Lawyers, Guns and Money: How insurance could shift the economic costs of gun violence†

Suzan F. Charlton
Covington & Burling LLP
Washington, DC

Kristen Moore
University of Michigan
Ann Arbor, MI

Anna Torres
Torres Law Group
West Palm Beach, FL

INTRODUCTION

Every year in the U.S., victims of gun violence spend billions — not millions, billions — of dollars on firearms-related injuries. According to a long-term study by Johns Hopkins University, the annual cost in emergency-room and inpatient charges alone is $2.8 billion per year.1 If lost wages are factored in, the financial burden rises to $45 billion each year. And this is to say nothing of non-medical costs, like the cost of rebuilding a school (e.g., $50 million to build a new Sandy Hook Elementary School), restoring a business ($1 million to repair the airport and restore operations after the Fort Lauderdale shooting), or managing recovery and litigation costs ($48.2 million spent by Virginia Tech). Further, this does not even touch on the indirect costs incurred by businesses, local governments, communities, and law enforcement in emergency services, police investigations, and longer-term gun violence prevention efforts. By one estimate, the annual cost of gun violence in America actually exceeds $229 billion.2

Who bears these costs? Typically, medical costs are borne by the victims’ families and their health, life, and disability insurers — to the extent such insurance is available — including the government through Medicare and Medicaid, as well as state victim-compensation funds.3 Government institutions and businesses bear some of the costs, too. But homeowners insurance and commercial property and casualty

† The authors’ views are their own and not that of their firms or their clients. Further, each individual author does not necessarily agree with everything in this paper, which is a joint project and which necessarily contains portions that were authored by other panelists.
insurance have not often been implicated, due to exclusions for intentional harm, terrorism, and domestic or workplace violence.

That may be changing. Recently, insurers have been marketing “self-defense” coverage to gun owners, and commercial insurance offerings now include “active shooter” insurance for businesses and institutions like schools. On the other hand, some states have banned self-defense insurance programs, and some insurance companies reportedly have refused to insure school districts that allow teachers or other school employees to be armed. Nevertheless, insurance options seem to be expanding for at least some types of gun violence risks.

Could these developments in the insurance market help compensate victims while also protecting businesses, school districts, and homeowners from financial ruin? Or are such insurance vehicles too difficult to price, leading insurers either to avoid the market or to overprice the product (if that would even be allowed by insurance regulators), potentially so severely that the marketplace ultimately is unable to move the needle on risk transfer and social value?

This paper presents a brief overview of the costs of gun violence, current offerings in the insurance market that address certain gun-related risks (including sample policy forms), and a discussion of the challenges inherent in underwriting such insurance.

**DISCUSSION**

I. THE COSTS OF GUN VIOLENCE

Obtaining accurate information on the cost of fatal and non-fatal gun violence is difficult, in part because statistics on gun violence are hard to come by, and in part because the costs of gun violence can be measured in myriad ways. Healthcare costs. Legal judgments and settlements in litigation. Or broader socio-economic costs, based on economic principles used to assess the contingent valuation of a safe environment.

A. Studies regarding medical costs

Despite limitations on federal funding for comprehensive gun violence research, several medical and academic institutions recently have made independent attempts to estimate the costs of gun violence.

In July 2017, the National Institutes of Health published a study analyzing the costs of hospitalization of patients admitted for firearm-related injuries during, using the Healthcare Cost and Utilization Project Nationwide Inpatient Sample to study firearm injury hospitalizations from 2003 through 2013. The NIH study found that annually from 2003 through 2013, 30,617 hospital admissions were for firearm injuries, for an annual rate of 10.1 admissions per 100,000 U.S. population. More than 60% of admissions were for assaults, and 70% of the injuries that had a known firearm type were from handguns. The average annual admission cost was $622 million. The highest per-admission costs were for injuries from assault weapons ($32,237 per admission) and for legal intervention ($33,462 per admission); the highest total costs were for unspecified firearm type ($373 million) and assaults ($389 million). A quarter of firearm injury hospitalizations were among the uninsured, yielding average annual total costs of $155 million. This last finding led the researchers to conclude that hospitals can project that government insurance will be the highest source for firearm injury reimbursement, and that, depending on healthcare access laws, many of their firearm injury admissions will not be covered by insurance.
The same year, researchers at Stanford Medicine published a similar study covering a slightly later time period, from 2006 to 2014.\textsuperscript{8} Using the Nationwide Inpatient Sample for that time period, they found that initial inpatient hospitalization during that period totaled $6.61 billion — an average of $734.6 million per year.\textsuperscript{9} The largest proportion was for patients with governmental insurance coverage, totaling $2.70 billion (more than 40%), most of which was covered by Medicaid ($2.3 billion, with $0.4 billion covered by Medicare).\textsuperscript{10} Self-pay individuals accounted for $1.56 billion (23.6%) in costs. The researchers also commented that these figures “substantially underestimate true health care costs,”\textsuperscript{11} because the available data only tracked initial hospital admissions, not emergency room treatments, hospital readmissions due to the same injury, or other subsequent healthcare costs.\textsuperscript{12}

In November 2017, researchers from Johns Hopkins University published their own study, which analyzed emergency room visits by 150,930 gun-violence patients during the same period, 2006 to 2014.\textsuperscript{13} The Hopkins study, based on data from the Nationwide Emergency Department Sample, found that emergency room visits and inpatient care together cost approximately $2.8 billion per year.\textsuperscript{14} Emergency department and inpatient charges were $5,254 and $95,887, respectively. As reported in the Hopkins study, more than half of patients in the study sample were uninsured or self-paying, adding to the overall uncompensated care provided by hospitals and health care systems.\textsuperscript{15}

In a more wide-reaching study, Mother Jones estimated the true cost of gun violence at $700 per American per year, or $229 billion per year, based on a variety of factors and resources, including healthcare claims from the Healthcare Cost and Utilization Project, data collected by the Center for Medicare and Medicaid Services on insurance costs, emergency transport data, survey results from mental healthcare providers and police departments, as well as data on legal expenses, incarceration costs, and lost wages.\textsuperscript{16} Yet even this staggering figure (assuming it is accurate) might not tell the whole story. The researchers at Mother Jones themselves asked, “How much care would the survivors and the victims’ families need? What would be the effects on the broader community, and how far out would those costs ripple?”\textsuperscript{17} Their conclusion, at the end of their research paper: “Nobody really knows.”\textsuperscript{18}

B. Research on jury verdicts and settlements (publicly available examples)

High profile cases involving mass shootings that have garnered significant media attention have resulted in everything from dismissals\textsuperscript{19} to multi-million dollar settlements.\textsuperscript{20} Of the settled cases we reviewed, insurance was available in almost all settlements.\textsuperscript{21} However, insurance limits were not always adequate to cover the full settlement value.\textsuperscript{22}

Other than these few highly publicized matters, scant information is available on judgments and settlements obtained in connection with litigation over gun-related injuries and deaths. Generally speaking, in wrongful death litigation, multiple factors may be considered in determining the value of a lost life, including age, income, education, future earning capacity, lost benefits (e.g., pensions), medical expenses, funeral expenses, as well as dependents’ losses and needs. Injury cases where the victim survived entail similar considerations and may add future, long-term medical expenses and compensation for emotional distress and pain and suffering.

These general approaches sound formulaic. But our research of available reported jury verdicts and settlements involving gun violence (primarily accidental shootings but also intentional acts with unintended consequences) revealed few discernible patterns in the financial outcomes. Judgments involving child victims, for example, were not necessarily higher (or lower) than judgments involving adults.\textsuperscript{23} Judgments involving assault were not as a rule higher than judgments involving accidents.\textsuperscript{24} Geography also did not
appear to be a factor, given the lack of robust state-by-state data, combined with differences in substantive state law on gun restrictions, “stand your ground” laws, and tort liability standards. That said, verdicts out of West Coast states like California and Washington appeared to be somewhat higher than verdicts from states like Texas or Nebraska. Yet, even within these states some cases contravene the perceived norm.

In sum, judgments and settlements associated with litigated matters are difficult to predict. Further review of a statistically significant number of judgments would be required to determine whether more nuanced patterns or trends exist.

C. Economic Valuations of Community Safety

Some economists posit an entirely different way of looking at the societal costs of gun violence. Rather than focusing on the medical and related costs in the aftermath of a shooting, an economists’ approach focuses on the “contingent valuation” of a change in policy. Put another way, how much are people willing to pay for a reduction in their risk of dying? Statistically, this is also referred to as the “value of a statistical life” or “VSL.” VSL analysis essentially entails comparing the cost of implementing a particular policy (here, say, specific gun control measures) with the benefits of reducing the risk of injury and premature death.

VSL methodology has been used by a variety of government agencies to assess the value of, for example, environmental protection measures, auto safety, and food safety. The VSL model analyzes the amount a large group of people would be willing to pay to save one statistical life.

According to University of Minnesota economist Timothy M. Smith, however, unlike the seven-figure VSL figures identified in environmental, transportation and food-safety scenarios, gun violence figures are vastly higher: “From a purely economic perspective, the social costs of gun deaths likely exceed $300 billion annually…. not including more than 80,000 nonfatal firearm injuries each year.” Of course, this staggering figure lumps all gun deaths into one monolithic category — akin to lumping all environmental problems into a single massive category. But breaking the figure down into more manageable components, like gun type, might not be workable. For example, if handguns — which are responsible for a disproportionate amount of gun violence — are isolated, the annual social cost of preventing handgun violence ($401 per handgun per year, according to Smith’s study, or a VSL approaching $200 million) is still too huge to be grappled with. Conversely, if we only isolate military-style rifles — terrorists’ and mass shooters’ weapon of choice but responsible for only a fraction of gun deaths in the U.S. — the annual cost (less than $16 per rifle, based on a $9.1 million VSL) is probably too small, with political consequences too high, to be viable.

Nevertheless, such economic analysis may be useful in identifying the social and economic cost of certain types of gun violence. Economists Cook and Ludwig suggest that the economists’ approach might even break the public policy logjam:

More work to empirically quantify the social costs of gun violence the way economists define it should be a priority for the field moving forward, because it could have quite different implications from the prevailing public health perspective about which parts of the gun violence problem to prioritize. For example, it is entirely plausible that the value of reducing some kinds of gun violence (robbery murders) is greater than others (middle age suicides), on a per-victim basis—and this could have implications for public policy
priorities and strategies. Most important is the shift in perspective from the sum of injuries to the value of community safety.

Aside from the broader public policy issues, which may not be resolved by government in our lifetime (a topic beyond the scope of this paper), the social costs and benefits of gun safety could be dealt with in the marketplace. This is where insurance comes in.

II. SPECIALTY INSURANCE FOR FIREARMS-RELATED RISKS

Within the past several years, insurers have been marketing and selling specialized insurance policies to individuals and businesses for certain risks associated with guns. In the personal lines market, insurance is now available in most states for gun-related liabilities arising out of accidents and lawful acts of self-defense. In the commercial insurance market, offerings now include “active shooter” insurance for businesses and institutions like schools.

A. Carry Guard™ and other concealed-carry liability insurance products

“Self-defense” gun liability policies have been criticized by gun control advocates as “murder insurance,” based on the perception that they might encourage gun owners to shoot first and expect to be covered later. Others view such insurance (particularly if mandatory) as a legitimate way to compensate shooting victims—particularly when the gun owner is without adequate resources and therefore judgment proof. The NRA and others who are already selling such insurance would add that an additional benefit is the protection of law-abiding gun owners’ personal assets (“Defend your life savings with industry leading insurance”).

One example of such insurance is the NRA’s Carry Guard™ insurance product. (A specimen is attached to this paper.) This policy covers bodily injury or property damage caused by an “occurrence” —defined expressly to include an “act of self-defense”— arising out of the policyholder’s (or a family member’s) use of a gun while engaged in hunting, sport shooting, or an “act of self-defense,” or otherwise caused by an “accidental discharge” of the gun.

These policies don’t cover every type of shooting. There are exclusions for domestic violence (family member vs. family member), workplace violence (employee vs. employee), damage to the insured’s own property, injuries caused while loading or unloading a gun, drunk and impaired shooting, paintball, and — interestingly, considering the source — liability “directly or indirectly occasioned by … rebellion, revolution, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.”

Importantly, these policies purport generally to exclude “expected or intended” harm and claims arising out of criminal acts, but with clear and express exceptions for an “act of self-defense.”

The definition of “act of self-defense” is key:

“Act of self-defense” means the act of defending one’s person, or other persons who may be threatened, or one’s property when you use or threaten to use a “legally possessed firearm” as may be authorized by any applicable local, state, federal, or provincial laws of the state or jurisdiction within which the “bodily injury” or “property damage” occurs.
Thus — assuming the gun is legally possessed and the use of deadly force is authorized by state law — the intentional act of firing one’s gun in self-defense, with the potential result of injuring or even killing someone, is covered.

But how does one determine whether the shooting was actually in defense of self or others (or property) and complied with state or local laws regarding the use of deadly force? What are the state’s “justifiable homicide” laws? How does the state apply the “castle doctrine”? Is the policyholder in one of 25 states, like Florida, where “stand your ground” laws permit someone to defend himself with deadly force without a duty to retreat first? Or is he in a “duty to retreat” state? These may be factual questions to be resolved by a court—with the policyholder in the role of civil or criminal defendant. And once the policyholder lands in court, the policy’s defense coverage kicks in.

Carry Guard and policies like it contain a duty to defend any civil suit “even if such suit is groundless, false or fraudulent.” Civil defense costs, for example in a wrongful death suit, are covered regardless of the outcome. Thus, even if the shooter is ultimately found legally liable, his self-defense insurance would cover his defense costs.

The Carry Guard product does not actively defend criminal prosecutions but instead reimburses defense costs, although 80% of defense costs are only reimbursable upon a non-prosecution (dismissal) or formal acquittal. The Carry Guard policy promises to pay 20% of the policyholder’s defense costs up front; the policyholder must pay for the remainder with coverage “available on a reimbursement basis only.”

Some “self-defense” policies also cover criminal defense costs in the same way. CCW Safe, USCCA Self-Defense SHIELD, and U.S. Law Shield all provide defense costs up front, before an acquittal. United Self Defense Law Firm provides defense counsel, not just payment. At least one self-defense insurance product, Second Call Defense, advertises that “Nothing ever needs to be repaid regardless of the outcome.”

This is what makes self-defense gun liability coverage controversial. Because these policies — including Carry Guard’s 20% up-front defense coverage — cover the defense of a criminal prosecution before or without any adjudication of the policyholder’s criminal liability, the insurer potentially could be paying for a murderer’s lawyer.

Consequently, two states (as of the time of this writing) have banned Carry Guard’s firearms self-defense insurance. In May 2018, New York’s Department of Financial Services (DFS) fined both Illinois Union Insurance Company (a Chubb subsidiary) and the broker, Lockton Affinity, announcing:

    [T]he “Carry Guard” insurance program unlawfully provided liability insurance to gun owners for certain acts of intentional wrongdoing, and improperly provided insurance coverage for criminal defense for any act of self-defense covered under the policy for gun owners and their resident family members who may be charged with a crime involving a firearm.

In January 2019, Washington’s insurance commissioner similarly found that the Carry Guard policies insure unlawful activity and accordingly ordered the Illinois Union to immediately stop selling the policies.

Illinois Union had argued to the state of Washington that the policies didn’t really insure criminal behavior because, as a matter of ordinary business practice, the insurer only defended criminal prosecutions under a reservation of rights and, further, in the event of a conviction or guilty plea, the insurer would seek
repayment from the policyholder of any advanced defense costs. The Insurance Commissioner didn’t buy it. In its Order To Cease and Desist, the Insurance Commissioner observed:

There is no policy language, however, to support recoupment of these payments or a retroactive denial of coverage. Illinois Union’s representation that it would seek recoupment from the insured in the event of a guilty plea or conviction is not supported by the policy language, and is a misrepresentation of the policy provisions.

… [B]ased on actual policy language, Illinois Union would afford partial coverage for an intentional, illegal act by making payments for covered costs and expenses up to the 20% limit, even if the act is subsequently found to be a crime.42

Thus, either Illinois Union was insuring unlawful, criminal activity — not allowed — or, in reserving the right to recoup criminal defense payments without expressly saying so in the policy, the insurer had misrepresented the coverage — also not allowed.

Carry Guard and policies like it are still legal in 48 states. Assuming no criminal conviction, a civil lawsuit by a gunshot victim might nevertheless result in a judgment or settlement in excess of what the policyholder himself can pay. Without insurance, this situation could theoretically bankrupt the shooter, and often leaves the victim (or his family) bearing most or all of his own medical and other costs. With self-defense insurance, the insurer would pay both the policyholder’s defense costs and the victim’s damages resulting from the injury, up to the policy limits. In this way, the costs associated with the shooting would be shifted from a judgment-proof gun owner to a deep-pocketed insurer.

b. Commercial Insurance for Firearms-Related Risks

Commercial insurance is available for a variety of commercial risks, including property, liability, employment, professional liability, directors & officers, and more… now including “active shooter” coverage (also called “active assailant,” [Catlin] “workplace violence” [Chubb] and other euphemistic titles). Ostensibly these new insurance products are being made available to address an apparent gap in general liability coverage. As characterized by an Insurance Journal report, shooting incidents, which often are neither expressly excluded nor expressly covered, leave a “gray area” in existing coverage options:

The problem, says John Powter, president of GDP Advisors in McKinney, Texas, is that there is a misconception among clients that their current insurance policy covers an active shooter event. Insureds may also believe that active shooter incidents are automatically covered by terrorism insurance, all of which can lead to a debate between insureds and their carriers.

While a property policy is designed to handle physical damage, the general liability part of a policy doesn’t clearly cover or exclude active shooter incidents, Powter says.

“There is a concern, or gray area, with the general liability policy – in reality it was never designed to cover an active shooter incident,” said Powter. “We think there is a disconnect there and it’s a concern.”

…”

“Eventually, he [Powter] said, the gap that currently exists on GL policies will go from a gray area to excluded, as was the case with cyber risks and led to a huge new insurance
“Active shooter” insurance is designed expressly to cover expenses tied to shootings in office buildings and places of public accommodation, such as malls, hotels, and concert halls. According to a 2018 Reuters report, such insurance is increasingly gaining traction with schools. Demand for “active shooter” insurance spiked among school districts following the February 2018 shooting at a high school in Parkland, Florida. One month later, seven South Florida school district had purchased $3 million worth of “active shooter” coverage under policies backed by London-based insurers such as Beazley, XL Catlin, and Hiscox Ltd., as well as U.S.-based insurers Chubb and Ironshore (Liberty Mutual).

“Active shooter” policies typically cover up to $250,000 per shooting victim, with aggregate limits ranging from $1 million to $25 million, and pay for bodily injury, including death, and sometimes including additional coverage for medical expenses, funeral costs, and other benefits.

Some policies also include first-party property damage coverage too, for costs like building repairs and even demolition and reconstruction if a school district elects to demolish buildings in which a shooting has occurred. Business interruption coverage is included as a component of such first-party coverage.

Business that do not carry “active shooter” insurance may nonetheless find some coverage in their business insurance packages. Commercial property insurance might cover some of the property damage from a mass shooting (assuming such a peril is not excluded), potentially including repair or replacement of damaged property, debris removal, and other cleanup costs. Business interruption coverage should cover disruptions if an area is shut down for an extended period of time in the aftermath of a shooting event, for example, if a mall or airport is closed, or if events at a stadium or concert venue are cancelled.

Workers compensation insurance might come into play in the event of a workplace shooting — again, assuming no exclusions, such as the employee-on-employee violence is not excluded).

Retail, hospitality, and entertainment businesses pose unique risk management issues involving protection of their customers, guests, and other clientele. For example, hotels are reevaluating operational policies that might impact guest safety:

- The shooting at the Mandalay Bay has prompted hotel chains to reevaluate their “do not disturb” policies for guests. Walt Disney World Properties and Hilton have already begun changing their policies. Walt Disney is swapping out their “Do Not Disturb” signs for “Room Occupied” signs to indicate that someone may be in the room. However, cast members have been instructed to enter each room at least once a day as part of a guest safety and security check. They will knock and notify guests that they are entering the room just to check on their well-being.

- Hilton is in the process of updating its policies and encouraging employees to be aware of unusual occurrences such as guests who pay in cash, change rooms multiple times, choose not to have their rooms serviced for several days in a row, or those who might be taking numerous pictures of the interior or exterior of the hotel.
III. CHALLENGES IN UNDERWRITING FIREARMS-RELATED INSURANCE

Whether mandatory or voluntary, if gun liability insurance is to be viable, then insurers need to know how to underwrite it, which requires sufficient actuarial data about the risks associated with firearms. This is likely to be a major undertaking, with gun-related healthcare costs and litigation outcomes all over the map, and societal economic valuations being untethered to actual injury and liability outcomes.

Actuaries and other insurance professionals specialize in quantifying risk related to uncertain future events; thus, they are well positioned to study the risk related to firearms, both to quantify the risk and to inform state and public health interventions to mitigate it. There is evidence that the cost of gun violence to insurers is material, yet there is little on the topic in the actuarial and insurance literature. Moreover, we found no evidence that insurers have systematically studied their financial exposure to firearm-related risk. (Moore and Reynolds 2018).

How can any reasonable broker or underwriter determine the right price for insurance that would cover such liabilities where, as an insurance and risk management professor from the University of Pennsylvania’s Wharton School put it, “We don’t know anything” about such claims’ frequency and severity?

A. How Insurers Might Evaluate and Price Liability Insurance for Gun Owners with Limited Actuarial Data

In evaluating risk and pricing insurance, actuaries focus on the frequency and severity of claims; in other words, how often does the uncertain event occur in a population and, when it occurs, how much does it cost? With this information, actuaries can determine the expected cost of coverage. However, while insurers have meticulously tracked the frequency and severity of homeowners claims related to dog bites, we did not find evidence of systematic study of frequency and severity of firearm-related claims for life, homeowners liability, disability, workers compensation, or commercial liability insurance.

1. Personal Lines Insurance

In classifying life insurance risks, underwriters take into account whether an applicant engages in risky avocations such as private aviation, skydiving, or scuba diving. Similarly, for homeowners liability, insurers ask about risky features in a home such as swimming pools, trampolines, and dogs. If an applicant engages in a risky avocation or has risky features in the home, the insurance premium might be adjusted to reflect the additional risk. There is consensus in the literature that a firearm in the home is a risk factor for suicide, domestic violence homicide and accidental shootings, and that higher levels of gun prevalence are positively associated with higher homicide rates. Generally speaking, this additional risk is not considered in underwriting or pricing for life or homeowners liability insurance.

During the eight-year period 2010-2017, on average, there were about 35,000 fatal gunshot wounds (GSW) per year; this is approximately equal to the average number of auto fatalities per year during the same period. In addition, during the same time period, on average, there were approximately 85,000 nonfatal GSW per year. By comparison, there were only a few hundred deaths each year from private aviation. It is natural to ask, then, whether it is reasonable to consider private aviation in life insurance pricing and not to consider gun ownership.

Of course, rather than simply considering the number of deaths attributable to a risky avocation, one must examine the death rate per participant. In other words, to determine whether one avocation is riskier than another, one should compare the death rates attributable to the behavior. At best, one can produce only a
rough estimate of the rate attributable to gun ownership. If a person accidentally discharges his weapon and kills himself, one can argue that the death was attributable to the choice of risky avocation. However, if someone is the victim of a random gun murder, his gun ownership status may be independent of the cause of death. Thus, in computing a death rate, the correct choice for the numerator is unclear. Similarly, there is wide variation in estimates in the number of gun owners or gun owning households. Still, despite the wide variation in the numerator and denominator, even at the low end, the estimated rate of gun-related deaths per million gun owners is higher than the rate of scuba-related deaths per million scuba divers.\(^{60}\)

The latter is often considered in life insurance underwriting; the former is not.

Similarly, one might ask how homeowners insurance claims resulting from risky household features such as swimming pools, dogs, and trampolines compare with firearm-related claims. Computing a loss rate is more complicated in this case. Of the roughly 115,000 fatal and nonfatal GSW per year, only a fraction would result in a homeowners claim. Homeowners claims could also result from the theft of firearms, which is a rather common occurrence.\(^{61}\) Theft of trampolines, swimming pools, and dogs is probably considerably more rare. Finally, we must consider claim severity as well; in many cases, the costs of treating a dog bite or trampoline injury may be less than the cost of treating GSW.

Insurers would be better able to quantify their financial exposure to firearm related risk via systematic study of the frequency and severity of firearm-related claims across lines of insurance business. Whether this is tractable depends on data availability (beyond what is available on a piecemeal basis from the CDC, NIH, local law enforcement and other public sources), claim coding practices, and industry or insurer interest. Presumably, if such frequency and severity data can be tracked for dog bites,\(^{62}\) similar analysis is possible for firearm-related injuries.

If the insurance industry were interested in obtaining the data necessary to evaluate the risk (and the price for transferring such risk), could it do so? Clearly some brokers and insurers currently operating in the gun liability space (see Section II.A above) have evaluated the data available to them and determined that it is sufficient to support their business decision to write and sell this type of personal liability insurance.

Indeed, as the University of Connecticut’s Peter Kochenburger observes, the insurance industry may have an important role to play in gun violence prevention:

There is a long and often favorable story to tell of how insurance has enhanced public safety. Just as insurers helped to encourage safer automobiles, they may likewise be able to enhance gun safety by funding research, utilizing data collected through their underwriting and claim handling processes, supporting public information campaigns, and lobbying legislatures and government agencies. Even more important is insurers’ potential “gatekeeping function” in denying coverage to high-risk individuals, as well as their ability to adjust premiums based on the mitigating effects of owning a less risky type of firearm, utilizing gun safety devices, storage requirements, and enrollment in firearm safety courses.\(^{63}\)

With sufficient actuarial data, public-safety-oriented intentions, and political will, the insurance industry could be in a position to shift the costs of gun violence in a way that compensates gunshot victims, potentially with the effect of reducing gunshot injuries and deaths overall.

2. Is Automobile Insurance Comparable?
Several states have proposed mandatory gun liability insurance in the recent past, although no such bills have been passed into law (yet). One insurance law expert has opined that “market-based solutions are usually preferable to mandating insurance coverage, particularly if many insurers and potential policyholders would be hostile to such coverage requirements.”64 In the case of mandatory gun insurance, in addition to the perceived impingement on individuals’ private commerce, such a requirement may be seen by some as akin to a firearm registration requirement — a hot button issue for many Second Amendment advocates who do not wish for anyone, and especially the government, to know how many guns they own.

But let’s assume for the sake of argument that gun liability insurance could be mandated, the way states mandate auto insurance. What might that look like? Economist Timothy Smith suggests that the automobile insurance market, which pools risks on a large scale, may provide some insights. Using some basic assumptions about the numbers of vehicles on U.S. roads, the cost of fatalities from third-party car accidents, known statistics on auto insurance premiums, and the economic cost to society of premature auto fatalities, Professor Smith estimated that about half of each auto policy premium covers bodily injury liabilities. Accordingly, “these insurance premiums represent about half of each vehicle’s societal burden.”

Using a similar analysis, Smith estimates the potential insurance premium that could be charged for firearms: Assuming 357 million firearms in the U.S., and a third-party mortality risk valuation (i.e., homicides not suicides) of $102 billion, the per-gun mortality risk valuation is $23.81 per gun per month. If the appropriate liability premium for this risk is about half, then the potential liability insurance premium for each gun should be $11.90 per month.65

Granted, this may be an oversimplification, based on several debatable assumptions. But it is one way to look at the issue.

**CONCLUSION**

This discussion is not intended to resolve or even address this country’s complicated debate regarding gun violence prevention, regulation, or the Second Amendment. But it does offer some food for thought regarding the transfer of risk and the potential mitigation of the social costs of gun-related injuries and deaths through insurance.

**END NOTES**


7 Id.


9 Id.

10 Id.

11 Id.

12 Id.

13 Gani, Faiz & Sakran, Joseph V. & Canner, Joseph K., Emergency Department Visits For Firearm-Related Injuries In The United States, 2006–14 Health Affairs 2017 36:10, 1729-1738

14 Id.


18 Id.


21 See, e.g., Shoels v. Klebold, 375 F.3d 1054, 1058 (10th Cir. 2004) ($1,600,000 settlement from Columbine shooters’ parents’ homeowners insurance policy); Dave Altimari, Sandy Hook Families Settle Lawsuits Against Lanza Estate For $1.5M Hartford Courant, Aug. 6, 2015 ($1,500,000 settlement from shooter’s mother’s estate’s homeowners insurance policy); Galasso v. Marysville School District, 17 Id. Verd. Stlmnt. Rpts. 208, 2017 WL 4621852 (Wash. Super. Ct. Oct. 3, 2017) ($18,000,000 settlement for school shooting from school district’s insurance policy).
22 See Shoels, 375 F.3d at 1057 (undisclosed settlement between Columbine shooters’ parents and subset of claimants likely greater than insurance policy limit).


31 See id. Smith evaluates the “social burden of a single military-style rifle … to be as little as $15.77 a year (or $455 million for all rifles based on 50 deaths and a $9.1 million VSL),” whereas he evaluates handguns at “$401 annually per handgun in circulation,” thus placing “a disproportionate burden on society.”

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33 See The Associated Press, NRA's Carry Guard comes under fire as “murder insurance” (October 19, 2017 12:49 PM), https://www.cbsnews.com/news/nras-carry-guard-comes-under-fire-as-murder-insurance/. Whole online campaigns have been devoted to the eradication of the NRA’s Carry Guard insurance program. See, e.g., http://stopmurderinsurance.org. The movement even has its own social media hashtag: #MurderInsurance.


Chubb, NRA Carry Guard™ Declarations and Policy Specimen (LRS CG DEC 2017).

Black’s Law Dictionary defines the “castle doctrine” as: “A legal doctrine that allows a person to use deadly force in protecting his/her home and inhabitants from an attack by someone intending to inflict serious bodily harm.” Castle Doctrine, Black’s Law Dictionary (?? ed. Year).

34 See Fla. Stat. § 776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person who is in a dwelling or residence in which the person has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use:

(a) Nondeadly force against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force; or

(b) Deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.

35 E.g., DeVaughn v. State, 232 Md. 447, 453, 194 A.2d 109, 112 (1963), cert. denied, 376 U.S. 527 (1964), quoting Bruce v. State, 218 Md. 87, 97, 145 A.2d 428, 433 (1958) (outside of one's home, a person, before using deadly force in self-defense, has the duty “‘to retreat or avoid danger if such means were within his power and consistent with his safety.’”). See also Burch v. State, 346 Md. 253, 283, 696 A.2d 443, 458 (1997).

36 Here are the major benefits, depending on the membership level you choose. Second Call Defense, Member Services (2019) (up to $150,000 in criminal defense coverage; “There is NO reimbursement and NOTHING to repay regardless of the outcome of your case.”) (emphasis in original), http://www.secondcalldefense.org/member-services.


Id.


47 [CITE - POLICY FORMS]


62 Insurance Information Institute, supra.


64 Id. at 1284.