

Dram Shop Liability: Shifting Burden of Proof

July 11, 2011, by [Collins & Collins](#)

The New Mexico Liquor Liability Act creates different standards of care for dram shop liability depending upon the relationship between the plaintiff and the defendant.

The highest standard of care is imposed in cases of suits by third parties for injuries caused by a drunken patron. In these cases, the plaintiff must simply show negligence on the part of the liquor serving establishment or licensee. A negligence standard means that the plaintiff must only show that it "reasonably apparent" that the person being served was intoxicated.

The standard is higher when a patron himself sues the licensee. In this case, the patron must prove gross negligence and reckless disregard on the part of the server of alcohol. This is a much higher standard requiring that the plaintiff show that the server was grossly negligent and recklessly disregarded the safety of the intoxicated patron.

The standard changes again for gratuitous providers of alcohol such as social hosts. This would include private parties and cases where the one person buys alcohol for another at a bar or restaurant. In this case, the plaintiff must show that the host provided the alcohol "recklessly in disregard of the rights of others, including the social guest." This provision sets a pretty high burden of proof and was intended to provide some measure of protection for social hosts against suits by injured third parties.

It is important to note that the social hosts provisions in the Liquor Liability Act are not limited to private settings. The extension of liability beyond the private setting was made explicit in [Delfino v. Griffo](#).

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It is noteworthy also that though the standard of proof is heightened for certain relationships such as a social host, DWI is treated quite harshly in New Mexico by law enforcement, the Courts and perhaps most importantly for dram shop liability, by juries. One would be hard pressed to find a juror that is unaware of the countless DWI tragedies that occur each year on New Mexico roads. In fact, there is a good chance that there will be some in the jury pool that have had personal experience with DWI tragedy.

This does not bode well for the defendants in these cases as the legal definitions of negligence, gross negligence, reckless are all in the eyes of the beholder. And few jurors these days will be sympathetic to DWI drivers or anyone that put them on the road in a drunken state.

It all sounds pretty straightforward in theory. However, as with all personal injury cases, dram shop suits can become quite complicated and difficult in a hurry. In almost all of these cases, the plaintiff will be dealing with an insurance company. Many of these companies are fair and rational and will attempt to come to a fair resolution of the claims.

Some insurance companies on the other are philosophically and financially opposed to a fair resolution no matter what the circumstances. In either case, it is important to seek the guidance of an experienced [personal injury attorney](#). After all, even the reasonable adjuster is looking after the financial interests of the insurance company and this interest is in direct opposition to the interests of an injured plaintiff.

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