

GEORGIA LAW

By Steven Leibel

Punitive damage awards hurt at any cost

Punitive damages are damages used to punish and deter people from egregious conduct decided by a jury. It is a hot topic in today's legal world because there is little comfort to owners knowing that a punitive damage award can wipe out a business.

Insurance rarely covers an award of punitive damages since many times it stems from reckless conduct. In the alcohol business, each owner is rightfully fearful that any conduct may be deemed reckless with a large award to follow. What many don't realize is that punitive damages in Georgia can only be awarded against an active tort-feasor. This is because in the alcohol business, punitive damages can be governed by statute. Each statute is crafted by legislators who can help or hinder the running of a business.

An example of punitive damages being restricted by statute is in the case of serving alcohol to noticeably intoxicated patrons. In this case Bill and Samantha, a husband and wife, managed a restaurant that recently opened. Nathan, an employee, worked as a waiter. About six weeks after the restaurant opened, Nathan invited his friend Lilian and two juveniles, 15-year-old Kerri and 14-year-old Eric, to come to the restaurant for free meals and drinks. While the two managers were leaving, Lillian drove up to the restaurant with the two teens and her infant son.

Throughout the course of the evening, Nathan served Lilian and the underaged teenagers numerous alcohol beverages. Everyone in the party was drinking heavily. Nathan, the server, joined the group by consuming a lot of alcohol with them.

According to an eyewitness, as the evening drew late, Lilian became intoxicated. She became loud and obnoxious. "When the teens were tired and began begging to go home, Lilian refused to leave. The group stayed until the restaurant closed at 12:45 a.m., then Lilian and the juveniles left with the infant in Lilian's truck. Although her truck had only one seat, they crowded inside and drove away from the parking lot.

On the way home, Lilian began driving at high speeds. Her passengers warned her to slow down, but she continued to speed and eventually lost control of the truck, which rolled over and came to rest in a water-filled ditch. Lilian's infant son was ejected from the truck into the ditch. He remained under water until he was rescued and resuscitated by emergency personnel.

This article addresses the civil side of this matter. We don't know if criminal charges were brought against Lillian.

However, Nathan admitted he was the restaurant's employee who served the group that evening, and that he had consumed numerous drinks and was more intoxicated than Lilian by the time they left.

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As a result – OCGA § 51-1-40 provides that [a] person . . . who knowingly

sells, furnishes, or serves alcoholic beverages to a person who is in a state of noticeable intoxication, knowing that such person will soon be driving a motor vehicle, may become liable for injury or damage caused by or resulting from the intoxication of such minor or person when the sale, furnishing, or serving is the proximate cause of such injury or damage.

Where there is evidence in the record from which a jury could infer that an employee served alcohol to a noticeably intoxicated person, knowing that they will soon be driving a motor vehicle which later caused an injury, the employer can be held liable for the acts of its employee. However, punitive damages were not appropriate in this case because, under the statute, the defendant held responsible for the punitive damages must be an active tort-feasor, that is, the defendant acting under the influence of alcohol.

Thus, the Court held that punitive damages against a restaurant as a server of alcohol are not authorized. The Court held that the legislative intent of the statute was to "provide unlimited punitive damages on the person who actually was intoxicated who caused the action, and to eliminate the restaurant which had joint liability for the accident."

Clearly the legislative intent in this statute is crucial in shielding liability. It points out how important legislative action is in preserving the right to serve alcohol.

Send your bar and retail-related questions to Steven Leibel of Steven Leibel P.C. at steven@leibel.com. Or call 706-867-7575.

Disclaimer: The information provided in this column is general information and not designed to be and should not be relied on as your sole source of information. Each fact situation is different; the laws are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult with legal counsel.