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TORT TRENDS

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What does a personal injury plaintiff have to plead to seek punitive damages against a drunk driver?

By [Sean C. Burke](#)

Drunk Driving Poses a Well-Known Risk of Danger

Alcohol is the number one killer on American roadways. Illinois Rules of the Road 2014, Chapter 6, p. 42. Over 30,000 people are killed in crashes each year in the United States.¹ Nationwide, about one-third (31%) of the total fatalities were in alcohol-impaired-driving crashes.² Another 28 people die in drunk-driving crashes every day in America.³ Driving under the influence in Illinois is a serious offense classified as a violent crime.⁴ Alcohol affects vision and slows reaction time so that it takes longer to react in an emergency.⁵

Does the Conscious Choice to Drink & Drive Establish Willful & Wanton Conduct?

Drunk drivers make a conscious choice to drink too much alcohol before getting behind the wheel. Such a deliberate decision to drive drunk seems to show "an utter indifference to or conscious disregard for the safety of others," which fits the definition of willful and wanton conduct in Illinois. So, it would seem that a driver who hurts somebody in a crash and pleads guilty to DUI is also guilty of willful and wanton conduct and should be subject to a claim for punitive damages. One trial judge has remarked: "You'd think there'd be a case somewhere that would say being drunk while you're driving either is or is not willful and wanton." *Farris v. Sullivan*, 2013 IL App (4th) 120753, ¶19. Until recently, however, DUI defendants argued that injuring another while driving drunk was not a sufficient basis for a personal injury plaintiff to claim punitive damages.

A Driver Who Hurts Someone in a Crash & Later Pleads Guilty to DUI Establishes the Facts Needed to Allege Willful & Wanton Conduct

A recent decision by the Illinois Appellate Court rejects this argument. In *Farris v. Sullivan*, the Fourth District ruled that a personal injury complaint states sufficient facts to support a claim for willful and wanton conduct where the plaintiff alleges that the defendant:

- Chose to drink enough alcohol that he pleaded guilty to DUI;
- Could not properly operate his car due to his alcohol consumption; and
- Injured the plaintiff in an collision.

Farris v. Sullivan, 2013 IL App (4th) 120753, ¶17.

In *Farris*, the plaintiff alleged that he was injured while riding as a passenger in the defendant's car after the defendant, who was intoxicated, lost control of the car which went airborne and struck a tree.⁶ Count I of the plaintiff's amended complaint alleged that the defendant was negligent for driving while under the influence of alcohol, losing control of his vehicle, failing to brake, speeding and failing to reduce speed for conditions.⁷ In

Count II, the plaintiff alleged that: (i) the defendant knew Illinois law prohibited driving while intoxicated; (ii) liquor caused intoxication; (iii) defendant could not safely operate a vehicle while intoxicated; (iv) intoxication lessened the defendant's ability to react to dangers while driving; (v) intoxication lessened the defendant's ability to pay attention while driving; (vi) intoxication impaired the defendant's coordination; (vii) intoxication affected the defendant emotionally and (viii) intoxication caused the defendant to exercise poor judgment.⁸

The defendant filed an answer to Count I admitting that he had been drinking and that he pleaded guilty to DUI, but he denied that he was intoxicated.⁹ The defendant moved to dismiss Count II, arguing that the plaintiff failed to allege that the defendant acted with an utter indifference or conscious disregard for his own safety or the safety of others and also failed to allege facts demonstrating that the defendant was intoxicated. The trial court dismissed plaintiff's willful and wanton count.

The Fourth District reversed, ruling that the complaint set forth sufficient facts to support a cause of action for willful and wanton conduct. The appellate court reasoned that an actor's "utter indifference" or "conscious disregard" for the safety of others can be inferred from the outrageous nature of the conduct committed.¹⁰ The appellate court pointed to the facts that the plaintiff alleged supporting his allegation of willful and wanton conduct:¹¹

- The defendant chose to consume alcohol to the extent he was accused of and pleaded guilty to DUI
- The defendant chose to operate a motor vehicle despite knowing the criminal nature of driving while intoxicated
- The defendant chose to drive and transport a passenger despite knowing the impact that consuming alcohol had on his ability to drive
- Due to his consumption of alcohol, the defendant was involved in a collision that injured the plaintiff.

The appellate court also rejected the argument that the allegation of "intoxication" was a legal conclusion and not an allegation of fact. The court noted that, in his answer to Count I of the amended complaint, the defendant admitted that he consumed alcohol before the crash and later pleaded guilty to DUI. The appellate court ruled that the defendant's answer to Count I was a judicial admission that the trial court should have considered.¹²

Suggestions For Seeking Punitive Damages Against A Drunk Driver

The opinion in *Farris* sets out several of the steps that a plaintiff's attorney should follow before seeking punitive damages against a drunk driver who has injured someone in a collision. First, it is important to obtain all the police reports generated by the crash and the driver's arrest for DUI. The reports should include the Illinois Traffic Crash Report, the traffic tickets issued to the defendant, the arresting officer's incident report, the warning to motorist, the alcohol influence report and the breathalyzer printout. The reports will document how much alcohol the defendant has admitted to drinking before the crash and how impaired the defendant appeared to the officer or witnesses at the scene. Second, look for whether the defendant driver refused to take breath test for alcohol. In Illinois, evidence of the refusal to take a breath test is admissible in a civil action or proceeding arising out of acts that the defendant allegedly committed while he was under the influence of alcohol.¹³ A driver's refusal to take a breath test is relevant because it implies that the driver believes he is intoxicated, which he is in a prime position to appraise.¹⁴ In other words, evidence of the refusal to take a breath test is evidence that the driver knew that he was intoxicated and not fit to drive a car, posing a safety risk to himself and others. Third, there are many statistics available through the National Highway Transportation Safety Administration (NHTSA), the Centers for Disease Control (CDC), Mothers Against Drunk Driving (M.A.D.D.) and the Illinois Secretary of State establishing that alcohol impairs a person's ability to drive safely and increases the risk of injury to the driver and others. A plaintiff can establish that these statistics come from accurate sources that cannot be reasonably questioned. A trial court may take judicial notice of these statistics to establish that drunk driving increases the chances for crashes resulting in serious injury or death.¹⁵ Fourth, a plaintiff may not file a complaint seeking punitive damages without first filing a motion and after a hearing is held where the trial court determines that there is a reasonable likelihood that the plaintiff will prove facts at trial sufficient to support an award of punitive damages.¹⁶ Punitive damages may be awarded when torts are committed with such gross negligence as to indicate a wanton disregard of the rights of others.¹⁷ Last, the Illinois Supreme Court defines willful and wanton conduct as "a course of action which . . . if not intentional, shows an utter indifference to or conscious disregard for the safety of others."¹⁸ To establish the defendant's "utter indifference" or "conscious disregard for the safety of others," the plaintiff's amended complaint must allege facts similar to those in *Farris* showing that the defendant driver drank alcohol knowing that it would impair his ability to drive safely, that the defendant was impaired enough to later plead guilty to DUI, that the defendant chose to drive despite his obvious impairment and that, due to his alcohol impairment, the defendant injured another person in a collision. Given these allegations and the court's reasoning in *Farris*, when a drunk driver injures a plaintiff in a car crash and later pleads guilty to DUI, the plaintiff should be permitted to seek punitive damages at trial. ■

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1. <<http://www.cdc.gov/motorvehiclesafety/costs/index.html>>.
 2. <<http://www-nrd.nhtsa.dot.gov/departments/nrd-30/nca/STSI/USA%20WEB%20REPORT.HTM>>.
 3. <<http://www.madd.org/drunken-driving/about/drunken-driving-statistics.html>>.
 4. *Illinois Rules of the Road 2014, Chapter 6, p. 43.*
 5. *Illinois Rules of the Road 2014, Chapter 6, p. 42.*
 6. 2013 IL App (4th) 120753, ¶6.
 7. 2013 IL App (4th) 120753, ¶6.
 8. 2013 IL App (4th) 120753, ¶7.
 9. 2013 IL App (4th) 120753, ¶10.
 10. 2013 IL App (4th) 120753, ¶16.
 11. 2013 IL App (4th) 120753, ¶17.
 12. 2013 IL App (4th) 120753, ¶20.
 13. 625 ILCS 5/11-501.2(c).
 14. *People v. Lynn*, [904 N.E.2d 987](#), 992, [388 Ill. App. 3d 272](#) (4th Dist. 2009) citing *People v. Garriott*, [625 N.E.2d 780](#), 784, [253 Ill.App.3d 1048](#) (4th Dist. 1993).
 15. *Illinois Rule of Evidence 201.*
 16. 735 ILCS 5/2-604.1.
 17. *Barton v. Chicago and North Western Transp. Co.*, [325 Ill.App.3d 1005](#), [757 N.E.2d 533](#) (1st Dist. 2001).
 18. *Illinois Pattern Jury Instruction, Civil, No. 14.01.*

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