Insurance Times: Mass. SJC: Bartenders Beware Of Serving Drunk Patrons
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Massachusetts bartenders can be more easily sued now if patrons who appear drunk leave a pub and cause an automobile accident.

That's the apparent consequence of a recent Massachusetts Supreme Judicial Court ruling, which overturned a lower court decision that a neighborhood bar was not liable in a car accident caused by one of its patrons.

The SJC, in a decision written by Judge Martha Sosman, has returned the case of Robert Douillard vs. LMR Inc. back to Superior Court for trial.

Douillard originally sued the bar for negligently serving alcohol to Steven Gagne on March 25, 1994 at Breaker's Billiards & Brews, which was owned by LMR, Inc.

Gagne left the bar later that night and crashed his vehicle into a car driven by Douillard, and both were seriously injured. According to the SJC decision, Gagne was later charged with and convicted of driving "while under the influence resulting in serious bodily injury and" negligent driving.

Gagne testified he drank a little over four rum and Cokes during the four hours he was at the bar, but that it took at least seven drinks to make him drunk.

Tests later that night revealed a blood alcohol concentration of .149 percent.

Sosman wrote in the SJC decision that the court did not "need to decide whether expert testimony on the average drinker's response to alcohol would be sufficient to demonstrate that a particular drinker more probably than not appeared intoxicated."

It was enough, Sosman wrote, that Douillard's case against LMR -- including affidavits and deposition testimony -- showed he "had sufficient evidence to permit the inference that Gagne was visibly intoxicated at the time he was served his final drink..."

An expert testified on Douillard's behalf at the initial trial, surmising "that Gagney's blood alcohol level would have been .154 percent" after his last drink before the accident ... and anything over .12 percent is considered intoxicated.

A Superior Court Judge granted summary judgment in 1997 to LMR, ruling that "the plaintiff's evidence of negligent service of alcohol was insufficient" to prove the case.

Sosman, in the SJC decision overturning the lower court decision, wrote that "apparent intoxification" at the time of an incident must be proved when alleging that a bartender knew or "should have known that the patron is intoxicated." But there is some leeway, she said, to reach that goal.

"The plaintiff may seek to prove that element by direct evidence, circumstantial evidence, or a combination of the two," she wrote.

"The only burden on the plaintiff here is to show that it is more probable than not that Gagne appeared intoxicated at the time he was served his last rum and Coke he does not have to establish this element to any greater degree of certainty"

According to the SJC ruling, four of Gagne's friends testified that "he had shown no signs of intoxication" the night of the accident.

One friend, however, testified that Gagne showed "outward signs" of intoxication when he did drink too much, and would "[h]ug [ ] people," engage in [l]oud behavior," "[v]omit," and "laugh inappropriately."