Active Shooter/Workplace Violence
Claims, Coverages and Consequences

Paul Marshall – Managing Director
McGowan Program Administrators
Sunday, September 23, 3:30-5:00

2018 Annual Marketplace
Atlanta, Georgia | September 23-26, 2017
First Day of School 2018
Legal Disclaimer

- The information contained herein is intended for informational purposes only. Insurance coverage in any particular case will depend upon the type of policy in effect, the terms, conditions and exclusions in any such policy, and the facts of each unique situation. No representation is made that any specific insurance coverage would apply in the circumstances outlined herein. Please refer to the individual policy forms for specific coverage details.
What is an Active Shooter or Workplace Violence Event?

Homeland Security defines an **Active Shooter** as "an individual actively engaged in killing or attempting to kill people in a confined and populated area; in most cases, **active shooters** use firearms(s) and there is no pattern or method to their selection of victims."

**Workplace violence**, (defined by OSHA) “is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from threats and verbal abuse to physical assaults and even homicide.”
What is an Active Shooter or Workplace Violence Event?

Each year nearly 2 million American workers are victims of workplace violence? In fact, according to OSHA, workplace violence is the second leading cause of work-site deaths in the US.

With recent high profile workplace attacks, more businesses are boosting security efforts and taking added precautions to prevent and prepare for acts of workplace violence.
Categories of Active Shooter or Workplace Violence events

Who commits AS/WPV acts:

- Customers, Clients, Patients, other 3rd parties
- Employees or Supervisors
- Domestic Partners or Relatives of Employees

- Per OSHA there are approx. 700 workplace homicide victims per year.
- In 2/3 of workplace homicides, the assailant was a 3rd party and had no known personal relationship with the victim(s).
- 1/3 did have a personal relationship, and more than 40% of these were domestic violence related.
Active Shooter Workplace Violence events

Gun Violence Archive aggregates and publishes the gun violence data in near real-time from over 2,500 verified media, commercial, and law enforcement sources. GVA defines Mass Shooting event that include 4 or more victims. [www.gunviolencearchive.org](http://www.gunviolencearchive.org)

2018 Year in review:

- Jan: 22 mass shootings
- Mar: 17 mass shootings
- May: 28 mass shootings
- Jul: 46 mass shootings
- Feb: 14 mass shootings
- Apr: 25 mass shootings
- Jun: 51 mass shootings
- Aug: 16 mass shootings

This year's total as of Sept 22th: 263
The U.S. Secret Service National Threat Assessment Center (NTAC) examined 28 incidents, (in which three or more persons were harmed, and were carried out in work/public places) to identify key themes for enhancing threat assessment and investigative practices.

These incidents resulting in the loss of 147 lives and injury to nearly 700 others had a devastating impact on our nation as a whole.

Regardless of whether these attacks were acts of workplace violence, domestic violence, school-based violence, or terrorism, similar themes were observed in the backgrounds of the perpetrators.
NTAC March 2018 Report: MASS ATTACKS - 2017

These included:

- Nearly half were motivated by a personal grievance related to a **workplace, domestic**, or other issue.
- Over half had histories of **criminal charges, mental health symptoms**, and/or illicit substance use or abuse.
- All had at least one **significant stressor** within the last five years, and over half had indications of **financial instability** in that timeframe.
- Over three-quarters made **concerning communications and/or elicited concern** from others prior to carrying out their attacks. On average, those who did elicit concern caused more harm than those who did not.
NTAC March 2018 Report: MASS ATTACKS - 2017

- Nearly half (46%) were at businesses (e.g., a bank, retailers, a law office, warehouses).

- Most of the attacks were carried out using a firearm (82%), while vehicles (11%) and knives (7%) were also used.

- The attacks took place throughout the year and occurred on every day of the week. Over half (61%) took place between the hours of 7:00 a.m. and 3:00 p.m.

- For half (50%), the violence ended within 5 minutes from when the first shot was fired or first person was harmed.
Litigation in the News

- San Bernardino “Workplace Violence” Shooting: Victim's family seeks $58 million
- Jury awards $3.7M to estate of Munch Bar shooting victim
- Judge Approves $11M Settlement in Virginia Tech Shootings
- School Shooting Victims in New Mexico Awarded Nearly $2M
- Washington Girl Gets $1.2M Settlement Over School Shooting
- Town Rejects $11 Million Settlement Offer from Sandy Hook Parents
- Sovereign Immunity Under Attack after Parkland Shooting
Active Shooter / Workplace Violence  
“Insurance” in the News

- More School buying Active Shooter Insurance - Wall Street Journal
- As Active Shooter / Workplace Violence Incidents Increase, Industry Addresses Coverage ‘Gray Area’ – Insurance Journal
- Workplace shootings have insurers going on offense – CBS NEWS
- Mass Shootings Convince Companies to Explore 'Active Shooter' Insurance - Fortune Mag
- Interest in active shooter insurance grows – CNBC
What happens in the aftermath?

- Situations like these are difficult to control and almost impossible to predict. The best thing you can do is prepare your staff to act the right way in any potentially violent situation through strong planning and regular exercises.
- We believe securing the proper insurance can serve as a catalyst to be more focused on being prepared while also looking more carefully for any warning signs.
What happens in the aftermath?

Virginia Tech University

Treating the survivors is just one of the primary expenses of mass shootings (hospital admissions of shooting victims costs more than $95,000 on average, according to Health Affairs). For instance, consider the largest costs of the 2007 Virginia Tech University massacre:

- $11.4 million: Safety and security upgrades
- $6.4 million: Cleanup, renovations, and other facility changes
- $4.8 million: Settlement payments and other legal costs
- $2.7 million: Support for survivors and families of victims
- $3.2 million: Other operational expenses
- $9.5 million: State expenses, including settlements
- $590,000: Healthcare costs

(Source: Washington Post)
What happens in the aftermath?

Cinemark Theater

- The theater in Aurora, Colorado, reopened in January 2013, six months after a gunman entered a showing of The Dark Knight Rises movie through a side door and opened fire, killing 12 and injuring 70. Families of the victims who sued Cinemark suffered another blow when a court said Cinemark could not have anticipated such an attack and therefore was not negligent.

- Cinemark had a legal right to insist that the plaintiffs repay more than $700,000 in court costs it amassed while defending itself. Initially, the theater chain asked to be repaid — generating a raft of negative publicity — but it eventually dropped the request.
What happens in the aftermath?

Pulse Nightclub

- The massacre at the Pulse nightclub, in June 2016, spread trauma far beyond the club, where 49 people died and more than 50 were injured. The club’s owner, kept the club closed in honor of the slain.

- Families of the victims sued the shooter’s employer, a global security company, claiming it should have recognized he had become mentally unstable. Another lawsuit targeted Google, Facebook, and Twitter, claiming they were culpable for terrorists who used their platforms to radicalize the gunman.
What happens in the aftermath?

Mandalay Bay Resort

- The deadliest mass shooting in modern U.S. history attracted more than a dozen lawsuits within six weeks of the attack. On October 1, 2017, 58 people died and more than 500 were wounded when a gunman at the Mandalay Bay Resort and Casino in Las Vegas opened fire on a country music festival from his suite at the resort.
What happens in the aftermath?

Mandalay Bay Resort

March 21st Victims of Las Vegas mass shooting start receiving payments out of $31 Million Victim Fund

532 claims total
14 received $200,000 / victims hospitalized for more than 24 days.
9 received $150,000 16-23 / days in the hospital.
15 received $100,000 / 8-15 days in the hospital.
77 received $52,500 / 7-10 days in hospital.
32 received $17,500 / 1 day in hospital.
What happens in the aftermath?

Parkland School Shooting

- Educational Foundation collects more than $8 million for victims and sets up a committee to decide on how to disburse these funds.
- School District is overwhelmed with media and public record requests
- **State immediately offers to pay for all funeral expenses**
- School District decides to tear down 9th grade building, State provides $25 million in funding.
Duty of Care

- In the US, several sources of law obligate an employer to a Duty of Care for the safety, health & security of employees (Occupational Safety and Health Administration Act of 1970)
- Duty of Care requires protection against workplace violence hazards.
- Injuries that are “reasonably foreseeable” can impose liability for negligence on employers for failure to take adequate safety precautions.
Duty of Care

Prepare your organization (for Tort Liability for negligent hiring, supervision, and training):

- Have a written policy against workplace violence.
- Communicate that policy to all employees.
- Establish an effective EAP- Employee Assistance Program.
- Train workers so they know what to do in a violent situation.
- Explore and secure insurance solutions to mitigate financial risk to organization.
Active Shooter / Workplace Violence Insurance

Insured Expenses:

- **AS/WPV Extra Expense**
  - Extra Security, Public Relations, Crisis Response, Any Extra Expense

- **Victim Personal Accident Expense**
  - Medical, dental, psychological, personal accident, rehabilitation.
  - Personal income, disability, death benefits.
  - Option to extend cover to off-site locations
Active Shooter / Workplace Violence Insurance

Insured Expenses:

- **3rd Party Legal Liability**
  - including defense costs and indemnity / judgements / settlements.

- **Business Interruption Expense**
  - including Extra Expenses to resume operations.

- **Property Coverage**
  - Teardown / Rebuild / Memorial Expenses
Active Shooter / Workplace Violence Insurance

Terms / Capacity / Limits

- Various minimum premiums
- $1M - $10M Standard Limits (up to $100M capacity)
- $0 - $10k retention in most cases, higher available
- Standard 12-month policy term – short extended available
- Aggregated policy / Sub limits
- Business Interruption included in standard policy form
Active Shooter / Workplace Violence Insurance

Exclusions to look out for:
- Terrorism exclusions
- Employee exclusions
- Casualties threshold limit
- Vehicle exclusion
- Requirement for explosive to be physically attached to assailant
- Mental Anguish exclusion
Types of Risk

Virtually any type of Business:
- Healthcare facilities
- Manufacturing operations
- Retail establishments
- Restaurants
- Hotels
- Car dealerships
- Not for profit organizations
- Education
- Religious
- Events
- Municipalities
Submission Requirements

- Signed and dated application:
  - Number of employees
  - Number of annual guests/students/patients/etc…
  - Number of locations
  - Hours of operation
  - Years in business
  - Employee protocols/hiring practices (EAP, background checks, etc.)
  - Loss experience – any violent events
Additional Factors Influencing Pricing

- Exchanging money with the public.
- Working with volatile or unstable people.
- Working alone or in isolated areas.
- Providing services and care to public.
- Working where alcohol is served.
- Working late at night or in areas with high crime rates.
- Working in large gatherings of general public
Sample Policy Form Definitions

Insured Person(s) means:

Any **Employee**; any **Guest** of the **Named Insured** while on any **Premises** occupied by the **Named Insured** in the conduct of its business…

**Off Site / Off Premises** Coverage also available
Sample Policy Form Definitions

3rd Party Legal Liability means:

those reasonable and necessary defense costs allowable by law, including any resulting settlements or judgments incurred by the Named Insured in connection with an action for damages brought by or on behalf of an Insured Person(s), or his or her legal representative, against the Named Insured solely and directly as a result of being a victim of an Act of Workplace Violence and or Stalking Threat.
Sample Policy Form Definitions

Active Shooter / Act of Workplace Violence means any intentional and unlawful Act of potentially deadly force involving the use of a Weapon on the Premises; or Threat of deadly force involving the display of a Weapon on the Premises.
Sample Policy Form Definitions

**Weapon** means an instrument or explosive device which is specifically intended to be used for and used to injure, kill or incapacitate a person.
Sample Policy Form Definitions

Active Shooter / Act of Workplace Violence Expenses means additional expenses necessarily and reasonably incurred by the Named Insured and/or an Insured Person(s) solely as a direct result of, immediately following, and for the duration of an event.
Questions / Comments ????
Presenter Contact Information

Paul Marshall | Managing Director – AS/WPV Division
McGowan Program Administrators
P: 937-241-6423
pmarshall@mcgowanprograms.com
www.mcgowanprograms.com