

CASE NOTE:  
The Oregon Court of Appeals Confirms the Availability of a Statutory  
Liquor Liability Claim

By: Dan Hasson, Shareholder

In *Deckard v. Bunch*, 2014 Or. App. LEXIS 1554, \_\_ P.3d \_\_ (Nov. 19, 2014), the Oregon Court of Appeals had the opportunity to consider whether Oregon law recognizes a “statutory” claim for liquor liability based on ORS 471.565, in addition to the existing common law negligence liquor liability claim.

In *Deckard*, the plaintiff was injured in a head-on automobile collision with defendant Diana Bunch, who had been drinking at the home of Roland King earlier in the evening. In addition to bringing a common law negligence claim against defendant Bunch, the plaintiff also brought a common law negligence and statutory liability claims against the Estate of Roland King (King had died in the years after the events at issue), alleging that King had served alcohol to defendant Bunch while she was visibly intoxicated. The defendant Estate successfully moved to dismiss the statutory liability claim, arguing that ORS 471.565 does not create a separate cause of action against alcohol providers. The case proceeded to trial. The jury awarded damages against defendant Bunch, but found that King had not been negligent. On appeal, the plaintiff argued that his statutory liability claim had been improperly dismissed.

The Oregon Court of Appeals began its analysis of the availability of a statutory liability claim by examining the history of Oregon’s Dram Shop legislation, including the 1979 codification of alcohol provider liability under former ORS 30.950 (the precursor to ORS 471.565). The Court then noted that the Oregon Supreme Court in *Chartrand v. Coos Bay Tavern*, 298 Or. 689, 696 P.2d 513 (1985), had suggested that former ORS 30.950 could supported a claim for statutory liability because it had expressly included such a claim as one of three theories of recovery available to a liquor liability plaintiff. The *Deckard* Court then noted that although the Oregon Supreme Court had previously refused to extend statutory liability, it had only done so in a case involving an assault by an intoxicated patron; it had not done so in a case involving a third party injured by an intoxicated motorist. The Court distinguished later legislative limitations on the availability of statutory claims, concluding that those limitations were intended to apply only to “non-innocent” claims, such as claims where an intoxicated plaintiff brings “first-party” claims for their own injuries, or claims brought by plaintiffs whose conduct constituted complicity in causing a driver’s intoxication. Reasoning that *Chartrand* was still good law in claims involving injuries to third parties caused by intoxicated motorists, and that it had not been legislatively overruled, the *Deckard* Court held that the trial court had erred in dismissing the plaintiff’s statutory claim. Lastly, the Court confirmed that the error was not harmless because the court had given joint instructions on the claims against both defendants--claims which not only had differing burdens of proof, but which erroneously sought to require the plaintiff to prove a foreseeability element against the Estate.