

Liability Insurance and Gun Violence

Institute and Faculty of Actuaries

GIRO Conference: October 24, 2018

Peter Kochenburger

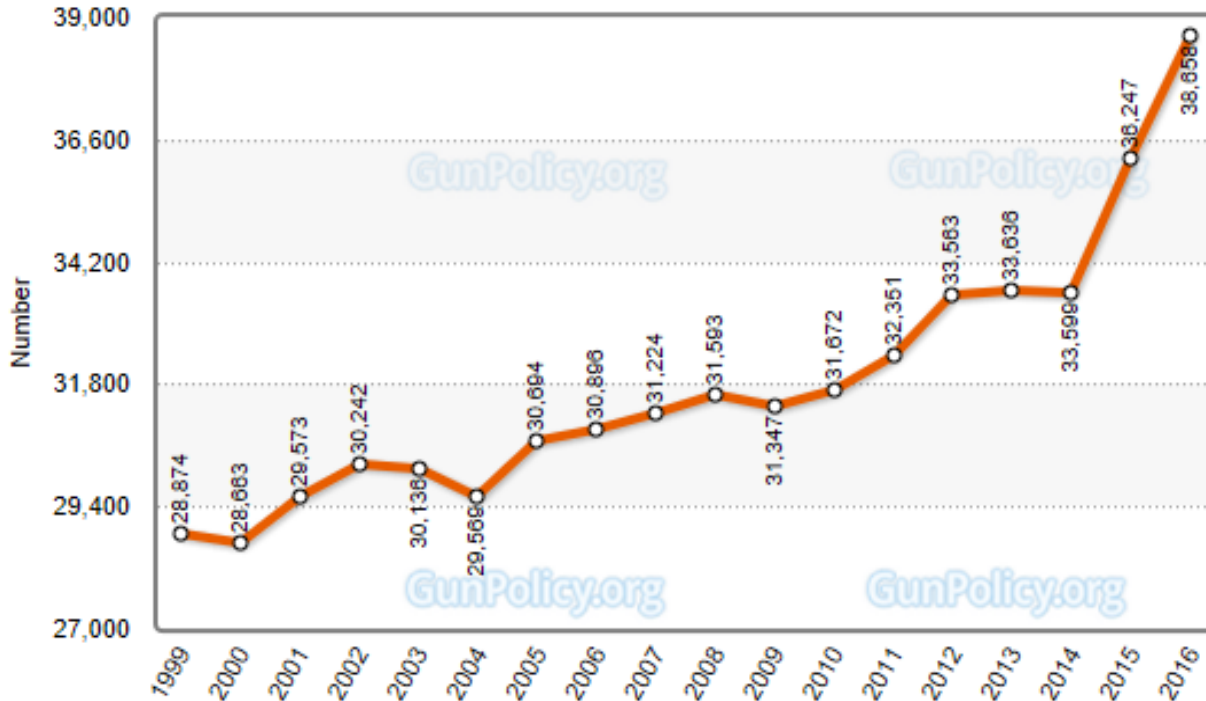
Deputy Director, Insurance Law Center

University of Connecticut Law School

peter.kochenburger@uconn.edu

Gun Deaths in the U.S.: 1999-2016

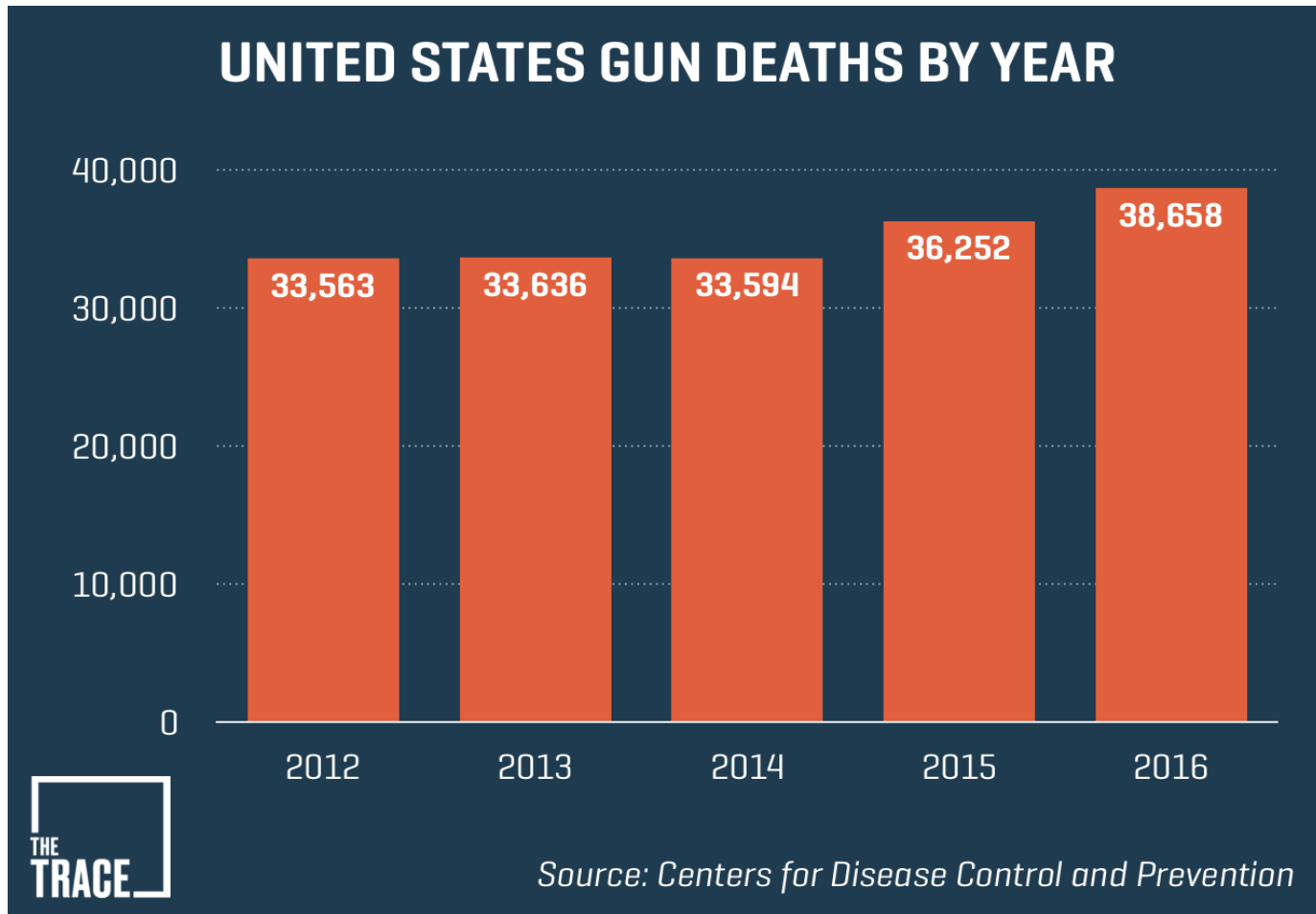
(Source: GunPolicy.org, accessed 23/10/18)



Totals and rates are not always drawn from a single publication. To view the source data or to match figures exactly, follow the hover links on each data point

Gun Deaths in the U.S.: 2012-2016

(Source: TheTrace.org, citing CDC Statistics)



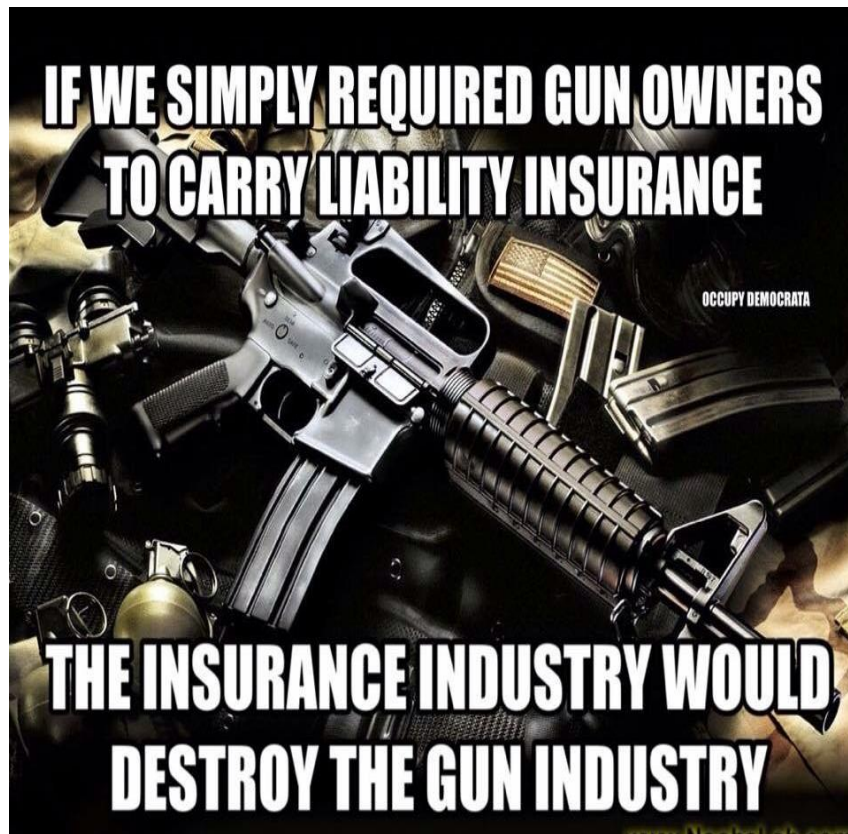


Liability Insurance & Firearm Legislation

In 2013, after the December 2012 massacre at Sandy Hook Elementary School in Connecticut, at least 7 states introduced bills mandating liability insurance for gun owners, some requiring coverage for intentional shootings. None passed.

Using Insurance to “Regulate” Firearms

Naïve Hope?



Irrational Fear?



Liability Insurance

3 Primary goals:

- Protect Policyholder financial assets and security
- Victim Compensation
- Risk Mitigation and Loss Control

Balancing these goals is ultimately a matter of public policy, not private contract law

How could liability insurance reduce gun violence?

Insurers as Private Regulators

- Leverage Insurers' ability to collect and analyze data into risk classifications
- Utilize risk-based pricing to encourage safer gun purchases, storage and use
- Support research on firearm safety

*Would help reduce accidents and suicides
involving firearms, But:*

2016 Firearm Deaths: 38,658

Center for Disease Control*

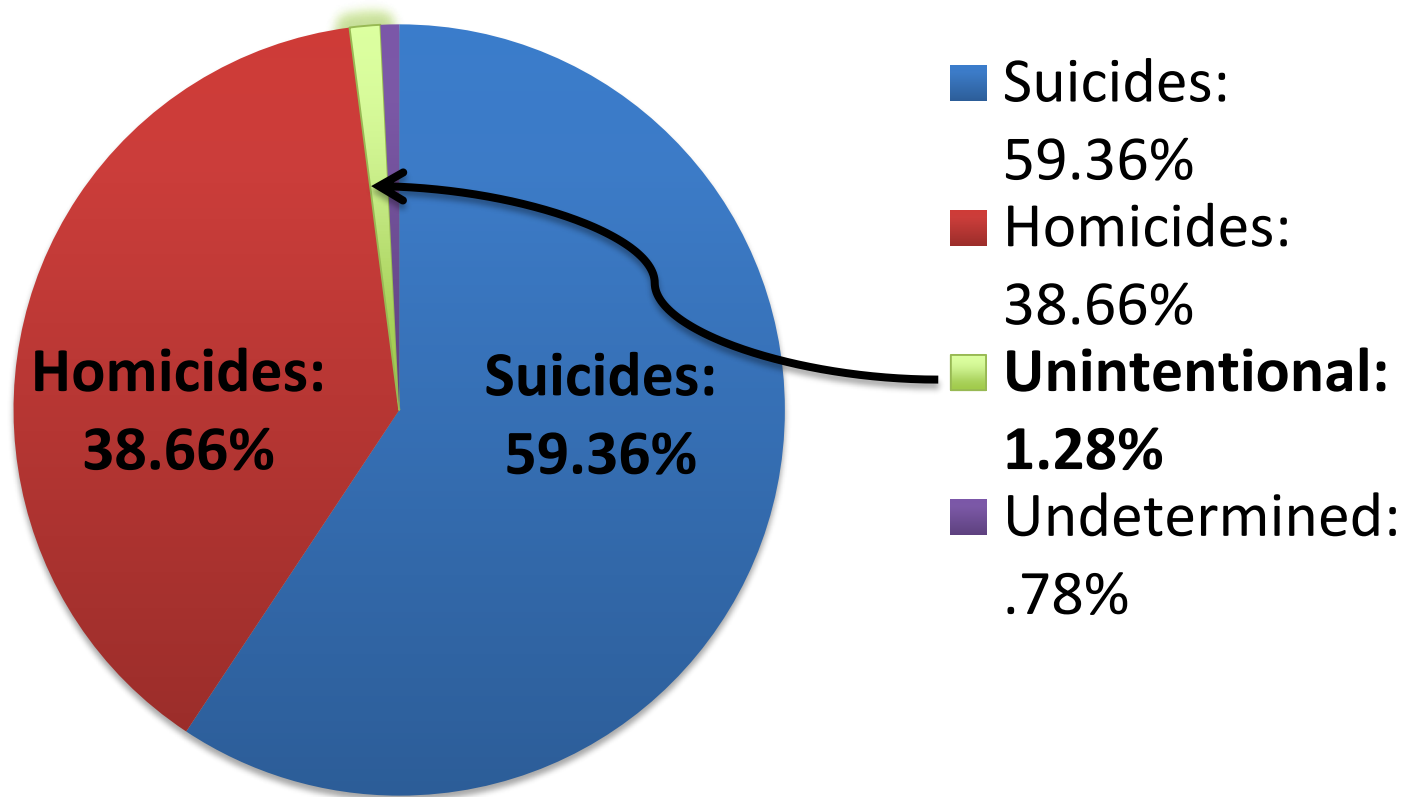
What do you think?

Cause	Percent of Total ?
Unintentional	
Homicide	
Suicide	

* CDC data incomplete, due to federal restrictions on gun control research.

2016 Firearm Deaths: 38,658

Center For Disease Control



Liability Insurance & Gun Violence Underwriting Linkage?

- Very large percentage of gun deaths and injuries attributable to suicides and homicides
 - *Liability insurance would rarely be triggered*
- Insurers likely can promote and privately “regulate” gun safety through research, risk-based pricing and education, and thereby reduce firearm injuries, but they have minimal economic incentive to do so
- Weak correlation between an insurer’s risk mitigation function and its coverage obligations

Insurance & Suicide Reduction

Similarly, insurance and insurers could reduce the number of suicides.

Suicide Success Rates:

- By firearms: 70-90%
- All Other Means: 10-15%
- Prevent or delay access to firearms from unauthorized users (children & teenagers) – “best practices” in storing and safeguarding firearms
- Many attempted suicides are “impulse” decisions; delaying access to firearms even briefly can reduce suicide rates

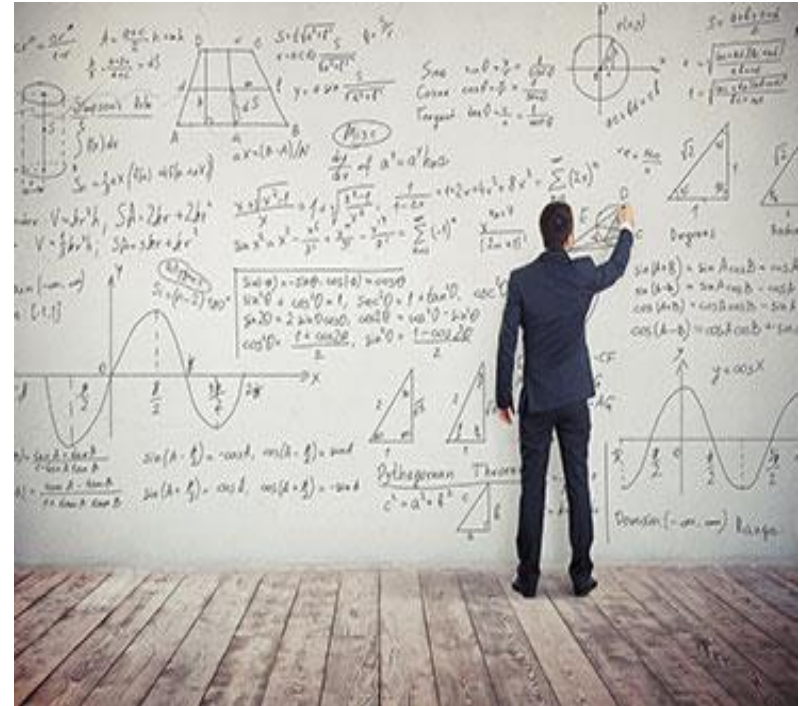
But, is there an Underwriting Link?

Require Liability Insurance? Unanswered Questions

- 2nd Amendment: would mandatory liability insurance for gun owners be constitutional?
- Can insurers access sufficient information to accurately assess and price risk? Will the States allow them to do so?
- What risk classifications would be acceptable?
- And, is coverage for intentional acts necessary and if so, how would such acts be insured?

Mandate the Offer and Require the Purchase?

- Will actuaries be able to accurately predict risk and appropriate rates?
- Will marketing pressures deter insurers from charging these rates?
- Will regulators allow them?
- Need for a residual market?
- **And**, those most likely to shoot someone unlikely to purchase “mandatory” insurance (?)



Mandate the Offer and Require the Purchase?

- Could place insurers into a highly contentious debate, with low profit potential (?) and lots of headaches.
- Such as,



Gun Control (one of) America's Third Rail



“Self Defense Insurance”

“I will never carry a gun without carrying this.” Summer 2017 NRA Card and Advertisement

“Carry Guard”

NRA insurance product introduced in 2017 which provides up to \$1 Million in civil liability coverage *and* up to \$150,000 in criminal defense fees.

[Was] Underwritten by Chubb

<https://www.nracarryguard.com/>

[Early article on NRA & Self Defense Insurance The Trace April 2017](#)



Carry Guard: Civil Liability Coverage

- Typical liability coverage language for BI/PD
- Includes defense costs outside of policy limits and duty/right to defend; not clear on selection of counsel
- Arising out of the use of a “firearm” while insured engaged in Hunting, Shooting Events (e.g. gun clubs), Accidental Discharge, and **“an act of self defense”**
- “Individual Insured Member” covered for acts that take place anywhere in the policy territory; “Resident family member” only at residence premises
- Definition of “firearm” excludes fully automatic weapons

Carry Guard

Definition of Self Defense

An “act of self-defense” is defined as:

“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 [jurisdiction]. ‘Act of self-defense’ includes the rendering of emergency assistance solely at the request of a uniformed law enforcement officer.”

Carry Guard: Criminal “Other than Civil Suits”

- Covers reasonable expenses associated with both a (1) criminal investigation, (2) criminal proceeding
- Legal defense fees, bail, other investigative costs
- Psychological counseling (for Insured & family)
- Coverage terminates if:
 - The Insured pleads guilty [to what?]
 - The Insured is convicted of “any criminal charge emanating from the [Insured’s] use of a firearm” (emphasis added)
 - What about pleading to a lesser offensive in a plea bargain?

Carry Guard: Criminal “Other than Civil Suits”

But:

“The Company shall be liable for an amount not to exceed 20% of such limit for all covered costs and expenses under Insuring Agreement 1C and the remainder [80%] of such limit shall be available on a reimbursement basis” only upon:”

- Formal dismissal of the criminal charge, or
- Formal acquittal due to an “act of self-defense” of the criminal charge

No apparent provision in Policy for insurer recouping its 20% from policyholder upon a guilty plea/conviction

Controversy & Pushback

“Murder Insurance”

**GUNS
DOWN**


appy rac

first

Stop Murder Insurance

Tell Chubb and Lockton to stop selling NRA Carry Guard

Add Your Name ↓

SHARE  

“Murder Insurance’ or Protection in Self-Defense Cases?”

“The National Rifle Association is offering insurance for people who shoot someone, stirring criticism from gun-control advocates who say it could foster more violence and give gun owners a false sense of security to shoot first and ask questions later. Some are calling it "murder insurance," . . . And, they say, it's being marketed in a way that feeds on the nation's racial divisions.”

October 19, 2017 Associated Press Reporter Lisa Marie Pane, picked up by over 150 media outlets

“Why is Lloyd’s of London Insuring American Guns”



“The iconic British insurance market is good at pooling risk. But critics fear the policies it underwrites could fuel gun violence.”

Foreign Policy, December 13, 2017

“Lloyd’s sells ‘gun murder insurance’ to NRA Members”



The Times, December 15, 2017

<https://www.thetimes.co.uk/article/lloyds-sells-gun-murder-insurance-to-nra-members-k7lb9dcjm>

“Lloyd’s withdraws from National Rifle Association (NRA) programmes”

“The Lloyd’s Corporation has given very careful consideration as to whether syndicates at Lloyd’s should continue to insure programmes offered, marketed, endorsed or otherwise made available through the National Rifle Association of America (NRA). This is now subject to an inquiry by the New York Department of Financial Services (NYDFS). Therefore Lloyd’s Corporation has decided to direct underwriters in the market to terminate any existing programmes of this type and not to enter into any new ones.”

Lloyd’s Press Release, May 9, 2018

Lloyd's Still Insuring Self-Defense Programs



FIREARM LIABILITY INSURANCE APPLICATION

Return Applications To:
Rockwood Programs, Inc
3001 Philadelphia Pike
Claymont, DE 19703
(800) 558 - 8808 / Fax: (302) 764 - 5477
www.rockwoodinsurance.com

NOTICE: THIS IS A CLAIMS-MADE FORM: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED IN WRITING TO THE COMPANY WHILE THE POLICY IS IN FULL FORCE. PLEASE REVIEW THE POLICY CAREFULLY. COVERAGE IS WRITTEN ON A SURPLUS LINES BASIS THROUGH CERTAIN UNDERWRITERS AT LLOYDS, LONDON

Carry Guard: 2018 Regulatory Actions (and reactions)

- **New York Dept. Financial Services**

- October 2017: Wall Street Journal reports NY DFS Investigation
- May 2: Fines Lockton, NRA's Carry Guard Broker, \$7 Million
- May 7: Fines Chubb Subsidiary \$1.3 Million

“Today’s action is another step in addressing the unlicensed and improper activity connected with the NRA’s unlawful “Carry Guard” program,” said Superintendent Vullo. “DFS will continue its comprehensive investigation into this matter to ensure that New York Insurance Law is enforced and that consumers are no longer conned into buying so-called ‘self-defense’ insurance coverage.”

- **May 11: NRA sues New York, alleging it improperly used its regulatory authority to violate its 1st Amend. Rights**

Carry Guard: 2018 Regulatory Actions

- **California:** September 11 – issues NRA Cease & Desist Order, marketing insurance without a license
- **Washington:**
 - April 3 – issues NRA Cease & Desist Order, soliciting insurance without a license
 - October 4 – Press release warning consumers Carry Guard is a “rip off,” noting nationwide loss ratio under 1%
- **New Jersey:** August 21 – announces investigation of Chubb and Lockton
- **Other States?** Solicitation, Surplus Lines laws similar

NRA Carry Guard Membership Card

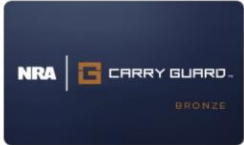



Spring 2017

October 2018



Carry Guard Details: Minimal Underwriting?

1. Membership in NRA
2. Select Limits/premium

			BEST PROTECTION
BRONZE	SILVER	GOLD	GOLD^{PLUS}
\$250,000	\$500,000	\$1,000,000	\$1,500,000
OF INSURANCE PROTECTION	OF INSURANCE PROTECTION	OF INSURANCE PROTECTION	OF INSURANCE PROTECTION
\$250,000 in civil protection \$50,000 in criminal defense	\$500,000 in civil protection \$100,000 in criminal defense	\$1,000,000 in civil protection \$150,000 in criminal defense	\$1,500,000 in civil protection \$250,000 in criminal defense
			
\$13.95/MONTH	\$21.95/MONTH	\$31.95/MONTH	\$49.95/MONTH
or \$154.95 billed annually	or \$254.95 billed annually	or \$359.95 billed annually	or \$549.95 billed annually

As Compared To:

Application for Property Insurance for Guns

ArmsCare *Plus* Firearms Insurance

(Replacement Cost Option)

Application for Coverage



For NRA Members Only

Name _____ NRA Member Number _____
 Address _____ NRA Membership Exp. Date _____
 City _____ Telephone # _____ State _____
 Zip _____ Email _____

Unscheduled Firearms

Enter the estimated value of all your firearms valued at less than \$2,500 per item \$ _____

Scheduled Firearms Description – For your firearms valued at \$2,500 or more
 Any single insured item valued at \$2,500 or more must be listed below to be fully covered.
 (Attach separate sheet, if needed)

Make	Model	Caliber/Gauge	Modifications & Accessories	Value (round each item up to nearest \$100)
1.				
2.				
3.				
4.				
5.				

Note: Please provide a clear description and value for each firearm valued at \$2,500 or more. In addition, for any single firearm that is \$20,000 or greater in value or any single firearm valued at 120% or more of the blue book value, we must receive an original signed appraisal and a clear photograph prior to binding coverage for that item. If we are unable to verify value, the item will be deleted from the schedule. Coverage for unscheduled items is Replacement Cost (cost to replace the damaged property without deduction for depreciation); coverage for scheduled items is the agreed amount shown in the schedule.

Total Scheduled Coverage: _____

Total Value to be Insured

Add totals from Unscheduled and Scheduled sections \$ _____

Calculate Your Premium Cost (Minimum payment \$50)

- Calculate Premium $\$(\text{Total Value of Insured from above}) \times .0125 = \$$ _____
- If Premium exceeds \$50, enter amount in the space to the right;
 If Premium is \$49.99 or less, enter \$50 at the right. \$ _____

Program Administrator Service Charge \$ _____ \$20.00

Carry Guard: Liability Objectives Achieved?

- Protection of Policyholder (but)
 - Not illusory coverage, but rarely triggered? (“shark-bite” insurance). Washington OIC: Loss Ratio under 1%
- Source of compensation for victims (though not a goal mentioned by the NRA)
- Private regulatory function?
 - Extensive training available, but: (1) optional for insured, (2) allegations training techniques inappropriate (too aggressive)
 - Minimal underwriting standards, no evidence of risk-based pricing

Carry Guard: Major Issue?

- Is self-defense insurance a significant moral hazard in that it reduces or eliminates many of the possible financial consequences associated with shooting someone in alleged self defense?
- At what point is this analysis relevant?
 - What the policyholder was thinking during the time of the shooting in (alleged) self-defense?
 - When the insurance was purchased?

Liability Insurance & Firearm Legislation

- 2018? Not aware of any Legislation
- Federal **Affordable Care Act** prohibits collection of firearm ownership info. 42 USC § 300gg-17(c)
- **Florida** has gone the other way:
 - Florida Statute 626.9541
 - Florida Statute 790.338(7)

Going Forward: Insurance, Actuaries and Gun Violence

What are the lessons for the Property Casualty Industry from the Carry Guard controversy?

To stay away from insuring the effects of gun violence? Broaden Int. Act exclusions, gun exclusions, etc.

or,

To develop insurance products in a much more careful, considered manner and process, that can provide real value to policyholders, victims of gun violence, and our nation. Along with the potential for reasonable profits for the insurers.

Insurance and Gun Violence

Regulators, insurance producers, claims experts, and (of course) lawyers have important roles, but:

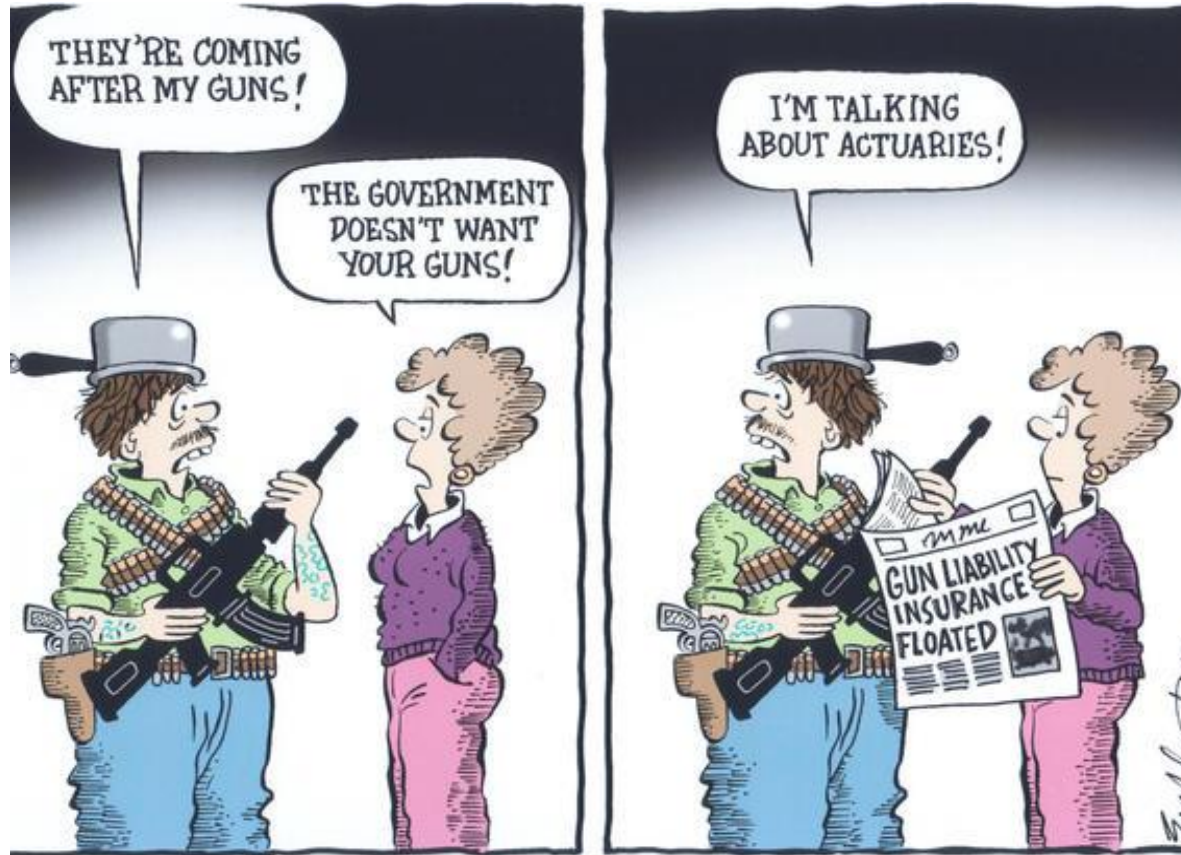
Actuaries are in a unique position to evaluate and determine how and why (or if) property casualty insurers should care about gun ownership, use and safety

“A Call to Action for Actuaries”*

“Actuarial input on the public health crisis of gun violence is consistent with the history and mission of our profession . . . Actuaries have unique skills in measuring and managing risk. We are experts in mortality analysis, skilled in data analytics and model building, and we can analyze the problem objectively. As a profession, we must employ our skills and talents to help address the economic, mortality and morbidity impact of gun violence.”

*Kristen Moore and Craig Reynolds: *Firearm Risk: An Insurance Perspective*, *The Actuary*, June/July 2018

<https://theactuarymagazine.org/firearm-risk/>



Who Really Holds the Power?*

Thank You

*Connecticut has the highest concentration of actuaries in the United States