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# 2019 Negligent Security Premises Verdicts of $81 Million and $45 Million vs. Major Retailers


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**Background/Overview:**

We are writing to update you concerning two significant, multi-million dollar premises liability verdicts in the Atlanta metropolitan statistical area. These verdicts are significant because they were rendered on a "*negligent security*" theory, and our firm has been tracking this ever-developing area of premises liability law. "Negligent security" means that the hazardous condition on the premises was the owner/occupier's (alleged) failure to provide and/or maintain adequate security against the risk of bodily harm by criminals and other third parties. While this theory of recovery used to be regarded with a high degree of skepticism by both judges and the bar at large (since it is asking the impossible of businesses), Georgia's appellate courts have in recent years have consistently ruled in the majority of negligent security cases that, because there is at least *some* duty to provide security, it is for a jury to decide what is a reasonable level of security under the circumstances. If that sounds like a vague description of the law, then it is because we regard the legal "analyses" propping up decisions in this area of the law to be both preposterous and inconsistent with Georgia jurisprudence, generally. While we strongly disagree with Georgia's law in premises cases premised on a negligent security theory (because it makes businesses liable for the acts of third parties – even criminals – over whom they have no control), we must nevertheless advise our clients that Georgia has opened the door to a floodgate of litigation and runaway verdicts against businesses and landowners in statistically high-crime geographic areas.

**Verdict #1, $45 Million (Gross)/$43 Million (Net) vs. CVS:**

This first verdict we are reporting was rendered on or about March 22, 2019 against Georgia CVS Pharmacy LLC in the State Court of Fulton County, Georgia in Atlanta proper with Judge Fred Eady presiding. It was reported that, after concluding ***personal*** business (buying, selling, and refurbishing electronics) with a customer in CVS' parking lot – business that had nothing to do with CVS, the plaintiff was shot by an unknown assailant. The plaintiff, who was armed, fired back, but his sidearm malfunctioned, and the assailant shot him twice before escaping. Responsibility for the unadjusted verdict of $45 million was allocated 95% to CVS and 5% to the plaintiff (per O.C.G.A. § 51-12-33), resulting in a net verdict against CVS of just under of $43 million ($42,750,000.00), which was approximately 59 times the plaintiff's medial specials of $725,000.00.

The jury reportedly deliberated for six to seven hours (according to a report from CaseMetrix, an independently maintained jury database and auditor) before deciding that the plaintiff (James Carmichael of Alabama) was only 5% negligent, leaving CVS 95% at fault. The information available to our firm does not indicate why the shooter was not apportioned any percentage of the total fault/verdict under Georgia's non-party apportionment statute (O.C.G.A. § 51-12-33). Possibly CVS failed to request a non-party apportionment; otherwise, the jury failed to blame the shooter for any of the plaintiff's injuries. It is difficult, though, to see how a reasonable and rational jury could blame CVS more than the individual who actually pulled the trigger and shot the plaintiff, yet that appears to be the result here. (Of course, in our estimation, it is difficult to see how the jury found against CVS at all – the plaintiff was not even a CVS customer at the time of the shooting.) However, the jury seemed to find it significant that the CVS had previously employed but then discontinued security personnel, and even CVS' employees were reportedly scared to work at that store due to the known crime rate in the area.

On a final note, this case has, understandably, caused the Georgia Defense Lawyers Association ("GDLA"), of which I am a member, to lobby with other groups including the American Tort Report Association in favor of tort reform to eliminate negligent security cases and uncapped civil verdicts, and you can read more about that in an article here.

**Verdict #2, $81 Million (Gross)/$70 Million (Net) vs. Kroger:**

The second verdict we are reporting was rendered on or about April, 2019 against a Kroger grocery store in the State Court of DeKalb County, Georgia with Judge Wayne Purdom presiding. The specific Kroger in question was located off Moreland Avenue in Atlanta. The plaintiff parked in the lot and was exiting his vehicle to enter the store when he was shot multiple times by two unknown assailants. Also, his car was stolen. The jury found persuasive the plaintiff's argument that Kroger had admitted it needed to retain a dedicated security officer for the parking lot but did not do so until after the plaintiff was shot in February of 2015 (this report, from CaseMetrix, raises obvious concerns that the jury appears to have been permitted to hear evidence of "subsequent remedial measures" in violation of O.C.G.A. § 24-4-407, but that is outside the scope of this update).

Following a two-week trial, the jury found that the plaintiff had been damaged in the gross amount of $81 million dollars. This is 19 times the reported medical specials of $ 4,260,077.00 (obtained from CaseMetrix). The jury apportioned 86% of the fault/blame to Kroger, and only 14% to two non-party shooters (nothing was apportioned to the plaintiff). The net verdict to Kroger was $70 million ($69,660,000.00) – all because it did not hire a private security guard to do what law enforcement cannot: prevent violent crime.

Given that the law does not permit the jury to take economic status into account when deciding what is "reasonable" in terms of security measures, the presumption is that the jury would have found a small, family business in that same area would also have to hire a security guard, which may not be economically feasible for all businesses. More to the point, should the security guard (that Kroger supposedly should have hired) be armed? What if an armed Guard shoots the assailant? The same jury might be asked to find Kroger liable for the guard's decisions on the use of lethal force (either in tort or in the form of a very expensive workers' compensation claim). If the guard is not to be armed, then how would that have stopped the shooters in this case? Kroger might have found itself being sued by the family of the unarmed guard for not having provided him with a sidearm.

**Impact:**

The problem with "negligent security" as a theory of recovery is that it basically requires Georgia businesses to take on the role of the police. Armed security guards are expensive. Arguably, they create more

problems than they solve since businesses might be held liable for their use of force and decisions (unlike with law enforcement). Unarmed guards are equally capable of being the victims of violent crime, creating additional exposures/risks for businesses who employ them. If the police cannot completely prevent/eliminate crime, then how are private businesses supposed to do it?

As reported in the news article cited above, a colleague practicing in commercial law spoke earlier this year before the Senate Study Committee on Reducing Georgia's Cost of Doing Business and said, "*Every business owner, every landowner in Georgia has an obligation to keep their business and premises safe. I am not arguing that we change that … But we are talking about negligence cases that are not actions of the landowner. We're talking about third parties who come on or near the landowner or business owner's property and commit a crime against a third party, frequently a customer*." We agree completely. This is an impossible situation for businesses and property owners.

The current law in Georgia, allowing a business, landowner, or other occupier of a given premises to be held liable for the acts of criminals over whom they hold no control or influence, is patently unreasonable. Georgia law is tasking private citizens and businesses with doing what even full-time, tax-funded law enforcement officials cannot: to prevent and eliminate crime on their property. Failing to accomplish that impossible task can result in multi-million and even billion dollar verdicts far in excess of the typical insurance limits available to them. Premiums for this coverage will have rise to accommodate the risk – to levels that may prove untenable for all but the largest companies.

While we usually try to keep legal updates to our clients to the facts without "editorializing," the two verdicts above are but a symptom of a cancerous problem. The law as it currently stands is clearly and unequivocally setting up businesses and insurers in higher-crime areas to fail to the detriment of the surrounding communities. It is not unreasonable to anticipate that this may result in a loss of businesses in at-ris areas that need them the most, yet juries in Georgia are frequently not allowed to hear argument on the impact to the community if these businesses close (see Georgia's Civil Pattern Jury Instructions §§ 02.550 and 66.773 concerning prohibitions against considerations of sympathy or bias based on, for example, economic status).

Hopefully the current push for tort reform will provide businesses and their insurers alike with some relief from this oppressive and unjust cause of action. Normally, when updating clients regarding adverse cases and verdicts, I try to offer some general advice to mitigate the risks that led to those outcomes. However, as discussed above, there is little that can be done when the standard is this unreasonable. Hiring security personnel is a measure that raises as many or more risks than it mitigates. Whatever security measures are undertaken should be kept current, with equipment and structures in good condition and functioning as intended. For example, ensuring that security cameras are functional and retaining footage of any incident for at least two (2) years is always prudent, though I have seen footage backfire too (e.g., when it depicts a violent attack that can engender sympathy for the victim-turned-plaintiff; regardless, having and not retaining footage leads to spoliation concerns that can result in a finding of liability as a penalty). Security personnel should be current in training and licensure/permits. Safety training to employees should include practical instructions on what to do in the event of a violent incident, remedy, or crime.

Of course, nothing a business or other owner/occupier can reasonably do, no matter how diligent or proactive, will avail them when confronted with a jury pool that is handing out runaway verdicts on facts such as those in the two cases cited above in this update. If a solution is to come, then it will have to come from legislative changes or a change in how Georgia's appellate courts approach this issue. To the former, the GDLA is already working in concert with other organizations to lobby the General Assembly for tort reform, and we recommend supporting those efforts however you can. To the latter, appellate changes would require businesses and their insurers to appeal jury verdicts rather than settling post-trial, which can

be a risky proposition, but the appellate courts do not and cannot rule on cases until an appeal is filed. We will continue to monitor appellate decisions and update you as developments arise.