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# Coalinga DUI victims settle with driver for \$7.75 million

**By Pablo Lopez**

The Fresno Bee

A Coalinga college theater instructor and her two daughters have agreed to a \$7.75 million settlement with a drunken driver who crashed into the family's car and severely injured them in November 2003.

Both sides said Thursday that the civil lawsuit settlement in Fresno County Superior Court sends a strong message to people who drive while intoxicated.

"The civil process has a much more powerful effect on drunken driving than criminal prosecution because the financial damages really get their attention," said Sacramento attorney Roger Dreyer, who with co-counsel Christopher Wood represented plaintiffs Dixie Smith and daughters Chalene and Lyra.

Fresno lawyer Theodore "Tad" Hoppe, who represented Kendall Woodrow Gardner, agreed: "Hopefully, this is a lesson learned for a lot of people." Gardner admitted that his drinking causing the crash.

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Monthly cloudy

# Settlement: Medical bills surpass \$400,000

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Court records say Smith, a West Hills College performing arts instructor, and her two daughters were injured when their car collided head-on with Gardner's pickup on Highway 41 south of Fresno on Nov. 19, 2003.

Because of the settlement, Dreyer said, the Smiths will collect damages from Gardner as well as Vista Verde Farms Inc. and their insurance companies, because Gardner was driving a company vehicle in the collision.

Gardner, 63, is a partner in Vista Verde Farms Inc., a large farming operation in the Three Rocks and Cantua Creek area in southwestern Fresno County.

Dixie Smith, who suffered a badly fractured right leg and foot and a large cut on her left lower leg, will receive \$1.9 million in damages.

Her settlement was finalized Tuesday in Judge Bruce Smith's courtroom, just moments before lawyers were to pick a jury to settle her claims for medical bills, future medical bills and lost income.

After the settlement was reached, Gardner apologized to Dixie Smith and asked for her forgiveness. She then hugged Gardner and forgave him.

Chalene Smith, who suffered a brain and spinal cord injury as well as several broken bones, settled for \$5.75 million March 23.

Lyra Smith, who had internal injuries, settled for \$100,000 about a month ago.

On Nov. 19, 2003, about 11:30 p.m., the Smiths were returning to their Coalinga home after visiting Melvin Smith, Dixie Smith's husband and the girls' father, who was hospitalized at University Medical Center in Fresno.

Dixie Smith was driving a 2002 Pontiac Grand Prix; Chalene was in the front passenger seat, and Lyra was asleep in the back seat.

As the Smith family traveled south on Highway 41, Gardner drove a company 2002 Ford pickup north. He then crossed over the highway and hit the Smith family vehicle head-on south of Elkhorn Avenue, court records said.

"Eyewitnesses compared the impact to a bomb going off," Dreyer said.

Gardner sealed the Smith family's fate hours earlier when he went on a drinking binge after winning a football pool, Dreyer alleged in court papers.

Gardner first drank margaritas with friends at a Hanford bar, the complaint said. He then went to another bar and had more drinks. He then went to a store and purchased long-neck bottles of beer.

"At this point, he had about 18 drinks in his system and a blood alcohol level of 0.24, or three times the legal limit," Dreyer said.

Gardner doesn't remember the crash, Dreyer said, because he was "fading in and out of consciousness as he headed northbound on Highway 41." In the collision, Gardner suffered a bruised left forearm and complained of pain, a law enforcement report said.

The Smith family sued Gardner and Vista Verde Farms, ac-

curring them of negligence and asking for punitive damages.

Dreyer said Dixie Smith had more than \$100,000 in medical bills and her injuries left her with a limp, chronic pain and severe depression because the accomplished dancer and actress can no longer effectively demonstrate dance moves to students.

Chalene Smith, a college student and accomplished cellist, has incurred more than \$300,000 in medical bills so far and will need more surgeries, Dreyer said. She has memory loss and is essentially unemployable, he said.

Lyra, also a college student, has recovered from her injuries, Dreyer said.

Hoppe disputed Dreyer's assertion that Gardner had won a football pool. He said that Gardner had "personal problems" at the time and regrets his "unfortunate mistake" and accepts full responsibility.

Gardner pleaded no contest to the felony drunken driving with injury on Feb. 18, 2004, and was sentenced to 60 months on probation and fined \$1,278. He also was ordered not to drink alcohol or be in establishments that serve alcohol.

"The settlement is big, but he wanted them to be fairly compensated because he feels awful about what happened," Hoppe said.

Recent news of the Fresno Police Department's crackdown on drunken driving also influenced the settlement, Hoppe said.

To stem drunken driving fatalities, undercover police officers began observing customers as they drank inside bars.

Officers no longer watch from inside the bars, but they remain vigilant against drunken driving.

Because no one likes drunken drivers, Hoppe said, there was a good chance that Gardner and Vista Verde Farms would have been hit with a large sum in punitive damage beyond the cost of what their insurance companies would pay.

Said Hoppe, "There would be a lot of emotion and risk involved if we had gone to trial."

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