

PUBLICATION

Marriott to Face Trial in Maryland Over Terrorist Bombing in Pakistan

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The U.S. Fourth Circuit Court of Appeals recently reversed a Maryland U.S. District Court decision to dismiss a wrongful death suit brought against Marriott International based on a terrorist bombing that occurred at a franchised hotel in Pakistan. Based on this ruling, Marriott will now have to defend the suit in Bethesda, Maryland, where Marriott's headquarters are located.

The bombing event known as "Pakistan's 9/11" occurred at the Marriott Islamabad Hotel on September 20, 2008, when a large dump truck filled with explosives unsuccessfully tried to ram the security gate barrier. The driver initially attempted to detonate the explosives, but only caused a small fire in the cab of the truck. The hotel security staff thought that it was a traffic accident and attempted to find a fire extinguisher to put out the fire in the cab of the truck, so it did not issue any warning to its guests. A short time later the truck exploded, killing 56 people and injuring 266 others.

Among those killed was Albert DiFederico, a former naval officer who was serving as a civilian contractor for the State Department. The wrongful death suit was filed in Bethesda, Maryland, by Mr. DiFederico's widow and their three sons. They did not sue the franchisee, a Pakistani company.

The trial court initially dismissed the case on the basis of the *forum non conveniens* doctrine and held that Pakistan was an adequate and more convenient location to hear the case because of the location of evidence and witnesses. However, this essentially meant that Mary DiFederico and her three sons were without a venue because the statute of limitations had already run in Pakistan.

But the Fourth Circuit reversed and ordered Marriott to face trial in Maryland, giving the plaintiff strong deference to the original selection of Marriott's "legal backyard" as a venue. The court was persuaded that it would be unfair to force the plaintiff to have to travel to the site of the crime, where violence rages on, in order to pursue her claims against Marriott. The court stated that it would be "a perversion of justice to force a widow and her children to place themselves in the same risk-laden situation that led to the death of a family member."

The Fourth Circuit also noted that "to the extent that Americans recognize and utilize the Marriott brand, Americans have a localized interest in resolving a dispute related to Marriott. This is a case of American citizens suing an American corporation. The defendant is a corporate member and employer within the community where this case would be tried."

Thus the case returned to Maryland for a decision based on the merits. The plaintiffs alleged that Marriott was negligent in developing and implementing its anti-terrorism security plan at the hotel and otherwise failing to protect Mr. DiFederico. Specifically, the DiFedericos alleged that Marriott failed "to design and implement a proper and satisfactory security protocol given the history and threat of terrorist activity in the area." The plaintiffs are also claiming that Marriott corporate staff knew the threat level at the hotel and took no action.

Upon remand back to the trial court in Maryland, Marriott filed a new Motion to Dismiss based on the traditional defenses of a franchisor to liability from an event at a franchised location, relying on the franchise agreement and the absence of the franchisor's control over the management of the hotel. They point out that this attack occurred on foreign soil, by international terrorists at a hotel owned and operated by a Pakistani company.

The narrow focus on the adequacy of Marriott's security plans for its franchisee that the plaintiffs adopted to work around the *forum non conveniens* arguments means that the case will turn on how well Marriott planned and instructed its franchisee, given Marriott's apparent notice of the history of violence at the hotel. Does a U.S. franchisor owe a duty to guests of its foreign franchised hotels to compel the franchisee to implement a franchisor-prescribed security plan?

Marriott is taking the position that it was the implementation (or lack thereof) of Marriott's security plan that was the true cause of Mr. DiFederico's demise and since the family has stipulated that they are not pursuing any vicarious liability claims, the case should be dismissed on the merits. Marriott's Motion to Dismiss is currently pending.

We will continue to monitor these proceedings and will report again on any lessons learned from the outcome. The case may open a new legal theory for franchisor liability from incidents at offshore franchises in higher risk locations.