

risk management MATTERS

A Risk Management Newsletter for NTCA Members

2012 Annual Risk Management Conference New York, NY • June 24-26

IN THIS ISSUE

Presidential Matters	2
Underwriting Matters	3
Safety Matters	4
Claims Matters	6
Telcom Matters	8

Start spreading the news! The speakers were excellent and inspirational, the session times were just right, the location was fabulous, the accommodations were great, and the new concepts that were presented opened everyone's eyes to exposures and solutions for those exposures in rural telecommunications in today's marketplace.

We would like to give a special thanks to Shirley Bloomfield, CEO of NTCA, Jeremy Ong, Aaron Latto, and Paul Samson of Great American, Jack Greguoli of GAIC's Executive Liability Division, and Beth Farmer of NTCA, in addition to our very own Peter Elliott for all their insightful sessions. In addition to two days of rural telecom-specific insurance and risk management training, we also had the chance to do some bonding/networking and have a little fun.

We thank all of you, our Telcom family, for joining us for the RMC and invite you back again next year. It's Vegas Baby...Mark your calendars for the Venetian in Las Vegas, June 23-25, 2013!

Check out the photo evidence:



Presidential Matters

By Peter J. Elliott, CPCU

I would not call myself a “techie” but I am definitely someone who appreciates the latest and greatest technology as a user. Professionally, my productivity is so much greater than it ever has been because of Smartphones and tablet computers and I am able to work the proverbial 24/7 from almost anywhere. Personally, there is a blessing and a curse to the professional availability. The ability to work when out of the office has lessened some of the stress of travel and the feeling of dread to return to the office and all the work that has piled up when away. The downside of the ability to be on all the time includes the potential burnout factor and never being able to get away from it all. I suspect that many of you know what I am talking about. In keeping up with what we do here at the Telcom Insurance Group, I have to ask are you aware of the perils, specifically the insurance related ones, that exist with the advancement of technology that is intended to increase the efficiency of your business plus create the ultimate customer experience? That is what I will explore in this issue of our RMM Newsletter.

Very few would argue that computers for various reasons could produce faster and more consistent results than humans when the task is easily programmed or it involves mining electronic data. For these simple tasks, electronic and phone applications that have been developed to take advantage of this fact with the intent to reduce expenses of the business and to improve customer service. As an example in your industry, website access can allow a customer to manage their account and services they have with your business. Instead of relaying information to someone about a new service they would like order, service they want to drop, or inquiring what their current bill amount is the customer can just as easily do these things themselves. In the insurance industry there has been a movement to handling the routine service requests in the same manner and an

example would be issuance of certificates as proof of insurance. Online programs, like the one used by us called e-certs (<http://www.ecertsonline.com/>), allow you to issue your own certificates 24/7 and eliminate a call and relaying the information. The goal is better service at your fingertips whenever you want, but, of course, we are there whenever you need help or want someone to assist you. One peril is the customer misunderstanding that service being offered electronically and not with a personal touch is not a reduction in customer care. This risk is not related to an insurable issue and is more closely tied to your businesses reputation and way of doing business. There is an insurable risk that exists in the program and software that allows customer interaction in the cyber world and they revolve around the slippery and dangerous slope known as intellectual property infringement.

IP refers to rights related to creations of the mind such as musical, literary, and artistic works; inventions; and symbols, names, images, and designs used in commerce, including copyrights, trademarks, patents, and related rights. Under intellectual property law, the holder of one of these abstract properties has certain exclusive rights related to the creative work, commercial symbol, or invention by which it is covered. There is artistic intellectual property and commercial and the second is what I will explore. Industrial properties a.k.a. commercial are typically created and used for industrial or commercial purposes. A patent may be granted for a new, useful, and non-obvious invention and gives the patent holder a right to prevent others from practicing the invention without a license from the inventor for a certain period of time. In 2006, a claim against RIMS and Blackberry threatened to shut down these phones when a fight over smart qwerty key recognition development and the patent of the same was in question.



Are you aware
of the perils
that exist with
technology?

continued on page 5

Underwriting Matters

By Beckie W. Menard, AU, CISR

Executive Liability: Wage And Hour Laws – Current Trends And How Your Insurance Policy Will Or May Not Respond

As a manager of the company there are many day to day procedures that must be established to effectively run the business and provide your product or service to the general public. One of the greatest challenges in every business is the hiring and management of employees. There are many federal and state rules that govern this area of business as well as dedicated federal agencies that oversee and regulate the process. The United States Department of Labor (DOL) is such an agency. Their website is a great resource for a multitude of topics regarding labor laws; www.dol.gov. The Wage and Hour Division (WHD) can be found within this site. Per their published Fact Sheet #14, more than 130 million American workers are protected or covered by the Fair Labor Standards Act (FLSA) which is enforced by the Wage and Hour Division of the US Department of Labor. As an employer you are charged with understanding and complying with Federal laws that set such rules as the minimum wage, overtime pay, hours worked, recordkeeping related to work and pay and many other employment standards. Each state has its own set of rules and regulations related to employment also. So, what does all this have to do with my insurance?

In recent years claims alleging violations of wage and hour laws have been steadily growing and continue to do so. This includes single claimants and collective actions or class action type suits. One research source stated that a review of federal court data showed 90% of class or collective action suits in recent years were related to wage and hour claims, with a 12% increase in 2010; most of these being private claims not brought by a federal agency. This is also fueled by lawyers who specialize and solicit

for FLSA violation type cases. These cases can be brought for a variety of allegations such as unpaid overtime, failure to pay minimum wage, employee misclassification (exempt vs. nonexempt) just to name a few. All employees are paid wages, so they are all or could be potential claimants. Some data suggests that in excess of 70% of employers are not in full compliance with all rules of the FLSA and trends in legislation show there is new emphasis, since mid-2009, by the Dept. of Labor to shift their focus to compliance and enforcement. These two items suggest that all employers should actively review and monitor their processes and procedures to ensure wage and hour compliance.

The insurance industry has been responding to the above mentioned trends regarding wage and hour claims. Coverage for these types of employment related issues would generally fall under an Executive Liability policy which could be a combined D&O/EPL/Fiduciary policy or a monoline Employment Practices Liability (EPLI) policy if it has been properly endorsed to do so. Without a specific endorsement adding wage and hour coverage, many policies will contain exclusions for violations of these federal or state laws. Telcom Insurance has worked with its major carriers and some policies now include coverage for the defense costs of these actual or alleged violations at a set sublimit amount; generally \$100,000 to \$150,000 per policy term.

In conclusion, if you would like to review your current policy for this coverage or discuss new EPLI coverage please contact any of the Telcom team to discuss this matter. We are here to assist you with all of your insurance and risk management needs.



As an employer
you are
charged with
understanding
and complying
with Federal laws

Safety Matters

By Tina M. Wynter

Have an Escape Plan

Did you know, in the United States in 2010, the National Fire Protection Association (NFPA) reported 1,331,500 fires, which caused 3,120 civilian deaths, 17,720 civilian injuries, and \$11.6 billion in property damage? In addition to that, NFPA breaks down their statistics using their US Fire Loss Clock:

- A fire department responded to a fire every 24 seconds
- One structure fire was reported every 65 seconds
- One home structure fire was reported every 85 seconds
- One civilian fire injury was reported every 30 minutes
- One civilian fire death occurred every 2 hours and 49 minutes
- One outside fire was reported every 50 seconds
- One vehicle fire was reported every 146 seconds

Don't become a statistic, have a Fire Escape Plan. In the event of a fire, remember that every second counts, so you, your business, and your family should always be prepared. Escape plans help you get out of your building or your home quickly. In less than 30 seconds, a small flame can get completely out of control and turn into a major fire. It only takes minutes for a structure to fill with thick black smoke and become engulfed in flames.

Prepare and practice your Fire Escape Plan twice a year with **everyone** in your office and household, including people with disabilities and children.

- Draw a map of each level of your business or home and show all the doors and windows. Find two ways to get out of each room. Make sure all doors and windows that lead outside open easily.
- Only purchase collapsible escape ladders

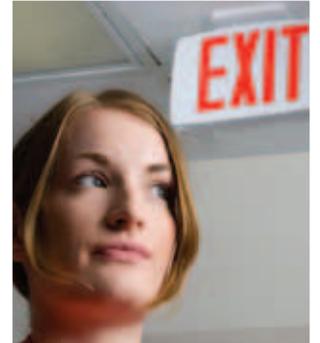
evaluated by a recognized testing laboratory. Use the ladder only in a real emergency.

- Have a plan for everyone who has a disability.
- Teach children how to escape on their own in case you cannot help them.
- Practice your fire escape during different weather conditions and at different times of the day.

When a fire occurs, get out fast, you may only have seconds to escape safely. Take the safest exit route, but if you must escape through smoke, remember to crawl low, under the smoke and keep your mouth covered. The smoke contains toxic gases, which can disorient you or, at worst, overcome you.

When you come to a closed door, feel the doorknob and door to make sure that fire is not on the other side. If either is hot, leave the door closed and use your secondary escape route. If the door feels cool, open it slowly. Be ready to shut it quickly if heavy smoke or fire is present. If you can't get out, close the door and cover vents and cracks around doors to keep the smoke out. Call 911 or your local emergency number. Say where you are and signal for help at the window with a light-colored cloth or flashlight.

Designate a meeting location a safe distance in front of your business or home. For example, meet under a specific tree or at the end of the parking lot to make sure everyone has gotten out safely and no one will be hurt looking for someone who is already safe. If a fire occurs at your home, make sure everyone knows how to call 911 or your local emergency number. Also, make sure that your building number, sign, or house number can be seen day or night from the street.



**Don't become
a statistic,
have a Fire
Escape Plan**

continued on page 5

Safety Matters

continued from p.4

Remember to escape first and then notify the fire department. Never go back into a burning building for any reason. If someone is missing, or pets are trapped inside, tell the firefighters right away. They are equipped to perform rescues safely. It is also a good idea to teach your children not to hide or be afraid of firefighters, they can look scary to them with all of their equipment on.

Telcom is here to help. Prevention...if you would like additional information, in the form of a safety video,

regarding fire safety to present during **National Fire Prevention Week, October 7-13, 2012**, please contact Tina Wynter at 800.222.4664 x3206 or TMW@TelcomInsGrp.com. Post fire...if you are a policyholder and you've been victim to a fire and would like to report a claim, please contact Cheri Condee at 800.222.4664 x1082 or CLC@TelcomInsGrp.com.

Presidential Matters

continued from p.2

Another commercial exposure is a trademark, which is a distinctive sign that is used to prevent confusion among products in the marketplace. Beyond the widely publicized Blackberry case, in the telecommunications industry there have been allegations of infringement on video on demand services, software applications, Smartphone applications, and the combination of software programs used in combination to make a network operational. The claims and allegations to date have been modest but as the industry deploys more applications and services could there be a spike? The largest service providers who are personalizing applications in their own name have recognized the risk and a company like Verizon has created their own captive insurance company to self-insure the risk that follows having their own cell phone app marketplace that is privately labeled. Why did they create a captive and not simply buy an insurance policy as a hedge? There are commercial intellectual property infringement policies that are available for sale that cover defense and as an option indemnification but they are known to be costly. The reason is that insurance as a whole operates on a pooling system where the good to some degree subsidize the bad risks. The bad is very ugly with regard to a true case of infringement and simply ugly when defense is all that required and the allegation is found to be untrue. The cost of these claims is huge. According to a study and article on patent litigation

costs which was published by Cohen Pontani Lieberman & Pavane LLP, New York, "US - Litigation: Cost and duration of patent litigation," *Managing Intellectual Property*, in February 2009 "The average patent litigation lasts about two years and costs about \$3 million. An appeal can add another \$2 million and one year to that estimate." These claims are not covered by the traditional policies that one might think would provide protection like the general liability coverage form. This form covers property damage and intellectual capacity is called property but the policy defines that type of loss as happening to tangible assets. The invention of the mind is not tangible and therefore not defended or covered. We are the first and only insurer for the telecommunications industry to have developed a beginning point for intellectual property claims. As the risks develop and you build out your business we will look to enhance what we are currently offering after careful review and understanding of the risk. The point is that we see what is happening already and have a vision of the future that we believe needs attention now. I believe it is this type of approach that has allowed us to earn the trust of so many National Telecommunications Cooperative Association members... "because it is a matter of trust". For more information on our one of kind products and services check out our redesigned website at www.telcominsgrp.com.

Claims Matters

By Cheri L. Condee, AU

Workers Compensation: “Coming and Going Rules”

What do you think the answer to this question is: Are you covered under Worker’s Compensation if you get into a car accident on the way to work or leave work to run a personal errand? The short answer is usually, no. As a general rule, accidents sustained while an employee is going to and from work are not considered to have occurred within his or her employment. Of course, there are always exceptions to this rule, but generally, for an employee (like most of us) who has a fixed place of employment, the “no” answer applies.

The Worker’s Compensation Act defines a worker’s compensation injury as one that occurs “by accident arising out of and in the course of employment.” When you are in an accident on the way to work, that satisfies the “by accident” portion of the definition; the problem is satisfying the “arising out of and in the course of employment” portion of the definition. Traveling to work in the hazards of traffic is “common to the general public;” and therefore, injuries sustained going to and from work are not generally compensable.

When an injury occurs, WC coverage is determined by a few main factors: The “area” of employment (your employer’s premises), generally including work facilities, parking lot and sidewalks owned and/or controlled by the employer; 2) is the injury work related, meaning: that “the injury arises out of and in the course of the worker’s employment;” and 3) the “coming and going” rule, generally meaning the commute to and from a fixed place of employment.

The following claims were chosen for our claims focus and the coming and going rule and how it has been interpreted as it is applied in actual claim situations and what the results were.

Going out of the office on a lunch break: (South Carolina)

- The employee left the office on a personal lunch break, while walking to their vehicle they slipped and fell on wet asphalt causing a fracture. Medical and indemnity benefits total: \$243,438.

Leaving the premises after work: (Vermont)

- This employee worked as a customer service representative and was leaving work to go home when she crossed the parking lot to her vehicle and slipped on ice in the employer’s parking lot. As the employee started to fall she grabbed the door handle of the vehicle and twisted her back: The claim resulted in total disability. Medical and indemnity benefits total: \$248,000.

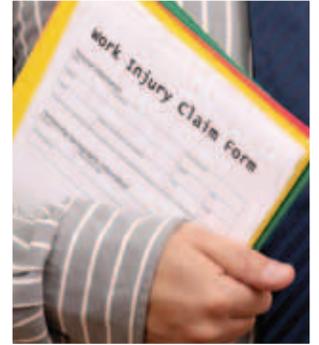
Personal errand, during work hours: (North Carolina)

- EE slipped on ice in a parking lot that was not owned by the insured, a the coming and going rules applied and the claim was denied. Total paid: \$0.

Personal errand, during work hours: (Oklahoma)

- Leaving the office on a personal errand (fill the car up with gas), the employee slipped on ice, and fell. Medical and indemnity benefits paid: \$55,332.

The rules that govern worker’s compensation laws vary greatly from state with their interpretations. One thing that has no variance for our Insureds is the help and consideration that they receive when they seek assistance from any of the Telcom Team, including the Claims Department. We are here to serve your needs and offer help on claims and risk management matters. Give us a call and allow us to work with you. You can reach Cheri by calling: 800-222-4664x1082 or email: clc@TelcomInsGrp.com.



“by accident
arising out of and
in the course of
employment”

It's that time again...
Telcom's 9th Annual Fire Safety Art Contest
This year's theme is

Have 2 Ways Out!

Contest Entry Rules:

- Must be 14 years old or younger and must represent a customer or an employee of a telecommunications company represented by NTCA and/or be insured by Telcom Insurance Group.
- All entries must be on a flat medium no larger than 8.5" x 11" and must represent some element of general fire safety where people live or work or play.
- The back of the picture must include: contestant's name, parent/guardian's name, age, telecommunication's company represented.
- All entries must be accompanied by an entry form signed by the contestant's parent or guardian.
- All entries become the property of Telcom Insurance Group and may be used in any communications/media known or hereafter developed for non-commercial and commercial purposes. Pictures will not be returned unless specifically requested.
- After the schools have had time to promote fire safety, we encourage entries to be received by **Friday, October 26, 2012**, at the Telcom office.

Telcom staff members will be the judges of the contest and all decisions are final.

In each age category, prizes are:

\$100 first place

\$75 second place

\$50 third place

Age groups are:

Under 8

8-10

11-14

**Start thinking about your artwork now!
More information coming soon. Contact
Tina Wynter TMW@telcominsgrp.com
for more information.**

Telcom Matters

We would like to welcome the following new members to our Telcom P&C and/or D&O family: **Eatel** (LA), **LTC Holding Company, Inc. aka Loretto Telephone Company** (TN), **Smithville Holding Company, LLC** (IN), **Bush-Tell** (AK), **Syringa Wireless, LLC** (ID). We also added a new member to the Stay Connected family: **Sunman Telecommunications Corp dba Enhanced Telecommunications Corp** (IN).

Upcoming Holidays: Our offices will be closed on **Monday, September 3rd** for the Labor Day holiday. Please report all claims directly to the carrier. If you need claims reporting phone/fax numbers, please dial our main line at 301-220-3200 for a complete listing.

We offer our Congratulations to the following Telcom family members:

- Horry Telephone Coop. recently secured the 20-year naming rights to the student center at Coastal Carolina University. It's now the HTC building.

- John Ort, Harron Communications, on his New England SCTE Personal Achievement Award for the advancement of safety training and awareness.
- Steve Bartlett, RTC Communications, we recently given the Pacesetter Award by the ITA.
- Jonathan & Claudia West, Twin Lakes Telephone, on the birth of Maelee Eve West born on July 5th.
- Welcome to Sally Wlasuk, the new Member Relations Manager at NTCA.

We offer condolences to the following Telcom family members:

- The family of Jack Hester, Chickasaw Telephone; He was a big OTA supporter and he passed away at the end of June.
- The family of Gerald Martinsen, owner/operator of Somerset Telephone, who passed away in July.
- The family of Glenn Ramsey of the Toledo Telephone Co. who was a leader in the rural telecom industry.
- Jim Paulsen's family; he was the father of Rick Paulsen of MACC.
- Marilyn Gambill, who's husband passed away on July 29th. Marilyn is the Administrative Assistant for the TTA in TN.