

PUBLICATION

Hilton Not Liable to Guests for Terrorist Attack in Egypt

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In October 2004, a suicide bomber drove an explosives-laden truck into the lobby of the Taba Hilton near the border between Egypt and Israel in the Sinai Peninsula. The blast caused ten floors of the hotel to collapse. The bombing of the Hilton hotel was part of a coordinated attack that included simultaneous explosions in two other neighboring resort locations¹.

At the time of the attack, the Hilton hotel was full of international guests who were celebrating the Jewish holiday of Sukkot. Thirty one people were killed in the attack on the Hilton property and approximately 160 people were seriously injured. Two other people died in the related bombings that day. It was obvious that all three attacks were focused on Israeli tourists.

Taba is a main crossing point between Israel and Egypt, and a major gateway for thousands of Israelis going on holiday to resorts and hotels on the Red Sea. Security at the hotel was controlled in part by the Egyptian Tourist Police Department, which maintained an office in the hotel. There were also numerous Egyptian National Police guards routinely stationed at the nearby border crossing. Given its location and the level of security present, it was generally considered to be a safe resort location.

Litigation followed, with two suits filed against Hilton in the United States alleging inadequate security and gross negligence. One action was filed in federal court in New York, New York and the other action was filed in state court in Miami, Florida (where Hilton International's central offices were located).

Both actions were challenged by Hilton on the basis of "forum non conveniens." The trial court in the Florida action denied Hilton's motion to dismiss because the lead plaintiffs were American citizens living abroad and working for the Army Corps of Engineers and had other indicia of Florida citizenship. Under the Florida law analysis, the lead plaintiffs were given an "edge" or increased deference to their chosen forum and then the other plaintiffs (who were Israeli and German citizens) were permitted to join the action based on Florida's liberal joinder rules because their claims "raised the same factual matters and questions of law."

However, on appeal the Florida appellate court reversed that decision and dismissed the action. The appellate court pointed out that the United States citizens were not really residents of Florida in that they had only acquired an interest in property and obtained drivers' licenses after the bombing and just before the suit was filed.

The U.S. District Court in New York subsequently dismissed the action filed there on the basis of forum non conveniens. In both actions, the plaintiffs contended that their remedies abroad were inadequate or ineffective because they would not be able to recover as much as they would presumably recover in the U.S. On the other hand, Hilton pointed out the difficulty in trying cases in the United States for an event that occurred on the border of the Red Sea. For instance, jurors would not be able to actually visit the hotel site; international witnesses could not be compelled to appear; and documentary evidence was largely written in Arabic and would require translation.

After a thorough analysis of all of the factors, both the Florida Court of Appeals and the United States District Court for the Southern District of New York found that Egypt (where the bombing had occurred) was an adequate forum. Of course, those decisions came before the political revolt in Egypt.

Nevertheless, both groups of plaintiffs re-filed their actions in Israel. An evidentiary hearing on the issue of liability was held. In late August this year, the Tel Aviv District Court held that Hilton was not legally responsible for the deaths and injuries that resulted from the terrorist attack. After deciding to apply Israeli law to the suits, the court addressed the issue of how one can take proper measures to prevent crime and especially terrorist attacks.

The Taba Hilton was located in a resort area that was frequented by Israeli citizens and Westerners and presumably would be considered an attractive terrorist target. Yet, prior to the incident, there had not been a car bomb explosion in Egypt in general and in the Sinai in particular for seven years.

Hilton's efforts to secure the hotel included perimeter road blocks manned by Egyptian police forces; posted security personnel at the access roads and entrances to the hotel; a unit of plainclothes "Muhabarat" forces who patrolled Taba and the hotel area; and a metal detector at the front entrance. Neighboring hotels had similar arrangements but the Taba Hilton was unique in that the Egyptian police forces actually maintained an office within the hotel.

The plaintiffs argued that international hotel attacks were occurring with more and more frequency and that this, as well as other factors, should have placed Hilton on heightened notice to take additional security steps. The question became whether Hilton was required to second-guess or supplement the security put in place by the national police forces to deal with this foreseeable risk?

The Israeli court noted that:

"The State of Israel is very sensitive to the security of its citizens. Since **we do not exist among friendly people** and over the years there are acts of hostility against Jews and Israelis both in Israel and abroad, our intelligence services are always on the lookout and justly so. From the evidence it arises that the Egyptian security conception was different. The Egyptians are aware of the importance of tourism for their country and certainly wish for tourists to keep coming without being afraid of staying in hotels in Egypt." (emphasis added)

But, considering all of the various factors, it could not be proven to the satisfaction of the court that the hotel could have concretely foreseen a terror attack against its guests. Thus the cases were dismissed.

In Israel there is a state-supported system of no-fault compensation for terrorist victims, the "Benefits for Victims of Hostilities Law," which would provide some recovery to the Israeli citizens impacted by the terrorist blast. But what about compensation for the other deceased and injured guests?

After concluding that Hilton was not technically liable under the applicable legal analysis, the court went on to urge Hilton to compensate the victims anyway:

"The parties emphasized the hotel's respectability; it seems to me that part of this respectability should be a moral-humane approach, and therefore it would be only appropriate to determine a criterion for compensating the victims, even if the Defendant prevailed in Court."

Hotels in security-sensitive locations maintain a delicate balance among the factors of security, guest convenience and access, and costs in a rate-competitive environment. Any meaningful disclosure to guests of the inherent risks of visiting in a security-sensitive location would have a chilling, if not fatal, impact on

occupancy and rate. Hotels typically blend passive and active security measures in conjunction with local law enforcement such as was done by the Taba Hilton to promote safety and comfort.

Much like the incidents themselves, the question of whether these measures will be a sufficient defense against claims arising from future incidents cannot be predicted. Governments of sensitive locations may wish to underwrite tourism promotion with a victims' compensation program similar to Israel's program, so that hoteliers will not risk their investments over a lapse in security and guests will not be left without remedy in their hour of need.

¹ The other explosions were in Ras al-Shitan, a camping area popular with young Israeli backpackers. The site is near the town of Nuweiba, which itself boasts a few hotels and restaurants.