

## Franchisor Liability for Terrorism Abroad

by [Andrew C. Hall and Matthew Leto](#) on Oct 10, 2016 Categories: [franchisor liability](#)



When U.S. citizens travel abroad, it is not uncommon to consider the potential for terrorist activity at their destination. For instance, recent events in France and Belgium demonstrated that the risk for terrorism has not diminished since 9/11. As a result, consumers naturally look to familiar hotel chains, such as Marriott and Hyatt, in order to alleviate their concerns under the assumption that these large corporations have protective measures in place to ensure the safety of their patrons. However, what these large hotel chains do not advertise is that many of their properties are owned by independent third party operators pursuant to a franchise agreement. Despite the fact that their names are emblazoned on the building, franchisor involvement related to terrorism security may be minimal.

Due to the protections the law affords franchisors using this arrangement, consumers are sometimes left without a remedy against the

franchisor for acts of terrorism that occur abroad notwithstanding the franchisor's presence in the United States. Even where it can be shown that franchisors are involved in aspects of their franchisee's business operations, plaintiffs will usually be faced with motions to transfer the entire matter to the location of the attack on the basis of forum non conveniens. Fortunately, the trend in recent years has been to allow cases to remain pending in the United States based upon the obvious difficulties that would exist relative to safety and the emotional trauma that would occur if the family member of a terrorism victim was required to return to same location of the horrible act that took the life of or injured their relative.

In *DiFederico v. Marriott Intern., Inc.*, 714 F.3d 796 (4th Cir. 2013), a U.S. government contractor was killed after a bomb exploded at the Marriott Islamabad. The district court initially granted Marriott's request to have the matter transferred to Pakistan. On appeal, the Fourth Circuit reversed and found that "the fear and emotional trauma involved in travel to Pakistan for a trial concerning such a politically charged event would give rise to a bevy of logistical concerns and expenses." *Id.* at 805. The court concluded 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.” *Id.* The *DiFederico* opinion was based upon the Second Circuit opinion in *Guidi v. Inter-Cont'l Hotels Corp.*, 224 F.3d 142 (2d Cir. 2000), wherein that court reversed the district court’s decision to dismiss a case based upon forum non conveniens arising from a terrorist shooting at the Inter-Continental Hotel in Egypt. The Guidi court also determined that “justice is best served [ ] by acknowledging the unique and heavy burden placed on Plaintiffs if they are required to litigate in Egypt.” *Id.* at 147. Although courts appear to be sensitive to the safety and emotional concerns surrounding the location of a lawsuit, overcoming this initial hurdle should hardly be considered a complete victory for terrorism victims. That is because when analyzing a franchisor’s responsibility for injuries that occur on the premises of a franchisee, courts throughout the United States employ and “instrumentality based approach” and will find liability only where the franchisor retains control of the operations of the franchisee or control of or the right to control the specific instrumentality of the harm. See e.g. *Allen v. Greenville Hotel Partners, Inc.*, 409 F. Supp. 2d 672, FN 3 (4th Cir. 2008) (“A Franchisor may operate a franchise establishment or control the instrumentality at the franchise establishment that causes injury and thus owe a duty to patrons of the franchise.”); *Bartholomew v. Burger King Corp.*, 2014 WL 1414975 at \*4 (D. Haw. 2014) (adopting an instrumentality focused franchisor liability test); *Toppel v. Marriott Intern., Inc.*, 2008 WL 2854302 at \*10 (S.D.N.Y. 2008) (denying franchisor, Marriott’s motion for summary judgment, holding that question of fact existed as to the extent by Marriott exercised control over the instrumentalities that gave rise to plaintiff’s injuries). In light of that standard, franchisors regularly assert that they do not assist their franchisees in any meaningful way in the area of security and that any standards imposed are merely suggestions. In order to rebut that proposition, a plaintiff will logically require information from the franchisee. Obtaining this information can sometimes be difficult, if possible at all. For example, if the particular country where the franchised property is located is not a signatory to the Hague Convention, a plaintiff will face incredible obstacles to compelling the production of records that may never be overcome. While that is occurring, the franchisor will take the position that it has no control over the franchisee and cannot obtain the documents through other means. This puts a premium on the plaintiff’s lawyer’s ability to secure records from the franchisor and other third parties in order to identify the level of control exercised over a franchisee’s security features. If the records demonstrate franchisor oversight and control, the plaintiff will have a strong case. If not, the plaintiff’s case against the franchisor will fail. In most cases, franchisors exercise extensive control in the area of terrorism security in order to protect its patrons and the reputation of its brand. Circumstances where this does not occur are more of an aberration.

*Andrew C. Hall is the founder and managing partner of Hall, Lamb and Hall, P.A., a Miami-based law firm specializing in complex corporate, business, and securities litigation.*

*Matthew P. Leto is a commercial litigator who handles business, real estate, personal injury and appellate cases.*

*The firm can be contacted at 2665 S. Bayshore Dr., PH 1 Miami, FL 33133 (305) 374-5030 [www.hlhlawfirm.com](http://www.hlhlawfirm.com)*