

**\$1,750,000 RECOVERY - PREMISES LIABILITY - DRAM SHOP ACTION - NEGLIGENT SERVICE OF ALCOHOL TO UNDERAGED STUDENT - FALL DOWN STAIRS - BASILAR SKULL FRACTURE - SUBARACHNOID HEMORRHAGE - WRONGFUL DEATH OF 19-YEAR-OLD MALE.**

*Lackawanna County*

**This action stemmed from the death of a 19-year-old male University of Scranton student who fell to his death in April 2002 after a night of drinking. The defendants in the case included a bar where the decedent celebrated his upcoming 20th birthday as well as the property owner of the duplex where he subsequently fell down the stairs, allegedly due to the lack of a hand rail. The defendant property owner named as additional defendants all of the students who were on the lease at two properties where the decedent attended "keg" parties on the evening of his death. The defendant bar contended that the decedent snuck into the bar due to an altercation and was a trespasser on the premises. The defendant property owner maintained that since the decedent's fall was unwitnessed and given his level of intoxication, there was no evidence to prove that the presence of a hand railing on the stairs would have prevented his fatal fall.**

On April 27, 2002, the evidence revealed that the decedent attended a beer party on Taylor Avenue in Scranton. The party was hosted by some of the students who leased a duplex for the school year from the defendant property owner. The student lessees were hosting what had been advertised around campus as the "Second Annual Beer Pong Tournament." Many of the approximately 120 partygoers were under the legal drinking age. The plaintiff contended that seven kegs of beer were purchased for the party at which students, including the decedent, competed in drinking contests by bouncing ping-pong balls into cups of beer.

At approximately 8:00 p.m., evidence showed that an additional three kegs of beer were purchased, making a total of ten kegs of beer consumed at the party that night. The decedent and his friends stayed until the end of the party at approximately 10:00 p.m. The decedent and his friends then went to another beer party at another location on Taylor Avenue for which an additional keg of beer had been purchased. The decedent and his friends arrived at the second party at approximately 11:00 p.m. and remained there consuming beer for about 30 minutes.

At midnight, the decedent and several of his minor friends went down the street to the defendant bar to celebrate the decedent's 20th birthday, which was April 28th. The plaintiff contended that the decedent was not asked for identification when he entered the defendant bar. The plaintiff claimed that the decedent ingested celebratory shots of whiskey at the bar, became visibly intoxicated and was asked to leave.

The decedent's friends took him back to the venue of the first party which was a block away from the bar. Several of the decedent's friends stayed with him for about an hour during which time he remained passed out on the couch on the first floor. At some time before 6:15 a.m., the decedent had to go to the bathroom. He walked up the first floor staircase to the bathroom at the top of the steps. When he was at the top of the steps, he grabbed a wooden slat that was part of the banister at the top of the steps. The plaintiff claimed that the wooden slat pulled loose and caused the decedent to lose his balance, fall backward down the steps and strike his head, suffering a fatal basilar skull fracture with subarachnoid hemorrhaging. The plaintiff alleged that a handrail on the stairs would have allowed the decedent to catch himself and prevent the fatal fall.

An autopsy was later performed that morning and showed the decedent's blood alcohol level to be .320 at the time of his death.

The defendant property owner argued that the lease signed by the students contained a requirement that they were not permitted to have keg parties at the property. The property owner also claimed that it was the decedent's own actions in consuming alcohol that were a cause of his fatality, rather than the missing handrail. The other defense raised was that in light of the decedent's level of intoxication, which was four times the legal limit, there was no evidence that the presence of a handrail would have prevented his fall.

The case settled prior to trial for a total of \$1,750,000. The defendant property owner paid his liability policy limits of \$500,000. The remainder of the settlement was paid by those students that had involvement in planning, organizing and hosting the two parties where beer was furnished to minors. The defendant bar was not insured and did not contribute to the settlement. However as a condition of the settlement, the bar was required by the Pennsylvania Liquor Control Board to obtain training and certification on alcohol education. The defendant bar also made a financial contribution to a scholarship fund set up by the decedent's parents.

**COMMENTARY:**

**During pretrial discovery in this case involving the senseless death of a young student, it was learned that the bar where he was served alcohol was not insured. Accordingly, plaintiff's counsel began an in-depth investigation of the remaining defendant, the owner of the property where the fatal fall occurred. The plaintiff alleged that the presence of a handrail on the stairs would have prevented the fall. It was learned that the property in question was condemned by Scranton Licensing and Inspection Department because of several building code violations. One of the building code violations was the failure of the property owner to have a hand railing for the staircase.**

Documents also revealed that the defendant property owner signed an affidavit verification claiming he had not received any other building code violations on any other properties he had owned. Through an exhaustive search by plaintiff's counsel, it was learned that the defendant property owner began receiving various building code violations starting in 1990. In fact, during a five-year period between 1990 through 1995, plaintiff's counsel was able to locate 29 building code violations issued to the defendant for 16 other rental properties he owned.

It was also discovered that the defendant had actually built an outdoor bar equipped with a roof for the student residents of his Taylor Avenue property. Compounding the property owners apparent culpability was testimony from several of the additional defendant lessee students that, when they signed the lease, they were told by the defendant property owner that they could have alcohol on the rental property.

**REFERENCE**

Skaf vs. Phillips, et al. Case no. 03-CIVIL-378; Judge Trish Corbett, 6-7-06.

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