

Missouri Lawyers WEEKLY

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Drunken-driving accident case settles for \$725,000

Underage patron sued bar; owner allegedly behind wheel



Dean Nash



Brian Franciskato

An underage bar patron injured in a drunken-driving accident has reached a \$725,000 settlement of his Clay County case against the bar and bar owner, who was allegedly behind the wheel in the single-car accident.

The identities of all parties are subject to a confidentiality agreement.

The plaintiff, a 20-year-old male, was served alcohol on Feb. 12, 2005, at a restaurant and bar in Liberty. The bar owner was drinking with plaintiff, and both became intoxicated.

The two left the bar together to go for a ride in the plaintiff's Chevrolet Camaro. The plaintiff contended that the bar owner was driving when the car ran off the road and flipped several times. Both occupants were ejected and seriously injured.

The plaintiff suffered a burst fracture of the T12 vertebra, multiple spinal fractures from T9-L2 and a fractured vertebra at C-6. His spinal fractures required placement of two rods, 10 screws and two clamps. He also had vertebrae fused at T11-T12 and T12-L1.

The plaintiff sued the bar and bar owner. Initially, the bar's commercial general liability carrier defended under a reservation of rights letter and filed for a declaratory judgment. The carrier contended the policy's automobile use exclusion and a warranty against allow-

ing employees to consume alcohol precluded coverage.

The defense also disputed whether the bar owner was driving because both men were thrown from the vehicle. Furthermore, the defense claimed that plaintiff had shown a fake identification card indicating that he was 21.

The plaintiff planned to enter a section 537.065 agreement with the bar, said plaintiff's attorney Dean Nash, of Nash & Franciskato in Kansas City. But the carrier withdrew the reservation and defended unequivocally.

The plaintiff settled with the bar owner's automobile insurer for \$100,000 and his own automobile insurer for \$25,000. The bar ultimately settled the plaintiff's dram shop and respondeat superior claims for \$600,000 for a net settlement of \$725,000.

Frederick Bryant, Kansas City attorney for the bar owner, confirmed the settlement details but declined further comment.

— Anne C. Vitale

\$725,000 settlement

PERSONAL INJURY/VEHICULAR

- **Court:** Clay County Circuit Court
- **Case Number/Date:** Confidential/May 28, 2008
- **Mediator:** David Russell
- **Plaintiff's Expert:** Dr. Terry Winkler, Springfield (life-care plan)
- **Special Damages:** \$209,520 medical expenses; \$1.6 million life-care plan
- **Insurance Carrier:** Confidential
- **Caption:** Doe v. confidential bar owner and bar

■ **Plaintiff's Attorneys:** Dean Nash and Brian Franciskato, Nash & Franciskato, Kansas City

■ **Defendants' Attorneys:** John Waldeck, Waldeck Matteuzzi & Sloan, Leawood, Kan.; Dennis Davidson, Abbott & Davidson, Kansas City; Barbara Corbin, Schmitt Manz Swanson & Mulhern, Kansas City; Frederick Bryant, Rubins, Kase, Hager, Cambiano & Bryant, Kansas City