

CASE NOTE:  
The Oregon Court of Appeals Affirms Statutory Bar on First-Party Liquor  
Liability Claims

By: Dan Hasson, Shareholder

In *Schutz v. La Costita III, Inc.*, 256 Or. App. 573, 302 P.3d 460 (2013), the Oregon Court of Appeals had the opportunity to consider, for the first time since its enactment in 2001, the contours and constitutionality of Oregon's statutory bar on first-party claims brought by an intoxicated patron against the commercial alcohol provider that served them. The statute at issue, ORS 471.565(1), provides that a person who "voluntarily consumes alcoholic beverages...does not have a cause of action...against the person serving the alcoholic beverages, even though the alcoholic beverages are served" to the person while visibly intoxicated.

In *Schutz*, the plaintiff drank past the point of intoxication at defendant's tavern. She was subsequently injured when she entered an interstate highway driving in the wrong direction and collided with another car. She brought first-party claims against the tavern, alleging negligence for serving her excessive quantities of alcohol, and for failing to prevent her from driving home despite knowing of her intoxicated condition. The trial court granted the tavern's motion to dismiss the plaintiff's claims, concluding that the claims were precluded by the ORS 471.565(1) statutory bar against first-party claims. On appeal, the plaintiff argued that ORS 471.565(1) did not apply to her claims because, although she initially voluntarily consumed alcohol, she thereafter became so intoxicated that her consumption of subsequent drinks became involuntary. Alternatively, she argued that even if ORS 471.565(1) did apply, it was unconstitutional under Article I, Sections 10 and 17 of the Oregon Constitution (the Jury Trial Provision and Remedy Clause).

The *Schutz* Court began its analysis by determining what the term "voluntarily" means in the context of ORS 471.565(1). *Id.* at 578. After reviewing the statute's context and legislative history, the *Schutz* Court concluded that although the plaintiff may have drunk to the point of intoxication, her subsequent consumption was nonetheless "voluntary" for purposes of ORS 471.565(1). *Id.* at 579-83. As such, the Court concluded that the statute applied to preclude her first-party claims as a matter of law. *Id.* Turning to the issue of the constitutionality of ORS 471.565(1) under Article I, Sections 10 and 17 of the Oregon Constitution, the Court looked to whether the common law of Oregon in 1857 would have recognized a cause of action for the plaintiff's claimed injury. *Id.* at 585. After suggesting that first-party claims against alcohol providers did not exist at common law, the Court held that ORS 471.565(1) was constitutional for an additional, independent reason: because the plaintiff's voluntary consumption of alcohol played a role in causing her own injuries, at common law, her claims "would have been foreclosed by the well-settled doctrine of contributory negligence." *Id.* at 588-90. As such, the Court held that the trial court did not err in granting the defendant's motion to dismiss the plaintiff's complaint. *Id.* at 590.