which was 35mph. I've lived in Bayside all my life, and I know the cops are always looking for speeders on that stretch of road.
15. I understand the importance of being a safe driver. I always try to keep my eyes on the road and truly believe my eyes were on the road on that day, including moments before the accident and all the way into the accident.
16. I remember that I was driving on Route 50 and could see from a distance that the light for me was red at the intersection where Max's is. But I was a couple hundred feet back when I made that observation. I was trying to time the light so I slowed to a speed that was below 35 mph in order to be able to stop if the light stayed red by the time I got up to it. I probably got the car down to about 20mph. My lane had no other cars in it all the way up to the crosswalk. The lane next to me had about 3-4 cars in it back to back to back. I believe those cars were all still stopped when I approached the signal. I remember the light changing to

green as I approached the intersection and I'm pretty much certain it was green before I entered the intersection.

17. I didn't see the other car until it was literally right in front of me. I didn't have time to react. I have no clue how they didn't see my car. It was broad daylight.
18. At the moment of impact, my face and chest hit the airbag and I was knocked unconscious.
19. I was flown to St. Joseph Medical Center, where I regained consciousness and was diagnosed with a severe concussion and fractured clavicle.
20. I know the airbag probably saved my life – but I also suffered pretty painful injuries when it deployed. I had horrible bruising and swelling around my face, which took weeks to go away. I also had burns on my chest and face.
21. I was elected to the Homecoming Court but I was still in too much pain and too embarrassed by the way my face looked to attend. My doctors say all of it healed really well, though.
22. I suffered a broken nose and cheekbone, and ethmoid fractures. They weren't sure at first if any of it would require surgery, but I'm probably going to need surgery on my cheekbone.
23. The main reason I had to stay in the hospital for as long as I did was because of internal bleeding, which required surgery.
24. Ever since the crash I have been experiencing horrible headaches and short term memory loss, which has really affected my ability to study for the SAT's and apply to college.
25. My parents say that they might have to sell the house I grew up in to pay my medical bills. They have totaled almost \$300,000. That doesn't include the facial surgery I might still need.
26. I missed the 2015 soccer season due to all my medical problems and stress from this lawsuit. That season was my chance to be scouted to play for a college. And with all of the expenses from this, I doubt I'll even be able to go away to college now.
27. Thankfully, despite my missing the first few months of school, I was able to work with a tutor, so I wouldn't fall behind. I'm a member of the National Honors Society and have always worked hard at school; this could have really set me back. Luckily, it looks like I will be able to graduate on time.
28. I can't tell you the last time I had a good night's sleep. It took weeks for me to be able to sleep even a few hours at a time, because the injuries were so painful. Now that they have gone away, for the most part, I have terrible nightmares about the accident.
29. I have been seeing a counselor to help me sort through all of this, and she says it will get better with time, but I really wonder if it will.

Kelly Kapowski

Kelly Kapowski

Affidavit of Officer R. Belding, Witness for the Defendant

1. I am forty seven years old and a twenty four-year veteran of the Bayside Police Department (BPD).
2. I live at 5454 River Terrace Drive in Bayside, Maryland.
3. Throughout my career, I have, unfortunately, been called to the scene of many vehicular accidents. I am not a certified accident reconstructionist but I am aware of the variables they use to do their job, so I try to record as much as I can when I am responding to accidents.
4. Every April, I go around to the local high schools and give talks to teenagers on the dangers of drinking and driving and distracted driving. Last spring, I went to Bayside High and Valley High School to speak about these issues.
5. Young people under the age of 20 represent the largest proportion of distracted drivers.
6. I also work the enforcement checkpoints. We take distracted driving seriously in Bayside County. We make it a point to be visible, and hope that if people know we are looking out for drivers who are distracted, then it will serve as a deterrent.
7. For me, there is nothing worse than having to knock on the door of a family's home to inform them that they have lost a loved one due to a preventable accident.
8. On September 4th, 2015, at around 10:25 am, I was coming to the end of my shift. That day I was working from 12 a.m. to 8 a.m. but with overtime my shift was extended until 12 p.m.
9. It had been a long night and I was pretty exhausted so I stopped by my favorite coffee shop, Toni Scott's Tea and Java, to get a coffee.
10. Toni's is in the shopping center across Route 50 from Max's Diner.
11. Max's is set back from Route 50. It is separated by a parking lot approximately half a football field's length from the intersection to the front door of Max's. Max's is part of a strip mall shopping center.
12. I know from my experience of working this area that the intersection near Toni's, and across from Max's is dangerous. It is well known in the police department that the yellow light at this intersection is one of the faster ones. I have timed it in the past, as well as on the incident date in this case, and this traffic light stays yellow for about 3 seconds in all directions. Most other yellow lights I've timed in Bayside County are 5-6 seconds long. Someone really should say something about that to the county council.
13. I took some measurements of the accident scene; I included those measurements in my report.
14. As I wrote in my report, the defendant, Kelly Kapowski, was driving Eastbound on Rt. 50. The speed limit for that stretch of Rt. 50 is 35 mph.
15. I didn't witness the accident as it happened. At the time of the accident, I was sitting in my patrol vehicle sipping on my coffee. I heard the collision and turned around to see that two vehicles had been involved in the accident had already come to rest. I looked at my watch and noted the time of the accident was 10:32 a.m.
16. Kapowski's vehicle was stopped near the middle of the intersection. Slater's vehicle was stopped with several feet between it and Kapowski's vehicle. In terms of where Slater's vehicle was stopped, if you are looking at it from Kapowski's vehicle's perspective, it would have come to rest at Kapowski's 10 o'clock. There were about 5-10 feet between the 2 vehicles.

17. It was not clear from this accident whether Slater's car was trying to make the sharpest left hand turn possible or a more casual rounder left hand turn.
18. Based on where the cars came to stop, I did not see any evidence that Kapowski swerved or made any attempt to avoid the collision.
19. I was first able to interview Zach/aria Morris who told me (s)he was in lane 2 going the same direction as Kapowski. Morris recalled that his/her light was green when (s)he noticed Slater's vehicle in the intersection effectuating a left hand turn.
20. When I interviewed A.C. Slater, (s)he explained (s)he had a green light and the light turned to yellow sometime before (s)he entered the intersection. I don't recall Slater stating a more specific amount of time. I believe Slater just said "sometime" before entering the intersection.
21. When I interviewed Kelly at the hospital, I asked him/her about how the accident happened and (s)he advised that she was traveling in Lane 1 and explained that the other car came out of nowhere. (S)he insisted that (s)he was not using his/her phone at the time of the accident. (S)he handed the phone over to me. After looking through the call logs and not seeing any phone calls around the time of the accident, I went through Kapowski's text history. I took a screenshot of Kapowski's only text messages from around the time of the incident. When I compared the time of the last text to the accident time, I noticed that Kapowski had not sent a text at the time of the accident.
22. Everything that is in my screenshot includes the last few minutes of text conversation on Kapowski's phone before the accident. There were no other texts right after the time of the accident. I know the last line cut off a little. There were no other texts after that last line.
23. I did not interview Sam Powers. I believe it is important to interview all witnesses to an accident. I must have just overlooked interviewing Sam Powers. I remember hearing that Powers was suggesting Kapowski may have been using a phone at the time of the accident. I know those texts were about Powers, and I wasn't in the car at the time of the accident, so I really don't want to get in the middle of a petty dispute between Powers and Kapowski.
24. Kelly's mother is also a police officer and she is my Lieutenant, but I had never met Kelly before the day of the collision.
25. Route 50 Eastbound was closed for approximately an hour following the accident as we investigated. Unfortunately, there are no traffic cameras on that stretch of road. The only skid marks present were very light – typically called "shadow skids" – which are produced as the wheels begin to slow and just before they achieve full lock. I wasn't even sure if they were from this incident or some other incident.
26. As part of my investigation, and because we were limited in what we could ascertain from the scene and my interviews, I knew it would be important to obtain the EDR from Kelly and A.C.'s car. The EDR, or Event Data Recorder is what is commonly referred to as a "black box." Most people don't realize the extent of the technology that exists in newer models. As of September 1, 2014, every newly manufactured car must have a black box installed. The National Highway Traffic Safety Administration (NHTSA) mandates that every new recorder track 15 variables, including vehicle speed, airbag deployment times, if seatbelts were worn, steering angles, and more. However, the black box only stores the information pertaining to a 20-second timeframe around the time of crash.
27. I made sure we followed protocol in obtaining a warrant to access the black boxes. We received approval for the warrant on September 5, 2015 and obtained both black boxes on September

13, 2015.

28. I turned over the black boxes to our IT department at Bayside Police, and they were able to extract the following data¹:

- a. Kelly and the other occupants of Kelly's vehicle were wearing their seatbelts at the time of the crash
- b. A.C was not wearing his/her seatbelt at the time of the crash
- c. The airbag deployed as they were designed to do in both vehicles. I know from my training and experience in traffic enforcement, that airbags are designed to supplement the seatbelt and enhance passenger safety, in collisions of approximately 15/mph or greater. I was taught this during police academy and it has been repeated in subsequent years at various police trainings.
- d. Data collected pertaining to the steering angle of the vehicle indicated that neither vehicle swerved in the seconds leading up to the collision.
- e. Unfortunately, the two cars were badly enough damaged that the speed of each vehicle was lost and not able to be recorded by each vehicle's black box computers at or around the time of the accident.

29. Toxicology screens were administered to both the plaintiff and the defendant at the hospital as part of the hospital's normal procedures, and both came back clean. As such, it is my opinion that alcohol and drugs were not contributing factors in this accident.

Officer R. Belding

Officer R. Belding

¹ This data is stipulated to for the purpose of Mock Trial.

Affidavit of Zach/Zacharia Morris, Witness for the Defendant

1. I am thirty four years old.
2. I reside with my spouse and three children at 46678 Garden Path Drive in Bayside, MD.
3. At the time of the crash, my children were aged 3 months, 2 and 4 ½ years old. All of my children were riding in my Honda SUV on September 4th, 2015.
4. We were driving eastbound down Route 50 on our way to take my feverish two year old to the pediatrician, when the plaintiff's blue car came tearing out of the parking lot by Max's Diner.
5. Prior to the accident, I remember my 2 year old was crying up a storm; it ended up being for an ear infection. My child's crying was so loud. I don't want to be called a liar so I'm willing to say I'm 90% sure my light was green before I started going through it- I guess anything's possible so I don't ever like to say I'm 100% anything (other than I'm 100% sure my child was crying like nothing I had ever heard before).
6. When I saw the plaintiff darting out of the lot into the intersection, I didn't feel I could just slam on the brakes; there was a car behind me. If that other car had not been behind me, I definitely believe that I would have had enough time to brake. I do recall, after the fact, that there was more than one car behind me but I don't remember if it was more than two.
7. Because I had a red light originally, I began driving from a stopped position. Once my light changed to green and I started to move forward, I swerved out of the way of that car coming out of Max's.
8. Everything happened so fast. I don't recall any cars being in the lane to my left prior to the light changing to green. It took me a few minutes to gain my composure. I was shaking and my two year old was definitely still screaming. All of my kids were terrified. The sound of the crash was so loud and scary.
9. Thank goodness I was paying attention to the road and was able to react quickly, or we all could have been killed.
10. I really believe the light was green when I entered the intersection, but I can't say for sure what color it was for the plaintiff when (s)he darted out because that was not my light to be looking at. I was looking up at my light waiting for it to change prior to the accident. I am comfortable saying that the plaintiff's car had to have been going at least 20 to 30mph, maybe more.
11. That driver in the blue car caused me to have a panic attack, and ever since then, I have gotten them even more than I usually do.
12. I am fed up with drivers who act like they own the road!
13. Every day I see idiots behind the wheel who are putting on make-up, drinking coffee, looking everywhere but the road. Sure, all of that concerns me greatly. But, so do the drivers, who tailgate, flash their high beams, weave in and out of traffic, and use the shoulder as a through lane!
14. In 2010, I lost my father when he was rear-ended by a driver who was late for a meeting, and driving like a maniac. We were fortunate in some respects, because witnesses actually stopped to give their accounts of what led to the accident. That man, who had a lengthy record of aggressive driving, served a small amount of time in prison for vehicular manslaughter. But, that doesn't bring my Dad back. Now my children are growing up without a grandfather.

15. In my grief, I became a vocal advocate against aggressive driving.
16. Driving distractions fall into four major categories: Visual (taking your eyes off the road), Auditory (hearing something that is not related to driving), Manual (using your hands to manipulate something other than the steering wheel) and cognitive (thinking about something other than driving.)
17. Cognitive distractions are a big issue – but they are the ones we hear about much less frequently. Drivers who are daydreaming or tired also pose a danger. When someone is emotional or angry and they get behind the wheel, it is very likely that their rage will transfer into erratic driving.
18. It's not that I don't get it. I live in the real world. People make us angry. Just this morning I was furious with my spouse for leaving dirty dishes in the sink, again. I was fuming when I got in the car to take the kids to the doctor. Luckily, I was able to recognize that I was not ready to drive safely and took a few minutes to listen to a meditation app and cool down before I started the engine.
19. Driving is a privilege, not a right. If you can't exercise that right responsibly, you shouldn't have the right to exercise it at all. Not when you're endangering other people.
20. The driver of that blue car was extremely aggressive. There is no way that they were paying attention to anyone else on the road. If they were, I would not have had to swerve to the right!

Zach Morris

Zach Morris