

# Alcohol Beverage Liability: Legal Update and Best Practices

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# Presenter - Elizabeth A. DeConti, Esq.



- Elizabeth is a shareholder with the Tampa office of GrayRobinson where she focuses her practice on litigation and compliance matters related to the rules, regulation and business practices that govern the marketing, sale, and consumption of malt beverages, wine, distilled spirits, and other regulated products. She also handles food law issues.
- Elizabeth's trial experience includes commercial, dram shop, franchise, intellectual property, and ADA cases litigated on behalf of major breweries, alcohol suppliers, wholesalers, retailers, and other members of the hospitality industry in state and federal courts and administrative agencies throughout the United States. In addition to her court experience, she represents many clients in alternative dispute resolution.
- She also advises clients on issues pertaining to trade regulation and marketing practices in the food and beverage industry, and concentrates on regulatory compliance, as well as advertising and promotional law. Elizabeth also drafts contracts related to advertising, distribution, importation, and related issues associated with the food and beverage industry.

*Elizabeth DeConti.*

# Alcohol Beverage Liability: Dram Shop Cases and Other Tort-Based Claims

- The “Common Law Rule” vs. State Statutes
- Limitation of liability for licensees
- Liability Usually Limited to Certain Situations/Varies by State
- Plaintiffs may try other causes of action if dram shop law is not exclusive remedy




# Using Dram Shop Laws to Limit Liability: Limiting the Parties

- Statutory Standards
  - Only certain tortfeasors (minors, drunk minors, “habitual drunkards”...)
  - Who Present Themselves a certain way (“visibly intoxicated”, “obviously intoxicated”, “apparent to the provider”)



# Using Dram Shop Laws to Limit Liability: Limiting the Plaintiffs

- The First Party Bar: Actions by Intoxicated plaintiffs usually excluded
    - *Encompass Ins. Co. v. Stone Mansion Rest.*, 2017 WL 664318 (W.D. PaFeb. 16, 2017)
    - Contributory Negligence
  - *Davis v. Hulsing Enter., LLC*, 783 S.E.2d 765 (N.C. Ct. App. 2016)
    - The doctrine of “Last Clear Chance”
    - Guests who do not leave your property are also a risk
-  Compliance tip: Do not be afraid to seek medical attention and create an incident report.

# Using Dram Shop Laws to Limit Liability: Limiting the Plaintiffs The “Fireman’s Rule”



- *Juszczyszyn v. Taiwo*, 113 A.2d 853 (Pa. Super. Ct. 2015)
  - The “inherent risk doctrine”
  - Public policy concerns
- Exceptions May Apply
  - Hidden Dangers
  - Off-duty Officers
  - Statutory Terms



# Using Dram Shop Laws to Limit Liability: Limiting the Defendants

- Property Managers and Landlords: *Schneider v. Paragon Realty, LLC*, 55 N.E. 2d 374 (Ind. Ct. App. 2016)
  - Foreseeability?
  - Profits?
  - Contractual Limitations?



# Limiting the Claims

## Negligent Eviction: How far does a licensee's duty extend?

- *Does your establishment have a policy about how to evict?*
- The duty of care to the public when they are your invitees and when they leave
- *Foreseeable Consequences*
  - Simmons v. Homatas*, 925 N.E. 2d 1089 (Ill. 2010)
  - Westin Operator, LLC v. Groh*, 347 P. 3d 606 (Colo. 2015)



Compliance Tip: Your security staff are an extension of your premises.  
Train them to deal with alcohol-related incidents




# Negligent Eviction (continued)

- Unforeseeable Injuries
  - *Pittman v. Rivera et al.*, 879 N.W. 2d 12 (Neb. 2016)
  - *Rausch v. Barlow Woods, Inc.* 204 So. 3d 796 (Miss. Ct. App. 2016)



# What Constitutes a “Sale” of Alcohol?

- No Indirect Sale
  - *Calvillo v. Frazier*, 2015 WL 154032 (Tex. Ct. App. 2015)
-  Compliance Tip: Exercise caution when selling to / serving large groups
  - *Ruiz v. Safeway, Inc.* 209 Cal. App. 4<sup>th</sup> 1455 (Cal. Ct. App. 2013)
- Indirect Sale
  - *Sanford v. Fillenwarth*, 863 N.W. 2d 286 (Iowa 2015)

# Conclusion

- **Liability arising from the Sale and Service of Alcoholic Beverages**
  - Know the standards for liability in the state where you operate
  - Remember that everyone on your team has a role in avoiding liability
  - Develop good policies for handling the obviously intoxicated and for ejecting patrons
- **Questions?**

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