

A Sobering Verdict for Club

Jury awards \$550G to man hurt in DWI crash with Fuze Box patron

By ROBERT GAVIN Staff writer

ALBANY -- A state Supreme Court jury awarded \$550,000 Monday to the victim of a DWI-related car crash in 2008 -- and placed nearly half the blame on the downtown Albany nightclub that served booze to the drunken driver before he hit the road.

The six-member jury unanimously determined the Albany Fuze Box on Central Avenue wrongly served alcohol to Craig Fuson, 30, formerly of Troy, while he was "visibly intoxicated" during the early hours of Sept. 12, 2008.

Fuson later got behind the wheel of his Lexus and rear-ended a Mazda Protege being driven by Lawrence Goyette, 44, of Cohoes on the northbound lanes of Interstate 787 about 3:20 a.m., said Goyette's attorney, Gene Napierski.

Goyette, a business owner in Schodack, needed surgery to have bones in his neck and spine fused. He has permanent restrictions in the ability to move his neck, which contains a plate, the lawyer said.

"The bars have a responsibility to make sure they don't over-serve people," Napierski said. "And drunk drivers cause injuries."

The jury found the Fuze Box not only caused or contributed to Fuson's intoxication -- but that its actions were a "substantial factor" in the injuries suffered by Goyette.

Michael McCabe, a Rochester-based toxicologist, testified during the one-week trial, according to the lawyer, that Fuson was determined to have a .24 blood alcohol level after the crash -- three times the legal .08 blood alcohol threshold for driving while intoxicated in New York state.

He calculated that Fuson's blood alcohol level would be about .15 -- with some 11 drinks in him -- when he was being served at the Fuze Box, Napierski said.

Fuson, who has four alcohol-related driving convictions, had a passenger in his car at the time. He was sentenced to 1 to 3 years in prison in April 2009 for felony driving while intoxicated. He was conditionally released in April. Now living in Oklahoma, he will be on parole until next April, officials said.

Read the Full Story at: <http://www.timesunion.com/local/article/A-sobering-verdict-for-club-1442975.php>

Featured Expert: Michael J. McCabe, Jr., Ph.D.

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Fuson conceded his liability in the lawsuit in midtrial before acting state Supreme Court Justice Gerald Connolly, according to Napierski, noting Fuson testified.

He could not be reached for comment Monday.

The jury unanimously awarded Goyette \$250,000 in damages for past pain and suffering and, with one dissenter, awarded him \$300,000 for future pain and suffering.

Fuson's insurance was expected to cover \$100,000 of the cost, the attorney said.

The jury voted 5-1 that Fuson was 55 percent responsible in the case, the Fuze Box 45 percent.

It found no wrongdoing on the part of the Rocks bar, also on Central Avenue. Napierski said the lawyers for the Fuze Box argued Fuson had drunk at that bar and showed up drunk at the Fuze Box.

Attorneys for the Fuze Box could not be reached for comment Monday.

Under New York's long-standing "Dram Shop" law, a person injured by a drunken driver can sue bars or liquor stores that served the motorist alcohol, should if it can be proven the sale was illegal.

Peter Gerstenzang, an Albany attorney who specializes in DWI cases, said the law dates back to 19th century horse-and-buggy days. He said such cases are common but noted many of the suits are settled before trial.

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