

**Salvatore Caccavale, Principal  
Global Hospitality Security Solutions, LLC**

**Paul Frederick, Co-Founder  
Hospitality Security Advisors, LLC**

**Jacob Malatesta, Attorney & Shareholder  
Hagwood & Tipton**

**Hotel Safety and Security Risks  
to Owners, Operators & Insurance**

The extent of liability to the owner, operator, and insurer of a hotel for any injury to a guest on the premises must always be determined on a case-by-case and state-by-state basis. However, there are some general principles that can be helpful in mitigating risk for each of the aforementioned parties when a guest is injured. It is always important to note that there is, generally, no liability of one party for the criminal acts of another, unless, of course, there is a special relationship. A long-time and widely accepted special relationship exists between an innkeeper and its guest. Another separate, but similar relationship exists between a property owner and an invitee (someone who has come to the property for the benefit of the landowner).

Gone are the days of a single owner/manager of a hotel. There are many fragments to operating, owning, managing, franchising, and insuring hotels and motels with all of the aforementioned tasked with some form of safety and well-being of their employees, guests, and visitors. The handling of each of those fragments is normally contracted away to the person or entity that can most efficiently handle the task. Large brands are most efficient at keeping up a brand name and client loyalty. Brand franchisors contract with franchisees to own and operate the hotel in a manner that fits the brand. The franchisee may or may not own the actual property but will almost always immediately contract some form of the management of the property (maintenance, security, personnel, etc.) to another entity. In such a case who is ultimately responsible? Is anyone responsible.

Each entity has a degree of responsibility, in legal and fiduciary positions, to ensure they are providing and acting in the best interest of their client, employees, guests, and visitors, through training and education of hotel policies and procedures, enforcement of standards and the elimination of hazardous conditions to create and maintain a safe environment for all. Failure to

address unwanted circumstances may trigger legal action against all hotel parties, as highlighted in the following three case synopsis.

***Kathleen Dawson v. Hilton Management, LLC***

On 03/12/2017 the plaintiff was passed out on the sidewalk in front of Hilton Houston Americas where she was a registered guest. A concerned citizen called 911 and the police responded while a hotel staff member brought a wheelchair. A man was standing next to the plaintiff who said, “She’s with me.” He also was a registered guest staying at the same hotel but in a different room. He proceeded to take the plaintiff to his room and sexually assaulted her. The hotel’s defense was that they were following the instructions of the police.

This is a bit of a strange case, procedurally, because the plaintiff initially brought suit against Hilton World Wide Holdings, Inc., Park Hotels & Resorts, Inc. f/k/a Hilton Worldwide, Inc., Hilton Management LLC, and Larry Joe Clowers, Jr., the person who sexually assaulted Ms. Dawson. The plaintiff non-suited, or dismissed, the other hotel defendants, leaving only Hilton Management LLC and Mr. Clowers as defendants based on representations from defense counsel that Hilton Management employed and managed the staff at the property. Interestingly, Mr. Clowers was originally charged with a crime, but the charges were later dropped without prejudice.

In response to a motion for summary judgement the plaintiff argued that this was not, in fact, a negligent security or premises liability action. Instead, this case was based on the negligent actions of the management group’s employees who 1) were alerted to Ms. Dawson being on the ground and unresponsive due to the police being called, but did not ask why the police had come to the hotel, 2) did nothing to check for Ms. Dawson’s own identification and trusted Mr. Clowers’s statement that she was with him, and 3) wheeled Ms. Dawson into Mr. Clowers’ hotel room where she was subsequently assaulted.

Verdict for Plaintiff: 11/23/2021

Jury Award \$44m

***Marchionda v. John Q. Hammons Management, LLC, and Atrium TRS, LP***

In April 2014 plaintiff was inside her guestroom asleep with the night latch engaged. Another hotel guest was able to convince the hotel engineer to use a master key to open the plaintiff's guest room door and disengage the night latch allowing him to enter the room and sexually assault her.

There were a number of entities that were sued, and which were also involved in the ownership of the subject hotel. The court in this case was tasked with a complex web of LLC's each with their own separate set contractual obligations. In summary, Embassy Suites Franchise, LLC; Hilton Worldwide Holdings, Inc.; and Hilton Worldwide, Inc. were all considered some form of franchisor. Each of these entities, to some extent, issued handbooks, manuals, and training to its franchisees and could terminate the right to use the Hilton, or Embassy Suites, name if the franchisee did not comply with the brand standards of Hilton. Atrium was the franchisee and had a relationship with the franchisors through a Franchise Licensing Agreement which stated that Atrium would own, operate, and manage the hotel pursuant to the franchisors policies and procedures. Atrium hired Hammons, and Atrium and Hammons agreed to a Management Services Agreement which provided that Hammons would control the premises and provide appropriate security as well as generally operate the hotel. None of these entities actually owned the physical property.

The court was less concerned with the name on the deed as it was with who actually intended, based on the contract language, to be in possession and control of the property. It was that entity that owed a non-delegable duty to the plaintiff to properly maintain and secure the premises. The court determined that the franchisor entities did not control the day-to-day operations of the hotel just because they provided handbooks and training. Atrium had agreed with the franchisor that they would be in possession of and operate the property. Thus, the franchisors were not liable.

Did the same logic apply to Hammond and Atrium? No. The court held that when Atrium, unlike the franchisors, agreed to take control and possession of the premises, that duty became non-delegable. Indeed, when Atrium had agreed to the FLA, it specifically included language that Atrium would defend and indemnify the franchisors from any claims and if there were any

Management Agreement that was entered into with a third party which conflicted with the FLA, then the FLA would control. Thus, the duty to the plaintiff was non-delegable and Atrium could ultimately be held responsible for the injuries to the plaintiff.

Confidential Settlement for Plaintiff: 02/13/2019

- Embassy Suites – Hilton Franchise
- John Q. Hammons – Management Company
- Atrium TRS – Owner/Operator

***Erin Andrews v. Marriott International, et.al***

In 2008, Plaintiff was videotaped by another guest inside her locked guestroom undressing. A stalker of the plaintiff checked into the same hotel and asked for a room next to hers. He was able to unscrew the peep-hole viewer from the corridor side of the door and use his cell phone to video the plaintiff undressing.

Verdict for Plaintiff: 03/07/2016

Jury Award: \$55m

- Marriott at Vanderbilt University - Franchise
- Windsor Hotel Capital – Management Company
- West End Hotel Partners – Owner

\* Marriott Corporate was dismissed from the case.

Untangling the highlighted cases, and any legal action, is time consuming, complicated, and costly to all parties. As equally important is the brand and reputation of each named defendant, regardless, if they are dismissed from any action. Maintaining healthy relations with all investors, including, but not limited to regular site visits, security and safety risk assessments, brand standard reviews, frequent appraisal of contracts, hold harmless agreements, and other indemnity clauses, will contribute to fostering a defensible position before any unfortunate legal circumstances and rightly position the stakeholders from an untenable position.