

Upside to tsunami lawsuit

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A lawsuit filed in a New York court last week may help shed light on two major problems still left unsolved by the Dec 26 tsunami _ finding out really what happened, and making the industry much more careful about the rebuilding process.

According to news reports, a group of Austrian and German victims of the tsunami was to file the lawsuit against Thai authorities, the French hotel chain Accor and the US-run tsunami early warning system in the Pacific, demanding that they "prove they reacted properly to the disaster".

The groups' lawyers said last Tuesday in Vienna they found that "serious lapses were committed." They claimed they were not demanding compensation but rather seeking to uncover "evidence that would prove negligence".

According to the reports, the group is mainly targeting the National Oceanic and Atmospheric Administration (NOAA) in Washington and its Hawaii-based tsunami warning centre; the Accor group of hotels where several Western tourists stayed; and the Thai government.

The suit accuses the NOAA of failing to warn Indian Ocean countries of the tsunamis as the Hawaii centre covered only the Pacific.

The NOAA and Thai authorities could have saved thousands of lives if they had passed on their alerts at the right time, the lawyers were quoted as saying.

"We have evidence they did not warn us, even though they knew a quarter of an hour later about the strength and location of the quake," one of the lawyers was quoted as saying.

The group also accuses Accor of building its Sofitel Khao Lak resort, on a quake fracture line.

Ed Fagan, a US lawyer, said he would ask a US court to ensure the preservation of satellite imagery and contacts between the NOAA, Thailand and Indonesia _ documents he says would be needed in the case.

Tim Robinson, a British lawyer who does much work for the Bangkok-based Pacific Asia Travel Association, said that while it was right to try and get to the bottom of what happened, using the courts may not be the best means of doing so.

"The courts of the US, in the adversarial context of suing for damages, are not the right forum for a proper examination of what did or should have happened or what should occur in the future," he said.

"The object of this legal exercise is primarily to recover damages. There is no guarantee whatsoever that the right evidence and witnesses will be called to achieve a genuinely constructive policy for the future. These witnesses are, of course, lined up to prove and disprove a case. Their evidence is tailored and restricted to these purposes.

In Bangkok, David Lyman, senior partner in the law firm Tilleke and Gibbins, said: "There is a mentality among some common law lawyers, principally in the U.S., that if anyone is injured or

killed for any reason, that some other human, entity or enterprise of man is to be held responsible. The mindset is always to look for or find someone else to blame and to pay for the loss or damage."

He noted that tort (wrongful act) lawyers often charge on a contingent fee basis. If they lose they collect no fee, but they collect a "huge percentage" of any award.

In Sydney, Accor's director of communications for Asia-Pacific, Peter Hook, commented: "The reaction of anybody I have spoken to in the industry to this suggestion of a lawsuit is one of amazement and even disbelief.

"We cannot speak on behalf of the US or Thai authorities, but what we can say is that the Sofitel staff did absolutely everything they could to assist their guests in the few minutes that it became apparent that something unusual was occurring on the water.

"In fact, one of our executive assistant managers, who rushed down to the beach to try and warn guests, lost his life saving two elderly guests. In the light of such heroic actions, I think many people would find a lawsuit of this kind quite repugnant.

As to its construction along a fault line or alleged violation of local zoning laws, Mr Hook said the hotel was built by a German company not Accor.

Mr Robinson said he did not think the suit would be accepted.

Even if it isn't, the mere fact of the publicity it has attracted will go a long way towards ensuring that future developers factor local zoning and other laws into their plans, rather than just build right at the doorstep of public beaches.

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