



Commercial Real Estate Council

August 2007

Commercial Real Estate Council Members

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Inadequate Security Litigation-A Legal Primer

As professionals within the security industry, we are charged with the protection of persons residing-in, occupying or otherwise conducting business within premises under our control. The trust which is placed within each of us is crucial to the success of our respective organizations. In today's litigious times, the issue of liability is paramount. Courts nationwide have determined that failure to warn, maintain and/or correct situations within a premise are grounds for litigation.

Within the protection arena, successful litigation for a host of issues including inadequate security, negligent hiring, negligent retention, failure to train and failure to supervise, can result in large jury awards and have catastrophic consequences.

The national average for defending an action can well exceed \$100,000.00 and the average cost for case settlement currently exceeds \$500,000.00. Where cases have "gone the distance", jury verdicts average an award of \$2,000,000.00 and have reached as high as \$16,000,000.00. In addition to the monetary damages, the unquantifiable costs, including damage to corporate reputation, decreased confidence from investors, low employee/tenant morale and the potential for reduced occupancy levels can destroy a once prosperous and well respected organization.

When we consider premises liability from a protection standpoint, we must consider three legal parameters; Duty, Breach and Causation.

1. Duty: Did the owner/agent have a legal duty to protect the person? In a landmark case, *Kline v. 1500 Massachusetts Avenue Apartment Corporation*/ 1970, the court ruled the "Special Relationships Doctrine", once exclusively applied to the "innkeeper/guest", also applies to the landlord/tenant relationship. While on the property, the owner/agent must provide reasonable security precautions for all tenants and visitors. Please keep in mind that this does not mean the owner/agent must guarantee security. The reasonable care standard requires the owner/agent to provide protection adequate to reasonably counter the existing criminal threat.

2. Breach: Did the owner/agent violate the duty to protect? Did the owner/agent know or should have known there was a probability that the specific crime would occur? Was the criminal incident foreseeable? When we consider breach of duty and the foreseeability of crime we must consider three factors; Crime Demographics, Location of Premises and Organizational Nature.

A. Crime Demographics: Have there been any criminal incidents within the building, on the property, or within the surrounding neighborhood? Has there been a pattern of a specific type of crime? Statistical analysis plays a vital role in predicting criminal incidents within a neighborhood. Local police agencies are, of course, the best source for reported crime throughout your area. An additional source, which should be utilized, includes interviews and conversations with the local business establishments and residents in the neighborhood. This will provide you with a "feel" for the neighborhood and prove to be invaluable when considering unreported criminal incidents. Statistical analysis and neighbor interviews should be conducted on a regular basis and include a vehicular assessment of neighborhood disarray (graffiti, dilapidated buildings, etc...).

B. Location of Premises: The physical location of the premise also plays a vital role in determining foreseeability of criminal incidents. A location on a secluded street vs. a heavily traveled thoroughfare affects the propensity for a crime to occur. Another

affecting factor is the evaluation of the economic demographics within the neighborhood. The U.S. Census Bureau plays a key role in this statistical analysis.

Persons in charge of individual units within a building must also consider this parameter when evaluating security. Considerations of ground floor vs. upper floor, areas accessible to the general public vs. semi-private areas affect the foreseeability of crime and respective countermeasures.

C. Organizational Nature: Fact - shopping center parking lots have a criminal foreseeability for theft related crime. Fact - a nightclub with a young clientele has the foreseeability for assault related crime. Fact - at 3:00 AM, a convenience store with one clerk has the foreseeability of a robbery occurring. Certain premises, just by the nature of their business or demographics of their clientele, have the "automatic foreseeability" of certain crimes. Although your property may not contain one of these "automatic" premises, if it is within close proximity of one, you must address the probability of crime "spilling over" to your property and provide reasonable countermeasures.

3. Causation: Did the person suffer an injury or loss which was directly caused by the breach? Was the breach just a factor in the injury or loss? Courts have determined that either "cause in fact" (a direct cause) or "proximate cause" (a factor) are grounds for litigation.

As an owner or agent, if you had the duty to protect the person, failed to reasonably protect them and this failure was a cause of their injuries or loss, your organization may be held liable.

By providing reasonable protection measures for our properties, we will not only adhere to the requirements of law, but ensure our most valuable assets, our tenants, are kept safe from the criminal element of our society.

Timothy O'Brien, CPP has in excess of twenty-four years experience within corporate security management and commercial property protection. He is currently President of Criminal Intelligence Administration, an independent security consulting firm.

2006 BOMA Calgary Laptop Theft Survey

Following up on the 2005 Laptop Theft Survey, the BOMA Calgary Public Safety Committee continued to gather data on laptop theft across the downtown core culminating in the Laptop Theft in Commercial Buildings 2006 Survey. There were 55% fewer incidents in 2006 compared to 2005. Whether this was due to increased physical and procedural security measure effectiveness, the incarceration of laptop thieves, market saturation, excess inventory, reduced demand for stolen laptops, thieves moving onto other areas or targeting other items it is not known.

Using a straight replacement cost estimate of \$2,000.00 per unit places the losses of 600 laptops in 2005 and 2006 at \$1.2 million dollars. If one was to use the FBI/CSI cost of \$35,000.00 per average incident, when taking into account lost information and all other associated costs, it increases dramatically to \$20 million dollars. The economic impact of laptops stolen from downtown Calgary, regardless of which dollar value used, is staggering. Following up on the 2005 survey, BOMA Calgary Public Safety Committee members continued to capture data from January 1 through December 31, 2006. Three points indicate overall thefts were reduced. First and foremost, there were far less reported incidents occurring throughout 2006 with approximately 200 laptops and LCD projectors reported stolen where previously in 2005, 400 Laptops and 50 LCD projectors were reported stolen. Secondly, the geographic area between 2005 and 2006 doubled as data was captured from both the downtown core and the adjacent 'beltline' district. The Calgary downtown area is an area of some 105 square blocks. The Beltline consists of some 100 square blocks, south of the downtown area. Finally, as indicated by the survey title change, the scope of data collection expanded to include commercial low-rise properties. 88 theft incidents representing 76 laptops, seven LCD projectors, three desktop computers, one PDA and one LCD flat panel monitor make up the report content.

What we continued to see throughout 2006 was the determination of laptop thieves to challenge the increased physical and procedural security measures. In some cases they were successful and in some, they were not. Another point of interest was that between 2001 and 2004, there were laptop thefts but the incidents were sporadic. We would see one, two or five laptops stolen in a single incident then we would not see anything for 10 to 12 months or so. From 2005 and onward, we started seeing continued thefts and attempted thefts with the same buildings hit again and again, with laptop thieves only leaving the building alone after it was obvious that security measures had increased to the extent they were not successful at all. However, they would come back a few weeks or a few months later with bigger tools, better social engineering cover stories, or they would systematically attack several floors, one after another, sometimes hitting 5 or 6 floors in a single evening. We also started seeing them break into offices with less security just to get at an adjacent office. The full 35 page report can be found detailing several interesting findings at:

http://www.canadiansecuritymag.com/index.php?option=com_frontpage&Itemid=1

Glen Kitteringham, CPP has a Master's of Science post graduate degree from the University of Leicester. He has been a member of the CREC for the past five years.

Commercial Real Estate Council New Member Profile's

John Petruzzi, CPP



John is one of the CRE Council's newest members joining the council in 2007. He brings a considerable amount of experience and expertise to the council. He has a combined 19+ years with various positions within the military, higher education services and corporate security departments.

He is presently with Simon Property Group. He joined them November 1, 2006 as Vice President of Corporate Security and Emergency Management. His present role has responsibility for the strategic management of security and emergency services for the portfolio of the firm as well as corporate operations.

John has an AA in Criminal Justice, BA in Security Management and a post graduate certificate with Georgetown University McDonough School of Business. He holds professional memberships with ASIS International, ISMA (International Security Manager's Association), ISSA (Information Systems Security Association), ISACA (Information Systems Audit and Control Association) and ICSC (International Council of Shopping Centers).

He has volunteered in several positions with ISACA, ASERM (Alliance for Enterprise Security Risk Management), and ASIS International, particularly on the Commercial Real Estate and Privacy & Personnel Information Management Councils.

In his downtime, John likes to spend quality time with his children and when he can squeak it in, he loves to play golf, fish and hunt.

John Hewitt, CPP



John is the second of -the CRE Council's newest members, joining the council in 2007. He has worked in the security industry for the past 22 years. He is currently the Senior Security Manager for CBRE in Dallas. He has worked for CBRE for the past 18 years and his held his current position for the last 10.

He is responsible for all security related activities of a 12 member staff and 871,000 square feet of office space. He implements and writes security procedures, hires staff and oversees all security equipment purchases and all procedures for the department. His other responsibilities include completing annual budgets, provide Fire and Life Safety training for tenants, conducts risk assessments, investigations and vulnerability studies of the property he is responsible for.

John is Assistant Regional Vice President of Region 6 for 2006 and 2007, a member of the Fire and Life Safety Council from 2003 to present, member of the ASIS North Texas Chapter where he is Treasurer in 2004. He is also a member of the Downtown Security Director's Association, and served as President from 2002 to 2004 and again in 2007. He is also a member of the International Foundation for Cultural Property Protection since 2004 and became a member of the Downtown Dallas Safety Committee in 2007. His favorite sport is baseball and is a big Texas Rangers fan.

Marianna Perry, CPP



Marianna is our third new member we are welcoming to the CRE Council. She brings more than 25 years of security industry experience to us.

Her current position is General Manager with Brantley Security where she has worked the past 2 ½ years. Some of her responsibilities include managing subordinate security management and over 500 employees, overseeing company financials, implementing comprehensive training programs for new employees, supervisors and managers, develops customized training and post orders for clients, coordinates all aspects of Human Resource related duties, and finally, she oversees the company health and safety program.

In addition to her CPP, Marianna also has a Master's of Science in Loss Prevention & Safety from Eastern Kentucky University and a Bachelor of Arts degree from Bellarmine University, in Louisville, Kentucky. She holds memberships in ASIS International, ASSE (American Society for Safety Engineers) and with the Kentucky Occupational Health and Safety Network. She also holds certification in Adult, Infant and Child CPR, AED, First Aid, Bloodborne Pathogens, HIV/Aids and other occupational health and safety Red Cross courses.

Marianna's husband's name is Tom and she has two boys, Brian, 24 and Andrew, 22. She and Tom are both realtors in Louisville.

Member Activities

John Hewitt, CPP of CBRE has a brief article being published in the September issue of Security Management related to the fire code.

Glen Kitteringham, CPP of Brookfield Properties has an article being published in the September issue of Security Management entitled 'To Practice Evacuating or Not'. Additionally, he had an article entitled 'Neocortical Security: A New Security Management Model for the 21st Century' appear in the 12th Annual Disaster Resource Guide 2007/2008. Additionally, Glen presented to the Calgary chapter of the High Technology Crime Investigation Association – Western Canadian Chapter on May 30/07. His presentation was entitled: ASIS International & the Calgary/Southern Alberta Chapter.

Alan Snow, CPP of Boston Properties was one of five panelists of REALCOM 2007 on June 4, 2007. The topic of the presentation was business continuity planning for commercial and corporate real estate organizations. On June 8, he facilitated the Boston Area Public/Private Sector tabletop simulated emergency exercise. Allan organized this event with over 130 participants from both the public and private sector which focused on coordination, communication and integration of plans using a multiple shooting as the focal point of the exercise.

In July 2007, Charles Hutchinson of Crescent Real Estate presented for the Houston chapter of BOMA United States. His topic was on evacuation verses sheltering in place.

Dennis Byerly, CPP of Bower Security presented in May 2007 to The Resort Community Security Association (RCSA). The topic was on ASIS International and our certification programs. In addition, he was given the opportunity to drum up support for a new chapter in Palm Desert, California.

ASIS National Convention Update

Two members of the CRE Council will be making presentations at the upcoming ASIS International Conference in Las Vegas. Keith Kambic, CPP of US Equities Realty will speak on High Rise Evacuation and John Petruzzi, CPP of the Simon Property Group will speak on Data Classification and Digital Rights Management, and Convergence of Security Operations.

Finally, the Commercial Real Estate Council will be sponsoring a pre-seminar educational session entitled: Security Basics in Today's High-Rise Market – A Tall Order. The session will be held on Sunday, September 23rd starting at 8 Am and going until 1 Pm. The session will focus on the four main pillars for a successful security operation in the commercial real estate business. Topics include physical security planning, responding to emergencies, security force management, and policies/procedures. The sessions will be taught by leaders in the industry and will provide not only basic core information, but also touch on advanced topics. The cost will be \$295.00 for ASIS members, \$395.00 for non-members and registration is available at www.asisonline.org/asis2007/registration.