

Wiley Rein's Richard W. Smith Discusses Dram Shop Laws in *USA Today* Article

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Richard W. Smith, a partner in Wiley Rein's Litigation Practice, was quoted in a Nov. 29 *USA Today* story about a drunken-driving case that has put the spotlight on laws aimed at preventing bars and restaurants from serving alcohol to intoxicated customers.

The case arose from a 2010 crash that critically injured a North Carolina couple and killed their unborn child. A drunk driver hit the family's car after leaving a restaurant that allegedly served him at least 10 alcoholic drinks. A jury recently ordered the restaurant to pay the family \$1.7 million, finding that the establishment was negligent in serving alcohol to a person it knew or should have known was intoxicated, *USA Today* reported.

The couple had sued under a North Carolina law that establishes liability for bars and restaurants that serve alcohol to visibly intoxicated or underage patrons who then injure or kill others in alcohol-related crashes, according to the article. Similar laws, known as dram shop laws, are on the books in all but seven states.

While it's illegal in most states to drive with a blood-alcohol level of .08 or higher, the .08 standard used in criminal cases "is meaningless in civil liability," Mr. Smith, a dram shop law expert, told *USA Today*.

"In most states, the patron has to be 'visibly intoxicated' at the time of service," Mr. Smith said. "The critical moment is when the bartender looks at a person and makes an evaluation. It really is the moment of truth. If you are a bar or restaurant, you need to know what the law is in your state. And most importantly, you need to train your servers and bartenders about the law in your state."

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Practice Areas

Litigation

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