

HOSPITALITY ISSUE OCTOBER 2009

Ontario court upholds \$13.9M award

By ILScorp.com Published 05/7/2009

The Ontario Court of Appeal has upheld a jury award in an automobile brain injury case, totaling almost \$17 million, including \$13.9 million for future cost of care.

The case of Marcoccia versus Ford Credit Canada Limited stems from an automobile accident in 2000 involving Robert Marcoccia and Bhupinder Singh Gill, who was driving the truck owned by Ford Credit.

At the time of the accident, the respondent was 20 years old and had just finished grade 12. He suffered serious injuries to the frontal and temporal lobes of his brain in the accident. As a result, he suffers from diminished executive functioning, has enduring physical, psychological, behavioural, and emotional impairments that impede his ability to lead a normal life, and cannot be competitively employed in the future.

Following the six-week long trial in 2008, the jury concluded that the respondent was 39 percent at fault and Gill was 61 percent at fault for the accident. The jury assessed the respondent's damages and awarded \$312,000 for pain and suffering, over \$5,000 for past income loss, over \$1.3 million for future income loss, and \$13.9 million for future cost of care.

Ford Credit appealed a number of aspects of the jury award, saying that the amounts awarded were wholly unreasonable.

The court disagreed, saying: "In our view, the jury's assessment of damages in this case was not plainly unjust and unreasonable."



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In the News...

Pro-hockey star awarded \$521,043 for bar-fight injuries

Florida Panthers forward Scott Mellanby was awarded more than \$500,000 in a lawsuit against a Muskoka bar and a bar-room fighter.

Frank Chapple, who gouged Mellanby's left forearm with a broken glass during a brawl at a bar in Gravenhurst, Ontario in August 1989, was held 50% responsible for the \$521,043 judgement. Mellanby was held 35% because he should not have fought and by doing so, he must be taken to have risked the possibility of injury. The bar was liable for the remaining 15%. Chapple was unable to pay his share of the damages, so under Ontario's contributory negligence rules the bar and its insurers paid the full award, for about \$750,000 including interest and defense expenses.

Reference: Elliot Special Risks LP Website:



Family seeks \$13M in hit-and-run death

Lawsuit wants alleged killer drunk driver and bars to pay

By KEVIN MARTIN, SUN MEDIA

Survivors of a Calgary mom killed while walking with her wheelchair-bound son have launched a multimillion-dollar lawsuit over her traffic death.

A statement of claim filed on behalf of Linda Davey's family seeks nearly \$13.7 million in damages from the motorist charged in her killing and the bars where he allegedly drank.

The lawsuit, filed by prominent personal injury lawyer Ed Pipella's firm, claims two drinking establishments were negligent in serving alcohol to Darren Coupal.

Both the Bridlewood Bull & Finch and The Other Side Tavern were responsible for "serving alcoholic beverages to the defendant, Darren Coupal, when they knew or ought to have known that in doing so they would increase the likelihood of the said defendant becoming intoxicated."

The claim, a copy of which was obtained yesterday by the Sun, also names the bars' owners, or directors, as well as the owner of the Dodge truck in which Coupal was allegedly behind the wheel.

It seeks damages for Davey's estate, husband Kevin, their two children, including Joshua, who was injured in the April 30, 2008, crash and the dead woman's parents.

The most damages being sought are for Joshua, who suffers from cerebral palsy and was with his mother when she was killed.

The claim says Joshua is entitled to more than \$5.8 million -- including \$3 million for loss of dependency on his mother, on whom he relied heavily. It says his younger sister, Erin, was walking ahead at the time of the crash and was traumatized by witnessing the carnage. She suffered "severe psychological trauma ... as a result of being present at the scene of the accident, and witnessing her mother being struck, dragged across the highway and run over," the lawsuit states.

Coupal, who was arrested at his home not far from the accident scene on Bridleridge Way S.W., faces criminal charges, including hit and run and impaired driving causing death.

Did you know?

Slip and falls account for over 20,000 fatalities per year in North America - that's 55 people per day.

They are the second leading cause of accidental death and disability after automobile accidents.

Slips and falls kill more workers than all other combined forms of workplace accidents.

Slip and falls are the number one cause of Accidents in Hotels, Restaurants and Public Buildings; 70% occur on flat and level surfaces.

The average cost of a slip and fall injury is \$28,000, including medical bills, physical therapy, and missed wages.

Slips and falls lead to 104 million lost workdays per year in North America - that's 4,000 lifetimes!



Restaurant floors in the kitchen and in the dining room can turn into a major safety hazard with just one spill. Specifically, you can get injured from trips, slips and falls while preparing food, cooking, while serving patrons and during clean-up. To prevent slips and trips, remember these safety tips:

In the Kitchen

- Wear non-slip waterproof footwear.
- Never wear open-toed shoes or leather-soled shoes.
- If you spill while preparing food, clean it up immediately.
- Use cones or signs to warn fellow employees until spills are dry.
- Remove clutter from workstations to avoid obstructing walkways.
- Avoid storing cooking oil on the floor as it may spill or someone may fall onto it.
- In areas that are typically slippery (i.e., near the sink), provide non-slip floor mats.
- Notify your supervisor if you notice any uneven floor surfaces or drain covers that have come loose.

In the Dining Room

- Remove clutter from walkways on the floor.
- Straighten out rugs and mats, and make sure they are always in place.
- Clean up spills immediately, and place signs and cones to warn both patrons and other employees of the hazard.
- While bussing tables, never overfill containers.
- Make several trips for large loads.
- Watch where you are walking while carrying loads of dishes back into the kitchen.
- While cleaning the floors, use a non-skid wax.
- Place mats so that patrons do not slip while floors are still wet.

Benefits and Risks of Social Networking

KNOW WHO'S TALKING ABOUT YOU

Industry leaders are constantly referring to social networking sites as places to advertise, branding them as "interactive tools for connecting with clients." However, remember not all publicity is good publicity. It is important to project a good company image, which you can do through setting up your own social networking account; however, it is just as imperative that you control other users' conversation about you.

Facebook, the largest social networking site today based on monthly unique visitors, has more than 250 million active users. The fastest-growing group of users is people older than 35, which means it is becoming increasingly more likely that your workforce is getting involved with social networking. While this has many potential benefits, you also want to be careful no one — whether it is a competitor, former or current employees — is tarnishing your company's name or reputation. The same holds true for blogs, where damaging content may appear without your consent.

The key to keeping your risk low is identity management. The best way to prevent Internet buzz from becoming a hazard is to monitor the use of your company name. Periodically type it into a search engine and make sure that your official Web site is the top hit and that nothing offensive comes up in the first 20 hits, which is statistically as far as most people will dig in a search.

If you do find references to your company name in the first 20 hits that could be hazardous to your business or your reputation, you have a few options. If social networking sites are the culprit, consider enacting a policy prohibiting employees from mentioning the company name on their personal sites. Explain the negative outcomes this could have for business and help employees understand how acting as poor representation of the company through scandalous photos or negative comments on a social networking site could affect them directly.

If negative or derogatory comments about your company have seeped into other sites outside the control of your employees, however, the risk to your business is even greater. What's more, this type of

hazardous publicity is more difficult to manage. One approach is to flood the Internet with positive information about your company so that the negative write-ups are no longer within the top search results. Contacting sites and asking them to remove fictitious and defamatory material is another option.

If you have a serious public relations issue and your company's reputation or legitimacy is on the line because of material on the Internet or social networking sites, it could cost you thousands of dollars in lost business. Consider hiring an identity management company, which will help organize, analyze and control the information about you that appears on the Internet.

Source: Zywave, Inc.

REMINDER

ALL CASH STORED ON PREMISES WHILE CLOSED FOR BUSINESS MUST BE KEPT IN A MINIMUM CLASS 2 SAFE.

Please remember that Insurance Policies have a limitation for money kept on premises overnight, or while closed for business. A Class 2 safe is one which carries a rating of TL-15 at a minimum.

If you question whether your safe meets this rating, I would suggest contacting the manufacturer or retailer where you purchased the safe.

VLT Machines and ATM's are NOT considered Class 2 Safes, and any money left in these machines while closed for business is covered by Insurers only up to \$250.

If you have any questions regarding your coverage, limits, or safe classifications, we welcome your call.

