TOURIST INDUSTRY LIABILITY FOR CRIMES AGAINST INTERNATIONAL TRAVELERS

Daniel B. Kennedy, Ph.D.
Jason R. Sakis, J.D.
Troy, Michigan

Reprinted from 22 Trial Lawyer 301-310 (1999)

Injuries that occur during international travel may be the result of negligence of foreign hosts. The hosts (such as hoteliers, travel agents, or shipowners), under certain circumstances, can be tried in the United States and held liable for their negligence. This article explores the current trends in liability and analyzes the law regarding the procedural and substantive issues.

Any observer of the contemporary U.S. legal environment will note the ubiquitous nature of litigation involving premises liability for negligent security. State and federal courts are hearing numerous third-party lawsuits involving plaintiffs who have suffered criminal attack while guests of hotels, customers of shopping centers, tenants of apartment complexes or invitees of other kinds of landlords. In fact, premises security lawsuits are among the fastest growing type of personal injury lawsuits, and, by the turn of the century, may well number second only to general negligence/slip-and-fall cases as the most common lawsuit brought against landlords.[1]

Although various professional periodicals,[2] law review articles,[3] and textbooks[4] have provided comprehensive treatments of premises liability issues, an area of this litigation remains undeveloped in the literature and the law itself. That area is third-party liability of commercial landlords and other business enterprises for criminal attacks on U.S. citizens vacationing in foreign countries or traveling on the high seas. Is there currently any legal recourse in U.S. courts for criminal injuries suffered while in a foreign jurisdiction? If so, under what conditions might liability attach, and what are the roadblocks affecting such litigation? Such questions will be addressed in this discussion, but first it would be prudent to explore the tremendous importance of these questions against the backdrop of tourism growth wherein millions of Americans travel to foreign countries every year and subsequently become the victims of negligent security. Recovery may be possible in many of these instances.

THE GROWTH OF WORLDWIDE TOURISM

In 1996, tourism receipts accounted for more than 8 percent of total world export of goods and over 35 percent of the total world export of services. The number of worldwide tourist arrivals at foreign destinations reached 594 million in 1996, accounting for global tourism receipts, excluding airfares, of $423 billion dollars.[5] Both tourist arrivals and tourist receipts constitute record highs and explain why travel and tourism constitute perhaps the world's largest industry with some $2 trillion in annual travel-related sales around the world.[6]

U.S. citizens constitute a significant proportion of the worldwide travel and tourism business. In 1996, there were 52.3 million American visitor arrivals at destinations outside the United States. There were approximately 12.9 million visits to Canada, 19.6 million visits to Mexico, and 19.8 million American visits to other destinations overseas. These numbers do not include the nearly 4.7 million North American passengers who booked passage aboard cruise ships in 1996. Altogether, Americans spent $64.5 billion outside the U.S.[7]

Given the number of Americans who vacation or do business in foreign countries each year, it is reasonable to expect that a not insignificant number of them might fall prey to injury or even death at the hands of criminals or due to other misadventures. While American economists are rather comfortable with their estimates of tourist numbers and tourist dollars, American criminologists are far less able to access or provide precise data on the number of American victimizations abroad. Nevertheless, there are a number of contributions criminologists can make to premises security litigation.

CONTRIBUTIONS OF CRIMINOLOGY TO SECURITY LITIGATION

Criminologists and security specialists may play a significant role in premises liability for negligent security litigation. For example, in many cases a duty does not arise unless a judge can be convinced that a given crime was foreseeable, i.e., that there was a reasonable likelihood or an appreciable chance that a victimization would occur.[8] Evidence to that effect can be offered through a criminologist or security specialist who analyzes prior crime patterns at a location or in its surrounding neighborhood. The principle here is that the best way to forecast future crime at a location is to examine prior crime at a location. A criminologist or security specialist may also examine certain land uses, architecture, socioeconomic characteristics, and general ecology of a neighborhood in order to establish the presence of crime correlates.[9] Of course, foreseeability of a criminal attack can sometimes be established by the manner in which a specific crime unfolds. For example, a drunken man loitering about a hotel beach and making hostile and aggressive remarks to tourists might suggest there was imminent notice of an assault.

If a plaintiff manages to establish that a duty exists, he must then show that this duty was breached, i.e., that an applicable standard of care was not upheld. Here, again, the criminologist and/or security specialist may be useful. In a hotel or resort setting, security standards may entail some combination of access control, sufficient lighting, effective locks, foliage control, employee hiring and retention, key control, courtesy patrols, and other property-specific measures.[10] A security expert is in an ideal position to explain to a jury exactly which security measures should have been in place given the level of foreseeability that a crime would occur.

Criminologists and security experts may also testify as to whether the breach of duty was the cause in fact of a burglary/rape. The criminologist might opine, for example, that a

burglar/rapist selected a particular hotel room and victim because he believed he could gain easy entrance (poor locks), could not be seen doing so (poor lighting, overgrown foliage), and could likely make an unimpeded escape (no fencing on property). Criminologists may rely on rational choice theory[11] and ethnographies[12] to explain the actions of criminals in these various circumstances. Conversely, the literature may also be interpreted in such a way as to challenge a causal relationship between property conditions and a criminal's actions.

Overall, there is every indication that the number of lawsuits concerning security negligence in a hotel or resort setting will continue to grow. As more and more properties adopt increasingly complex security systems, the standard of care tends to be driven upwards, thus causing other hotels and resorts to appear inadequate by comparison. This should not be taken to imply, however, that premises liability lawsuits are routinely decided in favor of plaintiffs. Clear cases of hotelier negligence are sometimes settled by a cash payment to the aggrieved guest well before a trial becomes necessary. Thus, trials themselves tend to involve cases where the existence of liability is by no means a foregone conclusion. A recent study of litigation in the 75 largest counties in the U.S. found that plaintiffs won 53 percent of all tort cases, many of which involved automobile collisions, but only 33 percent of premises liability cases, which would include slip and fall, other injury, and negligent security causes of action.[13] It is not known whether the same loss percentage would apply if only negligent security premises liability cases were studied.

FORESEEABILITY OF CRIMINAL ATTACK AT TOURIST DESTINATIONS

Any threshold inquiry into a premises security matter would generally involve the question of foreseeability. How frequently are American tourists subject to victimization while traveling abroad? Just how difficult is it to establish the foreseeability of criminal attack against a tourist plaintiff? Aside from the circumstances surrounding a particular case, as, for example, when the facts can establish notice of specific harm or imminent danger, is it possible to establish actual or constructive notice of criminal attack at a tourist destination? As the following analysis suggests, a totality of the circumstances approach to foreseeability may be feasible when dealing with liability for injuries suffered overseas.

Both the actual incidence of crime and the validity of crime reporting systems may be said to vary widely from country to country. Western European and Anglophone Caribbean nations, for example, may publish crime statistics, which are at least as valid as American statistics. Some European and Caribbean nations, on the other hand, may take a more hit-or-miss approach. Depending on the nation and, perhaps, the city in which the crime itself occurred, trial attorneys may or may not find official crime data sufficiently credible for trial purposes.[14]

One aspect of crime overseas does appear to be certain. More and more people are recognizing the very real threat posed by crimes against tourists. Telephone surveys of over a thousand consumers in the U.S. and the U.K. show that international travelers are increasingly concerned about their safety while touring abroad. Among U.S. travelers, 56 percent cited crime as a major concern.[15]

Travel journalists have also weighed in on the subject of crime against tourists as demonstrated by the following quote from a Fielding publication:

> We are pickpocketed in the street when we bend over to give money to a blind old woman, our car window is smashed in and all our clothing is stolen when we are having an audience with the pope, our hotel is ransacked when we visit a village

> to help a sick child. We are scammed, lied to, beaten, shot, raped, and in some cases murdered. Why? Well, look at it from the bad guy's perspective. He has a family to shelter, a vein to feed, a donkey payment, even an employer who will break his nose if he doesn't make the weekly number.[16]

While consumer polls and journalistic accounts of the problem of tourist victimization should be of interest to trial attorneys, it is likely the courts would expect more tangible evidence of foreseeability. Fortunately, the U.S. Department of State publishes on a regular basis a Consular Information Sheet for the various countries of the world. Contained in these Consular Information Sheets, where pertinent, is information concerning crimes against tourists. For example, during 1997-1998, the following information was made available through the U.S. Department of State, Bureau of Consular Affairs:

> Country B
>
> > Street crime sometimes occurs. Valuables left unattended on the beach are subject to theft.
>
> Country G
>
> > While violent crime has been a serious problem . . . for years, there has been a marked increase in incidents involving U.S. citizens since early 1997 . . . . Between July 1997 and January 1998, fifteen U.S. citizens were raped in ten separate incidents.
>
> Country C
>
> > Crime is increasing, and tourists as well as the local populace are frequent victims. Most crimes are non-violent, including pick-pocketings and house and car break-ins, but criminals have shown a greater willingness to use violence in recent years . . . . One U.S. citizen was killed in October 1997 during an apparent robbery attempt, and five U.S. citizen women have been victims of sexual assaults at beach resorts . . . since 1995.

Additional sources of information relative to crime foreseeability can sometimes be obtained from local newspaper coverage and the defendant hotelier, tour operator, or cruise line corporate and insurance records. Once foreseeability and other duty issues have been clarified, proofs concerning breach of duty and causation may become pertinent as in any other personal injury matter.[17] Over the past several years, a number of tourist-related lawsuits have been decided by higher courts in the United States. As a result, judicial thinking on a number of issues is becoming known.[18]

TOURIST LITIGATION INVOLVING HOTELS

Personal Jurisdiction

An injured tourist's ability to recover damages for injuries sustained in an overseas hotel depends upon whether the owner or operator is subject to jurisdiction in the United States. If an injured tourist cannot establish jurisdiction in the United States, he or she will be forced to file a lawsuit in the country where the injury occurred. Recovery under that scenario is unlikely.

As a general rule, it will be easier for an injured tourist to establish jurisdiction in the United States over an American hotel operating abroad than it will be to establish jurisdiction over a foreign-owned hotel. Only foreign corporations conducting "continuous and systematic" business in the United States will be amenable to general personal jurisdiction. This was recognized in *Frummer v. Hilton Hotels International, Inc*.[19] In *Frummer* a Hilton Hotel owned by an English company was sued in the state of New York by an injured tourist. The defendant moved for a dismissal arguing that the court lacked jurisdiction since the incident had occurred in England. The trial court denied the motion and the defendant appealed. On appeal, the court considered the hotelier's activity in New York. The court noted that the hotel had an office, telephone, and bank account in New York and determined these contacts were sufficient enough to permit the exercise of general personal jurisdiction.[20]

Choice of Law

There are three distinct choice-of-law rules, which govern tort cases. The traditional rule, known as *lex loci delicti,*[21] requires tribunals to apply the substantive law of the place of the wrong. In jurisdictions that follow this rule, foreign law will govern disputes between overseas hoteliers and injured tourists even though the case itself is tried in a U.S. court.[22]

The modern trend is to apply the substantive law, which has the "most significant relationship" to the controversy. This position is taken by the *Restatement (Second) of Conflicts of Laws.*[23] The *Restatement* (S*econd)* provides the following criteria for determining which country's law has the most significant relationship to the cause of action:

1. The place where the injury occurred,
2. The place where the conduct causing the injury occurred,
3. The domicile, residence, nationality, place of incorporation, and place of business of the parties, and
4. The place where the relationship, if any, between the parties is centered.

In jurisdictions that follow this rule, foreign law will usually govern disputes between overseas hoteliers and injured tourists.[24]

A third approach taken by some jurisdictions (*lex fori* rule) is to apply the law of their own state unless a rational reason exists for applying foreign law. In jurisdictions that follow this rule, U.S. law will ordinarily govern disputes between injured tourists and overseas hoteliers.[25]

The Doctrine of *Forum Non Conveniens*

Every court in the United States has the power to resist the imposition of its jurisdiction where it would be inconvenient to do so.[26] This is the principle of *forum non conveniens*. The doctrine is invoked only in instances where an alternative forum is available to the litigants. Generally, the issue is raised by defendants who are sued in the United States for incidents that occur in foreign countries and is heavily litigated in cases where tourists sue the owners of hotels for injuries sustained while traveling abroad.

The most notable *forum non conveniens* case is *Gulf Oil Corp. v. Gilbert*.[27] In its opinion, the United States Supreme Court delineated the factors to be considered by a trial court in deciding a motion to dismiss based upon the doctrine of *forum non conveniens*. These factors are commonly known as the "Gilbert factors." The Gilbert factors include "private interest" factors and "public interest" factors.[28]

The *forum non conveniens* issue was also addressed in *Lehman v. Humphrey Ltd.*[29] In *Lehman*, Victoria Lehman sued a Holiday Inn franchisee for the wrongful death of her husband. Victoria's husband Robert drowned while visiting the defendant's establishment in the Cayman Islands. In the complaint, the plaintiff claimed that the defendant failed to exercise due care for the protection of its guest. As expected, the defendant moved for a dismissal based upon the doctrine of *forum non conveniens*. The trial court granted the motion and the plaintiff appealed.

On appeal, the trial court's application of the Gilbert factors was reviewed. First, the court examined its ability to compel witnesses to testify at trial. It was apparent to the court that several witnesses were beyond its reach; however, that was not found problematic because the witnesses were the defendant's employees. The court reasoned that the defendant could produce its employees to testify at trial.

The court also considered the burden on witnesses having to travel to the United States. In addressing this factor, the "total burden" of having plaintiff's witnesses travel to the Cayman Islands was compared with the defendant's witnesses having to travel to the United States. The court did not find a difference.

The court then considered the relative interests of the United States and the Cayman Islands in litigating the dispute. The Cayman Islands had a local interest in deciding the case; however, this interest was outweighed by the United States' interest in providing a local forum for its citizen. Therefore, the court concluded that the United States was the better forum.

Finally, the plaintiff's ability to litigate the dispute in the Cayman Islands was considered. It was recognized that the plaintiff would not have a right to a jury trial or be permitted to enter into a contingency fee agreement in the Cayman Islands. For these reasons, the Cayman Islands was deemed to be an inappropriate forum and the United States to be the better forum.[30]

A few years later, the Seventh Circuit Court of Appeals decided a *forum non conveniens* issue in *Wilson v. Humphreys Limited*.[31] In *Wilson*, the plaintiff sued a Holiday Inn franchisee to recover for injuries sustained in an assault. The plaintiff was attacked in her hotel room while she was vacationing in the Cayman Islands. In the complaint, the plaintiff claimed that her injuries were caused by the defendant's negligence. The defendant in this case was also the defendant in the *Lehman* case previously discussed. Again, the defendant moved for a dismissal based upon *forum non conveniens*. The trial court denied the motion and the defendant appealed. On appeal, the court held that the United States was a better forum than the Cayman Islands.[32] In reaching its conclusion, the court relied upon the same reasoning set forth in the *Lehman* case.

The Eighth Circuit Court of Appeals was presented with a *forum non conveniens* case for a second time in *Reid-Walen v. Hansen*.[33] In *Reid-Walen*, the plaintiff sued the American owners of a Jamaican resort for injuries sustained while vacationing in Jamaica. The plaintiff was struck by a boat while swimming in an area designated for swimmers only. In the complaint, the plaintiff claimed that her injuries were caused by the defendant's failure to maintain a safe swimming area. The defendant's motion for a dismissal, based upon the doctrine of *forum non conveniens*, was granted and the plaintiff appealed.

The appellate court reviewed the trial court's application of the Gilbert factors and began its inquiry with the private interest factors. The court compared the burden of plaintiff's witnesses having to travel to Jamaica with the burden of defendant's witnesses having to travel to the United States and found there to be no difference. The ability of jurors to view the premises during trial was also considered. It was apparent to the court that jurors would be unable to view the premises if the trial was held in the United States. However, the court did not find this to be a problem because the scene could be accurately depicted through photographs.

The court examined the plaintiff's ability to litigate the dispute in Jamaica and found it would be unreasonable to expect the plaintiff to litigate in Jamaica where no right to a jury trial exists and where contingency agreements are not permitted. The court also addressed the public interest factors. The relative interests of the United States and Jamaica in litigating the dispute had to be considered. Jamaica had a local interest in the dispute; however, this interest was outweighed by the United States' interest in providing a local forum for its citizen.

Finally, the court considered whether it was capable of applying Jamaican law. Recognizing that Jamaican law derived from English common law, the court did not believe that it would be difficult to apply. For all of the reasons stated above, it was held that the United States was the better forum.[34]

Other courts have dismissed lawsuits based upon the doctrine of *forum non conveniens*. In *Guidi v. Inter-Continental Hotels Corp.*,[35] vacationers sued the defendant to recover for injuries and death that resulted from a shooting in Egypt. The plaintiffs were shot while dining in the defendant's restaurant and claimed that the defendants provided inadequate security. The defendant moved for a dismissal based upon the doctrine of *forum non conveniens*.

In deciding the motion, the court considered the Gilbert factors and concluded that Egypt was the more convenient forum. A view of the premises would be necessary for trial, and this would not be possible if the trial occurred in the United States. This factor tilted the balance in favor of having the dispute litigated in Egypt. Relying on the "first-filed" rule, which gives priority to the forum where the first suit was filed, the court also found Egypt to be the more convenient forum. Since two related lawsuits had been filed in Egypt before the plaintiffs filed their lawsuit in the United States, Egypt was given priority. Based upon these factors, the court dismissed the action.

TOURIST LITIGATION INVOLVING CRUISE SHIPS

Personal Jurisdiction

Millions of Americans vacation aboard cruise ships every year.[36] A number of those individuals are injured due to shipowner negligence. As a result, passengers are suing cruise ships in the United States to recover damages for their injuries. This section examines the circumstances under which shipowners are subject to personal jurisdiction.

General personal jurisdiction will be exercised over shipowners that conduct continuous and systematic business in the United States. For example, in *Wilkinson v. Carnival Cruise Lines, Inc.*,[37] an injured passenger filed a lawsuit in Texas against a Panamanian shipowner to recover damages for injuries sustained during a cruise. The shipowner moved for a dismissal arguing that the court lacked jurisdiction. In deciding the motion, the court considered the shipowner's activity in Texas and noted that the defendant spent $1,150,000 on advertising in Texas, between 1982 and 1984, and that this advertising generated substantial sales. According to the court, this activity was continuous and systematic. Consequently, the court asserted personal jurisdiction over the shipowner.[38]

Choice of Law

Tort actions arising out of incidents occurring in navigable waters are governed by federal maritime law.[39] Lawsuits involving incidents that occur on shore are either governed by the law of the country where the injury occurred or the law of the state where the action is filed.[40] To resolve this question, a court must refer to the choice-of-law rules adopted in its state as discussed earlier in this article.

Assaults Committed by Crew Members

In some jurisdictions, shipowners are held strictly liable for crew member assaults committed upon passengers, as recognized in *Morton v. De Oliveira*.[41] In *Morton*, an injured passenger sued Carnival Cruise lines to recover damages for injuries sustained in a rape committed by a crew member. The plaintiff conceded that Carnival was not negligent in hiring or supervising the perpetrator and relied solely on a theory of strict liability. The trial court dismissed the action, reasoning that the United States Supreme Court overruled prior case law holding shipowners strictly liable in *Kermarec v. Compagnie Generale Transatlantique*.[42] On appeal, the Ninth Circuit Court of Appeals interpreted the *Kermarec* decision and held that the Supreme Court did not extinguish strict liability for shipowners. Consequently, the plaintiff was permitted to proceed with her case.[43]

Passenger Injury Occurring on Shore

The issue addressed in this section is whether cruise ships have a duty to warn passengers of dangerous conditions associated with ports of call. A duty to warn was recognized in *Carlisle v. Ulysses Line Ltd.*[44] In *Carlisle*, passengers sued a cruise ship to recover for injuries sustained while touring Nassau. On the advice of the cruise director, the plaintiffs rented vehicles and drove to Yamacraw beach. On their return trip, masked gunmen opened fire on them. Subsequently, the plaintiffs learned that previous passengers had been injured in the same area. According to the court, cruise ships have a duty to warn passengers of known dangers that are associated with places that passengers are reasonably expected to visit.[45]

Passenger Injury Occurring on Board

A cruise ship has a duty to exercise reasonable care for the protection of its passengers. This duty was recognized in *Monteleone v. Bahama Cruise Line Inc*.[46] In *Monteleone*, the plaintiff sued the owners of a cruise ship to recover for injuries sustained in a fall while aboard the ship. The plaintiff caught her foot on a screw that was not properly affixed to the floor causing her to fall down a flight of stairs. In the complaint, the plaintiff claimed that her injuries were caused by the defendant's negligence. The court found the defendant to be negligent and liable for $97,168.95.

Other courts have also recognized a duty on the part of a cruise ship to exercise reasonable care. In *York v. Commodore Cruise Line Ltd.*,[47] a passenger sued a cruise ship to recover for injuries sustained in a sexual assault committed by a cabin steward. In the complaint, the plaintiff claimed that her injuries were caused by the owners' failure to install locking devices that could not be accessed from outside the cabin. The court held that a cruise ship does not have a duty to

install such devices; however, the court recognized that a cruise ship does have a duty to exercise reasonable care for the safety of its passengers.

TOURIST LITIGATION INVOLVING TRAVEL AGENTS

Duty to Warn

As a general proposition, travel agents are not insurers or guarantors of customer safety.[48] Under certain circumstances, however, a travel agent must warn customers of potential danger at a particular destination.

A few jurisdictions have defined the nature and scope of a travel agent's duty. In New York, travel agents have a duty to warn clients of safety factors related to lodging accommodations when those factors are known or readily available to the agent. This duty was recognized in *Creteau v. Liberty Travel Inc*.[49] In *Creteau*, vacationers sued their travel agent to recover for injuries sustained in a rape and robbery while vacationing in Jamaica. The plaintiffs claimed that their injuries were caused by the travel agent's failure to warn. The issue in this case was whether a travel agent has a duty to warn customers of safety factors related to lodging accommodations. The court held that a travel agent has a duty to inform customers of safety factors related to lodging accommodations when the agent has knowledge of those factors or where such information is readily available.

A travel agent's duty to warn was also recognized in *Fling v. Hollywood Travel and Tours*.[50] In *Fling*, vacationers sued their travel agent to recover for injuries sustained while vacationing in the Bahamas. While visiting the Bahamas, Jack and Doris Fling were shot and robbed near their hotel. The plaintiffs claimed that their injuries were caused by the travel agent's failure to warn. The court in this case held that "a travel agent has a duty to warn under special circumstances" and "special circumstances exist when a travel agent knows or should know that a hotel is located in a high crime area."

A travel agent's duty to warn was also recognized in Arizona in *Maurer v. Cerkvenik-Anderson Travel Inc*.[51] In *Maurer*, parents sued a travel agency for the wrongful death of their daughter, which occurred while she was vacationing in Mexico. Molly was the fourth person to fall from a moving train while participating in a tour package organized by the defendant. Because this fact was not disclosed to Molly, the plaintiffs claimed their daughter's death was caused by the defendant's failure to warn. The court in this case held that travel agents have a duty to disclose "known dangers."[52]

Passero v. DHC Hotels and Resorts Inc.[53] also discussed a travel agent's duty to warn. In *Passero*, Kristen Passero sued her travel agent to recover damages for injuries sustained while vacationing in Aruba. The plaintiff injured herself in a fall after tripping on a flotation mat near the pool area and claimed that her injuries were caused by the travel agent's failure to warn. The issue in this case was whether travel agents have a duty to warn customers of obvious dangers. On this issue, the court held that travel agents do not have a duty to warn tourists of "obvious dangers." However, the court also held that travel agents have a duty to warn customers of known dangers, which are not readily discoverable by the traveler.[54]

Other courts refuse to impose liability upon travel agents. The case most frequently cited for the proposition that travel agents have no duty to warn is *LaVine v. General Mills Inc*.[55] In *LaVine*, the plaintiff sued her travel agent to recover damages for injuries sustained while touring the Fiji Islands. The plaintiff was injured in a slip and fall and claimed that her injuries were

caused by the travel agents's failure to warn her of the unstable ground. The court in this case held that travel agents have no duty to warn travelers.

Another case declining to hold travel agents liable is *Connolly v. Samuelson*.[56] In *Connolly*, the plaintiff sued her travel agent to recover damages for injuries sustained while vacationing in South Africa. The plaintiff injured herself in a fall while participating in a walking tour and claimed that her injuries were caused by the travel agent's failure to warn her of the unstable conditions. Citing *LaVine* as precedent, the court refused to hold the travel agent liable for failure to warn.[57]

A Michigan court suggested that travel agents do not have a duty to warn clients of potential crime that may be encountered while traveling abroad. This was established in *Vorbroker v. Norwegian Caribbean Lines Inc*.[58] In *Vorbroker*, the plaintiffs sued their travel agent to recover damages for injuries sustained in an attack while vacationing in St. Thomas. The plaintiffs claimed that their travel agent had a duty to investigate and warn them of crime in St. Thomas. The court held that travel agents do not have a duty to investigate or warn customers of criminal activity.

Negligent Selection

Travel agents have also been held liable for negligently selecting hotel accommodations. This theory was advanced by the plaintiffs in *Wilson v. American Trans Air Inc*.[59] In *Wilson*, vacationers sued their travel agent to recover for injuries sustained while vacationing abroad. While visiting the Cayman Islands, Dorothy Wilson was assaulted by an intruder in her hotel room. The plaintiffs claimed that Dorothy's injuries were caused by the defendant's negligence in selecting hotel accommodations. The court in that case held that the defendant did not negligently select the plaintiff's hotel and that nothing in the record indicated the hotel was located in a high crime area. However, the court recognized the existence of the negligent selection theory.

The negligent selection theory also applies to the selection of excursion operators. This theory of liability was recognized in *Honeycutt v. Tour Carriage Inc*.[60] Although the issue in that case did not directly concern negligent selection, the court discussed the theory. According to the court, travel agents may be held liable for the negligent selection of excursion operators. However, the court also held that "tour operators may rely initially on the general reputation of the supplier and may continue to offer the services of the supplier where its experience with the supplier has been satisfactory."[61]

Respondeat Superior

The doctrine of *respondeat superior* was deemed to be a viable theory against travel agents in *Casey v. Sanborn's Inc. of Texas*.[62] In *Casey*, vacationers sued their travel agent to recover for injuries sustained while vacationing in Mexico. The plaintiffs were injured in an automobile accident, which was a result of their driver's negligence. The issue in that case was whether a travel agency could be held liable for negligence committed by its agent in a foreign country. The court held that it could.[63]

In summation, it is apparent that some jurisdictions are willing to impose liability upon travel agents for injuries sustained by tourists while traveling abroad. Other jurisdictions decline to impose a duty upon travel agents. This is a timely issue, which not every jurisdiction has

addressed. Based on the increase in tourist travel and growing awareness of premises liability litigation, one might expect an increasing number of jurisdictions to decide this issue in the near future.

PROJECTIONS AND PREDICTIONS

Premises security lawsuits based on criminal attacks occurring in the United States constitute a rapidly growing area of litigation. Due to the fact that U.S. citizens constitute some 54 million arrivals at foreign destinations each year, it is to be expected that a not insignificant number of such tourists will be injured or even killed as a result of criminal activity made possible by some form of landlord negligence. There is reason to believe there will be a commensurate increase in premises liability lawsuits generated by criminal attacks against U.S. citizens traveling abroad. The foreseeability of such attacks can be established in some instances by prior crime statistics and in others by an examination of socioeconomic characteristics of an area and patterns of land use. Depending on the circumstances of a given crime, foreseeability may be somewhat easier to infer based on open and threatening behavior on the part of the assailant himself.

Several U.S. courts have rejected the doctrine of *forum non conveniens* and imposed jurisdiction over the complaint of a U.S. citizen injured overseas. These cases involved the injury of a guest of either a U.S.-owned or operated property or, in some instances, a property owned by a foreign national. Cruise lines have also been held negligent for passenger injuries occurring both aboard ship or, in some instances, while ashore in various ports of call. In other instances, travel agents have been held liable for failing to warn tourists of dangerous circumstances or for negligently selecting accommodations on their behalf.

These legal developments will not hamper tourism growth but encourage it. As destinations become safer, sometimes through the impetus of liability, heretofore reluctant travelers will become more willing to venture overseas. Hoteliers and others involved in the tourist industry are not required to guarantee the safety of travelers but only to provide reasonably safe accommodations, which are not overly burdensome to the innkeepers themselves. As the tourist industry continues to adopt a crime preventive profile and as tourists themselves are encouraged to behave responsibly, the travel experience will continue to be beneficial to all involved.

ENDNOTES

[1] A. Kaminsky, A Complete Guide to Premises Security Litigation 5 (American Bar Association 1995).

[2] G. Eiesland, *Attacks in Parking Lots: Driving Home Liability of Owners*, Trial, Sept. 1990, at 108; P. Gerson, *An Ounce of Prevention: Proving Shopping Center Liability for Third-Party Crime*, Trial, Aug. 1997, at 52; C. Gordon, *A Safe Room at the Inn: Liability for Inadequate Security*, Trial, Oct. 1994, at 40; D. Kennedy, *Inadequate Security and Premises Liability: How Criminals Think*, Trial, June 1991 at 56; I . Leesfield & S. Gross-Farina, *Innkeeper Liability for Sexual Assaults*, Trial, Oct. 1994, at 46.

[3] S. Cabrera, *Negligent Security of Landowners and Occupiers for the Criminal Conduct of Another: On a Clear Day in California One Can Foresee Forever*, Cal. W. L. Rev. 165 (1987); W. Hardie, Jr., *Foreseeability: A Murky Crystal Ball for Predicting Liability*, 23 Cumb. L. Rev. 348 (1993); R. Homant & D. Kennedy, *Landholder Responsibility for Third Party Crimes in Michigan: An Analysis of Underlying Legal Values*, 27 U. Tol. L. Rev. 115 (1995); S. Ksen, *Isaacs v. Huntington Memorial Hospital: Reaffirming the Guidelines Established in Roland v. Christian to Determine a Landowner's Liability for Negligent or Criminal Acts of Third Persons on His Premises*, 18 Utah L. Rev. 201 (1986).

[4] F. Carrington & J. Rapp, Victim's Rights: Law and Litigation (Matthew Bender & Co. 1991); R. Kuhlman, Safe Places? Security Planning and Litigation (The Michie Co. 1989); J. Tarantino & M. Dombroff, Premises Security: Law and Practice (John Wiley & Sons 1990).

[5] Tourism Works for America Council, Tourism Works for America: 1997 Report 12 (New York 1997).

[6] P. Tarlow & M. Muehsam, *Wide Horizons: Travel and Tourism in the Coming Decades*, The Futurist, Sept.-Oct. 1992, at 28.

[7] Tourism Works for America Council, *supra* note 5, at 1. Early statistics for 1997 published by the Travel Industry Association of America estimate that there were 54.1 million American visitor arrivals at international destinations with about $72 billion spent abroad.

[8] Homant & Kennedy, *supra* note 3.

[9] D. Kennedy, *Architectural Concerns Regarding Security and Premises Liability*, 10 J. Architectural Plan. & Res. 105 (1993).

[10] S. Bach, *Tourist-Related Crime and the Hotel Industry: A Review of the Literature and Related Materials* in Tourism, Crime and International Security Issues (A. Pizam & Y. Mansfeld eds., John Wiley & Sons 1996); R. Ellis, Security (Educational Institute of the American Hotel and Motel Ass'n. 1986); H. Smith, Hotel Security (Charles C. Thomas 1993).

[11] Routine Activity and Rational Choice: Advances in Criminological Theory (R.V. Clarke, & M. Felson eds., Transaction Publishers 1993); The Reasoning Criminal: Rational Choice Perspectives on Offending (D. B. Cornish & R.V. Clarke eds., Springer-Verlag.1986).

[12] Cromwell et al., Breaking and Entering: An Ethnographic Analysis of Burglary (Sage Publications 1991); J. Katz Seductions of Crime (Basic Books 1988); R. Wright & S. Decker, Burglars on the Job (Northeastern University Press 1994); R. Wright & S. Decker, Armed Robbers in Action: Stickups and Street Culture (Northeastern University Press 1997).

[13] S.K. Smith et al. Tort Cases in Large Counties, Bureau of Justice Statistics Special Report April 1995, at 5.

[14] *See generally* D. Archer & R. Gartner, Violence and Crime in Cross-National Perspectives (Yale University Press 1984); J. Neapolitan, *Cross-National Crime Data: Some Unaddressed*

Problems, J. Crime & Just. 95 (1996); C. Kalish, International Crime Rates, Bureau of Justice Statistics Special Report, May 1998, at 1.

[15] S. Bovet, *Safety Concerns World Travel Market, B-M Survey Shows* 50 Pub. Rel. J., March 1994, at 8. Even domestic tourism can be negatively affected by crime concerns. *See* E. Demos, *Concern for Safety: A Potential Problem in the Tourist Industry*, 1 J. Travel & Tourism Mktg. 81 (1992).

[16] R. Pelton, Fielding's The World's Most Dangerous Places 51 (3d ed., Fielding Worldwide, Inc. 1998).

[17] D. Kennedy, *Litigation on Behalf of Tourists Victimized While Traveling Abroad*, 17 Trial Dipl. J. 207 (1994).

[18] Legal scholars have also begun to discuss liability for crimes committed in foreign countries against tourists. See T. Bateman, *Annotation, Liability of Travel Publication, Travel Agent, or Similar Party for Personal Injury or Death of Traveler*, 2 A.L.R. 5th 396 (1992); R. Gould, The Defense of Travel Litigation, Practicing Law Institute/Commercial Law and Practice Course Handbook Series (1987); M. Weisman, *Liability of Travel Agents and Tour Operators for Personal Injuries of Travelers*, Mich. B.J. March 1996, at 254.

[19] Frummer v. Hilton Hotels Int'l, Inc., 227 N.E.2d 851 (N.Y. App. Div. 1967).

[20] *Cf*. Wilson v. Humphreys Limited, 916 F.2d 1239 (7th Cir. 1990) (exercising specific personal jurisdiction over an overseas hotelier).

[21] This rule is followed in many jurisdictions. *See* Wagner v. Freightliner Corp., 622 F.Supp. 790 (S.D. Ind. 1985).

[22] *See* Reid-Walen v. Hansen, 933 F.2d 1390 (8th Cir. 1991).

[23] Restatement (Second) of Conflicts of Laws 145. Some jurisdictions have adopted the *Restatement (Second)'s* position. *See* Melton v. Borg-Warner, 467 F. Supp. 983 (W.D. Tex. 1979).

[24] *See* Lehman v. Humphrey Cayman, LTD, 713 F.2d 339 (8th Cir. 1983), and Bruemmer v. Marriot Corporation, No. CIV. A. 90-4190, 1991 WL 30141 (N.D. Ill. Mar. 4, 1991).

[25] *See* Braver v. Seabourn Cruise Line, Inc., 808 F.Supp. 1311 (E.D. Mich. 1992).

[26] *See* Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947).

[27] *Id.*

[28] The private interest factors include (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of unwilling witnesses; (3) the cost of obtaining witnesses; (4) the possibility of viewing the premises; and (5) all other factors that make a trial expeditious. A trial court is also guided by public interest factors, which include (1) court administrative difficulties; (2) burden on the jury pool; (3) the local interest in having disputes decided at home; and (4) the appropriateness of trying a case in a forum familiar with the law governing the case.

[29] Lehman v. Humphrey, 713 F.2d 339.

[30] The Eighth Circuit includes the following states: Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

[31] Wilson v. Humphreys Limited, 916 F.2d 1239 (7th Cir.1990).

[32] The Seventh Circuit includes Illinois, Indiana, and Wisconsin.

[33] Reid-Walen v. Hansen, 933 F.2d 1390, (8th Cir.1991).

[34] *See* also Bruemmer v. Marriot Corp., No. CIV. A. 90-4190, 1991 WL 30141 (N.D. Ill. Mar. 4, 1991).

[35] Guidi v. Inter-Continental Hotels Int'l Corp., No. CIV. A. 95-9006, 1997 WL 411469 (S.D.N.Y. July 18, 1997).
[36] B. Wade, *Cruise Ships: How Safe?*, N.Y. Times, May 23, 1993, at 3.
[37] Wilkinson v. Carnival Cruise Lines, Inc. 645 F.Supp. 318 (S.D. Tex. 1985).
[38] *See* Shute v. Carnival Cruise Lines, 897 F.2d 377 (9th Cir. 1990) (upholding the exercise of specific personal jurisdiction over a shipowner.
[39] Sullivan v. Celebrity Cruises Inc., 881 F.Supp. 906 (S.D.N.Y. 1995).
[40] *See* Braver v. Seabourn Cruise Line, 808 F.Supp. 1311 (E.D.Mich. 1992).
[41] *See* Morton v. De Oliveira, 984 F.2d 289 (9th Cir. 1993).
[42] *See* Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 375 (1959).
[43] Other jurisdictions also impose strict liability upon shipowners. *See* Muratore v. M/S Scotia Prince, 845 F.2d 347, 353 (1st Cir. 1988).
[44] Carlisle v. Ulysses Line Ltd., 475 So.2d 248 (Fla. Dist. Ct. App. 1985). This duty was also recognized in Bryant v. Cruises Inc., 6 F.Supp.2d 1314 (N.D. Ala. 1998). *See also* Taylor v. Costa Lines, Inc., 441 F. Supp. 783 (E.D. Pa. 1977).
[45] Shipowners may also be held liable for injuries sustained by passengers while ashore on hotel property owned by the carrier. *See* Rams v. Royal Caribbean Cruise Lines, Inc., 17 F.3d 11 (1st Cir. 1994).
[46] Monteleone v. Bahama Cruise Line Inc., 664 F.Supp. 744 (S.D.N.Y. 1987).
[47] York v. Commodore Cruise Line Ltd., 863 F.Supp. 159 (S.D.N.Y. 1994).
[48] LaVine v. General Mills Inc., 519 F.Supp. 332 (N.D. Ga. 1981).
[49] Creteau v. Liberty Travel Inc., 195 A.D.2d 1012 (N.Y. App. Div. 1993).
[50] Fling v. Hollywood Travel and Tours, 765 F.Supp. 1302 (N.D.Ohio 1990).
[51] Maurer v. Cerkvenik-Anderson Travel Inc., 890 P.2d 69 (Ariz. Ct. App. 1994).
[52] *See also* Rookard v. Mexicoach, 680 F.2d 1257 (9th Cir.1982).
[53] Passero v. DHC Hotels and Resorts Inc., 981 F.Supp. 742 (D. Conn. 1996).
[54] *See also* Stephenson v. Four Winds Travel Inc. 462 F.2d 899 (5th Cir. 1972), and Loretti v. Holiday Inns, Inc., CIV. A. No. 85-0709 (E.D. Pa. May 6, 1986).
[55] LaVine v. General Mills, Inc., 519 F. Supp. 332 (N.D. Ga. 1981).
[56] Connolly v. Samuelson, 671 F.Supp. 1312 (D. Kan. 1987).
[57] *See also* Leob v. The United States, 793 F.Supp. 431 (E.D.N.Y. 1992).
[58] Vorbroker v. Norwegian Caribbean Lines Inc., No. CIV. A. 94-131202 (Mich. Ct. App. Nov. 1993).
[59] Wilson v. American Trans Air Inc., 874 F.2d 386 (7th Cir.1989).
[60] Honeycutt v. Tour Carriage Inc., 997 F.Supp. 694 (W.D.N.C. 1996).
[61] *Id.* at 701; *see also* Ross v. Trans National Travel, No. CIV. A. 88-1763-Z, 1990 WL 79229 (D. Mass. June 5, 1990).
[62] Casey v. Sanborn's Inc. of Texas, 478 S.W.2d 234 (Tex. Civ. App. 1972).
[63] *See also* Hudson v. Continental Bus System, 317 S.W.2d 584 (Tex. Civ. App. 1958).