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INSURANCE LOSS CONTROL ASSOCIATION

eNews

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2012 Annual Conference

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The 2012 Conference will be held in Columbus, Ohio on October 8, 9, and 10. This 3-day information-packed conference will be held in Columbus, Ohio. ILCA is currently seeking presenters for the conference.

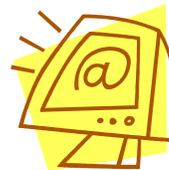
If you have a suggestion for a speaker, please call Kristi Ruxlow at 309.696.2551 or email administration@insurancelosscontrol.org. Watch for more details. You don't want to miss this great networking opportunity!

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Website Upgrade

The ILCA website is currently being upgraded. Be sure to visit the website for news and updates.

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Keith Jentoft is president of Videofied—RSI Video Technologies, White Bear Lake, Minn., and co-chair of the CSAA Insurance Liaison Committee.

E NEWS

Profit Model Drives Insurers to Stricter Loss Control—With Eyes on Security Tech & Processes by Keith Jentoft

The Insurance Loss Control Association represents the loss control professionals in the insurance industry—the eyes and ears of the underwriters. As investment income has plummeted in the past decade, the insurance industry profitability model has undergone a radical change. Moving from the back seat, loss control is now the focal point in the drive for profitability.

To put things in perspective, 15 years ago insurance business models paid out \$101.15 for every \$100 of premium collected. Times were good, however, as investment income from the markets more than made up the difference. The entire industry became “premium-centric” as the stock market skyrocketed and investment income soared. With the new realities following the market’s collapse, insurers have swung back to a business model that targets paying \$75 to \$80 for every \$100 in premium collected; and loss data is the driving factor in pricing.

The financial crisis affected more than the markets; it also impacted public services. Law enforcement budgets and resources are undergoing draconian cuts—with greater demands made on a shrinking force of officers. Much of this pressure to deliver more with less translates to non-response initiatives troubling the security industry, in which police stop responding to alarms. This same pressure on resources means “non-investigation” to the property/casualty insurers with a beleaguered law enforcement community saying, “It is only a property crime and it is insured anyway.”

We find the same problem from two different perspectives.

The new push towards building stronger relationships between the security industry and law enforcement is the answer. What changes the game are Priority Response and the Central Stations Alarm Association’s (CSAA) revolutionary Automated Security Alarm Protocol (ASAP) to deliver event-based video to the 911 center and the first responder. The insurance industry is looking for alarm systems delivering police response and catching the criminals in the act.

New technologies and processes have created unparalleled opportunities to re-establish partnerships with insurers to deliver new value to our customers. Historically, the insurance and the security industries have been very close. Much of this was because alarms meant law enforcement and lower losses. The insurers encouraged and drove their policy holders to install security systems as a proven method to reduce losses. In the 1970s this relationship began to decay. The financial markets began a period of unprecedented growth for insurers, creating an environment where losses no longer mattered. On the security side, mass market alarm systems flooded the country, creating new issues with false alarms and degrading police response. The relationship atrophied to the point where only one major insurer, Jewelers Mutual, still mandated UL certificated security systems for their policy holders.

With ASAP and new technology

solutions that deliver timely police response and reduce insurers’ losses, we have the makings of restoring the insurance/alarm industry partnership that was so successful in the last century. Rebuilding this partnership was the subject matter presented to the Insurance Loss Control Association last month in Columbus, Ohio. As the co-chair of the CSAA Insurance Liaison Committee, I presented a report on Priority Response to Video Intrusion Alarms and ASAP Phase 2. Fred Bales, of Insurance Services Office (ISO), an industry support organization, presented “Emergency Services—Working with Public Responders to Reduce Losses.”

Based upon the overwhelming response among the conference attendees interested in additional dialog with the security industry, rebuilding the partnership is already underway. The insurers recognize the value of a strong relationship between alarm companies and law enforcement and this will benefit all of the stakeholders—insurers with lower losses, law enforcement with more arrests, and the alarm industry delivering greater value to its customers.



The Potential Dangers of Carbonated Beverage Systems

Recent incidents involving carbonated beverage systems in Pooler Georgia and Phoenix Arizona have identified the need to raise the awareness level to the potential safety concerns related to these systems.

Liquid carbon dioxide (CO₂) was developed in the early 1900's specifically for making carbonated beverages. Historically cylinders are filled with liquid CO₂ at the distributor's facilities and transported to businesses for use in carbonated beverage dispensing machines. This method still exists today with cylinders ranging from 10 to 100 pounds of liquid CO₂ being utilized. The cylinders are classified by the actual weight of the liquid CO₂ they are filled with. These particular distribution systems have a good safety record since the cylinders are filled off-site and the cylinders utilized are typically designed for a much higher working pressure than the cylinder normally operates at. Problems associated with this process normally are the result of improper handling and storage of the cylinders and lack of employee knowledge of the potential dangers of CO₂ systems. The cylinders utilized in this process fall within Department of Transportation (DOT) regulations since they are transported via roads and highways. Outside of the DOT regulations, very little to no other regulations affecting this type of process exist.

Approximately 20 years ago the carbonated beverage industry developed a system that is filled on site of businesses that use carbonated dispensing machines. These types of systems utilize cylinders that hold a much larger volume of liquid CO₂. The CO₂ distributor/supplier now has the capability to service more customers less often by utilizing a tank truck to fill the larger storage vessels. Today almost every gasoline station, convenience store, bars and restaurant has a carbonated beverage system. The size of the storage cylinders utilized is typically based on the volume of beverages served at the location and delivery frequency of the distributor/supplier. Cylinder sizes associated with these systems can range from 200 pounds to 750 pounds of liquid CO₂. Since these cylinders are not transported they are not DOT regulated or certified cylinders and are typically designed for a working pressure from 300 psi to 350 psi. The cylinders are double walled vessels with the inner vessel being the storage area and the outer area having a coil and being under a vacuum to facilitate the change of state of the CO₂ from liquid to gas. Systems utilizing these tanks normally utilize a fill box installed on the outside of the building. It should be noted that in some cases the owner of the building will not permit the installation of these fill boxes. In these cases the supplier/distributor either disconnects the piping from the CO₂ cylinder or brings the fill hose inside of the business to fill the cylinder. If a fill box exists the box is fitted with a fill connection and a vent or relief connection, both of which must be properly piped out of the storage cylinder.

The internal pressure of these CO₂ cylinders varies based on the amount of liquid CO₂, ambient temperature, the vacuum in the outer vessel and the volume of CO₂ changing state at that time. These cylinders may reach the maximum working pressure of the cylinder when filling or immediately after high usage times. This should result in the excess pressure being vented through the safety relief circuit of the system thus creating the highest potential for risk for CO₂ to be released from the cylinder. Most cylinder manufacturers are very explicit on the installation instructions for these systems and require the vent or relief circuits to be piped to the fill box installed at a safe point of discharge outside the building. Additionally the location of the vent or fill box should not be below grade or in any enclosed area outside the building. Several incidents involving injuries and even deaths have occurred when the vent circuit was not in a free air flow area outside.

These systems are seldom regulated by local jurisdictions due to lack of knowledge of the system's potential risks and the ability to inspect the sheer number of these systems in use today. The lack of knowledge and awareness of these systems, functionality of the system, lack of proper detection equipment and change in environment between the time of incident and an investigation, have led to the lack of reporting and/or misreporting of incidents and near misses.

Some of these incidents directly related to carbonated beverages systems are:

- September 2011 – (10) people hospitalized including two firefighters with (1) fatality, fast food restaurant in Pooler, GA.
- June 2011 – evacuation of fast food restaurant in Dorchester, UK
- May 2011 – (3) hospitalized including (2) firefighters, fast food restaurant in Phoenix, AR
- May 2010 – evacuation of movie theater in Des Moines, IA
- July 2008 – (2) hospitalized from bar in Benson, NE
- April 2008 – (1) fatality in a hotel in Victoria, AU
- Aug 2007 – (1) fatality of waiter at restaurant in Coronado, CA (DOT Cylinder)
- January 2005 – (2) fatalities, employee and delivery driver, outside fast food restaurant, Sanford, FL
- March 1998 – (2) hospitalized, (2) treated at scene, fast food restaurant, US location unknown
- 1996 – (1) fatality, delivery driver outside restaurant, Cincinnati, OH

Some jurisdictions do require inspections of these fill on site system. The initial inspections of these systems found over a 25% violation rate related to the safety/vent circuit installation state wide with some isolated communities having close to a 100% violation rate.

Jurisdictions having authority should consider adopting ordinances requiring at a minimum the installation and periodic testing of carbon dioxide detectors in any business or place of public assembly that utilizes any type of bulk CO₂ systems, prohibiting CO₂ systems of any type from being installed below grade; filling of storage tanks inside the businesses and/or disconnecting any system piping to facilitate filling; and mandating posted signage warning employees, customers, and first responders of the presence of CO₂, and the potential risk and symptoms associated with carbon dioxide exposure. Additional consideration should be given to requiring CO₂ awareness training for emergency responders, businesses, and places of public assembly that utilize CO₂, as well as obtaining CO₂ detection equipment for first responders.

Be aware that carbon dioxide has many other uses within industry, especially the food industry. The OSHA incident reporting system has twenty pages of incidents and fatalities involving CO₂ exposure. Carbon Dioxide systems almost identical to the carbonated beverage systems have also recently been discovered being utilized with large swimming pools to control PH and is now being used as a refrigerant in what are advertised as Green Systems. Awareness and inspection of these systems is the key to ensuring the safety of emergency responders and the public.

For further information regarding CO₂ systems please contact the Chief Boiler Inspector for your jurisdiction.

Gary L. Scribner

Member of the National Board of Boiler & Pressure Vessel Inspectors and National Board Inspection Code Committee, Deputy Chief Boiler & Pressure Vessel Safety Unit Missouri Division of Fire Safety

Editor's note: The National Fire Protection Association Code 55 (NFPA 55) has some requirements for these CO₂ systems. The National Board Inspection Code (NBIC) is working on specific installation requirements for these tanks and systems. The task group is comprised of insurance companies, fire service, manufacturers, food service and The National Board Test Lab. Mr. Gary L. Scribner serves as the Authority Having Jurisdiction representative on the committee. It is estimated that there are 250,000 of these tanks in service in the US alone.

OSHA Willful Citations Increase Employer Liabilities

By Mark A. Lies, II* and Elizabeth Leifel Ash

OSHA Pursuing Willful Citations

As employers should know, an OSHA willful citation opens the door to significant OSHA and other liabilities. Under the current Administration, willful citations are being issued with increased frequency. A willful citation can be an intimidating enforcement tool for the agency, having an immediate negative impact on an employer.

Willful Citations Multiplying

OSHA's current strategy has resulted in more alleged violations and more alleged willful violations. OSHA's current preference for willful violations is often at odds with the standard of proof required for a willful violation. A willful violation is committed either *intentionally* or *with plain indifference* to the requirements of the Occupational Safety and Health Act. This contrasts with a serious violation, which requires only that the employer "knew or should have known" of the violation. Willful violations carry higher civil penalties—up to \$70,000 per violation compared with \$7,000 for a serious violation—and can result in criminal prosecution of the employer and its individual managers if the willful violation caused an employee's death. They can also impact potential civil liabilities, insurance rates and business opportunities, particularly job bidding.

Courts Resisting OSHA's Expanding Interpretation of Willfulness

Despite the enhanced use of willful citations, OSHA must still prove its case and the case law indicates that the burden of proof is still recognized as meaningful. The Occupational Safety and Health Review Commission and the courts have resisted the Agency's attempts to lower the standard for willfulness. In *American Wrecking Corp. v. Secretary of Labor*, 351 F.3d 1254 (D.C. Cir. 2003), the court affirmed the important distinction between serious and willful violations, noting that willfulness involves more than just negligence. It stated that the distinction "exists only if willful means knowledge that the conditions violate the statute or regulations—actual rather than imputed knowledge, for otherwise we are back to negligence." The case involved the demolition of a building. Two columns collapsed and bricks suspended above the columns fell, killing an employee. The supervisor testified that he believed the bricks were secure and did not create a hazard. OSHA alleged that the hazardous condition was so obvious that the supervisor's belief was unreasonable. The Review Commission rejected the notion that a willful violation exists simply because a hazardous condition "should have been obvious." *American Wrecking* also articulated the legal analysis necessary to determine if an employer's conduct constitutes a willful violation—rejecting the ALJ's vague observations and conclusions about the employer's state of mind and requiring competent and specific evidence of the employer's knowledge or indifference at the time of the alleged violation.

In *Secretary of Labor v. Active Oil Service, Inc.*, OSHRC Docket No. 00-0553 (July 15, 2005), the Review Commission also rejected OSHA's attempt to reduce willfulness to a "should have known" standard. Active Oil Service was hired to remove two oil tanks. An employee entered one of the tanks to clean it prior to removal and was overcome by fumes. A second employee, serving as the attendant, attempted a rescue and was also overcome. The Review Commission overturned the ALJ's finding that the employer had committed a willful violation of the general duty clause by permitting an employee to enter a permit-required confined space without first evaluating it. The Review Commission concluded that OSHA had not demonstrated the employer had actual knowledge of the violation. The testimony was not clear whether the foreman saw, or was even in a position to see, the employee enter the tank. Having eliminated the intentional disregard prong of the test, the Review Commission moved to the plain indifference prong—asking whether the employer was "so indifferent to safety that 'if he were informed of the rule, he would not care.'" The Review Commission concluded that even though the employer was lax in its approach to safety, its actions did not demonstrate plain indifference. The fact that the employer had a safety program that, if followed, would have avoided the violation, had the required equipment onsite at the time of the accident, and had followed the requirements in the past (including the previous day) undermined the allegations of plain indifference. The Review Commission affirmed that "knew or should have known" is not the standard for a willful violation and amended the citation to serious.

The Review Commission likewise rejected a willful citation in *Secretary of Labor v. Southern Pan Services Co.*, OSHRC Docket No. 99-0933 (September 30, 2005) because the evidence showed neither a conscious effort to disregard the OSHA requirements nor a plain indifference to safety. The suggestion that company officials and supervisors were present in the area and "should have" been aware that the exposed employee was working without fall protection was not enough to support a finding of willfulness. Again, the Review Commission downgraded the citation to serious.

The Review Commission has also recently affirmed that an employer's mistaken belief as to whether an OSHA standard was met does not rise to the level of willfulness. In *Secretary of Labor v. ASM-Sanders, Inc.*, OSHRC Docket No. 09-1158 (July 6, 2010), OSHA cited an excavation contractor under 29 C.F.R. § 1926.652(a)(1) where employees were working in a trench greater than five feet deep without cave-in protection. While the Administrative Law Judge (ALJ) found that the employer had, in fact, violated the cited standard, he found that OSHA had not satisfied its burden of proving that the employer had acted willfully. Specifically, the ALJ found that the employer had not measured the trench, but rather had "eyeballed" its depth and concluded that it was under five feet in depth. The ALJ held that although the employer was mistaken in its judgment of the depth of the trench, the mistake did not rise to the level of willfulness.

(continued on Page 5)

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(Continued from Page 4)

As these cases demonstrate, the issue of willfulness often turns on one or two facts regarding the employer's knowledge and steps taken to address safety hazards. In each of the cases cited above, as is often the case with willful citations, the knowledge, statements and conduct of the on-site supervisors was the key to whether a willful citation was issued and whether that citation survived judicial scrutiny.

Recommendations

Employers can protect themselves from OSHA's penchant for willful citations by establishing an effective safety program that:

- includes programs and procedures addressing the hazards of the workplace and the requirements of the standards
- communicates the importance of safety to employees and supervisors both in writing and in action;
- ensures that employees and supervisors are properly trained (including addressing potential language barriers or literacy issues involving employees), have the necessary equipment and properly use it;
- incorporates regular site inspections and work observations and corrects noted deficiencies in a timely manner;
- contains an effective and progressive disciplinary system that is routinely and consistently followed; and
- documents these elements.

Conclusion

In the event OSHA initiates an inspection, especially an investigation involving a fatality, an employer should seriously consider engaging counsel. Counsel can, among other things, conduct privileged investigations, participate in OSHA's interviews with management representatives (and sometimes non-management personnel) and in the closing conference, and otherwise help shape how OSHA interprets the evidence. If OSHA issues a willful citation, an employer must carefully evaluate the case—the evidence, OSHA's rationale for the willful classification and the impact of a willful violation on any civil cases, potential criminal liability, insurance rates, and future business opportunities—and pursue all available resources to defend against such citations because of the drastic consequences of failure to do so.

Automotive Safety ... Evolution or Revolution?

When the "Horseless Carriage" hit the road in the late 1800s and early 1900s, occupant safety was not a major concern. After all, they didn't go very fast and the chance of an encounter with another vehicle was pretty slim. Even so, in 1900, 36 people died in automobile related accidents while the US population was just over 76 million.

As the century progressed, safety consisted of "the heavier the better". As cars got larger and more powerful, by necessity, items such as tires, suspensions and brakes had to improve to keep up but, still driver and passenger safety was not a priority. Automobile related deaths increased ever year such that in 1930 the total was 31,204. Two years later the first percentage decrease in auto related deaths occurred brought on by the great depression and a drastic decrease in miles driven.

Through the 1930s and 40s the statistics varied as world events caused drastic fluctuations in driving activity. Still, no major occupant safety items were in evidence in the car market. Not until the early to mid 1950s did we start to see a change in the direction of automobile safety. Cars came equipped with padded dashboards and sun visors and some even offered lap safety belts. And cars got bigger and heavier, giving a somewhat false sense of security. Even drivers of high speed racecars such as Formula 1 and Indy cars still believed it was better to be thrown clear than to be belted into the car, fear of fire being a bigger concern.

In 1960 there were 36,399 vehicle related deaths while the population had increased to just over 180 million and US drivers traveled 718 billion miles. Vehicle related deaths continued to climb, peaking in 1973 at 54,052. Around this time, there was a subtle shift away from trying to prevent accidents to protecting the occupants in an accident. We started to see improvements in automobile and highway design specifically to protect vehicle occupants and reduce injury potential. These included better bumper systems, transitioning from full frames to unit-body design with crush zones, three point safety harnesses and redesigned highway guardrail and sign systems.

As the emphasis shifted to occupant safety, automotive manufacturers made a concerted effort to get on board. Crash tests exposed flaws in designs that allowed serious injuries, sometimes even in minor accidents. Cars were redesigned to specifically crush in a designed mode to absorb front and side impacts and reduce the G-forces on the occupants. Driver's side airbags became standard, soon followed by passenger side and then to multiple side impact airbags. Seat anchoring systems improved along with better head rests. Disc brakes with anti-lock systems became almost universal and tires and suspension systems continued to improve.

As a result of this change in emphasis, automotive related deaths have been going down steadily and consistently even while the miles driven continued to climb. In 2010, the last year for which statistics are available, the number of automobile related deaths had been reduced to 32,708, almost the same as 1960, while the miles driven were four times higher.

As a demonstration of where we are and where we came from, the following video is provided for your entertainment and education;

<http://www.youtube.com/watch?v=joMK1WZjP7g>

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Safe Winter Driving



Winter driving can be hazardous and scary, especially in northern regions that get a lot of snow and ice. Additional preparations can help make a trip safer, or help motorists deal with an emergency. This sheet provides safety information for your residents to help prevent motor vehicle injuries due to winter storms.

The Three P's of Safe Winter Driving:

» **PREPARE** for the trip; » **PROTECT** yourself; and » **PREVENT** crashes on the road.

» **PREPARE**

Maintain Your Car: Check battery, tire tread, and windshield wipers, keep your windows clear, put no-freeze fluid in the washer reservoir, and check your antifreeze.

Have On Hand: flashlight, jumper cables, abrasive material (sand, kitty litter, even floor mats), shovel, snow brush and ice scraper, warning devices (like flares) and blankets. For long trips, add food and water, medication and cell phone.

Stopped or Stalled? Stay with your car, don't over exert, put bright markers on antenna or windows and shine dome light, and, if you run your car, clear exhaust pipe and run it just enough to stay warm.

Plan Your Route: Allow plenty of time (check the weather and leave early if necessary), be familiar with the maps/ directions, and let others know your route and arrival time.

Practice Cold Weather Driving!

- ✦ During daylight, rehearse maneuver slowly on the ice or snow in an empty lot
- ✦ Steer into a skid
- ✦ Know what your brakes will do: stomp on antilock brakes, pump non-antilock brakes
- ✦ Stopping distances are longer on watercovered ice and ice
- ✦ Don't idle for a long time with the windows up or in an enclosed space

» **PROTECT YOURSELF**

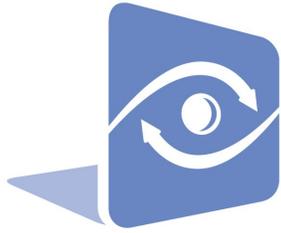
- ✦ Buckle up and use child safety seats properly
- ✦ Never place a rear-facing infant seat in front of an air bag
- ✦ Children 12 and under are much safer in the back seat

» **PREVENT CRASHES**

- ✦ Drugs and alcohol never mix with driving
- ✦ Slow down and increase distances between cars
- ✦ Keep your eyes open for pedestrians walking in the road
- ✦ Avoid fatigue – Get plenty of rest before the trip, stop at least every three hours, and rotate drivers if possible
- ✦ If you are planning to drink, designate a sober driver



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