

## **Working Premises Liability and Security Negligence Cases**

### **from the Private Investigator's Perspective**

by Eric D. Echols, CFI,

Have you handled a case in which someone died or was injured on another's property? That property could be a home, apartment, hotel, club, mall, parking lot, or other location. The case may involve an accident in which someone was injured or killed, or it may be a shooting, stabbing, or some other action by another human. In just about every criminal case that involves homicide, rape, assault, or other violence, there is a civil case that is sure to come behind it. Diligent investigation is crucial to the outcome of such cases. A private investigator can work behind the scenes to gather information, details of the incident, and statements from witnesses.

#### **A good private investigator should know what is Premises Liability?**

*Premises* refers to buildings, structures, and land that makes up real property. *Liability* is the responsibility for which someone is held accountable. Thus, premises liability is the part of law that makes a person, groups, company, or corporation that possesses or owns a property responsible for certain injuries or death suffered by persons or invitees who are on their owned or leased land (premises).

Now let's look at *security negligence*, also called *inadequate security*.

#### **A good private investigator should know what is Negligent or Inadequate Security**

What is considered to be negligent or inadequate security? When can land owners or lessors say they have enough security? Who decides that security measures and equipment are needed or sufficient? To answer these questions, you first must answer whether the act—damage, injury, or death—could have been prevented or at least made less likely to occur if there had been appropriate security measures, equipment, or personnel. If the answer is *yes*, but no security measures were implemented, then that is *negligent or inadequate security*.

The basic meaning of *security* is "being safe or free from harm or danger." A security officer or guard, then, is a person put in place to deter crime or prevent injury. Today, security also refers

to measures or equipment to help maintain safety, such as lights, gates, locks, and so on. *Negligence* is failing to provide the needed measures and equipment, including proper training and acceptable criminal background checks for personnel. In premises liability and security negligence cases, as in most cases, there are factors that need to be determined or proven in order to get the proper resolution or settlement. These factors are as follow:

1. Was there a legal duty owed by the property owner or leaseholder?
2. Was there a breach of duty that caused the damage?
3. Was the action that caused the injury or death foreseeable to a layperson?
4. Were adequate security measures or equipment provided by the owner or leaseholder?
5. Was there proximate cause for damage due to the failure by the owner or leaseholder?

An investigation should focus on getting the information, documentation, and witness statements to solidify these factors. Let's take a look in more detail.

### **Legal Duty**

Legal duty refers to the owners' duty to sustain or maintain a reasonably safe condition for people on their property (residents, customers, invitees, students on a campus, and so on). In premises liability and security negligence cases, also referred to as premises security claims or negligence suits, the plaintiff tries to show negligence resulting in the harm of a person by failing to take the necessary steps to prevent harm, even if caused by a third-party person.

As an example, say that a person is attacked (e.g., robbed, sexually assaulted, or shot) in an apartment complex. A private investigator first asks, "Did the apartment complex provide adequate protection for residences or invitees?" Adequate protection includes lighting, security gates, locks, security cameras, and sometimes security personnel. If security personnel are on the property, the next questions are, "Did the security personnel have the proper training and background check and maintain the proper state licenses? Was the security company properly licensed?"

## **Foreseeability and Conscious Disregard**

Continuing with the example above, the next question to ask might be, “Based on the crime data, could it have been foreseen by the apartment complex that a crime was likely to occur?” If injury or death was likely, the apartment complex had a duty to protect their residences and invitees. This is called *foreseeability*.

The history of crimes in an area or at a specific location is tracked by private and government agencies. Often, national retailers check the CAP (Crimes against Person or Property) Index score of an area before they move into a new market or open a new store. This index lists the type of crimes that have occurred and, based on the CAP Index score, indicates if that area is unsafe. The local police department also has crime stats and a count of the calls that police officers responded to. This data shows the history of a location. Knowing how to properly request a crime grid using the proper Georgia Open Records Act or FOIA (Freedom of Information Act) is a key factor when obtaining information to determine foreseeability.

In my experience, foreseeability also can fall under what an individual does, such as the tenant living in an apartment complex. Let’s say the tenant in apartment 1234 had the police respond multiple times for fights, assaults, and drug arrests. The management office constantly received noise complaints from other tenants. However, the apartment management continued to have the tenant stay in the apartment because they always paid their rent and paid in cash. A question to ask here might be “Was it foreseeable that another resident or invitee could be injured or killed by tenants in apartment 1234, or injured or killed due to the activity occurring in apartment 1234?” In this example, the apartment management had a conscious disregard, meaning that management knew of a problem, yet did nothing about the problem. This can also apply to possible foreseen incidents.

## **Proximate Cause and Cause-in-fact**

The case for what caused an incident can be made in two ways. The first is *proximate cause*, which means determining that an event is sufficiently related to the incident that it can be seen it cause. A question to ask here is, “Was the injury or death caused by the defendant (apartment management, owners, etc.) because they breached their legal duty in keeping the premises (apartment complex) in a safe condition?” This loops back to whether there were adequate protections to have prevented or deterred the injury or death.

Examples from my experience include determining when the case happened. If it was during the night hours, I look to see if there were working lights or if they were out and never replaced. I monitor the entrance and exit on the property to see if a security code gate was working and check for working video cameras. I look for security vehicles, personnel, and even off-duty police officers.

Thus, proximate cause may be a breach of legal duty that causes harm or death. It is an act, done intentionally or through negligence, that is determined to have caused damage, injury, or death. An illustration of this is when an employee working in a restaurant spills a tray and does not clean up the liquid and broken glass. If a person comes in, slips, and cuts himself on the glass, then the employee who dropped the tray and the restaurant would be liable, as the cause of the guest's slip and cut was due to the dropped tray.

The second type of causation is *cause-in-fact*. Cause-in-fact is determined by the "but for" test, which means "but for" the action that caused the incident, the outcome would not have occurred. Example; I have worked several 18-Wheeler accidents. There was a case I worked where the 18-Wheeler parked on the right-side shoulder of the road. The 18-Wheeler driver failed to put out the required flares or any triangle orange reflectors behind the truck. A car veered off the road to the right, crashed into the back of the 18-wheeler, and its driver died. Using this "but for" example, if the 18-wheeler had not been illegally parked on the shoulder but had used the required flares or triangle orange reflectors, the accident would not have occurred.

Premises liability and security negligent cases can be hazardous and complex for the private investigator working them. Some of these investigations can take place in low-income housing areas surrounded by drug and gang activity. Similar activity can occur in nightclubs, parking lots, and so on. Despite such conditions, all business entities still have a legal duty to maintain the premises in a reasonably safe condition and to provide a safe and secure environment, no matter where the premises are located.

## **Results**

The favorable result for the plaintiff in premises liability and security negligent cases will be an award of monetary damages based on the multiple factors discussed above. The goal and task of the private investigator is to be successful in obtaining evidence of negligence for the plaintiff or the estate of the plaintiff (used in the event of a death when the family is suing), and the results can make the case.

### **Remember These Points:**

1. The owner/manager of a property has a duty to protect those legally on the premises.
2. Find out if the defendant breached or failed to satisfy that duty, and if so, was that breach of that duty the proximate cause of the harm to the plaintiff.
3. Hire a professional private investigator to work behind the scenes to gather information, locate and interview witnesses and conduct a diligent investigation that can aid in the outcome of the case.
  - a. Keep in mind that in some cases, a private investigator can also be hired by the defendant. If this is the case, be sure to weigh evidence of your client's legal position in the situation.

If you find yourself in the position of having to hire a private investigator to work a premises liability and security negligence case, or you require consulting, I highly recommend using a professional who has worked these types of cases. Professional private investigators in this arena have been trained to conduct effective investigations and interviews using legally acceptable methods. Look for the private investigator's credentials such as training, references, certifications, and—most of all—case work experience. A professional private investigator can prevent you from becoming a witness to something else and allow you to work on preparing for witness deposition based on the findings of the private investigator to ensure you are fully prepared in your case and help you avoid the pitfalls that may damage your case or cost you a great deal of money. It is an investment well worth making.

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