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December 2007

Volume 29 Number 4

Health Insurance Lawsuit Update

By Richard Zackin, Esquire

On November 28, 2007, the United States Court for the District of New Jersey entered an Order granting the Association's motion to certify a class action for settlement purposes with regard to the lawsuit brought by the Secretary of Labor against the Association and others. As a result, all participants in the plan and medical providers with claims against the Plan will be mailed notices of the settlement fund which has been established in the amount of \$2.25 million and will be provided with a claims form to be sent to the Independent Fiduciary appointed by the Court to administer the settlement fund. The notices and claim forms will be sent out by the end of January. With regard to the overall settlement, the Court will conduct a "fairness hearing" on February 29, 2008. If the Court approves the settlement, the Independent Fiduciary will evaluate the claims submitted to make a recommendation to the Court as to how the settlement fund should be distributed. Once the Court approves the settlement, the Court will enter a "Bar Order" which will preclude healthcare providers from pursuing claims against participants in the Plan, other than through the settlement fund, to the extent the benefits provided to the participants would have been covered by the Plan.

If the total amount of the approved claims exceeds the amount of the settlement fund, the distribution will be made on a pro rata basis. The Association's contribution is being covered by insurance. In addition, once the settlement is approved, Midlantic Healthcare, Inc. which served as the Plan Administrator and which is

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NJLBA Adopts the HERO Campaign

The New Jersey Licensed Beverage Association is proud to support the HERO Campaign for Designated Drivers® and its goal, to prevent drunken driving tragedies by promoting the use of safe and sober designated drivers. The HERO Campaign was established in October, 2000 by the family of Navy Ensign John Elliott of Egg Harbor Township, in Atlantic County. The campaign is a living legacy to John a May, 2000 graduate of the United States Naval Academy, who was driving home from Annapolis, MD for his mother's birthday celebration, when he was killed in a head-on collision with a drunken driver near Woodstown, NJ.

The driver who killed Ensign Elliott, and himself, on July 22, 2000 had been arrested by police on DUI charges earlier the same evening, and then released to a friend who put him back behind the wheel while still intoxicated. In addition to the HERO Campaign, John's family also championed "John's Law" legislation, first passed by New Jersey in August, 2001. The law requires police to impound the cars of those charged with DUI for up to 12 hours, and issue responsibility warnings to friends and family who take custody of the DUI offender after release.

The HERO Campaign has grown throughout New Jersey and surrounding states, and is active in professional sports stadiums, such as Giants Stadium in the Meadowlands, and at more than ten colleges and universities, including Rutgers, Monmouth, Rowan, Richard Stockton College, and the College of New Jersey. Thousands of municipal police cars and

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CHANGE— CHALLENGE— CHOICE ABL Las Vegas Convention

The sixth annual Convention of the American Beverage Licensees is scheduled for February 26, 2008, at the Las Vegas Monte Carlo Resort and Casino.

This year's theme of change, challenge, choice, best expresses the state of the alcohol beverage industry as it enters 2008. Every day, licensees face tough changes to their business plan. The challenges presented by government, the Courts and customers must be addressed and answered. The choices you make as a retailer will determine your future in the industry.

The Convention provides presentations by exciting speakers and industry executives from the beer, wine and spirits sector. You can attend educational seminars covering industry trends and ways to increase your bottom line. Tastings are available of the finest products the industry has to offer. While the Convention may not give you all the answers, it will definitely lead you in the right direction.

The Convention provides the opportunity to meet licensees and alcohol beverage industry executives and associates from all over the country to discuss problems and solutions to mutual concerns.

Your \$250 registration fee includes admission to the Night Club and Bar Trade Show, billed as the most comprehensive beverage and food event in the western hemisphere.

continued on page 5

"Representing the on-premise licensed beverage retailers, the heart of the hospitality industry"

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Partner Joseph Deal of our Cherry Hill office guides liquor license owners and applicants through a wide range of issues. Our firm's approach is a multi-disciplinary one, calling on the experience and expertise of the attorneys in our tax, business, real estate, land use, litigation, and other departments to form a team that meets your individual needs. Cooper Levenson attorneys have a wealth of experience in dram shop litigation, insurance issues, compliance, single and multi-jurisdictional planning, construction defect litigation, and more.

Joseph is a graduate of Pennsylvania State University (B.S. 1983) and Widener University School of Law (J.D. 1986), he has admitted to the bar in Pennsylvania and New Jersey in 1986, the United States Army Court of Military Review in 1987, the United States District Courts of New Jersey and Eastern Pennsylvania in 1989, and the United States District Court of Western Pennsylvania in 1991. He is a member of the Camden County, Gloucester County, Pennsylvania and New Jersey State Bar Associations.

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“Change - Challenge - Choice”

ABL SIXTH ANNUAL CONVENTION

Sunday, February 24 through Tuesday, February 26, 2008
Nightclub & Bar Trade Show continues through February 27, 2008

REGISTRATION FORM – PLEASE PRINT OR TYPE

Please Duplicate Form to Register Additional People

NAME _____ GUEST NAME _____

COMPANY/ESTABLISHMENT _____

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CHECK ALL BOXES THAT APPLY:

YES, this is my first time attending the ABL Convention.

NO, I **Do Not** plan to attend the NC&B Trade Show.

ABL Member Convention Registration Fee (Per Person) \$250 x _____ = \$ _____

ABL Non-Member Convention registration Fee (Per Person) \$275 x _____ = \$ _____

CANCELLATION REFUND FEE \$30.00 PER PERSON

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PLEASE CALL ABL AT 1-888-656-3241 WITH ANY QUESTIONS

CHECK THE WEB SITE AT WWW.ABLUSA.ORG REGULARLY FOR UPDATES

The Monte Carlo Resort and Casino - Las Vegas - ABL's CONVENTION HOTEL

The Monte Carlo is offering very attractive rates of just \$119 + tax per night, single or double occupancy.

Room rates are \$199 + tax per night on the Friday and Saturday prior to the convention.

Call the Monte Carlo Resort and Casino to make your room reservations now! Deadline is January 25, 2008.

1-800-311-8999

Refer to group code XABL08 in order to receive the special room rate.

Please have your credit card, arrival and departure dates handy when you call.

WHERE DID YOU HAVE YOUR LAST DRINK?

That is the question being asked by police officers of drivers being arrested for allegedly violating the DWI statutes. Pursuant to the instructions and mandate of the Attorney General, the answer to that question becomes a part of the arrest report. That information must, within 24 hours, be sent to the State Division of Alcoholic Beverage Control for inclusion in their data base. If the same establishment is named on numerous reports, this could result in an investigation of the named premises.

As anyone who works in a licensed premise or anyone who has taken the Techniques of Alcohol Management (TAM) seminar knows the regulations prohibit a licensee or his agent from selling, serving or delivering any alcoholic beverage to a person who is actually or even appears to be drunk or intoxicated. The licensee may not allow such a person to consume any alcoholic beverage on the licensed premises. The recommended procedure to follow is to offer such a person food, coffee or a non-alcoholic beverage. Such person should never be served or allowed to continue to drink an alcoholic beverage while in such condition. The licensee should do everything reasonably possible to prevent such person from driving.

NJLBA asked the ABC Advisory Committee to add the topic to their agenda for discussion and clarification. The Association took the position that the information obtained was "unreliable hearsay". It was observed that there are many reasons not to respond truthfully. Many customers have a great loyalty to their "home" bar and would do nothing that might hurt that bar. If a patron has been refused service at an establishment, he might name that bar for revenge. Or a customer may just lie about where he was drinking.

The Division has indicated that the last drink information will serve as another investigative tool. If an establishment is being continually mentioned, the possibility exists that further action will be taken.

If your employees, managers, bartenders, wait staff and security staff, have not attended a TAM seminar in the recent past, now is a good time to schedule one. An ounce of prevention is worth a pound of cure.

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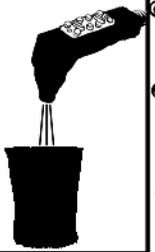
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LOOKING FOR SURVIVORS

After discussing the problems facing the alcohol beverage industry and how hard it was to do business in New Jersey, at a recent monthly meeting of the Board of Directors, it was suggested that the Association honor members who have been in business for 20 years or more and have maintained their membership in the NJLBA. Unfortunately our records only go back about seven years.

In order to compile this list of honorees, we need your help.

If you have been an on-premise licensee operating a business continually for a period of 20 or more years and have belonged to

the Association for that period of time, please let us have your story. We want to know your name, location, date you went into business, your phone number and e-mail address. We are also interested in your community involvement, your charitable endeavors, your NJLBA participation and any other information you want to share.

If you know of an on-premise licensee in your area that has been in business for 20 or more years, please fax (609.394.6730) their name and address to our office. With the help and co-operation of our membership, we hope to give the proper recognition to this distinguished group of owners.

SCHOLARSHIP APPLICATION DEADLINE APRIL 30, 2008

The Wellhofer/Wilinski Scholarship Foundation of the New Jersey Licensed Beverage Association was founded in 1945. Since that time, on an annual basis, scholarships have been awarded to a deserving student, helping them to continue and complete their higher education.

The deadline for submitting applications for the 2008 scholarship awards is April 30, 2008. All applications must be received in the NJLBA office on or before the April 30, 2008 deadline to be eligible for consideration.

To be considered for the Scholarship, the applicant must be the son, daughter or grandchild of a bona fide dues paying, on-premise retail consumption licensee association member. Sons, daugh-

ters or grandchildren of retired NJLBA members are also eligible if the retired licensee had paid dues for the last five (5) years they were in business prior to the application.

Annually the Scholarship Foundation has awarded two scholarship grants in the sum of \$10,000.00 each payable at the rate of \$2,500.00 per school year. The recipient must be a matriculated, full time undergraduate student attending any recognized degree granting college or university in the United States.

If your child or grandchild is eligible, please call the office (609-394-6730) for an application. Remember the completed application must be in the NJLBA office on or before April 30, 2008.

Health Insurance Lawsuit Update

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also contributing to the settlement, will dismiss its claim against the Association for allegedly unpaid fees in the amount of approximately \$900,000.

If you or your employees who believe they have claims against the Plan, do not receive the notice of the class action by February 8, 2008, please promptly contact the Association.

NJLBA Adopts the HERO Campaign

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state police cruisers throughout the state display HERO window decals.

The NLBA asks all members to participate in the HERO Campaign by signing a pledge to display HERO posters—available through the NJLBA—serve free soft drinks to designated drivers, and place HERO decals at or near your front doors to identify you as HERO Campaign supporters. In addition to our organization, the HERO Campaign has been endorsed and adopted by the New Jersey Beer Wholesalers Association, the New Jersey Restaurant Association, and various state agencies. In December, 2006, Governor Corzine declared New Jersey the first HERO State in recognition of the campaign.

CHANGE—CHALLENGE—CHOICE ABL LAS VEGAS CONVENTION

continued from page 1

The Monte Carlo Resort and Casino features new amenities, dining options and gaming experiences thanks to an extensive renovation of the resort over the past year. The Monte Carlo is offering a very attractive convention room rate of \$119 plus tax per night, single or double occupancy. The Monte Carlo can be reached at 1-800-311-8999. Please refer to group code XABL08 in order to receive the special room rate. Please have your credit card, arrival and departure date when you call. Deadline to receive the Convention room rate is January 25, 2008.

Convention registration application is on page 3.

Legal Corner

by Paul D. Strauchler, Esquire
Post, Polak, Goodsell, MacNeill & Strauchler, P.A.

Two recent decisions, one by the New Jersey Appellate Division and the other by the New Jersey Division of Alcoholic Beverage Control ("NJABC"), demonstrate the importance of disclosure of all potential beneficial interests in operations of licensees, both in applications for licenses and renewals, and for transfer of licenses.

In *Fayette Fair Trade, Inc. v. City of Perth Amboy*, the licensee appealed a suspension of the license. The sole shareholder of the licensee indicated that there were no other persons receiving a percentage of profits from the business in the original application or in subsequent renewal applications. All operating decisions and bookkeeping for the bar were made by a non-owner manager, and the owner exercised no significant oversight of the operations. Moreover, the manager was compensated by a 50% or better share of the profits. The NJABC Director determined that the manager exercised an undisclosed beneficial interest which warranted suspension of the license. The Appellate Division affirmed, stating that the general laws regarding profit sharing with employees of a business were superseded by the plenary statutes and regulations governing the liquor industry.

In *P.T.K., L.L.C. v. Borough of Fort Lee*, the applicant, P.T.K., sought a person-to-person transfer of a license. P.T.K. had a sole shareholder. Following the submission of the application to Fort Lee, the husband of P.T.K.'s sole shareholder entered an agreement to manage The Hangar Nightclub for Hangar, Inc., which club operated under the license. The management agreement gave the manager the exclusive right to operate the club, purchase all provisions, manage all employees, and keep the books for the club. The manager also received a "monthly management fee" equal to 100% of net profits, including profits from the sale of alcohol. The husband also entered an operating agreement with P.T.K. that granted similar broad rights. The NJABC Director affirmed the denial of the transfer application based on an undisclosed ownership interest in the license applicant. This case is currently on appeal to the Appellate Division.

Both cases emphasize the general prohibition on someone who is not a part owner of a corporate licensee exercising the benefits of ownership, including control over operation of the license and profit-sharing from the sale of alcohol.

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Alcoholic Beverage Control
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A MUSIC LICENSE IS GOOD BUSINESS EVEN WHEN “ORIGINAL” MUSIC IS PLAYED

Nightclubs, bars and restaurants which present original music by live musicians still may need a music performance agreement with BMI, said Tom Annastas, BMI Vice President, General Licensing.

“It’s not unusual to find business owners who think they are exempt from music licensing because they tell the performers they hire to play only original compositions,” explained Annastas. “Nevertheless, these businesses may be using copyrighted music registered with BMI without realizing it. Most entertainers will perform some songs they don’t own.”

Annastas said the term “original music” usually means musical works written by the performing musicians. Because BMI represents more than 350,000 composers and publishers and more than 6.5 million compositions – more than half the songs played by radio stations today – there is a good chance some of the performed songs are affiliated with BMI.

“There are many situations in which musicians unintentionally perform songs from BMI writers and publishers,” Annastas said. “It’s common for customers to request a popular song, and it’s likely many songs known to the public are registered with us. Sometimes, bands perform songs written by former band members and friends who may be affiliated with us. It’s the responsibility of the business owner to make sure the performances of these songs are authorized by obtaining a BMI music agreement.”

Annastas added, “If an entertainer has recorded a CD of his songs, or if others have recorded his songs, that entertainer probably has registered his work with a performing rights organization.” Musicians also may use a song written by someone else and perform it in their own style, saying it is original. “This is actually an arrangement,” Annastas explained. “It would still be a performance of a copyrighted song, which must be authorized. Whether live performers are paid or work for tips usually has no bearing on whether a music license is needed,” Annastas said.

Many live music venues play recorded music before and after live performances to entertain those customers who arrive early or stay late for food or drinks. A typical CD doesn’t include information about who wrote the songs, so it’s very difficult for a business owner to determine copyright ownership. Most CDs include songs registered with BMI.

All of the titles in the BMI catalog of musical works may be accessed on the BMI web site (www.bmi.com), but most business owners have neither the time nor interest to research ownership of the music played in their business. To simplify that task, BMI provides an information hotline: 1-800-800-9313, where business owners can request information on as many as 20 song titles per call.

Even when an entertainer manages to perform only the songs he or she owns, most business owners play recorded music before and after the live performance. Many customers in the mood to

be entertained leave a silent venue quickly, taking their money with them. Playing copyrighted music, whether CDs, tapes or MP3s, requires a music license or permission of songwriters.

“When playing recorded music, often it’s impossible for the venue owner to know who owns the copyrights,” said Annastas, “Without a music license, such a proprietor is at risk of infringement, regardless of intent.”

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Legislative Affairs Report

NEW JERSEY LICENSED BEVERAGE ASSOCIATION

TRENTON, NEW JERSEY

by Barbara McConnell

The 2007 Legislative elections are over, and while the Democrats retained control of both the Assembly and Senate, the results produced several new members of the Senate and Assembly. The most notable upset was in District 12 where Assemblywoman Jen Beck unseated incumbent Senator Ellen Karcher (D), sponsor of several “unfriendly” bills for business, especially in the food and beverage sectors.

Senator Richard Codey was re-elected by the Senate Democrats as Senate President; and Senator Stephen Sweeney was elected as Majority Leader. On the Minority side of the Senate, Senator Tom Kean stole the Minority Leadership post from Senator Leonard Lance, who was named as Senate Budget Leader.

On the Assembly side, Assemblyman Joe Roberts was re-elected as House Speaker; and Assemblyman Alex DeCroce was re-named as Assembly Minority Leader.

The “Lame Duck” session began on November 8, 2007 and will continue through January 8, 2008 when the new 213th Legislature will convene.

Issues expected to be considered during “Lame Duck” that are of interest to NJLBA are:

- **Paid Family Leave.** Governor Corzine supports the passage of paid family leave and the bill is likely to move during “Lame Duck”. A-3812/S-2249 (Albano/Sweeney) has passed the Senate Labor Committee; and the Senate Budget & Appropriations Committee. While we expect there will be several changes to the bill in order to try and make it more palatable to the business community, this will likely slow down the sponsors ability to move the bill during “Lame Duck” and get it to the Governor’s desk. Mandating paid time off will severely disrupt the operations of companies, and small businesses by requiring that they find and pay for qualified replacements for workers taking time off. New Jersey already has a hard time attracting businesses to the state – this legislation will only make it more difficult.

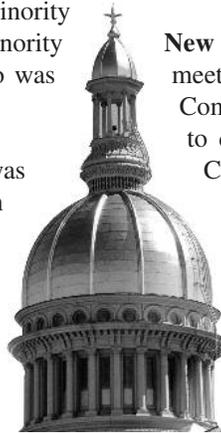
- **A-4025 - “Winemaking Schools”** – legislation to create a new alcoholic beverage license for facilities that teach winemaking, allowing them to manufacture, bottle, sell, and have wine tastings and special events for the public. We have just learned that this legislation has been re-committed to the Assembly Law and Public Safety Committee for amendments. The Committee is meeting on November 19. NJLBA met previously with the Speaker’s staff to express our concerns about the bill, and to discuss possible amendments.

New Jersey “Fire Code” – NJLBA has scheduled a meeting with Commissioner Joe Doria, Department of Community Affairs for November 21, 2007 at 2:00 PM to discuss the hardship that portions of the new Fire Code will have on our industry.

Legislation Introduced on November 8, 2007

Several new bills were introduced on November 8, 2007 that NJLBA strongly oppose:

- A-4483 (Huttle) - legislation that requires a 10-cent deposit on beverage containers under 24 ounces; and 20-cents for containers over 24 ounces. The proposal includes juice, sports drinks, and bottled waters, as well as soda, wine and beer containers.
- A-4438 - Rumpf/Connors, - Criminalizes fifth and subsequent drunk driving offenses;
- A-4517 - Vandervalk - clarifies that use of ignition interlock device is mandatory for all drunk driving offenses and requires installation during license suspension;
- A-4524 - Gusciora - Raises minimum wage to \$7.40, then makes annual adjustments based on CPI increases;
- S-2867 - Sarlo - Permits qualified trustee to hold interest in alcoholic beverage license for qualified beneficiary under age 18.



Behind the Bar

by David T. Kratt

TERMINOLOGY AND RULES OF ENLIGHTENMENT



As a beginner bartender, do you sometimes feel left in the dark? Why can't some higher power show us the light or, at least, etch a few things in stone?

This is when you say, "Hallelujah!"

Well, it's my prophecy that, over time, the practice of mixology will become even more, thou shalt dare say, mixed up. Some content in this and next month's article is opinion, so I can only pray that the higher powers don't strike me down with lightning if they disagree:

Martini, Manhattan and Rob Roy –

Hey, my prophecy came true already. To me, a cocktail dripped with chocolate syrup does not maketh a Martini because it's served in a Martini glass.

Praise the....

In the Old Testament, a Martini was simply gin or vodka with vermouth. A Dry Martini means less vermouth; so just give it a splash. Add olive juice to make it a Dirty Martini. Dry Manhattan means replace sweet vermouth with dry. Perfect Manhattan is prepared with the same amount of vermouth as a regular Manhattan but with sweet and dry vermouth in equal parts. Rob Roy is a scotch Manhattan. Ask if a customer wants these cocktails prepared up or on-the-rocks.

Neat, Shot, Shooter, Slammer and Bomb –

Neat means no ice; served at room temperature. To me, a jigger is a tool of our trade and a shot glass is used to serve a shot of liquor. Add a nonalcoholic ingredient and maybe chill it and it's a shooter. In the beginning, a customer slammed the glass on the bar before drinking a slammer. For safety reasons, tell customers not to do that. Today, thanks to the Jager® Bomb, a drink with the word "bomb" in the name probably means a shot of liquor with Red Bull® energy drink.

Sour, Daiquiri, Collins and Fizz –

Oh God, please don't strike me down for this one, but the bar mix today is so sour that, for Sours and Daiquiris, I'll cut it down with a splash of 7UP® which, technically, makes it a Collins. A Stone Sour is a Sour with orange juice. For Fizzes, usually Sloe Gin Fizz, I'll blend the ingredients without the 7UP® and then splash it with 7UP® after the blended ingredients are poured into the glass.

Presbyterian, Rickey and Buck –

All highballs: Presbyterian usually means ginger ale, club soda and maybe a lemon twist. Rickey means club soda with a lime wedge. Buck means ginger ale with a lime wedge or lemon twist.

Cosmopolitan and Kamikaze –

Cosmopolitan is chilled and served up. Ask customers how they want a Kamikaze. Know the core ingredients for these cocktails and you have the key to many recipe variations. For example, what's in a Stoli® Kamikaze or a Raspberry Cosmopolitan?

Breeze and Madras –

Sea Breeze means cranberry and grapefruit juices. Bay Breeze means cranberry and pineapple juices. Madras means cranberry and orange juices.

Let's get right into filling up this stone tablet with some general rules:

Garnishes and mixes –

Daiquiris, gimlets and highballs prepared with tonic all get a lime. Ask if a customer wants a lime or lemon for highballs prepared with club soda. Collinses usually get a cherry and an orange slice. Manhattans and Rob Roys get a cherry. Ask if a customer wants a lemon twist or olives, or both, for Martinis, Dry Manhattans and Dry Rob Roys.

Dash, splash and under pouring –

Some recipes use the phrase, "a dash." Unless it's a solid ingredient such as nutmeg, to me, that's a cooking phrase, not bartending. Now "a splash," that even sounds like a bartending phrase. They probably mean the same thing; about a teaspoon, maybe less.

Thou shalt err on the safe side by purposely under pouring ingredients such as vermouth, lime juice and grenadine because you can't take it back out, but you can add more on request.

Shaken not stirred –

Don't over shake a cocktail. You want it chilled; not watered down. In addition, don't stir a cocktail even when the recipe calls for it to be stirred. That's the customers' job, not yours. Drinks such as a White Russian or a Mudslide prepared on-the-rocks look much better served layered than stirred.

Let there not be fire –

Years ago, when flaming drinks were more popular than today, a customer burned his lips on his snifter glass. I got the message from that burning bush. You have to make the call on this one, but if all my customer wants is his or her liqueur warmed up, I'll give it a quick zap in a microwave or hold the snifter inverted under hot running water and then quickly pat it dry with a cocktail napkin before pouring the liqueur.

Ice cream drinks –

Thou shalt not over blend ice cream drinks. And don't make them too strong, either. Did I mention not to over blend them?

Sum of the parts –

The bar decides how much alcohol is in a cocktail, not a recipe book, nor a customer. That means you must learn to quickly convert from ounces, usually, to parts. The sum of the alcoholic parts must not be greater than the specified volume of alcohol for that type of cocktail.

Give 'em what they want or expect –

A customer orders Baileys® on-the-rocks; but she gets a substitute for Baileys®. A customer orders a Black Russian; but it's prepared with a coffee liqueur instead of Kahlua®. I just don't see that as being right. Do you?



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LOOKING AHEAD TO UPCOMING EVENTS

May 14, 2008 – Annual Golf Outing
Ramblewood Country Club, Mount Laurel

June 25, 2008 – Wellhofer/Wilinski Scholarship Picnic
Oak Tree Lodge, Wall Township

October 2008 – 76th Annual Alcohol Beverage
Retailers' Convention, Atlantic City

Monthly Board Meeting,
second Wednesday of each month

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SEASON'S GREETINGS AND BEST WISHES FOR
A HAPPY NEW YEAR.

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Robert C. Williams
COUNSELLOR AT LAW
Associate Member NJLBA

Alcoholic Beverage
Licensing Matters

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