

Steven J. Forbes of Norchi, Barrett & Forbes, LLC recently obtained a defense verdict in a wrongful death, dram shop case in Cuyahoga County, Ohio (Cleveland), which is the most favorable venue for plaintiffs in Ohio. Mr. Forbes successfully represented BadFrogs Bar & Grille, a restaurant and bar owned by three brothers who are all currently serving in the United States military as Navy SEALs. On the morning of July 14, 2006, Plaintiff's decedent, Ronald Woods, was working as a garbage collector when the fatal accident occurred. At approximately 6:30 a.m., while Mr. Woods was throwing trash from the curbside into the back of his garbage truck, he was struck by a Ford F-150 operated by Elizabeth Oliver. Mr. Woods was pinned between the two trucks and died less than an hour later. He was 57 years old and is survived by his wife, to whom he was married for over 35 years, two children, and several grandchildren.

According to Oliver, who was 27 years old when this incident occurred, she fell asleep behind the steering wheel. An empty pint bottle of vodka was found in her vehicle. She failed all three field sobriety tests administered by a police officer at the scene of the accident. Her blood alcohol level was 0.163, which is over two times the legal limit in Ohio. She was convicted of Aggravated Vehicular Homicide and is currently serving a five year prison term. The last place that Oliver visited before the accident was BadFrogs Bar & Grille.

To succeed in a dram shop action in Ohio, a plaintiff must prove that a bar owner or his employee knowingly served an intoxicating beverage to a noticeably intoxicated person, who then caused personal injury, death or property damage to the plaintiff. Here, Plaintiff had a strong circumstantial case and asked the jury for an award of damages in excess of 4.5 million dollars. The testimony showed that Oliver began her night of drinking at approximately 6:00 p.m. and consumed multiple alcoholic beverages at several other bars before arriving at BadFrogs around midnight. There was no dispute that Oliver was served at least three intoxicating beverages at BadFrogs. Plaintiff's attorney placed a considerable amount of emphasis on the fact that Oliver was permitted to stay at BadFrogs and drink alcoholic beverages past 2:30 a.m., which is the cutoff for liquor sales in Ohio. Two employees of BadFrogs allowed Oliver and her friend to stay at the bar after closing until approximately 5:00 a.m. The two BadFrogs' employees, Oliver, and her friend were the only people at the bar during this time.

The defense strategy in this case was to focus on the fact that BadFrogs' employees did not actually know that Oliver was intoxicated when she was served drinks at the bar. Oliver was the classic example of a functioning alcoholic with a high tolerance for alcohol. She admitted that she was a daily drinker prior to the accident, drinking an average of a fifth of vodka per day. No one testified that Oliver appeared intoxicated, including an off-duty police officer who encountered Oliver as she stopped at a gas station on her way to BadFrogs. The defense stressed the fact that the noticeable signs of impairment caused by alcohol are more difficult to detect in persons with a high tolerance for alcohol. The chief toxicologist for a local county coroner's office testified for the defense. He testified that the signs of alcohol impairment would be present in a person with a high tolerance such as Oliver, but to a lesser degree. The defense also stressed the fact that there was a considerable gap between the time Oliver left BadFrogs and the time the accident occurred. Although Oliver did not admit to drinking out of the vodka bottle found empty in her truck, the inference was made that the bottle was empty because Oliver drank it during this approximately one-hour long interval, thus explaining her high blood alcohol level after the accident.

Defendant's requested a jury interrogatory apportioning the percentages of fault between BadFrogs and Oliver, which was granted over Plaintiff's objection. However, there was no need for jury to answer this question. After a five-day trial, the jury unanimously found no liability on the part of BadFrogs, Inc.

