

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

SUPERIOR COURT
CIVIL ACTION NO.
06-xx

XXXXXXXXXXXXXXXXXXXXXXXXX, et al.,)
Plaintiffs)
)
v.)
)
STANLEY XXXXXXXXXXXXXXXX, and)
XXXXXX, INC., Defendants)

DEFENDANTS' MOTION IN LIMINE TO PRECLUDE EVIDENCE
OF DEFENDANT STANLEY XXXX'S INTOXICATION

Now come the defendants, and move the court *in limine* for a ruling excluding any evidence of defendant Stanley xxx's intoxication at the time of the accident. As grounds, the defendants have admitted the defendant xxx's operation at the time of the accident was negligent, and the only issues in dispute are causation and damages. Mr. xxx's intoxication is irrelevant to causation and damages. The plaintiff is not entitled to any greater damages due to the increased culpability of Mr. xxx, and there is a clear danger such evidence would be unduly prejudicial and inflammatory to the jury, the court's instructions to the jury notwithstanding. In further support of this motion, the defendants state as follows:

1. This is a motor vehicle tort action arising from a two-car accident on November 11, 2003. The defendants' Answer to Plaintiffs' Complaint admitted the plaintiff's allegation that the defendant operator Stanley xxx was negligent. The only issues in dispute are causation and damages.

2. The defendants' research has located no cases in Massachusetts on the subject of whether it is error, in the trial of a motor vehicle personal injury claim where the defendant has admitted liability, to allow the plaintiff to offer evidence of the defendant's intoxication. However, in

Johnson v. Knipp, 36 Ohio App.2^d 218, 1304 N.E.2^d 914 (Ohio App. 1973) [Tab A, attached hereto], the court found error in the admission of intoxication evidence where the defendant had stipulated to liability. In that case, the plaintiff called the defendant as his first witness asked him about the accident and then successfully offered evidence of his intoxication under the justification it was relevant to the defendant's credibility. The appellate court found this improperly interjected immaterial and prejudicial material which served only to influence the jury on the issue of damages. *Id.*, at 222. The court held a defendant's credibility is put in issue, permitting cross-examination on alcohol consumption and intoxication, only where the defendant takes the stand as part of the defense case and offers testimony which conflicts substantially with the plaintiff's evidence. *Id.*, at 223. The court ruled the evidence was it was prejudicial error to admit the intoxication evidence and a mistrial should have been granted. A verdict for the plaintiff was vacated, and the case was remanded for a new trial. *Id.*, at 224.

3. Further, in Bauer v. Carothers, 659 N.W.2^d 506, 2003 Wisc. App. LEXIS 183, an appeals court in Wisconsin, in an unpublished opinion, found no error in the exclusion of a defendant's intoxication in an admitted-liability automobile accident trial. At a motion in limine hearing, the defendant stipulated to liability and found the trial court evidence of intoxication lacked relevance to the issues of causation and damages. "Given [the defendant's] concessions, the court inquired what would be the purpose of the intoxication evidence other than 'to hope the jury decides to punish the guy for drunk driving.'" *Id.*, at __, *3 [Tab B, attached hereto].

4. At bottom, the issues in dispute in this case are causation and damages. The fact the defendant operator may have been drunk does not make the plaintiffs' compensatory damages any greater, or make a causal relationship between plaintiffs' damages and the accident more likely than without such evidence. Rather, to permit the plaintiff to interject the defendant operator's intoxication would be solely to inflame the passions of the jury in hopes of obtaining unsanctioned punitive damages.

WHEREFORE, the defendants respectfully request the Court prohibit the plaintiffs from interjecting the defendant operator's intoxication into this trial or any other evidence not probative of causation and damages.

Respectfully submitted,
STANLEY xxxx, AND xxxxxxxxxxxxxxxx,
INC., Defendants

By _____
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