BRINGING PROTECTION INTO FOCUS

Active Shooter Incidents and Security Firms:
LIABILITY AND RISK MANAGEMENT

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In recent years, mass shootings have stirred up conversations from newsrooms and boardrooms to living rooms and office water coolers across the country.

Experts and observers have called for responses ranging from stricter gun control laws to more stringent security measures at schools to a broader mental healthcare safety net. Some of these conversations have turned into action, as schools invest in metal detectors, lawmakers write bills and security firms enhance their training for officers. Across the country, from Parkland to Santa Barbara, how we prepare for, respond to and learn from active shooter incidents has evolved.

In many workplaces, such as office buildings, hospitals and factories, security officers and security firms are central to the preparation for and response to these incidents. A professional security officer is driven to defend the well-being of the people being protected and to protect their clients' interests. Yet active shooter incidents can present security officers with a near-impossible predicament: they cannot always halt a shooter before s/he has caused some sort of harm. This reality sometimes means security officers are held liable for incidents in the legal system and in the court of public opinion.

WHAT IS AN ACTIVE SHOOTER?

According to Eddie Sorrells, CPP, PSP, PCI -
COO and General Counsel of DSI Security Services, an active shooter is:

- *One or more people in the process of causing death or injury or posing an immediate danger*
- *Not a hostage situation, standoff or barricaded perpetrator (but can become one of these).*

Thus, in preparing for and responding to active shooter incidents, security firms face a complex question: how can officers provide the best possible protection during active shooter incidents while mitigating potential liabilities? We seek to answer that question in this Risk Management Brief by exploring two topics: how firms are held liable for active shooter incidents and how they can protect themselves before and during litigation.

UNDERSTANDING THE LIABILITY ISSUES

Litigation will happen

Security firms do their best to help clients prevent and mitigate the impact of many dangerous situations, among them active shooter incidents. Firms' clients sometimes mistake these security measures for guarantees of total safety. However, the role of security firms is to create reasonable security measures for specific facilities. There are no absolutes.

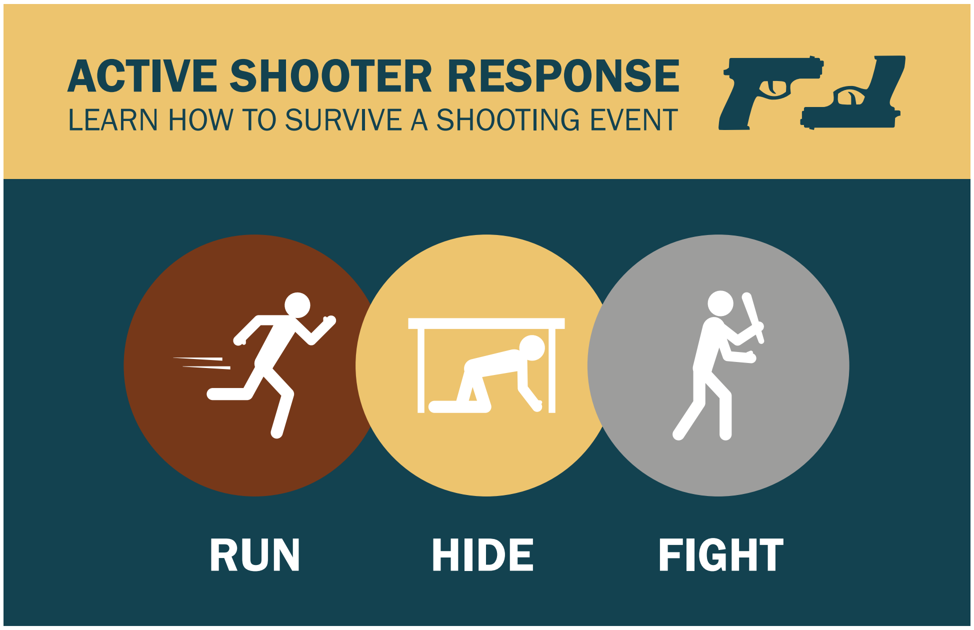
Even clients who understand that reality will seek to hold security firms wholly responsible for active shooter incidents. They are reluctant to sign contracts that indemnify the security firm against liability, and firms are reluctant to sign contracts that indemnify the client. These negotiations often drag on, and there are no easy solutions, as the firm struggles to put itself in a defensible position.

In many ways, these indemnification debates are due to the trust clients (and the public) place in security officers. A security professional is positioned as the expert who must anticipate every threat and every person or place that needs to be protected. Yet clients do not always allow the security firm to conduct a thorough risk assessment; in this way and others, the security experts may be limited in the information available to them when protecting clients. These conflicts between expectations and reality can create litigation centered around allegations of negligent security, failure to protect or foreseeable violence issues.

Common issues raised in litigation

In litigation involving security firms and businesses with whom they contract, attorneys raise questions about policies and procedures, as well as post orders. Were policies and procedures adequate, and did officers follow the orders? Sometimes the post orders established by a client are too broad to be realistic, such as "provide total protection." Some policies center around vague terms, like "zero tolerance for violence," which do not create a clear procedure for how officers should respond in specific situations.

A 2010 case illustrates how a lack of clear procedures can create an unsafe situation. Within minutes after being suspended from her job at a food plant, a former employee went to her car, retrieved a gun and returned to the facility. She threatened the security officers stationed at the entrance; bypassing them, she returned to her department to open fire on her co-workers, two of whom died in the attack. Though the officers encountered the shooter before any other employees, one of the main issues raised in the litigation was whether or not proper notification was made to the employees inside the facility concerning the approaching threat.



UNDERSTANDING THE LIABILITY ISSUES (CONT.)

This incident also illustrates how questions around security officer training can enter litigation. Clear policies and procedures do not always permeate an organization's culture. Do officers know what is contained in written policies and procedures? Are they trained to execute those procedures? A policy not followed by management or security officers can create significant risk to people and property, not to mention creating tremendous legal liability issues in any resulting litigation.

Both marketing materials and contracts can help create reasonable expectations for clients. On websites and in social media, firms can get carried away with messages that pledge "total protection" or other vague promises. Though marketing language alone is unlikely grounds for a lawsuit, attorneys can use it against firms in litigation as an example of unreasonable promises and unmet expectations. Contract language can also be used against firms in litigation. Though often carefully negotiated, any concessions a firm makes in contracts can be used as an example of unmet promises.

BEST PRACTICES: HOW FIRMS CAN PROTECT THEMSELVES

As active shooter tragedies have come to dominate the news, more and more people are familiar with the recommended response: run, hide, fight. That protocol is considered best practice for individual survival, but security officers must consider other details during incidents, and each facility should research what is the best plan of action for their facility and employee population. Security firms and the companies which contract them can clarify these details through appropriate, specific training, careful planning and thoughtful development of processes. It is impossible to develop a perfect plan that anticipates every possibility, and officers cannot prevent all casualties during an active shooter incident. However, proper preparation is a proven tactic for mitigating losses during unforeseen tragedies. Firms should equip their officers with a defensible plan.

Processes, procedures and policies

An active shooter response plan must be enforceable and easy to follow, but there is no one-size-fits-all plan. Instead, firms should work with clients to develop plans that fit into a company's culture and realities. With that foundation, a plan should address how to respond, depending on where the shooter is located. It should include guidelines on:

- *Sheltering in place and escape.*
- *How and when to notify to law enforcement.*
- *How and when to notify employees in other parts of a facility.*
- *What to do immediately after an incident.*

HOW FIRMS CAN PROTECT THEMSELVES (CONT.)

However, the post orders set forth by the client must also be realistic. Some contracts specify broad post orders that do not create clear expectations for guards. For example, they may include language like, “enforce all security rules and regulations” or “prevent all weapons from being introduced into the facility.” As discussed earlier, there are no absolutes in security. Though clients often set their post orders independently and are not willing to negotiate, the security experts with whom they contract can make recommendations and offer full-scale threat assessments.

Training supports planning and processes. Security officers must be trained in active shooter procedures and equipped with post orders specific to active shooter incidents that help them counter and reduce the threat to others within a facility. But all employees of an organization, from a worker on the factory floor to a CEO, also need training. This can focus on tactics like verbal de-escalation and run, hide, fight procedures. An effective plan is communicated to all employees and reviewed on a regular basis. Security firms can create a boilerplate training procedure that provides a template adaptable to each client’s needs.

Document and discuss security flaws

As businesses have come to understand the realities of active shooter incidents, they have become more willing to discuss post orders and best practices with security contractors. Security firms must discuss any flaws with managers at the organizations they protect. For example, potential clients seeking an officer to staff the entrance of their building may not readily agree to a full-scale security assessment that makes an account of all vulnerabilities. But raising the issue can make them more amenable to threat assessment in the future. Simply documenting a client’s inaction is useful information. This creates a defensible position for a security firm in the case of future litigation.

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Let’s consider an example. A security firm had been working with a homeowners’ association (HOA) for a few years to protect access to a gated community when they received a request to change the gate. A delivery truck had tried to sneak under the gate arm as it was closing, resulting in significant damage to the truck and the gate. The HOA decided the best solution was to lengthen the amount of time between opening and closing of the gate. This created a clear security vulnerability, and the security contractor advised against it. However, the HOA decided to proceed. As a result, a person was able to sneak in the gate and commit a homicide. The HOA or security firm may not have been held liable for this crime, but the firm’s clear and documented recommendations would put them in a position to show they are not responsible for the security breach.

HOW FIRMS CAN PROTECT THEMSELVES (CONT.)

Strengthen contracts and improve communications

In security contracts, vague language is a red flag. Agreements such as “protecting all employees from all harm” put security firms in an impossible position in litigation. Even if a contract stipulation is clearly unrealistic, officers will be held to that standard following an active shooter event. More and more firms are seeking to include *force majeure* clauses in contracts. Though clients are often reluctant to sign, these are becoming critical for security contractors. A contract may provide clear limits on an officer’s duties, but when it comes to questions of liability, the firm is still expected to be the expert.

Firms should also review their marketing communications for red flags. Making claims like “bulletproof protection” may create an unreasonable expectation among current or potential customers. Run marketing and web copy by several internal stake holders, as well as an attorney, to ensure these materials are not promising anything the firm cannot fulfill.

CONCLUSION: LIABILITY IS A CRITICAL PART OF THIS URGENT CONVERSATION

Some might wonder how we can have discussions about liability, indemnity and contracts as others consider mental health, gun ownership and school safety. However, this discussion is an important one as we all fight to prevent future tragedy. Examining your liability encourages open conversations with customers about the realities of their vulnerabilities and the protection you provide. Those conversations can lead to the sort of strong, actionable policies and processes—from better training to more accurate contracts—that can strengthen the security industry. Your focus should be on protection, not the threat of lawsuits.

Addressing active shooter risks and related liabilities requires a multi-pronged risk management approach. One important factor is having the right insurance coverage. At Brownyard Group, our security risk experts can help security professionals and their brokers ensure they have the proper coverage for evolving threats. Please contact us at **info@brownyard.com** to discuss how we can support your business.

FURTHER READING

DEPARTMENT OF HOMELAND SECURITY ACTIVE SHOOTER RESOURCES FOR SECURITY PROFESSIONALS
https://www.dhs.gov/human-resources-or-security-professional

ASIS RESOURCES ON ACTIVE SHOOTERS, SOFT TARGETS AND SCHOOL SECURITY
https://www.asisonline.org/publications--resources/security-topics/active-shooter/

"ANOTHER ACTIVE SHOOTER: HOW SHOULD WE RESPOND?" - EDDIE SORRELLS
https://www.linkedin.com/pulse/another-active-shooter-how-should-we-respond-sorrells-cpp-psp-pci?arti-cleId=6320746586355884032#comments-6320746586355884032&trk=prof-post

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