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Jury awards \$25M in fatal road accident

Indiana dram shop law plays role with overserved driver

BY MARC KARLINSKY
Law Bulletin staff writer

A Chicago law firm won a \$25 million wrongful-death verdict Tuesday in an Indiana courtroom.

In 2010, Philip Amsden was fixing a semitrailer's flat tire along the shoulder of Interstate 65 when the back of his service truck was struck by Jeffery Cleary.

Amsden was pinned between his own vehicle and the semitrailer. He died before paramedics arrived.

In Lake County Superior Court, Amsden's widow, Patricia, sued Cleary, the business he owned and the two nearby restaurants that allegedly served him alcohol that day.

Attorney Jill M. Webb, a partner at Phillips Law Offices, said Cleary spent more than 11 hours at the two restaurants and that his tested blood-alcohol content measured 0.19 two hours after the crash.

The legal intoxication limit in Indiana is the same as Illinois, .08.

The counts against the restaurants came under Indiana's dram shop laws which, like Illinois' law, imposes liability on restaurants or bars for the actions of their patrons if those customers were visibly intoxicated and the bar knew.

Unlike Illinois, there are no set limits for dram-shop damages in Indiana.

"The knowledge element can be proven circumstantially, looking at how much alcohol you served the guy and looking at his blood-alcohol at the crash," Webb said.

Giovanni's restaurant in Munster, Ind., served Cleary at least 21 ounces of vodka and some glasses of red wine between 12:30 and 8 p.m., she said.

"He was ordering double Absolut, and the bartender testified that each double Absolut had between three and three and a half ounces of vodka," she said.

Cleary then spent about two more hours at a second bar, Country Lounge in Hobart, Ind. The crash site was only a 45-second drive from the bar, Webb said.

A jury trial in Lake County Superior Court before Judge Bruce D. Parent began Feb. 9.

Webb said Cleary admitted negligence before the trial but then claimed at trial that the bars were at fault for overserving him.



Jill M. Webb

And the bars blamed one another, she said.

"Nobody was really accepting responsibility," she said.

The jury awarded \$25 million to Amsden. Indiana juries are instructed to reach general verdicts and do not itemize individual damages.

But the jury then divides up the total award payments among the defendants based on their proportion of liability.

The jury found Cleary, at 40 percent fault, liable for \$10 million, and his business, Maintenance Dynamics Inc., 10 percent at fault, liable for \$2.5 million.

Data from the Indiana Department of Correction indicates

Cleary was convicted in September 2012 of operating a motor vehicle while intoxicated, causing death. He was sentenced to 14 years in prison.

Chulas LLC, which operated the Country Lounge bar, was found 30 percent liable and assessed \$7.5 million. Giovanni's Inc., which runs the other restaurant, was found liable for \$5 million.

Amsden was also represented by Stephen D. Phillips of Phillips Law Offices and Kevin C. Smith of Smith, Sersic in Munster, Ind.

Cleary was represented by Jerry E. Huelat of Huelat, Mack & Kreppein P.C. in Michigan City, Ind., and Thomas William Kramer of Buoscio, Pera & Kramer in Merrillville, Ind. Kramer also represented Maintenance Dynamics. They could not be reached for comment.

Giovanni's restaurant was represented by Brandon J. Kroft, a partner at Cassidy, Schade LLP in its Crown Point, Ind., office. He could not be reached for comment.

Country Lounge was represented by Deborah A. Kapitan, partner at Kopka, Pinkus, Dolin P.C. in Crown Point, Ind. She could not be reached for comment.

The case is *Patricia Amsden v. Maintenance Dynamics, Inc., et al.*, Cause # 45D04-1105-CT-00111.