

### ANSWER TO QUESTION NO. 3

The Dramshop Act provides a cause of action for plaintiffs injured by a visibly intoxicated person against a retail establishment that unlawfully sells alcohol to the visibly intoxicated person, if the unlawful sale is a proximate cause of the injury. MCL 436.1801(3); *Reed v Breton*, 475 Mich 531, 537-538 (2006).

Proof of "visible intoxication" requires objective manifestations of intoxication. *Reed, supra* at 542; *Miller v Ochampaugh*, 191 Mich App 48, 59-60 (1991). Circumstantial evidence such as Topsy Tammy's blood alcohol content taken after the accident cannot alone demonstrate that Topsy Tammy was visibly intoxicated. *Reed, supra* at 542-543. Polly cannot demonstrate that Topsy Tammy was visibly intoxicated because Topsy Tammy did not show any objective manifestations of intoxication--she did not slur her speech, show a lack of balance or change her mood. Accordingly, Carolyn's Cavern is entitled to summary disposition under the Dramshop Act.

The No-Fault Act generally bars actions for non-economic damages, unless the injured person suffered an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life. MCL 500.3135(1), (7). Whether a plaintiff meets that standard involves a multi-step process in which the court determines: (1) whether there is a material factual dispute concerning the nature and extent of the person's injury; (2) whether an important body function has been impaired; and (3) whether the impairment affects the person's general ability to lead her normal life by comparing her life before and after the accident and the significance of impact on the course of her life. *Kreiner v Fischer*, 471 Mich 109, 131-133 (2004). There is no dispute that Polly broke her arm and it took three months to heal. A broken arm is a serious impairment of an important body function. Polly's injury, however, did not affect her general ability to lead her life or alter the course of her life. Polly's injury was not extensive or pervasive and her recovery was relatively short. Polly's life before and after the accident is indistinguishable. Thus, her general ability to lead her life and the course of her life were unaffected and Tammy is entitled to summary disposition. See *Kreiner, supra* at 135-136.