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Vendor Liability for the Sale of Alcohol to an Underage Person: The Untoward Consequences of Estate of Mullis v. Monroe Oil Co.

Angela M. Easley

NOTE

VENDOR LIABILITY FOR THE SALE OF ALCOHOL TO AN UNDERAGE PERSON: THE UNTOWARD CONSEQUENCES OF *Estate of Mullis v. Monroe Oil Co.*

"I had thought it known to all humankind that when one provides alcoholic beverages to a minor, 'the unreasonable risk of harm not only to the minor . . . but also to members of the traveling public may readily be recognized and foreseen."[1]

INTRODUCTION

Otis Blount, age twenty, Dwaine Darby, age nineteen, Melissa Mullis, age fifteen, and Patricia Teel, age eighteen, began the night of April 30, 1993 at a local teen nightclub in Monroe, North Carolina.[2] The four individuals planned to meet each other and several other friends at the nightclub between 7:00 and 8:00 p.m.[3] Before arriving at the nightclub, Blount purchased liquor for himself and two other individuals at the City of Monroe Board of Alcoholic Beverage Control ("Monroe ABC").[4] Although Blount went to the nightclub to meet the other teenagers, he returned to the same Monroe ABC store during the evening to purchase more liquor for himself and two other individuals.[5] Later that evening, Blount left the nightclub once again.[6] This time he purchased

1. Hart v. Ivey, 332 N.C. 299, 307, 420 S.E.2d 174, 179 (1992) (Mitchell, J., concurring) (citing Rappaport v. Nichols, 31 N.J. 188, 202, 156 A.2d 1, 8 (1959)).

2. Estate of Mullis v. Monroe Oil Co., 349 N.C. 196, 197, 505 S.E.2d 131, 132 (1998). The facts of this case are also set out in Estate of Mullis v. Monroe Oil Co., 127 N.C. App. 277, 488 S.E.2d 830 (1997) and in the companion case of Estate of Darby v. Monroe Oil Co., 127 N.C. App. 301, 488 S.E.2d 828 (1997).

3. *Id.*

4. *Id.*

5. *Id.* The companion case of Estate of Darby v. Monroe Oil Co. states that Blount purchased liquor from Monroe ABC on the evening of April 30, 1993 on "at least" two occasions. *Darby*, 127 N.C. App. at 302, 488 S.E.2d at 828.

6. *Id. Darby* notes that Blount also left the nightclub on another occasion. On this occasion, Blount drove Darby in Darby's automobile wildly through

beer from a convenience store owned by Monroe Oil Company, Inc. ("Monroe Oil").[7]

Around 11:00 p.m., Blount, Darby, Mullis, and Teel decided to leave the nightclub and go to a private party.[8] Darby drove the individuals in his automobile.[9] On the way to the party, Darby stopped at the convenience store owned by Monroe Oil.[10] Here, Blount bought beer at the store for a second time that night and consumed the beer in the parking lot.[11] Two other carloads of teenagers from the nightclub had stopped at the convenience store along with Blount, Darby, Mullis, and Teel.[12] After consuming the beer, Blount decided to drive Darby's automobile to the party.[13] Shortly after midnight, Blount drove the automobile off a road and into a tree.[14] The automobile caught fire tragically killing Blount and the three teenage occupants.[15] Blount's blood alcohol level at the time of the accident was 0.13.[16] An investigation of the accident indicated that Blount's alcohol use caused the accident.[17]

The administrator of the estate of Melissa Mullis sued Monroe ABC and Monroe Oil in state court for wrongful death.[18] The law suit alleged that Defendants were negligent for selling

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Union County, North Carolina. Blount traveled at high speeds, careened off the road twice, and spun into a ditch in search of persons who scratched the initial "DK" into Darby's automobile. Blount and Darby returned to the nightclub when they could not find the person who scratched Darby's automobile. *Darby*, 127 N.C. App. at 302, 488 S.E.2d at 828.

7. *Id.*

8. *Mullis*, 349 N.c. at 197, 505 S.E.2d at 132. According to *Darby,* Darby, Blount, and other teenagers were asked to leave the nightclub. *Darby*, 127 N.C. App. at 302, 488 S.E.2d at 828.

9. *Id.*

10. *Id.* at 197-198, 505 S.E.2d at 133. .

11. *Id.* at 198, 505 S.E.2d at 133.

12. *Id.*

13. *Id.* Darby sat in the front passenger seat while Mullis and Teel sat in the back passenger seat. *Id.*

14. *Mullis*, 349 N.C. at 198, 505 S.E.2d at 133.

15. *Id.*

16. *Id.* The legal limit of alcohol content under North Carolina's impaired-driving statute at the time of the accident was 0.10. *Id.* On October 1, 1993, the legal limit of alcohol content under North Carolina's impaired-driving statute was amended to 0.08. *Id.*

17. *Id.*

18. *Id.* Plaintiff brought the suit under North Carolina's Wrongful Death Statute, N.C. GEN. STAT. §§ 28A-18-1 to –18-8, which deals with wrongful death and the survival of actions. *Id.*

alcohol to an underage person[19] under N.C. GEN. STAT. sections 18B-120 to -129, known as the Dram Shop Act.[20] Defendants moved to dismiss the complaint on the basis that Plaintiff had failed to file the complaint within the applicable statute of limitations required by the Act.[21] Plaintiff then amended the complaint alleging both a negligence per se and a common law negligence claim.[22] In regards to the negligence per se claim, Plaintiff alleged that Defendants were in violation of N.C. GEN. STAT. section 18B-102, which prohibits the illegal sale of alcohol, and section 18B-302, which prohibits the sale of alcohol to underage persons.[23] As for the common law negligence claim, Plaintiff alleged that Defendants were liable for the negligent sale of alcohol to an underage person.[24]

The trial court in Union County, North Carolina granted summary judgment in favor of Defendants on May 10, 1996.[25] The North Carolina Court of Appeals affirmed the trial court's decision holding that Plaintiff's sole remedy was under the Dram Shop Act.[26] In its opinion, the court of appeals analyzed the requirements of a wrongful death action before confronting Plaintiff's negligence per se and common law negligence claims.[27] It determined that to maintain a wrongful death action, the estate of Mullis had to show that Melissa Mullis, had she lived, would have had

19. "Underage person" is defined as "a person who is less than the age legally required for purchase of the alcoholic beverage in question." N.C. GEN. STAT. § 18B-120(3) (1997). *See also* Clark v. Inn West, 324 N.C. 415, 418, 379 S.E.2d 23, 24 (1989). The legal age required for purchase of malt beverage, unfortified wine, fortified wine, spirituous liquor, or mixed beverages is twenty-one. N.C. GEN .STAT. § 18B-302(a) (1997). *See also Clark*, 324 N.C. at 418, 379 S.E.2d at 24.

20. *Mullis*, 349 N.C. at 198, 505 S.E.2d at 133. See section II for a discussion of North Carolina's Dram Shop Act.

21. *Id.* There is a one year statute of limitations period under North Carolina's Dram Shop Act. N.C. GEN. STAT. § 18B-126 (1997). *See also* N.C. GEN .STAT. § 1-54(7a) (1997).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 199, 505 S.E.2d at 133.

26. Estate of Mullis v. Monroe Oil Co., 127 N.C. App. 277, 281, 488 S.E.2d 830, 833 (1997). Unfortunately Plaintiff was barred from recovery under this Act due to the statue of limitations. *Id.*

27. *Id.* at 279, 488 S.E.2d at 831.

a negligence per se cause of action or a negligence action under common law against Monroe Oil and Monroe ABC.[28]

With this principle in mind, the court addressed for the first time the question of "whether a plaintiff may maintain a wrongful death action against a vendor on the basis of the vendor's unlawful sale of alcohol to an underage person in violation of section 18B-102 in general, and more specifically, section 18B-302."[29] In other words, the court looked at whether Plaintiff may assert a negligence per se action against Defendants for selling alcohol to an underage person. The court quickly determined that Melissa Mullis could not have maintained a negligence per se action against Defendants had she lived.[30] Relying on a North Carolina Supreme Court decision, *Hart v. Ivey*,[31] the court stated that section 18B-302 was not a public safety statute, because the purpose behind the statute was to restrict the consumption of alcohol by minors rather than to protect the driving public from intoxicated drivers.[32] Therefore, it ruled that violation of the statute was not negligence per se.[33]

Next, the court of appeals looked to Plaintiff's common law negligence claim.[34] Here again, it determined that Melissa Mullis could not have maintained a common law negligence action against Defendants had she lived.[35] Relying on *Hart v. Ivey*, the court stated that North Carolina courts "have not articulated any common law duty existing between a third-party furnishing alcohol to underage persons and the public at large."[36] Thus, Defendants had no duty requiring them to refrain from serving alcohol to underage patrons. Although the court recognized a common law duty requiring vendors to refrain from serving alcoholic beverages to a person they know or should know is intoxicated or under the

28. *Id.* at 279, 488 S.E.2d at 831-32.

29. *Id.* at 278, 488 S.E.2d at 831.

30. *Id.* at 279, 488 S.E.2d at 832.

31. 332 N.C. 299, 420 S.E.2d 174 (1992).

32. *Mullis*, 127 N.C. App. at 279, 488 S.E.2d at 832.

33. *Id. See* Hart v. Ivey, 102 N.C. App. 583, 589, 403 S.E.2d 914, 919 (1991) "It is well-settled law in this jurisdiction that when a statute imposes upon a person a specific duty for the protection of others, that a violation of such statute is negligence per se." *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 280, 488 S.E.2d at 832.

influence of alcohol, it noted that Plaintiff did not allege a violation of this common law duty.[37]

The North Carolina Supreme Court affirmed the lower court decisions holding that Plaintiff could neither maintain a negligence per se action nor recover from Defendants under a theory of common law negligence.[38] Like the court of appeals, the supreme court summarily dismissed Plaintiff's negligence per se claim stating that a violation of section 18B-302 was not negligence per se.[39] Reaffirming its earlier opinion in *Hart v. Ivey*, the court held that the statue was not negligence per se, because it was not a public safety statute which imposed a duty for the protection of the public.[40] Rather, its purpose was to restrict the consumption of alcohol by minors.[41]

As for Plaintiff's common law negligence claim, the supreme court departed from the reasoning of the court of appeals by allowing "'established negligence principles' to be applied to the facts of plaintiff's case."[42] Therefore, it concluded that a common law negligence action could be maintained against a commercial vendor based on the sale of alcohol to an underage person.[43] However, the court held that this Plaintiff was not able to maintain a common law negligence action against Defendants, because Plaintiff did not establish the four elements of a common law negligence suit: duty, breach of duty, proximate cause, and damages.[44] Particularly, the court looked to the duty element of the common law negligence action.[45] It stated that duty is triggered "where the risk [of danger of injury to a person] is both unreasonable and foreseeable."[46] Here, evidence that Defendants sold alcohol to Blount who was later discovered to be underage, "without an offer of some additional factor or factors which would put the vendor on notice that harm was foreseeable, [was] insufficient to establish the duty element and thus maintain a common law negligence suit."[47]

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37. *Id.*
38. *Mullis*, 349 N.C. at 200, 505 S.E.2d at 133.
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.* at 202, 505 S.E.2d at 135.
43. *Id.*
44. at 204, 505 S.E.2d at 136.
45. *Id.*
46. *Id.* at 205, 505 S.E.2d at 137.
47. *Id.* at 206, 505 S.E.2d at 138.

In concluding that Plaintiff failed to establish the duty element of a common law negligence claim, the court relied on evidence such as statements from teenage friends who saw Blount on the night of April 30, 1993.[48] For example, the court quoted one teenager as saying, ". . . the only way to tell if Blount was intoxicated was 'if you knew him' . . . '[i]f you didn't know him, he would be sober to you.'"[49] Because this evidence showed that from the vendors point of view, the transactions between Defendants and Blount were ordinary transactions for the sale of alcohol, the court determined that there was no indication that foreseeable harm would occur.[50] Thus, there was no duty and no action for common law negligence.

This note begins with a discussion of vendor liability for the sale of alcohol to underage persons, specifically liability under a dram shop act, and liability under negligence per se and common law negligence theories. Part II examines underage age drinking and public safety in North Carolina and on a national scale. Finally, Part III addresses the North Carolina Supreme Court's decision in *Estate of Mullis v. Monroe Oil Co.* This article contends that Defendants clearly had a duty to the people who travel on public highways not to serve alcohol to an underage individual. Therefore, N.C. GEN. STAT. section 18B-302, which prohibits the sale of alcohol to underage persons, should be regarded as a public safety statue, violation of which constitutes negligence per se. It further argues that Defendants should have recognized that Mullis and others might be injured by their conduct. The supreme court merely misinterpreted the element of duty required to maintain a common law negligence action and failed to look at the evidence and circumstances surrounding the sales to Blount as a whole when it determined liability under a theory of common law negligence.

I. VENDOR LIABILITY FOR THE SALE OF ALCOHOL TO UNDERAGE PERSONS

At common law, it was not a tort to either sell or give intoxicating liquor to an ordinary able-bodied person.[51] Therefore, a

48. *Id.* at 204, 505 S.E.2d at 136.

49. *Id.*

50. *Mullis*, 349 N.C. at 206, 505 S.E.2d at 137.

51. Tobias v. Sports Club, Inc., 323 S.C. 345, 348 (1996); Estate of Mullis v. Monroe Oil Co., 127 N.C. App. 277, 280, 488 S.E.2d 830, 832 (1997); Hutchens v. Hankins, 63 N.C. App. 1, 5, 303 S.E.2d 584, 587 (1996); George B. Apter, *Tort*

supplier of alcohol could not be held liable for the injury or death of a person who consumed the alcoholic beverage, nor could the supplier be held liable for the injury or death caused to a third party by the acts of an intoxicated patron.[52] There were several

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Law - Bertelmann v. TAAS Associates: Limits on Dram Shop Liability; Barring Recovery of Bar Patrons, Their Estates and Survivors, 11 U. HAW. L. REV. 277, 280 (1989); Steven P. Callahan, *Tort Liability for Suppliers of Alcohol*, 44 MO. L. REV. 757, 758 (1979); Daniel R. Conrad, *Intoxicating Liquors - Persons Liable: North Dakota Extends Statutory Dram Shop Liability to Social Hosts*, 71 N.D. L. REV. 743, 745 (1995); Jon R. Erickson and Donna Harper Hamilton, *Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated*, 19 WAKE FOREST L. REV. 1013, 1015 (1983); Robert J. Evola, *The Legislative Preemption of Social Host Liability in Illinois: An Analysis of Charles v. Seigried*, 21 S. Ill. U. L. J. 635, 636 (1997); Diane Schmauder Kane, *Social Host's Liability for Death or Injuries Incurred by Person to Whom Alcohol Was Served*, 54 A.L.R. 5th 313 (1997); Madeleine E. Kelly, *Liquor Liability and Blame-Shifting Defenses: Do They Mix?*, 69 MARQ. L. REV. 217, 217 (1986); Julius F. Lang, Jr. and John J. McGrath, *Third Party Liability for Drunken Driving: When "One for the Road: Becomes One for the Courts*, 29 VILL. L. REV. 1119, 1121 (1983-84); Jane Leopold-Leventhal, *Pennsylvania Broadens Commercial Licensee Liquor Liability for the Service of Alcoholic Beverages to Minors: Matthews v. Konieczny*, 61 TEMP. L. REV. 643, 649 (1987); Katherine M. Mahoney, *Responsible Service of Alcohol: A Way to Reduce Injuries and Protect Against Liability*, 19 GOLDEN GATE U. L. REV. 279, 281 (1989); Dustin Blake McDaniel, *Torts: Dramshop Liability in Arkansas: Illegal Sales of Liquor to Minors May Expose Alcohol Vendors to Expensive Liability*, 20 U. ARK. LITTLE ROCK L. J. 985, 987 (1998); Edward L. Raymond, Jr., *Social Host's Liability for Injuries Incurred by Third Parties As a Result of Intoxicated Guest's Negligence*, 62 A.L.R. 4th 16 (1989); Andrew D. Shore, *Social Host Liability in North Carolina: Did the Supreme Court Get It Right in Hart v. Ivey*, 71 N.C. L. REV. 2149, 2152 (1993); Joel E. Smith, *Common-Law Right of Action for Damages Sustained By Plaintiff in Consequence of Sale or Gift of Intoxicating Liquor or Habit-Forming Drug to Another*, 97 A.L.R. 3d 528 (1980); Daphne D. Sipes, *The Emergence of Civil Liability for Dispensing Alcohol: A Comparative Study*, 8 REV. LITIG. 1, 3 (1988); and Mark L. Weber, *Reyes v. Kuboyama: Vendor Liability for the Sale of Intoxicating Liquor to Minors Under a Common Law Negligence Theory*, 17 U. HAW. L. REV. 355, 358 (1995). The common law rule was "succinctly stated" in a frequently cited passage from *State for Use of* Joyce v. Hatfield, 197 Md. 249, 254, 78 A.2d 754, 756 (Md. App. 1951): "Apart from statute, the common law knows no right of action against a seller of intoxicating liquors, as such, for 'causing' intoxication of the person whose negligent or willful wrong has caused injury. Human beings, drunk or sober, are responsible for their own torts. The law (apart from statute) recognizes no relation of proximate cause between the sale of liquor and a tort committed by a buyer who has drunk the liquor." *Hutchens*, 63 N.C. App. at 7, 303 S.E.2d at 588.

52. *Tobias*, 323 S.C. at 348; *Mullis*, 127 N.C. App. at 280, 488 S.E.2d at 832; *Hutchens*, 63 N.C. App. at 5, 303 S.E.2d at 584; Apter, *supra* note 51 at 281; Callahan, *supra* note 51 at 758; Conrad, *supra* note 51 at 745; Erickson, *supra* note 51 at 1015; Evola, *supra* note 51 at 636; Kane, *supra* note 51; Kelly, *supra*

rationales behind the old common law rule. The one most commonly cited was that consuming the liquor, not supplying it was the proximate cause of injury.[53] Another theory was that even if the sale or furnishing of liquor was found to have caused a patron's intoxication, any subsequent injury to a third party was deemed an unforeseeable consequence of the sale of the alcoholic beverage.[54] A third justification for the common law rule was that the business of selling liquor was legitimate, thus the purchaser was held to be responsible.[55] Finally, it was thought that decisions regarding liability should be made by the legislature not the courts.[56]

Today, however, most jurisdictions have rejected the common law rule of nonliability.[57] Many states have enacted dram shop acts or civil damages acts which impose liability on vendors under various circumstances.[58] Other states that have not passed dram

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note 51 at 217; Lang, *supra* note 51 at 1121; Leopold-Leventhal, *supra* note 51 at 649; Mahoney, *supra* note 51 at 281; McDaniel, *supra* note 51 at 987; Raymond, *supra* note 51; Shore, *supra* note 51 at 2152; Smith, *supra* note 51; Sipes, *supra* note 51 at 3; and Weber, *supra* note 51 at 358.

53. *Tobias*, 323 S.C. at 348; *Hutchens*, 63 N.C. App. at 5, 303 S.E.2d at 584; Callahan, *supra* note 51 at 758; Conrad, *supra* note 51 at 745; Erickson, *supra* note 51 at 1015; Evola, *supra* note 51 at 636; Kane, *supra* note 51; Kelly, *supra* note 51 at 217; Lang, *supra* note 51 at 1121; Leopold-Leventhal, *supra* note 51 at 649; Mahoney, *supra* note 51 at 281; McDaniel, *supra* note 51 at 987; Raymond, *supra* note 51; Shore, *supra* note 51 at 2152; Smith, *supra* note 51; Sipes, *supra* note 51 at 3; and Weber, *supra* note 51 at 358.

54. *Hutchens*, 63 N.C. App. at 7, 303 S.E.2d at 588; and Sipes, *supra* note 51 at 3.

55. *Hutchens*, 63 N.C App. at 7, 303 S.E.2d at 588-89.

56. *Id.* at 7-8, 303 S.E.2d at 589; and Shore, *supra* note 51 at 2153.

57. *Tobias*, 323 S.C. at 348; *Hutchens*, 63 N.C. App. at 7-8, 303 S.E.2d at 588-89; Apter, *supra* note 51 at 282; Callahan, *supra* note 51 at 758; Conrad, *supra* note 51 at 745; Erickson, *supra* note 51 at 1015; Evola, *supra* note 51 at 637; Kane, *supra* note 51; Kelly, *supra* note 51 at 217; Lang, *supra* note 51 at 1121; Leopold-Leventhal, *supra* note 51 at 649; Mahoney, *supra* note 51 at 281-82; McDaniel, *supra* note 51 at 988; Raymond, *supra* note 51; Shore, *supra* note 51 at 2152; Smith, *supra* note 51; and Weber, *supra* note 51 at 358-59. The two leading cases rejecting the common law rule of nonliability are Waynick v. Chicago's Last Dep't Store, 269 F.2d 322 (8th Cir. 1959) and Rappaport v. Nichols, 31 N.J. 188, 156 A.2d 1 (1959). *See Hutchens*, 63 N.C. App. at 9, 303 S.E.2d at 590; and Sipes, *supra* note 51 at 6.

58. *Tobias*, 323 S.C. at 348-49 (citing Ala. Code § 6-5-71 (1993); ALASKA STAT. § 04.21.020 (1994); ARIZ. REV. STAT. ANN. § 4-311 (West 1995); COLO. REV. STAT. §§ 12-47-128, 12-46-112.5 (1991); CONN. GEN. STAT. ANN. § 30-102 (West 1990); FLA. STAT. ANN. § 768.125 (West 1986); GA. CODE ANN. §§ 51-1-18 to –40 (Supp. 1993); IDAHO CODE § 23-808 (1995); 43 ILL. COMP. STAT. 135 (West 1992); IND.

shop legislation impose liability under common law negligence principles or alcohol beverage control statutes.[59]

A. *Dram Shop Liability*

In the mid-1800s, many states enacted civil damage statutes called dram shop acts.[60] The acts imposed strict liability on commercial vendors for injuries to third parties caused by intoxicated patrons.[61] Although many of these states repealed their dram shop acts after the end of Prohibition in 1933, several states began to reenact dram shop acts in the 1970s.[62] By 1988, thirty-seven state legislatures had enacted some type of dram shop act.[63] The

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CODE ANN. § 7.1-5-10-15.5 (Burns Supp. 1996); IOWA CODE ANN. § 123.92 (West Supp. 1996); LA. REV. STAT.ANN. § 9:2800.1 (West 1991); ME. REV. STAT. ANN. tit. 28- A, § 2504 (West 1988); MICH. COMP. LAWS ANN. § 436.22 (West 1995); MINN. STAT. ANN. § 340A-801 (West 1990); MO. ANN. STAT. § 537.053 (West 1988); MONT. CODE ANN. § 27-1-710 (Smith 1995); N.H. REV. STAT. ANN. §§ 507-F:1 to –8 (Supp. 1995); N.J. STAT. ANN. § 2A:22A-1 to –7 (West 1987); N.M. STAT. ANN. § 41-11-1 (Michie 1996); N.Y. GEN. OBLIG. LAW § 11-101 (McKinney 1989); N.C. GEN. STAT. § 18B-121 (1995); N.D. CENT. CODE § 5-01-06.1 (1987); OHIO REV. CODE ANN. § 4399.01 to .99 (Anderson 1989); OR. REV. STAT. § 30.950 (1988); R.I. GEN. LAWS §§ 3-14-1 to –15 (1987); TENN. CODE ANN. § 57-10-102 (1989); Tex.Alco.Bev.Code Ann. §§ 2.01 to .03 (West 1995); Utah Code Ann. § 32A-14-101 (1994); VT. STAT. ANN. tit. 7, § 501 (1988); WYO. STAT. § 12-5-502 (Supp. 1995)); *Hutchens*, 63 N.C. App. at 6, 303 S.E.2d at 588; Apter, *supra* note 1 at 282; Callahan, *supra* note 51 at 758-59; Conrad, *supra* note 51 at 746; Erickson, *supra* note 51 at 1015; Evola, *supra* note 51 at 637; Kane, *supra* note 51; Kelly, *supra* note 51 at 218; Lang, *supra* note 51 at 1122; Leopold-Leventhal, *supra* note 51 at 649; Mahoney, *supra* note 51 at 281-82; McDaniel, *supra* note 51 at 988; Raymond, *supra* note 51; Shore, *supra* note 51 at 2153; Smith, *supra* note 51; Sipes, *supra* note 51 at 4-6 (noting that 37 states have enacted some form of a dram shop statute, including: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin, and Wyoming); and Weber, *supra* note 51 at 358-59.

59. *Tobias*, 323 S.C. at 348-49; *Hutchens*, 63 N.C. App. at 8-9, 303 S.E.2d at 589; Apter, *supra* note 51 at 282; Callahan, *supra* note 51 at 758-59; Conrad, *supra* note 51 at 746-47; Erickson, *supra* note 51 at 1018-24; Kelly, *supra* note 51 at 218; Lang, *supra* note 51 at 1122; McDaniel, *supra* note 51 at 989-91; Shore, *supra* note 51 at 2153; Smith, *supra* note 51; Sipes, *supra* note 51 at 6-8; and Weber, *supra* note 51 at 358-59.

60. Sipes, supra note 51 at 4.

61. *Id.*

62. *Id.*

63. *Id.*

rationale for the enactment of these acts, and, consequently, the imposition of liability on commercial vendors was "to deter the sale of alcohol to [certain] classes of persons [such as minors and the intoxicated] who were likely to injure themselves or third persons."[64] Several of the justifications for imposing strict liability on vendors through a dram shop act included: "(1) [vendors] can purchase extensive liability insurance to bear the loss; (2) [vendors] can spread the cost of insurance by increasing prices; (3) [vendors] have expertise in judging whether a person is a minor or is intoxicated; (4) [vendors] can control the patron's consumption;" and (5) "[i]t is more equitable to impose the cost of accidents on those making a profit from the sale of intoxicants than on an innocent, injured third party."[65]

The North Carolina legislature passed its Dram Shop Act in 1983 as part of the Safe Roads Act.[66] In general, an action brought under North Carolina's Dram Shop Act is "an action against [a] permittee or local Alcohol Beverage Control Board for negligently selling or furnishing alcohol to an underage person who, after becoming impaired, negligently operates a vehicle and causes injury."[67] There are several requirements explicit in the Act, such as who may file a claim,[68] whom a claim may be filed against,[69] the elements necessary for a claim,[70] the party required to carry the burden of proof,[71] the amount recoverable,[72] and the time limit required to file a claim.[73] These will be discussed in the order listed above.

Under the Dram Shop Act only an "aggrieved" party may file a claim against a permittee or local Alcohol Beverage Control (ABC) Board.[74] An "aggrieved party" is defined as "a person who sustains an injury as a consequence of the actions of [an] underage

64. Erickson, supra note 51 at 1015.

65. *Id.* *See also* Vincent A. Sheheen, *Court of Appeals Expands Potential Liability of Businesses for the Consumption of Alcohol by Minors*, 47 S.C. L. REV. 164, 166-67 (1995).

66. *Id.* at 1026.

67. *Darby*, 127 N.C. App. at 303, 488 S.E.2d at 829. *See also* N.C. GEN. STAT. § 18B-121 (1997).

68. N.C. GEN. STAT. § 18B-121 (1997).

69. *Id.* *See also* N.C. GEN. STAT. § 18B-125 (1997).

70. *Id.*

71. N.C. GEN. STAT. § 18B-122 (1997).

72. N.C. GEN. STAT. § 18B-123 (1997).

73. N.C. GEN. STAT. § 18B-126 (1997).

74. N.C. GEN. STAT. § 18B-121 (1997).

person, but does not include the underage person or a person who aided or abetted in the sale or furnishing to the underage person."[75] In addition to this requirement, the Dram Shop Act allows "aggrieved parties" to recover only from certain permittees and local ABC Boards.[76] Those considered permittees include: commercial vendors of alcohol, such as bar owners, restaurant operators, and convenience and grocery store owners.[77] Those not considered permittees include: parties holding only a brown bagging permit, a special occasions permit, or a limited special occasions permit, parties holding only a special one-time permit under N.C. GEN. STAT. section 18B-1002, and parties holding only permits under N.C. GEN. STAT. section 18B-1100.[78]

Once it is determined that the proper parties are involved, an aggrieved party may file a damage claim against a permittee or a local ABC Board. Three elements must be met, however: (1) "[t]he permittee or his agent or employee or the local board or its agent or employee negligently sold or furnished an alcoholic beverage to an underage person;" (2) "[t]he consumption of the alcoholic beverage that was sold or furnished to an underage person caused or contributed to, in whole or in part, an underage driver's being subject to an impairing substance within the meaning of N.C. GEN. STAT. section 20-138.1 at the time of the injury;" and (3) "[t]he injury that resulted was proximately caused by the underage driver's negligent operation of a vehicle while so impaired."[79] It is up to the plaintiff to prove that the sale or furnishing of alcohol to the minor was negligent under the circumstances.[80] Proof that the permittee or local ABC Board sold or furnished alcohol to an underage person without asking for proper identification to determine age is admissible as evidence of negligence.[81] However, the permittee or local ABC Board may rebuke this evidence by offering its own proof that it was not negligent.[82] For instance, the permittee or local ABC Board may offer evidence that the underage person misrepresented his age, the sale or furnishing of alco-

75. N.C. GEN. STAT. § 18B-120(1) (1997).

76. N.C. GEN. STAT. § 18B-121 (1997). *See also* N.C. GEN. STAT. § 18B-125 (1997); and Erickson, *supra* note 51 at 1028. .

77. Erickson, *supra* note 51 at 1028.

78. N.C. GEN. STAT. § 18B-125 (1997). *See also* Erickson, *supra* note 51 at 1028.

79. N.C. GEN. STAT. § 18B-121 (1997).

80. N.C. GEN. STAT. § 18B-122 (1997).

81. *Id. See also* Erickson, *supra* note 51 at 1027.

82. *Id.*

hol was made under duress, or proof of good practices, including instruction of employees regarding alcohol control laws, training of employees, detention techniques, admonishment of patrons regarding alcohol control laws, and detention of a patron's identification documents.[83]

Damages are limited to $ 500,000, even if an aggrieved party successfully establishes all three elements required to maintain a claim.[84] Furthermore, the Act does not allow for double recovery,[85] although it should be noted that the enactment of the Dram Shop Act does not effect any common law action that may be brought against a commercial seller for the sale of alcohol to an underage person.[86] Finally, the statute of limitations under the Act is one year.[87]

B. Civil Liability Under a Negligence Per Se Theory

Even before the reenactment of dram shop legislation in the 1970s, courts in the mid-1950s had started to reject the various theories behind the common law rule of nonliability.[88] Consequently, many courts created a cause of action based on the violation of an alcohol beverage statute.[89] Every jurisdiction in the nation has an alcohol beverage control statute that prohibits the sale of alcohol to an underage person or an intoxicated person.[90]

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83. *Id.*

84. N.C. GEN. STAT. § 18B-123 (1997).

85. N.C. GEN. STAT. § 18B-128 (1997).

86. *Id.*

87. N.C. GEN. STAT. § 18B-126 (1997).

88. Sipes, *supra* note 51 at 6.

89. *Id.* at 7.

90. *Id. See also* Julius F. Lang Jr. and John J. McGrath, *Third Party Liability for Drunken Driving: When "One for the Road" Becomes One for the Courts*, 29 VILL. L. REV. 1119, 1137 (1983-84) (citing ALA. CODE § 28-3A-25 (Supp. 1984); ALASKA STAT. §§ 4.16.030, .16.051-.052 (1980); ARIZ. REV. STAT. ANN. §§ 4-241, -244 (1974); ARK. STAT. ANN. § 48-529 (1977); CAL. BUS. & PROF. CODE §§ 25602, 25658 (West Supp. 1984); COLO. REV. STAT. § 12-47-128 (1978); CONN. GEN. STAT. ANN. § 30-86 (West 1975); DEL. CODE ANN. tit. 4, §§ 711, 713 (1974); D.C. CODE ANN. § 25-121 (Supp. 1984); FLA. STAT. ANN. § 562.11 (West Supp. 1984); GA. CODE ANN. §§ 3-3-22 to -23 (1982); HAWAII REV. STAT. § 281-78(2) (1976); IDAHO CODE §§ 23-312, -929 (1979); ILL. ANN. STAT. ch. 43, § 131 (Smith-Hurd Supp. 1984); IND. CODE ANN. §§ 7.1-5-7-8, -14 to -15 (West 1982 & Supp. 1983); IOWA CODE ANN. §§ 123.47, .49 (West Supp. 1984); KAN. STAT. ANN. §§ 41-261, -2704 (1973); KY. REV. STAT. §§ 244.070, .080 (1981); LA. REV. STAT. ANN. §§ 14:91 (West 1974), 26:88, :285 (West 1975 & Supp. 1984); ME. REV. STAT. ANN. tit. 28, §§ 303, 1058, 1058-A (Supp. 1983); MD. ANN. CODE art. 2B, § 119 (Supp. 1983);

By using the negligence per se doctrine, plaintiffs have been able to prove negligence based on a criminal violation of these alcohol beverage statutes.[91] Liability under the negligence per se doctrine is easier to establish than civil liability under a common law negligence theory, because the negligence per se doctrine eliminates the need to establish the duty owed by an individual defendant and his breach of that duty.[92]

North Carolina has two alcoholic beverage control statues, violation of which imposes civil liability under a negligence per se theory.[93] These statutes are section 18B-302, which makes it unlawful for any person to knowingly sell or give alcoholic beverages to underage persons,[94] and N.C. GEN. STAT. section 18B-305(a), which makes it unlawful for permittees or ABC Board employees to knowingly sell or give alcoholic beverages to intoxicated persons.[95] Both statutes have been litigated infrequently. Only one case to date has been litigated regarding vendor liability under section 18B-302. That case is *Estate of Mullis v. Monroe Oil*

MASS. GEN. LAWS ANN. ch. 138, §§ 34, 69 (West 1974 & Supp. 1984); MICH. COMP. LAWS ANN. §§ 436.29, (West 1978 & Supp. 1984); MINN. STAT. ANN. § 340.73 (West 1972 & Supp. 1984); MISS. CODE ANN. §§ 67-1-81, -1-83, -3-53 (Supp. 1983); MO. ANN. STAT. § 311.310 (Vernon 1963); MONT. CODE ANN. § 16-3-301 (1983); NEB. REV. STAT. § 53-180 (1978); NEV. REV. STAT. § 202.055 (1983); N.H. REV. STAT. ANN. § 175:6 (Supp. 1983); N.J. STAT. ANN. §§ 33:1-39, -77 (West 1940 & Supp. 1983); N.M. STAT. ANN. §§ 60-7A-16, -7B-1.1 (1981); N.Y. ALCO. BEV. CONT. LAW § 65 (McKinney 1970 & Supp. 1983); N.C. GEN. STAT. §§ 18B-302, -305 (1983); N.D. CENT. CODE § 5-01-09 (1975); OHIO REV. CODE ANN. §§ 4301.22, .69 (Page 1982); OKLA. STAT. ANN. tit. 37, § 537 (West Supp. 1983-84); OR. REV. STAT. § 471.410 (1983); PA. STAT. ANN. tit. 47, § 4-493 (Purdon 1969 & Supp. 1984); R.I. GEN. LAWS § 3-8-1 (Supp. 1984); S.C. CODE ANN. §§ 61-5-30, -3-990 (Law. Co-op. 1976 & Supp. 1983); S.D. CODIFIED LAWS ANN. § 35-4-78 (1977); TENN. CODE ANN. §§ 57-4-203, -5-301 (Supp. 1983); TEX. ALCO. BEV. CODE ANN. §§ 101.63, 106.03 (Vernon 1978 & Supp. 1984); UTAH CODE ANN. §§ 32-7-14 to -15, -24 (1974); VT. STAT. ANN. tit. 7, § 658 (1972); VA. CODE § 4-62 (1983); WASH. REV. CODE ANN. §§ 66.44.200, .270, .310, .320 (1962 & Supp. 1983); W. VA. CODE § 60-3-22 (1977 & Supp. 1984); WIS. STAT. ANN. § 125.07 (West Supp. 1983); WYO. STAT. §12-6-101 (1981).

91. *Id.*

92. *Id.* at 7-8.

93. Erickson, *supra* note 51 at 1028-29.

94. N.C. GEN. STAT. § 18B-302 (1997). *See also* Erickson, *supra* note 51 at 1029.

95. N.C. GEN. STAT. § 18B-305(a) (1997). *See also* Erickson, *supra* note 51 at 1029.

Co.[96] Two cases that were consolidated on appeal were decided under N.C. GEN. STAT. section 18A-8, a predecessor of section18B-302,[97] and *Hart v. Ivey*[98] dealt with social host liability under section 18B-302.[99] The only case to be litigated on the issue of civil liability under N.C. GEN. STAT. section 18B-305(a) is *Hutchens v. Hankins*.[100]

C. *Civil Liability Under a Theory of Common Law Negligence*

Another theory that has been used to establish civil liability for the sale of alcohol to underage persons is common law negligence. As noted in the previous section, the traditional common law rule of nonliability was modified in the 1950s to comport with modern society.[101] As a result, many states allowed a common law negligence suit to be maintained against a commercial vendor for the sale of alcohol to underage persons.[102] North Carolina is one of the states that has recognized such a common law negligence cause of action.[103]

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96. Estate of Mullis v. Monroe Oil Co., 349 N.C. 196, 505 S.E.2d 131 (1998); and Estate of Mullis v. Monroe Oil Co., 127 N.C. App. 277, 488 S.E.2d 830 (1997) (stating "[w]e confront in this appeal the novel question of whether a plaintiff may maintain a wrongful death action against a vendor on the basis of the vendor's unlawful sale of alcohol to an underage person in violation of N.C. GEN. STAT. § 18B-102, in general, and more specifically, N.C. GEN. STAT. § 18B-302"). Although State v. Wilson, 127 N.C. App. 129, 488 S.E.2d 303 (1997) touches briefly on N.C. GEN. STAT. § 18B-302, the issue in the case concerns double jeopardy rather than vendor liability under N.C. GEN. STAT. § 18B-302.

97. The two cases consolidated under appeal are found in Freeman v. Finney, 65 N.C. App. 526, 309 S.E.2d 531 (1983). *See* Erickson, *supra* note 51 at 1029.

98. 332 N.C. 299, 420 S.E.2d 174 (1992).

99. *Id.*

100. 63 N.C. App. 1, 303 S.E.2d 584, *disc. rev. denied*, 309 N.C. 191, 305 S.E.2d 734 (1983). *See* Erickson, *supra* note 51 at 1029. Although Harshbarger v. Murhpy, 90 N.C. App. 393, 368 S.E.2d 450 (1988) discusses N.C. GEN. STAT. § 18B-305(a), the action is based on a dram shop liability theory rather than liability under N.C. GEN. STAT. § 18B-305(a).

101. Sipes, *supra* note 51 at 6-7.

102. *Id.* (citing 13 states that recognize a common law cause of action against a vendor including Connecticut, Hawaii, Massachusetts, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Utah, Vermont, Washington, Wyoming, and the District of Columbia).

103. *See, e.g.,* Chastain v. Litton Systems, Inc., 694 F.2d 957 (4th Cir. 1982), *cert. denied*, 103 S.Ct. 2454 (1983); and Estate of Mullis v. Monroe Oil Co., 349 N.C. 196, 505 S.E.2d 131 (1998) (noting that in applying principles set forth in Hart v. Ivey, 332 N.C. 299, 420 S.E.2d 174 (1992) and Camalier v. Jeffries, 113 N.C. App. 303, 438 S.E.2d 427 (1994), a common law negligence suit may be

Negligence is defined as "the failure to exercise that degree of care which a reasonable and prudent person would exercise under similar conditions."[104] In order to maintain an action for common law negligence against a commercial vendor, a plaintiff must establish four elements: (1) "defendants had a duty or obligation recognized by the law, requiring them to conform to a certain standard of conduct, for the protection of others against unreasonable risks;" (2) defendants failed "to conform to the standard required;" (3) there was "a reasonably close causal connection between defendants' conduct and plaintiff's injuries;" and (4) there was "actual loss or damage."[105] In other words, a plaintiff must offer evidence of duty, breach of duty, proximate cause, and damages in order to prevail in an action for negligence.[106]

Each of these elements required to maintain a common law negligence action has been analyzed, specifically the elements of duty and proximate cause. Duty is defined as "an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another."[107] The law imposes upon every person the duty to exercise ordinary care to protect

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maintained against a commercial vendor for the sale of alcohol to an underage person). But note the Supreme Court of North Carolina has stated that it has not recognized a new cause of action in allowing a common law negligence action to be maintained against a commercial vendor for the sale of alcohol to an underage person. *Estate of Mullis*, 349 N.C. at 202, 505 S.E.2d at 135. Rather, it has allowed "established negligence principles" to be applied to the facts of each case. *Id.*

104. *Mullis*, 349 N.C. at 201, 505 S.E.2d 131, 135 (1998) (citing Hart v. Ivey, 332 N.C. 299, 305, 420 S.E.2d 174, 177-78 (1992)); and Hart v. Ivey, 332 N.C. 299, 305, 420 S.E.2d 174, 177-78 (1992) (citing Bolkhir v. N.C. State Univ., 321 N.C. 706, 365 S.E.2d 898 (1988); Lentz v. Gardin, 294 N.C. 425, 241 S.E.2d 508 (1978); Williams v. Trust Co., 292 N.C. 416, 233 S.E.2d 589 (1977); and Clarke v. Holman, 274 N.C. 425, 163 S.E.2d 783 (1968).

105. Winters v. Lee, 115 N.C. App. 692, 694, 446 S.E.2d 123, 124 (1994) (citing Southerland v. Kapp, 59 N.C. App. 94, 95, 295 S.E.2d 602, 603 (1982); and W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 30 (5th ed. 1984)); and Freeman v. Finney, 65 N.C. App. 526, 528-29, 309 S.E.2d 531, 533-34 (1983) (citing Hutchens v. Hankins, 63 N.C. App. 1, 13, 303 S.E.2d 584, 592, *review denied*, 309 N.C. 191, 305 S.E.2d 734 (1983), quoting W. Prosser, The Law of Torts, § 30, p. 143 (4th ed. 1971)).

106. *Mullis*, 349 N.C. at 201, 505 S.E.2d at 135 (citing Hart v. Ivey, 332 N.C. 299, 305, 420 S.E.2d 174, 177-78 (1992); and Lamm v. Bissette Realty, Inc., 327 N.C. 412, 395 S.E.2d 112 (1990)).

107. Peal v. Smith, 115 N.C. App. 225, 230, 444 S.E.2d 673, 677 (1994) (citing W. Page Keeton et al., The Law of Torts, § 53 (5th ed. 1984)).

others.[108] Whether duty is present in a particular case is a question of law and can only be determined by the court.[109] A breach of duty is considered negligence,[110] and the breach may be made by a negligent act or a negligent failure to act.[111] Finally, proximate cause is "a cause which in natural and continuous sequence produces a plaintiff's injuries and one from which a person of ordinary prudence could have reasonably foreseen that such a result or some similar injurious result was probable."[112] A proximate cause analysis is determined by "whether a person of ordinary prudence could have reasonably foreseen the actual results of similar injurious results from their negligent conduct."[113] And questions concerning forseeability under a proximate cause analysis are left to the jury.[114]

II. UNDERAGE DRINKING AND PUBLIC SAFETY

Before analyzing the North Carolina Supreme Court's decision in *Estate of Mullis v. Monroe Oil Co.*, it is necessary to examine statistics concerning teenage alcohol-related motor vehicle accidents. The prevalence of underage drinking and driving is an important factor in the issues of the case.

A. *Alcohol-Related Automobile Accidents Generally*

There is no question that driving an automobile while under the influence of alcohol is a deadly combination.[115] Deaths and

108. *Id.* (citing Hart v. Ivey, 332 N.C. 299, 305, 420 S.E.2d 174, 178 (1992)).

109. *Id.* (citing W. page Keeton et al. at § 37).

110. *Id.*

111. Hutchens v. Hankins, 63 N.C. App. 1, 13, 303 S.E.2d 584, 592 (1983) (citing Dunning v. Warehouse Co., 272 N.C. 723, 158 S.E.2d 584, 592 (1983)).

112. *Peal*, 115 N.C. App. at 234, 444 S.E.2d at 679 (citing Murphy v. Georgia Pacific Corp., 331 N.C. 702, 706, 417 S.E.2d 460, 463 (1992)).

113. *Freeman*, 65 N.C. App. at 29, 309 S.E.2d at 534 (citing Sutton v. Duke, 277 N.C. 94, 176 S.E.2d 161 (1970)).

114. *Peal*, 115 N.C. App. at 234, 444 S.E.2d at 679 (quoting "[i]n any case where there might be reasonable difference of opinion as to the forseeability of a particular risk, the reasonableness of the defendant's conduct with respect to it, or the normal character of an intervening cause, the question is for the jury." W. Page Keeton et al., The Law of Torts, § 45 (5th ed. 1984)).

115. *See, e.g.*, Bo Brismar and Bo Bergman, *The Significance of Alcohol for Violence and Accidents*, 22 Alcohol Clin. Exp. Res. 299S (1998) (noting the prevalence of alcohol in fatal road traffic accidents); Cheryl J. Cherpitel, *Alcohol in Fatal and Nonfatal Injuries: A Comparison of Coroner and Emergency Room Data from the Same County*, 20 ALCOHOL CLIN. EXP. RES. 338 (1996) (concluding that the coroner sample studied for those injured by a motor vehicle accident was

71% positive for alcohol and 51% positive for a blood alcohol level of .10 or higher; whereas, those studied in the Emergency Room were only 5% positive for alcohol and 0% positive for a blood alcohol level of .10 and higher); Mike Crilly, *Contributory Factors to Traffic Accident Deaths Identified at Coroner's Request*, 20 J. PUB. HEALTH MED. 139 (1998) (reporting alcohol consumption as an important contributory factor in traffic fatalities); Rita K. Cydulka et al., *Injured Intoxicated Drivers: Citation, Conviction, Referral, and Recidivism Rates*, 32 ANN. EMERG. MED. 349 (1998) (citing driving under the influence of alcohol as the most frequent cause of death on the nation's highways); Hallvard Gjerde, Kari-Mette Beylich, and Jorg Morland, *Incidence of Alcohol and Drugs in Fatally Injured Car Drivers in Norway*, 25 ACCID. ANAL. AND PREV. 479 (1993) (concluding that 28.3% of fatally injured drivers studied were positive for alcohol and 41.8% of fatally injured drivers studied involved in single-vehicle accidents were positive for alcohol); Oksana T. Holubowqcz and A. Jack McLean, *Demographic Characteristics, Drinking Patterns and Drunk-Driving Behavior of Injured Male Drivers and Motorcycle Riders*, 56 J. STUD. ALCOHOL 513 (1995) ("[I]t has been well established that alcohol consumption beyond a blood alcohol concentration (BAC) of about 50 mg/dl increases the average risk of crash involvement . . ." *Id.* at 513); Jean Y. Liu et al., *Teenage Driving Fatalities*, 33 J. PED. SURG. 1084 (1998) (concluding that alcohol consumption is one of two major factors for increased risk of motor vehicle crashes and fatalities); Robert C. Mackersie et al., *High-Risk Behavior and the Public Burden for Funding the Costs of Acute Injury*, 130 ARCH. SURG. 844, 846-48 (1995) (concluding that high risk behavior, such as driving while intoxicated, is associated with severe injury); G. William Mercer and Wayne K. Jeffery, *Alcohol, Drugs, and Impairment in Fatal Traffic Accidents in British Columbia*, 27 ACCID. ANAL. AND PREV. 335 (1995) (concluding that 48% of traffic fatalities studied involved alcohol); Betha A. Mueller et al., *Hospital Charges to Injured Drinking Drives in Washington State: 1989-1993*, 30 ACCID. ANAL. AND PREV. 597 (1998) (noting that 40% of all traffic fatalities involve drivers who have consumed alcohol); Mats Ostrom, Harmeet Sjogren, and Anders Eriksson, *Role of Alcohol in Traffic Crashes Involving Women Passenger Car Fatalities in Northern Sweden*, 56 J. STUD. ALCOHOL 506 (1995) ("Alcohol is a well-known risk factor in fatal traffic crashes"); Eleni Petrisou et al., *Relative and Population Attributable Risk of Traffic Injuries in Relation to Blood-Alcohol Levels in a Mediterranean Country*, 33 ALCOHOL & ALCOHOLISM 502 (1998) (concluding that alcohol consumption is an important cause of automobile injuries); Harmeet Sjogren et al., *Drug and Alcohol Use Among Injured Motor Vehicle Drivers in Sweden: Prevalence, Driver, Crash, and Injury Characteristics*, 21 ALCOHOL CLIN. EXP. RES. 968 (1997) ("Alcohol is regarded as the most significant single factor contributing o serious and fatal traffic crashes"); Lennart Sjobert, *Risk Perception of Alcohol Consumption*, 22 ALCOHOL CLIN. EXP. RES. 277S (1998) (concluding that traffic accidents are one of the highest alcohol risks); Teri Randall, *Driving While Under Influence of Alcohol Remains Major Cause of Traffic Violence*, 268 JAMA 303 (1992) (citing various statistics regarding fatalities and injuries in alcohol-related traffic crashes); S. Waller et al., *Perceptions of Alcohol-Related Attendances in Accident and Emergency Departments in England: A National Survey*, 33 ALCOHOL & ALCOHOLISM, 354 (1998) (finding that alcohol-related traffic accidents are perceived by doctors and nurses to be one of several problematic types of alcohol-

injuries stemming from alcohol-related automobile accidents continue to be a significant problem in our society.[116] The statistics are alarming. For example, almost half of all traffic crashes involve alcohol.[117] Reports indicate that an estimated three in every ten people will be involved in an alcohol-related automobile accident during their lives.[118] That is, approximately forty percent of all Americans can expect to be involved in an alcohol-related crash.[119] As a result of the high number of traffic accidents involving alcohol, society loses almost two million years of life and functioning each year.[120] In 1990, alcohol-related crashes killed 22,084 people, one third of whom were innocent victims.[121] The number of fatalities that year was only about 1,500 less than the number of homicides.[122] Alcohol related accidents in 1990 also caused 1.9 million injuries, including 43,140 people with permanent partial disabilities and 4,072 with permanent total disabilities.[123]

Even though statistics show some recent improvement in the occurrence of alcohol-related traffic accidents,[124] alcohol remains a persistent factor in automobile injuries and fatalities. In 1996, for instance, an alcohol-related traffic fatality occurred every thirty-

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related attendances in the Emergency Room); Jiang Yu and Robin W. Shacket, *Long-Term Change in Underage Drinking and Impaired Driving After the Establishment of Drinking Age Laws in New York State*, 22 ALCOHOL CLIN. EXP. Res. 1443 (citing numerous statistics on alcohol involvement in automobile fatalities).

116. *See, e.g.*, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS 1997 (reporting 1.5 million arrests in one year for driving under the influence of alcohol, which is an arrest rate of 1 for every 122 drivers in the United States).

117. Randall, *supra* note 115 at 303. *See also* Cydulka, *supra* note 115 at 350 (noting that alcohol is involved in approximately 55% of fatal automobile accidents).

118. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS 1997.

119. Randall, *supra* note 115 at 303.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *See, e.g.*, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS 1997 (noting that "[t]raffic fatalities in alcohol-related crashes fell by 6% from 1996 to 1997" and that "[t]he 16,189 alcohol-related fatalities in 1997 represent a 32% reduction from the 23,641 alcohol-related fatalities reported in 1987").

one minutes and an injury occurred every two minutes.[125] The most current studies available show that in 1997 there were 16,189 fatalities in alcohol-related crashes.[126] This represents an average of one alcohol-related fatality every thirty-two minutes.[127] Alcohol-related injuries were also prevalent in 1997. For example, over 327,000 persons were injured in crashes where alcohol was present, an average of one person injured approximately every two minutes.[128] Other studies represent a higher figure of 500,000 injuries in alcohol-related crashes.[129] Upon examination of these statistics, it is not surprising that in 1997 alcohol was involved in a total of thirty-nine percent of fatal crashes and seven percent of all crashes.[130]

The economic burden on society as a result of these accidents is also staggering. The cost of alcohol-related traffic crashes in the United States is approximately 148 billion dollars annually.[131] The economic costs are numerous, often including hospitalization for the drunk driver and passengers, as well as hospitalization for drivers and occupants of other motor vehicles involved in the same alcohol-related collision, Emergency Department fees, physician charges, rehabilitation care costs, pharmacy charges, pre-hospital emergency care fees, outpatient care costs, property loss and damage, insurance administration time, time lost from work, lost years of productivity, and lost quality of life.[132] Studies show that the majority of these costs are being paid for by public agencies, essentially at the taxpayers' expense.[133] For instance, a study of 7,083 persons receiving medical care as a result of drunk driving accidents showed that forty-three percent received public funding while only thirty-five percent received private funding.[134] The report also indicated that those injured while drinking and driving were likely to stay in the hospital between seven and fourteen

125. Yu, *supra* note 115 at 1443.

126. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS 1997.

127. *Id.*

128. *Id.*

129. Cydulka, *supra* note 115 at 350.

130. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS 1997.

131. Mueller, *supra* note 115 at 597.

132. *Id.* at 597, 602-03.

133. Mackersie, *supra* note 113 at 846-48.

134. *Id.* at 846.

days.[135] Another study conducted in Washington state reported similar results.[136] This study concluded that forty-three percent of the hospital charges for drivers injured in automobile accidents were for those drivers who had been drinking.[137] Medicaid was identified as the payor for forty-seven percent of the alcohol-related hospitalizations, which was more than twice that for drivers who had not been drinking.[138] The study also reported that drinking drivers had longer hospital stays,[139] and the average bill for each alcohol-related crash injury was 18,258 dollars compared to 14,181 dollars for a motor vehicle collision injury not involving alcohol, 15,578 dollars for an unhelmeted motorcycle injury, and 13,937 dollars for an unbelted vehicle injury.[140]

The economic costs, injuries, and fatalities that accompany drinking and driving in the United States are common in North Carolina as well. For example, a study conducted by the University of North Carolina Highway Safety Research Center showed that on an average night in North Carolina, about eleven percent of drivers passing through checkpoints have some alcohol in their system, and approximately two percent are legally intoxicated.[141] A more recent study indicated that in 1996, thirty-six percent of those involved in alcohol related crashes were positive for alcohol, and twenty-eight percent had a blood alcohol level of .10 or higher.[142] These figures are slightly below the national aver-

135. *Id.* at 847.

136. *See* Mueller, *supra* note 115. It should be noted that this study was considered to be an "underestimate of the true hospital-related costs of drinking and driving, "because of the exclusion of data such as rehabilitation, outpatient care and hospital charges associated with injured passengers or drivers of other motor vehicles involved in the same crash." *Id.* at 603.

137. *Id.* at 599.

138. *Id.* at 599-600.

139. *Id.* at 600.

140. *Id. But see*, A. J. McKnight and F. M. Street, *The Effect of Enforcement Upon Service of Alcohol to Intoxicated Patrons of Bars and Restaurants*, 26 ACCID. ANAL. AND PREV. 79 (1994) (noting that the comprehensive cost of a fatal injury resulting from an alcohol-related crash is $2,785,002, and the comprehensive cost of a nonfatal injury is $67,611. Comprehensive cost includes medical, emergency services, productivity, employer costs, administrative, legal, travel delay, property damage, monetary costs, and quality of life).

141. UNIVERSITY OF NORTH CAROLINA HIGHWAY SAFETY RESEARCH CENTER, DRINKING DRIVERS IN NORTH CAROLINA: FALL 1994 ROADSIDE SURVEY OF NIGHTTIME DRIVERS (1994).

142. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION,TRAFFIC SAFETY FACTS (1997).

age.[143] The study also reported that in 1997, there were 1,483 traffic fatalities in North Carolina, thirty-five percent of which were alcohol-related.[144]

B. Underage Drinking and Driving

Although the statistics above regarding alcohol-related motor vehicle accidents are alarming, the problem is even more pronounced among young drivers.[145] Young drivers between ages fifteen and twenty represent 12.1 million of the nation's drivers, which is approximately six percent of all licensed drivers.[146] Unfortunately, these 12.1 million drivers are at an increased risk for automobile crashes resulting in injuries and fatalities.[147] Although teens comprise only a small percentage of the total licensed drivers in the United States, they are involved in ten to fifteen percent of fatal crashes.[148] Some studies even show that teenage drivers are responsible for five times as many fatal accidents as drivers thirty-five to sixty-four years old.[149] The economic cost of these automobile accidents in 1997 alone was 31.9 billion dollars.[150]

Young drivers are not only at risk for causing injuries and fatalities among the general public, but they are also at risk for injuries and fatalities themselves. Reports indicate that the highest driver fatality rates for any age group are found among teenage drivers.[151] Specifically, it is estimated that the fatality rate for teenagers is four times as high as that of drivers between ages

143. *Id.* In the United States, 40.8% of those involved in alcohol-related crashes were positive for alcohol, and 32.2 percent had a blood alcohol level of .10 or higher. *Id.*

144. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (1997).

145. *See, e.g.*, Brismar, *supra* note 113 at 299S-300S; Cydulka, *supra* note 115 at 350; Liu, *supra* note 115 at 1084; NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (1997). Randall, *supra* note 115 at 303; and Yu, *supra* note 115 at 1443.

146. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (1997).

147. *See* Brismar, *supra* note 115 at 299S-300S; and Liu, *supra* note 113 at 1086.

148. Liu, *supra* note 115 at 1086.

149. Brismar, *supra* note 115 at 300S.

150. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (1997).

151. Liu, *supra* note 115 at 1086-87. *See also* NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (1997).

twenty-five and sixty-nine.[152] And virtually every study agrees that motor vehicle crashes are the leading cause of death for fifteen to twenty year olds.[153] In 1995, for example, 7,993 drivers ages fifteen to twenty were involved in fatal automobile accidents, in which 3,351 were killed.[154] In 1997, 2,001,000 young drivers were involved in automobile crashes and 7,885 were involved in fatal automobile crashes.[155] As a result, 3,336 young drivers were killed and an additional 365,000 were injured.[156]

Alcohol compounds the risk of injuries and fatalities among young drivers and their innocent victims.[157] Alcohol is implicated in approximately one third[158] to one half of all fatal crashes involving teenagers.[159] One New York study concluded that drivers under the age of twenty-one are three times as likely to be involved in alcohol-related accidents as other drivers,[160] and underage persons are twice overrepresented in alcohol-related fatal accidents among all licensed drivers.[161]

Currently, a person under the age of twenty-one dies every three hours as a result of an alcohol-related automobile accident.[162] In 1996, thirty-seven percent of all traffic fatalities of fifteen to twenty year olds were alcohol-related,[163] which means that approximately 2,324 youths were killed due to alcohol-related

152. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (1997).

153. Cydulka, *supra* note 115 at 350; National Highway Traffic Safety Administration: Traffic Safety Facts 1997. U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington D.C.; Randall, *supra* note 113 at 303; and Yu, *supra* note 113 at 1443.

154. Liu, *supra* note 115 at 1084.

155. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (1997).

156. *Id.*

157. *See, e.g.*, Brismar, *supra* note 115 at 299S-300S (stating that "[a]lcohol intoxication increases the risk of accidents for all drivers, and this risk is increased for young drivers even with a lower alcohol concentration. The combination of alcohol debut and debut as a driving license holder makes the young drivers a high-risk group.").

158. Liu, *supra* note 115 at 1087

159. Stats and Facts. Iowa State University Substance Abuse prevention Program, Sept. 14, 1998.

160. Yu, *supra* note 115 at 1444.

161. *Id.* *See also* Brismar, *supra* note 115 at 300S. "The age group 16 to 24 years is overrepresented in all types of alcohol-related road traffic accidents." *Id.*

162. *Id.* at 1443.

163. *Id.*

automobile accidents.[164] In 1997, thirty percent or 2,209 drivers who were killed in motor vehicle crashes had been drinking.[165] Between January 1, 1996 and December 31, 1998, there were 2,689 alcohol-related automobile accidents in North Carolina involving a driver between the ages sixteen and twenty.[166] These accidents yielded 3,094 injuries and 954 total fatalities, thirty-four of which were driver fatalities.[167] During the next decade, approximately 100,000 people twenty-five years old and under will die in alcohol-related accidents if the present trend continues.[168]

Perhaps the main reason for the prevalence of teenage alcohol-related crashes is that the drinking rate among teens is high.[169] It is reported that over fifty percent of youths begin drinking before ninth grade.[170] More than fifty-five percent of high school seniors drink, and approximately thirty-three percent of these students binge drink.[171] A study conducted in 1996 reported that the drinking rate among eighteen year olds is thirty-four percent, fifty-three percent for nineteen year olds, and forty-nine percent for twenty year olds.[172] Peer approval rates for drinking were as high as eighty-two percent,[173] and as many as seventy-one percent of underage persons reported that they thought they would not get caught by law enforcement officials for illegally purchasing alcohol.[174] Although many of the youths studied did not report drinking and driving themselves,[175] approx-

164. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (1997). *See also* Yu, *supra* note 115 at 1443.

165. *Id.*

166. *Id.*

167. *Id.*

168. Jennifer Gracey, Iowa State University, (last modified Sept. 14, 1998) <http.///www.iastate.edu/deansdt_info/sa/stats.htm>.

169. *See, e.g.*, Yu, *supra* note 115 at 1445-46.

170. Gracey, *supra* note 168.

171. *Id.*

172. Yu, *supra* note 115 at 1445.

173. *Id.* at 1446. Peer approval rates of alcohol use were 69.3 percent for 16 year olds, 75.5 percent for 17 year olds, 76.8 percent for 18 year olds, 82.4 percent for 19 year olds, and 79.5 percent for 20 year olds. *Id.*

174. *Id.* The percentage of youths studied who thought they wold not get caught by law enforcement officials or some other authority for purchasing alcohol was 43.1 percent for 16 year olds, 52.7 percent for 17 year olds, 57.1 percent for 18 year olds, 71.9 percent for 19 year olds, and 54.8 percent for 20 year olds. *Id.*

175. *Id.* at 1447. Self-reported drinking and driving was 0 percent for 16 year olds, 5 percent for 17 year olds, 4 percent for 18 year olds, 4 percent for 19 year olds, and 10 percent for 20 year olds. *Id.*

imately twenty-five percent indicated that they had been a passenger of a drinking driver.[176]

III. THE NORTH CAROLINA SUPREME COURT'S DECISION IN ESTATE OF MULLIS V. MONROE OIL CO.

A. *Negligence Per Se Claim*

In light of the above statistics, it seems that the North Carolina Supreme Court in *Estate of Mullis v. Monroe Oil Co.* would have interpreted section 18B-302 as a public safety statute. Yet, the court ruled that the purpose behind the statute was to restrict the consumption of alcohol by minors, not to protect the public.[177] As a result, any violation of the statute is not considered negligence per se.[178]

Estate of Mullis v. Monroe Oil Co. is not the only case in which the North Carolina Supreme Court has interpreted section 18B-302.[179] In *Hart v. Ivey*, a case regarding social host liability, the supreme court also ruled that section 18B-302 was not a public safety statute.[180] In a divided decision, the court held that the statute was not intended to protect the public for two reasons: (1) it is limited to persons under twenty-one years of age; and (2) it is not related to persons being under the influence of alcohol.[181] As to the first reason, the court noted that "[a]n adult driver under the influence of alcohol can be just as dangerous as a person under twenty-one years of age."[182] Thus, it reasoned that if the statute was intended to protect the public, it should have been inclusive of all persons.[183] In regard to the second reason, the court stated that the statute does not restrict the sale of alcohol to underage persons who are intoxicated, but rather restricts the sale of alcohol to all underage persons, intoxicated or not.[184] Because of this statutory language, the court deemed that the statute's purpose

176. *Id.* The rate of youths riding with an impaired driver was 25 percent for 16 year olds, 25 percent for 17 year olds, 25 percent for 18 year olds, 28 percent for 19 year olds, and 21 percent for 20 year olds. *Id.*

177. Estate of Mullis v. Monroe Oil Co., 349 N.C. 196, 200, 505 S.E.2d 131, 134 (1998).

178. *Id.*

179. *See* Hart v. Ivey, 332 N.C. 299, 420 S.E.2d 174 (1992).

180. *Id.* at 303-04, 420 S.E.2d at 177.

181. *Id.* at 304, 420 S.E.2d at 177.

182. *Id.*

183. *Id.*

184. *Id.*

was merely to restrict the consumption of alcohol of underage persons.[185]

Justice Mitchell's concurrence in the case as well as the North Carolina Court of Appeals' decision in *Hart v. Ivey*[186] and *Freeman v. Finney*[187] regarding N.C. GEN. STAT. section 18A-8, a predecessor to section 18B-302, produces a much better result than that reached by the supreme court. Justice Mitchell, in a concurring opinion, cited other cases that have interpreted statutes similar to section 18B-302 as public safety statutes.[188] He noted that "[b]etter reasoned cases have always taken the view that laws governing the sale of alcoholic beverages are intended to and do enhance the well-being of the community by protecting all members of the public from the dangers arising from the indiscriminate sale of such alcoholic beverages."[189] For example, the Michigan Court of Appeals stated in a similar case, "[I]t would be absurd indeed to maintain that one of the purposes of the statute in question was not to protect the public from the risk of injury caused by intoxicated minors."[190] Justice Mitchell also noted that there are several public safety interests in addition to highway safety that are being served by section 18B-302, such as the physical and mental health of the underage persons purchasing the alcohol.[191] Finally, in response to the supreme court's reasons for ruling that section18B-302 was not a public safety statute, Justice Mitchell stated:

Reason and common sense could only have led our General Assembly, like all ordinary citizens, to know that minors who drink alcoholic beverages and drive on the public highways ordinarily will be more dangerous to themselves and to the general public than more experienced adults who drive under the influence of alcohol. Further, it should be obvious to anyone that children who drink are more likely to fall under the influence of alcohol and to be generally more dangerous in every respect imag-

185. *Hart*, 332 N.C. at 304, 420 S.E.2d at 177.

186. 102 N.C. App. 583, 403 S.E.2d 914 (1991).

187. 65 N.C. App. 526, 309 S.E.2d 531 (1983).

188. *Hart*, 332 N.C. at 308, 420 S.E.2d at 178-79 (citing, e.g., Marusa v. District of Columbia, 484 F.2d 828, 834 (D.C. Cir. 1973); Davis v. Shiappacossee, 155 So.2d 365 (Fla. 1963); Rappaport v. Nichols, 31 N.J. 188, 156 A.2d 1 (1959) and Koback v. Crook, 123 Wis. 2d 259, 366, N.W.2d 857 (1985).

189. *Id.* at 307, 420 S.E.2d at 179.

190. *Id.* at 308, 420 S.E.2d at 180 (citing Thaut v. Finley, 50 Mich. App. 611, 613, 213 N.W.2d 820, 822 (1973)).

191. *Id.* at 307, 420 S.E.2d at 179.

inable than similarly situated adults. Clearly, the statute in question here was intended to protect inexperienced youths and the general public from the danger and other dangers which arise when minors are served alcoholic beverages. This Court should take judicial notice of such obvious facts, including the fact that this statue was intended by the General Assembly as a public health and safety measure.[192]

In *Freeman v. Finney*, the North Carolina Court of Appeals reached a similar conclusion to that of Justice Mitchell in interpreting section 18A-8. The court of appeals clearly stated, "[t]he purpose of this statute is to protect both the minor and the community at large from the possible adverse consequences of the minor's intoxication."[193] The North Carolina Court of Appeals again affirmed this decision in *Hart v. Ivey*.[194] Citing the cases of *Hutchens v. Hankins* and *Freeman v. Finney* to support its decision, the court stated:

> [w]e need not recite at any length the record of carnage on our public highways caused by drivers (particularly those underage) who have consumed intoxicating beverages. Needless to say, the public, as evidenced by the actions of our legislature, has increasingly focused on the need to curtail and punish the illegal consumption of alcoholic beverages by underage persons.[195]

Consequently, it ruled that a violation of section 18B-302 is negligence per se.[196]

The supreme court in *Estate of Mullis v. Monroe Oil Co.* should have followed these well reasoned conclusions. The statistics regarding underage drinking and driving clearly compel a different result than that reached by the court.

B. Common Law Negligence Claim

Upon examination of the drinking and driving problem among teenagers, it also seems that the Supreme Court of North Carolina would have sustained Plaintiff's common law negligence claim. Yet, the court granted summary judgment for Defendants regarding this claim as well.[197] Although the court held that a common law negligence suit could be maintained against Defend-

192. *Id.* at 307-08, 420 S.E.2d at 179.
193. Freeman v. Finney, 65 N.C. App. 526, 309 S.E.2d 531, 534 (1983).
194. *Hart*, 102 N.C. App. 583, 590-91, 420 S.E.2d 914, 919 (1991).
195. *Id.*
196. *Id.*
197. *Mullis*, 394 N.C. 196, 200, 505 S.E.2d 131, 134 (1998).

ants for the sale of alcohol to an underage person, it ruled that Defendants owed no duty to Melissa Mullis.[198] Specifically, the court stated, "[e]vidence offered by Plaintiff indicated merely that defendants sold alcohol to an individual who was later discovered to be underage. Evidence of this alone, without an offer of some additional factor or factors which would put the vendor on notice that harm was foreseeable, is insufficient to establish the duty element and thus maintain a common law negligence suit."[199]

Seemingly, the duty owed by Defendants was simply a duty to refrain from selling alcohol to individuals under the legal age required for purchasing intoxicating liquor. Yet, the supreme court wanted to find some additional factors to maintain the common law negligence claim, such as visible inebriation at the time of purchase.[200] The court relied heavily on the cases of *Hart v. Ivey*[201] and *Camalier v. Jeffries*[202] in granting summary judgment for Defendants.[203] It failed to see, however, that these cases involved a common law negligence claim for the sale of alcohol to an intoxicated person. There was no such claim in *Estate of Mullis v. Monroe Oil Co*. Even so, the court continued to compare the two cases to the present case of *Estate of Mullis v. Monroe Oil Co*. Under *Hart v. Ivey* and *Camalier v. Jeffries*, the court held that "an individual may be held liable on a theory of common-law negligence if he (1) served alcohol to a person (2) when he knew or should have known the person was intoxicated and (3) when he knew the person would be driving afterwards."[204] There is no mention of an underage person in its statement of the rule. That is simply because *Hart* and *Camalier* did not assert a negligence claim for the sale of alcohol to an underage person. The claim asserted in *Estate of Mullis v. Monroe Oil Co*. was a common law negligence claim for the sale of alcohol to an intoxicated individual. As such, the court should not have required more of Plaintiff in establishing the duty element of the common law negligence action.

198. *Id*. at 203-04, 505 S.E.2d at 135-36.

199. *Id*. at 138.

200. *Id*. at 137-38.

201. 332 N.C. 299, 420 S.E.2d 174 (1992).

202. 340 N.C. 699, 460 S.E.2d 133 (1995).

203. *Mullis*, 505 S.E.2d at 135.

204. *Id*. at 207, 505 S.E.2d at 138 (Frye, J., concurring) (citing Camalier v. Jefferies, 340 N.C. 699, 711, 460 S.E.2d 133, 138 (1995)).

Even assuming that Plaintiff needed additional factors to support the common law negligence claim, the additional factors were present. The North Carolina Supreme Court merely failed to look at the circumstances surrounding the sales to Blount as a whole. The evidence did not just show that Blount was an ordinary person who purchased alcohol from Defendants and was later discovered to be underage. Rather, the evidence showed that Blount purchased alcohol from Monroe ABC on "at least" two occasions in the same night.[205] Blount also purchased beer from Monroe Oil twice in the same night.[206] This should have created suspicion in the mind of the vendor or at least put the vendor on notice that these were not just ordinary sales for alcohol. Furthermore, with each purchase of alcohol from Monroe ABC, Blount did not just by a small amount of liquor. Instead on both occasions, Blount bought enough liquor for himself plus two other individuals.[207] The evidence also showed that Blount was accompanied by other teenage peers when purchasing the alcohol, and there were two carloads of teenagers that accompanied Blount to Monroe Oil when he made his last purchase.[208] Finally, as noted in section I, the vendor is in a good position to monitor who buys alcohol, because vendors have expertise in judging whether a person is a minor or intoxicated.[209] All of these were additional factors the court seemingly overlooked.

Defendants here clearly owed a duty to Mullis not to sell alcohol to an underage person. There were many factors present to support an action for common law negligence. Defendants profited from Blount's purchases and should not have been able to escape liability.

IV. CONCLUSION

Legislatures and courts can effectively reduce the number of fatalities and injuries that result from underage drinking and driving. Several studies show that legislation in this area has already saved many lives. For instance, the National Highway Traffic Safety Administration reports that minimum drinking age laws saved 846 lives in 1997 and have saved approximately 17,359

205. *Id.* at 197, 505 S.E.2d at 132. *See also Darby*, 127 N.C. App. at 301, 488 S.E.2d at 828.

206. *Id.* at 197-198, 505 S.E.2d. at 132-133.

207. Id. at 197, 505 S.E.2d at 132.

208. *Id.* at 198, 203, 505 S.E.2d at 133, 136.

209. *See supra* note 65.

lives since 1975.[210] Other reports indicate that legislation allowing administrative license revocation[211] as well as legislation enforcing zero tolerance laws have reduced fatal alcohol-related crashes and injuries.[212]

Courts, however, must also do their part. As one writer noted, "[w]hile legislatures were the first to act, the courts are frequently confronted with situations in which it would seem appropriate to impose tort liability on a commercial vendor, employer, or social host for injuries to innocent third parties caused by an intoxicated driver."[213] Courts must recognize the prevalence and consequences of teenage drinking and driving in analyzing cases and in interpreting statutes, such as N.C. GEN. STAT. section 18B-302. Their rulings will undoubtedly have an impact.

Angela M. Easley

210. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (1997). *See also* Liu, *supra* note 115 at 1087 (stating that minimum drinking age laws have saved more than 15,000 lives and have reduced alcohol-related accidents by 40 percent since 1982); and Yu, *supra* note 115 at 1447-49.

211. Randall, *supra* note 115 at 304. Administrative license revocation allows a police officer to confiscate the driver's license of any driver who fails or refuses to take a sobriety test. *Id.*

212. Liu, *supra* note 115 at 1087. Zero tolerance laws reduce the illegal blood alcohol level to .02 for drivers under the age of 21. *Id.*

213. Erickson, *supra* note 51 at 1013.