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MORRISON vs. JJV CORPORATION D/B/A MOLLY MAGUIRES' PUB.  
01-08-01398

DATE OF VERDICT/SETTLEMENT: August 6, 2004

TOPIC: NEGLIGENT FAILURE TO PROVIDE SECURITY AT TAVERN - COMMINUTED HIP FRACTURE - OPEN REDUCTION - INTERNAL FIXATION - 30% COMPARATIVE NEGLIGENCE FOUND

SUMMARY:

Result: \$387,600 Gross Verdict

EXPERT WITNESSES:

Plaintiff's: R. Paul McCauley from Indiana University of Pennsylvania.: Plaintiff's security expert.

Randall Smith from Philadelphia.: Plaintiff's orthopedic surgeon.

Defendant's: Frank Storey from Clinton, N.J.: Defendant's security expert.

ATTORNEY:

Plaintiff's: George J. Badey, III, and Michael H. DiGenova of Sheller Ludwig & Badey in Philadelphia for plaintiff.

Defendant's: Charles A. Harad of Law Offices of Charles A. Harad in Philadelphia for defendant.

JUDGE: Lisa M. Rau

RANGE AMOUNT: \$200,000-499,999

STATE: Pennsylvania

COUNTY: Philadelphia County

INJURIES:

NEGLIGENT FAILURE TO PROVIDE SECURITY AT TAVERN - COMMINUTED HIP FRACTURE - OPEN REDUCTION - INTERNAL FIXATION - 30% COMPARATIVE NEGLIGENCE FOUND

FACTS:

This action arose from a hip fracture suffered by the male plaintiff as a result of being trampled in a brawl in the street outside the defendant's pub at the time the plaintiff left the pub. He contended that the defendant provided inadequate security to prevent the injury. The plaintiff was not involved in the brawl, but the defendant argued the plaintiff was negligent for failing to immediately leave the scene.

The plaintiff was a 26-year-old nursing student and part-time nursing intern, when he stopped at the defendant's establishment after working

the 3 to 11:30 P.M. shift. The plaintiff arrived at the pub at approximately 1 A.M. and left shortly before the 2 A.M. closing time.

Unbeknownst to the plaintiff, an altercation had broken out in the pub between two groups of individuals. One group was comprised of three males, the other group consisted of eight to twelve males. The defendant's doorman/bouncer separated the groups and escorted the smaller group out of the pub and across the street. The larger group then left the bar and the altercation quickly escalated into two separate brawls. One brawl took place in the middle of the street outside the pub. The other took place on the side driveway of the pub.

The plaintiff testified that, as he exited the bar through the front door, he observed the brawl taking place in the middle of the street. The plaintiff also heard a commotion to his left, in the side driveway of the pub. Although the plaintiff's car was parked to the right, the plaintiff testified he decided to walk to his left to investigate the commotion in the driveway and to see if any of his friends were involved. While approaching the driveway, the plaintiff was trampled from behind by several unidentified people who were involved in the fight. The plaintiff contended that since he was a business invitee, the defendant failed to warn or protect him from the accidental negligent or deliberate actions of third parties on the defendant's premises, in violation of Sections 343 and 344 of the Restatement (2nd) of Torts. The plaintiff claimed the defendant also violated the Philadelphia Code as it relates to 'Dance Halls.'

The plaintiff called a neighbor of the bar who testified the pub had a history of numerous incidents of fights and disorderly conduct. Two witnesses to the incident, who were frequent patrons of the pub, testified for the plaintiff that there had been numerous fights at the pub prior to the plaintiff's injury.

The plaintiff's security expert testified that separating but not isolating the combatants caused the altercation to resume and then escalate outside the pub. The plaintiff's security expert also testified that the defendant's failure to call the police once the fight resumed outside the pub was negligent. Testimony from the two eyewitnesses indicated the brawl had been going on for at least ten minutes before the plaintiff came outside and was injured.

The plaintiff's orthopedic surgeon testified the plaintiff sustained a comminuted, displaced fracture of the neck of the femur, commonly referred to as a hip fracture. The plaintiff underwent open reduction and internal fixation and the hardware remains in place. The plaintiff claimed past medical expenses of \$17,000 and future medical expenses of approximately \$140,000 for surgery to remove the hardware, lifetime diagnostic testing and monitoring for arthritis which is likely to develop. The plaintiff's past loss of wages was approximately \$6,700.

The defendant argued that the plaintiff could have easily avoided the injury by immediately going to his car after leaving the pub. The defense contended the plaintiff placed himself in harm's way by going to the area where the brawl was taking place.

The defendant presented the testimony of the pub manager who was not present on the night in question. He testified the defendant's security policy was for the doorman to call the police if, in his judgment, it was necessary. The defendant's manager also testified the pub had taken steps to address the concerns of the neighbors prior to the incident. The defendant's security expert testified the security policy of the pub was adequate.

After a deliberation of approximately six hours over a two-day period, the jury found the defendant 70% negligent and the plaintiff 30% comparatively negligent. The plaintiff was awarded \$387,600 in damages. After reduction for comparative negligence and the addition of delay damages, the plaintiff's total recovery was \$286,730.

COMMENTARY:

This case was originally dismissed on summary judgment, and later reversed by the Superior Court. Notwithstanding the serious nature of the plaintiff's hip fracture, the defendant's highest offer before trial was \$15,000, increased to \$35,000 during trial. Presumably, the granting of the summary judgment made the likelihood of a plaintiff's verdict seem quite low from a defense standpoint.

The case was fought mainly on liability at trial, with the plaintiff presenting a two-fold theory of negligence. The plaintiff's security expert testified the defendant was negligent in failing to isolate the fighting groups and in failing to immediately call the police to stop the fight once it spilled into the street. Key testimony from eyewitnesses established that the brawl had been going on for some ten minutes before the plaintiff exited the bar and was injured. Even the defendant's security expert admitted the police should have been called immediately.

Defense of the case centered on comparative negligence and the argument that the plaintiff had ample opportunity to walk away from the fight, get into his car and leave the scene. In response to the defendant's failure to produce any employees, although five were working on the night in question, the court gave the jury a 'failure to produce evidence' charge. The jury was instructed that the defendant's failure to call any employees permitted it to infer that such witnesses would have been damaging to the defendant.

The jury asked a question during deliberations regarding the guidelines for awarding damages, which made it appear that the panel had already cleared the liability hurdle. The parties then agreed to a high/low agreement of \$100,000 and the defendant's \$300,000 policy limit. The net award of \$286,730 is not affected by the high/low agreement. The agreement also precludes pre-trial motions or an appeal.

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