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## VERDICTS & SETTLEMENTS

### Racial Attack Brings Six-Figure Jury Award in Dram Shop Case

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A verdict against a Philadelphia bar in a dram shop action stemming from an off-premises assault indicates that jurors in the case believed the bar owner should be held liable for violent acts committed by patrons after closing time, lawyers involved in the recent case say.

In *Lee v. Cheers To You Inc.*, \$750,000 was awarded to a Chinese man who claimed he was assaulted by two carpenters on the tail end of a drinking binge.

Mark Lee had sued the South Street bar that was apparently the last establishment to serve alcohol to Michael Tomaszewski and Christopher Novak, also named as defendants in the suit.

Defense counsel for the bar asserted in court papers that Tomaszewski and Novak had been drinking since the previous afternoon and had been involved in a gay bashing well before stopping to drink at Cheers To You, indicating that they were both drunk and violent prior to entering that bar.

Attorneys involved in Lee said they think the case is rare, if not unique, because it involves an off-the-premises assault, as opposed to a vehicular accident or an intra-bar drunken scuffle.

"This was a little bit unusual," Novak's attorney, Daniel McCaffery of Jaffe Friedman Schuman Nemeroff Applebaum & McCaffery in Elkins Park, Pa., said of the case.

Cheers To You's insurer, Lloyd's, retained Robert MacMahon of Weber Gallagher Simpson Stapleton Fires & Newby to serve as defense counsel.

According to Edward Chacker of Gay Chacker & Mittin, who represented the plaintiff with solo practitioner Christy Adams, 7 percent negligence was apportioned to Cheers To You, 70 percent to Tomaszewski and 23 percent to Novak.

Chacker said he will seek the whole award

from Cheers To You, and thinks he will be able to recover from Lloyd's at least \$500,000 - the limit of Cheers To You's policy - plus \$50,000 in delay damages. (Tomaszewski was not represented by counsel at trial.)

MacMahon acknowledged that Pennsylvania's joint and several liability law is clearly cut in Lee's favor, but called the verdict "unjust" and said he would file post-trial motions.

"This assault had nothing to do with alcohol - this was all about racial bigotry," MacMahon said. "How far does the duty of the bar extend when an intentional, criminal act occurred some two miles and 30 to 45 minutes removed in proximity and time from the bar?"

According to court papers filed by MacMahon, Tomaszewski and Novak had been to at least four different bars during their binge before landing at Cheers To You close to last call. Earlier in the evening, Tomaszewski allegedly assaulted a gay man.

After leaving Cheers To You, the bar contended in court papers, the pair went to Chinatown to locate a man of Asian descent with whom Novak had previously been involved in a car accident. They randomly chose Lee, the defense asserted.

Lee said in his complaint that as a result of the assault, he suffered a shattered right elbow that will require extensive corrective surgery. Tomaszewski and Novak were arrested and found guilty following a criminal trial over the crime.

Lee's complaint cited an affidavit from Novak, in which Novak said Tomaszewski had been the perpetrator of the two assaults, but that both men had been visibly drunk when they entered Cheers To You, where a bartender with whom Tomaszewski was friendly was on duty.

The trial began on Sept. 9, and the 12-member jury returned with its unanimous



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verdict on Sept. 19 following roughly seven hours of deliberations, McCaffery said.

Chacker said the trial, over which Judge Annette M. Rizzo presided, was the scene of visits by federal law enforcement - including agents from U.S. Immigration and Customs Enforcement and the Federal Bureau of Investigations - after they were notified that Lee

was possibly an illegal alien. At the time of trial, however, Lee was in the country legally pending an asylum hearing, Chacker said.

Lee's demands, which ranged from \$1 million to \$3 million, were never met with an offer from Cheers To You, according to Chacker.

McCaffery said he thinks Lee's unusual fact pattern - compared to that of the typical dram shop action - contributed to the bar's decision not to talk settlement.

MacMahon would not comment on why his client chose to go to trial rather than settle.

He said he does not foresee any disputes over coverage between the bar and Lloyd's.

"The issue of factual cause is certainly in dispute, and the resulting verdict is unjust," he said.

Plaintiff's attorney Adams said she thinks the cause of the assault was Tomaszewski's and Novak's drunkenness.

"I think this case is unique because it involved . . . an intentional act, and liability is difficult under that circumstance," she said. "But when you're dealing with a dram shop case, if the bar breaks the law and serves an individual when they're visibly intoxicated, it's no different than getting in a car and hitting somebody standing on the side of the road."

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