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Hospitality Liability Report: Significant Changes in Case Law Regarding Liquor Liability

On August 29, 2005, the South Carolina Supreme Court issued two new opinions that affect liquor liability in South Carolina, which may significantly impact our state's hospitality industry.

In *Marcum v. Bowden*, Opinion No. 26035, the Court held underage adults may maintain a first party cause of action against a social host when that social host serves or provides the underage adult with alcoholic beverages and the underage adult is injured as a result.

That same day, in *Barnes v. Cohen Dry Wall, Inc.*, Opinion No. 26036, the Court ruled an injured third party may maintain a cause of action against a social host when the social host served

or furnished alcohol to an underage adult who later injures the third party as a result of his or her intoxication.

In both *Marcum* and *Barnes*, the Court based its ruling primarily upon public policy arguments. First, the Court held persons under the age of twenty-one are "incompetent by reason of their youth and inexperience to deal responsibly with the effects of alcohol." The Court additionally determined that imposing liability on social hosts who provide alcohol to minors will encourage hosts to be more vigilant in policing their guests, thus promoting public policy which prohibits the use of alcohol by incompetent and inexperienced youth. The Court tempered

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its ruling with the proviso that an underage individual's own negligence in consuming alcohol and becoming injured may reduce that individual's recovery by the percentage of his or her own negligence or bar it altogether if the jury finds the individual was

greater than 50% negligent in causing his or her own injuries.

These two rulings and existing South Carolina case law mean that alcohol licensees and social hosts face liability in the following situations, as illustrated by

	Commercial vendor serves already intoxicated individual	Commercial vendor serves person under age 21	Social host serves already intoxicated individual	Social host serves individual under 21
Intoxicated individual injures himself/herself	The commercial vendor is not liable. <i>Tobias v. Sports Club</i> , 332 S.C. 90, 504 S.E.2d 318 (1998).	The commercial vendor is potentially liable to the intoxicated individual. <i>Whitlaw v. Kroger</i> , 306 S.C. 51, 410 S.E.2d 251 (1991).	The social host is not liable. <i>Garren v. Cummings & McCrady, Inc.</i> , 289 S.C. 348, 345 S.E.2d 508 (Ct. App. 1986).	The social host is potentially liable to the intoxicated individual. <i>Marcum v. Bowden</i> , Opinion No. 26035.
Intoxicated individual injures a third party	The commercial vendor is potentially liable to the third party. <i>Tobias v. Sports Club</i> , 332 S.C. 90, 504 S.E.2d 318 (1998).	The commercial vendor is potentially liable to the third party. <i>Whitlaw v. Kroger</i> , 306 S.C. 51, 410 S.E.2d 251 (1991).	The social host is not liable. <i>Garren v. Cummings & McCrady, Inc.</i> , 289 S.C. 348, 345 S.E.2d 508 (Ct. App. 1986).	The social host is potentially liable to the third party. <i>Barnes v. Cohen Dry Wall, Inc.</i> , Opinion No. 26036.

the chart:

These recent cases raise several troubling issues for the hospitality industry. Certainly, there is the ever-present possibility of liability when one's premises are used to sell or transfer alcohol to underage adults or already intoxicated individuals. Now, however, the Supreme Court has clearly stated preventing underage drinking is an important policy goal and imposing liability on adults who supply alcohol to

minors will serve to make those adults more vigilant and responsible in monitoring the actions of their guests. In light of these holdings, hospitality employers should redouble their efforts to instruct their employees to ensure underage individuals are not drinking alcohol on their employers' premises, regardless of whether the establishment provided the alcohol or not.

