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## **Out of Control Gun Violence**

### **I. The Prevalence of Gun Violence**

#### **Important Facts**

In 2015 there were 52,627 incidents of gun violence resulting in 13,346 deaths and 26,934 injuries. 330 of these incidents involved a mass shooting. In 2014, there were 51,778 incidents resulting in 12,576 deaths and 23,040 injuries. There were shooting incidents at an Omni Hotel in Austin Texas, a shopping center in Moneta, Virginia, a community college in Roseburg, Oregon and a regional center in San Bernardino California. It has been estimated that gun violence has an economic cost of approximately \$229 billion. It is businesses and insurers who often bear that cost.

Sometimes, laws are passed in response to allegations of inadequate security. In July 2010, the Cruise Vessel Security and Safety Act was signed into law, requiring new security measures on cruise ships. The act requires that cruise lines report to the FBI all crimes aboard cruise ships, and take actions to protect the crime victims. It requires cruise lines to install peep holes on all cabin doors, comply with 42-inch guard rail height requirements, and maintain an emergency sound system, among other safety measures. Shipboard medical care must also be provided for victims of sexual assault, and medical staff onboard must know how to collect forensic evidence and report crimes in international waters. Penalties for non-compliance range from stiff fines to denial of entry into the United States.

#### **How Do Businesses Respond**

Businesses have to make an economic decision as to balance the cost and expense of added security with the potential exposure for failing to provide adequate security. Prominently, Walt Disney World announced on December 17, 2015 that it was installing metal detectors and banning toy guns from the resort.

#### **The Basics of a Negligent Security Claim**

Inadequate premises security litigation is an outgrowth of premises liability law. Therefore, it is essential to understand the applicable law – particularly the concepts of “duty” and “foreseeability.” As in all tort cases, a duty must first be established as a

threshold for liability. The nature and extent of that duty will depend on the nature of the premises, the foreseeable criminal activity on and/or near the premises, and the relationship of the parties.

A landowner breaches duty to use reasonable care by failing to make diligent searches or inspections at reasonable intervals for dangerous conditions that might be created by invitees or third parties. Boatwright v. Sunlight Foods, 592 So.2d261 (Fla. 3d DCA 1992)

The duty of care owed by a landowner to invitee with respect to protection from criminal acts is dependent upon foreseeability of such acts. Admiral's Port Condominium Ass'n. v. Feldman, 426 So.2d 1054 (Fla. 3d DCA 1983); Medina v. 187th Street Apartments, 405 So.2d 485 (Fla. 3d DCA 1981).

### **Elements of Summary Judgment**

As noted above, a key element in winning a motion for summary judgment is to defeat the idea that the crime was foreseeable. Christopher Walton v. Mercy College and Allied Security, LLC, 93 A.D.3d 460, 940 N.Y.S.2d 54 (1<sup>st</sup> Dept 2012). Additionally, it is important to be able to demonstrate that plaintiff's claims of inadequate security had no causal link to the actual crime. As such, it is often necessary to retain a security expert who can testify as to the reasonableness of the security measures taken to prevent the crime the cost of the claim.

## **II. Real World Responses**

### **Different Responses for Different Situations**

There is a major difference between the security needs of a theme park and a shopping mall. There are different requirements for a hotel as opposed to a Planned Parenthood clinic. A bank will have different needs from a luxury apartment building.

As noted above, Walt Disney World installed metal detectors to prevent guns from getting into the park. An apartment building may have a doorman who requires visitors to sign a logbook. Shopping mall they have no security at a point of entrance. A different shopping mall may have roving security guards. The metropolitan transit may have undercover police officers riding public transportation to deter crime.

### **How Do Insurers Handle Negligent Security Claims**

Negligent security claims are essentially an offshoot of premises liability claims. As such, insurers try to incorporate statistics into its underwriting to reflect the likelihood that it's insured will be affected by a criminal act. However, there is another type of crime which ensures have avoided, terrorism. How have acts of terrorism affected insurance companies?

## **Terrorism Risk Insurance Act**

In response to September 11, The Terrorism Risk Insurance Act (TRIA) (Pub.L. 107–297) is a United States federal law signed into law by President George W. Bush on November 26, 2002. The Act created a federal "backstop" for insurance claims related to acts of terrorism. The Act "provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism."

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The term "act of terrorism" is defined in the act as: any act certified by the Secretary of the Treasury, in concurrence with the Secretary of State and Attorney General, to be an act that is dangerous to human life, property, or infrastructure and to have resulted in damage within the U.S. (or outside the U.S. in the case of a U.S.-flagged vessel, aircraft or premises of a U.S. mission). It must be committed as part of an effort to coerce U.S. civilians or to influence either policy or conduct of the U.S. Government through coercion. The definition includes both foreign and domestic terrorists. The Secretary may not delegate this certification authority and his or her decision to either certify or not certify an act of terrorism is not subject to judicial review.

Essentially, because reinsurers would not insure for acts of terrorism, the federal government has stepped in and become a reinsurer for this type of claim.