



SMITH | FREED  
EBERHARD

Attorneys at Law  
Oregon & Washington

# Investigation of *Liquor Liability Claims*



In Oregon, to recover, a plaintiff must prove by clear and convincing evidence that the patron that injured plaintiff was served or provided alcohol when he or she was visibly intoxicated.

In Washington, the standard is “apparently under the influence” of liquor.

1



Interview your insured and their employees who were working at the time of alleged sale(s):

- What are the employees' duties?
- Do the employees know the customer? Can they estimate age, height, weight?
- What was the quantity and nature of the drinks consumed (get detailed description as to size of drinks and volume of alcohol)?
- How fast/slow drinks were consumed and how many drinks over what period of time?
- Where did they sit? Who did they sit with and who was purchasing the drinks? Was any food consumed? Any unusual behavior?
- Did customer ever leave and return (i.e. drink in car or elsewhere)?

2

When did they leave your bar?

3

What time was the last drink served? Was patron visibly intoxicated at time of last service? The Oregon Liquor Control “50 Signs of Visible Intoxication” is attached - Look for these signs when investigating.

4

Did they go to another bar before or after?

5

Was plaintiff socializing or drinking with the patron whose conduct is in question?

6

Was alcohol found in the vehicle?

7

Interview establishment witnesses: Ask same questions as above.

8

Obtain any surveillance video - for the entire time period the alleged intoxicated person (AIP) and/or plaintiff was in your insured's business.



9

What time was the accident?

10

What time was BAC tested?

11

Secure police reports to determine details of the accident: how impaired was the patron when interviewed by police; if any blood alcohol tests were completed, what were the results of the BAC tests. (Remember “Field Sobriety Tests” are divided attention tests - a failure does not equal visible intoxication.)



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**12** Retrograde Extrapolation - Using a post-incident BAC to calculate pre-incident BAC is subject to many inconsistent variables. However, you should use the Widmark Formula to determine likely levels of intoxication at time of last service.

**13** The method used to test for BAC will affect the results (i.e. police vs. hospital – hospital overstates BAC due to testing method).



**14** Keep Blood Alcohol Concentration (BAC) in perspective. Under criminal driving under the influence .08 is driving while impaired. Plaintiff's experts will typically say it takes .13 or more for visible intoxication. "Veteran" alcoholics may show no signs, even if in the range of .20 to .30.

**15** Determine when and what AIP had to eat. Food can slow down absorption, meaning it takes longer for the BAC to peak.

**16** Investigate the following factors that affect BAC:  
Strength of Drink ○ Weight of Patron ○ Rate of Consumption  
Tolerance ○ Gender ○ Age ○ Fatigue ○ Mood ○ Illness & Medications

**17** Secure AIP's driving record.

**18** Was the AIP charged? Did AIP appear in court? Can court records be obtained?

**19** Was AIP on any type of medication or did they consume illegal drugs?

**20** Determine whether the patron has a condition that mimics signs of intoxication (important for Field Sobriety Tests):

- **Flushed face caused by:** Blushing, Diabetes, High blood pressure, Menopause, Sunstroke
- **Acetone odor (a fruity odor) of the breath caused by:** Amnesia, Blood poisoning, Brain concussion and other brain injuries, Delirium tremens, Diabetes, Epilepsy, Food poisoning, Intestinal obstruction, Migraine headache, Nervous disorder, Starvation, Stomach cancer, Stomach ulcer, Vomiting
- **Eye disorder caused by:** Brain hemorrhage, Drugs, Fractured skull, Fright, Hay fever, High blood pressure, Nausea, Pain
- **Speech disorder caused by:** Adenoid problem, Cleft palate, Dislocation of jaw, Hysteria, Infection, Migraine headache, Toothlessness
- **Poor coordination caused by:** Exposure to gases, drugs, or chemicals such as carbon monoxide, barbiturates, or industrial chemicals, Inner ear infection, Muscle spasm or injury, Nerve injury, Shock, Spinal cord injury
- **Hallucinations caused by:** Bites or stings, Blood loss, Diabetes, Drugs, Infection, Poisons or poisonous foods
- **Drowsiness caused by:** Anemia, Brain concussion, Diabetes, Drugs, Sickness



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### **Jeffrey D. Eberhard**

111 SW 5th Ave, Suite 4300  
Portland, OR 97204

**Phone:** 503.227.2424  
**Email:** jeberhard@smithfreed.com  
[www.smithfreed.com](http://www.smithfreed.com)



### **Philip R. Bennett**

111 SW 5th Ave, Suite 4300  
Portland, OR 97204

**Phone:** 503.227.2424  
**Email:** pbennett@smithfreed.com  
[www.smithfreed.com](http://www.smithfreed.com)



### **Bill P. Taaffe**

111 SW 5th Ave, Suite 4300  
Portland, OR 97204

**Phone:** 503.227.2424  
**Email:** btaaffe@smithfreed.com  
[www.smithfreed.com](http://www.smithfreed.com)

