

## Premises Liability Part 2: Denny's Shooting and a Record-Setting Jury Verdict

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Back in December, my colleague Greg posted "[Premises Security 101](#)," noting the increased attention our clients were paying to premises security issues. As it turns out, they were right to do so. Less than two months later, on February 7, 2011, a King County jury decided that Denny's owed three plaintiffs \$46.4 million in total for injuries sustained when a patron shot into a Denny's Restaurant in Kent with a semiautomatic gun. According to plaintiffs' attorney [Ron Perey](#), this was the largest personal injury verdict ever rendered in the State of Washington; however, Denny's insurance company settled the case for \$13 million before the jury delivered its damage award.

Just to be clear, the man who shot plaintiffs Steve Tolenoa, Lisa Beltran-Walker and Carl Walker was not employed by or otherwise related to Denny's or its management or the owner of that particular Denny's. Frank Evans was a violent drunk guy who showed up after the bars closed, picked a fight with another patron, lost it, got mad, left and came back with a Glock .40, which he used to shoot up the restaurant (11 bullets). Mr. Evans was convicted on multiple counts of first-degree assault and is currently serving a 62 year sentence in state prison.

The gist of plaintiffs' argument against Denny's was that it behaved negligently in (a) not having a security plan to protect patrons and (b) failing to take other reasonable measures to protect its patrons, particularly during the so-called "bar rush" (1-5 a.m.). Plaintiffs noted, for example, that the presence of an off-duty police officer or security guard might have prevented the shooting.

In essence, plaintiffs asserted that the harm done them was foreseeable. They provided evidence that, for example, between the years of 2005 and 2008, police came to the property 30 times for crimes including assaults, drug offenses, car prowls and rape. Plaintiffs' attorney stated that many Denny's employees did not want to work the bar rush because of the risk of danger. Evidence was provided about the commonness of violence at and near the location of that Denny's in Kent (right next door to a bar). And so on.

What this means for other restaurateurs is not clear. There was no written opinion issued by the court of any precedential value, and, as part of the settlement, Denny's has agreed not to challenge the verdict. Should every restaurant open all night employ armed security guards? What is the risk if a restaurateur temporarily or permanently excludes a patron it believes poses a security threat to others? What if he or she does not? Is the risk different if the person is white or if the person is Black or Latino? There are no easy answers to these questions; however, the general guidelines regarding foreseeable injury Greg

describes are a good place to begin:

- If a harm is foreseeable, you have a duty to warn or protect your customers. Therefore, know your surroundings. Consciously avoiding having information-the "hear no evil, see no evil" approach-will not work; if you reasonably should have known about a particular harm, you will still be accountable for it.
- On the other hand, if you do know or should have known that a harm is foreseeable (such as car theft, if there have been many such thefts in the area), you will likely be held responsible for that knowledge, particularly if you, your business or the business just next door have been victims of such crimes. This is why, for example, the number of times the police visited the Kent Denny's is relevant. Take action on the knowledge you have.
- Your duty is to warn your guests so that they may avoid the harm, or protect them or protect them from it. You might consider doing some of both-e.g. posting signs reminding customers to lock their cars and employing a security guard.
- Finally, your duty with regard to the safety of your premises is just one of the many legal duties incumbent upon you and must be weighed against, as in the above example, your legal obligation not to discriminate against customers based on their races or other protected classes.

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