



DRINKING, DRIVING AND HOW YOUR ESTABLISHMENT MAY BE RESPONSIBLE

On October 4, 2006 the Puerto Rico Supreme Court held in López vs. Porrata Doria, 2006 T.S.P.R. 149, that selling alcohol in an irresponsible manner is a violation of the general duty of prudence and an act of clear disregard to public safety. Specifically, the Supreme Court held that a commercial establishment may be subject to liability for damages if it dispenses alcoholic beverages to a patron that is visibly intoxicated and such person later causes a car accident while DUI and injures themselves and/or others, if:

- (i) claimant(s) can prove by preponderance of evidence (more likely than not) that the establishment acted negligently; and
- (ii) there is a causal relation between the negligent sale of alcohol and the damage caused.

It is important to note that the Supreme Court ruling states that an establishment may foresee that all patrons will drive a vehicle upon leaving a commercial establishment. Therefore, if you sell alcoholic beverages in your establishment, presume that all patrons will drive a car upon exiting your premises.

So, who is a visibly intoxicated person? The Supreme Court does not define this term but lists symptoms that may help you identify a visibly intoxicated person: tremors, nervousness, leg and knee coordination problems, heavy tongue, red eyes, alcohol breath, dizziness, sleepiness, head ache, nausea, vomiting, memory loss, depression, grumpiness, aggressiveness, sadness and/or uninhibited behavior. These symptoms should be construed as red flags to watch out for when serving alcohol to patrons.

How do you determine whether or not the establishment was negligent in dispensing alcohol to a patron? These factors set forth by the Supreme Court include:

- Alcohol level in the patron's blood;

- Patron's conduct at the time of ordering the drink (look for any of the red flag symptoms);
- The amount of time the patron stayed in the establishment;
- The amount of drinks consumed before leaving the establishment,
- The type of drink consumed;
- The amount of money spent at the establishment; and
- The combination of food and alcohol consumption, if any.

Under such an ample spectrum of factors, all establishments must take affirmative action to identify and limit the consumption of alcohol by suspected intoxicated patrons; if in doubt it is best to err on the side of caution: refuse to serve them alcohol. What is required of you is to observe a responsible conduct after analyzing all factors that may hint that a person is intoxicated, on a case-by-case basis.

Since the establishment has no control over the patron once they leave the premises, and it can not restrain them from using their car, or force them into a taxi cab, it is of extreme importance that business operators develop policies and procedures to minimize the risks of serving of alcohol to visibly intoxicated customers. Failing to do so could leave the establishment with very little defenses against potential claims.

FTMR can help you develop formal procedures, taking into consideration privacy issues, civil rights and other legal considerations, to ensure that your establishment meets the requirements of this ruling and help you minimize exposure to liability caused by patrons DUI. Should you need additional information, please contact attorneys Blas Ferraiuoli-Martínez, Nani Marchand-Sánchez or Yahira Caro-Domínguez at 787-977-4000.

November 2006