

NO. 11-09711-CV

SMILEY CRYUS,

*Plaintiff,*

v.

MEGA ENTERTAINMENT, INC.

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE 5<sup>th</sup> DISTRICT COURT

IN AND FOR TRAVIS COUNTY

STATE OF LONE STAR

**Prepared by:**

**Marvin W. Jones  
Sprouse Shrader Smith P.C.  
701 S. Taylor, Suite 500  
Amarillo, TX 79101**

Copyright 2014  
Texas Young Lawyers Association  
and  
Marvin W. Jones  
All Rights Reserved

This case file was commissioned by the Texas Young Lawyers Association and was prepared by Marvin W. Jones for the 2014 National Trial Competition

## STATEMENT OF THE CASE

This is a civil case brought by Smiley Cryus as the surviving wife of David Kitner, Sr., deceased, against MEGA Entertainment, Inc., alleging that MEGA was negligent in hiring and supervising John Martin, M.D., a medical doctor whose job duties included treating Kitner's various medical conditions in preparation for a comeback entertainment tour styled "This is S\*\*t."

Witnesses will include:

1. Smiley Cryus, the surviving widow of David Kitner.
2. Chris Jensen, an expert witness for Plaintiff.
3. Zeke Fortenberry, an executive vice president of MEGA.
4. Cory Harbor, who will testify as an expert on behalf of MEGA.

SMILEY CRYUS,

*Plaintiff,*

v.

MEGA ENTERTAINMENT, INC.

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE 5<sup>th</sup> DISTRICT COURT

IN AND FOR TRAVIS COUNTY

STATE OF LONE STAR

**PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE COURT:

COMES NOW, Plaintiff SMILEY CRYUS and files this Original Complaint against Defendant MEGA ENTERTAINMENT, INC., and for cause of action against said Defendant shows the Court as follows:

**I.**

**PARTIES, JURISDICTION AND VENUE**

1. This is an action for damages within the jurisdictional limits of this Court.
2. Smiley Cryus has been a resident of Travis County, Lone Star since 2006. Plaintiff was the wife of rock legend David Kitner, Sr., deceased, to whom she was married at the time of his death on May 10, 2011.
3. MEGA Entertainment, Inc. is a rich Nevada corporation with its principal place of business in Travis County, Lone Star. Said Defendant may be served with citation in this matter by serving its president, Robert L. Byman, at its corporate headquarters located at 353 North Clark Street, Armadillo, Lone Star.
4. Venue is proper in Travis County, Lone Star because the conduct that is the subject of Plaintiff's Original Complaint occurred in Travis County, Lone Star.

Additionally, Defendant's principal place of business is located in Travis County, Lone Star. Finally, Plaintiff resides in Travis County, Lone Star.

**II.**  
**FACTUAL BACKGROUND**

5. Prior to his death, rock legend David Kitner, Sr. entered into a contract with MEGA to undertake an entertainment venture in which Kitner would contribute his time, talent and efforts in the nature of musical performances, and MEGA would provide promotional services including, but not limited to, advertising the events, securing facilities, providing stage and sound equipment, providing labor necessary to prepare venues for and conduct events, and provide such other services as might be required by Kitner.
6. Pursuant to the agreement, MEGA supplied, inter alia, medical services to Kitner. In particular, MEGA entered into an agreement with a physician named Dr. John Martin, M.D. to oversee Kitner's health and well being, and agreed to pay Dr. Martin to provide such services to Kitner on an as needed basis, including 24 hours per day and seven days per week if necessary.
7. Acting under and pursuant to his agreement with MEGA, Dr. Martin began providing medical services and medications to Kitner, including medications designed and intended to assist Kitner in sleeping. Dr. Martin provided and administered the drug Propofol to cause Kitner to sleep. However, the drug Propofol is an anesthetic indicated and used for and in conjunction with surgical procedures, and was not indicated or intended to be used as a sleep aid.
8. Dr. Martin was negligent in one or more of the following ways, which negligence was a proximate cause of the death of David Kitner, Sr.:

- a. Kitner was a known user of narcotic and illegal drugs, including cocaine and prescription pain medications. The use of Propofol in patients using such substances is contraindicated, dangerous, and reckless, and is reasonably calculated and expected to cause respiratory distress and myocardial disruption and death.
  - b. Propofol does not induce normal sleep, but instead produces a state of consciousness that does not permit normal sleep rhythms and patterns. Prolonged use of the drug causes sleep deprivation, which exacerbates rather than ameliorates sleeplessness.
9. As a direct and proximate result of the administration of Propofol, Kitner, a rock legend, suffered a severe and fatal myocardial event and died.

**III.**  
**CAUSES OF ACTION**

10. MEGA was negligent in the following respects:
- a. MEGA failed to properly investigate Dr. Martin's background. A proper investigation would have revealed that Dr. Martin had a history of medical malpractice and a poor reputation as a provider of medical services.
  - b. MEGA failed to investigate Dr. Martin's prior relationship with Kitner. A proper investigation would have revealed that Dr. Martin had in the past overprescribed medications to Kitner on a routine basis.
  - c. MEGA failed to properly supervise and oversee Dr. Martin's provision of medical care and medications to Kitner. If MEGA had properly supervised the provision of medical services to Kitner, it would have known that Kitner's condition was deteriorating under Dr. Martin's care and would have

discovered the medical negligence involved in Dr. Martin's treatment of Kitner.

- d. MEGA observed that Kitner was weak, dizzy, confused and under physical and mental stress, but continued to pressure Dr. Martin to do whatever it took to have and keep Kitner on stage.
11. The above acts were a proximate cause of the death of David Kitner, Sr., a rock legend.
12. Because Dr. Martin was the contractual agent of MEGA, MEGA is vicariously liable for Dr. Martin's acts and conduct, and Dr. Martin's negligence is charged to MEGA.

**IV.**  
**DAMAGES**

13. Plaintiff was married to rock legend David Kitner, Sr. at the time of his unnecessary death. As a result of his death, she has suffered mental anguish, loss of consortium, loss of care, comfort and support and loss of his future earnings.

**V.**  
**JURY DEMAND**

14. Plaintiff hereby requests trial by jury.

**VI.**  
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Defendant be cited to appear and answer herein, and that upon final hearing the Plaintiff have judgment for damages, pre-judgment and post-judgment interest as allowed by law, costs of suit and such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully Submitted,

WRATH & DRATH, P.C.  
1864 Poison Spring  
P.O. Box 41864  
Armadillo, Lone Star 76706  
(361) 305-6400 (Telephone)  
(361) 757-6400 (Facsimile)

By: /s/ John M. Drath\_\_\_\_\_

John M. Drath  
State Bar No. 00045

*Attorneys for Plaintiff*

NO. 11-09711-CV

SMILEY CRYUS,

*Plaintiff,*

v.

MEGA ENTERTAINMENT, INC.

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE 5<sup>th</sup> DISTRICT COURT

IN AND FOR TRAVIS COUNTY

STATE OF LONE STAR

**DEFENDANT'S ORIGINAL ANSWER**

TO THE HONORABLE COURT:

COMES NOW, Defendant MEGA Entertainment, Inc. ("MEGA") and files this Original Answer in response to Plaintiff's Original Complaint, showing the Court as follows:

**I.**

**ANSWER**

1. Defendant admits the allegations in paragraph 1.
2. On information and belief, Defendant admits the allegations in paragraph 2.
3. Defendant admits the allegations in paragraph 3.
4. Defendant admits that its principal place of business is located in Travis County, Lone Star and that the accident referenced in Plaintiff's Complaint occurred in Travis County. Defendant has insufficient information to either admit or deny the remaining allegations in paragraph 4 of Plaintiff's Complaint, and Defendant therefore denies the allegations in paragraph 4.
5. Defendant denies the allegations in paragraph 5.
6. Defendant denies the allegations in paragraph 6.

7. Defendant denies the allegations in paragraph 7.
8. Defendant denies the allegations in paragraph 8.
9. Defendant denies the allegations in paragraph 9.
10. Defendant denies the allegations in paragraph 10.
11. Defendant denies the allegations in paragraph 11.
12. Defendant denies the allegations in paragraph 12.
13. Defendant denies the allegations in paragraph 13.
14. Defendant requests trial by jury.
15. To the extent necessary, Defendant denies all the remaining allegations in the Complaint.

**II.**  
**AFFIRMATIVE DEFENSES**

16. Without waiver of the foregoing but in addition thereto, Defendant affirmatively pleads that the death of David Kitner, Sr., a legendary drug addict, was caused solely or, alternatively, in part, by Kitner's conduct in ingesting narcotic and other illegal drugs.

**III.**  
**PRAYER**

WHEREFORE, Defendant requests that upon final trial that Defendant have judgment that Plaintiff take nothing by her suit, that Defendant be discharged from any and all liability, that Defendant recover court costs and for such other and further relief, at law or in equity, general or special, to which Defendant may show itself justly entitled.

Respectfully submitted,

LAW OFFICES OF N. KAREN DEMING  
800 LaSalle Avenue  
2800 LaSalle Plaza  
Armadillo, Lone Star 76707  
(512) 831-7364  
(512) 832-2628 FAX

By: /s/ Karen Deming  
N. Karen Deming  
State Bar No. 2547895254158454  
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendant's Original Answer has been served by certified mail, return receipt requested, to John M. Drath, Wrath of Drath, P.C., on this 1<sup>st</sup> day of September, 2011.

By: /s/ Karen Deming  
N. Karen Deming

## **WITNESS AND EXHIBIT LIST**

### **WITNESSES:**

#### **PLAINTIFF:**

1. Smiley Cryus (must be female)
2. Chris Jensen (may be either male or female)

#### **DEFENDANT:**

1. Zeke Fortenberry (may be either male or female)
  2. Cory Harbor (may be either male or female)
- 

### **EXHIBITS:**

1. Judgment of conviction
2. Contract
3. Email
4. Email
5. Financial statement
6. Autopsy report
7. Malpractice suit
8. Judgment of conviction
9. Medical records
10. Photograph
11. Rolling Stone article
12. Rolling Stone article
13. Prescription for Propofol
14. Study regarding Propofol
15. Email

16. Email

17. Email

18. Email

## **STIPULATIONS AS TO EVIDENTIARY MATTERS**

### **Procedural Matters**

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. All witnesses called to testify who have identified the parties, other individuals, or tangible evidence in depositions or prior testimony will, if asked, identify the same at trial.
3. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give a full and complete description of all material events that occurred and to correct the deposition for inaccuracies and completeness before signing the deposition.
4. All depositions were signed under oath.
5. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on a deposition does not comport with signatures or initials located on an exhibit.
6. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
7. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.
8. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4)

VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in Rule VIII(4).

9. The Plaintiff and the Defendant must call the two witnesses listed as that party's witnesses on the witness list.

10. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

11. It is stipulated that no one shall attempt to contact the problem drafter about this problem before the conclusion of the 2014 National Trial Competition Final Round. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

12. 2014 is the year in which this case comes to trial.

13. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the Plaintiff shall have four minutes to present any pretrial motions; (2) the Defendant shall have four minutes to respond to the Plaintiff's motion(s); (3) the Defendant shall have four minutes to present any pretrial motions; and (4) the Plaintiff shall have four minutes to respond to the Defendant's motion(s).

14. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions or to the jury verdict form.

### **Substantive Matters**

1. Exhibits 1, 6, 7 and 8 are certified copies of public records, and as such are admissible in evidence, if relevant.

**DEPOSITION OF SMILEY CRYUS  
DECEMBER 22, 2012**

1 Q: Can you tell the jury your name?

2 A: My name is Smiley Cryus, the surviving widow of the legendary rock star David Kitner.

3 Q: Where were you raised, Ms. Cryus?

4 A: I was raised in Happy, Lone Star. It was a wonderful, idyllic place to live.

5 Q: What year did you graduate from Happy High School?

6 A: That is a pretty sneaky way to try to figure out how old I am. Anyway, I didn't quite  
7 graduate.

8 Q: I take it, then, that you did not attend any college?

9 A: Actually, I got my GED and was able to gain admission to the University of Lone Star at  
10 Austin, where I graduated with a degree in lunar studies.

11 Q: What did you do after graduating from that university?

12 A: About the only job I could get with that degree was working honky tonks here in Lone  
13 Star. I was twerking in a honky tonk when I met the rock legend David Kitner. He was  
14 hanging out there, listening to the music and having a good time with his friend Ted  
15 Nugget.  
16

17 Q: Did you begin dating Kitner at that time?

18 A: Somewhere around that time. Ultimately, I moved into the Kitner residence.

19 Q: And when did you move into the Kitner mansion?

20 A: I moved into his humble house about two years before he died.

21 Q: At some point, did you actually become married to Mr. Kitner?

22 A: Special K and I were married twenty-seven days before his untimely death. It was a very  
23 special ceremony, attended only by David and me and a former girlfriend of David's who  
24 had become a minister.  
25

**DEPOSITION OF SMILEY CRYUS  
DECEMBER 22, 2012**

1 Q: After you moved into the Kitner mansion, were you around him often?

2 A: I was at his side constantly during those two years. We were seldom ever apart. I  
3 overheard virtually every conversation he had, whether it had to do with his life, his  
4 career, drugs, rock & roll, whatever.

5 Q: Did Mr. Kitner ever talk to you about his come-back tour?

6 A: David was so excited about the come-back tour. He saw it as his chance for redemption  
7 after the unfortunate other thing that we will not talk about. He was acquitted, by the  
8 way.

9 Q: Who was promoting this come-back tour?

10 A: It was being promoted by MEGA Entertainment. One of the MEGA representatives  
11 practically lived in the mansion, I mean residence, during the last four months that David  
12 was alive.

13 Q: Did you over hear any conversations between David and the MEGA representative?

14 A: I heard every conversation. They were constantly discussing the details of the tour. They  
15 talked about stage design, they talked about the songs that David would sing, they talked  
16 about the dance routines, they talked about the back-up singers, the band, the costumes,  
17 the wigs, the groupies, the whole thing.

18 Q: Who was the MEGA representative that was living at the mansion during those four  
19 months?

20 A: It was a guy named Paul "Guitar" Gutierrez.

21 Q: Did you ever hear Mr. Gutierrez of MEGA expressing any concerns about the come-back  
22 tour?  
23

24 A: Yes, Guitar was taking this whole thing way too seriously. He kept asking David if he  
25

**DEPOSITION OF SMILEY CRYUS  
DECEMBER 22, 2012**

1 was in good enough physical condition to handle the stress of a live tour that was going  
2 to last for two years. Guitar once pulled me aside and asked me if Kitner was getting any  
3 real exercise and whether he always wheezed when he walked up the one hundred and  
4 fifty stairs between the 1<sup>st</sup> floor and 2<sup>nd</sup> floor of the mansion, I mean, residence. I told him  
5 we all wheezed when we took the stairs.

6 Q: Did you talk to David about these health concerns that MEGA had?

7 A: Yes, I told David about Guitar's silly worries, and David told me not to worry, that  
8 MEGA had actually hired his favorite doctor to go on the tour with him.

9 Q: And who was that favorite doctor?

10 A: That would be John Martin, M.D.

11 Q: To your understanding, what was Dr. Martin supposed to be doing for David?

12 A: He was supposed to take care of his physical health issues up to and through the entire  
13 two year tour.

14 Q: Did you see much of Dr. Martin during the final days of David's life?

15 A: Sure, Dr. Martin was constantly around the last two months before David's tragic death.

16 Q: Did you ever hear any discussion between Dr. Martin and David concerning any kind of  
17 drugs?  
18

19 A: Yes, I heard several conversations where David would tell Dr. Martin that he needed to  
20 be able to sleep, that he wasn't getting any sleep, that he couldn't do a tour without sleep.  
21 Dr. Martin would always say "okay, okay, I will prop you up and get you to sleep."

22 Q: When was the last time you heard such a conversation?

23 A: The night that David left us to go on the big tour in the sky.

24 Q: Did you ever hear Dr. Martin express concern about David's physical condition?  
25

**DEPOSITION OF SMILEY CRYUS  
DECEMBER 22, 2012**

1 A: Yes, I heard Dr. Martin tell David that he was just wasting away and he needed to get his  
2 calorie intake up if he planned to make a successful tour.

3 Q: After David died, what did you do?

4 A: Well, Kitner's crazy son Little Kit threw me out of the house. I needed to make a living,  
5 so I hired on with a T.V. network as a commentator and attended the involuntary  
6 manslaughter trial of Dr. Martin. I've gotta tell you, I cheered when he was found guilty  
7 and was dragged away in chains to serve time.

8 Q: Can you identify Exhibit 1?

9 A: Yes, that is the Judgment of Conviction of Dr. Martin. I have a framed copy of it at my  
10 house.

11 Q: Can you identify Exhibit 10?

12 A: Yes, that is a photograph of a bottle of Propofol that was found on the floor of the master  
13 bedroom right after David died. By that, I mean ten minutes after he died.

14 Q: And can you identify Exhibit 4?

15 A: Yes, after David died, I gained access to his lap top computer, which was the only  
16 computer he ever used. I got into his email, and this is one of the emails that I found in  
17 his Sent Items box.

18 Q: And what does this email say?

19 A: This is an email where Kitner asks "Guitar, when is MEGA going to get Dr. Martin hired,  
20 because I'm tired of paying Martin out of my own pocket."

21 Q: Can you identify Exhibit 3?

22 A: Yes, I found Exhibit 3 in the email also. It is an email from Guitar at MEGA to Dr.  
23 Martin, with a copy to David, saying that Dr. Martin better get David on stage or that he  
24  
25

**DEPOSITION OF SMILEY CRYUS  
DECEMBER 22, 2012**

1           was going to get fired.

2           Q:     Can you identify Exhibit 7?

3           A:     Yes, that is a certified copy of a complaint in a malpractice suit that was filed against Dr.  
4           John Martin.

5           Q:     And do you know what that lawsuit was about?

6           A:     Only what it says here.

7           Q:     Finally, can you identify Exhibit 18?

8           A:     That's an email that I got off David's machine from Guitar at MEGA to some other guy  
9           at MEGA about getting the deal sealed with Doctor John. Guitar told me it was copied to  
10          David to let him know what was happening.

**DEPOSITION OF CHRIS JENSEN  
AUGUST 5, 2013**

1 Q: Would you state your name for the record?

2 A: My name is Jensen, Chris Jensen.

3 Q: Where do you reside, Mr. Jensen?

4 A: I reside in Cheapside, State of Lone Star.

5 Q: Do you work up here in Armadillo?

6 A: No, I do business where I reside, which is Cheapside.

7 Q: Where were you raised, Mr. Jensen?

8 A: I was raised in Exile.

9 Q: Oh, I see. Are you a political refugee?

10 A: No, Exile, Lone Star. Over near Dry Frio River.

11 Q: A dry river?

12 A: It's Lone Star, sonny. Are we going to get down to business here?

13 Q: Tell us about your educational background.

14 A: Well, I went to high school at a high school for the gifted and talented because I was both  
15 gifted and talented. Still am, by the way.

16 Q: Where did you go after high school?

17 A: I went to Lone Star Technical Institute where I achieved a degree in obscure English  
18 literature.

19 Q: Obscure English literature?

20 A: Yes, where you learn to recognize obscure references like "Mrs. Grundy."

21 Q: What did you do after graduating from college?

22 A: Well, there's not that much work for folks with degrees in obscure English lit, so I went  
23 to UCLA and obtained a masters degree in entertainment management.

24 Q: What did you do then?

25 A: I then went to work at a recording studio in Memphis. At that same time, I was taking

**DEPOSITION OF CHRIS JENSEN  
AUGUST 5, 2013**

1 night classes at Lone Star Tech to become a certified anesthetist, in case the  
2 entertainment gig didn't work out. Turns out those two things go hand in hand.

3 Q: Was that Memphis, Tennessee?

4 A: No, Memphis, Lone Star. After a couple of years, I had picked up some country western  
5 clients, so I moved to Cheapside, the undisputed home of CW music. I set up a  
6 management company in Cheapside.

7 Q: How long have you been running that entertainment business in Cheapside?

8 A: I've been rocking out there for 15 years now.

9 Q: Were you asked to review the situation involving the final tour of David Kitner?

10 A: Yes, the poor, distraught widow asked me to take a look at the situation and give an  
11 opinion, based on my training and experience in the entertainment industry, as to whether  
12 MEGA Entertainment was negligent in its hiring and supervision of one John Martin,  
13 M.D.

14 Q: What did you look at in connection with your review of the situation?

15 A: I looked at the unsigned agreement between MEGA and Dr. Martin, and some emails that  
16 went back and forth. I looked at the transcript of the trial of Dr. Martin, where he was  
17 found guilty of involuntary manslaughter in connection with the death of David Kitner, a  
18 rock legend. I've read the depositions of the other witnesses in this case.

19 Q: Can you identify Exhibit 6?

20 A: Yes, Exhibit 6 is the official autopsy report, which I obtained from the lawyers who  
21 represented Dr. Martin in his criminal trial. As you can see, it's a certified copy of that  
22 report.

23 Q: Do you have a copy of the trial transcript still?

24 A: No, I gave it back to Dr. Martin's lawyers so they could prepare his appeal from the  
25 conviction. You never know when I might get it back.

**DEPOSITION OF CHRIS JENSEN  
AUGUST 5, 2013**

1 Q: What did you observe in the autopsy report that was important to your opinion?

2 A: Well, the autopsy report and the toxicology reports that accompanied it showed that the  
3 cause of death of Mr. Kitner was a massive coronary event, caused by an injection into  
4 his system of a drug known as Propofol, followed closely in time by the injection of  
5 adrenalin. And what that means to me is that Dr. Martin was in fact responsible for  
6 Kitner's untimely demise.

7 Q: Couldn't you have discerned that from the guilty verdict?

8 A: No. As you are well aware, Lone Star juries are notoriously fickle. For all I knew, they  
9 convicted Dr. Martin just because they were Kitner fans. I had to see for myself that the  
10 Propofol was the cause of death. Exhibit 6 shows that.

11 Q: Can you identify Exhibit 9?

12 A: Yes, Exhibit 9 is a medical record showing that Dr. Martin had prescribed Propofol for  
13 David Kitner back in 2006.

14 Q: Can you identify Exhibit 13?

15 A: Yes, that's a prescription for Propofol, also for Kitner, also from Martin.

16 Q: In the entertainment business, do management companies like yours often hire doctors to  
17 look after their clients, those pricey, ego-driven rock stars?

18 A: Yes, that's a pretty common practice. There's a lot of need for a doctor to be on the  
19 scene at all times. Throats get sore, you get guitar string injuries, these folks fall off of  
20 the stage or off of cherry pickers, that sort of thing. Plus, when you're talking about half  
21 a billion dollars in profit from a tour like Kitner's, you can afford to have a doc around all  
22 the time just to make the stars feel like they're special. I've done the same thing dozens  
23 of times.

24 Q: Do you have an opinion, based on your education, background and experience, as to  
25 whether MEGA was negligent in hiring and supervising Dr. Martin to be the personal

**DEPOSITION OF CHRIS JENSEN  
AUGUST 5, 2013**

1           physician for Mr. Kitner?

2   A:    In my opinion, MEGA was negligent in hiring Dr. Martin to look after Mr. Kitner. Mr.  
3           Kitner was a known drug user. He had a bad reputation in the community for abuse of  
4           drugs. Dr. Martin was a constant companion of Mr. Kitner, and knew or absolutely  
5           should have known that Mr. Kitner was using drugs, including cocaine and pain killers.

6   Q:    I want you to assume for purposes of this question that MEGA Entertainment hired Dr.  
7           Martin to keep Mr. Kitner in tip top physical condition for his upcoming come- back tour.  
8           Do you have an opinion, based on your knowledge and experience, as to whether MEGA  
9           Entertainment was negligent in hiring Dr. Martin?

10   A:   Yes, MEGA was negligent for several reasons. First, Dr. Martin had a bad reputation in  
11           the medical community. He was known for catering to his patients.

12   Q:    What do you mean by that?

13   A:    Dr. Martin had a bad reputation in the community for giving his patients whatever  
14           medications they wanted even when it was not medically warranted. Witness the fact, for  
15           example, that Dr. Martin was giving Kitner Propofol. Propofol is a powerful anesthetic  
16           that should only be administered in operating rooms. If MEGA had contacted me or any  
17           other person in the entertainment management community it would have learned that Dr.  
18           Martin was way too happy with the drugs.

19   Q:    Why would people in the entertainment management business be aware of the reputation  
20           of a doctor?

21   A:    There aren't that many doctors who will drop their whole money-mill practices to go on  
22           the road with a rock star, so we all keep our ears to the ground and learn what we can  
23           about those folks. You can't be too careful hiring doctors these days.

24   Q:    Why is that?

25   A:    Lone Star tort reform has made it impossible to sue doctors, so there's been a veritable

**DEPOSITION OF CHRIS JENSEN  
AUGUST 5, 2013**

1 gold rush of unqualified practitioners into the state. Just because a doctor is there and  
2 licensed and all doesn't really mean anything anymore. You've got to know the  
3 reputation. It's the only lifeline we have left.

4 Q: Can you identify Exhibit 14?

5 A: Yes, Exhibit 14 is a study done by the coroners office down in Austin. It shows that in  
6 the past fourteen years in Austin there have been thirty-one deaths attributed to the use of  
7 Propofol in decedents who were not in surgery or even in a hospital at the time the  
8 Propofol was administered. This study shows just how dangerous it is to play with  
9 Propofol if you do not know what you are doing.

10 Q: Can you identify Exhibit 10?

11 A: Yes, that is a photograph of the Propofol bottle that was found at the foot of Kitner's bed  
12 in the master bedroom where he died.

13 Q: Are there any other reasons that you know of that MEGA should not have hired Dr.  
14 Martin?

15 A: Yes, on a different level, MEGA should not have hired Dr. Martin because he was a  
16 known pedophile. That fact was reasonably calculated to cause Kitner's stress, because  
17 Kitner had recently been acquitted of similar charges. It was like a constant reminder of  
18 that unpleasant chapter in his life. You do not want a doctor who causes stress if you are  
19 trying to relieve stress.

20 Q: Can you identify Exhibit 8?

21 A: Yes, that is a certified copy of the Judgment of Conviction of Dr. John Martin nine years  
22 ago for sexual assault of a child.

23 Q: Assume with me for the purpose of this question that MEGA Entertainment was paying  
24 or promising to pay Dr. Martin \$150,000.00 per month for his treatment of David Kitner;  
25 do you have an opinion as to whether that put Dr. Martin in a difficult ethical position?

**DEPOSITION OF CHRIS JENSEN  
AUGUST 5, 2013**

1 A: Yes, it put Dr. Martin in an untenable ethical position. Any doctor would have been  
2 tempted to do whatever he needed to do to keep that kind of money coming in, including  
3 giving drugs that weren't medically necessary. It is worse here, though, because Dr.  
4 Martin was deeply in debt. He had to stay on this gravy train.

5 Q: Can you identify Exhibit 5?

6 A: Yes, that is a financial statement from Dr. Martin. Not a pretty picture.

7 Q: Do you have an opinion as to whether MEGA should have exercised supervision over Dr.  
8 Martin in his treatment of Kitner?

9 A: You know, Kitner was a well known drug user. MEGA knew that, because anybody  
10 would know that. MEGA should have exercised a strict degree of supervision over Dr.  
11 Martin to insure that he was keeping Kitner off of the drugs. That was the whole idea  
12 here, to make sure Kitner was healthy.

13 Q: How would anybody have known Kitner was a drug user?

14 A: Reputation, for one. Also, all of us in this business read the scholarly journal Rolling  
15 Stone magazine, where this had been reported more than once about Kitner.

16 Q: Can you identify Exhibit 12?

17 A: Yes, that's a copy of an article from Rolling Stone about Kitner's recent relapse into the  
18 world of happy, happy, happy.

19

20

21

22

23

24

25

**DEPOSITION OF ZEKE FORTENBERRY  
FEBRUARY 4, 2012**

1 Q: Will you state your full name for the record, please?

2 A: My name is Zeke Fortenberry, no middle name, and no other identification.

3 Q: And what is it that you do for a living, Mr. Fortenberry?

4 A: I am an Executive Vice President of MEGA Entertainment.

5 Q: Where were you raised?

6 A: I was raised in Beverly Hills.

7 Q: Beverly Hills, California?

8 A: No, Beverly Hills here in Lone Star. It's up in McLennan County.

9 Q: What did you do after you graduated from high school in Beverly Hills?

10 A: I attended college in Los Angeles.

11 Q: Los Angeles, Lone Star?

12 A: No, the Los Angeles in Lone Star is too far south for me. We are talking California. USC.

13 Q: What degree did you earn at USC?

14 A: I earned a Master of Business Administration.

15 Q: What did you do after graduating from USC?

16 A: I wanted to hang around Los Angeles, so I started working for a record company. I got  
17 interested in promoting entertainers, and started working for MEGA Entertainment  
18 Group. I went through several promotions until I obtained my current position of  
19 Executive VP.

20 Q: What are your job responsibilities as Executive VP of MEGA Entertainment?

21 A: My job responsibilities currently include supervising, organizing, and generally being  
22 responsible for concert tours featuring major artists.

23 Q: Were you involved in promoting the come-back tour of David Kitner?

24 A: Yes, I was directly responsible as part of my job as Vice President of MEGA to take care  
25 of all of the details regarding that come-back tour.

**DEPOSITION OF ZEKE FORTENBERRY  
FEBRUARY 4, 2012**

1 Q: As part of your responsibilities regarding the Kitner come-back tour, did you negotiate  
2 the terms and conditions of Kitner's contact?

3 A: Of course. That was actually a pretty easy negotiation, because Kitner was very anxious  
4 to do this come-back tour. He viewed it as his one chance to get back into the limelight  
5 after that unfortunate criminal trial, in which he was fortunately acquitted.

6 Q: In your position of Executive Vice President, were you responsible for negotiating the  
7 contract between MEGA and Dr. John Martin?

8 A: Yes, I was responsible for attempting to negotiate the contract that never occurred  
9 between MEGA and John Martin.

10 Q: Why do you say "the contract that never occurred?"

11 A: Because with Dr. Martin, we would send him a draft of the contract, he would mark it up  
12 and send it back. There were several drafts that passed back and forth, back and forth,  
13 back and forth. Our in house counsel, Tim Williams, spent hours trying to get a draft of  
14 that contract that would please Dr. Martin's lawyer, a real hardnose named Kathleen  
15 Petersyn.

16 Q: Were these difficult negotiations?

17 A: Duh. Little Timmy Williams spent several weeks trying to iron out the agreement, but  
18 that woman, Kathleen Petersyn, would always find something new to complain about in  
19 every draft that was passed back and forth.

20 Q: Can you identify Exhibit 2?

21 A: Yes, that is the last draft of the contract that was sent by MEGA to Dr. Martin's crazy  
22 lawyer.

23 Q: Was this ever signed?

24 A: Nope.

25 Q: At the time you were dealing with Kitner, was MEGA aware that Kitner was a drug user?

**DEPOSITION OF ZEKE FORTENBERRY  
FEBRUARY 4, 2012**

1 A: Absolutely not. We had no idea that Kitner was using drugs.

2 Q: Were you aware that Dr. Martin was administrating Propofol to David Kitner for  
3 sleeplessness?

4 A: Again, we were absolutely not aware that Dr. Martin was giving Kitner Propofol for any  
5 reason. We would not have agreed to produce this expensive tour if we had known that  
6 Kitner was using Propofol as some kind of kinky sleep aid. We are not in the gambling  
7 business.

8 Q: What did MEGA do to supervise or monitor Dr. Martin's treatment of Mr. Kitner?

9 A: We didn't need to do anything. We just needed to look at the man to see if he was being  
10 David Kitner. And he was. He was actually looking pretty good.

11 Q: Did you follow the details of the tour preparations?

12 A: I followed those very closely. I even insisted on watching all of the rehearsals.

13 Q: Were you in attendance at the last rehearsal Kitner did, about 12 hours before his death?

14 A: Yes, of course.

15 Q: How did Kitner appear at that rehearsal?

16 A: He appeared to be lucid and energetic. He was playing complex riffs on the guitar, he  
17 was singing all the lyrics of 15 different songs without difficulty, he was dancing around  
18 like a ballerina. There was even one point where he leaped over several speakers and  
19 tried to grab hold of a cherry picker that they were using to hang stage lights. I'd have to  
20 say that we had not seen that David Kitner for months, maybe years.

21 Q: Watching that last rehearsal, did you have any reason to believe that Mr. Kitner was in  
22 poor health?

23 A: From all appearances, he was fit as a fiddle. I wasn't worried at all about his state of  
24 health. Never had been.

25 Q: Do you recognize Rolling Stone magazine as an authoritative source of information for

**DEPOSITION OF ZEKE FORTENBERRY  
FEBRUARY 4, 2012**

1 people in the rock & roll entertainment management industry?

2 A: Rolling Stone is the absolute bible. We find it to be very reliable, and we rely on it  
3 constantly to determine what our rock & roll entertainment clients are doing or not doing.  
4 If a star like Kitner sneezes, Rolling Stone reports it, usually before the Kleenex hits the  
5 trash can.

6 Q: Can you identify Exhibit 11?

7 A: Yes, that is a copy of an article from Rolling Stone's magazine in which Kitner's come  
8 back tour was announced.

9 Q: Can you identify Exhibit 12?

10 A: Yes, it is another copy of Rolling Stone, from about one month prior to Kitner's death.

11 Q: Can you identify Exhibit 15?

12 A: Yes, this an e-mail string between me and Paul concerning tour expenses. You'll see that  
13 the expenses include Kitner's personal physician, something Kitner's lawyer was  
14 demanding. In retrospect, I should have turned Kitner down flat.

15 Q: Can you identify Exhibit 16?

16 A: Yes, this is an e-mail from Paul about Dr. Martin pinging for payment from MEGA.

17 Q: Did you respond to this e-mail?

18 A: Why would I, if he hadn't signed a contract yet.

19 Q: Prior to hiring Dr. Martin, did MEGA do any kind of background check?

20 A: Under the circumstances, no. David Kitner was demanding that we hire Dr. Martin.  
21 David Kitner was going to be the star of this half-billion dollar come-back tour. What  
22 Kitner wanted, Kitner got.

23 Q: Did you do any kind of credit check on Dr. Martin?

24 A: We are not in the business of investigating medical doctors. This guy had a valid license  
25 from the State of Lone Star; he had been a practitioner for years and years. He was a

**DEPOSITION OF ZEKE FORTENBERRY  
FEBRUARY 4, 2012**

1 cardiologist, for goodness sake. You don't check out people who are clearly qualified.

2 Q: Can you identify Exhibit 17?

3 A: Well, that's an email that Guitar showed me at some point in time. He was having a back  
4 and forth sort of exchange with Kitner, trying to keep David from freaking out, which  
5 was a full time job, let me tell you.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**DEPOSITION OF CORY HARBOR  
AUGUST 12, 2013**

1 Q: What is your name?

2 A: My name is Cory Harbor.

3 Q: What is your occupation or profession?

4 A: I'm a concert promoter here in the state of Lone Star.

5 Q: Where do you live?

6 A: I live here in Armadillo with my spouse and three adorable children.

7 Q: Where were you raised, Mr. Harbor?

8 A: I was raised in Austin.

9 Q: What? No strange town name?

10 A: When you're in Austin, you've got enough strange without the name.

11 Q: What is your educational background?

12 A: Well, after I got out of high school, I went to Yale University, majoring in economics and  
13 pharmacology. After I got out of there, I went to Lone Star A&M graduate school, where  
14 I obtained a Masters in Business Administration. That's MBA, in case you missed it.

15 Q: Why did you choose to go to graduate school at A&M?

16 A: After being in Yale for a while, I wanted to be in a school where they had good old-  
17 fashioned fun, like football games with male cheerleaders and crazy big bonfires and  
18 stuff like that.

19 Q: Has it been long enough to joke about that?

20 A: We'll see.

21 Q: What did you do after graduating from Lone Star A&M?

22 A: I was offered and accepted a position at Capital Records. Worked at the LA office for  
23 several years, then came back to Lone Star to open a branch office for Capital. They let  
24 me put a branch in Armadillo.

25 Q: What brought you to Armadillo?

TESTIMONY OF CORY HARBOR - 1

**DEPOSITION OF CORY HARBOR  
AUGUST 12, 2013**

1 A: I like places that are flat, and Armadillo sure as hell fits that description.

2 Q: Have we asked you to look at the facts and circumstances surrounding the unfortunate  
3 death of David Kitner and to render opinions regarding the conduct of Dr. John Martin  
4 and the conduct of MEGA Entertainment?

5 A: Yes, and I have done just that.

6 Q: What did you review in reaching your opinions?

7 A: I reviewed the emails between Kitner and MEGA and Martin. I've reviewed the contract  
8 that's marked as Exhibit 2, the Rolling Stone articles, the financial information on Dr.  
9 Martin, a couple of judgments of conviction, and the depositions of all of the other  
10 witnesses in this case. It is my understanding that I am the last person to be deposed in  
11 this case.

12 Q: Based on your review of the various things that you just described, have you formed an  
13 opinion based upon your experience and your training, as to whether MEGA  
14 Entertainment Group was negligent in employing, retaining, or supervising Dr. John  
15 Martin?

16 A: I have formed opinions with respect to those matters, yes.

17 Q: And what are those opinions?

18 A: Generally, it is my opinion that MEGA was not negligent in connection with its hiring of  
19 Dr. Martin. Additionally, I do not believe MEGA was negligent in connection with its  
20 supervision of Dr. Martin.

21 Q: What are those opinions based upon?

22 A: First, if you look at Exhibit 2, you notice that it is not signed. I do not believe that  
23 MEGA actually ever formally hired Dr. Martin. Second, it was David Kitner, not  
24 MEGA, that chose Dr. Martin. Dr. Martin had been Kitner's doctor for a long time. If  
25 you will look at Exhibit 9, you will see that Dr. Martin was treating Mr. Kitner well

TESTIMONY OF CORY HARBOR - 2

**DEPOSITION OF CORY HARBOR  
AUGUST 12, 2013**

1 before this current tour was even dreamed about.

2 Q: Do you recognize Rolling Stone magazine as a reliable and authoritative source of  
3 information for people who are in the entertainment business?

4 A: It's the Holy Grail. I think I would have to conclude that I was purely negligent if I  
5 didn't read Rolling Stone cover to cover every time it comes out.

6 Q: Do you recognize Exhibit 11?

7 A: Yes, that is a Rolling Stone article in which the Kitner comeback tour was announced.  
8 You can see in this article that Dr. Martin is mentioned as Kitner's long time friend and  
9 doctor.

10 Q: Are you familiar with other instances in which a promoter of a tour has hired a doctor to  
11 make sure that the star is in top shape?

12 A: This happens all the time. Stars are pretty fragile. They burn out. They become black  
13 holes. Somebody has got to be there pretty constantly to keep them healthy.

14 Q: In your experience, is it negligence for an entertainment company to hire a cardiologist to  
15 assist a star like David Kitner?

16 A: No, Dr. Martin was really over qualified. Usually, you get somebody who only knows  
17 how to administer methadone or something like that. If you get my drift. Certainly Dr.  
18 Martin was fully trained and had all the experience he needed to treat Kitner's various  
19 maladies, most of which were related to drugs like cocaine.

20 Q: In your opinion, should MEGA have known that Kitner was using Propofol or that Dr.  
21 Martin was facilitating the acquisition and use of Propofol by Kitner?

22 A: No, until Kitner died, nobody really knew that he was using something as dangerous as  
23 Propofol.

24 Q: Doesn't this Rolling Stone article that is marked as Exhibit 11 mention the use of  
25 "unconventional sleep aids?"

TESTIMONY OF CORY HARBOR - 3

**DEPOSITION OF CORY HARBOR  
AUGUST 12, 2013**

1 A: Yea, but it doesn't say Propofol, does it?

2 Q: Can you identify Exhibit 12?

3 A: Yes, Exhibit 12 is another Rolling Stone article about a month before Kitner's death. It  
4 reportedly says that Kitner was notoriously back to using various drugs. You can see  
5 from this that Kitner was very open about the illegal drugs that he used and abused. But  
6 you don't see any mention of Propofol. If Kitner was using Propofol, he would have  
7 bragged about it. He was just that kind of guy. He was very secretive apparently about  
8 the Propofol, and there is no reason to believe that MEGA should have discovered it.  
9 That would have taken a private investigator. An entertainment company just doesn't  
10 hire a private investigator to go looking into the lives of its rock stars.

11 Q: Can you identify Exhibit 13?

12 A: Sure, that appears to be a prescription for Propofol.

13 Q: Who wrote the prescription?

14 A: Is this a trick question? But you have to understand that this was years ago. There is no  
15 reason to believe that Dr. Martin was aware of Kitner's continued abuse of prescription  
16 drugs just before he died.

17 Q: From the evidence that you have seen, did MEGA have any reason to believe that  
18 Kitner's health was fragile just before his death?

19 A: Mr. Fortenberry testified that he saw Kitner's last rehearsal and there wasn't anything  
20 wrong with Kitner at the time. If Kitner didn't look sick at that rehearsal, then MEGA  
21 had no reason to believe that he was slated to be dead within hours. MEGA didn't have a  
22 crystal ball.

23 Q: Do you have an opinion as to whether MEGA Entertainment should have done a more  
24 through credit check or background check on Dr. Martin than it did?

25

TESTIMONY OF CORY HARBOR - 4

**DEPOSITION OF CORY HARBOR  
AUGUST 12, 2013**

1 A: In my experience with entertainment companies, nobody checks out the doctors that are  
2 hired to keep the stars healthy. Keep some perspective about this. These are medical  
3 professionals. They are licensed by a state board. They aren't some kind of garden  
4 variety convicted criminals with a bad credit history, for goodness sake.  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



THE STATE OF LONE STAR

§ IN THE 921ST DISTRICT

v.

§ COURT

DR. JOHN MARTIN

§ TRAVIS COUNTY, LONE STAR

STATE ID No.: TX2239

§

**JUDGMENT OF CONVICTION BY JURY**

Judge Presiding: **HON. CHRISTY JONES** Date Judgment Entered: **7/7/2011**

Attorney for State: **MICHAEL CLANCY** Attorney for Defendant: **RON LEIGHTON**

Offense for which Defendant Convicted:  
**INVOLUNTARY MANSLAUGHTER OF A ROCK LEGEND, TO WIT, DAVID KITNER SR.**

Charging Instrument: **INDICTMENT** Statute for Offense: **LS PENAL CODE SEC. 19.04**

Date of Offense: **5/9/2011**

Degree of Offense: **1ST DEGREE FELONY** Plea to Offense: **NOT GUILTY**

Verdict of Jury: **GUILTY** Findings on Deadly Weapon: **NO**

Plea to 1<sup>st</sup> Enhancement Paragraph: **N/A** Plea to 2<sup>nd</sup> Enhancement/Habitual Paragraph: **N/A**

Findings on 1<sup>st</sup> Enhancement Paragraph: **N/A** Findings on 2<sup>nd</sup> Enhancement/Habitual Paragraph: **N/A**

Punished Assessed by: **JURY** Date Sentence Imposed: **7/14/2011** Date Sentence to Commence:

Punishment and Place of Confinement: **2 YEARS COUNTY JAIL**

**THIS SENTENCE SHALL RUN CONCURRENTLY.**

**SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR 2 MONTHS.**

Fine: \$ **N/A** Court Costs: \$ **753** Restitution: \$ **0** Restitution Payable to:  VICTIM (see below)  AGENCY/AGENT (see below)

**Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.**

**Sex Offender Registration Requirements do not apply to the Defendant.** L.S. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.  
Time Credited: From to From to From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

**N/A DAYS NOTES: N/A**

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Travis County, Lone Star. The State appeared by her District Attorney.

**Counsel / Waiver of Counsel (select one)**

Defendant appeared in person with Counsel.  
 Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.  
It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

**Punishment Assessed by Jury / Court / No election (select one)**

**Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

**Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

**No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

**Punishment Options (select one)**

**Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State or the Sheriff of this County to take, safely convey, and deliver Defendant to the . The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the . Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

**County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of **Travis** County, Lone Star on the date the sentence is to commence. Defendant shall be confined in the **Travis** County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the . Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

**Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the Office of the County . Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

**Execution / Suspension of Sentence (select one)**

The Court **ORDERS** Defendant's sentence **EXECUTED**.

The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

**Furthermore, the following special findings or orders apply:**

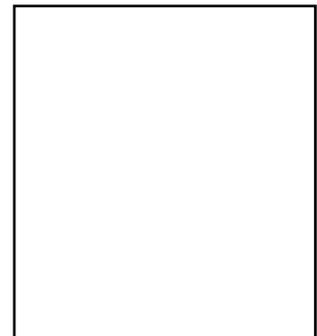
Signed and entered on July 14, 2011

X Christy Jones

CHRISTY D. JONES

JUDGE PRESIDING

Clerk:



Right Thumbprint

## AGREEMENT

THIS AGREEMENT (this "Agreement") is made effective as of May 1, 2011 by and among MEGA ENTERTAINMENT, INC. ("Producer"), on the one hand, and Dr. John Martin ("Dr. Martin"), on the other hand.

## RECITALS

A. Producer holds the exclusive right to produce and promote a series of concert performances of David Kitner, a rock legend, (the "Artist") scheduled to take place at the 02 Arena in Turkey, Lone Star and other United States and European venues between approximately July 13, 2011 and March 6, 2012 ("First Concert Series") (the "Artist Agreement"). Producer has agreed to retain the services of Dr. Martin for the benefit of the Artist throughout the duration of the Concert Series on the terms set forth herein.

B. Dr. Martin represents he is a licensed cardiologist practicing in Las Vegas, Lone Star and that he acts as the Artist's general practitioner. MEGA desires to contract for, and Dr. Martin desires to provide medical services to the Artist during the Concert Series on the terms set forth herein.

## AGREEMENT

NOW THEREFORE, in consideration for the mutual covenants that are contained in this Agreement, the parties hereto hereby agree as follows:

1. **SCOPE OF SERVICES.** Producer hereby engages Dr. Martin to provide the services of Dr. Martin, and Dr. Martin hereby agrees that Dr. Martin will provide general medical care to the Artist throughout the duration of the Term ("Services"). Such Services will be administered professionally and with the greatest degree of care to be expected from similarly situated members in the medical field. Such services shall include, without limitation, tending to the Artist's general medical needs and assisting and treating the Artist in the case of a medical emergency. Dr. Martin shall also provide such other services as are reasonably requested by Artist from time to time during the term hereof. Dr. Martin shall perform such services in European venues during any time periods in which the Artist is located in venues and at all other times during the Term, the Services will be performed in the United States.

2. **COMPENSATION AND OTHER BENEFITS.** As full and complete compensation for all of the Services to be provided by Dr. Martin under this Agreement, Producer shall remit payment to Dr. Martin in the amount of \$150,000 per month to be paid on the later of the fifteenth day of the month or five (5) business days after the execution and delivery of the Agreement. Such monthly payment shall compensate Dr. Martin for the services rendered by Dr. Martin commencing on the 1st day of the applicable month through and including the last day of such month.

3. **RESPONSIBILITIES OF DR. MARTIN.** Without in any way limiting any other term or provision of this Agreement or any obligation of Dr. Martin hereunder, Dr. Martin shall:

3.1 Perform the Services reasonably requested by Producer.

3.2 Adhere to all laws, policies, rules, and regulations applicable to the Services to be provided by Dr. Martin pursuant to this Agreement.

3.3 Obtain, maintain and comply with all licenses, permits and franchises or other approvals required by any applicable law or from any governmental agency or authority to p e r m i t or otherwise legally authorize Dr. Martin to perform a n y and all of the Services and to fulfill all of h i s obligations under this Agreement including in accordance with any and all applicable laws in the applicable venue.

3.4 Present to Producer within two (2) weeks from the date of this Agreement documented proof of any and all licenses required for Dr. Martin to practice medicine in the United States and to perform the Services under this Agreement.

4. TERMINATION. The Term of this Agreement and this Agreement may be terminated as

4.1 Immediately by Producer or Dr. Martin, respectively, for cause upon the failure of the other to perform any of its material obligations hereunder which has not been cured within 5 business days following the defaulting party's receipt of written notice from the non-defaulting party, or, if cure is not reasonably possible within said 5 business day period, if the defaulting party has not taken meaningful steps within such time to cure such default and thereafter promptly cure such default.

4.2 Immediately by Producer if the Artist decides for any reason that the Artist no longer wants or needs the services of Dr. Martin.

5. ENTIRE AGREEMENT. This Agreement expresses and contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes and replaces any and all prior agreements and understandings, either oral or written, with respect to the subject matter hereof. This Agreement may not be modified, altered or amended except by a written instrument signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement at Paris, Lone Star and have made it effective as of the day and year first above written.

MEGA ENTERTAINMENT, INC.

\_\_\_\_\_  
Name  
Title: An Authorized Representative  
Dated: May \_\_\_\_, 2011

DR. JOHN MARTIN, M.D.

\_\_\_\_\_  
Dated: May \_\_\_\_, 2011

---

**From:** John Martin  
**Sent:** Monday May 9, 2011 8:03 AM  
**To:** MEGA Entertainment  
**Subject:** RE: David Kitner  
**CC:** D Kitner

On top of it.

John

---

**From:** MEGA Entertainment  
**Sent:** Monday May 9, 2011 8:03 AM  
**To:** John Martin M.D.  
**Subject:** David Kitner

John: We've had another complaint from David about your refusal to treat his "pain issues." He says you're spending less and less time with him and more and more time with your girlfriend Tats. We want to remind you that we agreed to pay your \$150,000 per month salary on the condition that you have David ready for his "This is S\*\*t" tour. This is pretty simple—David can't perform if he doesn't practice. David can't practice if he's in pain. We certainly don't want to interfere with your "professional judgment" as you call it, but we may need a second opinion from someone who is more on top of the job and less on top of Tats.

Please take care of this.

*Paul "Guitar" Gutierrez  
Executive Vice President  
MEGA Entertainment*

EXHIBIT 3

---

**From:** D Kitner  
**Sent:** Friday, April 15, 2011 3:03 PM  
**To:** Paul Gutierrez, MEGA Entertainment  
**Subject:** John Martin, M.D.

Guitar: just paid my taxes and it really pisses me that my cash flow is so very pinched by the fact that you all are still not paying John.

Get on the ball and get it happening. Or as the song says "who do you love?"

David K

EXHIBIT 4

# AGREEABLE STATE BANK

# FINANCIAL STATEMENT

## SECTION 1 PERSONAL INFORMATION

Single
  Married
  Separated
  Divorced

Borrower's Name	Dr. John Martin	SSN	158-73-1547	Birth Date	01/15/58
Address		City / State		Zip Code	76706-1000
Occupation	Medical Doctor	Position		Years	
Spouse's Name	N/A	SSN	N/A	Birth Date	N/A
Occupation	N/A	Position	N/A		
Business Name	Dr. John's Heart Clinic	Bus. Type	Medical Clinic	EIN / TIN	N/A
Address	1492 Penguin Way	City / State	Armadillo, TX	Zip Code	76707-5647
Business / Work Phone	555-322-5815	Cell Phone	555-452-6497	Home Phone	

## SECTION 2 STATEMENT OF FINANCIAL CONDITION

as of:

CURRENT ASSETS		(Omit Cents)	CURRENT LIABILITIES		(Omit Cents)
<b>Cash:</b>	In this Bank	\$110,325.00	<b>CPLTD:</b>	Oil & Gas Interests	-
	In other Institutions	98,754		Real Estate Notes Payable	-
<b>Securities:</b>	Marketable	105,874		Other Term Notes Payable	-
	Non-Marketable		<b>Accounts Payable:</b>	Accounts Payable	-
<b>Accounts &amp; Notes Receivable</b>		-		Bank Revolving Lines	-
<b>Cash Value of Life Insurance</b>		12,587		Estimated Credit Card Balances	45,897
<b>Other Current Assets:</b>			<b>Taxes Payable:</b>	Federal Income Taxes	16,489
				Real Estate & Other Taxes	24,324
			<b>Other Current Liabilities:</b>		
<b>TOTAL CURRENT ASSETS</b>		<b>327,540</b>	<b>TOTAL CURRENT LIABILITIES</b>		<b>86,710</b>
NON-CURRENT ASSETS		(Omit Cents)	NON-CURRENT LIABILITIES		(Omit Cents)
<b>Real Estate:</b>	Homestead	1,458,978	<b>Mortgages Payable:</b>	Homestead	1,656,000
	Investment Property			Investment Property	
	Other Real Estate			Other Real Estate	
<b>Other Business Interests</b>		-	<b>Notes Payable:</b>	Oil & Gas Interests	
<b>Deferred Comp. &amp; Retirement Plans</b>		458,721		Other Business Interests	
<b>Oil &amp; Gas Interests</b>		-		Automobiles	
<b>Non-Current Accounts &amp; Notes Receivable</b>				Other Term Notes Payable	212,548
<b>Other Non-Current Assets:</b>			<b>Other Non-Current Liabilities:</b>	Judgment in Nevada	589,741
				Back Child Support	56,987
				Judgment in Kentucky	24.95
			<b>TOTAL LIABILITIES</b>		<b>\$2,602,011</b>
			<b>NET WORTH (Assets less Liabilities)</b>		<b>(\$356,772)</b>
<b>TOTAL ASSETS</b>		<b>\$2,245,239</b>	<b>TOTAL LIABILITIES &amp; NET WORTH</b>		<b>\$2,245,239</b>

Signed: John Martin, M.D. Date: March 10, 2011

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

I performed an autopsy on the body of David Nellie Kitner, Sr. at the DEPARTMENT OF PATHOLOGY, CHEAPSIDE HOSPITAL, CHEAPSIDE, LONE STAR on May 11, 2011.

From the anatomic and laboratory findings and pertinent history, I ascribe the death to: **MASSIVE CARDIAC ARREST SECONDARY TO DRUG INTERACTION(S)**.

---

EXTERNAL EXAMINATION:

The body of DAVID NELLIE KITNER, SR. is that of a well-developed, somewhat obese Caucasian male stated to be 65 years old. The body weighs 224 pounds, measuring 69 inches from crown to sole. The remaining hair on the scalp is salt and pepper in color and straight. The irides appear hazel with the pupils fixed and dilated. The body bears several identifying tattoos, including a tattoo depicting the Battle of Waterloo across the buttocks.

The head is normocephalic, and there is no evidence of external traumatic injury.

CARDIOVASCULAR SYSTEM:

The heart weighs 290 grams, and has a normal size and configuration. Dissection reveals evidence of a severe myocardial episode.

TOXICOLOGY:

A sample of right pleural blood as well as bile are submitted for toxicologic analysis. Findings included levels of Propofol, adrenalin and hydrocodone. Trace analysis performed independently from toxicology laboratory reveals slight residual levels of cocaine, THC, ketamine, and a chemical mixture of sodium hydroxide and aluminum powder. None of the trace drugs or chemicals was contributory to death.

OPINION:

The decedent apparently injected propofol in the presence of hydrocodone. The resulting symptoms were treated by injection of adrenalin, which produced a massive cardiac arrest episode leading to death.

The remainder of the autopsy revealed a normal, healthy adult male with no congenital anomalies.

/s/ DR. PAMLA BASKRVILL, M.D.  
CHIF MDICAL XAMINR  
May 12, 2011

EXHIBIT 6

<p><b>CORI HARBOUR CAÑAS</b></p> <p><i>Plaintiff,</i></p> <p>v.</p> <p><b>JOHN MARTIN, M.D.</b></p> <p><i>Defendant.</i></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>IN THE 531<sup>st</sup> DISTRICT COURT</b></p> <p><b>IN AND FOR TRAVIS COUNTY</b></p> <p><b>STATE OF LONE STAR</b></p>
--	--	--

**PLAINTIFF’S ORIGINAL COMPLAINT**

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Cori Harbour Cañas and files this Original Complaint against John Martin, M.D., showing the Court as follows:

**I.**  
**GENERAL ALLEGATIONS**

1. This is an action for damages within the jurisdictional limits of this Court.
2. Cori Harbour Cañas is a resident of Armadillo, Travis County, Lone Star.
3. John Martin, M.D. is a resident of Paris, Lamar County, Lone Star.
4. The conduct that is the subject of Plaintiff’s Original Complaint occurred in Travis County, State of Lone Star.

**II.**  
**CAUSES OF ACTION**

5. On or about April 27, 2008, Lone Star State Judge Rob Cañas, deceased, visited the Travis Henderson Medical Clinic in Armadillo, Travis County, Lone Star, for the purpose of seeking medical treatment and advice. There, he was seen by Dr. John Martin. Dr. Martin reviewed an information sheet prepared by Judge Cañas,

EXHIBIT 7

which information sheet inquired about medications taken by the patient and listed certain prior health conditions of the patient. The information sheet revealed that Judge Cañas was taking a medication containing nitrates, and that he had experienced chest pains, low blood pressure, dizziness and other symptoms related to heart problems. The information sheet also indicated that Judge Cañas was taking certain medications for erectile dysfunction syndrome.

6. Dr. Martin failed to warn Judge Cañas of the potential drug interactions caused by taking nitrates and medications for erectile dysfunction syndrome, and failed to warn Judge Cañas that taking drugs such as Viagra could cause an unsafe drop in blood pressure in persons who had pre-existing blood pressure and heart conditions.
7. On June 7, 2008, Judge Cañas was found dead in his chambers in the courthouse of Travis County. The cause of Judge Cañas' death was an unsafe drop in blood pressure, caused by the ingestion of Viagra. Further, Judge Cañas was determined to have ingested nitrates at or near the time he ingested Viagra, compounding the effect of Viagra on his low blood pressure problems.
8. Dr. Martin was negligent in failing to warn Judge Cañas of the potential interaction of the medications he was taking, and in failing to warn Judge Cañas of the dangerous effects of taking Viagra in amounts that could cause an unsafe drop in blood pressure. Such negligence was the proximate cause of the death of Judge Cañas.
9. Cori Harbour Cañas was the wife of Judge Cañas at the time of his death. As such, the negligence of Dr. Martin and the resulting death of her husband has

caused Plaintiff to suffer loss of income and support, loss of consortium, mental anguish, grief, loss of society and comfort and loss of inheritance, for which she sues Defendant.

**III.**  
**JURY DEMAND**

10. Cori Harbour Cañas hereby requests trial by jury.

**IV.**  
**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Cori Harbour Cañas requests that the Defendant be cited to answer and appear, and that upon final hearing, she have judgment for damages, pre-judgment and post judgment interest as allowed by law, costs of suit and such other and further relief, at law or in equity, to which she may be justly entitled.

Respectfully Submitted,

SHINEY & RINEY, P.C.  
83 Pauper's Parkway  
P.O. Box 1001  
Armadillo, Lone Star 72115-1001  
(800) 525-6161  
(512) 467-1455

By: /s/ Dusty Stockard (electronically signed)  
Dusty Stockard  
State Bar No. 018569784

The State of Lone Star

§  
§  
§  
§  
§  
§  
§

IN THE 834 DISTRICT

v.

COURT

DR. JOHN MARTIN

PECOS COUNTY, LONE STAR

STATE ID No.: 3432

**JUDGMENT OF CONVICTION BY JURY**

Judge Presiding: HON. BRIAN JACKSON Date Judgment Entered: 12/2/2004  
Attorney for State: DEBRA POLE Attorney for Defendant: RON LEIGHTON

Offense for which Defendant Convicted: SEXUAL ASSAULT OF CHILD

Charging Instrument: INDICTMENT Statute for Offense: LS Penal Code Sec. 22.011

Date of Offense: 1/4/2004

Degree of Offense: 1ST DEGREE FELONY Plea to Offense: NOT GUILTY

Verdict of Jury: GUILTY Findings on Deadly Weapon: NO

Plea to 1st Enhancement Paragraph: N/A Plea to 2nd Enhancement/Habitual Paragraph: N/A

Findings on 1st Enhancement Paragraph: N/A Findings on 2nd Enhancement/Habitual Paragraph: N/A

Punished Assessed by: COURT Date Sentence Imposed: 12/2/2004 Date Sentence to Commence:

Punishment and Place of Confinement: 4 YEARS STATE JAIL DIVISION, LSDCJ

THIS SENTENCE SHALL RUN CONCURRENTLY.

SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR 2 MONTHS.

Fine: \$ N/A Court Costs: \$ 456 Restitution: \$ 2000 Restitution Payable to:  VICTIM (see below)  AGENCY/AGENT (see below)

Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.

Sex Offender Registration Requirements apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was 9 years.

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time Credited: From to From to From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Pecos County, Lone Star. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

Defendant appeared in person with Counsel.

Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

**Punishment Assessed by Jury / Court / No election (select one)**

**Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

**Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

**No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of . CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

**Punishment Options (select one)**

**Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Lone Star or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, LSDCJ** The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the . Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

**County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of County, Lone Star on the date the sentence is to commence. Defendant shall be confined in the County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the . Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

**Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the Office of the County . Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

**Execution / Suspension of Sentence (select one)**

The Court **ORDERS** Defendant's sentence **EXECUTED**.

The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

**Furthermore, the following special findings or orders apply:**

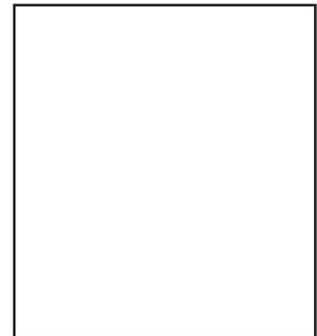
---

**Signed and entered on December 2, 2004**

*X Brian Jackson*

\_\_\_\_\_  
BRIAN JACKSON, JUDGE PRESIDING

Clerk:



Right Thumbprint

**PARIS HEALTH CLINIC, INC.**

Dr. John Martin, MD, FACS, GOLD  
333 Third Street, Armadillo, Lone Star 76704

PATIENT NAME: David Kitner Sr. DATE: April 4, 2006

DOB: \_\_\_\_\_ AGE: \_\_\_\_\_ REFERRING PHYSICIAN: None

PRESENT COMPLAINT: Sleeplessness

DATE PROBLEM BEGAN: Lifelong problem

PROBLEM WORK RELATED? YES ACCIDENT RELATED? NO

DESCRIBE HOW PROBLEM BEGAN: The trouble is, is that sleep doesn't begin.

HAVE YOU HAD PRIOR TREATMENT FOR THIS PROBLEM? YES NO

DESCRIBE PRIOR TREATMENT: \_\_\_\_\_

PLEASE LIST ALL MEDICATIONS YOU ARE CURRENTLY TAKING:

MEDICATION	DOSAGE	FREQUENCY
Hydcodone	Don't know	As I please

DIAGNOSIS: Sleep deprivation disorder, sleeplessness, insomnia

TREATMENT: Ambien as needed, will admin Propofol if Ambien unsuccessful

**EXHIBIT 9**



# KITNER UPDATE: ON THE ROAD AGAIN!

David Kitner has always been one to stun. This time, he stuns the rock world by announcing a spectacular comeback tour, scheduled to begin June 16, 2011 and slated for 50 cities across the U.S. and Europe.

Flanked by high-ranking representatives of MEGA Entertainment, Kitner's long time manager Thea Whalen told breathless fans that Kitner would launch his "This is S\*\*t" World Tour in Turkey, Lone Star. "If it was good enough for the legendary Bob Wills, it's good enough for Kitner," she explained. From there, the Tour will go to Normal, Illinois. "We wanted to hit at least one place in Illinois that had even a modicum of the appearance of normality," Whalen said.

Rolling Stone caught up with Kitner near his home in Armadillo for an exclusive interview about the Tour.

RS: So you're back.

Kitner: Yeah, it aches some when the weather's cold and all.

RS: No, I mean you are back on the road with a new Tour.

Kitner: Oh.

RS: Why Normal, Illinois?

Kitner: We want to feel the Illinois.

RS: Hey, that's clever and original.

Kitner: That's what we do. Original all the way.

RS: OK. How's the fabled sobriety going? You still on the wagon?

Kitner: I had too much to dream last night.

RS: What? Well, never mind. What are you looking forward to most in getting back out in front of your fans?

Kitner: My 19th nervous breakdown.

RS: That's been done, David.

Kitner: I don't keep up with the very newest stuff out there, you know.

RS: What was your inspiration for the title of this Tour?

Kitner: Warm smell of collitas rising up through the air.

RS: Nope, been done.

Kitner: Damn.

RS: What would energize a man of your wealth and fame to leave the comfort of this mansion for the hard times on the road?

Kitner: If you wanna hang out, you gotta take her out.

RS: Are you afraid the road will tempt you back into that notorious drug habit you've famously beat?

Kitner: If I see any temptations coming my way, I'll just say "Hello old friend. It's really good to see you again."

RS: That sounds like the start of a bad problem or a good song.

Kitner: Oh I been flying momma, there ain't no denying.

At this point in the interview, Paul "Guitar" Gutierrez stepped back into the room and told Kitner he was needed on the veranda because of some pool crisis, and offered to provide some details about the Tour.

Asked about the projected cost and revenue of the Tour, Paul shrugged and said "This is history, how can you put a price on it?" Pressed on the subject, Paul admitted that the cost of the Tour had spiraled beyond the original expectations. "We've got a budget you wouldn't believe. This is one of the harder rock stars to work with. He insists on flying first class and even wants his dog Teddy to fly first class. He even has us spending \$150 grand a month to keep his personal physician handy at all times. His own doc! If Kitner could just unwind a little without funky meds, we'd all be better off. But it's Kitner, after all, so we give him whatever he wants, no questions asked."

On the revenue side, Paul predicts that the 50 city Tour will be sold out at some of the world's largest and most famous venues, resulting in a two year gross in the range of \$1.5 billion, with "only" a third actually going to Kitner and costs, and the balance as pure profit. "We wouldn't put up with the antics or pay the bills if we didn't see lots of upside," Paul noted.

Upside indeed. MEGA VP Zeke Fortenberry showed Rolling Stone his internal projections, reflecting profits almost double those described by Gutierrez. "Paul's pretty conservative," Fortenberry claimed. "If we get this one done, MEGA will be on the map for all time. The money flow will be like voting in Chicago: early, often and for pure cash. MEGA is all the way in on this one. We will do whatever it takes."

Other industry analysts sound a more cautionary note, however, pointing to the mercurial nature of most critical factor in the Tour--Kitner himself. "If he falls off the wagon, all bets are off," warned T. John Ward, former federal judge and rock legend in his own right. "Believe me, I've danced with that lady, and she can turn on you in a nanosecond."

We'll see. Tour starts July 13.

KITNER ~~KICKS~~ THE KOKE  
**Rolling Stone**

APRIL 2011



Special K Falls Off Wagon-Again **EXHIBIT 12**

F

lanked by his long-time personal trainer, rock legend David Kitner emerges from his stretch Hummer with a palor rarely seen since his early days in rap. "I feel like s\*\*t!" he complains while pulling his pit bull from the massive machine. "I haven't felt this bad since Teddy here was just a pup." Never mind that Teddy *is* still a pup. The gloom is pervasive. Fans and former fans wanted to believe the unbelievable--that Kitner had finally kicked his cocaine habit. But it was not to be.

Kitner's on-again/off-again drug habit appears to be in another "on-again" phase. Just months ago, it was widely reported--even here--that Kitner was finally free of the cocaine habit that has plagued him (and fueled his music) for decades. His former girlfriend Bree "Tattoo Woman" Trevino is as disappointed as any: "Like, really, I just can't (expletive deleted) believe that Special K is back on the coke. It's like a (expletive deleted) nightmare. I mean, like, who'da (expletive deleted) believed that the (expletive deleted) idiot would fall of the (expletive deleted) wagon again."

What caused this latest fall? "Inevitable," says Zach Hall, Kitner's guitar coach. "Once the double bubble dragon bites your dusty nose, it's almost impossible to slay the yay, so to speak." Hall notes that Kitner's long drug history made it pure fantasy to believe he'd be off the stuff for long. "Only the truly credulous would believe Special K could resist the temptation for long."

One industry insider suggested that Kitner was doomed from the moment he hired his current lawyer, Kathleen Petersyn. "She told Kit she was good, so good that if he liked his drug habit, he could keep his drug habit." Rolling Stone attempted to call Petersyn for her comment on this allegation, but her staff reported that she is on an extended vacation and likely would not be back in the United States until 2018.

Those who are familiar with Kitner are familiar with his storied past. Raised the son of a catfish farmer in the tiny Lone Star town of Concrete, he describes his early years as hard. "There was nothing but fish," he once famously said about Concrete. "Fish for breakfast, fish for lunch, fish popsicles in the afternoon, fish for supper." But the hard times in Concrete served as a jumping off point for Kitner's career. His hard driven

musical style and poetic lyrics were often on display at the local high school, where he regularly entertained the student body before Friday night football games. "There was only 12 people in my whole class, so it wasn't hard to be the star," he recollects.

But the star he was. Those Friday night concerts began to be more popular than the 6 man football being played on the field, so much so that the school officials reversed the order of things. "They started playing the game first, then letting me play my music. It was like the football game was an opening act or something." Graduating from dusty high school football field to bars along the I-35

"I'm screwed for good  
this time. No doubt.  
No redemption. No  
comeback this time.  
Like that other time. Or  
the other one before

corridor, Kitner began to attract a following. "Mostly red-necks, so I played pure old country for quite a time," he reflects. "Those bars lead me to Ted Nugget, the cultural icon of Lone Star, who took me under his wing and taught me the fine art of heavy metal, head-banging, loose-jawed, raw-boned, hyphen-strewn rock, which lead naturally to rap." Kitner made a mark in the rap world before giving it up for progressive/regressive country rock. "My vocabulary increased from 30 words to 300, so I had to give up the rap," he laments.

Increasing popularity, however, lead to an increasingly drug-fueled lifestyle. "He was staying up all night drinking and all day doing drugs," recalls his one-time manager, Gary Winters. "It got so bad that he couldn't keep his attention for more than a chord at a time, so his music was pretty limited." The rock and roll pressure soon lead to hallucinogens. Kitner admits a fondness for mixing various drugs in order to experiment. "Once, I even tried to inject Drano," Kitner admits. According to his publicist, Joe Redden, the

supermarket tabloids exploded with tales of Kitner's antics. "You could follow his whole life just by dropping by the local Safeway for a box of wine."

John Martin, Kitner's long-time personal doctor, quit touring with Kitner because the excesses became too often and too outrageous. "Yeah, I could see what the coke was doing to Special K. I could see it in the photos in National Enquirer and in your righteous rag, Rolling Stone. I just couldn't face up to being with him during that dark time."

Asked about his famous patient's latest fall from grace, Dr. Martin shrugs and says the most current return to drugs is just part of the same old cycle. Dr. Martin notes that many famous drug users have been on and off of drugs, but only a few have a sustained track record of success. "Don't get me wrong," says Martin, "I'd love to see Mr. Kitner return to his former rock glory as much as the next guy, but we've been down this road before, if you catch my drift."

Martin reports that he has recently been hired again as Kitner's full-time physician. "He has that come-back tour coming up, and the entertainment company has hired me to make sure he can perform up to expectations," says Martin. "His real issue with the coke thing is sleep, and we are working on that issue constantly, using some creative methods to help him doze off."

Asked about the unusual step of hiring a full-time physician for a rock star, MEGA Entertainment mogul Zeke Fortenberry would neither confirm nor deny the report. "It is what it is," Fortenberry said. "But without lending any credence to such a report, MEGA is determined to make this multi-million dollar debacle work. His fans and financiers deserve our best shot."

Even the cable news outlets have started speculating openly about Kitner's ability to hold it together long enough to complete his latest come-back tour. Kristy Blanchard, a Fox News correspondent and aspiring sports law attorney, reports that MEGA Entertainment is known in the industry for its unflagging support of the stars it relies on. "MEGA representative Paul Gutierrez told me that it will do whatever it takes to ensure that the show goes on. Whatever," she reports.

EXHIBIT 12



John Martin, M.D.

333 Third Street  
Armadillo, Lone Star 76704  
(512) 978.7413

NAME: *David Kitner, Sr.* DATE: *April 11, 2006*

***A generically equivalent drug product may be dispensed unless the physician specifically writes the words "Brand Necessary" or "Brand Medically Necessary" on the face of this form.***

MEDICATION: *Propofol (brand medically necessary)*

REFILL: *4 X*

*/s/ John Martin, M.D.*

EXHIBIT 13

# Addiction to Propofol: A Study of 22 Treatment Cases

*Ronald B. Leighton, MD and Emerson Banack, Jr., MD*

May 2011

**Objective:** To review and report the history and clinical presentation of a cohort of Austin residents who have abused the drug propofol.

**Methods:** The authors queried a clinical database that contained information about Austin residents treated at a large addiction center between 1990 and 2010. Patients who reported propofol use were removed from the database and placed in a second database referred to herein as the Propofol Database. The medical records of each of the cases in the Propofol Database were pulled and carefully reviewed; a clinical case history of each case was prepared. The Propofol Database was expanded by this chart review, adding demographics, drugs used, course of substance use, other clinical history, presenting signs, diagnoses, and comorbid conditions. At this point, the case histories and databases and were anonymized. When variables were present in both data sets, significance was tested between the general database and the Propofol Database. When comparable data were not present in the general database, the authors reported simple percentages within the Propofol Database. This study focused on gender, medical education and specialty, drugs used, course of illness, and comorbid conditions.

**Results:** Compared with the composite treatment population of Austin residents during the same time, records showed that the propofol group was more likely to work in the entertainment industry, be male, and have a prior history of abusing cocaine and other similar intoxicants. Presentation into treatment from the propofol cohort more commonly occurred soon after beginning propofol use, often presenting in a dramatic fashion such as motor vehicle accidents or other physical injuries. When such injuries occurred, it was a direct result of acute propofol intoxication. The number of cases arriving in treatment increased over the duration of the study. The propofol group frequently suffered with a depressive illness and had a history of earlier life trauma. They had a high frequency of biological relatives with substance dependence. The most common subjective response as to why they began using propofol was to induce sleep. Most of these patients identified propofol as one of their preferred drugs of abuse. Twenty two (22) subjects in the Propofol Database were involved in fatal episodes immediately after using the drug Propofol. None of the fatalities were in surgery or even admitted to hospitals at the time of administration of the drug.

**Conclusions:** This study suggests the incidence and/or detection rate of propofol abuse in Austin residents is increasing. Propofol-dependent patients commonly have a history of depression and earlier drug abuse.

**Key Words:** propofol, case study, health care providers, addiction treatment, NTC

(J Addict Med 2013;00: 1-8)

Propofol is an anesthetic induction agent, first released in its current form in 1986. It is omnipresent as an induction agent in operating rooms in 50 countries and is used in procedural sedation. It is considered the induction agent of choice in many medical situations in the United States (Eger, 2004) and the United Kingdom (Payne et al., 2003). Propofol is in widespread use in veterinary medicine (Short and Bufalari, 1999).

Propofol was originally developed and marketed as an induction agent. Once on the market, it quickly replaced thiopental for this purpose. Its use has expanded over time and today it is a commonly used primary anesthetic for procedural sedation or short operative procedures. Induction into anesthesia is rapid. Recovery is just as quick and does not require the use of an antagonist. Patients awaken feeling refreshed with little anesthetic hangover. These properties account for its widespread adoption.

Propofol has a relatively benign adverse effect profile when used in the proper setting. The first common adverse effect is a drop in both systolic and diastolic blood pressure by 25% to 40%. The second effect is a reduction in respiratory drive and upper airway protection, which can lead to hypoxia and arrest when used outside of the proper medical arena or when its use is unsupervised (Marik, 2004). Propofol's anesthetic properties have been used to manage intractable Status Epilepticus and Delirium Tremens (McCowan and Marik, 2000). It also has interesting anti-inflammatory properties.

EXHIBIT 14

---

**From:** Zeke Fortenberry, MEGA Entertainment  
**Sent:** Monday April 18, 2011 3:32 AM  
**To:** Paul Gutierrez, MEGA Entertainment  
**Subject:** RE: John Martin

Guitar: We just received this from accounting. It's the budget items that have been revised from the original estimate of tour expenses. Wow.

1. DK Charter USA-UK: Original budget assumed DK & security would be in commercial 1st class. Now assumed to be in G4 or G5 charter.
2. Video Screen Size & 3D: Screen originally estimated at 40'x x 20b, now 90'w x 30'h. Also, specialized optics applied to allow 3D image to be viewed through special lenses. Obvious increases due to sheer size and technology.
3. Increase in Lighting: Original lighting bargain was driven irrespective of the actual lighting plot and number of instruments and represented approx 65-70% of commercial rental rates. The addition of some specialized lights resulted in an addition to the quote. The lights may be eliminated in rehearsal if they do not perform to expectation.
4. Dr John Martin: Kitner wishes to have his own personal physician available on call throughout the pre-tour period and operational period. There are 12 months at \$150,000 newly budgeted.
5. Wardrobe, Hair & Make-Up: The original London budget for 8 dancers and DK onstage for 1:00 out of a total running time of 1:20, altered and remade designer clothes were considered sufficient to last 30 shows. Current wardrobe is for more people & changes, applies 15 different 'looks' for DK and the entire wardrobe is expected to last 2 years with care and maintenance. Unanticipated hair and make-up expenditure accounts for \$100,000.

This is all approved by the higher ups here, so just gut up and be ready for more \$\$\$ in the budget. Doesn't really matter—this thing will make us all rich.

Z Man

EXHIBIT 15

---

**From:** Paul Gutierrez, MEGA Entertainment  
**Sent:** Monday April 18, 2011 3:32 AM  
**To:** Zeke Fortenberry, MEGA Entertainment  
**Subject:** RE: John Martin

Any joy with an agreement for Martin to sign? He's pinging on us for payment but we can't without a contract in place. Would like to stall him with something for him to look at & mull over.

*Paul "Guitar" Gutierrez  
Executive Vice President  
MEGA Entertainment*

EXHIBIT 16

**Paul Gutierrez**

---

**From:** Paul Gutierrez, MEGA Entertainment  
**Sent:** Monday May 9, 2011 8:03 AM  
**To:** David Kitner  
**Subject:** RE: John Martin

Don't take offense. We check everyone out.

*Paul "Guitar" Gutierrez  
Executive Vice President  
MEGA Entertainment*

---

**From:** David Kitner  
**Sent:** Monday May 9, 2011 8:03 AM  
**To:** Paul Gutierrez  
**Subject:** John Martin

Paul, what's this garbage about making Dr. John give you guys a waiver for a background check? I've told you he is OK and you insist on this? Why can't you understand that he's my doc and he's the only doc that I'm gonna approve for this tour? Here you are checking him out like some kind of common criminal. Trust me on Dr. John—he is clean. You wouldn't find anything that implicates him in anything that matters to the job you hired him to do. Give it a rest already!!!

Special K

EXHIBIT 17

**Paul Gutierrez**

---

**From:** Paul Gutierrez  
**Sent:** Monday April 4, 2011 8:41 PM  
**To:** Zeke Fortenberry  
**CC:** David Kitner  
**Subject:** RE: John Martin

done at \$150k per month, per DK. He needs about 10 days to wind down his practice then he will be full time.

*Paul "Guitar" Gutierrez  
Executive Vice President  
MEGA Entertainment*

EXHIBIT 18

NO. 11-09711-CV

SMILEY CRYUS,	§	IN THE 5 <sup>th</sup> DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	IN AND FOR TRAVIS COUNTY
	§	
MEGA ENTERTAINMENT, INC.	§	
	§	
<i>Defendant.</i>	§	STATE OF LONE STAR

**FINAL JURY INSTRUCTIONS**

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them, from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received into evidence, and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the

ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in light of your own experience and common sense.

The issue for your determination is whether there was a contract between MEGA Entertainment, Inc. and Dr. John Martin under which Dr. Martin was an employee of MEGA Entertainment, Inc., and if so, whether the death of David Kitner, Sr. was the result of the negligence, if any, of MEGA Entertainment, Inc., or of Kitner himself. In that regard, you are instructed that Smiley Cryus has the burden of proof on her claims against MEGA Entertainment, Inc., meaning that Smiley Cryus must convince you by a preponderance of the evidence that a contract existed between Dr. John Martin and MEGA Entertainment, Inc., and that David Kitner, Sr.'s death was the result of MEGA Entertainment, Inc.'s negligence, if any, in hiring or supervising Dr. John Martin. You are further instructed that MEGA Entertainment, Inc. has the burden of proof on the claim that David Kitner, Sr.'s death was caused solely or in part by the negligence, if any, of Kitner himself, or from some other cause.

With respect to MEGA Entertainment, Inc., "negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

With respect to David Kitner, Sr., you are instructed that the term "negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar

circumstances.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Proximate cause” means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using *ordinary care* would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer “Yes” or “No” to all questions unless otherwise instructed. A “Yes” answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a “Yes” answer, then answer “No.” The term “preponderance of the evidence” means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than “Yes” or “No,” your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

At this point in the trial, you, as jurors, are deciding if there was contract between Dr. John Martin and MEGA Entertainment, Inc., and whether David Kitner, Sr.’s death was proximately caused, in whole or in part, by the negligence, if any, of MEGA Entertainment, Inc., or of Kitner himself. If you find MEGA Entertainment, Inc. was at fault in whole or in part, you will hear additional argument from the attorneys and you will hear additional witnesses testify concerning damages. Until that time, you are not to concern yourselves with any question of damages.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party. When you retire to the jury room, you should select one of your members to act as foreperson, to preside over your deliberations, and to sign your verdict. You will be given a verdict form, which I shall now read and explain to you.

**(READ VERDICT FORM)**

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

NO. 11-09711-CV

SMILEY CRYUS,

*Plaintiff,*

v.

MEGA ENTERTAINMENT, INC.

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE 5<sup>th</sup> DISTRICT COURT

IN AND FOR TRAVIS COUNTY

STATE OF LONE STAR

**JURY QUESTION NO. 1**

Was there a contract between MEGA Entertainment, Inc. and Dr. John Martin, M.D.?

Answer "Yes" or "No."

ANSWER: \_\_\_\_\_

A contract may be oral or written. In deciding whether a contract existed, you may consider what the parties said and did in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties' unexpressed thoughts or intentions.

If you have answered “yes” in response to Jury Question No. 1, answer the following Jury Question; otherwise, do not answer the following Jury Question.

**JURY QUESTION NO. 2**

Did the negligence, if any, of the following proximately cause the death of David Kitner, Sr., a rock legend?

Answer “Yes” or “No” for each of the following:

- 1. MEGA Entertainment, Inc. \_\_\_\_\_
- 2. David Kitner, Sr. \_\_\_\_\_

If you have answered “yes” with respect to more than one party in response to Jury Question No. 2, answer the following Jury Question; otherwise, do not answer the following Jury Question.

**JURY QUESTION NO. 3**

What percentage of the negligence that caused the death of David Kitner, Sr. do you find to be attributable to each of those listed below and found by you, in your answer to Jury Question No. 2, to have been negligent?

- 1. MEGA Entertainment, Inc. \_\_\_\_\_
- 2. David Kitner, Sr. \_\_\_\_\_

Total                      100%

CERTIFICATE

We the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into Court as our verdict.

\_\_\_\_\_  
Presiding Juror

To be signed by those rendering the verdict if not unanimous.
