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Active Shooter & Armed Assailant: What Are the Insurance Implications?

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Sadly, school shootings, workplace violence, and mass or multiple casualty events have become all too common in the past few decades. While we don't tend to associate this type of tragedy with passenger vessel operations, we should have it on our radar.

Several years ago, the Passenger Vessel Association (PVA) hosted a first-ever active shooter drill. More recently, during the Western Region meeting in October, there was an eye-opening presentation titled *Active Shooter-How to Prevent and How to Respond*, followed by a lively Q&A session. Chris Gallup's follow-up article in the [December 2022 Foghorn](#) helped drill down on questions regarding the need for training, if we are a target, and what we can do before, during, and after an attack to minimize the possibility of an event and to lessen the severity of an attack if the unthinkable were to occur.

More recently, I had the opportunity to give a talk on the subject during the PVA Annual Convention at MariTrends. My biggest takeaway from that talk and the conversations that followed over the next several days is twofold.

First, people are clearly concerned about the possibility of an active shooter/armed assailant incident aboard a passenger vessel. Second, people are looking for clear-cut answers. I'm not sure the answers are as straightforward as we'd like, but that doesn't mean the discussion isn't worth having.

During the Q&A in October, I was asked how insurance would respond in the case of an active shooter/armed assailant. That question is what prompted this article, as well as the MariTrends talk. The answer largely depends on the type of insurance you have. But before I go any further, I want to be clear: despite the increasing frequency of active shooter/armed assailant events, the insurance market for this type of coverage is still very new and can only be described (generously) as "emerging." The marine insurance market is even further behind

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the curve. Having said that, let's jump right in. There are 3-4 policies we should consider in the context of active shooter/armed assailant events.

HULL AND MACHINERY (H&M)

This policy covers partial or total loss of vessels and machinery if the loss is the result of a covered peril. The American Institute Hull Clauses (AIHC), a commonly used form, offers very broad coverage against a host of perils, most of which seemingly have nothing to do with active shooters/armed assailants. In reviewing the form, the only covered peril that seems to make sense is that of *Assailing Thieves*, which refers to criminal acts committed by persons other than passengers and crew members who gain access to the property by violence or force. But what if the armed assailant paid the price of admission and could be considered a passenger?

Going a step further, the AIHC also includes a section on War Strikes and Related Exclusions. The policy specifically excludes any damage caused by *"malicious acts or vandalism, unless committed by the Master or Mariners and not excluded elsewhere under this War Strikes and Related Exclusions clause."*

While it may be possible to remove the exclusion via endorsement (for a price), if the expectation is that the H&M policy will respond to an active shooter/armed assailant incident, I'd say we're a maybe at best. Even assuming it did respond, it would likely only cover physical damage to the vessel or machinery.

PROTECTION & INDEMNITY (P&I)

This policy covers liability an owner may have to passengers and visitors aboard the vessel, liability to the crew, and various other liabilities such as that arising from injury caused by a collision. P&I exposure is usually addressed either by placing the vessel in one of the various P&I self-insurance pools or through the fixed-cost P&I market. This article will focus on the fixed-cost market

in which conventional insurance carriers charge a fixed premium at policy inception that cannot be changed without the consent of the insured.

Two of the most widely used P&I forms in the American fixed-cost market are the SP-23 and the SP-38. Both forms include provisions related to sums the owner is found legally liable to pay on account of *"loss of life, or injury to, or illness of, any person."* Both forms also contain exclusions like the War Strikes and Related Exclusions clause mentioned above. So again, at best, we're looking at another maybe.

One final thought on the P&I policy response—these policies typically include a per occurrence limit. Limits of \$1 million per occurrence are common. With this in mind, it would be imperative to understand how an "occurrence" is defined. Even still, these limits won't go very far considering an event that may result in multiple victims, all of whom may seek restitution related to loss of life, funeral expenses, non-fatal injuries, illness, grief counseling, etc. After quickly blowing through the primary limits, you would be looking at the **excess liability policy** to make up for the shortfall. Assuming an excess policy in place, these limits may also be quickly eroded, particularly in a situation with multiple victims.

COMMERCIAL GENERAL LIABILITY (CGL) OR MARINE GENERAL LIABILITY (MGL)

These policies cover a business for bodily injury, personal injury, and property damage caused by the business's operations, products, or injuries that occur on the business premises. For passenger vessel operators, these policies typically address exposures the company may have regarding the shore-based component of their operations and bridge the gap between their terrestrial and marine exposures. Again, these policies are typically written on standardized forms. But with standard forms come standard exclusions.

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An interesting presentation to the American Bar Association¹ speaks to whether a business owner can be held liable for the criminal acts of a third party, particularly concerning the foreseeability of the act. The article also notes exclusions for criminal acts, intentional acts, and firearms, as well as failure on the part of the property owner to provide adequate security.

While this article was written with events like the 2007 mass shooting at Virginia Tech University and the 2017 Las Vegas Music Festival in mind, I can think of additional exclusions unique to the marine environment that may also be brought to bear. Again, the same per occurrence considerations mentioned regarding the P&I policy above would likely apply in the case of either a CGL or MGL policy. Additionally, with the CGL/MGL policy, you would also have aggregate limits to consider. So, where does that leave us in terms of policy response to an active shooter/armed assailant incident? I'd say we've got another maybe.

HOW TO GET FROM MAYBE TO PROBABLY

Since the Western Region meeting, I've discussed this issue with several underwriters both in the domestic and London market. While I have yet to come across anything in the domestic market, several products in London may apply to passenger vessels.

You may notice I chose my words carefully by using "probably" at the top of this paragraph. One underwriter I spoke to has an active shooter/armed assailant insurance product he is pitching to restaurants, casinos, music festivals, etc. When I asked him if they would consider providing coverage to passenger vessels, he replied, "sure, why not?" Then I read the form they are using to write these policies—there was a very specific provision in the policy that would render it useless for passenger vessels.

Another product I looked at had a provision requiring the attack to be politically motivated for coverage to apply. I mentioned to the underwriter that his product seemed more geared toward a terrorist attack than what I had in mind. He agreed, and that was the end of that meeting.

I've also heard of casualty thresholds where coverage only kicks in if a certain number of individuals are injured or killed in the attack or where the total number of victims is limited. I've also seen very narrow definitions of what constitutes a weapon for the purposes of coverage.

So where am I going with all this? Even getting to probably requires careful review of the product being offered and a willingness on the part of the underwriter to craft a specific policy to suit the particular needs of the client.

Given that there are no standard forms (that I've come across) to provide coverage to passenger vessel operators for active shooter/armed assailant events, what would be the critical components of such a policy? I have a few ideas:

- + Coverage for liability to third parties related explicitly to active shooter/armed assailant events
- + Business income or business interruption coverage
- + Physical damage coverage
- + Loss of attraction & brand rehabilitation coverage
- + Crisis response, management & public relations support
- + Victim counseling & ongoing support
- + Prevention costs & training support
- + Broad definition of what constitutes a weapon
- + Adequate limits
- + No threshold on the number of victims
- + No restriction on the motivation of the attacker
- + Crime scene cleanup costs

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These are just a few of my thoughts. Without question, there are other vital components you, as an operator, could come up with. You know your operation better than any broker or underwriter. But therein lies the key, in my opinion—work with a broker you trust and in whom you have confidence. You will have to rely on that individual to thoroughly review all policy provisions, definitions, and exclusions and negotiate on your behalf.

The fine print will be the difference between having coverage that should respond if an attack occurs and having an expensive piece of paper. You also need to have the right underwriting partner who is willing to craft a customized policy to suit your needs and can do so at a price point that works for all concerned parties.

As I mentioned at the top of this article, while these types of events are becoming more and more common, the marketplace is still in its infancy, even more so in the marine insurance market. As uncomfortable as this topic is, it's important to continue to discuss how best to minimize the chances of an attack, lessen the severity or impact if an attack occurs, and protect ourselves financially if an event occurs beyond our control.

References and Resources

1. Steinlage, Michael. Liability for Mass Shootings: Are We at a Turning Point? American Bar Association. The Brief. Winter 2020 Vol. 49, No. 2. Accessed at: [Winter 2020 | Liability for Mass Shootings \(americanbar.org\)](#).