

***MOTOR VEHICLE COLLISION; DRAM SHOP ACT; SCOPE OF EMPLOYMENT -
SPECIAL FUNCTION EXCEPTION: SETTLEMENT***

***F. Reed Risner, Jr., and Mildred E. Risner vs. McBride Electric, Inc., a Kansas Corporation,
East Meets West, L.L.C., a Georgia Limited Liability Corporation, and Sheree Lynn Moore
State Court of Fulton County Civil Action File No. 00VS010669-C***

Settlement of \$2,375,000.00 for a couple struck head-on by a drunk driver returning from a Christmas party at a restaurant and bar in Atlanta, Georgia.

In September of 1999, Sheree Lynn Moore commenced employment with McBride Electric as an inside sales person, selling electrical contracting services. Upon commencing her employment, she was advised that as a part of her job, she should attend monthly functions hosted by the Georgia Hospitality & Travel Association, with whom McBride Electric maintained a membership, in order to "network" with clients and prospective clients. On December 8, 1999, she attended her second such function, which was held at the Fusebox Restaurant and Bar in the Buckhead entertainment district in Atlanta, located approximately 12 miles from her usual place of employment at McBride Electric. The function was scheduled to take place from about 5:00 p.m. to 6:30 p.m. that evening. When she arrived, she was given a name tag with her employer's name on it, and was provided two free drink tickets for beverages to be served by the Fusebox staff. She was told that if she wanted anything more, she would have to pay for it herself. Moore stayed at the restaurant beyond the scheduled time for the function, leaving shortly before 9:00 p.m. On her way home, after traveling several miles, she apparently became lost or confused and began driving on the wrong side of the road, where she then struck another vehicle and continued on the wrong side of the road until she violently collided head-on with Plaintiffs' vehicle. Although Moore contended she had only consumed two glasses of wine at the Fusebox, her blood alcohol level was found to be between .14 and .16 shortly after the incident. A chemist from the Georgia Crime Laboratory subsequently

testified that it was probably around .18 when she left the restaurant, which would have resulted in her being in an obviously impaired condition.

Suit was instituted against the Fusebox under Georgia's Dram Shop Act, which provides that a party may be held liable if alcoholic beverages are provided to a noticeably intoxicated person who will shortly be operating a motor vehicle. Plaintiffs contended that the bartenders who served Moore should have been aware of her impaired condition at the time, based on the blood alcohol results. However, by the time the Plaintiffs sought legal advice in 2001, the Fusebox had been out of business for several months, and no records were available to identify anyone who had formerly worked there. The only individual Moore could remember seeing at the function that evening recalled that Moore had appeared normal at the bar. Based on the circumstantial evidence of her blood alcohol findings and expert testimony, however, Plaintiffs contended she would have been noticeably intoxicated at the bar, resulting in liability under the Dram Shop Act.

Suit was also instituted against McBride Electric, Moore's employer. Plaintiffs contended she was in the scope of her employment while attending the function at the Fusebox, and remained in the scope of employment on her way home. McBride Electric argued that it could not be held responsible for her actions, as traditional law holds that an employee is not acting within the scope of employment while traveling to or from work. However, Plaintiffs argued that this case fell within Georgia's "special function" exception to this rule, in which an employee may be held to be acting within the scope of employment while going to and from a special function at the employer's direction. [See e.g. Jones vs. Aldrich Co., 188 Ga. App. 581, 373 SE2d 649 (1988); Patterson vs. Southeastern Newspapers, Inc., 243 Ga. App. 241, 533 SE2d 119 (2000); but see Wright vs. Pine Hills Country Club, Inc., ___ Ga. App. ___, ___ SE2d ___ (Case No. A03A0178, decided June 18, 2003)]. Moore was using her personal vehicle at the time of this incident, and was not being paid

for her time or expenses in connection with her attendance, but she testified that she was entitled to be reimbursed for mileage, though none had been paid as she had simply not applied for reimbursement. Plaintiffs successfully overcame a Motion for Summary Judgment on the scope of employment issue, with the trial court holding a jury question existed under the evidence as to whether Moore was on a special function and thus in the scope of her employment at the time of this incident.

Plaintiffs' medical and related expenses were approximately \$375,000.00. Plaintiffs contended they were left with permanent disabilities, and that they had suffered substantial lost income in their camera repair business, asserting that as a result of the injuries they suffered and the time they missed from work as a result thereof, they lost substantial revenues and were subsequently forced to sell their business, which was failing. Defendants contended, however, that shortly after this incident, the company's largest customer, which accounted for over 90 percent of its business, had gone bankrupt, and thus the losses suffered by the company were caused by this unrelated business failure, and the general economic downturn that occurred during this time period.

The matter was fully settled several months after a full day of mediation and approximately two weeks before its scheduled court date, with the defunct restaurant paying \$1,000,000.00; McBride Electric paying \$1,175,000.00; and Moore paying the limits of her insurance coverage of \$200,000.00.

[Plaintiffs were represented by ATLA and GTLA members William C. Lanham, Esq., and Clark H. McGehee, Esq., of Atlanta, Georgia.]