

DRAMSHOP LITIGATION ARISING FROM MOTOR VEHICLE ACCIDENTS

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INTRODUCTION

The high incidence of alcohol-related vehicle accidents has resulted in an equally large number of civil actions being filed in our state and throughout the country. The courts have responded in a proper fashion by holding bars, restaurants, package stores, and the like responsible to injured parties. Due to the catastrophic injuries and deaths resulting from drunk-driving crashes, the national movement to curb drunk driving, the loose practices by many sellers of alcoholic beverages, and the increased awareness by jurors generally, the value of these cases has increased greatly.

Most American believe that drunk driving is a major national problem – a national tragedy – a national disgrace and a drain on the nation's resources. They are absolutely correct.

Consider these statistics:

1. Drunk drivers kill and injure almost three quarters of a million each year in the United States.
2. Seventy Americans are killed each day in drunk driving crashes.
3. More Americans have died in drunk driving crashes than in all the wars we have fought combined.
4. Young people between 15 and 24 have a higher death rate today 20 years ago. Most who die are killed in motor vehicle accidents.

Enforcement of the criminal laws has not solved the problem. Most states have enacted new and tougher laws governing drunk driving. There has been a good effect – but it has not achieved the desired results. We are still seeing far too many persons killed or maimed throughout the country at the hands of drunk drivers each year.

The victims of liquor-related injuries have looked more to the civil law for results. This will spread out the enforcement responsibilities to many more capable attorneys and will get at the real core of the problem, i.e., the supplier of the alcohol beverages.

I. Dram Shop Act

Alabama's Dram Shop Act, § 6-5-71, Ala. Code, 1975, provides:

- (a) Every wife, child, parent, or other person who shall be injured in person, property or means of support by any intoxicated person or in consequence of the intoxication of any person shall have a right of action against any person who shall by selling, giving, or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages cause the intoxication of such person for all damages actually sustained, as well as exemplary damages.
- (b) Upon the death of any party, the action or right of action will survive to or against his executor or administrator.
- (c) The party injured, or his legal representative may commence a joint or separate action against the person intoxicated or the person who furnished the liquor, and all such claims shall be by civil action in any court having jurisdiction thereof.

This Act was passed into law in 1909 and has been on the books without change since enactment. The Dram Shop Act provides liability for selling, giving, or disposing of liquors or beverages "contrary to the provisions of law." In fact, the Alabama Supreme Court in Attalla Golf and Country Club, Inc. v. Harris, 601 So.2d 965 (Ala. 1992), held that in order to show a violation of the Dram Shop Act, the plaintiff must prove that the sale of alcohol: (1) was contrary

to the provisions of law; (2) was the cause of intoxication; and (3) resulted in the plaintiff's injury.¹

What is "contrary to the provisions of law?"

Practically and most commonly "contrary to the provisions of law" means that the ABC Board licensee (bar, restaurant, convenience store, etc.) sold alcoholic beverages to a person who was "visibly intoxicated." ABC Board Regulation 20-X-6-.02(4) specifically prohibits the sale of alcoholic beverages to persons "acting in a manner as to appear to be intoxicated." Obviously, the sale of alcohol to minors is "contrary to the provisions of law" also.² In Attalla, the Court determined that the sale of liquor by a private bar to a non-member or non-guest was a sale "contrary to the provisions of law" within the meaning of § 6-5-71.

Who has cause of action under the Dram Shop Act?

Section 6-5-71 grants a right of action to "every wife, child, parent or other person who shall be injured in person, property, or means of support. The Alabama Supreme Court simplifies this language by recognizing two classes of person who may have a right-of-action under § 6-5-71:

- (1) The person injured in person or property,

(Example: a person who is driving his or her vehicle down the road and they are hit by a drunk driver); and

¹ It should be noted that § 6-5-71 does not require a plaintiff to prove that his injury or damage was proximately caused by the sale, but only that he was damaged "as a consequence" of the intoxication resulting from the sale of alcohol.

² The Civil Damages Act, Ala. Code, § 6-5-70 deals specifically with the sale of alcohol to minors and will be discussed later.

- (2) The wife, child, parent, or other person . . . who has been injured through loss of means of support because of personal injury to the person furnishing the means of support.

(Example: wife/dependent child whose husband/father is injured by a drunk driver). See McIssac v. Monte Carlo Club, Inc., 587 So.2d 320, 324.

The phrase "other person" constitutes a second class of claimants that encompasses "anyone who is proximately 'injured in person, property, or means of support by any intoxicated person or in consequence of the intoxication of any person.' And . . . this category of plaintiffs is as broad as proof of proximate cause will permit." See James v. Brewton Motel Management, Inc., 570 So.2d 1225, 1229. (Example: perhaps a dependent grandchild whose grandfather is injured by a drunk driver.)

It should be noted that the Dram Shop Act does not permit recovery by the intoxicated person who is injured because of his own intoxication. See Maples v. Chinese Palace, Inc., 389 So.2d 120 (Ala. 1980). However, in Week's v. Princeton's, 570 So.2d 1232 (Ala. 1990), Howard Weeks became intoxicated and was actually ejected from Princeton's. While driving home, Howard had a one-car accident was injured. His wife, Molly, and their minor daughters, Allison and Heather, asserted claims against Princeton's, alleging liability under the Dram Shop Act due to Princeton's sale of alcoholic beverages to Howard after he had become intoxicated and that as a result of the sale, they had lost the companionship, services, society, and support of Howard.³ The Court held that the wife and daughter had valid Dram Shop Act claims. Further, § 6-5-71(b) permits the survival of actions or rights of action upon the death of any party.

Finally, the Alabama Supreme court held in McIssac that § 6-5-71 creates a strict liability in favor of these persons covered under its provisions and authorizes those persons to maintain

³ Howard Weeks also filed a claim against Princeton's, but his claim was properly dismissed because the intoxicated person is not a protected party under the Dram Shop Act.

an action without regard to complicity or contributory negligence. McIssac v. Monte Carlo Club, Inc., 587 So.2d at 324. As a consequence, it is believed that there are no defenses to a Dram Shop case.

Damages

Under the statute, a plaintiff may recover "all damages actually sustained as well as exemplary damages. As a result, plaintiff may recover both compensatory and punitive damages. Allowable compensatory damages claimed by an intoxicated person's family members have included mental and emotional stress, and the loss of companionship, services, society, support and consortium. Ex parte Macon County Greyhound Park, Inc. v Miles, 567 So.2d 997, 999 (Ala. 1993); and Weeks v. Princeton's, 570 So.2d at 1232. In The Booth, Inc., v. Miles, 567 So. 2d 1206 (Ala. 1990), the jury awarded no compensatory damages and \$65,000 in punitive damages. The Court held that "in a Dram Shop action, when there is sufficient evidence of actual damage or injury to support an award of compensatory damages, we do not require a specific award of actual (compensatory) damages in order to support and award of punitive damages. The Booth, Inc., v. Miles, 567 So.2d, at 1208.

Common Pitfalls

1. Proving that defendant driver was served while "visibly intoxicated."
2. Defendant bar or lounge has little or no liquor liability coverage.
3. Defendant is a local restaurant/bar.
4. Plaintiff participated in drinking with defendant driver.
5. Jurors understanding of liability issue.

II. CIVIL DAMAGES ACT

I would like to briefly touch on the Civil Damages Act, which addresses the sale of liquors to minors. Ala. Code, § 6-5-70 provides:

Either parent of a minor, guardian or a person standing *in loco parentis* to the minor having neither father nor mother shall have a right of action against any person who unlawfully sells or furnishes spirituous liquors to such minor and may recover such damages as the jury may assess, provided the person selling or furnishing liquor to the minor had knowledge of or was chargeable with notice of knowledge of such minority. Only one action may be commenced for each offense under this section.

This seldom utilized act creates a civil action based upon strict liability in favor of the parent or guardian of a minor. It should be noted that the act mentions "spirituous liquors" only. This has been interpreted to mean any alcoholic beverages including malted beverages (beer) and wines.

In McLeod v. Cannon Oil, 603 So.2d 889 (Ala. 1992), the Alabama Supreme Court held that "in order to establish liability under the Civil Damages Act, a plaintiff must prove that the defendant (1) sold spirituous liquors to a person who was a minor, and (2) was chargeable with notice or knowledge of the minority." Once the plaintiff establishes liability, the burden shifts to the defendant to show that he did every thing required by the statute and the regulations to determine whether the purchaser was a minor. If the defendant cannot show that he complied with the statute and regulations, the plaintiff is entitled to a directed verdict on the issue of whether the Civil Damages Act was violated. There are no defenses to an action brought under § 6-5-70. Section 6-5-70 allows the plaintiff to "recover such damages as the jury may assess." In Brackett v. Exit Inn, Inc., 604 So.2d 402 (Ala. 1992), while the Court held that the phrase "such damages as the jury may assess" has been construed to mean that only punitive damages are

appropriate, the Court commented that the plaintiff had not raised the issue of whether only punitive damages were recoverable under § 6-5-70, suggesting that the Court may consider the issue of compensatory damages when properly presented. (See Justice Maddox' concurrence in part and dissent in part in Maples v. Chinese Palace, Inc., 389 So.2d 120 (Ala. 1980).

It should be noted that § 6-5-70 (Civil Damages Act) has been the focus of litigation less often than § 6-5-71 (Dram Shop Act).

CONCLUSION

The tragic damage caused by drunk drivers demonstrates the need for plaintiff's lawyers to seek out all potentially responsible parties to compensate victims for their losses. For those persons injured or killed as a result of the sale of liquor, the civil actions mentioned herein provide means for recovery and compensation. Also, the imposition of punitive damages serves as both punishment and deterrence to wrongdoers.

These combined routes to recovery can help compensate innocent victims of drunks for the tragic losses sustained by them and their families. It will also cause potential defendants to institute measures designed to curb sales to minors and to persons who are visibly intoxicated.