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PRACTICE AREAS

Workers Compensation

Personal Injury

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Wrongful Death

Illinois Court Holds Dram Shop Act Inapplicable in Automobile Accident Lawsuit

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Generally speaking, in Illinois, lawsuits may not arise from the sale or gifting of alcoholic beverages, since the Dram Shop Act (S.H.A. 235 ILCS 5/6-21) preempts all alcohol-related liability claims. However, where the claim is based on legal theories independent from the defendant's provision of alcohol, the Dram Shop Act does not preempt the lawsuit.

This issue arose in a recent case, *Hicks v. Korean Airlines Company*, 2010 WL 3290997 (Ill. App. 1 Dist.). In *Hicks*, an employee of Korean Airlines was involved in car accident following a dinner with colleagues. She had been drinking at the dinner before the accident occurred. As a result of the accident, both the Korean Airlines' employee and the driver of the other car involved in the accident were killed. The estate of the driver of the other vehicle brought a [personal injury lawsuit](#) on her behalf.

In the lawsuit, it was alleged that Korean Airlines was liable for the deceased employee's action under the doctrine of respondeat superior. Specifically, it was alleged that Korean Airlines was liable for its employee's action in operating her motor vehicle while intoxicated since she was acting within the scope of her employment duties at the time of the accident.

The court noted that contrary to the defendant's assertions, the plaintiff's theory of liability was not premised on the provision of alcohol to the employee, but



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rather was based on the theory of respondeat superior. Accordingly, the court concluded that where there were material issues of fact “regarding whether Kim’s actions were within the scope of her employment, the Dramshop Act does not preempt a claim that Korean Air is vicariously liable under the theory of respondeat superior, as Kim’s alleged negligence is independent of which entity supplied alcohol to her.”

As such, the plaintiff’s claim survived and the lawsuit moved forward, allowing her estate to seek recovery for her unfortunate and untimely death.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles **workers’ compensation and personal injury cases**. Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.