



Practice Tips: An Opening Statement in the Estate of Keith Magnuson v. National Car Rental of Canada, et.al.

by Daniel M. Kotin

In late 2007, I tried a wrongful death case on behalf of the estate of former Chicago Blackhawk player Keith Magnuson, who died in a 2003 Toronto car crash. The St. Louis County, Missouri, trial concluded on November 30th with a jury verdict of \$9.5 million - an award nearly 10 times larger than the previous record of \$980,000 for a wrongful death verdict in that county.

In addition to the exceptionally high jury award, the case was remarkable for several other procedural reasons.

Keith Magnuson and his family lived in Lake Forest, Illinois. On December 15, 2003, he traveled to Toronto, Canada, to attend the funeral of the chairman of the National Hockey League Alumni Association (NHLAA) association; an organization for which Magnuson was a former officer.

Following the funeral, Magnuson was a passenger in a rental car driven by Rob Ramage, another retired NHL player and officer in the NHLAA, when Ramage crossed the center line and collided with two oncoming vehicles, killing Keith Magnuson. Keith is survived by his wife, Cindy, and his adult children, Kevin and Molly.

The first issue to address in this highly publicized case was jurisdiction. Rob Ramage, a resident of St. Louis County, Missouri, was insured by State Farm Insurance Company with policy limits of \$1.1 million. Arguably, \$1.1 million was plenty of coverage since the largest wrongful death verdict ever in that county was \$980,000.

Consideration was also given to filing the lawsuit in the jurisdiction of the *situs* of the crash. I learned that Ramage was allegedly intoxicated at the time of the crash, but there was no dram shop liability statute or equivalent cause of action in Ontario, Canada. Additionally, there was no evidence of an improper road design nor mechanical defect in the vehicle, which would open the door to another potentially liable defendant.

There was, however, a statute in effect in Canada which was unheard of in either Ramage's home state of Missouri or Magnuson's home state of Illinois. The Ontario Highway Traffic Act, § 192(2), provides that

"The owner of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a highway, unless the motor vehicle or street car was without the owner's consent in the possession of some person other than the owner or the owner's chauffeur."

This statute made National Car Rental of Canada vicariously liable for the negligence of its renter, Rob Ramage.

Further research revealed that Ontario, Canada, had essentially the same elements of damage in a wrongful death case as Illinois and Missouri. Based upon this information, the Canadian province was the ideal jurisdiction for a wrongful death lawsuit on behalf of the Magnuson family. The lawsuit would name both Ramage and

the National Car Rental of Canada as defendants. Further research, though, changed my strategy.

Three decisions by the Supreme Court of Canada from 1978, known as the "trilogy," required appellate courts to monitor damage awards in personal injury and wrongful death cases and reduce any non-pecuniary damages to a maximum of \$100,000. Given this precedent, even the ultra conservative jurisdiction of St. Louis County, Missouri, would be preferable to Ontario, Canada.

Accordingly, suit was filed in St. Louis County, Missouri, on behalf of the Magnuson family and against Rob Ramage and National Car Rental of Canada. Local representation of the family was provided by local trial lawyer, Grant Davis.

National Car Rental of Canada immediately moved to dismiss the action for lack of personal jurisdiction. That motion was denied.

The next challenge was a heated battle on the issue of choice of law. According to National Car Rental of Canada, if the court were to apply the substantive law of the forum state (Missouri), then vicarious liability did not exist, and National Car Rental of Canada should be dismissed as a defendant. On the other hand, National argued, if Canadian law were to apply, then National Car Rental would be an appropriate defendant, but non-economic damages would be limited to \$100,000.

In response, I argued that the court should follow the analysis set forth in



the Restatement (Second) of Conflict of Laws and conduct an issue-by-issue analysis to determine which state (or country) had the most significant relationship to the occurrence and the parties with respect to *any particular issue*. The first question on any issue involved determining whether a true conflict existed. If so, then a governmental interest analysis would take place to determine which jurisdiction had the most significant relationship.

With regard to liability, it could hardly be disputed that a true “conflict” existed between the law of Ontario (vicarious liability) and the law of Missouri (no vicarious liability). Based upon a governmental interest analysis, the plaintiffs argued, and the court agreed, Ontario had a much greater interest insuring that the province’s Highway Traffic Act was enforced than did the State of Missouri, with no such statute on its books. Therefore, the vicarious liability laws of Canada would apply, and National Car Rental would remain a defendant.

As for the issue of limitations on damage awards, the plaintiffs argued, and the court also agreed, that no true conflict existed. Neither Ontario nor Missouri had statutory damage caps in place. Ontario’s limitations were based upon 30-year-old precedent from the Supreme Court. The trial court agreed that Supreme Court precedent was not properly the subject of a conflict laws analysis.

Accordingly, the path was cleared for trial in St. Louis County, Missouri, against both Rob Ramage and National Car Rental of Canada, with no artificial limit to non-economic damages in place.

The only remaining hurdle was that no St. Louis County jury had ever awarded a million dollars in a wrongful death case. The way to get past that fact was to simply convince the jury that this case was different. I began that process with the opening statement that

follows.

Plaintiffs’ Opening Statement

Mr. Kotin: May it please the Court, good afternoon, everybody. My name is Dan Kotin. I’m one of the lawyers for the Magnuson family.

I was introduced a couple of times, but I didn’t have an opportunity to speak yesterday. Now I get to talk for the first time.

You have heard about this case over the past day and a half in driblets and drabs. I know it’s been frustrating. I think for some of you who remember seeing this on the television or reading about it in the newspaper four years ago, it’s more driblets and drabs. But you still really don’t have a clear picture of what this is all about. So now, finally, in this opening statement, I have an opportunity to start to paint for you the picture of what this case is all about.

Exhibit 58 is a small picture of Keith Magnuson. Keith Magnuson on December 15, 2003, was in Toronto for a funeral. He was 56-years-old. He was a former Blackhawk hockey player. He played for the Blackhawks for eleven years, and he was the head coach of the team for two years.

After that, he left hockey and became a businessman for the rest of his life, but he stayed very close to hockey. One of the things he did in staying close to hockey is that he was involved in the National Hockey League Alumni Association. The Alumni Association is a voluntary group of retired NHL players who spend their time helping other players make that transition from hockey to life after hockey, and they also do charitable work all over the country. Actually, all over America and Canada.

Keith Magnuson was very involved in the NHLAA. He was a former chairman of the group. In fact, he was the immediate past chairman of the

group, a three-year term. He finished his job in about 2002, and the new chairman was another retired hockey player, a man named Keith McCreary. But Mr. McCreary got sick almost immediately of cancer and, tragically, he died in December of 2003. The funeral was in Toronto. That’s why Keith was up there — at the funeral.

So Keith went to the funeral at 11:00 in the morning on December 15. And after the funeral, the McCreary family had one of those receptions, a luncheon for all the guests, at a country club. Keith went to it, as did about three hundred other people that were at the funeral. They went to this reception put on by the family. Keith had lunch there and visited with the other people there. A lot of people were former hockey players and alumni association members.

You will hear evidence in this case that the conversation during this luncheon turned at some point to the issue of governance of the alumni association, because their chairman had just died and someone needed to step in and fill that void.

So you’ll hear the testimony of Andy Bathgate, who is another NHL hockey player. He’s much older than Keith. But he was at that funeral and that reception, and midway through the afternoon the conversation started that someone has got to step in and be chairman. Keith was part of that conversation, as was a retired player named Rob Ramage, the defendant in this case, who just so happened to be the vice chairman of the alumni association.

The way it worked out was, if you can picture the chain, Keith was the immediate past chairman, Mr. McCreary was the chairman, but he died. According to the bylaws, the vice-chairman, Rob Ramage, should step up and take that role as chairman. But that wasn’t scheduled to happen for two years. Mr. McCreary died. The

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conversation was “who is going to fill this void.” There was discussion about Mr. Ramage’s schedule and things that were going on at his work. And the powers that be got together that afternoon and asked Keith Magnuson, who was a great chairman during his three years, if he wouldn’t mind stepping back into the role as chairman.

Mr. Bathgate will explain that Keith’s reaction was a little bit surprised, and he said, “This isn’t how it’s supposed to happen according to the bylaws, but if you folks want me to be chairman again, I would be honored.”

Based on that discussion, a phone call was made to the director of the alumni association, and it was decided that after this reception Keith would drive with Rob Ramage to the offices of the alumni association where they would have a meeting and do the paperwork and figure out the change in power.

And so it was based upon those circumstances that at about 4:30 in the afternoon on December 15, Keith Magnuson climbed into the car that Rob Ramage had rented from National Car Rental Canada, a Chrysler Intrepid, and began the twenty-five or thirty minute drive to the NHL Alumni Association’s offices.

Exhibit 27 is a photograph of eastbound Rutherford Road in the town called Vaughan, which is a suburb of Toronto in Ontario, Canada. Ramage was driving eastbound on Rutherford Road that afternoon. He got to this point, which is depicted on Exhibit 27, at about 5:00 that day. It was dusk, meaning, it was not as light as it is in this picture, but it wasn’t quite dark yet. The roads were dry. Traffic was pretty light for that time of year. Both men in the Intrepid, both the driver, Ramage, and Keith Magnuson were belted.

And even though nobody knew it,

nobody at the reception knew it, Keith Magnuson couldn’t have known it, Rob Ramage, that afternoon, was drunk, very drunk.

The evidence will be that at the time that he drove on this section of Rutherford Road, Rob Ramage had a blood alcohol level that was two and a half or three times the legal limit. The legal limit is 0.08 in Canada, just like it is here in Missouri. His blood alcohol level was somewhere between 0.21 and 0.24, two and a half to three times the legal limit.

Exhibit 28 is a picture of westbound Rutherford Road. This is traffic coming in the opposite direction. Just like the other way, it was pretty light traffic that day. There was a car driven by a man named Dean Sequeira, who will testify in this trial.

Behind him there was an SUV driven by Michelle Pacheco. She was on her way home from work. And both of these drivers will testify that they were heading westbound on Rutherford Road. The Intrepid, driven by the defendant Ramage, coming at them at a high rate of speed, suddenly veered to its left, crossed the center line, crossed into the westbound oncoming lanes of traffic.

Mr. Sequeira tried to move his car as far over to the right as he could, and Ramage’s car, the front of his car, struck the driver’s side rear door of Sequeira’s vehicle, bounced off and then plowed head on into the oncoming SUV driven by Michelle Pacheco, smack dab in the middle of her lane of traffic.

Exhibit 29 is sort of a poor quality photo taken from the newspaper the following day showing the vehicles on the roadway after the crash. Over here on the left is Michelle Pacheco’s SUV with frontend damage. Over here on the right is the Chrysler Intrepid driven by Ramage.

Now, sort of amazingly, Mr. Sequeira, and his father and Michelle Pacheco weren’t hurt too badly in the crash. Rob Ramage, in addition to

being three times the legal limit of alcohol, had moderate injuries. But Keith Magnuson, as you look at Exhibit 30, who was seated here in the passenger side of this Intrepid, was killed.

You’ll hear from a Dr. William Lucas, who is the coroner in Toronto who did the autopsy on Mr. Magnuson. Dr. Lucas will explain that Keith was killed not just one way, but four separate ways.

I apologize to the family. I’ll be very brief with this. Dr. Lucas will explain that Keith had a subdural hematoma on the right side of his brain; he had a transected medulla on his brain stem; he had a ruptured aorta in his heart; and a broken cervical spine at C6/C7. Any one of those four injuries could have killed Keith Magnuson, and he had all four of them.

Now, ladies and gentlemen, we’re here today, nearly four years later, in this civil wrongful death lawsuit on behalf of Keith’s family. We’re looking at exhibit 31. His wife, Cindy, his daughter, Molly, his son, Kevin. The three of them are all here today.

In this lawsuit we are seeking wrongful death damages against the defendants in this case — Rob Ramage, the driver of the car, and National Car Rental of Canada and its related entities, the corporate rental car defendant.

You’re going to be asked to decide many questions here. Some questions you won’t be asked to decide because, as Judge Gaertner explained just before we took a lunch break and he was reading you those instructions, certain issues are issues of law which are decided by the court. Certain issues are issues of fact decided by you folks, the jury. And I know this got very confusing and complicated yesterday and a little bit more so this morning, but one of the issues that’s an issue of law --

Ms. Boggs: Your Honor, I’m going

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to object at this point as I no longer think counsel is outlining what the evidence in this case will be and is deviating into argument.

The Court: You may proceed.

Mr. Kotin: One of the issues which is an issue of law is that the National Car Rental defendants are vicariously liable for the negligence of a renter. Meaning, under the law of this case, a company that leases a car to somebody who pays money and signs a contract is liable for any negligence that that renter is guilty of. That's the law. It's not a question you're going to have to decide. That has been decided.

Your question will be a question of fact, which is about the driving of Rob Ramage. And the question is: was Mr. Ramage negligent in driving a car that day, and did he cause a crash that resulted in the death of Keith Magnuson.

What is the evidence that you're going to hear in this case? Well, you'll hear that at 5:00 on December 15 Ramage was traveling at a high rate of speed. You will hear that he crossed over the center line into oncoming traffic and collided head on with not just one vehicle but two vehicles in their lanes. You will hear expert testimony from the toxicologist that at the time of the collision Mr. Ramage's blood alcohol level was between two and a half and three times the legal limit.

Now, that toxicology testimony is going to be important. The toxicologist is a man named James Wigmore. He's the official toxicologist up in Toronto, and his testimony is important.

I'll start off with the basics. The first blood test taken from Rob Ramage was done about two and a half hours after the crash at the hospital. A blood sample was taken and was tested to a blood alcohol level of 0.24. That's exactly three times the legal limit.

Four hours after the crash, a urine

sample was taken and the urine sample was calculated, and they extrapolate back in time, and the alcohol level on that urine sample 0.21.

Mr. Wigmore will explain when you start to extrapolate backwards in time that comes out to a very consistent reading as in a blood sample.

Just to make matters safer, another urine sample was done a couple hours later, and that also came out to two and a half to three times intoxication level as the first two tests did.

Now, Mr. Wigmore will testify as to those details. He's also going to provide very important testimony based on his expertise in toxicology.

Mr. Wigmore is going to answer this question: "How is it that Rob Ramage could be that drunk and have that much alcohol in him after a funeral and luncheon?" And the answer is, "Yeah, he was that drunk, he did have a lot of alcohol in him." But Mr. Wigmore will talk about the concept of carryover.

You see, the evidence in this case will be that Rob Ramage was in Toronto the night of December 14, and that he was out drinking until as late as 4:00 in the morning.

Based on this concept of carryover, Mr. Wigmore will explain that in order to get this blood alcohol level of 0.24, a man the size of Mr. Ramage would have to have an awful lot of drinks.

But if he had been drinking the night before and had an increased blood alcohol level, the carryover concept means that he need not drink that much the following day in order to get the blood alcohol level back up. He talks about a twenty-four hour period of alcohol remaining in the system to some degree. So that's interesting testimony which you should pay attention to.

The other interesting piece of testimony from Mr. Wigmore is the question of how is it that this man could have been so intoxicated but nobody around him that afternoon noticed it.

Mr. Wigmore will talk about the fact that in Toronto he performed a

study called the WigmoreWilkie Study in which they tested 811 drunk drivers in Toronto. They had 811 drunk drivers, all of whom failed the blood alcohol test, but all of whom also passed the field sobriety tests which were administered by police officers.

He explains that based upon the fact that people can develop they can become, in his terms, accustomed to drinking and develop a tolerance, and when that happens, police officers, or more particularly, lay people, wouldn't notice them slurring or swaying or acting unusual in any way at all. That would explain how Mr. Ramage would seem normal in front of witnesses at the reception yet be three times the legal limit in his car.

That's going to be the issue of liability in this case, folks. You will be asked to decide liability in this case.

During jury selection I know the conversation focused a lot about the burden of proof. Some people were concerned about this preponderance of the evidence burden, 51 versus 49 percent. Well, that is the law. But we believe that the evidence in the case on liability will be far greater than 51 percent. It will be very clear that Rob Ramage, and as a matter of law, National Car Rental, will be liable for whatever damages there are. So your real consideration will be on damages.

This is a lawsuit filed not just by Keith Magnuson's family, but by three separate people: Cindy, his wife, Molly, his daughter, and Kevin, his son. And based upon the evidence in this case, we will be asking you to compensate each one of them for ten specific items of damage:

The loss of services that Keith provided to his wife and to his kids.

The loss of consortium, which is a legal term. It's really affection or love between a husband and a wife.

The loss of companionship that Keith had with his wife and his children.

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and that helped him become the iconic figure that he was.

You'll also hear from another very important person in Keith Magnuson's life. It's another name you may know because he played hockey for years. Cliff Koroll. Cliff Koroll was another kid from Saskatoon. There's exhibit 37. It's a picture of Cliff and Keith at a relatively young age.

Cliff was eleven and Keith was ten when they first met and started playing hockey against each other, and became friends. Cliff went on to the University of Denver to play hockey. Keith was still in high school. Cliff called his friend Keith and said, "Hey, if you're looking at colleges to come play at, you've got to come here. This is a great place." Keith followed Cliff Koroll to the University of Denver, they played together there for three years, they won a National championship together. Cliff graduated, Keith took over as captain, and won another title. And then, believe it or not, when Cliff Koroll left the University of Denver, what team did he sign with? Chicago Blackhawks.

So Keith followed Cliff to the Blackhawks where they were teammates for another eleven years. Then in 1980 Keith retired to become head coach, and I think Cliff will tell you his friend Keith talked him into retiring also, and becoming an assistant coach, which he was for a couple of years. That's a real bond there between Cliff Koroll and Keith Magnuson.

Cliff will talk to you about their lives together as young men. They were roommates in Chicago because they were both single. So they lived together not only on the road, but also at home. He'll talk about their social life in and around the Chicago sports community and other sports stars that they would spend time with, like Mike Ditka.

Mike Ditka actually gave a deposition in this case and we may play it for you depending upon the time. Cliff will talk about that relationship, but

that's really not important in Keith's life or the reason we're here for today.

I think what Cliff will talk more about is Keith Magnuson the person. Cliff will tell you that it was in 1974 when his buddy Keith said to him, "Hey, you know what? I met the girl I'm going to marry." And Cliff says, "Really, when do I get to meet her?" Keith says, "The only problem is she won't go out with me." You'll hear about that tomorrow.

That girl was a twenty-one-year-old recent graduate from the University of Missouri named Cindy White. She was working in a golf pro shop. Keith was in there playing golf one day and he met her. He had a hard time getting her to agree to a date. She wasn't a hockey fan, I guess. But eventually she relented. They went on a date. And then on June 7, 1975, Maggie, as he had become known, and Cindy White, became Mr. and Mrs. Keith Magnuson.

I think you will learn that everything in Keith Magnuson's life pretty much changed on that day back in 1975. Because it was on that day, and I think Cindy will talk about it, that Keith started talking about life other than hockey, and

life after hockey. It wasn't just about hockey anymore.

You know, there were some comments during jury selection about the fact that we don't want you to award more money in this case just because Keith Magnuson was a local celebrity.

Ms Boggs: Your Honor, I'm going to object. I think this is argument. This is not lying out what the evidence in this case is going to show. I think it's improper.

The Court: You may proceed.

Mr. Kotin: We agree with what Miss Boggs said there. But I think that what is important that from the date he got married onward you're going to learn all this from the evidence. From that day forward, Keith Magnuson was a tremendous husband and a tremendous father, despite the fact that he was a celebrity.

Hockey players weren't paid in 1975 like they're paid today. When

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Keith was single, he could probably, on his hockey salary, afford to support himself. He had a roommate, Cliff Koroll.

But then he got married and they were planning to have a family, and so right away he started talking about the concept of taking on another job and getting involved in the business world. So he took a job with the Seven Up Company in sales. And worked in the off season selling for Seven Up. During the hockey season he would get paid for playing hockey for the Blackhawks.

And it made sense that he would have to supplement his income because not long after they got married, the following year, 1976, Kevin was born, and then two and a half years later, Molly came along. And then this became what mattered most in Keith Magnuson's life forever, the Magnuson family.

After leaving hockey - let me stop for a second and point something out here. I know it's easy for a lawyer in a wrongful death case to talk about how the evidence is going to show that this guy was different, that all he cared about was family, his wife and his kids and hockey wasn't that important to him. It's easy for me to say that especially since it's after the fact.

But you're going to hear real witnesses in this case. You're going to hear witness after witness talk about Keith Magnuson, not necessarily the hockey player, but Magnuson, the father and the husband. And beyond that, there is also going to be real evidence that you can look at.

Pat Foley, who is going to testify tomorrow, the broadcaster, will talk about Keith Magnuson as a young hockey player was on the cover of *Sports Illustrated*, and Foley kept that magazine because he always wanted Maggie to autograph it so he could hang it on the wall of his office. So one day, years later, he brings the magazine to Keith Magnuson and says, Keith, I wanted to

hang this on my wall, could you autograph this for me? Can you do that for me, Maggie?

And Keith took the magazine and autographed it like this: "To Pat, the voice. Thank you for your friendship. Signed Keith, Cindy, Kevin and Molly." And it's that *Sports Illustrated* cover which is framed on Pat Foley's wall today.

That's an athlete on the cover of *Sports Illustrated*, not just signing his own name, but signing on behalf of his whole family. And there is something else too, folks, something else I hope will show you this is not just some lawyer up here talking about some guy in a wrongful death case. It's a magazine.

In 1981, Keith was a brand new coach of the Blackhawks. The *Chicago Tribune*, on Sunday, has a magazine section in the Sunday paper, and on November 29, 1981, the *Chicago Tribune Magazine*, this is exhibit 40, did a feature story on Keith Magnuson.

Here's the heading, the cover: "A loving home helps build a coach." There's a picture of Keith, and Cindy and Molly and Kevin. When you go inside the article it's all about Keith's family helping him to be the hockey coach. That's real evidence. That's 1981, long before anybody thought we would be sitting here today.

After leaving hockey in 1982, Keith took a job with the CocaCola Company. And for the rest of his life he worked as an executive for CocaCola. He rose through the ranks, and his final job title before his death was the title of Director of Sales Development for the midwest.

You'll hear from David Huelsmann, he's Keith Magnuson's most recent supervisor. Mr. Huelsmann will explain that as the Director of Sales Development, Keith's responsibilities were really twofold: Number one, to build relationships with the key decision makers that pick customers. And, number two, to develop an annual marketing plan for each of those customers.

Mr. Huelsmann will acknowledge that, yeah, maybe once in awhile Keith did use his hockey pedigree, his celebrity status, to get his foot in the door to meet someone who otherwise wasn't willing to meet. Once he had a foot in the door, Keith Magnuson was all business, and was really good at it and had a great deal of success for many, many years at CocaCola.

In addition to that, even though he wasn't involved playing or coaching hockey anymore, he still stayed very involved in charitable aspects of hockey. He coached CocaCola hockey teams.

Now, as a matter of fact maybe now would be the time to play that first video, a video showing some of the things Keith was involved in. He was involved in the Special Olympics. He was involved in Chicago charities like the City of Hope. This is a video montage of some of the charitable things Keith did over the years.

You'll hear from some of the witnesses that one thing this guy would never do is say "no" to somebody who wanted an autograph. He would always take the time to talk with people and to sign autographs. This is exhibit number 60, I believe, the video.

(Plaintiffs' exhibit number 60, a video clip, was played in open court.)

Mr. Kotin: Okay. We have Exhibit number 41, a picture of Keith signing autographs somewhere. Here's Keith as a coach for one of the junior hockey teams. He did that all the time as well. Exhibit 43, this happens to be a CocaCola sponsored hockey team.

Another charity he was involved in quite a bit was the Blackhawks Alumni Association. Not to be confused with the NHLAA, which was his reason for the trip to Toronto, but the Chicago Blackhawks had their own alumni association where they did a lot of charitable work. Keith was very

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involved in it, as was Cliff Koroll.

Exhibit 44 is a picture of Keith and Cliff Koroll wearing the Chicago Blackhawks alumni jerseys, and you can see there - you know what? I'm going to let Cliff Koroll tell you what the two of them are doing in this picture.

But more important than hockey and more important than CocaCola or his business commitments or his charity work, Keith Magnuson, the evidence in this case will clearly show, was nothing more than a great husband and a great father.

You're going to hear from all three Magnusons. You're going to hear from

Cindy. She's going to tell you about the early days with Keith and how life went on. She'll have a lot to share with you. Just by way of example, a couple of things that Cindy will share is how important family vacations were to Keith and her and family. No matter how busy life got, they would always take time out to go on family vacations.

Exhibit 47 was a picture of a ski trip that was taken when the kids look like they were early teenagers. You'll hear about these family vacations.

Exhibit 46 is another vacation picture of Keith and Cindy. I don't know where it was taken, but I think it is a great picture so I wanted to show it to you. You'll hear about these trips.

But maybe more important from Cindy than her talk about their previous life together, will be Cindy's talk about Keith Magnuson and their marriage in more recent years. Because we hear about families where the kids grow up and leave the house and then the question is what happens to the married couple?

Cindy Magnuson and Keith Magnuson grew closer together. Kevin was off in Michigan. Molly was off in Kansas. It was just Cindy and Keith at home, and their life and their marriage was better than ever, and you'll hear about that.

Cindy will tell you about the things that they would do together in those later years. She'll tell you how they would talk on the phone on Friday afternoon to compare notes to find out what was going on for the weekend, and how excited they were when there was nothing on the calendar. It was just the two of them, and they could do the thing they loved most of all which was to rent a movie and order pizza. You'll hear from Cindy.

You're going to hear from Kevin, Keith Magnuson's first born child. His only son. You can probably imagine that it didn't take long for Keith to get Kevin out on skates, right?

Exhibit 48 is a picture of Keith teaching Kevin, I don't know if he's two or three-years-old, with a sawed-off hockey stick and some little skates, how to play hockey.

Whatever he did, he must have done it well, because Kevin Magnuson turned into quite a hockey player himself. By the time he reached high school, he was one of the best hockey players in the Chicago area, probably in the State of Illinois.

Exhibit 49 is a *Chicago Tribune* article titled "Chip Off the Old Blackhawk." It's an article about Kevin Magnuson following in his father's footsteps and how he was a star hockey player at Lake Forest High School.

When you read the article it talks about how Keith had red hair, and

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Kevin's a blond, but other than that they sure looked awfully similar on the ice. Kevin was a great high school hockey player. He was recruited by a lot of schools and he wound up playing hockey in college at the University of Michigan. Just like his dad had done years earlier at Denver, Kevin won an NCAA championship at Michigan.

Exhibit 50 is Kevin's favorite photograph. It's a picture of his dad giving him a hug on the night they won the NCAA championship when he got his trophy.

After playing four years of college hockey, Kevin decided he was going to continue to try to follow his father's legacy. He longed to be an NHL player. So Kevin played a couple years semipro hockey, small towns around the country, trying to make it eventually to the NHL.

Keith would be a diehard supporter of him. He would follow him around to small arenas all over to watch Kevin play. After a couple years, Kevin realized that this is fun, and he was good, but he really wasn't going to be an NHL player. And he'll talk to you about how he was worried about disappointing his father when he made that phone call to his dad to say, "You know what, Dad, I think I'm finished. I'm going to move on."

He'll tell you how happy he was when his father was anything but disappointed in him, but truly proud of Kevin. And then Kevin would have had an opportunity to do something not even his father had done. He was going to go to law school and become the first Magnuson lawyer ever.

And in the fall of 2003, Kevin began his first semester of law school, nowhere else but his father's alma mater, University of Denver.

Then there is Molly Magnuson. I don't know how you put it, but you're going to hear she was nothing other than daddy's little girl, his only daughter. And they had a great life together as Molly was growing up.

Exhibit 51 is a picture of Keith

teaching Molly how to ride a two-wheel bicycle with a hat pulled all of the way over her eyes.

Exhibit 52 is another great photograph of Molly on her Dad's back. Molly had a great childhood. You'll hear all about their lives together. She went on to the University of Kansas where she graduated, moved back home to Lake Forest with her mom and dad, moved into the house, and with her father's assistance, got a job after college with the CocaCola Company.

And the great thing that Molly had for a couple years before her dad died was that she was living at home with mom and dad, and she and her dad would drive to work together in the morning. They would get to work, go off in separate directions, but then they would get back together, drive home and have dinner. You'll hear all about that from Molly.

Now, December 15, 2003, Cindy expected Keith to get home at about 9:30 or 10:00 that night from the trip to Toronto where he was at the funeral. It was now 10:00, 10:15, 10:30, and he wasn't home yet. That wasn't a big deal because sometimes traveling is delayed,

but she was surprised he hadn't called. He was a guy that always called in.

Molly was home that night. She was upstairs watching Monday night football on TV. And at about 10:30 the back doorbell rings. Molly left the TV, walked out of the room, down the stairs and she looked out through the window, she saw Bill Wirtz, the Blackhawks' owner, as well as the Blackhawks' president and general manager outside, outside their house at 10:30 at night.

What she didn't hear on the television was the ABC Channel 7 News in Chicago cutting into the Monday Night Football broadcast to announce that former Chicago Blackhawk player, Keith Magnuson, has just been killed in a Toronto car crash.

That's not what Molly heard—only because the back doorbell rang. Then, instead, she learned about her father when she opened the door and her mother and she were informed by the Blackhawks administration. Kevin was just finishing his last final exam that night in Denver.

(continued on page 80)

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(continued from page 79)

That was almost four years ago, folks. In the four years since, Cindy Magnuson well, before Keith died, she worked at Marshal Fields which is now Macy's. She continues to work at Macy's. Before Keith died, you will hear she was a very strong person, you're going to hear from her best friend, Susan Banter.

Susan Banter will tell you that in the four years since, there hasn't been a day that's gone by when Cindy hasn't cried. You'll hear Cindy talk about how even though she knows it's not logical, she can't help but think in the back of her mind to expect that door to pop open and see Keith walk in. But she knows that will never happen.

Kevin Magnuson went back to Denver to finish his second semester of his first year of law school, but realized during that semester, that with his dad gone, he needed to be closer to his mom and his sister, so he transferred to Chicago and finished law school at DePaul University.

Kevin's dad wasn't there to see the first Magnuson lawyer ever sworn in to practice law. And Kevin doesn't have these weekend phone calls which meant so much to both of them, which you'll hear about.

Molly Magnuson was really fortunate in that she met a great guy, and not too long ago Molly got married. But she didn't realize her childhood dream of her father walking her down the aisle. Instead, Kevin walked her down the aisle. And Molly still does work at CocaCola. She's doing fine there, but she drives to work alone in the morning now.

Folks, you are going to be asked in about two or three days to decide issues of liability and damages in this case. The evidence is clear that Rob Ramage was intoxicated, was speeding, crossed the center line and crashed into two other cars — that he was negligent.

And, as a matter of law, ladies and gentlemen, you will be instructed that National Car Rental and those

related companies, are responsible for Ramage's negligence. Then you're going to be asked to decide issues of damages in this case.

You folks are going to be asked to decide damages for Cindy, damages for Molly, and damages for Kevin separately, and you're going to be asked to put a value on the services that Keith provided to each of them, the consortium that he provided, the companionship that he provided to each of his family members.

All of these elements for each of them separately, not just for the past four years from December 15, 2003 until today, but for the next 19.7 years, which, according to the U.S. Health and Human Services Life Tables, is how long this family could have expected to have their husband and father with them - 19.7 more years.


You're going to be asked to decide damages for each of these people, for each of these elements, for the past four years plus the future, almost twenty years. And, yeah, that does add up to quite a number. I know some people were sort of wondering how the numbers during jury selection were getting as high as they were. Well, that's how.

You're going to hear a lot of evidence in this case through live testimony. Unfortunately, you're going to hear a lot of evidence on videotape because of the people in Toronto. We can't bring them into the United States to testify, so they're on videotape. Some testimony will be read to you.

For four years now Rob Ramage has refused to answer any questions about this crash. For four years now he's --

Ms. Boggs: Your Honor, I would object to this. I think it's inappropriate argument. I think

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opening statement is intended to lay out the evidence to the jury and outline what the evidence will show. I think this is more in the nature of closing argument at this time.

The Court: Counsel can comment upon the testimony that he wishes to present even if it's not cross-examination. You may proceed.

Mr. Kotin: For four years he has asserted his Fifth Amendment right not to testify. And we fully expect that Rob Ramage will continue to assert that Fifth Amendment right and will refuse to testify about this particular crash. In fact, he's already been deposed. We have a deposition, something which we'll play for you, and he'll assert that Fifth Amendment right.

You probably know that in a criminal context the fact that someone doesn't testify cannot be used against him in a court of law as criminal.

The law which you will be instructed on in this civil case is that his refusal to testify can provide you with an inference that whatever that testimony would have been, would have been harmful and incriminating to Mr. Ramage.

But even without that, with all the other evidence you're going to have, you won't have any lack or shortage of evidence in this case. In terms of evidence of damages, we're going to do our best to paint this picture and bring this person to life as best as we can. And then we'll hand it over to you for deliberations.

Thank you very much for all your time and patience, not just listening to me but for the past day and a half during jury selection process. We will stand before you and talk to you, again, in summation about what we believe the evidence has shown.

Until then, thank you for your courtesy and I'm sure you'll offer the

same courtesy to Miss Boggs and Mr. Harper as well.

Daniel M. Kotin is a partner and trial lawyer at Corboy & Demetrio. He represents individuals in personal injury and wrongful death litigation, including medical malpractice, product liability, and transportation cases. He is also a lead lawyer on mass tort cases arising out of fires, train derailments, airplane crashes and other disasters. In addition to his extensive and successful trial practice in Illinois, Mr. Kotin has obtained multi-million dollar jury verdicts in Wisconsin and Missouri.

Named one of the top 5% of all Illinois attorneys by the Leading Lawyers Network, Mr. Kotin has also achieved the highest rating in the Martindale-Hubbell Law Directory and has been designated an Illi-

nois Super Lawyer. In 2002, he was named to the Law Bulletin Publishing Company's list of "40 Illinois Attorneys Under Forty to Watch."

Mr. Kotin lectures at Loyola University Chicago School of Law where he serves as a coach of the School's National Mock Trial Team and is a member of the faculty of the National Institute for Trial Advocacy where he teaches trial skills to lawyers in an annual program. He is a member of the Board of Managers for the Illinois Trial Lawyers Association and is active in the Chicago Bar Association, where he currently is a member of the Finance Committee.

A frequent speaker and writer on issues relating to trial practice and strategy, Mr. Kotin has also published chapters and articles in legal books, periodicals and newspapers. □

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