

Rape Victims Sue Over Safety

One plaintiff wins \$17 million in third-party suit against landlord

In 1974 when singer Connie Francis sought damages against Howard Johnson's Motels Inc. for a rape, such suits were "rare as a hound's tooth," says the lawyer who represented her, Richard Frank.

"But today," adds the New York lawyer, who has since represented plaintiffs in nearly 150 lawsuits involving hotel security, "it's a much more common form of tort litigation."

Francis had argued the faulty locks at her motel enabled a man to break into her room and rape her. The rape victims' movement was galvanized in 1976 when the jury awarded Francis \$2.6 million in the highly publicized case; she eventually settled for \$1.8 million.

In the 15 years since the verdict, rape victims, no longer satisfied to use the criminal courts as their sole recourse, have increasingly pursued justice through the civil courts. The victims' targets are those responsible for maintaining safe conditions, including property managers, landlords, security companies and colleges.

Making possible the third-party suits are two developments in the law. First, many courts have permitted such suits, traditionally based on negligence, to be brought on other grounds, such as breach of warranty and consumer fraud.

Second, a number of rulings have rejected the doctrine that third parties are not liable for criminal conduct because it isn't foreseeable. "Until this twist in the law, criminal conduct oftentimes was seen as superseding and intervening, and therefore third parties were never responsible," says Princeton, N.J.-based victim-rights attorney Beth Baldinger.

\$17 Million Verdict

It's difficult to establish the highest damage award in such suits, although one of the biggest appears to be the August judgment for \$17

million against the company that managed a Corpus Christi apartment building where plaintiff Juli Bliskey was raped. Bliskey claimed at trial that when she moved to the building in 1987, she asked for a



Beth Baldinger: Lawsuits can empower rape victims.

lock that could be opened only from the inside. However management refused her request, citing a need for access to all units.

Six months later, the suit alleged, she was raped by an assailant who broke into the management office and looked through the complex's files to select three women victims who were single. He got the key to Bliskey's apartment from a board where all the building's keys were hanging, the suit said. The management company has filed a motion for a new trial.

A lawsuit filed in March against Carleton College by four women

students cites college policy, rather than locks, as at fault in allowing two men with a history of sexual abuse to repeat their crimes.

One plaintiff, Amy, had been on the campus of the Minnesota liberal-arts college just five weeks in October 1987 when she joined some friends to watch a video in a senior's room. As the evening progressed, everyone but Amy and the senior left—although some said they would return later. In the lawsuit, Amy charges that once they were alone, her attacker locked his door and raped her repeatedly for the next five hours.

Shortly after, Amy reported the incident to the dean of students. She alleges he discouraged her from going to the police, saying that as the victim she would be put on trial. She chose instead to have an internal review by a college hearing board, which found Amy's attacker had sexually assaulted her.

The suit charges that even though the attacker had been found guilty previously by the same board of a lesser sexual offense—called "advances without sanction" and defined as unwanted sexual advances or inappropriate touching—he was not expelled for attacking Amy. The hearing board said the school's 1983 sexual-harassment policy required two of the more serious "sexual assaults" before expulsion, the suit claims.

Another plaintiff in the suit, Julie, alleges the same man raped her in 1986, although she did not go before the hearing board with the incident. Julie, then 18, had been dating the student, a fellow cast member in a Carleton play. She charges in her suit that they had not had sex before he came to her dorm room one night—uninvited—and raped her.

Two other Carleton students, Kristene and Karen, claim to have suffered similar experiences at the hands of another student. Lawyers

and the parties cannot comment on the case because of a court-ordered mediation process. If the suit is not resolved out of court, a trial is scheduled for Jan. 2.

According to Baldinger, colleges will sometimes "sweep crime under the rug" because it taints their idyllic image. "If there's a crime problem at a college, parents are not going to want to send their children there. For that reason, victims can be as much a problem as perpetrators."

Hotels and motels also try to conceal crime that's committed on their premises, some lawsuits charge. For example, one former security executive for Motel 6 claimed in a deposition that the budget motel chain averaged a rape a month from 1987 to 1990, despite its upbeat ads stressing safety.

In June, Motel 6 settled a lawsuit for \$10 million brought by a woman photographer who was raped at one of the motels in Fort Worth, Texas, in 1988. The plaintiff claimed she asked the manager when she checked in whether the motel provided security and he said it did at night, although guards actually were present only Friday and Saturday nights.

Crime Stoppers

One defense attorney involved in premises-liability cases, James McDonald Jr., thinks some decisions are holding landlords to an unreasonably high standard, because it's nearly impossible for them to stop crime. "Landlords are not obligated to provide security and do not have an obligation to plaintiffs," he maintains.

Atlanta-based victim-rights attorney Gilbert Deitch counters that these lawsuits have raised overall safety standards. "When that happens we've all been well-served," he says. "After all, third-party litigation is about consumers' rights and, even more importantly, it's about social change."

Baldinger cites another positive effect of the third-party lawsuits: They empower the victims. "It gives them control over something they had no control over when it occurred by shifting some responsibility and accountability to where it belongs," she said. —*Jessica Copen*

Sparring Over Proposed Remedy

Putting itself in a touchy situation, the Judicial Conference of the United States is opposing legislation that would create a civil-rights remedy for victims of sex assaults.

The bill, called the Violence Against Women Act, declares that rape is a bias or hate crime and allows victims to recover compensatory and punitive damages in federal court.

Taking pains to state its concern about violence against women, the Judicial Conference nonetheless voted unanimously at its September meeting in Asheville, N.C., to oppose the act because it would add too many cases to the federal courts.

In a carefully worded statement, the federal courts' policy-making body said that gender-based violence is "extremely complex" and offered to work with Congress "to ensure the most efficient utilization of scarce judicial resources and to fashion an appropriate response to violence directed against women."

The kind words did not convince supporters of the measure, including the bill's author, Sen. Joseph Biden, D-Del. He accused the Judicial Conference of not accepting the "basic idea" that "women have a right to be free from violent hate crimes."

The conference, however, fears that the law could be abused. It claimed, for example, that women could sue or threaten to sue under the law as a bargaining chip in divorce cases. If only a tenth of the 3 million domestic relations cases brought in 1989 ended up in federal court, the conference said, it would exceed all the cases now pending in federal district and appeals courts.

The conference also warned that the bill's definition of gender crimes on which a suit may be based is so broad that it includes misdemeanors and minor threats against persons and property.

Supporters of the bill dispute those assertions. Sally Goldfarb of the NOW Legal Defense and Education Fund said the measure will not lead to a "landslide" of cases.

She called the allegation that women would use the civil right as a bargaining chip in divorce cases a "real red herring" that is based on the false

stereotype of a woman crying wolf.

She added that conceivably any "legal right could be used as a bargaining chip in divorce cases and that was no reason not to provide the right."

Biden, chair of the Senate Judiciary Committee, said the bill would not cover frivolous claims and would apply only to crimes that clearly are "gender-motivated and are violent—generally defined in the U.S. Code as a felony."

Nor would the act "flood federal courts with domestic dispute claims any more than existing civil-rights laws have brought domestic cases into federal jurisdiction," Biden said.

Other provisions of the Senate bill would:

- ▶ Mandate interstate enforcement of spouse protection orders to protect women who cross state lines to flee their spouses.

- ▶ Increase penalties for federal sex crimes and require victim restitution.

The bill, introduced in the Senate in the summer of 1990, was passed out of committee and is awaiting action by the full Senate. A similar measure has been introduced in the House.

—*Henry J. Reske*

Sally Goldfarb

