

Family of young women killed by drunken driver win \$1.35 million from Gresham bar

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Krissy Shaddix and Jessica Blanck died on Washington State Route 14 in Vancouver when a drunk driver plowed head on into their Chevy Aveo.

Jessica Blanck and Krissy Shaddix waited until midnight April 29, 2007 to head to the Barracuda bar and dance club in downtown Portland. It was Shaddix's 21st birthday, and Blanck, already 21, was the designated driver.

Blanck, close friends with Shaddix from their Camas High School days, had playfully bought the birthday girl a rhinestone tiara at WalMart. They snapped photos of themselves, Krissy's face beaming under the sparkling crown.

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Family photo

Jessica Blanck (left) and Krissy Shaddix

Investigators said it's unlikely either woman drank that night because no trace of alcohol was found in their bodies.

A 37-year-old driver who was going the wrong way on State Route 14 plowed into them at 2:55 a.m. The driver – Theresa M. Nickelby – had a blood-alcohol level of 0.16 percent, twice the legal limit.

The collision killed both young women. Eight months later Nickelby sobbed that she was sorry as she pleaded guilty in Clark County Superior Court to vehicular homicide. Her 4 1/2 year sentence will be up in nine months.

The grieving parents learned that Nickelby had spent the night drinking in Gresham at the Golden Star Restaurant & Lounge, which had a 16-year reputation for over-serving customers. Despite countless complaints about the practice -- including letters from the Gresham police chief cautioning the bar not to over-serve -- and more than 35 DUII arrests of drivers leaving the bar in the five years leading up to the crash, the Oregon Liquor Control Commission fined the Golden Star only once, and that was in 2002 when two inspectors witnessed an egregious episode.

The case has raised questions about the ability of the OLCC's 42 inspectors to police 12,000 establishments selling liquor, and whether an agency that makes money for the state selling liquor can adequately monitor and penalize its customers.

OLCC tickets issued in 2009

4: Allowing patrons to drink in the parking lot

The OLCC didn't cite the Golden Star for serving too much alcohol to Nickelby. Its inspector noted inconsistencies in the witnesses' accounts and concluded he didn't have enough evidence. On May 8, 2007 - one week after opening the investigation - the inspector closed it.

Lorie and Marty Shaddix and Rob and Julie Blanck hired Portland attorneys Elden Rosenthal and John Devlin to sue the bar and its insurance company, winning a \$1.35 million settlement this month. If a judge rules in favor of the parents in a dispute about the insurance company's policy limits, the settlement will grow to \$2.86 million.

Krissy Shaddix was Lorie and Marty Shaddix's only child.

"That particular bar has altered so many lives, and it ruined ours," said Lorie Shaddix, who contends the OLCC should have pulled the Golden Star's license years before her daughter's death. "You always go into the 'what ifs.' 'What if the OLCC took action?' My daughter would be alive."

Steve Pharo, the OLCC's executive director, praised his agency's investigation into the Golden Star as "well done and very thorough."

Rosenthal, whose private investigator tracked down witnesses the OLCC didn't interview, said the only way bars get in trouble is if inspectors catch them in the act.

"It's my view OLCC doesn't have sufficient resources and regulatory tools to deal with bars and taverns that regularly put drunk drivers on the road."

The owners of the Golden Star shut their doors in fall 2007, and it re-opened under new ownership.

OLCC frustrated, too

Linda Ignowski, who oversees OLCC's enforcement division, said it is extremely difficult to prove that a bar knowingly served a visibly intoxicated person. The agency has unsuccessfully lobbied the Legislature to make it illegal if a bar knew or "should have known" it was serving an intoxicated person.

"I'm not trying to make any excuses," said Ignowski. "We are just as frustrated as anyone else."

OLCC officials cautioned against condemning the agency based on one investigation. However, The Oregonian interviewed half a dozen attorneys experienced in suing bars for serving drunken customers. They say they've repeatedly won large settlements from establishments which were not cited by the OLCC. In some cases, the agency didn't even investigate, even though the victims of the drunken drivers ended up brain

5: Selling alcohol past 2:30 a.m.

27: Employees drinking on duty

37: Selling alcohol to or allowing a visibly intoxicated person to drink

145: Allowing an employee without a permit to serve alcohol

557: Failing to check ID

Number of establishments that sell liquor: **12,006**

Number of businesses that lost liquor licenses:

2007: **3**

2008: **9**

2009: **11**

damaged or dead.

OLCC officials say they depend upon police to let them know of such cases, and they aren't always informed.

Lake Oswego attorney Randall Wolfe says he can't recall a single case in which the OLCC disciplined a bar that served a visibly intoxicated patron and then drove off and hurt someone. "Their investigations are fairly cursory," he said.

The Blancks and the Shaddixes say an agency that sells liquor to benefit state coffers should not be regulating it. The OLCC made \$172 million from sales of liquor in 2009 which went to state, county and city governments.

But Pharo, the agency's executive director, said: "If we wanted to make unlimited money, we'd put in a lot more liquor stores."

The Golden Star

OLCC inspector Stanley Grubbs started asking questions about the night of the e crash. Three friends who were at the bar with Nickelby and one of the bar's owners, Sau "Sandy" Chan, said Nickelby didn't appear drunk.

Co-owner King "Johnny" Chan told the inspector he was the only one to serve Nickelby that night, and she drank two mixed drinks, then barely took a few sips of a third. But a waitress said she served Nickelby two drinks, and Nickelby barely touched one of them.

A bar security officer told the inspector he saw Nickelby leaving the bar at about 2 a.m. with three men who said they had three cases of beer in their apartment and car. Nickelby's friends, however, said Nickelby told them she'd meet them at an after-hours club next door. The inspector noted that there were inconsistencies in witnesses statements, but he didn't have enough evidence to prove the bar over-served Nickelby.

The attorneys hired by the families interviewed more than twice the number of people the OLCC inspector did -- including a former waitress who was working at the Golden Star the night of the crash but wasn't questioned by the inspector.

The waitress, who was laid off 1 1/2 months after the crash. turned out to be a key witness in the civil case.

The Oregonian is not identifying because Rosenthal is concerned she'll suffer repercussions.

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The waitress said she saw Nickelby served four to six mixed drinks, and Nickelby was noticeably drunk. Her skin was red, she swayed as she walked and she even lifted up her blouse to flash her bra to the entire bar.

The waitress said staff didn't clear the bar until 2:25 or 2:30 a.m. -- approximately half an hour before the crash.

The waitress also said the Chans called in the entire staff the day after the crash.

"They just told us that 'If you wanted to keep your job not to say anything,'" the waitress said.

The Chans did not return calls seeking comment for this story.

Asked why attorneys for the parents of Shaddix and Blanck were able to get the Golden Star to settle for \$1.35 million, when OLCC concluded it didn't have the power to issue a \$1,650 fine, OLCC officials said the attorneys got additional information that bolstered their case after the OLCC investigation was closed.

"We can't hang onto investigations," Ignowski said. "When we conclude we don't have enough facts, we close it. ... Is that right or wrong? That's just how we have to do our business."

OLCC officials say they re-open investigations if they learn of new, crucial information. After talking to The Oregonian about the attorneys' investigation, OLCC officials said they plan to re-open their investigation into Nickelby's visit to the bar. Although the Chans no longer own the bar, a violation would mar their record if they decided to apply for a liquor license again.

Lawsuits rare

Attorneys say it's difficult to win a case against a bar for over-serving because the standard is high and jurors are hesitant to place blame on anyone but the drunken driver. But they say the case can be won with a competent investigation.

The only time the OLCC cited the Chans for continuing to serve a "visibly intoxicated person" was when two inspectors heard a customer say he was on his 15th rum and coke. The bar continued to serve the man, whose eyes were glassy and bloodshot. He fell off his barstool, knocking it over. When he tried to stand it up, he put it upside down.

According to the investigators' report, co-owner Sandy Chan "observed the entire incident, rolled her eyes and made no attempt to remove his drink." The OLCC fined the bar \$990.

After nearly three years of legal wrangling and grief over the loss of his oldest daughter, Rob Blanck said he's exhausted.

He will hold onto memories of the 5-foot 11-inch volleyball player who wasn't afraid to wear high heels. She

was so responsible, he said. Hours before the crash, he had offered his daughter a raspberry vodka at dinner.

"Jessica refused to have a drink," Blanck said. "She said 'I'm driving daddy.'"

He treasures something police retrieved from his daughter's wrecked car -- a book entitled "Why a Daughter Needs a Dad." She had marked up the book with loving memories about her father, and had planned to give it to him for his birthday.

For months after the crash, Lorie Shaddix cried at the thought that she didn't get to see her daughter on her last birthday. Then, she said, came a gift from police: a camera they'd recovered from the crushed Chevy Aveo.

On it was something she will always treasure: a photo of her daughter wearing the tiara.

-- **Aimee Green**

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