Investigating and Defending Minnesota Civil Damages Act Claims

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*The authors gratefully acknowledge the assistance of law clerks Scott M. Kranz and Amy Lanser in the development and preparation of this guide.

FOREWORD

The topic of this guide is liquor liability under Minnesota law. The specific purpose of this guide is simple: to facilitate the insurance claim handler's, defense counsel's, or judge's analysis of whether a commercial liquor vendor may be subject to liability under Minnesota's Civil Damages Act—from initial notice to final disposition.

As of 2008, a majority of jurisdictions—forty-two states and the District of Columbia—impose dram-shop liability on commercial liquor vendors. The minority—Delaware, Kansas, Louisiana, Maryland, Nebraska, Nevada, South Dakota, and Virginia—has rejected dram-shop liability.

Minnesota's Civil Damages Act, known colloquially as the Dram Shop Act, is a creature of statute and has no common law counterpart. Since the Civil Damages Act's enactment, Minnesota courts traditionally have construed it in a strict fashion so as to not enlarge it beyond its definite scope. *See Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008). Over the years, both the Minnesota legislature and the courts have cleared up many ambiguities in the statutory text. Yet ambiguities remain.

The Civil Damages Act is "[p]rimarily compensatory in purpose"—it "provides a type of social insurance to compensate members of the public who are injured as a result of illegal liquor sales, and the burden of economic loss caused thereby is placed upon those who profit from furnishing liquor as a cost of engaging in that business." *Skaja v. Andrews Hotel Co.*, 161 N.W.2d 657, 661 (1968).

A usual dram shop action involves an alleged sale to an obviously intoxicated person. When an individual is injured by a drunk driver, there are several potential sources of recovery: the drunk driver's automobile insurance, uninsured or underinsured motorist benefits, and victims' compensation funds. But, when such sources prove to be inadequate, the plaintiff or plaintiffs bring a dram shop action.

In such a case, early investigation is key. Evidence quickly becomes stale or disappears. In order to establish a proper defense to a dram shop claim, it is important to begin gathering information, interviewing witnesses, and securing evidence as soon as possible. This guide will serve as a roadmap for the effective defense of a dram shop claim in Minnesota.

I. INTRODUCTION

Under Minnesota law, two distinct causes of action exist with respect to the furnishing of alcohol. The Civil Damages Act, section 340A.801 of the Minnesota Statutes[1] (also known as the Minnesota Dram Shop Act) may impose liability on liquor vendors who make an illegal sale of alcohol. In contrast, the social host liability statute, section 340A.90, applies to the furnishing of alcohol to underage persons. This reference guide is intended to be an overview of Minnesota's Civil Damages Act and, to a lesser extent, the laws of social host liability in Minnesota. For the claims handler and practitioner with little or no experience in investigating and defending dram shop claims, this guide sets forth the basic elements of a dram shop claim, common defenses, and tips for investigation and discovery regarding such claims from first notice through litigation. For the experienced liquor liability claims handler and practitioner, this guide examines novel and as yet unresolved questions of liquor liability law in Minnesota.

II. THE CIVIL DAMAGES ACT – MINN. STAT. § 340A.801

A. Historical Background

At common law, there was historically no cause of action against a liquor vendor for its sale of alcohol to a customer in Minnesota. *Beck v. Groe*, 70 N.W.2d 886, 891 (Minn. 1955). With the passage of the Civil Damages Act, the legislature sought to suppress the mischief of "social ills resulting from intoxication" by providing incentive for liquor vendors to do everything within their power to avoid making illegal sales of alcohol, and by providing compensation for members of the public injured as a result of illegal sales. *Hollerich v. City of Good Thunder*, 340 N.W.2d 665, 668 (Minn. 1983); *Skaja v. Andrews Hotel Co.*, 161 N.W.2d 657, 661 (Minn. 1968).

B. In General

In its present form, the Civil Damages Act, section 340A.801, requires that five elements be proved against a liquor vendor:

(1) An illegal sale of intoxicating liquor;
(2) The illegal sale must have caused or contributed to the intoxication of the allegedly intoxicated person ("AIP");
(3) The intoxication resulting from the illegal sale was a direct (proximate) cause of the plaintiff's injury;
(4) The plaintiff sustained damages recoverable under the Act; and
(5) The required statutory notice was provided to the liquor vendor.

[1] The Act is reprinted at Appendix A.

Minn. Stat. § 340A.801 (2006).

As with any civil case, the plaintiff bears the burden of proving the necessary elements by the greater weight of the evidence. *See* 4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 14.15.

Because there was no cause of action at common law prior to the enactment of the Civil Damages Act, a plaintiff injured by an intoxicated person has no cause of action against a liquor vendor except as provided for under the Act. *See Brua v. Olson*, 621 N.W.2d 472, 474 (Minn. Ct. App. 2001). In other words, as the Minnesota Supreme Court has stated:

> Since the legislature has provided a remedy for the illegal sale of intoxicating liquor in the Civil Damage Act, the legislature has preempted the field and has provided the exclusive remedy in the act. A common-law cause of action for negligence will only be allowed where the act does not apply.

Fitzer v. Bloom, 253 N.W.2d 395, 403 (Minn. 1977). For example, the Act specifically states that it does not preclude "common law tort claims against any person 21 years old or older who knowingly provides or furnishes alcoholic beverages to a person under the age of 21 years." Minn. Stat. § 340A.801, subdiv. 6 (2006).

Further, Minnesota courts have stated that the legislative purpose of the Civil Damages Act is to penalize the illegal sale of liquor and to provide a remedy to those damaged by the illegal sale. *Johnson v. Foundry, Inc.*, 702 N.W.2d 274, 277 (Minn. Ct. App. 2005) (citing *Paulson v. Lapa, Inc.*, 450 N.W.2d 374, 383–84 (Minn. Ct. App. 1990)). In addition, courts have explained that, because the Civil Damages Act creates a remedy that did not exist at common law, it must be strictly construed and cannot be enlarged beyond its definite scope. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).

C. Who May Maintain a Cause of Action?

The Civil Damages Act creates a private right of action by "[a] spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person." Minn. Stat. § 340A.801, subdiv. 1 (2006). Unlike a wrongful death cause of action, a claim under the Civil Damages Act allows a person to bring a dram shop action in his or her own name for such damages against a person who caused the intoxication by making an illegal sale. *Id.* Common plaintiffs in a dram

shop action include individuals injured by an intoxicated person, family members of a person injured or killed by an intoxicated person, and family members of the AIP.

With the inclusion of the phrase "other person," individuals not related to the injured person by blood or marriage may also maintain an action under the Civil Damages Act under certain circumstances. In *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855 (Minn. 1998), the Minnesota Supreme Court considered whether the injured person's fiancée and her daughter qualified as plaintiffs under the "other person" language of the Act. The Court held that the term "other person" applies to any other person injured by the intoxication of another, and who played no role in causing the intoxication. *Id.* As a result, Civil Damages Act claims can now be brought by individuals with no legal relationship to the injured person. *See id.*; *see also Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704 (Minn. Ct. App. 2002) (claim brought by girlfriend of injured party).

But, the list of "other persons" who may bring a dram shop claim is not without limit. Importantly, AIPs are not entitled to sue liquor vendors for damages sustained as a result of their own voluntary intoxication. *Robinson v. Lamott*, 289 N.W.2d 60 (Minn. 1979), *overruled on other grounds by Johnson v. Helary, Inc.*, 342 N.W.2d 146 (Minn. 1984). Even minors may not bring suit against liquor vendors for damages resulting from their own intoxication. *Randall v. Vill. of Excelsior*, 103 N.W.2d 131 (Minn. 1960). Furthermore, any party forced to stand in the shoes of the AIP may not bring claims under the Civil Damages Act. *Sather v. Woodland Liquors, Inc.*, 597 N.W.2d 295 (Minn. Ct. App. 1999) (holding that direct claim brought by Department of Human Services depended on assertion of AIP's rights, and therefore was properly dismissed for failure to state a claim); *Line Constr. Benefit Fund (Lineco) v. Skeates*, 563 N.W.2d 757 (Minn. Ct. App. 1997) (holding that AIP's health insurer is not "other person" under Civil Damage Act).

Subrogation claims are also expressly barred by the plain language of the Civil Damages Act. Specifically, the statute bars recovery by insurance companies against liquor vendors under any subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of a motor vehicle insurance policy. Minn. Stat. § 340A.801, subdiv. 4 (2006).

Until 2003, a dram shop action brought by a trustee on behalf of the heirs and next-of-kin of a deceased person was subject to dismissal. *Beck v. Groe*, 70 N.W.2d 886, 897–98 (Minn. 1955) ("[A]n action by a trustee or personal representative cannot be predicated upon our civil damage act, for it clearly provides that the action must be brought by the injured party in his own name.") (internal citation omitted). But, the Minnesota Supreme Court has since held that a wrongful death trustee and the conservator of a deceased's estate could maintain a claim under the Civil Damages Act on behalf of a proper plaintiff. *Haugland v. Mapleview Lounge & Bottleshop, Inc.*, 666

N.W.2d 689 (Minn. 2003). In *Haugland*, the court held that, despite the improper initiation of the complaint by the trustee, the decedent's son could maintain a dram shop action because the necessary elements of a dram shop claim were asserted in the complaint. *Id.* at 694–95. Therefore, an amendment to the complaint naming the decedent's son as a plaintiff could relate back to the date of the original complaint. *Id.*

In *Richardson v. Biff's Billiards Sports Bar & Grill*, No. A03-372, 2003 WL 22707507 (Minn. Ct. App. Nov. 18, 2003), the Court of Appeals allowed a decedent's surviving spouse and children to amend their complaint to assert individual claims against a liquor vendor under the Civil Damages Act more than two years after the decedent's death. The widow had originally commenced a lawsuit only as the trustee for the decedent's next-of-kin. *Id.* at *1. The Court of Appeals, however, held that the liquor vendor was put on notice of the dram shop claims by way of the original complaint, and that "[t]he amended complaint would not change the respondents' defense, legal theory, or strategy, and all discovery already conducted would also apply to the amended complaint." *Id.* at *3.

After *Haugland* and *Richardson*, a wrongful death trustee technically remains an improper plaintiff in a Civil Damages Act suit. However, the courts have rejected a strict, formalistic approach to the exact naming of a Civil Damages Act plaintiff. As such, plaintiffs are now given much more latitude in subsequently amending their complaints to name the proper individuals as parties for purposes of dram shop claims.

D. Who May Be Liable?

In General. The Civil Damages Act creates a cause of action against "a person who caused the intoxication of [another] by illegally selling alcoholic beverages." Minn. Stat. § 340A.801, subdiv. 1. Though any individual could "sell" an alcoholic beverage, dram shop claims may only be brought against a liquor licensee. A social host who charges a nominal fee for alcohol at a social event is not a liquor vendor under the meaning of the Act, and therefore cannot be held liable under the Civil Damages Act. *Koehnen v. Dufuor*, 590 N.W.2d 107, 113 (Minn. 1999). In other words, as currently interpreted, the Civil Damages Act only subjects commercial vendors and persons in the business of providing alcohol to civil liability, and a social host does not become a commercial vendor for purposes of the Act by providing alcohol for consideration. *See id.* For a discussion of the law relating to social host liability, see *infra* Part VIII.

One issue that has been addressed by Minnesota courts is whether vicarious liability[2] principles apply in dram shop actions. Prior to 1985, the rule was that vicarious liability did apply in dram shop actions. *See Hahn v. City of Ortonville*, 57

[2] "Vicarious liability" is defined as "[l]iability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties." BLACK'S LAW DICTIONARY (8th ed. 2004).

N.W.2d 254 (Minn. 1953). In *Hahn*, the Minnesota Supreme Court applied vicarious liability principles and held that a municipality was liable under the Civil Damages Act where the municipality owned and operated a liquor store who sold alcohol to a minor. *Id.* at 261–62. But, in 1985, the legislature amended the Civil Damages Act by enacting Section 340A.501, which provides: "Every licensee is responsible for the conduct in the licensed establishment and any sale of alcoholic beverage by any employee authorized to sell alcoholic beverages in the establishment is the act of the licensee for the purposes of all provisions of this chapter . . . ." Minn. Stat. § 340A.501 (2006).

More recently, in *Urban v. American Legion Department of Minnesota*, 723 N.W.2d 1 (Minn. 2006), a dram shop action was filed after an intoxicated driver's vehicle collided into a vehicle, killing the driver, a mother, and seriously injuring her two children. The local American Legion Post 184 made the alleged illegal sale to the intoxicated driver. The surviving family members brought claims against the American Legion and the American Legion Department of Minnesota, arguing that such entities were vicariously liable for the local post's illegal sale. In *Urban*, the issue before the Minnesota Supreme Court was whether the American Legion Department of Minnesota and/or the American Legion National were vicariously liable under the Civil Damages Act. The court ultimately ruled in favor of the two defendants, concluding that, by enacting section 340A.501, the Minnesota legislature limited vicarious liability under the Civil Damages Act to licensees (e.g., the local post). The court rejected the family's argument—that section 340A.501 does not expressly prohibit the application of respondeat superior—because the statute "necessarily implies that the legislature did not expect respondeat superior to apply to CDA liability." *Id.* at 5.

Municipal Liability. Under *Hahn v. City of Ortonville*, 57 N.W.2d 254, 262 (Minn. 1953), the Civil Damages Act applies to municipal corporations. In *Hahn*, the Minnesota Supreme Court reasoned that a municipality—defined as "a city, county or, for purposes of licensing under section 340A.404, subdivision 7, the metropolitan airports commission," Minn. Stat. § 340A.101, subdiv. 18—is a type of "person" who can be liable under the Civil Damages Act. Under section 340A.101, subdivision 23, the term "person" has the meaning given it in section 645.44, subdivision 7, which extends the term "person" to "bodies politic and corporate, and to partnerships and other unincorporated associations." Minn. Stat. § 645.44, subdiv. 7 (2009).

It is important to note that special notice provisions apply to dram shop actions in which the defendant is a municipality. Every person, whether a plaintiff, a defendant, or a third-party plaintiff or defendant, who claims damages from a municipality must provide notice to the municipality's governing body within 180 days

after the alleged loss or injury under section 466.05, subdivision 1 of the Minnesota Statutes.[3]

In a dram shop action, the maximum liability of a municipality is $300,000.00 for any one claimant and $1,000,000.00 for any number of claimants arising out of a single occurrence for claims arising after January 1, 2000. Minn. Stat. § 466.04, subdiv. 1 (2008). Still, a municipality may purchase liability insurance is excess of these maximum liability amounts. Minn. Stat. § 466.06. In doing so, however, the municipality waives "its section 466.04 liability limits by purchasing insurance in excess of those limits." *Casper v. City of Stacy*, 473 N.W.2d 902, 905 (Minn. Ct. App. 1991).

E. Comparative Fault

At one time, a plaintiff's own complicity was an absolute bar to recovery under the Civil Damages Act. *See Herrly v. Muzik*, 374 N.W.2d 275, 278 (Minn. 1985). In 1990, however, the Civil Damages Act was amended to provide that actions brought under the Act are governed by section 604.01 of the Minnesota Statutes,[4] Minnesota's comparative fault statute. Minn. Stat. § 340A.801, subdiv. 3 (2006). Instead of acting as an absolute bar to recovery, a plaintiff's own complicity is now merely a factor for the jury to consider in allocating the comparative fault of the parties. *See K.R. v. Sanford*, 588 N.W.2d 545, 548 (Minn. Ct. App. 1999). Specifically, the comparative fault statute provides that any award to a plaintiff must be reduced in proportion to the amount of fault attributable to the plaintiff. Minn. Stat. § 604.01, subdiv. 1. Furthermore, a plaintiff may not recover if his or her own fault was greater than the fault of the person against whom recovery is sought. *Id.*

In a typical lawsuit under the Civil Damages Act, a plaintiff brings suit against the AIP and the liquor vendor. If the plaintiff's own fault is greater than 50%, the plaintiff cannot recover any damages. If, however, the plaintiff's fault is 50% or less, the recovery will be reduced by the percentage of the plaintiff's own negligence. *See* Minn. Stat. § 604.01, subdiv. 1; *see also* 4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 28.15.[5] In addition, a plaintiff may not recover from any individual party if the plaintiff's own comparative fault exceeds that of the particular party. For example, if the plaintiff was 25% at fault and the liquor vendor was 20% at fault, the plaintiff can recover nothing from the liquor vendor.

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[3] For a discussion of the notice requirement in general, see *infra* Part VI.A, which discusses the provisions of Minn. Stat. § 340A.802.

[4] Minn. Stat. § 604.01 is reprinted at Appendix A.

[5] "If you find that (plaintiff's) (negligence) (fault) is greater than 50%, then (plaintiff) will receive no damages. If you find that (plaintiff's) (negligence) (fault) is 50% or less, then (plaintiff's) damages will be reduced by that percent."

A common claim under the Civil Damages Act is one brought by the spouse and/or dependents of an AIP, who are injured in "means of support" because of the injuries sustained by the AIP. Unlike in a wrongful death claim, the comparative fault of the AIP in a Civil Damages Act claim cannot be imputed to the spouse or dependents to reduce their recovery. *Bushland v. Corner Pocket Billiard Lounge of Moorhead, Inc.*, 462 N.W.2d 615, 616–17 (Minn. Ct. App. 1990); *Paulson v. Lapa, Inc.*, 450 N.W.2d 374 (Minn. Ct. App. 1990). This is because the Civil Damages Act gives these plaintiffs a right of action, in their own names, directly against the liquor vendor responsible for an illegal sale that caused their damages. *See Bushland*, 462 N.W.2d 615; *Paulson*, 450 N.W.2d 374. For example, the recovery of the spouse of an AIP killed in a one-car accident cannot be reduced by the percentage of fault attributed to the AIP himself.

Interesting issues arise in the context of a dram shop claim in which the plaintiff was damaged by way of an assault by an intoxicated individual. In such a case, the bar could be liable to an assaulted plaintiff through the Dram Shop Act, while the AIP assailant(s) would be liable to Plaintiff for assault. Minnesota courts have held that principles of comparative fault do not apply to intentional torts. *Florenzano v. Olson*, 387 N.W.2d 168, 175 (Minn. 1986). As a result, fault is not apportioned between an intentional tortfeasor and a merely negligent victim. *Id.* Because there are no reported decisions analyzing the issue, it is unclear whether the fault of an intentional tortfeasor who assaults a plaintiff could be compared with the fault of a dram shop in serving an obviously intoxicated assailant. Defense counsel must argue that, because common liability would exist to the plaintiff, the fault of each should be compared in determining liability.

F. Joint & Several Liability and Reallocation of Damages

When multiple defendants are at fault in a dram shop case, as often occurs with an AIP and a liquor vendor, the jury must assign a percentage of fault to the AIP and a percentage of fault to the liquor vendor. Apportionment of the damages among multiple defendants is controlled by section 604.02 of the Minnesota Statutes,[6] which provides:

> When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that the following persons are jointly and severally liable for the whole award:
>
> (1) *a person whose fault is greater than 50 percent*;
> (2) two or more persons who act in a common scheme or plan that results in injury;

[6] Minn. Stat. § 604.02 is reprinted in its entirety at Appendix A.

> (3) a person who commits an intentional tort; or
> (4) a person whose liability arises under chapters 18B - pesticide control, 115 - water pollution control, 115A - waste management, 115B - environmental response and liability, 115C - leaking underground storage tanks, and 299J - pipeline safety, public nuisance law for damage to the environment or the public health, any other environmental or public health law, or any environmental or public health ordinance or program of a municipality as defined in section 466.01.

Minn. Stat. § 604.02, subdiv. 1 (2003) (emphasis added). Section 604.01, subdivision 1, was amended to its current form in 2003. The current statute provides for *several* liability between or among defendants as the default, replacing the old version that provided for *joint and several* liability as the default. Therefore, under the current statute, a party is only *jointly* liable in certain situations. The effect on a dram shop case is that, if the liquor vendor is found 50% at fault or less, it should not be jointly liable with the AIP. Instead, only the party whose fault is greater than 50%, and there can be only one, is jointly liable under section 604.02.

Whether a defendant is *jointly and severally* liable or merely *severally* liable is important in determining the amount of damages for which the party will be liable. Section 604.02, subdivision 2 allows for reallocation of damages from a party that cannot pay to a jointly & severally liable co-defendant:

> Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

Minn. Stat. § 604.02, subdiv. 2 (2003). This provision was not amended in 2003, when subdivision 1 was amended to provide for several liability as the default rule.

It appears clear that subdivision 2 only applies when the defendant to whom the damages are to be reallocated is *jointly and severally* liable under subdivision 1 (i.e, such defendant was found to be more than 50% liable). However, no Minnesota appellate cases have examined this issue since subdivision 1 was amended in 2003. But, in 1994, the Minnesota Court of Appeals held that section 604.02, subdivision 2 does not apply and there is no basis for reallocating any uncollectible amount of a judgment to another party unless joint liability is established. *Eid v. Hodson*, 521 N.W.2d 862, 864 (Minn. Ct. App. 1994). More recently, the Court of Appeals reaffirmed this holding. *See Newinski v. John Crane, Inc.*, No. A08-1715, 2009 WL 1752011, at *7 (Minn. Ct. App. June 23, 2009)

(citing the *Eid* decision and stating "[t]here is no basis for reallocation unless joint liability is established"), *review denied* (Sept. 16, 2009). While *Eid* was decided before the 2003 amendment to subdivision 1, and although *Newinski* is an unreported decision, the fact that the legislature in 2003 changed *when* parties are jointly liable should not change the underlying principle that subdivision 2 is only applied when the parties *are* jointly liable. In addition, it would defy common sense to allow subdivision 2, the reallocation section, to apply to parties not held jointly liable. Such a holding would, in effect, nullify the 2003 amendment that limited joint liability by forcing those who are not held jointly liable to pay as if they were. Secondary sources have also noted that reallocation only applies when a party is jointly liable. *See, e.g.*, Michael K. Steenson, *Joint and Several Liability in Minnesota: The 2003 Model*, 30 WM. MITCHELL L. REV. 845, 863 (2003).[7]

In short, section 604.02, subdivision 2 does not currently allow for the reallocation of uncollectible damages from a drunk driver to the liquor vendor, unless the liquor vendor is found *more than* 50% at fault. Nevertheless, the plaintiffs' bar has pushed for the opposite interpretation, arguing that reallocation can be had against a defendant not jointly liable. In addition, there has been some effort to amend this statute to specifically make liquor vendors jointly and severally liable, and thus subject to reallocation, when they are found less than 50% at fault. They argue that an AIP typically bears the largest percentage of fault in a dram shop case, yet rarely has sufficient insurance coverage for the resulting damages. Recent proposed legislation would amend the joint and several liability statute to make "a person who violates chapter 340A by making an illegal sale of an alcoholic beverage" jointly and severally liable even if such person's fault is 50% or less.[8] Indeed, if such a bill were to become law, it would have a considerable effect on liquor vendors and their insurers.

G. Contribution & Indemnity Claims

Common liability to the plaintiff is necessary for a contribution claim. Some Minnesota cases have held, in situations where a liquor vendor attempts to seek contribution from the AIP, that there is no common liability between a liquor vendor and an allegedly intoxicated person.

In *Jones v. Fisher*, 309 N.W.2d 726 (Minn. 1981), the Minnesota Supreme Court examined a similar factual and legal situation. In that case, Terry Jones had been drinking at three different bars. At about 4:30 in the morning, he was walking when he was struck and killed by a car. His wife, as trustee, brought a wrongful death action against the car's driver and owner. The suit was settled for $15,000, and $10,000 in no-

[7] "[T]he loss reallocation provision has potential application only where one of the defendants is jointly and severally liable to the plaintiff."Michael K. Steenson, *Joint and Several Liability in Minnesota: The 2003 Model*, 30 WM. MITCHELL L. REV. 845 (2004).

[8] *See* S.F. No. 1091, 85th Leg., Reg. Sess. (Minn. 2007); H.F. No. 561, 85th Leg., Reg. Sess. (Minn. 2007), *available at* http://wdoc.house.leg.state.mn.us/leg/LS85/HF0561.0.pdf.

fault death benefits were also paid to the trustee by the driver's insurer. In a separate dram shop action, Mrs. Jones and her two children brought claims in their own names against two of the bars at which Terry Jones had been drinking on the night of his death. They also asserted claims against a third bar, a 3.2 beer establishment, under the *Trail v. Christian* doctrine. In the wrongful death action, the driver and owner of the vehicle that struck and killed the plaintiff's husband asserted third-party claims for contribution against the bars. In this appeal, the Court was asked to rule on the permissibility of those claims for contribution.

The precise issue in *Jones* was whether the liquor vendors could be liable in contribution to the motorist who killed the intoxicated decedent. *Jones*, 309 N.W.2d at 728. According to the Minnesota Supreme Court, two requirements must be met before contribution may be obtained: (1) the co-tortfeasors must be under a common liability to the injured party, and (2) the co-tortfeasors claiming contribution must have paid a disproportionate share of the judgment. *Id.* As to the first requirement, common liability of two different parties may exist even when such liability is predicated upon different legal theories.[9] *Id.* The defendant liquor vendors in *Jones* argued that common liability did not exist between them and the negligent driver who killed Mr. Jones, because the decedent, Terry Jones, could not have maintained an action under the Civil Damages Act. *Id.* at 729. But, the court said the plaintiff in that case was the spouse, an innocent third party who is entitled to assert claims under the Civil Damages Act. *Id.* According to the court, because all defendants were liable to the decedent's spouse, either in her capacity as trustee or individually, the common liability requirement was satisfied. *Id.* It would be a closer question in a case where the wrongful death trustee is not a proper dram shop plaintiff in his or her individual capacity.

Similarly, in *Pautz v. Cal-Ros, Inc.*, 340 N.W.2d 338, 339 (Minn. 1983), the court held that a dram shop could seek contribution from the AIP, who was the husband and father of the plaintiffs, because they (the bar and the AIP) were commonly liable to the plaintiffs for the damages they sustained when the AIP set fire to the family home. The court said that the plaintiffs' decision to only sue the liquor vendor did not prevent that vendor from seeking contribution from the AIP. It distinguished its decision in *Ascheman v. Village of Hancock*, because in that case, the plaintiffs were seeking to recover for loss of means of support. *Pautz*, 340 N.W.2d at 340 (discussing *Ascheman*, 254 N.W.2d 382 (Minn. 1977)). Since the AIP could not be liable to his own family for injuring himself, there was no common liability between the AIP and the bar.

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[9] The case of *Milbank Mutual Insurance Co. v. Village of Rose Creek*, 225 N.W.2d 6 (Minn. 1974), serves as a good example of when common liability of two different parties may exist even when such liability is predicated upon different legal theories. In that case, the court allowed the intoxicated driver's motor vehicle liability insurer, which paid a settlement to the trustee of the deceased passenger, to assert a claim for contribution against the liquor vendor that served its insured. The court has also held that a co-tortfeasor whose liability is based upon strict liability is entitled to contribution from a negligent co-tortfeasor.

III. ILLEGAL SALES

A. In General

For an actionable dram shop claim, the commercial liquor vendor must have made an illegal sale or barter of alcohol. The plaintiff bears the burden of proving that the defendant liquor vendor illegally sold liquor. *Knese v. Heidgerken*, 358 N.W.2d 177, 180 (Minn. Ct. App. 1984). An illegal sale can ostensibly be any violation of Minnesota's Liquor Act,[10] which prohibits:

- sales to obviously intoxicated persons (Minn. Stat. § 340A.502),
- sales to minors (persons under 21) (Minn. Stat. § 340A.503),
- sales after hours and on prohibited days (Minn. Stat. § 340A.504, subdivs. 1–3, 7),
- sales at prohibited locations (Minn. Stat. § 340A.504, subdivs. 4, 5),
- sales to nonmembers of clubs (Minn. Stat. § 340A.404), and
- "on-sales" of alcohol which is consumed off premises.

In order for an illegal sale under section 340A.502 of the Liquor Act to constitute an illegal sale for purposes of a Civil Damages Act claim, a plaintiff must establish: (1) that a sale of alcohol was in violation of the Liquor Act; (2) that the violation was substantially related to a purpose sought to be achieved by the Act; (3) that the illegal sale was the cause of intoxication; and (4) that the intoxication was the cause of plaintiff's injuries. *Rambaum v. Swisher*, 435 N.W.2d 19, 21 (Minn. 1989).

Before discussing each type of illegal sale in detail, it is first helpful to discuss the more basic requirement that an actual sale of alcohol occurred.

B. The "Sale" Requirement

Although Minnesota courts have stated that they should avoid a "hypertechnical determination" of whether an illegal sale of alcoholic beverages was completed or intended under the Civil Damages Act, the occurrence of a sale of alcohol is nonetheless an important element of a Civil Damages Act claim. *Carlson v. Thompson*, 615 N.W.2d 387, 389 (Minn. Ct. App. 2000). A "sale" or "barter" of liquor involves a bargained-for exchange and consideration, which is the voluntary assumption of an obligation by one party on the condition of an act or forebearance by the other. *Knese*, 358 N.W.2d at 179–80. Absent sufficient factual evidence of a sale of alcohol, a plaintiff's dram shop claim fails under the Civil Damages Act. *Id.* at 179 (finding insufficient evidence of sale of alcohol where evidence did not demonstrate that liquor vendor was open for business

[10] The Liquor Act defines "alcoholic beverage" as "any beverage containing more than one-half percent alcohol by volume." Minn. Stat. § 340A.101, subdiv. 2. "Intoxicating liquor" is defined as "ethyl alcohol, distilled, fermented, spirituous, vinous, and malt beverages containing more than 3.2 percent of alcohol by weight." Minn. Stat. § 340A.101, subdiv. 14.

on day of the alleged sale of beer to the plaintiff's son who was killed in a truck accident).

The line between what constitutes a "sale" and a "non-sale," such as a gift, is not always clear. In *Carlson*, a firefighters' relief association charged an intoxicated individual an admission fee to its dance, sold beer tickets to him, and later provided him alcoholic beverages when he was obviously intoxicated. 615 N.W.2d at 389. The Minnesota Court of Appeals held that there was a "sale" for purposes of the Civil Damages Act because the patron furnished consideration for the delivery of drinks, the association imposed charges on the patron for drinking and then served drinks to him, and this conduct occurred in the ordinary course of the association's business as a commercial vendor. *Id.* at 390. But, the court excluded from its holding a pure gift of alcohol, declining to reach the issue. *Id.* ("Because we are not dealing with such a case of pure gratuity, we needn't reach this question").

Sometimes, there is simply insufficient evidence as to whether the AIP actually purchased alcohol from the liquor vendor in question. For example, in *Lamas v. A-Du Enterprises, LLC*, No. A08-1095, 2009 WL 511871 (Minn. Ct. App. Mar. 3, 2009), the plaintiff, Martha Lamas, sued a liquor store alleging that it had sold alcohol to an obviously intoxicated driver before an accident. During his deposition, the driver testified that he had purchased a six-pack of Miller High Life for $5 cash before the accident. He further testified that he "may have" purchased the beer from the liquor store in question, but he could only speculate because he did not remember—he explained: "[The liquor store was] typically where I would stop in and get a six-pack. . . . I believe that—I would have stopped there if I stopped anywhere." *Id.* at *2 (alteration in original). The defendant liquor store's receipts for the day of the accident documented two sales of a six-pack of Miller High Life for $5 cash, but both sales occurred well outside of the time frame in which the driver thought he made the purchase and was seen in the area. *Id.* at *1. The Minnesota Court of Appeals concluded that the district court did not err in granting summary judgment for the liquor store because there was insufficient evidence to create a genuine issue of material fact as to whether the intoxicated driver purchased alcohol from the defendant liquor store.

C. Obviously Intoxicated Persons – § 340A.502

Probably the most common type of illegal sale in a dram shop case, but a sale that can be difficult to prove, is the sale to an "obviously intoxicated person." It is illegal to sell alcoholic beverages to obviously intoxicated persons under section 340A.502 of the Minnesota Statutes, which provides: "No person may sell, give, furnish, or in any way procure for another alcoholic beverages for the use of an obviously intoxicated person." Minn. Stat. § 340A.502 (2006). Under this provision, a liquor vendor cannot provide alcohol to someone who is obviously intoxicated, even if the

alcohol is actually sold to someone other than the obviously intoxicated person. *See Fette v. Peterson*, 404 N.W.2d 862, 866 (Minn. Ct. App. 1987) ("[A] cause of action exists against anyone who illegally sells intoxicating liquor to an intoxicated person, whether the intoxicated person bought the drinks himself or the drinks were purchased by others."). Therefore, the term "sale" will include any act of furnishing alcohol to someone, even if such furnishing does not involve the exchange of money.

Although the term "obviously intoxicated" is not defined in the statute, the Minnesota Supreme Court has stated that "obvious intoxication" is "such [an] outward manifestation of intoxication that a person using his reasonable powers of observation can see or should see that such person has become intoxicated." *Strand v. Vill. of Watson*, 72 N.W.2d 609, 615 (Minn. 1955), *superseded by statute as stated in Mjos v. Vill. of Howard Lake*, 178 N.W.2d 862 (Minn. 1970). In addition:

> A finding of intoxication does not require proof of any specified amount of drinking or any degree of intoxication, but simply proof that, as a result of drinking intoxicants, a person has lost control to any extent of his mental or physical faculties and that such condition is, or should be, observable or apparent to the seller.

Murphy v. Hennen, 119 N.W.2d 489, 493 (Minn. 1965). More specifically, "[s]uch outward manifestations of intoxication may include a person's loss of reason or faculty, incoherent speech, or loss of control of bodily motions or actions." *Bicknell v. Dakota GM, Inc.*, No. 07-3529, 2009 WL 799613, at *3 (D. Minn. Mar. 24, 2009) (citing *Strand*, 72 N.W.2d at 614–16).

The standard Minnesota jury instruction on intoxication is CIVJIG 45.25, which states that "[a] person is 'intoxicated' when, as a result of drinking alcohol, he or she has lost control to any extent of his or her mental or physical faculties." *See* Appendix C. For a potentially more favorable instruction, defense counsel can argue for a slightly different instruction based on the Minnesota Supreme Court's decision in *Strand v. Village of Watson*, 72 N.W.2d 609, 615 (Minn. 1955). In *Strand*, the court said that a person is "intoxicated" when the use of intoxicating liquors has affected his reason or his faculties, or has rendered himself incoherent of speech, or has caused himself to lose control in any manner to any extent of the actions or motions of his person or body. *Id.*

Obvious intoxication can be shown through direct evidence or, more commonly, circumstantial evidence. One example of direct evidence includes testimony from witnesses who observed the commercial liquor vender make the sale of the alcoholic beverage to a person who exhibited signs of obvious intoxication. Note, however, that proof of obvious intoxication does not have to "be positive by eyewitnesses." *Strand*, 72 N.W.2d at 616. Another example is a videotape of an obviously intoxicated person being served at the commercial establishment. It is not unusual for commercial liquor

vendors to use video surveillance to monitor activity both inside and outside the establishment. 5A Roger S. Haydock & Peter B. Knapp, MINNESOTA PRACTICE SERIES: METHODS OF PRACTICE § 3.4 (4th ed. 2009).

Minnesota courts have held that, in the absence of, or in addition to, direct evidence, circumstantial evidence is admissible to prove obvious intoxication. *See, e.g.*, *Larson v. Carchedi*, 419 N.W.2d 132, 134 (Minn. Ct. App. 1988) ("Direct evidence is not essential, and intoxication sufficient to constitute a violation may be established by circumstantial evidence which reasonably supports a jury verdict on the ultimate question."). Notably, Minnesota courts have found that an allegedly intoxicated person's appearance and behavior before and after leaving an establishment may raise a question of fact as to intoxication for a jury. *Id.* at 135–36. Another example of circumstantial evidence is an elevated blood alcohol test. According to the Minnesota Supreme Court, evidence of elevated blood-alcohol content, without more, does not establish as a matter of law that a person is obviously intoxicated. *Seeley v. Sobczak*, 281 N.W.2d 368, 370–71 (Minn. 1979) (decedent's blood alcohol content at the time of death was .269 percent).

D. Minors – § 340A.503

While proof of a sale to an obviously intoxicated person is heavily fact-dependent, a more clear-cut and easier to prove illegal sale is the sale of alcohol to a minor. It is obviously illegal to sell alcoholic beverages to a minor, and such sale subjects a liquor vendor to liability under the Civil Damages Act. Minn. Stat. § 340A.504 (2008); Minn. Stat. § 340.801, subdiv. 1 (2006). In cases involving illegal sales to minors, the plaintiff need not prove that the minor was intoxicated when the sale was made. 5A Roger S. Haydock & Peter B. Knapp, MINNESOTA PRACTICE SERIES: METHODS OF PRACTICE § 3.5 (4th ed. 2009). Proof of age to purchase or consume alcoholic beverages may be established only by one of the following:

> (1) a valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person;
> (2) a valid military identification card issued by the United States Department of Defense;
> (3) a valid passport issued by the United States; or
> (4) in the case of a foreign national, a valid passport.

Minn. Stat. § 340A. 503, subdiv. 6 (2006).

Under Minnesota law, if a liquor vender sells alcohol to a minor, and the minor gives the alcohol to an adult who thereafter causes an accident, "[t]he illegality of such a sale is neither affected nor erased" regardless of whether the adult was sober or

obviously intoxicated. *Murphy v. Hennen*, 119 N.W.2d 489, 492 (Minn. 1963). According to the Minnesota Supreme Court, "[i]f the adult consuming the intoxicant is obviously intoxicated at the time, two illegal acts occur—the illegal sale to the minor and furnishing liquor to an intoxicated person." *Id.*

Where a liquor vendor "cards" a minor who uses a fake ID as proof of age, the liquor vendor may nonetheless have a valid defense if the vendor's reliance on the false identification was reasonable and in good faith. *Wagner v. Schwegmann's S. Town Liquor, Inc.*, 485 N.W.2d 730, 732–33 (Minn. Ct. App. 1992). If the liquor vendor meets its burden of proving by a preponderance of the evidence that it had reasonable, good-faith reliance upon a false identification, it is relieved of liability for a sale which is otherwise illegal. *See* Minn. Stat. § 340A.503, subdiv. 6 (2006) ("[I]t is a defense for the defendant to prove by a preponderance of the evidence that the defendant reasonably and in good faith relied upon representations of proof of age . . . in selling, bartering, furnishing, or giving the alcoholic beverage.").

In *Wagner*, a deceased minor's family brought a dram shop action against a liquor vendor who sold a keg of beer that was eventually consumed by the minor. 485 N.W.2d 730. Since there was conflicting testimony as to whether a different minor purchased the keg with a fake ID, or whether it was purchased for them by an adult, the court found that genuine issues of material fact existed as to whether the seller of alcoholic beverages actually sold alcoholic beverages to an adult or to the 18-year-old friend of the minor. *Id.* at 733. Additionally, the court found genuine issues of material fact as to (1) whether the liquor vendor sold alcoholic beverages to the 18-year-old friend or an adult, (2) if the adult purchased the alcohol, whether the seller knew that the adult was buying the alcohol for minors, and (3) if the 18- year-old friend purchased the alcohol, whether the seller reasonably relied upon a false identification card as proof of age. *Id.* The court found that these issues precluded summary judgment in the action for illegal sale of alcoholic beverages. *Id.* at 734.

E. Hours and Days of Sale – § 340A.504

In general. Under the Civil Damages Act, it is illegal for a commercial liquor vendor to make a sale of alcohol after hours or on prohibited days. Minn. Stat. § 340A.504 (2008); *Hollerich v. City of Good Thunder*, 340 N.W.2d 665, 668 (Minn. 1983) (holding that for purposes of the Civil Damages Act, an after-hour sale constitutes an "illegal sale"). The *Hollerich* court reasoned that the after-hour sale in that case was sufficiently related to the Civil Damages Act's purpose because the sale occurred at night "when the likelihood of overindulgence . . . is enhanced." *Hollerich*, 340 N.W.2d at 668.

Whether the sale is made after hours or on a prohibited day depends on whether the establishment constitutes an "on sale" or "off sale" liquor vendor. "On sale" liquor

vendors (i.e., bars) sell liquor by the drink for consumption on the premises. 5A Roger S. Haydock & Peter B. Knapp, MINNESOTA PRACTICE SERIES: METHODS OF PRACTICE § 3.6 (4th ed. 2009). In contrast, "off sale" liquor vendors sell liquor for purchase and consumption off the premises. *Id.*

"On sale" liquor vendors. In general, "on sale" liquor vendors are prohibited by state law from selling intoxicating liquor (1) between 2:00 a.m. and 8:00 a.m. on Monday through Saturday and (2) after 2:00 a.m. on Sundays. Minn. Stat. § 340A.504, subdiv. 2 (2008). There are exceptions, however, for sales after 2:00 a.m. on Sundays. Minn. Stat. § 340A.504, subdiv. 3. Moreover, a restaurant, club, bowling center, or hotel with an on sale liquor license and a seating capacity of at least 30 persons may sell alcohol in conjunction with the sale of food between 12:00 p.m. on Sundays and 2:00 a.m. on Mondays. *Id.* Note that section 340A.504 does not prohibit a hotel from placing alcohol in liquor cabinets located in hotel rooms and charging guests for withdrawals from such cabinets because such dispensing of alcohol does not constitute a "sale." Minn. Stat. § 340A.504, subdiv. 2(a).

"Off sale" liquor vendors. "Off sale" establishments cannot sell intoxicating liquor at all on Sundays or before 8:00 a.m. or after 10:00 p.m. on Monday through Saturday. Minn. Stat. § 340A.504, subdiv. 4(1)–(2). Moreover, "off sale" liquor vendors cannot sell alcohol on Thanksgiving Day, Christmas Day (December 25), or after 8:00 p.m. on Christmas Eve (December 24). *Id.* § 340A.504, subdiv. 4(3)–(5).

F. Others

1. *Sales at prohibited locations.*

The Liquor Act prohibits the issuance of retail alcoholic licenses in certain locations and thereby proscribes sales of alcohol is those areas. Under section 340A.412(a) of the Minnesota Statutes, no license to sell alcohol may be issued within the following areas:

> (1) where restricted against commercial use through zoning ordinances and other proceedings or legal processes regularly had for that purpose, except licenses may be issued to restaurants in areas which were restricted against commercial uses after the establishment of the restaurant;
> (2) within the Capitol or on the Capitol grounds, except as provided under Laws 1983, chapter 259, section 9, or Laws 1999, chapter 202, section 13;
> (3) on the State Fairgrounds, except as provided under section 37.21, subdivision 2;
> (4) on the campus of the College of Agriculture of the University of Minnesota;

(5) within 1,000 feet of a state hospital, training school, reformatory, prison, or other institution under the supervision or control, in whole or in part, of the commissioner of human services or the commissioner of corrections;
(6) in a town or municipality in which a majority of votes at the last election at which the question of license was voted upon were not in favor of license under section 340A.416, or within one-half mile of any such town or municipality, except that intoxicating liquor manufactured within this radius may be sold to be consumed outside it;
(7) within 1,500 feet of a state university, except that:
(i) the minimum distance in the case of Winona and Southwest State University is 1,200 feet, measured by a direct line from the nearest corner of the administration building to the main entrance of the licensed establishment;
(ii) within 1,500 feet of St. Cloud State University one on-sale wine and two off-sale intoxicating liquor licenses may be issued, measured by a direct line from the nearest corner of the administration building to the main entrance of the licensed establishment;
(iii) at Mankato State University the distance is measured from the front door of the student union of the Highland campus;
(iv) a temporary license under section 340A.404, subdivision 10, may be issued to a location on the grounds of a state university for an event sponsored or approved by the state university; and
(v) this restriction does not apply to the area surrounding the premises of Metropolitan State University in Minneapolis; and
(8) within 1,500 feet of any public school that is not within a city.

Minn. Stat. § 340A.412 (2009). But, the restrictions of section 340A.412(a) do not apply to a manufacturer or wholesaler of alcohol or to a drugstore or to a person who had a license first lawfully issued prior to July 1, 1967. Minn. Stat. § 340A.412(b).

Moreover, an illegal sale occurs where a sale of alcohol violates the compact and contiguous building requirement of section 340A.410, subdivision 7, which provides: "A licensing authority may issue a retail alcoholic license only for a space that is compact and contiguous. A retail alcoholic beverage license is only effective for the licensed premises specified in the approved license application." Minn. Stat. § 340A.410 (2006). In *Clark v. Peterson*, 741 N.W.2d 136 (Minn. Ct. App. 2007), a sale of alcohol violated this provision. In that case, the Court of Appeals held that the compact and contiguous building requirement is substantially related to the purposes of the Civil

Damages Act, because "[the defendant's] operation of two separate establishments in two separate buildings circumvents statutory limits based on population on the number of liquor licenses that a municipality may issue, thereby increasing the potential for alcohol abuse and the injury of innocent persons." *Id.* at 140.

2. ***Sales to nonmembers of clubs.***

It is illegal for a fraternal club to make a sale to an individual who is neither a member nor a bona fide guest of a member of the club. *See* Minn. Stat. § 340A.404(a)(4) (2009) (authorizing the issuance of certain liquor licenses to clubs "provided that the organization has been in existence for at least three years and liquor sales will only be to members and bona fide guests, except that a club may permit the general public to participate in a wine tasting conducted at the club under section 340A.419"); *see also Rambaum v. Swisher*, 435 N.W.2d 19 (Minn. 1989).

A common issue in dram shop actions involving fraternal clubs is whether the intoxicated individual was a "bona fide guest" while at the club. For example, in *Rogers v. Ponti-Peterson Post # 1720 Veterans of Foreign War*, 495 N.W.2d 897 (Minn. Ct. App. 1993), a personal injury action arose from a traffic accident which caused injuries to the plaintiffs, Donna Rogers and her two children. Before the accident, the other driver, who was not a club member, came into the club alone, sat away from other patrons, and drank alone. *Id.* at 900. The club's bartender knew the driver was not a member and had not signed the club's guest book—yet the bartender knowingly served alcohol to the nonmembers and nonguests of the club. *Id.* Moreover, the club had a "relaxed" policy and practice of serving anyone despite its restrictive liquor license. *Id.* In light of such evidence, the court affirmed the lower court's directed verdict as to the existence of an illegal sale because there was insufficient evidence to create a factual question for the jury on whether the driver was a guest of the club. *Id.* The court reasoned that the legislature "used the phrase 'bona fide guests' in accordance with its standard dictionary definition to describe persons specifically welcomed to a club by its members." *Id.* at 901. According to the court, it would be inconsistent with the common usage of the phrase "bona fide guest" and the purpose of the restricted license statute to interpret such phrase to include everyone. *Id.*

3. ***An "on sale" of alcohol which is consumed off premises.***

The sale of alcohol in an open container by an on-sale vendor without safeguarding against off-premises consumption is an illegal sale under the Civil Damages Act. *Bicknell v. Dakota GM, Inc.*, No. 07-3529, 2009 WL 799613, at *3 (D. Minn. Mar. 24, 2009) (citing *Englund v. MN CA Partners/MN Joint Ventures*, 555 N.W.2d 328, 331–32 (Minn. Ct. App. 1996)). It is not the case, however, that "an on-sale liquor vendor is liable every time a customer evades the vendor's safeguards and smuggles liquor off-premises." *Englund*, 555 N.W.2d at 332. Instead, a liquor vendor will only be

liable if it fails to "operate as a reasonable vendor, acting in good faith to sell liquor to be consumed only on the licensed premises." *Id.* Stated differently, courts determine if the sale constitutes an "illegal sale" by measuring the reasonableness of the liquor vendor's actions. *See Englund*, 555 N.W.2d 328 (Minn. Ct. App. 1996), *aff'd*, 565 N.W.2d 433 (Minn. 1997). If the liquor vendor unreasonably allowed the alcohol it sold to an individual to be consumed off-site, then an illegal sale may be found for purposes of a dram shop claim.

4. Sale in violation of a municipal ordinance.

There remains a question as to whether the violation of a municipal ordinance restricting alcohol sales can constitute an illegal sale under the Civil Damages Act. While municipalities may not expand alcohol sales beyond what is allowed by the state Liquor Act, section 340A.509 provides that "[a] local authority may impose further restrictions and regulations on the sale and possession of alcoholic beverages within its limits." Minn. Stat. § 340A.509 (2010). Cities and towns around the state have used this provision to enact ordinances further restricting the hours of off-sales or banning "happy hours" at certain times of the day. Does a liquor vendor's violation of a city ordinance restricting alcohol sales constitute an illegal sale under the Civil Damages Act?

Because there are no appellate decisions on this issue, never in the history of Minnesota jurisprudence has it been held that there was an illegal sale of alcohol under the Liquor Act absent a violation of the Liquor Act itself. The Minnesota Supreme Court, in *Hollerich v. City of Good Thunder*, 340 N.W.2d 665 (Minn. 1983), embraced the principle that the proper framework for analyzing an illegal sale under the Liquor Act is restricted to the provisions of the Liquor Act itself. In *Hollerich*, the issue was whether an after-hours sale in violation of state law was an illegal sale under the Liquor Act as it existed at the time. In deciding that it was, the court held that, "[n]owhere in the Act is the phrase 'illegally selling' defined; consequently, one has to look elsewhere in chapter 340 [the Liquor Act] for what is an illegal sale." *Id.* at 666. Indeed, the court held that each prohibition in the Liquor Act must be independently examined as to its context, purpose, and legislative history to determine whether a violation would constitute an illegal sale for the purpose of Liquor Act liability. *Id.* at 669. *Hollerich* essentially held that the courts may not look outside the Liquor Act itself to prove an illegal sale in violation of the Liquor Act.

Furthermore, "[o]rdinances by definition are the laws of a municipality made by the authorized municipal body in distinction from the general laws of the state and constitute local regulations for the government of the inhabitants of the particular place." *State v. Thomas*, 156 N.W.2d 745, 746 (Minn. 1968). Thus, the violation of an ordinance, though quasi-criminal or criminal in nature, is not considered an offense against the state. *Id.* If a violation of a city ordinance is not

an offense against the state, then it should not be considered an offense that imposes liability under the Civil Damages Act.

IV. CAUSATION

A. In General

To prosecute a dram shop claim, it is insufficient to merely prove an "illegal sale." The claimant must also establish that (1) the illegal sale caused or contributed to the intoxication of the AIP, and (2) the AIP's intoxication was a direct (proximate) cause of the plaintiff's injury. *Hollerich v. City of Good Thunder*, 340 N.W.2d 665, 668 (Minn. 1983). More recently, the Minnesota Supreme Court described the standard for causation as follows: "The claimant must . . . show *by competent proof* that the illegal sale of alcohol caused or contributed to * * * intoxication and that the same was a proximate cause of the [claimant's] injuries." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 372 (Minn. 2008) (emphasis added) (internal quotation marks omitted).

B. Causation Between Illegal Sale and Intoxication

In proving that an illegal sale caused or contributed to the intoxication of the AIP, the claimant need not establish that the illegal sale was the *sole* cause of the AIP's intoxication. *Murphy v. Hennen*, 119 N.W.2d 489, 493 (Minn. 1963). Instead, causation between the illegal sale and the intoxication is established if the alcohol that was part of the illegal sale was a "concurring or proximately contributing cause." *Id.*

As to causation between the illegal sale and the AIP's intoxication, there are two common defenses. First, a defendant can argue that a lapse of time between the alleged illegal sale and the accident precludes a finding that the illegal sale caused the AIP's intoxication. 5A Roger S. Haydock & Peter B. Knapp, MINNESOTA PRACTICE SERIES: METHODS OF PRACTICE § 3.9 (4th ed. 2009). Second, a defendant can argue that the AIP's minimal amount of consumption precludes a finding that the illegal sale caused the AIP's intoxication. *Id.*

C. Causation Between Intoxication and Injury

Under Minnesota law, the causal relationship between the AIP's intoxication and the injury required to prevail in a dram shop action is *proximate* causation. *Kryzer v. Champlin Am. Legion No. 600*, 494 N.W.2d 35, 36–37 (Minn. 1992). In *Kryzer*, the Minnesota Supreme Court rejected the "but-for" causation test and stated that proximate causation is required to recover under the Civil Damages Act. *Id.* Generally speaking, "Minnesota applies the substantial factor test for [proximate] causation. The negligent act is a direct, or proximate, cause of harm if the act was a substantial factor in

the harm's occurrence." *George v. Estate of Baker*, 724 N.W.2d 1, 10 (Minn. 2006). Additionally, "the Civil Jury Instruction Guide directs district courts in dram shop cases to instruct juries on causation by using the causation standard in negligence cases—that the intoxication 'had a substantial part in bringing about the [injury].'" *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 372 (Minn. 2008) (citing 4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides*, CIVJIG 27.10 (5th ed.2006)).

In *Hastings v. United Pacific Insurance Co.*, 396 N.W.2d 682, 684 (Minn. Ct. App. 1986), the Minnesota Court of Appeals held that a dram shop defendant was not liable for the plaintiff's injuries sustained in an automobile accident where there was no evidence showing that the AIP's intoxication caused the accident, and where there was no evidence that the AIP failed to exercise due care to avoid collision. In that case, the plaintiff was a passenger in a vehicle operated by the AIP, and the collision took place wholly in the AIP's lane of travel. *Id.*

In *Kryzer*, an AIP injured her wrist while being removed from the American Legion by one of its employees. 494 N.W.2d at 36. The Minnesota Supreme Court held that her "intoxication may have been the occasion for her ejection from the legion club, but it did not cause . . . her injury." *Id.* at 37. The court also stated that "[a]lthough the conduct of the employee in removing [the AIP] from the club, if negligently performed, may give rise to liability under the common law, it does not provide any causal connection between the intoxication and the injury. *Id.* at 38 (citing *Crea v. Bly*, 298 N.W.2d 66 (Minn. 1980)).

The case of *Kunza v. Pantze*, 527 N.W.2d 846 (Minn. Ct. App. 1995), *rev'd*, 531 N.W.2d 839 (Minn. 1995), serves as another example where proximate cause did not exist between the AIP's intoxication and the injury. In *Kunza*, the defendant became intoxicated at a bar and then left the bar with his wife in a motor vehicle. *Id.* at 847. While driving the vehicle, the defendant began abusing his wife and as a result of the abuse, she jumped out of the moving vehicle to avoid further abuse. *Id.* The Minnesota Court of Appeals held that the driver's intoxication could have been a proximate cause of his wife's injuries even though she admitted that she opened vehicle door, apparently when vehicle was still moving. *Id.* at 848. Accordingly, the Court of Appeals held that the bar was not entitled to judgment as a matter of law. *Id.* On appeal, however, the Minnesota Supreme Court reversed the Court of Appeals, holding that proximate cause between the driver's intoxication and his wife's injury was lacking as a matter of law. *Id.* at 839 (citing *Kryzer*, 494 N.W.2d 35).

More recently, in *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 368 (Minn. 2008), the family and girlfriend of a bowling alley patron brought a dram shop action against the bowling alley under the Civil Damage Act. The family alleged that the bowling alley's illegal sale of alcohol caused the AIP to become intoxicated, and that this intoxication caused him to jump to his death into the Minnesota River to avoid

arrest after he was pulled over by police. *Id.* at 368–69. Because it was undisputed that the bowling alley illegally sold alcohol to the AIP and that this sale caused his intoxication, the sole issue before the Minnesota Supreme Court was if a genuine issue of material fact existed as to whether the AIP's intoxication was a proximate cause of his choice to jump off bridge into river in order to avoid DWI arrest. *Id.* at 372. The court ultimately held that summary judgment was inappropriate because there was sufficient evidence that "reasonable persons might draw different conclusions" as to whether the AIP's intoxication was the proximate cause of his fatal choice to jump into the river. *Id.* at 381. In reaching this conclusion, the court stated that "the known and proven effects of alcohol, in concert with the fact that [the AIP]—while intoxicated—made a choice to escape arrest by jumping into a river, provide [the plaintiffs] with sufficient evidence to create a genuine issue of material fact as to whether [the AIP's] intoxication proximately caused [him] to choose to jump into the river under the mistaken belief that he could swim safely to shore." *Id.* at 377.

D. Jury Instructions Regarding Causation

There is no standard Minnesota jury instruction on causation specific to dram shop cases. The general causation instruction tells the jury that "a 'direct cause' is a cause that had a substantial part in bringing about the *(collision) (accident) (event) (harm) (injury)*." CIVJIG 27.10. Because causation in a dram shop action requires proof that an illegal sale caused the intoxication, and that the resulting intoxication caused the plaintiff's injuries, defense counsel may request more detailed instructions on causation. *See* Appendix C.

In addition to the standard instruction, the jury should be told that there must be a practical and substantial relationship between the illegal sale and the intoxication in order to establish the necessary causal relationship between the illegal sale and the intoxication. *Hollerich v. Good Thunder*, 340 N.W.2d 665, 668 (Minn. 1983); *Kvanli v. Vill. of Watson*, 139 N.W.2d 275, 277 (Minn. 1965). Furthermore, the intoxication resulting from the illegal sale must have been a substantial factor in bringing about the accident. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 373 (Minn. 2008).

V. RECOVERABLE DAMAGES

A. In General

As stated above in Part II.C, the Civil Damages Act confers a right of action upon a "spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person . . . ." Minn. Stat. § 340A.801, subdiv. 1 (2006). By conveying standing upon a

broad range of injured parties, the Civil Damages Act provides a broad range of recoverable damages.

In a case where the plaintiff was injured by a drunk driver, the plaintiff alleges personal injuries. In such case, the plaintiff can recover compensatory damages for:

- pain and suffering,
- medical bills,
- future medical bills,
- lost wages,
- diminished earning capacity,
- vocational rehabilitation expenses,
- disfigurements, and
- emotional distress.

At present, there is no statutory ceiling on damages under the Civil Damages Act. *McGuire v. C & L Restaurant Inc.*, 346 N.W.2d 605 (Minn. 1984) (holding unconstitutional the statutory "damage cap" of $250,000 person and $500,000 per incident).

B. Bodily Injury

"Bodily injury" in the context of the Civil Damages Act has the same meaning as in the general personal injury context. *See* 4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.55 (5th ed. 2006). Bodily injury damages include compensation for pain, disability, disfigurement, embarrassment, and emotional distress. 4A Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 91.10 (5th ed. 2006). Note that bodily injury damages are not recoverable where death occurs as a result of the injuries suffered. *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010).

C. Property Damage

A plaintiff in a dram shop action may seek property damages—property damage compensates the plaintiff for damage to tangible property, such as an automobile. 5A Roger S. Haydock & Peter B. Knapp, MINNESOTA PRACTICE SERIES: METHODS OF PRACTICE § 3.13 (4th ed. 2009). But, recoverable property damage also includes intangible property. The scope of intangibles recoverable as property damage in dram shop actions is currently limited to medical and funeral expenses, and loss of earnings and services of a minor. *Id.*

D. Loss of Means of Support

"Means of support" refers to financial support that, but for the accident, would have been provided to the plaintiff by the injured or deceased person. *Brua*, 778 N.W.2d at 300 (citing 4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.45 ("A person's means of support has been damaged when the usual source of support has been [and/or will be] lost or reduced.")). Claims for loss of means of support under the Civil Damages Act are limited to dependents of persons injured by an intoxicated person**.** *Britamco Underwriters, Inc. v. A & A Liquors of St. Cloud*, 649 N.W.2d 867 (Minn. Ct. App. 2002). To recover loss-of-means-of-support damages under the Civil Damages Act, a plaintiff must demonstrate that as a result of the defendant's alleged wrongful acts, the plaintiff's standard of living or accustomed means of maintenance has been lost or curtailed so that he or she has been reduced to a state of dependence by being deprived of the support which he or she had enjoyed. *Johnson v. Foundry, Inc.*, 702 N.W.2d 274 (Minn. Ct. App. 2005)

E. Pecuniary Loss

The Civil Damages Act does not define "pecuniary loss." The Minnesota Supreme Court has stated, however, that pecuniary loss includes loss of "advice, counsel, and loss of companionship." *Jones v. Fisher*, 309 N.W.2d 726, 730 (Minn. 1981); *Gravley v. Sea Gull Marine, Inc.*, 269 N.W.2d 896, 901 (Minn. 1978); *see also* 4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil,* CIVJIG 45.45 (5th ed.2006) ("Pecuniary loss is financial loss, but also includes loss of counsel, guidance and aid."). In a dram shop action, pecuniary loss damages are not limited to "death" cases and, thus, children of parents who are injured by intoxicated motorist have a right of action to recover such damages. *Coolidge v. St. Paul Fire & Marine Ins. Co.*, 523 N.W.2d 5 (Minn. Ct. App. 1994).

As discussed *infra* Part VII, Minnesota law does not require insurance coverage for pecuniary loss, although it does require coverage for bodily injury, property damage, and loss of means of support. *See* Minn. Stat. § 340A.409, subdiv. 1 (2009).

F. Loss of Consortium and Lost Profits Unavailable

Loss of Consortium. The availability of damages for loss of consortium in a liquor liability case was considered in *State Farm Mutual Automobile Insurance Co. v. Village of Isle*, 122 N.W.2d 36 (Minn. 1963). In that case, a man was injured in a car accident caused by his own intoxication. *Id.* at 38. The man's wife sued the Village of Isle, a municipal corporation, as owner of the bar that served alcohol to her husband. *Id.* The Minnesota Supreme Court determined that the wife could not recover damages for loss of consortium. *Id.* at 42. Admittedly, the court based that decision, at least in part, on antiquated law. At that time, damages for loss of consortium were available

only to a man for the loss of his wife's services. This case was also decided under the previous Civil Damages Act, section 340.95 of the Minnesota Statutes (repealed in 1985). But, the court did say that the Civil Damages Act only allowed a plaintiff to recover for injury to her person, and that loss of consortium does not constitute an injury to the person. *Id.* at 42.

Lost Profits. The owners of a corporation and their dependents, who claimed the corporation lost profits due to acts of an intoxicated motorist who damaged property from which the corporation conducted its business, cannot assert those lost-profits claims as claims for loss of means of support under the Civil Damages Act against liquor vendor that allegedly made illegal sale of intoxicating beverages to the intoxicated motorist. *Johnson v. Foundry, Inc.*, 702 N.W.2d 274 (Minn. Ct. App. 2005)

G. Punitive Damages Unavailable

The Civil Damages Act does not authorize recovery for punitive damages. *Coughlin v. Radosevich*, 372 N.W.2d 817 (Minn. Ct. App. 1985). In *Coughlin*, the Minnesota Court of Appeals undertook an extensive analysis of the availability of punitive damages under Minnesota's Civil Damages Act. The court reiterated that a cause of action against a liquor vendor exists only by virtue of the enactment of the Act, which is the exclusive remedy available against liquor vendors. *Id.* at 820. Since this cause of action is a creation of statute, it cannot be expanded beyond its explicit terms by judicial construction. *Id.* After noting that the Act does not authorize a recovery of punitive damages, the court reasoned as follows:

> Case law supports the trial court's denial of Coughlin's punitive damages claim. In *Fitzer v. Bloom*, the court did not allow a recovery for "other" pecuniary losses under the version of the Dram Shop Act that is applicable to this case. The court relied on the fact that the Dram Shop Act is a statutory creation and it did not provide for recovery of "other" pecuniary losses. . . . In 1982, the Minnesota legislature amended the Dram Shop Act to include recovery for "other pecuniary loss." . . . Significantly, the legislature did not provide recovery for punitive losses in that amendment.
>
> Following a similar analysis, the court in *Eisert v. Greenberg Roofing & Sheet Metal Co.* . . . held that punitive damages were not recoverable in an action under the wrongful death statute. As in *Fitzer,* the court relied on the fact that the wrongful death statute, as originally written, was a statutory creation and made no mention of punitive damages. Subsequently, the legislature amended the wrongful death statute to permit recovery of punitive damages. . . .

> Since the Dram Shop Act does not specifically authorize a recovery of punitive damages, we conclude that the trial court properly denied Coughlin's motion to amend his complaint to include a punitive damages claim.

Id. at 820–21 (internal citations omitted). Therefore, punitive damages are not available in an action under Minnesota's Civil Damages Act.

VI. NOTICE AND STATUTE OF LIMITATIONS – MINN. STAT. § 340A.802

Section 340.802 of the Minnesota Statutes[11] sets forth the notice requirement and the statute of limitations for a dram shop action.

A. Notice[12]

The notice requirement of section 340A.802 is "a condition precedent to a civil damage action." *May v. Strecker*, 453 N.W.2d 549, 553 (Minn. Ct. App. 1990). In other words, to successfully bring a dram shop claim, the statutory notice requirement must first be met. And it is the plaintiff who bears the burden of proving that the liquor vendor had notice of a possible claim within the statutory notice period. *See Schulte v. Corner Club Bar*, 544 N.W.2d 486, 488 (Minn. 1996).

Section 340A.802, subdivision 1 lists the information that should be included in the notice. Subdivision 2 sets forth *when* a claimant must give notice. For example, under subdivision 2, an individual who claims damages under the Civil Damages Act must give notice within 240 days from the date the individual enters into an attorney-client relationship with respect to the dram shop claim. In contrast, as to claims for contribution or indemnity, notice must be given within 120 days after the injury occurs or within 60 days after receiving written notice of a claim for contribution or indemnity, whichever is applicable.

The relevant time is when an attorney-client relationship is created for purposes of the claim. So, if the plaintiff merely enters into an attorney-client relationship with respect to another matter—not with regards to the dram shop claim—then, the period in which notice must be given has not commenced. *See May v. Strecker*, 453 N.W.2d 549 (Minn. Ct. App. 1990) (holding that the period in which notice of claim must be served did not begin when injured minor's mother entered into an attorney-client relationship relating to discovery of insurance benefits, not relating to the dram shop action).

[11] Minn. Stat. § 340A.802 (2006) is reprinted at Appendix A.
[12] For the practitioner's review, a notice form is provided at Appendix D.

Note that a different notice period applies to dram shop actions brought against municipalities. Under Minnesota's Political Subdivisions Tort Claims Act, every person, whether plaintiff, defendant, or third-party plaintiff or defendant, who claims damages from a municipality must provide notice to the municipality's governing body within 180 days after the alleged loss or injury. Minn. Stat. § 466.05, subdiv. 1 (2006).

B. Statute of Limitations

The last sentence of subdivision 2 provides that an action under the Civil Damages Act must be commenced within two years after the injury. Minn. Stat. § 340A.802, subdiv. 2 (2006). There is one exception to the two-year limitations period, however. Under *Brua v. Olson*, 621 N.W.2d 472 (Minn. Ct. App. 2001), the two-year limitations period does not apply to contribution and indemnity claims brought against a liquor vendor by a tortfeasor who has complied with the statutory notice requirement.

VII. LIQUOR LIABILITY INSURANCE COVERAGE

A. Mandated Coverage

Section 340A.409, subdivision 1 of the Minnesota Statutes, states that liquor establishments must demonstrate "proof of financial responsibility with regard to liability imposed by section 340A.801." Minn. Stat. § 340A.409, subdiv. 1 (2009). Under that statute, there is statutorily required minimum coverage for bodily injury claims, property damage claims, and loss of means of support claims brought under the Civil Damages Act. Those requirements are:

	Bodily Injury	**Property Damage**	**Loss of Means of Support**
Minimum Limit Per Person	$50,000	$10,000	$50,000
Minimum Limit Per Occurrence	$100,000	$10,000	$100,000

See Minn. Stat. § 340A.409, subdiv. 1. In addition, the statute provides that "[a]n annual aggregate policy limit for dram shop insurance of not less than $300,000 per policy year may be included in the policy provisions." *Id.*

Until recently, it was unclear whether the statute addressed insurance coverage for "pecuniary loss." But, in early 2010, the Minnesota Supreme Court held that section 340A.409, subdivision 1, does not require coverage for pecuniary loss:

> [S]ection 340A.409, subdivision 1, requires "proof of financial responsibility with regard to liability imposed by section 340A.801." Section 340A.801, as previously discussed, creates a right of action for pecuniary loss. . . . [But Section] 340A.409 has not been amended to require coverage for pecuniary loss in order to show financial responsibility. This may or may not be a legislative oversight, but it is indisputably the way the law is written. We may not disregard the clear and unambiguous language of the statute.

Brua v. Minn. Joint Underwriting Ass'n, 778 N.W.2d 294, 300-01 (Minn. 2010) (internal citations omitted). In *Brua*, a man died in a single-car accident after drinking at a bar, and the man's parents and brother brought a dram shop action seeking compensation for property damage and pecuniary loss. *Id.* at 296. The bar's liquor liability insurance policy contained a limitation on liability for bodily injury damages—$50,000 per person, $100,000 per occurrence limit—and defined "bodily injury" as including "pecuniary loss." *Id.* at 298-99.

The primary issue in *Brua* was whether pecuniary loss coverage was subject to a $50,000 per person, $100,000 per occurrence limit, as the bar's insurance carrier contended, or whether pecuniary loss coverage was only subject to the $300,000 aggregate policy limit, as the Bruas contended. Rejecting the appellate court's ruling that section 340A.409, subdivision 1 statutorily mandates coverage for claims of pecuniary loss, subject only to the $300,000 aggregate annual limit, the Minnesota Supreme Court stated its conclusion in clear terms: "We conclude that while section 340A.801 makes recovery for pecuniary loss possible, neither section 340A.801 nor section 340A.409 makes pecuniary loss coverage under a dram shop insurance policy mandatory." *Id.* at 301.

Even though the statute does not require coverage for pecuniary loss, some liquor liability insurance policies may define "bodily injury" or "loss of means of support" to include pecuniary loss. As noted above, such was the case in *Brua*. In that case, the Supreme Court addressed the additional issue of whether "the policy provision defining bodily injury as including pecuniary loss impermissibly diluted the statutorily required minimum coverage for bodily injury claims, and was therefore void and unenforceable." *Id.* Rejecting the analyses of two Minnesota federal district court cases, the Minnesota Supreme Court held that section 340A.409, subdivision 1 "requires a minimum level of coverage of $50,000 per person and $100,000 per occurrence to cover claims for bodily injury for each person and each occurrence, and *that this coverage may not be blended with other categories of damages*." *Brua*, 778 N.W.2d at 304 (emphasis added). To be sure, the court further held that the insurance carrier cannot define bodily injury to include pecuniary loss in the insurance policy because doing so would "impermissibly dilute[] the mandatory minimum coverage for bodily injury." *Id.* Although the court did not address the permissibility of defining "loss of means of

support" to include pecuniary loss, it is apparent that the same reasoning would apply, and, as a result, such a definition of "loss of means of support" would be void and unenforceable.

B. Resolving Conflicts between Insurance Policy and Statute

At times, a liquor liability insurance policy may conflict with the statute. For example, the policy limit on coverage may be insufficient to meet a statutorily required limit under section 340A.409. In such a case, Minnesota courts provide a remedy "by reforming the insurance policy to provide at least the level of coverage provided for in the statute." *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 689 (Minn. 1997). So, where a policy limit on coverage is insufficient to meet a statutorily required limit, the court will adjust the limit in the policy unilaterally. *Lewis v. Penn. Gen. Ins. Co.*, 391 N.W.2d 785, 790 (Minn. 1986); *see also Dorn v. Liberty Mut. Fire Ins. Co.*, 401 N.W.2d 662, 663 (Minn. 1987) (reforming an insurance contract to provide $25,000 in uninsured motorist coverage to a second person where the exhaustion of the policy's limits by another person violated a statute mandating $25,000 per person per accident).

As an example, in *Brua v. Minnesota Joint Underwriting Association*, 778 N.W.2d 294 (Minn. 2010), the Minnesota Supreme Court sought to remedy the conflict created by the insurance policy's inclusion of pecuniary loss in the definition of bodily injury. The court ultimately reformed the policy to provide for $50,000 per person and $100,000 per occurrence coverage for bodily injury, and $50,000 per person and $100,000 per occurrence for pecuniary loss. *Id.* at 306. In doing so, the court reasoned that "the most the [plaintiffs] can achieve here is to have the diluted bodily injury coverage in the policy restored to undiluted form." *Id.* at 305.

VIII. SOCIAL HOST LIABILITY

A. In General

Under current Minnesota law, liability as a social host generally applies only to hosts who serve underage drinkers. There are two causes of action against social hosts: one is found in the common law as designated in section 340A.801, subdivision 6 of the Minnesota Statutes, and the second is statutory in nature as set forth in section 340A.90.

B. Historical Background

In 1985, the Minnesota Supreme Court held that a social host was not liable in a common-law action for negligently serving alcohol to a minor because the field was preempted by the Civil Damages Act. *Holmquist v. Miller*, 367 N.W.2d 468, 472 (Minn. 1985). The court stated that only the Minnesota legislature could create social host

liability. *Id.* at 471–72. In response, in 1990, the Minnesota legislature added subdivision 6 to the Civil Damages Act, which provides:

> Nothing in this chapter precludes common law tort claims against any person 21 years old or older who knowingly provides or furnishes alcoholic beverages to a person under the age of 21 years.

Minn. Stat. § 340A.801, subdiv. 6 (2006). "The statute did not overtly create a statutory cause of action, but merely permitted common-law tort claims." *Wollan v. Jahnz*, 656 N.W.2d 416, 418 (Minn. Ct. App. 2003).

In *Koehnen v. Dufuor*, 590 N.W.2d 107 (Minn. 1999), the Minnesota Supreme Court addressed the issue of whether a social host, who charged party guests a nominal fee of $2 to $4 for beer at a party, lost her status as a "social host" exempt from liability under the Civil Damages Act. The court held that the hostess did not lose her status as "social host" merely because a fee is charged for alcohol in light of the legislative history of the Act—specifically, how the legislature had amended the Civil Damages Act in 1985 and 1990 without extending statutory liability to social hosts. *Id.* at 112. Accordingly, the court held that the hostess could not be held liable for injuries sustained by neighbor assaulted by intoxicated party guests.

In response to *Koehnen*, in 2000, the Minnesota Legislature enacted section 340A.90 of the Minnesota Statutes,[13] which sets forth a cause of action against social hosts.

C. Social Host Liability Today

Section 340A.90 grants a cause of action to "a spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss, by an intoxicated person under 21 years of age or by the intoxication of another person under 21 years of age." Minn. Stat. § 340A.90, subdiv. 1(a) (2006). As one can see, such language is nearly identical to that of section 340A.801. Note, however, that "[a]n intoxicated person under the age of 21 years who caused the injury has no right of action under this section." Minn. Stat. § 340A.90, subdiv. 1(c).

Under section 340A.90, an individual falling within this group of people has a right of action in his or her own name against a person who is 21 years or older who:

> (1) had control over the premises and, being in a reasonable position to prevent the consumption of alcoholic beverages by that person,

[13] Minn. Stat. § 340A.90 (2006) is reprinted at Appendix A.

knowingly or recklessly permitted that consumption and the consumption caused the intoxication of that person; or

(2) sold, bartered, furnished or gave to, or purchased for a person under the age of 21 years alcoholic beverages that caused the intoxication of that person.

Minn. Stat. § 340A.90, subdiv. 1(a)(1)–(2).

D. Statute of Limitations

As noted above in Part VI.B, an action under the Civil Damages Act must be commenced within two years after the injury. Minn. Stat. § 340A.802, subdiv. 2 (2006). In contrast, no statute expressly sets forth the limitations period for common law or statutory social host claims.

In 2003, the Minnesota Court of Appeals addressed the limitations period of *common law* social host claims. *Wollan v. Jahnz*, 656 N.W.2d 416, 418–19 (Minn. Ct. App. 2003). The court held that a six-year limitations period applied: "Because we find no compelling reason to diverge from the negligence analysis used in prior cases under the Civil Damages Act and subdivision 6, we hold that the six-year limitations period under Minn. Stat. § 541.05, subd. 1(5) is the proper measure for those common-law actions permitted by section 340A.801, subdivision 6." *Id.* at 420.

In 2007, the Minnesota Court of Appeals addressed the limitations period of *statutory* social host claims made under section 340A.90. *Christiansen v. Univ. of Minn. Bd. of Regents*, 733 N.W.2d 156 (Minn. Ct. App. 2007). In *Christiansen*, the court held that "[b]ecause appellant's liability in this action was created by Minn. Stat. § 340A.90 (2004), the appropriate limitation period is the six years that Minn. Stat. § 541.05, subd. 1(2) specifies for liabilities created by statute." *Id.* at 159.

IX. PRACTICE POINTERS AND INVESTIGATION CHECKLIST

In defending a claim under the Civil Damages Act, it is important to begin gathering and securing evidence as soon you have notice of the claim, be it through the statutorily required notice or otherwise. Because key evidence in a dram shop case often goes stale or disappears entirely in a short period of time, it is important to begin work immediately. In addition, a claimant's counsel will often have a 240-day head start in gathering evidence, interviewing and securing statements from witnesses, and hiring experts. The following tips will aid you in conducting a prompt and thorough investigation of a dram shop claim.

1. *Interview principal and employees of dram shop:*
    a. Obtain Notice if one has been served;
    b. Determine if AIP known to employees;
    c. Obtain names of employees working at time of alleged illegal sale;
    d. Determine duties of employees;
    e. Photograph signage and premises;
    f. Obtain copies of training material and memoranda related to prevention of illegal sales;
    g. Determine store policies and practices re: sale to minors and obviously intoxicated patrons;
    h. Obtain relevant sales receipts, cash register taps, cancelled checks, credit card receipts, etc.;
    i. Determine prices of drinks, price of relevant container of alcohol, size of containers and drink glasses, "proof," etc.;
    j. Preserve inventory records; and
    k. Obtain surveillance tapes, if any, for the date and time of the alleged illegal sale.

2. *Obtain police reports and court records:*
    a. Determine facts of accident;
    b. Find out if blood alcohol test done (blood, urine, or breath);
    c. Were there sobriety tests at accident scene?;
    d. What were the opinions of arresting officers?;
    e. Was AIP charged? Did AIP appear in court and enter plea? Was there a trial?;
    f. Get court records, including copy of plea transcript and sentencing transcript;
    g. Obtain accident report, reports of reconstructionist and police reports;
    h. Obtain AIP's prior driving record?;
    i. Get prosecutor's file;
    j. Identify witnesses;

k. Find out if claimant(s) complained of injury at scene; and
l. Get Bureau of Apprehension (BCA) records.

3. *Obtain hospital records:*
    a. If AIP hospitalized or deceased, get hospital records;
    b. Find out what fluids were given to AIP and whether alcohol testing was conducted;
    c. Get claimant's records from medical providers; and
    d. Follow up with identified witnesses.

4. *Interview AIP or determine through witnesses:*
    a. Where AIP was drinking;
    b. What AIP had to drink;
    c. How many drinks over what period of time;
    d. Whether AIP was drinking fast or slow;
    e. AIP's height, weight, and drinking experience;
    f. Did AIP eat before accident? Before drinking?;
    g. How much sleep did AIP have night before accident?;
    h. Was AIP stressed out or hung over?;
    i. When AIP started to drink on the day of incident?;
    j. Did AIP take medication or use street drugs?;
    k. Who purchased drinks or alcohol consumed by AIP?;
    l. Size of drinks and volume of alcohol;
    m. When did AIP arrive at insured's premises?;
    n. Where AIP sat and who AIP talked to;
    o. Who purchased alcohol?;
    p. Did AIP believe he/she was intoxicated? Why?;
    q. When AIP left insured's premises;
    r. Problems driving?;
    s. Facts of accident; and
    t. Resulting criminal charges and convictions.

5. *What witnesses should be asked:*
    a. Familiarity with AIP;
    b. Foundation for opinions re: intoxication, etc.;
    c. What conduct of AIP observed;
    d. Give time line and identify drinking behavior;
    e. Who purchased alcohol?;
    f. Whether AIP used false I.D.; and
    g. Identity of other witnesses.

6. *What are claimant's damages* (see Jury Instruction Guides in Appendix C for suggestions):
    a. Loss of support – heirs and next of kin (*see supra* Part II.C.);
    b. Pecuniary damages – comfort, guidance, and protection;
    c. Personal injuries – earning capacity, medical expenses, time off work, emotional injury; and
    d. Property damages.

7. *What is available insurance for AIP? For dram shop?*
    a. Is the automobile/driver uninsured or underinsured?
    b. Does dram shop have excess coverage?

APPENDIX

APPENDIX A: MINNESOTA STATUTES

340A.801 CIVIL ACTIONS.

Subdivision 1. Right of action. A spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person, has a right of action in the person's own name for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages. All damages recovered by a minor under this section must be paid either to the minor or to the minor's parent, guardian, or next friend as the court directs.

Subd. 2. Actions. All suits for damages under this section must be by civil action in a court of this state having jurisdiction.

Subd. 3. Comparative negligence. Actions under this section are governed by section 604.01.

Subd. 3a. Defense. The defense described in section 340A.503, subdivision 6, applies to actions under this section.

Subd. 4. Subrogation claims denied. There shall be no recovery by any insurance company against any liquor vendor under subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or part under this section. The provisions of section 65B.53, subdivision 3, do not apply to actions under this section.

Subd. 5. [Repealed, 1987 c 152 art 2 s 5]

Subd. 6. Common law claims. Nothing in this chapter precludes common law tort claims against any person 21 years old or older who knowingly provides or furnishes alcoholic beverages to a person under the age of 21 years.

History: *1985 c 305 art 10 s 1; 1985 c 309 s 12; 1Sp1985 c 16 art 2 s 3 subd 1; 1987 c 152 art 1 s 1; art 2 s 3; 1989 c 301 s 15; 1990 c 555 s 10.*

340A.802 NOTICE OF INJURY; DISCOVERY BEFORE ACTIONS.

Subdivision 1. Notice of injury. A person who claims damages and a person or insurer who claims contribution or indemnity from a licensed retailer of alcoholic beverages or municipal liquor store for or because of an injury within the scope of section 340A.801 must give a written notice to the licensee or municipality stating:

(1) the time and date when and person to whom the alcoholic beverages were sold or bartered;

(2) the name and address of the person or persons who were injured or whose property was damaged; and

(3) the approximate time and date, and the place where the injury to person or property occurred.

A licensee or municipality who claims contribution or indemnification from another licensee or municipality must give a written notice to the other licensee or municipality in the form and manner specified in this section.

An error or omission in the notice does not void the notice's effect if the notice is otherwise valid unless the error or omission is of a substantially material nature.

Subd. 2. Limitations; content. In the case of a claim for damages, the notice must be served by the claimant's attorney within 240 days of the date of entering an attorney-client relationship with the person in regard to the claim. In the case of claims for contribution or indemnity, the notice must be served within 120 days after the injury occurs or within 60 days after receiving written notice of a claim for contribution or indemnity, whichever is applicable. No action for damage or for contribution or indemnity may be maintained unless the notice has been given. If requested to do so, a municipality or licensee receiving a notice shall promptly furnish claimant's attorney the names and addresses of other municipalities or licensees who sold or bartered liquor to the person identified in the notice, if known. Actual notice of sufficient facts reasonably to put the licensee or governing body of the municipality on notice of a possible claim complies with the notice requirement. No action may

be maintained under section 340A.801 unless commenced within two years after the injury.

Subd. 3. Bad faith notice. A claimant who in bad faith gives notice to a licensee who did not sell or barter liquor to the alleged intoxicated person is subject to liability for actual
damages, which shall include the reasonable out-of-pocket attorney fees incurred by the licensee in the defense of the bad faith notice.

History: *1985 c 305 art 10 s 2; 1985 c 309 s 13; 1Sp1985 c 16 art 2 s 3 subd 1; 1Sp1986 c 3 art 1 s 44; 1987 c 152 art 1 s 1; 1993 c 347 s 22.*

604.01 COMPARATIVE FAULT; EFFECT.

Subdivision 1. Scope of application. Contributory fault does not bar recovery in an action by any person or the person's legal representative to recover damages for fault resulting in death, in injury to person or property, or in economic loss, if the contributory fault was not greater than the fault of the person against whom recovery is sought, but any damages allowed must be diminished in proportion to the amount of fault attributable to the person recovering. The court may, and when requested by any party shall, direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each party and the court shall then reduce the amount of damages in proportion to the amount of fault attributable to the person recovering.

Subd. 1a. Fault. "Fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an express consent or primary assumption of risk, misuse of a product and unreasonable failure to avoid an injury or to mitigate damages, and the defense of complicity under section 340A.801. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault. The doctrine of last clear chance is abolished.

Evidence of unreasonable failure to avoid aggravating an injury or to mitigate damages may be considered only in determining the damages to which the claimant is entitled. It may not be considered in determining the cause of an accident.

Subd. 2. Personal injury or death; settlement or payment. Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages

on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf payment was made.

Subd. 3. Property damage or economic loss; settlement or payment. Settlement with or any payment made to a person or on the person's behalf to others for damage to or destruction of property or for economic loss does not constitute an admission of liability by the person making the payment or on whose behalf the payment was made.

Subd. 4. Settlement or payment; admissibility of evidence. Except in an action in which settlement and release has been pleaded as a defense, any settlement or payment referred to in subdivisions 2 and 3 shall be inadmissible in evidence on the trial of any legal action.

Subd. 5. Credit for settlements and payments; refund. All settlements and payments made under subdivisions 2 and 3 shall be credited against any final settlement or judgment; provided however that in the event that judgment is entered against the person seeking recovery or if a verdict is rendered for an amount less than the total of any such advance payments in favor of the recipient thereof, such person shall not be required to refund any portion of such advance payments voluntarily made. Upon motion to the court in the absence of a jury and upon proper proof thereof, prior to entry of judgment on a verdict, the court shall first apply the provisions of subdivision 1 and then shall reduce the amount of the damages so determined by the amount of the payments previously made to or on behalf of the person entitled to such damages.

History: *1969 c 624 s 1; 1978 c 738 s 6,7; 1986 c 444; 1990 c 555 s 19-21.*

604.02 APPORTIONMENT OF DAMAGES.

Subdivision 1. Joint liability. When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that the following persons are jointly and severally liable for the whole award:

(1) a person whose fault is greater than 50 percent;

(2) two or more persons who act in a common scheme or plan that results in injury;

(3) a person who commits an intentional tort; or

(4) a person whose liability arises under chapters 18B - pesticide control, 115 - water pollution control, 115A - waste management, 115B - environmental response and liability, 115C - leaking underground storage tanks, and 299J - pipeline safety, public nuisance law for damage to the environment or the

public health, any other environmental or public health law, or any environmental or public health ordinance or program of a municipality as defined in section 466.01.

This section applies to claims arising from events that occur on or after August 1, 2003.

Subd. 2. Reallocation of uncollectible amounts generally. Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

Subd. 3. Product liability; reallocation of uncollectible amounts. In the case of a claim arising from the manufacture, sale, use or consumption of a product, an amount uncollectible from any person in the chain of manufacture and distribution shall be reallocated among all other persons in the chain of manufacture and distribution but not among the claimant or others at fault who are not in the chain of manufacture or distribution of the product. Provided, however, that a person whose fault is less than that of a claimant is liable to the claimant only for that portion of the judgment which represents the percentage of fault attributable to the person whose fault is less.

History: *1978 c 738 s 8; 1986 c 444; 1986 c 455 s 85; 1988 c 503 s 3; 1989 c 209 art 1 s 44; 2003 c 71 s 1.*

340A.90 CIVIL ACTION; INTOXICATION OF PERSON UNDER AGE 21.

Subdivision 1. Right of action.

(a) A spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss, by an intoxicated person under 21 years of age or by the intoxication of another person under 21 years of age, has for all damages sustained a right of action in the person's own name against a person who is 21 years or older who:

(1) had control over the premises and, being in a reasonable position to prevent the consumption of alcoholic beverages by that person, knowingly or recklessly

permitted that consumption and the consumption caused the intoxication of that person; or

(2) sold, bartered, furnished or gave to, or purchased for a person under the age of 21 years alcoholic beverages that caused the intoxication of that person.

This paragraph does not apply to sales licensed under this chapter.

(b) All damages recovered by a minor under this section must be paid either to the minor or to the minor's parent, guardian, or next friend as the court directs.

(c) An intoxicated person under the age of 21 years who caused the injury has no right of
action under this section.

Subd. 2. Subrogation claims denied. There shall be no recovery by any insurance company
for any subrogation claim pursuant to any subrogation clause of the uninsured, underinsured,
collision, or other first-party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or in part under this section.

Subd. 3. [Expired]

History: *2000 c 423 s 1.*

APPENDIX B: MINNESOTA CASE LAW

Ascheman v. Vill. of Hancock, 254 N.W.2d 382 (Minn. 1977)
Beck v. Groe, 70 N.W.2d 886 (Minn. 1955)
Bicknell v. Dakota GM, Inc., No. 07-3529, 2009 WL 799613 (D. Minn. Mar. 24, 2009)
Britamco Underwriters, Inc. v. A & A Liquors of St. Cloud, 649 N.W.2d 867 (Minn. Ct. App. 2002).
Brua v. Minn. Joint Underwriting Ass'n, 778 N.W.2d 294 (Minn. 2010)
Brua v. Olson, 621 N.W.2d 472 (Minn. Ct. App. 2001)
Bushland v. Corner Pocket Billiard Lounge of Moorhead, Inc., 462 N.W.2d 615 (Minn. Ct. App. 1990)
Carlson v. Thompson, 615 N.W.2d 387 (Minn. Ct. App. 2000)
Casper v. City of Stacy, 473 N.W.2d 902 (Minn. Ct. App. 1991)
Christiansen v. Univ. of Minn. Bd. of Regents, 733 N.W.2d 156 (Minn. Ct. App. 2007)
Clark v. Peterson, 741 N.W.2d 136 (Minn. Ct. App. 2007)
Coolidge v. St. Paul Fire & Marine Ins. Co., 523 N.W.2d 5 (Minn. Ct. App. 1994)
Coughlin v. Radosevich, 372 N.W.2d 817 (Minn. Ct. App. 1985)
Dorn v. Liberty Mut. Fire Ins. Co., 401 N.W.2d 662 (Minn. 1987)
Eid v. Hodson, 521 N.W.2d 862 (Minn. Ct. App. 1994)
Englund v. MN CA Partners/MN Joint Ventures, 555 N.W.2d 328 (Minn. Ct. App. 1996)
Fette v. Peterson, 404 N.W.2d 862 (Minn. Ct. App. 1987)
Fitzer v. Bloom, 253 N.W.2d 395 (Minn. 1977)
George v. Estate of Baker, 724 N.W.2d 1 (Minn. 2006)
Gravley v. Sea Gull Marine, Inc., 269 N.W.2d 896 (Minn. 1978)
Hahn v. City of Ortonville, 57 N.W.2d 254 (Minn. 1953)
Hastings v. United Pac. Ins. Co., 396 N.W.2d 682 (Minn. Ct. App. 1986)
Haugland v. Mapleview Lounge Bottleshop, Inc., 666 N.W.2d 689 (Minn. 2003)
Herrly v. Muzik, 374 N.W.2d 275 (Minn. 1985)
Hollerich v. City of Good Thunder, 340 N.W.2d 665 (Minn. 1983)
Johnson v. Foundry, Inc., 702 N.W.2d 274 (Minn. Ct. App. 2005)
Jones v. Fisher, 309 N.W.2d 726 (Minn. 1981)
Knese v. Heidgerken, 358 N.W.2d 177 (Minn. Ct. App. 1984)
Koehnen v. Dufour, 590 N.W.2d 107 (Minn. 1999)
K.R. v. Sanford, 588 N.W.2d 545 (Minn. Ct. App. 1999)
Kryzer v. Champlin Am. Legion No. 600, 494 N.W.2d 35 (Minn. 1992)
Kunza v. Pantze, 527 N.W.2d 846 (Minn. Ct. App. 1995)
Kunza v. Pantze, 531 N.W.2d 839 (Minn. 1995)
Lamas v. A-Du Enterprises, LLC, A08-1095, 2009 WL 511871 (Minn. Ct. App. 2009)
Larson v. Carchedi, 419 N.W.2d 132 (Minn. Ct. App. 1988)
Lefto v. Hoggsbreath Enters., Inc., 581 N.W.2d 855 (Minn. 1998)
Lewis v. Penn. Gen. Ins. Co., 391 N.W.2d 785 (Minn. 1986)
Line Const. Ben. Fund (Lineco) v. Skeates, 563 N.W.2d 757 (Minn. Ct. App. 1997)
May v. Strecker, 453 N.W.2d 549 (Minn. Ct. App. 1990)

McGuire v. C & L Restaurant Inc., 346 N.W.2d 605 (Minn. 1984)
Mjos v. Vill. of Howard Lake, 178 N.W.2d 862 (1970)
Murphy v. Hennen, 119 N.W.2d 489 (Minn. 1965)
Newinski v. John Crane, Inc., No. A08-1715, 2009 WL 1752011 (Minn. Ct. App. June 23, 2009)
Osborne v. Twin Town Bowl, Inc., 749 N.W.2d 367 (Minn. 2008)
Paulson v. Lapa, Inc., 450 N.W.2d 374 (Minn. Ct. App. 1990)
Pautz v. Cal-Ros, Inc., 340 N.W.2d 338 (Minn. 1983)
Rambaum v. Swisher, 435 N.W.2d 19 (Minn. 1989)
Randall v. Vill. of Excelsior, 103 N.W.2d 131 (Minn. 1960)
Richardson v. Biff's Billiards Sports Bar & Grill, No. A03-372, 2003 WL 22707507 (Minn. Ct. App. Nov. 18, 2003)
Rogers v. Ponti-Peterson Post # 1720 Veterans of Foreign War, 495 N.W.2d 897 (Minn. Ct. App. 1993)
Schulte v. Corner Club Bar, 544 N.W.2d 486 (Minn. 1996)
Seeley v. Sobczak, 281 N.W.2d 368 (Minn. 1979)
Skaja v. Andrews Hotel Co., 161 N.W. 657 (Minn. 1968)
State Farm Mut. Auto. Ins. Co. v. Vill. of Isle, 122 N.W.2d 36 (Minn. 1963)
Sather v. Woodland Liquors, Inc., 597 N.W.2d 295 (Minn. Ct. App. 1999)
Strand v. Vill. of Watson, 72 N.W.2d 609 (Minn. 1955)
Urban v. Am. Legion Dep't of Minn., 723 N.W.2d 1 (Minn. 2006)
Wagner v. Schwegmann's S. Town Liquor, Inc., 485 N.W.2d 730 (Minn. Ct. App. 1992)
Watson v. United Servs. Auto. Ass'n, 566 N.W.2d 683 (Minn. 1997)
Wood v. Diamonds Sports Bar & Grill, 654 N.W.2d 704 (Minn. Ct. App. 2002)
Wollan v. Jahnz, 656 N.W.2d 416 (Minn. Ct. App. 2003)

APPENDIX C: JURY INSTRUCTION GUIDES[14]

CIVJIG 45.10: Illegal Sale—General

Illegal sale of Alcohol

Minnesota law says that no alcoholic beverage can be sold for any purpose to any person who *(specify type of illegal sale)*.

A violation of this law is an illegal sale.

4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.10.

CIVJIG 45.15: Illegal Sale

Sale to an obviously intoxicated person

Minnesota law says that it is illegal to sell an alcoholic beverage for any purpose to any person who is at the time "obviously intoxicated."

A violation of this law is an illegal sale.

Definition of "obviously intoxicated"

A person is "obviously intoxicated", if the intoxication is or should be reasonably evident to another person using usual powers of observation.

If *(defendant)* sold an alcoholic beverage to *(intoxicated person)* at a time when *(intoxicated person)* was obviously intoxicated, *(defendant)* made an illegal sale.

4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.15.

CIVJIG 45.20: "Alcoholic Beverage"—Definition

Definition of "alcoholic beverage"

The term "alcoholic beverage" means a beverage containing more than 0.5 percent alcohol by volume.

[14] Richard Lind, the co-author of this book, was a member of the Minnesota District Judges Association Civil Jury Instruction Guide (JIG) Committee.

4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.20.

CIVJIG 45.25: "Intoxicated"—Definition

Definition of "intoxicated"

A person is "intoxicated" when, as a result of drinking alcohol, he or she has lost control to any extent of his or her mental or physical faculties.

4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.25.

***Alternative:**

Definition of "intoxicated"

A person is "intoxicated" when the use of intoxicating liquors has affected his reason or his faculties, or has rendered himself incoherent of speech, or has caused himself to lose control in any manner to any extent of the actions or motions of his person or body.

Strand v. Village of Watson, 245 Minn. 414, 421-22, 72 N.W.2d 609, 615 (1955).

CIVJIG 27.10: Direct Cause

Definition of "direct cause"

A "direct cause" is a cause that had a substantial part in bringing about the *(collision) (accident) (event) (harm) (injury)*.

4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 27.10; *see also* 4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.30 (Use Note) ("The supreme court has emphasized that an illegal sale must be the "proximate cause" of the injury or loss in Civil Damage Act cases. To satisfy the requirement, the same causation standard used in negligence cases (CIVJIG 27.10) is applicable in Civil Damage Act cases. CIVJIG 27.10 also applies to determine whether the intoxication was a cause of the accident or injury in question.").

***Alternative:**

Definition of "direct cause"

A "direct cause" is a cause that had a substantial part in bringing about the accident.

There must be a practical and substantial relationship between the illegal sale and the intoxication in order to establish the necessary causal relationship between the illegal sale and the intoxication. *Hollerich v. Good Thunder*, 340 N.W.2d 665, 668 (Minn. 1983); *Kvanli v. Village of Watson*, 139 N.W.2d 275, 277 (Minn. 1965).

The intoxication resulting from the illegal sale must have been a substantial factor in bringing about the accident. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 373 (Minn. 2008).

CIVJIG 45.42: Responsibility for Conduct of Employee Authorized to Sell Alcoholic Beverages

(Name of defendant) is responsible for the sale of alcoholic beverages by (his) (her) (its) employees.

4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.42.

CIVJIG 45.45: Damages—Means of Support and Pecuniary Loss—Combined Instruction

Damages to means of support and other pecuniary loss

You must decide two types of damages:
(1) Damages to means of support, and
(2) Other pecuniary loss.

Means of support

A person's means of support has been damaged when the usual source of support has been [*(and) (or)* will be] lost or reduced.

Deciding damages for means of support

In deciding damages for means of support, you may consider:
(1) The health, age, habits, talents, and success of *(person giving support)*,

(2) The life expectancy of *(person giving support)* [and the life expectancy of the person(s) getting support],
(3) The occupation of *(person giving support)*,
(4) The past earnings of *(person giving support)*,
(5) The likely future earnings of *(person giving support)*,
(6) The prospects of the person bettering *(himself) (herself)* had [*(he) (she)* not been injured],
(7) The contributions in the past of *(person giving support)*, and
(8) The likely future contributions of *(person giving support)*.

Other pecuniary loss

Pecuniary loss is financial loss, but also includes loss of counsel, guidance, and aid.

You must decide on an amount of money that will fairly compensate the *(surviving spouse) (next of kin) for (his) (her) (their)* losses resulting from *(the death) (injury)*.

Deciding damages for other pecuniary loss

In deciding damages for pecuniary loss, you may include:

[(1) All reasonable expenses for a funeral and for burial or other arrangements],

[(2) All reasonable expenses for support of *(person giving support)* because of the injuries that led to *(his) (her)* death],

[(3) The probability of paying the debt owed by *(person giving support)*],

[(4) The counsel, guidance, and aid that *(person giving support)* would have given to those getting support if (he) (she) (had lived) (not been injured)], and

[(5) The advice, comfort, assistance, companionship, and protection that *(child's name)* would have given if *(he) (she) (had lived) (not been injured)*].

Factors not to consider

Do not include amounts for:

[(1) Punishing the defendant],

[(2) Grief, emotional distress of *(persons getting support)*], or

[(3) Pain and suffering of *(person giving support)* before *(his) (her)* death].

Facts to exclude

Do not be influenced by the fact[s] that:

[(1) The *(persons getting support) (may have received) (may get)* money or other property from (person giving support)'s estate],

[(2) The *(persons getting support) (may collect) (have collected)* insurance, or workers' compensation benefits because of *(persons giving support)*'s death],

[(3) The surviving spouse has remarried],
[(4) The minor children have been emancipated], or
[(5) There is no legal obligation to support the next of kin.].

Calculation of damages

Calculate damages for means of support and pecuniary loss separately.

4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.45.

CIVJIG 45.50: Damages—Injury to a Minor

Parent's damages for injury to a minor child

A parent is entitled to damages because of injury to a minor child. You may include:

(1) The value of the minor child's services
(2) The minor child's earnings up to the age of majority.

4 Minn. Dist. Judges Ass'n, *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG 45.50.

APPENDIX D: FORMS

Form Notice

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF XYZ — FIRST JUDICIAL DISTRICT
Case Type: Personal Injury

Pauline Plaintiff and Pat Plaintiff,

Plaintiffs,

vs.

John Doe and XYZ Bar,

Defendants.

Court File No. _____

NOTICE PURSUANT TO MINN. STAT. § 340A.802

TO: Defendants, above-named, and its attorney of record.

PLEASE TAKE NOTICE that on January 1, 2007, at or around 10:00 p.m. on said day, John Doe, who resided at 5678 DEF Street, in the City of XYZ, County of XYZ, State of Minnesota, was a patron of XYZ Bar, an on-sale liquor establishment located at 9012 GHI Street, in the City of XYZ, County of XYZ, State of Minnesota.

On said date, at said time, and for a period of time thereafter, XYZ Bar, through its agents, servants, and employees, served intoxicating liquors to John Doe while Doe was obviously intoxicated and as a direct result of said illegal sale or barter of intoxicating liquor by XYZ Bar to John Doe, and as a direct result of Doe's intoxication, Doe operated his vehicle in such a drunken and negligent manner as to cause his automobile to crash into the automobile of Pauline Plaintiff, causing numerous serious and permanent injuries to Pauline Plaintiff and Pat Plaintiff, thereby causing them to be damaged by reason of past, present, and future physical and mental pain and distress; past, present, and future medical care; past, present, and future loss of earnings; and damage to property in a sum in excess of Three Hundred Thousand and no/100ths Dollars ($300,000.00).

Dated: _____

XYZ Law Firm

Anita Attorney

Form Complaint

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF XYZ FIRST JUDICIAL DISTRICT
Case Type: Personal Injury

Pauline Plaintiff and Pat Plaintiff, Court File No. _____

Plaintiffs,

vs. **COMPLAINT**

John Doe and XYZ Bar,

Defendants.

Plaintiffs, for their cause of action against Defendants, state as follows:

I.

At all times relevant herein, Plaintiffs Pauline Plaintiff and Pat Plaintiff resided at 1234 ABC Street, in the City of XYZ, County of XYZ, State of Minnesota.

II.

At all times relevant herein, Defendant John Doe has resided at 5678 DEF Street, in the City of XYZ, County of XYZ, State of Minnesota.

III.

At all times relevant herein, Defendant XYZ Bar owned and operated an on-sale liquor establishment located at 9012 GHI Street, in the City of XYZ, County of XYZ, State of Minnesota.

IV.

On January 1, 2010, Defendant XYZ Bar sold or bartered intoxicating liquor to Defendant John Doe when Doe was obviously intoxicated, violating Minn. Stat. § 340A.502 and other pertinent statutes and laws.

V.

As a direct result of said illegal sale or barter of intoxicating liquor by Defendant XYZ Bar to Defendant John Doe, and as a direct result of Doe's intoxication, Doe operated his vehicle in such a drunken and negligent manner as to cause his automobile to crash into the automobile of Pauline Plaintiff.

VI.

The crash was a direct and proximate result of the drunken, negligent, careless, and unlawful conduct of Defendant John Doe and the illegal sale of intoxicating liquors to Doe by Defendant XYZ Bar.

VII.

As a direct and proximate result of the drunken conduct of Defendant John Doe and the illegal conduct of Defendant XYZ Bar, Plaintiff Pauline Plaintiff has sustained serious and permanent injuries, incurred hospital and medical expenses, lost wages and will in the future have an impaired earning capacity, and has and will in the future suffer great pain of body and mind, including but not limited to extreme pain, catastrophic disability, and severe emotional distress for the remainder of her life.

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants for reasonable damages in an amount in excess of $50,000, together with their costs and disbursements herein.

Dated: _____ XYZ Law Firm

Anita Attorney

Form Answer

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF XYZ FIRST JUDICIAL DISTRICT
Case Type: Personal Injury

Pauline Plaintiff and Pat Plaintiff, Court File No. _____

Plaintiffs,

vs. **ANSWER**

John Doe and XYZ Bar,

Defendants.

COMES NOW Defendant XYZ Bar, for its Answer to the Plaintiffs' Complaint, states as follows:

I.

Denies generally each and every allegation, matter and thing as set forth in Plaintiffs' Complaint except as hereinafter expressly admitted or otherwise answered.

II.

Denies that it made an illegal sale of intoxicating beverages to John Doe as that term is defined under Minnesota law.

III.

Denies that any illegal sale of alcohol to John Doe was a substantial contributing cause of his intoxication.

IV.

Denies that any intoxication of John Doe was a substantial contributing cause of Plaintiff's damages.

V.

XYZ Bar affirmatively alleges that if Plaintiff suffered injuries or damages as alleged in Plaintiffs' Complaint or otherwise, that said injuries or damages were caused or contributed to by the negligence of the Plaintiff himself, or by the negligence or fault of others over whom this answering Defendant had no control.

VI.

XYZ Bar affirmatively alleges that Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

VII.

XYZ Bar affirmatively alleges that Plaintiff failed to provide proper notice as required by Minn. Stat. § 340A.802.

VIII.

XYZ Bar affirmatively alleges that Plaintiff's claim is barred by the statute of limitations set forth in Minn. Stat. § 340A.802, subd. 2.

WHEREFORE, Defendant XYZ Bar prays that Plaintiff take nothing by his claim, that the same be dismissed, with prejudice and on the merits, and that Defendant XYZ Bar have judgment against the Plaintiff for its costs, disbursements and any other relief the Court deems proper.

Dated: _____

ABC Law Firm

Adam Attorney

Form Interrogatories Served by Defendant Bar

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF XYZ FIRST JUDICIAL DISTRICT
Case Type: Personal Injury

Pauline Plaintiff and Pat Plaintiff, Court File No. _____

Plaintiffs,

vs. **DEFENDANT XYZ BAR'S INTERROGATORIES TO PLAINTIFFS**

John Doe and XYZ Bar,

Defendants.

1. For each Plaintiff, state your full name and address; your age, giving date and place of birth; marital status; and your social security number.

2. If you were employed at the time of the accident/incident referenced in the Complaint, then:

    a. State the nature of your employment, giving exact duties.

    b. State the period prior to the accident/incident during which you did such work.

    c. State exact wage, salary, or commission before deductions which you were earning at the time of the accident/incident. Specify if you were paid by the hour, day, week, month, or other.

    d. State the period of time prior to the accident/incident during which you received such amount.

    e. State the number of hours worked per day and per week.

    f. State exact number of days lost from work and the date returned to work, and the amount of lost wages or income claimed.

    g. If you have not returned to your former employment since the accident/incident referenced in the Complaint, have you made application for

work elsewhere? If yes, then give the names and addresses of the persons, firms, corporations or governmental agencies to which you have made application for employment and the approximate date thereof.

h. If self-employed, describe your business and describe in detail any claim of loss or profits.

3. List in chronological order the names and addresses of all of your employers for the last ten (10) years.

4. List separately and in detail all injuries you received in the incident/accident.

5. If you obtained professional medical, hospital, or chiropractic treatment as a result of the alleged injuries set forth in the Complaint, then:

   a. List the names and addresses of each and every physician who treated you therefor, or hospital where you received treatment.

   b. Give the dates of such treatments.

   c. Describe the nature of the treatments.

6. If you have received any diagnostic procedures such as electroencephalogram (EEG), electromyogram (EMG), myelogram, spinogram, discogram, or others, then state:

   a. By whom they were given;

   b. Give dates when given; and

   c. What they disclosed.

7. At any time subsequent to the sustaining of the alleged injuries referenced in the Complaint, and on account thereof, were you confined to your home? If yes, give the inclusive dates of such confinement.

8. Have you fully recovered from the injuries sustained in the accident/incident? If not, set forth in detail in what respect you have not recovered from the injuries and relate in detail such symptoms as are evidence to you.

9. If you allege that any or all of your injuries are permanent, state which injuries you claim are permanent.

10. List dates and places of all previous and subsequent incident/accidents in which you were involved regardless of whether or not you made a claim, and:

    a. If injured, describe the injury in detail.

    b. If you made any claims for such injury, state when, where, against whom, and the name of the insurance company.

11. Have you been examined or treated by a physician or surgeon, osteopath, chiropractor, neurologist, psychiatrist, or hospitalized in the last ten (10) years? If yes:

    a. List the names and addresses of such persons or institutions, stating the times and places of such examination and/or treatments.

    b. Describe the physical or mental condition for which treatment was received.

12. If you claim any prior physical or mental condition was aggravated or accelerated by the accident/incident set forth in your Complaint, then:

    a. Set forth in detail the manner and extent such prior condition was aggravated or accelerated.

    b. If you were treated by a physician, chiropractor or psychiatrist for this condition, provide the names and addresses of each.

13. Concerning the cause of action set forth in the Complaint, have you made a claim therefor against any insurance company under any disability, health and accident, workers' compensation or hospitalization policy? If yes, then state the names and addresses of the insurance companies and the benefits received.

14. Have you ever had any policy of accident, health, disability or life insurance rejected or cancelled, or renewal refused, by any company? If yes, then state the names and addresses of such companies and the date of such cancellation, rejection, etc.

15. Have you ever made a claim for unemployment compensation insurance? If yes, state where and when.

16. Have you ever been convicted of a crime other than a minor traffic offense within the last fifteen (15) years? If your answer is yes, please state the offense of which you were convicted, the date of the offense, the court in which the conviction occurred.

17. State the type and frequency of recreational activities in which you engaged prior to the accident/incident referenced in the Complaint, and state the type and frequency of recreational activities in which you have engaged subsequent to said accident/incident.

18. List your doctor bills, hospital bills, and all other bills or expenses incurred as a result of the accident/incident.

19. Please state your version of the facts giving rise to this lawsuit, specifying in detail each act of Defendant XYZ Bar alleged to be negligent or a cause of the accident/incident.

20. List all statutes or ordinances you claim were violated by Defendant XYZ Bar, and in each instance identify the facts that you expect to prove in support of the claimed violation.

21. What alcoholic beverages, narcotics or medications did you consume during the 24 hours preceding the incident complained of? State the time and amount of such consumption.

22. Furnish names and addresses of all persons who arrived at the scene of the accident/incident following the occurrence.

23. Furnish the names and addresses of all parties to the action or witnesses to the accident/incident from whom you, your attorney, or agents have secured statements. Attach any such statements to your response to these Interrogatories.

24. Relate all conversations you have had with any party to this action, giving complete contents, date, and time.

25. Do you expect to call an expert witness at trial? If the answer is yes, please answer the following with respect to each expert witness:

    a. The name, address and special qualifications of the expert, including specifically his or her educational, academic, professional and vocational background.

    b. Identify any published articles or treatises authored by the expert witness relevant to the subject of the inquiry in this matter. Such identification should include the title of the article, the publication in which it appeared and the date of publication.

c. Provide the venue and case title of any other litigation in which the expert witness has testified on the subject of the inquiry made in this litigation.

d. State the substance of the facts to which the expert is expected to testify about which he has personal knowledge.

e. State the substance of the facts the truth of which the expert has been or will be asked to assume.

f. State the substance of all the opinions to which the expert is expected to testify.

g. State in summary the grounds for each such opinion identifying any demonstrations or experiments performed by or on behalf of the expert and identifying any publications upon which the expert has relied in whole or in part in grounding the opinions held.

Please note that Rule 26.05 of the Minnesota Rules of Civil Procedure provides specifically for the supplementation of your responses to this Interrogatory to include information acquired after the date of your original or any supplemental answer. Adherence to this rule is expected.

26. If photographs were taken on your behalf, state:

a. The subject of each photograph;

b. The date taken and by whom; and

c. Who has the prints and negatives.

d. Supply photocopies of said photographs and indicate whether copies of the prints will be supplied at our expense.

27. Please identify all documents or physical evidence bearing upon this action, other than those previously disclosed herein, in your possession or control, the appearance, contents or existence of which support or tend to support your claims in this action.

28. Is plaintiff eligible to receive medical expenses, income loss, or replacement service benefits under a Minnesota No-Fault insurance policy? If so, please state the name of the insurance carrier, the amount of the coverage available, the number of vehicles insured within the household, and the amounts of benefits received to date.

29. Please state each and every fact upon which you claim that intoxicating beverages were sold to John Doe by Defendant XYZ Bar on January 1, 2010.

30. Please identify by address and telephone number each and every witness who will support your claim that Defendant XYZ Bar sold intoxicating beverages to John Doe.

31. Please state whether or not Notice was provided to Defendant XYZ Bar in accordance with Minn. Stat. § 340A.802. If your Answer to this Interrogatory is yes, please attach to your Answers to Interrogatories a copy of the Notice provided to Defendant and a copy of the Fee Agreement entered into with your attorney. If you claim the Fee Agreement entered into with your attorney is privileged or otherwise confidential, please attach appropriate Affidavits indicating when you and your attorney entered into an attorney-client relationship.

32. If you claim that the liquor which was allegedly illegally sold was consumed by a person causing your injuries, please state how you know this person consumed the liquor and what facts you have concerning the amount of the liquor that this person drank.

33. If you claim the person to whom the liquor was allegedly illegally sold was intoxicated at the time you sustained your injuries, please state each and every fact upon which you rely in claiming that the person causing your injuries was intoxicated.

34. Set forth a detailed and itemized list of all payments made to the plaintiffs or on the plaintiffs' behalf which relate to the injury or disability in question and made by or pursuant to:

    a. Federal, state or local income disability or Workers' Compensation Act; or other public program providing medical expenses, disability payments or similar benefits.

    b. Health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage.

    c. A contract or agreement of a group, organization, partnership, or a corporation to provide, pay for or reimbursement of cost of hospital, medical or dental or other health care services.

    d. A contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability except benefits received from a private disability insurance policy where the premiums were wholly paid for by the plaintiff.

37. With regard to the payments referred to in your answer to the foregoing Interrogatory, set forth a list of all such payments where a subrogation right has been asserted.

38. With regard to the payments described in your answer to the two preceding Interrogatories, set forth a specific and detailed list of all the amounts that have been paid, contributed or forfeited by or on behalf of the plaintiff or members of the plaintiff's immediate family for the two year period immediately prior to the date of the accident/incident to secure the right to any such benefits that the plaintiff is receiving as a result of the losses caused by the accident/incident in question.

***ADDITIONAL INTERROGATORIES FOR ASSAULT CASE:**

39. In your Complaint you identified an assailant who injured Plaintiff at XYZ Bar. Please provide the name, address, telephone number and description of the person who you alleged assaulted you.

    a. Please advise how it was that you located this person and subsequently identified him as the assailant.
    b. Who was with you when the alleged assault took place?
    c. Identify the persons who you know witnessed the assault.
    d. Please state your full recollection of how the assault happened.
    e. Please state what you recall the alleged assailant said to you before the assault, during the assault, and after the assault.

40. In your Complaint you allege that XYZ Bar served alcohol to the alleged assailant at the time the assailant was "obviously intoxicated", as that phrase is used in Minnesota Statute 340A.502. Please state each and every fact upon which you rely in your claim that XYZ Bar served the alleged assailant intoxicating liquors when the alleged assailant was "obviously intoxicated".

    a. Please identify each and every witness or other person who has provided you with information which leads you to believe that the alleged assailant was "obviously intoxicated" when furnished intoxicating liquors by XYZ Bar.
    b. With respect to your claim that the alleged assailant was served intoxicating beverages, please identify the intoxicating beverage served, the quantity you claimed served and the approximate time the beverages were served.

41. If you consumed any liquor, beer or other alcoholic beverage(s) of any sort whatsoever, or any drug, narcotic, pill, or any medication of any sort whatsoever, within the twenty-four (24) hour period preceding the occurrence referred to in Plaintiff's Complaint, state:

    a. The precise substance(s) consumed.
    b. The quantity of each consumed.
    c. The time and place of each consumption.
    d. Identify each person observing or having the opportunity to observe you at each instance or period of consumption.

Jury Special Verdict Form

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF XYZ FIRST JUDICIAL DISTRICT
Case Type: Personal Injury

Pauline Plaintiff and Pat Plaintiff, Court File No. _____

Plaintiffs,

vs. **SPECIAL VERDICT FORM**

John Doe and XYZ Bar,

Defendants.

We, the jury empanelled in the above-captioned matter, answer the Court's special interrogatories as follows:

1. Did XYZ Bar illegally sell an alcoholic beverage to John Doe?

Yes _____ No _____

2. *If and only if your answer to Question 1 was "Yes," then answer this question*: Did the illegal sale cause or contribute to the intoxication of John Doe?

Yes _____ No _____

3. *If and only if your answers to both Questions 1 and 2 were "Yes," then answer this question*: Was the intoxication resulting from the illegal sale a direct cause of the accident?

Yes _____ No _____

4. Was John Doe negligent in causing the accident?

Yes _____ No _____

5. Was John Doe's negligence a direct cause of the accident?

Yes ____ No _____

If and only if you answered "Yes" to Questions 1, 2, 3 and 5, then answer Question 6.

6. Taking 100% as the total fault attributable to both parties, what percentage of fault do you attribute to:

XYZ Bar _____%

John Doe _____%

TOTAL: 100%

You must answer Questions 7–9, regardless of your answers to any of the other questions.

7. What amount of money will fairly and adequately compensate Pauline Plaintiff for damages directly caused by the accident up to the time of this verdict for:

a. Past pain, disability and emotional distress…. $ _____

b. Past wage loss…… $ _____

c. Past healthcare expenses…….. $ _____

d. Other past loss…… $ _____

8. What amount of money will fairly and adequately compensate Pauline Plaintiff for damages reasonably certain to occur in the future, directly caused by the accident, for:

a. Future pain, disability and emotional distress. $ _____

b. Loss of future earning capacity…… $ _____

c. Future healthcare expenses…….. $ _____

d. Other future loss……. $ _____

9. What amount of money will fairly and adequately compensate Pat Plaintiff for:

a. Past loss of Pauline Plaintiff's services and companionship $ _____

b. Future loss of Pauline Plaintiff's services and companionship $ _____

If the verdict is unanimous, it should be signed and dated only by the foreperson.

_____ _____

Date Jury Foreperson

If the jury is unable to arrive at a unanimous verdict after deliberating six hours or more, five of you may return a verdict by each of the five concurring jurors signing below and by indicating the date and time of the 5/6 verdict.

Time deliberations began: _____

Six-hour period expired: _____

CONCURRING JURORS:

_____

_____

_____

_____

_____

This verdict was agreed upon at the hour of _____ o'clock __.m. on _____, 2010, at the XYZ County Government Center, XYZ County, State of Minnesota.