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August 2010

Volume 32 Number 3

78TH ANNUAL CONVENTION

The 78th Annual Convention of the New Jersey Licensed Beverage Association (NJLBA) is being held this year at the Tropicana Casino and Resort on September 28th and 29th in Atlantic City. This Convention is open to all members of the Alcoholic Beverage Industry. This year's Convention promises to be packed with information and tools to assist you with your on-premise license.

As many of you are already aware the alcoholic beverage industry is facing many new challenges with recently proposed legislation to create new beer and wine licenses, the transfer of retail licenses from one town to another, redevelopment zone licenses, the attack on the two license limitation law and the recent passing of the ignition interlock law just to mention a few. The NJLBA has been meeting with key members of the legislature to inform them of the devastating effect these bills will have on the on-premise licensees if these bills are passed. A strong and united voice by the NJLBA is needed to defeat this legislation. In that regard, we have invited Assemblyman Joseph Cryan and Assemblyman David Rible to attend and speak at our Convention on these issues. We have also invited Alcoholic Beverage Control (ABC) Director Jerry Fischer and his staff from the Enforcement, Regulatory, Licensing and Investigation units to provide a seminar on updates on any new issues concerning our industry including the last drink data. This seminar is invaluable to all retail and wholesale licensees. There will also be a Fake Identification Training with Joseph Vasil, Document Fraud Specialist from the Division of Motor Vehicle Services.

We will also have a very special presentation from Allen Riley, former New Jersey State Trooper (NJSP) and former NJSP ABC Enforcement Officer who will provide information on how his company can assist licensees with employee training, undercover surveillance and mystery shopping operations, license transfer and permits, guidance on recently established violations, education and advice on ABC statutes and regulations and procedures used by ABC

Enforcement Officers. This is an excellent opportunity for licensees to ask questions about all aspects of their business and hear first hand from someone who has in-depth knowledge and first hand experience on ABC enforcement and regulatory matters.

A convention highlight this year will be the presentation of the "NJLBA 20 Year Member Awards" at the closing dinner. Please contact the NJLBA if you are a 20-year plus member of the Association so that you can receive your award and be recognized at the Convention.

Further, there will be a free TAM Seminar for NJLBA members. The Division of ABC will also be conducting a Mandatory Package Store Education Training class. For TAM registration contact Judy at the NJLBA at 609-394-6730 and for Package store training contact Beth Pajak of the Division of ABC at 609-984-2658. Register early space is limited for both classes.

As you know Conventions are an excellent opportunity to meet and exchange ideas with fellow licensees and old friends. Take this opportunity to get away from your hectic businesses and join us down at the Tropicana for informative seminars, meet with legislative leaders, members of the ABC and NJLBA and hear first hand what the NJLBA is doing for you and what you can do to protect your business. Proceeds from the Convention go directly towards protecting your license.

We look forward to seeing you at the Convention.

**Drink Responsibly.
Drive Responsibly.**

JOHN F. VASSALLO, JR.

ALLIED MEMBER

The NJLBA is pleased to finally welcome former ABC Director John F. Vassallo, Jr., as an allied member. Although she never worked under him, our Executive Director, Diane Weiss, was instrumental in bringing Jack into the fold.

Since finishing his eight years as Director during Governor Kean's administration, Jack has been practicing law, with a concentration in the field of alcoholic beverage control law. He first joined a Philadelphia law firm and opened their New Jersey office, but that was very short lived. He then was on his own for about a year before returning to the Willingboro law firm (Kearns, Vassallo & Kearns) that he had been with before becoming the ABC Director.

Jack remained with that firm for 17 years leaving at the end of 2008 to practice on his own. Since the beginning of 2009, Jack has a "mobile practice", based out of his home in Willingboro. Jack now travels to his clients and his "office" is with him. He has a laptop, Blackberry phone, portable printer and portable scanner. As Jack puts it, it's the law office of the future, and he will gladly set up to work at a bar or in an office!

In addition to having his own practice, and in order to have assistance when needed, Jack is also "of counsel" to two New Jersey firms that concentrate in alcoholic beverage control law. One is the firm of Scott N. Silver, Esq. in Linwood, where Scott and his associate, Glenn Gorman, Esq. often work with Jack, and

the other is The Skene Law Firm in Old Bridge, where Rich Nasca, Esq. who formerly was with the enforcement bureau of the Division of ABC is an associate.

Over the past 20 years, since leaving the Director's office, Jack has also given several alcoholic beverage control law seminars for lawyers, and workshops for municipal clerks in different parts of the State.

As Jack was always available to discuss matters with licensees when he was ABC Director, Jack remains available to assist them with their legal needs. He especially takes pleasure in being able to come up with solutions for unusual circumstances. Jack's address is 50 Twin Hill Drive, Willingboro, NJ 08046, and his email is jack@abacnjlaw.com.

With his background and experience, the NJLBA is pleased to welcome Jack as an allied member and to have him share with us as he frequently did when he was the ABC Director.

NJLBA Officers 2009 - 2010

President
Fred Barnes
Dingo's Den/Dingbatz
Clifton
973.471.7767

Vice President
Bonnie Petrock
Petrock's
Hillsborough
908.359.2344

Secretary
Ken McCormick
Hotel Somerset
Somerset
908.725.2739

Sgt-at-Arms
Sherwood Brown
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609.695.9058

Counsel
William Cahill, Jr.
Cahill, Wilinski,
Rhodes & Joyce
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856.428.2100

Treasurer
Mike Marsh
Trio Tavern
Williamstown
856.629.3500

Executive Director
Diane M. Weiss
1.800.LBA.0076

Counsel
Saul A. Wolfe
Skoloff & Wolfe
Livingston
973.992.0900

Reporter

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206 West State Street, Trenton, NJ 08608
609.394.6730 • 800.LBA.0076 • Fax 609.394.6732

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**SEPTEMBER 28 & 29, 2010
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TENTATIVE CONVENTION SCHEDULE

Tuesday, September 28, 2010

3 pm-6 pm Registration Desk Open
7 pm-9 pm Welcome Reception & Buffet

Wednesday, September 29, 2010

8 am-10 am Buffet Breakfast
10 am-5 pm Registration Desk Open
10 am-10:15 am NJLBA Welcome Address
10:15 am-11:30 am ABC Seminar
11:30 am-12:30 pm Fake ID Training
12:30 pm-1:30 pm Lunch
1:30 pm – 3 pm NJLBA Legislative Update
NJLBA Meeting &
Election of Officers
1:30 pm-4 pm FREE TAM Training*

Wednesday, September 29, 2010 (continued)

1:30 pm-4 pm Mandatory Package Store
Education Training*

4 pm-5 pm Speaker Allen Riley Retired State Trooper
NJSP ABC Enforcement Bureau
(See attached information)
7pm-8 pm Cocktail Reception
8 pm-10 pm Dinner – Keynote Speakers
Assemblyman Joseph Cryan
Assemblyman Dave Rible
Jerry Fischer, Director of the
Alcohol Beverage Control
Presentation of the NJLBA
20 year Member Awards

***REGISTER EARLY CLASS SIZE LIMITED: TAM REGISTRATION CONTACT Judy at 609.394.6730
PACKAGE STORE TRAINING CONTACT Beth Pajak at the Division of ABC at 609.984.2658**

REGISTRATION FORM

Member: Full Registration @ \$150 _____

Non-Member: Full Registration @ \$200 _____

Name _____

Company _____

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NO REGISTRATION REFUNDS

WASHINGTON UPDATE

Swipe/Interchange Fees Legislation PASSES; Heads to President's Desk

This morning, the Senate voted to invoke cloture on the Conference Report after weeks of vote-counting and lobbying. A vote to officially pass the bill by the whole Senate took place this afternoon, with the legislation passing 60-39. It now heads to the President's desk to be signed into law.

Back on May 13, the Senate passed an amendment to the Restoring American Financial Stability Act of 2010. Included in the bill was an amendment introduced by Senate Majority Whip Dick Durbin (D-IL), which itself received strong bipartisan support in a 64-33 vote to add it to the larger bill. The Durbin amendment has two key provisions:

- First, it directs the Federal Reserve to issue rules to ensure that debit interchange fees are reasonable and proportional to the processing costs incurred. Visa and MasterCard currently charge debit interchange fees of around 1-2% of the transaction amount. These fees are far higher than the actual cost of processing debit transactions, and they mean that small businesses and merchants always get shortchanged when they accept a debit card for a sale.
- Second, the Durbin amendment prevents card networks like Visa and MasterCard from penalizing sellers for offering discounts to customers. The amendment allows sellers to offer discounts for customers to use competing card networks and for customers to pay by cash, check or debit card. The amendment also allows sellers to choose to decline credit cards for small dollar purchases (because interchange fees often exceed profits on such sales).

This is a great victory for ABL, its members and the retail community as a whole. Congratulations to all those who did their part – writing, calling, faxing or emailing their members of Congress; talking to media about interchange fees; and educating their customers and the public about this important issue.

Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010 (H.R. 5034)

On April 15, the Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010 (H.R. 5034) was introduced in the House of Representatives. Its introduction followed a hearing held by the House Judiciary Committee's Subcommittee on Courts & Competition, focused on "Legal Issues Concerning State Alcohol Regulation". The bill currently has 125 cosponsors and there has not been a version introduced in the Senate

There are strongly opposing intra-industry views relative to the CARE Act. Supporters of the bill claim that the bill is sorely needed as a means of clarifying congressional intent as to states having primary authority to regulate alcohol, thereby preventing further erosion of state-based alcohol regulation and strengthening the presumption of validity of state laws. Those in opposition warn that the legislation would destroy the careful balance of regulation at the federal, state and local levels enjoyed successfully by the industry for over 75 years and would have harmful unintended consequences.

ABL remains officially neutral on H.R. 5034 but remains engaged in active discussions with representatives of the varying viewpoints and will continue the process of studying the issue in

depth. ABL is strongly supportive of the Three-Tier System and states' rights to implement beverage alcohol distribution and sales policies they deem the most effective, efficient and responsible. It is our consideration that all parties have similar and basic goals with regard to the future of our industry. We strongly urge proponents and opponents of this legislation to join together in an effort to resolve their differences as to how best to proceed as a unified industry.

Ignition Interlock Legislation

ABL continues to work with allied industry groups and third parties to prevent an all-offender ignition interlock mandate from being included in surface transportation legislation, as a stand alone bill or in another legislative vehicle. Staff has met with the office of Sen. Jim Inhofe (R-OK) and continues to make out outreach to other Senate offices to voice its objection to interlock sanction legislation (S.2920) offered by Sen. Frank Lautenberg (D-NJ).

ABL is seeking support for the Congressional Budget Office to identify S.2920 as a mandate under provisions in the Unfunded Mandate Reform Act of 1995 (UMRA), which calls for intergovernmental mandates with project cost burdens on state, local and tribal governments in excess of \$70 million over five years to be eligible for a point of order and subsequent scoring. If passed, the mandate is estimated to cost states nearly \$500 million in monitoring and compliance costs. It is possible that the language in S. 2920 will be folded into a Senate transportation bill later this fall, though the ever-tightening legislative calendar and the November mid-term elections may delay this action.

The ROADS SAFE Act (S.3039), a bill introduced by Sens. Mark Udall (D-NM) and Bob Corker (R-TN), calls for \$12 million/year in funding for anti-drunk driving technology through the DADDS program. It recently received the backing of Senator Chuck Schumer (D-NY) and has picked up 12 cosponsors.

Estate/Death Tax Negotiations Continue

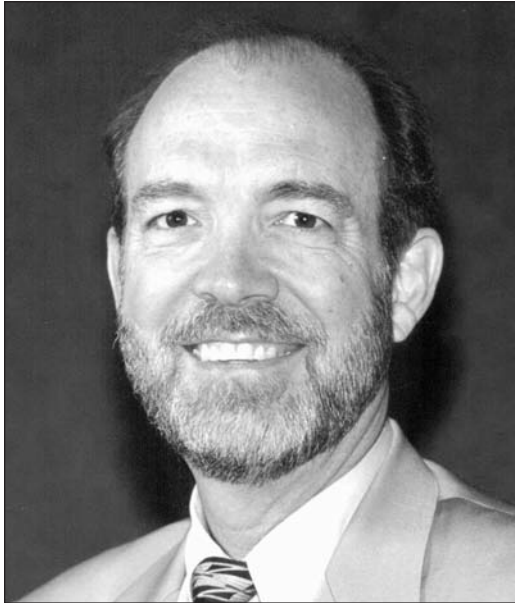
Work continues in the Senate to find a compromise that would prevent the Estate tax – known to many as the Death Tax – from returning in 2011 with a vengeance, with the latest proposal backed by Sens. Jon Kyl (R-AZ) and Blanche Lincoln (D-AR). Kyl and Lincoln suggest that their death tax motion be included in the process of moving a small business bill (HR5297), though this path has proven difficult due to the lack of consensus on the death tax, fights over amendments and scheduling challenges.

Under their proposal, the top tax rate would drop to 35 percent, the per-person exemption would be set at \$5 million and indexed to inflation. Though the Senate adopted a similar measure as an amendment to its budget resolution in 2009, that version did not get the 60 votes needed to overcome a filibuster.

"In just six short months, American taxpayers will face the largest tax hike in history unless Congress acts," said Kyl. "It is estimated that more than a half-million American families will pay the estate tax over the next decade, and the lack of congressional action creates a tremendous amount of uncertainty for these families, small-business owners and farmers. This uncertainty is one of several factors acting to prevent a strong economic recovery from taking hold."

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ABL Executive Director Harry G. Wiles



Bethesda, MD - August 19, 2010 - American Beverage Licensees announces with profound sadness and regret that Harry G. Wiles passed away unexpectedly on Wednesday, August 18, 2010. Harry was ABL's Executive Director and a leading member of the beverage alcohol community. He will be remembered as a true advocate for the entire industry and a loyal friend to those whose lives he touched.

Harry served as ABL's Executive Director since 2002. He was chosen to lead the association and its nearly 20,000 members following its creation after the merger of the National Association of Beverage Retailers and the National Licensed Beverage Association. Under his leadership, ABL grew in scope and strength as he oversaw the partnering of on-premise and off-premise beverage licensees into a single, unified voice for the beverage retail community.

"Not only has our industry lost a leading advocate, we all have lost a dear friend," said ABL President David Jabour. "Harry was the consummate industry ambassador and steward, and will be remembered for years to come. He was truly part of our industry family."

An attorney and member of the Bar in the State of Kansas, the District of Columbia, and the United States Supreme Court, Harry followed his political instincts from Kansas to Washington, D.C. in 1976, where he worked on Capitol Hill before becoming a fixture in the beverage alcohol community.

Harry's more than two decades of service to the industry began in 1987 when he became Senior Vice President of Federal Government Relations & Senior Counsel for the Wine & Spirits Wholesalers of America, a position he held for thirteen years.

In 2010, Harry was inducted into the Sky Ranch Hall of Fame, and served on the Executive Committee of the Sky Ranch Foundation. He also served as a board member of the Responsible Hospitality Institute (RHI), the Responsible Retailing Forum (RRF) and the Night Club & Bar Advisory Board.

An avid supporter of the western lifestyle and horseback riding, Harry was a member of western riding organizations Rancheros Visitadores, based in Santa Barbara, CA, and El Viaje De Portola in San Juan Capistrano, CA. He was also a board member of the Heartland Alliance of America, the association for rural Americans.

Harry is survived by his wife Cindy; his daughter Heather and husband, Troy Valerius; and four grandsons. Please keep them in your thoughts and prayers. Condolences may be sent to Harry's wife Cindy Wiles at 10890 Woodleaf Lane, Great Falls, VA 22066. A remembrance gathering in honor of Harry will take place at a future date with details to follow.

CONVENTION BUSINESS

The NJLBA Constitution provides for amendments to keep it as a relevant and living document. Pursuant to the procedure outlined in the Constitution, an amendment has been proposed to eliminate the term limit set forth in Article VI, Section 2. A discussion and vote on the amendment is scheduled at the business meeting of the Association on Wednesday, September 29. Attendance at the Convention affords you the opportunity to express your opinion on this matter.

Assuming that the amendment is ratified, the following officers will serve as the Executive Committee of the Association for the 2010-2011 term. Current President Fred Barnes, owner of Dingbatz and Dingo Den in Clifton will again serve in that capacity. Fred's background includes serving as Convention Chairman, Secretary and Vice President of the Association. Fred is very active in the Clifton LBA, working with the bar owners to protect their licenses from restrictive municipal legislation. Fred has served as a Passaic County Director and a Regional Director.

Serving as Vice President will be Bonnie Petrock, owner of Petrock's in Hillsborough. Bonnie has previously served in the position of Association Treasurer and Secretary. Bonnie has represented Somerset County as a County Director for several years. Bonnie has been a valuable member of the Wellhofer/Wilinski Scholarship Foundation committee and has been a contributing voice protecting the interests of the on-premise licensees on the ABC Advisory Committee.

Following in the footsteps of his father who was elected President of the organization, Secretary Ken McCormick of the

Hotel Somerset in Somerville represents the second generation to become an officer of the Association. Ken has previously served as a voice of reason during his service as Somerset County Director. Ken has made a contribution serving as Constitution Chairman and Strategic Planning Committee.

No one has worked harder for NJLBA, than Mike Marsh who will again serve as Treasurer. Mike is the owner of Trio Tavern in Williamstown. In that position, Mike oversees the collection and spending of Association revenue. Mike has always been an outspoken champion of the importance of a strong membership. Mike has previously served in all offices except President. He has been Membership Chairman, Convention Chairman, Regional Director and County Director. Mike also is the "unofficial" house repair Chairman and has made many improvements to the head-quarter building.

Representing the urban businessperson, Sherwood Brown will serve as Sergeant-at-Arms. Sherwood's business, Bistro on Olden, is located in Trenton. Previously Sherwood has represented Mercer County as a County Director for over ten years. Sherwood has been very successful in resolving the problems facing the licensees in his county. Sherwood brings a valuable insight on the unique situation confronting inter-city owners.

The governing body of the NJLBA is the Executive Committee comprised of the officers elected by the membership at the annual Convention and by County Directors elected independently by each county.

Washington Update

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The House of Representatives and the White House favor an approach embodied in a bill the House passed last December, HR 4154, that would set the death tax at permanently at 2009 levels: a 45 percent top rate, with a \$3.5 million per-person exemption.

Currently the death tax is on a one-year hiatus following the expiration of the tax on December 31, 2009. The 2001 tax cut law phased out the estate tax over the past decade, but not permanently. The tax is set to return on Jan. 1, 2011, with a top rate of 55 percent and only a \$1 million per-person exemption.

TTB User Fees Proposal Still Under Consideration.

With the unveiling of the President's budget in February came the following revelation: "The Treasury department is also reviving a proposal from last year to fund the \$106.2 million operations of the Alcohol and Tobacco Tax and Trade Bureau with user fees, instead of paying for it out of the general budget." This proposal would amount to a re-imposition of the Special Occupational Tax (SOT), the permanent repeal of which was successfully passed in 2005.

ABL has joined a group of beverage alcohol industry groups in a letter to the Chairman and Ranking Member of the Senate Subcommittee on Financial Services and General Government

Chairman, Senators Dick Durbin (D-IL) and Susan Collins (R-ME); and the Chairman and ranking Member of the House Subcommittee on Financial Services and General Government, Representatives Jose Serrano (D-NY) and Jo Ann Emerson (R-MO), expressing strong opposition to the proposal. ABL is hopeful that those who opposed the SOT will reject this new fee structure.

973.736.4100

Fax 973.736.1712

Robert C. Williams
COUNSELLOR AT LAW
Associate Member NJLBA

Alcoholic Beverage
Licensing Matters

622 Eagle Rock Ave.
West Orange, NJ 07052

SPORTS BARS FIND FOOTBALL AND MUSIC A GOOD COMBINATION TO ENTERTAIN CUSTOMERS

Sports bars are a couch potato's nirvana – a place where fans can simultaneously watch multiple games without having to fumble with the remote or rush to the fridge for another brew.

Among their proponents, such bars are an oasis, an escape from chores and distractions that might spoil their fun. Some purists see little room for improvement in the basic model – a room lined with TV sets tuned to as many sporting events as possible – but many of the more profitable establishments have found new customers by embellishing on the sports bar concept.

Limited appeal and increased competition among bare-bones sports watering holes have given rise to expanded features – sort of a sports bar on steroids – where football fans can dance to a hip-hop DJ, perform their favorite songs in a karaoke contest, or boogie to the sound of live bands. Some bars have musical entertainment several nights per week, while others add it only on non-game nights or between sports seasons. Their web sites offer even more music, so customers know right away these businesses have more than television entertainment.

Randy Filner, who operates three Time Out Sports Bars in the Houston area, learned quickly that it takes more than television to keep customers coming through the door. "I've been doing this 11 years, and it became apparent during the first year there are only 40 nights per year that TV will bring customers into the bar," he said.

Filner relies on a combination of music and games – including pool, shuffleboard, darts and video games – to entertain his customers. The bars often advertise live cover bands on Thursdays and Saturdays, and the customers keep the jukebox going on other nights. "Saturday nights are a real problem in this business," he says. "Nobody goes anywhere unless there's something to do." He usually gets a packed house on Fridays to watch sports programs.

Filner said the target demographic for Time Out locations is a male in the 25-40 age group, and he considers women "another breed" of customer. "We get a lot of women, but they want two things – they want a dance floor and they don't like to pay for much. We don't market to them."

Champps Entertainment, Inc., which operates 43 Champps restaurants and 13 franchises throughout the U.S., puts the emphasis on food without overlooking entertainment. "First and foremost, we're a restaurant that happens to have sports viewing," said Sharon Banta, Director of Marketing. Restaurants may or may not have their multiple TV sets tuned to sporting events, she said, depending on the season and popularity of specific events. "Sports bars have a certain connotation that we try to avoid. We also have music, deejays, late-night promotions, karaoke, and trivia games for our customers."

Sports bars – like other businesses – are required by U.S. Copyright law to obtain permission from songwriters for the recorded and live music they use, and may need a license for TV and radio. Most of them obtain a blanket license through performing rights organizations such as BMI, which represents more than 6.5 million songs. Most of these businesses find the increased profits from music well worth its cost.

"Music is crucial to your ambiance," Banta said. "It sets the mood. Often, people don't notice music until it's wrong. It has to be at the right volume, and should match the day-part. Happy hour is different from lunch, which is different from late night."

The diversity of entertainment offered by Champps is designed to reach a very broad demographic as the business day progresses. Their youngest customers often are the last to arrive in the evening, and that's when karaoke is popular. "People forget how to have fun," said Banta. "Karaoke is a way to cut loose."

PROPOSED CHANGES TO THE CONSTITUTION & BY-LAWS

The New Jersey Licensed Beverage Association Constitution and By-Laws provides for the annual election of the Association officers.

The Constitution currently reads:

Article VI – Section 2: No Officer shall be permitted to serve more than two (2) successive one (1) year terms in the same position and no Regional Director shall serve more than six (6) successive one (1) year terms on the Executive Committee.

PROPOSED CHANGE:

No Officer shall be permitted to serve more than two (2) successive (1) year terms in the same position (**UNLESS UNOPPOSED**), and no Regional Director shall serve more than six (6) successive one (1) year terms on the Executive Committee (**UNLESS UNOPPOSED**).

The election of officers will take place during the Association meeting being held at the annual Convention on September 29, 2010 at the Tropicana Hotel and Casino in Atlantic City, NJ.

The changes in the Constitution and By-Laws will be addressed at that time.

Should you have any questions, please contact Diane Weiss at 609.394.6730.

NJLBA 20 YEAR MEMBER AWARD

A highlight of this year's convention is the 20-year NJLBA member award ceremony. This award is given in recognition of 20 years of service in the industry, community and the NJLBA. Any licensee who has been a member of the NJLBA for 20 years or more will be honored at the closing dinner at the convention on September 29th. Please contact the association if you are a 20-year member and are planning to attend the convention to assure that you will receive your award. The NJLBA is proud to recognize and support our members.

SUPREME COURT TO DETERMINE IF AN INTOXICATED DRIVER CAN SUE A LICENSED ALCOHOLIC BEVERAGE SERVER

In 1997, the New Jersey Legislature enacted *N.J.S.A. 39:6A-4.5(b)* which provides that a driver of a motor vehicle who is convicted of or pleads guilty to driving while intoxicated pursuant to *N.J.S.A. 39:4-50(a)* in connection with a motor vehicle accident “shall have no cause of action for recovery of economic or non-economic loss sustained as a result of the accident.” The application of this statute as a defense to a first party dram shop claim under the New Jersey Alcoholic Beverage Server Fair Liability Act, *N.J.S.A. 2A:22A-1 to 7* has recently been addressed by the Superior Court of New Jersey, Appellate Division, in the case of *Voss v. Tranquilino, et al.*, A-110-09 and is now headed to the Supreme Court of New Jersey for review and final determination.

The *Voss* case stems from an accident involving a motorcycle driven by plaintiff Frederick Voss and a motor vehicle driven by defendant Kristoffe Tranquilino. Prior to the accident, Mr. Voss was a patron at Tiffany’s Restaurant in Toms River where he consumed alcoholic beverages. Mr. Voss’ BAC following the accident was .196. He was charged with several motor vehicle offenses, including DWI to which he ultimately pled guilty.

Despite his obvious contribution to the accident, Mr. Voss sued Tranquilino and Tiffany’s in Ocean County Superior Court. Both defendants filed motions for summary judgment pursuant to *N.J.S.A. 39:6A-4.5(b)*, arguing that Voss’ guilty plea to the DWI offense barred him from pursuing a personal injury action. Tranquilino’s motion, which was unopposed, was granted. Tiffany’s motion was denied by the Honorable John Peterson who noted that the Legislature’s purpose in enacting *N.J.S.A. 39:6A-4.5(b)* was to contain the cost of automobile insurance premiums and, in light of this purpose and contrary provisions of the Dram Shop Act which would be “eviscerated” if the statute barred such claims against liquor licensees, determined that the statute did not bar Mr. Voss’ claim against Tiffany’s. Tiffany’s subsequently filed a motion for leave to appeal which was denied by the Appellate Division. Subsequently the Supreme Court granted Tiffany’s motion and remanded the case back to the Appellate Division for disposition on the merits.

The Appellate Division affirmed the trial court’s ruling, holding that the statute does not bar a dram shop claim because:

- (1) the purpose of the statute is to reduce automobile insurance premiums and its scope should be limited accordingly to losses that are subject to coverage under Title 39;
- (2) an interpretation barring a dram shop claim would unjustifiably constitute repeal by implication of a portion of the Dram Shop Act; and
- (3) immunizing liquor licensees from liability in such circumstances would be inimical to the policy of this State of curbing drunk driving.

In arriving at its decision, the Appellate Division reviewed the legislative history and public policy rationale behind the enactment of the Dram Shop Act. The Court noted that the Act provides the exclusive civil remedy for injuries resulting from the negligent service of alcoholic beverages by a liquor licensee and that “negligence,” within its context occurs “only when the

server served a visibly intoxicated person,” *N.J.S.A. 2A:22A-5(b)*, i.e., a person in “a state of intoxication accompanied by a perceptible act or series of acts which presents clear signs of intoxication.” *N.J.S.A. 2A:22A-3*. The Court cited to the fact that within its legislative findings and declarations, the Legislature acknowledged the need to enact measures to make liability insurance for liquor licensees more available and more affordable, *N.J.S.A. 2A:22A-2*. The Legislature determined that in order to make insurance coverage more economically feasible “the incidence of liability should be more predictable” and that predictability could be achieved by “defining the limits of civil liability of licensed alcoholic beverage servers in order to encourage the development and implementation of risk reduction techniques.”

The Act was designed to protect the rights of persons who suffer a loss as a result of the negligent service of alcoholic beverages by licensed alcoholic beverage servers while at the same time providing a balanced and reasonable procedure for allocating responsibility for such losses. Thus the Legislature also enacted, as part of the Act, *N.J.S.A. 2A:22A-6* which limits a liquor licensee’s responsibility for damages to its percentage of negligence. The Court noted that, pursuant to the legislative findings and declarations, a “person” for whom the dram shop remedy is made available includes “patrons” of the liquor establishments and “it is therefore beyond question that the Dram Shop Act conferred on plaintiff a cause of action against Tiffany’s.”

The Court further noted that the Legislature and the Governor were “keenly aware” when they enacted the Dram Shop Act that most claims arise from drunk driving accidents. The law which was originally passed and sent to the Governor contained provisions which would have immunized licensed alcoholic beverage servers from all first party claims and claims brought by passengers in vehicles driven by persons known by the passenger to be intoxicated. Governor Kean however issued a conditional veto and recommended the deletion of these provisions, indicating that keeping them in the bill would contravene current Alcoholic Beverage Control policy. The Governor said that he could not support legislation which eliminated the licensee’s civil duty of care to visibly intoxicated adults and third parties who ride in motor vehicles with an intoxicated driver. The Legislature agreed and the subject provisions were deleted from the Act.

The Appellate Division also cited to the public policy considerations behind the Dram Shop Act in support of its concurrence with the trial judge. They noted that the courts of New Jersey have long recognized the “senseless havoc and destruction caused by intoxicated drivers,” the strong public policy in the immediate removal of drunk drivers from the highways and stated that “Discouraging drunk driving is surely a purpose of both statutes involved in this case.” The Court was not swayed by Tiffany’s argument that precluding first party dram shop claims would send a firm message to drivers of motor vehicles in this State concerning the increased risk of driving while intoxicated and said that

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Behind the Bar

by David T. Kratt

TEMPERS RISE IN STOP 'N' GO TRAFFIC



The stress is building with every step on the brake. Another road sign reads, "REDUCE SPEED AHEAD." You think, "I don't have time for this!" (Brake) Traffic funnels down to one lane. (Brake) "Come on!" (Brake) Your knuckles turn white from gripping the steering wheel so tight. (Brake) Another sign reads, "PREPARE FOR BACKUPS" (Brake) Traffic comes to a dead stop.

Bartending has its own fair share of delays, bottlenecks, roadblocks and detours. When you're busy, it seems like every other liquor bottle you pick up is empty and, of course, there is no backup behind the bar. (Brake) You reach for a highball glass and there are none. (Brake) She's taking forever to order. He's taking forever to pay. The other bartender is using the blender or cash register when you need it. The credit card machine takes time to process a transaction. It's one interruption after another and your temper is rising faster than the arrow on your temperature gauge.

In traffic, you may scream and shout, strangle your steering wheel or honk your horn in frustration. Behind the bar requires a little more composure than that.

Here are a few ideas how to get through that stop 'n' go traffic:

Stocking properly before the busy times will eliminate many frustrating brakes. This means the obvious stock like liquor, beer and wine but also pens, an extra credit card paper roll, change and

anything else needing replenishing. And don't forget to focus on washing some highball glasses during the breaks in the action.

When you're at a dead stop with a foot on the brake, ask yourself, "Could I be doing something better than standing here waiting?" Turn around and clean the bar where customers just left while you're waiting for the credit card machine to process a transaction. If the other bartender is using the blender, get the beer in your cocktail order first and then prepare the blended drink. While the other bartender is using the cash register, take some dirty highball glasses to the glasswasher. You may not be able to control the interruption but you can change lanes and work on another task or two instead.

Nor can you prevent customers from taking their own sweet time ordering but you can control the time you wait. When you're busy you need to drive around these I-don't-know-what-I-want proverbial Sunday drivers. Plan out your next moves instead of thinking, "Come on, I don't have all day!" and then say, "Excuse me. I'll be right back."

Now, you have one more thing to do before putting the pedal to the metal on a clear stretch of highway. "Excuse me sir. Could I collect for your drink, please?"

Okay, maybe you do have to honk your horn now and then.

Please send correspondence to dtkratt@chartermi.net or P.O. Box 638, Grand Haven, Michigan 49417.

Supreme Court

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"the Legislature could not have thought it could reduce the number of drunk drivers by immunizing liquor establishments from their claims and thus providing a disincentive to the licensees, who possess the expertise and the statutory and regulatory responsibility to avoid serving visibly intoxicated patrons, thus increasing their degree of intoxication before turning them loose on the highways."

Alas, hope springs eternal... The Supreme Court has granted Cert. to Tiffany's and will make a final determination as to whether *N.J.S.A. 39:6A-4.5(b)*, which precludes an intoxicated driver who was involved in a motor vehicle accident from pursuing a cause of action for economic and non-economic losses, also bars a dram shop claim against the establishment where he was served while visibly intoxicated. Judging by the Appellate Division's ruling, and the rationale set forth within its opinion, it is unlikely that the Supreme Court will overturn this decision. Considering the provision of the Act which limits a liquor licensee's responsibility for damages to its percentage of negligence, and the availability of comparative negligence as a defense to first party dram shop claims, there is no reason to believe that the Supreme Court will find a way to bar first party claims for economic and non-economic damages. Despite the legislative history and public policy rationale cited by the Appellate Division,

it is my opinion that the public at large, those persons who sit on our juries, remain reluctant to reward adults who suffer injuries as a result of their own, voluntary intoxication. Thus, while the Appellate Division's ruling in *Voss*, and the Supreme Court's anticipated affirmation of that decision, will preclude the dismissal of such claims via summary judgment, barring egregious and aggravating circumstances, in most instances these cases should be tried.

By: Joe Deal, Esq.

Cooper Levenson – Allied Member

(609) 927-0800

Fax: (609) 927-0333

SCOTT N SILVER, P.C.

Attorney at Law

Associate Member NJLBA

2106 New Road
Suite F-6
Linwood, NJ 08221

Alcoholic Beverage Control
- Licensing Matters
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- Monthly Meetings** 2nd Wednesday of the month
Call the office or check website for details
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Thomas Jannarone, Esquire

*Associate Member, NJLBA
Member, National Association of
Alcoholic Beverage License Attorneys*

**tjannarone@nightclublawyer.com
www.nightclublawyer.com**

254 Brick Blvd., Suite 9 Brick, NJ 08723 • 732- 477- 4466