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4 Premises Liability Cases To Know

By **Emily Field**

Law360, New York (February 7, 2018, 4:05 PM EST) -- Premises liability cases often involve standard "slip and fall" incidents, but some notable cases stand out for their potential effects on hospitality and other industries, such as the wave of cases that have arisen after the mass shooting at the Mandalay Bayhotel in Las Vegas.

Property owners and premises operators also may see more cases involving sexual harassment and assault following the #MeToo movement, attorneys say, along with such diverse situations as fatal animal attacks or errant baseballs. Here, Law360 runs down some premises liability cases to know about.

Mandalay Bay Shooting Cases

Hundreds of victims of the Oct. 1 shooting on the Las Vegas strip — the deadliest mass shooting in recent U.S. history — have hit Mandalay Bay, MGM and Live Nation with various suits alleging that the companies failed to keep the site reasonably safe, and attorneys say they expect to see more suits to come as the year progresses.

The suits — which include one California state suit with 450 plaintiffs and one proposed class action also in California state court, as well as others filed by other victims and a gun control group — generally allege that the companies should have been aware that inadequate security and exit plans at the concert venue could result in catastrophic injuries at the hands of an armed guest.

In the wake of the shooting, security has become a hot topic in the hospitality industry, said David Samuels of Lewis Brisbois Bisgaard & Smith LLP, who has 20 years of experience representing hotels.

"It's going to cause multiple industries to take a closer look at what security measures they have in place and change things," Samuels said.

Already in the hospitality industry, Disney resorts have done away with "do not disturb" signs on room doors, as the Las Vegas shooter, Stephen Paddock, reportedly hung one on his door when he holed up for days with his arsenal of weapons, Samuels said. Now, staff members will have to knock and enter a hotel room once a day.

The cases also raise questions of how reasonably foreseeable Paddock's attack was; the proposed class

action states that concert venues have become targets for mass shootings in the U.S. and abroad in the past several years.

“As more of these mass shootings occur, it becomes more and more foreseeable to an entity who owns or operates a concert venue, that these venues will be seen as an opportunity for mass shootings,” the complaint says.

The victims also allege that MGM and Live Nation didn’t provide adequate emergency exits for the venue and didn’t train employees how to respond to an event like a terrorist attack.

“Maybe those claims would gain some added traction with a jury because even if you can argue that there was no way we could have figured out his plans and found his guns because he was adequately concealing them ... [as] these attacks become more commonplace, then these organizers and owners should make sure that if one does occur, you’re prepared for it,” said Frank Hosley of Bowman and Brooke LLP.

While the hotel hadn’t had a mass shooting before, evidence of other shootings or violent crimes could add “color and shape” to a foreseeability argument, said Carla Varriale of Havkins Rosenfeld Ritzert & Varriale LLP.

“Just because people get drunk and assault each other, does that put someone on notice of a mass shooting, that someone could come in and perpetrate that sort of crime?” Varriale said. “That seems to me the question to answer.”

The five suits are Staples et al. v. MGM Resorts International et al., case number BC684142, Jaksha et al. v. MGM Resorts International et al., case number BC684048, Roybal et al. v. MGM Resorts International et al., case number BC684046, Gasper et al. v. MGM Resorts International et al., case number BC684143, and Abraham et al. v. MGM Resorts International et al., case number BC684047, in the Superior Court of the State of California, County of Los Angeles.

The proposed class action is Spencer et al. v. Paddock et al., case number BC680065, in the Superior Court of the State of California, County of Los Angeles.

Sexual Harassment on Premises

The tsunami of allegations of sexual harassment and assault by women empowered by the #MeToo movement have been impossible to miss in recent months. While litigation stemming from the movement has been generally aimed at high-profile men like media mogul Harvey Weinstein, attorneys say property owners and operators should be on the lookout for similar suits.

“Liability for sexual assault on your premises, I could see that being a natural outgrowth — an enhanced duty on the part of business owners and operators,” said Varriale.

One case involving sexual assault and premises liability is a proposed class action alleging that a pain management physician who worked for Maryland-based medical centers sexually assaulted patients — and that the centers were told of his assaults but failed to act.

The suit, filed in August in Maryland state court, claims that Mid-Atlantic Permanente Medical Group PC, which employed Dr. Bryan Williams while he allegedly assaulted the women, was continually informed

of Williams' conduct starting in mid-2013 but didn't discipline him. The doctor was ultimately fired in fall 2014.

Sexual harassment and assault allegations in the premises liability context would come from guests, customers and patients, Samuels said. Particularly in the hotel industry, these types of cases often arise from circumstances where a customer is left alone with an employee, such as a massage therapist at a spa, Samuels said.

"My experience has been rarely does a guest falsely make that claim," he said.

As sexual assault victims lose fear of being stigmatized and become more likely to speak out, this could result in more claims and lawsuits, Hosley said.

"Employers have to make sure they're doing sufficient background checks on employees to hopefully make sure it doesn't happen in the first place," he said.

The case is Jacqueline Scales v. Mid-Atlantic Permanente Medical Group PC et al., case number CAL17-18720, in the Circuit Court for Prince George's County, Maryland.

Fatal Swan Attack

One wrongful death suit against a property management company in Illinois involves a unique set of circumstances: A pair of swans that lived on one of its properties attacked a kayaker in 2012, and he fell overboard and drowned.

The suit, brought by the kayaker's widow in Illinois state court in December, claims that Hillcrest Property Management Inc. failed in its duty to keep its premises safe by having "unreasonably dangerous" mute swans on the property.

The mute swans are "strongly territorial with a dangerous propensity to attack," the complaint says. They hit their victims with bony spurs in their wings and bite them with "their large bill." And it says their wings can break a man's leg.

The pair of mute swans were placed at the property to control the geese population, according to the complaint. Generally, if a property owner is aware that there are wild or aggressive animals on site, they do have a duty to provide warnings, attorneys said.

However, in this case, it seems that the late kayaker, Anthony Hensley, was going to the lake to feed and care for the birds as part of a routine role, either voluntarily or as an employee, said Aimee Adams of Bowman and Brooke.

Hosley noted that Illinois' animal control act allows for a person to sue when they get attacked by an animal on the premises, "but there's an exception if you are deemed to be an owner, and an owner is someone caring or in custody of the animal."

The suit is Amy Hensley v. Hillcrest Property Management Inc. et al., case number 2017-L-012371, in the Circuit Court of Cook County in Illinois.

Baseball Blindness Suit

Baseball stadiums have often found themselves the subject of suits like those of John “Jay” Loos, who said in an Illinois state suit in October that a stray baseball at a Chicago Cubs game this summer left him blind in one eye.

The Cubs and Major League Baseball asked a Cook County Circuit Court judge in December to toss the man’s suit, saying his claims are barred by the Illinois Baseball Facility Liability Act.

Loos claims that the incident at Wrigley Field was caused by negligence on the part of the MLB and the Cubs, by failing to install enough netting behind home plate to prevent foul balls from injuring spectators.

Generally, baseball fans assume a level of risk in attending games — especially since many game attendees want to catch a foul ball as a souvenir of the game, attorneys said.

“You darn well better have a glove and be watching,” Leon Silver of Gordon Rees said.

However, there is a trend of adding protective netting further down the sidelines, which raises the question of whether owners will be found negligible for not having adopted that trend, or if they won’t be liable because fans have waived that risk.

The case is John Loos v. Major League Baseball et al., case number 2017-L-10195, in the Circuit Court of Cook County in Illinois.

--Editing by Brian Baresch and Aaron Pelc.