



## Corporate Exposure: Premises Liability (Part I)

Harry P. Mirijanian

As the world we live in becomes more violent, businesses have had to become more vigilant in protecting themselves from criminal activity. We know that businesses have an obligation to protect their customers from many potential hazards on their premises—slippery floors—for example. But what responsibility do they assume when the hazard comes from a third party in the form of a criminal?

Some might say that a business is not responsible for actions committed by a criminal on their property. But the law is increasingly holding businesses liable for the criminal acts of others. Unfortunately, many businesses do not know the specifics of premises liability laws. This month we define premises liability and examine a case in which a business was found liable. Next month will offer a picture of which businesses are at the most risk—and how they can minimize their exposure.

Premises liability is defined simply as an organization's responsibility to protect its customers from any reasonably foreseeable risk, even one presented by a criminal. Recently, a New Jersey man sued the golf course he was playing on because he was struck by lightning. While this may be an extreme case, in truth the law is transferring negligence from the third-party source—in this case, Mother Nature—to owners viewed as negligent. Premises liability is a part of risk management many businesses are oblivious to. They may believe that it is the responsibility of the police, or they

may think they do not owe customers protection against people outside their organizations. Time and again, however, the courts have repudiated this belief, and have told surprised businesses that they are responsible for taking reasonable precautions to prevent criminal activities. The awards in these cases can go into six and seven figures—in other words, a premises liability case could bankrupt an unsuspecting business.

### What are you truly liable for?

The law looks at a number of elements when deciding whether a business acted negligently toward customers attacked by a third party. The bulk of premises liability cases cover hotels, apartments, stores, and supermarkets, although many other cases occur in offices or other business premises. Add to this the increasing nature of crime and the tendency of the law to hold owners liable, and premises liability becomes an issue for virtually every business.

What can happen when a business does not know the specifics of premises liability laws? The following case answers that question.

A woman leaving a shopping mall was attacked by three young women while putting packages into the trunk of her car. Investigators concluded that the young women had been parked nearby for more than half an hour, observing customers leaving the mall and going to their cars. Further, it turns out that they had been thrown out of another mall by guards who considered their behavior suspicious. The victim sued the mall for being negligent in caring for her safety.

Further investigation showed the mall's security to be flawed; in fact, there had previously been similar incidents there. (Prior knowledge almost always makes a party liable.)

Moreover, it was found that the mall did not keep accurate records, and had no way to prove what, if any, safety precautions had been taken. Management had no idea that there had already been criminal activity on the premises.

Finally, the mall was unable to verify whether the guards it employed actually worked their assigned patrols.

The mall was not responsible for the beating—that responsibility rests primarily with the three criminals. Under the law, however, the mall was negligent in preventing a crime it could have easily foreseen. This is a key point in today's premises liability cases: If a crime can be reasonably foreseen, the business should take measures to prevent the risk.

Although a business may have nothing to do with criminals or criminal activity, it can be found just as responsible for the crime as the actual perpetrator. And the business could wind up facing a lawsuit that could result in a verdict in excess of \$1 million. This is a financial strain few business can withstand.

What could the mall have done to prevent these and related crimes? Which business find themselves at greatest risk? Those are the topics we will address next month. ■

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