

Keeping Plaintiff's Lawyer's Hands Out of Your Pockets: Avoiding Premises Liability for Third Party Criminal Acts

September 15, 2009

Sometimes it's the company you keep and sometimes it's just a matter of trying to keep your company. When a third party commits a criminal act on your premises, it is important to take care that your business does not become a victim as well. Generally, business owners and lessors may be held liable for injuries occurring on their business premises when they knew or should have known of the condition that caused the injury, and failed to remedy the condition. It is good business planning to take a few minutes to assess what liability you may have as premises owner or lessor for the criminal acts of third parties. While this article deals with Louisiana law, the general principles apply in other states. Your legal advisor can provide you with a state-specific assessment of potential exposure.

Wait a minute! I wasn't even there. How can I be held responsible?: In cases involving third party criminal acts in Louisiana, Courts have adopted a duty-risk analysis, requiring the plaintiff to prove that (1) the conduct in question was the cause-in-fact of the resulting harm, (2) the defendant owed a duty of care to the plaintiff, (3) the defendant breached that duty and (4) the risk of harm was within the scope of protection afforded by the duty breached. The threshold issue is whether the defendant owed the plaintiff a duty. In deciding whether to impose a duty, the court is allowed to make a policy decision in light of the facts and circumstances presented. In general, landowners and business owners are not the insurers of their patrons' safety. However, landowners and business owners do have a duty to implement reasonable measures to protect their patrons from foreseeable criminal acts. Determining whether a crime is foreseeable becomes the critical inquiry. But how could I have known?: Louisiana has adopted a balancing test for determining when a business owner owes a duty to provide security for patrons. The greater the foreseeability and gravity of the harm, the greater the duty of care that will be imposed. The plaintiff has the burden of establishing the duty the defendant owed under the circumstances, including the existence, frequency and similarity of prior incidents of crime on the premises and the location, nature and condition of the property.

But it was the middle of the night and the business was closed!: At least one court has held that the limited duty of business owners to protect the general public does not extend to hours when the business is closed to the public. In other words, a criminal act on a customer or employee after business hours is not foreseeable.

Can I be held responsible for being in a bad neighborhood?: Another factor which may be an issue is the crime in the area of business's property. Recent decisions are mixed concerning the relevance of crime in the neighboring area. Some courts have looked at crime statistics for an area in determining whether the criminal act at issue was foreseeable. Other courts have determined that this type of evidence was not relevant. The crime statistics in the area of a business's property may provide additional support for the position that an act was not foreseeable, depending on what those statistics reflect.

But I hire security...: Generally, there is no duty to protect against the unforeseen criminal acts of third persons. However, once a property owner undertakes a duty to protect, that duty must be exercised with due care. A business owner undertakes a duty to protect when it provides security in its common areas. If security is provided, it is critical to make sure that the level of services are adequate. Usually, expert testimony is needed at trial to defend inadequate security claims. Whether or not a business's security measures are adequate can be analyzed on the basis of case law (that is, what measures courts have found to be adequate) and by working with consultants in the field.

Can I protect myself if I am merely the lessor? For lessors, particular attention should be paid to your lease language. Liability for injuries occurring on the leased premises can be contractually shifted to a lessee. The shift should follow the statutory language that authorizes the shift.

So should I just shut my doors? Of course not! Don't give up yet. We recommend contacting your legal advisor to discuss how to protect your property against crime and how to protect your business against becoming a secondary victim of third party crime. As with all types of crime, the best protection is being alert to danger. Please contact us with any questions.