

Active Assailant Risk

Exposure modeling and Insurance solutions

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US Casualty Practice

Our panel



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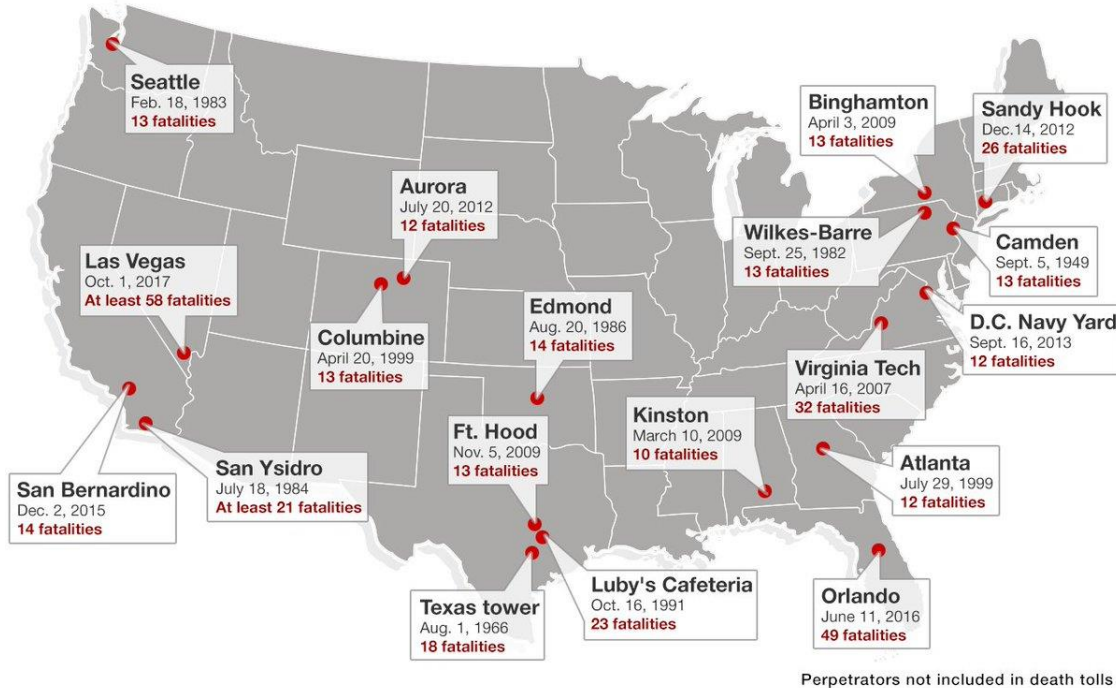
Agenda

Active assailant threat assessment

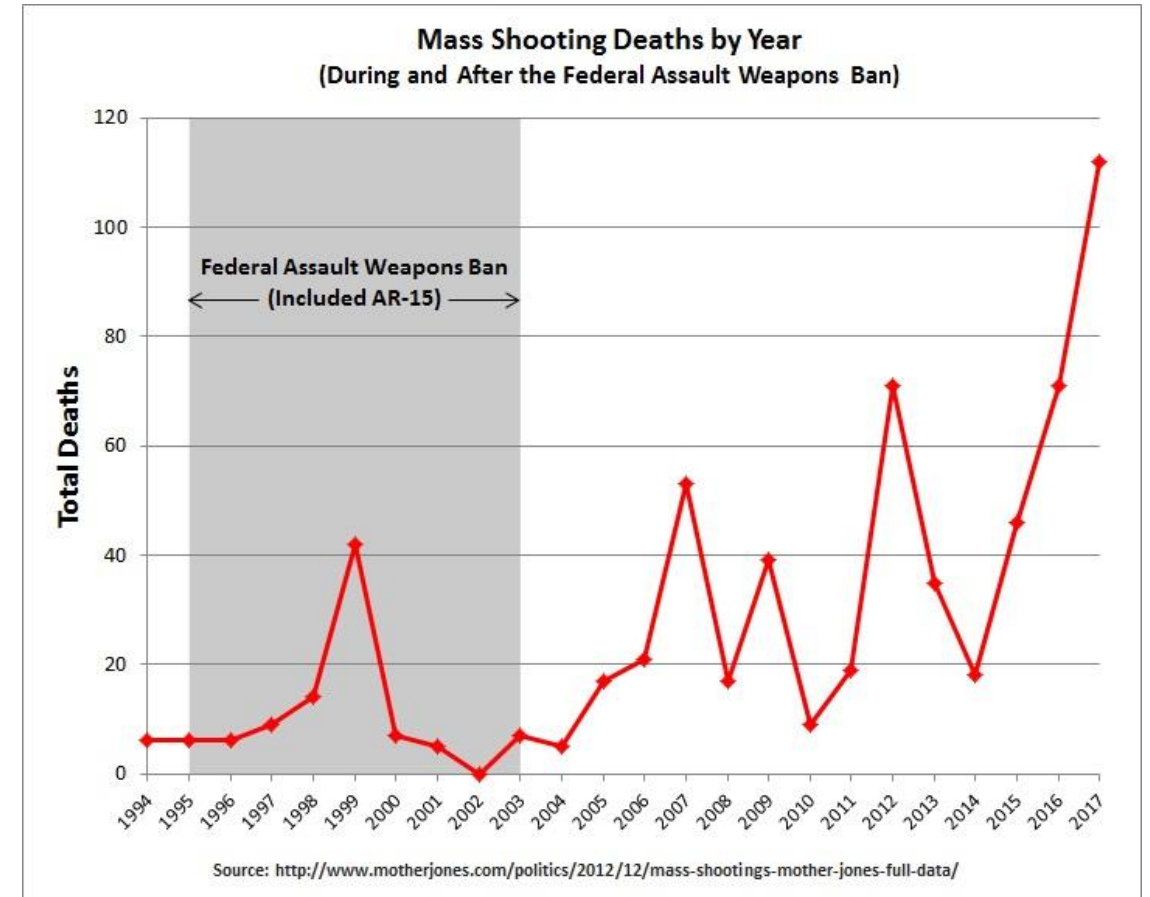


Active assailant – A growing trend

Deadliest mass shootings in modern U.S. history



An *active assailant* is an individual actively engaged in killing or attempting to kill people in a confined and populated area. Depending on the motive, victims can be random or targeted (workplace violence)



The increase in active assailant events appears to be directly correlated to the advent of and increased usage of social media. A perpetrator can today more easily broadcast their “manifesto” to a much larger audience.

Typical perpetrator profile

- Nearly **80%** of shooters had an identifiable grievance that appeared to motivate their violence.
- **Over half** of the shooters whose preparation was observable had spent less than a week in those specific tasks, the balance spending up to a year.
- **40%** of shooters purchased firearms just prior to the attack. Very few instances of illegal guns used in an attack.
- Only **25%** of shooters had a previously diagnosed mental illness. Fewer than **25%** had known substance abuse problems.

Firming up your security and risk management protocols

- Increase patrolling, uniformed security officers.
- **Interact with local law enforcement** – build a relationship; conduct joint exercises.
- Conduct active shooter awareness and response **training** for employees, and conduct **desk-top exercises**.
- Sufficient security cameras – operable and well maintained.
- Stay connected to social media for any “flash mob” type planned events.
- Increase security signage (“This area under camera surveillance,” etc.)
- Develop and display Code of Conduct e.g., “No firearms allowed.”

Workplace violence

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Workplace violence – Defined

Workplace violence 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.

Four types

- Criminal intent – i.e., incidental to another crime.
- Customer/client - while being served by the business.
- Co-worker - current or past employee attacks or threatens other employees.
- Personal relationship - no relation to business; domestic violence.

A few alarming statistics

- Every year, **2 million** people experience some form of workplace violence.
- **One in seven** people doesn't feel safe in their workplace.
- In 2020, **30%** of the people said they were **unaware** of their company's **safety plan**.
- **Healthcare workers** make **50%** of victims of such crimes.
- **44%** of **school teachers** also report attacks in the workplace.
- **In total, workplace violence results in \$130 billion in costs and lost productivity every year.**

Workplace violence – Warning signs

Potentially violent behaviors by an employee may include one or more of the following (this list of behaviors is not comprehensive, nor is it intended as a mechanism for diagnosing violent tendencies):

- Increased use of [alcohol and/or illegal drugs](#).
- Unexplained increase in [absenteeism](#).
- Noticeable decrease in attention to [appearance and hygiene](#).
- [Depression / withdrawal](#); Noticeably unstable, emotional responses, severe mood swings, and/or explosive outbursts of anger or rage without provocation.
- [Suicidal](#) comments or comments and behavior which is indication of potential [paranoia](#).
- Increasingly talks of [problems at home](#), escalation of domestic problems into the workplace, talk of severe [financial difficulties](#), [extreme political views](#) expressed, etc.
- Increase in unsolicited comments about [firearms](#), other dangerous [weapons](#), and [violent crimes](#).

Workplace violence – Mitigating the risk

- Establish a “zero tolerance” policy.
- During employment process, conduct effective **employee screening** and **background checks**.
- Provide training to staff on how to **recognize warning signs**.
- Create a **confidential system** for reporting signs of potentially violent behavior.
- Make **counseling services** available to employees (Employee Assistance Plan).
- Develop an **Emergency Response Plan**, which includes policies and procedures for dealing with an active shooter situation or other workplace violence events, as well as after-action planning.
- Develop a **formal protocol for terminating employees**.

TIPS FOR SAFER TERMINATIONS

- **Assess the threat.** Look for physical indicators that an employee is prone to violence such as abusive language, violent gestures and clenched fists. Does the employee fit in any of the four profiles above?
- **Involve legal and security staff** throughout the process.
- **Conduct the termination without delay** and keep the termination meeting short. Don't engage in debate or arguments which may feed an employee's anger.
- **Have security officers or law enforcement present** if the meeting is expected to be volatile.
- **Take any threats made during the termination meeting seriously.**
- **Avoid embarrassing the employee** by escorting him or her out of the office in front of co-workers. Have security present but keeping a low-profile. Allow the employee to maintain his or her dignity.
- **Reduce contact with supervisors and co-workers** after the termination meeting. Have workers near the meeting room and exit relocated until after the terminated employee has departed.
- **Alert security and front-desk staff** that the individual is no longer employed and should return to the workplace. Provide a photo of the person if necessary and give instructions of whom to contact if the individual does return.
- **Ensure the employee can get home safely.** If the employee typically carools, for example, arrange for a cab.



EXIT

Emergency response and crisis management



Risk management and crisis management go hand-in-hand



Critical components of an active assailant crisis response

- Dedicated crisis management and response team – multi-disciplined approach – and conduct routine desktop exercises.
- Develop an emergency action plan – and communicate to staff.
- **Implement active assailant training.**
- Lockdown/evacuation/assembly/accountability procedures.
- Notification/communication protocols.
- First responder/law enforcement coordination.
- Communications management and public relations.
- Victim and community outreach.
- Recovery and business continuity.
- Post-incident review and any corrective actions and/or training identified.

Active assailant crisis response training

Components of training

Corporate Level

- Develop a [crisis response plan](#) and then conduct mock active shooter/workplace violence training exercises. Include law enforcement where appropriate.
- Designate a “[person most knowledgeable](#)” as public spokesperson. Conduct public relations communications training for these individuals to ensure proper messaging. Other staff prohibited from interviews/response.
- Establish and maintain [solid relationships with local law enforcement](#) for higher profile potential targets.

Personal Safety and Training for Staff - Adopting the **survival mind set** during a time of crisis

- [Recognizing the sound of gunshots](#) and reacting quickly when gunshots are heard and/or when a shooting is witnessed and how to interact with law enforcement when they arrive.
- [Evacuating](#) the area – [Barricading](#) and hiding out - [Acting](#) against the shooter as a last resort.
- [How to react](#) when law enforcement arrives.
- [First Aid](#) and [CPR training](#).

Claims and litigation considerations

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Active shooter litigation

Plaintiff tactics and courtroom realities...

- The [concept of “foreseeability”](#) as a defense continues to be eroded in the courts.
 - *Lopez v. McDonald’s Corp. (1984)* vs. other recent cases.
- Area crime statistics coupled with extent of security features/protocols of defendant are being challenged.
- Security budgets, sufficiency of security features, written policies (or lack thereof), staff training, and incident response are all being scrutinized more closely and amplified by plaintiffs.
- [“Reptile Theory”](#) approach to litigation, as well as [active litigation funding](#), are generating an increase in “nuclear” verdicts. The plaintiff attorneys start by establishing safety rules, and then demonstrating how a defendant’s unreasonable actions violated the rules to put a plaintiff in danger. Strategy seeks to ignore how the accident occurred.
- [Social justice](#) and [social inflation](#) also pushing up settlement amounts.
- [Awards and settlements](#), in general, are increasing significantly. Awards for [punitive damages](#) are also increasing.

Practical defense considerations

Pre-litigation

- As soon as possible, [contact outside counsel](#) and include them in the investigation.
- [Preserve evidence](#) (videos, photos, emails, etc.) and store it in a way that is accessible to outside counsel.
- Include counsel (in house and/or outside counsel) on internal email communications to [preserve privilege](#).
- [Identify](#) the corporate [representative](#) who will testify at trial and make sure they have necessary credentials and knowledge.
- [Identify](#) potential [witnesses](#) or other potential [defendants](#) or [cross-defendants](#).
- Make sure any incident report will be privileged. (Have counsel prepare the report and/or make sure it is labeled “confidential.”)

Practical defense considerations

In litigation

- When a complaint is filed, review to ensure that the plaintiff has **alleged sufficient facts** to state a cause of action.
- Make sure a **protective order** is entered in the case before producing confidential documents.
- Be prepared to argue with opposing counsel about producing the **incident report**.
- Make sure the corporate representatives have the **appropriate training, expertise**, and are adequately **prepared for depositions**, including mock deposition questions.
- During depositions, object to **hypothetical questions** where possible.
- File a *motion in limine* for **obvious and inflammatory reptile tactics**.

Insurance considerations in claims management

- Accusation or formal charges of “**criminal intent**” that may trigger the certain **exclusions under the general liability policy**. Underwriters are increasingly inserting exclusions for “assault and battery.”
- Does **affirmative coverage** for “emotional distress” and “mental anguish” exist, or not?
- **Number of occurrences** – depending on the time over which the incident occurs, multiple injuries/fatality events could trigger multiple “per occurrence” limits, but also multiple per occurrence retentions.
- **Additional insureds** under the policy – and review of any contractual defense and indemnification provisions as well as any opportunity to tender a claim.
- Potential for **uninsured costs** – such as the need to increase security protocols post-incident.
- Directors and officers potential exposure to “**management liability**” for decisions made around security protocols, security budgets, etc.
- **Crisis response coverage** – typically found in the umbrella liability policy.
- Importance of **reporting the incident immediately** to insurers and coordinating litigation management.
- Choice of **counsel and litigation budget** discussions with insurers can be challenging.

Risk modeling

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Modeling exposure to terrorism and active shooter

Marsh Advisory solution set. Key capabilities include:

Peril advisory

A qualitative and quantitative study of security, terrorism and political violence risks faced by clients according to their industry and specific location.

Probable maximum loss study

A detailed assessment of the potential impact of terrorism incidents using a range of weapon effect modelling techniques against a number of viable attack scenarios.

Crowd flow modeling

A structured review of current security risk management practices, to align security strategy and governance with strategic business outcomes.

Security strategy and policy review threat, vulnerability, and risk assessment

An analysis of site-specific threats and vulnerabilities with industry best practice mitigation recommendations where appropriate.

Portfolio risk assessment

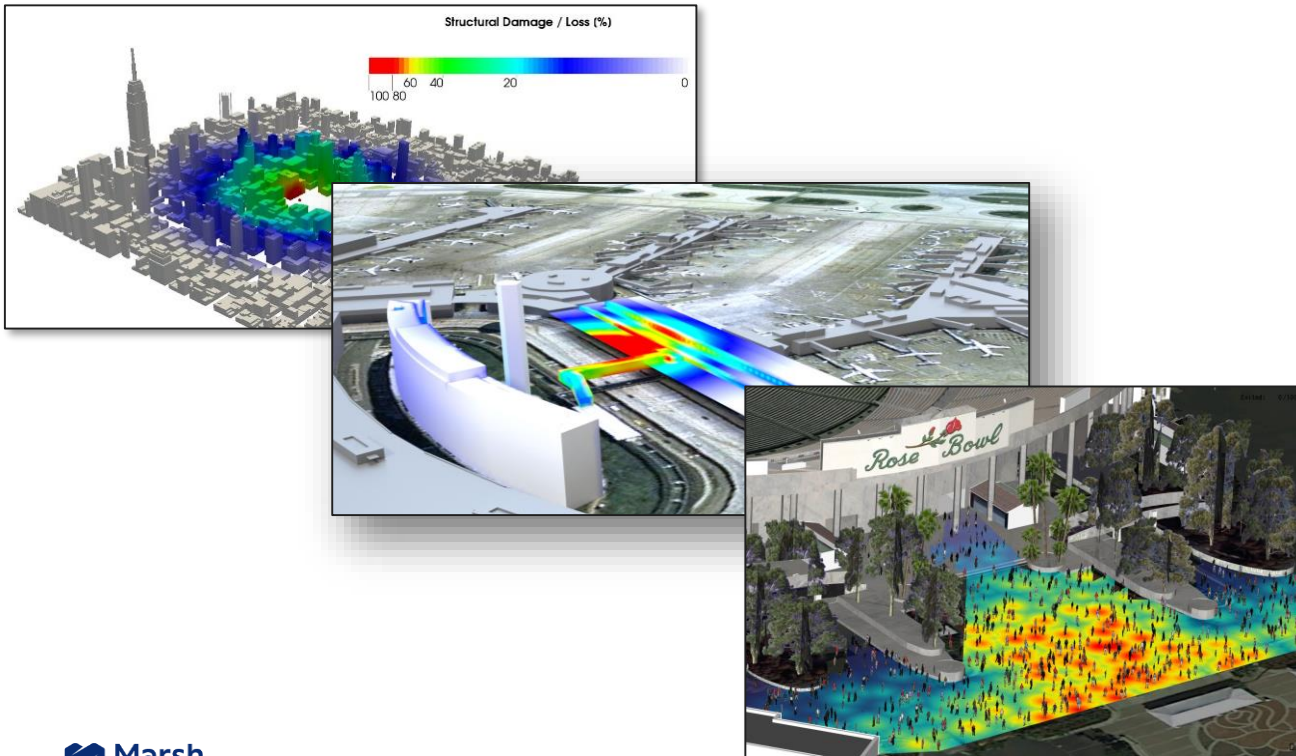
A portfolio level evaluation of exposure to terrorism risk across geographies, using Marsh McLennan proprietary terrorism modeling tool, Sunstone®. A predictive analysis of the movement of people reacting to emergencies, highlighting choke points, critical areas, and thus informing incident response planning.

Violent threat modeling

Marsh evaluates clients' property and casualty–related risks from: [bomb](#), [fire](#), [active shooter](#), or [biological toxin scenario](#). This provides clients with an advanced understanding of the estimated loss exposures.

Scope: Modeling provides:

- Evaluation of complex property portfolio risks
- Assesses single or multiple attack types
- Enables client to see multiple types of events



Value: This work will provide client value in two primary areas:

Assessment of estimated:

- Maximum property damage
- Casualty loss exposures (fatalities and injuries)
- Nuanced analysis (e.g., TIV impact by floor)
- Business interruption modeling

Facilitates alignment with clients':

- Insurance program
- Security / crisis management plans
- ERM / BCP

Sample risk profiles:

- Central business district
- Critical infrastructure (bridges, airports, etc.)
- Entertainment/hospitality

Insurance solutions

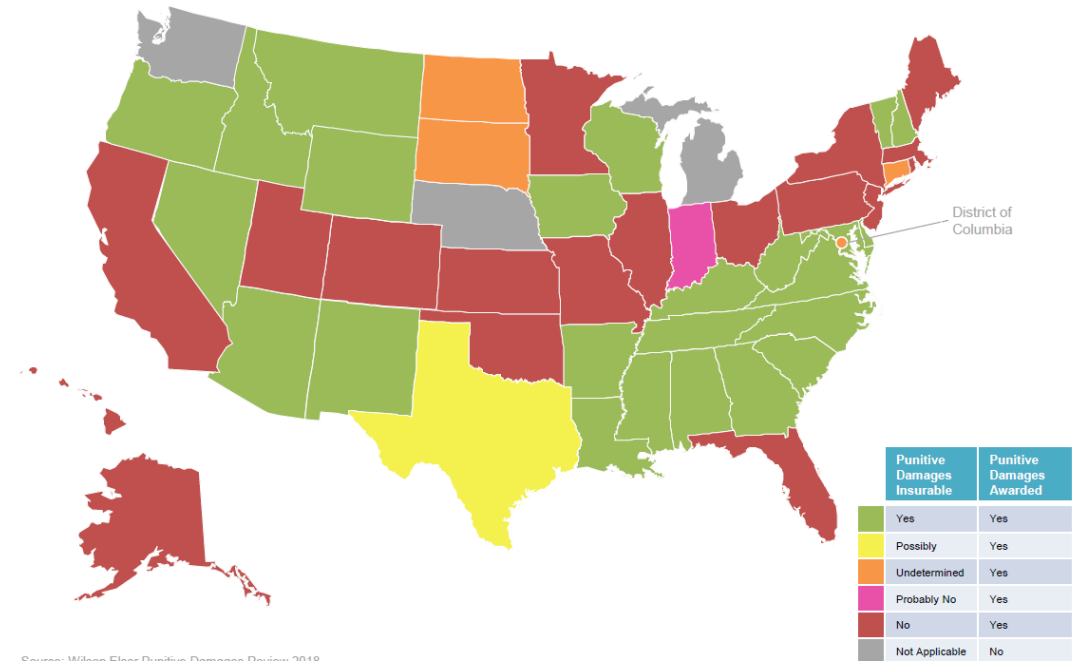
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Insurance considerations and solutions

Underwriters are responding to the risk with:

- Reduction in limits offered – particularly on umbrella/excess.
- **More strenuous underwriting** review of “high hazard” risks.
 - Class of asset – open to public vs. access controls
 - Security features and protocols
 - Crime statistics in the area – coupled with deeper review of loss experience
- Particularly in the **real estate sector**, underwriters are increasingly attempting to introduce exclusions for “**violent crime**” and/or “**assault and battery.**”
- Increase in punitive damages awards that may or may not be legally insurable with local admitted CGL policies.
 - Top 5 states for number of mass shooting incidents: CA, FL, TX, WA, and CO (1982 to present).
- Review of existing CGL policy terms and conditions important in understanding how the current liability program will respond to a claim.

Punitive Damages Heat Map



Source: Wilson Elser Punitive Damages Review 2018.

Insurance considerations and solutions

Introduction of *Active Assailant* insurance products

- Property damage, business interruption, and extra expense.
- Legal liability coverage.
- Non-physical damage coverage.
- Loss of attraction and denial of access coverage.
- Reimbursement for costs for public relations consulting, crisis management, medical services, counseling and/or psychiatric care, hiring of additional staff, and added security.
- Limits of up to \$100 million. [Generally small retentions or guaranteed cost.](#)
- No exclusions for vehicles, attacks by employees, and terrorism.
- Compliment to your existing general liability and property insurance policies.

Underwriter presentation considerations

Preparing for underwriter inquiry for this risk...

As with any underwriting submission, outlining the specific risk control and loss prevention programs within your firm will be important.

If underwriters have raised the concern of active shooter/workplace violence, be prepared to discuss and detail the following items:

- Formal [crisis management response framework](#) and training regime.
- Overview of [HR policies and training](#) around workplace violence.
- Physical [security features](#) such as access control, security personnel, CCTV, etc.
- Understanding of [crime statistics](#) in the area around given assets.
- If appropriate, [engage your security or operations personnel to speak to specific protocols](#), etc.
- Discuss your relationship/partnership with [local law enforcement](#).

Proactively putting your firm in it's most favorable light with respect to managing this risk will resonate positively with underwriters.

Recap

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Listen to our Active Assailant Risk podcast

In-depth conversations with subject matter experts

Threat assessment and preparation

featuring Dan Kennedy, SVP US Security Operations - Unibail-Rodamco-Westfield

Workplace violence and threat other than shooters

featuring Jonathan Frost, Senior Security Consultant - Marsh Advisory

Crisis management and emergency response programs

featuring Renata Elias, Strategic Risk Consultant - Marsh Advisory

Claims management and mitigation considerations

featuring Reginald Roberts, Jr., Partner - Sanders Roberts LLP

Recap

- The incident rate for active shooter events continues to increase.
- ALL businesses are exposed to this risk.
- Risk assessment is of paramount importance.
- Having a formal Crisis Management and Emergency Response Plan and training both at the corporate level and for employees is essential in mitigating and managing this risk.
- Training the firm and employees on active shooter response as well as recognizing potential workplace violence more important than ever.
- Litigation trends are increasingly challenging, and defendants are being found negligent based on lack of proper security, crime statistics, and failure to control the workplace environment.
- “Foreseeability” thresholds have evolved in our courtrooms.
- Insurance companies are more closely underwriting this risk – review of coverage and negotiating proper terms and conditions is essential.





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