

**From:** Tom Cabral  
**Sent:** Wed 9/6/2017 12:52 PM

**Gallagher Sharp Newsflash:** Workers Included as “Intoxicated Persons” Under Ohio’s Dram Shop Act

Today, September 6, 2017, in *Johnson v. Montgomery*, Slip Opinion No. 2017-Ohio-7445, the Supreme Court of Ohio held that an “intoxicated person” under Ohio’s Dram Shop Act, R.C. 4399.18, is not limited to the liquor-permit holder’s patrons but also includes “dancers, workers, independent contractors, and others served by the permit holder.”

In *Johnson*, an intoxicated dancer caused a car accident on her way home from a strip club. Johnson was injured in the accident and filed a complaint asserting common-law-negligence claims against the dancer, the club, and the club owner. The claims against the club and its owner were tried to a jury. The club’s motion for a directed verdict on the issue of common-law negligence was denied and the jury returned a verdict in favor of Johnson on the negligence claim. The Court of Appeals for Montgomery County reversed the jury’s verdict finding that because the Dram Shop Act provided the exclusive cause of action against the club, the trial court had erred when it allowed the issue of common-law negligence to go to the jury. The Supreme Court of Ohio affirmed the decision of the court of appeals that vacated the judgment against the club.

The question presented to the Supreme Court of Ohio was whether the dancer who caused the accident qualified as an “intoxicated person” under Ohio’s Dram Shop Act. The Court found that under the plain language of the statute “the ordinary meaning of ‘person’ includes not only patrons but also dancers, workers, independent contractors, and others served by the permit holder.”

The Court concluded that in this case Johnson’s only cause of action was under the Dram Shop Act because she did not dispute that under the given set of facts it provided the exclusive basis for relief against the club. However, the Court declined to address the exclusivity of the Dram Shop Act as a remedy in general because the issue had not been raised by a party to the appeal in *Johnson*.

Justice O’Neill, the sole dissenting justice, agreed that the majority answered the legal question at issue correctly but would have reversed the appellate court’s decision. Justice O’Neill explained: “I am unable to join a majority decision that absolves from liability a liquor-permit holder who encourages the dancers in its club to drink alcohol in order to reap enormous profits from the drinks purchased for the dancers, does not monitor the intoxication level of the dancers, and then sends them out on the roads without ensuring that they are fit to drive.”

A copy of the decision can be found at  
<http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-7445.pdf>.

If you have any questions, please contact:

Thomas J. Cabral  
General Litigation Practice Group Manager  
Colleen A. Mountcastle  
Appellate Practice Group Manager  
GALLAGHER SHARP  
Sixth Floor, Bulkley Building  
1501 Euclid Avenue  
Cleveland, Ohio 44115-2108  
Ph: (216) 241-5310  
[tcabral@gallaghersharp.com](mailto:tcabral@gallaghersharp.com)  
[cmountcastle@gallaghersharp.com](mailto:cmountcastle@gallaghersharp.com)  
[www.gallaghersharp.com](http://www.gallaghersharp.com)