

Public liability cover at malls needs to be assessed carefully

The growing number of mall robberies and shootings raises the issue of who is liable - the property owners, shopkeepers or the security companies - to cover the costs of injuries and damages, as well as legal expenses. It also underlines the need for effective security.



Simon Colman

Simon Colman, Underwriting Executive at SHA Specialist Underwriters says that the issue of upgrading security measures, such as improved scanning practices or the installation of permanent metal detectors - in line with mall security practices used in countries such as the US - needs to urgently be explored. "It is becoming increasingly important for clear guidelines for dealing with high risk situations to be drawn up, so that all parties know how to deal with these life-threatening situations."

He says property owners should engage with reputable security companies that have proper training in dealing with crime in crowded areas and have proper liability insurance in place. "In addition to this, it is crucial that the mall itself has proper liability cover in place."

Property owners often underestimate the value of public liability cover with many South African businesses buying less than R5 million worth of cover. "With crime becoming an increasing problem across the country, paired with an increasingly litigious population, it is imperative for retailers and property owners to review and revise the limit of their liability cover to ensure it is as wide as possible."

Public liability policies cover the defence costs (legal fees) to defend the insured if it is alleged that it is liable for any injuries or damages sustained by customers during a robbery. "If the defence is unsuccessful, the damages awarded by the court are covered, though some liability insurers will settle if the prospects of successful defence are poor."

In the case of robberies, South African law still requires there to be negligence on the part of the property owner or retailer in order to hold them liable for any injury to consumers. "A robbery does not automatically impute liability onto the property owner / shopkeeper. Some unknown party is actually responsible for perpetrating the crime itself and would of course be criminally and civilly liable for the injuries and damages."

Question of negligence

The question that retailers need to ask is if they have done all that they could reasonably be expected to do, in order to keep their customers safe. "If they have been negligent in carrying out their duty of care to customers, it is possible that liability could attach. For example, if a security system prevents the exit of customers when a robbery is in progress, one could argue that this puts customers in harm's way."

From a shopping mall tenant perspective, one could argue that the attraction for a retailer to be in a shopping centre, as opposed to out on the street, is due to the provision of security. "This could justify action brought by the tenant retailer against the property owner for not providing adequate security. Similarly, a shopping centre that is repeatedly hit by robberies could see its foot traffic dramatically affected, this in turn could lead to a drop in revenue causing retailers to seek recovery from the landlord. If negligence on the part of the property owner can be established, and liability is not limited in the lease agreement, property owners may be held liable."

Public liability policies must be written on a broad form basis to cover defence costs against any third party litigation. "These broad liability policies can even extend to cover the security companies that are employed to guard the premises."

It is advisable for shopkeepers to have their own policies in place, rather than assuming that they are covered by the overall policy of the shopping mall, as third party attorneys may target the property owner, the shopkeeper and the security company respectively in a suit, concludes Colman.

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