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HOLIDAY PARTY WARNINGS FROM THE CALIFORNIA COURT OF APPEAL

By Gerald A. Griffin

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On July 31, 2013, the California Court of Appeal placed employers on notice that they better control holiday party drinking. In *Purton v. Marriott International, Inc.* (2013) 218 Cal.App.4th 499, the court extended the already broad scope of the Respondeat Superior Doctrine to embrace an employee's negligent conduct which occurred at a time the employee was no longer acting within the scope of his employment.

The facts in the Marriott case are simple but tragic. In December 2009, The Marriott threw a holiday party for the staff at its Del Mar Hotel. The hotel managers planned to serve only beer and wine and gave each attendee two drink tickets. Attendance at the party was purely voluntary. Michael Landri, a staff bartender, had the day off but nonetheless decided to attend the party. Prior to leaving his home for the party, Landri consumed a beer and a shot of Jack Daniels. Landri also took a flask of whiskey with him. At the party, the restaurant's manager supplied more whiskey to Landri which she procured from the Hotel's liquor supply. After about three hours Landri left the party and safely drove home with another Marriott employee. After staying home for about 20 minutes, Landri decided to drive his intoxicated colleague to her home. On the way, while driving over 100 miles per hour in a 45 mile per hour zone, Landri rear ended Dr. Jared Purton's car, killing Dr. Purton.

Following the accident, Landri had a .16 blood alcohol level, twice the California legal limit. He pleaded guilty to gross vehicular manslaughter while under the influence of alcohol and received a 6 year prison sentence.

The civil action against Landri, The Marriott and others, was filed by Dr. Purton's parents. The Marriott filed a summary judgment motion and moved to dismiss the wrongful death case against it arguing that the accident did not happen within the scope of Landri's employment inasmuch as when it occurred, Landri had already gotten home and subsequently left for purposes unrelated to his work. Hence, according to The Marriott, once Landri arrived home safely, any liability it faced as Landri's employer under the Respondeat Superior Doctrine terminated. The trial court agreed and granted The Marriott's summary judgment.

The court of appeal reversed, holding that liability should not focus on when the accident occurred but on why it was caused.

California courts have long held employers liable for negligent acts of employees who become intoxicated at company sponsored social events. However, those cases have invariably involved employees who attempted to drive home while still intoxicated. Earlier cases crafted an exception to the "going and coming" rule which generally exempts employers from liability for tortuous acts committed by employees while going to or coming home from work. The exception created by the courts failed to protect an employer whose employee became intoxicated at his workplace and caused personal injuries on the way home.

The Marriott court held that there was no justification for cutting off an employer's liability merely because its intoxicated employee safely reached his home. The Marriott's manager testified that the holiday party was a "thank you" for its employees. According to testimony from another Marriott manager, the party was meant to build team work. Thus, it was reasonable to conclude that the party and drinking of alcoholic beverages benefited The Marriott by improving employee morale and furthering employer-employee relations. Accordingly, the evidence supported a conclusion that Landri was acting within the scope of his employment while ingesting alcohol at the party. The court reasoned that since The Marriott created the harm at its party by allowing its employee to become intoxicated, it should bear the burden of injuries proximately caused by his consumption of alcohol. The court thus left to the jury the determination of whether Landri's act of leaving his home to drive another employee to her home was so unusual as to render a car accident unforeseeable.

In conclusion, the Court of Appeal placed employers on notice that they better lessen the risk they create by providing alcohol at company events. The court offered five suggestions:

1. Adopt and enforce a policy prohibiting alcohol smuggling;

2. Enforce a drink ticket policy;

3. Serve drinks for only a limited time period;

4. Serve food; or

5. Simply forbid alcohol.

For more information about this topic please contact:
Gerald A. Griffin, Partner
Gibbs Giden Locher Turner Senet & Wittbrodt LLP
1880 Century Park East, 12th Floor
Los Angeles, California 90067
Phone: (310) 552-3400
email: jgriffin@ggltsw.com