

November 20, 2006

DRAM SHOP VICARIOUS LIABILITY LIMITED TO LICENSEES

In Urban v. American Legion Dept. of Minn., (Oct. 19, 2006), the Minnesota Supreme Court affirmed a lower Court's grant of summary judgment to the American Legion Department of Minnesota and the American Legion National holding they could not be held liable under the Civil Damages Act (CDA a/k/a Dram Shop Statute) because they were not alcohol licensees.

The suit arose after a drunk driver struck the Urban family car, killing Barbara Urban and seriously injuring two of her children. The plaintiffs sued the American Legion Post 184 for allegedly illegally serving the drunk driver alcohol. They also sue the American Legion Department of Minnesota and the American Legion National under *respondeat superior*. (*Respondeat superior* is a common law doctrine which holds an employer vicariously liable for the torts of its employees committed within the course and scope of employment.) The American Legion National was created by the federal government for the mutual aid and community service for veterans. The national organization then created state chapters and within each state, groups of Legion members created "posts" which are local chapters of the American Legion.

In its 4-1 decision affirming the grant of summary judgment, the Court looked to the language of the CDA (two justices did not participate in the decision). The majority determined that while Minn. Stat. § 340A.801 does not expressly prohibit the application of *respondeat superior*, the express language of the statute designating licensees as responsible for the sale of alcohol by their employees necessarily implied the legislature did not expect *respondeat superior* to apply to CDA liability. By specifying licensees are liable for the alcohol distribution of their own employees, the legislature meant that *only* licensees are vicariously liable for the alcohol distribution. The Court concluded that the legislature had, in amendments made in response to previous court decisions, expressed a public policy to limit claims under the CDA to commercial vendors who *profit* from the sale of alcohol. Using this logic, the Court concluded that only Post 184, not the State or National American Legion organizations, could be held liable under the CDA.

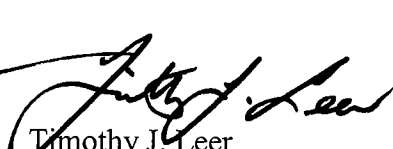
This will also have implications for services and corporate parents of "licensees." Using the same logic, they should not be liable under the CDA.

Please contact the undersigned or any of the attorneys in our Liquor Liability Practice Group if you have any questions regarding this decision.

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