

NEW MEXICO INJURY ATTORNEY BLOG

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Business Owners' Duty of Care to Protect Customers from Criminal Acts

The recent New Mexico Court of Appeals case of *Romero v. Giant Stop-n-Go of New Mexico* addresses the duty of care owed by a business to protect its customers from harm under the law of premises liability.

The case arose out of a multiple homicide that occurred in a Mustang convenience store in Taos, New Mexico. The murders resulted from a bad drug deal that had occurred earlier in the evening. The perpetrator of the murders spotted the three victims in a vehicle in the store parking lot. He charged toward the car emptying the clips of two handguns into the car killing the three occupants.

A wrongful death lawsuit was filed on a premises liability theory alleging that the store owed a duty of care to protect its customers from the criminal acts of third parties while on the premises. The court began by stating that "As a general rule, a person does not have a duty to protect another from harm caused by the criminal acts of third persons" in the absence of a special relationship. The court did indicate that a special relationship does exist between a store and its customers.

However, in addition to the special relationship, the criminal acts must be foreseeable and therefore preventable. The court stated that foreseeability is a measure of "what one might objectively and reasonably expect, not merely what might conceivably occur." The court refused to find that a targeted homicidal attack was foreseeable. The court did not find that prior criminal acts on the premises were in any way suggestive of foreseeability of such an heinous act.

In essence the court reached the only logical conclusion that it could. A business cannot be expected to install every possible measure to protect against every possible harm. Clearly, a drug deal related triple homicide that occurred spontaneously in the parking lot is not something that any business could reasonably predict. As such, there is no way to protect against it. To rule otherwise would place an impossible burden on business owners.

On the other hand, the court did restate the burden of businesses to protect customers from foreseeable harm. There are many instances in which criminal against patrons are clearly foreseeable. In these cases, business owners would be held to a higher standard of care. In case they neglect this duty, and a customer is injured, there would likely be a premises liability claim and the business owner would be held liable for all damages resulting from its negligence.

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Each case must be viewed individually. Review of the facts of any particular case by a qualified New Mexico attorney is essential for a determination of the rights and responsibilities of both the business and any victim suffering harm in a situation such as this.

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