

Din also said he was better qualified than the three people who were promoted, none of whom had a bachelor's degree. Din argued that a job description for the position said the program director must have a bachelor's degree.

Regarding how he clocked in, he said that he did it the same way as the other instructors, that no one else was fired for it, and that he came in early to do work.

The defense denied discrimination or retaliation. According to the school, Din was fired for regularly clocking in and out inappropriately. It also argued that he was not qualified for the program director position; that the successful applicants had no blemishes on their ATI work records; that, four years earlier, he had been put on probation for improper fraternization with a female student; that, more recently, he had been given a written warning for not following school policies; and that he had a declining work history.

The defense also argued that one of the successful applicants had several degrees, including a D.O., and that the job description was just a draft and was not in effect while the position was open.

According to the defense, although Din was considered for the position all three times, he applied the last time only.

The defense also argued that Din did not file an EEOC charge until Aug. 16, and that on July 3 he had simply filled out an EEOC intake questionnaire.

INJURIES/DAMAGES Din sought back pay or \$202,000, according to his attorney, or \$242,000, according to defense counsel. He did not ask the jury to award overtime for when he clocked in early, but he did say he worked during that time.

He also sought \$102,000 in past compensatory damages, \$102,000 in future compensatory damages and \$450,000 in punitive damages.

He said that, since losing his job, his children think he is a "grumpy old man," and he is ashamed around his friends.

RESULT The jury found that Din's national origin was a motivating factor in the decision not to promote him; that ATI would not have taken the same action in the absence of that factor; that ATI fired him for filing an EEOC charge on July 3, and that Din's actual damages were \$438,600.

The jury also found malice or reckless indifference and awarded \$500,000 in punitive damages.

SHAHBAZ DIN \$234,600 past lost earnings
 \$500,000 punitive damages
 \$102,000 past compensatory damages
\$102,000 future compensatory damages
 \$938,600

DEMAND \$500,000

TRIAL DETAILS Trial Length: 9 days
 Trial Deliberations: 3 hours
 Jury Vote: 12-0
 Jury Composition: 5 male, 7 female;
 5 black, 3 Hispanic, 4 white

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel and defense counsel.

-John Schneider

TARRANT COUNTY

DRAM SHOP

Wrongful Death — Alcohol Involvement — Head-On

Four teens killed in head-on crash with drunken driver

VERDICT \$4,300,000
ACTUAL \$1,505,000

CASE Sonya Bell, individually and as representative of the Estate of Jeffrey Muriel Jr., Donald Cain Sr. individually and as representative of the Estate of Donald Cain Jr., Cynthia Denton, Dessandra Tate individually and as representative of the Estate of Charles Tate Jr., Aaliyah Tate, Charles Tate Sr., Teresa Coleman Jordan and Vernita Walker individually and as representative of the Estate of Carl Fields Jr. v. Harry Floyd Freeman, John Faltynski and F&F Land Co. d.b.a. Harlem Nights Cabaret, No. 348-216237-06

COURT JUDGE Tarrant County District Court, 348th, TX
 Dana M. Womack
DATE 6/13/2011

PLAINTIFF ATTORNEY(S) Spencer G. Markle (lead), Markle DeLaCruz LLP, Houston, TX (Aaliyah Tate, Cynthia Denton, Dessandra Tate, Donald Cain, Sr., Estate of Donald Cain Jr., Estate of Jeffrey Muriel, Sonya Bell)
 Kevin A. Byrne, Law Office of Kevin A. Byrne, Fort Worth, TX (Estate of Carl Fields Jr., Vernita Walker)
 Robert E. Haslam, The Haslam Firm, Fort Worth, TX (Aaliyah Tate, Cynthia Denton, Dessandra Tate, Donald Cain, Sr., Estate of Carl Fields Jr., Estate of Donald Cain Jr., Sonya Bell, Vernita Walker)
 John R. Millard, Law Office of John R. Millard, P.C., Sugar Land, TX (Aaliyah Tate, Cynthia Denton, Dessandra Tate, Donald Cain, Sr., Estate of Donald Cain Jr., Estate of Jeffrey Muriel, Sonya Bell)

DEFENSE

ATTORNEY(S) Franklin W. Cram, Law Office of Franklin W. Cram, Mansfield, TX

FACTS & ALLEGATIONS On Aug. 7, 2005, plaintiffs' decedent Jeffrey Muriel Jr., 19, a student, was driving his car on Loop A-20 in Fort Worth with plaintiff's decedent Donald Cain Jr., 18, a student, plaintiffs' decedent Charles Tate Jr., 18, a student, and Carl Fields Jr., 14, a student, as passengers. They were struck head-on by Michael Miles who was driving the wrong way. Everyone was killed. Police determined that Miles had a blood alcohol level of 0.19. Prior to the crash, he had used an ATM multiple times in the Harlem Nights Cabaret in Fort Worth, a club owned by F&F Land Co., a corporation owned by Harry Freeman and John Faltynski.

The families, individually and on behalf of the estates of Muriel, Cain, Tate and Carl, sued F&F Land Co., operating as Harlem Nights Cabaret, Freeman and Faltynski, claiming dram shop violations. They claimed that Harlem Nights employees served Miles alcohol despite his visible intoxication. They claimed ATM records showed Miles was in the club for between 4.5 and five hours prior to the collision. After leaving the club, he went to a convenience store and its clerk testified that Miles was acting visibly intoxicated. The families also claimed F&F was a sham corporation, as evidenced by a lack of corporate records and frequent undocumented transfers of money to Freeman and Faltynski, and they should be held personally liable.

The defendants denied having served Walker and argued that there were no witnesses or other proof to establish Walker had been served at the club. Defense counsel argued the store clerk originally told police Miles did not appear intoxicated and he did not smell alcohol on his breath. Defense counsel argued the collision took place 2.5 hours after Miles left the club, and that cans of Miles' favored brand of beer were found at the scene.

INJURIES/DAMAGES *death*

Muriel, Cain, Tate and Fields suffered multiple catastrophic injuries in the collision. The witness who first called 911 after seeing the accident reported motion inside the car, but emergency personnel reported all four were dead or unconscious when they arrived. Lifesaving procedures were attempted on Fields on the scene before he was declared dead, and Tate was transported to the emergency room before he was declared dead. The plaintiffs sought \$8 million for pre-death pain and suffering, funeral expenses, past medical expenses and past and future mental anguish, loss of companionship and society and loss of support.

RESULT The jury found the defendants had violated the dram shop law and found F&F 35 percent liable and Miles 65 percent liable. The plaintiffs were awarded \$4.3 million, which was reduced to \$1,505,000.

SONYA BELL \$200,000 future loss of society companionship
\$100,000 future loss of pecuniary contribution
\$250,000 past mental anguish
\$550,000

DONALD CAIN SR. \$200,000 future loss of society companionship
\$100,000 future loss of pecuniary contribution
\$250,000 past mental anguish
\$550,000

ESTATE OF DONALD CAIN JR. \$10,000 funeral burial expense
\$25,000 past pain and suffering
\$35,000

CYNTHIA DENTON \$200,000 future loss of society companionship
\$100,000 future loss of pecuniary contribution
\$250,000 past mental anguish
\$550,000

ESTATE OF CARL FIELDS JR. \$11,000 funeral burial expense
\$50,000 Past Pain and Suffering
\$61,000

TERESA COLEMAN JORDAN \$200,000 future loss of society companionship
\$50,000 future loss of pecuniary contribution
\$250,000 past mental anguish
\$500,000

ESTATE OF JEFFREY MURIEL \$13,000 funeral burial expense
\$25,000 past pain and suffering
\$38,000

AALIYAH TATE \$250,000 future loss of society companionship
\$250,000 future loss of pecuniary contribution
\$60,000 past mental anguish
\$560,000

CHARLES

TATE SR. \$200,000 future loss of society companionship
 \$50,000 future loss of pecuniary contribution
\$250,000 past mental anguish
 \$500,000

DESSANDRA TATE \$100,000 future loss of society companionship
 \$200,000 future loss of pecuniary contribution
 \$250,000 past mental anguish
\$35,000 past medical expenses
 \$585,000

ESTATE OF CHARLES

TATE JR. \$10,000 funeral burial expense
\$50,000 past pain and suffering
 \$60,000

VERNITA WALKER

\$200,000 future loss of society companionship
 \$100,000 future loss of pecuniary contribution
 \$250,000 past mental anguish
\$22,000 past medical expenses
 \$572,000

DEMAND \$300,000
OFFER \$20,000

TRIAL DETAILS Trial Length: 6 days
 Trial Deliberations: 11 hours
 Jury Vote: 10-2
 Jury Composition: 3 male, 7 female

PLAINTIFF EXPERT(S) Angela Springfield, Ph.D., toxicology, Fort Worth, TX

DEFENSE EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.

-Rick Archer

MEDICAL MALPRACTICE

Hospital — Nurse

Nurse used different catheter than the doctor ordered

VERDICT \$850,000

CASE Charles Steen v. USMD Hospital at Arlington L.P., No. 131-241343-09
COURT Tarrant County District Court, 141st, TX
JUDGE John Chupp
DATE 4/12/2011

PLAINTIFF

ATTORNEY(S) Dale D. Williams (lead), Williams & Brown, Waco, TX
 Daniel Tilly, Scanes, Routh & James LLP, Waco, TX
 Brady Williams, Williams & Brown, Waco, TX

DEFENSE

ATTORNEY(S) D. Bowen Berry, The Berry Firm, PLLC, Dallas, TX
 Andrew Leibowitz, The Berry Firm, PLLC, Dallas, TX

FACTS & ALLEGATIONS On Aug. 30, 2007, plaintiff Charles Steen, 64, a retired railroad engineer, underwent surgery at USMD Hospital at Arlington. After performing a laparoscopic bilateral hernia repair on Steen, the surgeon had ordered the circulating nurse, Karol Clay, an employee of the hospital, to drain Steen's bladder with a catheter, to make sure there was no blood in Steen's urine. Blood in the urine could indicate that the bladder had been injured during the surgery. Steen alleged that the surgeon told Clay to use an "in and out" catheter, but she used a Foley catheter instead.

A Foley catheter has an inflatable retention balloon, and an "in-and-out" catheter does not. While Clay inserted the catheter, another nurse, Melissa Lawson (not a hospital employee), used a syringe to inflate the balloon. The inflation occurred in the urethra instead of the bladder and tore the urethra. The balloon was deflated, reinserted and reinflated, but this second attempt was also unsuccessful: the catheter went through the tear and again failed to reach the bladder. The surgeon left the operating room before the initial insertion of the catheter.

Steen sued the hospital and Lawson for medical malpractice, alleging that Clay used the wrong type of catheter without telling Lawson that the doctor did not want it inflated, and that she allowed Lawson to inflate and re-inflate it.

According to Steen's counsel, Clay said she used the Foley catheter because Foley catheters are kept in the operating room and "in-and-out" catheters are down the hall in a storage room. Counsel also said that Clay was aware of

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