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Supreme Court rules gasoline stations may be liable for selling fuel to intoxicated drivers

SANTA FE – Gasoline stations in New Mexico have a legal obligation not to sell fuel to a driver the retailer "knows or has reason to know" is intoxicated, the state Supreme Court ruled today.

Under the divided decision by the state's highest court, commercial gasoline vendors may be liable for negligently supplying gasoline to a drunken driver who injured other people.

In its precedent-setting opinion, the Court's majority concluded that the legal doctrine of "negligent entrustment of chattel" applied to the sale of gasoline – creating a "duty of care" for vendors to refrain from supplying fuel to drunken drivers because of the risk of harm from driving while intoxicated.

Chief Justice Michael E. Vigil and Justices C. Shannon Bacon and David K. Thomson formed the Court's majority. Justice Barbara J. Vigil, who retired from the Court at the end of June, dissented.

The Court's decision came in response to a request from the U.S. Court of Appeals for the Tenth Circuit to resolve a question of state law concerning the potential liability of a McKinley County retailer that sold gasoline to an intoxicated driver who ran out of gas in 2011 near Tohatchi. After Andy Denny refueled and returned to the highway, his vehicle crossed the centerline and collided with an oncoming automobile, killing one person. A federal district court's decision in a lawsuit by the victim's father gave rise to the legal question presented to the state Supreme Court.

Under the legal doctrine of negligent entrustment, the owners of potentially dangerous goods or "chattel" – such as an automobile – have a responsibility to supply the article only to someone competent to safely use it. New Mexico courts have recognized in past decisions that the owner of an automobile who entrusts its use by an intoxicated person may be liable for injuries caused by the drunken driving.

"A duty not to sell gasoline to an intoxicated person is consistent with liability for providing an intoxicated person with alcohol or a vehicle," the Court's majority wrote in an opinion by Justice Bacon. "Gasoline, alcohol, and the vehicle itself are all enabling instrumentalities involved in intoxicated driving. Gasoline is required to operate most vehicles today. Providing gasoline to an intoxicated driver is like providing car keys to an intoxicated driver. Accordingly, liability under negligent entrustment for the sale gasoline to an intoxicated driver is consistent with New Mexico law."

Although there is no state statute prohibiting the sale of gasoline to intoxicated drivers, the Court reviewed past legal precedents, statutes and other principles of law in reaching its decision. The majority noted that the Legislature earlier this year prohibited the sale of hard liquor at convenience store gas stations in McKinley County. State law also provides liability for the sale or service of alcohol to intoxicated persons. Among the purposes of civil law governing injury cases, the majority explained, is deterring wrongful actions.

"Concerning deterrence, absent any liability for injuries resulting from the sale of gasoline to intoxicated drivers, gas stations have an economic incentive to sell to all willing purchasers, even if doing so puts others at risk," the Court's majority reasoned.

In a dissenting opinion, Justice Barbara Vigil wrote, "While the sale and service of alcohol is regulated, neither our common law nor our statutes warrant extending liability for DWI to retail sales of nonalcoholic goods."

In disagreeing with the majority's decision to apply the doctrine of negligent entrustment to a commercial transaction of gasoline sales, the justice stated that "this sea change in the law could have far-reaching consequences for retail businesses."

"Finally, under the majority's reasoning, vendors of any item that enables DWI – not only gasoline – could now be liable for a customer's DWI-related torts. Thus auto parts stores, tire shops, mechanics, and others will be left guessing as to whether they are subject to the new duty and, if so, how to behave so as to avoid liability," the justice wrote.

It is unclear under the new legal duty established by the majority's decision, she explained, "how much investigation" vendors must do to determine whether a person may be intoxicated when trying to refuel a vehicle, particularly when many motorists pay for gas at pumps rather than dealing with an attendant inside a station. However, the majority wrote that such concerns "do not relate to whether a duty exists as a matter of policy" but are fact-based matters for juries to determine in considering a vendor's potential liability in individual cases.

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To read the decision in *Morris v. Giant 4 Corners*, No. S-1-SC-37997, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/500359/index.do>