

IN THE COURTS

Appeal Alters Innkeeper Liability

By David Forster
LAW WEEK COLORADO

A DOWNTOWN Denver hotel evicts a guest along with several of her drunk friends who were partying in a room.

On the drive home, they get into an accident that leaves one passenger dead and another in a permanent vegetative state.

Is the hotel responsible? It might be, the Colorado Court of Appeals said in a recent decision in which the court for the first time held that an innkeeper must evict a guest in a reasonable manner.

The decision doesn't define that phrase, but says the innkeeper must at least consider the condition of the guest and the conditions outside.

The decision is a reversal of the court's original ruling in this case last November, in which it upheld the district court's decision to dismiss the case on a summary judgment motion by the hotel.

In the earlier majority opinion, Judge David Furman wrote that the hotel's duty to care for a guest ends when the guest is evicted. Judge John Webb dissented.

The plaintiff asked for a rehearing, and this time Webb wrote the majority opinion and Furman dissented. The only difference in the panel was the third judge. The first time around it was Judge Robert Russel, who sided with Furman. This time, it was Judge JoAnn Vogt, who concurred with Webb.

The underlying claim

The parents of one of the victims, Jillian Groh, sued the Westin Hotel. Groh remains in a vegetative state after a drunken driving accident in the wee hours of a winter morning in 2007.

Groh had booked a room at the Westin for the night of March 3, 2007, because she and some friends planned to hit nightclubs downtown and wanted a place to crash so they wouldn't have to worry about getting home.

Groh and several friends were in the



ALAN SHAFNER

to them.

Ultimately, the manager decided that Groh, as the only registered guest among the group, could stay, but the others had to leave. Some of her friends already had left by this point, and Groh decided to leave with the rest.

Shortly after 3 a.m., Groh and the remainder of her group were escorted to the front entrance. One of the guards blocked the doorframe with his body as the last person exited.

Groh used her cell phone to call her brother and he advised her to get a taxi. One of Groh's friends asked the guard, "Hey, man, it's freezing out here, can we wait in the lobby while we get a cab?" The guard crossed his arms and said, "No, get the f*** out of here."

The group of seven walked down into the parking garage under the hotel, where Groh's car was parked. They passed a waiting taxi along the way. One of Groh's friends, Angela Reed, offered to drive. Groh gave her the keys, and the seven piled into Groh's P.T. Cruiser, which only had



KRISTINE HAYTER

legal duty to prevent injuries subsequent to eviction by preventing drunk driving. To hold otherwise would put hotels in the impossible position of exercising control over others when they have no right to do so."

On appeal

In the court of appeal's November decision upholding the dismissal, Furman wrote that the hotel's duty of care to

Groh ended when she was evicted. He also wrote that the hotel had taken no steps to try to prevent the drunken driving accident, and had made no promises that it would provide such a service. In other words, the parents were trying to punish the hotel for something it didn't do, not something it did.

In a dissent, Webb said that in circumstances where an eviction creates a significant risk for a guest, because of the guest's condition or because of conditions outside, the hotel's duty extends beyond the eviction.

Groh's attorney, Alan Shafner, petitioned the court for a rehearing, and on March 28 the court handed down its new ruling, this time with Webb in the majority.

Webb wrote that the hotel was certainly within its rights to evict Groh but that it must do so in a reasonable manner, and in this case that's a fact-driven question for a jury to decide.

"The jury could find it reasonably foreseeable that, after being evicted and denied the opportunity to wait in the lobby for a taxi, Groh would try to get home by car, either driving herself or riding with one of her companions; the driver would encounter a slow-moving vehicle or other hazardous situation; and the driver would

...CONTINUED ON PAGE 15

“

The jury could find it reasonably foreseeable that, after being evicted and denied the opportunity to wait in the lobby for a taxi, Groh would try to get home by car, either driving herself or riding with one of her companions..."

— Judge John Webb

room drinking when around 2:45 a.m. a security guard who said he heard loud noises from two floors up decided to investigate. No guests had complained.

The guard knocked on the door and Groh came out. Over the next several minutes, Groh spoke first with the guard, then a second guard who arrived and finally with the hotel's manager. During their negotiations, at least one person in Groh's group said that everyone was drunk, which was the whole point of renting the room, and they couldn't be expected to leave now in their condition.

The hotel employees would later say that only one of the guests seemed drunk

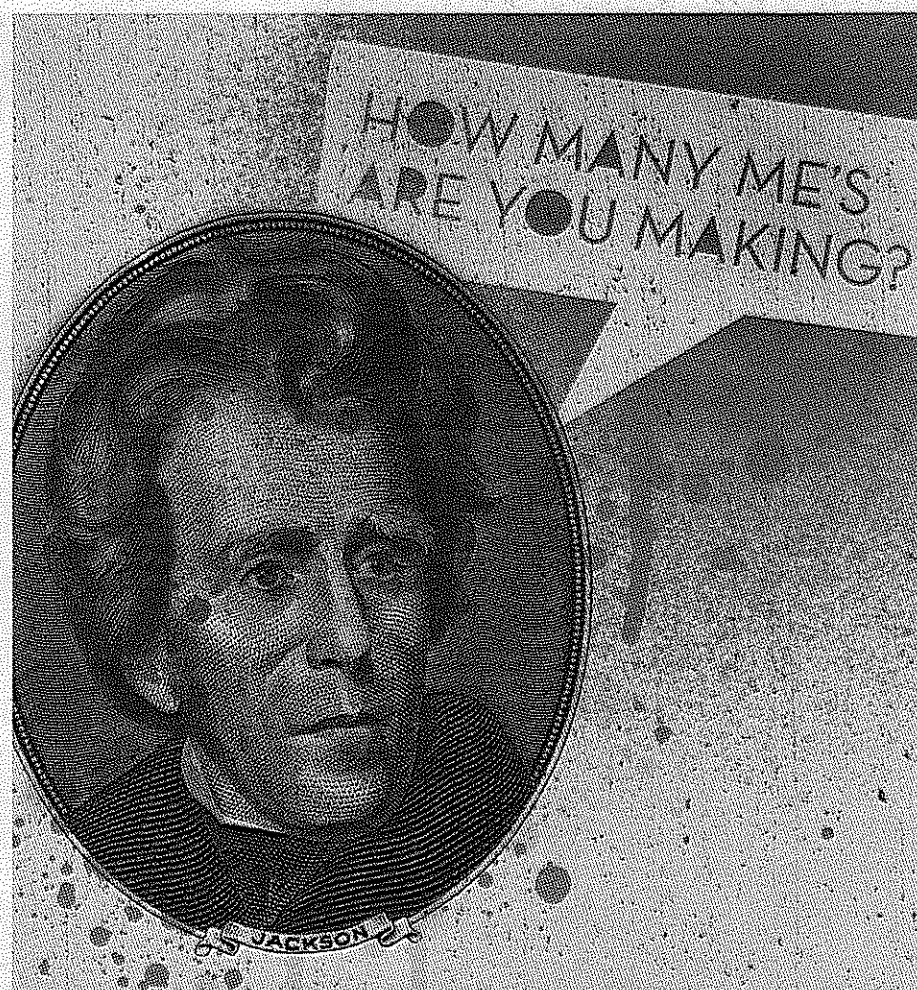
seatbelts for five.

Around 4 a.m., several miles from the hotel on the way to Groh's home, Reed plowed into the rear of a slow-moving car. Her blood-alcohol level was two to three times the legal limit. She was also the only one wearing a seatbelt.

One passenger died in the accident. Groh suffered severe head injuries that left her in a vegetative state.

Her parents sued the hotel, arguing it should not have evicted a group of people who had been drinking all night. The hotel asked the trial judge to dismiss the case on a summary judgment motion.

The judge granted the request, saying: "This court holds that hotels do not have a



2013 SALARY AND SATISFACTION SURVEY



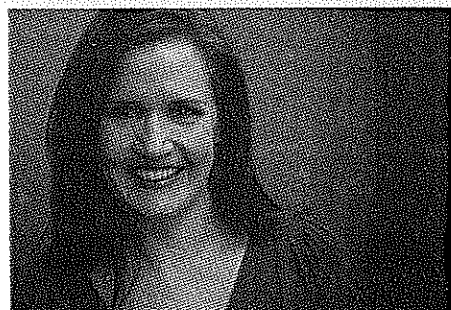
This short survey measures salary and job satisfaction for those who are in legal positions within the industry and for those who attended law school and have pursued positions outside private law firm practice.

VISIT <http://goo.gl/UQyN5>

Survey will take approximately 10 minutes to complete.

EDITOR'S DESK

Summit Offers Best Of Diversity Teachings



Meg Satrom, Esq.
EDITOR

AS EDITOR of Law Week, I attend a fair share of continuing legal education courses each year. They range from practice area specific courses to events featuring guest speakers on a variety of topics. I've seen enough of these courses to know that the most effective courses are those that leave me asking questions, hours, days and sometimes months later.

I don't mean that they leave me baffled or questioning the principles presented, instead they leave me thinking about a bigger picture — about how the intricacies of a particular practice or about the role of the rule of law in various societies or even about the unique challenges of practicing at this particular place in time.

I've always left the annual Center for Legal Inclusiveness Summit with a bevy of questions. The upcoming event, which is scheduled for May 6, aims to present a handful of different CLEs focused on diversity and inclusiveness, and each year the organization manages to provide timely and thought-provoking discussions that continuously appear on my radar.

A small disclaimer may be necessary before I continue. I worked with the nonprofit

If you go

DATE/TIME: Monday, May 6 from 7:30 a.m. to 6:30 p.m.

LOCATION: Sheraton Denver Downtown

TICKETS: \$299 for regular attendees, \$199 for government or nonprofit attendees. Tickets can be purchased at www.centerforlegalinclusiveness.org

ADDITIONAL INFO: There will be a Summit Reception with General Counsel from 5 to 6:30 p.m. Tickets to this reception are \$35 for an individual. Corporate counsel from more than a dozen different companies will be attending, including attorneys from Walmart, Xcel Energy and CenturyLink.

And while the state has been ahead of many others in working to address the issue, it's a message Denver's legal community should continue to heed.

This year's sessions

CLI has lined up an impressive slate of speakers, including Judge Bernice Donald of the Sixth U.S. Circuit Court of Appeals; Caren Ulrich Stacy of Lawyer Metrics; Arin Reeves of Nextions; and Laurie Lieb, who is the director of law firm services for PriceWaterhouseCoopers.

Lieb will be releasing the results of an internal survey her firm did on how outside counsel are underutilizing diverse attorneys. And Donald will participate in two sessions, one focused on the role of unconscious bias in the law, as well as a luncheon plenary where

“

Even if you aren't interested in diversity and inclusiveness efforts, this conference has a lineup of speakers and attendees that's worth the price of admission just for the networking benefits.”

before beginning as editor of Law Week, and I fundamentally believe in its mission to ad-

she'll sit with Kerry Kotouc of Walmart and James Leopold of the National Association

IN THE COURTS

CONTINUED FROM PAGE 5...

be unable to avoid the hazard because of intoxication,” Webb wrote.

Courts in other jurisdictions have held innkeepers to this reasonable manner standard for evictions, but this is the first time the Colorado Court of Appeals has embraced it.

The Westin's attorney, Dick Waltz of The Waltz Law Firm in Denver, said he couldn't comment on the ruling but is considering whether to ask the appeals court for another rehearing or appeal to the Colorado Supreme Court.

Kristine Hayter, an attorney at Cain & Hayter in Colorado Springs who defends

everybody leaving their lobby? Is the hotel going to be the gatekeeper for that?”

A lot of premises liability cases are dismissed on summary judgment on the grounds that there was no duty owed to the injured person — just as the trial court judge ruled in this case when he granted summary judgment.

This ruling will make it easier for plaintiffs to survive summary judgment and get to a jury, which is half the battle, Hayter said. Plaintiffs suing innkeepers can now argue that whether a guest is evicted in a reasonable matter is a question of fact, not law, and is something for a jury to decide.

Shafner agreed that getting before a jury is precisely the point. “If you want to

“

[The opinion] doesn't tell hotels how to respond. Are they going to police everybody leaving their lobby? Is the hotel going to be the gatekeeper for that?”

— Kristine Hayter

businesses in premises liability lawsuits, said this decision, if it stands, creates an overly burdensome duty for innkeepers.

It tells innkeepers they now have a duty to evict in a reasonable manner but doesn't tell them what that means, she said.

“It doesn't tell hotels how to respond,” she said. “Are they going to police

evict somebody, just do it in a safe way,” he said. “But let the jury decide whether you did it in a safe way or not.”

If a jury decides in this case that the Westin's staff acted reasonably, then so be it, Shafner said. But after all these years, he said, Groh's parents deserve to have their day in court. •

— David Forster, DForster@CircuitMedia.com

BUY ONE GET ONE FREE CLASS

EXPIRES 12/31/13 PROMO CODE **OMFCLASSLW2013**

Enter the PROMO code above when purchasing your class and you'll be emailed a certificate for your companion to redeem their free class. Restrictions may apply. REDEEM AT WWW.OPENMEDIAFUNDATION.ORG

**Take a class with a friend at
Media Foundation!**