



The Complexity of Negligent Security Claims - Episode #135

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John Czuba: Welcome to the *Insurance Law Podcast*, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Recommended Insurance Attorneys*.

We're pleased to have with us today attorneys Jan Simonsen and Tracy Scott from the law firm of [Carr Maloney](#) in Washington, DC. Jan Simonsen is an equity member with the firm, and is focused on mass tort and toxic tort litigation, retail litigation, and professional liability.

She represents retailers, manufacturers, home builders, and other clients in mass tort litigation in state courts, federal courts, and multi-district litigation.

Tracy Scott is a trial attorney who focuses her practice on premises, professional, and product liability. She is also well versed in construction litigation and general liability issues.

She has represented individuals in businesses on a wide variety of matters, including state and federal consumer protection, malpractice defense, personal injury cases, and wrongful death claims.

We're very pleased to have you both with us today. Today's topic is on negligent security claims. Tracy will be addressing our first question. Tracy, can you define for our audience, what is a negligent security claim?

Tracy Scott: Negligent security is also sometimes known as inadequate security. The claim is usually as a result of a criminal act that happens on a commercial property. For example, someone is robbed or assaulted at say, a shopping mall or a hotel. These are your classic claims for negligent security.

The claims are generally based on the victim's belief that the individuals and property owners who invite you onto their property should take reasonable steps to insure the property is safe. Some of the common allegations that you'll find in a negligent security case is that an area was too dark, that it should have had better lighting. Had there been better lighting that that criminal act would not have happened.

Another common claim is that there should have been either more security, or better security. Oftentimes, there are also allegations that the surveillance system in a location wasn't working properly. Those are some of the common allegations that you'll find in a negligent security claim.

John: What's the difference between a negligent security claim and a premises liability claim?

Tracy: Premises liability is an area of personal injury law that addresses injuries or harm that occurs on someone else's property. These are your classic examples of slip and fall, where, for example, someone goes into a parking lot and slips on ice. That is a premises liability case.

Negligent security claims is actually a branch of premises liability. A person is still claiming that they've been injured on someone else's property. The difference is that in a negligent security claim the injured person is seeking damages from the property owner for the criminal acts, or the wrongdoing of an unrelated or sometimes unknown third person.

In a negligent security claim, in terms of a parking lot, for instance, think of someone being assaulted or robbed in that parking lot rather than slipping and falling. Or in terms of say, a bar or a nightclub, someone is in a fight, or gets shot or harmed in that way.

Those are the classic examples of negligent security claims. As I said, there's often a criminal component that's intertwined within the incident itself.

John: Jan, can you tell us who is most affected by negligent security claims?

Jan Simonsen: The most significant companies that are affected by negligent security claims are security companies. If they are involved and hired by different companies, they are usually the first line of defendants who are affected.

Other entities that are affected are commercial properties such as shopping malls, hotels, retail establishments, and nightclubs. They are also generally brought in as defendants in a negligent security claim.

Depending on the type of claim, apartment complexes can be involved, universities, property management companies. It's very wide-ranging, depending upon the type of case and where it happens.

Many robberies and assaults occur in parking lots. If there is a business or organization with a parking lot attached, that business could be at risk as well as the owner of the parking lot or the people who manage the parking lot.

Employers can also be at risk in negligent security claims if they've hired individuals who are not qualified for the job. Along with a negligent security claim, there's a negligent hiring claim that is also brought to say that you didn't train, or your employees were not trained well or not qualified to do the job.

John: Jan, what is it that makes these cases so complex?

Jan: The number of defendants is probably what makes the most complex. Each case often involves several different defendants. In the case of a person assaulted at an apartment parking lot, for instance, the apartment complex may be sued, the property management company may be sued.

The security company will be sued. The landscaping company can even be sued, and of course, the parking lot company can be sued. What ultimately happens is the defendants point fingers at each other for contractual indemnification, or a demand for defense, depending upon where that particular defendant falls down the line.

There is usually some contractual relationship among the defendants. Depending on the language within the various contracts, when some defendants believe that others should be defending them from these claims, they will sue them within the lawsuit. They will file cross claims against each other for indemnification and defense.

For instance, many security contracts will contain indemnification provision in which the security company agrees to defend a property management company or property owner in a lawsuit if the security company is found to be negligent, or even if there is simply a claim made that would fall under the terms of the contract.

Typically however, a security company will not admit that it is negligent, absent some substantial evidence.

Quite often, depending upon the relationship, if you have a security company that is working with a large retailer for example, and has contracts across an area or across the country to protect that business relationship, they will sometimes agree to defend and indemnify the retailer, because of the larger issue of keeping a good relationship between the businesses.

John: Tracy, can you comment on what the legal standards are that apply in these cases, typically?

Tracy: As an initial threshold, the person who's making a claim for negligent security, they have to establish that the business owner owed it some duty of care. If the injured person was not legally on the property – for instance, if the person was a trespasser, or if the person was known to the business owner and that business owner had banned that person from their property – in most cases, that injured person would not be entitled to damages.

In negligent security cases the court also looks at foreseeability, and that's whether it was reasonable or not to foresee that this criminal activity would happen. Whether something is foreseeable is generally determined on a case-by-case basis. The court would look at whether there were any prior criminal acts within the vicinity of the incident, for instance. That's what the court would look at to see if something was foreseeable.

If the person is known to the property owner, the court may look at whether or not that assailant's behavior has escalated in the past, and whether it was foreseeable that the business owner could foresee that this criminal act would have occurred.

The court may also look at how frequently the police or security has been called to a particular location, and then look at proximity and time of that prior criminal act to the current injury at issue.

John: Thanks, Tracy. For our final question today Jan, what can businesses do to protect themselves against negligent security claims?

Jan: Between litigation costs, including costs for experts in lighting, security, and other specialized areas, negligent security claims can be very expensive to defend. While we cannot prevent claims from happening, businesses can be proactive in protecting themselves from these claims.

For example, if you hire a security consultant, many businesses will employ a security consultant who will prepare a comprehensive analysis of security for that business. Only do this if you are really serious about heeding the advice.

If you have no intention to follow the recommendations, it is not recommended that you undertake this comprehensive study. It can be attached as an exhibit to a lawsuit, for example, if a consultant advised you that you needed to have 24-hour security in a particular area and you never followed up with the recommendations.



If you have customer or resident complaints, do not ignore them. Follow up with them. Make sure that you are overseeing your property and following up on various complaints that may come up.

In particular for security companies, if you had made recommendations for a specific level of security, and an owner or property manager does not want to pay for your full recommended level of security, or doesn't heed your advice, make sure you document that, and that the reductions are being mandated from management, and that it is not the recommendation of the security company to reduce the level of security.

Ultimately, if that security company and the property owner are involved in a dispute, that will help the security company. It reminds me of a case that I had years ago, where a property in a pretty affluent part of town was mixed use. It was commercial, residential, and retail. There was a parking garage attached to the building.

I represented the property owner. The property management company was involved as well as the parking lot. A former employee of the parking garage came into the garage at night, because his friend was working at the front of the parking garage and let him in. He was a known criminal, a bad guy.

He stalked this woman who lived in the building, who came downstairs to get into her car. He kidnapped her in her own car and demanded that she get her ATM card to get him money, which she stupidly refused. He murdered her, threw her in the trunk of her car, and then this brilliant actor took her ATM card and went around town trying to guess what her pin number was.

They obviously found him, arrested him, and he is still in prison. The parking company knew that he was a bad guy, had fired him because he was a bad guy, and had no protocols in place to avoid allowing him back in the garage, because his friend was working when this happened.

What Tracy discussed, foreseeability, this is a classic example of things you can do to avoid situations like this. The parking company paid the lion's share of that settlement, and rightfully so.

If you have cameras, make sure that you have surveillance cameras and electronic systems. Make sure they work. Make sure that the staff that is overseeing those cameras are properly trained on the system.

If you have a security plan in place, you must make sure it is being followed. If it needs to be updated and revised, you need to make sure that is done. You need to train your people on your security plan and make sure that they know what the terms of it are, and that it is, in fact, being followed.

For property owners and managers, ensure that there is adequate lighting in parking areas, that shrubs and bushes are regularly trimmed. If you have roving security, make sure that they are actually roving the premises when they are supposed to. You need to be very proactive.

Eliminate terms selling safety. Do not try to oversell safety by exaggerating the level of security that is provided. For example, using statements like "completely safe," or stating that the area is under 24-hour surveillance when it is not, are not good ways to go.

Finally, consult with legal counsel to review contracts and lease agreements, to make sure that you are protected both from a negligent security standpoint and from an indemnification standpoint.

John: Jan and Tracy, thank you both for joining us today. That was Jan Simonsen and Tracy Scott from the law firm of [Carr Maloney](#) in Washington, DC. Special thanks to today's producer, Frank Bullwinkle.

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