

# Tourist Industry Liability for Crimes Against International Travelers

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Litigation involving premises liability for negligent security is ubiquitous in this country. State and federal courts are hearing numerous lawsuits involving plaintiffs who have suffered criminal attacks 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.<sup>1</sup>

Although various professional periodicals,<sup>2</sup> law review articles,<sup>3</sup> and textbooks<sup>4</sup> have provided comprehensive treatments of premises liability issues, an area of this litigation remains undeveloped in the literature and in 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.

Every year, there are more than fifty million American visitor arrivals at destinations outside of the U.S. In addition, several million North Americans book passage aboard cruise ships every year.<sup>5</sup> Given the number of Americans who vacation or do business abroad each year, it is reasonable to expect that a significant

number of them might fall prey to injury or even death at the hands of criminals. Is there currently any legal recourse in U.S. courts for injuries suffered in a criminal attack which occurred in a foreign jurisdiction? If so, under what conditions might liability attach, and what are the roadblocks affecting such litigation?

## Foreseeability of Criminal Attack at Tourist Destinations

When a crime occurs abroad, the victims or their survivors may want to consider civil legal action in an American court against the owner or operator of the premises where the attack occurred. Any threshold inquiry into a premises security lawsuit generally involves the question of foreseeability. In many cases, a defendant does not have a legal duty unless a court can be convinced that a given crime was foreseeable—that is, that there was a reasonable likelihood or an appreciable chance that a victimization would occur.<sup>6</sup> Therefore, a party considering bringing such a case should consider some basic questions: 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? Aside from the circumstances surrounding a particular case, for example, when the facts can establish notice of specific harm or imminent danger, is it possible to establish actual or constructive notice of a criminal attack at a tourist destination? While obtaining prior crimes evidence and other evidence aimed at proving foreseeability can be difficult in a domestic negligent security case, locating such evidence can be even more challenging when the crime in question occurred overseas.

Both the actual incidence of crime, and the validity of crime-reporting systems vary widely from country to country. For example, Western European and Anglophone Caribbean nations may publish crime statistics that are at least as valid as American statistics. Other nations may take a more hit-or-miss approach. Depending on the nation, and perhaps the city in which the crime occurred, trial attorneys may or may not find official crime data sufficiently credible for trial purposes.<sup>7</sup>

The U.S. Department of State publishes a periodic Consular Information Sheet for the various countries of the



world that may be of some help in establishing foreseeability. These Consular Information Sheets contain information about crimes against tourists. For example, during 1997-98, the following information was made available in these reports:

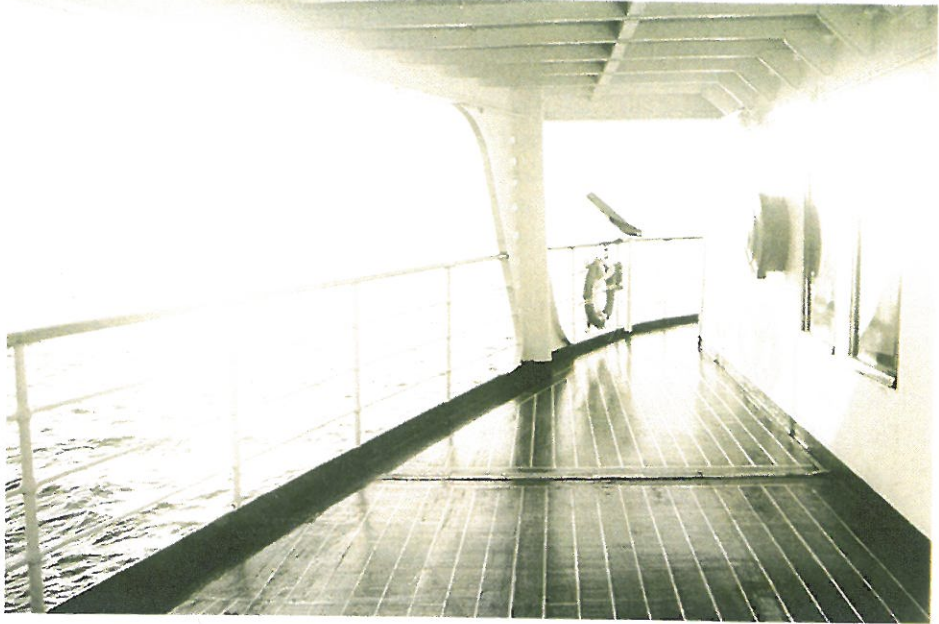
- Country B: "Street crime sometimes occurs. Valuables left unattended on the beach are subject to theft."
- Country G: "While violent crime has been a serious problem . . . for years, there has been a marked increase in incidents involving U.S. citizens since early 1997. . . . Between July 1997 and 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 information relative to crime foreseeability can sometimes be obtained from local newspapers, hoteliers, tour operators, cruise line corporate offices, and insurance records. Once foreseeability and other duty issues have been clarified, proofs concerning breach of duty and causation will become pertinent as in any other personal injury matter.<sup>8</sup> Over the past several years, higher courts in the U.S. have decided a number of tourist-related lawsuits. As a result, there are emerging trends in judicial thinking on a variety of issues.<sup>9</sup>

**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 of the hotel is subject to jurisdiction in the U.S. If an injured tourist cannot establish jurisdiction in the U.S., he or she must file a lawsuit in the county where the injury occurred. Recovery under that scenario is unlikely.

As a general rule, it is easier to establish jurisdiction in the U.S. over an American



hotel operating abroad, than to establish jurisdiction over a foreign-owned hotel. Only foreign corporations conducting "continuous and systematic" business in the U.S. will be subject to general personal jurisdiction. This principle was recognized in *Frummer v. Hilton Hotels International, Inc.*<sup>10</sup> In *Frummer*, a Hilton Hotel owned by an English company was sued in New York by an injured tourist. The defendant moved for a dismissal arguing that the court lacked jurisdiction because 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 to permit the exercise of general personal jurisdiction.<sup>11</sup>

**Choice of Law**

There are three distinct choice-of-law rules that govern tort cases. The traditional rule, known as *lex loci delicti*,<sup>12</sup> requires tribunals to apply the substantive law of the jurisdiction where the crime took place. In jurisdictions that follow this rule, foreign law governs disputes between overseas hoteliers and injured tourists even though the case itself is tried in a U.S. court.<sup>13</sup>

The modern trend is to apply the substantive law which has "most significant relationship" to the controversy. This position is taken in the *Restatement*

(*Second*) of *Conflicts of Laws*.<sup>14</sup> The *Restatement (Second)* 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.<sup>15</sup>

A third approach taken by some jurisdictions (the *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.<sup>16</sup>

**The Doctrine of *Forum Non Conveniens***

Every court in the U.S. has the power to refuse the imposition of its jurisdiction where it would be inconvenient to do so.<sup>17</sup> This is the principle of *forum non conveniens*. The doctrine is invoked only in instances where an alternative forum is available to the litigants. The issue is often raised by defendants who are sued in the U.S. for incidents that occur in foreign countries. *Forum non conveniens*



issues are heavily litigated in cases where tourists sue hotel owners for injuries sustained while traveling abroad.

The most important *forum non conveniens* case is *Gulf Oil Corp. v. Gilbert*.<sup>18</sup> In *Gilbert*, the U.S. Supreme Court delineated the factors a trial court must consider in deciding a motion to dismiss based upon the doctrine of *forum non conveniens*. These factors, commonly known as the *Gilbert* factors, include "private interest" factors and "public interest" factors.<sup>19</sup>

The *forum non conveniens* issue was also addressed in *Lehman v. Humphrey, Ltd.*<sup>20</sup> In *Lehman*, Victoria Lehman sued a Holiday Inn franchisee for the wrongful death of her husband. Mrs. Lehman's husband, Robert, drowned while visiting the defendant's establishment in the Cayman Islands. In the complaint, the plaintiff claimed that the defendant failed

Cayman Islands had a local interest in deciding the case; however, this interest was outweighed by the U.S.'s interest in providing a local forum for its citizen.

Finally, the plaintiff's ability to litigate the dispute in the Cayman Islands was considered. 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 court concluded that the Cayman Islands was an inappropriate forum, and that the U.S. would be the better forum.<sup>21</sup>

A few years later, the Seventh Circuit Court of Appeals decided a *forum non conveniens* issue in *Wilson v. Humphreys Limited*.<sup>22</sup> In *Wilson*, the plaintiff sued a Holiday Inn franchisee (the same defendant as in *Lehman*) 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. 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 relied upon the *Lehman* reasoning and held that the U.S. was a better forum than the Cayman Islands.<sup>23</sup>

The Second Circuit recently emphasized the significance of plaintiffs bringing suit in their "home forums," particularly when the home forum is a U.S. court as opposed to a foreign one. In *Guidi v. Inter-Continental Hotels Corp.*,<sup>24</sup> several U.S. citizens sued the defendant alleging negligent security as a result of injuries and deaths caused by a shooting in an Egyptian hotel the defendant managed. The trial court dismissed based on *forum non conveniens*.

The Court of Appeals reversed, observing that the plaintiffs' decision to file suit in New York "should not be disturbed if that forum<sup>25</sup> is not so oppressive and vexatious to IHC as to overwhelm the convenience<sup>26</sup> to [p]laintiffs of suing in their home forum." The court concluded that for these plaintiffs,

"litigating in Egypt presents and obvious and significant inconvenience." Litigating in New York was not oppressive to the defendant because it had its principal place of business there, and it was only being forced to defend against a relatively simple tort action. The court also considered the substantial emotional burden that the plaintiffs would suffer if they were forced to travel to Egypt.<sup>27</sup>

## Tourist Litigation Involving Cruise Ships

### Personal Jurisdiction

Millions of Americans vacation aboard cruise ships every year.<sup>28</sup> A number of those individuals are injured because of shipowner negligence. As a result, passengers sue cruise lines in U.S. courts. One of the first steps in bringing such a suit is to establish personal jurisdiction over the shipowners.

U.S. courts will exercise general personal jurisdiction over shipowners that conduct "continuous and systematic" business in this country. For example, in *Wilkinson v. Carnival Cruise Lines, Inc.*,<sup>29</sup> an injured passenger filed suit 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.<sup>30</sup>

### Choice of Law

Tort actions arising out of incidents occurring in navigable waters are governed by federal maritime law.<sup>31</sup> Lawsuits involving incidents that occur on shore are governed either by the law of the country where the injury occurred, or by the law of the state where the action is filed.<sup>32</sup> To resolve this question, a court must refer to the choice-of-law rules adopted in its state as discussed earlier in this article.

## Millions of Americans vacation abroad every year.

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 court reviewed the trial court's application of the *Gilbert* factors. First, the court examined the trial court's ability to compel witnesses to testify at trial. While several witnesses were beyond the trial court's reach, that was not 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 U.S. In addressing this factor, the "total burden" of having plaintiff's witnesses travel to the Cayman Islands was compared with the burden of defendant's witnesses having to travel to the U.S. The court did not find a difference.

The court then considered the relative interests of the U.S. and the Cayman Islands in litigating the dispute. The



## Assaults Committed by Crew Members

In some jurisdictions, shipowners are held strictly liable for crew member assaults on passengers, as recognized in *Morton v. De Oliveira*.<sup>33</sup> 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 U.S. Supreme Court overruled prior case law holding shipowners strictly liable in *Kermarec v. Campagnie Generale Transatlantique*.<sup>34</sup> 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 court permitted the plaintiff to proceed with her case.<sup>35</sup>

### Passenger Injury Occurring on Shore

A cruise ship owner's duty to warn of dangerous conditions in ports-of-call was recognized in *Carlisle v. Ulysses Line Ltd.*<sup>36</sup> In *Carlisle*, passengers sued a cruise ship to recover for injuries the passengers 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.<sup>37</sup>

### 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.*<sup>38</sup> 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 negligent and liable to the plaintiff for \$97,168.

Other courts have also recognized the duty on the part of a cruise ship to exercise reasonable care. In *York v. Commodore Cruise Line Ltd.*,<sup>39</sup> 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 the outside of the cabin. The court held that a cruise ship does not have the duty to install such devices, but does have a duty to exercise reasonable care for the safety of its passengers.

## Conclusion

The increase in tourism-related negligent security lawsuits should not hamper tourism growth, but encourage it. Our legal system does not require hoteliers and others involved in the tourist indus-

try to guarantee travelers' safety, but only to provide reasonably safe accommodations that are not overly burdensome to the innkeepers themselves. As destinations become safer, sometimes through the impetus of liability, heretofore reluctant travelers should become more willing to venture overseas. **W**

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1. A. Kaminsky, *A Complete Guide to Premises Security Litigation*, American Bar Association (1995).
2. G. Eislund, *Attacks in Parking Lots: Driving Home Liability of Owners*, Trial at 108 (Sept. 1990); P. Gershon, *An Ounce of Prevention: Proving Shopping Center Liability for Third-Party Crime*, Trial at 52 (Aug. 1997); C. Gordon, *A Safe Room at the Inn: Liability for Inadequate Security*, Trial at 40 (Oct. 1994); D. Kennedy, *Inadequate Security and Premises Liability: How Criminals Think*, Trial at 56 (June 1991); L. Leesfield & S. Gross-Farina, *Innkeeper Liability for Sexual Assaults*, Trial at 46 (Oct. 1994).
3. S. Cabera, *Negligent Security of Landowners and Occupiers for the Criminal Conduct of Another: On a Clear Day in California One Can See Forever*, 23 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. Frank Carrington & James Rapp, *Victims' Rights: Law and Litigation* (1991); R. Kuhlman, *Safe Places? Security Planning and Litigation* (1986); J. Tarantino & M. Dombroff, *Premises Security: Law and Practice* (1990).
5. Tourism Works for America Council, *Tourism Works for America: 1997 Report* at 12 (1997).
6. Homant & Kennedy, *supra* note 3.
7. See generally D. Archer & R. Gartner, *Violence and Crime in Cross-National Perspectives* (1984); J. Neapolitan, *Cross-National Crime Data: Some Unaddressed Problems*, 19 J. Crime & Just. 95 (1996); C. Kalish, *International Crime Rates*, Bureau of Justice Statistics, U.S. Dept. of Justice (May 1998), at 1.
8. D. Kennedy, *Litigation on Behalf of Tourists Victimized While Traveling Abroad*, 17 Trial Dipl. J. 207 (1994).
9. 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*, Practising 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.
10. *Frummer v. Hilton Hotels Int'l Inc.*, 227 N.E.2d 851 (N.Y. App. Div. 1967).
11. *Cf. Wilson v. Humphreys Limited*, 916 F.2d 1239 (7th Cir. 1990) (exercising specific personal jurisdiction over an overseas hotelier).
12. This rule is followed in many jurisdictions. See, e.g., *Wagner v. Freightliner Corp.*, 622 F. Supp.790 (S.D. Ind. 1985).
13. See, e.g., *Reid-Walen v. Hansen*, 933 F.2d 1390 (8th Cir. 1991).
14. *Restatement (Second) of Conflicts of Laws* § 145. Some jurisdictions have adopted the *Restatement (Second)*'s position. See *Melton v. Berg-Warner Corp.*, Inc., 467 F. Supp. 983 (W.D. Tex. 1979).
15. See *Lehman v. Humphrey Cayman, LTD.*, 713 F.2d 339 (8th Cir. 1983); and *Bruemmer v. Marriott Corp.*, No. CIV. A. 90-4190, 1991 WL 30141 (N.D. Ill. Mar. 4, 1991).
16. See *Braver v. Seabourn Cruise Line, Inc.*, 808 F. Supp. 1311 (E.D. Mich. 1992).
17. See *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).
18. *Id.*
19. 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.
20. *Lehman v. Humphrey*, 713 F.2d 339.
21. The Eighth Circuit includes the following states: Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.
22. *Wilson v. Humphreys Limited*, 916 F.2d 1239 (7th Cir. 1990).
23. The Seventh Circuit includes Illinois, Indiana, and Wisconsin.
24. *Guidi v. Inter-Continental Hotels Corp.*, 203 F.3d 180 (2nd Cir. 2000).
25. *Id.* at 184.
26. *Id.*
27. *Id.* at 186.
28. B. Wade, *Cruise Ships: How Safe?*, N.Y. Times, May 23, 1993, at 3.
29. *Wilkinson v. Carnival Cruise Lines, Inc.*, 645 F. Supp. 318 (S.D. Tex. 1985).
30. See *Soute v. Carnival Cruise Lines*, 897 F.2d 377 (9th Cir. 1990) (upholding the exercise of specific personal jurisdiction over a shipowner).
31. See *Sullivan v. Celebrity Cruises, Inc.*, 881 F. Supp. 906 (S.D.N.Y. 1995).
32. See *Braver v. Seabourn Cruise Line, Inc.*, 808 F. Supp. 1311 (E.D. Mich. 1992).
33. See *Morton v. De Oliveira*, 984 F.2d 289 (9th Cir. 1993).
34. *Kermarec v. Campagnie Generale Transatlantique*, 358 U.S. 375 (1959).
35. Other jurisdictions also impose strict liability upon shipowners. See *Muratore v. M/S Scotia Prince*, 845 F.2d 347, 353 (1st Cir. 1988).
36. *Carlisle v. Ulysses Line, Ltd.*, 475 So. 2d 248 (Fla. Dist. Cr. 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).
37. 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).
38. *Monteleone v. Bahama Cruise Line, Inc.*, 664 F. Supp. 744 (S.D.N.Y. 1987).
39. *York v. Commodore Cruise Line, Ltd.*, 863 F. Supp. 159 (S.D.N.Y. 1994).