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The cases and materials presented here are in summary and outline form. To be certain of their applicability and use for specific claims, we recommend the entire opinions and statutes be read and counsel consulted.

## LIQUOR LIABILITY: SOCIAL HOSTS & OTHER ISSUES

### I. INTRODUCTION

In general terms, the liability for damages facing a person or entity who provides alcohol to someone, who in turn becomes intoxicated from ingesting that alcohol has basically been settled since the late nineteenth century, pursuant a portion of the long-standing Illinois Liquor Control Act, otherwise known as the "Dramshop Act." The Act treats private citizens and commercial suppliers of alcohol much differently. Until recently, a private citizen who provided alcohol to another adult generally could not be held liable for injuries caused by the intoxicated adult. However, a commercial supplier of alcohol is generally strictly liable for injuries caused by an intoxicated guest or customer.

However, Illinois courts have recently permitted creative theories that circumvent this well-settled area of the law, leaving previously protected "social hosts" wondering what to do, and what not to do, when alcohol is being consumed on their property. This presentation reviews the basics of Illinois' dramshop legislative scheme, describes these new theories of liability and analyzes the present state of social host liability in the State of Illinois.

## II. ILLINOIS LIQUOR CONTROL ACT (DRAMSHOP)

### A. Creation of Cause of Action

The civil liability portions of the Liquor Control Act are codified at 235 ILCS 5/6-21. This section of the Act is commonly referred to as the Dramshop Act. The Act creates a cause of action and provides a remedy for individuals who suffer personal injury or property damage as a result of the actions of an intoxicated person. Specifically, the Act permits recovery from any licensed supplier of alcohol who, by providing alcohol to someone, causes them to be intoxicated.

Causes of action under the Dramshop Act are based on strict liability, or "no fault" liability. These causes of action are not based on the traditional elements of negligence such as duty, breach and proximate cause. The purpose of dramshop acts across the country and in Illinois is to shift the financial burden and risk of loss associated with intoxication from those injured by intoxicated individuals to the industry supplying the intoxicating beverages. Since this burden can be insured and ultimately passed on to the consumer of alcoholic beverages, the risk is inevitably spread across the group of people most likely to be responsible for such injuries.

### B. Who May Recover

Any person in Illinois who suffers personal injury or property damage caused by an intoxicated person may recover damages subject to the elements of proof and classification of damages detailed below.

In 1986, the legislature amended the Dramshop Act to extinguish any cause of action for personal or property injury suffered by the intoxicated person as a result of the intoxication. Additionally, the Act now prohibits recovery for any person who claims loss of society or loss of means of support as a result of injury to the intoxicated person.

## C. Damages

As noted above, any party injured by an intoxicated person may recover damages for personal injury or property damage, including pain and suffering, disability, lost wages, etc. Additionally, a party may recover damages related to loss of means of support or loss of society (but not both). However, every person claiming loss of means of support or loss of society from the injury or death of a single person is limited to one aggregate recovery not to exceed the statutory maximum. Thus, if a father is killed by an intoxicated person, the children will have one, aggregate claim for the specified damages of loss of society/loss of support, irrespective of how many children actually suffer the claimed loss.

Since dramshop liability is statutorily capped, this right to recover is often subject to creative theories by plaintiff's attorneys. For example, when a wife suffers personal injuries caused by an intoxicated person, she obviously has a right to recover her damages. However, since both she and her husband are obligated by the Illinois Rights of Married Persons Act to pay any medical bills she incurs for medical treatment, he has also suffered injury (financial) as a result of the intoxication. See 750 ILCS 65/15. To avoid any prohibition against a "double recovery" and to expose more than one statutory "cap," the wife might limit her claim to recovery for pain and suffering and lost wages resulting from the injuries, while her husband claims the cost of the medical bills for the treatment. That way, both spouses are permitted to recover damages up to statutory maximum on each of their claims, as opposed to one, joint claim under one maximum recovery.

#### D. Who Is Liable

According to the statute, three general classes of defendants are liable for injuries caused by an intoxicated person:

### 1. Licensed Seller

Any entity licensed by any state to sell alcohol is liable for injuries caused by individuals in Illinois who become intoxicated from alcohol they obtain by sale or gift from the entity.

## 2. Hotel/Motel Sponsor

Any person at least 21 years old who pays for a hotel or motel room or facility knowing that the room will be used by minors for the unlawful consumption of alcohol will be liable for any damages caused by the intoxicated minor, as long as consumption of alcohol at the facility causes the minor to become intoxicated.

## 3. Knowledgeable Land Owner

Any person who owns, rents, leases or permits the occupation of a building or premises with knowledge that alcohol will be sold on the property will be jointly or severally liable with the seller for injuries caused by resulting intoxication.

#### E. Elements of Proof

In any action brought pursuant to the Dramshop Act, the plaintiff must establish each of the following elements by a preponderance of the evidence:

- 1. That the alleged intoxicated person was intoxicated at the time of the occurrence;
- 2. That the defendant, his agents or employees, sold or gave intoxicating liquor consumed by the intoxicated person;
- 3. That the liquor consumed caused the intoxication of the intoxicated person;
- 4. That the intoxicated person's intoxication was at least one cause of the occurrence in question;
- 5. That as a result of the occurrence the plaintiff suffered injury or damage to his property.

Mohr v. Jilg, 223 Ill. App. 3d 217, 586 N.E.2d 807, 166 Ill. Dec. 849 (4th Dist. 1992).

## F. One Year "Condition Precedent"

The Act mandates that any action under the Dramshop Act must be commenced within one year of the accrual of the cause of action. 235 ILCS 5/6-21. However, this is not a statute of limitations per se. Filing suit within one year of the plaintiff's injury is a condition precedent to the right to recover. Courts have held that since the cause of action conferred by the Act did not exist at common law and is thus entirely a creature of statutory creation, the one year "restriction" is an integral part of the statute and thus a condition precedent to recovering the statutory damages. See Morales v. Fail Safe, Inc., 311 Ill. App. 3d 231, 724 N.E.2d 174, 243 Ill. Dec. 865 (1st Dist. 1999).

The statute is an offer of an action on condition that it be commenced within the specified time. If the offer is not accepted in the only way in which it can be accepted, by a commencement of the action within the specified time, the action and the right of action no longer exist, and the defendant is exempt from liability.

Thompson v. Capasso, 21 III. App. 2d 1, 5, 157 N.E.2d 75 (1st Dist. 1959).

Note that the one year condition precedent applies even when the potential plaintiff is a minor or incompetent adult. *Demchuk v. Duplancich*, 92 Ill. 2d 1, 440 N.E.2d 112, 64 Ill. Dec. 560 (1982).

#### G. Defenses

Even though the liability scheme established in dramshop cases is one of strict liability, there are certain, limited defenses available to defendants. The Dramshop Act itself is silent as to any defenses, yet these two defenses – preferably plead as affirmative defenses – may successfully defeat a dramshop claim.

#### 1. Provocation

Courts have held that the notions of contributory negligence or comparative fault have no application to dramshop causes of action, since these actions are created by statute and involve strict liability, *i.e.*, there is no measurement of the fault or negligence of any party, including the plaintiff. However, evidence that the plaintiff provoked the actions that caused plaintiff's injuries may be sufficient to defeat a dramshop claim. *Gilman v. Kessler*, 192 III. App. 3d 630, 548 N.E.2d 1371, 139 III. Dec. 657 (2d Dist. 1989). This doctrine is obviously primarily applicable in "bar fight" cases, where an intoxicated individual attacks someone after drinking alcohol at a licensed tavern. While provocation is a valid defense, mere words and gestures are insufficient to constitute provocation. *People v. Reyes*, 102 III. App. 3d 820, 833, 429 N.E.2d 1277, 57 III. Dec. 914 (1st Dist. 1981).

The idea of provocation as a defense initially seems odd in light of the strict liability nature of dramshop liability. However, if provocation is considered as part of causation, its appeal as a fair defense to a dramshop claim is evident. If it is the provocative action of the plaintiff which causes an incident during which the plaintiff is injured at the hands of an intoxicated person, the jury should be permitted to determine whether the cause of plaintiff's injuries was merely coincidental with the intoxication or whether it was directly related. In other words, the jury must decide whether the sale of alcohol caused the plaintiff's injuries, or whether plaintiff's own actions caused the injuries. *See Gilman v. Kessler*, 192 Ill. App. 3d 630, 548 N.E.2d 1371, 139 Ill. Dec. 657 (2d Dist. 1989).

### 2. Complicity

The doctrine of complicity is also a defense to dramshop actions and yet, like provocation, it also does not appear in the text of the Dramshop Act. The theory of complicity applies when the injured plaintiff "actively contribute[s] to or procure[s]" the intoxication of the individual causing the plaintiff's damages. *Walter v. Carriage House Hotels, Ltd.*, 164 Ill. 2d 80, 646 N.E.2d 599, 207 Ill. Dec. 33 (1995). In *Walter*, the Illinois Supreme Court stated:

The Dramshop Act was intended to place the economic consequences of intoxicated behavior primarily on the businesses that profited from the liquor trade. By defining complicity in terms of the plaintiff's active and material role in

causing the inebriate's intoxication, leading to plaintiff's injury, the *Nelson* court attempted to balance the purposes of the Dramshop Act against the common law concept which precluded plaintiffs from recovering damages if their own negligence contributed to their injuries.

Walter, 164 Ill. 2d at 89.

Again, the mere existence of this defense seems out of place, since liability in dramshop cases is not based on measuring fault, but is instead based on strict liability. However, the Illinois Supreme Court distinguishes the measurement of fault from causation itself, holding that "[c]ontributory negligence relates to the plaintiff's role in causing his own injury, while complicity concerns the plaintiff's role in causing the inebriate's intoxication." *Id*.

Summary judgment on the complicity defense may be proper under some circumstances:

Complicity is an affirmative defense for the dramshop defendant to plead and prove by the preponderance of the evidence. If defendant is unable to present sufficient evidence to demonstrate that plaintiff's conduct *actively contributed to or procured* the inebriate's intoxication, the complicity defense should not be submitted to the jury. The nonexistence of complicity is for judicial determination. Where the material facts establishing plaintiff's procurement of the inebriate's intoxication are undisputed and capable of only one conclusion, summary judgment or directed verdict for the defendant dramshop is appropriate.

Id. at 94-5. (citations omitted).

## H. Statutory Liability Cap

The Dramshop Act establishes maximum liability limits for each proper plaintiff, including both personal injury and property damages. Between 1985 and 1999, these damages caps gradually increased according to a statutory schedule. By law, the caps began to increase (or decrease) in 1999 in accordance with the percentage change in the "consumer price index-u," as published by the United States Department of Labor. The limits are adjusted each year on January 20, and are available from the Illinois Comptroller's office. The applicable limits to any verdict or settlement will be those limits in place at the time final judgment is entered or when a settlement is reached. The current 2011 limits are as follows:

Personal Injury/Property Damage: \$61,151.39 (each person incurring damages)

Loss of means of support

<u>OR</u> loss of society: \$74,740.59 (aggregate amount)

See http://www.ioc.state.il.us/ioc-pdf/Dram\_Shop\_Liability\_All.pdf

#### I. Contribution and Set-off

The law does not recognize the right to contribution against dramshop defendants. Courts have held that the cause of action against a dramshop defendant is statutorily created and, since it is based on strict liability and has no genesis or counterpart in common law, it is not an action that "sounds in tort." Since the Contribution Act only applies to actions sounding in tort, it does not apply to dramshop actions. Furthermore, the Dramshop Act itself provides no right to contribution. Therefore, the intoxicated individual has no right to contribution against the tavern owners and operators who served him, and likewise, the owners and operators cannot seek contribution from the intoxicated individual or other potential dramshop defendants. *See Hopkins v. Powers*, 113 Ill. 2d 206, 497 N.E.2d 757, 100 Ill. Dec. 579 (1986) and *Jodelis v. Harris*, 118 Ill. 2d 482, 517 N.E.2d 1055, 115 Ill. Dec. 369 (1987).

While contribution in dramshop cases is not applicable, the theory of a "set-off" is. Dramshop defendants are permitted to assert "set-offs" of damages already recovered from other parties such as the intoxicated defendant. The "set-off" is taken against the total damages awarded in a dramshop case prior to any reduction for the statutory maximum liability caps.

## J. Interplay with Other Causes of Action

The Dramshop Act provides the only remedy against tavern owners and operators for injuries caused by intoxicated individuals. Illinois has consistently refused to acknowledge the existence of a common law action against these licensees for injuries by intoxicated patrons. However, nothing generally prevents the injured party from attempting recovery against *all tortfeasors* who caused or contributed to cause the injuries. Thus, it is common for a plaintiff to file suit against the intoxicated individual who caused the damages as well as any potential dramshop defendants. However, the Act exempts from liability any licensed distributors or brewers whose only connection with furnishing the alcohol which allegedly caused the intoxication was the furnishing or maintenance of apparatus for the dispensing or cooling of beer.

## III. SOCIAL HOST DOCTRINE

#### A. General Rule

Illinois does not recognize social host liability: "For over one century, this court has spoken with a single voice to the effect that no social host liability exists in Illinois." *Charles v. Seigfried*, 165 Ill. 2d 482, 486, 651 N.E.2d 154, 209 Ill. Dec. 226 (1995).

However, the analysis of potential liability for social hosts does not end with this seemingly insurmountable pronouncement by the Illinois Supreme Court.

## B. History and Recent Precedent

## 1. Cruse v. Aden – The Strong and Able Bodied Man

In 1889, the Illinois Supreme Court first considered whether a common law cause of action existed against what we now know as a "social host." In 1884, Adde Aden gave his friend, George Cruse, two drinks of an intoxicating liquor, which he drank. Mr. Cruse then left for his home on horseback. The horse threw Mr. Cruse from its back on the way home and he died from his injuries. His wife sued Mr. Aden under an early version of the Dramshop Act. *Cruse v. Aden*, 127 Ill. 231, 20 N.E. 73 (1889).

The Illinois Supreme Court declared that there was no common law cause of action for giving or selling "intoxicating liquor to 'a strong and able-bodied man.'" *Id.* at 234. The Court also noted that any plausible cause of action Mrs. Cruse had was purely statutory and dependent upon the Dramshop Act. This laid a solid foundation for the rule of non-liability for social hosts, which has survived several judicial and countless statutory challenges over the last 125 years.

## 2. Charles v. Seigfried – Judicial Restraint

In 1995, the Illinois Supreme Court reinforced its holding in *Cruse* and refused to create a common law cause of action against social hosts when it decided *Charles v. Seigfried*, 165 Ill. 2d 482, 651 N.E.2d 154, 209 Ill. Dec. 226 (1995). In *Charles*, the Supreme Court actually consolidated and decided two similar cases. In both cases, the plaintiffs alleged that defendants hosted social gatherings, that they served alcohol to persons they knew to be underage and that the minors became intoxicated as a result of drinking the alcohol. In one case, the intoxicated minor left the gathering in her own vehicle and was killed in an automobile accident. In the other case, the minor left the premises in a vehicle driven by another intoxicated minor and they were involved in motor vehicle accident as well, although that plaintiff survived. *Charles*, 165 Ill. 2d at 484.

Both plaintiffs filed complaints premised, in part, on theories of social host liability. In both cases, the circuit courts dismissed the complaints for failure to state a cause of action, and in both cases, the appellate courts reversed the trial courts, choosing instead to "create" and then expand social host liability in Illinois. *Id*.

The Supreme Court reversed both Appellate Court decisions, although Justice McMorrow issued a contentious dissenting opinion. Writing for the majority, Justice Bilandic stated simply and convincingly:

For over one century, this court has spoken with a single voice to the effect that no social host liability exists in Illinois. \* \* \* [I]t has been, and continues to be, well-established law that Illinois has no common law cause of action for injuries arising out of the sale or gift of alcoholic beverages; that the legislature has preempted the field of alcohol-related liability; and that any change in the law

governing alcohol-related liability should be made by the General Assembly, or not at all.

Charles, 165 Ill. 2d at 486.

The Court went on to explain that there was no cause of action in common law against a social host, primarily because it is the drinking of intoxicating beverages which causes intoxication, not the furnishing of alcohol. The provision of alcohol, according to the majority, was too remote to constitute the proximate cause of an injury by an intoxicated person. *Id*.

The Court then noted that the only source of liability for furnishing of alcoholic beverages is the Dramshop Act. Since social host liability did not exist prior to the creation of the Dramshop Act, and since it was never inserted into the Dramshop Act in any amendments to the statute, the Court determined that the legislature did not intend to create liability for social hosts. The Court noted that "the General Assembly has preempted the entire field of alcohol-related liability through its passage and continual amendment of the Dramshop Act." *Id.* at 488.

Justice Bilandic then took great pains to describe why the Supreme Court was declining the invitation to judicially create social host liability. He reasoned that such "primary expression of Illinois public and social policy should emanate from the legislature," as the legislators responsible for such a decision are charged with the duty of creating the law and are also more directly accountable to the people of the State of Illinois for those decisions. *Id.* at 492-94.

The Court also noted the more pragmatic issues in creating social host liability, which are truly concerns for insurers and defense counsel in the "voluntary undertaking" cases on the horizon and more fully described below:

We are realistic enough to know that in virtually every instance where an underage driver is involved in an alcohol-related car accident, a clever plaintiff's attorney would drag into court any and all adults who may qualify as a social host. The focus at trial would then shift from the drunk driver to the alleged social hosts. Accidents following a wedding, for example, would include the typical targets of the bride, the groom, the parents of the bride and groom, the servers, and anyone else who may have handed the underage person a drink. Ironically, these "social hosts" could be held responsible for the underage person's drinking even if that person's parents were also in attendance. Courts and jurors would then be faced with evaluating the social host's conduct. For example: Did the social host do enough to stop the underage drinker from his or her own illegal actions? Did the host check identification to determine the guests' ages? Should the host have allowed the guests to serve themselves? Should the host have allowed underage persons to be present? Could the host have done more to prevent a quest's departure? Did the host know that the quest was visibly or obviously intoxicated? We are unwilling to open up this "Pandora's Box" of unlimited liability through judicial decision. If civil liability is to be imposed in

these situations, the legislature should carefully delineate the standards of conduct expected of social hosts.

Charles, 165 Ill. 2d at 502-03.

Justice McMorrow's dissent focused on what she considered to be a recent surge in the number of teenage deaths and injuries related to underage drunk driving and alcohol-related accidents. In choosing not to create social host liability, she accused the majority of turning "its back on a development in the common law that is long overdue." *Charles*, 165 Ill. 2d at 505. In her opinion, the job of the Illinois Supreme Court was to "facilitate the evolution of our common law in order to accommodate the changing needs of our citizens." *Id.* at 518. In Justice McMorrow's view, the Court was obligated to create this theory of liability.

## C. Recognition of Voluntary Undertaking Theory

## 1. Wakulich v. Mraz – Voluntary Undertaking Theory Emerges

In 2003, the Illinois Supreme Court again declined an invitation to create social host liability in *Wakulich v. Mraz*, 203 Ill. 2d 223, 785 N.E.2d 843, 271 Ill. Dec. 649 (2003). In Justice Fitzgerald's words, the Court was "adhering" to its decision in *Charles v. Seigfried*. Indeed, the Court refused to create social host liability *per se*, but it did permit plaintiff to advance a voluntary undertaking theory – arguably an "end run" around the prohibition of social host liability.

On June 15, 1997, 16-year-old Elizabeth Wakulich was at the home of Michael Mraz (21 years old), Brian Mraz (18 years old) and their father, Dennis Mraz. According to the complaint, the defendants encouraged and pressured Elizabeth to drink a quart of Goldschlager, after which she lost consciousness. Michael and Brian laid her in the living room of the house and placed a pillow under her head to prevent her from aspirating. They did not contact her parents, did not seek medical attention and "actually prevented other individuals at the home from calling 911 or seeking other medical intervention." Wakulich, 203 Ill. 2d at 227. Plaintiff alleged that Dennis Mraz then ordered his sons to remove Elizabeth from the home during the morning hours of June 16, 1997. They complied. She died later that day. Id.

Plaintiff sought recovery under two theories – social host liability and the voluntary undertaking doctrine, claiming that the defendants did not act reasonably to protect Elizabeth after voluntarily assuming that duty when she became unconscious. The trial court dismissed the complaint and the Appellate Court reversed, finding that the plaintiff properly alleged a cause of action under the voluntary undertaking theory. The Supreme Court affirmed.

The Court initially discussed the *Charles* opinion and relied upon it in refusing to recognize social host liability in Illinois. However, the Court then moved on to discuss the plaintiff's allegations under the voluntary undertaking theory, which the Court defined as:

one who undertakes, gratuitously or for consideration, to render services to another is subject to liability for bodily harm caused to the other by one's failure to exercise due care in the performance of the undertaking.

Wakulich, 203 Ill. 2d at 241.

Plaintiff alleged that the defendants undertook this duty by placing Elizabeth in another room, by checking on her and observing her condition, and by taking steps to prevent her from aspirating. Plaintiff claims they breached that duty by failing to seek medical care, preventing others from seeking care for her and removing her from the premises. *Id.* at 241-42.

Defendants argued that permitting the plaintiff to advance the voluntary undertaking theory was an attempt to circumvent the long-standing rule of non-liability for social hosts in situations involving alcohol-related injuries. The Court concluded, however, the liability of the defendants in this case was "not contingent on their status as social hosts." *Id.* at 242. Liability was not based on whether they were social hosts, but instead on the fact that they undertook a voluntary duty to care for Elizabeth in a drunken state. The Court then simply concluded that the voluntary undertaking theory, in this case, was not an attempt to circumvent the rule against social host liability.

However, the Court acknowledged defendants' argument that any duty assigned to the defendants was limited by the extent of the undertaking. Defendants argued that merely permitting an intoxicated guest to "sleep it off" does not mean that the host automatically assumes an "open-ended duty to care for the guest and assess the guest's medical condition." The Court agreed, but noted that the plaintiff alleged that defendants did much more than simply make the floor of their home available to Elizabeth, since they checked on her periodically, tried to prevent aspiration and prevented others from attending to her. *Id.* at 243.

## 2. Bell v. Hutsell – Ignorance Is Bliss

The *Bell* case is the most important recent appellate case concerning the social host doctrine. In *Bell*, the Appellate Court determined that the plaintiff's allegations that defendants failed to prevent the consumption of alcohol by persons on their property when the defendants allegedly voluntarily undertook that duty were not barred by the Dramshop Act or the prohibition against social host liability. *Bell v. Hutsell*, 402 Ill. App. 3d 654, 931 N.E.2d 299, 341 Ill. Dec. 691 (2d Dist. 2010). As will be discussed below, the case potentially presents social hosts with an untenable choice between doing nothing to monitor their guests' drinking, or assuming some duty with respect to monitoring the consumption of alcoholic drinks and facing certain litigation should any guest later cause any injury to any person. Defendants filed a petition for leave to appeal this case to the Illinois Supreme Court, which was granted in November 2010. In March 2011, the Supreme Court heard oral argument on the case, and an opinion is expected sometime in 2011.

According to the plaintiff's complaint, 18-year-old Jonathon Hutsell had a party at his family's home. A number of Jonathon's underage friends attended the party, including the decedent, Daniel Bell. Prior to the party, Hutsell's parents told him that they would not permit alcoholic beverages at the party and that they would be present during the party to "check on the partygoers." They told him that they would "monitor and inspect" the lower level of the house, the garage and the driveway to ensure that no one was drinking alcohol. *Bell*, 402 Ill. App. 3d at 655. However, plaintiff alleged that defendants were present throughout the evening while partygoers drank beer, vodka and rum. The alcohol was apparently furnished by the guests, and was not provided by the Hutsells. The Hutsells actually stocked their bar with soft drinks. Daniel Bell apparently became intoxicated from alcohol he consumed at the party. He got into his car with several others and struck a tree. He died from his injuries. *Id.* at 655-56.

Plaintiff filed suit, alleging that the Hutsells voluntarily undertook the duty to monitor the underage guests at the party to ensure that they did not consume alcohol, and that they were negligent in failing to prevent the consumption of alcohol on their premises. The defendants moved to dismiss the complaint, asserting the rule of non-liability for social hosts and arguing that the voluntary undertaking doctrine was an attempt to circumvent that rule. The trial court dismissed the complaint, and plaintiff appealed.

The Appellate Court reversed, and began its analysis by repeating the above-referenced definition of the voluntary undertaking doctrine. The Court then quoted the popular but evernarrowing rationale for the rule against social host liability expressed by the Supreme Court in *Charles v. Seigfried. Bell*, 402 Ill. App. 3d. at 657-59.

The *Bell* court held that plaintiff properly stated a cause of action under the voluntary undertaking theory and that the rule against social host liability did not prohibit the cause of action because, according to the Court, the Hutsells *were not social hosts* during the party. The court based this conclusion on the fact that the Hutsells did not supply the alcohol:

They did not supply the alcohol that Daniel consumed to the point of impairment. They stocked the lower bar area with soft drinks, and the alcohol that was brought onto the premises was supplied by the invited partygoers. That defendants may have negligently failed to prevent the consumption of alcohol on the premises does not convert them into social hosts.

Bell, 402 Ill. App. 3d at 660.

Defendants argued the obvious and arguably impossible situation the Court's opinion would create – that parents who provided alcohol for a similar party would have no liability, while parents who purchased soft drinks and attempted to curtail the consumption of alcohol face unlimited liability for the actions of the guests if the guests somehow become intoxicated. In other words, the parents who attempt to ensure that underage guests do nothing face more liability than the parents who actually furnish alcohol. The Court tossed this argument aside by

noting that the parents who purchased soft drinks and agreed to monitor the party could also avoid liability if they simply chose not to monitor the party. *Id*.

The Court cited a long list of cases refusing to hold social hosts liable for the damages caused by intoxicated guests. Referring to that list, the Court distinguished those cases from the Bell case and stated:

In the above cases, the defendants were alleged to have served the alcohol or permitted it to be served, unlike the case at bar where defendants were alleged to have undertaken a duty to prevent the consumption of alcoholic liquor.

Bell, 402 Ill. App. 3d at 662.

Here, the Appellate Court implies that traditional social host non-liability should not be overturned. The conclusion to be drawn from the opinion, however, is that the protection afforded by the long-standing social host doctrine is narrower than ever.

## D. Simmons v. Homatas – An Extreme Exception

If one thing is to be learned from recent trends in social host cases, it is that the definition of the defendant is essential, and any analysis of liability must include an honest examination of whether a defendant is truly a "social host" and/or whether it is a licensee under the Dramshop Act. As is evident from reviewing *Wakulich* and *Bell*, the simple fact that an intoxicated person causes injury does not automatically generate the protections of the Dramshop Act or of the doctrine of social host non-liability.

The *Simmons* case involved an adult entertainment club operated by defendant, On Stage, that neither sold nor provided alcohol to its guests, yet the Court found that the club had a duty not to encourage and assist patrons in driving while intoxicated. *Simmons v. Homatas*, 236 Ill. 2d 459, 925 N.E.2d 1089, 338 Ill. Dec. 883 (2010). While the club did not sell or provide alcohol, it allegedly encouraged its guests, including Mr. Homatas, to bring alcohol and to drink it at the club, and the club even provided glasses, ice, soft drinks and other mixers for its guests. In this case, Mr. Homatas and his friend became so intoxicated that he was found vomiting in the club's restroom. The club ejected the men from the premises, instructed the valet service to bring their car around to the front door, and then placed Homatas in the drivers' seat of the car while directing him to leave the premises. He later collided with a vehicle driven by plaintiff's decedent, killing her, her unborn child and the passenger in his own car. Homatas survived and recovered from his injuries. *Simmons*, 236 Ill. 2d at 462.

Multiple complaints were filed by multiple plaintiffs. The club moved to dismiss, asserting that its policy of not selling or serving alcohol prohibited plaintiffs from maintaining any action under the Dramshop Act, and that the Dramshop Act provided the sole remedy for "alcohol-related" injuries. The motion was granted in part and the case was eventually appealed to the Illinois Supreme Court. The Court determined that plaintiffs stated a cause of action against the club,

not under the social host doctrine or the Dramshop Act, but under an "in concert" negligence theory. The Court found that the club encouraged or assisted Homatas' tortious conduct of driving while intoxicated:

Similarly, On Stage's duty does not arise from providing alcohol to Homatas. Indeed, the parties agree that the club did not provide any alcohol at all. Rather, a duty under the facts alleged arose later, following a series of actions taken by club employees in response to discovering Homatas vomiting in the club's restroom. At that point, employees allegedly ejected Homatas and Chiariello from the club, ordered the parking attendant to bring Homatas's car around to the front door, and assisted Homatas and Chiariello into the vehicle, directing him then to leave the premises.

Simmons, 236 Ill. 2d at 473.

These facts are extreme, and the Supreme Court noted the nature of the facts in its decision:

As the circuit court recognized, this case presents a set of special circumstances. We do not hold today that restaurants, parking lot attendants or social hosts are required to monitor their patrons and guests to determine whether they are intoxicated. We hold only that where, as here, a defendant is alleged to have removed a patron for being intoxicated, places the patron into a vehicle and requires him to drive off, such facts are sufficient to state a common law negligence cause of action that is not preempted by the Dramshop Act.

Id. at 481.

Here, the Supreme Court also explained that its statement in *Charles* that "the General Assembly 'has preempted the entire field of alcohol-related liability through its passage and continual amendment of the Dramshop Act'" does not extend so far as to preempt every, conceivable action to recover for an alcohol-related injury. *Id.* at 469.

## E. Exception for Minors

The Drug or Alcohol Impaired Minor Responsibility Act works in concert with the Dramshop Act and the social host doctrine. Pursuant to section 5 of that Act, any person 18 years of age or older who willfully supplies alcohol or illegal drugs to someone younger than 18 and causes the impairment of that person is liable for death, personal injury or property damage caused by the impaired minor. 740 ILCS 58/5. The Act also assigns liability for alcohol-related injuries to a person over the age of 18 who owns or controls "non-residential" premises and willfully permits people under the age of 18 to consume alcohol or illegal drugs on the premises to the point of impairment. *Id.* The Act creates a cause of action against such defendants for people injured by these impaired minors, and permits the recovery of economic damages, non-economic damages, attorneys' fees, costs of suit and punitive damages. 740 ILCS 58/10.

### IV. CONCLUSION

As the above-referenced statement from the Supreme Court in *Simmons* illustrates, the traditional rule of non-liability for social hosts is still intact, though it is likely narrower than the sweeping language found in *Charles v. Siegfried*. Furthermore, clever plaintiff's attorneys are sure to continue to develop and assert new theories to avoid the traditional protection for social hosts. The nature of the liability facing social hosts in Illinois is dynamic. The forthcoming opinion from the Supreme Court in *Bell v. Hutsell* will hopefully give some guidance on the issue to social hosts, insurers, and litigants in alcohol-related injury cases.



## Michael J. Denning

- Associate

Mike began his career with Heyl Royster by clerking for the firm's Peoria office during law school. At Northern Illinois University, he served as the Editor-in-Chief of the Law Review and was awarded the NIU Scribes award in 2001 for legal scholarship. After graduating, he served as Senior Law Clerk to Justice Tom Lytton of the Illinois Appellate Court, Third District. Mike joined the Rockford office in June 2004.

Mike concentrates his practice in civil defense litigation, including medical malpractice and nursing home litigation; auto, premises and trucking litigation; and the defense of toxic tort and asbestos claims.

As counsel, Mike has defended the firm's clients and their interests at depositions, including those of plaintiffs, co-defendants, witnesses, treating physicians, and expert witnesses. He has presented physicians, nurses and nursing assistants for deposition in numerous professional liability cases. He has drafted and argued motions, including: discovery, dismissal and summary judgment motions. Mike has represented the firm's clients at high-exposure mediations and settlement conferences, and has assisted in the trial of cases. He has represented Fortune 500 companies, local businesses, professionals and insurance companies in a variety of cases.

Mike is a certified arbitrator for the Seventeenth Judicial Circuit Court.

#### Significant Cases

 Proper venue for personal injury action against deputy sheriff is county in which sheriff's office is located, not plaintiff's county of residence.

#### **Publications**

- "Illinois Courts Expand, Then Narrow Validity of Arbitration Agreements in Nursing Home Litigation," IDC Defense Update, Vol. 12, No. 14 (2011)
- "Code Blue! Ambulance Manufacturing Specifications May Pre-empt State Common Law Claims," Northern Illinois University Law Review (2001)

#### **Professional Associations**

- Winnebago County Bar Association
- Illinois State Bar Association
- Illinois Association of Defense Trial Counsel
- Defense Research Institute
- American Bar Association
- State Bar of Wisconsin

#### **Court Admissions**

- State Courts of Illinois and Wisconsin
- United States District Court, Northern District of Illinois and Eastern District of Wisconsin
- United States Supreme Court

#### **Education**

- Juris Doctor (Cum Laude), Northern Illinois University College of Law, 2002
- Bachelor of Science-Business Administration, Bradley University, 1999