

January 1, 2023

ATTN: Mr. Elliot Deli
Vista View, LLC
1234 Belleville Blvd.
Anytown, Georgia 12345

Re:	Claimant:	Timothy Banks
	Parties Involved:	Timothy Banks; Vista View Improvements, LLC
	Date of Incident:	07/15/2022
	Type of Case:	Premises Liability – Dangerous
	Location of Injury:	Vista View Crossing Shopping Center
		Blankton Rd, Anytown, GA 12345, United States

Pursuant to O.C.G.A. § 24-4-808: Clear and Unequivocal Time Sensitive Revised Settlement Demand Opportunity for Policy Limits; Expires Sunday [time and date].

Dear Mr. Deli,

I am writing to you on behalf of Timothy Banks regarding injuries he sustained when he was the victim of a shooting on your property, Vista View Crossing Shopping Center.

I. Background Facts

On Friday, April 23, 2021, Mr. Banks stopped to buy a meal at the La Boqueria food truck located in the parking lot of your property, Vista View Crossing Shopping Center. While waiting on his food, Mr. Banks was engaged in a verbal dispute by Jackie Colton. At some point, Jackie Colton brandished a firearm and shot Mr. Banks in the chest. Jackie Colton fled the scene. Mr. Banks was taken from Vista View Crossing Shopping Center to Atlanta Medical Center by ambulance, where he remained for nearly one month.

II. Vista View Improvements, LLC failed to fulfill its statutory duty to exercise ordinary care to keep its premises safe.

O.C.G.A. § 51-3-1 states that where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises safe. Vista View Improvements, LLC's failure to provide security measures to deter criminal activity on its premises is a breach of its statutory duty.

A. Vista View Improvements, LLC is the owner and occupier of the Vista View Crossing Shopping Center parking lot.

O.C.G.A. § 51-3-1 imposes upon an owner or occupier of land the nondelegable duty to exercise ordinary care to keep the premises and approaches safe for invitees.¹ An owner or

¹ Nair v. Aramark Food Serv. Corp., 625 S.E.2d 78, 80 (2005).

occupier of land is one that controls and manages a property.² Per the Shopping Center Lease agreement between Vista View Improvements, LLC and AAA Quality Foods, Inc (d/b/a “Kwick Store”), Vista View Improvements, LLC maintained exclusive control and management of the parking lot where the shooting occurred.

ARTICLE 14 COMMON AREAS AND PARKING

All Common Areas in or about the Shopping Center shall be subject to the exclusive control and management of Landlord.

Tenant and its concessionaires, officers, employees, contractors, agents, customers and invitees shall have the non-exclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use the Common Areas as designated from time to time by Landlord subject to such reasonable rules and regulations as Landlord may from time to time impose, including the designation of specific areas in which cars owned by Tenant, its concessionaires, officers, employees, contractors and agents must be parked. Tenant agrees to abide by such rules and regulations and to use its best efforts to cause its concessionaires, officers, employees, contractors, agents, customers and invitees to conform thereto. Landlord may at any time temporarily close parking areas; and Landlord may do such other acts in and to the Common Areas as in its judgment may be desirable. Tenant shall, upon request, furnish to Landlord the license numbers of the cars operated by Tenant and its concessionaires, officers and employees. If Tenant or its concessionaires, officers or employees fail to park their cars or other vehicles in Common Areas designated by Landlord, Landlord shall after reasonable notice (including oral notice) have the right in its sole discretion to have such cars or other vehicles physically removed from the Shopping Center at Tenant's expense, without any liability whatsoever to Landlord. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their concessionaires, officers, employees, contractors, agents, customers and invitees, to use any part of the parking areas and other Common Areas. Neither Tenant nor Tenant's employees, contractors, concessionaires or agents shall solicit business in the parking or other Common Areas or distribute any handbills or other advertising matter in such areas or place any such handbills or advertising matter in or on any automobiles parked therein without Landlord's written consent.

Anything in this Lease to the contrary notwithstanding, Landlord shall have the right at any time during the term of this Lease to alter, modify, change or move the parking facilities or other Common Areas within the Shopping Center as now constituted or planned or hereafter enlarged or diminished; provided, however, that the parking areas shall not be in violation of applicable laws. It is expressly understood and agreed that the designation or use from time to time of portions of the Shopping Center as Common Areas shall not restrict Landlord's use of such areas for buildings, structures, or for such other purpose as Landlord shall determine, provided that reasonable access to the Leased Premises and the parking areas shall not be materially impaired, and provided that reasonable visibility of the Leased Premises shall not be materially impaired.

Landlord reserves the right to grant to third persons the non-exclusive right to cross over and use in common with Landlord and all tenants of the Shopping Center the Common Areas as designated from time to time by Landlord.

Because the contract between Vista View Improvements, LLC and AAA Quality Foods, Inc. unequivocally establishes that Vista View Improvements, LLC retained exclusive control of the property's parking lot, Vista View Improvements, LLC is the owner and occupier of the parking lot where Mr. Banks was shot. As the owner and occupier of the parking lot, Vista View Improvements, LLC owed Mr. Banks – a patron of a business located in the parking lot and therefore an invitee on the property – a nondelegable duty to keep its premises safe under O.C.G.A. § 51-3-1. This duty includes protecting invitees from unreasonable risks of which Vista View Improvements, LLC has superior knowledge.³

B. Vista View Improvements, LLC had reason to anticipate that their invitees could be the victims of shootings on their property and therefore had a duty to guard against injury from dangerous characters.

² See Lake v. APH Enters., LLC, 702 S.E.2d 654 (2010) (Court of Appeals of Georgia addressed a case in which a patron filed action against a restaurant owner and the owner's landlord to recover damages for injuries he sustained when he was shot in the restaurant's parking lot. The court held that the landlord was not liable because the tenant had exclusive control of the parking lot where the patron's injury occurred).

³ Cleveland v. Team RTR2, LLC, 854 S.E.2d 756, 760 (2021).

A landowner is responsible for the intervening criminal acts of a third party when the act was reasonably foreseeable.⁴

If the proprietor has reason to anticipate a criminal act, he or she then has a duty to exercise ordinary care to guard against injury from dangerous characters. Accordingly, the incident causing the injury must be substantially similar in type to the previous criminal activities occurring *on or near the premises* so that a reasonable person would take ordinary precautions to protect his or her customers or tenants against the risk posed by that type of activity. In determining whether previous criminal acts are substantially similar to the occurrence causing harm, thereby establishing the foreseeability of risk, the court must inquire into the location, nature and extent of the prior criminal activities and their likeness, proximity or other relationship to the crime in question.⁵

As the owner and operator of Vista View Crossing Shopping Center, Vista View Improvements, LLC is well aware that its property is located in a crime-ridden area. Violence, particularly gun violence, is pervasive in the neighborhood in which the shopping center is located. A simple Google search reveals at least eight (8) shootings **on Blankton Road alone** in the fifteen months before Mr. Banks was shot.⁶ Five more shootings were

⁴ *Drayton v. Kroger Co.*, 297 Ga. App. 484, 485, 677 S.E.2d 316, 317 (2009).

⁵ *Cleveland*, 854 S.E.2d at 760 quoting *Sturbridge Partners v. Walker*, 267 Ga. 785, 786 (483 SE2d 339) (1997) (emphasis added).

⁶ WSBTV.com News Staff, *2 killed in shooting at Dekalb County Gas station*, WSB-TV 2 ATLANTA (April 9, 2021), <https://www.wsbtv.com/news/local/dekalb-county/developing-dekalb-police-investigate-double-shooting-gas-station/G5TVSATIY5HQHPCJ3QIDGD7QMM/>; Marc Teichner and Portia Bruner, *1 killed, 5 wounded after 30 rounds fired at Dekalb County gas station*, FOX 5 ATLANTA (May 17, 2021), <https://www.fox5atlanta.com/news/people-hurt-in-dekalb-co-gas-station-drive-by-shooting>; 11Alive Staff, *1 dead after shooting in Dekalb County gas station, police say*, 11ALIVE NEWS (May 5, 2022), <https://www.11alive.com/article/news/crime/stone-mountain-gas-station-valero-shooting/85-14ece4ae-de6f-4e78-9c98-27c628f981e3>; Fox 5 Atlanta, Digital Team, *Man killed in shooting at Stone Mountain gas station*, FOX5 ATLANTA (May 31, 2022), <https://www.fox5atlanta.com/news/man-shot-gas-station-Blankton-road-stone-mountain>; Fox 5 Digital Team, *Police investigate deadly shooting at Dekalb County fast-food restaurant*, FOX5 ATLANTA (June 27, 2022), <https://www.fox5atlanta.com/news/popeyes-dekalb-county-Blankton-road-deadly-shooting>; WSBTV.com News Staff, *2 men injured after gunfire erupts at Dekalb County Restaurant*, WSB-TV 2 ATLANTA (July 11, 2022), <https://www.wsbtv.com/news/local/dekalb-county/2-men-shot-restaurant-dekalb-county/TWIBFHZD2BEMTMG5SMAIHY7OMA/>; Henri Hollis, *Man critical after shooting at Stone Mountain Gas Station*, THE ATLANTA JOURNAL CONSTITUTION (Feb. 9, 2022), <https://www.ajc.com/news/crime/breaking-man-dead-in-shooting-at-stone-mountain-gas-station/ECHNOG2BSZAEBPTAN2WS3VUWLQ/>; WSBTV.com News Staff, *19-year-old dead after late night shooting at Dekalb County*, WSB-TV (July 2, 2022), <https://www.wsbtv.com/news/local/dekalb-county/19-year-old-dead-after-late-night-shooting-dekalb-county-apartment-complex/SQU5DGIJDFABJNT5ZYJIIOI2I/>.

committed on Blankton Road in the six months since Mr. Banks was shot.⁷ Again, these shootings **only include Blankton Road**, and do not contemplate gun violence in the entire neighborhood.

The pervasiveness of shootings on Blankton Road undoubtedly put Vista View Improvements, LLC on notice that gun violence posed a risk to patrons of Vista View Crossing Shopping Center.⁸ Based on the prevalence of shootings in the area, it was reasonably foreseeable that Mr. Banks would suffer the same kind of violence – shooting – that is common on Blankton Road and in the area where the shopping center is located. Because of the pervasiveness of gun crimes in the neighborhood in which Vista View Shopping Center is located, it was reasonably foreseeable that Mr. Banks would be the victim of gun violence on your property.

C. Vista View Improvements, LLC had superior knowledge of the dangerous conditions on their property.

Mr. Banks did not live in the same neighborhood or county as Vista View Crossing Shopping Center. Mr. Banks had never been the victim of any violent encounters in the area. Mr. Banks had never witnessed criminal activity in the area. By contrast, Vista View Improvements, LLC is a long-term resident in an area where shootings occur *regularly* not just in the same neighborhood, but *on the same road* where the property is located. It is undeniable that Vista View Improvements, LLC had superior knowledge of the fact that their shopping center is located on a crime-infested road in a crime-infested area.

D. Vista View Improvements, LLC took no security measures in the face of relentless gun violence.

Because it was reasonably foreseeable that Mr. Banks would be the victim of gun violence at Vista View Crossing Shopping Center, Vista View Improvements, LLC had a statutory duty to take ordinary precautions to protect Mr. Banks from the risk of injury.⁹ Notwithstanding their knowledge of the continuous danger of criminal activity on the property and in the vicinity, Vista View Improvements, LLC, by and through its agents,

⁷ Fox 5 Atlanta Digital Team, *Man shot near Stone Mountain Gas Station*, FOX5 ATLANTA (Dec. 6, 2022), <https://www.fox5atlanta.com/news/man-shot-near-stone-mountain-gas-station>; Gabriella Nunez, *Woman shot by stray bullet while driving in Lithonia, police say*, 11ALIVE NEWS (Oct. 27, 2022), <https://www.11alive.com/article/news/crime/woman-shot-by-stray-bullet-while-driving-in-lithonia/85-e919fe61-4961-413e-a040-80deb1f6ec8f>; WSBTV.com News Staff, *Man in critical condition after being shot multiple times at Chevron in Dekalb county, police say*, WSB-TV 2 ATLANTA (Aug. 24, 2022), <https://www.wsbtv.com/news/local/dekalb-county/man-critical-condition-after-being-shot-multiple-times-chevron-dekalb-county-police-say/7VMKFP77IRAI7HE6BZOSTZ5BPM/>; WSBTV.com News Staff, *Shooting at Dekalb County shopping center leaves man in serious condition, police say*, WSB-TV 2 ATLANTA (Nov. 13, 2022), <https://www.wsbtv.com/news/local/dekalb-county/shooting-dekalb-county-shopping-center-leaves-man-serious-condition-police-say/ENU2NKCBBJGFBHDDLNLQKLPPXE/>; Alexis Stevens, *Driver working a scod job shot to death while delivering ice cream, his new car stolen*, THE ATLANTA JOURNAL CONSTITUTION (Sept. 7, 2022) <https://www.ajc.com/news/crime/driver-working-a-second-job-shot-to-death-while-delivering-ice-cream-his-new-car-stolen/NYXU45MHWBB5BPPBU3FFT24HFQ/#:~:text=Early%20on%20May%2027%2C%20Smith,still%20had%20a%20temporary%20tag>.

⁸ See *Cleveland v. Team RTR2, LLC*, 854 S.E.2d 756, 760 (2021) (Georgia Court of Appeals found that *five incidents* of sexual assault in *four years* established reasonable foreseeability that the Plaintiff could also be subjected to sexual assault on the Defendant's premises).

⁹ *Cleveland*, 854 S.E.2d at 760 (2021) quoting *Sturbridge Partners v. Walker*, 267 Ga. 785, 786 (483 SE2d 339) (1997).

servants, and/or employees, failed to provide adequate security measures on the premises, resulting in an unreasonable risk of violence to their invitees. By failing to implement security measures, Vista View Improvements LLC failed to meet its statutory duty to exercise ordinary care.

III. Mr. Banks's injuries and treatment.

Timothy Banks seeks compensation for compensatory as well as punitive damages to redress and remedy the violation of his state statutory rights, as well as attorney's fees and costs, pursuant to O.C.G.A § 51-1-6.

Mr. Banks was shot in the chest at close range, and a bullet was lodged in his ribcage. He suffered a pulmonic injury affecting the left upper lobe and the superior segment of the lower lobe. His left lung collapsed. He was hospitalized for 23 days. During his time in the hospital, his pain was treated with strong opioids. As a direct and proximate result of Vista View Improvements, LLC's negligence, Mr. Banks suffered serious bodily injuries, including, but not limited to:

1. Gunshot wound to the chest;
2. Pulmonic injury primarily affecting the left upper lobe and possibly the superior segment of the left lower lobe
3. Left hydropneumothorax
4. Missile wound to the sternum, diaphoretic

A. Past Medical Expenses

As a direct and proximate result of the Vista View Improvements, LLC's negligence, Mr. Banks further shows that he has been required to receive medical treatment as a result of the injuries sustained in this incident. Mr. Banks shows that he has incurred the following past medical expenses, in the amount of **\$1,187,865.38**, as a result of said incident:

1. Atlanta Medical Center - \$1,105,202.33
2. George P. Delgado, M.D. - \$1,007.10
3. Theodore Smith, M.D. - \$1,500.00
4. Kindred at Home - \$2,275.00
5. GA Nephrology - \$24,596.00
6. IDC - \$1,891.95

B. Future Medical Expenses

In addition to ongoing physical suffering, Mr. Banks has also been diagnosed with post-traumatic stress disorder and major depressive disorder. Memories of the shooting plague him, making it difficult to sleep, concentrate, and interact socially. Mr. Banks will need continued medical support – both mentally, physically, and emotionally – for the foreseeable future.

C. Decrease in Future Earning Capacity

Before the shooting, Mr. Banks had been a UPS driver for 16 years. The physical ramifications of the shooting have made it impossible for Mr. Banks to continue to work.¹⁰ His only income is unemployment, which is barely enough to cover his mortgage.

D. General Damages

Though his pain has become more manageable, it is unlikely that Mr. Banks will ever make a full physical recovery. Before the shooting, Mr. Banks had just purchased a home and was engaged to be married. He had been employed as a UPS driver for 16 years. The physical ramifications of the shooting have made it impossible for Mr. Banks to continue to work, and, with no job, Mr. Banks can barely afford the mortgage payments for his new house. In addition to his profound physical injuries, Mr. Banks also suffers from PTSD and depressive mood disorder which makes it difficult for him to have social interactions, sleep and concentrate.

E. Punitive Damages

Per O.C.G.A. § 51-12-5.1(a), punitive damages may be awarded in tort actions where it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, wantonness, or that entire want of care which would raise the presumption of conscious indifference to consequences. In the wake of incessant gun violence in its neighborhood – with a shooting occurring roughly every six weeks – , Vista View, LLC took no action to secure its premises for the safety of its invites. Vista View, LLC's failure to introduce **any security measures** even though its neighborhood regularly experiences shooting crimes demonstrates an extreme and wanton negligence on the part of Vista View, LLC for the safety of its patrons.

F. Attorney's Fees

If this good faith demand to settle is rejected, and Mr. Banks recovers a final judgment in an amount greater than 125 percent of his demand, he will also be entitled to attorney's fees and litigation expenses pursuant to OCGA § 9-11-68 (b)(2).¹¹

IV. Time Sensitive Demand for Settlement.

Vista View Improvements, LLC failed to meet its statutory duty under O.C.G.A. § 51-3-1 to exercise ordinary care to keep its premises safe for invitees. The gun violence Mr. Banks suffered at Vista View Crossing Shopping Center was highly foreseeable based on the prevalence of gun violence in the neighborhood, and on Blankton Road, where the shopping center is located, specifically. Vista View Improvements, LLC's failure to provide security measures to deter gun violence was a breach of their statutory duty. Had Vista View Improvements, LLC provided security measures, Mr. Banks would likely have never been shot on its property.

¹⁰ See *Dep't of Human Res. v. Thomas*, 456 S.E.2d 724, 727 (1995) ("Damages allowed to a plaintiff for injury to his earning capacity are compensatory, allowing a pecuniary recovery for a diminution in the *physical ability* to work resulting from an injury to the person of the plaintiff.")

¹¹ *Cajun Contractors v. Peachtree Prop. Sub, LLC*, 861 S.E.2d 222, 236 (2021).

Mr. Banks demands that Vista View Improvements, LLC compensate him for the physical, mental, and emotional injuries he has suffered as a direct and proximate cause of the shooting he suffered on their premises.

Failure to make a reasonable written tender of relief within thirty (30) days of this demand may result in your liability for multiple damages, costs, and Mr. Banks's reasonable attorney's fees.