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Security Shortcomings Exposed By Las Vegas Massacre Prompt Sweeping Security Overhaul Discussions Among Hotels In The United States

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On Sunday, October 1, 2017, a gunman shot into a crowd of 22,000 people from his 32nd-story room in the Mandalay Bay Resort and Casino. After 11 minutes, 59 people were killed and more than 500 were injured. Whether hotels can or will respond to this tragedy with security measures capable of preventing future mass shootings remains to be seen. In the wake of this tragedy, however, hotel security practices undoubtedly will come under severe scrutiny. As many of our hospitality clients have contacted us over the past three days to discuss their security obligations, we thought this short article might prove helpful by identifying certain legal principles applicable to hotel security and by outlining several security measures hotels will likely evaluate and implement in the near future.

An Innkeeper's Liability for Guest Safety

Innkeepers are obligated to exercise “reasonable care” for the safety of their guests. This duty of reasonable care requires vigilance in the protection of guests from foreseeable risks — a duty that requires not only warning guests, but also adequately policing the hotel premises. More specifically, innkeepers and hoteliers are liable for injuries to guests caused by the accidental, negligent, or intentional harmful acts of other guests, patrons, or strangers, if, by the exercise of reasonable diligence, the innkeeper could have discovered that such acts were being done or were about to be done and could have protected against harm either by controlling the conduct or giving an adequate warning to allow guests to avoid harm. That being said, innkeepers are not required to anticipate and guard against the unusual, unlikely or abnormal, or against something that reasonable care, skill, or foresight could not have discovered or prevented.

In the context of a guest suffering a violent assault by another guest, a hotel may be held responsible if the hotel knew or should have known that the offending guest may become violent and it could have evicted that attacking guest. Guests of an inn, hotel, restaurant, or similar establishment are entitled to rely on that establishment operator to exercise reasonable care for their safety. In addition, the operator may provide its own security employees or use the services of a private security vendor. Further, innkeepers owe a duty to protect strangers from the acts of guests while at the establishment. Nevertheless, innkeepers are liable to such strangers for the act of a guest only when the hotel knew or, by the exercise of ordinary care, could have known the guest was likely to commit some act resulting in injury to the stranger.

Whether a hotel is liable to its guests or strangers for a violent act by one of its guests primarily hinges upon the foreseeability of the act. Unfortunately for Mandalay Bay, hindsight is 20/20 and many questions will be asked about whether it should have noticed a guest making multiple trips to equip his 32nd floor room with an arsenal of guns and ammunition.

Possible Next Steps in Hotel Security

It is no easy feat to balance the safety of guests with their desire for privacy. Also, the many intrusions and encumbrances of thorough security measures may at times seem antithetical to notions of luxury and hospitality. Most hotels have safety, security, and emergency response procedures in place that are reviewed frequently, tested, rehearsed and updated accordingly. Still, hotel security and guest safety measures remain imperfect. In fact, advances in hotel security have largely developed in response to breaches in security, changes in technology and other unfortunate acts. Admittedly, security in the hospitality industry is more reactive than proactive. However, given the devastation caused during the Las Vegas massacre, hotels must become vigilant in pursuing preventative measures.

While many hotels already use closed-circuit surveillance systems, one such preventative measure may include installing state-of-the-art window locks and sensors to alert security personnel and law enforcement when a hotel window has been opened or broken. Additionally, many hotels may need to revisit their firearm policies to decide whether they will prohibit firearms on premises, or place restrictions on firearm possession, such as allowing guests to bring permitted, unloaded firearms for storage purposes only, and requiring that firearms remain locked in a firearms safe or container.

With regard to the implementation of security checkpoints, some hotels may consider installing entryway deterrents, such as dog sniffs, metal detectors, X-ray machines and the like. However, despite having proven to be an effective method of deterring individuals from checking in at airlines with firearms, establishing a visible security presence at hotel entryways collides with the immense premium hotel guests place on their privacy. And, while replacing seemingly loose hotel security protocols with more robust security measures that target guest luggage may be an obvious solution for some, the fact remains that such deterrents often make guests feel less safe — a concern that many in the hospitality sector can ill-afford to ignore.

In short, any overhaul in hotel security practices would likely have to be at an industry level. Absent an industry-wide change in security practices, it is unlikely that hotels will undertake the expense of implementing state-of-the-art security measures. This is especially true if hotels fear a potential loss of business to competitors with less intrusive security measures. What is likely, however, is that the impact of the Las Vegas massacre will force those in the hospitality industry to take a closer look at their security measures and adapt accordingly.

What does this mean for you? Before October 1, 2017, it may not have been reasonably foreseeable that a guest was going to check in to a hotel, arm himself, and use his room as a turret. Now, it very well may be. As a result, we suggest your hotel add this scenario to its list of considerations as it refines or develops a security program. At bare minimum, your hotel should ask itself (1) what measures are in place to prevent this type of tragedy; (2) if it occurred, what

guidance is in place to ensure an appropriate and immediate response; and, (3) on a more mundane level, does the hotel's insurance policy provide or exclude coverage for such events?

Hotel security will never be perfect, but hotels have a longstanding legal duty to protect their guests and other visitors. Let's all take a moment and reflect upon what else we may be able to do to ensure that safety remains a cornerstone of hospitality.