

IN THE COURTS

Hotels' 'Duty Of Care' Doesn't End At Property Line

By **Hannah Garcia**
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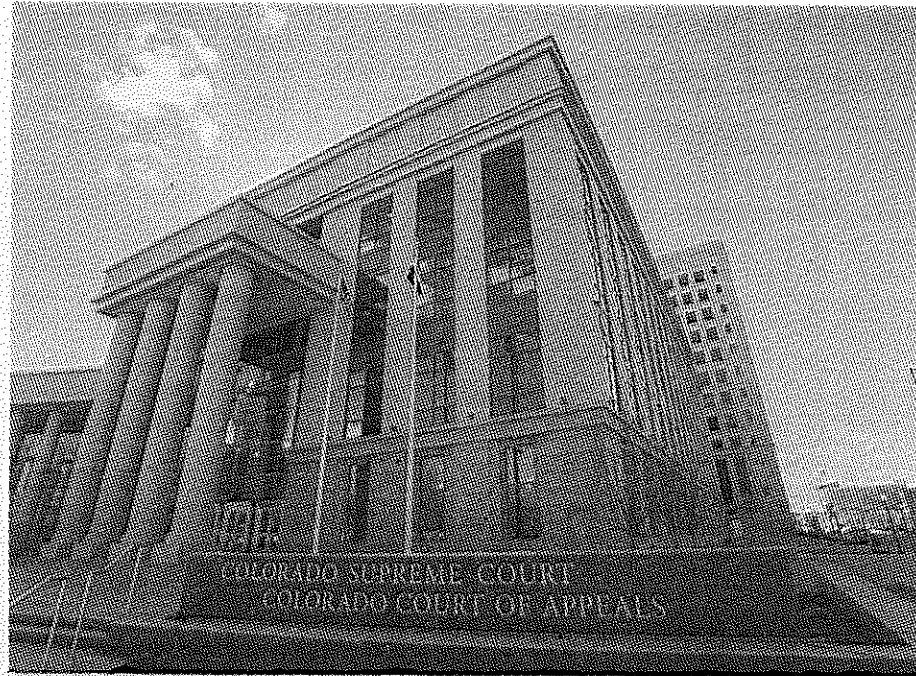
WHEN A HOTEL evicts a guest in Colorado, the inn's "duty to exercise reasonable care" doesn't end when the patron walks out the front doors.

In a case of first impression, the Colorado Supreme Court held in an April 13 decision in *Westin Operator v. Groh* that "based on the special relationship that exists between an innkeeper and guest," that duty includes "refrain(ing) from evicting an intoxicated guest into a foreseeably dangerous environment." The dissent agreed with this general premise but diverged in its application to Groh's case.

Attorney Dick Waltz, whose Waltz Law Firm represented Westin, declined to comment in an email because the firm is preparing for further proceedings.

After booking a room in the hopes of avoiding the drive home, Jillian Groh and friends returned to the Westin Denver Downtown Hotel around 2 a.m. on March 4, 2007, after a night of drinking.

"Jillian and her friends did absolutely the right thing by booking a hotel room so they wouldn't have to drive," said Alan Shafner, who represents Groh. "They did exactly what you're supposed to do, and they wound up in a car because the security guards violated procedure on how



In an April 13 decision the Colorado Supreme Court said hotels cannot evict intoxicated guests into a dangerous environment. | LAW WEEK FILE PHOTO

you should treat a guest, and bad things happened."

According to the opinion penned by Justice William Hood, security guards ended up evicting the group after "a heated confrontation" about noise "even though Groh and her companions advised the guards that they were drunk

and could not drive." Prior to the confrontation, there were no noise complaints from other guests, according to the opinion.

When one of Groh's friends asked a guard if the group could wait for a taxi in the lobby because of the freezing temperature, he said, "No, get the f--- out of

here." Seven people ended up piling into Groh's PT Cruiser with an intoxicated driver, and the vehicle rear-ended another 15 miles away on I-225 two hours later, resulting in one passenger's death and "a persistent vegetative state with traumatic brain injuries" for Groh. Several other passengers were injured, as well.

Although there was evidence that there were taxis around the hotel when they were evicted, several of Groh's friends testified that they did not see any. While police were on the premises for an unrelated incident, security guards did not seek their intervention, according to the opinion.

Groh sued the Westin through her parents for negligence, premises liability, breach of contract and negligent hiring and training, though the Supreme Court only addressed the negligence claims. Groh's attorneys argued the hotel "failed to exercise a minimum level of due care" when it evicted the guests with knowledge that they were intoxicated but did not consider consequences regarding their safety. Groh also contended the two security guards and night manager who had a hand in the eviction were negligently hired and trained.

CONTINUED ON PAGE 20...



BACKGROUND CHECKS

CONTINUED FROM PAGE 4...

act, however; the complaint is filed with the Department of Labor, which then investigates the incident and can impose penalties if it finds the company in the wrong.

The Consumer Credit Reporting Act of 1996 is more a concern for credit reporting agencies, but it explicitly limits the information the agencies can provide in Colorado, most significantly omitting any negative credit events more than seven years old.

As for significant employment screening-related cases on the horizon, Fano said his firm isn't monitoring any that have to do with credit reporting. However, the Equal Employment Opportunity Commission has been taking some aggressive stances as of late, he said, some of which may affect how employers conduct criminal background checks.

On Feb. 20, the 4th Circuit Court of Appeals threw out the EEOC's case against Freeman, a convention services provider. The commission alleged that Freeman's use of criminal background checks in hiring decisions had disparate impact on African-American male applicants, violating the Civil Rights Act. The EEOC filed similar discrimination suits against Dollar General and a BMW factory in South Carolina, which are both yet to be decided in U.S. district courts.

"Because the EEOC has put that near the top of its priority list and had issued some pretty far-reaching position statements ... we watch that closely," Fano said.

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HOTELS

CONTINUED FROM PAGE 9...

"This has been a battle that will never end," Shafner said. "It started in March 2007, and now we're in April 2015. At least the Grohs have an opportunity to present their case in front of a jury."

Both the trial and appellate courts ruled the hotel had no "duty of care" to guests, but the Court of Appeals reversed course after Groh's attorneys filed a petition for rehearing. A new panel withdrew the first opinion and reversed the trial court's summary judgment order on the negligence claims, holding that "a hotel must evict a guest in a reasonable manner, which precludes ejecting a guest into foreseeably dangerous circumstances resulting from either the guest's condition or the environment." Westin petitioned the Supreme Court to review the case, and the case was remanded.

"The Westin argues that even if it had a duty to Groh, it ended 'at the property line' when she exited the hotel. While alluring in the abstract, this argument suffers from a false premise," according to the majority opinion. "The scope of the property does not define the scope of the duty; whether the risk of harm originated during the eviction process does."

Justice Allison Eid, who authored the dissent and was joined by Justice Nathan Coats, agreed with the majority's assertion that the hotel owed its guests a general duty of reasonable care during

eviction but called the position "entirely unremarkable."

"The important question in this case, however, is the application of that duty to the circumstances presented here," Eid wrote. "In my view, the duty was plainly satisfied, as the group discussed taking a taxi, Groh's brother told her to take a taxi, video footage shows Groh and her companions walking by two taxi cabs on the way to her car and there is no suggestion that Groh was so intoxicated that she could not call or get into a taxi."

Shafner said he became involved in the case after a series of referrals.

"When I first came in and met the Grohs and some of the people involved, the facts didn't make sense, because the information from the hotel indicates the Westin evicted the entire room with the aid and assistance of the Denver Police Department. If they did that, game over," Shafner said. "But as a lawyer, you start looking behind door No. 3. The reality was completely different than Westin's version of events."

Groh's parents are her full-time caretakers after quitting their jobs, Shafner said.

"The thing that's very, very interesting about this case is that no one ever said Jillian Groh did anything wrong — in fact the contrary. No one at the Westin has any evidence that Jillian Groh did anything improper," Shafner said. "That's what the whole irony of this thing is."

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