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Insurance Law

Is Your Company Liable for a Criminal Attack on its Premises?



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We are all familiar with standard premises liability cases involving the person who slips on an icy sidewalk or one who falls down a dimly lit stairwell.

Companies have always been held responsible for dangerous conditions on their premises. What if the dangerous condition is not a patch of ice, however, but a criminal? Are you liable for a criminal attack on your premises?

Unfortunately, the answer may be “yes.” Crime victims used to be just that – victims. Whatever justice they obtained was through the criminal prosecution of the attacker.

Increasingly, however, those victims are demanding monetary compensation from other parties who may have some association with the crime. For example, earlier this year, the parents of a 17-year-old girl killed in a shooting at a party for teenagers held in a large banquet hall in Kansas City, Mo. received a \$5,000,000 verdict against the banquet hall.

The criminal may be a complete stranger or someone your company knows is violent from past experience, or even one of your own employees. If a customer, employee, tenant, or anyone else is the victim of a criminal attack on your property, there is a good chance you are going to get sued. What factors will determine whether your company is liable and what can you do to reduce that risk?

There is agreement on two basic principles. First, one generally has no duty to prevent a criminal attack on another. Second, there may be a duty if that attack is reasonably foreseeable.

Beyond that, unfortunately, there is little agreement regarding what theories or circumstances will create a duty to prevent criminal attacks on your premises. Rules will vary from state to state, and even within a state. Also, the law is evolving, as courts consider theories and approaches from other states.

Be aware of security issues and the rules in your jurisdiction, so that you can help protect not only the people on your property, but also protect your company from liability when violent crimes do happen.

Theories Of Liability

All of the theories require that there be some relationship between the victim and the party who owns or manages the property where the assault occurs. Usually, the claimant is an invitee, tenant, or even a licensee.

In Missouri, a specific “special relationship,” such as common carrier/passenger or innkeeper/guest, by itself is sufficient to impose a duty. In most other states, however, the relationship is just one element a plaintiff must establish in order to create a duty.

Typically, plaintiff must also show that the crime was reasonably foreseeable. *Hills v. Bridgeview Little League Association*. 745 N.E.2d. 1166. 1187-90 (Ill. 2000).

Whether a crime is “reasonably foreseeable” or, more broadly, whether a duty should be imposed depends upon what test (or tests) a court uses. For example, Michigan uses a specific imminent harm test. A duty arises only when there is a present situation that creates a risk of imminent harm to a specific person.

There is “no duty to otherwise anticipate and prevent the criminal acts of third parties.” See *McDonald v. PKT, Inc.*, 628 N.W.2d 33, 35 (Mich. 2001). (Spectator at outdoor Ramones concert injured when other spectators began throwing sod.)

In other states such as Missouri, a business may be liable if there has been a number of recent, similar, violent crimes on its premises (the “prior crimes” test). It may also be liable if a person known to be violent comes onto its property (the “known violent person” test). At that point, the business may have a duty to at least warn others on the property, or take appropriate steps to prevent an attack, such as calling the police.

Indiana uses a “balancing test”, which considers the relationship between the parties, the reasonable foreseeability of harm, and public policy considerations. Some states use a “totality of the circumstances” test, which allows a court to consider almost any circumstance raised by the parties in determining whether there is a duty to prevent violent crimes. This is probably the most unpredictable test.

Assumption Of Duty

An injured party will sometimes claim the business assumed a duty to protect him. The true basis of liability for assuming a duty is that your negligent performance causes the injury or increases the risk, or that plaintiff has relied on you to do something he would otherwise do for himself.

Simply taking precautions should not, by itself, create liability. *Scott v. Harper Recreation, Inc.*, 506 N.W.2d 857 (Michigan 1993); *Miller v. South County Center, Inc.*, 857 S.W.2d 507, 512 (Mo. App. 1993).

The Rest Of The Claim

Remember that duty is only the first element of the injured person’s claim. He also has to show that your company breached its duty. No business can prevent crime from ever occurring on its property, nor should it be expected to act as an insurer.

It is negligent, though, if it fails to use ordinary care to guard against reasonably foreseeable risks. A crime victim will also have to show that your company’s negligence contributed to cause the injury, along with the actions of the criminal.

What Can You Do?

There is no foolproof way to prevent all crime on your property or avoid lawsuits arising from those crimes. Yet, there are steps your company can take to reduce both risks.

A basic list would include the following.

Be aware of your history. If you don’t know what’s happened on your property, you are unlikely to take action.

Take reasonable precautions based on your circumstances. Identify the security risks you have, and what can be reasonably done about them. If you don’t have an in-house security expert, consider consulting a security professional for an assessment of your needs.

Pay attention to particular problems. When something happens for the first time (consider 9/11), it’s easy to say it was unexpected, and there was nothing that could have been done. When the same thing happens repeatedly, juries tend to be much less forgiving. If there is a history, you’ll want to show you’ve taken concrete steps to address the problem.

Have good hiring practices. Sometimes the criminal turns out to be one of your own employees. While reference checking is still a hit and miss business, examine how your company conducts background checks on prospective employees, and how that process can be revised to give you better information.

Avoid express assurances of safety. It’s one thing to advertise your place of business. It’s a different matter to assure patrons or tenants they’ll be safe there, however. Don’t cross that line.

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