



Does Your Business Need Active Assailant Insurance?

How Active Assailant Insurance Can Help Your Business Survive after a Mass Casualty Event

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Are those firecrackers? Is a car backfiring? Perhaps there's a disturbance of some kind. Today's managers and owners 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, a business that faces this situation may find itself without coverage for many claims that arise post-event. These uncovered losses can include posttraumatic stress (PTSD) treatment, structural improvements of buildings, post-event security, or the inability to handle the onslaught of media post-event.

This article outlines typical policies most businesses buy and describes additional coverage business owners should consider to protect their business, employees and customers/guests if the unthinkable event occurs. It discusses active assailant policies along with other risk prevention techniques. This article helps business owners understand the liability products available and provides some pricing examples. Active assailant coverage is surprisingly affordable, and while not right for every business, certain owners will want to obtain a quote for this important coverage.

Definition

According to VOX, the week of January 5, 2014, is the only full calendar week without a mass shooting since January 1, 2013. As of April 27, 2019, 104 mass shootings killed 124 people and wounded 375. The Gun Violence Archive defines "mass shootings" as "events in which four or more people, excluding the shooter, were shot."¹ So ubiquitous are mass shootings that the shooting on the last day of Passover, 2019, in a Poway synagogue did not make the front page in most major newspapers.

The U.S. Department of Justice and the Federal Bureau of Investigation (FBI) outlined active assailant incidents in 2016 and 2017. The FBI found 20 occurrences in 2016; the number increased to 30 in 2017. Unlike the Gun Violence Archive, the FBI excludes gang- and drug-related activities as well as gun-related activities that do not harm others. All 50 shooters were males who acted alone, and the majority of them were in their 20s.² Active assailants focus on soft targets – locations with a high number of people and low security. The events usually occur in businesses (45%), schools (25%) and government facilities (10%).³

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."⁴

This definition may be important because not all active assailant insurance policies define an active assailant event in the same way. An active assailant incident can range from a shooting, a stabbing, or an explosion such as the Boston Marathon bombing, to individuals driving automobiles into a crowd.

Insuring agreements (the insurer's promise to pay), definitions and exclusions differ among policies. 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.

The public and employees began placing more expectations on business owners to protect them from harm. Often business owners failed to recognize their standard commercial policies could leave them with large, uncovered losses, losses that would exceed their policy limits and litigation costs that could devastate a small-to-medium sized company.

Overview of Standard Commercial Insurance Policies

Most business owners buy several insurance policies, such as commercial property and liability, worker's compensation and business interruption coverages. Attempts by the insurance industry to modify current business policies to cover these events still left coverage gaps for active-assailant incidents. Clearly, society needed more protection.

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 general liability (GL) policy responds when the business owner is "legally liable" for an accident and has breached a duty or standard of care. The business owes an invitee, its customer, a high duty of care to provide an environment free of hidden risks or perils. However, when an active assailant strikes with little or no apparent connection to the property, how can the business' customers and employees find liability against that owner? While the general liability policy should provide a defense, it may provide few if any benefits to injured customers or employees.

This is where active assailant policies can be invaluable. Paul Marshall, the Managing Director of the Active Shooter/Workplace Violence Division Team at McGowan Programs, one of the premier 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.

Additionally, while the GL policy provides medical, funeral and death benefits for the customer, regardless of fault, payable amounts are usually \$1,000 or \$5,000, which may not cover all personal expenses resulting from an active assailant incident. Additionally, costs for an active assailant event, such as cleanup, media control and other costs not faced by a typical injury on a business' premises can be expensive.

The Occupational Safety and Health Administration (OSHA) Act of 1970 mandates a business ensure the “safety, (health) and security of employees.” As a general standard of care, OSHA can find employers responsible if employees receive “reasonably foreseeable” injuries.⁵ While worker’s compensation policies are necessary to provide for the health and well-being of employees injured at work, policies usually extend coverage for the employee while in the course and scope of the job. What about workers who have left their post and are injured as they walk away from the job site? Would they find coverage under workers compensation? Court decisions are still rare regarding these types of events.

Similarly, if an incident arises out of a personal quarrel such as domestic violence, coverage may not apply since the incident does not result from employment. Because workers compensation courts are state-specific, no federal standard applies. One state may find a connection to employment that another state does not.

Business interruption policies are important for the continuation of a commercial endeavor after a loss, but the policy responds only when “direct physical loss of or damage to property at premises...” occurs.⁶

An employer’s current business policies may leave the owner with significant coverage gaps after an active shooter event. As society changes, insurers respond. Beginning in London and now firmly entrenched in the U.S., specialty insurers in the surplus lines market developed policies to meet the needs of business owners should an active assailant event occur.

Why Every Business Owner Should Consider Active Assailant Coverage

While business owners have many reasons to want active assailant coverage, the most important reason is that the policy helps them avoid large uncovered losses from an active assailant event, losses that would cause the business financial hardship.

A standard commercial property coverage policy will pay to restore the property to its state prior to the loss. However, if the business wants to tighten security by reconfiguring entrances and exits, the property policy would not cover such renovation costs. School administrators rebuilt Sandy Hook Elementary School after the shootings not only to focus on increased security but also to rearrange the school in response to those suffering from PTSD.⁷ The rebuilding of the Sandy Hook elementary school cost Connecticut taxpayers \$50 million. A standard commercial property policy would not provide that coverage, even given actual damage to the premises itself. Some active assailant forms will provide that coverage.

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, an owner’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 a business that has a large self-insured retention or a high deductible.⁸ 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.

As mentioned previously, a workers compensation policy may not respond to employees' medical needs if the employees are not in the scope and course of their employment when the event occurs and if the attack on employees is unrelated to the workplace.⁹ For example, an administrative law judge may not find a purely personal quarrel between spouses or intimate partners work-related. Many workplace fatalities arise from domestic quarrels. In workplace shootings between 2003 and 2008, a current or former partner killed nearly 33% of the female decedents.¹⁰

Other Insurance Considerations

If the business did not sustain direct physical damage from an active assailant event, the business interruption policy would not respond. However, if police quarantine the area during investigation and the business cannot reopen during that time, coverage for civil authority may apply. Business owners should discuss this important item with their current brokers to determine if they have coverage and if their limits are appropriate.

The "Other Insurance" clause appears in nearly every policy (except life insurance) and is most prevalent in property and liability policies. This clause establishes how multiple insurers will pay a loss where the event triggers more than one policy. Depending on policy language, the policy will provide no coverage if there is another insurer that covers the same risk; or it will provide a proportionate share of the damages with the other insurer; or it will be in excess of the other insurer. Policies include this language to prohibit a business from profiting by submitting a loss as the same claim to more than one insurer. Check this clause in the active assailant policy to ensure these policies are primary, not excess, of other liability coverage.

Finally, an insurer could consider an active assailant occurrence as an act of terrorism, which a business' policy purchased under the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA) could exclude.¹¹ The incident must meet certain criteria, such as property and casualty losses of more than \$5 million. Additionally, the U.S. Secretary of the Treasury, the Attorney General and the US Secretary of Homeland Security must declare the loss a "Certified Terrorist Attack." The government did not certify the Boston bombing event because damages did not exceed the \$5 million threshold.¹² In addition, for insurers to consider the active assailant event as an act of terror, the act must be a part of "an effort to coerce the civilian population of the United States or to influence a [U.S. government's] policy..."¹³

What Is Active Assailant Insurance?

After an agent or broker reviews the current coverages of a business, the agent may offer active assailant insurance as a separate policy. Active assailant coverage can help fill coverage gaps so the business does not face uncovered losses that are potentially bankrupting. Coverages encompass crisis management aid, off-site/international attacks, loss of attraction losses and prevention techniques.

Indirect loss costs arise unexpectedly after active shooter events, and active assailant policies help to stem those costs. For example, after a 2017 airport attack in Florida, Broward County spent over \$500,000 to return luggage abandoned by passengers.

Unlike standard business policies, most active assailant policies offer crisis management both pre-event to help plan for an active shooter and post event. Hiscox's terrorism policy evolved to encompass active assailant coverage, according to Jennifer Rubin, head of Hiscox's terrorism, war and political violence division. Hiscox partners with a public relations company to provide crisis management services, both firms working with the media to ensure that communication flows smoothly post event.¹⁴

Post event, experts reassure families and demonstrate to the public that the business is handling the assault with competence and consideration. The insurer also may facilitate victim counseling and plan steps needed to assist crisis victims. Crisis management will help the business return to customary operations more quickly than business owners who deal with the aftermath of these events on their own.

Business interruption coverage does not begin unless direct physical damage or a shut down due to civil authority occurs. Likewise, a business interruption policy would not respond to a business downturn because customers no longer feel safe at the location. This contingent loss – not a direct loss like damage to the building itself, but an indirect “loss of attraction” because of the event – can be fiscally devastating. An active shooter policy can help with this contingent loss.

Litigation is costly regardless of the type of loss, and it is beneficial for a business to obtain broad coverage for the litigation that will follow an assault. Some carriers writing this coverage offer loss prevention services pre-event so that businesses can identify troubled individuals in an effort to avoid the event all together.¹⁵ These services may include training and social media monitoring as well as other pre-loss activities.

Business owners must take special care when reading their policies to understand the policy definitions and determine when coverage is in-force. For example, while workers compensation may cover employees' injuries, the active assailant policy may specifically exclude such injuries, according to McGowan's marketing material. A business owner should require an endorsement naming the employees, volunteers, or students as insureds to prevent the form from excluding these persons from coverage.

Determining thresholds or maximum amount of coverage is an important decision. Is \$1 million in coverage enough considering your exposure or would \$3 million be better? Most small businesses usually choose between \$1 million and \$3 million in limits, according to several active assailant underwriters.

In some policies, coverage begins after a certain number of victims are physically wounded or deceased. The policy may also limit a maximum number of victims – for example, the limit could be set at 50 victims. It is important to consider not only the deceased victims of the active assailant but also those who have emotional or mental trauma due to the assault. On March 23,

2019, in Coral Springs, Florida, police responded to a second student who died from suicide – a student who initially survived the shooting at Marjory Stoneman Douglas High School on February 14, 2018. Therapists diagnosed the student with PTSD while at university, and the school district provided therapy animals and counselors. This help may be insufficient for many survivors.¹⁶

Policy definitions play a major role in an active assailant policy. Consider whether the policy covers only an active shooter or if assaults by knives and explosives also are covered losses. Additionally a policy may exclude assaults by vehicles. In London in June 2017, assailants used an automobile to drive into a crowd of pedestrians.

Each policy will respond to the crisis differently based on how it defines the event or occurrence. A policy could describe a firearm as loaded to be “deadly,” and a firearm must meet that definition before coverage would apply. For example, absent threats of deadly force or no bodily injuries, deaths, or attacks with loaded firearms, PTSD claims may not be covered. Business owners should consult their agents and brokers to ensure they have the broadest coverage available given the premium.

How Costly is Active Assailant Coverage?

Most small-to-medium sized business owners today buy coverage limits of \$1 million or \$3 million, as previously mentioned. Larger businesses can buy limits up to \$100 million, according to one underwriter.

Underwriters base quotes on number of employees added to annual number of guests for retail stores, schools and other establishments. They use crime maps to assess all locations and a variety of other factors to determine premium. Many carriers use a three-page or less application, so applying for coverage is easy. Business owners can obtain quotes through insurance agents who offer more nuanced coverages. If your current agent cannot help you, visit [Trusted Choice](#) at the Independent Insurance Agents & of America website to find a drop-down menu that will help you locate an independent insurance agent in your area.

Premiums are still affordable. For example, an art museum in a major city purchased \$1 million limits for \$3,000. A New Jersey hotel purchased \$1 million limits for \$6,500. A stock brokerage in Pittsburgh with 1,515 employees and yearly visitors would pay about \$1,340 for \$1 million coverage or \$2,320 for \$3 million coverage.

While active assailant policies have covered some recent events, these are “long-tail” claims, meaning it may be years before carriers total the final loss numbers. Because carriers writing the coverage have little history on which to base rates, the rate future remains cloudy.

Other Risk Management Tools

Business owners can protect themselves by employing methods other than insurance, such as monitoring social feeds and conducting emergency drills.

One idea in this era of protection against active assailants is to arm front-line personnel. Fourteen states allow teachers to carry guns in the classroom.¹⁷ The belief is that armed personnel can defuse the active assailant situation before the police arrive. Arming personnel may open the business to a higher standard of care and higher premiums.

Underwriting applications ask if a business has armed guards. Always completely disclose your business' current situation on the policy application. Any mistakes or misrepresentations could void coverage.

Unfortunately, juries could find that armed personnel were acting as an agent of the business, which increases the business's liability. While active assailant insurance applications ask if the business has an onsite security team, armed civilians could eliminate any potential carriers willing to underwrite the risk.¹⁸

Just as schools conduct tornado and fire drills, a business can reduce the risk of casualties by using active assailant scenarios to develop a plan, implement it, and train employees, students and other covered personnel. In these simulations, participants develop a clearer vision of how to remove themselves and their customers from the situation until help arrives, if possible. Insurance applications ask who designed the business' emergency plan and if a risk-consulting firm reviewed it

Applications also ask about past threats and attacks. Again, always disclose any events or activities that might be important to the underwriter considering the risk.

It is also useful for employers to monitor social media feeds. Monitoring social media can help identify an employee or person who might become an active shooter. In the case of the shooting at Marjory Stoneman Douglas High School, the school had expelled suspect Nikolas Cruz for "disciplinary reasons."¹⁹ In the police and FBI investigation of the shooting, social media posts from Cruz showed weapons lying on a bed and a YouTube message stating, "Im [sic] going to be a professional school shooter."²⁰ Being aware of these red flags and taking action when found can help reduce the risk of an active assailant event.

How Will a Carrier Handle Your Claims?

The insurance industry divides insurance in the U.S. market into two categories: the admitted market and the non-admitted market. The admitted market insurers, also known as "standard market carriers," are insurers who are "admitted" to carry out insurance functions in a state. Admitted carriers follow each state's department of insurance rules and regulations. Non-admitted carriers are often excess and surplus line insurers and operate in the state without conforming to each department of insurance approval process. This difference is important when it comes to claim handling since most admitted carriers have their own claims department while non-admitted insurers often use third-party claim administrators (TPA), which are independent firms hired by carriers to handle its claims.

When considering active assailant coverage, ask about the claims process should an incident occur. You will require swift assistance following an assault. Carriers are currently developing a

new type of claim team to handle these losses, trained and ready to deploy overnight. These specialty teams should encompass worker's compensation adjusters who understand traumatic injuries management as well as aspects of PTSD; liability adjusters to address non-employee claims; property adjusters to appraise physical damages to buildings; and a lead or general adjuster as a point person with whom the business can correspond and coordinate plans. One of the closest models to these types of teams is airline disaster adjusters.

Admitted insurers such as AIG have their own staffs. Non-admitted carriers like syndicates at Lloyd's of London generally contract with large TPAs, which have a dedicated crisis management team familiar with active assailant events.

It's a New Time in America

Experts say no one can predict an active shooter occurrence. However, due to their increasing frequency, the insurance marketplace has stepped forward to address the concern. Preventive steps offered by some carriers range from helping employers identify troubled individuals before they kill to providing training designed to teach those in a crisis how to respond to reduce casualties.

No policy can be "one size fits all," but careful coordination with an experienced insurance agent will help you avoid financially catastrophic and uncovered losses that could force your business into bankruptcy.

Work with an Agent Who Understands Active Assailant Coverage

A recent article in *Insurance Journal* warned agents about straying into coverages outside their expertise. Active assailant coverage is new and emerging. Few agents have deep expertise in this coverage. It pays to know your agent and ask what experience she or he has in placing 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 with your agent. Pay special attention to the insuring agreement, the definitions and the exclusions.

"If you remain unsure about coverage ask your agent to arrange a call with the underwriter or representative from the wholesaler or MGA that quoted the risk to answer any questions you may have."

Will These Events Continue to Escalate?

Active shooter and other mass violence events in America are not going away. We are probably years away from gun regulation, although students of the Parkland shooting sparked a national trend of activism that may result in legislative changes. Increased political rancor, greater

alienation in our population and untreated psychiatric disorders are just some of the reasons we may see these events, whether with guns or other weapons, continue to increase.

In a 2015 essay by Malcolm Gladwell, author of *The Tipping Point*, discussing the work of sociologist Ralph Larkin, Gladwell wrote that the Columbine shooting “laid down the ‘cultural script’ for the next generation of shooters.” Gladwell suggested that “low threshold” shooters would be motivated to act. “The problem is not that there is an endless supply of deeply disturbed young men who are willing to contemplate horrific acts. It’s worse. It’s that young men no longer need to be deeply disturbed to commit horrific acts.”²¹

Should You Consider Active Shooter Coverage?

Virtually all business owners today should determine if their business could be the target of, or adjacent to, an active shooter event. 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, taverns near areas where the public congregates, houses of faith, charter schools – no organization with public access should consider itself exempt from this type of tragic event. An event that occurs nearby can spill over into your establishment.

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

As active shooters continue to threaten and insurers respond, coverage will change, both narrowing and expanding to manage the tragic consequences of these violent mass events. An annual discussion with your agent prior to renewal or when circumstances change in your business can help ensure you have the most appropriate coverage for your current loss exposures.

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