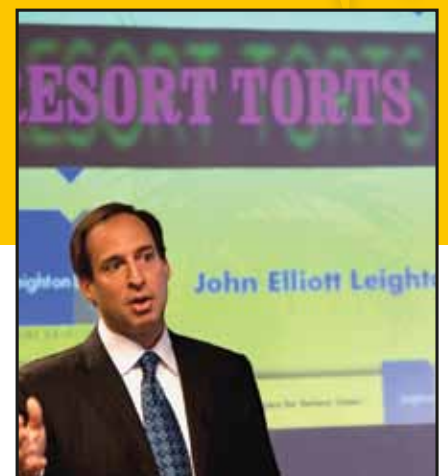


# ResortTorts™

## Vacation, Resort and Recreational Liability Seminar



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Each year, more than 80 million people come to Florida – one of the most resort-enriched locations on the planet. Even the tiny town of Key West, with its permanent population of 25,000, hosts 2 million visitors a year. The resort business is Florida's economic base, even in difficult economies. In fact, the state tends to benefit from a downturn because it is less expensive for American travelers to come to Florida than travel to an international destination.

What happens when people go on vacation? They want to relax and leave their troubles and cares behind. They are encouraged to do so by the travel industry. And so they let their guards down. They leave behind that sense of "looking over my shoulder" and thinking about what is safe. They assume or want to believe that there are built-in safety measures in their hotel, resort or cruise ship. They are not thinking about the inadequate lighting that criminals notice or the slippery floors around the perimeter of the swim-up bar. They are also encouraged to drink heavily in their unfamiliar vacation environment, since alcohol is a significant revenue source for resorts, restaurants and cruise ships. Put this all together and you have the makings of tragedy

– an accident, a crime or a negligent action that results in serious injuries or death.

Our goal with these ResortTort™ seminars is to help educate attorneys – both plaintiff and defense lawyers – so that hopefully we can prevent some of the injuries, accidents and deaths that occur within the resort, cruise or other vacation experience.

## What Is a Resort Tort?

Resort torts are instances of civil liability for negligent or intentional acts that arise out of a resort, vacation or recreational setting. They come in all shapes and sizes and can occur almost anywhere in Florida – the common focus is that they involve leisure recreational activities and travel. Therefore, a resort tort can involve:

- Hotel and motel safety
- Cruise ship injuries
- Leisure boating and jet ski incidents
- Amusement and theme park liability
- Aquatic, diving and swimming incidents
- Foreign travel and medical emergencies
- Gaming and casinos
- Aviation (commercial and general)
- Rental car liability
- Moped, bicycle and motorcycle safety
- Buses and tour guides
- Travel industry liability for crime victims
- Medical care provided to vacationers

Of course, many of these issues can affect residents as well as visitors. For instance, our beaches are packed with people from Florida as well as other locations. Improper maintenance and security, for example, is a liability issue for many condominiums, regardless of whether they cater to visitors or year-round residents.

There are countless examples of all the unfortunate things that can happen at a resort, vacation or

recreational location. Deaths, injuries, sexual assaults and other violent crimes do occur, even in Florida's most popular theme parks, though many have been successful in keeping things quiet when problems occur. Transit by planes, trains, automobiles and boats also pose multiple inherent dangers, not to mention taxicabs, rental vehicles, theme park buses, city tour buses, and helicopter tours.

Now take a resort and place it in the middle of the ocean, in foreign waters. The potential for injury and disaster multiplies. Today, South Florida is the resort cruise capital of the world, with floating cities sailing daily from the Port of Miami or Port Everglades. Most ships are flagged in Liberia, Panama or The Bahamas, where the laws are different than in the U.S. If there is a problem with a violent crime on a cruise ship, for instance, it is more difficult to involve the FBI. There is a huge amount of litigation in terms of who has jurisdiction when it comes to personal injury and wrongful death cases.

People also get hurt or become crime victims on shore excursions. A launch headed for shore may be pitching from one side to the other, and a passenger breaks her leg trying to board. A jitney carrying passengers might hit another vehicle, resulting in multiple injuries. And don't forget about the cases of flu, diarrhea and other infections like norovirus that can break out onboard a cruise ship.

Casinos, whether on a cruise ship or not, also provide an environment ripe with potential for disaster. Surrounded with the distractions of bells, whistles, sirens, nearby disco music, and potentially losing a fortune, the gamers are also drinking steadily. It's no surprise that people fall, fights break out, and injuries occur when bouncers toss patrons out. In South Florida, the Seminole Hard Rock Casino in Hollywood with its clubs, shops, restaurants, entertainment and gaming is a Disney World for adults – or maybe more like what used to be Disney's "Pleasure Island." As an attorney, it's important to remember that the Seminole Tribe is a sovereign nation. They cannot be sued except in the tribal courts, where there is typically little chance for recovery. It's important to know where an accident occurred. If something happened at a restaurant within the Hard Rock, the franchisee operating it could potentially be sued even though the tribe owns the premises.

In Florida, boating is another major source of injuries and death. Many people who drive a car think it's easy to drive a boat – even while intoxicated. For local residents and visitors alike, it is dangerous to get into a boat with an owner who is unqualified or too impaired to operate it. One case we handled involved the owner of a boat franchise who went out to a nightclub with his wife. They brought several people back to the house and drank some more. Then the owner took them for a boat ride at 2:00 a.m. and hit a dock, killing our client's 19-year-old daughter. "BUI" – boating under the influence – is just as serious as DUI. In that case the drunk boater went to prison for manslaughter. There can also be problems with U.S. Coast Guard certifications of a rental boat, as there are specific requirements as to what needs to be on board for flotation devices and rescue equipment.

Jet Skis provide another source of accidents and injuries. They are like motorcycles on the water and are very dangerous to the people operating them and those

This special supplement is an overview of "Resort Torts: Vacation, Resort and Recreational Liability," a continuing legal education seminar provided by Leighton Law, P.A. on May 6 at the SunTrust International Bank Building in downtown Miami. Brenda B. Shapiro, Esq., managing partner of The ShapiroKuendig Law Group, moderated the session, which was presented by John Elliott Leighton, Esq. and hosted by the *Daily Business Review*. Leighton Law, P.A. produced this supplement in cooperation with the marketing department of the *Daily Business Review*, independent of the editorial staff of the *Daily Business Review*.

in the water nearby. Anyone can go to a resort and rent a Jet Ski with little or no instruction. If there's a problem, the result can be anything from a herniated disk to death.

### Premises Liability

Many Resort Torts involve premises liability at hotels, resorts, amusement parks and nightclubs. It is key to first consider the duty owed to the plaintiff. Was the plaintiff an invitee, a licensee or a trespasser? Their status affects the duty owed to that person. Did someone breach that duty? What did the plaintiff do wrong? Also consider the issue of causation: Did the defendant's actions cause the damage to the injured party? If not, then the victim does not have a case.

As a general rule, property owners have a duty to keep their premises in a reasonably safe condition to protect the invitee from dangers of which the owner is aware, should be aware, or might reasonably foresee.

The first duty is to eliminate or guard against harm. If that is not possible, the owner has a duty to warn the invitee of hidden dangers. An effective warning is one which is clear and gives the consequences for failure to follow the warning, such as "severe injury or death." However, some signs don't do that. For instance, a warning to "beware of alligators and snakes" doesn't say what you should do. Does it mean you should run away?



Stay out of the water? Or stand still hoping the animal goes away?

As for a trespasser, there is no duty to warn, except when the owner has some knowledge that a third party is using the property. If a trespasser is injured while intoxicated or under the influence of drugs, the trespasser is barred from recovery unless the owner caused the injury through gross negligence or intentional conduct. Fla. Stat. 768.05.

Consider the situation of someone who goes to a bar to drink, enters an employee-only area of the establishment and is injured. Is that person a trespasser? The defense lawyer would certainly call that person an intoxicated trespasser and therefore barred from recovery. But are they? Is it unforeseeable?

In *Barrio v. City of Miami Beach* 698 So. 2d 1241 (3 DCA 1997), the court held that the owner had no duty to a plaintiff robbed and shot on the beach at 3:00 a.m.,

saying the beach was closed and the plaintiff was an uninvited licensee.

In another case – *Smith v. Markowitz*, 486 So. 2d 11 (3 DCA 1986) – a plaintiff wandered onto the defendant's property to take a shortcut and tripped on a visible above-ground water pipe. The court ruled there was no liability, and the plaintiff was deemed a licensee. The moral: Don't take shortcuts through people's property!

Just because a person has one status when entering the property, don't assume that status remains constant. For instance, if an invitee exceeds the scope of the invitation, that person could become a trespasser instead. The status is determined at the time of injury. In *IRE Florida Income Partners v. Scott*, 318 So. 2d 1114 (1 DCA 1979) the court ruled there was no duty when a plaintiff who took a shortcut on the property became a trespasser. In *Byers v. Radiant Group*, 966 So. 2d 506 (2 DCA 2007), a plaintiff was involved in an altercation in a parking lot some time after leaving a convenience store. The court held it was a jury question as to when the plaintiff's invitation to the store had expired, and found that the violent behavior of the plaintiff, in itself, did not change his status.

The basic test of status is the "benefits" test. Was the individual on the property for the benefit of himself or the owner? If for himself, the person is a licensee or a trespasser. If the person was invited or provides an economic benefit for the owner, then the individual is an invitee. If a licensee's presence is known or foreseeable to the owner, courts typically apply the same standard of care to a licensee as to an invitee. Thus, many courts have abandoned the benefits test.

### Slip and fall liability

Slip and fall liability cases revolve around issues of proof as to how the plaintiff fell and what caused the fall. For many years, plaintiffs' attorneys had to prove the business knew something was on the floor, such as a spilled liquid in a grocery store. Then the Legislature passed a statute putting the burden of proof on the owner. That statute was abrogated by the Legislature last month. With support from the Florida Retail Federation and Associated Industries of Florida, the Legislature passed a new law – Fla. Stat. 768.0755 – that requires the plaintiff to prove the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it.

Because resorts in Florida have a variety of flooring surfaces, and it is common for there to be water on some floors, proving slip and fall negligence may be more difficult. Visitors are often unaware of how long slippery substances may have been sitting on a floor surface, and may not have the ability or presence of mind to speak to witnesses or even get names when they are injured.

### Lighting and illumination

Most counties and cities have municipal codes requiring a certain amount of lighting, generally for parking lots, walkways and buildings. This type of case requires an expert who knows the standards and can measure the lighting and illumination levels.

For example, many banks have companies come to their branches several times a year to perform lighting surveys. The illumination is normally measured three feet from ground at 0, 1, 5, 10, 20, and 50 feet from the ATM, based on Florida statutes. Additionally, Miami-Dade County has a lighting ordinance setting minimum

## Some issues to consider in hotel premises security cases:

- Hotel policies and procedures. Do they meet industry standards?
- The surrounding neighborhood. Is it safe or not?
- Access to hotel grounds. Are there trespassers wandering around?
- Housekeepers and maintenance staff. Do they go into the rooms and leave the doors open or not?
- Hiring and supervision. Has the hotel conducted an adequate background check on employees who come into contact with the public?
- Hardware and locks. What kind of equipment is used to secure a room, including the windows and terrace as well as the doors?
- Elevator access. Do guests have to show a room key before accessing the lodging floors?

illumination. Clearly, this type of city or county ordinance can be very relevant to the case.

Also, the industry association IESNA (Illumination Engineering Society of North America) has lighting standards for roadways, buildings and common areas. So even when there is no code or ordinance, the owner might have violated an industry standard.

### Evidence of prior incidents

Evidence of prior incidents can be used to help a plaintiff prove a premises liability case. Remember that the property owner has to give timely notice of latent or concealed perils and has a duty to warn invitees.

The first step is to gather incident reports. The defense will argue that they are privileged, however, the information in those reports is not privileged, especially when a plaintiff has to prove prior knowledge. *Liberty Mutual v. Kimmel*, 465 So. 2d 606 (3 DCA 1985).

The next step is to obtain a copy of any lease or contract between the owner and the business. In cases involving lessors and lessees, the duty usually turns on possession and control of the property. *Haynes v. Lloyd*, 533 So. 2d 944 (5 DCA 1988). Most of the time, both parties can be sued. Regarding the common areas of a building, the lessor is usually responsible. *Federated v. Doe*, 454 So. 2d 10 (3 DCA 1984). *Publix v. Jeffery*, 650 So. 2d 122 (3 DCA 1995)

In other cases, businesses may be held liable for actions that occur off premises if they know their patrons use a nearby property, as in *Borda v. Voodoo*

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*Lounge*, 950 So. 2d 488 (4 DCA 2007) and *Holiday Inns v. Shelburne*, 576 So. 2nd 322 (4 DCA 1991). In the Shelburne case, the Holiday Inn was held to have a duty to its patrons as it was directing them to park in a particular parking lot.

### Swimming pool liability

In Florida, most kids learn to swim at an early age. That's not always the case with visitors who come to Florida to enjoy the beaches, lakes and pools. In Florida, there is not a statutory duty to provide lifeguards at pools, but the courts have held that the failure to provide one may be a jury issue.

In these cases, the undertaker doctrine must be considered: an owner who undertakes a duty, has to do so responsibly. *Pickett v. City of Jacksonville*, 20 S.2d 484 (Fla. 1945). In cases like *Frost v. Newport Motel*, 516 So. 2d 16 (3 DCA 1987) there was no liability for failure to have a lifeguard. However if a resort caters to children, there may be a duty created based on the facts.

### Outsourcing a duty

In many premises liability cases, a plaintiff seeks to hold the resort responsible for the actions of its employees or "independent contractors." Today, many businesses have outsourced their employment without necessarily making sure those people have had adequate training, putting visitors at risk. In *Stoll v. Noel*, 694 So. 2d 701 (Fla. 1997), the court held that an independent contractor can also be an agent of the business. These cases turn on specific facts: What people do and how they perform their duties, as in *Stuyvesant v. Stahl*, 61 So. 2d 18 (Fla. 1953). Therefore, it is important to review their contract before proceeding with depositions.

In cases of actual agency, the principal acknowledges that the agent will act on his behalf, the agent accepts that role and the principal has control over the actions of agent. *Robbins v. Hess*, 659 So. 2d 424 (4DCA 1995). But there are also matters involving apparent agency, when someone who is not an actual agent does act in a way that benefits the principal, such as a resort or hotel. *National Indemnity v. Consolidated*, 789 So. 2d 404 (4 DCA 2001). It is sometimes called

"agency by estoppel" and it is created by the facts of the case.

The courts have held that agency does not turn on the labels the parties have chosen to place in a contract. *Robinson v. Linzer*, 758 So 2d 1163 (4 DCA 2000). Issues of agency should be issues of facts for the jury to determine. In many cases a jury will infer an agency relationship when there are facts that employees are not clearly identified as being employed by others.

### Medical care

Medical care cases are a big issue in Florida and resort destinations. Accidents can happen in remote locations when snorkeling, scuba diving or riding an airboat in the Everglades. How is a resort or hotel held liable for the medical care rendered by a doctor who is not an employee of the resort? This is an important concern, particularly if the doctor does not have malpractice insurance. The courts have found that if a hotel makes a recommendation or referral, then liability is triggered. The hotel therefore has a duty to exercise reasonable care. *Riedel v. Sheraton Bal Harbour*, 806 So. 2d 530 (3 DCA 2002). In other words, a hotel has no duty to provide healthcare, but if it undertakes to do so, it must do so responsibly.

## Premises Security

Many types of Resort Torts fall into the premises security category. In Florida, every landlord, owner and lessee owes a duty of care to the public to eliminate and protect against reasonably foreseeable intentional acts of third parties. The business is not an insurer of the public safety, but does have a duty to protect against a reasonably foreseeable act.

Hotels have a non-delegable duty to provide reasonably safe premises to guests. *U.S. Security Svs. v. Ramada Inn*, 665 So. 2d 268 (3 DCA 1996). A hotel may contract its security services to another company, but the hotel remains liable. While a plaintiff might want to sue the security provider as well, the resort or hotel is on the hook. In these cases, the owner's actual or constructive knowledge of the likelihood of disorderly

conduct by third persons is sufficient to establish foreseeability.

What gives rise to premises security cases in hotels? A major area of concern is access to a hotel's guest rooms. For security purposes, most hotels today use plastic key cards with a magnetic stripe that can be changed at any time, and front desk clerks in the hotel lobby no longer announce a guest's room out loud where others could hear the room number. However, there are ways for criminals to circumvent those controls, perhaps by riding up in the elevator and following someone to a room, or loitering in a hall until a guest starts to leave the room.

Many commercial establishments – including shopping centers, restaurants and hotels – have closed circuit television (CCTV) systems in place. That provides the means to monitor almost every area of a commercial property, including the lobby and parking lot. But is someone watching the monitors or have they fallen asleep? Are the cameras actually recording the video and, if so, how long is the video retained? Most of the time, businesses are more concerned about internal theft than protecting guests from violent crime.

The first step in a premises liability case is to deliver a spoliation letter to the defendant demanding that they preserve all evidence including videos, documents, and other electronically stored information. Then the failure to preserve could give rise to a spoliation claim.

In these cases, it helps to work with a security expert from the early stages of the case. There is also no substitute for visiting the crime location, to see firsthand where and how it occurred.

### The issue of foreseeability

Some premises security cases turn on the issue of foreseeability. Should the hotel, resort or other establishment have been able to foresee the possibility of a violent crime or other incident?

Police records often provide a good starting point to investigate the foreseeability issue. Crime grids can provide an indication of the location and number of reported incidents near the hotel or resort, and incident reports often shed further light on the location.

Sometimes the police reports include the names of witnesses who can be contacted. At other times they might provide clear substantiation, such as: "We responded to the hotel and spoke to the manager, who told us that another person had threatened a guest last month."

If the case is considered "open," the police agency might refuse to provide more information. But records must be provided to the extent that they don't interfere in an ongoing criminal case. That is especially true for open cases that are two or three years old; at a minimum, records with some redactions should be obtained.

The defendant's internal records should be reviewed, including incidents that were not reported to the police, as well as the insurance company's records of claims and incidents. Prior lawsuits should also be researched and considered. Has the defendant been sued before in this type of case? If so, details and contact with the plaintiff's lawyer in the matter are essential. Never underestimate the value of a prior lawsuit.

Industry and trade associations can be another source of information. What types of crimes and what frequencies have been reported to the organization? Are there certifications that are typical for workers in this field?

The defense will spend a lot of time battling over



discovery, because it is so important to the case. Evidence should be requested aggressively and persistently, taking as long as necessary. If the defense tries to coach the witnesses or interfere with questions, the discovery can be stopped, and the judge consulted directly.

## Turf & Surf: A Wide Range of Torts

Resort Torts can occur at many locations other than hotel properties. Theme park and amusement park scenarios can cause anything from hot coffee spills to fatal transportation accidents. A Florida case – *Rainbow Enterprises v. Thompson*, 81 So. 2d 208 (Fla. 1955) – suggests that theme parks may have a higher duty of care to keep their premises in a reasonably safe condition. But in *Walt Disney v. Goode*, 501 So. 2d 622 (5 DCA

1987), a theme park's liability for a child drowning was determined by the ordinary rules of negligence and the park's duty to invitee.

Theme park rides seem an obvious source of risk and potential disaster. Interestingly, the U.S. Consumer Products Safety Commission (CPSC) only has jurisdiction over non-fixed amusements, such as inflatable bounce houses and carnival rides. Theme parks are regulated by state and local authorities that may not have the money or the skills to enforce their regulations. Local governments also rely on theme parks for tax revenue and local economies rely on them for employment.

### Bars and nightclubs

Bars and nightclubs are rife with potential risks. A bar or nightclub has a duty to take action even in a situation of one patron attacking another. *Henry v. Zelaya*, 841 So. 2d 572 (3 DCA 2003) and *Hall v. Billy Jack's*, 458 So. 2d 760 (Fla. 1983). In Florida, the totality of the circumstances determines the duty, and a prior similar act

is not necessary in order to bring a case. Another relevant case is *Priester v. Grand Aerie of Fraternal Order of Eagles*, 688 So. 2d 376 (3 DCA 1997), which supports a bar's liability if it knowingly serves a guest who is intoxicated and a known alcoholic.

Bars and clubs face another liability issue: drink spiking. This can happen when a substance like a "roofie" or GHB is dropped into a drink, causing the drinker to become uninhibited and typically leading to a sexually assault. Some of these drugs can cause amnesia, so often the evidence is gone when the victim regains awareness. This is a real problem on South Beach and other nightclub 'areas'. One of the ways bars are combating this issue is to scan everyone's ID upon entrance, creating a record of who was present at that time. They can also warn patrons not to let a drink out of sight, and not to take drinks from strangers. Some bars are even putting caps and lids on drinks.

### Water activities

Water parks are great conductors of bacteria – just think of all the kids in swim diapers. Back in 1998, there were 26 cases of bacterial infection and one death at a Georgia water park with low chlorine levels. Other problems occur because of the height of a water slide – someone slips and goes over the edge. There are also cases where a slide breaks when someone goes down the chute.

Beaches can also present problems with waterfront activities often operated by an independent party. These operators are rarely held to industry standards or regulations – or there may be no standards for a particular activity.

A major case litigated by Leighton was a tragedy suffered last year in Pompano Beach. He represented the mother of two girls, age 15 and 17, who were staying at a major resort and were encouraged to go parasailing. In this case, the operator stayed close to shore, rather than head further out to



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sea. It was a windy day with choppy water, and other parasail operators had decided it was too dangerous to fly. The boat was pushed toward the shore, its winch stopped working and the line snapped, propelling the girls into a building at 50 or 60 miles per hour. One girl died and the other had severe head trauma.

In this case, Leighton proved that the operators of the parasail activity were agents of the hotel, which benefited financially from their activities since the hotel's directory offered water sports and parasailing and had signs promoting it posted around the property.

### Cruise ships, motorboats and Jet Skis

Cruise ships represent all the hazards of any resort on land, and then some. Passengers get sick and die; ships run aground; violent crimes occur. Furthermore, the courts have ruled that a cruise line's liability does not cease when a passenger steps off the ship, especially when the company benefits financially from shore excursions. *Carlisle v. Ulysses*, 475 So. 2d 248 (Fla 3 DCA 1985).

Under federal maritime law, the owner of a ship in navigable water owes a duty to everyone on board to exercise reasonable care under the circumstances of each case. The federal Death on the High Seas Act (DOHSA) covers fatalities on a cruise ship, but there are differences in the law, depending on where the death occurred. Generally, the State of Florida has assumed control of the

first three miles of coastline water. If a death occurs on the high seas, a suit under DOHSA can only be brought for the recovery of pecuniary losses actually suffered by the survivors. *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990). Within the three-mile limit, Florida's wrongful death act applies.

In terms of accidents and injuries, cruise ships are not liable for the medical care rendered by their independent contractor doctors. *Carlisle v. Carnival Corp.*, 864 So.2d 1 (Fla. DCA 2003). Those doctors do not have to be licensed nor are they required to have insurance. In *Howard v. Crystal Cruises, Inc.*, 41 F.3d 527 (9th Cir. 1994), a passenger was injured while disembarking from a cruise ship in Mexican territorial waters. He was treated on the vessel, underwent surgery in Acapulco and returned home to California, where he died within a month from blood clots. His widow filed a wrongful death suit against the operator of the cruise ship, and the court applied DOHSA as the exclusive remedy.

Cruise ship injuries call into question the passenger contract or ticket for passage. There is generally a one-year statute of limitations, and that restriction has been upheld by the courts. There are also forum selection clauses included in these tickets, which require cases to be brought in federal courts in Miami for most companies (Carnival, NCL, Royal Caribbean, Celebrity) or in Seattle for Holland America.

### Rental cars

Florida is the rental car capital of America, and many drivers are unfamiliar with driving here – including foreign visitors who are accustomed to driving on the left side of the road. The law in Florida has been the dangerous instrumentality doctrine. If you own a vehicle and entrust it to someone, you are primarily liable. Under longstanding law, if a renter takes a car and allows someone else to drive it, the company was still liable. However, under heavy lobbying, the Legislature passed a law capping damages for rental car providers at a maximum of \$500,000.

In 2005, a federal statute called the Graves Amendment effectively eliminated all vicarious liability for rental car companies where there is no direct negligence or criminal wrongdoing on the part of the rental car company, up to the limit of the state minimum financial responsibility limit. The courts have now held that the Graves Amendment, 49 U.S.C. § 30106, is controlling and therefore the dangerous instrumentality doctrine does not apply. *Kumarsingh v. PV Holding*, 983 So. 2d 599 (Fla. 3 DCA 2008).

## RESORT TORTS

# Q&A

### Q. Is a resort's waiver of risk valid?

**A.** To be valid, such a waiver or release must be clear and unequivocal so an ordinary person would know what they are contracting away. *Cain v. Banka*, 931 (So. 2d 575 (5 DCA 2006)). In the past, a parent could not sign away a child's claim in a release. However, a new state statute overturns that to some degree. Now, a parent or guardian can waive the child's rights if it is an inherent risk in the activity. See Fla. Stat §§ 549.09 and 744.301.

### Q. What if you refuse to sign a waiver for a cruise ship?

**A.** As practical matter, you can sign it, cross out the provision and initial it. Then, you certainly have a jury issue in saying that you didn't consent to the waiver.

### Q. We've all seen signs like "swim at your own risk." How easy is it for the property owner to avoid liability by posting those signs?

**A.** Generally, those warning signs don't carry a lot of weight. The defense would have to prove that the person saw the sign and recognized the warning. But if there's a resort on a beach with a severe drop-off in the ocean, for example, it would need to be proven that the hotel knew of a risk and that it had a duty to warn its guests. These types of questions are generally issues for the jury to decide.

### Q. What about the dram shop law in Florida (§768.15)?

**A.** Bars or restaurants are liable only if they serve someone who is habitually addicted to alcohol or a minor. In the case of a minor who uses a fake ID, the question becomes: Should the bar have known it wasn't a real ID? Did they act reasonably?

### Q. Do bars and nightclubs carry insurance coverage?

**A.** We are increasingly seeing them operate without insurance or with major coverage exclusions, such as liquor liability or assault and battery exclusions. These are terrible policies all around, but because they are considered matters of contract, the courts uphold these exclusions.

### Q. Let's say a woman was followed home from a bar in the Brickell area and assaulted in her condominium. How many potential defendants would there be in the case?

**A.** You could go after the bar, but that would be a tough case to prove. You might have a better claim against the building. Traditionally, security in apartments and condominiums is not top-notch.

### Q. Is there a difference between the mobile rides at the Dade County Youth Fair and Disney World?

**A.** Yes. At Disney, they are considered fixed rides. They are not regulated by the CPSC but by the state. It's like a mobile home when you take off the wheels after it's placed on a lot. The mobile rides are under the jurisdiction of the CPSC but are often not inspected.

### Q. Is parasailing regulated in Florida?

**A.** No. We are trying to get a bill passed in the Legislature. This is an activity that should be regulated and the legitimate operators are in favor of it. It's a white hat issue and there is no reason to oppose it.

### Q. What about the question of jurisdiction when overseas, such as renting a moped in The Bahamas?

**A.** It can be difficult to hold a foreign business liable in the U.S. You generally need to find a connection to Florida in order to keep a case in Florida.

### Q. I had a case where the court ruled that the U.S. was the appropriate forum for a lawsuit involving a Spanish company, but that was just the start of the battle.

**A.** Yes. The court might also decide to apply the law of the jurisdiction where the accident occurred. And certainly the battle over *forum non conveniens* is huge. To win that fight, you might have to show there is not an adequate remedy in the other jurisdiction.

### Q. What is your experience with open criminal cases? Is there a time limit for getting records from a police department?

**A.** Every agency is different. Usually, after two or three years you have good argument for obtaining the files. In most cases, even with actual pending cases, you should be able to obtain basic information.





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## John Elliott Leighton Board certified trial lawyer

Mr. Leighton is the Chairman of The Academy of Trial Advocacy and Co-Chairman of the Inadequate Security Litigation Group of the American Association for Justice (AAJ). He is a Founding Member of the Resort Tort Litigation Group and Past Chairman of the Motor Vehicle, Highway and Premises Liability Section of the AAJ. He is on the Board of Trustees of the National College of Advocacy and on the Board of Advisors of the National Crime Victim Bar Association.

Mr. Leighton provides clients with extensive experience in the area of Resort Torts, including cruise ship, maritime, and violent crime/negligent premises security. Among his cases is the high-profile parasailing case in Pompano Beach, Florida, where he represented the mother of 15-year-old Amber May White against the parasail operators and the resort where Amber May was killed and her sister injured due to negligent parasailing operations. Mr. Leighton has spearheaded legislative efforts to bring some regulation to this industry. His efforts in Tallahassee have resulted in a bill which he and the family hope to make law next year.

Mr. Leighton received the Advocate of Justice Award from the National Crime Victim Bar Association for his work in representing violent crime victims against corporate defendants. He is the author of *Litigating Premises Security Cases*, a two-volume book published by Thomson West, which provides comprehensive analysis on investigating, preparing and trying inadequate security cases and representing crime victims. He frequently lectures at national legal programs and has spoken and taught at seminars, colleges and conventions in over a dozen states.

He is a Board Certified Specialist in Civil Trial Law and appears in *The Best Lawyers in America*, Florida SuperLawyers (Top 100 of Florida SuperLawyers), South Florida Legal Guide "Top Lawyers," and Florida Trend Magazine's "Florida Legal Elite"™. He holds a Martindale-Hubbell rating of AV and a 10/10 ("Superb") rating on AVVO.COM.

Many of Mr. Leighton's cases are high profile or have wide-reaching social implications. Several cases have resulted in policy or procedure changes on the part of the businesses or governmental entities sued. He is often called upon by local and national media to comment on legal issues, including NBC's *The Today Show*, *Inside Edition*, and many other news programs.

### RECOGNITION

- Board Certified Specialist in Civil Trial Law
- AVVO.COM 10/10 ("Superb") rating
- Martindale-Hubbell AV rating
- The Best Lawyers in America
- Florida SuperLawyers™ (Top 100 of Florida SuperLawyers)
- "Top Lawyer in South Florida," *South Florida Legal Guide*
- *Florida Trend Magazine* "Florida Legal Elite"™

### MEMBERSHIPS

- The Academy of Trial Advocacy - Chairman
- American Association for Justice - Co-Chairman, Inadequate Security Litigation Group; Founding Member, Resort Tort Litigation Group; Past Chairman, Motor Vehicle, Highway and Premises Liability Section
- National College of Advocacy (Board of Trustees)
- Melvin M. Belli Society
- Academy of Florida Trial Lawyers/Florida Justice Association (Eagle member)
- American Board of Trial Advocates (ABOTA)
- American Bar Association, Tort and Insurance Practice Section
- Cooperative Association of Medical Malpractice Attorneys (Charter member)
- Dade County Trial Lawyers Association (Past Director)
- Bar Associations: Florida, Miami-Dade County, Monroe County, Miami Beach, Cuban American, Orange County, National Crime Victim Bar Association, Miami-Dade Justice Association

### ADMITTED TO PRACTICE

- Supreme Court of Florida
- United States Court of Appeals, Eleventh Circuit
- United States District Court
- Southern District of Florida (General and Trial Bars)
- Middle and Northern Districts of Florida
- State Courts *pro hac vice*: Texas, Wisconsin, Georgia, New York, Indiana, North Carolina, Illinois

### EDUCATION

Juris Doctor (*with honors*), The University of Florida (Law Review, Trial Team, and Teaching Fellow)

Bachelor of Arts (*with honors*), The University of Florida

# Serious Lawyers for Serious Cases.™

**Leighton Law** focuses on representing plaintiffs in complex and catastrophic personal injury and wrongful death cases, with special emphasis on violent crime/negligent premises security, medical malpractice, trucking, aviation, cruise ship/maritime, product liability and Resort Torts™.

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