

## LEGAL TROUBLE ON TAP AS STATE SUPREME COURT CONSIDERS BROADER INTERPRETATION OF DRAM SHOP LAW

From the Georgia Restaurant Association's General Counsel Charles Hoff

Georgia's restaurants and bars could face greater liability exposure depending on the outcome of the Georgia Supreme Court's review of a case (Sugarloaf Cafe, Inc. d/b/a Buffalo's Cafe v. Rebecca Ann Willbanks), and whether they choose to broaden the Dram Shop Act – legislation that currently limits liability to restaurants and other servers of alcoholic beverages in Georgia.

### THE CASE

Buffalo's Cafe was sued under the Dram Shop Act in the Superior Court of Gwinnett County. The plaintiffs claimed that the restaurant was responsible for injuries caused by a drunk driver whose car collided with their vehicle. The drunk driver in this case did not have her car at the restaurant. She had been driven to the restaurant by one co-worker and left the restaurant to get a ride back to her car with a *different* co-worker. Once back at her car she drove off and caused the accident.

Buffalo's Cafe moved to dismiss the case, claiming there was no evidence that the restaurant's bartender knew or should have known the driver would soon be driving after leaving the restaurant. While the Gwinnett court ruled in Buffalo's favor, the Court of Appeals reversed this ruling and held that there was sufficient circumstantial evidence to raise a question of fact regarding whether the bartender should have known the driver would be driving soon after leaving the restaurant. The court found that because the driver was drinking with a group of people, the restaurant should have known that its patrons all arrived by car.

In essence, the Court of Appeals ruled that bars, restaurants and anyone else who sells alcohol has a duty to inquire as to how each patron consuming alcohol intends to leave. Not only does this significantly change the traditional interpretation of the Dram Shop Act, but it also sets an entirely new standard that could lead to soaring rates of liability.

### GRA On Your Side

The Georgia Supreme Court is reviewing the Court of Appeals' ruling. The Georgia Restaurant Association (GRA) retained the law firm of Berman Fink Van Horn P.C. to file a "Friends of the Court" brief in the case, expressing the policy reasons why the appeals court's ruling should be reversed.

### The Dram Shop Act

The act provides that a purveyor of alcohol may be held liable for injuries caused by a customer to third parties if the purveyor "knowingly sells, furnishes or serves alcoholic beverages to a person who is in a noticeable state of intoxication, knowing that such person will soon be driving a motor vehicle ...." In the years since the Georgia Legislature enacted the Dram Shop Act, Georgia's courts have interpreted the statute to require a plaintiff to prove the existence of at least some evidence that would have put the server on notice that the customer was intoxicated and would soon be driving a motor vehicle. This standard is known as "constructive" or "implied" knowledge.

In its filing, the GRA has stressed that the restaurant/bar industry constitutes a major employer and source of income in Georgia. The GRA believes that if restaurant and bar owners are subjected to liability for the acts of any person who drinks in their establishments, regardless of whether there is any information that the patron is intoxicated and intends to drive, liability insurance premiums for those establishments will increase dramatically. If that occurs, many will be forced to pass on higher costs to customers while cutting operating costs elsewhere, such as reducing staff. Some might even be forced to close. The ultimate effect will be damage to the Georgia economy and significant job losses.

The Georgia Supreme Court has indicated that it will likely hear oral arguments in this case in January 2005 and will then issue its opinion.

*Nothing herein is intended to constitute a legal opinion or advice. If you have particular questions or concerns as to the potential impact of the discussed ruling, please contact Charles Hoff at Berman Fink Van Horn P.C (404-261-771) to assist you.*