

July 1, 2008

DRAM SHOP/CAUSATION

In the case of Osborne v. Twin Town Bowl [---N.W.2d---, 2008 WL 2229473, Minn., May 30, 2008 (No. A06-1007)], the Minnesota Supreme Court clarified its position regarding proximate cause (causation) in liquor liability cases.

Mr. Riley (the decedent) went drinking with friends at Twin Town Bowl in Mankato, MN. At approximately 1:30 a.m. while driving home, he was observed by a Highway Patrol Officer driving 74 MPH in a 50 MPH zone. The Trooper stopped him on the Highway 14 bridge over the Minnesota River between Mankato and North Mankato. Smelling alcohol on Riley's breath, the Trooper conducted various field sobriety tests and performed a preliminary breath test resulting in an alcohol level of .18. Riley was advised he was under arrest for driving while impaired. The Trooper left Riley standing in front of the patrol car while he placed the breath test device in the car. The Trooper heard Riley say "I'm outta here." He turned and saw Riley running to the bridge railing which was only a few feet away. Riley jumped off the bridge into the Minnesota River which, unfortunately for Mr. Riley, was well above flood stage. They recovered his body in the river several months later.

Michael Riley, Jr.'s family brought a lawsuit against Twin Town Bowl alleging an illegal sale of alcohol caused or contributed to his intoxication which caused or contributed to his death. For purposes of proximate cause only, the parties stipulated there was an illegal sale. We anticipate the illegal sale issue will be litigated if the case goes to trial.

Twin Town Bowl moved for summary judgment on the proximate cause issue, claiming the actions of Mr. Riley in attempting to escape the Trooper broke the causation between his intoxication and drowning. The District Court granted Twin Town's motion, dismissing the claims against Twin Town Bowl agreeing that Riley's attempting to escape arrest severed any proximate causation between his intoxication and drowning. The Minnesota Court of Appeals affirmed the decision of the District Court.

The Supreme Court reversed the Court of Appeals and District Court decision, remanding the case for trial reaffirming Minnesota's long held position that generally proximate cause is an issue for the jury. In Minnesota, in dram shop cases, proximate cause is defined as a contributing or substantial cause of the intoxication and the harm or injury. It need not be the sole cause of the intoxication, harm or injury.

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Page 2

The Supreme Court distinguished three Minnesota cases recognizing a break in the chain of proximate cause. These cases involved:

- An intoxicated patron who was injured by a bar employee while the patron was being removed from the premises;
- An intoxicated person who assaulted his wife while driving home from the bar, causing her to jump out of a moving vehicle; and
- An intoxicated female patron encouraged a male patron to attack the Plaintiff.

The Supreme Court reasserted its position there was no proximate cause in these three cases because the injuries in question were caused by choices and actions of a third party who was not the AIP (bar employee; the wife; and another patron).

In Riley, the Court determined it was Riley's decision to jump into the river and not that of a third person.

In opposing the Motion for Summary Judgment, the Plaintiff's submitted an unsigned Affidavit of a psychological expert who had reviewed Mr. Riley's medical and psychological records and interviewed his family. This expert claims that absent intoxication, Riley would not have attempted to escape the Police. While the Court did not endorse this opinion or even the concept of such an opinion, it did find the report raised sufficient questions to make proximate cause a jury issue.

Ultimately, we see this case having very little effect on liquor liability cases in the state of Minnesota. Proximate cause has almost always been a jury issue in Minnesota as can be seen by the words used to define it. When the Courts use words such as "substantial contributing factor," they have erased any potential bright line test. While there have been and will continue to be the occasional unusual circumstances in which Courts find no causation, the vast majority of proximate cause issues are for a jury.

If you have any questions or comments, please feel free to give us a call.

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