

# SOUTH CAROLINA Lawyers Weekly

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## \$7.5M settlement reached in dram shop case

By David Baugher

The surviving parent of a woman who was killed when a drunk driver who was traveling at over 100 mph crashed into her while she was pulling into her driveway has reached a \$7.5 million dram shop settlement with a chain restaurant and a gas station that both sold alcohol to the drunk driver.

David Lail of Yarborough Applegate in Charleston and Douglas Jennings of Bennettsville represented the estate. Due to a confidentiality agreement, many details of the case, including the identities of the parties and the defense counsel and the date and location of the crash, were withheld.

Lail said that the case concerned a crash in which the drunk driver first became intoxicated at a restaurant before purchasing additional alcohol at a gas station. Lail obtained access to a recording of a jailhouse phone call between the drunk driver and his girlfriend which allowed him to identify the restaurant. Uncovering the name and location of the gas station took more work, however.

“Without knowing the identity of the gas station where the second alcohol purchase was made much closer in time to the crash, I knew I would have a problem with the restaurant blaming the crash on the later gas



David Lail



Reynolds Blankenship

station alcohol purchase giving them a strong ‘empty chair’ defense,” Lail said.

Lail ultimately performed, in essence, a “photo lineup of gas stations” by showing the driver a photo of each one in the area so that he could identify the one where he made his purchase.

That was not the end of the challenges faced by the estate, however. No surveillance video was available at either the restaurant or the gas station, and no receipt was available for the latter.

“The restaurant argued that nearly all the alcohol that was allegedly served would have been almost totally eliminated from the driver’s body at the time of the crash which happened more than three hours after he left the establishment,” Lail said.

The gas station, meanwhile, contended that the driver was an alcoholic and could have hidden any signs of intoxication. The estate, however, countered that there was evidence that gas station employees took no action to establish whether the customer was drunk, and the restaurant should have known of his intoxication.

“Depositions of restaurant employees confirmed that the alcohol service was in violation of responsible alcohol service standards, and a

forensic examination of prior point of sale data showed a pattern of unsafe alcohol service at the establishment,” Lail said.

Lail said that by the time he received the case, a settlement had already been reached with the drunk driver and the owner of the vehicle he’d been driving. The settlement, which included a full release, eliminated the prospect of pure joint and several liability and resulted in a set-off of more than \$1 million.

The matter was mediated twice and settled in October, shortly before it was set to go to trial. Due to the confidentiality agreement, the attorneys could not say how much of the settlement was provided by the restaurant and how much was provided by the gas station.

### SETTLEMENT REPORT DRAM SHOP



**AMOUNT:** \$7.5 million

**INJURIES ALLEGED:** Death

**CASE NAME:** Confidential

**COURT:** Confidential

**DATE OF SETTLEMENT:**

October 2021

**ATTORNEYS FOR PLAINTIFF:**

David Lail of Yarborough Applegate in Charleston and Douglas Jennings of Bennettsville

**ATTORNEYS FOR**

**DEFENDANTS:** Confidential