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TORTS

N.J. Court To Mull Drunken Drivers' Standing To Bring Dram Shop Claims

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Last July, the state Supreme Court granted a defendant liquor licensee leave to appeal the Appellate Division's decision in *Voss v. Tranquilino*, 413 N.J. Super 82 (App.Div. 2010), in which the court held that an individual who is convicted of, or pleads guilty to, driving while intoxicated may bring a dram-shop claim for damages against the establishment that had served the individual alcohol prior to his or her accident.

The underlying Appellate Division opinion came in response to the latest in a series of cases involving N.J.S.A. 39:6A-4.5(b), a motor vehicle statute that bars individuals guilty of DWI from bringing suit for losses sustained as a result of their underlying alcohol-induced accident. The bar on such claims was introduced in 1997 as an amendment to N.J.S.A. 39:6A-4.5 of the Automobile Reparation Reform Act, which was precursor legislation to New Jersey's current Automobile Insurance Cost Reduction Act. The amendment was intended to reduce or stabilize the cost of automobile insurance that had been on the rise as a result of increased insurance fraud at that time. Section 4.5 focused on three areas of reform: (1) deterrence of drunk driving, (2) deterrence of the use of automobiles as weapons, and (3) deterrence of the operation of uninsured vehicles.

In *Voss*, an individual who pled guilty to DWI attempted to bring suit against the restaurant that had served him alcohol on the date of his DWI-induced accident, claiming he had been served alcohol while visibly intoxicated in violation of New Jersey's Dram Shop Act, N.J.S.A. 2A:22A-1 to -7. The act stipulates that a licensed alcoholic beverage server can be held liable in negligence when the server provides alcohol to a visibly intoxicated person, where the server knew, or reasonably should have known, that the person served was intoxicated.

The defendant restaurant moved to dismiss the plaintiff's complaint based upon the bar on claims by those guilty of DWI pursuant to Section 4.5(b). Although the trial court initially denied the motion, the decision was reviewed de novo by the Appellate Division. After reviewing the underlying legal arguments, the Appellate Division held that Section 4.5(b) did not bar a dram-shop claim against the liquor licensee that had served the plaintiff alcohol prior to his accident.

The Appellate Division was asked to reconcile whether the statutory ban on actions by individuals who were either convicted of or plead guilty to DWI overrides an individual's right to bring a dram-shop claim. The Appellate Division held that Section 4.5(b) does not bar a dram-shop claim for three reasons.

First, the court explained that the legislative purpose behind Section 4.5(b) was to reduce automobile insurance premiums. The court reasoned that legislative policy should not extend its scope beyond the motor vehicle statutes outlined in Title 39.

Second, the court felt that barring dram-shop claims under such circumstances would constitute an unjustified repeal by implication of the Dram Shop Act. The court reasoned that, absent clear and compelling legislative intent, it would be improper to override an individual's ability to bring a dram-shop claim.

Third, the court felt that immunizing liquor licensees under such circumstances would go against the state's strong public policy against drinking and driving.

The Appellate Division's holding in *Voss* is of interest because the public policy behind both the Dram Shop Act and Section 4.5(b) was to lower insurance premiums. In the New Jersey Legislature's initial statement of legislative findings and declarations on the Dram Shop Act, the Legislature acknowledged the need to enact measures to make liability insurance coverage for liquor licensees more available and more affordable.

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It also indicated the Legislature's hope that the Act would result in the improvement of the alcoholic beverage liability insurance market in New Jersey. Insurance companies, the Legislature rationalized, would be more inclined to offer favorable policies to liquor licensees if the limits of civil liability were better defined and, thereby, the potential incidences of liability were more predictable. By clearly indicating the liability of liquor licensees for serving visibly intoxicated individuals, it reasoned, less expensive insurance policies could be drafted with this risk in mind. Section 4.5(b), on the other hand, was enacted 10 years after the Dram Shop Act in an effort to reduce and stabilize the cost of automobile insurance premiums.

The Appellate Division's decision in *Voss* was not the first time that Section 4.5(b) has had to take a backseat in light of conflicting public policy provisions. In 2002, the Appellate Division held in *Camp v. Lummino*, 352 N.J. Super. 414 (App.Div. 2002), that an underage plaintiff was not barred under Section 4.5(b) from bringing suit against the social host in whose home he had been drinking before his automobile accident. Three years later, in *Walcott v. N.J. Ins. Co.,* 376 N.J. Super. 384 (App.Div. 2005), the Appellate Division also declined to apply the bar to the recovery of PIP benefits by drunk drivers.

In the wake of the Appellate Division's decision in *Voss*, it became questionable whether Section 4.5(b) would ever be an effective defense to bar liability in any context outside of the motor vehicle liability arena. Now that New Jersey's highest court has agreed to make a determination as to the applicability of N.J.S.A. 39:6A-4.5(b) in relation to a dram-shop claim, it seems the time has come to find out whether the Dram Shop Act, and the state's strong public policy against drinking and driving, will continue to serve as the superior statutory authority regarding liquor liability in the state of New Jersey. ■