

# Travel, Tourism and Hospitality Law

Y  
NEWS

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## United States

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### Hotel not immune from liability for 'inside job'

A recent decision by the US Court of Appeals for the Seventh Circuit surveyed various state court decisions that interpreted state 'innkeeper statutes', ie those statutes that insulate today's hotels and motels from potentially astronomical liability for the loss of guests' property.

In *HK Mallak Inc v Fairfield FMC Corp*, at issue was the interpretation of a Wisconsin statute on which the lower court had relied in dismissing all of the plaintiff's claims, including a claim that the robbery of the guest, as he was entering his hotel room, could have been an 'inside job'. The plaintiff claimed that the innkeeper statute should not have been available to insulate Fairfield Inns from liability.

The guest was a jewellery salesperson who had more than \$1 million in diamonds wrapped around his body when masked men assaulted him as he entered his hotel room. He had stayed at the Fairfield Inn seven or eight times before. The hotel knew one of the keys to the room was missing. The Court of Appeals noted that the attackers were never found, so no one knew whether the assailants were ordinary thieves, or whether they were hotel employees who knew of the guest's business from previous stays.

The Court distilled the issue before it as an analysis of the Wisconsin statute that protects hotels and motels from claims for stolen or lost property where the innkeeper has taken certain security measures. In Wisconsin, this required the innkeeper to:

- have locks on guest-room doors;
- provide a notice in each guest-

room that the hotel will accept valuables for safekeeping and is not liable for losses of valuables not so tendered; and

- keep a safe or vault suitable for the valuables and receive them when tendered by a guest.

The Court then proceeded to survey the circumstances under which the various states of the US had permitted an innkeeper to be insulated from liability for loss of valuables which resulted or were alleged to have resulted from negligence or gross negligence on the part of the innkeeper, or related innkeeper or third party criminal activity.

First, it considered an 82-year-old Wisconsin case in which notice requirements had been met, but the loss occurred from the theft or gross negligence of the innkeeper's employees. There was no ordinary negligence alleged on the part of the innkeeper. The court in that case held that, at a minimum, the notice and delivery requirements that were laid out in the statute did not protect the innkeeper from gross negligence of himself or his servants (see *Busley v Hotel*

*Wisconsin Realty Co*, 164 NW 826 (Wis 1917).

The *Mallak* Court went on to survey what it stated was a dearth of decisions from other states in the area, concluding that the decisions it had reviewed 'all indicate in one way or the other that the statutory limitations found in laws like Wisconsin's (a) do not relieve the hotelkeeper from liability based on acts of its own employees, and (b) merely modify the duty of insurer that the common law otherwise imposed on innkeepers, replacing it with a negligence regime'.

The cases included one that found no insulation from liability where a purse-snatching was found to be due to the negligence of the porter or servants of the hotel (*Rockhill v Congress Hotel Co*, 86 NE 740 at 741-742); another in which the innkeeper statute was limited where the case alleged the loss occurred through the negligence of the hotel (*Shamrock Hilton Hotel v Caranas*, 488 SW 2d 151 at 153 (Tex Civ App 1972)); and a case which alleged negligence and gross negligence, including knowledge of the loss of a master key for the area

where the plaintiff was staying, in which the court concluded that the innkeepers' law only modified the common law rule of strict liability (*Kutbi v Thunderlion Enterprises, Inc*, 698 P 2d 1044 at 1048 (Or App 1985)).

Also discussed was a New York case, in which a guest who had already checked out and was waiting in a cab in the hotel's driveway, had her purse snatched. The court found that, notwithstanding the hoteliers' liability laws, the hotel had a continuing duty to reasonably protect its guests from the criminal acts of third parties (*Penchas v Hilton Hotels Corp*, 603 NYS 2d 48 (App Div 1993)).

Following its review of those opinions, the *Mallak* Court went on to conclude that even if a Wisconsin court would rule that Fairfield Inns could rely on the notice provisions of the statute (even though *Mallak* had not had the opportunity to review the notice in his room before he was assaulted), the Court of Appeals was reasonably confident that the Wisconsin court would not extend protection where the allegations were that it was an 'inside' job.

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