

## LAW COMMITTEE REPORT FALL 2014

### DRAM SHOP LIABILITY ISSUES

On Sept. 26, 2009, at approximately 2:00am the parents of Jessica and Michael Trail received a telephone call from the Pennsylvania State Police that their children were involved in a catastrophic traffic accident. Jessica had been killed and Michael suffered a fractured femur. Their friend Amanda Delval suffered a broken back in the same accident, and their other friend, William Grice, suffered such severe injuries that months later he died of an overdose of pain medication. All four were victims of a drunk driver named Timothy Lesko who also suffered injuries and later pled guilty to vehicular homicide charges. He was sentenced to 4 years in prison. His blood alcohol level was .226. In that instance, the lives of all involved were forever changed. Take a moment, reflect, and be grateful that your child or someone else you loved was not in that car that night.

The alcohol that caused Mr. Lesko's blood alcohol level to soar to nearly three times the legal limit was served at the Pittsburgh Elks Lodge #11, at a fund raiser held by a local hunt club. It was a self-service, open plate, open glass event, without supervision over the service of alcohol. The Lodge and Mr. Lesko were sued under Pennsylvania's Dram Shop Act that prohibits the sale of alcohol to a person who is "visibly intoxicated". 20 witnesses testified that Mr. Lesko did not appear to be visibly intoxicated at the event. Six jurors nonetheless awarded the victims and their families \$28 Million Dollars in damages and then imposed an additional penalty of \$10 Million Dollars to punish the Lodge for its reckless behavior. Not surprisingly, the testimony of the grieving families, photos of twisted vehicles and lab report of a .226 blood alcohol level were more convincing than the testimony of the defense witnesses.

The greatest tragedy is the senseless loss of life; devastating injuries and crippling financial award were all avoidable. If only proper procedures were in place and followed.

Pennsylvania is not unique. Michigan also has laws, both civil and criminal, that prohibit the sale or service of alcohol to a person who is visibly intoxicated, even if it is provided without charge. Specifically, a liquor licensee who sells or furnishes alcoholic beverages to a visibly intoxicated person may be found guilty of a misdemeanor. This means both your lodge and your bartender can be charged as a criminal for serving alcohol to a visibly intoxicated person. In addition to the criminal charge, the Lodge can be stripped of its liquor license for serving alcohol to a visibly intoxicated person. And, under Michigan's Dram Shop Liability Act, the responsible lodge can be sued by any victim who is injured by a person who was served alcohol at the lodge while such person was visibly intoxicated. This applies regardless of whether the drunk driver is a member, a guest of a member, or a person attending a wedding, or a social or fund raising event at the lodge.

What is your lodge doing to make certain that it is not responsible for such a tragedy? Do you have a "no tolerance" policy against serving persons who are visibly intoxicated, without regard for whether such person is an officer, a friend of the bartender, a long standing member, or the father of the bride? Does your lodge openly provide bartenders with the authority they need to cut-off a person, and then support such bartender fully when he or she does? Does your lodge take action against members who demand service when it has been denied to them? If not, then the game of Russian Roulette your lodge is playing is not limited to its financial future, it includes risk to your children, your spouses, your friends, all of whom drive in the area around your lodge, as well as the countless innocent members of the community to whom we, as Elks, otherwise pledge our support.

If there are any further questions please feel free to contact me at [pr@sullivanleavitt.com](mailto:pr@sullivanleavitt.com)

Respectfully Submitted

**Paul E. Robinson – Law Committee Chairperson**