

Jury awards \$5.9M in cut-railing case

[Caryn Tamber](#)//Daily Record Legal Affairs Writer

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Jasmin R. Carbaugh fell through a fire-escape railing that had been cut to allow a pool table to be removed from the establishment. She says she hopes people who see her will understand what can happen with they ‘mess with, alter any safety devices or emergency exits.’

A 15-foot fall from the fire escape of a Baltimore bar where Jasmin R. Carbaugh was celebrating a friend’s birthday left her unable to stand or walk unassisted.

Last month, Carbaugh won a \$5.9 million verdict against a vendor who, years earlier, had taken out a pool table through the fire escape, removing the railing and reattaching it with rope.

The jury verdict includes almost \$3 million in non-economic damages, which is expected to be reduced to \$695,000 under the statutory cap. After the reduction, the total award would stand at \$3.6 million.

“I don’t want people to see me and pity me or feel sorry for me, but I want them to look at me and understand that this is what happens when you mess with, alter any safety devices or emergency exits, anything like that,” said Carbaugh, a 32-year-old insurance industry worker who now suffers from incomplete paraplegia.

Timothy E. Fizer of Krause, Fizer, Crogan & Lopez, who represented pool table vendor Joseph J. Balsamo’s JAG Vending, declined to comment on the case because the judgment has not yet been entered.

Carbaugh went to a 30th birthday party on Feb. 29, 2008, at Mahaffey’s Pub. According to Carbaugh and her attorneys, Nathaniel Fick of Fick & May P.C. and J. Mitchell Lambros of Lambros & Lambros,

the party's host had reserved the second floor of Mahaffey's, and the bar's owner said guests could use the fire escape to enter and leave the building.

A few years earlier, when Wayne Mahaffey bought the place, there had been a pool table upstairs, Carbaugh's lawyers said. Mahaffey and the vendor hired a crane operator and removed it through the fire escape, cutting the iron railing in the process. The railing was tied back into place with rope but never welded back on.

During the party, Carbaugh stepped out onto the fire escape to talk on her phone. When other guests opened the door to leave the party, Carbaugh was knocked off her feet and over the edge of the fire escape, to the street.

She suffered a burst fracture, a spinal cord contusion, a dislocated spine, eight fractured ribs and a skull fracture. She spent five weeks at the hospital and seven at a rehabilitation center, missing eight months of work.

Carbaugh suffers from incomplete paraplegia: she has some movement in her hips and knees but cannot control her feet or toes, so she cannot stand or walk without support, she said.

"This is a railing on a fire escape removed for a stupid pool table," Lambros said. "Our dear client here is a paraplegic for life over a pool table."

A Baltimore City Circuit Court jury reached a verdict in Carbaugh's case Feb. 5, just as the Super Bowl weekend blizzard was rolling into Baltimore. The jury awarded her \$381,000 in past medical expenses, \$2.5 million in future medical expenses, \$27,000 in lost wages and more than \$2.9 million in non-economic damages.

Carbaugh had originally sued just Mahaffey's, but she settled with that defendant for an undisclosed sum and added JAG Vending to the case. JAG, in turn, brought Mahaffey's back in through a third-party complaint, and the jury found Mahaffey's to be negligent as well. Mahaffey's attorney, Edward M. Buxbaum, said the settlement means the bar does not have to pay anything further to Carbaugh.

He added that Mahaffey's had been inspected several times between the pool table's removal and Carbaugh's fall, and no one raised questions about the railing.

Fick said he thinks the testimony of Carbaugh herself, her mother, her friends and her co-workers on the extent of her limitations "carried the day" with the jury in terms of determining damages.

But he criticized the statutory cap, saying that cases like Carbaugh's, where the plaintiff is seriously injured and has years of pain ahead of her, show its unfairness.

The jury is "trying to give a person both their day in court and the day that will speak for a lifetime and are never told that this is going to be stripped away, and has been stripped away, by the legislature," he said.

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