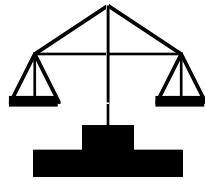


HOSPITALITYLAWYER.COM PRESENTS



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THE MEETING PROFESSIONAL'S GUIDE TO LIABILITY AND RISK MANAGEMENT



John S. Foster, Esq., CHME

Protecting
Your
Organization
from Loss and
Liability

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- Consultant and counsel to **Associations, Trade Show & Event Sponsors, Meeting & Convention Professionals**
- Named as one of the **Top 25 Most Influential People** in the meetings industry by MeetingNews
- Outside counsel to **Meeting Professionals International (MPI)** for industry contracts and other legal issues

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What We Will Discuss

- Three major **areas of the law**
- Typical **losses and liability** affecting meetings
- **Four questions that have to be answered** before every event regarding risk and liability
- **Security** planning vs. **Liability** planning

What We Will Discuss

- **Four legal duties** meeting sponsors and planners have to staff and attendees
- **Five Risk Management** steps, and
- **Putting Risk Management** into practice

Three Major Areas of the Law Important to Meeting & Event Sponsors

- **CONTRACTS**
(Hotels, Convention Centers, Other Vendors)
- **NEGLIGENCE LIABILITY**
(Injury to Persons, Damage to or Loss of Property)
- **STATUTORY COMPLIANCE**
(Federal, State and Local)
(ADA, Music Licensing, Dramshop, SOX etc.)

Typical Risks

➤ **THREE CATEGORIES:**

- **Financial Risks**

- Attrition and Cancellation (Guest Rooms & F&B)
- Loss of Ancillary Revenue at facility
- Nonrefundable Deposits

- **Liability Risks**

- Injury to persons
- Damage to or loss of property
- Acts of the Organization, Board, or individuals

- **Planning Risks**

- Force majeure / Termination
- Construction / Renovation
- Change of Ownership or Flag, Labor issues, Bankruptcies

Understanding Risk Management

Risk Management Basics

➤ What is Risk Management?

Risk management is a discipline for dealing with the **possibility that some future act or occurrence will cause harm or loss**



Risk Management Planning

Four Questions That Must Be Answered (4 Ws)

- **What** can go wrong?
- **What** can be done to prevent harm or loss or harm from occurring?
- **What** steps should be taken if harm or loss does occur?
- **Where** will the money come from to cover the harm or loss?

Risk Management Concepts

- **Avoid** the Risk
- **Retain** a Portion of the Risk
- **Transfer** the Risk to Someone Else
- Institute **Loss Control** Measures
- **Insure** Against the Risk



Risk Management for Meeting Professionals

Security Planning + Liability Planning



Putting Risk Management Into Practice Loss Control

Security Planning Objectives

- Provide a **safe and secure environment**
- Protect **people and property**



Putting Risk Management Into Practice Avoiding Loss and Liability

Liability Planning Objectives

- **Implement risk management techniques** to avoid loss, damage or injury to staff or attendees
- **Document risk management steps taken**



Negligence Liability

Four Elements must co-exist:

- **A Duty of Reasonable Care**
- **Breach of the Duty**
- **Proximate Cause**
- **Resulting in Injury or Damage**



Legal Duties Meeting Sponsors Have to Attendees and Staff

- The Duty to **INVESTIGATE** all aspects of the event and **ACT** accordingly
- The Duty to **INFORM** and **WARN** attendees of known hazards as may be necessary
- The Duty and Responsibility to **plan** for the **SAFETY** and **WELL-BEING** of every attendee
- The Duty not to subject attendees to **UNREASONABLE RISKS OF HARM**

Cases Involving Meeting & Event Professionals

- **Chilko River Case**
- **Hotel Sued Over Beating
(Cerasoli vs. Westin)**
- **Meeting Sponsor and Hotel Sued
by Attendee for Attack By Other
Attendees (Coughlin vs. Las Vegas
Hilton)**

payoffs from trade show contractors and exhibitors. Trade show exhibitors are allegedly bullied into paying off union workers in an attempt to sidestep restrictive and costly work rules. *The Journal* reported.

The Journal also reported that Morgenthau's office suspects some contractors make payments to "ghost" workers: that is, people who are paid for work they do not do. The district attorney's office is "currently assembling evidence and cannot comment, as the case is pending," spokesperson Gerald McKelvey said.

As part of its investigation, Morgenthau's office has subpoenaed the payroll records of two exposition services firms, including United Exposition Service Co. William Smith, general manager of United, said he is "not aware of any activities" such as payoffs, and "has no idea what they're looking for."

Javits officials argue that the union workers currently under investigation are not hired or paid by the center. "They're hired by outside contractors, who are hired by show managers," said Gus Engelman, Javits director of public relations.

"All we can do is cooperate with the investigation," Engelman said. "Javits is maintained by 18 unions; there are always a few bad apples."

Whether the current investigation

Continued on page 11

Chilko Jury Awards \$1.1 Million

In awarding \$1.1 million to the plaintiffs in the first of what have become known as the Chilko River lawsuits, a Chicago jury sent a clear message to planners of company outings: You must make every effort to ensure the safety of participants and inform them about the dangers they face.

The case, *Fasules vs. DDB Needham*, was brought by the family of James Fasules, a retired DDB Needham advertising agency executive who was among five men who drowned during a white-water rafting trip in August 1987 (see November 1990 *Meeting News*, page 11). The key issue in the case for meeting planners is: Can a company be held liable for mishaps if participants sign personal injury waivers?

The message from this case is a resounding "yes." All of the Chilko rafters signed waivers before arriving in British Columbia, but the document was dismissed in court because it did not specify the dangers the rafters would face on the river.

In finding for the plaintiff, the jury might well have been swayed by the descriptions of the hazards that Chilko presented the participants, some of whom had no experience in white-water rafting. Also potentially damaging was the testimony concerning the safety precautions the outfitter of the expedition

Continued on page 12

**Company
found
liable
for death
despite
injury
waiver
signed by
participant**

**BY ANTHONY J.
RUTIGLIANO**

personal liability would cover if this people were customers

MEETING NEWS

February 1991 - Mtg News

Westin Sued over Beating *MAID'S SLAYING 2 MONTHS EARLIER IS CITED*

BY JUNE D. BELL
Staff Reporter

The family of a woman ferociously beaten in the Westin Peachtree Plaza in February 1996 has sued the hotel, claiming it should have warned guests of a murder there two months earlier.

The Feb. 16 attack on Coloradan Pauline A. Cerasoli occurred after a housekeeper was beaten to death in the downtown hotel.

"I think there's certainly an indication of a violent event that put the hotel on notice," says plaintiff's attorney James M. Poe, a partner in Drew Eckl & Farnham.

No one has been arrested in either the devastat-

ing attack on Cerasoli, which has left her permanently disabled, or the Dec. 30, 1995, slaying of housekeeper Elia Banderas.

Hotel spokeswoman Wendy Lothspeich says she has not seen the suit and has no comment.

At the time of the attack, Cerasoli ran the physical therapy program at the University of Colorado and was the school's associate dean for health services, Poe says. She was staying in a 64th floor room at the Westin Peachtree while attending a convention of the American Physical Therapists Association.

A housekeeper found Cerasoli, choked and

See CERASOLI, Page 2



Pauline A. Cerasoli, who worked for the University of Colorado when she was attacked in February 1996, is now in a center that gives round-the-clock care to people with brain injuries. The attack took place in the Westin Peachtree Plaza hotel, right.

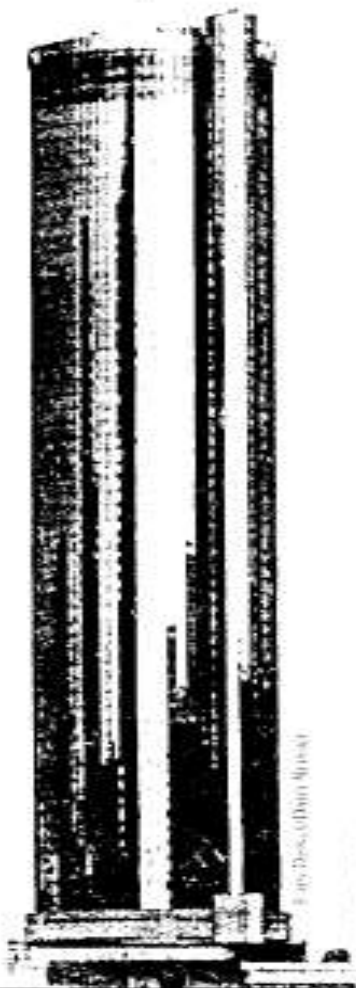


Photo by Dan Brown

Poverty Law Center Starts Georgia Project

\$100,000 GRANT TO FUND SUITS

Tailhook Case

1991 Annual Convention

What went wrong?

What should we learn from it?

**Paula Coughlin v. Tailhook, 1994
Association and Las Vegas Hilton**



Putting Risk Management Into Practice

Avoiding the Risk

Plan for Health, Safety and Property Issues First

- Always remember that **meeting sponsors and planners owe legal duties** to their staff and attendees
- Use a **safety & security checklist** on site inspections



Putting Risk Management Into Practice

Transfer the Risk

- **Purchase insurance** to handle the risks that cannot be avoided, controlled or transferred
- **Require both parties to a contract to hold harmless and indemnify the other party and have insurance** for the acts and omissions of either party against third party claims
- **Contractually limit your liability for damage** to the other party's property to the **amount of insurance required.**



Putting Risk Management Into Practice

Transfer the Risk

Indemnification and Hold Harmless Agreements

- **Outsource certain activities to specialized Vendors and require indemnification**
- **Require all vendors to add the meeting sponsor to the vendor's insurance and require certificates of insurance**
- **Require attendees who participate in hazardous activities to sign a Release and Waiver of Liability with specific details**



Putting Risk Management Into Practice

Transfer the Risk

Indemnification and Hold Harmless Agreements

Key Understanding:

The purpose of an **Indemnification and Hold Harmless clause** is for one party (**Party A**) to **defend or compensate** the other party (**Party B**) from liability damages resulting from the conduct **Party A**

Putting Risk Management Into Practice

Transfer the Risk

Indemnification and Hold Harmless Agreements

- Insert **disclaimers** in registration materials for the acts or omissions of your vendors
- Require facilities to be responsible for **all security in the common areas** – both inside and outside the building



Putting Risk Management Into Practice

Avoiding the Risk

Plan for Health, Safety and Property Issues First

- **Check out all vendors** regarding their reputations for safety, before you sign the contract
- **Do not sign contracts** that transfer **unreasonable risks** to your organization

Putting Risk Management Into Practice

Avoiding the Risk

Plan for Health, Safety and Property Issues First

- **Warn Attendees (and Staff) of Uncommon Hazards in the facility or locale**



Putting Risk Management Into Practice

Avoiding the Risk

➤ Focus on Contract Terms

- Include a comprehensive Force Majeure clause (**Termination and Excuse of Performance**)
- Use terms in supplier contracts making the supplier responsible for the **acts or omissions of their agents and employees**

Putting Risk Management Into Practice Loss Control

Plan for Health, Safety and Property Issues First

- Have a **crisis committee** pre-established at the event to be assembled quickly in an emergency. Have a disaster plan and assign responsibilities in advance. **STICK TO THE PLAN!**



Insurance Coverage

➤ Meetings & Special Events

- **Commercial General Liability (CGL)**
- **Event Cancellation**
- **Broad Form Property Liability**
- **Worker's Compensation**



ANY QUESTIONS ?

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