



Active Shooter

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Recent tragic events around the country have brought renewed attention to mass shooting losses. Whether motivated by terrorism or simply the acts of a deranged individual, active shooter scenarios cause significant bodily injury (BI) and property damage (PD). After the victims are treated and the immediate shock passes, practical realities reassert themselves. Claims are made and suits are filed, and the defendants in such actions look to their insurance coverage for defense and indemnity. We will examine an insured's recourse under general liability (GL), workers' compensation (WC), employer's liability (EL), first party property, and active shooter policies.

Potentially Applicable Policies

Ultimately, the facts of any claim will determine the potentially applicable policies, but we will make certain assumptions for the sake of discussion.

1. If employees are victims of an active shooter, the employer's workers' compensation (WC) policy should apply, in the absence of intentionally malicious conduct by the employer.
2. Depending upon the state, it could be alleged that the employer knew or should have known that a mass shooting event could take place, but failed to prevent it. If allegations of gross negligence or wanton behavior are sufficient to overcome the WC bar, they would be addressed by the employer's liability (EL) section of the WC policy. Egregious conduct on the employer's part could jeopardize coverage if they were to amount to a substantial certainty of employee BI, but barring such claims, EL should cover the employer.
3. Patrons, visitors and other victims represent third party liability, and their claims implicate the general liability (GL) policy. A GL policy provides coverage when it is alleged that a third party suffered BI or PD as a result of the negligence of the insured. The insurer might raise particular exclusions, depending upon the facts.
 - The expected or intended exclusion might be raised as a defense by insurers. The carrier could argue that smuggling numerous weapons into a hotel or public venue means that the BI should have been expected. While we cannot predict what a court might do in any given scenario, this should not constitute a considerable hurdle unless senior employees of the defendant were involved.
 - If an active shooter event is certified as an act of terrorism by the Secretary of the Treasury under the Terrorism Risk Insurance Program Reauthorization Act of 2015, and the insured has rejected TRIPRA coverage at its last renewal, terrorism and or enhanced war exclusions could jeopardize coverage.

4. The insured's property insurance may also respond to both physical damage caused by the active shooter and income loss sustained by the insured after the event. Many hospitality venues have coverage, often with a sub-limit, for events such as suicide, murder or viral outbreak. While these incidents are not thought of as traditional types of physical damage covered by a property insurance policy, they do result in property damage and time element loss to which insurers have agreed to insure pursuant to a stated sub-limit. Other property coverages that might be applicable include closure or impairment of access by a civil authority and loss of ingress/egress, both of which implicate time element coverage under the property policy. Coverage for the insured would be triggered by damage to the room, windows or other insured property.
- Depending on the facts, an issue may arise as to whether damage to a few rooms can trigger coverage for what might be a significant impact on business to the venue.
 - Insurers might argue that the loss of business income should be limited to revenue loss for the damaged rooms, or the floor on which they sit, rather than to the entire location. However, once the policy is triggered, generally income loss sustained that results from the covered event is itself covered.
 - Insureds can also purchase cancellation of bookings coverage. The fact that cancellation of bookings coverage is afforded supports the argument that coverage for loss of income is more extensive than the minimal loss of income on the few rooms that may have suffered actual physical damage.

5. The insurance markets developed active shooter insurance policies over the last several years in response to such events. An active shooter policy offers protection from legal liability for BI, often on a claims-made basis. While there are variations among carrier forms, many afford:

- crisis management services,
- risk mitigation services
- avoidance training
- legal defense,
- loss of earnings, and
- a personal accident benefit for those injured or killed.

It is important to ensure that priority of coverage between an active shooter and a GL policy is determined at the time of placement, to avoid a dispute after loss.

Conclusion

Unfortunately, insureds with active shooter exposures, such as universities, entertainment venues, hotels, retailers and trade shows, must consider how to respond to such an event. Central to that consideration is a plan of action for avoiding, and if necessary, dealing with, an active shooter. The policies described above offer protection within their respective spheres for various aspects of liability associated with a shooting. Should you have any questions about these forms, or how you should insure against the possibility of an active shooter loss, please consult with your Willis Towers Watson broker.

Contact

Will Eustace

Executive Vice President
Head Casualty Coverage Officer
O +1212 915 8679
C +1347 602 1932
will.eustace@willistowerswatson.com

Henry R. Daar

Executive Vice President
Practice Leader, National Property
Claims
O +1312 720 8216
henry.daar@willistowerswatson.com

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