BARBARA DUNN; CHARLES DUNN,

Plaintiff(s)

v.

US SECURITY ASSOCIATES, INC; THE PROMENADE AT SAGEMORE; DAVIS ENTERPRISES; ROGER J DAVIS QTIP TRUST; ROGERS INTEREST INC.; MIRIAM NASE; DAVIS & ASSOCIATES, LLC; DAVIS & ASSOCIATES; GENERAL SECURITY SYSTEMS, INCORPORATED; GENERAL SECURITY SYSTEMS, INC.; ABC CORPORATIONS 1-25; JOHN DOES 1-25

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY

Docket No.: MID-L-4683-16

Civil Action

BRIEF ON BEHALF OF PLAINTIFFS, BARBARA AND CHARLES DUNN, IN OPPOSITION TO DEFENDANT'S MOTION TO BAR

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PRELIMINARY STATEMENT

This is a negligent security matter wherein Plaintiff Barbara Dunn was caused to suffer severe and permanent injuries when she was pushed to the ground and dragged by her purse during a robbery at the Promenade at Sagemore, an open air shopping mall in Marlton, New Jersey. Defendants argue because nothing of this severity had happened before, they owed Mrs. Dunn no duty of care to protect against criminal acts of third-parties. Moreover, Defendants argue the testimony of Plaintiff's liability expert, a nationally recognized and eminently qualified negligent security expert, should be barred as a net opinion. Both arguments fail.

First, Defendant's do not get one free mugging resulting in catastrophic injuries before they have a duty to take reasonable care to protect against such acts.[1] Given the totality of the circumstance, namely, prior thefts, burglaries and the opioid crisis at large, simply because the Promenade is an upscale shopping plaza does not mean Defendants are absolved of their duty to provide a safe place for patrons, including Barbara Dunn to do that which is within the scope of their invitation. Second, prior to the incident involving Mrs. Dunn, the Promenade took the affirmative steps to hire a security company to act as a deterrent to criminal behavior on their property. As such, they voluntarily assumed the duty to provide security to protect against the criminal acts of third

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[1] Our Supreme Court supports this very concept as it relates to negligent security claims:

> The mere fact that a particular kind of incident had not happened before is not a sound reason to conclude that such an incident might not reasonably have been anticipated. Generally, our tort law, including products liability, does not require the first victim to lose while subsequent victims are permitted to at least submit their cases to a jury. For instance, a tavern owner who sells alcohol to minors or visibly intoxicated patrons is not entitled to a liability-free first accident, *Rappaport v. Nichols,* 31 *N.J.* 188 (1959), or a free criminal assault committed by an intoxicated patron, *Steele v. Kerrigan,* 148 *N.J.* 1, 26-27 (1997).

Clohesy v. Food Circus Supermarkets, 149 *N.J.* 496, 516 (1997) (emphasis added).

parties on their property. The question, therefore, is not whether a duty existed, but whether that duty was breached - a question for the jury and not an issue to be decided as a matter of law.

Lastly, Defendant's motion to bar Kolin's liability report is in essence one for summary judgment, meant to defeat Mrs. Dunn's claim as a whole and deprive her of her day in Court. Kolin's report sufficiently applies the standards in his industry to the facts of this case and does not constitute a net opinion. Any perceived issues with his report and/or testimony can be addressed via cross examination at trial and through Defendant's own expert. Defendant's motion to bar should be denied and Mrs. Dunn permitted to present her case in its entirety to the jury.

STATEMENT OF FACTS

A. BACKGROUND, THE PROMENADE, AND THE ROLE OF SECURITY AT THE PROMENADE

1. Mrs. Dunn was injured on August 20, 2014 at the Promenade at Sagemore at approximately 8:30 p.m. (*Exhibit A - Evesham Township Police Report*)

2. The Promenade at Sagemore ("Promenade") is an open-air shopping center consisting of a variety of retail stores and restaurants. The Promenade's website touts the property as one designed "with the time-starved shopper in mind." (*See, The Promenade at Sagemore Website,* https://thepromenadenj.com/info (Last Accessed Feb. 14, 2019)).

3. On the night of the incident, the Promenade hosted a show as part of its summer concert series which resulted in an influx of two to three hundred additional patrons on site. (*Exhibit B - Deposition of Laura Balga* at 13:20-24) (*Exhibit C - Deposition of Lee Wallin* at 26:15-27:23)

4. The Promenade contracted with a private security company, U.S. Security, Associates, Inc. ("U.S. Secuirty"), to provide security on their premises. (*Exhibit B - Deposition of Laura Balga* at 10:5-17).

5. The Promenade's general manager, Laura Balga, ("Balga") interacts with the contracted for security guards on a daily basis and communicates the Promenade's security needs and expectations including, "if we need a change of personnel or, you know, just any issues with the [security] personnel." *Id.* at 9:20-10:4.

6. Typically, on a normal business day the Promenade deploys one security officer. *Id.* at 12:11-14.

7. For the summer concert series, Balga requested U.S. Security provide one additional security guard for the evening. *Id.* at 15:9-16:4.

8. This decision to use two security guards was made without the Promenade requesting a security assessment be performed to determine whether two guards would be a sufficient amount of guards for the summer concert series. *Id.* at 18:15-19:14.

9. According to Lee Wallin ("Wallin"), one of the guards on duty at the time of this incident, U.S. Security's guards are responsible to, "observe and report any problems" on the property. (*Exhibit C - Deposition of Lee Wallin* at 13:16-24). Wallin testified his job responsibilities include "acting as a deterrent from criminal conduct occurring at the Promenade." *Id.* at 18:16-19. According to Wallin, part of acting as a deterrent to prevent criminal activity is "just our being there, just visibility of seeing security people." *Id.* at 18:20-23; (*Exhibit B - Deposition of Laura Balga* at 37:9-14).

10. U.S. Security's Security Officer's Guide sets forth standards and directives to guide guards in the performance of their duties, beginning with a code of ethics which states, officer's responsibilities include, "protecting life and property; preventing and reducing crimes within the limits of the facility where assigned; upholding the law and respecting the constitutional rights of all persons." (*Exhibit D - U.S. Security Associates, Inc., Security Officer's Guide* at i) (emphasis added).

11. Wallin agrees the statements in the Security Officers Guide apply to his job responsibilities at the Promenade. (*Exhibit C - Deposition of Lee Wallin* at 52:14-53:5). Specifically, Wallin was asked:

> Q. [The Security Officer's Guide] says, we are crime prevention officers entrusted with protecting our clients' people and property. We are . . . alert for any suspicious article, person or activity that might cause harm. Do you agree that that's part of your job responsibility?
> A. Yes.
>
> Q. . . . we understand that our professional appearance and conduct is in itself an important deterrent to criminal activity. Do you agree with that statement?
> A. Yes.
>
> Q. . . . the security officer is assigned to a client's facility to protect all property within the limits of the facility and to protect the lives of employees and others on the property. This includes . . . preventing theft, arson and sabotage. Do you agree that that's part of your job responsibility?
> A. Yes.

Id. at 53:20-54:18; (*Exhibit D - U.S. Security Associates, Inc., Security Officer's Guide* at iv, 1).

12. As it relates to maintaining a look out for suspicious persons, the Officer's Guide states, and Wallin agrees:

> Q. . . . always be alert for anything unusual or out of place. Do you see that?
> A. Yes, I do.
>
> Q. What type of unusual or out of place things would you be looking for during a patrol?
> A. Well, a lot has to do with the property itself. A lot has to do with just people who - - kids are always a problem, safety issues, that type of thing.
>
> Q. Okay. Would that include being on the lookout for any suspicious

people?
A. Yeah. Yes.

Q. Okay . . .
A. That would be part of our job.

. . . .

Q. Page 45. Section 8.1 [of the Officer's Guide]. It says, the security officer plays a most important part in helping to keep a client's facility a safe place to work. While on patrol security officers are in an excellent position to observe unsafe conditions or infractions of established facility safety rules. Do you see that?
A. Yes.

Q. Do you agree with that statement?
A. Yes.

(*Exhibit C - Deposition of Lee Wallin* at 61:9-23; 62:24-63:9); (*Exhibit D - U.S. Security Associates, Inc., Security Officer's Guide* at 37, 45).

13. In addition to these duties, Balga testified the Promenade's vision for having a second security guard during the summer concert series was as follows:

Q. At some point it became part of your discussions, how many officers to have for the summer concert series?
A. Yes.

Q. Why was that?
A. I felt that with the concerts centralized in the center court and getting more popular, kids around - - and I'm out there too - - but I thought let's have another one patrol the perimeter and do what they usually do, go along the perimeter of the stores, sidewalks. So if I needed an extra hand. I don't remember when that was.

Q. Okay. But <u>your vision, then, was to have an extra security guard to patrol the perimeter while the concert was going on, is that fair?</u>
A. <u>Yes.</u>

Q. And when you talk about the perimeter, do you mean all the other stores and everything?
A. Yes.

Q. Okay. So not necessarily to watch the concert itself or the crowd, but just to make sure that everything else is protected and covered as

well?
A. Right . . .

(*Exhibit B - Deposition of Laura Balga* at 15:16-16:18) (emphasis added).

14. Balga testified in regard to the summer concert series:

Q. . . . you assume you're putting on an event there's going to be more people there?
A. That's the idea.

Q. What do you mean by that?
A. That's why we have the event.

Q. To get more patrons to come?
A. Yes.

Q. More shoppers?
A. Right.

Q. More business?
A. Exactly.

Q. More money?
A. We hope.

. . . .

Q. Okay. So if you're having more crowds and more people there, you also want to make sure that you're keeping those crowds and the more people that are coming onto the Promenade safe as well; is that fair?
A. Right, because my thinking of adding an extra security guard for that time period just probably made sense to me and to give the stores still what they expected to have someone roaming and not take it away, you know, all in the center court.

Q. Sure. So you don't want all the attention just directed right at the crowd and the center court when the concert is going on?
A. Right.

Q. You want the security guards patrolling the perimeter?
A. Yes, rotate. Two different posts, yes.

Q. Would you want two guards within a few feet of each other both

focused at the crowd?
A. No.

Id. at 21:12-25; 23:5-24:2.

15. Despite this preference, Balga never held any briefings, meetings, or sent any correspondence as to her expectations for the security staff during the concert series:

Q. Would you have briefing meetings on what you expected from the security officers for the summer concert series?
A. Not formally.

Q. Okay. How would you relay what essentially you just relayed to me [regarding expectations for security officers during the concert series]?
A. I would just tell them.

Q. Okay. Would that be a sit down meeting or anything like that?
A. No.

Q. Would you ever put anything in writing? Would you send them e-mails?
A. No.

Q. Was there a supervisor or anything like that from U.S. Security on site?
A. No.

Q. It was just all the same level security officers?
A. Correct.

Id. at 17:3-21.

16. Indeed, Lee Wallin did not recall any briefing sessions related to the concert series. (*Exhibit C - Deposition of Lee Wallin* at 25:7-9). Specifically, Wallin testified:

Q. I know you said Laura [Balga] would speak to you guys about the events, but just so I'm clear, would you have specific security briefings on these events on how this day or night should be treated differently than other days, if at all?
A. Well, as I said, we talked to her about the way these - - what we should be doing.

Q. And Laura doesn't work for U.S. Security, right?
A. No, she does not.

Q. Do you know if she has a security background?
A. I do not.

Q. Okay. And you said your supervisor at the time was someone who was not on site at the Promenade?
A. Not at that instance, no.

Id. at 45:8-24.

17. Likewise, the Promenade never reached out to Evesham Police Department to coordinate security with U.S. Security for the summer concert series. (*Exhibit B - Deposition of Laura Balga* at 29:25-30:5). Wallin testified:

Q. Did you have any sit down security meetings with the Evesham Police Department regarding safety concerns, security concerns for the summer concert series?
A. No.

Q. Did you coordinate security efforts with the Evesham Police Department in any way for the summer concert series?
A. No.

(*Exhibit C - Deposition of Lee Wallin* at 76:8-16).

B. DEFENDANTS' FAILURES ON THE NIGHT OF THE INCIDENT

18. On the night of the incident, seventy-five year old Barbara Dunn and her friend, Dolly Harrison met for dinner at the Brio restaurant, located inside the Promenade complex. (*Exhibit F - Deposition of Barbara Dunn* at 29:2-20).

19. Following dinner, Mrs. Dunn and her friend Dolly decided to do some window shopping and walked the storefronts along the Promenade. *Id.* at 33:20-22.

20. Mrs. Dunn noticed there was a crowd at the other end of the Promenade assembled for the summer concert series, but she did not care for the music. *Id.* at 33:10-19.

21. While Mrs. Dunn and Dolly browsed the storefronts, defendants Joshua McFarland and Misty Riddle - who were later identified as heroin addicts - lurked nearby, casing the area, smoking cigarettes and loitering in the same general vicinity waiting for a victim to rob to support their drug habit. (*Exhibit A - Evesham Township Police Report*)

22. At the time of the assault McFarland was wearing a blue bandana and Riddle, despite being a female, was described to police as a male based on her haggard appearance. (*Exhibit A - Evesham Township Police Report* at 2-3); (*Exhibit E - Photographs of Assailants*)

23. Several patrons at the Promenade made note of the presence of these suspicious looking individuals. (*Exhibit A - Evesham Township Police Report* at 2-3).

24. Notably, two witnesses walking the perimeter of the Promenade for exercise relayed to police after the assault, they noticed the presence of these suspicious individuals. *Ibid.*

25. Likewise, two other patrons at a nearby restaurant made note of the presence of McFarland and Riddle, smoking cigarettes and loitering near a bench in an area out of view of the concert. *Ibid.*

26. Although these patrons noted the presence of these suspicious individuals, the security guards on duty stood within a few feet of each other for five to ten minutes watching the summer concert, unaware of the presence of Riddle and McFarland:

> Q. So just so I'm clear on the picture, so at the time of the incident, you and [the other guard on duty] were both facing the crowd and the stage; is that correct?
> A. Yes, correct.
>
> Q. So your back and [the other guard on duty's] back was to the incident [involving Mrs. Dunn]?
> A. Yes, that's correct.
>
> Q. And you had been in that position for five to ten minutes?
> A. That's correct.
>
> Q. Had [the other guard on duty] been there for that same five to ten minutes, if you recall?
> A. Yes, he was there the time that I was there - - the times that I was there, yes.
>
> Q. And at the time there were only two security officers on duty?
> A. That's correct.
>
> Q. And they - - both of you were looking at the crowd at the time?
> A. That's correct.

(*Exhibit C - Deposition of Lee Wallin* at 75:7-76:3).

26. While these guards watched the concert crowd, not patrolling the perimeter as envisioned by the Promenade's general manager, Riddle and McFarland attacked Mrs Dunn:

> Q. . . . Now, you've left the restaurant, you've made the left, what happened after that?
> A. Like I said, basically we did a U, we made a left, we made another

left just looking in the windows, and then we made another - - we were coming back alongside of the Brio again.

Q. Okay.
A. And unfortunately that's when . . .

Q. If you need a break, we can take a break.
A. When this person came up behind me and, unfortunately for me, my purse was on my left arm and it had a short strap and when [McFarland] yanked the purse, it did not come off of my arm but I was moved to the ground. And he was pulling the purse and pulling me along with it along the ground until it came off of my arm.

(*Exhibit F - Deposition of Barbara Dunn* at 37:17-38:9).

28. As a result of the robbery, Mrs. Dunn was caused to suffer severe and permanent injuries including, but not limited to a dislocated left shoulder, torn rotator cuff, a comminuted acetabular fracture (fracture to the ball and socket joint in the hip) necessitating open reduction and internal fixation and eventually a total hip replacement, permanent nerve damage in her left upper extremities, a left flail arm as well as broken fingers on her left hand. Likewise, while hospitalized, Mrs. Dunn contracted c-diff, now suffers from Post Traumatic Stress Disorder and has severe limitations in the use of her left arm and hand. (*Exhibit G - Narrative Report of Doctor Lance Markbreiter*)

29. Following her fall, Mrs. Dunn's friend Dolly came to her aid:

Q. Do you remember anybody else then after Dolly coming to your attention? I'm sorry, you mentioned a nurse?
A. There was a nurse, I believe she was at the venue, the concert, and she was there telling me to keep breathing in through my nose, out through my mouth, and she kept telling me that over and over and over. And I guess that's like to keep the oxygen in because I was awake, and I remember that.

And then probably without her assistance being there when I went into the ambulance, I'm assuming I blacked out because I do not remember the ride to the hospital.

. . . .

Q. Okay, thank you. So then besides Dolly, besides the nurse, did anybody else come to your attention?
A. No. There were people around, I believe, but no one, no.

Q. Do you recall any security guards coming to the scene?
A. No, no one, no.

(*Exhibit F - Deposition of Barbara Dunn* at 50:5-17, 51:7-14).

30. Lee Wallin did not witness the incident and testified he arrived on scene, "a few minutes," after the incident occurred. (*Exhibit C - Deposition of Lee Wallin* at 35:13-23).

31. Laura Balga, who was in the same vicinity as the security officers observing the concert testified:

> Q. Where were you during the incident?
> A. I was in the center court by the stage.
>
> Q. Okay. Were you aware that the incident occurred at the time?
> A. I saw - - you know, it's a long view, but I saw something going on across the way at the corner, and I thought, oh, you know, it looks like some sort of incident or activity going on at that corner. So that just kind of caught my eye. So I started heading over there and then saw that police were there and security was there.

(*Exhibit B - Deposition of Laura Balga* at 31:21-32:8) (emphasis added).

32. Balga testified that prior to this incident they had theft type issues requiring the police to respond:

> Q. Do police come for shoplifting type incidents?
> A. Sure.
>
> Q. Do you have a recollection of police coming prior to August of 2014 for shoplifting.
> A. I would assume they did. If a store calls. Not all stores will call.
>
> Q. What about any burglaries prior to August of 2014?
> A. Burglaries that I can recall are that - - I think Apple had one. Maybe like a break-in glass kind of situation. The jeweler might have had one. I don't know what date that was. But - - and the police handled that. I think those were the two main ones that would be like - - besides just shoplifting or, you know, someone stealing something - -
>
> Q. Okay.
> A. During the day. Like I don't know. I think Apple and Bernie Robbins might have had one.

Id. at 28:2-23.

33. Likewise, Lee Wallin testified the Apple store on site was broken into when he first started working at the Promenade and, "there has always been shoplifting," type issues on the

premises. (*Exhibit C - Deposition of Lee Wallin* at 17:2-7; 17:20-18:4)

C. THE DUNN'S NEGLIGENT SECURITY EXPERT RUSSELL KOLINS

34. Plaintiff's negligent security expert, Russell Kolins ("Kolins") authored three reports dated, August 15, 2018, November 3, 2018 and November 9, 2018. (*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018*); (*Exhibit I - Russell Kolins Narrative Report dated November 3, 2018*); (*Exhibit J - Russell Kolins Narrative Report dated November 9, 2018*).

35. Kolins is a nationally recognized expert in the field of negligent security. He has been qualified to testify across the country in hundreds of cases and estimates he's been involved in over 2,000 negligent security type cases in his career. (*Exhibit K - Deposition of Russell Kolins* at 43:19-44:8); (*Exhibit L - List of Cases Kolins Testified 2009-2019*).

36. Kolins exposure to security matters began with his time with the United States Marine Corp. In 1966. During this time, Kolins was a counter intelligence agent, attended counter intelligence school and received training in various disciplines of security. He achieved the rank of Sergeant, and was honorably discharged following the end of his tour. *Id.* at 12:16-13:13.

37. Following his release from the Marine Corp., Kolins worked as an agent performing risk assessments and threat assessments for insurance companies. He obtained his detective and security licenses in Philadelphia and has been in private practice as a consultant and forensic negligent security expert for nearly fifty years. *Id.* at 15:2-5; (*Exhibit I - Russell Kolins Narrative Report dated August 15, 2018* at 38) (*Exhibit M - C.V., Russell Kolins*).

38. Kolins has attended "hundreds of courses," in the area of negligent security and frequently lectures for organizations such as the New Jersey Bar Association:

> Q. So looking at your CV, just tell me which courses involved premises security.
> A. Well, first of all, the CV is only a summary of some of the courses just to give an idea - -
>
> Q. Okay.
> A. - - of what I do, but as far as my education in premises security, it not only involves courses that I've taken over the years, which is an ongoing education program for me, but also courses that I teach including the New Jersey Bar Association where I've taught an all-day negligence security CLE - -
>
> . . . .
>
> Q. Okay. All right. So let me just go back to your education and just hit on some of the things that you have here.

Starting at the top ASIS International Security Leadership Conference.

A. That's correct. And I'm going to be - - I was invited to attend that again next year - - or next week, so I'll be - -

Q. What is - -
A. - - in Washington all week.

Q. - - ASIS?
A. ASIS International is the preeminent security organization - - global security organization. We have 56,000 members. ASIS International produces what is commonly referred to as the Bible of security which is a protection of assets manual, which is an ongoing publication right on this first shelf up here in front of you.

I've lectured at numerous annual conferences for ASIS International in security and security management.

(*Exhibit K - Deposition of Russell Kolins* at 22:12-23:20; 24:11-25:7) (emphasis added).

39. Likewise, Mr. Kolins is a member of the International Association of Professional Security Consultants ("IAPSC"), an elite organization with restricted membership of approximately 127 members of various disciplines relating to professional security consulting. Mr. Kolins is on the education committee for this organization and is schedule to speak at their annual conference on the issues of safety and security. *Id.* at 53:11-54:3.

40. In drafting his narrative report, Mr. Kolins relied on his education, experience and training, various source materials reviewed, as well as the standards set forth by ASIS and IAPSC:

> My analysis is consistent with the best practices and forensic methodology by ASIS International, *Protection of Assets Manual (POA)* and the International Association of Professional Security Consultants (IAPSC).
>
> ASIS International is the preeminent worldwide Professional Security Organization, consisting of vetted qualified members in every discipline of security. The Protection of Assets Manual is recognized in the security industry as the "*Bible*" of security. Its contents are comprised of accepted industry standards and accepted best practices. It also contains sections of published books and other literature for the education and advancement of all principles and disciplines of security. ASIS International also has certified many Councils that are comprised of only qualified and accepted leaders in their respective field of expertise. Membership is limited for each Council. Councils are charged with the responsibility of continuous monitoring of their respective objectives and developing recommendations for the Standards and Best Practices Commission for the advancement of those standards. I serve as the Liaison to the Commission.
> . . . .

> The International Association of Professional Security Consultants (IAPSC) is the preeminent organization restricted to recognized qualified professionals in their respective security disciplines.

(*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018* at 3); *Exhibit K - Deposition of Russell Kolins* at *Id.* at 56:16-58:23; 77:4-79:9).

41. Additionally, in reaching his opinions and conclusions Mr. Kolins relied on various authoritative texts, including but not limited to, "*Handbook of Loss and Crime Prevention Fifth Edition*," "*Spotlight on security for real estate managers,*" *"Introduction to Security," "Broken Windows (1982) - Wilson and Kelling," "Encycolpedia of Security Management."* (*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018* at 25, 33).

42. Lastly, Mr. Kolins reviewed extensive discovery relating to this case including pleadings, discovery responses, depositions, OPRA request documents relating to prior criminal acts in the area, the entire Burlington County Prosecutor's Office file relating to this incident, the Evesham Township Police Report, Photographs of the scene and property, the U.S. Security Officer's Guide, the contract between U.S. Security and Davis Enterprises, and the incident reports relating to this matter. *Id.* at 35-37.

43. Having reviewed all of these materials and based on his training, experience, education as well as the industry standards in his field, Mr. Kolins reached several conclusions as to whether the Promenade Defendants and U.S. Security were negligent in the implementation and performance of their security on the night of the incident. *Id.* at 22.

44. First, Kolins opined that there was a clear disconnect between the Promenade's expectations for its security officers and the performance of the officers duties on the night of the incident:

> There are two types of security operations, one: proprietary security which is in-house or controlled entirely by the company establishing security for its operations; two: contract security services which are those operations provided by a professional security company that contracts its services to a business. Staffing of proprietary security personnel is done entirely by the business while contract security personnel are hired, trained and supervised by the agency for which they work. Defendant hired contract guards, but failed to properly communicate needs and concerns to the security company.
>
> Some of the disadvantages to having a contract security company are evident in the neglect to address key issues to this case. The first disadvantage is looser control and supervision. This is demonstrated in the lack of supervision provided to the property from their regional manager Joseph Mar[i]ni . . . this advantage is represented when the Promenade at Sagemore property manager, Laura Balga, had an expectation of at least one security officer being dilligent throughout the property and not both security officers being focused on the concert [when the incident occurred].

In noting the issues with this disconnect, Kolins cites to and relies on the ASIS Protection of Assets Manual as well as the "*Introduction to Security*" text referred to in his reference list. (*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018* at 23-24).

45. Moreover, Kolins notes the disconnect between U.S. Security and the Promenade Defendants results in vulnerabilities to key areas on the property:

> The last disadvantage of contract security is demonstrated in the neglect of the property and its contract security team to identify and mitigate the properties vulnerabilities which has led the property to welcome criminal activity. This is demonstrated in the various graffiti markings around the property. The 13 pictures that were captured had graffiti markings on key property vulnerabilities. There were three electrical transformers/relays, one by a gas connection, and in front of three key doors: the Security/Sprinkler Room door and the electrical room door. The appearance of graffiti gives the appearance of neglect and gives criminals the appearance that there is an opportunity as demonstrated in the "Broken Windows Theory." In the theory it cites lack of observation or monitoring of areas of concern and the perceived invitation to more crime and the helplessness to prevent such action. This is especially true with graffiti since it takes time to apply, this is even more troubling in sensitive areas.

Id. at 25; (*Exhibit N - Photographs of Graffiti at the Promenade*).

46. In addition to this disconnect between the organizational structures of U.S. Security and the Promenade Defendants, Kolins also notes the deficiencies in the deployment of security personnel at the Promenade:

> Defendants failed to conduct a Security Vulnerability Assessment and/or create a security plan for the Promenade at Sagemore. Further, in light of the Summer Concert event, which brought in more people than the normal customer base for the retail stores. A Vulnerability Assessment and/or Security Plan should have been conducted to ascertain how to best provide a safe and enjoyable environment for all persons coming onto the property. Further, consideration should have been given to the number of security personnel required and the deployment/posts of such security personnel to provide a safe and enjoyable environment for its patrons and/or guests. Defendants failed to do these things and failed to take reasonable and appropriate measures pursuant to security industry standards.
>
> . . . .
>
> There was insufficient supervision of security at The Promenade at Sagemore. [Managers] must be familiar with the local criminal, administrative, and civil laws. "*If established operators do not know the law, they cannot know how to prevent breaking it. If they do not know the rules, how can they educate their managers and employees?" " . . . [M]anagers and security staff act as an agent or servant of the*

> *business owner who is the one responsible under the rules of agency."* Thus, it behooves the cautious and responsible business owner to institute policies which will protect the establishment, the staff, and of utmost importance the customer from harm and liability.

Id. at 29 (quoting, Fay, J. J. (2007). *Encyclopedia of Security Management.* Burlington: Elsevier); (*Exhibit K - Deposition of Kolins at* 84:2-85:3; 173:13-174:1).

47. In this regard, Kolins testified at his deposition:

> a risk assessment, as I said, is an ongoing situation. And so you have to take each day and each event that is planned to conduct a risk assessment and evaluate what is needed. Now, Ms. Balga stated that she asked for an additional guard because of the concert and she needed an extra guard to patrol the area. The security company says, you know what, she's asked for an additional guard because of the concert, but she never asked us to patrol the area because there was no communication except what she testified to about her expectations of what the guard would do. So that's where I talked about earlier in my testimony that there was no synchronization between the two . . . . So there was no actual posts orders to tell the guards, hey, go out there and patrol the area while every - - all the attention is drawn on the concert area.

(*Exhibit K - Deposition of Kolins at* 147:17-148:19).

48. Kolin's also opines that under basic principles of security implementation, as set forth in the ASIS Protection of Assets Manual and sources such as "*Spotlight on security for real estate managers,"* Defendants failed in their responsibilities to deter third party criminal conduct on their property:

> "One of the most important values of security guards is their visibility." "No matter how many people are involved, guards that are not visible will not be an effective deterrent." ["]Visibility, availability, and an active duty routine are important to the perception of security as well at the reality."
>
> . . . .
>
> The primary purpose of physical security are the BIG D's:
>
> - Deter — Visual evidence of a comprehensive security prgram will induce some perpetrators to look for other facilities where access would be less risky.
> - Detect — This is the first step to prevent losses, in this instance the brutal attack on Plaintiff
> - Delay — Once intrusion has been detected, time must be allowed for

response force to prevent loss

> In order for security personnel to provide the deterrent effect, security personnel have to be deployed in such a manner so as to be visible. Defendants contracted for two security personnel to be present for the Summer Concert events with the obligations to engage in both foot and vehicular patrols. According to Security officer, Wallin, both security personnel were in the immediate vicinity of the concert stage for a period of "five to ten minutes." Security would therefore only be visible to the persons in the immediate vicinity of the concert stage, and not to the property at large, as they would be if they were conducting foot and/or vehicular patrols. This eviscerates the first purpose of security to *deter* criminal activity. It follows that if security was standing in one area for a period of time they are similarly unable to detect and delay personal and/or property loss and delay.

(*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018* at 30-31) (emphasis added); (*Exhibit K - Deposition of Kolins at* 165:20-166:19).

49. These failures on the part of the Promenade Defendants and U.S. Security were proximate causes in the injuries to Mrs. Dunn:

> Although Defendants took steps to provide security for the premises at the Promenade at Sagemore, the steps taken were not reasonable . . . Defendant [never] had any meeting of the minds to re-assess the property and the usage of the property, even if it were if it was for limited time periods, to determine if the security needs of the property changed or needed to be re-evaluated in any way . . . Based on my review of the documents, materials and transcripts, and photographs identified in this report, as well as my knowledge and experience of security standards, theories and principles and my knowledge, experience, expertise and training, the Defendant[s] materially deviated form the applicable security standards, laws and regulations, substantially breached their duty to undertake reasonable care to provide a safe place for patrons and failed in protecting patrons from a known and foreseeable harm. These breaches were fundamental, far-reaching and outrageous and created an unsafe environment with circumstances that caused the horrific injuries to Barbara Dunn which were both foreseeable and preventable.

Id. at 32; (*Exhibit K - Deposition of Kolins at* 168:21-169:5; 183:3-18).

50. Regarding the issue of foreseeability of a third party criminal act, such as the one which injured Mrs Dunn occurring on the premises, Kolins testified:

> as far as foreseeability is concerned, it was the mall itself that actually undertook the - - the idea of potential threats which were foreseeable on their property and hired security to - - to deter those threats from occurring . . . If they didn't believe there were any threats, they wouldn't hire security to begin with. Number two, they had the burglary at the Apple store. They knew that there was crime in the area, that there

was potential crime because of the graffiti which I addressed in my report as a broken window effect.

(*Exhibit K - Deposition of Kolins at* 126:1-17).

51. Likewise, Kolins testified his review of materials for this case showed a history of crimes predicated on monetary gain:

> Q. Do you recall being asked a question about prior crimes that occurred in the Promenade?
> A. Yes.
>
> Q. Okay. Do you recall generally what those crimes were?
> A. Yes. There was a robbery - - I'm sorry, burglary at the Apple Store. They had shoplifting incidents as well.
>
> Q. Okay. So those were crimes, I believe you said they were crimes against property?
> A. Yes.
>
> Q. Okay. Crimes predicated on monetary gain?
> A. Yes.
>
> Q. Okay. What was the aim of the crime against Mrs. Dunn?
> A. Monetary gain.
>
> Q. Okay. And just - - could you clarify that a little bit more?
> A. Yes. The purpose was to rob Ms. Dunn of her pocketbook in the hope of gaining monetary value from either credit cards or cash or maybe even jewelry or whatever Ms. Dunn purchased in a store that was stored in her pocketbook . . .

(*Exhibit K - Deposition of Kolins at* 174:18-175:17).

52. Lastly, Kolins noted the police report indicated several witnesses noticed the criminal defendants as suspicious individuals while walking the property for exercise:

> Well, these two civilian [witnesses], not security people or indication that they were police officers recognized that McFarland and Riddle were displaying signs of suspicious activity. And, again, that's what I talked about in situational awareness. And had the security been patrolling the area, they would have seen the same thing and addressed the issue with the suspicious activity and - - that we []now [k]now as McFarland and Riddle.
>
> Q. And would you agree that simply even their patrolling the area providing a

visual that there's security personnel in the area would have played a factor into acting as a deterrent and preventing this type of incident?

A. That's correct. Because neither McFarland or Riddle, after they robbed and injured Ms. Dunn, stood around with their hands up in the air saying we're here, we confess, we're waiting for the police to come arrest us.

The very fact that they stole her pocketbook, robbed her and after injuring her took off and escaped is a clear indication that - - that they were not deterred in committing this crime.

Id. at 179:10-180:22.

53. Kolin's opinions and conclusions in this matter are well grounded in the standards for his industry, sufficiently applied to the facts of this case and his report should not be barred as a net opinion. Moreover, Defendants without question owed a duty to Mrs. Dunn to protect against third party criminal acts on their property. They hired security personnel for this very purpose. As such, the question is not whether a duty was owed, but whether this duty was breached. This question is one for the jury and Defendant's Motion should be denied.

RESPONSE TO DEFENDANT'S STATEMENT OF FACTS

1. Admitted that Plaintiff Barbra Dunn was injured while shopping at the Promenade on August 20, 2014 and admitted that her husband is alleging per quod damages.

2. Admitted in part that Plaintiff was shopping at the Promenade at Sagemore when she was injured in the incident giving rise to this litigation. Plaintiff can neither confirm nor deny the characterization of the Promenade as "an upscale shopping strip mall."

3. Admitted.

4. Admitted in part, denied in part. Admitted that there was a concert going on during the night of the incident which brought an additional approximately 200-300 patrons onto the property. Denied as to the characterization of "small concert of light music" with patrons over the age of 65 primarily in attendance. Mrs. Dunn testified she did not care for the music that was being played at the concert and Security Officer Wallin did not recall what kind of music was being played during the night Mrs. Dunn was injured. (*Exhibit C - Deposition of Wallin* at 71:3-9).

5. Admitted.

6. Admitted in part. Denied as to the term, "impulsive," as their specific state of mind is unknown. Notwithstanding, the Evesham Police Report speaks for itself. Moreover, the national epidemic of opiate abuse is well recognized, namely the serious problem in Southern New Jersey, including Burlington County, of heroin addiction and its link to violent crimes. (*Exhibit O - Article, "DEA Announces "360 Strategy" in Southern New Jersey to Address Heroin, Prescription Opioids, Violent Crime"*).

7. Admitted.

8. Denied. The incident occurred at 8:30 p.m., certainly not "broad daylight." Moreover, while several individuals noted the presence of McFarland and Riddle as suspicious persons prior to the incident occurring, the characterization the incident happened in front of "multiple witnesses," is over broad and not supported by the facts. Moreover, there is a dispute as to the distance the security officers were from the incident. Balga testified it was a "long view," from the concert area to where the incident occurred and Wallin testified he and the other guard on duty had their backs to the area where the incident occurred for between five and ten minutes. Wallin's testimony he never saw the assailants before the attack is correct because he and his co-worker were not patrolling the perimeter of the Promenade as envisioned by Laura Balga. (*Exhibit A - Evesham Township Police Report* at 1-3); (*Exhibit B - Deposition of Laura Balga* at 21:12-25; 23:5-24:2; 31:21-32:8); (*Exhibit C - Deposition of Lee Wallin* at 75:7-76:3).

9. Admitted that there were no prior robberies during the summer concert series. However, Defendant's do not get one free robbery before they are held accountable for their negligence.

See, Clohesy v. Food Circus Supermarkets, 149 *N.J.* 496, 516 (1997) ("Generally, our tort law . . . does not require the first victim to lose while subsequent victims are permitted to at least submit their cases to a jury.").

10. Admitted in part. There were no prior assaults on the property in the two years prior to the incident, however, there were numerous theft type crimes predicated on monetary gain including shoplifting and a break-in at the Apple store in the Promenade. As our Supreme Court recognizes, theft crimes often lead to violent crimes. *See, Clohesy, supra,* 149 *N.J.* at 514 ("Theft offenses frequently escalate into more violent crimes.").

11. Admitted in part. Mrs. Dunn testified she had been to the Promenade dozens of times, but noted she never noticed any security presence aside from seeing a security vehicle at some point. (*Defendant's Exhibit E - Deposition of Barbara Dunn* at 41:17-42:11). Mrs. Dunn testified she did not view the Promenade as a high crime area, such as Camden, New Jersey. *Id.* at 90:6-11.

12. Admitted.

13. Admitted in part, "to the best of [Corporal Bourdon's] recollection," he was never called to the Promenade for an assault. However, he was called to the Promenade for theft type incidents such as shoplifting. (*Defendant's Exhibit F - Deposition of Corporal Bourdon* at 31:4-9). See answer to Number 10 above.

14. Admitted in part, however there was no coordination between the Promenade, U.S. Security and the Evesham Township Police Department as it related to the Summer Concert Series. *Id.* at 20:10-15. Corporal Bourdon testified:

> Q. And you said you weren't aware of the summer concert series in August of 2014 that the Promenade was hosting?
> A. I don't recall, no.
>
> Q. Did anyone from the Promenade ever call you personally and say hey, you know, we want you to come and provide extra personnel for these summer concert series?
> A. Not me personally, no.
>
> . . . .
>
> Q. And you talk about around the holidays you get directives to kind of focus more on the shopping centers and things?
> A. Correct.
>
> Q. Do you have any recollection of getting those directives in August of 2014 to focus more on shopping centers?
> A. I do not.

. . . .

Q. Do you know who is in charge of security at the Promenade like a specific person?
A. Specific person or company I do not.

Id. at 34:24-36:15.

15. Admitted.

16. Admitted in part. Over objection, Officer Funches testified that he received descriptions of the suspects involved in this incident from two individuals who noted their suspicious nature prior to the incident. He then received information from two witnesses who observed the incident occur. He was not on scene when the incident occurred, therefore his testimony as to the area being "populated with customers," is speculation and hearsay. Moreover, he is not being offered as an expert in the field of patrons and their deterrent effect on criminal behavior, so his testimony in this regard is also speculation.

17. Admitted in part. Officer Funchess was never specifically assigned to the Promenade during the concert series, nor did he recall the Promenade or U.S. Security ever coordinating security efforts with the Evesham Police Department for the concert series:

Q. I just have a few more questions for you. So just to be clear, no one from the Promenade ever contacted you prior to August of 2014 to say hey, we're having a summer concert series. Can you guys come in and provide more police personnel?
A. No. We would have been advised at role call in regards to it that afer you guys - - if the Promenade contacted us and said we're having this large event. We need you to ride through. How it worked prior engagements at the Promenade for security for the food truck they have vendored out to us in regards to security work by providing security at a food truck event. I have worked one of those events.

(*Defendant's Exhibit G - Deposition of Officer Funches* at 36:21-37:11). He also testified he was never requested to do additional property checks during the summer concert series and only knew there was a concert going on at the Promenade from "looking at the sign in the front . . . or hearing the music." *Id.* at 20:16-25. Lastly, he stated he had responded to the Promenade for "property crimes" or "retail theft," type crimes. *Id.* at 22:15-18. See response to Number 10 above.

18. Admitted in part, however, Officer Funchess was not directed to make any special checks during the summer concert series. See response to Number 17 above.

19. Admitted in part. In response to one of counsel's questions he agreed it was a sudden event, however his report indicates multiple witnesses noticed the suspicious presence of McFarland and Riddle well before the incident occurred. As such, the characterization of

the event as "sudden" is at odds with the officer's report and facts of the case. *Id.* at 32:15-33:9.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Plaintiff can neither admit nor deny and leaves Defendants to their proofs.

25. Plaintiff can neither admit nor deny and leaves Defendants to their proofs.

26. Plaintiff can neither admit nor deny and leaves Defendants to their proofs. Fittingly, despite Defendant's representation Dr. Kennedy has been accepted as an expert on over 100 occasions in the past thirty years, like Kolins, Dr. Kennedy's testimony was barred by the same Judge in Wisconsin Federal Court. *See, Lees v. Carthage Coll.*, 714 *F.3d* 516, 518 (7th Cir. 2013) ("The district court excluded Dr. Kennedy's testimony, finding it inadmissable . . . We vacate the judgment and remand for further proceedings.").

27. Denied. The facts and methodology applied in the Wisconsin case are vastly different from the facts of this case. Moreover, what one judge did in another jurisdiction is of no moment to this New Jersey Court. *See, e.g. R.* 1:36-3; *Trinity Cemetry v. Wall Tp.*, 170 *N.J.* 39, 48 (2001)(Verniero, J., concurring)(an unreported decision "serve[s] no precedential value and cannot reliably be considered part of our common law."). Like Dr. Kennedy, Kolins has been accepted as an expert in the field of negligent security in hundreds of cases and estimates he has been involved in over 2,000 cases involving allegations of negligent security. (*Exhibit K - Deposition of Russell Kolins* at 43:19-44:8); (*Exhibit L - List of Cases Kolins Testified 2009-2019*). If this Court is being asked to follow past decisions by Courts of other jurisdictions as Defendants suggest, Kolin's should be accepted as an expert in the field of negligent security and his testimony deemed admissible as it has been in hundreds of cases prior.

28. See response to Number 27 above.

LEGAL DISCUSSION

Defendant's Motion to Bar Plaintiff's liability expert is in essence a motion for summary judgment. Indeed, encompassed in their motion is the argument this Court should decide as a matter of law the Promenade Defendants owed Barbara Dunn no duty of care and thus her case (at least against the Promenade Defendants) should be dismissed.

Motions for summary judgment are filed pursuant to *R.* 4:46, *et. seq*. Summary judgment is an extraordinary measure that is opposed to the policy of law that each litigant be afforded the opportunity to air fully his or her case in a court of law, *Hearon v. Burdette Tomlin Memorial Hospital*, 213 *N.J.Super*. 98 (App. Div. 1986). As such, these motions should be granted only with extreme caution. *Ruvolo v. American Casualty Co.*, 38 *N.J*. 490 (1963). In deciding a motion for summary judgment, the reviewing court is to examine "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issues in favor of the non-moving party." *Brill v. Guardian Life Ins. Co. of Am.*, 142 *N.J.* 520, 540 (1995) (emphasis added); *see also R*. 4:46-2(c). Only where the evidence is "'so one-sided that one party must prevail as a matter of law,'" should summary judgment be granted. *Brill, supra*, 142 *N.J.* at 540 (*quoting Anderson v. Liberty Lobby, Inc.*, 477 *U.S.* 242, 252, 106 *S. Ct.* 2505, 2512 (1986)).

For the reasons stated herein Plaintiff's liability expert does not offer a net opinion and Plaintiff should not be denied her day in Court on the grounds Defendants did not owe her a duty of care to protect against third party criminal acts on their premises.

I. RUSSELL KOLINS REPORT IS BASED ON THE STANDARDS IN HIS INDUSTRY, SUFFICIENTLY TIED TO THE FACTS OF THIS CASE AND SHOULD NOT BE BARRED AS A NET OPINION

Plaintiff's liability expert bases his findings and conclusions on reliable standards, facts and data in evidence and his report does not constitute a net opinion. Consistent with the policy of admitting all relevant evidence, it is well established that a decision to reject an expert's testimony should be used sparingly and only with great caution. *N.J.R.E.* 402; *Reinhart v. E.I. DuPont De Nemours,* 147 *N.J.* 156, 164 (1996). It is the jury's function to weigh any alleged deficiencies in the testimony or qualifications of a proffered expert. *Rubanick v. Witco Chemical Corp.,* 242 *N.J. Super.* 36, 48 (App. Div. 1990), *mod. on o.g.,* 125 *N.J.* 421 (1991). Any alleged weaknesses in an expert's qualifications or testimony are the subject of cross examination and not grounds to bar the expert's testimony outright. *See, e.g., State v. Jenewicz,* 193 *N.J.* 440, 455 (2008) ("courts allow the thinness and other vulnerabilities in an expert's background to be explored in cross-examination and avoid using such weaknesses as a reason to exclude a party's choice of expert witness to advance a claim or defense."). Plaintiff's liability expert should not be barred and any purported weaknesses can be addressed via cross examination at trial.

An expert's report should not be barred as a net opinion unless it is composed of solely "bare conclusions, unsupported by factual evidence[.]" *Buckelew v. Grossbard,* 87 *N.J.* 512, 524 (1981). To avoid being deemed a net opinion an expert must provide the why and wherefore of his opinions, not just offer mere conclusions. *Jiminez v. GNOC, Corp.,* 286 *N.J. Super.* 533, 540 (App. Div. 1995). That is, the report must be based on supporting standards, data and facts where the expert's opinion seeks to establish a cause and effect relationship. *Rubanick, supra,* 242 *N.J. Super.* at 49. The standards, facts or data relied on must either be part of the record or the type usually relied on by experts in the field. *N.J.R.E.* 703. As recently set forth by our Supreme Court in *In re Accutane*

Litigation, 234 *N.J.* 340 (2018), trial courts are asked to exercise their gatekeeping function by employing a "methodology-based approach to reliability for expert scientific testimony." *Id.* at 399-400. In that regard, trial courts are asked to examine whether the "methodology underlying the testimony is scientifically valid . . . [and] whether that reasoning or methodology properly can be applied to facts in issue." *Id.* at 397. If there is a "means-ends-fit," the report is not a net opinion and the testimony should not be barred. *Rubanick, supra,* 242 *N.J. Super.* at 49.

The mere discounting of a fact in evidence by an expert which is deemed to be important by an adverse party does not reduce the expert's testimony to a net opinion:

> The failure of an expert to give weight to a factor thought important by an adverse party does not reduce his testimony to an inadmissible net opinion if he otherwise offers sufficient reasons which logically support his opinion. *State v. Freeman,* 223 *N.J. Super.* 92, 115-16 (App. Div. 1988), *certif. denied,* 114 *N.J.* 525, 555 (1989). Rather, such an omission merely becomes a proper "subject of exploration and cross-examination at trial." *Rubanick, supra,* 242 *N.J.* at 55.

Rosenberg v. Tavorath, 352 *N.J. Super.* 385, 402 (App. Div. 2002) (emphasis added); *see also, Creanga v. Jardal,* 185 *N.J.* 345, 360-61 (2005). Fact finders are free to accept parts of an expert's testimony and reject others. *See, e.g., Todd v. Sheridan,* 268 *N.J. Super.* 387, 401 (App. Div. 1993).

Moreover, where there is a so called, "battle of the experts," summary judgment should be denied and the factfinder permitted to assess and weigh each expert's testimony. *Ruvolo v. American Cas. Co.*, 39 *N.J.* 490, 500 (1963) ("where a case may rest upon opinion or expert testimony, a court should be particularly slow in granting summary judgment."); *Lee v. Travelers Insurance Co.,* 241 *N.J.Super.* 293, 295 (Law Div. 1990) ("Ordinarily, where a case may rest upon expert testimony justice is best served by a plenary trial on the merits. A court should be particularly slow in granting summary judgment when a determination rests upon the opinion of an expert witness."). Such is the case here and Kolins report and testimony should not be barred.

Defendant claims Mr. Kolin's "fails to reliably apply his methodology to the facts of th[is] case and presents blanket opinions without providing a reason for them." *Db* at 8-9. Not so. As an initial matter, Defendants do not question Mr. Kolin's qualifications as his curriculum vitae speaks for itself. (*Exhibit M - C.V., Russell Kolins*). He is a renowned expert in the field of negligent security, regular speaker at International Conferences and even recently lectured on the subject of negligent security for the New Jersey Bar Association. (*Exhibit K - Deposition of Russell Kolins* at 22:12-23:20; 24:11-25:7). He has been admitted to testify in hundreds of cases as a negligent security expert and estimates he has been involved in over 2,000 cases involving allegations of negligent security. (*Exhibit K - Deposition of Russell Kolins* at 43:19-44:8); (*Exhibit L - List of Cases Kolins Testified 2009-2019*).[2]

Mr. Kolin's also clearly applies the methodology recognized in his field to the facts of this case. Indeed, nearly every opinion and conclusion is backed by an authoritative source, be it the ASIS Asset Protection Manual ("the Bible" in his field) or another authoritative source listed in his reference materials. (*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018* at 3); (*Exhibit K - Deposition of Russell Kolins* at *Id.* at 56:16-58:23; 77:4-79:9). Defendant's attempts to isolate portions of Kolin's report and present them as a net opinion unsupported by industry standards misses the mark.

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[2] While Defendant's attempt to focus the Court's attention on the decision by a Wisconsin Federal Judge to bar Kolins report under different circumstances and a vastly different set of facts, ironically, and demonstrative of the issues that arise when citing to unpublished decisions and decisions from other jurisdictions, this same Judge barred Defendant's negligent security expert Daniel Kennedy in *Lees v. Carthage Coll.*, 714 *F.3d* 516, 518 (7th Cir. 2013) ("The district court excluded Dr. Kennedy's testimony, finding it inadmissable . . . We vacate the judgment and remand for further proceedings."). *See, R.* 1:36-3; *Trinity Cemetry v. Wall Tp.*, 170 *N.J.* 39, 48 (2001)(Verniero, J., concurring)(an unreported decision "serve[s] no precedential value and cannot reliably be considered part of our common law.").

First, Defendants argue Kolin's presents no connection between his opinion Defendant's failed to order a risk assessment for their summer concert series and how the outcome would have been affected given the facts of this case. *Db*. at 10. Kolin's both testified and wrote in his August 15, 2018 report that this failure to order a risk assessment was a symptom of the weaknesses of the contract relationship between U.S. Security and the Promenade Defendants and a manifestation of the lack of supervision for U.S. Security personnel at the Promenade:

> Defendant hired contract guards, but failed to properly communicate needs and concerns to the security company.
>
> Some of the disadvantages to having a contract security company are evident in the neglect to address key issues to this case. The first disadvantage is looser control and supervision. This is demonstrated in the lack of supervision provided to the property from their regional manager Joseph Mar[i]ni . . . this advantage is represented when the Promenade at Sagemore property manager, Laura Balga, had an expectation of at least one security officer being diligent throughout the property and not both security officers being focused on the concert [when the incident occurred].

(*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018* at 23-24). Specific to the lack of a Security Vulnerability Assessment, Kolins writes:

> Defendants failed to conduct a Security Vulnerability Assessment and/or create a security plan for the Promenade at Sagemore. Further, in light of the Summer Concert event, which brought in more people than the normal customer base for the retail stores. A Vulnerability Assessment and/or Security Plan should have been conducted to ascertain how to best provide a safe and enjoyable environment for all persons coming onto the property. Further, consideration should have been given to the number of security personnel required and the deployment/posts of such security personnel to provide a safe and enjoyable environment for its patrons and/or guests. Defendants failed to do these things and failed to take reasonable and appropriate measures pursuant to security industry standards.

Id. at 29 (emphasis added); (*Exhibit K - Deposition of Kolins at* 84:2-85:3; 173:13-174:1). Kolins further testified at his deposition:

> a risk assessment, as I said, is an ongoing situation. And so you have to take each day and each event that is planned to conduct a risk assessment and evaluate what is needed. Now, Ms. Balga stated that she asked for an additional guard because of the

> concert and she needed an extra guard to patrol the area. The security company says, you know what, she's asked for an additional guard because of the concert, but she never asked us to patrol the area because there was no communication except what she testified to about her expectations of what the guard would do. So that's where I talked about earlier in my testimony that there was no synchronization between the two . . . . So there was no actual posts orders to tell the guards, hey, go out there and patrol the area while every - - all the attention is drawn on the concert area.

(*Exhibit K - Deposition of Kolins at* 147:17-148:19). As to the importance of a security vulnerability assessment and the synchronisation between a property and its security personnel, Kolin's cites to the ASIS Protection of Assets Manual as well as the *Introduction to Security* text by Fischer and Green. (*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018* at 23). His report and testimony is clear, had there been a vulnerability assessment and coordinated efforts between security personnel - ideally individuals in a supervisory capacity - and property owner, post orders could have formally and clearly been communicated. Of note, Balga never held briefing sessions with security personnel regarding the summer concert series and never spoke with supervisors as to the expectations for guards during this concert series. (*Exhibit B - Deposition of Laura Balga* at 17:3-21); (*Exhibit C - Deposition of Lee Wallin* at 25:7-9). A security assessment would have revealed specific vulnerabilities in the property during the summer concert series and more clearly communicated post orders to security personnel to protect those vulnerabilities and engage in their job duties to deter, detect and delay criminal conduct. (*Exhibit K - Deposition of Kolins at* 147:17-148:19).

Instead, the facts of this case have two security guards standing in close proximity to each other, watching a concert (or at the least the concert crowd) while the vulnerable areas of the property are unprotected and ripe for third party criminal activities. (*Exhibit C - Deposition of Lee Wallin* at 75:7-76:3). Had the guards post orders been implemented and effectively communicated

and the security officers performing their envisioned tasks, it is more likely than not their patrol of the perimeter would have acted as a deterrent to the criminal act which severely injured Mrs. Dunn. Mr. Kolin's opinion to this effect is not a net opinion as it is based on the methodology employed in his field and tied to the facts of this case.

Kolin's opinion that Defendants failed in their responsibility to effectively communicate, enforce and carry out post orders designed to deter and detect potential crime around the perimeter of the Promenade is also not a net opinion and is a means ends fit between the methodology of his industry and the facts of this case. Regarding the presence of security guards as a deterrent to criminal behavior, the literature in Kolin's field states:

> "One of the most important values of security guards is their visibility." "No matter how many people are involved, guards that are not visible will not be an effective deterrent." ["]Visibility, availability, and an active duty routine are important to the perception of security as well a[s] the reality."
>
> . . . .
>
> In order for security personnel to provide the deterrent effect, security personnel have to be deployed in such a manner so as to be visible. Defendants contracted for two security personnel to be present for the Summer Concert events with the obligations to engage in both foot and vehicular patrols. According to Security officer, Wallin, both security personnel were in the immediate vicinity of the concert stage for a period of "five to ten minutes." Security would therefore only be visible to the persons in the immediate vicinity of the concert stage, and not to the property at large, as they would be if they were conducting foot and/or vehicular patrols. This eviscerates the first purpose of security to *deter* criminal activity. It follows that if security was standing in one area for a period of time they are similarly unable to detect and delay personal and/or property loss and delay.

(*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018* at 30-31) (emphasis added) (citing Fennelly, L.J. & Lombardi, J.H. (2005) *Spotlight on security for rel estate managers.* Chicago: Institute of Real Estate Management (163-164) & ASIS Protection of Assets Manual (2008)). Wallin agrees, U.S. Security guards are responsible to, "observe and report any problems"

on the property. (*Exhibit C - Deposition of Lee Wallin* at 13:16-24). This job responsibility includes "acting as a deterrent from criminal conduct occurring at the Promenade." *Id.* at 18:16-19 (emphasis added). According to Wallin, part of acting as a deterrent to prevent criminal activity is "just our being there, just visibility of seeing security people." *Id.* at 18:20-23 (emphasis added); (*Exhibit B - Deposition of Laura Balga* at 37:9-14). Regarding the night Mrs. Dunn was robbed, Wallin testified:

> Q. So just so I'm clear on the picture, so at the time of the incident, you and [the other guard on duty] were both facing the crowd and the stage; is that correct?
> A. Yes, correct.
>
> Q. So your back and [the other guard on duty's] back was to the incident [involving Mrs. Dunn]?
> A. Yes, that's correct.
>
> Q. And you had been in that position for five to ten minutes?
> A. That's correct.
>
> Q. Had [the other guard on duty] been there for that same five to ten minutes, if you recall?
> A. Yes, he was there the time that I was there - - the times that I was there, yes.
>
> Q. And at the time there were only two security officers on duty?
> A. That's correct.
>
> Q. And they - - both of you were looking at the crowd at the time?
> A. That's correct.

(*Exhibit C - Deposition of Lee Wallin* at 75:7-76:3). As Balga, who was in the same vicinity as the guards testified, she could tell an incident was going on but, "you know, it's a long view." (*Exhibit B - Deposition of Laura Balga* at 31:21-32:8). It serves that if the guards are not patrolling the perimeter as envisioned and thus not visible to third party criminals, there is no deterrent to criminal behavior and patrons such as Mrs. Dunn can be harmed. Kolin's opinion that Defendant's failed in their responsibility to deter criminal conduct by not effectively communicating and carrying out post

orders to patrol the perimeter during the concert series is not a net opinion and is sufficiently married to the facts of this case.

Next, Defendant's position that "Mr. Kolins throws out a conclusion that the attack was foreseeable, but does not provide any analysis of why or how this attack was foreseeable based on the facts of this case," is wrong. *Db*. at 11. Kolin's testified Defendants themselves essentially conceded potential third party criminal acts were foreseeable given they hired a security company to begin with:

> as far as foreseeability is concerned, it was the mall itself that actually undertook the - - the idea of potential threats which were foreseeable on their property and hired security to - - to deter those threats from occurring . . . If they didn't believe there were any threats, they wouldn't hire security to begin with. Number two, they had the burglary at the Apple store. They knew that there was crime in the area, that there was potential crime because of the graffiti which I addressed in my report as a broken window effect.

(*Exhibit K - Deposition of Kolins at* 126:1-17). Moreover, while not a "high crime area," there had still been a past history of crimes predicated on monetary gain, involving burglaries and thefts:

Q. Do you recall being asked a question about prior crimes that occurred in the Promenade?
A. Yes.

Q. Okay. Do you recall generally what those crimes were?
A. Yes. There was a robbery - - I'm sorry, burglary at the Apple Store. They had shoplifting incidents as well.

Q. Okay. So those were crimes, I believe you said they were crimes against property?
A. Yes.

Q. Okay. Crimes predicated on monetary gain?
A. Yes.

Q. Okay. What was the aim of the crime against Mrs. Dunn?
A. Monetary gain.

Q. Okay. And just - - could you clarify that a little bit more?
A. Yes. The purpose was to rob Ms. Dunn of her pocketbook in the hope of gaining

> monetary value from either credit cards or cash or maybe even jewelry or whatever Ms. Dunn purchased in a store that was stored in her pocketbook . . .

(*Exhibit K - Deposition of Kolins at* 174:18-175:17).[3] Additionally, there was graffiti on key areas of the property, thus giving criminals an invitation to engage in criminal activity:

> The 13 pictures that were captured had graffiti markings on key property vulnerabilities. There were three electrical transformers/relays, one by a gas connection, and in front of three key doors: the Security/Sprinkler Room door and the electrical room door. The appearance of graffiti gives the appearance of neglect and gives criminals the appearance that there is an opportunity as demonstrated in the "Broken Windows Theory." In the theory it cites lack of observation or monitoring of areas of concern and the perceived invitation to more crime and the helplessness to prevent such action. This is especially true with graffiti since it takes time to apply, this is even more troubling in sensitive areas.

Id. at 25; (*Exhibit N - Photographs of Graffiti at the Promenade*). Given the lack of security presence to act as a visible deterrent to criminal activity due to the guards being focused on the concert and concert crowd, it was also foreseeable this neglect would leave vulnerable areas of the property unprotected and patrons exposed to harm from third party criminal actors. (*Exhibit H - Russell Kolins Narrative Report dated August 15, 2018* at 30-31).

Moreover, Defendant's characterization of the event which injured Mrs. Dunn as a "sudden attack," is incorrect. Two civilians, walking the perimeter for exercise - what the guards should have been doing at the time of this incident - noted the presence of McFarland and Riddle and identified

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[3] Whether an area is a "high crime" or "low crime" area is quickly becoming blurred given the heroin epidemic in the United States and especially in Southern New Jersey. Indeed, the Drug Enforcement Administration recently launched a task force to deal with the "heroin and prescription drug abuse epidemic, and its associated violent crime." (https://www.dea.gov/press-releases/2018/01/08/dea-announces-360-strategy-southern-new-jersey-address-heroin, "DEA Announces "360 Strategy" in Southern New Jersey to Address Heroin, Prescription Opioids, Violent Crime" Last Visited Feb. 15, 2019). This task force is concentrated in areas across Southern New Jersey, including Burlington County, where the incident involving Mrs. Dunn occurred. (*Exhibit O - Article, "DEA Announces "360 Strategy" in Southern New Jersey to Address Heroin, Prescription Opioids, Violent Crime"*).

them as suspicious persons. (*Exhibit A - Evesham Township Police Report* at 2-3). The Defendants loitered in the area for some time, smoking cigarettes and essentially casing the scene. *Ibid.* The attack was not, "sudden," and Kolin's opinion, had the guards been doing what other patrons were doing, taking note of suspicious individuals on the premise and acting as a deterrent simply by being present, is not a net opinion as it is grounded in his fields methodology and sufficiently tied to the facts of this case. Any deficiencies in Mr. Kolin's opinions can be addressed via cross examination. *See, e.g., Jenewicz, supra,* 193 *N.J.* at 455 ("courts allow the thinness and other vulnerabilities in an expert's background to be explored in cross-examination and avoid using such weaknesses as a reason to exclude a party's choice of expert witness to advance a claim or defense.") His testimony should not be barred.

II. DEFENDANT'S ARGUMENT THE ATTACK ON MRS. DUNN WAS NOT FORESEEABLE AND THEY THEREFORE OWED HER NO DUTY OF CARE TO PROTECT AGAINST THIRD PARTY CRIMINAL ACTS RELATES TO THE ISSUES OF BREACH AND PROXIMATE CAUSE AND SHOULD BE DECIDED BY THE FINDERS OF FACT

In a last ditch effort to escape liability for negligently providing security on their premises, Defendant seeks to have this Court throw Mrs. Dunn's case out of Court on the premise they owed her no duty to keep her safe from the third party acts of criminal defendant's. While this argument is veiled as a motion to bar Plaintiff's liability expert, the argument they owed Mrs. Dunn no duty is in essence one for summary judgment meant to defeat Mrs. Dunn's claim in its entirety. This argument fails.

A. Defendant's Had a Duty to Keep Mrs. Dunn Safe from Foreseeable Third Party Criminal Acts on Their Property

Duty is a fluid concept dependant on the interplay of several factors including, "(1) the relationship of the parties; (2) the nature of the attendant risk; (3) the ability and opportunity to exercise control; (4) the public interest in the proposed solution; and, most importantly; (5) the objective foreseeability of harm." *Alloway v. Bradlees, Inc.*, 157 *N.J.* 221, 230 (1999); *see also, Hopkins v. Fox and Lazo Realtors,* 132 *N.J.* 426, 439 (1993). Whether a duty exists is grounded in concepts of fairness and public policy. *See, e.g. Hopkins, supra,* 132 *N.J.* at 439. The key inquiry is whether, "'the plaintiff's interests are entitled to legal protection against the defendant's conduct.' Duty is largely grounded in the natural responsibilities of social living and human relations, such as have the recognition of reasonable men; and fulfillment is had by a correlative standard of conduct." *Wytupeck v. Camden*, 25 *N.J.* 450, 461-62 (1957)(quoting Prosser on Torts, § 36 (2d ed.)).

Concerning the fifth factor identified in *Alloways*, the question of whether harm to another by a third party criminal defendant is foreseeable "is capable of objective analysis and is based on

the 'totality of circumstances.'" *Wlasiuk v. McElwee*, 334 *N.J. Super.* 661, 667 (App. Div. 2000) (quoting *Clohesy, supra, 149 N.J.* at 508-09). The concept of foreseeability subsumes, "many of the concerns we acknowledge as relevant to the imposition of duty: the relationship between the plaintiff and the tortfeasor, the nature of the risk, and the ability and opportunity to exercise care." *Carter v. Lincoln-Mercury, Inc. V. EMAR Group, Inc.,* 135 *N.J.* 182, 194 (1994). Foreseeability as it relates to duty is distinguishable from foreseeability as it relates to the issues of breach and proximate cause. *Clohesy, supra,* 149 *N.J.* at 502-03. Foreseeability as it relates to whether a duty of care should be imposed is focused on "the risk reasonably within the range of apprehension, of injury to another person[.]" *Hill v. Yaskin,* 75 *N.J.* 139, 144 (1977) (quoting, 57 *Am. Jur. 2d Negligence* § 58 (1970)).

In that regard, it is well established "business owners and landlords have a duty to protect patrons and tenants from foreseeable criminal acts of third parties occurring on their premises." *Clohesy, supra,* 149 *N.J.* at 504; *see also, Butler, supra,* 89 *N.J.* at 280 (business owners have a duty to protect invitees from third party criminal acts); *Trentacost v. Brussel,* 82 *N.J.* 214, 231 (1980) ("landlord has a legal duty to take reasonable security measures for tenant protection on the premises"). Although a patron's common law status as an invitee in and of itself does not establish as a matter of law a duty exists, these "common law classifications can be useful in determining the existence and scope of the duty of care owed." *Id.* at 502. As the Supreme Court points out in *Clohesy*:

> Although we do not heavily rely on the common law classification of [plaintiff] as an invitee, we cannot disregard that fact. The *Restatement (Second) of Torts* Section 314A states that a possessor of land who holds it open to the public is under a duty to members of the public who enter in response to the possessor's invitation to take reasonable action to protect them against unreasonable risk of physical harm. *Restatement (Second) of Torts* § 314A (1965). Thus, that section of the Restatement creates a duty based on status alone. In light of that relationship and the totality of the circumstances, the imposition of a duty on the possessor of land to exercise

> reasonable care to prevent foreseeable harm to its customers comports with notions of fairness and sound public policy.

Clohesy, supra, 149 *N.J.* at 515 (emphasis added).

In *Clohesy,* the Supreme Court dealt with a fact pattern strikingly similar to the facts of this case. There, a seventy-nine year old woman was attacked by an assailant "loitering in the parking lot" of a Foodtown located in Red Bank, New Jersey. *Id.* at 500. Defendants moved for summary judgment arguing an absence of "similar criminal incident[s] in the parking lot" relieved them of any duty to protect against third party criminal acts as such an attack was not foreseeable. *Id.* at 500-01. The trial court agreed and the Appellate Division affirmed. *Id.* at 501. The Supreme Court, however, reversed, finding:

> The mere fact that a particular kind of incident had not happened before is not a sound reason to conclude that such an incident might not reasonably have been anticipated. Generally, our tort law, including products liability, does not require the first victim to lose while subsequent victims are permitted to at least submit their cases to a jury. For instance, a tavern owner who sells alcohol to minors or visibly intoxicated patrons is not entitled to a liability-free first accident, *Rappaport v. Nichols,* 31 *N.J.* 188 (1959), or a free criminal assault committed by an intoxicated patron, *Steele v. Kerrigan,* 148 *N.J.* 1, 26-27 (1997) . . . foreseeability can stem from prior criminal acts that are lesser in degree than the one committed against a plaintiff.

Id. at 516 (emphasis added). As such, the Court held that under the totality of the circumstances (which included an examination of prior incidents of a lesser degree on or near the Foodtown premises as well as United States Justice Department crime statistics), defendants owed plaintiff a legal duty to protect against third party criminal acts on their property. *Id.* at 503-04, 514-15, 519-20. A history of prior theft offenses was sufficient to impose such a duty, as the Court noted, "we conclude that it was foreseeable that over the course of time an individual would enter the parking lot and assault a Foodtown customer. Theft offenses frequently escalate into more violent crimes." *Id.* at 514 (emphasis added). According to the Supreme Court, a properly deployed security guard

would "be available to report suspicious criminal activities to the police and thus help to avert criminal conduct . . . [and] serve as a deterrent to crime[.]" *Id.* at 519.

Such is the scenario here. The Promenade has a history of theft offense including shoplifting and burglary crimes. (*Exhibit C - Deposition of Lee Wallin* at 17:2-7; 17:20-18:4); (*Exhibit B - Deposition of Laura Balga* at 28:2-23). Likewise, the United States Drug Enforcement Agency has recognized there is a link between opioid use and violent crime and has developed a task force specifically targeting the region encompassing Burlington County, Evesham Township and thus the Promenade. (*Exhibit O - Article, "DEA Announces "360 Strategy" in Southern New Jersey to Address Heroin, Prescription Opioids, Violent Crime"*). It is entirely foreseeable given the heroin epidemic, the history of theft offenses at the Promenade and the presence of graffiti in key areas, a crime such as the one which befell Mrs. Dunn was foreseeable. Mrs. Dunn should not lose her case simply because this exact type of thing has not happened before - such is our law in New Jersey.

B. Whether the Attack Against Mrs. Dunn Was Foreseeable Relates to the Issues of Breach and Proximate Cause, Not Whether a Duty Existed.

Defendant's argument it owed Barbara Dunn no duty of care to protect against third party criminal acts is all the more specious given they took the affirmative act to hire and deploy security personnel in the first place. Indeed, since before Balga began working at the Promenade, Defendants have employed security personnel to act as a deterrent to third party criminal activities, be a visible presence and provide security for the exterior of the open air shopping plaza. (*Exhibit B - Deposition of Balga* at 37:9-14). As Kolin's points out, "it was the mall itself that actually undertook the - - idea of potential threats which were foreseeable on their property and hired security to - - deter those threats from occurring . . . If they didn't believe there were any threats, they wouldn't hire security to begin with." (*Exhibit K - Deposition of Kolins at* 126:1-17). The issue then is not a legal question

of whether a duty existed, but a question of fact for the jury as to whether this duty was breached. *See, e.g. Anderson v. Sammy Redd & Assocs.,* 278 *N.J.Super.* 50, 56 (App.Div.1994) ("Although the existence of a duty is a question of law, whether the duty was breached is a question of fact.")

The facts here are akin to the situation in *Butler*. In *Butler*, a woman in her sixties was assaulted in the parking lot of an Acme supermarket. *Butler, supra,* 89 *N.J.* at 274. Prior to the assault, the Defendant property owner hired an off-duty police officer to provide security for certain evenings, namely to, "watch out for shoplifters . . . patrol both inside and outside of the store, and to watch customers' parcels while they retrieved their cars." *Id.* at 274-75. At the time of the incident, "the lone security guard was inside the store." *Id.* at 275. In framing the issue presented in *Butler*, the Court in *Clohesy* made a distinction between scenarios where no security is provided and scenarios where security is provided but purportedly in an inadequate manner. The issue in *Clohesy* was "whether the owner of a large supermarket with a correspondingly large parking lot had a duty in 1991 to provide security or warnings in its parking lot to protect its customers from the criminal acts of third parties, when prior similar criminal acts had not occurred in the parking lot." *Clohesy, supra,* 149 *N.J.* at 499. The Supreme Court distinguished this issue from the question presented in *Butler* as it related to foreseeability:

> The *Butler* Court had no occasion to discuss whether prior similar criminal incidents were essential to foreseeability . . . Indeed, Acme recognized there was a problem and hired an off-duty police officer to supply security during certain evenings. *Ibid*. The security person's duties included patrolling both inside and outside the store. *Ibid*. The focus in *Butler* was, instead, on whether liability for foreseeable criminal conduct of third parties committed on a shopkeeper's premises should be visited upon the shopkeeper . . . . As such, foreseeability in *Butler* related to proximate cause in the breach of duty context rather than the existence of a duty. Furthermore, Butler was not tried on the theory that there was no security in the parking lot. It was tried under the twin theories of inadequate security and a failure to warn customers of the dangerous condition existing in the parking lot.

Id. at 506 (emphasis added). Tellingly, *Butler* dealt with a motion for judgment notwithstanding the verdict, after the case had been presented to the jury.[4] As such, since Defendant's provided security services on their premises, the question is not whether a duty existed, but whether the duty to protect against third party criminal acts was breached by, among other things, Defendants not effectively communicating and following post orders and whether these acts were a proximate cause of the injuries to Mrs. Dunn. This is a question for the jury. *See, e.g. Anderson v. Sammy Redd & Assocs.,* 278 *N.J.Super.* 50, 56 (App.Div.1994) ("Although the existence of a duty is a question of law, whether the duty was breached is a question of fact."); *Arvanitis v. Hios,* 307 *N.J.Super.* 577, 582 (App.Div.1998) (issues of breach, foreseeability and proximate cause are questions for the jury). Defendant's Motion to Bar should be denied and the issue of whether the attack against Mrs. Dunn was foreseeable and thus whether Defendants breached their duty of care should be decided by the jury.

[4] There are likewise a litany of cases dealing with whether immunity under the New Jersey Tort Claims Act exists where a public entity begins providing security type services, but is negligent in the performance of those duties. There, the question is not where a duty exists, the question is where the duty is breached by the negligent performance of services and whether the entities are entitled to immunity. They are not. *See, e.g. Massachi v. AHL Servs., Inc.*, 396 *N.J. Super.* 486, 499-500 (App. Div. 2007) ("Additionally, as we have already discussed, we rely on our holding in *Suarez* that *N.J.S.A.* 59:5-4 only immunizes an entity for its discretionary police actions that result in a failure to provide police protection. *Suarez, supra*, 171 *N.J. Super.* at 9. The statute does not protect them from the results of the negligent performance of their ministerial duties. *Id.* at 10.") (emphasis added).

CONCLUSION

For the reasons set forth above, it is respectfully submitted Defendant's Motion to Bar Plaintiff's Expert be denied.

Respectfully submitted,
Clark Law Firm, PC

By: _____
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Counsel for Plaintiffs Barbara and Charles Dunn

Dated: February 15, 2019

negligent security - no prior acts - opp mot to bar expert as net opinion.wpd