

VERDICT: Pltf. 60%, Deft. 40%. Motion pending for new trial alleging inconsistent verdict.

Pltf. Attys: John L. Juliano, East Northport

Def. Attys: Richard N. Slater of Richard Scheer, Manhattan

Facts: Pltf. was an off-duty bartender present at defts. premises as a patron. Pltf. claimed that he was stabbed by another person, alleging that the perpetrator was intoxicated at the time and that defts. agents were aware of his intoxication and had served him additional alcohol in violation of the Dram Shop Act. See Alcoholic Beverage Control Law Sec. 65, General Obligations Law, Sec. 11-101 Pltf. also alleged negligence. Two police officers, a detective, and friends of pltf. testified that the perpetrator was intoxicated. There was no indication of intoxication in any police reports. However, there was evidence that there had been previous arguments between pltf. and perpetrator that evening. The perpetrator had pleaded guilty to the criminal charge arising out of the incident. Defts. argued that the perpetrator was not intoxicated, and that pltf. was contributorily negligent in any event. The jury found that the deft. had violated the dram shop act and that the deft. was negligent but that the negligence was not the probable cause of the occurrence. On motion pltf. argued that the jury finding of no probable cause combines with an apportionment of liability was inconsistent.