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WHITE PAPER ALERT

Premises Liability – Criminal Act

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WIENER v. SOUTHCOAST CHILDCARE CENTERS **04 C.D.O.S. 3886**

Property owners cannot be held liable for unforeseeable criminal acts, the California Supreme Court ruled Thursday. The unanimous decision, relying on a balancing test established in Ann M., confirms that courts must apply a heightened sense of foreseeability before holding a defendant liable for a third party's criminal conduct.

"It is difficult, if not impossible, in today's society, to predict when a criminal might strike," Justice Ming Chin wrote. "Also, if a criminal decides on a particular goal or victim, it is extremely difficult to remove his every means for achieving that goal."

The case was brought by two couples whose children were killed on May 3, 1999, when Steven Abrams deliberately drove his Cadillac onto a church playground in Costa Mesa, Calif. Abrams, who told officers he had harbored a desire to kill kids on that playground for years, was sentenced to life without parole.

In suing Southcoast Childcare Centers and First Baptist Church of Costa Mesa, the two couples claimed it didn't matter that Abrams acted intentionally. It was enough, they contended, that it was foreseeable that a 4-foot-high chain-link fence wouldn't protect children from cars on a busy street. Three years earlier, a mail truck went out of control and crashed through the fence at a low speed. Although no one was hurt, the parents argued that the incident revealed the weakness of the fence.

The Supreme Court held that liability for third-party criminal conduct requires a heightened sense of foreseeability. "The court did not give due consideration to the criminal nature of Abrams' injury-producing act..." Justice Chin wrote, "...and thus created a duty test that is far too broad." Chin said Abrams' crime was brutal and that there was no evidence of any similar act that would have put the church or child care center on alert that there were dangers to the children in their care.

"Indeed, here, the foreseeability of a perpetrator's committing premeditated murder against the children was impossible to anticipate," he wrote, "and the particular criminal conduct so outrageous and bizarre, that it could not have been anticipated under any circumstance."

If you have any questions or desire further information on this, or any other topic, please contact:

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