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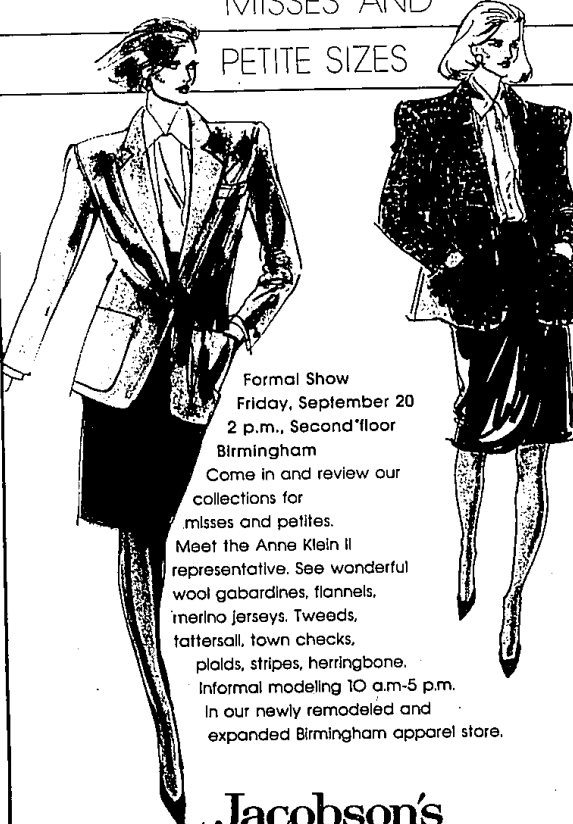
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'Reform dram shop law'

"A victim of a drunk driving accident who sues the tavern owner rather than the drunk driver, believing the tavern owner carries more insurance, may well be left high and dry. Seventy percent of Michigan tavern owners no longer carry liquor liability insurance."

So says Ronald Gutman of the Farmington Hills law firm of Kaufman and Payton, recognized for its insurance law practice.

He testified at hearings before the Subcommittee on Dram Shop of the Michigan Senate Select Committee on Civil Justice Reform, chaired by Sen. Richard Fessler, R-West Bloomfield.

Gutman urged reform of Michigan's 100-year-old dram shop act, which concerns the liability of establishments serving alcohol.

"Plaintiffs think they can get more money from a tavern owner with a high insurance policy," Gutman said. "But they may end up with nothing if the trend of liquor establishments going with-out insurance continues because carriers refuse to write policies in Michigan."

"Reasonable caps must be set on dram shop awards to woo insurance carriers back to Michigan," Gutman said.

THE STATE must require mandatory "reasonable and affordable" insurance coverage for sellers of alcohol too, he added.

In an interview after the hearing, Gutman urged that Michigan's dram shop law be changed to prevent "double recovery," which allows a plaintiff to seek and receive damages from both the driver and the tavern owner.

He pointed out that courts must keep in mind that the intoxication standard by law is one of visible, not legal, intoxication.

"Juries don't always realize that 'visible' intoxication is the actual standard," Gutman said. "It is not illegal to serve customers drinks, which may result in their getting drunk. What is illegal is serving them drinks if they are clearly, visibly drunk," Gutman said.

Customers must show signs of drunkenness for it to be illegal for the bartender or waiter to serve them," he added.

THE INTOXICATION standard issue must be made clearer to juries,

Gutman said, because a person may be legally drunk (as determined by a Breathalyzer test), but may not necessarily appear drunk (visibly drunk) to the people around.

Gutman said that the defense of visible intoxication is greatly watered down by plaintiffs' use of expert testimony to contradict eyewitness testimony.

"In dram shop cases where there are eye-witnesses, experts should be disallowed because they can only hypothesize, while the eye-witnesses can relate what they actually saw at that particular scene," Gutman said.

The law firm of Kaufman and Payton conducts annual seminars on dram shop law and litigation.

Its attorneys frequently contribute articles on the subject to legal and business journals.

Residents now liable for sidewalk mishaps

By Lisa Simon
staff writer

Liability for injuries incurred on Farmington sidewalks are now the sole responsibility of property owners.

That's the word from city council members who Monday passed an ordinance to amend the existing city sidewalk and public right-of-way ordinance.

The Michigan Municipal Risk Management Authority (MMRMA), the city's insurance company, reviewed Farmington's sidewalk ordinances and determined that liability for the maintenance of sidewalks and areas between sidewalks and roadways was not clearly stated.

As a result, the new amendment states, "If the property owner neglects to maintain the sidewalk and driveway approach in good repair, that the owner shall be liable to the city for any damages recovered against the city sustained by any person by reason of such sidewalk or driveway approach being unsafe and not in good repair."

"We believe since the city has already transferred the maintenance of sidewalks and driveway approaches to the property owner, the city should also clearly transfer the liability for lack of maintenance to the property owner," said Robert Deadman, Farmington city manager.

walk maintenance and unclear liability. All involved personal injuries.

"We don't know what causes the accidents, the condition of the person, or the condition of the sidewalk," Deadman said.

The amendment is designed to protect the city from lawsuits, he said.

The city of Farmington has set standards on sidewalk maintenance. Loose material, general deterioration and displacement of debris are all considered part of sidewalk maintenance.

Many times, a homeowner will wait for the city to maintain their property, then pay the city's bill, Deadman said.



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