

NEGLIGENT PREMISES SECURITY: LIABILITY & LITIGATION

Contributing to a Reduction in Violent Crime at Commercial Premises

Florida has been the number three state for inadequate security claims (behind Texas and New York but ahead of California). In the 1990s, Miami was the number one city for overall crime per 1000 residents, ahead of virtually all other metropolitan areas. Broward County ranked third in the country in crime. In



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2008 there was one violent crime every 4 minutes and 11 seconds in Florida.¹

Negligent security cases generally involve an injury to an individual as a result of a criminal assault or robbery on a commercial premises. These frequently occur at malls, shopping centers, hotels, motels, office buildings, schools, parking lots, or parking garages. In most negligent security cases, the plaintiff who has been

injured due to a criminal act brings an action against the owner, manager and/or business at the premises. These are the entities that are in control of the property where the crime occurred.

INADEQUATE SECURITY LITIGATION ON THE RISE

The field of inadequate security litigation has exploded in the last two decades. Considered the “product liability case of the 1990s,” premises security cases have increased in number and value. According to a study by Liability Consultants, Inc., the average settlement in a rape security case is \$600,000, and the average verdict in the same type of case is \$1.75 million. The average verdict in an assault in a hotel or motel is \$254,850, with 25 percent totaling \$1 million or more.

These figures are sobering for businesses and landowners, and they seem to be taking notice. Enhanced security measures are visible everywhere, from security personnel to surveillance cameras. New laws are even being passed to require enhanced security measures by entire industries.

For example, in July 2010, The Cruise Vessel Security and Safety Act was signed into law, requiring new security measures on cruise ships. The act requires that cruise lines report to the FBI all crimes aboard cruise ships, and take actions to protect the crime victims. It requires cruise lines to install peep holes on all cabin doors, comply with 42-inch guard rail height requirements, and maintain an emergency sound system, among other safety measures. Shipboard medical care must also be provided for victims of sexual assault, and medical staff onboard must know how to collect forensic evidence and report crimes in international waters.

Penalties for non-compliance range from stiff fines to denial of entry into the United States.

DUTY AND FORESEEABILITY

Inadequate premises security litigation is an outgrowth of premises liability law. Therefore, it is essential to understand the applicable law – particularly the concepts of “duty” and “foreseeability.” As in all tort cases, a duty must first be established as a threshold for liability. The nature and extent of that duty will depend on the nature of the premises, the foreseeable criminal activity on and/or near the premises, and the relationship of the parties.

A landowner breaches duty to use reasonable care by failing to make diligent searches or inspections at reasonable intervals for dangerous conditions that might be created by invitees or third parties. *Boatwright v. Sunlight Foods*, 592 So.2d261 (Fla. 3d DCA 1992)

The duty of care owed by a landowner to invitee with respect to protection from criminal acts is dependent upon foreseeability of such acts. *Admiral's Port Condominium Ass'n. v. Feldman*, 426 So.2d 1054 (Fla. 3d DCA 1983); *Medina v. 187th Street Apartments*, 405 So.2d 485 (Fla. 3d DCA 1981)

Inadequate premises security cases can be difficult and expensive to litigate, yet they play a major role in creating corporate and individual deterrence, and creating an incentive for businesses to provide adequate security. It is as a consequence of this litigation that we now see security guards, better lighting, improved design and an overall security awareness that was not present 20 years ago. ¶

¹Florida Department of Law Enforcement statistics, 2008.