

A background image showing several police cars at night with their blue and red emergency lights flashing, creating a sense of urgency and emergency response.

FIRST LOOK

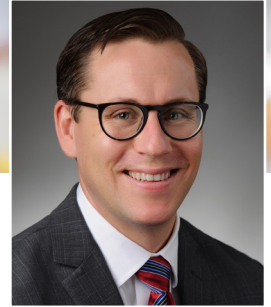
ISSUES AND DEVELOPMENTS IN INSURANCE LAW

A CLOSE LOOK AT COVERAGE IN MASS SHOOTINGS

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This newsletter is a periodic publication of Steptoe & Johnson PLLC's Insurance Company Team and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions you may have. For further information, please contact a member of the Insurance Company Team.



MASS SHOOTINGS: MULTIPLE CLAIMANT CONSIDERATIONS

BY: GREG JACKSON

In 2020, despite nearly nationwide lockdowns due to the COVID-19 pandemic, the United States sustained 611 mass shooting events.¹ This represents an increase from 336 in 2018 to 417 in 2019. Such events often lead to civil liability claims by multiple claimants seeking significant sums. For instance, in the MGM Las Vegas shooting 58 people were killed and another 850 injured. The claims were settled for \$800 million, with insurers contributing \$751 million.² The increased exposure has resulted in coverage litigation and the sale of alternative “deadly weapon” or “active shooter” coverage options, frequently as standalone policies.³ However, assuming coverage exists, whether under a CGL policy or newer Active Shooter insurance, the number of claimants and accompanying high exposure of mass shooting claims present unique challenges for the insurance industry. Carriers must frequently determine the amount of available limits and navigate settlement with multiple distinct claimants, while avoiding extracontractual liability.

Determining available limits frequently centers on whether the covered events are considered one occurrence under the policy or multiple occurrences. Under an occurrence-based policy, limits are frequently available per occurrence within an aggregate limit for multiple occurrences. Under such circumstances, where each shooting victim or round fired is considered a single occurrence, the claimants would stack occurrences until the aggregate limit is reached – creating a ceiling to potential exposure. However, if the applicable policy fails to proscribe an aggregate limit, the number of occurrences is not artificially limited, and the potential exposure remains unchecked. Alternatively, where the shooting event is considered a single occurrence, the per occurrence limit greatly reduces carrier exposure.

Two primary approaches, and a lesser used third approach, have emerged for determining whether an event with multiple injuries constitutes a single occurrence or multiple occurrences. The theories are known as the “cause” theory, the “effect” theory, and the “time and space” theory.

The majority of jurisdictions follow the “cause” theory, focusing on the alleged cause or causes of the injury or damage from the insured’s perspective, rather than the number of claims.⁴ Under the “cause” theory, the focus is on what actions of the insured, for which coverage is sought, are alleged to have caused the injuries.⁵ This analysis centers on the insured’s alleged wrongful acts and considers “whether any of the acts or omissions of the insured defendants was a ‘discrete’ act of liability so separated by time and location to warrant the conclusion that each such act resulted in [the shooter] having access to a weapon he used to shoot several people.”⁶ For instance, in *RLI Insurance Company v. Simon’s Rock Early College*, a student of Simon’s Rock Early College, residing on campus, Wayne Lo, received a package from a known firearms store.⁷ College employees intercepted the package, subsequently allowed Lo to receive

and open the package, and allowed Lo to retain the contents – 3 or 4 magazines, a plastic rifle stock, and an empty army surplus ammunition container – as a firearm was not present. However, Lo subsequently purchased a modern sporting rifle from a local sporting goods store, which he used to shoot 6 people, killing two. Importantly, a concerned student reported Lo's agitated behavior before the shooting, but college officials failed to take any preventative action.⁸ The several victims and victims' families filed suit, alleging the college was negligent in failing to prevent Lo from engaging in the wrongful acts. The Court reasoned that, although several events led up to the shooting, the claims centered on arguably inadequate policy as the basis for liability against the college, which was a single occurrence.⁹ Stated another way in *Uniroyal Inc. v. Home Insurance Company*: "Since the policy was intended to insure [the college] for its liabilities, the occurrence should be an event over which [the college] had some control. Otherwise, with the covered risks out of the insured's hand and coverage for losses determined by the action of the unfettered [shooter], the insurer would have no basis for setting premiums *ex ante* and the insurance contract would be illusory."¹⁰ Accordingly, the "cause" theory focuses on the actions of the insured that allegedly caused the claimed harm.

The minority "effect" theory, on the other hand, looks at the event that caused claimed injuries.¹¹ Most notably, Florida adheres to this approach, with the Florida Supreme Court's seminal case of *Koikos v. Travelers Insurance Company* aptly describing the theory.¹² In *Koikos*, a bar owner rented his bar to a fraternity, but did not provide security. During the evening, when two men were refused entry to the fraternity function, an altercation arose which became physical and resulted in one of the men firing two volleys of shots. Two rounds during the first volley separately struck two bystanders.¹³ On certification from the Eleventh Circuit, the Florida Supreme Court considered whether each shot constituted an occurrence under the bar's insurance policy or if the alleged negligent failure to provide security constituted a single occurrence.¹⁴ Under the policy, an occurrence was defined as an accident, including repeated exposure to the same or similar circumstances, resulting in bodily injury.¹⁵ The Court reasoned that the event actually resulting in the injury was the firing of the firearm. Although the claims against the insured were premised on the allegedly negligent failure to provide security, the immediate cause of the alleged injury – the shooting – was the appropriate occurrence.¹⁶ Each shot was, therefore, an occurrence. Under the "effect" theory, each round fired that causes injury would be considered an occurrence, potentially creating extraordinary exposure under policies without aggregate limits.

A lesser used approach to multiple claimant cases is the "time and space" theory, which focuses on the link between the cause and resulting injury.¹⁷ The test considers whether the "cause and result are simultaneous or so closely linked in time and space as to be considered by the average person as one event."¹⁸ If so, the injuries are the result of a single occurrence.¹⁹

Once the number of occurrences is determined, insurers face potential issues settling multiple claims, particularly where the exposure exceeds available limits. Policies typically establish a duty to defend until limits are exhausted. Multiple claimants with claims exceeding limits, in aggregate or individually, create a risk of extracontractual liability and personal exposure to the insured. For example, where an insurer receives a settlement demand below policy limits, fails to settle, and the claimant obtains an excess verdict, the insurer could be found liable for bad faith.²⁰ Similar liability may attach where an insurer wrongfully refuses to defend a claim, perhaps misunderstanding its settlement obligations.²¹

There are three general approaches to an insurer's obligation when settling with multiple claimants. The first, often referred to as "first in time, first in right," focuses directly on the time of when claimants assert claims.²² Under this theory, absent bad faith, an insurer may settle whenever and with whomever it chooses.²³ The insurer does not owe a duty to consolidate claims or pay out claims *pro rata*.²⁴ Moreover, provided limits are not exhausted by unreasonable overpayments, the duty to defend and/or indemnify ends when the insurer pays its limits.²⁵ However, unreasonably paying out higher settlements to deplete or exhaust available limits may result in extracontractual liability.²⁶

Another approach imposes greater duties upon insurers to seek a settlement resolving all potential liability:

First, the insurer is required to fully investigate all claims at hand to determine how to best limit the insured's liability. ... [A]n insurer has some discretion in how it elects to settle claims, and may even choose to settle certain claims to the exclusion of others, provided this decision is reasonable and in keeping with its good faith duty. Second, the insurer should seek to settle as many claims as possible within the policy limits. Third, the insurer has a duty to avoid indiscriminately settling selected claims and leaving the insured at risk of excess judgments that could have been minimized by wiser settlement practice.²⁷

The insurer must also keep the insured informed about the settlement process.²⁸ These additional duties increase the potential for extracontractual liability, as jurors play Monday morning quarterback for the insurer's settlement decisions but afford insureds greater protection.

Multiple claimant settlements may also be conducted on a *pro rata* basis.²⁹ Under this approach, where multiple claimants seek recovery from the same insurance proceeds and their damages exceed the limits of insurance, each claimant will receive a *pro rata* share of available limits based on the amount of damage suffered.³⁰ This formula is, however, limited to circumstances where multiple claimants have judgments or all claimants are joined in one suit (i.e., interpleader).³¹

Ultimately, mass shooting claims present complex issues that can drastically expand potential exposure and put carriers at risk for extracontractual liability. These issues can be expected to continue as the recent years have seen increases in mass shooting events. The Insurance Company Team is available to discuss these and other issues with you at your convenience.

¹ A "mass shooting," according to the Gun Violence Archive, is a shooting in which 4 or more individuals are shot or killed, excluding the shooter. See, Gun Violence Archive, *General Methodology*, <https://www.gunviolencearchive.org/methodology> (last visited Sept. 7, 2021); Gun Violence Archive, *Past Summary Ledgers*, <https://www.gunviolencearchive.org/past-tolls> (last visited Sept. 7, 2021).

² Ken Ritter, *Court OK's \$800M Settlement for MGM Resorts, Vegas victims*, Associated Press (Sept. 30, 2020) <https://apnews.com/article/lawsuits-shootings-las-vegas-mass-shooting-nevada-las-vegas-cd07b4640a5a8e6d32ccbcd1aae2e65>.

- ³ Lawrence Hsieh, *New products show insurers reassessing risk in U.S. mass shootings*, Thomson Reuters Regulatory Intelligence (Feb. 20, 2018) <https://www.reuters.com/article/bc-finreg-mass-shooting-insurance/new-products-show-insurers-reassessing-risk-in-u-s-mass-shootings-idUSKCN1G42QA>; Katie Young & Contessa Brewer, *Rise in mass shootings leads to 'rapid growth' in active shooter insurance*, CNBC (Jan. 10, 2020) <https://www.cnbc.com/2020/01/10/rise-in-mass-shootings-boosts-active-shooter-insurance.html>.
- ⁴ See, *RLI Inc. Co. v. Simon's Rock Early College*, 765 N.E.2d 247, 249 (Mass. App. 2002).
- ⁵ *Id.* at 251 ("We conclude that when the issue is the number of occurrences, we must look to the 'cause' of the injury by reference to the conduct of the insured for which coverage is afforded, and that 'cause' and 'occurrence' are indistinguishable for purposes of this analysis."); see also *Travelers Indem. Co. v. Olive's Sporting Goods, Inc.*, 764 S.W.2d 596 (Ark. 1989) (negligently selling gun to mass shooter was a single occurrence); *Worcester Ins. Co. v. Fells Acres Day Sch., Inc.*, 558 N.E.2d 958 (Mass. 1990); *Uniroyal Inc. v. Home Ins. Co.*, 707 F.Supp. 1368 (E.D.N.Y. 1988); *Nicor v. Associated Electric & Gas Insurance Services Ltd.*, 860 N.E.2d 280 (Ill. 2006) (describing the "effects" theory and the "cause" theory).
- ⁶ *RLI*, 765 N.E.2d at 254.
- ⁷ *Id.* at 249-250.
- ⁸ *Id.*
- ⁹ *Id.* at 254.
- ¹⁰ *Uniroyal*, 707 F.Supp at 1383.
- ¹¹ *Koikos v. Travelers Ins. Co.*, 849 So.2d 263 (Fla. 2003); *American Indemnity Co. v. McQuaig*, 435 So.2d 414 (Fla. 5th DCA 1983).
- ¹² *Koikos*, 849 So.2d 263.
- ¹³ *Id.* at 264-265.
- ¹⁴ See generally, *Id.*
- ¹⁵ *Id.* at 266-267.
- ¹⁶ *Id.* at 271-272.
- ¹⁷ *Doria v. Insurance Co. of America*, 509 A.2d 220 (N.J. 1986).
- ¹⁸ *Addison Ins. Co. v. Fay*, 232 Ill.2d 446 (Ill. 2009) (quoting *Doria*, 509 A.2d at 224).
- ¹⁹ *Id.*
- ²⁰ *Eskridge v. Educator & Exec. Insurers, Inc.*, 677 S.W.2d 887, 889 (Ky. 1984).
- ²¹ *Aetna Cas. & Sur. Co. v. Comm.*, 179 S.W.3d 830, 841 (Ky. 2005) (a carrier may be liable for all damages flowing from a wrongful denial of its duty to defend).
- ²² *In re September 11 Property Damage Litigation*, 650 F.3d 145, 151 (2nd Cir. 2011).
- ²³ *Id.* (citing *Allstate Ins. Co. v. Russell*, 13 A.D.3d 617 (N.Y.App.Div.2d Dep't 2004)).
- ²⁴ *Schuster v. Quanta Specialty Lines Inc. Co.*, 455 Fed.Appx. 724 (8th Cir. 2012).
- ²⁵ *Id.*
- ²⁶ See, *Maguire v. Ohio Cas. Co.*, 602 A.2d 893 (Pa. 1992); see also *Pareti v. Sentry Indemnity Company*, 536 So.2d 417 (La.1988); *Lumbermen's Mutual Casualty Co. v. McCarthy*, 8 A.2d 750 (N.H. 1939).
- ²⁷ *TIG Ins. Co. v. Smart School*, 401 F.Supp.2d 1334, 1339 (S.D. Fl. 2005) (citing and quoting *Farina v. Florida Farm Bureau Gen. Ins. Co.*, 850 So.2d 555 (Fla. 4th DCA 2003)) (internal quotation and citation omitted)
- ²⁸ *Id.*
- ²⁹ *Allstate Ins. Co. v. Ostenson*, 713 P.2d 733 (Wash. 1986).
- ³⁰ *Id.*; See also, *Accident Inc. Co. v. Winget*, 197 F.2d 97 (9th Cir. 1952).
- ³¹ *State Farm Mut. Auto Ins. Co. v. Hamilton*, 326 F.Supp. 931 (D. S.C. 1971).



COVERAGE ISSUES IN ACTIVE SHOOTER CLAIMS: THE INSURED'S AND VICTIM'S PERSPECTIVES

BY: MELANIE NORRIS*

Last year (2020) was the least deadly year for U.S mass shootings in a decade.¹ Yet, with the advent of spring 2021 and 200 mass shootings in a little over 100 days, inquiries for active shooter insurance policies have risen 50 percent, with a startling demand from the healthcare industry.² There is some speculation that the isolation and stress caused by the COVID-19 pandemic has contributed to the recent spike in public violence.³

Of great concern to carriers is the potential exposure to liability of the insured owner of the premises where a shooting occurs. This concern has reached a fever pitch as of late. The concern is understandable in light of recent developments like the \$800 million settlement reached in the MGM Las Vegas shooting litigation, \$751 million of which will be funded by insurance.⁴

Under general principles of tort law, an owner of a premises that is the site of a shooting is only liable for injuries caused to patrons if the criminal acts of the shooter were foreseeable.⁵ More specifically, the judicial philosophy of the past was that an establishment had no duty to protect patrons from mass shootings because they were not reasonably foreseeable and were considered extremely unlikely, even if the owner was aware of some “warning signs” of potential violence.⁶ States have attempted to clarify the duty owed to patrons of businesses through laws such as the Colorado Premises Liability Act,⁷ but, as shootings continue to make recent headlines, courts are feeling the tension in deciding these tragic cases.

For example, in the prominent case *Lopez v. McDonald's Corp*, a California Appeals court evaluated the liability of the McDonald's Corporation after a mass shooting occurred in a McDonald's in San Ysidro, California in 1984.⁸ Ultimately, the court concluded as a matter of law that the mass murder that occurred was not a foreseeable harm that could expose McDonald's to liability.⁹ The court reached this conclusion despite the plaintiff's introduction of evidence of previous violent crimes occurring on the premises, a higher crime rate at the location compared to the city at large, and testimony showing the McDonald's had rejected a private security firm's offer to provide services.¹⁰ The court found that the previous incidents of crime had no relationship to the homicidal nature of the mass shooting and that the shooting was simply not a foreseeable event that McDonald's had a duty to prevent.¹¹

It is heartbreaking to admit, but times have changed. The sad reality is that mass shootings are no longer “once-in-a-lifetime”¹² occurrences. Consequently, courts are more willing to at least entertain the notion that these horrific events are foreseeable due to their increased frequency and can, therefore, impose liability on a premises owner.¹³

Compare the almost outright dismissal of claims in *Lopez* to the extensive analysis performed in the premises liability action filed after the El Paso Walmart shooting in 2019.¹⁴ The court in the Walmart case wrestled with the issue of whether discovery requests seeking information on related crimes and security information in other Walmart stores were reasonable and relevant.¹⁵ Intimately tied to these requests was the question of whether the information sought would produce evidence that the actions of the El Paso shooter were foreseeable.¹⁶ Previously, an individual entering a business to commit mass murder was an almost inconceivable notion; however, the Walmart court almost took for granted the fact that mass shootings are common enough that discoverable corporate policies related to active shooter situations could exist in the first place.¹⁷

Another critical consideration is whether the shooter's conduct supersedes any negligence on the part of the premises owner, but such can be a context-specific inquiry. Until recently, the shooter's intentional, criminal conduct was typically seen as "predominant" over any possible negligence on the part of the premises owner in failing to protect patrons.¹⁸ However, courts now seem more apt to consider all circumstances and actions of a premises owner leading up to a shooting in their evaluations of whether a shooter's conduct truly "predominates" any negligent conduct by an owner.¹⁹

With regard to recovery against a shooter, a victim's ability to collect upon a policy owned by the shooter often hinges upon the shooter's intent. Factual inquiries surrounding denial of claims under intentional acts exclusions can be complex.²⁰ For example, some courts are willing to infer the intent to injure as a matter of law from the violent, reckless nature of a shooter's acts, even if the exact intent behind an inflicted injury is uncertain.²¹ Still others find that, depending on the wording of an exclusion provision, the criminal nature of an act voids coverage regardless of a shooter's intent.²² Finally, in some instances the questions courts face can grow even more complicated when the perpetrator is deemed to be mentally ill.²³

With the prevalence of mass shooting events, courts today may be more willing to find such conduct "foreseeable" to insured premises owners. The coming years will be telling in how far courts are willing to go in expanding the duties that business owners owe to their patrons in a world where mass shootings make regular headlines. The impetus then, lies on carriers to remain apprised of the current state of the law and to be meticulous when crafting criminal and intentional acts exclusions. The Insurance Company Team is able to assist you should you have questions in this regard.

***Melanie would like to thank Justin Wilson, incoming associate with the class of 2022, for his work on this article.**

¹ Noor Hussain & Carolyn Cohn, *Mass shooting insurance in high demand as U.S. emerges from lockdown*, Reuters, (May 13, 2021), <https://www.reuters.com/business/legal/mass-shooting-insurance-high-demand-us-emerges-lockdown-2021-05-13/>

² *Id.*

³ *Id.*

⁴ Michael Steinlage, *Liability for Mass Shootings: Are We at a Turning Point?* American Bar Association (Feb. 7, 2020), https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2019-20/winter/liability-mass-shootings-are-we-a-turning-point/.

- ⁵ See *Rest. (2d) of Torts* § 344 cmt. f (1965) (“Since the possessor is not an insurer of the visitor’s safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur.”)
- ⁶ See *Lopez v. McDonald’s Corp.*, 193 Cal. App. 3d 495 (Cal. Ct. App. 1987).
- ⁷ Colo. Rev. Stat. § 13-21-115 (2006).
- ⁸ *Lopez*, 193 Cal. App. 3d at 500.
- ⁹ *Id.* at 509.
- ¹⁰ *Id.* at 502.
- ¹¹ *Id.* at 509 (“[T]he risk of a maniacal, mass murderous assault is not a hazard the likelihood of which makes McDonald’s conduct unreasonably dangerous. Rather, the likelihood of this unprecedented murderous assault was so remote and unexpected that, as a matter of law, the general character of McDonald’s nonfeasance did not facilitate its happening. Huberty’s [the shooter’s] deranged and motiveless attack . . . is so unlikely to occur within the setting of modern life that a reasonably prudent business enterprise would not consider its occurrence in attempting to satisfy its general obligation to protect business invitees from reasonably foreseeable criminal conduct.”)
- ¹² *Id.* at 504.
- ¹³ See *Axelrod v. Cinemark Holdings, Inc.*, 65 F.Supp.3d 1093, 1099 (D. Colo. 2014) (“I do not disagree at all with the holding in the *Lopez* case. But what was ‘so unlikely to occur within the setting of modern life’ as to be unforeseeable in 1984 was not necessarily so unlikely by 2012.”)
- ¹⁴ See *In Re Walmart, Inc.* 620 S.W.3d 851 (Ct. App. Tex. 2021).
- ¹⁵ *Id.* at 855-56.
- ¹⁶ *Id.*
- ¹⁷ *Id.* at 862 (“The trial court could have concluded that the request is reasonably calculated to lead to the discovery of information related to Walmart policies and procedures related to active shooter-type situations involving armed criminals posing a direct threat to human life.”)
- ¹⁸ See e.g., *Nowlan v. Cinemark Holdings, Inc.*, 2016 WL 4092468, at *3 (D. Colo. Jun. 24, 2016) (holding Aurora theater shooter’s actions were predominant cause of plaintiffs’ losses).
- ¹⁹ *Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 467 P.3d 287, 289 (Colo. 2020) (holding genuine issue of material fact existed as to whether shooter’s conduct was predominant cause of plaintiffs’ injuries and therefore liability due to conduct of premises owner as a substantial factor in the cause of plaintiffs’ injuries could still exist).
- ²⁰ See *Allstate Ins. Co. v. Pond Bar*, No. 3-94-1310, 1995 WL 568399 (D. Minn. May 19, 1995).
- ²¹ *Id.* at *8.
- ²² *Liebenstein v. Allstate Ins. Co.*, 517 N.W.2d 73, 75 (Ct. App. Minn. 1994).
- ²³ See e.g., *Municipal Mut. Ins. Co of West Virginia v. Mangus*, 443 S.E.2d 455, 458 (holding that intentional act exclusion provision applied and mental illness of insured did not prevent him from intending his actions); cf. *Swift v. Fitchburg Mut. Ins. Co.*, 700 N.E.2d 288, 289 (Ct. App. Mass. 1998) (holding that criminal acts exclusion was inapplicable because insured was mentally ill and found not guilty by reason of mental illness in related criminal proceeding).



ACTIVE SHOOTER INSURANCE POLICIES

BY: MELANIE NORRIS*

In the aftermath of an active shooter event, one of the last things an insured wants to deal with is the consequential financial impact. The reality is, however, that an active shooting results in property damage, bodily injury, and potential liability for the premises or business owner where the event took place. Historically, an insured business or premises owner faced with such claims had the protection of only a commercial general liability policy (“CGL”).¹ However, in response to the rise in active shooter events, many commercial carriers have developed dedicated active shooter policies or endorsements to specifically address the coverage deficits some insured businesses find themselves facing following an active shooter event.² The policies are typically triggered by premeditated, malicious physical attacks by active assailants who are physically present and armed.³

Key components of active shooter policies include the same third and first party coverages historically available under CGL policies such as physical damage, business interruption, and legal liability, but also provide additional coverages for items such as loss of attraction and brand rehabilitation expenses, victim crisis management, counseling, and prevention costs.⁴ Indeed, “the most innovative and unique feature of these policies are the risk management services, such as risk assessment and crisis management” which assist the insured business or premises owner in recovering faster if such an event does occur.⁵

Before underwriting active shooter insurance coverage became available, most carriers require business owners to show certain commitments or warranties to forestall foreseeable active shooter events.⁶ This stemmed from the duty of care that can arise from foreseeable active shooter events on business premises. Insurance companies value those businesses that take steps to implement strategies and prevention programs to minimize the risk of active shooter events and to develop active response methods that are designed to handle an active shooter event.⁷ These strategies include balancing the business owner’s foreseeability of the harm against the burden and efficacy of potential security measures and other actions that could be taken to prevent such events.⁸ In other words, businesses taking steps to prevent and mitigate foreseeable active shooter events.⁹ Things like active shooter training sessions for employees on how to respond to an active shooter, or providing for consumer evacuation plans as provided by the Department of Homeland Security will likely be taken into consideration by underwriting.¹⁰ Likewise, commercial insurers may provide further preventative assistance through “sending in risk management companies to assess a location’s vulnerabilities and make suggestions” to help aid in a business’s effort to ensure reasonable security protocols.¹¹

Like any other insurance policy, active shooter insurance policies will contain specific exclusions that may limit coverage.¹² Such exclusions can include exclusion of employee liability protections, limiting coverage to only guest or visitor victim claims. Also, these policies may provide for the exclusion of damages caused by vehicles or weapons that are not guns or knives. Alternatively, there may be casualty thresholds, where coverage may only apply to a certain number of individuals that have been injured or killed following the attack.¹³ Many active shooter insurance policies limit coverage to only three or four victims in total.

Active shooter insurance policies are still a new concept to both the insured and insurers, and the law surrounding foreseeability is ever-changing. Businesses feel like potential victims, and their consumers know of the risks by way of prolific media coverage. Providing active shooter insurance coverage is more than just peace of mind. It is future protection from the impactful financial burdens that come with an active shooter event.

***Melanie would like to thank Delainey Banks, incoming associate with the class of 2022, for her work on this article.**

¹ *Allstate Ins. Co. v. Neal*, 304 Ga. App. 267, 696 S.E.2d 103 (2010).

² *Id.*

³ <https://www.marsh.com/us/insights/research/active-assailant-coverage.html> (last visited 9/14/21).

⁴ *Id.*

⁵ <https://www.propertycasualty360.com/2019/07/30/active-shooter-unique-coverage-for-a-unique-risk/?slreturn=20210813203922> (last visited 9/13/2021).

⁶ Paul Marshall, *Coverage for Active Shooter Risks*, (Sept. 4, 2018), <http://www.rmmagazine.com/2018/09/04/insurance-coverage-for-active-shooter-risks/>

⁷ *Id.*; see also <https://www.hamiltongroup.com/locale/hamilton-insurance-group/> (providing methods on how businesses can be responsive to active shooter incidents).

⁸ Dru Stevenson, Dru Stevenson, *Workplace Violence, Firearm Prohibitions, and the New Gun Rights*, 55 U.S.F. L. Rev. 179 (2021); see also McGowan Program Administrators, *Companies Taking Notice of Safe Workplace OSHA Requirements*, (Feb. 11, 2021) <https://mcgowanprograms.com/blog/taking-notice-safe-workplace-osharequirements/>.

⁹ *Id.*

¹⁰ Department of Homeland Security, *Active Shooter – How to Respond*, https://www.dhs.gov/xlibrary/assets/active_shooter_booklet.pdf

¹¹ Katie Young & Contessa Brewer, *Rise in Mass Shootings Leads to ‘Rapid Growth’ in Active Shooter Insurance*, CNBC (Jan. 10, 2020, 4:22 PM), <https://www.cnbc.com/2020/01/10/rise-in-mass-shootings-boosts-active-shooter-insurance.html> [<https://perma.cc/8MZH-FW8U>].

¹² See Paul Marshall, *Coverage for Active Shooter Risks*.

¹³ *Id.*

INSURANCE COMPANY TEAM MEMBERS

TEAM LEADERS



LAURIE C. BARBE
Member

Morgantown, WV
304-598-8113
laurie.barbe@steptoe-johnson.com



MELANIE MORGAN NORRIS
Of Counsel

Wheeling, WV
304-231-0460
melanie.norris@steptoe-johnson.com

TEAM MEMBERS



W. RANDOLPH FIFE
Member

Charleston, WV
304-353-8115
randy.fife@steptoe-johnson.com



MICHELLE E. GASTON
Member

Charleston, WV
304-399-8842
michelle.gaston@steptoe-johnson.com



JASON R. GRILL
Member

The Woodlands, TX
281-203-5764
jason.grill@steptoe-johnson.com



GREGORY A. JACKSON
Associate

Lexington, KY
859-219-8226
greg.jackson@steptoe-johnson.com



R. MITCH MOORE
Associate

Morgantown, WV
304-598-8153
mitch.moore@steptoe-johnson.com



ANCIL G. RAMEY
Member

Charleston, WV
304-526-8133
ancil.ramey@steptoe-johnson.com



HANNAH CURRY RAMEY
Of Counsel

Huntington, WV
304-526-8132
hannah.ramey@steptoe-johnson.com



SHAINA L. RICHARDSON
Associate

Morgantown, WV
304-598-8122
shaina.richardson@steptoe-johnson.com



BENJAMIN L. RIDDLE
Member

Louisville, KY
502-423-2045
benjamin.riddle@steptoe-johnson.com



ANDREW P. SMITH
Member

Huntington, WV
304-526-8084
andrew.smith@steptoe-johnson.com



ED WALLISON
Member

The Woodlands, TX
281-203-5766
ed.wallison@steptoe-johnson.com



MEGAN FARRELL WOODYARD
Of Counsel

Huntington, WV
304-339-8838
megan.woodyard@steptoe-johnson.com

QUICK LOOK AT THE STEPTOE & JOHNSON INSURANCE TEAM

StepToe & Johnson's Insurance Company Team has **more than 100 years** of experience providing legal service and advice to the insurance industry. Our attorneys possess a wealth of knowledge and understanding of insurance issues. We are prepared to manage insurance carriers' complex legal issues and defend insurance companies during claim investigations.

HOW WE HAVE HELPED

- » Prepared insurance coverage opinions
- » Developed successful strategies used in federal and state courts to resolve complex insurance claims
- » Defended first party cases involving bad faith claims, unfair claim settlement practices, and general first party responsibilities
- » Provided advice regarding the regulatory aspects of insurance
- » Provided Insurance claim handling training
- » Compliance issues, including the Unfair Trade Practices Act
- » Investigated fraudulent fire and theft claims, including examinations under oath
- » Investigated insurance losses for subrogation potential

FAST FACTS

- » **370+** attorneys and other professionals
- » **18** offices in Colorado, Kentucky, Ohio, Pennsylvania, Texas, and West Virginia
- » **More than 50** areas of practice
- » **90** lawyers recognized in *The Best Lawyers in America®*
- » **20+** attorneys listed as leaders in their field by Chambers USA
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