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and as Next Friend of AIDAN LAWRENCE
BREM and RYAN TIMOTHY BREM, Minors;
TIMOTHY WARKE; and ANNA WARKE

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

MONTE BREM, Individually and as Personal
Representative of the Estate of ELIZABETH
BREM, Deceased, and as Next Friend of
AIDAN LAWRENCE BREM and RYAN
TIMOTHY BREM, minors; TIMOTHY
WARKE; ANNA WARKE; ILEANA
CARRENO as Special Administrator of the
Estate of PAULA ANDREA GONZALEZ
RAMIREZ, Deceased; and MARTHA LUCIA
RAMIREZ JARAMILLO,

Plaintiffs,

vs.

STATE OF HAWAII, a governmental
agency; JOHN DOES 1-10; JANE DOES 1-
10; DOE CORPORATIONS 1-10; DOE
PARTNERSHIPS 1-10; and DOE
GOVERNMENTAL ENTITIES 1-10,

Defendants.

CIVIL NO. 07-1-0176
(OTHER NON-VEHICLE TORT)

PLAINTIFFS' OPENING STATEMENT/
SUMMARY OF EVIDENCE TO BE
PRESENTED AND CERTIFICATE OF
SERVICE

Judge : Hon. Kathleen Watanabe
Trial : March 19, 2012

**PLAINTIFFS' OPENING STATEMENT/
SUMMARY OF EVIDENCE TO BE PRESENTED**

I. INTRODUCTION

At the Court's request, Plaintiffs here present a narrative of points that will discuss a summary of the evidence to be presented as part of the Plaintiffs' case in the same manner that an opening statement would provide a summary of the anticipated evidence. Plaintiffs will call Monte Brem, Elizabeth's husband, Timothy and Anna Warke, Elizabeth's parents, and Tim Warke, Jr., Elizabeth's only sibling. Plaintiffs will call three of Ms. Brem's professional colleagues (either live or by deposition) from the law firm, Gibson, Dunn & Crutcher. Those witness include Charles Woodhouse, the Executive Director and Chief Financial Officer of Gibson Dunn, Meryl Young, a senior securities litigator and partner at Gibson Dunn who was a colleague of Ms. Brem and Wayne Smith, a senior litigation partner at Gibson Dunn who was Ms. Brem's mentor and boss. Plaintiff will call as an expert, Dr. Jonathan Cunitz, on Ms. Brem's financial loss and expected earnings. Dr. Cunitz is an economist who has conducted an in-depth study of Ms. Brem and her career at Gibson Dunn and will provide testimony based on evidence adduced from Gibson Dunn and the people who knew Ms. Brem best.

II. THE PLAINTIFFS

This action was commenced by the Estate of Elizabeth Brem by her surviving husband Monte Brem and two children, Aiden Brem, who was 5 years old at the time of his mother's death, and Ryan Brem, who was 14 months old at the time of his mother's death. The action is also brought by Elizabeth's parents, Timothy and Anna Warke, who were living in San Diego, helping to care for Aiden and Ryan at the time of Elizabeth's death.

Elizabeth Brem was born in Queens, New York, on June 14, 1971 to Tim and Anna Warke. Anna was an immigrant from Columbia; Tim was a native New Yorker. Tim worked as a civil servant with the Social Security Administration, while Anna worked as a homemaker and in the garment industry. Elizabeth had one younger brother, Timothy, Jr.

It was a loving, close knit family of modest means with core values centering on hard work, frugality and of course, the American Dream of achieving success in life through education and hard work. The Warkes lived in rent-assisted housing in Queens, in a two-bedroom apartment. When they were young, Elizabeth and Tim Jr. shared a bunk bed. As they became teenagers, Tim Jr. moved out and slept most nights in the living room.

From an early age, Elizabeth showed a gritty determination to achieve. In middle school, she tested for, and was accepted to, the prestigious The Bronx High School of Science, a magnet school for gifted children in New York City. Despite a commute which required travel by subway and bus for an hour every day, Elizabeth commuted to and from The Bronx School. In high school, she joined the debate team, and traveled all over the country, debating other high school students. It was on a high school debate trip that she first saw California. From as early as eight years old, Elizabeth announced her intention to become a lawyer. It was a dream that she harbored most of her life and those who observed her in her early years were aware of her dogged ambition to achieve in the legal profession.

Upon graduation from The Bronx High School of Science, Elizabeth Brem applied and was accepted at Barnard College of Columbia University in New York City. She continued to pursue her studies and her professional pursuits with astounding success. Her grades were almost perfect. She graduated *summa cum laude* and Phi Beta Kappa in 1993, at

which time she applied and was accepted to Yale Law School, perhaps one of the best and certainly one of the most competitive law schools in the country.

She attended Yale Law School where she again met with remarkable success and accomplishment. She was a senior editor of the Yale Law Review. She graduated from Yale Law School in 1996 and joined the law firm of Gibson, Dunn & Crutcher LLP in its Orange County office. She certainly had the credentials to clerk for a judge or even pursue an academic life teaching law but she recognized, as she had always professed even as a child, that she wanted to be a lawyer. Gibson Dunn was one of the most prestigious law firms interviewing at Yale and literally could have selected any person as their choice for a high-paid associate position in California.

In her first year at Gibson Dunn, Elizabeth met another young associate at the firm, the man who would become her husband, Monte Brem. They dated from 1996 through 1999. On December 31, 1999, at the Mauna Lani resort on the Big Island, Monte proposed. Elizabeth accepted; they were married on December 2, 2000. They welcomed their son, Aiden, into the world nine months later, on August 2, 2001. Monte left the firm to enter the private equity business which involves the management of money typically belonging to large investors such as pension funds, universities and endowments are seeking to diversify their portfolios in private equity rather than typical traded securities.

Early on at Gibson Dunn, Elizabeth became interested in securities litigation. She approached a senior partner, Wayne Smith, and told him that she wanted to concentrate in that area. Wayne quickly realized that although Elizabeth knew nothing about securities litigation, she had a burning desire to be a top litigator in the field. Wayne became her mentor. He began working with her, assigning her to his cases. Elizabeth would go home at

night and study the law; she also took accounting courses to gain the knowledge she needed to handle litigation in the securities field.

Elizabeth became so proficient in securities litigation that, even as an associate, Wayne appointed her lead counsel in cases, a responsibility normally reserved for partners. On one occasion, Wayne sent Elizabeth to train the partners in the New York City office in the area of hostile takeover litigation because, at that point, Elizabeth had more experience than any of the New York partners in securities litigation. As an associate, Elizabeth was chosen, out of 100-150 securities litigation attorneys working at Gibson Dunn, to speak at an all-partner retreat on the topic of securities litigation.

Elizabeth relished her new found responsibility. She regularly billed between 2400-2600 hours per year, over 500 hours more than what Gibson Dunn expected of its lawyers.

On September 5, 2005, Elizabeth gave birth to her second son, Ryan. Four months later, Gibson Dunn made Elizabeth a full equity partner, a huge accomplishment, considering that on average, only 27% of the attorneys at Gibson Dunn are partners.

Among the attributes expected of a Gibson Dunn partner, the lawyers are expected to be actively involved in their community and with social causes that would expose them to clients and governmental officials. In 2006, Ms. Brem was appointed by California Assembly Speaker Fabian Núñez as a Board Member to the 13-member California Coastal Conservancy, a state agency that uses entrepreneurial techniques to purchase, protect, restore, and enhance coastal resources, and to provide access to the shore. With a current annual budget of \$53 million, the Conservancy worked in partnership with local governments, other public agencies, nonprofit organizations, and private landowners to undertake more than 1,000 projects along the 1,100 mile California coastline and around San Francisco Bay.

Elizabeth's life was full and happy. She had moved her parents from New York to San Diego so that she could continue her work as a hard-charging equity partner at Gibson Dunn and to enjoy the benefits of extended family. To accommodate their busy lives, she and Monte utilized the services of a housekeeper, a nanny, and a bi-weekly cleaning service. Elizabeth arranged to work from home two days a week, and frequently drove her sons to school. Her promotion to "equity partner" at Gibson Dunn was the realization of a dream for her, not only for the financial security it provided but more because of the security it provided to her career aspiration to become a top tier securities litigator. The evidence will show that despite her promotion to equity partner with a very generous income and bonus to accompany it, she continued to live her life in a frugal, conservative manner that was so much part of her youth in Queens. She could afford a Mercedes but she drove a Prius. She could afford to fly first class or even private, but she used her airline points (including her trip to Hawaii) when she could. She could afford to stay at suites at the finest hotels, but instead shared a room with her cousin at the Sheraton. She could afford clothing and accessories Neiman Marcus but she often shopped at discount stores, like Ross. She could afford a lavish lifestyle even as a young partner but chose instead to maintain the lifestyle she had known as a child. She strove to exemplify her core values for her children.

Despite her remarkable success in her career and academics, she never lost site of her Hispanic heritage and the meaning of her identity and values that helped her overcome a disadvantaged upbringing. At Yale, she was active in the Hispanic law student association and as young lawyer in Southern California she was active in Adelante Mujer, a volunteer organization for other women of Hispanic backgrounds seeking to achieve success in difficult world. Her death was not just felt by her family who are plaintiffs but it painfully

reverberated in her own community of women lawyers who admired Ms. Brem not just as a successful lawyer but a remarkably inspirational human being.

In December, 2006, Elizabeth decided to take a short vacation on the island of Kauai with her husband and her cousin, Paula Ramirez. Tim and Anna stayed home with the children. On December 19, 2006, Elizabeth's life, career, and relationships were cut short by the accident that resulted in her death at age 35 years old. Her family lost a beloved wife, mother, and daughter.

Plaintiffs will ask the Court to enter a damages award that will, consistent with Hawaii law, make up for the economic losses that Elizabeth Brem suffered from losing her lucrative career. In this trial, you will hear from forensic economist Dr. Jonathan A. Cunitz, who conducted an extensive investigation into the prospective earnings of Elizabeth Brem. You will learn that Dr. Cunitz examined Elizabeth Brem's career at Gibson Dunn under a microscope. He conducted independent research regarding the financial history and strength of Gibson Dunn. He reviewed Elizabeth Brem's compensation package and, through confidential productions from the firm and as well as interviews with the Executive Director and attorneys at Gibson Dunn, he determined the most likely trajectory for Elizabeth Brem's career and her expected earnings. He is the *only* expert in this trial who has reached his conclusions based upon the evidence of who Elizabeth Brem was, what she had accomplished in the past, and what she would achieve in the future.

Hawaii law requires the Court to examine evidence to determine the present value of Ms. Brem's earnings she would have earned but for her death subtracted by her personal consumption. As to this area of special damages, the evidence the Court will hear is quite unique. Seldom, if ever, does this inquiry involve such detailed, specific financial

information or career trajectory. Usually, in wrongful death cases, the decedent is not even in the work force or experts have to rely on statistics from the Bureau of Labor statistics to predict a career path based upon education level. Courts are frequently limited to: “Average high school graduates are projected to earn over the course of their life...” However, the career trajectory of someone like Ms. Brem working at a huge firm such as Gibson Dunn is entirely different and the career path of successful equity partners is clear and thoughtfully designed by the management of the firm. The firm pays its partners very well. The firm has a retirement system that really only pays off if the partner stays, over the long-term after a career with the firm. Partners are compensated more each year of their partnership by the issuance of additional partnership shares. The entire compensation system is designed to have partners stay at the firm for their entire career and there are financial penalties for leaving early. The undisputed testimony is that was exactly Ms. Brem’s intention.

As one would imagine, because the senior partners of Gibson Dunn are some of the highest earning professionals in the country, and, in fact, earn huge amounts of money, the projected earnings of Ms. Brem had she lived was tens of million dollars, even with very conservative assumptions concerning growth.

The assumptions employed by the defense experts are that because Elizabeth Brem was a minority woman of child bearing years, one would have to assume she would not pursue her professional career as a man would. The assumptions providing the basis of Dr. Cunitz’s opinion, on the other hand, is based entirely in the evidence. Although the Defense experts will use these and other unsubstantiated assumptions to carve the numbers down to 10 million and below, there is little dispute as to the depth and reliability of Ms. Brem career and professional objectives.

You also will hear testimony from Elizabeth's parents, mentors and husband, explaining their anguish at losing this bright star in their lives. You will learn how her parents' lives simply collapsed after the loss of their daughter. Monte Brem will explain to you the difficulty that he has had trying to put together a life for himself and his boys. The pain of losing his wife, and the mother to his two boys, continues to this day. Plaintiffs will ask the Court to review the reasonable value of the Ms. Brem's loss of enjoyment of life, Monte's loss of his beloved wife, the loss to each of their two children and the devastating loss to Ms. Brem's two parents.

Monte has endeavored to move on with his life and create a stable environment for his children. He now runs a private equity company with four offices, one of which is in Beijing. Elizabeth was his soul mate and the pain to him and his children resulting from her loss and the loss of all she was able to contribute to their family life has been extraordinarily difficult for him and the boys.

DATED at Honolulu, Hawaii, March 9, 2012.

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Defendants.

CIVIL NO. 07-1-0176
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CERIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2012, Plaintiffs' Opening Statement/Summary of Evidence to be Presented was duly served upon the parties below as indicated to their last known address on the date listed below:

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