

\$2.3 million awarded in balcony collapse--City faulted for negligence in inspections

DATE: June 21, 1991---**BYLINE:** Jim Phillips AUSTIN AMERICAN-STATESMAN **PAGE:** A1

PUBLICATION: Austin American-Statesman

A man who was seriously injured when the balcony of a building collapsed has been awarded more than \$2.3 million by a jury that ruled the City of Austin was grossly negligent in its inspection policy.

The city is responsible for about half the damages because it failed to order repairs on the defective balcony and did not properly enforce its building codes, according to the jury's verdict.

The finding of gross negligence by the city was based in part on the fact that city employees routinely gave failing notices on building inspections that were never performed, and then did not notify anyone at the building that it had failed inspection, according to the plaintiff's attorneys. Gross negligence was defined for the jury as "an entire want of care" and "conscious indifference to the rights, welfare or safety of the persons affected."

Assistant City Attorney Robert Reaves declined to comment on the verdict, which was returned Wednesday after more than two days of deliberations in the court of state District Judge Joe Dibrell.

The suit involved injuries suffered by Everett Charles Price Jr., who was a University of Texas student when he was injured in the October 1987 collapse of a balcony at the 21st Street Co-Op, 707 W. 21st St. Price suffered a fractured skull, and doctors said he almost died before he began recovering. His sight and hearing were permanently damaged, according to testimony at the trial, and he has a form of diabetes caused by the head injury. Two other students suffered minor injuries.

Jay Harvey, who with Steve **Gibbins** represented Price, said Thursday, "We're very, very pleased with the award of damages for Charlie.

"But in a sense, we're even more proud of the exemplary damages, because it takes a real gutsy jury to make that finding. It just shows the city what the citizens expect out of that department.

"They don't want them to just be pencil pushers," Harvey said. "They want them to use reasonable procedures and reasonable policies to protect the public."-----Price was in California and was not available for comment.

A city inspection after the accident found that the balcony should have been anchored by heavy-duty bolts, but instead was secured only by three nails. But the crux of the lawsuit against the city involved actions taken by the city before the accident.

The building was constructed in 1972, and the balconies were replaced in 1983, Harvey said. The contractor was supposed to ask the city for a final inspection after the balconies were replaced, but there was a dispute at the trial over whether that request was ever made. In September 1984, a city computer check showed that the co-op balcony project and a number of other construction projects had never received final approval by inspectors, Harvey said. According to testimony, city policy at the time was to automatically give a failing inspection to those projects, without an inspection. And, the policy did not call for any notification of the failure to a building's owner, contractor or occupants, Harvey said.

"It's a clear case of conscious indifference," the attorney said. "They say that's not their policy anymore."

The trial was one of the first in the state that sought damages from a city because of failures in the city's building codes or inspection process, according to lawyers.

The jury awarded almost \$2.1 million in actual damages, and said the city was 45 percent responsible for the damages. The jury found the contractor 45 percent negligent, and the building owner 10 percent responsible. Price previously won a \$500,000 settlement from the insurance company that covered College Houses Inc., the non-profit corporation that owned the building.

The city also was found to be grossly negligent and was ordered to pay \$250,000 in exemplary damages.

The verdict has not been approved by Dibrell, who probably will hold a separate hearing on whether all or part of the damages will be approved.

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