

# Jackie Booker Prevails on Motion to Dismiss in Dram Shop Action

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Jackie achieved a dismissal of all claims against an insured driver on a motion to dismiss. Asserting a dram shop liability claim, the Complaint alleged that the insured volunteered to act as a “designated driver” for a co-defendant. Plaintiffs claimed the insured’s failure to fulfill her duties as a designated driver was the proximate cause of Plaintiffs’ injuries because, had the insured actually driven the co-defendant home, the co-defendant would not have driven while allegedly intoxicated and injured Plaintiffs. The Court found Plaintiffs failed to plead the insured was a social host who (a) provided alcohol or (b) provided the premises in which to drink alcohol. Thus, the Court held, citing *Warne v. Hall*, 373 P.3d 588, 594 (Colo. 2016), Plaintiffs’ Complaint lacked any plausible claim that the insured was liable for any injuries to the Plaintiffs under the Dram Shop Liability statute. The Court further held that the insured owed no affirmative duty to protect a third person from the acts of the co-defendant under Colorado law. The Court dismissed all claims against the insured driver. The Court also denied Plaintiffs’ attempt to amend the Complaint, finding Plaintiffs’ attempts to amend were futile.

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