PREMISES LIABILITY CASE LAW UPDATE

By: Jerry Fazio, Esq.

Owen&Fazio P.C.
Attorneys & Counselors at Law

7557 Rambler Road, Suite 1465
Dallas, Texas 75231
(214) 891-5960 - Telephone
(214) 891-5966 – Facsimile
www.owenfazio.com

PREMISES LIABILITY LAW IN TEXAS

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I. WHAT IS PREMISES LIABILITY LAW?

1. Premises liability is a type of ordinary negligence action brought by someone who claims to have been injured by a condition on the property.

2. The Difference Between a Premises Liability Suit and a Negligent Activity Suit?

   - In a negligent activity suit, the plaintiff must establish that he was injured by or as a contemporaneous result of an activity rather than by a condition created by the activity. However, in a suit for premises liability, a plaintiff's injury is caused by a condition on the premises. The condition may have been caused by an activity, but the injury occurred after the activity.

   - **Example:**

     1. *Keetch v. Kroger Co.*, 845 S.W.2d 262 (Tex. 1992): a business patron slipped on Green Glo, a substance used to make flowers look more shiny. An employee had sprayed the flowers **30 minutes before** the patron slipped on the slick floor. For the business patron to recover under a negligent activity theory (which is easier to prove that premises liability), the court said she would have to prove she was injured by negligent activity, not by a condition created by the activity. Because there was no "ongoing activity" when the business patron was injured, her cause of action was for premises liability, not for negligence. Even though the business patron was injured by a condition created by the spraying of the flowers, she was not injured by the activity of spraying itself.

   - Pursuing a premises liability is much more difficult than a simple negligent activity case. As a result, most employees prefer to pursue their claims under the terms of negligence. Since these theories are different, the employee cannot bring both and must choose the correct one to pursue.

II. WHAT DUTIES ARE OWED BY LAND OWNERS / OCCUPIERS?

1. In a premises liability case, the duty owed to a person on the premises depends on the legal status of the injured party. In Texas, a person on the premises of another is classified as either a(n):

    - Invitee
    - Licensee or
    - Trespasser

2. Ask → What is the reason the injured person was on the premises?

    - Invitee – A person who enters the premises with owner's express or implied knowledge and for the parties' mutual benefit.

        1. ***Covers Employees and Business Patrons**

    - Licensee – A person who enters the premises with the owner's permission, but only for their own convenience or for the business of someone other than the owner

        1. Covers off-duty employees

    - Trespassers – A person who enters the premises without the lawful right or the consent of the owner, merely for the trespasser's own purpose or out of curiosity.

        1. Covers business patrons who have been asked to leave the premises

3. So, as an land owner / occupier, what duty is owed to my employees and business patrons?

    - In Texas, the duty owed to an employee and business patron (invitee status) is the Highest.

        1. Rule→ The land owner / occupier has a duty to INSPECT and MAKE SAFE any dangerous condition OR give adequate warning of that dangerous condition. Further, there is a duty to refrain from injuring a person willfully, wantonly or with gross negligence.

        2. The Texas Supreme Court has held that corporate employees have no independent duty to furnish a safe workplace, and therefore corporate employees cannot be held personally liable for the corporation's

failure to provide a safe place to work. Individual liability only arises when the officer, manager or agent has an independent duty of reasonable care to the injured party apart from the employer's duty. Except for alter ego situations, "corporate officers and agents are subject to personal liability for their action within the employment context only when they breach an independent duty of care."

- Leitch v. Hornsby, 935 S.W.2d 114 (Tex. 1996).

- How is this duty compared to the duty owed to a licensee (such as an off-duty employee?)

    1. A land owner / occupier only owes the duty to make safe dangerous conditions or give adequate warnings of the conditions. There is NO duty on the land owner / occupier to inspect the premises for dangerous conditions, but there is a duty to refrain from injuring a person willfully, wantonly or with gross negligence.

- What about trespassers?

    1. The only duty owed in Texas is not to injure the trespasser willfully, wantonly or with gross negligence.

III. ELEMENTS OF A PREMISES LIABILITY CASE

1. Luckily for Land Owners / Occupiers, it is difficult to maintain a suit for Slips, Trips and Falls.

    - As the Texas Supreme Court said, "The great majority of slip-and-fall cases are lost at the trial level and, no doubt, always will be."
        1. Wal-Mart Stores, Inc. v. Gonzalez, 968 S.W.2d 934 (Tex. 1998).

2. Texas Supreme Court enunciated the elements in: Keetch v. Kroger Co., 845 S.W.2d 262 (Tex. 1992).

    - Facts: A patron of Kroger grocery store was walking through the floral department to go to the checkout counter. The patron slipped on Green Glo, a substance that was sprayed on the flowers to shine the leaves. A witness to the accident said they noticed the waxy substance on the floor; however, an employee of Kroger testified that they never noticed the spot on the floor after spraying the leaves.

    - Elements:

      (1) Actual or constructive knowledge of some condition on the premises by the owner/operator;

      (2) That the condition posed an unreasonable risk of harm;

      (3) That the owner/operator did not exercise reasonable care to reduce or eliminate the risk; and

      (4) That the owner/operator's failure to use such care proximately caused the plaintiff's injuries.

3. The Texas Courts have recently applied these same elements in Non-Subscriber cases. Thus, these elements apply to invitees of non-subscribers including business patrons and non-subscriber employees.

    - De Los Santos v. Healthmark Park Manor, L.P., No. 06-05-00014-CV, 2005 WL 2708497 (Tex. App.—Texarkana Sept. 23, 2005, no pet.) (mem. op.).

    - The Court wrote:

    "To succeed in a premises liability suit, an invitee plaintiff must prove:

(1) that the defendant had actual or constructive knowledge of some condition on the premises,

(2) that the condition posed an unreasonable risk of harm,

(3) that the defendant failed to exercise reasonable care to eliminate or reduce the risk of that harm, and

(4) that the defendant's failure to use such care proximately caused the invitee's injury. "

- "Employees of an owner or occupier of premises are considered invitees of the employer....The rationale used to justify an inference of knowledge by an employer, as described in Keetch, requires a finding that an owner of the premises knew or should have known of the condition. "

- **Element 1: The land owner / occupier had actual or constructive knowledge of some condition on the premises;**

    1. An employee's proximity to a hazard, with no evidence indicating how long the hazard was there, merely indicates that it was *possible* for the premises owner to discover the condition, not that the premises owner reasonably *should* have discovered it. Land owner / occupier held not liable for injuries caused by a liquid spill on the floor.
        - Wal-Mart Stores v. Reece, 81 S.W.3d 812 (Tex. 2002).

    2. Land owner / occupier was not charged with knowing condition just because they knew that ice dropped from ice machine onto floor on a daily basis. The dispenser was not set up in such a way that ice on the floor was a greater dangerous than one would ordinarily encounter with such dispenser, and customers were not any more prone to spills around the dispenser than they were around any others like it. The Court held that a condition on the premises is not unreasonably dangerous simply because it is not foolproof.
        - Brookshire Grocery Co. v. Taylor, ---S.W.3d---, 2006 WL 3456559 (Tex. 2006).

    3. Shopping center had knowledge of dangerous condition because it knew that change in floor elevation was not marked.
        - Harwood v. Hines Interests, 73 S.W.3d 450 (Tex. App.—Houston [1st Dist.] 2002, no pet.)

4. Customer told employee of oil on the floor.
    - Wal-Mart Stores v. Chavez, 81 S.W.3d 862 (Tex. App.—San Antonio 2002, no pet.)

5. An owner of a business is charged with actual notice of a dangerous condition if the business took precautionary measures to reduce the danger. Here, the employer saw customers tripping over the step and adjacent display.
    - Reliable Consultants, Inc. v. Jaquez, 25 S.W.3d 336 (Tex. App.—Austin 2000, no pet.)

6. Store did not have constructive knowledge of a French fry on the floor just because employee was working at a cash register 20-30 feet away.
    - Wright v. Wal-Mart Stores, 73 S.W.3d 552 (Tex. App.—Houston [1st Dist.] 2002, no pet.).

7. The injured's claim that litter could have been on stairs for 10-12 hours following the late afternoon rush was insufficient to show that the owner had constructive knowledge of the litter.
    - Bendigo v. City of Houston, 178 S.W.3d 112 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

8. An employee of a non-subscriber sustained a broken kneecap, when a co-employee unknowingly dropped a bottle of hand sanitizer which spilled onto the floor.. The Court of Appeals held that even though the co-employee was responsible for dropping the bottle of hand sanitizer onto the floor, this alone was insufficient to show that the employer had actual or constructive knowledge of the dangerous condition.
    - De Los Santos v. Healthmark Park Manor, L.P., No. 06-05-00014-CV, 2005 WL 2708497 (Tex. App.—Texarkana Sept. 23, 2005, no pet.) (mem. op.).

- IT CAN BE DIFFICULT FOR A PLAINTIFF TO PROVE NOTICE!! FOR EXAMPLE:

1. Dirt in macaroni salad lying on a heavily-traveled aisle is no evidence of the length of time the macaroni had been on the floor. That evidence can no more support the inference that it accumulated dirt over a long period of time than it can support the opposite inference that the macaroni had just been dropped on the floor and was quickly contaminated by customers and carts traversing the aisle.
    - Wal-Mart Stores, Inc. v. Gonzalez, 968 S.W.2d 934 (Tex. 1998).

2. Just because dried macaroni noodles were "soiled, scattered and appeared as though other persons had passed through the area and had been run over presumably by another cart or carts" was no evidence of the length of time the macaroni noodles had been there.
    - Furr's Supermarkets, Inc. v. Arellanno, 492 S.W.2d 727 (Tex. Civ. App.—El Paso 1973, writ ref'd. n.r.e.).

3. Testimony that the grape on which plaintiff slipped was squashed and muddy, that the floor was dirty, and that pieces of paper were strewn around nearby was no evidence that the grape had been on the floor long enough to charge the store with notice.
    - H.E. Butt Grocery Co. v. Rodriquez, 441 S.W.2d 215 (Tex. Civ. App.—Corpus Christi 1969, no writ).

4. The presence of footprints or cart tracks in the macaroni salad equally supports the inference that the tracks were of recent origin as it supports the opposite inference, that the tracks had been there a long time.
    - Wal-Mart Stores, Inc. v. Gonzalez, 968 S.W.2d 934 (Tex. 1998).

- **Element 2: That the condition posed a unreasonable risk of harm**;

Courts define "dangerous condition" as a defect that constitutes an unreasonable risk of harm such that a person using ordinary care could not encounter such condition with safety.

-Univ. of Texas Pan America v. Aguilar, 2007 WL 610731 (Tex. App.—Corpus Christi 2007, no. pet. h.).

WHAT CONDITIONS ARE LAND OWNERS / OCCUPIERS NOT LIABLE FOR BECAUSE THEY ARE NOT REASONABLE RISKS OF HARM?

1. A ramp without handrails that met applicable safety standards and was outlined in yellow stripping to note a change in elevation that was no more than four inches.
    - Brinson Ford, Inc. v. Alger, ___Tex. S. Ct. J ___, 05-0722 (June 15, 2007)

2. Mud and Dirt that accumulate naturally on a concrete slab outside of a business
    - M.O. Dental Lab v. Rape, 139 S.W.3d 671 (Tex. 2004).

3. Small rock in clod of dirt at rodeo arena

- Johnson Cty. Sheriff's Posse v. Endsley, 926 S.W.2d 284 (Tex. 1996).

4. Frozen Parking Lots – Conflicting Law
    1. One court of appeals case held that a owner/employer does not have the duty to protect its invitees from the natural accumulation of frozen precipitation on its parking lot.
        - Wal-Mart Stores v. Surratt, 102 S.W.3d 437 (Tex. App.—Eastland 2003, pet. denied).

    2. And yet another held that an owner/employer has a duty to remove or eliminate all dangerous conditions on the premises, even natural accumulations of ice.
        - Houston v. Northwest Vill., 113 S.W.3d 443 (Tex. App.—Amarillo 2003, no pet.).

5. Slime or mud near landscaped area in parking lot after 30-minute rainfall
    - Eubanks v. Pappas Restaurants, 2006 WL 3513623 (Tex. App.—Houston [1st Dist.] 2006, no pet. h.).

6. A foul ball at a baseball park injuring a patron
    - Knebel v. Jones, 266 S.W.2d 470 (Tex. Civ. App. –Austin 1954, writ ref'd n.r.e.).

7. Properly stored and stacked inventory
    - Wal-Mart Stores, Inc. v. Hinojosa, 827 S.W.2d 43 (Tex. App.—Corpus Christi 1992, no pet. h.).

8. Revolving doors with no defect in structure, condition, or operation
    - Skillern & Sons, Inc. v. Paxton, 293 S.W.2d 521 (Tex. Civ. App. 1956, writ ref'd n.r.e.).

9. Plain dirt that ordinarily becomes soft and muddy when wet
    - Brownsville Nav. Dist. v. Izaguirre, 829 S.W.2d 159 (Tex. 1992).

10. Risks inherent in the sport or activity in which the participant has chosen to take part
    - Phi Delta Theta Co. v. Moore, 10 S.W.3d 658 (Tex. 1999).

11. Mere presence of a product display
    - H.E. Butt Grocery Co. v. Resendez, 988 S.W.2d 218 (Tex. 1999).

12. A stump in a landscaped area outside of a business
    - Wong v. Tenet Hospitals. Ltd., 181 S.W.3d 532 (Tex. App.—El Paso 2005, no pet.).

13. A land owner's general knowledge that certain building materials will, over time, deteriorate and require repair and replacement does not necessarily mean the land owner created the dangerous condition.
    - CMH Homes, Inc. v. Daenen, 15 S.W.3d 97 (Tex. 2000).

WHAT CONDITIONS ARE LAND OWNERS / OCCUPIERS LIABLE FOR?

1. Self-serve grape displays without a slip and fall mat after a store knows of the dangers.
    - Corbin v. Safeway Stores, 648 S.W.2d 292 (Tex. 1983).

2. A patron being injured by falling down unmarked stairs in search of the bathroom after being given directions by an employee.
    - Bohn Bros. v. Turner, 182 S.W.2d 419 (Tex. Civ. App.—Austin 1944, writ ref'd w.o.m.).

3. A beverage display with no precautionary measures when the store knows ice can fall onto the floor.
    - National Convenience Stores, Inc. v. Erevia, 73 S.W.3d 518 (Tex.App.--Houston [1 Dist.] 2002, pet. denied).

4. Produce that causes a slip and fall injury when the store has knowledge of the condition.
    - Mass Marketing, Inc. v. Gaines, 70 S.W.3d 261 (Tex. App.—San Antonio 2001, pet. denied.).

5. When a store knows stocked shelves are unstable and that merchandise could fall off and injure a patron.
    - Wal-Mart Stores v. Sholl, 990 S.W.2d 412 (Tex. App.—Corpus Christi 1999, pet. denied.).

6. Products on display that are meant to be moved by customers and that become unstable as a result of this movement.
    - Plainview Motels, Inc. v. Reynolds, 127 S.W.3d 21 (Tex. App.—Tyler 2003, pet. denied.)

7. Elevated booth in dimly lit restaurant.
    - Marjorie Messer v. Texas Roadhouse Restaurant, WL 1373880 (Tex.App.-Waco May 9, 2007).

- **Element 3: That the land owner / occupier did not exercise reasonable care to reduce the risk** and;

    1. Duty to Inspect

        - A hotel was found not to be liable after a business patron slipped and fell while getting out of the shower. Even though a inspection was done of the shower before the room was given to the patron and after the fall, the duty to inspect only covers risks of which the owner should be aware after reasonable inspection. Here there was no unsafe condition that would have been detected by the hotel manager.
            i. Motel 6 G.P. v. Lopez, 929 S.W.2d 1 (Tex. 1996).

    2. Duty to Warn or Make Safe

        - Because the duty to warn or make safe involves alternative methods of either warning of the danger or eliminating the dangerous condition, the plaintiff must obtain a finding of fact that the owner/employer did neither.
            i. State v. Williams, 940 S.W.2d 583 (Tex. 1996).

    3. Duty to Refrain from Gross Negligence

- **Element 4: That the land owner / occupier's failure to use such care proximately caused the Plaintiff's injuries.**

    1. Physical facts showed that a customer in a store after receiving directions as to where the rest room was, was found seriously injured at the foot of the basement stairs, the door to which was not locked, and contained no marks, sign, notice or warning that public was not to use it, or of dangerous condition confronting a stranger or the public with respect to landing and stairs, supported finding of jury that store owners negligently failed to lock or guard the door and such negligence was the proximate cause of the death of a customer as a result of her injury.
        - Bohn Bros. v. Turner, 182 S.W.2d 419 (Tex. Civ. App.—Austin 1944, writ ref'd w.o.m.).

    2. A minor tenant of an apartment complex was assaulted by another tenant. The Court held that the allegations that the landlord breached their duty in failing to provide security guards, to obtain police reports of calls related to criminal activity in the area and in failing to require certain documents from prospective tenants was not the proximate cause of the assault. The tenant presented no

evidence that the assault could have been prevented if this Landlord would have done these three things.

- Western Invs., Inc. v. Urena, 162 S.W.3d 547 (Tex. 2005).

3. An air conditioning repairman sued a commercial tenant for injuries allegedly sustained in a fall from the roof of their building. It was disputed what actually caused the fall, as the worker was found the next business day and could not remember what had caused the fall. Although the repairman tried to show evidence that the unit he was working on shocked him and he fell off the roof, the Court held that the repairman had only slight circumstantial evidence and that something else must be found to corroborate the probability of that fact's existence for the commercial tenant to be liable.
    - Marathon Corp. v. Pitnzer, 106 S.W.3d 724 (Tex. 2003).

- **Damages**: If a injured person can prove all 5 elements to a premises liability claim, they could be entitled to actual damages and exemplary damages.

1. Recent Big Verdicts Involving Patrons and Employees in Premises Liability Cases

a. Theresa v. Dunn v. Denar Rest. LLC, No. 04-9025-A (14th Dist. Ct., Dallas County, Tex. Sept. 28, 2006).

An employee waitress sued her non-subscriber employer after tripping and falling on a telephone cord lying in the floor near the check out counter. A jury awarded a total of $437,500 for medical costs, physical impairment and pain and suffering. The Judge did not allow damages for the employee's heart-related damages and costs, as there was no finding of causation by an expert.

b. Singleton v. Popeye's Fried Chicken & Biscuits, No. 2005-27307 (270th Dist. Ct. Harris County, Tex. Aug. 31, 2006).

An employee sued her non-subscriber employer when she slipped and fell while working. The employee had allegedly slipped on loose floor tiles or a grease and water spill. The City of Houston health inspectors had found defective tiles on the floor before the accident. A jury awarded the employee $368,000, which was reduced by $22,000 for an ERISA payment.

c. Petsmart and Petsmart, Inc. v King, 2007 WL 926456 (Tex. App.—Dallas 2007 pet. denied).

A patron was shopping at PetSmart when he slipped and fell while attempting to pull a bag of cat litter from a shelf and his fingers slipped off the bag. A

jury awarded the patron $300,000 for medical costs, pain and suffering and lost earnings. The patron had initially demanded $175,000 pre-trial and the defense offered a settlement amount of $30,000.

d. Plainview Motels, Inc. v. Reynolds, 127 S.W.3d 21 (Tex. App.—Tyler 2003, pet. denied.).

Customer and his wife brought premises defect action against store, individually and on behalf of their minor child, for injuries sustained when a stack of mirrors fell onto the customer and their child. The trial court entered judgment on a jury verdict in favor of customer and the store appealed. The Court of Appeals held the evidence was sufficient to support finding that customer's injuries were caused by store's breach of duty in failing to exercise reasonable efforts to reduce or eliminate risk associated with unreasonably dangerous mirror display, that the evidence was sufficient to support customer's damage award of $585,000 for loss of future earning capacity.

e. Hendrick Medical Center v. Smith, 2007 WL 3309120 (Tex. App.-Eastland 2007).

An employee, who worked as a tray line aide in the kitchen, was shocked as she attempted to plug in a refrigerating unit. A jury awarded the employee $472,500 for past and future medical costs, physical impairment, lost earnings and mental anguish.

f. Allsup's Convenient Stores, Inc. v. Anderson, 2006 WL 2588733 (Tex. App.—Amarillo 2006, no pet.).

An employee of a non-subscriber employer fell off a ladder and hit his head on a shelf on the store floor. The employee weighted 350 pounds and was using a company ladder rated for 200 pounds of weight. A jury awarded the employee $648,560 compensating him for medical costs, physical impairment and lost earnings. The appeal was dismissed as the parties reached a confidential settlement before the case could be reheard by the Court of Appeals.

IV. PREMISES LIABILITY: CRIME BY A THIRD PARTY

1. What does a Plaintiff have to prove to hold a land owner / occupier liable when a **crime** has been committed to them by a third party on the premises?

   a. Timberwalk v. Cain, 972 S.W.2d 757 (Tex. 1998).

      i. Whether a risk of crime to a person is foreseeable is determined by what the land owner / occupier should have known before the criminal act occurred, not by hindsight. To determine if a criminal act was foreseeable, the court considers the following "Timberwalk" factors:

         1. Previous crimes on or near the premises;
         2. Recency of the crimes;
         3. Frequency of the crimes;
         4. Similarity of the crimes and;
         5. Publicity of the crimes.

   b. Stewart v. Columbia Medical Center of McKinney Subsidiary LP, 214 S.W.3d 659 (Tex. App.-Dallas 2007)

      i. Facts: A husband brought a rifle to the hospital where his wife worked and shot her in the head while she was exiting her car in the parking lot next to the office building after lunch. The Plaintiff in this case was a co-worker who ran to assist the victim and was also subsequently shot in the back. The Plaintiff sued the hospital and stated that the hospital had a duty to protect her and provide adequate security to users of the parking lot. The Plaintiff pointed to a security management program that required hospital security officers "to challenge suspicious persons" on the premises.

         Held: The Court applied the Timberwalk factors and held that the hospital presented sufficient evidence that there had been no prior similar criminal activity at or near the hospital and that the acts of the husband were unforeseeable to the hospital. Further, the Court held that the security management plan was insufficient as a matter of law to impose a duty on the hospital to protect invitees from the unforeseeable criminal conduct.

c. Trammell Crow Central Texas Ltd. v. Gutierrez, 2008 WL 3991185 (Tex. 2008) 51 Tex. Sep. Ct. J. 1355.

Facts: A husband and his pregnant wife were walking from a movie theater that was located in the Quarry Market, a property managed by Trammell Crow, when the husband was shot by a third party. The police classified his death as murder. The wife and mother of the victim brought suit on behalf of the victim's children and asserted that Trammell Crow was negligent in failing to adequately provide security and that this caused the death. Trammell Crow stated that just a few weeks before his murder, the victim provided the police with names of individuals involved in smash-and-grab burglaries. Trammell Crow argued that the victim died as a result of a targeted murder, and no negligence on their part.

Held: The Court reversed the Court of Appeals' judgment and rendered a judgment that Respondents take nothing. The Court held "because the attack on Lewis was so extra ordinarily unlike any crime previously committed at the Quarry Market, we conclude that Trammell Crow could not have reasonably foreseen or prevented the crime and thus owed no duty in this case."

Non-Subscriber Cases Involving the Criminal Act of a Third Party

1. Gibbs v. ShuttleKing, Inc., 162 S.W.3d 603 (Tex. App.—El Paso 2005, pet. denied).

Facts: This case arose from a bus hijacking incident in which the bus driver sustained serious injuries. The bus driver brought suit against his non-subscriber employer, alleging that the employer failed to provide a reasonably safe workplace. The employee initially sought recovery on theories of negligence and promissory estoppel. The employer filed both No Evidence and Traditional Motions for Summary Judgment, which the Trial Court partially granted to dismiss the negligence claims. A jury awarded the employee $150,000.00 on his promissory estoppel claim. The Court of Appeals remanded the case to the Trial Court, stating that the judgment was interlocutory because it did not address all claims and parties. The Trial Court subsequently issued an amended final judgment which incorporated both the partial summary judgment on the negligence issues and the judgment on the jury verdict. The employee appealed the summary judgment as to negligence and sought to affirm the judgment as to promissory estoppel. The employee asserted that he submitted sufficient evidence to raise a fact issue as to the foreseeability of the risk of harm to drivers and passengers. The employee contended that the employer, as owner of the bus, was responsible for controlling the third parties who injured Plaintiff.

Holding: The Court held that the employee's claim was more akin to a premises liability claim than a negligent activity claim, and thus applied the foreseeability factors articulated in *Timberwalk*. The Court found that the relatively small number of crimes committed on the employer's buses over an extended period of time negated any element of foreseeability. Furthermore, the Court stated that the employee failed to establish that other incidents were

similar to the crime which resulted in his injury. Accordingly, the summary judgment granted by the Trial Court was affirmed.

2. Jea v. Cho, 183 S.W.3d 466 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).

   Facts: While working, an employee was shot during a robbery. The employee subsequently sued his non-subscriber employer for negligence in failing to provide a safe workplace. A jury rendered a favorable verdict for the employee; however, the employer filed a Motion for Judgment Not Withstanding the Verdict, which the Trial Court granted. The Trial Court based its decision partially on the fact that there was no evidence of proximate cause.

   Holding: The Court of Appeals affirmed the Trial Court's judgment because the Court could not find any evidence of omissions on the part of the employer, individually or in combination, that would have prevented either the robbery or shooting that caused the employee's injuries.

3. Allen v. Connolly, 158 S.W.3d 61 (Tex. App.—Houston 14 Dist.] 2005, no pet.).

   Facts: An employee of a non-subscriber employee was robbed and sexually assaulted while working at an insurance agency located on a leased premise. She sued her employer for negligence, alleging that her employer had failed to properly train her to use the alarm system, and that had she known the location of panic buttons and the fact that only a silent alarm would be activated, she would have utilized the alarm. The employer filed a No-Evidence Motion for Summary Judgment asserting that there was no evidence that the employer owed a duty to the employee because there was no evidence that other crimes of similar nature had occurred at the location of the assault or in its immediate vicinity. The Trial Court granted this motion. The employee appealed this summary judgment.

   Holding: The summary judgment was affirmed by the Court of Appeals. The Court reasoned that an employer's duty to use reasonable care to provide a reasonably safe workplace is, with respect to the risk of violent crime, based upon the same considerations that determine whether a premises occupier must protect invitees against the same risk. The employer argued successfully in the Trial Court that no foreseeable risk of harm existed, and thus, the employer owed no duty to the employee.