

Application of Dram Shop and Responsible Retailing Standards to the Maritime Industry.

A passenger is missing on a cruise and is presumed to have fallen overboard. Two pleasure boats collide at high speed on a lake after the operators left a lakeside bar. And a young man falls down a flight of stairs on a spring break cruise breaking his back. A common theme is woven through each of these scenarios; a failure on the part of a beverage retailer or server to dispense alcohol in a reasonable and responsible manner.

Accurate statistics concerning alcohol related injuries and deaths in the maritime industry are not readily available but antidotal evidence suggests that alcohol over-service, over-consumption, and consumption of alcohol by those under twenty one is involved in a majority of injuries and deaths occurring on cruise ships and private vessels.

Application of *Responsible Retailing Standards* in the Maritime Industry and the use of *Dram Shop* laws may provide civil justice to victims of improper alcohol service including compensation for their loss. It may also encourage cruise ship operators, river and lakeside bars and restaurants, and other commercial providers of alcohol in the maritime environment to act in a responsible manner in the service and sale of alcoholic beverages.

Beverage alcohol is the only universally available consumer product that when used as directed causes changes in the consumer's emotional state, his or her cognitive ability, their gross and fine motor skills, and diminishes their ability to make rational decisions. It contributes to risk taking and victimization ranging from accidents to falls overboard to sexual aggression and assaults. And it is widely and generously dispensed as part of cruise packages and at locations available to vessel operators.

The business model under which the maritime industry dispenses alcoholic beverages is often antithetical to the elements of responsible retailing. Many cruise lines create a *party atmosphere* that encourages drinking through the facility's design, through all-inclusive pricing, through drinking games and events, and by the active encouragement of serving staff to consume alcohol well beyond the point of intoxication. This type of alcohol service tends to reduce inhibitions resulting in high-risk behaviors. However, the cruise lines often utilize their "closed environments" on the ships to implicitly or explicitly suggest that this is a "safe" environment in which one may drink with abandon.

Even the employment arrangements for bartenders and servers is in conflict with responsible alcohol service. Tips; a significant part of a servers' income, come from "good service" which often equates to heavy pours of alcohol, frequent drink replenishment, and a wink and a nod at increasing intoxication levels or underage drinking. It is important to understand that the choices bartenders and servers make in over-serving their guests often eliminate the choices their guests might have in moderating their drinking.

What is a *Dram Shop* action and how can it be applied in the maritime environment? The phrase *dram shop* is based on a unit of measure popular in Victorian times; approximately 1/8th of an ounce in our vernacular, and has become synonymous with a prohibition on the over-service of beverage alcohol to a patron or guest. In more recent times *dram shop* has also come to mean improper service of alcohol to someone under 21. The principal purpose of dram shop laws is to protect the public; and even the drinker himself, from the intentional or negligent over-service or over-consumption of beverage alcohol and from the service of alcohol to persons under 21 years of age.

Almost all states allow the use of the civil justice system to recover damages related to the service of alcohol to those under twenty one. In addition, all states hold the server criminally responsible for service to minors.

The injuries and deaths associated with adult over-service and over-consumption is even greater than that associated with underage drinking. The United States incurs losses and direct costs exceeding \$148 Billion each year from adult alcohol intoxication. Over 10,000 people die and 125,000 are seriously injured each year in impaired driving crashes where the impaired driver was coming *directly* from a bar or restaurant.

Thirty eight states allow for civil damages when an injury or death results from the negligent or improper service of alcohol. These states have recognized that it is good public policy to use the civil justice system to recover damages and as leverage to encourage beverage retailers to operate their businesses in a responsible manner.

It is interesting to note that of the twelve states that do not have provisions for the use of the civil justice system in adult alcohol related injury or death cases, many are closely associated with the maritime industry. Civil dram shop actions for adult over-service or over-consumption are not currently available in California, Louisiana, New York, or Delaware. Florida, while allowing civil actions for adult alcohol consumption, limits the actions to situations where the bartender or server knew or reasonably should have known that the drinker was habitually addicted to alcohol.

The risks associated with cruise ship environments make it evident that cruise ship operators should exercise a higher level of alcohol service responsibility than their land based counterparts. The core element of responsible retailing, after all, is to serve alcohol in a hospitality setting for the enjoyment of the patrons while preventing those patrons from becoming intoxicated to the extent that they are a risk to themselves or to others. Deaths, injuries, falls overboard, and sexual assaults seem to be at epidemic levels in the cruise industry and alcohol seems to be an integral part of those tragedies.

What is at the core of the alcohol service philosophy for most cruise lines? Cruise lines seem to rely on *individual patron responsibility* as the corner-stone of their alcohol service practices. Cruise lines are often prepared to serve passengers as much alcohol as they wish regardless of the passenger's level of intoxication or the inevitability of their subsequent intoxication.

Individual responsibility alone may not be a well founded philosophy on which to base alcohol service. The consumption of beverage alcohol reduces the drinker's ability to assess their own intoxication level and, therefore, they may not be able to make prudent decisions as to whether they should continue to drink and make rational decisions concerning their own safety. This most certainly creates a "Catch 22" logic model in which the person responsible for determining whether their faculties are impaired becomes more and more impaired with each drink.

The Arizona Supreme Court seemed to sum up the approach that should be taken by the maritime industry when they opined (in a land-based Dram Shop case) that "those who furnish liquor have an obligation or "duty" to exercise care for the protection of others".

Cruise ship operators have an obligation to understand that they operate in (and in large part have created) a unique environment which may present a risk of aggravating the effects of alcohol on their passengers. The party atmosphere many cruise lines have created is emotionally charged intensifying the effect of alcohol. Passengers have an almost unlimited opportunity to obtain and consume alcohol. And passengers are exposed to large amounts of sun, wind, and exercise which also intensifies the effect of alcohol.

A common presumption made by cruise line passengers is that the cruise line's alcohol servers are highly trained. This is often not the case. Employees are *trained* to provide "good service" meaning quick and accurate delivery of drinks. They are trained to provide or offer refills even before the patron has finished his or her current drink. They are trained to up-sell brands and products increasing cruise line profits. But they are not often trained to understand the number of drinks a person can safely consume based on gender, weight, food consumption, type of drink consumed (sweet, carbonated, etc), emotional state, fatigue, sun and wind exposure, and the hundreds of other factors that directly impact a patron's intoxication level. Servers are not trained to recognize the subtle clues that indicate a patron is approaching intoxication. And they are not trained in ways to slow or limit alcohol consumption and to track the amount of alcohol a patron has consumed to provide protection from alcohol intoxication.

There is a common presumption that alcohol servers are properly supervised and managed. This is often not the case either. Servers and bartenders should be constantly reminded of the importance of the responsible service of alcohol and the practices involved in such service. Managers should be actively involved in monitoring the service of alcohol and the amount of alcohol included in the drinks served.

And there is a presumption that cruise lines employ adequate numbers of employees to properly manage the hospitality environment. While cruise lines may employ large numbers of employees in some areas of their operation including housekeeping and food preparation, many cruise lines seem to employ far fewer employees than reasonable to control and supervise alcohol service, consumption, and the risks that stem from that service and consumption.

In addition to obtaining justice and financial compensation for a loss, the use of *dram shop* laws in maritime related alcohol related injury or death cases also holds significant promise of improving alcohol service and responsible retailing across the industry. It will increase awareness of the negative consequences of over-service and over-consumption of alcohol because of the publicity that is generated from *dram shop* cases and verdicts. Cruise lines without effective alcohol service policies will be encouraged to develop and implement effective practices and lines with marginal policies will be encouraged to develop and implement better policies.

The use of effective responsible retailing practices will decrease excessive and illegal alcohol consumption by both adults and underage persons. Studies have found that states with high *dram shop* liability had fewer lower-price drink promotions (like “happy hours”) that encourage excessive consumption in a limited amount of time and are attractive to underage drinkers. This has direct application to the cruise ship industry.

Application of *dram shop* laws in the maritime industry will encourage more thorough checks of identification which will mean that fewer underage drinkers will be able to drink illegally.

And the application of *dram shop* laws will shift the maritime industry's philosophy from a reliance on personal responsibility to a shared responsibility making the experience and environment safer for all.

George Gobel, the late actor and comedian, seemed to identify the problem at the very core of *Dram Shop* cases when he said:”I’ve never been drunk, but often I have been over-served.” Drinkers do not accept responsibility for their over-consumption and need the assistance of a highly trained and motivated workforce to help prevent tragedies from occurring.

Many cruise lines and licensees seem to have adopted the practice of limiting staff-to-customer ratios and providing little or no training for staff concentrating instead on maximizing alcohol flow and profits. And many cruise lines seem to strive for “good customer relations” rather than monitoring and controlling their patron’s alcohol consumption and the subsequent risks that may arise.

How do you assist your client who asks for your help in seeking redress for an alcohol related death or injury in a maritime environment? You look to the cruise line’s alcohol service policies, practices, training, and management oversight to see if they met their obligation under law and under prevailing industry practice. You look to see if the cruise line served alcohol to a “minor” or to an adult in a negligent or reckless manner resulting in an injury or death. That is where you may find compensation for your client.

About the author: Major Mark Willingham served with the Florida Division of Alcoholic Beverages and Tobacco for 30 years where he policed and regulated the alcoholic beverage industry. He is a national expert in matters pertaining to responsible retailing and dram shop and provides litigation support, expert witness services, and consultation on matters pertaining to the

Responsible Service and Use of Beverage Alcohol. Major Willingham can be reached at 904 707 4400, mwilling@fbinaa.org, or www.alcoholsolutions.org.