

Mitigating Inadequate Security Claims Through Effective Security Measures

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Abstract

Gaming and hospitality operators are currently facing a litigation crisis. Recent court decisions, such as Tailhook, have established that hospitality operators are responsible for foreseeable security problems. Because of the increased responsibility placed on gaming and hospitality operators to provide a safe and secure environment for their guests, patrons, and employees, companies must take a proactive stance regarding security. While the surveillance and security programs in place at most gaming establishments are often quite sophisticated, care must still be taken to remain current with technological advances in security and changing industry security standards. The implementation of security measures can help mitigate costs associated with inadequate security claims. A cost/benefit analysis can help quantify whether a proposed security measure is sensible. **Key Words:** Security, Foreseeable Events, Inadequate Security Claims

Gaming operators, as well as other companies operating in the hospitality industry, are currently facing a litigation crisis. The ability and dedication of hospitality companies to provide adequate protection to guests is being challenged across the country through lawsuits and other claims alleging inadequate security (Mariner, 1995). Inadequate security claims, one of the "fastest growing areas of tort liability facing companies today," arise when hospitality operators fail or are perceived to fail in providing a reasonably safe environment to their patrons or guests (Bates, p. 30, 1993). Litigation stemming from charges of inadequate guest

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security can cost hospitality operations, including gaming operations, millions of dollars. A recent study investigating security liability issues found that the average out-of-court settlement for violent crime cases between the years 1983 and 1992 exceeded \$600,000, while the average jury verdict for such cases during this period was \$1.3 million (Bates, 1993). The gaming industry has been faced with several highly notable inadequate security claims where individual properties have had to pay large settlements, most notably the Tailhook scandal.

Landmark Inadequate Security Cases

Most industry experts agree that there have been two landmark inadequate security claims cases affecting the hospitality industry. The first landmark case establishing the responsibility of the hospitality industry in providing a safe and secure environment to its guests was *Garzilli v. Howard Johnson's Motor Lodges*. In this case, famous singer Connie Francis was awarded a \$2.5 million verdict after she was raped at knifepoint when an unknown assailant entered her room through a sliding glass door which was found to have a faulty door lock. This case caused the hospitality industry to truly acknowledge just how costly breaches in security can be and forced the industry as a whole to address the problems associated with inadequate security (Marshall, 1995).

A more recent landmark case with regard to the area of hospitality industry security is Tailhook. In fact, the Tailhook case has been called the "most important hotel-security case of the decade" (Marshall, 1995). So what circumstances lead to the filing of this lawsuit? The Tailhook Association, a group of Navy and Marine flyers, had held its annual convention at the Las Vegas Hilton for 19 years prior to the 1991 incident leading to the landmark ruling, and during those 19 years the convention had gained a reputation as being quite rowdy (Howe, 1995). During the 1991 Tailhook convention, a female attendee of the convention and former Navy Lieutenant, Paula Coughlin, charged that she was sexually harassed and battered by a crowd of drunken conventioners and that the Las Vegas Hilton's security force had provided inadequate security which failed to protect her from these abuses. The jury agreed with the charges and awarded Coughlin \$6.7 million. Of this amount, "... \$1.7 million was awarded as compensatory damages for the hotel's failure to provide for the safety of a guest," and \$5 million was awarded for "reckless disregard for the safety and welfare of people visiting and in residence at the hotel" (Howe, 1995). The jury's high punitive damages resulted from the "jury's finding of malice and oppression on the part of the hotel's management" (Howe, 1995). According to a jury spokesperson, the fact that the hotel had only three security guards staffed to monitor 5000 intoxicated Tailhook conventioners played an important role in the verdict (Marshall, 1995).

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The Tailhook verdict illustrates the importance of hotel security in providing a safe environment for its guests and patrons to the extent that problems can be foreseen. Given the prior reputation of the Tailhook group, foreseeability of a problem was deemed possible. Hence, the case sets a precedent for holding a hotel liable for foreseeable security problems when appropriate corrective actions are not taken. While the Tailhook verdict was quite large, it is important to note that Coughlin was just one of many women to allege these charges and there are more cases surrounding the 1991 Tailhook convention that are yet to be tried. The Las Vegas Hilton's liability surrounding the case may escalate substantially should similar verdicts be returned in other cases.

The two cases just discussed exemplify the magnitude of settlements and jury verdicts concerning inadequate security, yet clearly there are additional costs associated with these claims as well. Other costs which must be considered include, but are not limited to, attorney's fees, increased insurance premiums, negative consequences associated with unfavorable publicity, and down or lost time at work for employees involved in depositions. Hence, the overall costs of inadequate security claims and litigation can be quite high. On a more positive note, however, states can take steps to limit liability in certain cases. For instance, Nevada's revision of statute 42.005 makes it more difficult to receive punitive damages in cases in which employees are involved in a security breach.

Factors Contributing to the Litigation Explosion

Several factors have contributed to the increasing rate of inadequate security claims. First, hospitality operations are not immune from the effects of increasing crime rates (Mariner, 1995). As crime rates increase throughout the nation and the world, it is reasonable to assume that these rising trends will also impact gaming companies and other hospitality operators¹. Furthermore, as reported by experts at the Fourth Annual Las Vegas Tourism and Security Seminar, the crime rates at resort areas exceed national and regional averages (1995).

Second, and perhaps most importantly, the level of accountability for hospitality operations in providing a reasonably secure environment for patrons has increased in recent years. While the issue of foreseeability has always been part of negligence, the degree of foreseeability to which hospitality operators are held accountable has been clarified by the legal system to include a more comprehensive array of foreseeable events. Even if no similar security breach occurred, "[i]f hotel management failed to recognize or failed to take action to correct a situation which made the crime possible, then management will shoulder some or all of the blame" (Israel, 1991). For instance, one hospitality operation had to pay \$700,000 after it failed to increase security when a patron, who had been drinking all day and had been asked to leave the premises, became violent and injured another patron, neither of whom was staying at the hotel. The courts ruled that the hotel should have been able to foresee the trouble based on the events which had occurred earlier in the day.

Third, the media has been giving increased attention to the alleged lack of guest security in the hospitality industry (Mariner, 1995). For instance, the Tailhook scandal received extensive publicity both locally and nationally. Similarly, the recent case of a young woman being electrocuted as she inserted her key into an

electronic door lock in Maryland has also received national attention. Additionally, in 1992 Motel 6 received national publicity when the *Wall Street Journal* published a front page story highlighting the motel chain's problems with providing adequate guest security and the resultant lawsuits (Helliker, 1991).

Fourth, the aggressiveness and sophistication of the attorneys working for claimants has also increased over time (Bates, 1993). The aggressiveness of lawyers may stem from the huge increase in the number of lawyers over the past four decades. In 1958, U.S. law schools were graduating approximately 8,000 new lawyers per year, and by 1988, this number had increased to approximately 35,000 new lawyers per year (McConnell and Rutherford, 1993)². In terms of the sophistication of lawyers, legal teams will go to great lengths to prove that hospitality operations have failed to provide reasonable security to guests. It is not uncommon for legal firms to place "shills" in operations being sued to look for security problems which may then be used in court to show inadequate security (Mariner, 1995).

Lastly, many large hospitality firms, particularly gaming companies, are affected by the "deep pockets" theory of litigation. The "deep pockets" theory of litigation suggests that large, highly profitable companies are more likely to be sued because these companies are viewed as having the needed funds to pay large settlement claims. Because gaming operations often have the public perception of being highly profitable, the "deep pockets" theory of litigation suggests that gaming companies are prime candidates for lawsuits and other claims. This "deep pockets" viewpoint is widely accepted by industry and legal professionals.

Considering all of these factors impacting litigation in the U.S. and within the hospitality industry, it is not surprising that litigation rates within the industry have increased. Whether or not this trend will continue into the future is yet to be seen.

Personal injury claims are the greatest threat to gaming and other hospitality operators.

Types of Claims Resulting from Inadequate Security

The types of claims generally arising from charges of inadequate security include guest personal injury claims, guest property loss or injury, and third party injuries. In a study investigating the number of appellate citations originating from cases other than employer/employee relations from 1966 through 1991, McConnell and Rutherford (1993) found that guest personal injury lawsuits accounted for 60% of the lawsuits, while guest property loss and injury claims and third party injury claims accounted for 15 and 3 percent of the lawsuits, respectively. Therefore, personal injury claims are the greatest threat to gaming and other hospitality operators. However, industry representatives indicate that many of these lawsuits are based on fraudulent claims. For instance, representatives from one major casino in Las Vegas indicate that up to 70 percent of their casino's guest theft claims

are fictitious (Anonymous interview, 1995). Regardless of whether claims are fraudulent or not, gaming and hospitality operators should take precautions to help minimize these claims, as well as to help minimize security breaches.

How Regulations Affect Casino Security and Surveillance Measures

While the requirements for surveillance and security may vary by jurisdiction, most gaming operators already have a sophisticated system in place to help fight inadequate security claims. For instance, Atlantic City casinos must "follow a stringent set of security regulations under the state Casino Control Act," which specifies the minimum security requirements for casinos in this jurisdiction. Mississippi and Iowa also have quite strict security regulations (*International Gaming & Wagering Business*, 1993). Alternatively, the Nevada regulations are not as specific as the regulations in other jurisdictions. However, the minimum acceptable surveillance and security measures required for casinos are stipulated in the Minimum Internal Control Standards (MICS) as mandated by the Nevada Gaming Control Board. At the other end of the spectrum are states like Colorado and South Dakota, where security and surveillance measures are determined by the casinos themselves. Similarly, unless otherwise specified by tribal-state agreements, Indian casinos can determine their own standards (*International Gaming & Wagering Business*, 1993).

Companies must take a proactive approach to guest security.

Despite these differences in jurisdictional requirements, most gaming operators have a sophisticated set of tools available to help them in the fight to provide adequate guest security that tra-

ditional hotels and motels do not generally have. However, many of these tools emphasize the security issues in the casino to a much greater extent than security in areas outside the casino. This emphasis is logical due to the large amounts of cash on hand in the casino, but it is still important that gaming operators make a concerted effort to maintain a strong security environment throughout the property for their guests and patrons. In the next section, several methods for minimizing inadequate security claims against casinos through implementing effective security and surveillance measures are discussed.

How Gaming Companies Can Minimize Inadequate Security Claims

What can a gaming operation do to protect and limit itself from claims alleging inadequate security? Most importantly, companies must take a proactive approach to guest security. Rather than waiting for problems to occur and then trying to rectify them, companies should actively seek ways to improve guest security. Identifying and establishing security policies and a security program is an excel-

lent place to begin. Good preventive measures will also show guests and patrons that the establishment is concerned about their safety, an issue which will help the company if it is taken to court to fight a particular claim.

Development of a thorough security program with an adequate number of well-trained security officers is absolutely necessary in today's litigious society. Experts stress that "[t]he stronger that [a casino resort's] security image is, the less likely the robber is to select that casino as a target" (Fourth Annual Las Vegas Tourism Safety and Security Seminar, 1995). Furthermore, security personnel should be trained to respond promptly anytime a problem arises. This quick response policy must include provisions for listening to guest complaints and an appropriate channel of communication for a response. If a guest complains about suspicious activity and the hotel or casino does nothing and a problem later arises, an inadequate security claim may likely be successfully brought against the operation. One of the quickest ways to insure failure to establish concern over guest security in court is to have evidence showing the hotel failed to respond or delayed its response to an alleged threat to guest security. Hence, when potential security problems arise, security personnel should take appropriate measures to combat the potential or existing security problem.

It is also important to note that responsibility for guest security is not just limited to security personnel. All employees of the company should be encouraged to be conscious of potential security problems. For instance, experts cite that "the number one deterrent to a robbery taking place in your establishment is employee awareness" (Fourth Annual Las Vegas Tourism Safety and Security Seminar, 1995). Specifically, employees should be encouraged to be on the lookout for suspicious persons and notify security or supervisory personnel of suspicious persons when identified, to make eye contact and speak with patrons and guests, and to always be aware of the events in their work areas (Fourth Annual Las Vegas Tourism Safety and Security Seminar, 1995). This type of organizational commitment can be influential in deterring all types of crimes.

Another important component of a good security program is to mandate employee background checks. In Nevada, Atlantic City, and certain other gaming jurisdictions, employee background checks are mandated for persons wishing to become employed in gaming operations. For instance, in Nevada prospective employees must undergo a background check as part of the requirements for obtaining a sheriff's card. All gaming employees in Nevada must have a valid sheriff's card. However, in emerging jurisdictions, employee background checks may not be as extensive or in some cases may not even be required. Therefore, it is not uncommon for a casino in an emerging jurisdiction to hire a new employee who previously lost the privilege to work in the gaming industry in another jurisdiction.

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Furthermore, close relationships should be maintained with security departments at other hotels. Mug shots of criminals are currently shared by casinos in major gaming cities, such as Las Vegas and Atlantic City. Frequently, mug shots or surveillance video photographs of alleged criminals are faxed to other properties in the area within minutes of a security breach. This cooperation between casinos can be a great tool for the quick apprehension of alleged criminals, not to mention serving as a deterrent for prospective criminals. Security directors of properties should also network with directors of other properties to share trade secrets on what methods of security are successful and what new advances are being made to improve guest security.

Gaming companies should also maintain close relationships with local law enforcement authorities. For instance, one way to maintain close ties with local law enforcement authorities is to attend law enforcement sponsored seminars on security. The Las Vegas Metropolitan Police Department offers an annual seminar called the Las Vegas Tourism Safety and Security Seminar which is intended to inform local casinos and other establishments about security issues in the area and to offer advice for improving security and deterring crime. Maintaining such relationships with local law enforcement agencies can also enhance the quality of any security program by improving communication between law enforcement personnel and hospitality employees. Such communication may lead to increased cooperation between organizations and better response times when security emergencies do arise. For instance, the cooperation between police and one Las Vegas

casino resort's security personnel recently resulted in the apprehension of the suspects allegedly involved in a major cage robbery.

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security consultant, such as the local police, should be commissioned to perform a security check to provide an objective opinion regarding security (Bates, 1993). It is cheaper to pay someone to inspect the property and identify potential problems now, than to pay a settlement or jury verdict later. In addition, such an independent evaluation often serves as evidence that a company is committed to providing a secure environment for its guests and patrons should the issue arise in court.

Another important component of a strong security program is the implementation of adequate perimeter controls. While this issue is best addressed prior to construction, so that the physical layout of the property may be developed to enhance perimeter controls, certain steps may also be taken to improve the security controls of an existing facility. For instance, sensitive alarm systems may be installed to monitor access to restricted areas, and combination door locks or security guards may be used to discourage access to other limited access areas of a property by unauthorized individuals.

Remaining current with the latest technology and industry standards is also important. Items such as locks for guest rooms have changed drastically with the advent of new technology. Today, one of the quickest ways to lose a claim involving guest security or theft is to have key-in-lock door security rather than elec-

tronic locks (Mariner, 1995). Since the industry standard has become electronic locks, hotels without such systems will undoubtedly be challenged in any court cases that may allege inadequate security.

The utilization of surveillance equipment also helps improve security. According to the regulations of most states with casino gaming, casino operators are required to maintain adequate systems of surveillance. While many people view surveillance systems as a means of catching cheaters, another use for surveillance techniques is to enhance existing security. For instance, surveillance techniques can be used to monitor and ensure the safety of high-rollers, who may draw a lot of attention with their high bets. Furthermore, surveillance techniques can be used to deter crimes such as assault and theft, if such crimes occur in areas monitored by video cameras. Casinos are a prime target for theft because of the large amounts of cash and chips involved in gaming operations. Surveillance tapes can be useful tools in identifying and apprehending purse thieves or other alleged criminals. Successful apprehension of such persons will help reduce future claims resulting from such incidences by deterring future crimes.

Video evidence from surveillance systems, such as closed circuit systems, can also be used to provide an objective account of alleged security incidents. As noted by Mark Russell, Corporate Attorney for the Treasure Island Casino Resort in Las Vegas, if surveillance tapes exist for a particular incident, the surveillance evidence allows people evaluating a security claim to see what happened with their own eyes rather than relying on the accounts of "eyewitnesses" (telephone interview 6/28/95).

Additionally, surveillance video may show evidence of fraudulent claims. Many say that surveillance is the most important tool hotels and casinos have to fight fraudulent claims. Reports by the American Society of Industrial Security state that annual losses due to fraud and theft exceed \$50 billion (Christine, 1992). Joe Wilcock, Vice President of Table Games at Treasure Island in Las Vegas, praises the usefulness of surveillance techniques in catching cases of both actual and fraudulent hotel theft, fraudulent accident claims and other types of employee theft (telephone interview 6/28/95).

Lastly, to avoid becoming a target for many frivolous and fraudulent claims, firms should prosecute criminals and individuals who file false claims to the fullest extent of the law. According to Wilcock, the policy of prosecuting to the fullest extent has a chilling effect on potential criminals and scam artists. If the threat of prosecution is severe, criminals and scam artists will prey on other properties.

Cost vs Benefit Analysis

Implementing security measures to provide adequate security to protect guests, patrons and employees does not come without a cost. Gaming and hospitality concerns need to be aware that these costs are a necessary component of hospitality operations. Failure to incur essential security costs can result in significant negative ramifications, such as lawsuits and settlements. On the other hand, avoiding unnecessary costs related to security is also critical. A cost/benefit analysis should be performed when consideration is being given to spending money on security procedures, especially new technology.

The costs involved are quite objective and quantifiable. They represent the costs of placing the new security measure into operation. However, the benefits involved are more subjective or intangible in nature, meaning that they are difficult to quantify. Benefits associated with heightened security measures include avoiding losses, such as thefts or claims (settlements and jury verdicts). Other benefits include avoiding lost revenues associated with negative publicity from a security breach. Furthermore, heightened security measures may even increase the revenues of the property if prospective guests perceive the property as a safer environment than other properties.

In order to place a quantifiable dollar figure on the benefits of heightened security measures, casinos and hospitality concerns must first attempt to estimate the probability that a breach in security will occur if a heightened security measure is not implemented. For instance, management may feel that there is a 10 percent

chance that a guest will be assaulted on the property if key-in-door locks are not replaced with electronic door locks. This estimate of the probability of a security breach may be based on past experience or the experiences of similar operations in the area. Next, an estimation of a range of potential losses, if the security breach occurs,

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must be computed by factoring in the level of exposure with the potential loss estimates regarding security breaches. For instance, if the average claim for guest assaults is between \$600,000 and \$1,000,000, then the range of potential losses would be \$60,000 ($\$600,000 * 10\%$) to \$100,000 ($\$1,000,000 * 10\%$). The costs associated with placing the security procedures in operation can then be measured against this range of losses to deem whether the security measure is economically feasible to incorporate. If the new locking system cost \$40,000, the property would, based on this analysis, decide to install the electronic locks, while if the electronic locking system cost \$150,000, the property might decide to not upgrade its lock systems.

One way casinos and hospitality firms can document this cost/benefit procedure is to prepare a **hazard-and-loss** statement. This statement lists the potential hazards, the estimated level of exposure or degree of risk of each hazard, the estimates of the losses that may occur if the security breach does occur and no security measures are in place, and the estimated procedural costs necessary to deter the hazard. In this way, casinos and hospitality firms may address in quantifiable terms the decision of whether or not to incorporate security measures into the business. It is important to note that many of the figures computed in a hazard-and-loss statement are based on estimates. Estimates by their nature are not exact, so the analysis and statement do not provide a definite answer as to whether security

measures should be placed into operation. It does, however, provide a method for documenting the reasons why decisions are made. The documentation of a hazard-and-loss statement may be useful in a court of law to show that care was taken in deciding which security measures should be undertaken.

Conclusions

Gaming and hospitality operators are currently facing a litigation crisis. The majority of the claims contributing to this crisis involve guest personal injury claims, guest property theft and injury claims, and third party injury claims, and stem from charges of inadequate security against gaming and hospitality operators. Recent court decisions, such as Tailhook, have clearly established that hospitality operators will be held responsible for foreseeable security problems. Because of the increased responsibility placed on gaming and hospitality operators to provide a safe and secure environment for their guests, patrons, and employees, gaming and hospitality concerns must take a proactive stance regarding security.

To a large extent, gaming properties have a distinct advantage over non-gaming properties in maintaining adequate security because of the technologically advanced capabilities of the surveillance systems required to be in place at most gaming properties. Such systems can provide an objective account of security breaches and can also have the effect of deterring future criminal activity. Despite the advantages that gaming operators have, gaming and hospitality operators should still make every effort to stay current with technological advances in security and to keep abreast of changes in industry security standards. Clearly, the implementation of certain security measures can help mitigate the costs associated with inadequate security claims. A hazard-and-loss analysis is a helpful tool in determining what security measures are economically feasible for an operation.

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Endnotes

¹From 1983 to 1992, violent crimes in the United States increased 53.6% and property crimes increased 15.3% in terms of number of offenses. When standardized by population, the rate of violent crimes per 100,000 persons increased 40.9% from 1983 to 1992 and the rate of property crimes increased 5.7% per 100,000 persons (United States Bureau of Census, 1994).

²Based on these statistics, the number of lawyers graduating from law schools in 1988 was 4.375 times the number graduating from law school in 1959. This increase is larger than both the increase in the number of college degrees conferred during this time period (3.115 times) and the population increase during this time period (1.378 times) (United States Bureau of the Census, 1994 and Digest of Educational Statistics, 1994).

