

Best's Insurance Law Podcast

What Insurers Should Know about Investigating Negligent Security Claims – Episode # 200

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Hosted by: John Czuba, Managing Editor

Guest Expert: James Barbieri of [Claims Advantage, Inc.](#)

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John Czuba: Welcome to Best's Insurance Law Podcast, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, managing editor of Best's Insurance Professional Resources.

I'm pleased to leave with us today Jim Barbieri from independent adjusting and investigation company, Claims Advantage in Georgia. Jim is the President and CEO of [Claims Advantage, Inc.](#) He's a former police officer and has a BS degree in criminal justice.

Mr. Barbieri is also a certified fraud investigator adjuster and has been conducting SIU investigations for over 30 years. Jim, thanks so much for joining us again today.

Jim Barbieri: Hi, John. Thanks for having me.

John: Today's topic is negligent security claims investigation. Jim, let's start out. Can you define for our audience, what is a negligent security claim?

Jim: A claim of negligent or inadequate security usually involves an insured who fails to take proper precautions or security measures to prevent violent crimes. The key is to prove that the property owner was aware of the potential for crime and the lack of security on the property that may have allowed the crime to occur.

John: Jim, what types of negligence security claims do you investigate?

Jim: John, the most common type of negligent security claim is at a commercial retail establishment. When a business invitee enters a place of business such as a retail store, could be a hotel bar, could be a shopping mall, they have a reasonable expectation of security that the owner must provide to protect them from foreseeable harm.

In hotels, the management has a greater degree to provide security to hotel guests. As an example, if a hotel room door lock was defective and allowed a perpetrator to enter the room and sexually assault a guest, that hotel could be liable for negligent security.

Another common type of negligent security claim in which I've handled several of these types of claims are shooting investigations at apartment complexes. In those cases, it's important to determine the victim status. Is he a tenant, or he or she a tenant, visitor, or a trespasser?

Another type of negligent security claim occurs at retail stores. I had a claim where a husband parked his vehicle on the corner of the building on a drugstore and his wife entered the store to shop. The husband got robbed and killed.

The plaintiff argued inadequate lighting on the corner of the building contributed to this violent crime, and furthermore, the business was in a high crime area, and the owner should have taken greater care in providing security and adequate lighting.

A negligent security claim also could involve a bar fight or fight at a restaurant where the plaintiff was seriously injured or killed and the bar failed to provide bouncers, or security, or adequate security measures.

John: Jim, how do you handle a shooting investigation in an apartment complex?

Jim: The first thing I do when I handle a complex shooting investigation is determine the status of the victim, as I mentioned previously. The victim could be a tenant, a guest, or a trespasser. I then determine the extent that the landlord or management company owes a duty of security.

As an example, I handled a case in Georgia where tenants lived, and boyfriend was shot and killed in the parking lot during an armed robbery attempt. In that case, the boyfriend picked up the tenant at work. It was three o'clock in the morning.

He drove through the open, broken apartment complex gate. Parked in the parking spot, got out, and three guys approached with guns, and a gunfight ensued. Unfortunately, the boyfriend was killed. I took a statement from the perpetrator of that crime. Actually, she was the getaway driver from prison.

She told me that the only reason why they entered that complex was because the gate was broken and stuck in the open position. The only problem with that case for the plaintiff was that the decedent's estate did not have any legal standing in that case because the boyfriend was not on the lease agreement, and he was not considered to be a tenant.

Therefore, the complex did not have a duty to provide security to this guest. However, the girlfriend, who was injured during the shootout, had a valid claim, as she was the actual tenant, and the complex had a duty to provide her with adequate security.

I had another case in Atlanta. The facts were similar, but somewhat different, where the perpetrator entered an apartment complex through a broken security gate. He shot his way through the victim's apartment door. We've researched crime statistics from the police department and determined that this apartment complex was located in a high crime area.

It's very important to examine the types of crimes in the area. We are more concerned with violent crimes such as robbery and sexual assault. However, people say that burglary is a property crime, but the definition of burglary is unlawfully entering a premises with intent to commit a felony therein, and this could involve potential injury to the occupants.

The purpose of getting the police log or crime statistics, usually in a one mile radius, is to determine if the insured should have been aware of the risks to safety of their tenants. During the investigation, it's important to determine whether there is any type of relationship between the perpetrator of the crime and the victim tenant.

In that case where the guy shot his way through the door, the tenant apparently went to a party one time and met the perpetrator briefly, but she did not invite him into the apartment, and he shot his way through the sliding glass door. That did not come into play, that defense.

It is also important to show whether the property manager was aware of the broken gates that were stuck open. In both the aforementioned apartment complex shooting cases, I obtained statements from several tenants who said that they complained verbally and in writing to the management about the inoperable gates.

In the first case discussed, where the boyfriend was killed in a shootout trying to protect his girlfriend, tenants said that they moved into the apartment complex because the marketing literature boasted a safe and gated community. Only problem was that the gate never worked, and it's a brand new apartment complex.

In that case, when I went to the apartment complex, there was a security guard with the flashing lights on the car, and they were checking everybody going in and out, but that was a little too late. The other part of the investigation on the apartment complex is determine the status of the perpetrator of the crime.

If he or she is an employee of the complex, such as a maintenance worker who has access to keys to the apartments, and then sexually assaulted a tenant, generally, the employer is not liable for the criminal acts of an employee unless they did something negligently.

If there was no request or authorization to enter the apartment, that would put the landlord on notice as they are supposed to control the employees and access to keys. The insured may be liable if they did not do an adequate background check and the employee has a criminal history for violent crimes.

John: Jim, what if the victim is a trespasser on the insured's property? Would they then have a valid claim?

Jim: Generally, no. A trespass would normally not have a valid claim for lack of security because they should not have been on the property at the time of the incident. I just handled a shooting case at an apartment complex in New York, where a claimant was shot in the breezeway of an apartment building.

John: Jim, previously, you mentioned that the business operator or property owner might be aware of a foreseeable criminal attack. What exactly do you mean by a foreseeable criminal attack?

Jim: I previously mentioned that as part of our investigation, we usually request crime statistics, so police call logs from the local police department for a one mile radius around the establishment or apartment complex to ascertain if the crime was committed in a high crime area.

In the Atlanta case that I handled involving the broken gate, we determined that the general area surrounding the apartment complex has a high violent crime rate. Therefore, the landlord or property maintenance company should have been aware of the potential for violent crime to occur and should have secured the property by repairing the front gate or providing security guards.

If the business operator or property owner does nothing to increase protection against this known threat, such as provide or increase security, they may be held liable. The plaintiff needs to show that the landlord or insured had constructive knowledge that a violent crime could occur to the claimant or plaintiff.

John: Jim, what does a plaintiff attorney need to show in a negligent security case?

Jim: Basically, the defendant was legally required to provide adequate security at the location. They also need to show that the defendant did not provide reasonable security measures. The plaintiff injury occurred as a result of the defendant's inadequate security measures.

John: Jim, what are some examples of negligent security claims that you've personally seen?

Jim: At different establishments, I've seen lack of security cameras, malfunctioning security equipment, untrained or unqualified security guards, or lack of security guards, especially at these apartment complexes, where they don't have any security in a high crime area.

Several years ago, I handled a sexual assault case in Rhode Island, where a bedroom window lock was broken in an apartment and the perpetrator entered through the window and sexually assaulted a female tenant.

She had just moved into the apartment and they should have done an inspection, which would have revealed the security hazard. Other examples would be inadequate or missing lighting.

As I mentioned in the pharmacy shooting case, the light was out on the corner of the building, and that may have contributed to the opportunity for the crime to be committed.

I mentioned a few cases of broken fences or gates in apartment complex shooting investigations. In other cases, there may be no alarm system or malfunctioning alarms.

John: Jim, thanks so much for joining us today.

Jim: John, thanks for having me. It's always a pleasure being on this podcast.

John: You just listened to Jim Barbieri, President and CEO of [Claims Advantage, Inc.](#) in Georgia. Special thanks to today's producer, Frank Vowinkel. Thank you all for joining us for Best's Insurance Law Podcast.

To subscribe to this audio program, go to our web page, www.ambest.com/claimsresource. If you have any suggestions for a future topic regarding an insurance law case or issue, please email us at lawpodcast@ambest.com. I'm John Czuba, and now, this message.

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