A War Story: *Sneed v. Uno Restaurant Holdings Corp.*

By John R. Solter Jr.

When my partners and I evaluate a potential injury or wrongful death case for our clients and prospective clients, we look for three things:

1. Good facts to establish liability;
2. Big damages; and
3. Sufficient insurance.

However, in the current era of personal injury and wrongful death practice, we are often faced with low insurance limits, insurance exclusions, health insurance liens, disputed and/or unknown facts, and myriad other practical difficulties. Cases possessing all three of these elements are harder and harder to find. Therefore, plaintiffs' attorneys must adapt our way of thinking. This has led me to change the way I review and select potential cases. Lately, I've found that some of my firm's best and most valuable cases involve premises liability claims, where damages and insurance are substantial even though liability is fiercely contested and there are factual disputes to be resolved by the jury.

An example of this case selection is demonstrated by the recent case of *Sneed v. Uno Restaurant Holdings Corp.*, No. 1699 (Md. App. Jan. 13, 2014). This case is the progeny of *Corinaldi v. Columbia Courtyard, Inc.*, 162 Md. App. 207, 218, 873 A.2d 483, 489 (2005), discussed below. Although the Unos case was not reported, it serves to further the analysis of a landowner or business owner's liability for injuries to invitees caused by third party criminal activities on the premises. The Unos case serves as another example of the facts needed to meet the burden of proving that imminent harm was foreseeable and preventable.

A landlord has a duty to exercise reasonable care for the safety of tenants and invitees. Maryland case law sets out three general theories on which a landowner or business may be held liable for injuries to invitees caused by third party criminal activities on the premises. Judge Kehoe reiterated these principles in *Troxel v. Iguana Cantina*, 201 Md.App. 476, 497, 29 A.3d 1038, 1050 (2011):

> Under the first theory, a duty is imposed on the landowner to eliminate conditions that contribute to criminal activity if the landowner had prior knowledge of *similar criminal activity* — evidenced by past events — occurring on the premises. *Id.* at 223, 873 A.2d 483. In the second scenario, a duty is imposed on the landowner to prevent criminal conduct of a specific assailant if the landowner is aware of the violent tendencies of *that particular assailant. Id.* at 224, 873, A.2d 483. The third category involves the imposition of a duty on a landowner if the landowner had knowledge of events *occurring immediately before* the actual criminal activity that made imminent harm foreseeable. *Id.* (citing *Corinaldi v. Columbia Courtyard, Inc.*, 162 Md.App. 207, 873 A.2d 483, 493 (2005) (stating, "[i]f we conclude that no jury could reasonably find under the facts that were known or should have been known by appellees, that the injury to decedent was both foreseeable and preventable, then appellee had no duty to take affirmative action to prevent injury to decedent.").

In the Unos case, we proceeded under the third theory of recovery outlined in *Troxel* and *Corinaldi*. We represented the families and estates of three young men (Charles Dontee Harrison, Terrance Sneed and Curtis Poston), who were shot and killed during a fight at Uno Chicago Grill ("Unos") located at the Boulevard at the Capital Centre (the "mall") on Super Bowl Sunday, February 3, 2008. Although this Super Bowl is best remembered for the "helmet catch" by David Tyree of the New York Giants that helped secure a victory over

the heavily favored New England Patriots, it is also remembered by the families of three young men as the day their loved one was tragically and unnecessarily taken from them while watching the game.

When Beverly Poston, the mother of Charles Dontee Harrison, first came into my firm's office she had already met with several attorneys about her potential civil claims against Unos. She told us that we were her last hope and that all of the attorneys with whom she had previously met declined to represent her and the other families. The shootings at Unos on Super Bowl Sunday had received tremendous local media coverage, and it appeared from all of the coverage that some of the decedents were involved in the fight that ultimately led to their deaths. Clearly, negligence claims against Unos would have to overcome defenses of contributory negligence and/or assumption of the risk. The case met two of our selection criteria (big damages and sufficient insurance), but the facts were certainly in dispute and liability was anything but clear. However, we decided to take on the case for investigation.

Our decision to accept or decline further representation would be based on whether we could present sufficient evidence of negligence to survive a motion for summary judgment, get the case to a jury on the issue of negligence and present proof of substantial damages.

We formed a team, planned the work and worked the plan:

1. **Investigate the Facts**. We reviewed the police reports, witness statements, photographs, video tapes, liquor board files and other documents. We contacted patrons who were present when the shootings occurred, and interviewed several eyewitnesses.

2. **Know the Law**. We studied the case law and geared our efforts to establish facts showing that the imminent harm was foreseeable and that the fight and fatal shootings were preventable.

3. **Line up Experts**. We identified and lined up potential expert witnesses: security expert, forensic pathologist, vocational expert and economist.

4. **Keep Contact with Clients**. We communicated regularly with family members and formed bonds of trust and confidence. They had to be committed to the case, ready to assist in providing testimony, and not "jump ship" when the road to settlement or trial got rocky.

5. **Prepare for Trial**. We never assumed that our clients' claims would be settled. We began trial preparation well ahead of the scheduled trial date,

conferred with each witness, prepared power points of exhibits, and crafted a "mantra" to reiterate to the jury: "The violence at Unos was foreseeable and preventable. Unos should be held accountable."

Following our investigation we believed there was sufficient evidence to show that Unos had knowledge of events occurring immediately before the actual criminal activity that made imminent harm foreseeable. See, *Troxel* and *Corinaldi,* supra. Simply put, we believed we could defeat a future motion for summary judgment and prevail at trial.

In 2011, we filed suit against Unos, the mall and the mall's security company. Over the next year and one-half, we took over twenty depositions and developed testimony from four experts, including a security expert, forensic pathologist, economist and vocational expert. Through discovery we developed and presented ample evidence to show that Unos had a duty to exercise due care to protect its patrons because it had knowledge of events occurring immediately before the actual criminal activity that made imminent harm foreseeable and had sufficient time to take reasonable measures to prevent the harm.

After the conclusion of discovery, we ultimately prevailed on Unos' motion for summary judgment. Settlement discussions ensued, but fell apart. My partner, Jonathan Azrael, and I had put in hundreds of hours of work and we were prepared. The case was going to trial.

The trial was invigorating and nerve-wracking. Six days of testimony is summarized as follows:

On Super Bowl Sunday, February 3, 2008, Unos planned an all-you-can-eat pizza promotion and drink specials. An Unos' memo to its store managers admitted that the promotion was targeted to attract "younger men, from age 21-27 or so, a segment that is more likely to congregate at a bar for the game rather than a home." Curtis Poston, his younger brother, Raymond Poston, and first cousin, Maurice Poston, went to Uno Chicago Grill to watch the Super Bowl and enjoy the special promotions. Later that day, Curtis Poston's first cousin, Charles Dontee Harrison, and good friend, Terrance Sneed, joined the festivities. Curtis Poston's mother and sister also joined Curtis and their group for a meal that day, but left before the events which lead to the shootings. The Postons went to Unos to enjoy a family day. However, as the football game progressed and the alcohol flowed, things took a turn for the worse.

At around 8:00 that evening, Tron Johnson and two of his friends arrived at Unos and sat on the opposite side of the U-shaped bar, across from the Poston group. Shortly after their arrival, trash-talking began between the two groups. The trash-talking grew more menacing, personal and threatening as the night progressed, and escalated into a loud and offensive argument between Curtis Poston and Tron Johnson. At some point the argument became personal and threatening. Testimony revealed that the arguing and escalation occurred for nearly one hour in the presence of the bartender and other Unos' staff.

At some point during the escalating argument, Johnson called his friend, "Busky", and asked him to deliver a handgun to Unos. Johnson told Busky he was feeling uneasy due to the ongoing situation at Unos and he wanted protection. Johnson later went to the parking lot where he met his friend, took possession of the handgun, and returned to the bar at Unos. No one knew that Johnson had a handgun when he reentered the bar.

Shortly after Johnson returned to the bar, a face-to-face confrontation started between Johnson and Poston. According to eyewitness testimony, Poston was yelling obscenities at Johnson "literally just inches away from him." Mr. Poston was using threatening language including, "I'm going to f*** you up" and "you are not going to make it out of here." Testimony showed that Poston took off his shirt and/or chain and asked Johnson if he wanted to take it further. Johnson said, "go ahead man, you got it", while a mutual friend attempted to calm them down.

At some point during this confrontation, members of both groups converged at the bar before the final altercation began. Another minute or two went by before punches were thrown. One witness testified that a man "came out of nowhere" and hit Johnson. A fist-fight ensued. Johnson fired his handgun inside the bar area, fatally wounding Poston and Terrance Sneed. Charles Dontee Harrison ran out of the front door of Unos. Johnson shot him in the back of the head before he could reach the parking lot. Sneed was pronounced dead at the scene. Poston and Harrison were taken to local hospitals and were pronounced dead shortly thereafter.

Testimony revealed that the entire face-to-face confrontation lasted "at least ten minutes."

All of the witnesses testified that during the entire duration of the altercation between Johnson and Poston, no Unos' employee intervened or did anything to stop the confrontation. One witness testified that there was time for Unos' employees to intervene, but that no employee did anything to stop the situation that was occurring in plain sight a few feet from the bar.

At trial we also presented evidence that Unos had a written "Guest Ejection Policy" in place on February 3, 2008. The Guest Ejection Policy stated: "Managers must immediately address any guest that is offending

others or posing a safety threat in our restaurants. Before asking a guest to leave, alert an employee to stand by to call for help (i.e. police) if necessary." The evidence showed that Unos did not follow its Guest Ejection Policy and did not intervene or call for help during the entire argument and altercation. The first call to police was made after the shots were fired. By then it was too late.

At the time of the shootings, mall security guards and an off-duty police officer were on patrol and available to respond if Unos had called to report an incident or ask for help. Surveillance video shows that the police arrived at Unos within eighty seconds of the shootings. This evidence was extremely helpful to show that not only was imminent harm foreseeable, but it was also preventable.

Plaintiffs' liability expert testified that not only did Unos fail to follow its own policies, but it also breached the well established standard of care when it failed to properly intervene in the lengthy, threatening, verbal and physical confrontation.

As prefaced above, the damages in the case were substantial. We asserted three wrongful death actions and three survival actions against Unos, the mall and the mall's security company. In support of the claims for damages we presented evidence of the wrongful death plaintiffs' mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance or education where applicable." Maryland Courts & Judicial Proceedings Code Annotated § 3-904(d); *Scamardella v. Illiano,* 126 Md.App. 76, 727 A.2d 421 (1999).

We also presented evidence of the wrongful death plaintiffs' economic loss resulting from the untimely deaths of their fathers (Curtis Poston and Terrance Sneed had minor children) and adult children (on behalf of the surviving parents). We presented testimony from family members that each of the decedents provided regular financial assistance to their children and their parents, through cash contributions and household services. Unfortunately, the decedents work history was generally "off the books" and there was limited documentation concerning their earning history. However, through our vocational expert we were able to demonstrate how much young African American men of the decedents' age and educational experience were expected to earn. Our expert economist then extrapolated this data and arrived at the economic loss suffered by each of the wrongful death plaintiffs.

Finally, in support of the survival actions, we presented evidence of the non-economic losses suffered by each of the decedents between the time of their injury and death. *Stewart v. United Electric Light & Power Co.,* 104 Md. 332, 65 A.49 (1906). Under Maryland law, in survival actions where a decedent has "great fear and apprehension of imminent death before the fatal physical impact, the decedent's estate may recover for such emotional distress and mental anguish as are capable of objective determination." *Benyon v. Montgomery Cablevision Limited Partnership, et al.*, 351 Md. 460, 718 A.2d 1161(1998). In support of these claims we offered expert testimony from a forensic pathologist who testified in graphic detail about the nature of the decedents' injuries, the pain they likely experienced, how long they likely survived and how long they likely remained conscious. This testimony was compelling and credible, and the jury agreed.

At the conclusion of the trial, the jury completed a verdict sheet and decided in favor of the families and estates of Charles Dontee Harrison and Terrance Sneed. However, the jury found that Unos was not liable to the family or estate of Curtis Poston because he assumed the risk of his own injury or death when he engaged in the altercation with Tron Johnson. Ultimately, the jury made substantial awards to the Harrison and Sneed wrongful death plaintiffs for their substantial economic and non-economic loss. The jury also made substantial awards in favor of the Harrison and Sneed estates for their conscious pain and suffering and pre-death fright. In total, the jury awarded over $2.3 million to the families and estates of Charles Dontee Harrison and Terrance Sneed.

After trial, Unos filed a motion for judgment n.o.v. and the prevailing plaintiffs opposed it. After a hearing on the matter, the trial judge granted Unos' motion finding that the shooting deaths were not foreseeable. We promptly filed a Notice of Appeal to the Court of Special Appeals arguing that there was ample evidence for the jury to conclude that Unos had knowledge of events occurring immediately before the shootings that made imminent harm foreseeable and preventable.

The Court of Special Appeals agreed that the trial court erred in entering judgment n.o.v. The Court of Special Appeals affirmed the jury verdict and held that based on the evidence presented at trial, a jury could reasonably conclude:

1. that Unos had notice of the potential for a volatile situation which made imminent harm foreseeable;

2. that Unos could have acted to prevent or mitigate the harm; and

3. that Unos' failure to intervene or call security was a substantial factor in bringing about harm [the fatal shooting] to decedents.

The Court of Special Appeals stated that while evidence of an initial verbal altercation (prior to the face-to-face confrontation) was insufficient to indicate that physical violence was imminent, there was additional evidence of more than a mere verbal altercation. The Court held that "at the point when Poston removed his jersey and told Tron that he was 'not going to make it out of here', a reasonable jury could find that Unos had notice that violence, i.e. imminent harm, was foreseeable." The Court further held that "a reasonable jury could find that Unos had time to prevent the violence" because there was evidence that "ten minutes elapsed between the time that the face-to-face interaction between Curtis and Tron began and the time that the fight broke out."

The Court of Special Appeals also held that the jury could have reasonably found that Unos' failure to intervene was a cause of plaintiffs' death; i.e. Unos' failure to timely intervene in the altercation was a substantial factor in the shooting death of decedents. In addition, the Court ruled that a jury could have also found that Unos' breach was the proximate cause of the death.

The Court of Special Appeals applied well-established legal principles in rejecting Unos' contention that it has a duty to intervene "only if the murders were foreseeable;" i.e. only if Unos was on notice that three victims would be shot and killed. The Court noted that "the focus is not on whether the particular event that occurred was expectable, but rather whether the event 'fell within the general field of danger which should have been anticipated.'" The Court held that the imposition of a duty on a business owner is not based on the foreseeability of the particular events that unfold, but rather the foreseeability of a general danger to patrons. In the end, foreseeability of an imminent fight was sufficient to satisfy plaintiffs' burden; plaintiffs were not required to establish that Unos knew that Tron Johnson had a gun or that a shooting was imminent.

Unos then filed a Petition for Writ of Certiorari to the Court of Appeals. The Court of Appeals denied Unos' Petition and the case was remanded back to the trial court with instructions to reenter the judgments. Post judgment interest accrued from the date of the entry of the original judgments. See, *Brown v. Medical Mutual*, 90 Md.App. 18, 599 A.2d 1201 (1992).

At the end of the day, my partners and I worked on the Unos case for more than five years and invested more than $150,000 in the case. Despite our substantial investment, the outcome was unknown until the final ruling by the Court of Appeals. There were days when I doubted that we would achieve the result we desired. However, we continued to push ahead and believed in the case and our analysis of Maryland law concerning a business establishment's liability for the criminal acts of a third party.

Together with our clients, we experienced dramatic highs and crushing lows, uplifting victories and difficult apparent defeats. Throughout the entire case, from initial meeting to final appeal, we remained committed to the case and worked diligently in hopes of achieving our desired outcome: justice for the victims of a tragic event that could have and should have easily been avoided. In the end the result was professionally and financially rewarding, and our clients appreciated our efforts on their behalf. ■

Biography:

John R. Solter, Jr. is a partner at Azrael Franz Schwab & Lipowitz, LLC and is the lead trial attorney in AFSL's wrongful death and personal injury departments. John's litigation and trial practice focuses on helping victims of negligence, including car accidents, airplane disasters, commercial truck and charter bus crashes, bicycle crashes, negligent security, slip and falls, tire failures, and other personal injury or death cases. He represents victims of criminal acts, including drunk driving, murder, assault and other intentional or reckless crimes. John can be reached at jsolter@azraelfranz.com.