

MICHAEL HENSLEY AND JOHN LIERMAN OBTAIN SUMMARY JUDGMENT

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Sosa v. La Casa Del Mariachi, LLC – Jones, Skelton and Hochuli Partner [Michael](#)

[Hensley](#) and Associate [John Lierman](#), recently obtained summary judgment on all claims in Maricopa County Superior Court, for two Phoenix Police officers and a client restaurant, all of which had been sued for negligence after the plaintiff was shot in the chest by another restaurant patron. The plaintiff alleged that the restaurant and the two police officers, who were working at the restaurant as an off-duty officer detail, were negligent in allowing the plaintiff's assailant to have a gun inside the establishment. The plaintiff argued that the restaurant's "no guns" policy, and its provision of security measures at the front entrance on the night in question, as well as an off-duty officer detail, constituted an undertaking to keep the premises free of guns, such that the presence of the gun alone was evidence of negligence.

The JSH attorneys filed a motion for summary judgment, arguing that the two off-duty police officers had no duty to the plaintiff as proprietors of land, because they were independent contractors with duties set forth in standing orders of the Phoenix Police Department, under which they were not responsible for security, but only for law enforcement. Indeed, under the Fourth Amendment, the officers could not take part in any security measures, but were strictly limited to enforcement of the law, not affirmative provision of private security measures.

The same motion for summary judgment recognized that the restaurant had a duty of care to keep customers safe, but that the evidence of patdowns of male patrons and bag searches of female patrons on the night in question was prima facie evidence of reasonable measures for security to fulfill that duty. It was further argued that the reasonableness of a restaurant security plan is an issue beyond the knowledge of the layman, and that the plaintiff had no expert opinion to explain to the jury what more a reasonable restaurant owner should have done to secure his premises. The court found that the restaurant completed all security measures it had undertaken to do, and that the plaintiff had failed to offer any competent evidence that something more should have been done. The court therefore granted summary judgment on all claims and the costs of litigation to the defendants.

Partner [Michael Hensley](#) concentrates his practice on general civil litigation and insurance defense litigation of all types, including life, health, disability and ERISA claims litigation, bad faith defense, professional liability defense, employment law and employee benefits law. He is a member of the Defense Research Institute, the Life, Health, Disability and ERISA law sub-committee of the DRI, and the Arizona Association of Defense Counsel.

[John Lierman](#) is an Associate at JSH and practices in the areas of premises liability, construction defect, and general liability. Mr. Lierman received his law degree from the University of Arizona, where he was a member of the Trial Competition Team, and competed successfully in several trial advocacy competitions.