

## Courts Rule on Important Issues in Drunk Driving Injury Cases: Husband who bought drinks may sue for wife's death; Driver who struck pedestrian may look to bar to share in defense

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It's as simple as A-B-C. The Alcohol Beverage Control Law has long provided that [it is a crime to sell alcohol to a visibly intoxicated person](#). Violation of the A.B.C. Law will expose the seller to a lawsuit for civil damages too. We visit **two new cases that made their way to appeals courts this month, each starting with a drunk driving car accident and tragic injuries.**

**Julie Oursler died** on 10/27/02 at 3 a.m., after several hours of drinking at a bowling alley in Buffalo, New York. Walking along the side of a road, she was struck by a car and later run over by a police officer responding to a 911 call made by the fellow who hit her.

Four years later, on 10/29/06 at 5 a.m., **Kathleen O'Gara was seriously injured** when, after drinking heavily at a bar in Katonah, New York and taking narcotic painkillers, she tried to cross the Saw Mill River Parkway and was struck by a car.

These accidents both resulted in personal injury lawsuits that have just now been ruled upon by two separate appeals courts. They involve [New York's Dram Shop Act](#) (General Obligations Law Section 11-101) which provides that **anyone who has been injured by a visibly intoxicated person has a claim to recover his damages from the one who caused or contributed to the intoxication by unlawfully selling alcohol.**

The **typical Dram Shop Act lawsuit** involves a slobbering drunk driver who crashes into and injures or kills an innocent victim who (or whose estate) then sues not only the drunk driver but also the bar or restaurant whose bartender could see that his customer was drunk (and should have known his customer would later drive and injure an innocent victim).

**This woman should not be served any more drinks:**



Neither of the two new cases is typical but each is fascinating and breaks new legal ground.

In [Oursler v. Brennan](#) the issue was **whether a husband's actions in buying drinks for his wife would preclude him from winning his own Dram Shop Act case** against a bowling alley. Christopher and Julie Oursler were at a Halloween party at the bowling alley where they drank for four hours – Chris bought his wife two beers, she and friends bought others and she also had free Jell-O shots. Dressed in a black witch's costume, Mrs. Oursler got into a fight outside the bar when she left, was arrested, driven home by the cops and left there with her mother. An hour later, still in black, she left her house, alone, and walked along a dark road. That's when she was struck by a car and after a 911 call to help her she was run over by the responding officer who did not see her.

**How could anyone see a person dressed like this, at night, on a dark road?**



Oursler's estate clearly had no claim in this case because one cannot maintain a lawsuit for personal injuries sustained due to one's own intoxication. The **surviving husband, though, had his own, separate claim for spousal loss of support** (the same claim children have upon the death of a parent).

The driver moved to dismiss the husband's claim under the **well settled principle that one who is a guilty participant may not recover for his own injuries caused by an intoxicated person.**

The appeals **court held that merely buying two beers for his wife did not establish a guilty participation defense.** The husband's claim may now proceed to trial.

**Inside Information:**

- Plaintiff still has the difficult burden of proving that there was a practical connection (we lawyers call it "**proximate cause**") between the unlawful alcohol sale and death several hours later. As a dissenting judge said, this case involves the **intervening actions of three sober individuals who directly altered the course of events** beyond any reasonable or practical connection to the unlawful alcohol sale to the decedent.
- Plaintiff will be in the hot seat at trial as the **issue of his drinking with his wife will come up again**, with full blown testimony from all the witnesses and cross-examination of the husband. A skilled defense lawyer will be permitted to try to convince the jury that the husband participated in getting his wife drunk to such a degree that he should not win money for himself.

In **O'Gara v. Alacci**, the issue was whether the driver who struck the drugged and drunk 23 year old plaintiff crossing the highway at night could assert a **claim against the bar for contribution** to any damages the driver might be liable to pay the plaintiff.

**Before wandering onto the highway, Ms. O'Gara took painkillers and drank alcohol. Bad move.**



Clearly, plaintiff herself had no claim against the bar for her own injuries; however, in a case of first impression, the appeals **court held that the defendant driver could bring in the bar as a so-called third-party defendant and, if found liable, defendant driver could have the bar share in the payment of damages to the plaintiff.** The judges stated that their decision promotes an important goal of the Dram Shop Act, namely motivating sellers of alcohol to exercise greater care in their sales.

**Inside Information:**

- This was a case that plaintiff would have lost at trial. She was in a stupor, at night, crossing a busy highway and didn't even know how she came to be there. Nonetheless, defendant settled for \$7,500 (nuisance value) while the appeal was pending.
- Plaintiff sustained fractures to her tibia, thoracic spine and pelvis as well as massive skin injuries requiring grafts.
- The drinking in this case, as in the **Oursler** case, took place at a Halloween party.
- The bar had called a cab for the plaintiff but she left on foot before it arrived.

Unfortunately, drunk drivers often collide with innocent victims with resulting deaths and grievous serious injuries. Lawsuits follow, especially when the drunk driver has insufficient liability insurance coverage and the facts show that the Dram Shop Act was violated (i.e., the drunk was served when he was visibly intoxicated). **We will continue to follow these cases and report on interesting decisions and verdicts.**