

After-Hours Drinking Brews Trouble

by Perry Safran and James J. Fradenburg



Contractors who do nothing to stop after-hours consumption of alcohol on their job sites should take note of a recent personal injury case heard in North Carolina. A jury held that a construction company that allowed after-hours drinking on the job site had to pay a \$2.5 million award to a motorist who was struck and injured by an intoxicated employee. In the case, the fact that the employee was drinking on the contractor's controlled job site held sway over arguments that the employee violated the contractor's written safety rule that barred drinking on company property.

Social host. The case arose out of a 1986 automobile accident on a bridge. A car driven by the defendant's employee hit the plaintiff's car head-on, leaving her with permanent brain damage. The evidence showed that the employee had been drinking at the job site, and that project managers knew that there was frequent drinking at the job site and often joined in.

The North Carolina Court of Appeals found that the contractor was negligent, and had breached two duties. First, the contractor had a duty to protect its employees and the public pursuant to its company policy and common law. Second, and more important, the contractor had a duty to "use reasonable care" to stop a worker from harming others if the worker is on the employer's premises, and if the employer is aware that the employee must be controlled. The issue of control is the key in "social host" cases, which hold bars and restaurants liable for injuries caused by patrons whom the bar and restaurant continued to serve and who leave in an inebriated state.

The court found the decision appropriate in the light of the evidence that the company had allowed — and even participated in — the after-hours partying. This result is consistent with other "social host"

decisions, but represents an expansion of the legal theory since this was not strictly a "social host" case — there was no evidence the contractor had provided the alcohol. Unfortunately for the contractor, this legal distinction did not make a difference in the practical result.

The lesson is that a jury can find contractors negligent for the acts of their employees, even though the employees' negligent acts are perpetrated after hours and off premises.

A jury can find a contractor liable for the negligent acts employees commit after hours and off premises

The decision by the jury in this case may be a sympathy verdict — an effort to make whole an injured plaintiff who would otherwise go uncompensated if the contractor were not found liable. But the appellate court, which might have tossed out the jury verdict, instead agreed in writing.

The rule in this case pushes the everyday duties of contractor supervision further into the gray area of liability. A company policy against the negligent behavior — and even disciplinary action against the employee — may not protect the contractor. For example, a contractor who strictly enforces its own work rules and fires an employee for drinking on the job may still incur liability if the employee leaves the workplace in a condition that may be dangerous to others. Contractors must also take steps to prevent injury to an unsuspecting public. ■

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