

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

PATSY L. HAMAKER,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.: CV-2008-901617.00
)	
BIT, INC. (d/b/a "The Furnace"), et al.,)	<u>Hearing Scheduled for:</u>
)	<u>October 5, 2009, at 1:30 p.m.</u>
Defendants.)	

**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT
AND BRIEF IN SUPPORT THEREOF**

COMES NOW, the Defendant, BIT, Inc. (“BIT”), and pursuant to Rule 56 of the Alabama Rules of Civil Procedure moves this Honorable Court for summary judgment as to Plaintiffs’ complaint on the grounds that there is no genuine issue as to any material fact and that the Defendant is entitled to a judgment as a matter of law, and in support thereof, BIT relies on all pleadings filed in the present case; the following memorandum; Plaintiff’s Response to Defendant’s Interrogatories to Plaintiff; Affidavit of Lester Palmer; Affidavit of Christy Young; excerpts from the Deposition of Jennifer Etheridge; and the Deposition of the Plaintiff, all of which are attached hereto.

INTRODUCTION

On or about May 21, 2008, Plaintiff filed her complaint asserting two counts: (1) negligent and/or wanton hiring, supervision and training; and (2) negligently and/or wantonly causing or allowing a dangerous condition to exist by allowing Plaintiff to leave BIT’s premises while intoxicated. (*See Plaintiff’s Complaint*).

On August 8, 2008, BIT filed its answer denying Plaintiff’s allegations and setting forth various affirmative defenses. (*See Defendant’s Answer*). On April 6, 2009, BIT filed its first

amendment to answer setting forth an additional affirmative defense. (*See* Defendant’s First Amendment to Answer).

On June 2, 2009, Plaintiff amended her complaint asserting an additional claim of negligent/wanton failure to follow adopted policies and procedures. (*See* Plaintiff’s First Amendment to Complaint).

On June 29, 2009, BIT filed its answer to Plaintiff’s first amendment to complaint asserting all previously pled affirmative defenses and an additional affirmative defense. (*See* Defendant’s Answer to First Amendment to Complaint).

STATEMENT OF FACTS

BIT operates a gentleman’s club known as “The Furnace. Plaintiff began dancing as a stripper/exotic dancer in 1996. (Deposition of Plaintiff, p. 35). As a stripper/exotic dancer in Birmingham, Alabama, Plaintiff had to have both a dancer license and a business license. (Deposition of Plaintiff, pp. 35–36 and 38–39).

Plaintiff began dancing at The Furnace in 2005. (Deposition of Plaintiff, p. 34). As a dancer, Plaintiff was not paid by the hour. (Deposition of Plaintiff, p. 82). Plaintiff was required to pay various fees such as a House fee, a DJ fee and a House Mom fee for being allowed to dance. (Deposition of Plaintiff, pp. 84–85). Plaintiff made money while dancing by receiving tips and commissions from the sale of “Dancer Drinks.” (Deposition of Plaintiff, pp. 85–88). Dancer drinks are drinks of the wine and champagne category purchased for the dancer by a patron. (Deposition of Jennifer Etheridge, pp. 81-83). Dancers have the option of having the dancer drink in non-alcoholic form. (Deposition of Plaintiff, pp. 98–99). According to Plaintiff, she did not like the non-alcoholic drink option for fear of the patron tasting the drink and not buying her another drink, leading to her not making money. (Deposition of Plaintiff, p. 100).

Dancers did not receive a commission for alcoholic drinks not of the wine champagne category. (Deposition of Jennifer Etheridge, pp. 81-83; Deposition of Plaintiff, pp. 92-93).

Dancers were subject to various rules regarding alcohol. Dancers were limited to two (2) alcoholic non-dancer drinks per evening; however, dancers were not allowed to drink shots. (Deposition of Plaintiff, p. 107). Although dancers were not allowed to have shots and Plaintiff knew dancers were not allowed shots, Plaintiff would often sneak shots of alcohol. (Deposition of Plaintiff, pp. 107-109 and 151). Although dancers were not allowed to bring alcohol into The Furnace and Plaintiff was aware of the same, Plaintiff would often sneak pints of liquor into The Furnace in her dance bag. (Deposition of Plaintiff, pp. 107-08).

On or about October 17, 2007, Plaintiff danced as a stripper/exotic dancer at The Furnace. (Deposition of Plaintiff, pp. 100-101). On that evening, Plaintiff was served one (1) dancer drink. (Plaintiff's Exhibit 3 to the Deposition of Jennifer Etheridge). During the time Plaintiff was at The Furnace on that evening, she did sneak at least one (1) shot of liquor and attempted to sneak several more shots of liquor. (Affidavit of Christy Young; Affidavit of Lester Palmer). Plaintiff was removed from the floor and told to sit upstairs in the locker room. (Deposition of Jennifer Etheridge, pp. 146-47; Affidavit of Lester Palmer). Plaintiff's car keys were taken from her. (Deposition of Jennifer Etheridge, p. 147). Although Plaintiff was told to sit and wait, she attempted to leave The Furnace several times, was caught by a manager and/or security and returned inside. (Deposition of Jennifer Etheridge, pp. 150-51; Affidavit of Lester Palmer). Eventually Plaintiff was able to get to her vehicle without being caught and left the premises. (Deposition of Jennifer Etheridge, pp. 150-51; Affidavit of Lester Palmer). Plaintiff left the premises without closing out or paying the "House Mom" fee. (Deposition of Jennifer Etheridge, pp. 112-14; Plaintiff's Exhibit 3 to the Deposition of Jennifer Etheridge). Plaintiff

does not recall the events of October 17, 2007. (Deposition of Plaintiff, pp. 100–101 and 143–144).

Shortly after leaving BIT’s premises, Plaintiff was injured in a one car accident as a result of her intoxication. (See Plaintiff’s Response to Defendant’s Interrogatories to Plaintiff, p. 2 ¶ 3). At the time of the accident, Plaintiff’s driver’s license was suspended. (Deposition of Plaintiff, pp. 117-18). Plaintiff admits that she is at least partially responsible for her own behavior in driving while intoxicated. (Deposition of Plaintiff, pp. 145-46).

No one forced Plaintiff to consume alcohol the evening of October 17, 2007. (Deposition of Plaintiff, p. 145). Plaintiff was not forced to leave The Furnace that evening. (Deposition of Plaintiff at 144). No one forced or encouraged Plaintiff to get in her car and drive from The Furnace the evening of October 17, 2007. (Deposition of Plaintiff at 145).

STANDARD OF REVIEW

“The party moving for a summary judgment must make a prima facie showing that there are no genuine issues of material fact and that he is entitled to a judgment as a matter of law. If this showing is made, the burden then shifts to the nonmovant to rebut the movant's prima facie showing by substantial evidence.” *Falls v. JVC America, Inc.*, 7 So. 3d 986, 989 (Ala. 2008) (internal citation omitted). “‘Evidence is ‘substantial’ if it is of ‘such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.’” *Peterson v. City of Abbeville*, 1 So. 3d 38, 40 (Ala. 2008) (quoting *West v. Founders Life Assurance Co. of Fla.*, 547 So. 2d 870, 871 (Ala. 1989)).

ARGUMENT

I. Dram Shop Act.

Plaintiff attempts to state various claims for negligence and wantonness against BIT; however, there is really only one claim: a Dram Shop Action. Plaintiff's claims against BIT are for damages she suffered due to her own voluntary intoxication.

In *Williams v. Reasoner*, 668 So. 2d 541 (Ala. 1995), the Supreme Court of Alabama held that no recovery is allowed for negligent dispensing of alcohol, and ***no remedy for unlawful dispensing of alcohol exists other than those provided by the Civil Damages Act and/or the Dram Shop Act.*** *Id.* at 542 (citing *Maples v. Chinese Palace, Inc.*, 389 So. 2d 120, 124 (Ala. 1980) (emphasis added)).

Alabama's Dram Shop Act, ALA. CODE § 6-5-71(a) (1975) provides, in part:

Every wife, child, parent, or other person who shall be injured in person, property, or means of support by any intoxicated person or in consequence of the intoxication of any person shall have a right of action against any person who shall, by selling, giving, or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages, cause the intoxication of such person for all damages actually sustained, as well as exemplary damages.

Id.

It is well established in Alabama that “***the intoxicated person is not a protected party under the Act.***” *Weeks v. Princeton's*, 570 So. 2d 1232, 1233 (Ala. 1990) (emphasis added).

There is no dispute that Plaintiff claims damages of BIT for injuries she sustained due to her own intoxication. (Plaintiff's Complaint at COUNT 1, ¶5; Plaintiff's Response to Defendant's Interrogatories to Plaintiff, p. 2 ¶ 3). There is no dispute that Plaintiff's intoxication as alleged was voluntary. (Deposition of Plaintiff, p. 145). Plaintiff was not forced to leave The Furnace that evening. (Deposition of Plaintiff at 144). No one forced or encouraged Plaintiff to

get in her car and drive from The Furnace the evening of October 17, 2007. (Deposition of Plaintiff at 145).

Plaintiff's complaint is nothing more than a Dram Shop Act, which does not provide a remedy for the intoxicated person; therefore, as there is no genuine issue to any material fact and, pursuant to ALA. CODE § 6-5-71, BIT is entitled to a summary judgment as a matter of law.

II. Negligence and Wantonness.

If the Court were to disagree with the case law as set forth above and allow Plaintiff to proceed on claims of negligence and wantonness, BIT addresses the claims asserted by Plaintiff in that context herein.

A. Negligent/Wanton Hiring, Supervision and Training.

1. Negligence

Plaintiff asserts a claim for negligent/wanton hiring, supervision and training in alleging that BIT's servants allowed Plaintiff to consume alcohol and allowed Plaintiff to subsequently leave the premises with the knowledge that Plaintiff was intoxicated. Plaintiff's argument fails as a matter of law.

It is the law in Alabama that, when attempting to establish a claim for negligent training, hiring and supervision, the threshold inquiry for a court is whether the plaintiff has proven actual or presumed knowledge on the part of the employer of the employee's alleged incompetence. *See, e.g., Ledbetter v. United American Ins. Co.*, 624 So. 2d 1371, 1373 (Ala. 1993); *Perkins v. Dean*, 570 So. 2d 1217, 1219-20 (Ala. 1990); *Lane v. Central Bank of Ala., N.A.*, 425 So. 2d 1098 (Ala. 1983).

In *Lane*, the Court held that "[i]t is incumbent on the party charging negligence to show it by proper evidence." *Id.* at 1100; *see also Collins v. Wilkerson*, 679 So. 2d 1100, 1103 (Ala.

Civ. App. 1996). The *Lane* Court held that such “proper evidence” may be established by: (1) showing specific acts of incompetency and bringing them home to the knowledge of the master, or (2) by showing them to be of such nature, character, and frequency that the master, in the exercise of due care, must have had them brought to his notice. *Lane*, 425 So. 2d at 1100. The Court further emphasized that specific acts of alleged incompetency cannot be shown prove that the servant was negligent and that such evidence is property for the jury *only* when the “repeated acts of careless and incompetency” are shown on the part of the servant. *Id.* (quoting *Thompson v. Havard*, 235 So. 2d 853 (Ala. 1970) (emphasis added); see *Sloss-Sheffield Steel & Iron Co. v. Bibb*, 51 So. 345 (Ala. 1910). Furthermore, “a party alleging negligent supervision and hiring must prove the underlying wrongful conduct of the defendant's agents.” *University Fed. Credit Union v. Grayson*, 878 So. 2d 280, 291 (Ala. 2003).

In the present case, Plaintiff fails to identify how BIT was negligent in its hiring, supervision and training of its employees other than to make a blanket allegation that BIT’s servants allowed Plaintiff to consume alcohol and allowed Plaintiff to subsequently leave the premises with the knowledge that Plaintiff was intoxicated. Plaintiff has not presented evidence of the incompetence of BIT’s employees, much less identified knowledge on the part of BIT as to any such incompetence. BIT is entitled to a summary judgment as a matter of law.

2. Wantonness

First, Defendant notes that, although Plaintiff attempts to use the terms “negligent” and “wanton” almost interchangeably, the Supreme Court has affirmatively stated that the two principles of law are separate, cognizable legal claims. Wantonness is defined by ALA. CODE § 6-11-20(b)(3) (1975) as “[c]onduct which is carried on with a reckless or conscious disregard of

the rights or safety of others.” The courts have explained the difference between negligence and wantonness as follows:

Wantonness is not merely a higher degree of culpability than negligence. Negligence and wantonness, plainly and simply, are qualitatively different tort concepts of actionable culpability. Implicit in wanton, willful, or reckless misconduct is an acting, with knowledge of danger, or with consciousness, that the doing or not doing of some act will likely result in injury[.]

Lynn Strickland Sales & Service, Inc. v. Aero-Lane Fabricators, Inc., 510 So. 2d 142, 145 (Ala. 1987) (internal citations omitted). See *South Cent. Bell Tel. Co. v. Branum*, 568 So. 2d 795 (Ala. 1990); *Cent. Ala. Elec. Coop. v. Tapley*, 546 So. 2d 371 (Ala. 1989). See also *Salter v. Westra*, 904 F.2d 1517, 1524 (11th Cir. 1990) (interpreting Alabama law and holding that “before a party could be said to be guilty of wanton conduct it must be shown that with reckless indifference to the consequences he consciously and intentionally did some wrongful act or omitted some known duty which produced the injury.”).

Plaintiff has failed to present one shred of evidence, much less substantial evidence, indicating that Defendant willfully or recklessly supervised its employees. BIT is entitled to a summary judgment as a matter of law as to Plaintiff’s wantonness claims.

B. Negligently/Wantonly Causing or Allowing a Dangerous Condition to Exist by Allowing Plaintiff to Leave BIT’s Premises While Intoxicated.

Historically, the liability arising out of a latent defective or dangerous condition dealt primarily with physical dangers or defects concerning the property. See, e.g., *Tice v. Tice*, 361 So. 2d 1051 (Ala.1978); *Lamson & Sessions Bolt Co. v. McCarty*, 173 So. 388 (Ala. 1937); *Quillen v. Quillen*, 388 So. 2d 985 (Ala.1980); *Autry v. Roebuck Park Baptist Church*, 229 So. 2d 469 (Ala. 1969); *Ex parte Mountain Top Indoor Flea Market, Inc.*, 699 So. 2d 158 (Ala. 1997); *Shaw v. City of Lipscomb*, 380 So. 2d 812 (Ala. 1980).

It is impossible for the Plaintiff to assert any set of facts in which Plaintiff would be able to prove that either the alleged use of alcohol created a dangerous condition or that the Defendant was aware of the alleged dangerous condition or that the Plaintiff was unaware of the dangerous condition.

While Plaintiff has failed to present any evidence of a “dangerous condition” created by BIT, even if she had done so, the Supreme Court has recognized that even when a defendant has caused or allowed a dangerous condition to exist, if the plaintiff, with knowledge and appreciation, puts herself in the way of said dangerous condition, the plaintiff is barred from recovery. *See Employers Cas. Co. v. Hagendorfer*, 393 So. 2d 999, 1002 (Ala. 1981) (holding that plaintiff was contributorily negligent and assumed the risk in riding in an automobile, with the knowledge that her driver was intoxicated). *See also Hancock v. Ala. Home Mortg. Co., Inc.*, 393 So.2d 969, 971 (Ala. 1981) (holding that plaintiff could not recover for negligence in creating a dangerous condition because there was no evidence of a dangerous condition and because plaintiff, by virtue of her intoxicated condition, contributed to her injuries).

Based on the undisputed facts before this Court, BIT is entitled to a summary judgment as a matter of law.

C. Negligent/Wanton Failure to Follow Adopted Policies and Procedures.

In the amended complaint filed on or about June 2, 2008, Plaintiff asserted a claim for negligence and wantonness in alleging that Defendant failed to follow its policy of returning automobile keys to dancers only upon passing a breathalyzer test. (Plaintiff’s First Amendment to Complaint at COUNT III, ¶ 5). However, in so arguing, Plaintiff apparently overlooks the fact that the reason Defendant was unable to follow its policy is because of the actions of Plaintiff herself.

The law provides that “[w]ilful violations of an employer’s orders limiting the sphere the employee’s employment can create a bar to recovery. *Gossett v. Twin County Cable T.V., Inc.*, 594 So. 2d 635, 638 (Ala. 1992) (citing *Johnson v. Brinkler*, 266 So. 2d 851, 854 (Ala. 1972)). “If an employee ‘voluntarily undertakes to do work about which he had no duties to perform by virtue of the contractual relationship between him and his employer, then, while such condition exists, the duty ... of using care for [the employee’s] safety does not rest on the employer. *Gossett*, 594 So. 2d at 638 (quoting *Southern Ry. V. Guyton*, 25 So. 34, 37 (1899) (alteration in original)).

Defendant does not dispute the fact that there were policies and procedure in place to prevent dancers from driving from the premises, unless first being subjected to a breathalyzer test. However, Plaintiff was under absolutely no duty to drink any alcohol; to the contrary, Plaintiff ingested at least one (1) shot of liquor—directly in violation of Defendant’s policy. Thus, but for Defendant’s willfully wrongful conduct of not only consuming contraband alcohol (despite Defendant’s explicit instructions to the contrary), but also her subsequent attempts to leave the premises (despite Defendant’s employees catching her on multiple occasions), Defendant’s policies would never have been violated.¹ Presumably, had Plaintiff sat and waited in the locker room as Defendant has instructed her, Plaintiff never would have wrecked her automobile and sustained her injuries. Simply stated, it was Plaintiff’s conduct, not Defendant’s, which led to Plaintiff leaving without being administered the breathalyzer test, and BIT is entitled to a summary judgment as a matter of law as to Count III of Plaintiff’s amended complaint.

¹ Defendant contends that prior to coming to work on October 17, 2007, Plaintiff was in possession of two (2) sets of automobile keys, one of which was in Defendant’s possession and one of which remained in Defendant’s possession. Plaintiff apparently cannot remember, but can produce no evidence to the contrary.

III. Assumption of the Risk

Defendant is due summary judgment as to all of Plaintiff's claims, since, even if Defendant negligently/wantonly allowed Plaintiff to become voluntarily intoxicated and subsequently leave the premises, despite explicit instructions not to, Defendant assumed the risk of driving while voluntarily intoxicated.

Alabama has long recognized the affirmative defense of assumption of the risk. *See, e.g., Edwards v. Southern Ry.*, 169 So. 715, 715 (Ala. 1936); *Dunklin v. Hanna*, 156 So. 768, 769 (Ala. 1934); *Louisville & N.R.R. v. Parker*, 138 So. 231, 238 (Ala. 1931). “The general principle of assumption of the risk is that “[a] plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm.” *Ex parte Barran*, 730 So.2d 203, 206 (Ala.1998).

Assumption of the risk has two subjective elements: (1) the plaintiff's knowledge and appreciation of the risk; and (2) the plaintiff's voluntary exposure to that risk. *Driver v. Nat'l Security Fire & Cas. Co.*, 658 So. 2d 390, 393 (Ala. 1995). While questions of assumption of the risk are often within the province of the jury, the Supreme Court has held that “if there is no genuine issue of material fact, that is, if reasonable persons must draw the same conclusion, then whether the plaintiff has assumed the risk becomes a question of law for the court.” *Ex parte Barran*, 730 So. 2d at 206 (citing *Sears v. Waste Processing Equip., Inc.*, 695 So. 2d 51, 53 (Ala. Civ. App. 1997)). However, more importantly—and perhaps most damaging to Plaintiff's claim—is the fact that a person driving while under the influence of alcohol assumes the risk. In fact, the Supreme Court has actually imputed assumption of the risk to a plaintiff who was not the driver, but rather was the passenger, who had knowledge that the driver was intoxicated. *See Hagendorfer*, 393 So. 2d at 1002.

It is undisputed that Plaintiff was voluntarily intoxicated. (Deposition of Plaintiff, p. 145; Plaintiff's Response to Defendant's Interrogatories to Plaintiff, p. 2 ¶ 3). Plaintiff knew that driving while intoxicated is against the law. (Deposition of Plaintiff, pp. 66-68 and 118). Plaintiff knew she could have called a taxi cab to drive her home if she were too intoxicated to drive. (Deposition of Plaintiff, pp. 119-20). Plaintiff does not claim that BIT would not call her a cab on the evening of October 17, 2007. (Deposition of Plaintiff, pp. 122-23). Thus, because, as a result of her intoxication, Plaintiff assumed the risk of driving, she is barred from recovering from Defendant, and summary judgment is due to be granted as to all of Plaintiff's claims.

IV. Contributory Negligence

Even in the event that this Court finds that Defendant's conduct was somehow negligent and/or wanton and that Plaintiff did not assume the risk of driving while intoxicated, Plaintiff is barred from recovery in this action based on her own negligence in driving off of the road and flipping her automobile while voluntarily intoxicated.

Defendant initially notes that assumption of the risk and contributory negligence are, in fact, separate legal defenses. Assumption of the risk proceeds from the injured person's actual awareness of the risk. *McIssac v. Monte Carlo Club, Inc.*, 587 So. 2d 320, 324 (Ala. 1991) (internal citation omitted). Contributory negligence, however, stems from the fact that the injured person contributed to the creation of the risk. *Id.* Furthermore, unlike assumption of the risk, wherein the plaintiff's state of mind is determined by the subjective standard, with contributory negligence the court uses the objective standard. *Id.*

It is well-established law in Alabama that intoxicated persons are held to same standard of care as are sober persons under like circumstances. *Hamilton v. Kinsey*, 337 So. 2d 344, 346 (Ala. 1976); *see also* 2 ALA. PATTERN JURY INSTR. CIVIL 30A.02 (2nd ed.) ("a person who is

voluntarily intoxicated must use the same care as a sober person would use in a similar situation.”). Furthermore, the Supreme Court has held that “drunkenness does not exempt a person from the responsibility of his own acts; and if intoxication renders him reckless or indifferent to the consequences, and he fails to exercise due care, such failure will not be excused because superinduced by intoxication.” *Hamilton v. Kinsey*, 337 So. 2d 344, 346 (Ala. 1976) (citing *Johnson v. L. & N.R.R.*, 6 So. 75 (1894)). Most importantly, driving while under the influence of alcohol is a violation of the law and is “clearly an act of negligence per se.” *Wise v. Schneider*, 88 So. 662, 663 (1921). However, such negligence per se must proximately cause or proximately contribute to the injury complained of by the Plaintiff. 1 ALA. PATTERN JURY INSTR. CIV. 26.11 (2nd ed.).

Again, in this case, it is undisputed that Plaintiff was intoxicated. (Deposition of Plaintiff, pp. 121; Plaintiff’s Response to Defendant’s Interrogatories to Plaintiff, p. 2 ¶ 3 and p. 3 ¶ 14). It is further undisputed that Plaintiff was intoxicated as a result of her own free will. (Deposition of Plaintiff, p. 145). The proximate cause of Plaintiff’s injuries was the automobile wreck caused by Plaintiff driving under the influence of alcohol, which constitutes negligence per se as a matter of law. *Wise*, 88 So. at 663.

Because Plaintiff’s driving under the influence was clearly negligent per se conduct, and because driving one’s automobile off of a public roadway is clearly negligent when compared to the ordinary, prudent driver, any resulting injuries proximately caused by said negligent conduct are not recoverable from Defendant based on the doctrine of contributory negligence. BIT is entitled to a summary judgment as a matter of law.

V. Punitive Damages.

The Alabama Legislature has strictly limited punitive damages to very specific cases.

ALA. CODE § 6–11–20(a) (1975) provides as follows:

Punitive damages may not be awarded in any civil action ... other than ... where it is proven by clear and convincing evidence that the defendant consciously or deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff. Nothing contained in this article is to be construed as creating any claim for punitive damages which is not now present under the law of the State of Alabama.

The statute defines “clear and convincing evidence” as

Evidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt.

ALA. CODE § 6–11–20(b) (1975).

Plaintiff has failed to produce clear and convincing evidence that BIT consciously or deliberately engaged in oppression, fraud, wantonness, or malice with regard to the Plaintiff. BIT is entitled to a summary judgment as a matter of law to the extent that Plaintiff claims punitive damages.

VI. Workers’ Compensation

Although it is undisputed that Plaintiff’s status in relationship to BIT was that of an independent contractor, to the extent Plaintiff seeks damages due to injuries suffered through her alleged employment with BIT, the Alabama Workers’ Compensation Act, §25-5-1 *et seq.*, Ala. Code 1975, provides Plaintiff with the exclusive remedy to recover damages.

CONCLUSION

WHEREFORE, the foregoing premises considered, Defendant, BIT, Inc., prays this Honorable Court will grant summary judgment in favor of Defendant as to all Plaintiff's claims and dismiss Plaintiff's complaint with prejudice.

Respectfully submitted this the 4th day of September, 2009.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

s/ Robert G. Poole

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by placing a copy of the same in the United States mail, postage prepaid, to the attorneys listed below on this the 4th day of September, 2009.

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