

Recent Bar and Restaurant Assault Cases Increase Exposure to Premises Owners

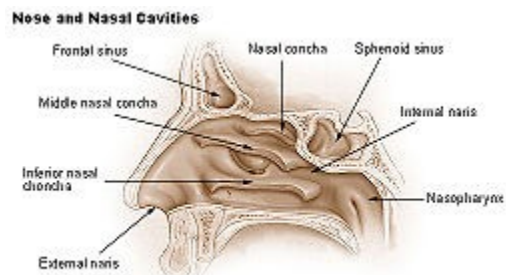
Posted on October 20, 2009 by [John Hochfelder](#)

Bars and restaurants are frequently sued for injuries to patrons that result from fights. Usually, the fights, or attacks, are between patrons. Sometimes, it's a bouncer or security person who causes the injuries. In all cases, though, liability upon the bar or restaurant will depend on whether there was an opportunity to control (i.e., prevent) the incident and whether the premises owner was reasonably aware of the need for such control. There is simply no duty to protect patrons against unforeseeable and unexpected assaults. The courts have addressed these concepts in **three recent cases in which patrons were beat up in bars and restaurants.**

Crazy Donkey Bar & Grill – that's really the name of a bar in Suffolk County, New York – won one of its appeals of an injury verdict against it arising out of an assault on the dance floor but lost two others.



The facts sound like the beginning of a joke – guy arrives at a bar with his girlfriend, buys a drink and walks across the dance floor to give it to her when another guy comes up behind him, grabs his shoulder and Well that's pretty much it. No punch line except that the boyfriend was, literally, punched (in the face) and suffered a broken nose. The perp (as prosecutors would call him) was never found but the boyfriend sued the bar. And won a verdict of **\$115,000** (fractures of both nasal bones, deviated septum, concha bullosa and lacerations).



On appeal, though, the verdict was reversed and the boyfriend's complaint dismissed in **Giambruno v. Crazy Donkey Bar & Grill** because of the spontaneous nature of the incident and the finding that the attack could not have been prevented even with a greater presence of security personnel.

Giambruno's girlfriend, Bobee Delgado and his uncle William Hacker also sued the bar. When Delgado tried to come to Giambruno's aid, the bar's bouncers grabbed her and Hacker and hauled them outside where they threw Delgado over a wall and kicked and punched Hacker.

Delgado sustained contusions of her left thumb and right hand as well as bruising under her arms for which the jury awarded her \$74,000 in pain and suffering damages. The trial judge reduced her award to \$1,000 and the appeals court finally increased it to **\$15,000**.

Hacker sustained contusions to his head and right hand as well as severe bruising on his back, chest, neck and arms. His \$88,000 verdict was likewise reduced to \$1,000 by the trial judge and increased to **\$15,000** by the appeals court.

In another recent case, a young man was **attacked just outside a well known New York City nightclub**, inside a roped off smoking area. Standing near the door (and a doorman and security person), Jack Haber was confronted by two other patrons who had exited the club. They argued for about 60 seconds when Jack was pummeled in the face first by one and then by another attacker. Hacker did not fight back and the **nearby security guard did not intervene**.



Jack sued the club – the **notorious Stereo** – and in **Haber v. Precision Security Agency**, the defendants argued on a motion to dismiss that they had no duty to protect plaintiff under these circumstances. The trial judge denied the motion finding that a jury may fairly determine that the 30-40 second fight was long enough for the staff to intervene, given their proximity to the assault and the fact that they were present for another minute or so during the verbal altercation preceding the attack. So, this case was allowed to proceed to trial and we will follow it for future developments such as an appeal, trial or settlement.

In the third recent case, **Boyea v. Aubin**, an appeals court affirmed the denial of a restaurant's pre-trial motion seeking dismissal of its patron's lawsuit for injuries arising out of a fight at the premises. Jack Boyeya was struck in the back of the head during a melee that erupted between the restaurant's general manager and a disgruntled customer. There had first been a 15 minute dispute between Boyeya's

girlfriend and a waiter when the manager intervened and the fight broke out. The issue a jury will determine is whether the defendants could have anticipated or prevented the incident and whether the manager's conduct was reasonable.

Not surprisingly, bars and restaurants are places where, often **under the influence of alcohol, fights erupt and people are injured**. Then, the instigator is either missing (unidentified because he fled) or judgment proof (an uninsured, financially strapped person). So, the premises owners (usually insured or otherwise financially viable) are named as defendants with allegations that they failed in their obligations to protect their patrons from injurious acts of third persons. These claims can succeed but are quite dependent on the unique facts of each case. In many cases, there is no set of facts that will allow the case to proceed to trial and they are dismissed as a matter of law. The **recent cases indicate a trend to more exposure on the part of premises owners**.