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HOTEL SECURITY: CUTTING BACK NOW MAY BE COSTLY IN THE FUTURE

Hotel crime has been front page news recently with stories like the "Craigslist killer," who committed crimes against women in two Boston hotels. In fact, *USA Today* recently reported that hotel crime has been on the rise during the recession. According to the article, the hard economic times are driving up thefts and, at the same time, prompting some hotels to make cuts in security measures. Although many in the hotel industry have disputed this trend, the recent news provides an opportunity for hotel owners and operators to reassess security plans.

Legal Obligations

Throughout legal history, the relationship between an innkeeper and a guest has been regarded as a special one. Although an innkeeper is not an insurer of guests' safety, business owners owe, under conditions that vary from state to state, a duty to act reasonably to protect their customers from reasonably foreseeable risks. These risks may include criminal acts. Thus, when a guest is harmed on hotel property by a third person (e.g., a hotel's employee, a hotel's guest or an intruder) the guest may be able to sue the hotel under a theory called negligent security. To succeed on this theory, the guest will generally have to show that the criminal act was foreseeable and that the hotel's security was inadequate.

Most negligent security cases turn on the issue of the foreseeability of the criminal act. Although courts throughout the country determine foreseeability in many different ways, most will consider prior similar incidents at a hotel as evidence of foreseeability. Courts differ on how close in time and nature an incident must be in order to be considered "similar." Some courts will look at a variety of other factors, in addition to prior similar incidents, to determine foreseeability. These factors can include industry standards, the community's crime rate, the extent of assaults or criminal activity in the area or in similar business enterprises, the presence of suspicious persons and the peculiar security problems posed by the design of the premises.

Fiscal Concerns and Potential Liability

The potential liability faced by a hotel in a negligent security lawsuit varies with the circumstances of each case; however, compared to other types of cases against hotels, such as a case for injuries sustained from a slip-and-fall, jury verdicts rendered in assault cases are generally higher. A 1998 article reported that the median award in such cases was \$287,500, with extreme cases yielding verdicts in the millions. For example, in 2004, a man who was assaulted in the parking lot of a Georgia hotel was awarded \$2.2 million. The plaintiff had been retrieving luggage from his car when he was approached by a man with a gun. The gunman demanded that the plaintiff return to his room, and when the plaintiff resisted, the

gunman shot the plaintiff in the leg. Despite hearing the hotel's argument that there had been no prior similar crimes at the hotel, the jury rendered a verdict in favor of the plaintiff.

So, what can hotels do?

A careful reading of decisions in negligent security lawsuits can provide hotel owners and operators with suggestions on how to minimize their exposure to liability. First, hotel owners and operators should be aware of crime rates and incidents in and around the hotel. No matter which foreseeability test a court uses, the higher the crime rate, the greater the duty a hotel may have to provide protection to guests. Next, hotel employees should be trained on what to do if someone suspicious is on hotel property. Many cases have involved instances where a hotel's employee had the opportunity to turn an assailant away but did not. Similarly, hotel employees should be trained how to respond to a guest's request for assistance and in the absence of a request, how to recognize a guest's need for assistance. Many negligent security cases involve a hotel employee's failure to respond or responding too late to a guest in imminent danger. Further, locks and doors should be regularly checked to make sure they are operating properly. A number of cases have involved intruders who easily entered a guest's room because the lock or door was defective. Although testing the locks may prevent other guests and intruders from perpetrating a crime, the hotel's employees may still be able to gain access to a guestroom with a master key. For this reason, hotels should be careful to hire trustworthy individuals and should conduct background checks if possible. Finally, hotels should employ additional security measures. Security guards and surveillance cameras located throughout a hotel's common areas can act as deterrents to crime.

Although cutting back on security measures may save money during the recession, the money that could be lost in a future lawsuit has the potential to be far more significant than whatever is saved today. Hotel owners and managers need to be aware of the legal duty of a hotel to provide security to guests and should keep this in mind when executing or updating a security plan.

The suggestions in this article are suggestions only. The use of these suggestions in no way guarantees immunity from or minimization of liability. Hotel owners and operators are encouraged to consult a local attorney to find out the exact laws in their area. In addition, they are encouraged to seek security advice from security professionals.

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