

What Happens If Your Firearm Causes Injury or Worse?

Should Gun Owners Have to Buy Liability Insurance?

Legal Tip of the Week

By Jeff Kelley, Esq.

We are all reeling from yet another horrific school shooting. A disturbed and apparently depressed and desperate young male shooter kills 17 with a lawfully (as known at current writing) obtained AR 15. In preparation for this week's legal tip of the week, I wanted to see what is "trending" on the internet about this event. I wanted to see if there is something that could be helpful for my readers to know, beyond that of re-hashing the same emotionally charged issues of gun control and mental illness. Those topics will be thoroughly examined by others in the weeks, months and years to come, hopefully in a useful and productive way, but we will see. As I have suggested in prior articles, liability for certain acts or failure to act, can come back to haunt you if you failed to prepare yourself from the unexpected. One article that I found was a one published by the American Bar Association in 2013 following the Sandy Hook shooting about the states that were pursuing legislation to compel gun owners to carry fire arm liability insurance. The author, Ms. Carmel, pointed out that: "As of February 2013, lawmakers in California, Connecticut, Maryland, Massachusetts, New York, and Pennsylvania, among others, have proposed legislation requiring gun owners to buy liability insurance. Although the political merit of whether the insurance industry can effect gun safety makes for an interesting debate in its own right, the more prosaic reality is that the principles governing the existence of coverage for shooting are already well established in most states." Looking at the NRA website comparative law table for Florida (and Colorado), the focus seems to be on concealed, right to carry, right to bear, etc., I found nothing on compulsory insurance for gun ownership. It appears this concept never got traction and gun owners' right to bear does not include an obligation to insure. Never the less, your homeowner or other insurance coverage may still be triggered in certain circumstances, and you should make sure such coverage is in place.

My intent is to help people, help themselves and this very typically comes to looking at how can one avoid a claim or protect themselves from a claim if one is made against them. Or, if a client is injured, how can they seek compensation when someone's negligence has caused my client injury. In the recent Florida shooting, it appears Mr. Cruz was staying with the Nead family as a guest, a friend of their son, who needed a home following the death of his mother. The Neads knew he had hand guns, apparently even the AR he used at the school, and as a precaution, insisted that the guns be locked up. They claim they did not know Mr. Cruz had his own key. The FBI missed or ignored a tip, and Cruz' social media was replete with his hopes and aspirations of evil intent. Legal analysis has already begun and will continue and claims will be made and asserted. In the now (unfortunately) seminal 1999 Columbine shooting, victims pursued claims against responding agencies, the parents of the shooters and those who provided access to the weapons purchased at a gun show from an unlicensed seller. The homeowner liability carriers for the shooters' families eventually settled claims with victims, other claims languished or settled. Of course, the financial settlements were woefully inadequate. No financial compensation is adequate for such serious injuries and loss of life.

Ms. Carmel continues: "Common fact patterns for shooting claims, as reflected in the case law, include domestic violence; people shooting at each other for fun, for sport, or to teach

someone a lesson; disputes between neighbors; and self-defense. Not infrequently, alcohol is involved. The homeowners' policy—and sometimes the auto policy—of the shooter, or his or her parents, are at issue. If the shooting happens at a business, church, or school, that location's general liability policies may also be at issue.” In the instant case, at a minimum, the Nead homeowner's liability insurance (if they are home owners) will be placed on notice of a claim, if not already done. Gun owners should evaluate their own situation and proactively evaluate their insurance, whether it be business, home or auto, and determine if there is coverage for a possible event involving a firearm. Umbrella policies must also be reviewed for coverage and exclusions. Coverage for liability associated with concealed carry should also be examined and determine if there are requirements for coverage and what exclusions apply.

We have entered into an era that is no longer a trend, but an unfortunate reality that requires careful review of risk associated with firearm use, carry and ownership, even those invited to stay as guests can impact your own liability and how your insurance coverage may or may not be there to protect you if the unexpected happens.

Do you have a legal question? Send your question to Gilpin County attorney Jeff Kelley (Jeff@klfpc.com), Kelley Law Firm, P.C., to be featured in an upcoming legal tip column, or call 303-582-9900.

Note: All legal claims are different and require full analysis by an attorney.