

April 6, 2018

**THE MINNESOTA SUPREME COURT INTERPRETS
MINNESOTA'S STATUTORY DRAM SHOP NOTICE REQUIREMENT**

In [*Buskey v. Am. Legion Post # 270*](#), ___ N.W.2d ___ (Minn. April 4, 2018), a divided Minnesota Supreme Court reversed the trial court's and court of appeals' interpretation of the Minnesota Civil Damages Act "dram shop" statutory notice requirement and held:

- (1) the statutory notice requirement only requires the liquor licensee to possess knowledge of "sufficient facts" to put it on actual notice of a potential dram shop claim; and
- (2) the notice requirement is satisfied if a dram shop claimant provides notice to a liquor licensee's agent or if the licensee's agent possesses the aforementioned actual notice of a potential claim.

On October 19, 2012, an intoxicated driver killed the driver of an oncoming vehicle, Mary Jo Meyer-Buskey, and injured three of her passengers in a head on collision when he crossed the center line of a roadway. *Id.* The intoxicated driver consumed alcoholic beverages at the American Legion Post #270 ("Legion") prior to the collision. The Legion's manager and staff learned of the fatal collision shortly after it took place and within two weeks of the collision the Legion's server prepared a written statement stating that she had served the intoxicated driver four drinks and that he did not appear obviously intoxicated.

The children and spouse of the deceased driver (collectively "Buskey") retained an attorney on October 25, 2012 – six days following the collision. Buskey's retention of counsel triggered the 240-day notice period in which they were required to provide written notice to the Legion pursuant to Minn. Stat. § 340A.802. Minnesota's Dram Shop statute requires that the statutory notice provide the liquor licensee with notice of the time, date, and person to whom liquor was furnished; the name and address of the persons whom were injured or whose property was damaged; and the approximate time and date where the injury or property loss occurred. It is undisputed that Buskey's counsel did not timely provide the required written notice to the Legion. However, attorneys for several of the injured passengers did provide the Legion and its liquor liability insurer with timely notice of their respective claims which included all of the information the Buskey's counsel failed to provide except for the identities of the Buskey claimants. The Legion's insurer retained counsel to defend the Legion from the passengers' dram shop claims and the Legion's attorney sent a letter to Buskey's attorney notifying him of his retention and demanding that he cease any and all contact with the Legion and to direct all further communications through the Legion's counsel.

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The supreme court reversed the district court's and the court of appeals' grant of summary judgment to the Legion against the Buskey claimants for failing to comply with the notice requirement; holding that the Legion had actual knowledge of sufficient facts regarding the Buskey's potential dram shop claims to reasonably put the Legion on notice of their claims pursuant to Minn. Stat. § 340A.802, subd. 2. The supreme court observed that the statute's "sufficient fact" determination test is made on a case-by-case determination and held that the following circumstantial evidence demonstrated the Legion's actual notice: the Legion's attorney knew that Buskey retained counsel to represent the Buskey family for claims against the Legion arising out of the October 19, 2012, collision that killed Mary Jo Meyer-Buskey. The court further reasoned that the Legion's attorney's actual notice of sufficient facts constituted notice to the Legion itself pursuant to the common law agency tenet that notice to an agent is imputed as notice to the principal.

Minnesota Supreme Court Justice Anderson, joined by Justice Gildea, agreed with the majority's interpretation of Minn. Stat. § 340A.802, subd. 2; actual notice of sufficient facts to put a liquor licensee on notice of a potential dram shop claim satisfied the dram shop statutory notice requirement. Conversely, Justices Anderson and Gildea disagreed with the majority's holding that Buskey demonstrated that the Legion or its counsel possessed sufficient facts to satisfy the actual notice burden in order to avoid summary judgment. Justice Anderson observed that the circumstantial evidence the majority cited to in support of its reversal of summary judgment in *Buskey* was so flimsy that it is "difficult to imagine" the factual scenario in which any facts would be found to be "insufficient." As such, Justice Anderson notes that the majority's decision in *Buskey* essentially "eviscerates the protective aspect of the notice requirement that the Legislature provided to [liquor] licensees."

Our Retail and Hospitality Group is happy to answer any questions you may have about *Buskey* or any other Liquor Liability-related issues.



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