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Managing the Risk of Gun Violence Are You Ready for the Litigation That May Follow

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Managing the Risk of Gun Violence

Are You Ready for the Litigation That May Follow

Introduction

Litigation alleging “negligent security” as a consequence of isolated criminal assaults is not new to the hospitality and retail industry. In fact, it is well known that such lawsuits represent potential high exposure, particularly in certain venues.ⁱ However, the increasing number of “active shooter” and “mass shooting” incidents has brought greater focus on the broader risk to multiple victims including both customers and employees, and on what practices may minimize injuries, loss of life, and potential liability in the aftermath. The purpose of this paper is to provide background information to support a discussion of the impact of “active shooter” and “mass shooting” incidents, with a focus on factors that may distinguish them from the more typical “negligent security” case. Additionally, this paper will identify resources available to minimize risk and maximize readiness and response to such incidents.

FBI Data Regarding Active Shooter Incidents

The Federal Bureau of Investigation collects data on “active shooter incidents” which it defines as “one or more individuals actively engaged in killing or attempting to kill people in a populated area.”ⁱⁱ For the period 2017–2021, active shooter incident data reveals an upward trend. In fact, the number of active shooter incidents identified in 2021 represents a 52.5% increase from 2020 and a 96.8% increase from 2017.ⁱⁱⁱ The FBI doesn't have a mass shooting definition. Instead, it defines “mass murder” as an incident where four or more people are killed, which can include gun violence.^{iv} Fortunately, most of those incidents did not result in the deaths of “four or more victims” which is the standard included in the definition for “mass shootings” used by the Congressional Research Service^v or the definition used by The Gun Violence Archive database, i.e. incidents where “four or more people are shot.”^{vi} These statistics do not include the more typical single-victim cases that usually arise from shootings at hospitality and retail establishments. Thus, you will not find many of the high-verdict negligent security cases on the “active shooter” or “mass shooting” lists. Mass shootings are statistically rare, accounting for fewer than 1% of all firearm homicides in the United States. But they are occurring regularly in a growing number of venues.

Workplace Shootings

The FBI's reports of active shooter incidents, as well as other analysis of mass shootings,^{vii} break down the incidents by locations. Appendix A lists the active shooter incidents identified by the FBI occurring between 2000 and 2021 at locations open to the public considered part of the hospitality and retail industry. The increase over the last 10 years is eye-opening:

Year	Total Active Shooter Incidents	Public Hospitality & Retail Incidents
2010	27	7
2011	13	2
2012	21	8
2013	19	2
2014	20	4
2015	20	7
2016	20	4
2017	31	8
2018	30	8
2019	30	9
2020	40	19
2021	61	21

There is general agreement that workplaces have been the most common site for both “active shooter incidents” and mass shootings.^{viii} According to one study, retail establishments account for 17% and restaurants and bars account for 13.4% of the incidents.^{ix} The Violence Project database reflects that almost all workplace shooters have employment troubles (77%) with many being motivated to carry out their shooting in part by anger over workplace issues. Their research revealed that “almost all of mass shooters at restaurants, bars and retail establishments were strangers to those businesses, while perpetrators in workplaces, houses of worship, and schools and colleges tended to be current or former students and insiders known to the victims.”^x Of the 172 mass shooters studied by the Violence Project, only four were women. White males were the most common shooters, handguns were the most common weapons used, and 46% of the guns were legally acquired. Other researchers have found that domestic violence (DV) is a precipitating factor for many mass shootings. Analyzing data from the Gun Violence Archive between 2014 and 2019, a researcher concluded that in more than two-thirds (68.2%) of mass shootings the perpetrator either killed family or intimate partners or the shooter had a history of domestic violence, and that DV-related mass shootings were associated with a greater fatality rate.^{xi} On average, only one in six people survive a DV-related mass shooting compared to one in three people for non-DV mass shootings.^{xii}

Exemplary Case Studies

A closer look at some litigated cases - both mass shooting cases and single-victim cases – sheds more light on the potential aftermath. Several Case Studies are attached and are discussed below along with others. Included are two recent single-victim cases in Georgia resulting in large verdicts for comparison. Also included is the El Paso Walmart case for purposes of examination of the type of discovery sought by Plaintiff’s counsel. Several cases reflect the type of insurance coverage disputes that can develop.

It is noteworthy that many notorious mass shooting cases either do not result in any reported litigation or are dismissed by the court. For example, the Aurora Century 16/Cinemark incident involved twelve deaths and 58 wounded, but after 4 years of litigation, the court granted summary judgment.^{xiii} In some cases, there is little if any tort litigation and victims obtain assistance from victim compensation funds. An example is the Thousand

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Oaks Borderline Bar and Grill mass shooting. The Borderline Bar and Grill shooter shot and killed an unarmed security guard standing outside and then opened fire inside the nightclub. A total of twelve people were killed and 16 were wounded (15 from injuries incidental to the shooting). According to a lengthy report subsequently published by the Ventura County Sheriff's Department^{xiv}, investigators determined there were approximately 259 patrons in the bar when the shooting started. The chaotic mass exodus resulted in approximately 128 people sustaining injuries ranging from bumps and bruises to significant lacerations, fractures and/or dislocations. At least 29 people were treated at various local hospitals for injuries sustained during the event. The shooter committed suicide at the scene after an exchange of gunfire with law enforcement. Although lawyer advertisements explaining "negligent security" cases popped up immediately, at this writing, no lawsuits against the owners or security providers have been identified. Instead, the victims took advantage of funds available from the California Victim Compensation Board (CalVCB). It paid more than a quarter million dollars to victims and their families. In addition, the Conejo Valley Victims Fund was established and received more than \$2 million in donations to be distributed to those impacted by the tragedy.

The Pulse Nightclub mass shooting resulted in 49 killed and 53 wounded with ISIS later claiming responsibility. Plaintiffs pursued two types of separate actions. One was a suit by 56 plaintiffs against the City of Orlando and three groups of Orlando police officers claiming that an Orlando police officer working a security detail at the club who was temporarily away from his duty station at the club when the shooter entered, should have immediately reentered and attempted to take out the shooter once he heard the shooting going on inside the club. Plaintiffs contended that, by failing to engage the shooter inside the club, the officer violated the victims' rights to substantive due process under the United States Constitution. The claims were rejected by both the trial and appellate courts.^{xv}

The other cases were against several social media companies—Facebook, Twitter, and Google (YouTube) alleging in part that the companies aided and abetted the shooter in violation of the Anti-Terrorism Act, 18 U.S.C. §§ 2333(a) & (d)(2), by facilitating his access to radical jihadist and ISIS-sponsored content in the months and years leading up to the shooting. The plaintiffs also asserted claims against the companies under Florida law for negligent infliction of emotional distress and wrongful death. The Eleventh Circuit affirmed dismissal holding that the plaintiffs "failed to make out a plausible claim that the Pulse massacre was an act of "international terrorism" as that term is defined in the ATA."^{xvi} Although those lawsuits were unsuccessful, victims were already the beneficiaries of funds created for them. Within a matter of days after the shooting donors gave \$15 million to benefit survivors and family members of those killed. By February 2017 the fund had increased to over \$29 million and was reportedly being distributed to 395 claims.^{xvii} In March 2017 the Office for Victims of Crime (OVC), part of the U.S. Department of Justice's Office of Justice Programs, announced an \$8,466,970 Antiterrorism and Emergency Assistance Program (AEAP) grant to assist victims of the June 2016 mass shooting at Pulse nightclub.^{xviii}

Theories of Liability

With the Pulse Nightclub shooting cases as a notable exception, most lawsuits arising out of a mass shooting are based on well-established premises liability law that mirror single-victim negligent security cases. They typically allege in some form that the premises owner failed to comply with its duties to provide a safe and secure location for its customers/invitees by permitting dangers and dangerous conditions to exist on the premises and not taking additional precautions. The lawsuits track the same criticisms as asserted in single-victim criminal assault cases such as inadequate lighting, lack of or inadequate number of security guards, lack of or inadequate video-surveillance and lack of adequate control over access to the premises. Many Courts apply principles stated in

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Restatement (Second) Torts § 324A (1965) and/or Restatement (Second) of Torts § 343 (1965). The burden is to prove that the criminal attack was not just possible but foreseeable under the standard or factors applicable in that venue.

The four basic approaches to the foreseeability issue were explained by the South Carolina Supreme Court in *Bass v. Gopal*.^{xix} The first approach, is known as the “imminent harm rule.” “Under this rule, the landowner owes no duty to protect patrons from violent acts of third parties unless he is aware of specific and imminent harm about to befall him.”^{xx} A second approach is the “prior or similar incidents test.” “Under this test, foreseeability may only be established by evidence of previous crimes on or near the premises. Courts following this test will consider the nature and extent of previous crimes, their frequency, recency, and similarity to the crime at issue.”^{xxi} “A majority of jurisdictions have adopted the totality of the circumstances approach in an effort to prevent the “rigid application of a mechanical” prior incidents rule.”^{xxii} The fourth approach, the “balancing test,” was adopted by the South Carolina Supreme Court with the explanation:

As opposed to the imminent harm, prior incidents, or totality of circumstances tests, we believe the balancing approach appropriately weighs both the economic concerns of businesses, and the safety concerns of their patrons. In replacing our imminent harm test with a balancing test, we hope to “encourage a reasonable response to the crime phenomenon without making unreasonable demands.”

After an evaluation of the evidence, the court affirmed summary judgment holding that Plaintiff “failed to provide any evidence that Respondent should have expended more resources to curtail the risk of criminal activity that might have been probable.”^{xxiii}

Applying the “balancing test” in *Goodwin v. Yeakle's Sports Bar and Grill, Inc.*, the Indiana Supreme Court discussed the foreseeability of a shooting in a bar where a patron became angry when he overheard comments he believed to be about his wife and produced a handgun and shot three people. The three individuals who were shot sued the bar for negligence based on premises liability. The trial court granted summary judgment for the bar, and the Supreme Court affirmed stating:

...[W]e conclude that although bars can often set the stage for rowdy behavior, we do not believe that bar owners routinely contemplate that one bar patron might suddenly shoot another. To be sure, we doubt there exists a neighborhood anywhere in this State which is entirely crime-free. Thus, in the broadest sense, all crimes anywhere are “foreseeable.” But to impose a blanket duty on proprietors to afford protection to their patrons would make proprietors insurers of their patrons' safety which is contrary to the public policy of this state.^{xxiv}

Foreseeability is analyzed differently when the workplace shooting involves a “targeted victim.” Courts tend to find that the foreseeability of a targeted shooting between acquaintances cannot be established by proof of other criminal activity that does not involve them.^{xxv} It is also important to be aware that there are additional considerations where the victim is a guest at a hotel, particularly when the crime occurs in their room.^{xxvi}

Foreseeability is not the only hurdle for Plaintiffs. Plaintiff also has to prove causation which can turn on whether the venue involved has apportionment of responsibility statutes. The Defendants in the Aurora Century 16 movie theater case had lost dispositive motions arguing lack of foreseeability, but ultimately prevailed on a lack of causation arguments. That case arose out of a shooting that occurred on July 20, 2012, at 12:30 a.m., when a 24 year old, armed with a rifle, a shotgun, and a handgun began shooting after releasing tear gas canisters in a theater at the Cinemark Century 16 movie theaters in Aurora, Colorado. Twelve people were killed; 58 were

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wounded. The shooter, who was wearing body armor, was apprehended by police. Police later found the shooter's apartment booby-trapped with explosives. A lawsuit was filed two months later and the case was litigated for 4 years before being resolved in favor of the defendants on their third dispositive motion. The court held that the shooter's "premeditated and intentional actions were the predominant cause of plaintiffs' losses" and not defendant's alleged failure "to provide certain safety measures such as placing an alarm on the exit door or employing security officers on the evening in question." ^{xxvii}The allegations made against Cinemark included:

- Failure to employ and have present at the time of the showing of this movie security guards (including, but not limited to, off-duty law enforcement officers) to protect against and reduce the risk of unlawful conduct that posed a risk of injury or death to patrons;
- Failure to provide reasonable protection against surreptitious, unauthorized entry into the darkened theater viewing areas;
- Failure to provide reasonable door entry security devices, including, but not limited to, automatic locking doors, alarms, warning signals and other such devices on the door located to the right, front of Auditorium;
- Failure to provide other reasonable security devices such as one-way security doors, exit doors interlocked with warning signals, alarms, light or other devices which would put personnel on notice of any surreptitious, unauthorized entry into the darkened theater viewing areas;
- Failure to develop, establish and institute adequate emergency or first-aid response and evacuation plans and procedures for patrons in the theater in the event circumstances called for such procedures;
- Failure to properly train employees in emergency, crisis, first-aid response, and evacuation procedures;
- Failure to properly train employees or provide reasonable surveillance procedures including, but not limited to, surveillance devices, monitors, cameras, and human surveillance or monitoring of suspicious activity

Some similar but additional theories were advanced in the Tacoma Mall shooting case where it was alleged:

- [Defendant] failed to use a professional security advisor to accurately determine the level of security needed in the mall, and they made no other effort to study the themes and trends arising out of crimes committed in the mall.
- [Defendant] used a non-standardized, paper-based security management system to track past crimes and failed to coordinate with the police department to prevent future crimes
- Despite that they had seen six shootings in the previous thirteen years and that the mall was built in an area with a high crime rate, the defendants' 1.3 million square foot mall had no closed-caption surveillance and no policy for responding to a shooter or terrorist attack, other than to "call police."
- [Defendant] budgeted only for unarmed security staff and only had three of them on duty in the 1.3 million square moot fall at lunchtime on a Sunday during the holiday season.
- [Defendant] did not hire off-duty, uniformed, armed police officers, unlike most other malls in the region and of their size. Their security director was aware of the need for a police presence: he spoke of goal to bring back police officers, a presence the Mall had abandoned before the shooting.
- [Defendant] failed to train their security on how to evacuate mall patrons in an emergency and failed to maintain a policy for responding to an active shooter or similar terrorist attack.

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- [Defendant] failed to have an audible public announcement system, they failed to train their security on how to use their (inaudible) public announcement system to warn patrons of imminent threats to their safety, and they failed to give their security access to that public announcement system because it was kept under lock and key.
- [Defendant] failed to ensure that their security staff abided by their own policy of maintaining a constant presence in the mall.
- [Defendant] positioned their security office in a remote location on the far outskirts of the mall, a location that required patrons and security officers to exit the mall, hike along its outer wall, and reenter from outdoors.
- As reflected in [the shooter's] statements to the police that reflect he knew that the mall was a soft target and he knew that is security was also soft.

Anticipated Discovery in a Mass Shooting Case

The Case Studies demonstrate the nature of discovery that will be at issue in mass shooting cases, much like it is in single-victim negligent security cases. A recent example is the El Paso Walmart shooting on August 3, 2019 at the Cielo Vista Walmart when twenty-three people were killed and 22 were wounded. An Appellate Court held that the trial court was within his authority to order Walmart to produce store security budgets for all stores in El Paso County and within the city limits of the City of San Antonio, as well as documents relating to "security measures" and the "transaction count" for the Cielo Vista Walmart for all Black Fridays, Tax Free Weekends, and all weekends before Tax Free Weekends between 2014 and August 3, 2019.

Similarly, the Tacoma Mall case included a discovery battle over data pertaining to other properties owned by Defendant Simon Properties with it being narrowed down to five other similar sized malls.

Security Consultants and Standards

Plaintiffs and defendants will often retain competing security consultants to offer opinions on the adequacy of the security and training of personnel. The consultants will usually cite one or more of the following as support for the methodology employed to reach their opinions^{xxviii}:

- ASIS International General Security Risk Assessment Guideline 3 ASIS International. General Security Risk Assessment Guideline. Alexandria, VA: ASIS International, 2003
- ASIS International Facilities Physical Security Measures Guideline 4L ASIS International. Facilities Physical Security Measures Guideline. ASIS GDL FPSM-2009. Alexandria, VA: ASIS International, 2009.
- NFPA 730 Guide for Premises Security 5 NFPA 730 Guide for Premises Security (2011 edition)
- IAPSC Best Practice # 2: Forensic Methodology 6 International Association of Professional Security Consultants Forensic Methodology (2000)

As discussed in *Hawkins v. Cypress Point Apts*^{xxix} the reliability of the IAPSC Forensic Methodology has been the subject of a number of Daubert challenges:

[The International Society of Professional Security Consultants methodology] has been accepted by numerous courts. "By all indications, the IAPSC Forensic Methodology has been subject to peer review and accepted by security industry professionals. It is the product of a consensus reached by security practitioners who are at the top of their field." *Childress v. Kentucky Oaks Mall Co.*, 2007 WL 2772299, at *7 (W.D. Ky. 2007); *Doe v. AE Outfitters Retail Co.*, 2015 WL 9255325, at *7 (D. Md. 2015). In *Hopkins v. Nat'l R.R. Passenger Corp.*, 2015 WL 13741721 (E.D.N.Y. 2015), the court rejected a challenge to the

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IAPSC methodology. The court concludes that the IAPSC methodology is sufficiently reliable for three reasons. First, applying the relevant Daubert factors, the IAPSC method went through substantial peer review before its adoption and has been generally accepted by the relevant community. See *Childress*, 2007 WL 2772299, at *7 (“By all indications, the IAPSC Forensic Methodology has been subject to peer review and accepted by security industry professionals. It is the product of a consensus reached by security practitioners who are at the top of their field.”). Second, not only was the IAPSC method itself peer reviewed, but the IAPSC relied on relevant and peer-reviewed sources to create its methodology. In that sense, the IAPSC method has been subject to peer review at each step of its creation. Third, the IAPSC methodology provides standards which control a premises security expert’s execution of a security assessment. Accordingly, the court finds that because the IAPSC method has been subjected to substantial peer review at each step of its creation, has gained substantial acceptance in the field, and has standards controlling its operation, it is sufficiently reliable. *Hopkins*, 2015 WL 13741721, at *11 (citations omitted)

Preparation for and Response to Active Shooter Situations

The FBI, FEMA and other federal, state and local government agencies have created a number of resources to help organizations prepare for and respond to an “active shooter” situation.^{xxx} Links to a number of resources are available at the National Retail Federation website.^{xxxi} It is recommended that every employer and business have an Emergency Action Plan (EAP) and that it conduct mock exercises to familiarize employees with the plan. Employees need to be educated on the principles of “RUN, HIDE, FIGHT” in the event the emergency is due to the presence of an active shooter.

The EAP should include the following:

- How to communicate the danger (or a lesser threat – Talker, Observer, Caller)
- How to move to a safe location.
- Designation of Safe Areas within the building.
- Establish medical supplies and training

Moving to a Safe Location: Try and have the same rally points for any emergency. Plan for at least two rally points. These should be at opposite sides of the building and need to consider hazards, like open ground, bridges, tall buildings. It is recommended that you have multiple escape routes planned and use them for practice if possible and identify any hazards that may exist particularly if multiple floors and stairs and windows involved.

Designate Safe Areas: Employees should all know safe areas within the building. Use the hide tools to ensure these areas are safe and know the limitations of these areas.

Communication: There should be a plan for communicating the threat to employees and others present as well as employees families. For employees, that may be accomplished by texting, a PA announcement, a Screen Alert or Alarm. Employees need to make families aware that they are safe. If they are not notified, they may come to scene and create confusion.

Trauma/Crisis Kit: It is recommended that you have a kit that contains the following: Tourniquet, Gauze, Dressing/Wrap, Chest Seal, shears, and flashlight

Response When an Active Shooter is in Your Vicinity: RUN, HIDE, FIGHT

RUN

1. Have an escape route pre-planned, and attempt to evacuate the premises
2. Help others escape if possible, however...
3. Evacuate regardless of whether others agree to follow
4. Always keep your cellphone on you
5. Don't spend time gathering other belongings
6. Prevent individuals from entering an area where the active shooter may be
7. Call 911 when you are safe

HIDE

1. If evacuation is not possible, find the best and most strategic hiding place.
2. Your hiding place should...
 - a. Provide protection if shots are fired in your direction – COVER vs CONCEALMENT
 - b. Not trap you or restrict your options for movement
 - c. Separate yourself from others
3. Secure the doors – lock, barricade, use a door stop device
4. Things to consider if/when hiding:
 - a. If the active shooter is nearby: Turn off any source of noise (cell phones, radios, televisions, etc.)
 - b. Remain calm and quiet – tactical breathing
 - c. Dial 911, if possible, to alert police to the active shooter's location
 - d. If you cannot speak, leave the line open and allow the dispatcher to listen
 - e. Prepare to fight

FIGHT

When your life or the life of a loved one is in imminent danger, attempt to disrupt and/or incapacitate the active shooter. Get ready by:

1. Find a weapon (chair, fire extinguisher, metal coffee pot, hot beverage)
2. Strategize with others if possible
3. Position yourself ready to strike
4. Act as aggressive as possible – shout, yell
5. What if you are carrying concealed?

Managing the Consequences of an Active Shooter Situation: After the active shooter has been incapacitated and is no longer a threat, management will be asked to assist police officers in:

1. An accounting of all individuals at a designated assembly point to determine who, if anyone, is missing and potentially injured.
2. Determining a method for notifying families of individuals affected by the active shooter, including notification of any casualties.
3. Assessing the psychological state of individuals at the scene, and referring them to health care specialists accordingly.
4. Identifying and filling any critical personnel or operational gaps left in the organization as a result of the active shooter.

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Homeland Security has published an “Active Shooter Recovery Guide” that addresses the above considerations in more detail.

Recognizing Potential Workplace Violence: As the FBI Active Shooter Incident reports document, an active shooter in your workplace may be a current or former employee, or a spouse/ex-spouse or an acquaintance of a current or former employee. Intuitive coworkers may notice characteristics of potentially violent behavior, which may include:

1. Increased use of alcohol and/or illegal drugs.
2. Unexplained increase in absenteeism.
3. Depression, withdrawal, or Suicidal; comments about “putting things in order”.
4. Increased severe mood swings, noticeably unstable, emotional responses.
5. Explosive outburst of anger or rage without provocation.
6. Behavior which is suspect of paranoia or feeling like a victim.
7. Increase in unsolicited comments about violence and/or weapons firearms

Known threats made towards an employee by another current or former employee or by a current or former domestic partner should not be ignored.

Insurance Issues Arising Out of Negligent Security Lawsuits

There are several insurance issues that can arise in negligent security cases. Initially, there is the question of whether there is any coverage for claims arising out of conduct that involves the use of weapons and constitutes an assault and battery. For example, in *Chappell v Colony Insurance*^{xxxii} the court held that policy exclusions for injury or property damage arising out of assault, battery, weapon use, and liquor liability barred coverage for damage and injuries resulting from a shooting at a nightclub in Montgomery, Alabama. Similarly, the Fifth Circuit affirmed summary judgment for the defendant insurer in *Funky 544, L.L.C., v. Houston Specialty Insurance Company*,^{xxxiii} where the policy contained the following exclusion:

The following is added to the Exclusion Section of the COMMERCIAL GENERAL LIABILITY COVERAGE FORM and the LIQUOR LIABILITY COVERAGE FORM: This insurance does not apply to, “bodily injury,” “property damage,” “personal and advertising injury,” “injury” or medical expense arising out of firearms or weapons or out of any act or omission in connection with the prevention or suppression of firearms or weapons, including failure to warn, train or supervise, whether caused by or at the instigation or direction of the insured, his employees, patrons or any other person or failure to render aid and/or notify emergency personnel.

Likewise, in *Petty v. United States Liab. Ins. Co.*^{xxxiv} the court dismissed a declaratory judgment action because the Absolute Firearms and Assault and Battery Exclusions in a commercial liability policy expressly barred coverage for a death resulting from a shooting outside of a nightclub in Spartanburg, South Carolina. Decedent had been at a nightclub owned by the insured when an altercation broke out and employees of the club forced Decedent and several other patrons to exit the building. Shortly thereafter, while still on the nightclub's property, Decedent was shot and killed. Plaintiff filed a wrongful death action against multiple defendants, including the nightclub which was ultimately settled for \$1 million. Plaintiff then filed a declaratory judgment action which was removed to federal court. The policy at issue included the following exclusions:

The Absolute Firearms Exclusion in the Policy stated that:

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The policy does not insure against loss or expense, including cost of defense, for any "occurrence", claim or "suit" for "bodily injury", "property damage", "personal and advertising injury" or medical payments arising or resulting from directly, or indirectly, the use of firearms of any kind.

This exclusion applies to any "occurrence", claim or "suit" regardless of whether the use of firearms is a direct cause, a contributing cause or a concurrent cause of any loss.

Similarly, the Assault or Battery Exclusion stated:

This insurance does not apply to: Any claim, demand or "suit" based upon any actual or alleged "assault" or battery", or out of any act or omission in connection with the prevention or suppression of any "assault" or "battery" . . . whether caused by or at the instigation or direction of an insured, its "employees", agents, officers or directors, patrons or any other person. Further, no coverage is provided for any claim, demand or "suit" in which the underlying operative facts constitute "assault" or "battery".

This exclusion applies to all "bodily injury", "property damage" or "personal and advertising injury" sustained by any person, including emotional distress and mental anguish, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving "assault" or "battery" whether alleged, threatened or actual including but not limited to "assault" or "battery" arising out of or caused in whole or in part by negligence or other wrongdoing with respect to:

- hiring, placement, employment, training, supervision or retention of a person for whom any insured is or ever was legally responsible; or . . .
- the failure to so report or the failure to protect any person while that person was in the care, custody or control of the insured, its "employees", agents, officers or directors; or
- any acts or omissions of any insured, its "employees", agents, officers, directors, patrons or other persons resulting from any "assault" or [" "]battery" and occurring subsequent in time thereto which caused or are alleged to have caused, directly or indirectly, any "bodily injury", "property damage", or "personal and advertising injury" to any person.

"Assault" means the threat of, or use of force on another that causes that person to have apprehension of imminent harmful or offensive conduct, whether or not the threat or use of force is alleged to be negligent, intentional or criminal in nature.

"Battery" means negligent or intentional physical contact with another without consent that results in physical or emotional injury.

In its Order dismissing the case, the court cited to a number of decisions from other jurisdictions enforcing similar exclusions.^{xxxv}

Not unique to negligent security cases is the post-verdict/settlement litigation that can arise out of a failure of a primary insurer to settle within their limits. Examples include the *Great American v Starr* lawsuit arising out of the *Laquan Taylor v Kroger* case. (See Case Study #4) and the Tacoma Mall case (Case Study #1).

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Filed in 2008, the Tacoma Mall case settled in 2018, but the insurance dispute between the insurers did not end until 2021. At the time of the shooting, Simon Property's security contractor, IPC, had insurance policies with Illinois National Insurance Company ("INIC") which had issued IPC a Commercial General Liability Policy with a \$1,000,000 retained limit and a \$1,000,000 each occurrence limit. INIC also issued IPC a Prime Commercial Umbrella Liability Policy providing for \$9,000,000 per occurrence limits for bodily injuries. As IPC's insurance provider, INIC provided coverage and a defense on behalf of Simon under a reservation of rights in the McKown lawsuit.

According to the court record, on September 8, 2018, an attorney with Simon wrote a letter to INIC demanding that it "authorize its full \$10 million policy limits to settle" the lawsuit. The attorney alleged that INIC's "conduct at the mediation was in bad faith" and stated that Simon "will look to [INIC] to pay any judgment in excess of [INIC's] policy limits." On September 14, 2018, the parties settled after INIC offered \$10 million, its policies' limits, on behalf of IPC, its named insured, and Simon, as an additional insured.

A year later, INIC filed suit against Travelers Property Casualty Company of America ("Travelers") and XL Insurance America, Inc. ("XL") alleging that McKown's injuries fell outside the scope of security services provided by IPC under the Security Services Contract. INIC contended that Simon's insurers, Travelers and XL, were obligated to contribute or pay indemnification on behalf of Simon but failed to do so. INIC asserted claims for breach of contract, equitable contribution, equitable subrogation, and conventional subrogation claims, and sought declaratory judgment requiring Travelers and XL to contribute to INIC for indemnity payments owed by Simon that were paid by INIC. The Court granted summary judgment in favor of Travelers because the Security Services Contract between IPC and Simon required IPC to waive its subrogation rights with respect to Simon and because the policy at issue purchased by IPC from Plaintiff/INIC also included a waiver of its subrogation rights against others.^{xxxvi}

Failure of a primary insurer to settle within its limits is at issue in Case Study #4. Following a \$81 million verdict against Kroger in a negligent security case in Georgia, Great American, a second-layer excess insurance carrier for Kroger, filed a declaratory judgment action against Starr, a first-layer excess insurance carrier, alleging that Starr negligently failed to settle the case within its \$25 million policy limits.^{xxxvii} The Complaint alleged that Starr received "numerous demands from the plaintiff squarely within its policy limit, and despite repeated warnings from defense counsel and Great American of the possibility of a runaway jury verdict that could penetrate deep into Kroger's excess coverage, Starr dug in and refused to settle or to offer its policy limit to attempt to settle." It was alleged that even after a remittitur of the \$81 million verdict, that "the Final Judgment against Kroger of \$61,441,494.20, was more than \$31 million in excess of the combined total limits of the Starr excess policy, underlying policy, and self-insured retention."

As reported by media in a 2020 article, the increase in shootings has driven up both the demand and cost of insurance.^{xxxviii} According to that report, the number of policies issued for deadly weapons coverage grew by 235% in 2018 and 270% in 2019. The company uses questionnaires to rank prospective clients on a scale of 1 to 100 with the higher number being a better result. The same company reported in 2022 that they had "seen a 25% jump in revenue so far this year for its deadly weapon policy, with a 30-35% jump in inquiries and a 10%-15% increase in rates, driven by the rising number and severity of gun attacks" and that "clients were now buying insurance to cover themselves for \$5-10 million in losses, compared to \$1-3 million four years ago. Policyholders typically can pay tens of thousands of dollars for \$1 million in coverage."^{xxxix}

APPENDIX 1

FBI SUMMARY OF ACTIVE SHOOTER EVENTS

2000-2021 - HOSPITALITY AND RETAIL

The FBI defines an “active shooter” as one or more individuals actively engaged in killing or attempting to kill people in a populated area. Implicit in this definition is the shooter’s use of one or more firearms. In 2014, the FBI published its first report, A Study of Active Shooter Incidents Between 2000-2013, and subsequently published annual and bi-annual reports reflecting its continued research into active shooter incidents based on the FBI’s definition of an active shooter. A 20 year report identifies incidents left out of earlier reports and summarizes data for the timeframe 2000-2019. This document has excerpted the active shooter events identified in the FBI Reports^{xl} as occurring, at least in part, at locations open to the public considered part of the hospitality and retail industry.

2000-2013

	Location	Description of Event
1.	McDonald’s and Burger King Wilkinsburg, PA	On March 2, 2000, at approximately 11:15 a.m., an identified male, 39, armed with a handgun, shot and killed a maintenance worker in his apartment building in Wilkinsburg, Pennsylvania. The shooter walked to a nearby Burger King, where he shot and killed one person, then walked to a McDonald’s, where he shot and killed one person and wounded two others. The shooter fled the scene, shot at police, and entered an office building, where he took several hostages. Three people were killed; two were wounded. Following a standoff, the shooter was apprehended by law enforcement at the location
2.	JB’s Pub	On April 13, 2001, at approximately 12:40 a.m., an identified male, 42, armed with two shotguns, two handguns, and approximately 200 rounds of ammunition, began shooting at JB’s Pub in Elgin, Illinois, where he had been escorted out for harassing patrons and quarreling with employees. Upon removal, the shooter returned to his residence, shaved his head, changed into military fatigues, and returned to the pub armed with guns and ammunition. Two people were killed; 21 were wounded (five from injuries incidental to the shooting). During the attack, the shooter was wrestled to the ground by bar patrons and employees and subsequently apprehended by law enforcement at the location.
3.	Stateline Tavern	On October 24, 2003, at approximately 3:30 p.m., an identified male, 51, armed with a handgun, entered the Stateline Tavern in Oldtown, Idaho. Shortly after a verbal altercation with one of his victims, the shooter began firing the weapon at patrons, including a known acquaintance. Four people were killed; no one was wounded. The shooter fled and committed suicide at another location
4.	Alrosa Villa Nightclub	On December 8, 2004, at approximately 10:15 p.m., an identified male, 25, armed with a handgun, climbed a barricade at the Alrosa Villa Nightclub in Columbus, Ohio, jumped on stage, and shot a band member. Spectators attempted to subdue the shooter as he continued shooting. Three people were killed; three were wounded. The shooter took a hostage prior to being killed by responding law enforcement at the location
5.	Top Valu Market	On May 31, 2002, at approximately 5:30 p.m., an identified male, 48, armed with two handguns, entered the Top Valu Market in Long Beach, California, shot and killed the clerk and an 8-year-8-old child, and wounded the child’s parents and two others. Two people were killed; four were wounded. The shooter was killed during a shootout with law enforcement at the location
6.	Radio Shack in Gateway Mall St. Petersburg FL	On November 18, 2004, at 6:45 p.m., Justin Michael Cudar, 25, armed with a handgun, began shooting in the Radio Shack at the Gateway Mall in St. Petersburg, Florida. Two people were killed; one was wounded. The shooter committed suicide before police arrived

7.	Best Buy in Hudson Valley Mall Kingston NY	On February 13, 2005, at 3:15 p.m., Robert Charles Bonelli Jr., 25, armed with a rifle, began shooting in the Best Buy at the Hudson Valley Mall in Kingston, New York. The shooter continued firing as he ran farther into the mall until he ran out of ammunition. No one was killed; two people were wounded. The shooter was restrained by two mall workers until police arrived and took him into custody
8.	Tacoma Mall Tacoma, WA	On November 20, 2005, at 12:00 p.m., Dominick Sergil Maldonado, 20, armed with a rifle and a handgun, began shooting at shoppers in the Tacoma Mall in Tacoma, Washington. After he stopped shooting, he barricaded himself and four hostages in a store. The shooter was apprehended by police after a three-hour standoff. No one was killed; six people were wounded
9.	Burger King and Huddle House	On November 22, 2005, at 6:10 a.m., an unidentified male armed with a rifle, began shooting in a Burger King in North Augusta, South Carolina, and then ran to a nearby Huddle House restaurant, where he continued shooting before fleeing. One person was killed; two were wounded. The suspect was still at large as of September 2014
10.	Trolley Square Mall	On February 12, 2007, at 6:42 p.m., Sulejman Talovic, 18, armed with a shotgun and a handgun, began shooting as he entered the Trolley Square Mall in Salt Lake City, Utah. Five people were killed; four were wounded. The shooter was killed during an exchange of gunfire by responding officers, including an off-duty police officer who was in the mall at the time of the shooting.
11.	Target Store	On April 29, 2007, at 3:25 p.m., David Wayne Logsdon, 51, armed with a rifle, shot an officer after being pulled over near a Target retail store in the Ward Parkway Shopping Center in Kansas City, Missouri. He drove into the Target parking lot and continued shooting as he ran into the building. Two people were killed; eight were wounded, including one police officer. The shooter was killed by police
12.	Am-Pac Tire Pros	On October 8, 2007, at 7:30 a.m., Robert Becerra, 29, armed with a handgun, began shooting at customers and employees of Am-Pac Tire Pros in Simi Valley, California. One person was killed; two were wounded. The shooter committed suicide before police arrived
13.	Von Maur in Westroads Mall	On December 5, 2007, at 1:42 p.m., Robert Arthur Hawkins, 19, armed with a rifle, began shooting as he exited the elevator on the third floor of the Von Maur department store in the Westroads Mall in Omaha, Nebraska. Eight people were killed; four were wounded. The shooter committed suicide before police arrived.
14.	Wendy's Fast Food Restaurant	On March 3, 2008, at 12:15 p.m., Alburn Edward Blake, 60, armed with a handgun, began shooting in a Wendy's restaurant in West Palm Beach, Florida. One person was killed; four were wounded. The shooter committed suicide before police arrived
16.	Black Road Auto	On March 18, 2008, at approximately 4:00 p.m., an identified male, 31, armed with a handgun, opened fire at Black Road Auto in Santa Maria, California. The shooter was the son of one of the victims. Four were killed; no one was wounded. The shooter was apprehended by law enforcement as he attempted to flee the location.
17.	Player's Bar and Grill	On May 25, 2008, at 2:25 a.m., Ernesto Villagomez, 30, armed with a handgun, began firing inside Player's Bar and Grill in Winnemucca, Nevada. Two people were killed; two were wounded. The shooter was killed by a citizen with a valid firearm permit before police arrived
18.	The Zone	On January 24, 2009, at 10:37 p.m., Erik Salvador Ayala, 24, armed with a handgun, began shooting at a crowd outside of The Zone, an under-21 nightclub in Portland, Oregon, and then shot himself before police arrived. He died in the hospital two days later. Two people were killed; seven were wounded
19.	Club LT Tranz	On July 25, 2009, at 4:40 a.m., an unidentified shooter began shooting at employees of Club LT Tranz in Houston, Texas. One person was killed; two were wounded. The suspect was still at large as of September 2014.
20.	LA Fitness	On August 4, 2009, at 7:56 p.m., George Sodini, 48, armed with three handguns, began shooting in a LA Fitness aerobics class at the Great Southern Shopping Center in Collier Township, Pennsylvania. He entered the gym, removed his guns from his gym bag, and began firing in the aerobics studio. Three people were killed; nine were wounded. The shooter

		committed suicide before police arrived
21.	Sandbar Sports Grill	On November 7, 2009, at 7:28 p.m., Richard Allan Moreau, 63, armed with a handgun, began shooting in the Sandbar Sports Grill in Vail, Colorado. Before the attack, Moreau had an argument inside the bar and was escorted out by security. One person was killed; three were wounded. The shooter was apprehended by responding police
22.	Forza Coffee Shop	On November 29, 2009, at 8:15 a.m., Maurice Clemmons, aka Dawson A. Carlisle, 37, armed with a handgun, began shooting in the Forza Coffee Shop in Pierce County, Washington, a regular gathering place for police officers. Four uniformed police officers were killed at the scene; no one was wounded. The shooter was killed during an exchange of gunfire with police after a two-day manhunt
23	Farm King Store	On February 3, 2010, at 12:45 p.m., Jonathan Joseph Labbe, 19, armed with a rifle, began shooting inside a Farm King Store in Macomb, Illinois. Eight people barricaded themselves in the office and remained hidden until police arrived. No one was killed or wounded. The shooter committed suicide after police arrived.
24.	Publix Super Market	On March 30, 2010, at 12:00 p.m., Arunya Rouch (female), 41, armed with a handgun, began shooting in the parking lot of a Publix Supermarket in Tarpon Springs, Florida, killing one person. She had just been fired from the store for threatening a co-worker. She continued shooting on her way into the store, passing customers on the way to her former supervisor's office. Responding police officers intercepted her before she reached the office. After an exchange of gunfire, she was wounded. One person was killed; no one was wounded.
25.	Hasting's Books and Entertainment and Toby's Bar	On April 20, 2010, at approximately 9:25 p.m., an identified male, 22, armed with a shotgun, began shooting inside the café at Hasting's Books and Entertainment in Wichita Falls, Texas, wounding four. The shooter then walked down the street to Toby's Bar, entered and began shooting, killing one employee of the bar. One person was killed; four were wounded. The shooter fled the location, returned home, and committed suicide.
26.	AT&T Cellular	On May 27, 2010 at 1:00 p.m., Abraham Dickan, 79, armed with a handgun, began shooting in an AT&T Wireless Store in New York Mills, New York. He had recently been reported to the police by AT&T for harassing and threatening employees. No one was killed; one person was wounded. The shooter was killed by an off-duty police officer who was a customer in the store.
27.	Yoyito Café	On June 6, 2010, at 10:00 p.m., Gerardo Regalado, 37, armed with a handgun, began shooting in Yoyito Café in Hialeah, Florida, where his estranged wife was employed. Four people were killed, including his estranged wife; three were wounded. The shooter fled the scene and committed suicide several blocks away.
28.	Fort Bliss Convenience Store	On September 20, 2010, at 3:00 p.m., Steven Jay Kropf, 63, armed with a handgun, began shooting in a convenience store at Fort Bliss in El Paso, Texas. One person was killed; one was wounded. The shooter was killed by police.
29.	Walmart Reno, NV	On October 29, 2010, at 8:57 a.m., John Dennis Gillane, 45, armed with two handguns, began shooting at his co-workers in a Walmart store in Reno, Nevada. The shooter purchased ammunition for one of the handguns at the store before the shooting. No one was killed; three were wounded. The shooter surrendered to police after a standoff where he barricaded himself in an office.
30.	International House of Pancakes	On September 6, 2011, at 8:58 a.m., Eduardo Sencion, aka Eduardo Perez-Gonzalez, 32, armed with a rifle, began shooting in an International House of Pancakes in Carson City, Nevada. Three members of the U.S. Air National Guard were killed, and two were wounded. In total, four people were killed; seven were wounded. The shooter committed suicide before police arrived.
31.	Salon Meritage	On October 12, 2011, at 1:20 p.m., Scott Evans Dekraai, 41, armed with three handguns and wearing body armor, began shooting in Salon Meritage, in Seal Beach, California, his ex-wife's place of employment. Seven people were killed, including his ex-wife; one was wounded. The shooter fled the scene and was later apprehended by police.
32.	J.T. Tire	On March 23, 2012, at 3:02 p.m., O'Brian McNeil White, 24, armed with a handgun, began

		shooting in the J.T. Tire store in Durham, North Carolina. Two people were killed; two were wounded. The shooter fled but was arrested a week later.
33.	Café Racer	On May 30, 2012, at 10:52 a.m., Ian Lee Stawicki, 40, armed with two handguns, began shooting inside Café Racer in Seattle, Washington, where he had been banned from entering because of previous incidents. He then fled to a parking lot, where he killed a woman to steal her car. Five people were killed; no one was wounded. The shooter committed suicide at another location
34.	Copper Top Bar	On July 17, 2012, at 12:29 a.m., Nathan Van Wilkins, 44, armed with a rifle, allegedly began shooting in the Copper Top Bar in Tuscaloosa, Alabama. Prior to the shooting, he shot a person in a nearby subdivision. No one was killed; 18 people were wounded. The shooter was apprehended later by police
35.	Cinemark Century 16	On July 20, 2012, at 12:30 a.m., James Eagan Holmes, 24, armed with a rifle, a shotgun, and a handgun, allegedly began shooting after releasing tear gas canisters in a theater at the Cinemark Century 16 movie theaters in Aurora, Colorado. Twelve people were killed; 58 were wounded. The shooter, who was wearing body armor, was apprehended by police. Police later found the shooter's apartment booby-trapped with explosives.
36.	Pathmark Supermarket	On August 31, 2012, at 4:00 a.m., Terence Tyler, 23, armed with a rifle and a handgun, began shooting at his co-workers in a Pathmark supermarket in Old Bridge, New Jersey. He returned after his shift dressed in military fatigues and carrying his weapons. He shot at a co-worker outside the store who ran inside and locked the door, warning other employees. The shooter gained entry to the store by shooting out the lock. Two people were killed; no one was wounded. The shooter committed suicide before police arrived.
37.	Las Dominicanas M&M Hair Salon	On October 18, 2012, at 11:04 a.m., Bradford Ramon Baumet, 36, armed with a handgun, began shooting in the Las Dominicanas M&M Hair Salon in Casselberry, Florida. The shooter had been served earlier that month with a domestic violence court order involving his ex-girlfriend, who managed the salon. Three people were killed; his ex-girlfriend was wounded. The shooter committed suicide at another location.
38.	Azana Day Salon	On October 21, 2012, at 11:09 a.m., Radcliffe Franklin Haughton, 45, armed with a handgun, began shooting in the Azana Day Salon in Brookfield, Wisconsin, his estranged wife's place of employment. Three were killed, including his estranged wife; four were wounded. The shooter committed suicide before police arrived.
39.	Clackamas Town Center Mall	On December 11, 2012, at 3:25 p.m., Jacob Tyler Roberts, 22, armed with a rifle, began shooting at people waiting to see Santa Claus in the Clackamas Town Center Mall in Happy Valley, Oregon. Two people were killed; one was wounded. The shooter committed suicide before police arrived.
40.	John's Barbershop and Gaffey's Clean Car Center	On March 13, 2013, at 9:30 a.m., Kurt Myers, 64, armed with a shotgun, began shooting in John's Barbershop in Mohawk, New York, then drove to Gaffey's Clean Car Center in nearby Herkimer, New York, and continued shooting. The shooter then barricaded himself in an abandoned building in the vicinity. Four people were killed; two were wounded. The shooter was killed later by federal law enforcement officers
41.	Centennial Hill Bar and Grill	On December 28, 2013, at approximately 1:00 a.m., three identified males, 21, 23, and 25, armed with handguns, fired multiple rounds at a crowd inside the Centennial Bar and Grill in Montgomery, Alabama. The shooting stemmed from an ongoing dispute between one of the suspects and one of the deceased victims. Three people were killed; five were wounded. The three shooters were subsequently apprehended by law enforcement at another location.

2014-2015

	Location	Description of Event
1.	Martin's Supermarket	On January 15, 2014, at 10:09 p.m., Shawn Walter Bair, 22, armed with a handgun, began shooting in Martin's Supermarket in Elkhart, Indiana. Two were killed, including 1 employee; no one was wounded. Law enforcement killed the shooter without an exchange of gunfire.

2.	The Mall in Columbia (MD)	On January 25, 2014, at 11:15 a.m., Darion Marcus Aguilar, 19, armed with a shotgun and explosive devices, began shooting in The Mall in Columbia in Columbia, Maryland, first in a retail store, then in the open mall. Two store employees were killed; 5 mall patrons were wounded. One person was shot in the ankle and 4 others suffered other medical emergencies. The shooter committed suicide before law enforcement arrived.
3.	Cici's Pizza and Walmart	On June 8, 2014, at 11:20 a.m., husband and wife, Jerad Dwain Miller, 31 and Amanda Renee Miller (female), 22, each armed with a handgun, one with a shotgun, began shooting at Cici's Pizza in Las Vegas, Nevada, killing 2 law enforcement officers who were having lunch. The shooters took the officers' weapons and ammunition and fled to a nearby Walmart, where they killed an armed citizen who tried to intervene. Three people were killed; no one was wounded. The male shooter was killed in an exchange of gunfire with law enforcement; the female shooter committed suicide during an exchange of gunfire with law enforcement
4.	Hon-Dah Resort Casino and Conference Center	On August 2, 2014, at 6:38 p.m., Justin Joe Armstrong, 28, armed with a rifle, began shooting in the parking lot of the Hon-Dah Resort Casino and Conference Center in Pinetop, Arizona. After wounding 2, the shooter moved to the middle of the nearby highway and began shooting at passing cars. No one was killed; 2 people were wounded, including the wounding of an unarmed security guard. The shooter was killed during an exchange of gunfire with law enforcement.
5.	Melbourne Square Mall	On January 17, 2015, at 9:31 a.m., Jose Garcia-Rodriguez, 57, armed with three handguns, began shooting at his wife's workplace, Scotto Pizza in Melbourne Square Mall in Melbourne, Florida. One person was killed; the shooter's wife was wounded. The shooter committed suicide before law enforcement arrived.
6.	Monroeville Mall	On February 7, 2015, at 7:33 p.m., Tarod Tyrell Thornhill, 17, armed with a handgun, allegedly began shooting in Macy's department store in Monroeville Mall in Monroeville, Pennsylvania. No one was killed; 3 were wounded. The shooter fled the scene and was apprehended by law enforcement several hours later.
7.	Dad's Sing Along Club	On March 14, 2015, at 2:00 a.m., Richard Castilleja, 29, armed with a handgun, began shooting in the parking lot of Dad's Sing Along Club in San Antonio, Texas. After being ejected from the club earlier in the evening, the shooter returned and shot at bar patrons as they left the club. No one was killed; 2 were wounded. Law enforcement killed the shooter without an exchange of gunfire
8.	Tri-City Inn motel And other locations	On March 18, 2015, 8:39 a.m., Ryan Elliot Giroux, 41, armed with a handgun, allegedly began shooting at the Tri-City Inn motel in Mesa, Arizona, killing 1 and wounding 2. The shooter fled to Bistro 13, a restaurant at the East Valley Institute of Technology, where he wounded a student and carjacked an instructor. He then wounded 2 at separate residential buildings. One person was killed; 5 were wounded. The shooter was apprehended by law enforcement several hours later.
9.	Walmart Supercenter	On May 26, 2015, at 1:00 a.m., Marcell Travon Willis, 21, an active-duty U.S. airman, armed with a handgun, began shooting at a Walmart Supercenter in Grand Forks, North Dakota. One store employee was killed; 1 store employee was wounded. The shooter committed suicide before law enforcement arrived.
10.	Omni Austin Hotel Downtown	On July 5, 2015, at 4:48 a.m., Michael Holt, 35, armed with a rifle, began shooting at Omni Austin Hotel Downtown in Austin, Texas. One person was killed; no one was wounded. The shooter was killed during an exchange of gunfire with law enforcement
11.	Grand 16 Theatre	On July 23, 2015, at 7:15 p.m., John Russell Houser, 59, armed with a handgun, began shooting moviegoers in the Grand 16 Theatre in Lafayette, Louisiana. Two people were killed; 9 were wounded. The shooter committed suicide after law enforcement arrived.

2016-2017

	Location	Description of Event
1.	Memorial Tire and Auto	On May 29, 2016, at 10:15 a.m., Dionisio Agustine Garza III, 25, armed with a rifle and a handgun, began shooting at Memorial Tire and Auto in Houston, Texas. One person was killed; six were wounded, including two law enforcement officers and an armed civilian who was wounded while attempting to stop the shooter. The shooter was killed in an exchange of gunfire with law enforcement officers.
2.	Pulse Nightclub	On June 12, 2016, at 2:02 a.m., Omar Mir Seddique Mateen, 29, armed with a rifle and a handgun, began shooting patrons inside Pulse nightclub in Orlando, Florida. Law enforcement officers entered the nightclub and engaged the shooter. The shooter then barricaded himself inside a bathroom with hostages for approximately three hours. Forty-nine people were killed; 53 were wounded. The shooter was killed in an exchange of gunfire with law enforcement officers after they breached the building.
3.	Cascade Mall	On September 23, 2016, at 6:52 p.m., Arcan Cetin, 20, armed with a rifle, allegedly began shooting inside the Macy's department store in Cascade Mall in Burlington, Washington. After firing multiple rounds, the shooter left the rifle on a countertop and walked out of the mall. Five people were killed; no one was wounded. The shooter was apprehended by law enforcement officers the next day in a nearby city and committed suicide in prison several months later while awaiting trial.
4.	H-E-B Grocery Store	On November 28, 2016, at 3:15 a.m., Raul Lopez Saenz, 25, armed with a handgun, allegedly began shooting into the break room window of the H-E-B grocery store where he worked in Palmview, Texas. One person was killed; three were wounded. The shooter fled the scene and surrendered to law enforcement officers about an hour later.
5.	The Cooler	On April 15, 2017, at 9:30 p.m., Seth Thomas Wallace, 32, armed with a handgun, allegedly began shooting inside The Cooler, a bar in Rock Falls, Illinois. The shooter had previously lived in the area and was familiar with the establishment since it was owned by an extended family member. No one was killed; four were wounded. The shooter fled to his home in South Carolina where he surrendered to law enforcement three days later.
6.	Weis Supermarket	On June 8, 2017, at 1:00 a.m., Randy Robert Stair, 24, armed with two shotguns, began shooting inside the Weis Supermarket in Tunkhannock, Pennsylvania, where he was employed. During his shift, the shooter blocked exit doors of the building with his car in an attempt to stop other employees from escaping. Three employees were killed; no one was wounded. The shooter committed suicide at the scene before law enforcement arrived.
7.	UPS Customer Center	On June 14, 2017, at 8:55 a.m., Jimmy Chanh Lam, 38, armed with two handguns, began shooting inside a UPS San Francisco Customer Center in San Francisco, California, where he was employed. Three people were killed; five were wounded (two were shot and three sustained injuries incidental to the event). The shooter committed suicide at the scene when confronted by law enforcement.
8.	Route 91 Harvest Festival	On October 1, 2017, at 10:08 p.m., Stephen Craig Paddock, 64, armed with four rifles (and access to 23 additional weapons in his hotel room) began shooting into a crowd of people attending the Route 91 Harvest Festival in Las Vegas, Nevada, from the 32nd floor of an adjacent hotel. Fifty-eight people were killed (including two law enforcement officers who were attending the concert); 489 people were wounded (many more sustained injuries incidental to the event). The shooter committed suicide at the scene before law enforcement arrived.
9.	Advanced Granite Solutions and 28th Street Auto Sales and Service	On October 18, 2017, at 8:58 a.m., Radee Labeeb Prince, 37, armed with a handgun, allegedly began shooting fellow employees at Advanced Granite Solutions in Edgewood, Maryland. After killing three people and wounding two, the shooter fled the scene and traveled 52 miles to the 28th Street Auto Sales and Service lot in Wilmington, Delaware, where he shot and wounded another person. A total of three people were killed; three were wounded. The shooter was apprehended by law enforcement later that night in Newark, Delaware.

10.	Walmart in Thornton, CO	On November 1, 2017, at 6:10 p.m., Scott Allen Ostrem, 47, armed with a handgun, allegedly began shooting inside a Walmart in Thornton, Colorado. Three people were killed; no one was wounded. The shooter fled the scene and was apprehended by law enforcement at another location
11.	Dollar General Store	On November 14, 2017, at 2:45 p.m., Travis Green, 29, wearing body armor and armed with two rifles, allegedly began shooting at the Union Road Dollar General store in Cheektowaga, New York. A citizen intentionally struck the shooter with his car, causing the shooter to drop his weapons and flee. He was tackled by a responding law enforcement officer who was at a nearby store. No gunfire was exchanged between the shooter and law enforcement. No one was killed; one person was wounded. The shooter was apprehended by law enforcement at the scene
12.	Schlenker Automotive	On November 17, 2017, at 4:30 p.m., Robert Lorenzo Bailey, Jr., 28, armed with a handgun, allegedly began shooting in the parking lot of Schlenker Automotive in Rockledge, Florida. The manager of the auto repair shop and an employee, both possessing valid firearms permits, exchanged gunfire with the shooter. One person was killed; one was wounded. The shooter, shot twice during the exchange, was held at gunpoint by the manager until law enforcement arrived and took him into custody

2018

	Location	Description of Event
1.	City Grill Café	On March 7, 2018, at 6:30 a.m., Walter Frank Thomas, 64, armed with a rifle, began shooting in the City Grill café in Hurtsboro, Alabama. Two people (including the owner) were killed; two were wounded. The shooter was apprehended by law enforcement at another location
2.	Waffle House	On April 22, 2018, at 3:30 a.m., Travis Jeffrey Reinking, 29, armed with a rifle, began shooting outside a Waffle House restaurant in Nashville, Tennessee. He fatally shot two people, then continued shooting inside the restaurant. When the shooter paused (presumably to reload or because the gun jammed), a citizen wrestled the gun away from him and tossed it over the counter. Four people (one employee and three customers) were killed; four were wounded (two from injuries incidental to the shooting). The shooter fled the scene. He was apprehended by law enforcement approximately 34 hours later at another location
3.	Louie's Lakeside Eatery	On May 24, 2018, at 6:30 p.m., Alexander C. Tilghman, 28, armed with a handgun, began shooting at Louie's Lakeside eatery and pub in Oklahoma City, Oklahoma. No one was killed; four people were wounded (one from injuries incidental to the shooting). After retrieving their guns from their respective vehicles, two citizens possessing valid firearm permits shot and killed the shooter.
	Walmart Wyncote, PA	On August 14, 2018 at approximately 6:06 p.m., an identified male, 30, armed with a handgun, began shooting at a Walmart in Wyncote, Pennsylvania. The shooter stood in the checkout line with an acquaintance, grabbed her gun, walked toward the back of the line, and fired a single round at a person, wounding him. The shooter then ran through the front of the store and fired multiple rounds, wounding four additional people. No one was killed; five were wounded. The attacker and his acquaintance fled the scene in a vehicle and drove to Philadelphia, where they rear-ended an unoccupied police vehicle and fled on foot. Police initiated a foot pursuit, a violent encounter ensued, and the gunman was subsequently apprehended by law enforcement.
4.	GLHF Game Bar	On August 26, 2018, at 1:34 p.m., David Bennett Katz, 24, armed with two handguns, began shooting inside the GLHF Game Bar in the Chicago Pizza and Sports Grill in Jacksonville, Florida, during a video game tournament. After losing a game earlier in the day, the shooter retrieved the guns from his car. He re-entered the game bar and began shooting. Two were killed; 11 were wounded (two from injuries incidental to the shooting). The shooter committed suicide at the scene before law enforcement arrived

Managing the Risk of Gun Violence

5.	Kroger Grocery Store	On October 24, 2018, at 3:00 p.m., Gregory Alan Bush, 51, armed with a handgun, began shooting inside a Kroger grocery store in Jeffersontown, Kentucky. After fatally shooting a man inside the store, the shooter exited and fatally shot a woman in the parking lot. A citizen possessing a valid firearms permit confronted the shooter, but no gunfire was exchanged. A second citizen possessing a valid firearms permit exchanged gunfire with the shooter, but neither was struck. Two people were killed; none were wounded. The shooter fled the scene and was apprehended by law enforcement a short time later at another location
6.	Hot Yoga Tallahassee	On November 2, 2018, at 5:37 p.m., Scott Paul Beierle, 40, armed with a handgun, began shooting inside the Hot Yoga Tallahassee studio in Tallahassee, Florida. Citizens confronted the shooter, allowing others to flee. Two people were killed; five were wounded (one was pistol-whipped by the shooter). The shooter committed suicide at the scene before law enforcement arrived
7.	Borderline Bar and Grill	On November 7, 2018, at 11:20 p.m., Ian David Long, 28, armed with a handgun, began shooting at the Borderline Bar and Grill in Thousand Oaks, California. The shooter shot an unarmed security guard standing outside. He then opened fire inside the nightclub and deployed smoke grenades. Twelve people were killed (11 from gunfire, including one unarmed security officer, and one law enforcement officer from friendly fire); 16 were wounded (15 from injuries incidental to the shooting). The shooter committed suicide at the scene after an exchange of gunfire with law enforcement
8.	Motel 6	On December 24, 2018, at 11:00 a.m., Abdias Ucdiel Flores-Corado, 35, armed with a rifle, began shooting from inside his room at a Motel 6 in Albuquerque, New Mexico. Several bullets went through the wall and traveled into an adjacent room. He then fired from the doorway of his room at motel guests and employees and at the motel main office. No one was killed; no one was wounded. The shooter was killed by law enforcement during an exchange of gunfire

2019

	Location	Description of Event
1.	PJ Harrigan's Bar & Grill and Residence	On January 24, 2019, at approximately 10:15 p.m., Jordan Witmer, 21, armed with a handgun, began shooting inside PJ Harrigan's Bar & Grill in State College, Pennsylvania. The shooter then fled in a vehicle to a random nearby house. After crashing into the house, the shooter exited the vehicle and killed the homeowner. Three people were killed; one person (the shooter's ex-girlfriend) was wounded. The shooter committed suicide at the second scene before law enforcement arrived.
2.	The Asian Bistro	On February 12, 2019, at approximately 7:38 p.m., Stefano Markell Parker, 29, armed with a rifle, allegedly began shooting into The Asian Bistro in San Diego, California. No one was killed; no one was wounded. The shooter fled the scene. He was apprehended by law enforcement at another location
3.	Multiple Locations in San Fernando Valley, California	On July 25, 2019, at approximately 2:00 a.m., Gerry Dean Zaragoza, 26, armed with a handgun, allegedly began shooting at a North Hollywood Shell gas station in San Fernando Valley, California. He killed a female acquaintance who worked at the gas station and wounded another employee. Shortly before the shooting, the shooter had killed his father and brother and wounded his mother at their Canoga Park apartment. Later that morning, he unsuccessfully attempted to rob a person at gunpoint outside a bank in Canoga Park. He fled to Van Nuys and boarded a bus. As he was getting off, he shot and killed a passenger. Four people (including one Shell employee) were killed; two people (including one Shell employee) were wounded. The shooter was apprehended by law enforcement at another location approximately 13 hours after the initial shooting.

4.	Gilroy Garlic Festival	On July 28, 2019, at approximately 5:40 p.m., Santino William Legan, 19, armed with a rifle and wearing body armor, began shooting at the Gilroy Garlic Festival in Gilroy, California. Three people were killed; 17 were wounded. The shooter committed suicide while engaging in gunfire with law enforcement at the scene.
5.	Walmart Supercenter #848	On July 30, 2019, at approximately 6:30 a.m., Martez Tarrell Abram, 39, armed with a handgun, allegedly began shooting co-workers inside a Walmart Supercenter in Southaven, Mississippi. The shooter had been recently suspended pending the outcome of an internal investigation. Two people (store managers) were killed; one person (a law enforcement officer) was wounded. The shooter was shot during an exchange of gunfire before being apprehended by law enforcement at the scene.
6.	Walmart Supercenter #2201	On August 3, 2019, at approximately 10:38 a.m., Patrick Wood Crusius, 21, armed with a rifle, allegedly began shooting at the Cielo Vista Walmart in El Paso, Texas. Twenty-three people were killed; 22 were wounded. The shooter fled the scene in his vehicle. After failing to get through to 911, the shooter returned to the scene and surrendered to law enforcement.
7.	Tequila KC Bar	On October 6, 2019, at approximately 1:30 a.m., two identified males, 23 and 25, armed with handguns, began shooting inside the Tequila KC Bar in Kansas City, Kansas. The shooters were kicked out of the bar after an altercation with a bar employee and returned with handguns. Four people were killed; five were wounded. The shooters fled the location. The shooters were apprehended by law enforcement at different locations.
8.	Chestnut Pointe Apartments and Palmetto Tire and Auto	On October 21, 2019, at approximately 7:30 a.m., Ozzy Alexander Mooneyham, 25, armed with a rifle, allegedly began shooting at residents of the Chestnut Pointe Apartments in Sumter, South Carolina. After wounding one person, the shooter fled to Palmetto Tire and Auto and opened fire. No one was killed; four people (including three employees) were wounded. The shooter was apprehended by law enforcement at another location.
9.	Jersey City Kosher Supermarket and Bayview Cemetery	On December 10, 2019, at approximately 12:21 p.m., David N. Anderson, 47, armed with a rifle and a handgun, and Francine Graham, 50, armed with a shotgun and a handgun, began shooting at the Jersey City Kosher Supermarket in Jersey City, New Jersey. A law enforcement officer had approached the shooters near Bayview Cemetery a short time earlier regarding their possible connection to a previous homicide investigation. The shooters opened fire, killing the law enforcement officer. The shooters then fled a few blocks, stopping their van outside the kosher market. After shooting and killing three people inside the market, the shooters engaged law enforcement officers in a lengthy shootout. Four people in total (including one law enforcement officer) were killed; four people (including three law enforcement officers [one from injuries incidental to the shooting]) were wounded. The shooters were killed by law enforcement during an exchange of gunfire at the scene.

2020

	Location	Description of Event
1.	9ine Ultra Lounge	On January 19, 2020, at 11:30 p.m., an identified male, 29, armed with two handguns, began shooting outside the 9ine Ultra Lounge in Kansas City, Missouri. The subject got into an altercation with other patrons and was refused entry. The subject retrieved a weapon from his vehicle and began shooting at the line of people outside. One person was killed; 16 people were wounded. An armed security guard shot and killed the subject.
2.	Kum & Go Gas Station	On March 15, 2020, at approximately 11:24 p.m., an identified male, 31, armed with a handgun and a rifle, began shooting in a Kum & Go gas station in Springfield, Missouri. Police exchanged gunfire with the shooter. Four people were killed (including one officer and one employee); two people were wounded (including one officer). The shooter committed suicide after law enforcement arrived.

3.	Unspecified Shopping Center in Tulsa, Oklahoma	March 27, 2020, at approximately 6:20 p.m., an identified female, 34, armed with a handgun, began firing at people standing outside a shopping center in Tulsa, Oklahoma. There were no casualties reported. The shooter was killed by an armed security guard at the scene before law enforcement arrived.
4.	McDonald's Restaurant Oklahoma City, Oklahoma	On May 6, 2020, at approximately 6:20 p.m., an identified female, 32, armed with a handgun, began shooting inside a McDonald's restaurant in Oklahoma City, Oklahoma. Four people (employees) were wounded. The shooter was found several blocks away and arrested by law enforcement
5.	Super 8 Hotel) On May 17, 2020, at approximately 12:38 a.m., an identified male, 35, armed with two handguns, began shooting inside the Super 8 hotel in Rockford, Illinois. Law enforcement arrived at the Super 8 hotel lobby to meet with the 911 caller. The shooter appeared in the lobby and began firing. One person was killed; two people were wounded. The shooter committed suicide at the scene following an exchange of gunfire with law enforcement
6.	Westgate Entertainment District	On May 20, 2020, at approximately 7:25 p.m., an identified male, 20, armed with a rifle, began shooting inside the Westgate Entertainment District in Glendale, Arizona. Three people were wounded. The shooter was apprehended by law enforcement at the scene
7.	Rebar Bar and Lounge	On June 12, 2020, at approximately 11:30 p.m., an identified male, 37, armed with a rifle, began shooting at patrons outside of Rebar Bar and Lounge in San Antonio, Texas after being denied entry. Eight people were wounded. The shooter was apprehended by law enforcement six days later
8.	Giuseppe's Pizzeria	On June 19, 2020, at approximately 11:45 a.m., an identified male, 56, armed with a rifle, began shooting inside Giuseppe's Pizzeria in Sebastian, Florida. One person was killed. The shooter was apprehended by law enforcement at the scene.
9.	Applebee's Restaurant	On June 22, 2020, at approximately 9:30 p.m., an identified male, 28, armed with a handgun, began shooting inside an Applebee's restaurant in St. John, Missouri. One person was killed; two people were wounded. The shooter was apprehended by law enforcement at a residence the next day
10.	Vons Gas Station	On August 21, 2020, at approximately 11:15 a.m., an identified male, 42, armed with a handgun, began shooting at Vons gas station in Nipomo, California. There were no casualties reported. The shooter was killed by law enforcement during an exchange of gunfire at the scene
11.	East Market & Restaurant	On October 3, 2020 at approximately 3:10 p.m., an identified male, 33, armed with a handgun, began shooting inside East Market & Restaurant in Sacramento, California. Two people were killed; one person was wounded. The shooter committed suicide at the scene before law enforcement arrived.
12.	Infinity Lounge	On October 10, 2020, at approximately 2:00 a.m., an identified male, 34, armed with a rifle, began shooting at the Infinity Lounge in Kingstree, South Carolina. The incident began after the shooter was removed from the club following an altercation. Following his removal, the subject began firing into the building from the road and subsequently fled the scene. Eight people were wounded. The shooter was apprehended by law enforcement at another location.
13.	Sahara Theater	On October 31, 2020, at approximately 1:35 a.m., an identified male, 34, armed with a rifle, began shooting outside the Sahara Theater in Anaheim, California. Five people were wounded. The shooter was apprehended by law enforcement at another location 47 days later
14.	Sports Unlimited Bar and Lounge	On November 7, 2020, at approximately 12:10 a.m., an identified male, 34, armed with a handgun, began shooting inside the Sports Unlimited Bar and Lounge in Rock Hill, South Carolina. One person was killed; three people were wounded. The shooter was apprehended by law enforcement at another location four days later
15.	Mayfair Mall	On November 20, 2020, at approximately 2:50 p.m., an identified male, 15, armed with a handgun, began shooting inside the Mayfair Mall in Wauwatosa, Wisconsin. Eight people

		were wounded. The shooter was apprehended by law enforcement at another location the following day
16.	Sonic Restaurant	On November 21, 2020, at approximately 9:23 p.m., an identified male, 23, armed with two handguns and a shotgun, began shooting inside the Sonic restaurant in Bellevue, Nebraska. Two people were killed; two people were wounded. The shooter was apprehended by law enforcement at the scene
17.	7-Eleven and other locations in Henderson, NV and Parker, AZ	On November 26, 2020, at approximately 12:54 a.m., two identified males, 30 and 28, and an identified female, 25, armed with handguns, began shooting inside and outside a 7-Eleven convenience store in Henderson, Nevada. The shooters also reportedly drove around shooting at citizens in Parker, Arizona. One person was killed; four people were wounded. The shooters were apprehended by law enforcement at another location.
18.	La Vaquita Deli	On December 12, 2020, at approximately 6:10 p.m., an identified male, 62, armed with a handgun, began shooting inside the La Vaquita Deli in Copiague, New York. Two people were killed; two people were wounded. The shooter was apprehended by law enforcement at another location
19.	Don Carter Lanes	On December 26, 2020, at approximately 6:55 p.m., an identified male, 37, armed with two handguns, began shooting inside and outside the Don Carter Lanes bowling alley in Rockford, Illinois. Three people were killed; three people were wounded. The shooter was apprehended by law enforcement at the scene. 40. Epic Ultra Lounge (Commerce) On December 31, 2020, at approximately 10:00 p.m., an unidentified individual began shooting outside the Epic Ultra Lounge in Indianapolis, Indiana. One person was killed; three people were wounded. The shooter remains at large

2021

	Location	Description of Event
1.	Jefferson Gun Outlet, Metairie, LA	On February 20, 2021, at approximately 2:50 p.m., an identified male, 27, armed with a handgun, began shooting inside the Jefferson Gun Outlet, Metairie, Louisiana. Two people were killed (one employee); two people were wounded (employees). The shooter was killed by armed citizens (employees) during an exchange of gunfire at the scene.
2.	Young's Asian Massage and other spa locations in GA	On March 16, 2021, at approximately 4:58 p.m., an identified male, 21, armed with a handgun, began shooting inside Young's Asian Massage, Acworth, Georgia. At approximately 5:45 p.m., the identified male began shooting inside Gold Spa and Aromatherapy Spa, Atlanta, Georgia. Eight people (seven employees) were killed; one person was wounded. The shooter was apprehended by law enforcement at another location.
3.	King Soopers Grocery Store, Boulder, CO	On March 22, 2021, at approximately 2:30 p.m., an identified male, 21, armed with a handgun, began shooting inside/ outside the King Soopers Grocery Store, Boulder, Colorado. Ten people were killed (including one law enforcement officer). The shooter was apprehended by law enforcement at the scene following an exchange of gunfire.
4.	Various locations, Baltimore County, Maryland	On March 28, 2021, at approximately 6 a.m., an identified male, 27, armed with a handgun, began shooting inside a residence in Baldwin, Maryland. The shooter then drove to the Royal Farms Store, Essex, Maryland and began shooting inside and outside the store. Four people were killed; one person (employee) was wounded. The shooter returned to his home and set fire to his apartment before committing suicide
5.	Snappy Mart Convenience Store, Koshkonong, MO	On April 10, 2021, at approximately 5 a.m., an identified male, 28, armed with a handgun, began shooting inside and outside the Snappy Mart Convenience Store, Koshkonong, Missouri. One person was killed; three people were wounded. The shooter was apprehended by law enforcement at another location
6.	.241 Main Street, Branford, CT	On April 13, 2021, at approximately 12 p.m., an identified male, 38, armed with several handguns and rifles, began shooting outside 241 Main Street (situated in a commercial

		district), Branford, Connecticut. One person was wounded. The shooter committed suicide at the scene when confronted by law enforcement
7.	Stop & Shop Store, West Hempstead, NY	On April 20, 2021, at approximately 11:19 a.m., an identified male, 30, armed with a handgun, began shooting inside the Stop & Shop Store, West Hempstead, New York. One person (employee) was killed; two people (employees) were wounded. The shooter was apprehended by law enforcement at another location
8.	Wawa Gas Station, Allentown, PA	On April 21, 2021, at approximately 4:48 a.m., an identified male, 45, armed with a handgun, began shooting in the Wawa Gas Station parking lot, Allentown, Pennsylvania. One person was killed; one person was wounded. The shooter committed suicide at another location
9.	Oneida Casino, Green Bay, WI	On May 1, 2021, at approximately 7:27 p.m., an identified male, 62, armed with a handgun, began shooting inside the Oneida Casino (Duck Creek restaurant inside the Radisson Hotel & Conference Center) Green Bay, Wisconsin. Two people were killed (employees); one person was wounded (employee). The shooter was killed at the scene by law enforcement during an exchange of gunfire
10.	Azuza Hookah Bar and Lounge, Houston, TX	On June 8, 2021, at approximately 1:45 a.m., an unidentified male, armed with a rifle, began shooting at the Azuza Hookah Bar and Lounge, Houston, Texas, after being denied entry. Five people were wounded. The shooter remains at large. 28. Publix Grocery Store, Royal Palm Beach, FL (Commerce) On June 10, 2021, at approximately 11:34 a.m., an identified male, 55, armed with a handgun, began shooting in the Publix Grocery Store, Royal Palm Beach, Florida. Two people were killed. The shooter committed suicide at the scene before law enforcement arrived.
11.	Old Town Arvada, Arvada, CO	On June 21, 2021, at approximately 1:30 p.m., an identified male, 59, armed with a shotgun, began shooting in Old Town Arvada, Arvada, Colorado. One person (law enforcement officer) was killed. The shooter was killed at the scene by an armed citizen
12.	Walmart Supercenter#1217, Franklin, NC	On June 23, 2021, at approximately 12:15 a.m., an identified male, 58, armed with a rifle, began shooting at workers unloading a truck outside Walmart Supercenter #1217, Franklin, North Carolina. There were no casualties reported. The shooter was apprehended by law enforcement at another location
13.	Gallops Gas Station, Kendallville, IN	On June 27, 2021, at approximately 11:59 p.m., an identified male, 24, armed with a handgun, began shooting inside Gallops Gas Station, Kendallville, Indiana. One person was killed, two people were wounded. The shooter was apprehended by law enforcement at another location
14.	Palace Inn Motel, Houston, TX	On July 18, 2021, at approximately 11:08 p.m., an identified male, 35 armed with gun, began shooting at the Palace Inn Motel, Houston, Texas. Two people were killed; two people were wounded. The shooter was killed by law enforcement during an exchange of gunfire at the scene
15.	Marathon Gas Station /Tony's Gas Station, Toccoa, GA	On August 1, 2021, at approximately 11:37 a.m., an identified male, 31, armed with a handgun, began shooting at Marathon Gas Station, Toccoa, Georgia; at approximately 12:42 p.m., the subject began shooting at Tony's Gas Station, Toccoa, Georgia. Three people were wounded. The shooter was apprehended by law enforcement at another location
16.	La Cerveceria de Barrio Restaurant, Miami Beach, FL	On August 24, 2021, at approximately 6:30 p.m., an identified male, 22, armed with a handgun, began shooting at people in the La Cerveceria de Barrio restaurant, Miami Beach, Florida. One person was killed. The shooter was apprehended by law enforcement at the scene.
17.	Enigma Club & Lounge, Wichita, KS	On September 7, 2021, at approximately 12:38 a.m., an identified male, 23, armed with a handgun, began shooting at people inside the Enigma Club & Lounge, Wichita, Kansas. One person was killed; five people were wounded. The shooter was apprehended by law enforcement at another location.
18.	La Palace nightclub and unspecified	On September 10, 2021, at approximately 12 a.m., an identified male, 29, armed with a gun, began shooting at people outside Le Palace nightclub, and in an unspecified

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	location Orlando, FL	neighborhood, Orlando, Florida. Four people were wounded (including a security guard). The shooter was apprehended by law enforcement at another location.
19.	Kroger Grocery Store, Collierville, TN	On September 23, 2021, at approximately 1:30 p.m., an identified male, 29, armed with two handguns and a rifle, began shooting at people in Kroger Grocery Store, Collierville, Tennessee. One person was killed; 14 people were wounded (10 employees). The shooter committed suicide at the scene before law enforcement arrived
20.	Chevron Gas Station, Las Vegas, NV	On November 4, 2021, at approximately 12:30 a.m., an identified male, 22, armed with a handgun, began shooting at people at a Chevron Gas Station, Las Vegas, Nevada. One person was killed. The shooter was apprehended by law enforcement at another location
21.	Various locations, Denver, CO	On December 27, 2021, between approximately 5:25 p.m. and 6:11 p.m., an identified male, 47, armed with a handgun and a rifle, began shooting at people at various locations in Denver and Lakewood, Colorado. Five people were killed (two employees); two people (including one law enforcement officer) were wounded. The shooter was killed by law enforcement after an exchange of gunfire at another location.

CASE STUDY #1

BRENDAN MCKOWN v. SIMON PROPERTY GROUP, INC., d/b/a TACOMA MALL

Summary

- This summary quotes extensively from the text of the multiple court opinions issued as a consequence of litigation originally filed in state court with removal to the US District Court for the Western District of Washington. See, *McKown v. Simon Prop. Group*, 2011 U.S. Dist. LEXIS 47649 (W.D. Wash., May 4, 2011); *McKown v. Simon Prop. Group, Inc.*, 689 F.3d 1086 (9th Cir. 2012); Certified question answered by *McKown v. Simon Prop. Grp., Inc.*, 182 Wn.2d 752, 344 P.3d 661, 2015 Wash. LEXIS 243 (2015); *McKown v. Simon Prop. Grp., Inc.*, 622 Fed. Appx. 621, 2015 U.S. App. LEXIS 14055 (9th Cir. Wash., 2015); *McKown v. Simon Prop. Grp.*, 2016 U.S. Dist. LEXIS 88312 (W.D. Wash. July 7, 2016); *McKown v. Simon Prop. Grp.*, 2016 U.S. Dist. LEXIS 119360 (W.D. Wash., Sept. 2, 2016); *Ill. Nat'l Ins. Co. v. Travelers Prop. Cas. Co. of Am.*, 2021 U.S. Dist. LEXIS 189118 (W.D. Wash. September 30, 2021)

This litigation arose from a shooting that occurred on November 20, 2005 at the Tacoma Mall, in Tacoma, Washington resulting in seven injuries, but no fatalities. A lawsuit was filed in 2008. It was not resolved until a settlement was reached in September 2018. A dispute over insurance coverage did not resolve until 2021.

Tacoma Mall is a 1.3-million square-foot shopping center owned by Simon Property Group Inc. Simon hired IPC International Corporation (“IPC”) to provide uniformed, unarmed security personnel at the Tacoma Mall. On November 20, 2005, Dominick S. Maldonado walked into the Tacoma Mall wearing a trench coat, under which he was concealing an MAK-90 rifle and an Intertec Tec-9 pistol, and carrying a guitar case containing ammunition. Prior to entering the mall, Maldonado made a phone call to 911 informing the operator that he was carrying two weapons and that he was going to begin shooting. The 911 operator then asked Maldonado where he was located and he answered, “follow the screams.” The 911 operator asked him the same question several more times to which he gave the same answer. The 911 operator then asked Maldonado for his name and he hung up the phone. After entering the mall, Maldonado stopped by a soda machine to load his rifle, passed by a T-Mobile

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kiosk multiple times and then began shooting. Over a period of approximately eight minutes, Maldonado injured seven people, the last of which was Brandon McKown.

Brandon McKown was working as an assistant manager at Excalibur Cutlery, a store located inside the mall. At approximately noon, McKown left Excalibur to take the previous day's deposits to a bank deposit box located at the opposite end of the mall. On his way to the deposit box, McKown stopped inside the Kits Camera store to visit some friends. While exiting Kits Camera Store, McKown heard sounds that he immediately recognized as gunshots. After hearing the gunshots, McKown drew the handgun he was carrying in his waistband. After several minutes of not hearing any additional gunshots, McKown put the handgun back in his waistband and continued standing near the entrance to Kits Camera. Maldonado then approached the Kits Cameras store and shot McKown several times.

McKown's account of what occurred next was as follows:

[Maldonado] turned, I got my hand in here. . . . I [said] . . . young man, I think you need to put your weapon down. He spins around, I draw and right as I aim and I'm pulling the trigger back, first shot hits me in the abdomen. Kicks my gun arm into the air. Kicks out and contorts my legs into uncomfortable, unduplicatable [sic] positions like up and out and up and back. And I'm trying to bring my gun arm down and I prayed the most un-Christian prayer of my life, which was: "please, God, let me shoot this guy before he kills somebody else." . . . [The pain] was horrible, horrible. . . .

So point is, I'm trying to bring my gun arm down to shoot him. You know, I'm thinking I'm doing my dying actions here, and then he hits me again and again and again and again. .

639 F.3rd at 1088-89

After shooting McKown, Maldonado entered a Sam Goody store, took four people hostage, again called 911 and demanded to speak to a police negotiator. Maldonado held the hostages in the Sam Goody store for several hours and was eventually taken into police custody.

Plaintiff's Theories of Liability

At the time of the shooting, the Tacoma Mall had an intercom system that IPC security guards were not trained to use, was somewhat inaudible, and was inaccessible to the security guards on the weekends. At the time of the shooting, the Tacoma Mall did not have security cameras or a surveillance system, with the exception of IPC's unarmed security guards. IPC's policy in an emergency was to contact the Tacoma Police Department using a radio in IPC's office that was provided to the security guards for the purpose of contacting the police. Simon is unaware of any incident, prior to November 20, 2005, in which someone was shot at the Tacoma Mall.

On November 12, 2008, McKown filed a complaint in state court against Simon and IPC. It was subsequently removed to the US District Court for the Western District of Washington where it was litigated for two (2) years before the Court considered Motions for Summary Judgment. McKown alleges that Simon: (1) failed to protect tenants and business invitees from foreseeable criminal conduct; (2) negligently rendered security measures and services; (3) negligently performed an undertaken duty; (4) negligently hired and/or failed to employ security personnel; and (5) breached an express and/or implied contract.

McKown alleged that Simon was negligent by failing to take reasonable steps to protect him and others from the danger of a shooting occurring in the Tacoma Mall and that Simon breached the relevant standard of care in the following ways:

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- (1) They failed to use a professional security advisor to accurately determine the level of security needed in the mall, and they made no other effort to study the themes and trends arising out of crimes committed in the mall.
- (2) They used a non-standardized, paper-based security management system to track past crimes and failed to coordinate with the police department to prevent future crimes
- (3) Despite that they had seen six shootings in the previous thirteen years and that the mall was built in an area with a high crime rate, the defendants' 1.3 million square foot mall had no closed-caption surveillance and no policy for responding to a shooter or terrorist attack, other than to "call police."
- (4) They budgeted only for unarmed security staff and only had three of them on duty in the 1.3 million square foot mall at lunchtime on a Sunday during the holiday season.
- (5) They did not hire off-duty, uniformed, armed police officers, unlike most other malls in the region and of their size. Their security director was aware of the need for a police presence: he spoke of goal to bring back police officers, a presence the Mall had abandoned before the shooting.
- (6) They failed to train their security on how to evacuate mall patrons in an emergency and failed to maintain a policy for responding to an active shooter or similar terrorist attack.
- (7) They failed to have an audible public announcement system, they failed to train their security on how to use their (inaudible) public announcement system to warn patrons of imminent threats to their safety, and they failed to give their security access to that public announcement system because it was kept under lock and key.
- (8) They failed to ensure that their security staff abided by their own policy of maintaining a constant presence in the mall.
- (9) They positioned their security office in a remote location on the far outskirts of the mall, a location that required patrons and security officers to exit the mall, hike along its outer wall, and reenter from outdoors.
- (10) As reflected in Maldonado's statements to the police that are cited in the defendants' motion, he knew that the mall was a soft target and he knew that its security was also soft.

The following is an outline of the litigation by the court in *Ill. Nat'l Ins. Co. v. Travelers Prop. Cas. Co. of Am.*, 2021 U.S. Dist. LEXIS 189118 (W.D. Wash. September 30, 2021):

The district court in McKown initially granted summary judgment in favor of defendants Simon and IPC after concluding that the shooting was not reasonably foreseeable and that IPC owed no duty of care to McKown. McKown appealed. The Ninth Circuit certified three questions to the Supreme Court of Washington. Upon receiving the response, the Ninth Circuit vacated in part, reversed in part, and remanded. As relevant here, the Court reversed the district court's grant of summary judgment to IPC on the grounds that it owed no duty of care to McKown where McKown failed to show that his status as a business invitee of Simon created a "special relationship" between IPC and McKown. The Court held that the district court erred in applying this test because "[i]n Washington, when a security company contracts with a landowner to provide security services on the owner's property, and the security company acts on behalf of the owner to provide those services, the security company may be subject to the same liability

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for the physical harm caused by others as though the security company were the owner." The Court noted that McKown had submitted the Security Services Contract as evidence that IPC agreed to provide security services and equipment at the mall. The Court concluded that IPC "may owe a duty to McKown that derives from its 'acting on behalf of' Simon."

On remand, the district court granted in part and denied in part Simon and IPC's motion for summary judgment, in which they argued that they did not owe McKown a duty to protect him from the shooter's criminal acts. The district court concluded that Simon owed McKown "a duty to use ordinary care to protect him from active shooters" and denied Defendants' motions with respect to that issue. The court then concluded that the duties of Simon and IPC "are coextensive" and thus declined to consider IPC's duty separately from Simon's.

Post-Settlement Insurance Litigation

At the time of the shooting, IPC had insurance policies with Illinois National Insurance Company ("INIC") which had issued IPC a Commercial General Liability Policy with a \$1,000,000 retained limit and a \$1,000,000 each occurrence limit. INIC also issued IPC a Prime Commercial Umbrella Liability Policy providing for \$9,000,000 per occurrence limits for bodily injuries. As IPC's insurance provider, Plaintiff provided coverage and a defense on behalf of Simon under a reservation of rights in the McKown lawsuit.

On September 8, 2018, an attorney with Simon wrote a letter to INIC demanding that it "authorize its full \$10 million policy limits to settle" the lawsuit. The attorney alleged that INIC's "conduct at the mediation was in bad faith" and stated that Simon "will look to [INIC] to pay any judgment in excess of [INIC's] policy limits." On September 14, 2018, the parties settled after INIC offered \$10 million, its policies' limits, on behalf of IPC, its named insured, and Simon, as an additional insured.

A year later, INI filed suit against Travelers Property Casualty Company of America ("Travelers") and XL Insurance America, Inc. ("XL") alleging that McKown's injuries fell outside the scope of security services provided by IPC under the Security Services Contract. INI contended that Simon's insurers, Travelers and XL, were obligated to contribute or pay indemnification on behalf of Simon but failed to do so. INI asserted claims for breach of contract, equitable contribution, equitable subrogation, and conventional subrogation claims, and sought declaratory judgment requiring Travelers and XL to contribute to INI for indemnity payments owed by Simon that were paid by INI.

CASE STUDY # 2

Georgia CVS Pharmacy LLC v Carmichael, 2021 Ga. App. LEXIS 541, writ of cert. granted, 2022 Ga. LEXIS 301 (Ga. Oct. 4, 2022)

This case arises out of a shooting that occurred on December 20, 2012 in the parking lot of a CVS Pharmacy in Atlanta, Georgia. At around 6:40 p.m. on that date, James Carmichael was driving through Atlanta on his way home to Alabama when he decided to stop at a CVS on Moreland Avenue for some toiletries. While there, Carmichael called an acquaintance, Frankie Gray, and asked Gray to meet him at the CVS to complete a previously discussed sale of an iPad. Carmichael thought the CVS store "was a safe place to meet Mr. Gray" because "CVS is a national chain." Carmichael parked by the front door of the CVS store to meet with Gray.

After Carmichael met with Gray and Gray left, an unknown man jumped into Carmichael's car, put a "big" gun to Carmichael's head, threatened to kill him, and said, "Give me your money." Carmichael "took everything out" and

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pleaded for his life. Carmichael then grabbed his own pistol and attempted to shoot, but the gun jammed. The perpetrator then fired several rounds into Carmichael's stomach, back, and shoulder. After the perpetrator fled, Carmichael ran into the store for help before collapsing. Carmichael was comatose for about a month afterward, and he has since undergone multiple surgeries and continues to suffer from permanent nerve damage, hearing loss, speech deficiencies, and chronic pain. Carmichael also incurred medical bills in the amount of \$725,800.

Carmichael filed a premises liability action against CVS, arguing that CVS failed to take adequate security measures to protect the property, such as by having security guards present or having improved lighting in its parking lot.

At trial, many current and former Moreland Avenue CVS store employees testified as to the store's conditions. Numerous employees testified that the store was located in a high-crime area. CVS's employees and managers considered the parking lot at the Moreland Avenue store unsafe, to the point that male employees regularly walked female employees to their cars. The employees would also park close to the building because of the spotty lighting in the parking lot. Two employees respectively rated the safety problems at the store as an "8" and "9" out of 10. Three employees testified that they were "not surprised" that Plaintiff was shot on the premises.

A supervisor with CVS, testified that the store previously had security guards that provided a "good deterrent" and made her feel safer, but they were removed in 2010. The store's employees repeatedly requested security guards from CVS after that point, but their requests were all denied. The witnesses at trial testified that, after security was removed, at least three violent crimes occurred at the Moreland Avenue store. A former cashier at the store, testified that, in February 2011, a robber approached her at the register, showed her what she "believe[d] to be a handgun," threatened to kill her, and demanded money. A CVS customer, testified that, in June 2012, a robber approached her in the parking lot after she left the store. The robber followed her to her car, which was "parked right in front," and "hit [her] in [the] head and took [her] purse." A CVS shift manager, testified that, in November 2012, a robber approached her in the store and demanded at gunpoint that she open the cash registers. There was testimony that these events were reported to CVS and that the CVS employees both requested security from CVS based on their respective incidents.

Plaintiff's expert witness testified that "there's an overwhelming body of research which confirm[ed] that [armed security] has a high deterrent effect." In the expert witness's opinion, if CVS had a security guard present, "the robbery more likely would have been prevented." The expert witness also reviewed the lighting at the Moreland Avenue store's parking lot and testified that, in his opinion, it was spotty and inconsistent, and that uniform lighting would "facilitate better visibility in the area to deter loitering, trespassing, [and] any of those undesirable activities." The investigating officer also testified that he found "armed security effective" and that "in [his] experience ... people don't rob and shoot people while an officer is sitting there." CVS's corporate representative testified in his deposition (which was read to the jury) that security guards were an effective deterrent, that "CVS wouldn't hire security guards if they didn't believe they were effective," and that "sufficient lighting" could "be a deterrent to violent crime."

The jury found CVS 95 percent at fault, Carmichael five percent at fault, and both Gray and the shooter zero percent at fault for the incident, and it awarded Carmichael an adjusted total of \$42,750,000 in damages (representing 95 percent of its total verdict of \$45,000,000). After trial, CVS filed a motion for new trial and a motion for j.n.o.v. Following a hearing, the trial court denied the motions, and CVS appealed.

The Georgia Court of Appeals rejected the following arguments and affirmed the verdict:

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- (1) Carmichael failed to produce evidence showing that the attack was reasonably foreseeable to CVS;
- (2) the undisputed evidence showed that Carmichael had superior knowledge of the danger; and
- (3) Carmichael's contention that increased lighting or a security guard presence would have prevented the attack was too speculative.
- 4) That the verdict was void because the jury assigned zero fault to the shooter who was not a party.

In granting the writ of certiorari, the Georgia Supreme Court said it “is particularly concerned with the following issue or issues”:

1. For a claim brought under OCGA § 51-3-1 that alleges negligent security, to what extent, if at all, is proof that the underlying criminal act occurring on the premises was reasonably foreseeable part of the plaintiff's burden to prove the elements of duty, breach, or proximate cause?
2. In light of the answer to the first question, is the question whether a criminal act occurring on the premises was reasonably foreseeable generally for the judge or the factfinder?
3. What is the legal test for determining whether a criminal act occurring on the premises was reasonably foreseeable? For example, is reasonable foreseeability determined based on the totality of the circumstances, or is some more specific showing required, such as prior, substantially similar crimes occurring on or near the premises?
4. When apportioning fault, can a rational fact finder determine that an intentional tortfeasor whose actions directly caused the plaintiff's injuries bears no fault for those injuries?

CASE STUDY #3

[Jessica Garcia et al v Walmart - In re Walmart, Inc., 620 S.W.3d 851 \(Tex. Ct. App. 2021\)](#)

The following quotes extensively from the Court's summary of the case leading up to its discussion of issues related to the trial court's Order requiring a number of documents to be produced by Walmart. The civil case is reportedly stalled by Orders entered in the criminal cases that prevent Walmart and First National Bank from releasing the surveillance footage as well as other relevant materials concerning the civil case as well as the criminal case. <https://kfoxtv.com/news/local/civil-lawsuit-against-walmart-on-hold-until-surveillance-video-is-released-patrick-crusius-shooting-crime-august-3-2019-nachawati-law-firm>)

Background

This case involves the mass shooting at a Walmart Supercenter in El Paso on August 3, 2019. On that date, Patrick Wood Crusius entered the Walmart Supercenter #2201 located in El Paso, Texas ("the Cielo Vista Walmart"), looked around, then returned to his car to retrieve a semi-automatic rifle. He then proceeded to open fire, killing 23 and injuring multiple persons, both outside and inside the store. Almost immediately he surrendered to the police and he now faces both federal and state criminal charges. He allegedly told police he was surprised nobody challenged him as he roamed the premises.

On September 4, 2019, a group of plaintiffs consisting of shooting victims and their families ("the Families") filed a civil suit. A day earlier, Walmart announced it would stop selling handguns, handgun ammunition and assault-rifle ammunition at its stores. As subsequently amended, it names Crusius, Walmart, and the First National Bank (which had a branch inside the Cielo Vista Walmart) as defendants. In their petition, the Families brought claims

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against Walmart for negligence, gross negligence, and premises liability, alleging that Walmart failed to provide adequate security for the Cielo Vista Walmart. They allege that Walmart had actual, subjective awareness of the risk of violence to patrons but acted with conscious indifference to the rights, safety, and welfare of others by failing to guard against that risk. It was alleged that Walmart previously had an armed, off-duty police officer protecting the premises, but stopped to save on expenses.

The Families specifically allege that Walmart assigns each store location a numerical risk score based on community demographics, local housing values, crime statistics, and internal company records. A score of 0 indicates that crime is 10 times less likely to occur at a particular store than would be expected in that area, whereas a score of 500 indicates that crime is 5 times more likely to occur at a particular store. Despite having this risk matrix, the Families contend that in allocating security resources, Walmart provides more security and staffing at their stores in higher-income, majority-white neighborhoods at the expense of low-income communities of color. The Families allege that Walmart's internal risk scores demonstrate its subjective awareness of the risk for in-store violence. The live petition also referenced three prior violent incidents at other Walmart stores involving armed individuals: a 2016 standoff in which two employees were taken hostage at a store in Amarillo, Texas; a November 2017 shooting in Thornton, Colorado, where a gunman shot and killed three shoppers; and a shooting a few days before the August 3rd attack in which an armed man shot and killed two people and injured another person in Southaven, Mississippi.

The Discovery at Issue

The mandamus focused on whether the trial court abused its discretion by ordering Walmart to respond to several requests for production. Following several hearings, the trial court issued an order that granted in part and denied in part a motion to compel responses to certain discovery requests made by the Families. The following seven categories of documents were the subject of the writ:

1. Prior Hostage Incident: the "store file" relating to a 2016 hostage incident at a Walmart in Amarillo, Texas;
2. Store Security Budgets for El Paso and San Antonio: documents relating to the security budgets for all stores in El Paso County and within the city limits of the City of San Antonio for the period between August 3, 2014 and August 3, 2019;
3. Crime-Driven Policy Changes at Texas Stores: documents regarding changes in policies that were implemented as a result of any crimes (other than shoplifting) at Walmart Supercenters in Texas from June 14, 2016 to the present;
4. Black Friday and Tax-Free-Weekend Security Information and Transaction Counts for the Cielo Vista Walmart: documents relating to "security measures" and the "transaction count" for the Cielo Vista Walmart for all Black Fridays, Tax Free Weekends, and all weekends before Tax Free Weekends between 2014 and 2019;
5. Employee Incentive Programs: documents relating to bonus, incentive, or other compensation programs for Walmart employees in which the bonus, incentive, or other compensation depended, in whole or in part, on revenue, income, profits, or loss-prevention performance at the Cielo Vista Walmart for the previous five years (limited to managers and employees who had authority over store security);
6. Cielo Vista Walmart Corporate Minutes: corporate minutes for the previous five years regarding security at the Cielo Vista Walmart, excluding slip-and-fall incidents;

7. Third-Party Safety Assessments in Walmart's Possession: documents in Walmart's possession, if any, from third-party entities on how to handle active shooter responses.

The trial court had entertained objections based on the geographic and temporal scope of the requests. Walmart principally argued that the requests seek documents which were not relevant under the Texas standard for determining whether a landowner owes a duty to guard against the criminal acts of third parties. See *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 756 (Tex. 1998) (establishing factorial test for determining whether criminal conduct is foreseeable to property owner). The Appellate Court held that the trial court was within his authority to order the information released, including on the store security budgets, and even Black Friday security information and transaction counts. The appeals court did find that the trial court overreached by ordering production of crime-driven policy changes made at Texas stores and some third-party information held by the retailer. But the appeals court left the door open for the plaintiffs to refile a more narrowly scoped discovery request.

The order on third-party reports, which included documents from National Retail Federation's Active Shooter Guidelines, was also found to be overly broad. The appeals court conditionally granted Walmart's requested relief as to these reports, but did so without prejudice to the trial court limiting the order as to time and scope.

CASE STUDY #4

Laquan Taylor v Kroger / Great American v Starr

These cases arise out of the shooting of a young Navy veteran during a robbery and carjacking at a Kroger store in Atlanta in January 2015. The victim, Laquan Taylor, was 26 when he visited the Kroger in southeast Atlanta a little after 7 p.m. to do some shopping and use the Western Union outlet there. Victor Moore and Javon Ross were hanging around the parking lot when Taylor arrived in an orange Camaro. Moore and Ross allegedly demanded his keys and wallet. After Taylor handed them over, Ross shot him between 11 and 14 times, and the pair left in his car. Taylor's car was equipped with an OnStar security system, and responding officers were able to use it to track and disable the vehicle remotely. Taylor's injuries required multiple surgeries and left him paraplegic. His medical expenses were stated to be approximately \$4 million.

Plaintiff filed suit alleging Kroger knew the store was located in an unsafe, high-crime area, yet failed to place any security guards in the parking lot where Taylor was robbed and shot. Mediation was unsuccessful. Plaintiff's counsel has been quoted as saying that the defense's highest offer to settle pretrial was for \$1 million. He stated: "They offered somewhere around \$12 million during the trial," and said. "We turned that down."

In April 2019, a jury returned a verdict awarding \$81 million in damages to Mr. Taylor. The jury apportioned 86% of the fault to Kroger, meaning the final judgment against Kroger was \$69,660,000. A notice of appeal was filed, but in February 2021 was dismissed in conjunction with a confidential settlement of the case. That same month, Great American, a second-layer excess insurance carrier, filed a declaratory judgment action against Starr, a first-layer excess insurance carrier, alleging that Starr negligently failed to settle the case within its \$25 million policy limits. The Complaint alleged that Starr received "numerous demands from the plaintiff squarely within its policy limit, and despite repeated warnings from defense counsel and Great American of the possibility of a runaway jury verdict that could penetrate deep into Kroger's excess coverage, Starr dug in and refused to settle or to offer its policy limit to attempt to settle." It alleged that even after a remittitur of the \$81 million verdict, that "the Final Judgment against Kroger of \$61,441,494.20, was more than \$31 million in excess of the combined total limits of

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the Starr excess policy, underlying policy, and self-insured retention.” Great American alleged that “it is entitled to recoupment from Starr of the amount it contributed to the Confidential Settlement.”

The Declaratory Judgment Complaint described in detail facts that Great American believed warranted Starr settling within its policy limits. Specifically, the Complaint alleged:

- a. This particular Kroger store was located in a high crime area. Kroger’s loss prevention team ranked this store 10 on a scale of 1 to 10 in identifying the need for security. Kroger also assigned the store one of the highest scores in Kroger’s Atlanta Division on its internal security index scale;
- b. Kroger delayed implementation of improved parking lighting despite identifying the need for improved parking lighting before the shooting occurred;
- c. Kroger delayed implementation of increased parking lot security despite identifying the need for security just a few months before the shooting occurred;
- d. The Burger King that shared a parking lot with the Kroger fuel center had been robbed;
- e. Other local businesses within walking distance of Kroger had hired security guards;
- f. There had been threatened gun violence in the Kroger parking lot;
- g. There had been at least six instances of car thefts from the Kroger parking lot in the nine-month period before the shooting;
- h. One of Mr. Taylor’s assailants was a known loiterer at Kroger’s store; and
- i. Two weeks before the shooting occurred, that particular assailant approached a Kroger employee at a coin laundromat across the street from Kroger’s store, demanded money and an unidentified witness indicated the assailant had a gun. The employee reported the incident to Kroger. Kroger took no action

The Declaratory Judgment Complaint further alleged that on the final day of testimony for Mr. Taylor’s case in chief, plaintiff’s counsel called Kroger’s Senior Loss Prevention employee and that he testified that:

- a. crime was on the rise at the property;
- b. it was foreseeable that a crime might occur;
- c. the store at issue had one of the worst risk ratings of all Kroger stores;
- d. a parking lot guard was needed and recommended at least two months before the shooting occurred;
- e. Kroger had the resources to put a guard in place immediately and failed to do so;
- f. that one of assailants was a frequent loiterer in front of the store;
- g. the same assailant had been seen with a gun across the street as reported by a Kroger employee; and
- h. no one followed up on the Kroger employee’s report.

ENDNOTES

ⁱSee, *Georgia CVS Pharmacy, LLC v. Carmichael*, 362 Ga. App. 59, 2021 Ga. App. LEXIS 541, writ of certiorari granted, *Georgia CVS Pharmacy v. Carmichael*, 2022 Ga. LEXIS 301 (Ga., Oct. 4, 2022) Compare with *Shadow v. Fed. Express Corp*, 359 Ga. App. 772 ; 860 S.E.2d

87; 2021 Ga. App. LEXIS 281 (Ga. App. 2021)

ⁱⁱ <https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2021-052422.pdf/view>

ⁱⁱⁱ Id.

^{iv} <https://crsreports.congress.gov/product/pdf/R/R44126/5>

^v Id.

^{vi} <https://www.gunviolencearchive.org/>

^{vii} <https://www.theviolenceproject.org/mass-shooter-database/>

^{viii} The Violence Project, 31% of mass shootings occur in the workplace. <https://projects.voanews.com/mass-shootings/data.html>

^{ix} <https://projects.voanews.com/mass-shootings/>

^x Id.

^{xi} Geller, L.B., Booty, M. & Crifasi, C.K. The role of domestic violence in fatal mass shootings in the United States, 2014–2019. *Inj. Epidemiol.* 8, 38 (2021).

^{xii} Id.

^{xiii} *Nowlan v. Cinemark Holdings, Inc.*, No. 12-CV-02517-RBJ-MEH, 2016 U.S. Dist. LEXIS 102599, 2016 WL 4092468, at *2 (D. Colo. June 24, 2016)

^{xiv} <https://s29762.pcdn.co/wp-content/uploads/2022/01/20181107OIS2018175110.pdf>

^{xv} *Vielma v. Gruler*, 347 F. Supp. 3d 1122, 2018 U.S. Dist. LEXIS 193950 (M.D. Fla., Nov. 14, 2018) aff'd *Vielma v. Gruler*, 808 Fed. Appx. 872 (11th Cir.2020)

^{xvi} *Colon v. Twitter, Inc.*, 14 F.4th 1213 (11th Cir. 2021).

^{xvii} <https://www.wuft.org/news/2017/02/08/some-pulse-nightclub-patrons-upset-at-not-getting-funds/>

^{xviii} <https://www.justice.gov/opa/pr/office-victims-crime-awards-almost-85-million-support-victims-pulse-nightclub-shooting>

^{xix} 395 S.C. 129, 716 S.E.2d 910 (2011)

^{xx} 395 S.C. at 135

^{xxi} Id.

^{xxii} Id.

^{xxiii} Id.

^{xxiv} *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384, 386 (Ind. 2016).

^{xxv} *Hiller v. Wal-Mart Stores East, LP*, 589 F. Supp. 3d 531, 2022 U.S. Dist. LEXIS 40653 (D.S.C. 2022); *Romero v. Giant Stop-N-Go of N.M., Inc.*, 146 N.M. 520, 212 P.3d 408 (N.M. Ct. App. 2009); *Estate of Bell v. 617 W. Llc*, 2022 Kan. App. Unpub. LEXIS 652 (2022)

^{xxvi} See, *Thetford v. Clanton*, 605 So. 2d 835 *; 1992 Ala. LEXIS 1177 (Ala. 1992)

^{xxvii} *Nowlan v. Cinemark Holdings, Inc.*, No. 12-CV-02517-RBJ-MEH, 2016 U.S. Dist. LEXIS 102599, 2016 WL 4092468, at *2 (D. Colo. June 24, 2016) (noting that a plaintiff must prove that the alleged tortious conduct constitutes a "substantial factor" in producing the injury and that one factor may have such a predominant effect in causing the harm that it renders the effect of another factor insignificant and prevents it from being a substantial factor).

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^{xxix} 2021 U.S. Dist. LEXIS 253066,

^{xxx} See, <https://www.fbi.gov/how-we-can-help-you/safety-resources/active-shooter-safety-resources> ;

https://training.fema.gov/emiweb/is/is907/visuals/is-907_visuals.ppt; ACTIVE SHOOTER / VIOLENT INTRUDER RESPONSE PPT prepared by City of Bellingham, WA at <https://cob.org/wp-content/uploads/Active-Shooter-Presentation.pdf>

^{xxxi} <https://nrf.com/resources/retail-safety-and-security-tools/active-shooter>

^{xxxii} *Chappell v. Colony Ins. Co.*, 2017 U.S. Dist. LEXIS 127973, adopted at *Chappell v. Colony Ins. Co.*, 2017 U.S. Dist. LEXIS 146966 (M.D. Ala., Sept. 12, 2017). See also, *Capitol Specialty Ins. Corp. v. JBC Entm't Holdings, Inc.*, 172 Wn. App. 328, 289 P.3d 735 (2012).

^{xxxiii} 2021 U.S. App. LEXIS 31832 (5th Cir. 2021)

^{xxxiv} 2022 U.S. Dist. LEXIS 56111 (D. S.C. 2022)

^{xxxv} Id.

^{xxxvi} *Ill. Nat'l Ins. Co. v. Travelers Prop. Cas. Co. of Am.* 2021 U.S. Dist. LEXIS 189118 (W.D. Wash. 2021)

^{xxxvii} <https://media.bizj.us/view/img/11956137/businesscourt21-gsbc-0006complaint.pdf>

^{xxxviii} <https://www.cnbc.com/2020/01/10/rise-in-mass-shootings-boosts-active-shooter-insurance>.

^{xxxix} <https://www.reuters.com/world/us/us-mass-shooting-insurance-rates-jump-incidents-rise-2022-06-29/>

^{xl} file:///C:/Users/JAS/Downloads/active-shooter-incidents-20-year-review-2000-2019-060121%20(1).pdf

: <https://www.fbi.gov/file-repository/active-shooter-study-2000-2013-1.pdf/view>;

file:///C:/Users/JAS/Downloads/ActiveShooterIncidentsUS_2014-2015.pdf; <https://www.fbi.gov/file-repository/active-shooter-incidents-us-2016-2017.pdf/view>; <https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2018-041019.pdf/view>;

<https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2019-042820.pdf/view>; <https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2020-070121.pdf/view>; <https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2021-052422.pdf/view>