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CHTA Live: The Resilience Series - "Risk Management: Liability Waivers in a COVID-19 World"

Thursday, July 23, 2:00 – 3:15PM

Q & A

1. **What actions are contemplated if guests fail to follow protocols?**

LARRY BASHAM: It is human nature to drop your guard a bit when you are on vacation. As hoteliers, we frequently remind visitors to use the same common-sense safety precautions they use at home. However, we also know that convincing guests to do simple things like lock their doors and windows can be a challenge. When dealing with a guest who is not following Covid-19 safety protocols, you should first determine whether the guest simply forgot—or is flat out refusing to comply. In the first instance, hotel staff should politely approach the guest, and gently remind them to please adhere to relevant safety protocols for the guest's own safety, and the safety of other visitors and hotel staff. In most cases, the guest will probably be more than happy to follow the rules. In the case of a difficult or unruly guest, a manager should intervene and explain to the guest—as a matter of fact—that the resort greatly appreciates the guest's business, but refusal to adhere to safety stands will result in eviction from the hotel; and in some cases, may result in fines or criminal charges. If the guest continues to defy local rules and ordinances, evict them from the hotel (and notify the office of the island's Chief Medical Officer or other relevant authority where required).

2. **Suggestion: There should be some advocacy/lobby to CARICOM Governments to request a special insurance coverage for COVID-19 on behalf of the tourism industry. We have already been completely "damaged" by this pandemic and we are not able to pay for any coverage for our operations and be able to adequately recover.**

FRANK COMITO: Good idea. Requires considerable efforts, expertise, and funds to advance this. We have reached out to the managers of the Caribbean Catastrophe Risk Insurance Facility which was established in 2007 and is funded by contributing jurisdiction governments to see how a model like this might apply to the establishment of some sort of private sector supplemental insurance. While this is a worthy effort, the challenge for CHTA, given the many priorities which are needing to be addressed, how do we identify the considerable support resources and expertise which would be required to advocate for and establish this.

LARRY BASHAM: Ideally, governments will enact laws that prevent or substantially limit lawsuits based on Covid-19 exposure. Typically, these laws will mandate that businesses are "held harmless" from any claims relating to Covid-19 exposure. This would make it very difficult for most hotel guests, employees, and others to file a successful claim. Claimants may still try to get around these limitation of liability laws by claiming they are victims of "gross negligence" or a "willful act;" but these types of claims can be hard to prove, and are therefore less likely to be filed in the first place. While some



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type of regional insurance solution is an interesting concept, I would prefer to see actual laws put in place to prevent or limit Covid-19 claims. Otherwise, business and even governments can and will be subjected to a barrage of lawsuits.

3. **It is extremely important that we all come together as an industry from Hotels, Airlines, Car Rental Companies, Cruise Lines, Governments and Local/International Organizations and Associations. Also The Human Resources, Security, Loss Prevention and Risk Management departments must work together as never before.**

FRANK COMITO: Agree. CHTA has been working with a number of the abovementioned partners to address various aspects of the recovery challenge and commits to continuing in this area – with our Caribbean Tourism Covid-19 Task Force being a good example of this approach.

LARRY BASHAM: Amen! Most of the world sees the Caribbean as a region, and we must be seen to be working cohesively and responsibly. When one island wins, we all win.

4. **What should be the focus for marketers with small budgets; the travel trade or consumers?**

LARRY BASHAM: Luckily, in this day and age, you can do both—even with a small budget. For smaller hotels with high volumes of repeat guests, regular updates and communications with past guests via email, social media, handwritten postcards, and even telephone calls are great ways to foster loyalty and stay top of mind. Digital tools like Google My Business, TripAdvisor, YouTube are easy, cost efficient, and effective. If you have a bit more to spend, start (or continue) working with an experienced digital marketing guru (in-house or outsourced) who can make sure you are maximizing your SEO, SEM, digital display and programmatic ads, retargeting, and cart abandonment efforts. These too are usually very cost-effective tools for staying in front of relevant consumer eyeballs. With regard to the travel trade, there is so much you can do without spending a lot of money (or in some cases, any money). Phone calls, webinars, newsletters, online meets, contests, giveaways, incentives, sales guides, and the list goes on and on in terms of what you can do to generate loyalty and excitement amongst suppliers and travel agents. Get creative!

5. **Does the signing of a waiver by guests protect the hotel from negligence on its part?**

LARRY BASHAM: Waivers certainly help, and are good place to start. In most cases, waivers (acknowledgement and assumption of risk and a covenant not to sue) will protect the hotel from most claims—except, perhaps, claims alleging “gross negligence” or some type of “willful” misconduct. Talk to an attorney in your jurisdiction. They can advise you with regard to the design and wording of waivers that can best protect your interests in light of specific laws and legal precedents in your country.



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6. Where you are a foreigner entering a country of destination and the country has a penalty for falsified information is found... should this penalty T&Cs be included?

LARRY BASHAM: You can always include a sentence advising visitors that it is illegal to knowingly falsify information relating to Covid-19 (including personal information regarding their recent travels, Covid-19 exposure, and so forth). Sometimes this helps motivate visitors to be truthful. Whether you “should” include this information or not is up to you, and should be based on your experience with gaining truthful compliance from your customers. Again, you may want to speak with an attorney in your country to see if your business is legally obligated to provide any such notices in writing. This will help you avoid any technical pitfalls.

7. So what if the employees decide to sue?

LARRY BASHAM: This is a good time to contact your insurers to clarify what is, and is not covered in respect of Covid-19 claims. In some jurisdictions, Covid-19 claims may be deemed to be workplace injuries (even though it is entirely possible that the employee was exposed while shopping in town, or by family members living under the same roof). Next, review your employment agreements, your collective bargaining agreement (if any), and your local labor laws (or Labour Code). This way, you the contractual provisions, and the law, fresh in your mind. You will probably have greater luck including Covid-19 assumption of risk and promise not to sue language in employment contracts for your senior managers. They are typically deemed to be sophisticated individuals with access to legal counsel. This is not always the case with line staff. If you force line staff to sign some type of waiver, they might successfully claim that they signed “under duress,” and the waiver should be null and void. Moreover, most employee claims will be based on the EMPLOYER’S alleged failure to provide a safe workplace. The more safety measures you put in place (and enforce and document), the better position you will be in. This is true even if you don’t have any lawsuits, which should be your goal in the first place. Following CDC and local guidelines will reduce your exposure to lawsuits by reducing your employee’s exposure to Covid-19. If an employee does become sick and sue, you will be able to clearly show that you went above and beyond to provide your employees with adequate protection (this includes everything from providing basic PPE to enforcing cleaning, disinfection, and social distancing protocols, etc.). Talk to an experienced labor attorney in your country to fully understand your exposure, and what you can do right now to mitigate it.

8. With all of the webinars and protocols observed, in the case of jet-ski operators, yoga instructors or mobile spa therapists who work around the hotels, is there an advertised list of tourism services where visitors can check to see if these providers are approved? Similar to a Trip Advisor stamp of Approval etc.



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FRANK COMITO: Not at a regional level. This will vary by destination. Recommended standards are in place which should apply to all services by CHTA with CARPHA and our regional partners. These have been backed by regional training. A number of jurisdictions have standards and support training in place for various tourism services and several destinations have established criteria which the various service providers must have in place in order to operate.

9. **ILO has designated COVID 19 if contracted in the workplace as a work place injury. However if negligence can be proved then there is a potential for liability I would think. Do you agree?**

LARRY BASHAM: Some jurisdictions have decided that Covid-19 exposure among essential workers is “presumed” to be a workplace injury. In the event of an employee lawsuit, the company then bears the burden of showing that the “presumption” of Covid-19 being a workplace injury is FALSE. To do this, you will need to clearly demonstrate that your company has continuously taken reasonable steps to provide and maintain a safe workplace (ie, following CDC and local guidelines for business). Going a bit above and beyond never hurts. Look at the claimant’s social media. Have they been out partying every night in crowded places with all their friends? Have they been posting comments like, “Who cares, you only live once”? Can you build a case that your workplace is probably the safest place this individual visits, and is therefore not like to be the point of exposure. When it comes to negligence, the current lawsuits, like the Amazon.com workers lawsuit, tend to claim some type of “gross negligence” or that the company is only providing the “façade of compliance” with CDC and local guidelines. To protect your employees and your business, you need to go beyond providing a “façade” of compliance. You need to comply, and document your efforts. This, and good local legal advice, will go a long ways toward protecting your business from Covid-19 liability and negligence claims.

10. **Is it advisable to allow asking for information regarding the guest's past movements for a period before arriving at the lodging destination to be required of a guest?**

LARRY BASHAM: This should typically be a function of Immigration authorities upon arrival. Hotels should probably not get involved in this level of guest scrutiny unless the guest tests positive for Covid-19, and the hotel is then required to assist with contact tracing.