

## STORY OF THE DAY

# Bridging Troubled Waters

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Popular vacation destinations such as California, Hawaii and Florida offer travelers picturesque coastlines, warm weather and sandy beaches. For those seeking to take advantage of those attractions, hotels on or near the water offer ideal accommodations. While these picturesque coastlines can be beautiful places to relax and sunbathe, hidden below the surface can be dangerous natural

hazards. Although these beaches are often owned and managed by the city or county in which they are located, under certain circumstances, a hotel can be held liable for failing to warn guests of these naturally occurring, dangerous conditions.

Injuries caused by natural conditions, such as sandbars or riptides, constitute the basis for many of the lawsuits brought against hotels for injuries sustained on beachfront property.

The majority of courts hold that in order for a hotel to have a legal duty to warn of dangerous conditions at a beach—for example, the prevalence of rip currents—the hotel must exercise sufficient control over the beach. Control in this context does not mean actual ownership of the beach property; rather, control will be implied where the hotel possesses an area and demonstrates intent to control it. Although the question of control will depend on the facts of each case, there are certain factors a court will generally consider in making its determination.

These factors include who has the authority to dictate who may use the beach; whether guests were invited by the hotel to use the beach; whether the hotel facilitated the use of the beach; whether the hotel sets up chairs, umbrellas or the like on the beach; and whether the hotel derives revenue from the beach. Generally, courts have been reluctant to imply control of beach property by a hotel, even when the hotel encourages the use of the beach by guests. Most cases that have found a duty to warn based on control have either been brought against the municipality that actually owns or controls the beach or have been based on implied control of the land portion of the beach rather than the water portion.

Even if a hotel is found to exhibit the requisite control over the beach area, it does not have a duty to warn beachgoers of every possible danger. Generally, the danger must be foreseeable, in that the hotel must have notice of the condition, in order for the duty to warn to arise. An example involves a claim brought by a swimmer who sustained injuries when he executed a surface dive in the ocean and struck a sandbar. The court ruled the defendant could not anticipate a danger to swimmers simply from the existence of the natural shifting condition of sandbars and the fact three similar incidents had occurred in a 24-year period did not give the defendant notice.

The second theory of hotel liability employs a test of foresee-ability. In these cases, courts have found a hotel operator has a duty to warn of foreseeable dangers at the beach, regardless of whether the hotel has any control over the area. In order to be foreseeable, the hotel must have some knowledge of the dangerous condition. In one such case, a guest at a hotel walked to the beach across the street. While in the ocean, the guest suffered serious injury. The court stated it was not a question of whether the hotel had control over the beach, but whether the injury sustained by the guest was foreseeable. If it was foreseeable that the guests would go to the beach and be injured by dangers that the hotel knew or should have known of, the hotel would have a duty to warn of these dangers.

Nonetheless, many courts hold there is no duty to warn of naturally occurring conditions. In a case employing this theory, the plaintiff sued a hotel for the drowning death of her husband off the coast of Brazil, which she alleged was due to the hotel's failure to warn of treacherous ocean water. In dismissing the plaintiff's lawsuit, the court found that even if the hotel had exhibited control over the beach area and could have foreseen the dangerous surf conditions, there was no duty to warn of a natural phenomena occurring in ocean beaches.

Although the case law is not nationally uniform as to exactly when a hotel has to warn guests of naturally occurring conditions, some states have enacted statutes that directly address the issue. For example, Hawaii enacted a statute to determine liability for beachfront hotels, which states:

*In a claim alleging injury or loss on account of a hazardous condition on a beach or in the ocean, a hotelkeeper shall be liable to a hotel guest for damages ... resulting from the hotel guest going onto the beach or into the ocean for a recreational purpose ... only when such loss or injury is caused by the hotelkeeper's failure to warn against a hazardous condition on a beach or in the ocean, known, or which should have been known to a reasonably prudent hotelkeeper, and when the hazardous condition is not known to the guest or would not have been known to a reasonably prudent guest.*

Because of the uncertainty surrounding a hotel's duty to warn, precautionary measures may be the most appropriate form of action for hotels and other accommodation providers to take. Even simple steps, like erecting a sign on the beach, may be successful and cost-effective ways to warn guests of possible beach dangers. One court even suggested a simple warning from a hotel pool attendant that the beach water was rough will satisfy a hotel's duty to warn. However, because the law is different in every state,

contacting a local attorney is the best way to find out the extent of hotel liability in that particular area and how a duty to warn can be satisfied.

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