

Should I Take a Case Against a Bar?

CHRISTOPHER L. STROHBEHN

Should I take a case against a bar?

If you are anything like me, you enjoy taking on challenging cases. It could be because I get my fill of the standard automobile accident files, so when a case with unique facts comes along, I grab for it. One category of “interesting liability cases” includes those involving injuries occurring at bars and nightclubs. Wondering what you should do if an injured patron comes through the front door of your office? Here are a few thoughts and tips to consider when reviewing a potential matter.

Standard of care

Of course, the initial consideration is identifying the standard of care that you will ultimately be required to prove. Generally, determining that standard of care revolves around the question of what would be reasonably foreseeable to expect a bar or tavern owner to do in order to protect patrons on the premise from dangers associated with the business. That reasonable person standard encompasses the reality that there are special dangers associated with the place and the character of these types of businesses. What are those special dangers? They include large numbers of patrons in an establishment (potentially over the approved capacity), patrons drinking alcoholic beverages (probably many to excess), and/or few or poorly-trained security and staff to handle the large crowds that the establishment hopes to generate.

What is the bar’s history?

If you considering taking a case against a bar, you need to know the bar’s history and the history of its owners and operators. Is the bar known to have lots of fights or police calls? What is the reputation of the bar? Aside from a simple Google search to see if the establishment has appeared in the media, one way to

check a bar's history is through an open records request to the local police department. A request for records relating to the specific address should reveal the reason for and frequency of police interaction with the establishment.

What more can you do? You should also research the background of the liquor license and any approval or disciplinary proceedings with the appropriate municipal authority, not only for the bar but also for the individual licensee (if applicable). Most municipal committees that grant licenses will revisit "problem" bars based on need and nuisance. Neighbors may have complaints about patrons outside in the parking lot or on the streets. The police may have run a sting on underage entry. Perhaps on big weekends with live acts the bar has been cited for being over capacity. Maybe there were multiple calls for fights inside or outside the establishment. These events are often detailed in license renewal proceedings or disciplinary actions related to suspensions or revocations (in other words, your necessary background research may already have been performed by law enforcement). Finding out this history will provide you with the knowledge you need to help answer the basic question: what should the bar owner have known about the bar? What about bar staffing and training?

A bar is often only as good as its management. How employees are trained goes a long way towards determining how the bar is run. Moreover, the issue of whether employees are allowed to drink on duty colors the entire establishment. It is often against the law, or at least against the policy of the bar owner, for a licensed bartender to drink while on duty. Whether that is what happens in practice is a question left to the discovery process. If bartenders or security staff are drinking while they are on duty, then that raises a significant question as to how competently those employees could do their jobs in the event an injury occurs. How can a bar owner trust a bartender to judge whether a patron should continue to be served alcohol if that bartender is intoxicated? How can a bar owner reasonably trust that patrons will be safely and calmly dealt with by the security staff if one or more of those employees are intoxicated?

In regards to the "bouncer" question, again, what should a reasonable bar owner do to keep his patrons protected from other patrons? How should a bar owner protect patrons from getting hurt directly or indirectly in a bar fight? More often than not, having at least one bouncer or security person is a good start. If an establishment is selling alcohol to large groups of men and women, especially in the 21-35 age range, its security staff should not consist solely of bartenders performing double-duty. That type of establishment should reasonably be expected to

have a number of personnel trained in how to de-escalate situations inside and outside of the bar.

As Dalton from Roadhouse would say, "Be nice." In providing security at a bar, there is something to that notion—a bar owner should expect trained security staff to break up a fight using safe and appropriate physical force techniques. In addition, there is more to operating a reasonably secure bar than simply breaking up fights and ejecting unruly patrons. As an experienced security officer or bouncer expert witness will testify, such actions simply shift the location of the fight. At that point, a reasonable path to deescalation is the separation of the parties so that the altercation cannot be reignited.

The "live act" or other big events

You often see big headlines when a tragedy occurs due to crowd capacity issues or catastrophic equipment failure during live events. Who can forget the tragedy of the fire during the Great White concert at the Station or the stampede that occurred at the E2 nightclub in Chicago? Those tragedies were magnified by the large crowds in attendance. A review of those situations (with the benefit of hindsight) revealed that numerous safety codes were overlooked or ignored. One constant lesson that can be derived from events like those is the importance of building and fire codes. Many of us have been to a bar that just seems too crowded. What if you had to exit the bar for any reason? What if you were in the way of other patrons attempting to exit? What if you were unable to get away safely from other patrons fighting each other because the crowd was simply too overwhelming? These scenarios are exactly why capacity limits for bars and nightclubs are established. It is not unreasonable to expect a bar or nightclub owner to plan and adjust staffing based on the attendance an event is expected to draw. Bar and nightclub owners need to, and responsible ones do, keep an accurate count of patrons in order to minimize potential injuries related to crowd and capacity issues.

Conclusion

Bar injury are frequently fact-driven and can be extremely unique, depending on the type of injury and what safety measures a reasonable bar owner would have taken. Given that, it is highly likely that you will ultimately need to consult with an expert who will guide you through security and safety specifics. But knowing the

basics of what to initially investigate and look out for will give you a head start in deciding whether to take on a case with this type of liability challenge.

******Christopher L. Strohbehn is an attorney with Gimbel, Reilly, Guerin & Brown, LLP in Milwaukee Wisconsin. He can be contacted at cstrohbehn@grgblaw.com.

*******This Section Newsletter is intended to be a forum of opinion and information pertaining to the interest of Section members. Unless specifically stated otherwise, its contents reflect the views of authors only, and should not be interpreted as a statement of the position or policies of AAJ or the Section itself. Published material remains the property of AAJ. No material may be reproduced or used out of context without prior approval of, and proper credit to, this Section Newsletter.



777 6TH STREET, NW, SUITE 200 WASHINGTON, DC

800.424.2725 | 202.965.3500

© 2016. American Association for Justice, All Rights Reserved