

# 2015 HOSPITALITY LAW CONFERENCE

FEBRUARY 9-11, 2015,

PEOPLE ARE NORMAL UNTIL  
THEY CHECK INTO A HOTEL

Presented by:  
Guy R. Gruppie, Esq. of Murchison & Cumming, LLP



# PRESENTER



## Guy R. Gruppie

Senior Partner, Murchison & Cumming, LLP

- ❖ Co-chair of the Hospitality Litigation Practice Group and Emerging Risks & Specialty Tort Practice Group
- ❖ Specializes in the defense of complex and high-stakes litigation, including representing some of the nation's leading hotel brands, properties, resorts and private clubs and hospitality related businesses.



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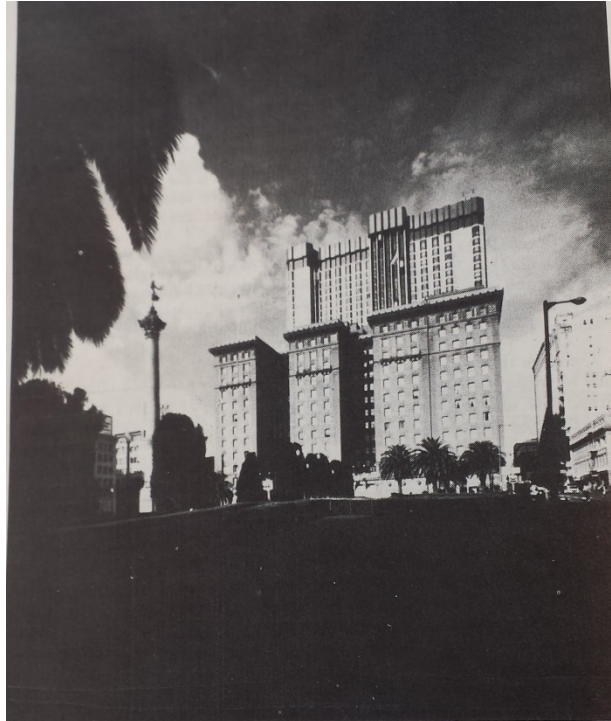
# General Duties Owed to Guests



- ❖ Protect guests against unreasonable risk of physical harm
- ❖ Exercise reasonable care under the circumstances
- ❖ Diligently inspect the rooms, common areas and premises for defects
- ❖ Correct defects that the hotel is aware of
- ❖ Provide safety and security from other guests and third parties
  
- ❖ However, the hotel is *not* required to “correct defects of which the owner is unaware and that cannot be discerned by a reasonable inspection.” Peterson v. Superior Court (1995) 10 Cal.4<sup>th</sup> 1185.

# In The Beginning

- ❖ Larson v. St. Francis Hotel (1948) 83 Cal.App.2d 210.



- ❖ Plaintiff was walking under the marquee sign of a hotel and a chair fell out of the sky and landed on her. Plaintiff sued the hotel on the theory of *res ipsa loquitur* (“the thing itself speaks”).
- ❖ Defendant can be liable for injuries, without evidence of wrongdoing, if the accident is not something that occurs if ordinary care is used, and the defendant is shown to have exclusive management and control over the cause of the accident.
- ❖ In Larson, Plaintiff had both no evidence of wrongdoing by the defendant, and no evidence that the defendant had control of the chair. The court held in favor of the hotel.
- ❖ However, this landmark decision demonstrated, perhaps, the first sign of aggressiveness against our industry.




# Strange But True

- ❖ A four-star family-friendly hotel reportedly did not respond to several parent complaints that “free” porn was streaming and being watched “all night” by youth baseball teams who were staying at the hotel as part of a major national tournament. The players did not play well that weekend. The parents made a claim to recover their lodging, food and hospitality costs.
- ❖ Lawsuit involving a very nice beach property that allegedly offered to load a wedding party’s gifts into the limousine early, for free, long before learning that a thief posing as an employee drove off with more than \$20,000 in gifts.
- ❖ These are just some examples of the kind of strange but true claims that you will hear about today.



# General Liability

- ❖ Slip and Falls
  - ❖ Building Code Issues
  - ❖ Americans with Disabilities Act (ADA)
- 



# Slip/Trip and Fall

- ❖ Dangerous Condition
- ❖ Notice
- ❖ Failure to Remedy



- ❖ Example: Lawsuit involving a super exclusive California hotel where a millionaire guest sued the hotel after his buttocks slipped off an outdoor wedding chair based on a claim of “excessive dew.”
- ❖ Example: Claim against a California hotel that the ADA accommodations in one of the bathrooms of a suite caused a guest to fall down in the bathtub.

# Building Code Issues

- ❖ The building code applies to the “construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building.” California Code of Regulations, Title 24, Part 2 § 1.1.3.
- ❖ Those quaint hotels may not need to comply with the building code if the owner has not taken any of the stated actions; but they must be aware because “quaint” is not always “safe.”



# Building Code Issues

- ❖ Noncompliance can mean liability.

- ❖ Example: 62 year old plaintiff walked out of French doors with a wood frame, and fell, not realizing that there was a staircase on the other side of the door. Plaintiff alleged that the door and staircase violated applicable building codes. Plaintiff received a settlement. Pollock v. West Beach Inn; 2001 Nat. Jury Verdict Review LEXIS 1911.

- ❖ Compliance does not mean that the hotel is off the hook.

- ❖ Example: Plaintiff, a child, fell out of a second story window. There was no screen on the window, however, the window complied with all applicable building codes. Defendant still had to prove it was not negligent. Lawrence v. La Jolla Beach & Tennis Club, Inc. 2014 Cal. App. LEXIS 998 (Cal.App.4<sup>th</sup> Dist. Oct. 31, 2014).



# Building Code Issues

- ❖ Renovations may also lead to lawsuits. (A hotel should do improvements quickly and correctly.)
- ❖ Example: A California resort was sued by a wealthy guest who claimed that repainting caused her lead exposure, and thus, a brain injury.
- ❖ Example: Claim against a famous hotel that re-did its marble lobby to make it more slip-resistant. Instead, the hotel was accused of making it less slip-resistant, by a celebrity who fell down in public view, injuring her pride as much as her spine. Carpet anyone?



# ADA



## ❖ Requirements for an ADA claim:

- ❖ Barrier interfering with use and enjoyment of facility
- ❖ Barrier relates to disability
- ❖ Intent to return to accommodation OR barrier deters him from returning

❖ However, the Plaintiff does *not* need to personally encounter each architectural barrier in order to seek its removal. Paulick v. Starwood Hotels and Resorts Worldwide, Inc., 2012 U.S. Dist. LEXIS 101332 (N.D. Cal. July 20, 2012)

## ❖ Defenses

- ❖ Common defenses include: effective access, maximum extent feasible, disproportionate cost, reasonable portion of facility accessible, structural impracticability

# ADA

- ❖ “Professional Plaintiffs” – They Do Lawsuits for a Living
- ❖ Some individuals make a living filing lawsuits against hotels, restaurants, and other public places for ADA noncompliance.
- ❖ The fact that a Plaintiff has filed multiple lawsuits, alone, cannot be used against Plaintiff’s credibility in his claim that he intends to return to the location.

## ❖ Example:

- ❖ D’Lil v. Riverboat Delta King, Inc., 2014 U.S. Dist. LEXIS 135836 (E.D. Cal. Sept. 25, 2014).
- ❖ D’Lil v. Best W. Encina Lodge & Suites (9th Cir. 2008) 538 F.3d 1031.
- ❖ D’Lil v. Anaheim Hotel P’ship (9th Cir. 2002) 43 F.App’x 96.
- ❖ D’Lil v. Cher-AE Heights Indian Cmty. of the Trinidad Rancheria, 2002 U.S. Dist. LEXIS 28882 (N.D. Cal. Mar. 11, 2002).
- ❖ D’Lil v. Good-Nite Inn La Jolla, Inc. (9th Cir. 2002) 26 F.App’x 685.
- ❖ D’Lil v. Stardust Vacation Club, 2001 U.S. Dist. LEXIS 23309 (E.D. Cal. Dec. 20, 2001).

# HOTEL SERVICES

❖ Concierge Recommendations

❖ Food

❖ Alcohol



# Concierge Recommendations

- ❖ A hotel may be liable for injuries that a guest suffers while eating at a restaurant or participating in an activity that the hotel recommended.
- ❖ Issues to consider:
  - ❖ When does a suggestion become a recommendation?
  - ❖ Can a recommendation become a warranty?
  - ❖ How fully must a hotel investigate possible vendors?



# Concierge Recommendations

- ❖ Example: A major resort was sued because of the informal recommendation of transportation that it made to guests who changed their travel plans and needed a “quick” way to get to a nearby island, leading to a \$10 million wrongful death claim.




- ❖ Example: Claim against a New York five-star property where the concierge’s “poor” dinner recommendation reportedly cost a businessman a huge contract deal.
- ❖ Waiver?

# Food

- ❖ Can a hotel be liable for food poisoning or allergies suffered by guests?
- ❖ Example: A landmark hotel served famous sushi so delicious that some guests asked for some “to go.” They later claimed that the same Ahi Tuna was “bad.”
- ❖ Nuts in the mini bar? Does the hotel need to warn?



# Hotel Bars

- ❖ Over-Serving
  - ❖ Underage Guests
  - ❖ Dram Shop Exposure
  - ❖ Rowdy Guests
- 

# Over-Serving

- ❖ The dangers of happy hours and mini bars
- ❖ Example: Plaintiff sued a major hotel claiming that the 24-7, unlocked nature of the mini bar caused him to over-imbibe, and therefore caused him to fall and hurt his back badly in the lobby.
- ❖ Example: A hotel hosted a wine tasting. A guest crossed the street afterwards and was hit by a car. The hotel was sued by the driver and then the guest.



# Dram Shop Exposure

- ❖ Dram Shop Statutes “impose liability for the sale of or furnishing of alcoholic beverages to persons who then injure third parties. They generally require only a showing of an act done in violation of the statute for liability to be imposed.” 4-19 Premises Liability – Law and Practice § 19.02.
- ❖ Many states impose liability in these scenarios, however California does not.
  - ❖ “[N]o social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages.” Cal. Civ. Code § 1714.



# Rowdy Guests

- ❖ Issue to consider: Do hotels have a duty to ask, or make, obnoxious, noisy or threatening guests to leave?
- ❖ Example: The case of the Los Angeles hotel that hosted a hip hop party and got sued when a gun battle between rival gangs broke out in the lobby.
- ❖ Example: The case of a man reversing the peep-hole of a hotel room to spy on a famous sportscaster.

# Rowdy Guests

- ❖ Example: The case of the famous Los Angeles hotel that agreed to rent rooms to rave partiers and then was accused of dealing drugs and being responsible for overdoses.



- ❖ But making these guests leave can be tricky in and of itself. Security!

# Security

- ❖ Issues to consider:
  - ❖ Hire direct or outsource?
  - ❖ Indemnity agreement?
  - ❖ Armed or not?
  - ❖ How much force is too much?
  - ❖ Just call the cops?



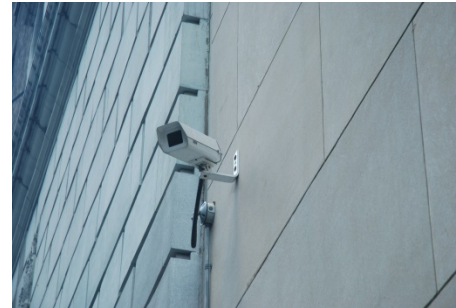
# Security

- ❖ Example: A famous big-city hotel was sued for “excessive force” when security ejected a guest who pre-planned – and carried out – a political protest at a famous annual political event.




# Spoliation of Evidence

- ❖ Keeping a good record or file on a potential claimant is key.
- ❖ Some courts have held that in the event of an accident, hotels are required to preserve security tapes of the footage of the accident.
- ❖ Gleason v. Marriot Hotel Servs., Inc., 2013 U.S. Dist. LEXIS 123967 (S.D.N.Y. Aug. 26, 2013).



- ❖ Consequences of spoliation:
  - ❖ Dismissal
  - ❖ Adverse Inference
  - ❖ Mullaney v. Hilton Hotels Corp., 2009 U.S. Dist. LEXIS 55629 (D. Haw. June 30, 2009).

# Defenses

- ❖ Obvious Danger
  - ❖ Comparative Negligence
  - ❖ Assumption of Risk
  - ❖ Trivial Defect
  - ❖ Lack of Notice
  - ❖ Failure to Mitigate
  - ❖ Unavoidable Accident
  - ❖ Unclean Hands
  - ❖ Lack of Control over Area of Incident
  - ❖ Plaintiff's Injury not Reasonably Foreseeable
- 

# Practical Advice

- ❖ Hire a good lawyer
  - ❖ Trustworthy
  - ❖ Aggressive
  - ❖ Trial Ability
- ❖ Attack outrageous claims in pleadings and discovery
- ❖ Control the pace of the case
- ❖ Manage the media
- ❖ Aggressively investigate incidents before they become claims
- ❖ Preserve all evidence, always
- ❖ Do not let your lawyer take his or her role as “defense” counsel literally...  
**ATTACK!**

# Conclusion

