



Mar 03, 2026

Categories:

[Publications](#)

Authors:

[Nathaniel T. Fowler](#)

Excess Forecast: Recent Premises Liability Trends and Why Early Engagement Matters in Retail and Hospitality Litigation

More and more frequently, excess carriers writing retail, restaurant, multifamily, and hospitality towers are likely to see premises liability claims turn on more than just the incident itself. These claims now often hinge on what the insured can prove about other factors: day-to-day operations, what the surveillance footage shows (or fails to show), and whether the jurisdiction lets foreseeability and “reasonableness” issues go to a jury. When those variables tilt the wrong way, a claim that starts in the primary layer can climb up the tower quickly — especially after plaintiffs’ counsel paint a “routine” incident as evidence of systemic operational failure or, worse, as deliberate indifference. Excess carriers should be on the lookout for the following themes, which show up again and again in tower files: operational-proof gaps, surveillance missteps, venue-driven foreseeability rulings, and post-loss conduct that inflates severity.

Operational Negligence Theories vs. Traditional Notice Defenses

Over the last several years, courts across the country have pulled premises cases in two directions at once: some opinions invite broader operational negligence discovery, while others tighten what plaintiffs must prove on issues like notice and condition. Recent decisions reinforce, on the one hand, how aggressively plaintiffs now prosecute operational negligence alongside traditional premises theories. For example, in a recent Tennessee case, the court declined to adopt a rule that would automatically eliminate negligent training and supervision claims once an employer admits potential vicarious liability. That approach matters for excess carriers because it broadens discovery into training materials, staffing practices, supervision, and corporate policies. This can increase spend and pressure well before mediation and potentially

bring punitive exposure into the picture where it otherwise would have stalled.

On the other hand, some courts continue to sharpen what plaintiffs must prove in terms of notice and condition, which can help excess carriers control early valuation in slip-and-fall cases. In *Albertsons, LLC v. Mohammadi* out of Texas, the court emphasized that “actual knowledge” must tie to the specific dangerous condition at the time of the accident, not merely to a hypothetical circumstance that might theoretically produce the hazard on the premises. Defendants can use that framing to narrow the case to the specific condition and notice at issue, while keeping plaintiffs from turning an abstract hazard into a broader “culture of carelessness” narrative.

Video Retention Now Drives Severity and Settlement Gravity

Even when defendants win the legal arguments, the claim’s trajectory often turns on a more practical question: what the insured preserved and how cleanly it can prove it. Surveillance retention now shapes premises cases from day one, not just at trial. As a result, astute plaintiff attorneys now frequently push the case away from “what happened” and toward “what the insured failed to preserve.” When the defense loses footage — or even looks sloppy in the way it handled it — the file often picks up settlement momentum regardless of the underlying liability facts.

Recent Florida appellate guidance illustrates how that dynamic plays out in real time. In a case involving a big box retailer, the court reversed a plaintiff’s judgment after the trial court issued an adverse-inference spoliation instruction based on a short gap in preserved video. The appellate court emphasized the lack of competent evidence supporting spoliation and criticized the trial court’s handling of the rebuttal process, noting that “the record contains no competent substantial evidence to support the trial court’s conclusion that [the defendant] negligently failed to retain footage[.]” Excess carriers should take two points from this ruling: Video disputes can distort valuation even when the defense ultimately wins, and the carrier that pushes preservation discipline in the first 30 days often prevents the dispute entirely. Put

differently: but for the appellate court stepping in, the insured and its carriers could have walked into a trial posture where the court “effectively shifted the burden of proof to the nonmovant,” turning a video gap into a case-driving liability narrative and a potentially disastrous leverage point.

Video can also shrink a case’s value when it eliminates inference-based theories and narrows what the plaintiff can plausibly argue. In *Oeffner v. Marc Glassman, Inc.* out of Ohio, the plaintiff alleged that an automatic entrance door at a Marc’s store struck her as she entered one evening. The plaintiff pursued negligence, negligence per se (building-code theories), premises liability, and even classwide injunctive relief premised on alleged systemic maintenance failures. Nevertheless, the appellate court affirmed judgment in the store’s favor, largely relying on surveillance footage from the accident, noting: “The video in this case clearly shows multiple store patrons having contact with the Door[.]” When the defense preserves clear footage and controls chain-of-custody, it starves the oxygen from “maybe” theories that otherwise survive on inference alone.

Negligent Security Claims Expand, but Jurisdictional Nuances Control the Ceiling

Surveillance preservation becomes even more consequential in cases involving third-party crime, where video and documentation issues collide with foreseeability doctrine and can push a claim into the tower earlier than expected. Plaintiffs continue to assert negligent security claims in places that once treated security allegations as outliers. That trend matters because plaintiffs do not need a “perfect” security case to create costly discovery and settlement pressure. Excess carriers should not treat those allegations as uniform across venues: Courts apply foreseeability and duty rules differently, and those differences often determine whether the claim putters out early or survives into substantive, expensive litigation.

Some courts resolve foreseeability at the summary judgment stage when the facts support a targeted or sudden-attack theory. In *Brownlee v. 22nd Avenue Apartments, LLC*, Florida’s Third District

Court of Appeal affirmed summary judgment in a negligent security case arising from a shooting at an apartment complex and emphasized the plaintiff's evidentiary gaps on foreseeability, duty, and causation. The court found, point-blank, that the plaintiff had "presented no evidence to illustrate that [the defendant] failed to have adequate security measures in place[.]" That kind of evidentiary gap gives excess carriers a clearer path to exit planning and reserve discipline.

Contract language and vendor agreements also drive these claims more often than insureds might expect. Plaintiffs now attack "security disclaimer" language by arguing that the insured failed to implement it conspicuously and contractually. In a Georgia case called *Tuscany Condominium Association, Inc. v. C.P.*, the court treated "no security" language as ineffective against a renter where the lease failed to incorporate it clearly and prominently, and the association failed to provide the governing declaration. Excess carriers should read that as an operational warning: If an insured relies on disclaimers or limitations, the insured must effectuate them in a tangible way — not just store them in a declaration or policy binder.

Taken together, these recent security decisions reinforce a simple excess-layer reality: Venue doctrine and early-evidence discipline often decide whether a security claim stalls out or becomes a tower problem.

Plaintiffs Build Punitive Narratives from Documentation and Post-Loss Conduct

Plaintiffs no longer reserve punitive narratives for the worst liability facts. They often build those narratives from the insured's policies, training, supervision, and post-loss investigation and conduct. When the insured mishandles an investigation, delays escalation, loses evidence, or appears uncooperative or even just unsympathetic, plaintiffs portray that conduct as indifference, and they use that framing to justify "nuclear" and punitive asks.

Recent Missouri appellate history illustrates how quickly juries adopt that storyline. In *Dugan v. Hyatt Corp.*, the court affirmed a

verdict that included substantial compensatory and punitive damages in a case where a hotel security guard used a master key to enter a guest's room and assault her, with evidence focusing heavily on pre-assault policy failures and post-assault conduct. The court explained that "Hyatt's post-assault resistance, interference, and failure to cooperate with the police investigation ... fully supports the trial court's submission of the punitive damages claim here." Excess carriers should treat this as a claims-handling reminder: In serious premises or security events, the insured's response can subsume the case and become as damning as the incident itself. Strong early coordination can prevent plaintiffs from converting missteps into an "indifference" narrative.

Practical Implications for Excess Carriers

Excess carriers in high-severity premises and hospitality cases do not need to second-guess every primary decision to protect the tower. However, they do need to identify early inflection points that predict whether the claim will climb. Excess carriers should prioritize as follows:

- **Evidence posture:** Demand early confirmation of preservation steps, retention windows, and chain-of-custody. Treat video as a first-30-days issue, not a "later" issue.
- **Theory creep:** Track pleadings and discovery that expand beyond the incident into training, supervision, staffing, and policy governance. Those theories often push claims into excess territory faster than the accident facts do.
- **Security contracts and allocation:** Obtain security agreements early and evaluate assumed duties, indemnity provisions, insurance requirements, and contractor performance records. These documents often decide allocation and "finger-pointing" fights.
- **Venue doctrine:** Reserve and plan with jurisdiction-specific duty and foreseeability doctrine in mind. The same fact pattern can wilt on the summary judgment vine in one venue and survive into a seven-figure settlement posture in another.

- **Post-loss conduct:** Push disciplined investigation, documentation, and cooperation protocols early. Additionally, a sympathetic touch — without conceding fault, blame, or liability — can help preserve a clearer picture if a claim ends up in litigation. Otherwise, plaintiffs will try to turn the response into the wrongdoing (or indifference).

Modern premises claims in the retail and hospitality industry rarely threaten excess layers because the insured suffered an accident. They threaten excess layers because the plaintiff turns the accident into a referendum on operations, evidence discipline, security governance, and respect for guests, customers, and the public at large. Excess carriers protect the tower most effectively when they engage early on those leverage points, before discovery hardens narratives and before mediation sets an artificial timeline.

If you're facing complex claims or suspect that your exposure may be increasing for any of the reasons discussed above, don't navigate these challenges alone. Please reach out to the author or any attorney with the firm's [Product, Tort, and Insurance Litigation Practice](#) for help determining your settlement exposure, along with the right course of action.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.