

Risk Trends: A Look Inside Restaurants



OFFICIAL PROPERTY & CASUALTY INSURANCE PARTNER

Cost Mitigation Strategies

Section Overview

- Demystifying Dram Shop (Liquor) Liability
- Impact of Dram Shop Liability Cases
- Dram Shop Statutes and Outlook by Jurisdiction
- Documentation and Training Key to Reducing Exposure to Liquor Liability
- Optimizing “Happy Hours” and Other Off-Peak Promotions
- Restaurant Publications

This section focuses on a selected topic that can help lower frequency or mitigate the severity of losses when they occur.

This year’s selected topic is dram shop liability.

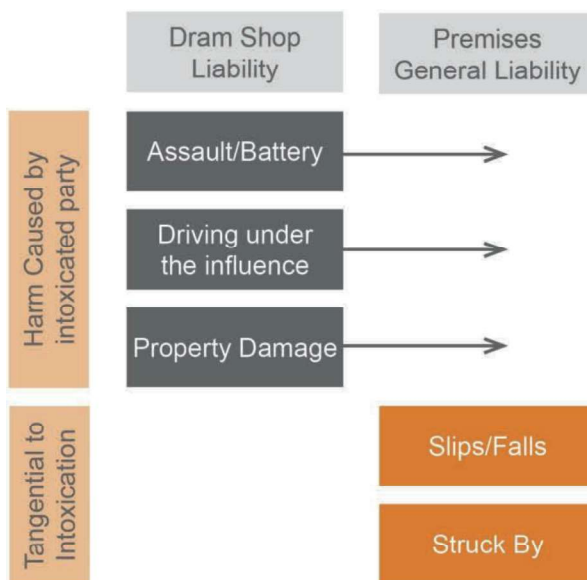
Demystifying Dram Shop (Liquor) Liability

Dram shop law holds establishments accountable for harm caused by or to an intoxicated person.

Liability Theories Affect the Coverage Implicated

A worrisome trend is for claimants to assert that alcohol-related injuries fall within negligence-based premises general liability, to avoid the statutory limitations of dram shop laws (damage caps and other statutory burdens based on over-serving). Sometimes, claimants allege both dram shop and premises liability, potentially triggering both liquor and general liability policies.

Alcohol-Related Losses



Impact of Dram Shop Liability Cases

Dram Shop Liability cases can be exceedingly severe in terms of awards: both basic and punitive damages. Below are a few reported examples:

Maddy v. Ruby Tuesday – 2009/Alabama: \$10,035,000 Verdict for Plaintiff

Dan Maddy ate dinner at Ruby Tuesday while on a business trip in Smyrna, Alabama. During the course of the meal he conversed briefly with another patron (Kenneth Comfort). Comfort drank in excess that night, and in a drunken rage, he hit Maddy in the face with a beer mug causing significant injuries and scarring. Ruby Tuesday was found liable under dram shop liability due to serving a visibly intoxicated person (proximate cause of injury) - \$35,000 in compensatory damages and \$10,000,000 in punitive damages.

Cleland v. Hofbrauhaus – 2013/Pennsylvania: \$15,600,000 Settlement

Nicole Cleland was involved in drunken driving accident where the other driver had been a patron of Hofbrauhaus earlier in the night. Nicole's daughter (also in the car) was killed instantly, and Nicole suffered a broken pelvis, miscarriage, and other injuries. In settlement of the case, Hofbrauhaus agreed to pay a total of \$15,600,000 to the involved parties as well as issue a public apology and institute new policies and procedures.

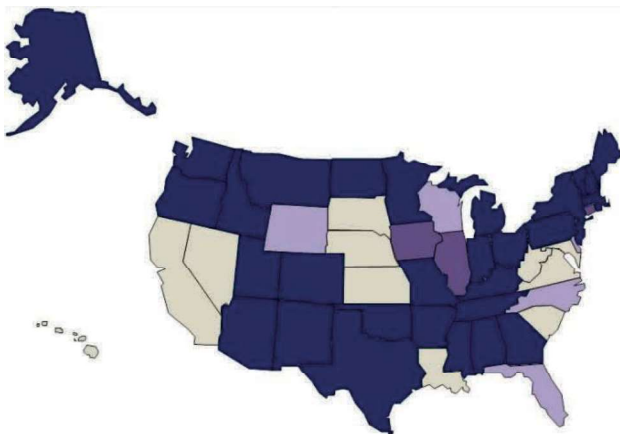
Stow v. Longhorn Bar & Grill – 2014/Texas: \$11,162,579 Verdict for Plaintiff

Kristopher Stow was involved in a drunken driving accident where the other driver had been a patron of Longhorn Bar & Grill earlier in the night – Stow died at the scene. Stow and Longhorn Bar & Grill were each assigned 50 percent liability with total damages assigned of \$11,162,579.

Dram Shop Statutes

Dram shop statutory law — whether an establishment can be held accountable for harm caused by an intoxicated person — is broken down into four applications:

1. Minors
2. Intoxicated people
3. Minors and/or intoxicated people
4. No applicable statutes



Legend
No relevant statutes
Statute only applies to serving minors
Statute only applies to serving intoxicated people
Both (Statute applies to serving minors and intoxicated people)

*Source: <http://www.ncsl.org/research/financial-services-and-commerce/dram-shop-liability-state-statutes.aspx>

Documentation and Training Key to Reducing Exposure to Liquor Liability

While the statute of limitation on filing a liability claim varies by jurisdiction, a current claimant strategy is to file within two years unless filing against a municipality or local government.

Claimant strategy is to file alcohol-related claims at or near the end of the statute of limitations to limit the success of the establishment during the discovery process.

State-specific strategies exist that can potentially limit or even eliminate liability. For one example, see the Texas "Safe Harbor" law regarding server training.

Documentation and Training Checklist

Documentation:

- Each incident when persons were refused service due to intoxication
- When identification was refused
- When alternate transportation was arranged or offered
- When other alcohol-related incidents occur

Training:

- All employees who serve alcohol have completed a state-approved responsible server program
- Written records of employees completing responsible server training are maintained
- Written procedures for verifying customers are of legal drinking age
- All servers verify that customers are of legal drinking age prior to being served
- There are a sufficient number of servers on each shift to effectively carry out the policies and procedures
- Signs are posted that promote responsible drinking
- Drinks are measured and drink recipes standardized, so that servers can more easily monitor customer alcohol consumption
- Food is available for customers
- A written policy exists for stopping alcohol service to persons who are suspected of being intoxicated
- A list of reliable transportation providers is posted prominently near door or in bathrooms