



## **Court of Appeals Considers Causation Under the Dramshop Act, Finds That Premeditated Murder is not a Foreseeable Result of Allegedly Unlawful Sale of Alcohol**

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### **SECRET WARDLE NOTES**

Generally, proximate cause is a factual issue to be decided by the trier of fact. However, if reasonable minds could not differ regarding the proximate cause of the plaintiff's injury, the court should decide the issue as a matter of law. *Seils*, \_\_ Mich App at \_\_; slip op at 12.

“Although a dramshop action may be premised on” the allegedly intoxicated person’s (AIP) “assaultive criminal conduct,” there still must be “sufficient evidence that furnishing the alcohol to the AIP is a proximate cause of the violent behavior.” *Id.*

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Causation is a necessary element of a claim under the Dramshop Act. MCL 436.1801(3). The statute specifically states that recovery is only available if “the unlawful sale *is proven to be a proximate cause* of the damage, injury, or death...” *Id.* (emphasis added). Also, the Dramshop Act represents a plaintiff’s exclusive remedy for injuries that arise out of “dramshop related facts.” *Jackson v PKM Corp*, 430 Mich 262 (1988). “The dramshop act affords the exclusive remedy for injuries arising out of an unlawful sale, giving away, or furnishing of intoxicants.” *Manuel v Weitzman*, 386 Mich 157 (1971).

Recently, in *Seils v Fraternal Order of Police, et al*, \_\_ Mich App \_\_ (2015) (Docket No. 315901), the Court of Appeals took a close look at the causation element of a dramshop claim. *Seils* involved the murder of two people, and the attempted murder of two others, by Todd Pink on May 15, 2010. One of the victims, Carrie Seils, had been dating Pink. Earlier on the day on May 15, 2010, she and Pink had attended a festival in downtown Detroit where the Fraternal Order of Police (“FOP”) was, as a fundraiser for charity, running a beer tent with the assistance of Olympia Entertainment, Inc. (Olympia). Seils and Pink had been drinking heavily together before they attended the festival and continued to drink afterward. The FOP allegedly served beer to Pink while he was visibly intoxicated in violation of the Dramshop Act. Between 1 ½ and 3 hours after he left the festival, Pink committed the horrific acts for which he was convicted of “two counts of first-degree premeditated murder, two counts of felony murder, two counts of assault with intent to murder, four counts of possession of a firearm during the commission of a felony, one count of first-degree home invasion, one count of assaulting or resisting a police officer, and one count of felon in possession of a firearm.” *Id.* at 5.

Plaintiffs filed suit against the FOP and Olympia under a dramshop theory. The FOP (represented by Secrest Wardle) argued that under the undisputed facts, Pink’s actions were deliberate and premeditated and therefore not a foreseeable consequence of serving alcohol to a visibly intoxicated adult. *Id.* at 6. The FOP further argued that Pink’s specific intent severed any causal chain with respect to any improper serving of alcohol.

*Id.* Olympia concurred in these arguments and also offered other arguments that did not pertain to the FOP. *Id.* With respect to causation, the trial court denied defendants' motions for summary disposition, relying upon the holding in *Weiss v Hodge* (After Remand), 223 Mich App 620 (1997) that there can be liability under the Dramshop Act for intentional torts. *Seils*, \_\_ Mich App at \_\_; slip op at 6.

The FOP and Olympia appealed. The Court of Appeals unanimously held that that the FOP and Olympia were entitled to summary disposition because Plaintiffs could not establish proximate cause. The panel explained:

For plaintiff to establish his dramshop action he must show that the FOPA violated MCL 436.1801(2) by selling, furnishing, or giving alcohol to Todd Pink while he was visibly intoxicated and that this statutory violation was "a proximate cause of [plaintiff's] damage, injury, or death," MCL 436.1801(3). Because plaintiff points to no evidence from which the FOPA could have reasonably foreseen Pink's intentional criminal acts and because Pink's decision to commit premeditated, deliberate murder (and other assaults) was an intervening or superseding cause of plaintiff's damages, the trial court erred by not granting summary disposition to defendants on the basis that no reasonable jury could find that the FOPA's alleged statutory violation was a proximate cause of plaintiff's injury....

MCL 436.1801(3) imposes liability on any licensee that, by the unlawful sale or furnishing of alcoholic liquor to a minor or visibly intoxicated person, has 'caused or contributed' to the intoxication that is a proximate cause of damage, injury, or death. Although a dramshop action may be premised on an AIP's assaultive criminal conduct, ... there still must be sufficient evidence that furnishing the alcohol to the AIP is a proximate cause of the violent behavior....

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Plaintiff Seils points to no evidence that would have put the FOPA, Olympia, or anyone else at the Detroit Hoedown on notice that Pink would later premeditate and deliberately commit the horrific crimes at issue in this case. Plaintiff instead speaks only of generalities, that it is well known that drinking alcohol can lead to violent behavior. ... While an intoxication-fueled assault occurring at or near the dramshop, ... or an auto accident caused by a drunken driver, might be reasonably foreseeable results of "selling, giving, or furnishing of alcoholic liquor to [a] minor or visibly intoxicated

person,” MCL 436.1801(3), no evidence exists in this case that would have put defendants on notice that violating the statute would lead Pink to deliberately, and with premeditation, commit the crimes at issue here. ... Consequently, we conclude the alleged statutory violation in this case cannot be established as a proximate cause of plaintiff’s damages.... *Seils*, \_\_ Mich App at \_\_; slip op at 12-15 (citations omitted).

The opinion went on to address various arguments raised by Olympia, finding that – although these issues were largely rendered moot by the panel’s holding on causation – Olympia was alternatively entitled to summary disposition because (1) Olympia was not the liquor licensee and could not have vicarious liability under the Dramshop Act and (2) Olympia was not provided with timely written notice as required by the Act.



**We welcome your questions -  
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