HOUSTON, TX

The
HOSPITALITY LAW
CONFERENCE

“Security!” An update on negligent security claims in the hospitality industry

Kendall Kelly Hayden

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Kendall Kelly Hayden

Member, Cozen O'Connor

Dallas

Commercial litigator with emphasis in hospitality law, transportation, and being hired as a fixer

Grateful to be invited each year as a speaker at HLC!

Will bribe guests who participate with swag

Leading Texas case

Timberwalk Apartments, Partners, Inc. v. Cain (Tex. 1998)

Premises or negligence?

Negligence:

1) legal duty
2) breach of that duty
3) damages
4) proximately caused by breach

Premises:

(1) knowledge of condition on premises
(2) unreasonable risk of harm posed by condition
(3) failure to exercise care to reduce risk of harm
(4) injuries caused by failure to use reasonable care

Premises, not negligence

In Texas, lawsuits arising from criminal acts of third parties are uniformly treated as premises cases under *Timberwalk.* *See UDR Texas Props., LP v. Petrie* (Tex. 2017)

Duty

Duty can be delegated

Hodge v. Liquid Ventures (La. App. 1994)

Duty can be created by a voluntary undertaking

Harris v. Pizza Hut of Louisiana, Inc. (La. 1984),
Atkinson v. Stateline Hotel Casino & Resort (Utah App. 2001)

Duty based on foreseeability

Pappas Restaurant, Inc. v. Welch (Ga. App. 2021)

Foreseeability factors

Similarity of prior crimes

King. v. Lindsay (Ohio App. 1993); *Doe v. Remington Hotels Corp* (Tex. App.—Amarillo 200

Proximity of prior crimes

Pearson v. Philadelphia Eagles (Pa. Super. 2019); *Beckwith v. Interstate Mgmt. Co.* (D.D.C.

Recency of prior crimes

Jai Jalaram Lodging v. Leribeus (Tex. App.—El Paso 2006)

Frequency of prior crimes

Flanagan v. RBD San Antonio, LP (Tex. App.—San Antonio 2017)

Publicity of prior crimes

*Fitzgerald v. Patel (*Tex. App.—Austin 2000)

Imminent crimes

Del Lago Partners v. Smith (Tex. 2010); *Rabutino v. Freedom State Realty Co.* (Pa. Super. 2

Kau v. Honolulu (Hawaii App. 1986)*; Loomis v. Granny's Rocker Nite Club* (Ill. App. 1993)

Jackson v. A.M.F. Bowling Centers, Inc. (D. Md. 2001)

Relevant issue spotting for hospitality establishments

- Superseding cause
- Risk transfer
- Franchise relationships
- Choice of law
- Expert testimony
- Special relationships
- Immunity

"He's a trained issue spotter."

Superseding cause

Lucht v. Stage 2, Inc.
(Ill. App. 1992)

Garcia v. El Paso Ltd. P'ship
(Tex. App.—El Paso 2006)

Risk transfer

Crime Fighters Patrol v. Hiles (Ky. 1987)

Franchise relationships

Marchionda v. Embassy Suites
(S.D. Iowa 2018)

N.T. v. Taco Bell
(D. Kan. 2019).

Castro v. Brown's Chicken and Pasta
(Ill. App. 2000)

Choice of law

Smith v. Foodmaker
(Tex. App. 1996)

Demyrick v. Guest Quarters Suite Hotel
(N.D. Ill. 1994)

Kabo v. Summa Corp.
(E.D. Pa. 1981)

Expert testimony

Farooq ex rel. Estate of Farooq v. MDRB Corp. (D.D.C. 2007), *affi'd*, (C.A.D.C. 2008)

Casey v. Ward (D.D.C. 2016)

Special relationship

Landry v. St. Charles Inn (La. App. 1984)

Reichenbach v. Days Inn (Fla. App. 1985)

Schwenke v. Outrigger Hotels (Haw. App. 2010)

Holland America Cruises v. Underwood (Fla. App. 1981)

Hallett v. U.S. Dept. of Navy (D. Nev. 1994).

Immunity

Lovelace v. Anderson (Md. 2001)

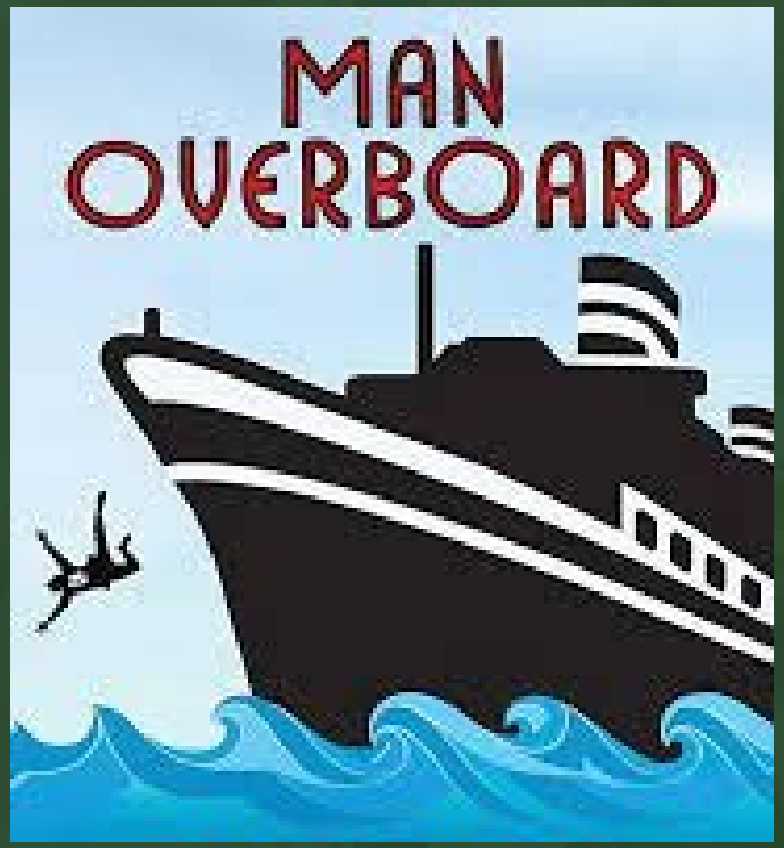
What does not create a duty

- Furnishing a condition
- Entering into an agreement to furnish security
- Providing policies and procedure
- Advertising security measures

Furnishing a condition

Mitchell v. Pearson Enterprises
(Utah 1985)

Entering into an agreement to furnish security



Potharaju v. Jaising Maritime, Ltd. (E.D. Tex. 2002)

Providing policies and procedures

Murphy v. Second Street Corp. (Ky. App. 2001)

Advertising security measures

Scott v. Harper Recreation, Inc. (Mich. 1993)

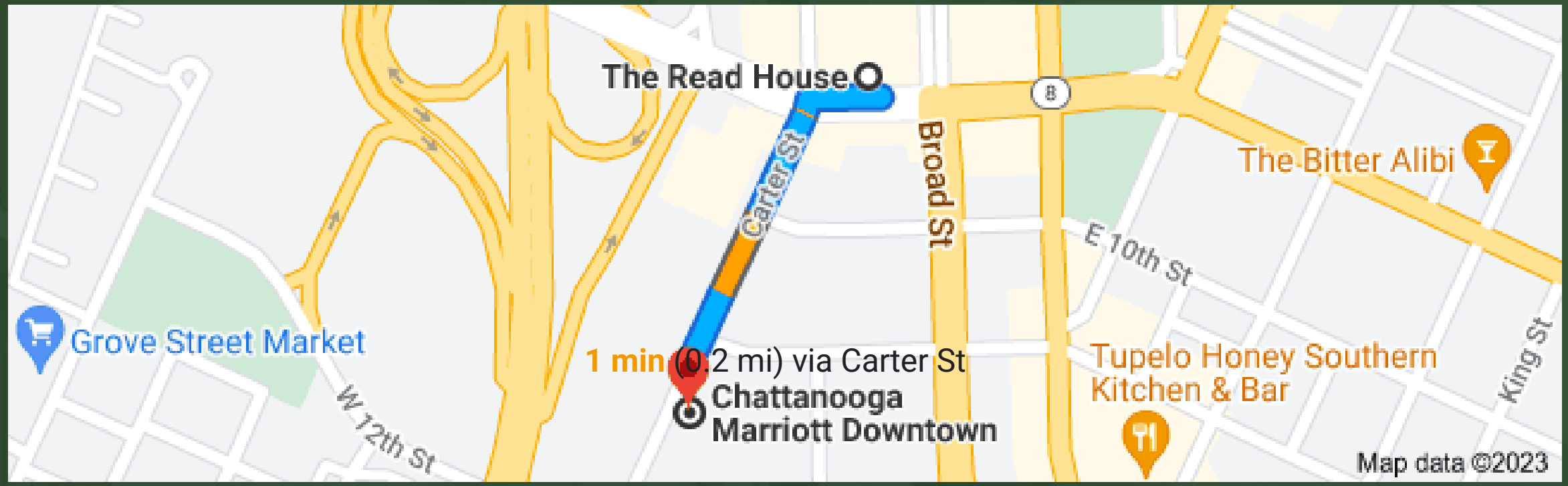
The Real Deal: Golf club assault

The Real Deal: Hotel burglary

The Real Deal: Office park murder

GameStop

The Real Deal: Mugging between hotel and restaurant



WE APPRECIATE YOUR
TIME AND ATTENTION!

Kendall Kelly Hayden
KHayden@cozen.com
214-462-3072
214-629-1997

Thank you!