

Uninsured Driver Hits and Kills Intoxicated Pedestrian; Jury Awards Estate Over \$1.75 Million in Damages

In the early morning hours of June 4, 2000, Tim Waterbury and a number of his college friends

left a local bar in Tallahassee, Florida. Tim and his friends had partied for hours until the bar's closing time, and Tim was clearly drunk as he headed home. As Tim and a friend walked across the street in front of the bar, a car sped down the inside lane of the street and struck Tim. The impact fractured his skull and caused other severe injuries. He was rushed to Tallahassee Memorial Hospital where he lingered for six days, barely alive. His mother sat at his bedside for those six days, and finally had to make the difficult decision to disconnect Tim's life support system.

Tim was 23 years old, handsome, athletic, popular, smart, and ambitious. He had been a champion wrestler in high school. His graduation from Florida State University was only weeks away. He and his mother, Sandy Crowell, had a close, loving relationship. She was devastated at the loss of her son. Tim's father, Steven Waterbury, and his mother had divorced some years before, and the relationship between father and son had become distant. Steven had just reinitiated contact with his son after a five-year period during which Steven had not seen Tim, and now all hope was gone for a chance to reunite and reestablish the bond they had when Tim was much younger. The entire extended family of siblings and step-parents was suffering from their loss. SBSBS attorneys **Jack Scarola** and **Bill King** prosecuted the liability claim on behalf of the estate of Tim Waterbury. Because of the nature of the claims of the survivors, attorney William Bone of Larmoyeux & Bone, and attorney Barry Balmuth were retained by the estate's personal representative, Robert Sorgini, to advance the damage claims on behalf of Sandy Crowell and Steven Waterbury, respectively.

The driver of the car that struck Tim was Alexander Crum, a 19-year-old Tallahassee resident and part-time community college student. The car he was driving was owned by Henrietta Cameron, a resident of Fort Lauderdale, Florida. Neither the owner nor the driver was insured for personal liability. Cameron received a discharge in bankruptcy and was no longer a defendant when the case went to trial. Tim was insured under an automobile

policy issued by State Farm Insurance Company to his mother and step-father, Dr. David Crowell. The State Farm policy provided uninsured motorist coverage and State Farm paid the \$100,000 in benefits due under that policy. State Farm had also issued a personal liability policy that contained an umbrella provision for uninsured/underinsured motorist coverage in the amount of \$1 million.

The initial task was to determine the applicability of a 1999 Florida statute that barred a plaintiff's ability to recover damages in a civil action if he or she was injured while under the influence of alcohol or drugs. State Farm included the statute as an affirmative defense against the plaintiff's claims. Florida Statute Section 768.36 specifically states in part that in any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if, at the time the plaintiff was injured, the plaintiff was under the influence of alcohol or drugs to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 or higher, and as a result of the condition, the plaintiff was more than 50% at fault for his or her own injury. *(Continued on next page.)*



Tim Waterbury

Jack Scarola asked the court to strike the affirmative defense referenced in Statute 768.36. He argued that the prohibition against recovery under the statute clearly only applies for "loss or injury to his or her person or property," and that the wording of the statute fails to include "death." The statute therefore does not apply in the context of a wrongful death action. The court found Scarola's argument persuasive, noting that it was clear that if the legislature had intended the statute to apply to actions by the estate of one who has suffered a fatal injury, it would have included the word "death" in the statute, as it had done in similar statutes concerning liability. The court granted Scarola's motion to strike the affirmative defense, and the case moved on to address the issue of negligence.

On the night of the accident, there were dozens of young adults milling around the popular entertainment area in Tallahassee. The speed limit on the street in front of the bar where Tim had partied was 30 miles per hour. Alexander Crum told the police later that he had been driving between 30 and 40 miles per hour. Crum tested negative for alcohol or drugs. Tim was wearing a white shirt and light blue jeans, and lighting on the street was not an issue. There was nothing obstructing Crum's view of the road. Tim had already crossed one entire lane of the street when he was struck by Crum's car. There were no skid marks, and nothing to indicate any effort on the part of the driver to avoid the accident.

Scarola argued that, under these circumstances, the law would require a driver to approach an incapacitated pedestrian in the same manner as the driver would approach a child in the road.

Crum had traveled that route before, at the same time of night. He knew that hundreds of students, many of whom had been drinking, would be pouring out into the street when the bars closed in the early morning hours. He admitted that he saw a long line of people standing around, waiting to cross the street. In fact, Crum said that he was driving in the inside lane because he was concerned about people stepping off the curb into the street. At trial, Bill King argued that had Crum been driving the speed limit and paying attention to the road ahead of him, he would have seen Tim crossing the road in time to initiate an action to avoid the accident. Scarola argued that Tim, intoxicated with a blood alcohol level three times the maximum legal capacity, was obviously incapacitated that morning. Scarola said that, under these circumstances, the law would require

In June 2000, Tim Waterbury was having the time of his young life. He was 23 years old, handsome, athletic, and ready to graduate from Florida State University in just a few weeks. He spent an evening partying with his friends at a popular nightclub in Tallahassee. In the early morning hours Tim, intoxicated, staggered outside and walked across the street. He made it only to the inside lane of the street when a car ran into him. Severely injured, he died six days later. His family was devastated. Neither the driver nor the owner of the car had insurance. SDSBS attorneys filed a liability claim on behalf of Tim's estate. Their first major obstacle was a 1999 Florida statute that bars a plaintiff's ability to recover damages in a civil action if the plaintiff was injured while under the influence of alcohol and was more than 50% at fault for the injury. The attorneys argued that the statute does not apply in the context of a wrongful death action, and the court supported the argument and struck the claim that the statute provided an affirmative defense. The claim was prosecuted and, although Tim was found partially at fault, the jury awarded damages in excess of \$1.75 million.

a driver to approach an incapacitated pedestrian in the same manner as the driver would approach a child in the road. Drivers are required to reduce speed and exercise greater defensive actions and vigilance when special hazards exist with respect to nearby pedestrians.

Scarola and King acknowledged that Tim was negligent and asked the jury to assess his comparative negligence at not more than 20% at fault for the accident. While Tim was too impaired by alcohol to make a conscious and reasoned decision that morning, Crum had the ability and responsibility to make the right decision, to proceed in a safe and careful manner to avoid an accident. Crum had defaulted and was not present at the trial. The court directed a verdict on his liability. In March 2008, after a two-week trial, the jury found there was negligence on the part of both young men – Tim Waterbury was 38% at fault, and Alexander Crum was 62% at fault. The jury assessed the damages for Tim's mother, Sandy Crowell, at \$1.5 million, and for his father, Steven Waterbury, at \$170,000, for the mental pain and suffering as a result of their son's death. The jury also assessed the estate's damages at \$128,529 for medical and funeral bills. ■