



Assigning Liability: A Pub Crawl That Ended With A Fatal Fall

Even some of the most well-intended and seemingly harmless activities can have drastic outcomes. And when they do, someone is going to be sued ... that is, someone's "going to have to pay." Here's a real example of this harsh reality. In early April 2011, two men who were reportedly "horsing around" in the back of a charter bus, apparently crashed through the bus's bathroom door and fell out an emergency window and onto the Route 2 highway in Gardner, Massachusetts. One of the men, a 31-year-old self-employed resident of Gardner, died of impact trauma and his friend, a 34-year-old resident of Winchendon, sustained a fractured skull and other assorted injuries one might expect to sustain if you were to fall out of a bus traveling at 60 mph and land on the roadway.

The two men were among 50 revelers on a charter bus which was returning to the ale house (*not an IIC client*) in the central Massachusetts town that had sponsored the pub crawl event. The bus was nearing the end of a "beer lovers' expedition," which is a 200-plus-mile roundtrip charter from the Gardner ale house, with stops at three Massachusetts-area breweries and one brewery in New Hampshire. While there were no witnesses to the accident, authorities reported that the two victims had been drinking and that their alcohol consumption on this pub crawl may have contributed to this unfortunate accident.

Massachusetts and federal authorities are still investigating the facts but the issue of who may be liable most likely will be contested in the months and years ahead. Proper protection and transfer of risk for the ale house referenced above would have alleviated most of the liability for this remarkable scenario. They should have secured waivers from all participants (**as a benefit to insureds, IIC provides legally proven waivers for all states**); and created a contractual

transfer of risk with the bussing company **IIC has forms to accomplish this as well**. When done properly, a contractual risk transfer adds another layer of protection to an establishment and may decrease the frequency or severity of claims.

The purpose of this memorandum is to provide ideas to consider when structuring coverage. This memorandum is not, and should not be considered to be, legal advice.