

# Chicagoland

Section 2 \*\*\*

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## Injured pay high cost for low cap on dramshop claims

By Flynn McRoberts

John Fetzer had just hopped on his bike and was riding to his night job when a truck struck the 41-year-old Elgin resident, dragged him 250 feet and stripped all the skin and soft tissue from his arms and hands.

Mario Pizano, the truck's driver, told police that before the crash he had drunk as many as 12 beers over four hours while sitting in Chuck's Tap, an Elgin tavern.

The Kane County Liquor Com-

mission has since suspended Tap owner Chuck Pollitt's liquor license for 90 days because Pizano was allowed to keep on buying beers after it had become clear he was drunk.

Even so, if Fetzer successfully sues the Tap for being partly responsible for the grisly injuries that have kept him in the hospital since Sept. 13, the most he could hope to collect is \$70,000.

That's because the state's Dramshop Act makes the 22,292 restau-

rants, bars and stores in Illinois that sell alcohol something of a privileged class, the only industry with a cap on negligence awards.

Many other states have similar statutes that protect liquor retailers from heavy judgments in negligence suits, even when the retailers admit they are at fault.

A 1990 federally funded study said these controversial laws actually contribute to the nation's persistent problem with drunken driving by re-

ducing "incentives for retailers to adhere to responsible service practices.

"Furthermore, the restrictions are inconsistent with related legal provisions, such as alcohol control laws and other tort law, and unfairly distribute the burden of liability on the victim," said the study, paid for in part by the National Highway Traffic Safety Administration.

Fran Liquori, a medical office manager from Addison, learned this

lesson the hard way.

On Sept. 8, 1989, a drunken driver who had spent the evening drinking in a Chicago bar plowed into Liquori's car, sending her to the hospital unconscious, with a broken neck and leg and other injuries.

"Crutches have been my 'friend' forever," said Liquori, who just last month got the half-leg cast off from her sixth operation. "I hate them."

But when she sued the now-closed Chicago bar, she won only a

\$60,000 settlement because of the dram law cap.

The roots of dramshop laws date to common-law England. And in the United States, historians said, lawmakers in frontier states were especially lenient with anyone who profited from alcohol sales in order to encourage people to congregate and help create a sense of community.

But dramshop-cap opponents con-

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# Dramshop

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tend that such thinking should go the way of the Pony Express, even as other reformers are seeking to add caps to different areas of negligence law, such as medical malpractice suits.

But the Illinois Appellate Court recently made it clear that any changes will have to come from the legislature.

In a unanimous decision earlier this year involving a dramshop case, the court ruled that, under existing law, "a tavern has no duty to restrain a patron from driving away no matter how intoxicated that individual may be."

The court added, "Regrettable as this result may be, we are compelled to conclude the matter is one for the legislature to remedy."

For their part, the alcohol and insurance industries say responsibility should fall solely on the drinker.

"Nobody points a gun at someone else's head and forces them to get drunk," said Peter Strauss, associate vice president of the Schaumburg-based Alliance of American Insurers, which represents about 160 property/casualty companies nationwide.

"Let's get the drunk driver off the street. But looking for another deep pocket isn't the answer."

Some who have studied the situation across the country believe that eliminating the special treatment for liquor sellers helps get drunken drivers off the road.

"We've shown that if a place will reform its serving practices, which would include training servers [to spot drunks] and not serving pitchers to individuals, it will reduce the number of intoxicated people leaving the premises," said James Mosher of the California-based Marin Institute for the Prevention of Alcohol and Other Drug Problems, which assisted in the federal dramshop study.

Chicago attorney Kenneth Moll agrees. Last month, he won more than \$335,000 for a client whose husband had died in a car crash after getting drunk at a bar.

But the judge in the case, citing the Dramshop Act, reduced the jury's award to about \$30,000.

Under the act, caps stand at \$40,000 if a plaintiff can prove loss of means of support, \$30,000 for personal injury and \$30,000 for property damage. If a plaintiff can prove that more than one category applies, he or she conceivably could win \$100,000.

"I would have liked to have said

to the jury, 'No, I don't want to hold the dramshop 100 percent responsible, because this man chose to get drunk,'" Moll said. "But let's look at what dramshops do in the normal course of business. Do they care?"

"If there weren't a cap, they might be liable for millions of dollars. So instead of nobody at the door watching people leave, there's going to be two or three at the door, making sure no one goes home drunk."

Comparing Illinois to other states, Mosher of the Marin Institute said, "If you have a dramshop case, you're more likely to win." But due to the cap, he added, "your recovery is so low it's not necessarily worth your while."

Cap opponents say the liquor industry's unique legal treatment continues because of the combined pull in Springfield and other state capitals of the alcohol and insurance lobbies, which often are at odds on other legislation.

"When they're on the same side of an issue, that's a lot of clout to overcome," said Paul Froehlich, executive director of the Alliance Against Intoxicated Motorists.

But that clout could be challenged in the next General Assembly session. Gov. Jim Edgar, who built his political career on tougher DUI

laws, said recently through a spokesman that he would support changes in the state's dramshop law.

Edgar's press secretary, Mike Lawrence, said the governor, whose campaign-disclosure forms show tens of thousands of dollars in contributions from insurance firms and their lobbying groups, is "favorably disposed to legislation that would raise the amount of damages" in dramshop cases and would consider removing the cap.

"Obviously, if legislation came to his desk that would remove the cap, he would seriously consider approving it," Lawrence added. "But he would want to hear the arguments of all sides before making a final decision."

If the law is changed, proponents contend it would save lives and more fairly assess blame in drunk-driving crashes. But it would be too late for Fran Liquori.

Even with the \$100,000 she received by suing her own insurance company, she said, she's recovered "nowhere near enough to cover the hospital bills and the suffering. There's no estimate on that, what my family went through and what we're still going through.

"It takes a long time to heal. And I'm not very patient, not 26 months later. I'm tired of being in pain."