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Good Afternoon, All:

Thank you for inviting me to testify in support of BILL NO. 36-0113. I definitely agree that this type of legislation is long overdue in the U.S. Virgin Islands and am hopeful that meaningful dram shop liability is adopted in our jurisdiction soon. With the woefully inadequate minimum automobile liability limits in the U.S. Virgin Islands (along with the repeated wrongful denial of coverage by our insurers), victims of drunk driving absolutely need alternative and additional avenues of recovery when bars and restaurants overserve their customers.

However, I have two issues. First, I see it as problematic and too narrow for the liability to attach only if the person is/was visibly intoxicated. The current Section 161 is definitely "archaic" and the absence of any liability having arisen under its limitations is understandable. However, "visibly" observing that someone is intoxicated in a restaurant or bar setting is not nearly as likely as appreciating their intoxication based on how they speak, the slurring of their words, or the manner or their conversing. If a person never leaves their bar stool, there may not be an overt visual cues that, on their own, would demonstrate intoxication. However, hearing someone slurring their speech and speaking way louder than necessary or acting in a rude or inappropriate manner – those can all be evidence of intoxication that don't fall under the auspice of "visibly intoxicated." Such a narrow criteria (visibly intoxicated) leaves significant room for abusing "loopholes." If a server never saw someone stumble, vomit on the floor, fall on the way to the bathroom, or lay their head on the bar in the middle of a story, there might not be sufficient evidence of "visible intoxication" to support liability even though the same server and everyone in the bar heard the customer slurring their speech, rambling incoherently, and inappropriately propositioning the people next to them. As an aside, I also think that it may be too limiting to allow recovery only if the victim was injured in an automobile accident. I have represented victims of drunken aggression and poor decision making who were simply pedestrians on a sidewalk when a drunk patron left a bar and started picking a fight because the innocent pedestrian stepped in front of the drunkard or allegedly looked at their girlfriend the wrong way.

My second issue is that, though I would love to support this Bill with my testimony, I have a conflict on Monday afternoon. I have a District Court case that was recently transferred to a new judge based out of New Jersey upon Judge Lewis's retirement and that case is now set for a contested hearing on Tuesday. My co-counsel is in Miami and we have determined that we need to be present together during the hearing. So, I have to catch the Monday afternoon flight to Miami so I can be present at my co-counsel's Miami office for the Tuesday hearing.

Accordingly, I am not available to attend the Monday legislative session to offer any testimony. However, my colleague Russell Pate is well-versed on the issues surrounding Dram Shop Liability and would be a knowledgeable and passionate supporter of this proposed legislation. I did not see his name on the Invited Testifiers List and would suggest that he be added in my place, if possible. And please give serious review and consideration to the horribly and embarrassingly low minimum automobile liability limits that have gone unchanged for decades! Our \$10,000 minimums are a joke and only benefit the insurance industry.

Please feel free to call if you need to contact me further

Thanks,

Nate

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