

Fell v. Fat Smitty's and Idaho's Dram Shop Act

Practitioner Comment

by Ryan C. Janis

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Our firm represented respondent Fat Smitty's, LLC, throughout the litigation in *Fell v. Fat Smitty's, LLC*, 167 Idaho 34 (2020). Certainly our firm agrees with the result, and believes the Supreme Court of Idaho correctly applied Idaho's Dram Shop Act, I.C. § 23-808, et seq. ("Act") and its notice requirement through its order. By extension we also believe the trial court correctly applied the law in its ruling on our underlying Motion for Summary Judgment, which we filed moving for dismissal based on the plaintiff's failure to comply with the act's notice requirement. The fact is that under the law in Idaho, if you are a plaintiff filing suit against a seller of alcohol and there is an allegation (or it is a part of a plaintiff's case based on the facts at issue) that the tortfeasor's intoxication was a proximate cause of the injury in question, then the plaintiff must comply with the requirements of Idaho's Dram Shop Act, which specifically includes the 180-day notice requirement under Idaho Code § 23-808(5).

In other words, if the Act is applicable based on the facts of the case, then its provisions are mandatory (including the notice requirement) and failure to comply with such requirements (including failure to provide the defendant/alcohol seller in question with notice within 180 days of the incident in question) is fatal to a plaintiff's case and mandates dismissal under the plain language of the statute. That was the case here and therefore the Supreme Court of Idaho correctly applied the law to the facts of the case. That was our firm's position throughout the litigation and on appeal. We strongly believe that is the correct application of the law and the Supreme Court agreed through its order filed July 2, 2020. Additionally, it was our experience, and the opinion of our firm, that both courts provided thorough review and analysis of the statute and case law on the issue in question, and both reached the correct result — a result our firm advocated for strongly, before both courts, in both our briefing and through oral argument.

On the whole, in our experience Dram Shop Act cases are not incredibly common, but they do come up, and our firm has handled a couple of them (other than the *Fell v. Fat Smitty's* case). With that said, I do believe this is an important case, and certainly that it will impact Dram Shop Act cases in Idaho moving forward.