

ALBA

ARIZONA LICENSED BEVERAGE ASSOCIATION

Dear Alba members,

The following is a timeline of the Torres case and the decision of reaffirming ARS §4-311 and §4-312 which places liability on the voluntary intoxication as the act of the drinker, and that licensees are only responsible for serving someone under 21 and serving an obviously intoxicated person.

I'm very happy to provide you with the Arizona Supreme Court's decision in Torres. It's a 34-page decision including a concurring opinion and a dissenting opinion by Justice Timmer. It finds in the liquor industry's favor by limiting a licensee's liability only if a person under 21 is sold alcohol or pursuant to Section 4-311(A) imposes liability upon a liquor licensee that serves alcohol to a patron who is **“obviously intoxicated,”** § 4-311(A)(1), which is defined as being **“inebriated to such an extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person,”**

ORIGIN OF THE TORRES CASE

In 2016, after a night of heavy drinking at the Jaguars Club in Phoenix, owned by JAI Dining Services, Cesar Aguilera Villanueva drove away heavily intoxicated. After going to a friend's house to “sober up” and sleeping for a short time at his own house, Villanueva again drove and crashed into a car stopped at a red light, killing its two occupants. The victims' families, Roberto Torres et al., sued Villanueva for negligence and sued JAI, under theories of statutory and common law dram-shop liability.

At trial in 2019, the jury found Villanueva liable for negligence but rendered a split verdict on the dram-shop claims against the licensee JAI. The jury found JAI was liable under the common law dram-shop action recognized by the Arizona Supreme Court in 1983, which imposes liability on a liquor licensee that serves alcohol to an intoxicated patron if it “know[s] or should know that such conduct creates an unreasonable risk of harm to others.” However, the jury found JAI was not liable under the dram-shop cause of action codified at A.R.S. § 4-311(A), which imposes liability on a liquor licensee that serves alcohol to a patron who is “obviously intoxicated.” The jury awarded Plaintiffs \$2 million in damages, apportioning 40% of the fault to JAI. Villanueva was to pay 1.2 million and is currently serving a 14-year sentence in jail. JAI appealed claiming it should not be held liable pursuant to A.R.S. § 4-312.

RELEVANT TIMELINE FOR DRAM-SHOP LIABILITY IN ARIZONA

1912 - At the time of Arizona's Statehood – No common law doctrine of tavern owner liability.

1983 - Arizona Supreme Court held in *Ontiveros* “that the common law doctrine of a tavern owner non-liability is abolished in Arizona” and recognized a common law dram-shop action.

1986 - ALBA's counsel Don Isaacson ushers through the Arizona Legislature ARS §4-311 and §4-312 which places liability on the voluntary intoxication as the act of the drinker, and not the act of the seller of the beverage unless the person being served is under 21 years of age or obviously intoxicated and the person being served has no cause of action for his own injuries or damages from the licensee.

1995 - The Arizona Court of Appeals in Young found that § 4-312(B)'s limitation of "dram shop liability found in §4-311 did not provide "a reasonable alternative to the general negligence action recognized in Ontiveros when claimants are injured by a driver that the licensee . . . should know is intoxicated, but the driver is not 'obviously intoxicated.'" The court thus held that § 4-312(B) "unconstitutionally abrogates the general negligence cause of action recognized in Ontiveros."

2022 - Arizona Court of Appeals, in which ALBA files an Amicus Brief, finds in Torres that ARS §4-311 and §4-312 are constitutional.

October 16, 2023 - Arizona Supreme Court, in which ALBA files another Amicus Brief, affirms the Court of Appeals holding in Torres that ARS §4-311 and §4-312 are constitutional and the Arizona legislature can limit liability for licensees. (ARS §4-311 and §4-312 attached)

<https://www.azleg.gov/ars/4/00311.htm>

<https://www.azleg.gov/ars/4/00312.htm>

This decision immediately goes into effect and I am already hearing of liquor liability cases being dropped and talk of more insurance carriers considering Arizona.

This can only lead to more competitive rates.

As President of ALBA I believe these are the issues that are most important to our membership. ALBA is one of only a few associations that hired an attorney specially devoted to this case.

Congratulations to all involved including ALBA's attorney in this case Pete Schelstraete who successfully represented ALBA.

These are your dues protecting your license, your business and your employees.

ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY

NO ONE OF US IS AS STRONG AS ALL OF US WORKING TOGETHER!

Thank you for your continued support.

Sincerely,

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