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COVERING THE BUSINESS OF LOSS

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**SCENE DO NOT CROSS**



# Helping Businesses Survive a Mass Casualty Event

By Chantal M. Roberts and Nancy Germond

**ARE THOSE FIRECRACKERS? IS A** car backfiring? Perhaps there's a disturbance of some kind. Today's insureds rarely consider if an active shooter incident can occur on their property. Unfortunately, active shooter or "active assailant" incidents are more prevalent in the United States than ever before. Due to the increasing occurrence of this type of loss, businesses who face this situation may find themselves without coverage for many claims that arise post-event. These uncovered losses can include post-traumatic stress (PTSD) treatment, structural improvements of buildings, post-event security or uncovered workers' compensation claims.

## ACTIVE ASSAILANT OCCURRENCES IN THE UNITED STATES

For the standardized business owners coverage (BP 00 03 07/13) (BOP) and the commercial general liability (CG 00 01

04/13) (CGL) forms "occurrence" has the same definition meaning "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." These standard commercial policies could leave insureds with large, uncovered losses which would exceed their policy limits and litigation costs which could devastate a small-to-medium sized company.

Liability exposure is not the only peril faced by insureds. During an active assailant incident, bullets, explosions or the police knocking down doors to gain access to the interior will damage the building. Provided the business has the "special" cause of loss form, the insurer would probably cover the damages if the insured meets all other insurance provisions.

The U.S. Department of Homeland Security defines an active shooter as "an individual actively engaged in killing or attempting to kill people in a confined and populated area, typically through

the use of firearms." Definitions play an important role because not all active assailant insurance policies define an event in the same way. The incident can include a shooting, a stabbing, an explosion such as the Boston Marathon bombing or individuals driving automobiles into a crowd.

Insuring agreements, definitions and exclusions differ among insurers. Historically, active assailant policies stemmed from terrorism and kidnap and ransom policies. However, as these horrific events escalated and the types of damages began to increase, underwriters and claims professionals recognized that these policy forms failed to meet their clients' needs.

As data for gun ownership and gun deaths across the globe show, the United States clearly stands out. Paul Marshall, the managing director of the active shooter/workplace violence division team at McGowan Programs, one of the writers of this coverage, likened the

coverage to a “go-fund-me account.” The policy will provide immediate benefits, without the wait to determine liability, according to Marshall.

## WHAT’S NOT COVERED IN STANDARD POLICIES?

A standard commercial property coverage policy will pay to restore the property to its state prior to the loss. However, if the insured wants to tighten security by reconfiguring entrances and exits, the property policy would not cover such renovation costs.

In the event of Sandy Hook Elementary, the school administrators rearranged the school not only to focus on increased security but also in response to those suffering from PTSD. The rebuilding of the Sandy Hook elementary school cost Connecticut taxpayers \$50 million. A small-to-medium business could not afford this and may have to give up a prime business location in deference to its public and employees.

Liability policies respond if the active assailant event meets the definition of an “occurrence” as defined by the policy. If an active shooter or other event causes multiple injuries or fatalities and a court rules the event is one occurrence, the insured’s liability policy limits will quickly erode. While it may seem beneficial for the court to determine that such an event constitutes more than one occurrence, this, too, can harm an insured who has a large self-insured retention or a high deductible. Finally, liability policies generally have assault and battery exclusions and terrorism exclusions. It is possible the insurer could invoke these exclusions and deny the damages.

Often overlooked in active assailant cases is that workers’ compensation coverage may be denied if the administrative law judge finds the event, while it occurred on the employer’s property and injured employees, is a purely personal quarrel between spouses or intimate partners. Many workplace fatalities arise from domestic quarrels and are not the result of mental illness as many opponents of gun control relay. Indeed, Michael Stone, a psychiatrist at Columbia University

stated approximately 78% of the killers he has in his database of mass shooters did not have a mental illness.

## WHAT AGENTS AND BROKERS NEED TO UNDERSTAND

Agents should be cautious about straying into coverages outside of their expertise. Active assailant coverage is still a new and emerging market, and few agents have deep expertise in this coverage.

According to Lori Hunter, a broker with Worldwide Facilities in Los Angeles, “This coverage is highly specialized and few brokers have expertise in part because it is a newer coverage. Only a few companies quote this line [of coverage], so my recommendation is to ask for two or three quotes and go over the policy forms...Pay special attention to the insuring agreement, the definitions and the exclusions.”

Today’s active assailants not only focus on schools, but they also focus on soft targets — locations with a high number of people and low security. Malls, theaters, and as we’ve recently seen, grocery stores — no insured with public access should consider itself exempt from this type of event.

According to the Department of Homeland Security, active shooter situations evolve quickly, are highly unpredictable, and typically end within 10-to-15 minutes. The damages, both physical and psychological, to people as well as property damage costs, however, will continue for years.

As active shooting risks continue to evolve and insurers respond, coverage will change, both narrowing and expanding to manage the tragic consequences of these violent mass events. Insurance professionals must review the policy and definitions to properly protect and indemnify the insured.

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