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## **Watch Your Back: What You Are Not Seeing in Your Negligent Security Case**

### What is Negligent Security:

Security as a profession and its correlation to any form of negligence and foreseeability is usually determined by two factors; failure to maintain industry best practices and an analysis of the geographical area and times a crime(s) occurs. If private parties are to be held liable for security negligence from criminal acts, they will need to determine how to develop security programs that are reasonably calculated to defend against the foreseeable risks uniquely associated with their obligations to those to whom they owe a duty to protect. Since those obligated to protect others from the foreseeable risks of crime are most often businesses, a good place to start is with the enterprises adherence to industry standards.

### Duties of those involved:

His/her status on defendant's premises is generally split into three categories: Invitee; Licensee; and Trespasser. As the landowner it's important to test whether we can classify the individual as a trespasser, because the law limits the duties owed when the injured party is a trespasser. The distinction between the two is whether the landowner possesses a generalized knowledge of whether individuals come onto the subject property prior to any incident occurring. A landowner's only obligation is to personally avoid willful or wanton harm to plaintiff.

To assess whether one classifies as a trespasser, one must satisfy the test: whether, "the occupier by his arrangement on the premises or other conduct has led the entrant to believe that the premises

were intended to be used by visitors for the purpose which this entrant was pursuing.” The rationale is, “[a]n owner cannot, however, be held liable for a negligent condition as to an undiscovered trespasser who chooses to come upon his property without his knowledge. It is unreasonable to subject an owner to a ‘reasonable care’ test against someone who isn’t supposed to be there and about whom he does not know.”

If one is not classified as a trespasser, the individual is typically classified as an invitee. Under this status, the premises owner has a duty to exercise reasonable care to maintain his premises in a reasonably safe condition and protect his/her invitees from harm due to reasonably foreseeable risks of injury, including foreseeable criminal activity. The premises owner also has a duty to keep common areas reasonably safe and to provide adequate security measures to protect tenant from reasonably foreseeable criminal activity.

Other factors to consider is Defendant’s control of the premises; and whether the owner completely surrenders possession and control of premises then tenant has sole duty. However, be mindful if the owner leases but retains control over common areas – owner has duty in common areas – not the tenant. This is also the case if the owner remains any type of discretion over the property. Generally, if there’s ever a doubt, unfortunately, the owner will remain on the hook (at least as a co-Defendant).

#### Know your Defendant/Conduct a Site Survey:

One of the most important things to do right off the back is to conduct a site inspection, either personally, through counsel, or through an independent adjuster. You want to know not only the property, but the surrounding areas. As it relates to the property, look at the conditions of the property. Is it laid out in such a way to create a hazard – be mindful of methods of ingress and egress. Alternatively, is it equipped with extra lighting, gates, or cameras that record, accessible via a monitoring company, or play directly into the local police department to deter crime.

During your site inspection, interview the owners and their staff. Informal discussions will likely help more than you know. Assess whether the property has a maintenance, doormen, security, and patrol (on staff or through an independent contractor). For those employed by your insured, assess what training is actually available. For example, (a) does the company use incident reports; (b) keep employee logs, (c) utilize job descriptions, policies and procedures, and instructions for employees, and (d) bring in outside

training. Utilize the saying, trust but verify. Not only ask about the above-referenced factors – ask to see the documents, policies, etc. Saying the company utilizes certain documents and procedures and then putting those to use can be two separate things. This will make or break a case.

As it relates to the surrounding areas, its very important to pull the local crime grids. Contemporaneously with doing this, make sure you are distinguishing those crimes that occur on the property and those in the surrounding areas. For purposes of trial, it's a preference to get the smallest amount admissible at trial. You can see what your court's preference is by filing Motions in Limine prior to trial. You can also file motions to distinguish between the type of crimes. For instance, the types of crimes should be limited to the type involved in the subject incident. If a murder, try to limit it to those involving guns. Move to exclude crimes involving domestic violence and non-gun related crimes. This will help limit Plaintiff's arguments on "foreseeability."

In addition to the following, other factors to consider when evaluating:

1. Industry Standard(s) - ASIS International; a non-regulatory body of security management and practitioners as well as other security organizations promote security standards and best practices within the industry, which are also used in the absence of actual legislation. Terms such as *guideline*, *suggested practice*, *recommended practice* and *model statute* are used as a benchmark for what a security practitioner should strive for.

Why Crime Grid Analysis is Important? Crime Grid Analysis is used by the security professional to map, visualize, and analyze crime incident patterns. Various methodologies can be used by Security Risk Managers to determine the particular nuances of crime predictors and management. Crime is neither systematic nor particularly random. It ebbs and flows with cycles of human input, but particular places incentivize certain crimes. Risk management must be used to quantify, qualify, and mitigate specific concerns an organization or body may discover or define. It is critical to identify the spatial and temporal patterns for a better grasp of specific crime events and to theorize their correlation. Using maps and time series data, practical crime prevention solutions can be developed that can be juxtaposed to specific places and times. Spatial data mining is a uniquely qualified field to enable the analysis necessary to develop effective crime forecasting. The aforementioned term of forecasting is a useful technique that allows the Security Risk Manager to mathematically project future crime by using the facility's crime history. It can project specific crime concerns as well as the times, days, and locations of these future crimes

Crime Grid Analysis provides context to absolute crime levels. Crime rates are one of the best methods for comparing crime at various facilities. Crime rates (expressed as a ratio such as the number of crimes divided by number of visitors per day) should be used whenever possible as they offer the most accurate reflection of crime at a site by taking not only the crime level into account, but also the population or traffic level of the facility. Coupled to a Crime Rate analysis, should also be a Risk analysis. The latter focuses on the identification of the assets to be protected and the risks to those assets. Within the scope of this arena, assets can be defined as people, facilities, property and reputation. Security surveys must be conducted in order to determine specific risks, threats and vulnerabilities. By utilizing the population or traffic levels, a Security Risk Manager is able to make comparisons of facilities under his or her control, to similar businesses in the area, and to larger geographic areas such as the city in which the facility is situated. Crime analysis is the logical examination of crimes which have penetrated preventive measures, including the frequency of specific crimes, each incident's temporal details (time and day), spatial (geographic) and the risk posed to a property's inhabitants, as well as the application of revised security standards and preventive measures that, if adhered to and monitored, can be the panacea for a given crime dilemma

Crime Grid Analysis can also be supplemented by using two other techniques designed to determine crime in a more narrow scope – Temporal and Spatial analysis. Temporal analysis; the trending of crime by time period (day, time, season, etc.) allows the end user to effectively allocate scarce security resources during peak time periods to reduce loss and mitigate potential liability. Spatial analysis is used to assist in the deployment of scarce resources but focuses on the locations within a geographic region where crimes are likely to occur.

### Criminal History of the Assailant

In addition to the foregoing, one last factor to consider is the criminal history of the assailant. You can do this by search public records of local clerk dockets as well as arrest records through the local police departments. The twist will likely turn on the Court's willingness to admit same. Arguments in favor are for a comparative negligence standpoint, if factors regarding the underlying tort give rise to something like a drug deal or other criminal activity. Additionally, if there is a surviving spouse or children, sometimes court will allow criminal activity in to show the relationship between the survivors and the decedent. Best advice, get your Judge's ruling early, so you can plan your strategy accordingly.