

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA
No. 23-ICA-337

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BARRY BARR,

Plaintiff Below, Petitioner,

v.

BRENT JACKSON, LYNN PERKINS, and
HEDGESVILLE REAL ESTATE, LLC,
VIP GENTLEMEN'S CLUB, LLC d/b/a
LUST GENTLEMEN'S CLUB,
WEST VIRGINIA SPORTS PROMOTIONS, INC.,

Defendants Below, Respondents.

***AMICUS CURIAE* BRIEF ON BEHALF OF THE WEST
VIRGINIA ASSOCIATION FOR JUSTICE IN SUPPORT
OF PETITIONER BARRY BARR**

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WEST VIRGINIA ASSOCIATION
FOR JUSTICE

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST	1
STATEMENT OF THE CASE	1
ARGUMENT	4
I. The Circuit Court Erred in Finding the Public Policy Exception Inapplicable in this Case where Maryland Law is a Complete Bar to Tort Recovery against a Negligent Tortfeasor and West Virginia has the Most Significant Relationship to the Parties and the Controversy.....	5
A. Tort defenses that act as a complete bar to recovery in a civil negligence action are contrary to West Virginia public policy	5
B. West Virginia has a significant interest in applying its law to conduct occurring in West Virginia by a West Virginia corporation which killed a West Virginia resident.....	7
C. Public policy requires corporations doing business in West Virginia to keep the promises they make to the State	10
II. In Interstate Dram Shop Cases, Courts in Other Jurisdictions Commonly Apply the Law of the State Where the Alcohol Vendor Resides Rather than the State Where the Accident Occurs ..	12
CONCLUSION	16
CERTIFICATE OF SERVICE.....	17

TABLE OF AUTHORITIES

Cases

<i>Bailey v. Black</i> , 183 W. Va. 74, 394 S.E.2d 58 (1990)	11
<i>Banks v. Ribco, Inc.</i> , 933 N.E.2d 867 (Ill. App. 3d. 2010)	14-15
<i>Clark v. Rockwell</i> , 190 W. Va. 49, 435 S.E.2d 664 (1993)	10
<i>Howe v. Stuart Amusement Corp.</i> , 1991 Conn. Super. LEXIS 3008 (1991)	14
<i>Joy Tech. v. Liberty Mut. Ins. Co.</i> , 187 W. Va. 742, 421 S.E.2d 493 (1992)	10
<i>Mills v. Quality Supplier Trucking, Inc.</i> , 203 W. Va. 621, 510 S.E.2d 280 (1998)	6,9
<i>Nadler v. Liberty Mut. Fire Ins. Co.</i> , 188 W. Va. 329, 424 S.E.2d 256 (1992)	10
<i>Pardey v. Boulevard Billiard Club</i> , 518 A.2d 1349 (R.I. 1986)	13
<i>Paul v. National Life</i> , 177 W. Va. 427, 424 S.E.2d 550 (1986)	passim
<i>Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.</i> , 534 A.2d 1268 (D.C. 1987)	12,15
<i>Schmidt v. Driscoll Hotel, Inc.</i> , 82 N.W.2d 365 (Minn. 1957)	12,15
<i>State ex rel. Am. Elec. Power Co. v. Swope</i> , 239 W. Va. 470, 801 S.E.2d 485 (2017)	8

<i>Thoring v. Bottonsek</i> , 350 N.W.2d 586 (N.D. 1984).....	15
<i>Trapp v. 4-10 Inv. Corp.</i> , 424 F.2d 1261 (8th Cir. 1970)	13,15
<i>Vass v. Volvo Trucks N. Am., Inc.</i> , 315 F. Supp. 2d 815, 820 (S.D. W.Va. 2004).....	6,9
<i>Woodcock v. Mylan, Inc.</i> , 661 F. Supp. 2d 602, 609 (S.D. W. Va. 2009).....	6,9

Statutes and Rules

Ohio Rev. Code §§ 2307.84, et seq.	8
W.Va. Code § 56-1-1(a)(4).....	7-8
W.Va. Code § 60-7-12(4)	4,11
W.Va. R.A.P. 30(e)(5)	1

STATEMENT OF INTEREST

The West Virginia Association for Justice ("WVAJ")¹ is a private, non-profit organization consisting of over five-hundred attorneys licensed to practice law in the State of West Virginia who represent, among others, citizens of West Virginia in the courts of our State. The membership of WVAJ is devoted to protecting the core values of our system of justice and to protecting the rights conferred upon all citizens of the State of West Virginia by our Constitution, the West Virginia Code and the precedent of this Court.

WVAJ has an interest in upholding the integrity of our judicial system against unfair attacks from special interest groups, protecting access to our courts and ensuring redress for injuries caused by the wrongful conduct of others.

WVAJ monitors trial court and appellate decisions and, where its members believe an issue is presented to this Court which impacts the fundamental legal rights of West Virginians and/or seeks to derogate established principles of West Virginia law, WVAJ will, as it has on many prior occasions, seek leave to submit an *amicus curiae* brief to give voice to West Virginians and to assist this Court.

STATEMENT OF THE CASE

WVAJ adopts Petitioner's Statement of the Case. For the purpose of this brief, the relevant facts are simple. Michael Maydian, a drunk driver, killed a West Virginia

¹ WVAJ certifies that no counsel for a party authored this *amicus curiae* brief in whole or in part, nor did any party, counsel for a party, or other person make a monetary contribution toward its preparation and submission. W.Va.R.A.P. 30(e)(5). Notice of WVAJ's intent to file this *amicus curiae* brief was provided to all parties, and all parties have consented to WVAJ filing this brief. W.Va.R.A.P. 30(a).

resident barely across the West Virginia border in Maryland after being overserved alcohol in a bar in West Virginia. In evaluating the public policies in this case, WVAJ also notes the additional facts contained in this Statement of the Case.

First, the area where Katie Barr was killed has been the scene of numerous other fatalities and other serious incidents involving driving under the influence of alcohol:

- “A Martinsburg man has been charged with driving under the influence after he allegedly caused an accident Thursday on Interstate 81 that killed one man and sent 13 others to area hospitals...”²
- A Berkeley County grand jury indicted a “Hagerstown, Maryland, man who is alleged to be the driver of a vehicle that crashed on Interstate 81 while under the influence and fleeing from police. Apollo R. Bey was charged with the felony counts of DUI resulting in death, two counts of DUI causing serious bodily injury...”³
- “A 48-year-old Martinsburg man is accused of driving nearly 100 mph on Interstate 81 while under the influence of alcohol early Tuesday.”⁴
- “A suspected drunken driver was arrested in a New Year’s Day highway crash that killed another motorist in West Virginia, police said. The accident occurred early Wednesday along southbound Interstate 81 in Berkeley County. . . . [Berkeley County Sheriff Curtis] Keller said a deputy investigating calls about a reckless driver attempted to make a traffic stop, but the suspect's vehicle sped up and hit a car, which then struck a guardrail. The driver of the car was pronounced dead at the scene. The driver's name was not immediately released.”⁵

² <https://www.heraldmillmedia.com/story/news/local/2016/06/17/martinsburg-man-charged-with-dui-following-fatal-i-81-crash/45644665/>.

³ https://www.journal-news.net/journal-news/hagerstown-md-man-charged-with-deaths-in-2019-dui-crash/article_cbaf3050-b097-51b5-b16d-5ac8dce414b7.html?utm_medium=social&utm_source=email&utm_campaign=user-share.

⁴ <https://www.heraldmillmedia.com/story/news/local/2016/03/29/martinsburg-wva-man-accused-of-dui-at-100-mph-on-i-81/45625739/>.

⁵ <https://www.wsls.com/news/virginia/2020/01/01/32-year-old-arrested-after-deadly->

- “West Virginia State Police say a Martinsburg man has been charged with causing an accident that killed one person and injured at least a dozen others on Interstate 81 in the Eastern Panhandle. Media outlets report 23-year-old Amid Hafley was charged with driving under the influence of a controlled substance and DUI causing death.”⁶

Thus, the hazards caused by impaired driving by out of state residents who flock to the area because of the number of bars and adult establishments in the area (like Respondent Lust) are real, not hypothetical.⁷

Second, the conduct on the part of Respondent Lust Gentleman’s Club in connection with the overserving of alcohol alleged by Petitioner violates promises Lust made to the State of West Virginia in obtaining a license to sell alcoholic beverages. As part of the application for a licensee from the West Virginia Alcoholic Beverage Control Administration, Lust agreed to comply with West Virginia Law:

The undersigned agree, if a license is issued as herein applied for, to comply at all times and observe all the provisions of West Virginia §§ Chapter 11, Article 16 et seq., and Chapter 60, Articles 1 through 8 et seq., and all Federal and State Statutes and all other laws of this State and the rules and regulations promulgated by the Alcohol Beverage Control Administration.⁸

[new-years-day-dui-crash-on-interstate-81-in-west-virginia/](#).

⁶ <https://www.wdbj7.com/content/news/One-killed-at-least-a-dozen-hurt-in-I-81-wreck-in-West-Virginia-383417931.html>.

⁷ <https://www.dcnewsnow.com/news/charles-town-detachment-of-west-virginia-state-police-leads-in-dui-arrests/> (“Police said many drunk drivers will make the short trip from bordering states to Jefferson County, where they can go to gentlemen’s clubs and the bars stay open later. . . . ‘Well over 60 percent of [DUI arrests] are from Maryland or Virginia. Some are even coming from D.C. or Pennsylvania,’ said Trooper 1st Class Timothy Perry. ‘Most of them are definitely from out-of-state.’”).

⁸ <https://abca.wv.gov/Documents/ABC%20Forms/Private-Clubs-Frat-catering-retail-license-on-premises-application-672023-FINAL.pdf>.

Among other restrictions, West Virginia law prohibits Lust from selling “any nonintoxicating beer, wine, or alcoholic liquors, for or to . . . any person who is physically incapacitated due to consumption of nonintoxicating beer, wine, or alcoholic liquor.”⁹ The Complaint alleges that Lust served Maydian “copious amounts of alcoholic beverages despite the fact that he exhibited physical signs of drunkenness and intoxication while upon the premises.”¹⁰ The conduct alleged in the complaint violated both W.Va. Code § 60-7-12(4) and the promises Lust made in order to obtain and keep its licenses to sell alcoholic beverages.

West Virginia’s strong public policies forbid the application of Maryland law in this civil action to bar a claim by the estate of a West Virginia resident killed due to the failure in West Virginia of a West Virginia licensed club to comply with West Virginia law and the promises it made to the State to obtain its license to sell alcoholic beverages in West Virginia. This Court should reverse and remand this case for discovery and trial.

ARGUMENT

The Supreme Court of Appeals recognized long ago in *Paul v. National Life*, that when the substantive law of the place of injury conflicts with the public policy of this State, *lex loci delicti* does not apply.¹¹ The single issue presented in this appeal is whether the public policies underlying West Virginia’s recognition of a cause of

⁹ W.Va. Code § 60-7-12(4).

¹⁰ App. at 17, ¶¶ 27-29.

¹¹ 177 W. Va. 427, 433, 424 S.E.2d 550, 556 (1986).

action against a West Virginia seller of alcoholic beverages who overserves a patron and who thereafter kills an innocent West Virginia resident precludes the application of Maryland law which does not recognize the claim.

A review of the instances where the Supreme Court has addressed the public policy exception to *lex loci* establishes that on the facts alleged in Petitioner's complaint, the answer is a clear yes.

I. The Circuit Court Erred in Finding the Public Policy Exception Inapplicable in this Case where Maryland Law is a Complete Bar to Tort Recovery against a Negligent Tortfeasor and West Virginia has the Most Significant Relationship to the Parties and the Controversy.

A. Tort defenses that act as a complete bar to recovery in a civil negligence action are contrary to West Virginia public policy.

The Supreme Court of Appeals first recognized and applied the public policy exception in *Paul*. There, two West Virginia residents were involved in a fatal one-car wreck in Indiana. One resident's estate then brought a wrongful death action in West Virginia against the other's estate. Under a strict application of *lex loci delicti* Indiana's automobile guest passenger statute would have precluded recovery.¹² The Court applied the public policy exception and applied West Virginia law because Indiana's bar to recovery violated West Virginia's "strong public policy . . . that persons injured by the negligence of another should be able to recover in tort."¹³ In finding that automobile guest passenger statutes of foreign jurisdictions would no

¹² 177 W.Va. at 433-34, 424 S.E.2d at 556.

¹³ 177 W.Va. at 433, 424 S.E.2d at 556.

longer be enforced in West Virginia, the Court also relied on the Legislature's implicit rejection of such statutes.¹⁴

Similarly, in *Mills v. Quality Supplier Trucking, Inc.*, a West Virginia resident brought a wrongful death action against an Ohio Defendant for a death that occurred in Maryland.¹⁵ The *Mills* Court held West Virginia law would apply to the wrongful death action because Maryland law recognizes contributory negligence which could serve as a complete bar to recovery for the West Virginia plaintiff.¹⁶ The Court relied on its reasoning in *Paul*, holding:

Concluding that the contributory negligence doctrine of Maryland contravenes the public policy of this State, we hold that West Virginia law should govern the resolution of the wrongful death issues in the case sub judice. Application of the doctrine of contributory negligence, barring a plaintiff's recovery if that plaintiff is guilty of any negligence, violates the public policy of this State; accordingly, contributory negligence laws of foreign jurisdictions will not be enforced in the courts of this State.¹⁷

In determining whether the other state's civil law violated public policy, the West Virginia decisions hold that where the tort defenses act as a complete bar to a negligence recovery, West Virginia's public policy is implicated.¹⁸ Here, the Circuit

¹⁴ *Id.*

¹⁵ 203 W. Va. 621, 510 S.E.2d 280 (1998).

¹⁶ 203 W.Va. at 624, 510 S.E.2d at 283.

¹⁷ 203 W. Va. at 624.

¹⁸ *Mills, supra*; *Paul, supra*; see also *Vass v. Volvo Trucks N. Am., Inc.*, 315 F. Supp. 2d 815, 820 (S.D. W.Va. 2004) (refusing to apply Virginia contributory negligence rules); *Woodcock v. Mylan, Inc.*, 661 F. Supp. 2d 602, 609 (S.D. W. Va. 2009) (applying West Virginia's rejection of the learned-intermediary defense on public-policy grounds in product liability claim where plaintiff injured in Alabama).

Court improperly relied on the existence of other Maryland statutory provisions addressing the responsibility of bar owners in support of its holding that Maryland law did not violate West Virginia public policy.¹⁹ Of course, the fact that Maryland, like West Virginia, has laws forbidding the service of alcoholic beverages to intoxicated individuals does not make the refusal to recognize a claim for injuries caused by a violation of these laws a violation of West Virginia public policy.

The Circuit Court did not cite any decision from West Virginia using a similar analysis. West Virginia courts do not look at whether there are non-tort based civil or criminal regulatory provisions that would make the tortfeasor's conduct illegal outside the civil context. Indeed, as discussed below, even the cases where West Virginia courts reject application of the public policy exception, they do so based on factors other than the existence of other state laws that show some bar on the underlying conduct.²⁰

B. West Virginia has a significant interest in applying its law to conduct occurring in West Virginia by a West Virginia corporation which killed a West Virginia resident.

In *Paul*, the Court, while applying West Virginia law, was concerned over forum shopping:

Although we intended this to be a rule of general application, we do not intend it as an invitation to flagrant forum shopping. For example, were a resident of a guest statute jurisdiction to sue another resident of a guest statute jurisdiction over an accident occurring in a guest statute jurisdiction, the simple fact that the plaintiff was able to serve process on the defendant within our State borders would not compel us to resist application of any relevant guest statute. This State

¹⁹ App. at pp. 183-84.

²⁰ See *infra* Part I(B).

must have some connection with the controversy above and beyond mere service of process before the rule we announce today will be applied. In other words, venue must be proper under some provision *other than W.Va. Code 56-1-1(a)(4)* [1986].²¹

Subsequent decisions have made it clear that a connection to West Virginia is required for the application of the public policy exception. Indeed, the cases where the Supreme Court of Appeals has rejected the application of the public policy exception to the *lex loci* rule have all involved parties and controversies that were devoid of any West Virginia connection.

For example, in *State ex rel. Am. Elec. Power Co. v. Swope*, the Court applied Ohio's Mixed Dust Statute²² which would bar plaintiffs' claims for cancer and/or other health problems from their exposure to fly ash containing a variety of heavy metals such as beryllium and silica, among others.²³ In spite of the bar, the Supreme Court rejected the application of West Virginia law holding:

Critically, in the set of circumstances before us, none of the twelve NWDC plaintiffs were citizens or residents of West Virginia at the time of their alleged exposures, and none of their exposures occurred in this State. Thus, although West Virginia has a strong public policy that persons injured by the negligence of another should be able to recover in tort, in this particular case, where these twelve plaintiffs lack a sufficient connection with the state of West Virginia, we are not strongly compelled to resist application of Ohio's Mixed Dust Statute. The MLP committed clear error in not following this Court's holding in *Paul*.²⁴

²¹ 177 W. Va. at 434, n.14, 352 S.E.2d at 556, n.14.

²² Ohio Rev. Code §§ 2307.84 through .902 (which provides that premises owners are not liable for off-premises mixed dust exposure).

²³ *State ex rel. Am. Elec. Power Co. v. Swope*, 239 W. Va. 470, 473, 801 S.E.2d 485, 488 (2017).

²⁴ 239 W. Va. 470, 479, 801 S.E.2d 485, 494 (2017).

In every case where the public policy exception was applied, however, there were significant connections to West Virginia. In *Paul*, while the negligent conduct occurred in Indiana, both the automobile passenger and the allegedly negligent driver were West Virginia residents.²⁵ In *Mills*, while the negligent conduct (the hiring of the driver) by an Ohio corporation occurred in Ohio, the plaintiff's decedent was a West Virginia resident.²⁶ In *Vass*, while the conduct and the injury occurred in Virginia, the plaintiff's decedent was a West Virginia resident.²⁷

Indeed, at least one Court has found the citizenship of the defendant is a dispositive factor:

Although Mr. Woodcock was not a West Virginia resident, Mylan is. As a West Virginia corporation, Mylan has taken advantage of the laws of West Virginia, and it cannot now complain that it is being held to their consequences. Presumably, Mylan has developed its business around an expectation that, as a West Virginia corporation, it will be subject to West Virginia tort law. . . .

In contrast [to *Paul's* caution], West Virginia's interest in this case extends beyond service of process within the state. Mylan is a West Virginia corporation subject to general personal jurisdiction here. West Virginia thus has an interest in this litigation beyond the attenuated circumstance addressed in *Paul*.²⁸

Basing the public policy determination in the *lex loci* context based on the reasonable expectations of the parties is also consistent with the application of the public policy exception in contractual insurance coverage cases:

²⁵ 177 W.Va. at 428, 352 S.E.2d at 550.

²⁶ 203 W.Va. at 622, 510 S.E.2d at 281.

²⁷ 315 F. Supp. 2d at 815.

²⁸ *Woodcock*, 661 F. Supp. 2d at 602, 608-09.

We found . . . that the Ohio plaintiffs were bound by the Ohio law as to the interpretation of their underinsured motorist coverage since most of the substantial contacts existed in Ohio with regard to their insurance coverage. We pointed out that it was not illogical to assume that a resident of Ohio, where the vehicle is garaged and where the insurance agent is located and the policy issued, might conclude that the Ohio law covered the interpretation of the policy coverage. Certainly, such an assumption would be more logical than the counter-assumption that the policyholder would believe the policy coverage would be determined by the laws of the state where the accident occurred.²⁹

Here, the Plaintiff's decedent and Defendant Lust were both West Virginia citizens, and Lust's conduct was governed by West Virginia law. It is both logical and fair to assume that when a West Virginia corporation breaches a duty in West Virginia that results in a death of a West Virginia resident, West Virginia law will govern the civil action.

C. Public policy requires corporations doing business in West Virginia to keep the promises they make to the State.

Public policy considerations also require parties to live up to the commitments they make to the State. In *Joy Tech. v. Liberty Mut. Ins. Co.*,³⁰ our Supreme Court noted:

The public policy of the State of West Virginia is that the law of the State should be administered in such a way as to insure that corporations which seek to do business in West Virginia act in a manner consistent with their studied, unambiguous, official, affirmative representations to the State, its subdivisions, or its regulatory bodies.³¹

²⁹ *Clark v. Rockwell*, 190 W. Va. 49, 53, 435 S.E.2d 664, 668 (1993) (citing *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W. Va. 329, 424 S.E.2d 256 (1992)).

³⁰ 187 W. Va. 742, 421 S.E.2d 493 (1992).

³¹ *Id.* at syl. pt. 2.

In *Joy*, an insurer made representations to the State that the changes it was making to its insurance policies were not substantive. The *Joy* Court enforced those promises on public policy grounds and precluded the insurer from narrowing coverage based on the new language.³²

Here, in seeking the permission of the State to sell alcoholic beverages, Respondent Lust, promised to “comply at all times and observe all the provisions of West Virginia . . . Chapter 60, Articles 1 through 8 et seq., and all Federal and State Statutes and all other laws of this State.”³³ The laws of this State include the prohibition against selling “any nonintoxicating beer, wine, or alcoholic liquors, for or to . . . any person who is physically incapacitated due to consumption of nonintoxicating beer, wine, or alcoholic liquor.”³⁴ The State’s laws also include West Virginia’s common law dram shop liability providing a “tort action against a licensee for personal injuries caused by the licensee’s selling alcohol to anyone who is physically incapacitated from drinking.”³⁵ Public policy forbids allowing Lust to escape both those promises and the consequences of failing to keep them – including tort liability.

³² 187 W. Va. 746, 421 S.E.2d 497.

³³ *See, supra* n. 8.

³⁴ W.Va. Code § 60-7-12(4).

³⁵ Syl. pt. 1, *Bailey v. Black*, 183 W. Va. 74, 394 S.E.2d 58 (1990).

II. In Interstate Dram Shop Cases, Courts in Other Jurisdictions Commonly Apply the Law of the State Where the Alcohol Vendor Resides Rather than the State Where the Accident Occurs.

Finally, applying West Virginia's dram shop liability laws to alcohol sales occurring in West Virginia is consistent with the result reached in other states. While the various states apply a number of choice of law tests, the result is that courts commonly apply the law of the alcohol vendor's state.

For example, the District of Columbia has refused to apply the same Maryland dram shop law applied by the Circuit Court.³⁶ The decision was rendered in a lawsuit brought in the District of Columbia by District residents against a District bar for injuries resulting from a car wreck in Maryland.³⁷ While the District uses a governmental interest analysis for choice of law questions, the Court of Appeals found a "false conflict" which "occurs when the policy of one state would be advanced by application of its law, while that of the other state would not be advanced by application of its law."³⁸ In such a situation, the law of the interested jurisdiction prevails.³⁹ The Court of Appeals reasoned that Maryland did not have an interest in regulating the conduct of District bars or insulating them from civil liability.⁴⁰

In *Schmidt v. Driscoll Hotel, Inc.*, a Minnesota plaintiff sued a Minnesota bar owner, who violated Minnesota's dram-shop statute by selling liquor to an intoxicated

³⁶ *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, 534 A.2d 1268 (D.C. 1987).

³⁷ *Id.* at 1269.

³⁸ *Id.* at 1270.

³⁹ *Id.* at 1271.

⁴⁰ *Id.*

Minnesota resident.⁴¹ This patron subsequently injured the plaintiff in a car wreck in Wisconsin. There was no equivalent dram-shop statute in Wisconsin. The Minnesota Supreme Court held that the parties' significant contacts with Minnesota (all parties were Minnesota residents; defendant bar owner was licensed under Minnesota law) coupled with Wisconsin's lack of interest in preventing foreign violations of liquor laws, justified applying Minnesota law under the "principles of equity and justice."⁴²

In *Pardey v. Boulevard Billiard Club*, a Massachusetts resident sued a Rhode Island tavern for injuries sustained in a car accident in Massachusetts.⁴³ The Rhode Island court abandoned *lex loci delicti* in favor of an interest-based approach and applied Rhode Island's Dram Shop Act to govern the conduct of the Rhode Island tavern. The Court reasoned: "[i]n dram shop actions arising out of automobile accidents, the place where the liquor was unlawfully sold is of greater significance than the location of the accident because, when an intoxicated person is driving, the actual site of the crash is largely fortuitous."⁴⁴

In *Trapp v. 4-10 Inv. Corp.*, a Minnesota resident brought suit in North Dakota against a North Dakota liquor retailer under the North Dakota Dram Shop Act for injuries from a car wreck in Minnesota.⁴⁵ Although Minnesota also had a Dram Shop

⁴¹ 82 N.W.2d 365 (Minn. 1957).

⁴² *Id.* at 380.

⁴³ 518 A.2d 1349 (R.I. 1986).

⁴⁴ 518 A.2d at 1352.

⁴⁵ 424 F.2d 1261 (8th Cir. 1970).

Act, the Court deviated from the place of wrong rule to apply North Dakota law holding that the remedial and regulatory nature of the North Dakota Dram Shop Act is best effectuated if applied to the facts of the case because North Dakota had the most significant interest in seeing its Dram Shop Act applied to North Dakota retailers.

In *Banks v. Ribco, Inc.*, an Iowa resident sued an Illinois bar for injuries sustained from a wreck in Iowa under the Iowa Dram Shop Act.⁴⁶ The Court, however, applied Illinois law because the most “critical element” of the tort was the sale of alcohol that occurred in Illinois. The Illinois Dram Shop Act explicitly limited liability to those injuries that occurred within the state’s borders even though Iowa’s Dram Shop Act did not have that limitation.⁴⁷ The Court gave little weight to the location of the physical injury (the wreck) compared to the wrongdoing upon which liability is premised (the unlawful sale).⁴⁸

In *Howe v. Stuart Amusement Corp.*, a Massachusetts plaintiff sued a Massachusetts defendant in Connecticut under Massachusetts Dram Shop Act for injuries sustained in a car accident in Connecticut.⁴⁹ The Court applied Massachusetts law under the “significant relationship test” reasoning:

This is a dispute between three domiciliaries of Massachusetts and two corporate citizens of Massachusetts. Massachusetts has a strong interest in regulating the actionable conduct in this case, and in

⁴⁶ 933 N.E.2d 867 (Ill. App. 3d. 2010).

⁴⁷ *Id.* at 649.

⁴⁸ *Id.* at 650-51.

⁴⁹ 1991 Conn. Super. LEXIS 3008 (1991).

providing rules for its purveyors of alcoholic beverages, from whose premises each patron must of necessity traverse its roads.⁵⁰

While there is no uniform approach to the question of which state's law applies to a dram shop claim to when the patron was served in one state and caused an accident in another state, if the offending liquor seller is generally subject to dram shop liability in its home state, liability will be imposed when the accident occurs in another state. The analyses differ based on the choice of law tests used, but all consider the relationship of the parties to the jurisdictions and the jurisdictions' interest in the case.⁵¹ These courts reasoned that the primary wrong was the unlawful sale of alcohol and that states had an interest in regulating alcohol distributors within their borders.⁵²

Notably, similar reasoning has been successfully used to argue alcohol distributors that are not subject to dram shop liability in their home state should not become so liable when an accident occurs in a state that happens impose dram shop liability. In *Thoring v. Bottonsek*, the North Dakota Supreme Court refused to apply the State's dram shop statute when a North Dakota plaintiff brought suit against a Montana bar for overserving a North Dakota patron who then returned to North Dakota and wrecked into the plaintiff because North Dakota's law did not govern Montana businesses.⁵³

⁵⁰ *Id.* at p*14.

⁵¹ *Rong Yao Zhou, supra; Banks, supra.*

⁵² *Schmidt, supra; Trapp supra.*

⁵³ 350 N.W.2d 586 (N.D. 1984).

Thus, regardless of the which choice of law test is applicable, courts will commonly apply the dram shop laws of alcohol vendor's state. This Court should do so here.

CONCLUSION

Where a West Virginia bar overserves a patron who kills a West Virginia resident, West Virginia dram shop liability should be imposed on the West Virginia business even if the accident occurs over the border in another state.

WEST VIRGINIA ASSOCIATION
FOR JUSTICE

By Counsel

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Defendants Below, Respondents.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 30th day of October, 2023, the foregoing Amicus Curiae Brief on Behalf of the West Virginia Association for Justice in Support of Petitioner Barry Barr was served using the File & ServeXpress system, which will send notification of such filing to all counsel of record.

/s Anthony J. Majestro
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