

Landlord Liability In The Age Of Terrorism

By David A. Glazer

Since September 11, building owners have had to worry about the threat of terrorism. With this threat comes the potential of an owner defending against lawsuits from persons injured from acts of terrorism. More importantly, what types of buildings need to worry about litigation from acts of terrorists?

The Legal Standard

The legal standard is that a landlord has a common law duty to take minimal precautions to protect tenants from foreseeable harm, including foreseeable criminal conduct by a third person. Fortunately, this standard has not been expanded by any statutes or case law. This standard also extends to visitors. However, a landlord is not an insurer against all possible events. The attack must be reasonably foreseeable before a building will be held liable.

The history of terror attacks suggests that the attacks are designed to cause as much physical harm as possible. Thus, the monetary damages from a successful attack can, quite possibly, exceed a building's insurance coverage. Terrorism has focused on very public targets such as the World Trade Center, government buildings, the Empire State Building, hotels and airports. Thus, it appears that the risk of a terrorist act is greatest for high profile targets. Otherwise, terrorism is just another form of crime under the law.

Foreseeability is the key factor in determining a landlord's liability. It appears that a landlord will not be held liable for an unforeseeable event. The 1993 World Trade Center bombing is instructive. The New York Courts denied a motion by the Port Authority to dismiss the plaintiff's claims because the Port Authority had received warnings about its vulnerability to terrorism. In fact, the Port Authority had commissioned security studies which identified the

below ground parking garage as particularly vulnerable to a terrorist attack through a car bomb. Because the Port Authority knew about this vulnerability prior to the bombing, the New York Courts

held that it was a question of fact for a jury to decide whether the security measures taken in 1993 were sufficient.



Buildings of Concern

Buildings that draw tourists, or adjacent to buildings that draw tourists, should have security measures designed to limit the likelihood of a successful terrorist attack. If your building falls in these categories, you are required to take minimal precautions to prevent an attack. The minimal precautions are always fact-specific to the building. However, limiting access to vulnerable areas is important as well as security screenings that prevent tourists from bringing dangerous materials into the building.

On February 23, 1997, a Palestinian man entered the Empire State Building and proceeded to the observation deck. He acted like any other tourist to that point. Once on the observation deck, he pulled out a semiautomatic pistol and killed one man, injured five others and then killed himself. The Empire State Building owners successfully defended the subsequent personal injury lawsuit by showing that it was undertaking

random searches of people before granting access and having security observe the tourists before reaching the observation deck. Because the Empire State Building had never been the

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subject of a terrorist attack before this incident, the appellate division held that the Empire State Building's security measures were sufficient for 1997 even though the measures would be considered lacking after September 11, 2001.

Tenant Objections

Even when landlords take appropriate measures to address the security issue, they can still run into problems, from their tenants. Rockefeller Plaza is a well known New York City building that draws thousands of tourists every year. In the wake of September 11, it installed new security measures for the Rainbow Room, a restaurant at the top of the building. The measures included handbag and other personal property. When the building then decided to add metal detectors at the entrance of the elevator bank servicing the Rainbow Room, the owner of the Rainbow Room sued to prevent the measures out of fears that it would hurt its business. Approximately 83 percent of the Rainbow Room's business came from formal catered events and the owners feared that this line of business would be severely damaged if the metal detectors were installed. Fortunately for the landlord, the lease agreement allowed the building to enact any security measures necessary to protect the building, and the owners won the suit as a result.

How to Protect against Litigation

A clear paradox is faced by building owners and managers. Too little security might lead to liability and too much security might upset the tenants and be prohibitively expensive. A low risk building should be protected from liability in a lawsuit if it applies security measures that are the custom and practice for the area. A high risk building should conduct a study to check for vulnerabilities and enact appropriate security measures to protect against those vulnerabilities.

Building owners can protect themselves against tenant litigation in the lease agreements. The lease should acknowledge that a tenant cannot be protected against all possibilities, but that building management maintains control over security. The level of security can be outlined in the lease as to the specific security services offered so that as long as the building meets that level, the tenant can have no claim that the security measures are unnecessarily onerous. Finally, the lease should require the tenant to be liable for any injuries suffered by its guests as long as security has been provided and outlined in the lease. ■

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