

PREMISES LIABILITY**Inadequate or Negligent Security — Hotel/Restaurant****Plaintiff claimed nightclub didn't protect him from 'gay-bashers'****SETTLEMENT** **\$2,376,275****CASE** Ivan Carbajal v. Bobo Robo Inc., d/b/a Regent's and also Robbie and Edward Hardy, No. 16938/01**COURT** Kings Supreme
JUDGE Lawrence S. Knipel
DATE 10/15/2007**PLAINTIFF**
ATTORNEY(S) Glenn D. Miller, Sivin & Miller, L.L.P., New York, NY**DEFENSE**
ATTORNEY(S) E. Gordon Haesloop, Bartlett, McDonough, Bastone & Monaghan, L.L.P., Mineola, NY

FACTS & ALLEGATIONS On May 12, 1998, plaintiff Ivan Carbajal, 41, a nursing-home president's assistant, fell while climbing a wall that was located on the premises of Regent's, an upscale gay nightclub and restaurant that is located at 317 E. 53rd St., in Manhattan. He plummeted about 30 feet and sustained injuries of his head and one leg. Carbajal claimed that he fell while fleeing drunken patrons who had attempted to abduct him.

Carbajal sued the club's owner, Bobo Robo Inc.; the club's manager, Edward Hardy; and another party, Robbie Hardy. He alleged that the defendants negligently failed to provide adequate security and that the club's staff violated the state's dramshop law.

Carbajal did not pursue the claim against Robbie Hardy. Edward Hardy failed to appear at a scheduled deposition, and, as a result, his answer was stricken. His damages were scheduled to be determined during an inquest that was to be conducted concurrent to the trial.

Carbajal claimed that, while he was outside of the club, three "gay-bashers" tried to abduct him. He contended that he went into the club, asked if he could telephone police, but was denied by Edward Hardy.

Carbajal claimed that he subsequently saw the three men enter the club and consume alcoholic beverages, despite being

visibly intoxicated. He contended that they continued to threaten and pursue him. He claimed that they appeared to be blocking the club's exits and that, as such, he had to flee by climbing a wall that was located on the club's rear patio. His clothing became tangled in the wall's razor wire, causing him to fall about 30 feet to the base of an underground garage that was alongside the club.

Carbajal claimed that Hardy should have allowed him to telephone the police. He contended that Hardy told him that the presence of police would compromise the privacy of the club's clientele and thus adversely affect the club's business.

Carbajal also claimed that the defendants were negligent for allowing the three assailants into the club and serving them alcohol when they were visibly intoxicated. He contended that the defendants were negligent for failing to provide him any security as the assailants continued to surreptitiously threaten him. He claimed that he believed that he would not receive any assistance from the club's employees, that he feared for his life and that, as a result, he concluded that he had to escape.

Bobo Robo's counsel contended that Carbajal was severely intoxicated and possibly impaired by illegal drugs. He claimed that Carbajal's story about the three assailants was a delusion or hallucination and that the alleged assailants were never apprehended or identified. Defense counsel noted that Carbajal's hospital records indicated that he had a blood-alcohol concentration in excess of 0.30 and that such a level of intoxication was consistent with causing hallucinations. A witness claimed that Carbajal was acting irrationally prior to falling from or jumping off of the patio's wall.

Defense counsel also contended that Carbajal's counsel failed to establish a causal connection between any alleged illegal service of alcohol and the resulting injuries to Carbajal. He moved to dismiss the dramshop cause of action, and the motion was granted. The matter continued on the issue of negligent security.

As a result of Hardy's default, Judge Lawrence Knipel also found that Hardy was 100-percent liable for the incident. Defense counsel argued that Bobo Robo was entitled to an apportionment of liability and claimed that if Hardy was 100-percent liable, Bobo Robo could not be liable.

INJURIES/DAMAGES *deafness, one ear; diminished cognitive ability; fracture, femur; fracture, skull; internal fixation; memory loss; open reduction; subdural hematoma; traumatic brain injury; vision, partial loss of*

Carbajal sustained a fracture of his skull, a subdural hematoma, a traumatic brain injury and a fracture of his right leg's femur. He was placed in an ambulance and transported to Bellevue Hospital Center, in Manhattan. He underwent intercranial surgery to relieve the pressure in his skull, and his right leg's fracture was repaired via open reduction and internal fixation.

Carbajal's hospitalization lasted about three months. He subsequently entered an outpatient program for traumatic brain injuries at the Rusk Institute of Rehabilitative Medicine, in Manhattan. He claimed that he suffers severe residual cognitive

deficits, specifically involving memory and speech, and that the brain injury rendered him legally blind and deaf in one ear. He also contended that his right leg suffers a residual disability that necessitates his use of a walking aid.

Carbajal also claimed that his injuries prevented his resumption of his job. He contended that he earned a salary in the high-\$20,000 range, but he could not present documentation to support that contention. Thus, he was not allowed to seek recovery of lost earnings.

Carbajal sought recovery of about \$200,000 for his past medical expenses and unspecified damages for his past and future pain and suffering. He also sought punitive damages for reckless disregard of his rights.

Defense counsel contended that Carbajal exaggerated the extent of his residual visual and ambulatory disabilities. He also contended that Carbajal should be able to obtain gainful employment. He moved to dismiss Carbajal's punitive damages claim prior to the trial, but the motion was denied.

RESULT During the jury's deliberations, the parties agreed to a settlement. The defendants' insurer agreed to tender its \$2 million policy. Knipel also added \$376,275 in interest that dated to September 2005, when Hardy's answer was stricken.

INSURER(S) Travelers Property Casualty Corp. for
Bobo Robo and Edward Hardy

**PLAINTIFF
EXPERT(S)**

John Schaefer, M.D., neurology,
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Leo Shea, Ph.D., psychology/counseling,
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**DEFENSE
EXPERT(S)**

William J. Kulak, M.D., orthopedics,
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counsel)
Elkin Simson, M.D., toxicology,
New York, NY

EDITOR'S NOTE The report is based on information that was provided by plaintiff's and defense counsel.

-Tim Heinz