



Mitigating Security/Safety Risks Presentation for Global Congress on Legal, Safety & Security Solutions in Travel Presentation

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Presenters



- Stephen R. Heifetz
- Partner in the Washington office of Steptoe & Johnson LLP, where he helps clients navigate laws and policies at the nexus of international business and security.
- Mr. Heifetz has served in the Departments of Justice and Homeland Security, as well as the CIA.
- Most recently, at the Department of Homeland Security, he worked with DHS's agencies, including TSA and CBP, to develop policy on a range of issues. These included cargo and passenger screening, the SAFETY Act, and CFIUS reviews.
- In private practice, Mr. Heifetz has specialized in sanctions administered by the Office of Foreign Assets Control (OFAC), anti-money laundering regulations, export controls, and the Foreign Corrupt Practices Act.
- Mr. Heifetz is a member of the Council on Foreign Relations and has published extensively, including articles in the New York Times and Washington Post.

Overview



- Vulnerability of Industry
- SAFETY Act
- PS Prep

Vulnerability of Industry



- Jolted by November 2008 attacks against Taj Mahal and Oberoi Trident in Mumbai India
 - Other recent incidents
 - June 2011 – Hotel Intercontinental Kabul Afghanistan
 - January 2011 -- Posthotel in Davos Switzerland
 - July 2009 -- JW Marriott and Ritz Carlton in Jakarta Indonesia
 - June 2009 -- Pearl Continental Hotel in Peshawar Pakistan
 - September 2008 -- JW Marriott Hotel in Islamabad Pakistan
 - October 2004 -- Taba Hilton Resort in Taba Egypt

Vulnerability of Industry (cont'd)

- Hotels and resorts classic “soft targets”
 - Must be welcoming; cannot create fortress
- Concentration of people also increases potential losses from other disasters (hurricanes, earthquakes, fires, etc.)

SAFETY Act: Terrorism Risk Mitigation



- Supporting Anti-terrorism by Fostering Effective Technologies Act of 2002
 - Final rule establishing SAFETY Act system published June 2006
- Liability protections in the event of a terrorist attack
 - Protections for sellers and users of SAFETY-Act approved “technologies”
 - “Technologies” are products, intellectual property, and services, e.g.,
 - Vulnerability assessment services
 - Security services
- Potentially broad scope of coverage
 - Most approvals have been for products, but DHS has approved
 - National Football League’s “Best Practices for Stadium Security”
 - Numerous physical security services and screening services
 - Hundreds of approvals in all

SAFETY Act: Terrorism Risk Mitigation



- DHS approval means liability protections apply if
 - DHS Secretary determines there has been an “act of terrorism”
 - Unlawful
 - Causes harm to person, property, or entity in the United States (act itself may occur outside the United States)
 - Intended mass destruction, injury, other loss to U.S. citizens/ institutions
 - Claims against seller of technology (i.e., business that provides the technology) arise from act of terrorism
 - For example, claims that hotel security plan was deficient
- In such a case, ONLY the technology seller is liable (user is not) and seller’s liability is limited
 - Suppose suit against hotel operator and hotel owner for deficient security
 - If operator had a DHS-approved security plan in use
 - Owner would move for dismissal because claim can only be against operator
 - Operator would invoke SAFETY Act protections to limit liability

SAFETY Act: Terrorism Risk Mitigation



- Two levels of approval and corresponding liability protection
 - Technology “designated” by DHS:
 - Liability is capped at an amount of insurance coverage that DHS specifies;
 - The claims may be brought only in federal court;
 - No joint and several liability for non-economic damages;
 - No punitive damages or prejudgment interest; and
 - Plaintiff recovery reduced by amounts received from collateral sources (e.g., insurance co.)
 - Technology “certified” by DHS:
 - All of the benefits of Designation, plus
 - “Government contractor” defense can be invoked to preclude liability entirely;
 - Technology is placed on DHS’s “approved products list” (marketing benefits)
 - Seller receives “certificate of conformance” (marketing benefits)

PS-Prep: Broad Emergency Risk Mitigation



- Voluntary Private Sector Preparedness Accreditation and Certification Program
 - Mandated by Section 524 of the 9/11 Recommendations Act of 2007
 - Administered by DHS/FEMA
 - Encourages incorporation of preparedness standards into company policies
 - Companies incorporating any approved standard may get certified
 - Program still in formative stages
- No formal liability protection (unlike SAFETY Act), but . . .
 - Certification that a company adopted a DHS-endorsed preparedness standard could help
 - Defend against lawsuits/investigations
 - Mitigate PR damage
 - Possible reduction in insurance premiums

PS-Prep: Broad Emergency Risk Mitigation



- Currently 3 approved preparedness standards
 - *Organizational Resilience* (ASIS International)
 - *Business Continuity Management* (British Standards Institution)
 - *Standard on Disaster / Emergency Management and Business Continuity Programs* (National Fire Protection Association)
- Each promulgated by standard-setting body
- Each is a guide to drafting company preparedness policies

PS-Prep: Broad Emergency Risk Mitigation



- Certification via third party accreditor
 - Small businesses may be able to self-certify
 - New DHS proposal, details have not been finalized
- Certification benefits
 - Safeguard employee, customer, and community welfare
 - Litigation/Investigation defense: “You are asserting that we were not sufficiently prepared for X, but in fact we were certified as meeting federal preparedness standards”
 - Potential reduction in insurance premiums

How Can Steptoe Help?

- Prepare or advise on SAFETY Act applications
- Prepare or advise on company procedures for fulfillment of PS-Prep standards
- Interface with DHS, department components (e.g., TSA, FEMA), and other agencies

Questions?

Resources

- SAFETY Act: www.safetyact.gov
 - Includes statute, regulations, examples of approved technologies, and more
- PS Prep: www.fema.gov/privatesector/preparedness
 - Includes news releases and other information (less developed than SAFETY Act site)
- Contact me at: 202-429-6227 or sheifetz@step toe.com
 - Bio can be found at www.step toe.com/professionals-821.html