



**2014 CLM Annual Conference**

**April 9, 2014 – April 11, 2014**

**Boca Raton Resort  
501 E. Camino Real  
Boca Raton, FL 33432**

**Roundtable 3: Thursday, April 10, 2014 (3:30 pm – 4:30 pm)**

**Panel Discussion Hypothetical**

“SHOTS HEARD AT LE CENTRE MALL, State and Federal Police, Fire and First Responders are responding to gun fire at the shopping center on this busy shopping day.”

A lone gunman, who turns out to be only 17 years old and armed with explosives and automatic weapons, arrives in the parking lot of the mall. His weapons, which he had grabbed from his father’s closet, are concealed but he is dressed in fatigues and appears highly agitated. He is seen by shoppers in the parking lot as he enters a little used side entrance. He is noticed by a security guard, employed by a large national security company. An off-duty police officer, eating in a café near the entrance, notices him walk by entering the large common area. He enters a store, is seen by the manager, where he is known as the reportedly violent former boy friend of an employee. The employee is not on duty and the man leaves the store after a 5 minute heated and threatening verbal exchange with the manager. The manager is relieved he has left and does nothing more. Approximately 30 minutes later, the man returns to the store and shoots the manager. Twenty minutes after that, seven people are shot in the food court area one hundred yards from the store. The shooter is shot and killed by a citizen carrying a licensed concealed weapon.

It is subsequently learned that the gunman was a high school student who was reclusive and had a history of making belligerent comments at school, although never acting upon them. He had been seen by the school counselors about these incidents, which involved physical threats against fellow students and teachers. The school talked to the gunman’s parents about these incidents and referred them to an outside psychiatrist for their son. The psychiatrist saw the gunman on one occasion, three weeks earlier and prescribed medication to keep him calm and to smooth out what appeared to be the possibility of violent tendencies. No follow up was ever done

by the psychiatrist and no one knows whether the medication regimen was followed. The gunman was also known as an avid, if not obsessive, video game player, who had bragged to one of his friends at school that he had “learned to shoot” by playing one particularly lifelike game.

The mall is owned by a large national shopping center company. It has \$1 million in primary per occurrence limits and excess coverage. It requires that its outside security guard company provide Additional Insured coverage for its liability arising from the fault of the Named Insured (or, alternatively arising out the activities of the Named Insured). The security guard company has \$1 million in per occurrence limits over a \$100,000 self-insured retention. The security guard company insurer has selection of counsel rights but the insured must pay the first \$100,000 pursuant to the SIR.

During the incident, police required all people to leave the premises leaving all their belongings behind. All people were detained for several hours after the shooter was killed while police secured the mall. No one was allowed back in the mall until the second day following the incident. The Mall was closed during the busiest shopping day of the year.

**Suggested Broad Topics/Questions:**

1. Who, if anyone, can be held liable for damages caused by the gunman?
  - a. Gunman
  - b. Mall Owner/Manager
  - c. Security Company
  - d. Municipality
  - e. Parents
  - f. School
  - g. Psychiatrist
  - h. Video Game Manufacturer/Developer/Retailer
  - i. Gun manufacturer/Retailer?
2. What are the theories of liability that may be argued against each?
3. What are the coverage issues and what policies may respond?
  - a. Number of occurrences
  - b. Expected and intended
  - c. Intentional act
  - d. Business interruption
  - e. Civil disturbance/riot
  - f. Sue and labor
4. All of the insurers potentially involved learned immediately of this incident and the players involved through pervasive news coverage that was widely broadcast as the situation played out. What are their duties and how, if at all, should they respond?