

OREGON LAW UPDATE

Oregon Court Clarifies Meaning of “Voluntarily” in Liquor Liability Statute

From the desk of Jeff Eberhard: In this case, the Oregon Court of Appeals held that a bar is not liable for injuries suffered by a plaintiff when she drunkenly crashed her car, even though the bar served her drinks while she was visibly intoxicated.

Claims Pointer: ORS 741.565(1) bars claims by a person who voluntarily consumes alcoholic beverages against the person serving the drinks, even though the person consuming them was visibly intoxicated. A person who begins to drink voluntarily, but continues to do so only because he or she is drunk, will still be considered to have consumed those drinks voluntarily. That person cannot then sue the person who served the drinks, if the drinker is later injured as a result of being intoxicated.

case in point...

Ashley Schutz v. La Costita III, Inc. et al., in the Court of Appeals of the State of Oregon, A148768 (May 15, 2013).

Ashley Schutz was paralyzed when, after an evening of drinking, she drove her vehicle the wrong way down a freeway off ramp and collided with another vehicle. On the evening of the accident, Schutz had been drinking with her boss at a Portland bar, La Costita. Her blood alcohol level was .24 percent. Schutz sued the bar, alleging that the bar was negligent for (1) serving her alcohol when she was already intoxicated; (2) failing to prevent her from driving home, despite knowing that she was too drunk to drive; and (3) failing to arrange for her alternative transportation. The trial court dismissed Schutz’s claims on grounds that her claims were barred by ORS 471.565(1). That statute says that a person who voluntarily consumes alcohol does not have a cause of action against the person serving the alcohol, even though the person was served while visibly intoxicated. Schutz appealed, arguing that when she consumed the drinks that caused her to crash, she was too drunk to have done so “voluntarily.”

While Schutz’s boss bought her the drinks, and she may have been pressured by her boss to start drinking in the first place, she was not coerced, tricked, or constrained to do so. Her decision to drink was her own, and therefore, under ORS 471.565(1), the bar could not be held liable for her injuries.

The Oregon Court of Appeals rejected Schutz’s arguments, finding that she did, in fact, consume the alcoholic beverages “voluntarily,” within the meaning of ORS 471.565(1). In making that determination, the Court examined the legislative history of the statute, finding that the definition of “voluntary” sought by Schutz would require jurors to know whether the injuries were caused by alcohol consumed before or after the plaintiff stopped drinking “voluntarily.”

The defendant-bar argued that a voluntary action is one that “is not the result of coercion, trickery, or constraint.” The Court agreed with that definition.



Contact: Jeff Eberhard | www.smithfreed.com | email: jeberhard@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.

