Be The Host With The Most. . . Smarts

July 22, 2012 | by Andrew Berns

In addition to the criminal exposure set forth above, on the civil side, there are pitfalls and exposure for those who throw private parties under New Jersey statute 2A: 15-5.6. This law, commonly known as the "social host liability law" is related to the service of alcoholic beverages to persons who have attained the legal age to purchase and consume alcoholic beverages.

A social host who serves alcoholic beverages at a party may be liable for monetary damages in a civil action, if he or she negligently serves alcohol to a guest and it results in bodily injury or injury to personal property. However, in a formal lawsuit, the injured party has to overcome some relatively rigorous requirements.

To be successful the injured party must demonstrate through a preponderance of the credible evidence that the host "willingly and knowingly" provided alcohol either to

an individual who was visibly intoxicated in the presence of the host, or
to an individual who was visibly intoxicated under circumstances constituting reckless disregard of the consequences affecting the life or property of another.

The first prong of this section would seem to be easier to prove than the second.

The law goes on to say that, in addition to the standard set forth in the previous paragraph, to be successful the injured person must also prove that the host served the alcohol to a visibly intoxicated guest under circumstances creating "an unreasonable risk of foreseeable harm to the life or property of another, and the social host failed to exercise reasonable care and diligence to avoid the foreseeable risk."

Finally, the statute requires that the injury complained of must arise out of the negligent operation of a motor vehicle by the visibly intoxicated person who was served by the social host.

Obviously, the above standard requires a definition of how people interpret visible intoxication. To clarify this issue, the statute makes two further statements associated with what we have come to understand is the barometer of intoxication. If a standard diagnostic test (a blood test or a breathalyzer) indicates that the injured person has an alcohol blood concentration of less than 0.10%, it will legally be presumed that the host could not have assumed that the injured party was visibly intoxicated and that the host did not provide alcohol to the guest in circumstances in which he or she could be held liable. However, if an individual is tested with results of at least 0.10% but less than 0.15% blood alcohol concentration in their blood, although the social host is still entitled to a presumption that the guest was not visibly intoxicated in the host's presence or that the host should have realized the prospective consequences of continuing to serve the guest, the presumption becomes rebuttable (meaning that the injured party could show that host should have or could have known that the person was intoxicated through other credible evidence). This could be utilized to successfully impose civil liability. Of course, if a guest tests higher than 0.15%, the social host will encounter exposure.

Needless to say, this statute and the standards it imposes are complicated and subject to some level of subjectivity. We would suggest that the best course of action when entertaining as a social host is to try to keep track of your guests and to take what may be considered poor social etiquette in some circumstances and stop serving anyone who appears visibly intoxicated if there is any chance this individual will get behind the wheel of a motor vehicle. You should also consult with your insurance broker of a representative on your homeowner's insurance company to determine the types of coverage and maybe more importantly the exclusions contained in your policy which might apply to a situation where the insured is having a party at their residence.

In the unfortunate situation where social host liability becomes a legal issue, whether through your insurance policy or privately, it is always good advice to consult with a competent attorney.