

Private Labor and Employment Group

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AALRR Alert



New Appellate Court Ruling Serves As A Cautionary Tale For Employer-Sponsored Social Events

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With the 2013 holiday season around the corner, many California employers are likely in the beginning stages of planning their annual holiday parties. As a part of this planning, California employers may be considering serving alcoholic beverages at the event. However, a recent ruling by the California Court of Appeal in *Purton v. Marriott International, Inc.* may cause California employers to carefully reconsider serving alcoholic beverages at future non-mandatory, but employer-sponsored events. The reason — the Court expanded the circumstances under which an employer may be held vicariously liable for its employees' actions when an employee becomes intoxicated at an employer-sponsored event.

Factual Overview

In December of 2009, Marriott Del Mar Hotel ("the Hotel") held its annual employee holiday party. Employee attendance at the Hotel's holiday party was strictly voluntary.

During the party, the Hotel attempted to control alcohol consumption in two ways: (1) serve only beer and

wine; and (2) limit consumption to two drinks per person by issuing drink tickets. However, the evidence submitted demonstrated the Hotel did not follow its plan to limit alcohol consumption. For example, the bartender, who was the general manager for the Hotel's restaurant, served party guests hard liquor from the Hotel's liquor stock and did not track the use of drink tickets. Additionally, Hotel managers took shots of hard liquor with employees and observed a Hotel employee, Michael Landri, drinking from a flask filled with hard liquor. The Hotel bartender refilled Landri's flask with hard liquor at least one time.

A coworker drove Landri and several other employees to Landri's house after the party. Twenty minutes after arriving at his house, Landri drove another coworker home. Landri struck another vehicle, killing the driver, Dr. Jared Purton. Landri was arrested and subsequently pled guilty to gross vehicular manslaughter while under the influence of alcohol. At the time of the accident, Landri's blood alcohol level was .16.

The parents of Dr. Purton filed a lawsuit against Marriott International, Inc. seeking to hold it vicariously liable for the wrongful death of their child under the doctrine of *respondeat superior*. Specifically, the parents claimed Marriott was liable for Landri's acts because: (1) it held the party for the benefit of its employees; (2) it provided alcohol to Landri at the party and permitted him to become intoxicated; (3) it allowed Landri to leave the party while intoxicated, which enabled Landri to drive while intoxicated after he arrived home.

Marriott filed a motion seeking dismissal of the claims, alleging that it could not be held liable for Landri's

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actions because Landri was not acting within the course and scope of employment when the accident occurred. The trial court granted Marriott's motion and dismissed the parents' claims against Marriott. The parents appealed.

The Appellate Court's Decision

On appeal, the Court of Appeal found the trial court improperly dismissed the claims against Marriott, and held Marriott may be held liable for Landri's acts (i.e. the death of the driver) under the doctrine of *respondeat superior*. The Court did not make a determination of whether Marriott was liable for the acts, but rather, held the case must be submitted to a jury for determination.

In its decision, the Court of Appeal explained that *respondeat superior* liability attaches if the activities that caused the employee to harm others were undertaken with the employer's permission, were of some benefit to the employer, or the activities constituted a customary incident of the employment relationship. The Court found sufficient evidence existed demonstrating Marriott benefited from the holiday party because the party boosted employee morale and job satisfaction. The Court also found sufficient evidence existed demonstrating Marriott impliedly permitted employee intoxication at the holiday party because the Hotel failed to follow its plan to control alcohol consumption and managers drank with employees. The Court further found that alcohol consumption

was a customary incident of the employment relationship because Marriott permitted the consumption, failed to limit it, and an employee testified that "historically there has been a lot of drinking and not a lot of control at these types of [employee] parties." Based on this evidence, the Court held that a jury may conclude Landri was acting within the scope of his employment while ingesting alcohol at the party, and therefore, Marriott may be held liable for Landri's acts while intoxicated.

The Court of Appeal rejected Marriott's argument that it could not be held liable for Landri's actions (e.g., the car accident) under the going/coming to work rule. Under the going/coming to work rule, employers generally cannot be held liable for the negligent acts of employees while commuting to or from work because an employee is deemed to not be acting within the scope of employment during this travel. The Court held the going/coming to work rule was not applicable because the proximate cause of the car accident — Landri's intoxication — occurred before Landri left the party. The Court concluded that liability is not based on when the injury occurred (e.g., the car accident), but on the act that caused the injury (e.g., Landri's intoxication). And, as explained above, the Court determined sufficient evidence existed from which a jury may determine that Landri's ingestion of alcohol was in the course and scope of his employment.

The Court of Appeal also rejected Marriott's arguments that any liability Marriott had regarding Landri's acts was cut off when Landri safely arrived home and that Marriott had no right to control the personal conduct of Landri once he arrived home. The Court explained that Marriott could be held liable for harm caused by Landri during the entire time that he was intoxicated because Marriott created the risk of harm by allowing Landri to become intoxicated at the party. The Court noted that Marriott could have lessened the risk of harm by having a policy prohibiting smuggling of alcohol, enforcing the drink ticket policy, serving drinks for a limited time period and serving food, or forbidding alcohol, but Marriott failed to do so. The Court stated, "if a commercial enterprise chooses to allow its employees to consume alcoholic beverages for the benefit of the enterprise, fairness requires that the enterprise should bear the burden of injuries proximately caused by the employees' consumption."

Ultimately, the Court of Appeal reversed the dismissal of the parents' claims and held the claims must be tried.

What This Decision Means For Employers

This ruling is significant because it expands an employer's potential liability for employees' actions resulting from alcohol consumption at company-sponsored events. Employers should therefore carefully consider serving alcohol at company-

sponsored functions. If alcohol is served, employers should implement policies and procedures for limiting alcohol consumption to minimize any risk of harm. The Court of Appeal provided examples of such policies which include prohibiting employees from bringing alcohol from home, limiting the number of drinks a person may have, serving alcohol for a set period and serving food, or prohibiting the consumption of alcohol altogether. It is also important for employers to enforce the policies and procedures during the company-sponsored event.