

NEW MEXICO INJURY ATTORNEY BLOG

PUBLISHED BY
COLLINS & COLLINS, P.C.
ATTORNEYS AT LAW

October 1, 2010

New Mexico Dram Shop Liability Extended to Protect Intoxicated Patrons

It has long been the case that injured third parties may bring a dram shop action for the negligent service of alcohol to an intoxicated patron. Typically, these cases arise where the intoxicated patron takes to the road injuring innocent third parties in auto accidents.

In the case of *Mendoza v. Tamaya Enterprises*, the New Mexico Court of Appeals broadened the protection of the dram shop laws to the intoxicated patron. The Court also made clear that an Indian casino or resort waived its sovereign immunity under the Indian Gaming Compact for the negligent service of alcohol on its premises.

The case involved a single vehicle car accident where two of the occupants were killed. The accident occurred following a wedding reception at the Tamaya resort where the deceased were served alcohol despite their obvious intoxication.

New Mexico law plainly prohibits the service of alcohol to intoxicated persons. It has long been held in New Mexico and elsewhere that third parties injured as a result of the negligent service of alcohol may bring a personal injury action against the server. However, in the past, the intoxicated person has been prevented from bringing a similar action. It was reasoned that a person should not be allowed to benefit from his or her own wrongful acts.

The Court in *Mendoza* disagreed with the prior position which predated New Mexico's adoption of the doctrine of comparative negligence. The Court reasoned that an intoxicated person should not be completely barred from recovery for negligent service. Instead, principles of comparative negligence should be applied in the apportionment of fault. The court stated that comparative negligence "supplanted the all-or-nothing bar of contributory negligence and doctrines, such as complicity, assumption of risk, and other defenses rooted in the claimant's negligence..."

In addition to the extension of dram shop protections to intoxicated patrons, the Court rejected the defendant casino's argument that the claims should be heard in tribal court. The Court determined that the claims and the wrongful behavior leading to them were plainly contemplated in the Indian Gaming Compact's waiver of tribal immunity. As a result, Indian casinos and resorts will be held to the same dram shop standards as all other restaurants, bars and liquor establishments.

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.newmexicoinjuryattorneyblog.com/>