

## TABLE 7

### LIABILITY IN OWNING OR OPERATING BUSINESS FACT PATTERN

Dan is the owner and operator of Marr Pub & Eatery, LLC which is a limited liability company in the State of New Hampshire. Dan schedules an appointment to see his company attorney Quinn. The conversation ensues as follows:

Dan : “Thanks for meeting me on such short notice. There was a mess up last month and from what I’m hearing I expect people to be lawyering up and coming after the pub for various claims.”

Quinn : “Sorry to hear that. What happened?”

Dan : “Well it was 10 o’clock and it had been a relatively slow night and I told one of the waitresses, Jill, and one of the kitchen staff, Jim, that they could punch hour early since they both had worked about 6 hours and we just didn’t need the help. Both Jim and Jill were fine with that, but after they clocked out they continued to hang around the pub and started doing jello shots. They both had about 6 within an hour. I don’t know what bartender, Barry, was thinking. They were all friends. After consuming all those shots, Jim began hitting on Jill and thought it was funny to grope her. At that point Barry finally stepped in and told them that they were both cut off. Jim told Jill he always gets what he wants and told Barry in front of Jill that he would “hit that”, pointing to Jill. After a string of profanity exchanges occurred between Jill and Jim resulting in Jill crying; Jill complained of sexual harassment the next day to the General Manager Jack. Jack came to me and told me what he had learned and I decided it not worth the hassle and that it was more of a ‘he said’ / ‘she said’ and they should both take responsibility for getting drunk. I then had Jack fire both Jim and Jill. Jim, Jack, me and the company got a Charge of Discrimination from the New Hampshire Commission for Human Rights by Jill. Jim and I as the registered agent for the pub also got a letter from a lawyer representing a man Jim had hit while drunk driving home from the pub that night. It claimed the pub was liable for overserving him under the DRAM shop law. You probably saw the accident in the news; although they did not mention the pub in the news. The man Jim hit appears to be paralyzed for life. I only have \$500,000 of liability coverage on the pub and my insurance company also tells me that I would

have had to have 'employment practice liability coverage to cover Jill's claims, which I don't. Now I have Jill's claim for which I do not have insurance coverage and a DRAM shop claim which could expose the pub for much more than the \$500,000 of coverage that I do have for that car accident claim. I also fired Barry the bartender for overserving Jim and Jill. He made a complaint to the New Hampshire Department of Labor where he claims that over the last three years he was not paid for setting up the bar or breaking it down and cleaning up which equates to about 2 hours for each shift. He is now claiming he is owed an additional \$20,000 which he has a claim against the LLC and me because he says I knew about us not paying for set up or break down of the bar each night, which I did know, and didn't pay him for those wages. I thought that was only a claim he could make against the LLC."

Moderator : Open up to Membership to find out who they believe to be potentially liable for Jill's sexual harassment claim in addition to the LLC, for the DRAM shop claim, and for the wage claim brought by Barry the bartender. Then the discussion continues...

Dan : "I know this could result in the pub closing and me losing my savings, but I am now making sure that I am getting those loans I made to the pub paid back to me and I am taking some additional distributions so there is not a lot of cash hanging around if there is ever a judgment and I cannot afford to pay."

Quinn : "Why don't you tell me more about the loan."

Dan : "Whenever I have extra money, I put it into the company. Whenever I need money, like when my family and I went to Ireland over the summer, I took money out of the company because I am the owner and all that money is mine anyways. I am also entitled to take profits. The company, until this debacle, was doing pretty well for itself. If things don't go in my favor and I get hit hard on one or more of these cases, I may just close down the pub and open a new one under a new name and LLC at the same location."

Quinn : (should be discussing with Dan potential exposures for liability of what Dan just stated and why)