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Tables of Cases

Tables of Cases, listed by party and by jurisdiction, have been included to help guide you to particular cases. Each listing references the page number on which the case appears in this book.

A. **Table of Cases, by Party** lists each case in alphabetical order by both the first and second party. Where the case is properly styled, i.e., the first party in the name of the case is listed first, the entry for the case is bold. Where the second (opposing) party is listed first, the entry for the case is not bold.

B. **Table of Cases, by Jurisdiction** lists each case by the court jurisdiction in which the case was decided. First listed are the federal appellate courts, e.g. the U.S. Supreme Court and the federal circuit courts. Next listed are the states' appellate courts and the federal district courts.

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I. Premises Liability

B. Criminal Activity

designed to prevent on-duty employees from being distracted from work by friends and off-duty employees.

COMMENTARY:

This case is a good reminder that your indemnification agreements, if you supply employees for work on property owned by others, should limit your liability to claims arising out of the premises or the work in question. On the other hand, if you use contractors to provide basic services such as parking garage management, you should make sure your agreements spell out the extent of indemnification liability and clearly specify the contractors' responsibility even for the acts of its off-duty employees while on your property.

PSCLR - J-J 97

Motel Has No Duty To Prevent Guest's Assault Without Knowledge Of Imminent Threat To Guest Or Method Of Business Attracting Crime:

Rosen v. Red Roof Inns Inc., 950 F. Supp. 156 (E.D. Va. 1997)

IN SUMMARY

KEY ISSUE(S)—Does an inn located off a major interstate in a high crime area owe a duty to prevent an assault on a guest when it has no knowledge of an imminent risk to the guest?

DECISION—The inn has no duty to prevent the assault on the guest, despite past crime on the property and the fact that guards regularly posted on the property were not on duty on the night of the attack. Nothing indicated that the inn knew that the assailants were on the premises or in proximity to the guest. Also, though the inn was located in a high crime area, no evidence showed that its particular method of business attracted crime. The guest did not allege that the inn encouraged or condoned any criminal activity or that it catered to renting its rooms to criminals or assailants.

FACTS—On January 2, 1995, Virginia Rosen checked into the Red Roof Inn on Commerce Road just off of Interstate 95 in Richmond, Va. She received room 137, located on the ground floor in a building separate from the inn's main office. Shortly after checking in, Rosen was assaulted by two unknown male assailants. The assailants forced Rosen inside her room, where they beat, robbed and sexually assaulted her.

Numerous assaults and acts of violence had allegedly occurred at the inn and at businesses close by in the years prior to 1995. On September 8 and 11, 1994, guests at the inn were assaulted and robbed at gun point near their rooms. At least one Red Roof employee was assaulted and robbed on the inns property prior to Rosen's assault. Though Red Roof regularly provided security guards at the Commerce Road inn prior to the date of Rosen's assault, allegedly none were at the inn that day. Further, the inn did not use surveillance devices to monitor its hallways, room locations, or parking lots.

In the U.S. District Court for the Eastern District of Virginia, Rosen sued Red Roof Inns Inc., asserting that it had a

duty under Virginia law to protect her from assault and that the inn breached that duty. Red Roof Inns moved to dismiss the lawsuit, arguing that the allegations in Rosen's complaint did not make out a claim recognized by Virginia law.

HOLDING—The district court agreed with Red Roof Inns. The district court noted that, under Virginia law, a proprietor whose method of business does not attract or provide a climate for criminal activity has no duty to protect "invitees" from criminal assault "unless he knows that criminal assaults against persons are occurring or are about to occur on the premises, indicating an imminent probability of harm to an invitee." Thus, the court said, Red Roof Inns had no duty to Rosen unless Red Roof knew that she faced a specific, imminent risk of harm or unless the inn's method of business could be said to attract crime.

The district court said that neither of these exceptions applied. The court said that there was no evidence that Red Roof Inns knew of any specific risk to Rosen from her assailants or that the assailants were on the premises. The court also rejected Rosen's argument that the Commerce Road inn provided a climate for assaultive crime because it was located in a high crime area and because it was close to I-95 and attracted unsuspecting guests who were susceptible to crime. The court said that Rosen's contention, if accepted, would prevent innkeepers from operating their businesses in poor areas. The court noted that Rosen failed to allege that Red Roof encouraged or condoned any criminal activity or that it catered to renting its rooms to criminals or assailants.

COMMENTARY

In this case, a record of prior assaults and the alleged lack of a guard on the night of the assault were not enough for the court to find that the inn had a duty to protect its guest from attack. Virginia's standard for holding property owners responsible for crime is thus quite rigorous. Prior, similar crimes on the property seem irrelevant (except, to some extent, in determining whether the "method of business" attracts crime). In other states (New York, Georgia, or Nevada, for instance) evidence of prior, similar crimes is more important in determining a landowner's duty to protect an invitee from assault.

PSCLR - AUG 97

After-Hours Restaurant Has No Duty To Prevent Patron Fight Where Business Does Not Present "Unique Opportunity" For Crime And Violence Had Not Previously Occurred On Premises:

Anders v. Trester, 562 N.W.2d 45 (Minn. Ct. App. 1997)

IN SUMMARY

KEY ISSUE(S)—Does a late-night restaurant that regularly experienced crowds after the closing of nearby bars have a duty to protect a patron during one such "bar rush" from an assault by other patrons?

DECISION—No "special relationship" existed between

the patron and the restaurant so as to give rise to a duty to protect. The restaurant did not present a “unique opportunity” for crime. The assaulted patron stated he had visited the restaurant many times and never felt threatened. Also, the restaurant’s longtime night manager stated that the assault on the patron was the most violent occurrence in her experience at the restaurant.

FACTS—At about 7:30 p.m. on a Saturday in February 1993, Erin Anders, his brother David and friend Sean Forester went out for a few drinks. By midnight, they had gone to two bars and each had three to four glasses of beer. After leaving the second bar, they decided to go eat at Taco Johns, a restaurant in downtown St. Cloud, Minn. Taco Johns was accustomed to a stream of business on Friday and Saturday nights after the bars closed, which they called a bar rush.

Upon arriving at Taco Johns, the Anders brothers and Forester got their food and sat down. A short time later, Janell Jones and Ronald Trester entered the restaurant. They had also visited a bar near the restaurant. While Jones and Trester stood in line to order, someone threw a piece of food that struck Jones. Another patron pointed to David Anders. Jones went to David and demanded an apology. David refused to apologize, denying that he had thrown the food. Trester then approached the table and demanded that David apologize. He again refused, and a fight ensued between Trester, the Anderses and Jones.

Erin Anders sustained many injuries during the brawl. He sued Trester, Jones and D&D Inc.—the company that owned Taco Johns. A trial court granted D&D’s motion for summary judgment. Erin appealed, arguing that the restaurant owed a duty to its customers to protect them from third-party assaults occurring during the “bar rush.”

HOLDING—The Minnesota Court of Appeals upheld the trial court’s ruling that there was no “special relationship” between Erin and Taco Johns that would give rise to a duty to protect Erin from the assault by Trester and Jones. The court of appeals first noted that Taco Johns did not present a “unique opportunity” for crime, such as an open building where criminals might hide. The court of appeals also noted Erin’s testimony that he had visited Taco Johns many times and never felt threatened or deterred from patronizing the restaurant until after this incident.

The court of appeals said that evidence did not establish Taco Johns as a violent place. The police station was only a block away; police were often called from a phone on the premises, but this did not show that all the incidents occurred on the premises or were violent in nature, the court said. Moreover, the court noted the testimony of Joyce Cheese-man—Taco John’s longtime night manager—who stated that the Ander’s incident was the most violent in her experience at the restaurant.

PSCLR - AUG 97

Guests Are Barred Under “Impact Rule” From Recovering Damages From Hotel For Emotional Distress

Caused By Robbery Where Guests Suffered No Physical Injury:

Ruttger Hotel Corp. v. Wagner, 691 So. 2d 1177 (Fla. Dist. Ct. App. 1997)

IN SUMMARY

KEY ISSUE(S)—Can hotel guests recover from an allegedly negligent hotel for the emotional trauma they suffered at the hands of a robber when the robber never physically harmed them and only lightly touched them?

DECISION—The guests cannot recover for their emotional distress, even if it manifested itself with physical symptoms (such as exacerbation of one guest’s diabetes), because they suffered no physical injury at the hand of the robber. Under the “impact rule,” a plaintiff can only recover damages for emotional distress caused by the negligence of another if the emotional distress flows from physical injuries that the plaintiff sustained in an impact. Because no such “impact” occurred in this case, the guests could not recover from the hotel for the psychic trauma allegedly caused by the burglary.

FACTS—Lisa Wagner and her father, Owen Asbell, stayed at a Days Inn in Fort Lauderdale, Fla., with Wagner’s three children. Around 7 a.m., Asbell left his room and was about to enter his daughter’s room when a robber put a gun to his back and told him to enter the room. Once in Wagner’s room, the robber demanded their money and pushed Wagner and Asbell into the bathroom. Wagner’s children remained asleep in bed during the robbery.

Wagner and Asbell sued the operators of the hotel, Ruttger Hotel Corporation d/b/a Days Inn Oceanfront and Days Inn of America Inc., alleging negligent infliction of emotional distress. At trial, Wagner testified that she was withdrawn, depressed and too frightened to leave her house after the robbery. Two psychologists testified that they saw Wagner on an “as needed” basis and diagnosed her as having post-traumatic stress syndrome. Wagner testified that she did not have any external injuries from the robbery. Asbell testified that the robbery made him feel helpless and that the stress from the incident aggravated his diabetes. No medical or psychological testimony was presented on his behalf, but he testified that he suffered from daily nightmares and “day mares.”

The hotel moved for a directed verdict, arguing (under the so-called “impact rule”) that the plaintiffs could not claim damages for their “psychic trauma” resulting from the incident because they did not allege or prove that the robber physically injured them during the robbery. The hotel also argued that mere touching was not enough to satisfy the impact rule. The trial court denied the defendant’s motion for directed verdict, and a jury awarded damages to Wagner and Asbell; the hotel appealed.

HOLDING—The Florida Third District Court of Appeal reversed the verdict for the plaintiffs. The district court of appeal rejected the plaintiff’s argument that the mere fact that the robber touched them when he “pushed” them into the bathroom was sufficient impact to maintain their negligent infliction of emotional distress claim. The evidence presented

at trial conclusively proved that the plaintiffs suffered no physical injuries from the touching. As a result, the district court of appeal held, the impact rule barred the plaintiffs' recovery for their psychic trauma.

The district court of appeal also rejected the plaintiffs' argument that the physical manifestations of their psychological injuries allowed them to avoid the application of the impact rule. Even if Asbell suffered an exacerbation of his diabetes as a result of the incident, the court said, he could not recover because he did not suffer a physical injury at the time of the incident.

COMMENTARY:

The court in this case, though it applied the "impact rule" to bar the plaintiffs' recovery, called the rule "harsh." The rule originated from the fear that courts felt in recognizing claims for psychic trauma—the fear that recognizing and allowing recovery for wholly psychological injuries would open the floodgates for all sorts of unsubstantiated claims of trauma relating to any imaginable brush with the "cruel world." In order to address this fear, courts believed that some sort of hard line requirement was needed to weed out the frivolous psychic trauma case from the legitimate.

The "impact rule," thus requires that in order to recover damages in a lawsuit for psychic trauma—the emotional aftermath of traumatic events—the plaintiff show that he sustained some sort of physical injury in the event that triggered the psychic trauma. If a plaintiff can show physical injury, courts that recognize the impact rule reason, then the plaintiffs' claims of emotional injury will more likely be true.

However, the impact rule has been called into question by many legal commentators and fallen into disrepute in some jurisdictions. In fact, in one entire area of the law, that dealing with claims for intentional infliction of emotional distress, the only requirement is that a plaintiff show "extreme and outrageous conduct" by the defendant in order to recover for emotional distress.

The difference with this case, however, is that here the hotel is accused only of negligence, while claims for intentional infliction of emotional distress involve just that—intentional conduct. Because the claim against the hotel is for negligence, the impact rule (though apparently unpopular with Florida's Third District appellate court) applies.

PSCLR - OCT 97

Stabbing At VFW Post Does Not Fall Within Posts Liability Coverage Because Incident Is Assault And Battery Rather Than Accident:

Capitol Indem. Corp. v. L. Carter Post 4472 Veterans of Foreign Wars Inc., 484 S.E.2d 52 (Ga. Ct. App. 1997)

IN SUMMARY

KEY ISSUE(S)—Should the liability insurer for a VFW post have provided coverage of a claim that the post negligently allowed an inebriated, violent patron back in the club precipitating a stabbing of another customer-when the insurers policy covered only "accidents" and excluded assault or battery injuries?

DECISION—The insurer did not have to cover the incident because the stabbing could not be considered an "accident" as defined by the policy. Moreover, the bodily injury caused by the inebriated patron arose out of an assault and battery. The policy could not reasonably be construed to limit the assault and battery exclusion to assaults and batteries committed by post employees.

FACTS—Roberson, a patron of Post 4472 Veterans of Foreign Wars Inc. suffered severe injuries when Wolfe, another patron, stabbed him. Roberson sued the VFW, contending it negligently allowed Wolfe to reenter the VFW after it asked him to leave due to his intoxication and behavior. The VFW made a claim upon its insurer, Capitol Indemnity Corporation, for coverage of the incident. Capitol's general liability policy covered "bodily injury" caused by an "occurrence," defined in part as an "accident, including continuous or repeated exposure to substantially the same general harmful conditions." Appended to the policy was an endorsement headed "Exclusion -Assault or Battery."

This endorsement stated "[t]his insurance does not apply to bodily injury ... or personal injury arising out of assault, battery, or assault and battery." The endorsement defined assault as a "willful attempt or offer with force or violence to harm or hurt a person without the actual doing of the harm or hurt." The policy defined battery as "any battering or beating inflicted on a person without his or her consent." Finally, the policy defined "assault and battery" to include "the ejection or exclusion with force or violence, or attempt thereof, of any person from the premises by the insured ..."

Capitol filed a motion for declaratory judgment with a trial court, contending the policy excluded the incident between Roberson and Wolfe, as an assault and battery. The trial court concluded the assault and battery exclusion did not apply because Roberson's claim "rests upon allegations of the insured's negligence in failing to protect its patrons from a person known to be violent." Capitol appealed.

HOLDING—The Georgia Court of Appeals reversed the trial court's ruling. The court of appeals ruled the act for which Roberson sought recovery was not an "accident" as defined by the policy. Roberson may pursue his negligence suit against the VFW for its negligence in allowing the violent inebriated patron to return to the club, but under the terms of the policy, Capitol need not defend the suit, the court said.

The court of appeals said, even assuming that the allegations of the complaint could somehow be read so as to include the club's negligence as an "accident," the exclusion precludes coverage. The bodily injury arose out of an assault and battery, and the court rejected the VFW's argument that the assault and battery exclusion applied only to assaults and batteries committed by VFW employees. The court found the policy's language was unambiguous and capable of but one reasonable construction.

PSCLR - N-D 97

Jury Must Decide Whether To Excuse Tavern's Failure

To Give Timely Notice To Insurer Of Claims When Tavern Claimed It Failed To See Potential Liability:

Marinello v. Dryden Mut. Ins. Co. Inc., 655 N.Y.S.2d 156 (App. Div. 1997)

IN SUMMARY

KEY ISSUE(S)—Did a tavern give timely notice to its insurer of a patron’s claim for fight injuries when the owner first learned of the incident three months later in a police report but did not notify his insurer until six months later upon learning that the patron intended to sue?

DECISION—A jury will have to decide whether the tavern owner had a reasonable, good faith belief in nonliability for the alleged injuries that occurred on his property, so as to excuse his failure to give notice after first learning of the incident through the police report. Other than noting that the incident took place at the tavern, the police report and criminal charges filed against the participants did not indicate the tavern employees played any role in the alleged assault.

FACTS—On June 22, 1995, an altercation took place at The Dukes Place, a tavern owned by Louis E. Marinello. The incident resulted in injuries to Scott Swartz. Though a bartender witnessed the incident, Marinello did not personally become aware of the incident until September 1995, when he received a copy of a police report filed by Swartz. On December 21, 1995, Marinello learned for the first time that Swartz intended to sue him as a result of the incident. Marinello immediately notified Dryden Mutual Insurance Company, which had issued a general liability insurance policy in Marinello’s name as owner of The Dukes Place. After an investigation, Dryden denied coverage on the grounds that Marinello failed to notify Dryden of the incident in a timely manner, as required by the policy.

Marinello sued Dryden, seeking a declaratory judgment that it should defend him against and indemnify him for the claim by Swartz. Dryden moved for summary judgment. Dryden submitted Marinello’s statement, in which he claimed he was not at the tavern when the alleged incident took place and that he first learned of it in September 1995 via the police report accusing Griffen and Zupo of assault. Marinello stated no police or medical personnel were summoned to the tavern that evening and that his bartender informed him there “was nothing to [the altercation]” and that “no punches [were] thrown.” In his statement, Marinello further stated the police report did not have his name on it and that “I wasn’t involved so I didn’t think to report [it] to my agent.” The trial court granted Dryden’s motion for summary judgment, and Marinello appealed.

HOLDING—According to the New York Supreme Court, Appellate Division, Third Department, when the facts of an occurrence are such that an insured acting in good faith would not reasonably believe liability on his part would result, notice to the insurer need only be given promptly after the insured receives notice that a claim against him will in fact be made. A question of fact existed as to whether Marinello had a reasonable, good faith belief in nonliability for the alleged injuries that occurred on his property, so as to fall

within the above rule. The police report contained no indication—other than noting the incident occurred at Marinello’s tavern—that Marinello or his employees participated in, permitted, or condoned the alleged assault or that alcohol served at the tavern played a role in the altercation.

COMMENTARY:

Almost all insurance policies contain a provision requiring timely notice of claims. This case gives proprietors some breathing room in recognizing that an insured proprietor might not realize a claim exists even after learning that an altercation occurred on the property, when available evidence does not suggest any involvement by the establishment or any way it could face liability for the occurrence. Still, when learning of an altercation on the premises, a conservative and cautious approach might be to notify your insurer, even if you have little reason to suspect a claim being made against you. After all, people are always finding cause, both reasonable and unreasonable, to sue.

PSCLR - N-D 97

Insurer Cannot Sue Tavern To Recover For Alleged Drunk Driver’s Medical Expenses Under Dramshop Law:

Line Construction Benefit Fund v. Skeates, 563 N.W.2d 757 (Minn. Ct. App. 1997)

IN SUMMARY

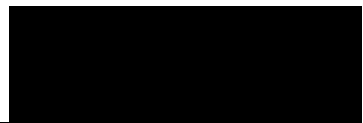
KEY ISSUE(S)—Did a state’s dramshop law allow a health insurer, that paid the medical expenses of an insured who injured herself in a car accident allegedly caused by her intoxication, to sue the tavern where the insured allegedly became intoxicated?

DECISION—The health insurer could not sue the tavern under the dramshop law. The law allows claims against taverns by employers, spouses, children and “other persons” for pecuniary loss caused by an individual’s intoxication, if the tavern serves that individual in violation of the law. The health insurer, however, could not be considered an “other person” entitled to sue under the dramshop law. Moreover, the insured’s voluntary intoxication prevented any claim under the law by the insurer as subrogee of the insured.

FACTS—Jacalyn Palmer drank alcoholic beverages at the Villard office bar one evening. While driving home, Palmer drove her car into the side of a moving train, causing her injury. Several hours after the accident, her blood-alcohol level registered 0.15. At the time of the accident, palmer received health insurance coverage through her husband’s employer. The insurer, Line Construction Benefit Fund (Lineco), paid the costs of palmer’s medical care, which amounted to \$125,820.

Lineco then sued Michael W. Skeates, owner of the bar, claiming it illegally served alcohol to Palmer in violation of the Minnesota dramshop law. Skeates moved for summary judgment, arguing that Lineco could not sue under the dramshop law. The court granted the motion, and Lineco appealed.

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