

# Law Reporter

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**Automobile Accidents:** Negligent placement of road work equipment, page 245

**Evidence:** Computer-generated animation admissible, page 254

**Intentional Torts:** Use of mental health records by counsel supports invasion of privacy claim, page 258

**Workplace Safety:** Negligent request for removal of floor grate, page 267

**Spotlight:** Child trapped on pool drain recovers from drain cover manufacturer, page 269



tionales, hoping one would ultimately be accepted.

Moreover, the court said, this approach would require the trial court to ignore its prior determination and explanations and evaluate each newly proffered rationale as if on a "blank slate." This would improperly restrict the trial court's ability to make the evaluation.

*Plaintiff's Counsel:*

\*Mark D. Cummings,  
Tracy L. Brandt, and  
Thomas L. O'Neill, all of Arlington, Va.

[Court documents in this case are available through the Offerings section at p. 273, courtesy of Mr. Cummings.]

## PREMISES

**Insured shot at bar: Subrogation: Inadequate security: Medical expenses: Verdict.**

*Daniels v. McKinney*, Colo., El Paso County Dist. Ct., No. 95-CV-0147, Div. 6, Apr. 10, 1997.

While a bar's doorman was allegedly helping an intoxicated patron into a cab, Baylis entered the bar with an assault rifle, handgun, grenades, ammunition, and a flak jacket. Patrons and employees tried to disarm him, and several shots were fired. Daniels, 34, was struck in the jaw and abdomen. His health insurer, Bankers United Life Assurance Company, paid about \$298,200 in medical expenses. Daniels settled with the bar for \$50,000, with an express reservation of his health insurer's subrogation rights.

The insurer sued the bar owners, alleging inadequate security. Plaintiff asserted that a motorcycle gang frequented the bar, which had had several previous incidents involving violence and firearms. Plaintiff contended the doorman should have been at the front door with a metal detector at all times.

Defendants asserted Baylis was to blame and Daniels had assumed the risk of danger and been comparatively negligent for frequenting the bar.

The jury awarded about \$298,200, finding defendants 70 percent liable; Baylis, 25 percent liable; and Daniels, 5 percent at fault. The court reduced the award 30 percent, added prejudgment interest and costs, and entered judgment for about \$295,400.

Defendant has appealed.

*Plaintiff's Experts:*

James Wattles, motorcycle gangs, Denver, Colo.  
A. Dale Wunderlich, security, Denver, Colo.

*Plaintiff's Counsel:*

\*James E. Gigax, Denver, Colo.

[Court documents in this case are available through the Offerings section at p. 273, courtesy of Mr. Gigax.]

[*Comment:* In *Grassi v. Carolina Barbecue, Inc.*, N.Y., New York County Sup. Ct., No. 25070/92, Jan. 17, 1997, Grassi, a 24-year-old exercise therapist and personal trainer, visited a bar. An altercation between other patrons escalated to a fight, and Grassi was knocked to the ground. She suffered knee injuries requiring two arthroscopic surgeries. Residual knee pain prevents her from continuing in her profession.

She sued the bar, alleging inadequate security and failure of defendant's employees to intercede while the argument escalated. The jury awarded about \$1.25 million. Leslie Cole, Union City, N.J., was plaintiff's security expert. James J. Killerlone, White Plains, N.Y., represented plaintiff.

In *MacHenry v. Moorestown Pub*, N.J., Burlington County Super. Ct., No. L-3033-93, Feb. 21, 1997, MacHenry was allegedly struck while leaving a bar. The fight spilled into the parking lot, where numerous patrons beat him for about 20 minutes while a bouncer stood by. MacHenry suffered facial lacerations that healed and nerve damage in his wrist resulting in partial loss of sensation in his palm. He sued the bar, alleging the bouncer's failure to intervene had been willful and wanton. The jury awarded \$45,000, including \$25,000 punitive damages. Defendant has appealed. Scott M. Goldberg, Pennsauken, N.J., represented plaintiff.]

**Bar patron kidnapped and sexually assaulted: Inadequate security: Posttraumatic stress disorder: Verdict.**

*Doe v. Gunny's Ltd. Partnership*, Neb., Lancaster County Dist. Ct., Doc. 504, No. 97, Apr. 2, 1997.

Doe, 21, left a college bar located in the basement of a five-story building. When she realized she had left her purse, she went back to the bar. Doe was kidnapped at gunpoint in the building lobby and taken to a fourth floor parking garage, where she was sexually assaulted. She suffered post-traumatic stress disorder.

She sued the building owner, alleging inadequate security. Plaintiff contended an assault was foreseeable because (1) the bar attracted female college students; (2) the building design had restricted views and provided access to isolated areas; and (3) the building lacked a security guard, surveillance cameras, and adequate lighting.

Plaintiff claimed that the owner had employed a security guard for the lobby during evening hours until 15 months before the assault. Further, plaintiff argued the bar owner had complained to the building owner about problems caused by transients and the need for security.

The jury awarded plaintiff \$204,000. The trial court de-