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INSURANCE LOSS CONTROL ASSOCIATION

eNews

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calendars!

ILCA 2013 Conference

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You are invited to join us for the ILCA 2013 Conference on October 7th, 8th and 9th at the Renaissance Indianapolis North Hotel in Carmel, Indiana.

We are thrilled to announce that the conference agenda this year will include:

Motivational Speaker, **Guy D. Gruters, Captain, USAF**,
as well as

Keynote Speaker, **Mark Robison, Chairman and President,
Brotherhood Mutual Insurance Company.**

Conference sponsorships will be available. If your company is interested in participating in our sponsorship opportunities, please contact:

Kevin Matthews kmatthews@brotherhoodmutual.com

or

Kristi Ruxlow administration@insurancelosscontrol.org.



More details coming soon!



**Guy D. Gruters, Captain, USAF
POW in North Vietnam,
December, 1967 to March, 1973; 5 years, 3 months**

Guy Gruters was raised in New Jersey, where his favorite interests were camping, hunting and trapping. He graduated from the Air Force Academy with a BS in Engineering Science and completed a Masters Degree in Astronautical Engineering from Purdue University. After Pilot Training and fighter gunnery school, he volunteered for Vietnam and served six years in Vietnam, more than five as a POW. He completed more than 400 combat missions as a FAC, first for the 173rd Airborne Brigade flying O-1 aircraft and then flying F-100s for the *MISTY* Fast FACS flying over North Vietnam. He was awarded more than 30 combat awards including two Silver Stars, two DFCs, two purple hearts, two bronze stars for valor, a Presidential Unit citation, POW medal, 20 air medals, and numerous other medals. He was shot down twice and captured the second time, on December 20, 1967.

Meanwhile, Lance Sijan had been shot down in early November and was still in the jungle. Lance evaded capture for forty-six days. He was finally captured on Christmas Day of 1967 and moved into a small holding prison with Guy and Major Bob Craner shortly thereafter. The three of them made the trip north to the Hanoi Hilton in the back of a military truck. Guy and Bob were with Lance until his last-minute removal to a hospital and death in late January, 1968.

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After release in March of 1973, their testimony was the basis for the award of the Congressional Medal of Honor to Lance. Guy also collaborated closely with Malcolm McConnell of the Reader's Digest in his book "Into the Mouth of the Cat," a story about one man's struggle to successfully resist all interrogation despite terrible physical injuries.

There have been two additional books written with stories about Guy, "Bury Us Upside Down," by Rick Newman and Don Shepperd, and "Misty," by Major General Don Shepperd, USAF (Ret.).

Guy joined Eastern Airlines as a pilot, flying DC-9s and Boeing 727s, and retired as a Captain in 1991. During this time, Guy and Sandy were blessed with seven children, two before Vietnam and five after. Guy also was a very successful international account representative for the IBM Corporation, handling GTE Sylvania, a three billion dollar company. He left IBM with his brother and was president of PC Software Systems for more than ten years, building it into IBM's leading supplier of application software for Accountants and Independent Insurance agents. Upon retiring from Eastern, Guy took the position of Director of Data Processing for Pearl Vision in Dallas and then VP-MIS for McCrory Corporation in Pennsylvania, both billion dollar corporations.

Guy was asked to leave the corporate world by his brother, Peter, in Ohio. Guy currently works there with his brother as a writer/editor and professional speaker about the POW experience. Peter is an author of many books on rural family life that have been well received.

The goal they are working for is to strengthen families by facilitating their return to traditional living on five to ten acre plots with large gardens and numerous domestic animals in the countryside.



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Mark Robison
Chairman of the Board and President
Brotherhood Mutual Insurance Company

Mark Robison has served Brotherhood Mutual for more than 18 years. He took on the role of company president in 2007, and was named Chairman of the Board in 2010 as well. In the more than six years since Robison took office, Brotherhood Mutual has increased its national footprint from 29 to 43 states and its customer base has grown by more than 5,000. Corporate assets also have increased from \$293 million to \$385 million. At the home office in Fort Wayne, Indiana, an additional 100 jobs have been created to help meet the insurance and risk management needs of America's churches and related ministries.

Robison has an extensive background in accounting and finance. He earned his accounting degree from Manchester College and his CPA from the Indiana State Board of Public Accountancy. He holds a Fellow Life Management Institute (FLMI) designation, an Associate in Insurance Accounting and Finance (AIAF) and the CPCU designation. A member of the American Institute of Certified Public Accounts and the Indiana CPA Society, Robison also is a past chairman of the Insurance Accounting Systems Association.

KEYNOTE SPEAKER

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Make Your Accident Investigation Count

*By Paul Wendel
Portfolio Executive
Zurich Services Corporation—Risk Engineering*

Is it your responsibility to conduct accident investigations? Do you participate in the process of investigation when a loss occurs? Can you honestly say that your company's investigation program will result in changes in process or procedures that will ensure that this type of event never happens again?

Hopefully the answer to the last question is yes. If you're not sure, then read on. Most individuals that have the responsibility of conducting an initial accident investigation for an employer want to do a good job. They are typically guided by a form that requires the gathering of specific information like the time and date of the injury, location of the incident, type of injury, description of incident/sequence of events, witness list/statements, and a diagram of the scene.

Remember, the accident investigation process is used to identify the cause(s) of an accident and determine the proper corrective actions. Virtually all accidents are caused by a combination of unsafe acts (about 90 percent) and/or unsafe conditions (about 10 percent). Keep in mind, the main reason we conduct an accident investigation in the workplace is to help prevent a reoccurrence, and given that most accidents involve unsafe acts, the need to determine the true or root cause is critical.

For your accident investigation to be successful, it will require you to use the collection of pertinent facts about the accident to determine surface and root causes. Surface causes are the hazardous conditions and unsafe employee/management behaviors that produced or contributed to the accident. Root causes are the system weaknesses that produced the surface causes for the accident.

Documents that may help determine facts about the accident include standard operating procedures, job hazard analysis (JSA's) material safety data sheets, training records, safety/health programs, inspection and maintenance records, and operator/manufacture manuals.

Determining the surface cause is usually not too difficult and many investigations stop there. An example would be an employee injuring their hand after they lost balance and fell into an unguarded belt and pulley assembly. The surface cause is the unguarded piece of equipment. If the corrective action statement simply focuses on the reinstallation of the guard lying on the floor, how much confidence exists that this will never happen again?

In order to make the most of the time and effort put into your accident investigation process, we must find the root cause. Root causes will typically focus on program design weaknesses and performance weaknesses. Program design weaknesses include a failure to effectively develop safety policies, programs, plans, processes, procedures, and practices. Performance weaknesses are a general failure to effectively carry out safety policies, programs, plans, processes, procedures, and practices. Shortcomings in either of these two areas can result in common or repeated hazardous conditions and unsafe/inappropriate performance.

Once you have determined the surface and root cause(s) of an accident, it is time to move to corrective action. Actions should focus on two main areas: engineering and management controls.

Engineering controls may involve equipment redesign, replacement, or substitution. In addition, are less harmful materials available for use? Is there a design flaw in the work flow or process that must be addressed? Are current preventative maintenance measures adequate?

Management controls typically include improvements to policies, programs, plans, processes, and/or procedures in one or more of the following management system elements: management commitment, accountability, employee involvement, hazard identification/control, education/training, and system evaluation.

Why do accident investigations fail to eliminate similar accidents? Because they only address the correction of surface causes and ignore or fail to determine the true root cause. Conducting a thorough accident investigation includes analyzing the accident to determine influencing factors that include surface causes and root causes, and using this information to prevent similar accidents.

The following quote was taken from the U.S. Occupational Safety and Health Administration website's Safety & Health Topic on Accident Investigation: "Thousands of accidents occur throughout the United States every day. The failure of people, equipment, supplies, or surroundings to behave or react as expected causes most of them. Accident investigations determine how and why these failures occur. By using the information gained through an investigation, a similar, or perhaps more disastrous accident may be prevented. It is important to conduct accident investigations with prevention in mind."

Make your accident investigation count. Don't look at it as a one more thing I have to do. Rather, embrace the process of determining the true cause and realize the satisfaction of knowing you will be part of the process of preventing an injury to a fellow employee.

MEMBER SPOTLIGHT: KEVIN MATTHEWS

Kevin Matthews is a Risk Control Specialist for Brotherhood Mutual Insurance Company. We asked him a few questions about becoming involved in the association and his interest in the loss control profession.

What is your educational background? I have a B.A. in Bible from Oklahoma Christian University.

What made you decide to work in the insurance loss control field? Steve Edmonds (current supervisor, past president of ILCA) told me I wouldn't need to carry a ladder with me.

What has been your career history? After spending close to 14 years in ministry I decided that a change was needed. At one point during those 14 years I took a break and worked for Prudential as an agent with an emphasis on Financial Planning. While with Prudential I became interested in being an Adjuster. While working a large hail claim on a church roof for Brotherhood Mutual I began to look at their company and was made aware that they were looking for a Loss Control Specialist. After a few phone conversations and a face to face meeting with Steve Edmonds, I asked, "Do I have to carry a ladder with me on every visit?" He replied, "No." I said, "I'm your guy." Since joining Brotherhood Mutual's Loss Control department 4 years ago, I haven't looked back. Brotherhood Mutual is a great company to work for and we have a great group of guys in our department.

What is the history of Brotherhood? What services do you provide? Brotherhood Mutual is in its 96th year and though there have been some changes through the years, the primary focus remains to insure America's churches and related ministries. We are the 2nd largest provider of insurance to churches in the U.S. and growing daily.

What has been the best part and the most challenging parts in your job? I spent 14 years in full-time ministry at various churches so understanding Brotherhood's customer-base (churches and related ministries) has made the transition easier. I am an outgoing people person, so being out in the field talking to people and doing our job is the easy part. As far as the most challenging part of the job, when I started I didn't have much experience in regards to construction classifications or the technical aspects of the job, but I feel as though I've learned quickly.

What do you think are the biggest issues facing the insurance loss control profession and the insurance industry in the next five years? Why? As the youngest person I know in our profession, a concern that I have is, how to attract the younger generations to want to pursue a career in loss control (proud to say that the ILCA board (especially Stig Ruxlow and Dan Finn) have made this a renewed priority and we are starting to see the fruits of some of that labor).

In what roles have you served ILCA or other safety associations? Last year I was brought in as the 1st Vice President on the ILCA board and this year I am serving as the President.

If you were not employed in insurance loss control, what would you like to do? I originally went to college to be an Accountant and that led to a love for statistics. If not employed in my current position/profession my dream job would be as a statistician for a college football team (Oklahoma Sooners), professional baseball team (Houston Astros, although I'm not sure they qualify as professional at the moment), or a network such as the MLB Network or ESPN.

What are your favorite non-work activities? I have 3 children at home, so I enjoy attending whatever activities they are involved in and watching any sporting event anywhere, live or on TV.

Are you involved in any social, community, or volunteer activities, etc.? I am involved in my church and the Stained Glass Theater (a small Christian theater) that puts on 8-10 plays/productions each year.

TELL A TALE—GO TO JAIL **OSHA Manager Criminal Liability**

By Mark A. Lies II

INTRODUCTION

As most employers are, or should be aware, there are a number of potential criminal liabilities associated with occupational safety and health under Federal law. These liabilities include not only that of the employer but also management representatives. This article will discuss each of these liabilities in the context of a recent U.S. Court of Appeals' decision, *United States of America v. Maury*, ___F3d___ (3rd Cir., Sept. 12, 2012).

CASE

The United States indicted the employer, Atlantic States Cast Iron Pipe Company, and four of its managers, for various environmental crimes as well as violations relating to concealing work-related accidents at the workplace from OSHA, one of which resulted in an employee death. The case was tried for eight months and a jury convicted the employer and the four managers.

OSHA-RELATED CRIMES

a. Forklift Fatality

An accident occurred in which an employee was killed when he was hit by a forklift driven by another employee. The OSHA inspector was told that the forklift that she inspected had not been touched since the accident and was in "perfect operating condition" before the accident according to the inspection reports. During the inspection OSHA learned that the forklift brakes were in fact defective prior to the accident, that the inspection reports were falsified and that the forklift had been repaired before OSHA inspected it. Hourly employee witnesses told OSHA they had been told to lie about the forklift or they would be fired.

b. OSHA 300 Log Concealment

During the inspection OSHA learned that a supervisor had been struck by a forklift and had apparently broken his leg. The supervisor was told to lie about the accident and deny that he had broken his leg and that he had returned to work the next day to full duty so that the injury would not have to be recorded on the OSHA 300 Log. OSHA eventually obtained medical records that indicated the supervisor had in fact broken his leg and been on restricted duty for 44 days but no entry was made on the OSHA 300 Log.

c. Loss of Eye Accident—Machine Guarding

OSHA learned about another accident in which an employee lost an eye when a piece of a rotating blade on a saw broke off and hit him in the face. When OSHA visited the worksite and inspected the machine involved in the accident there was a protective shield and screen in place to protect the operator from the equipment and OSHA was told it was in place at the time of the accident and for sixteen years previously. OSHA later learned that the shield and screen were put in place after the accident and that employees were told to lie or they would lose their jobs.

d. Amputation Accident— Machine Guarding

OSHA learned that an employee had lost three fingers in a cement mixer accident when a co-employee accidentally started the mixer. The managers told the inspector that the machine was never equipped with a safety switch or interlock to shut down the machine when the access door was opened. In fact, OSHA later learned that these devices had originally been on the machine and had been removed because they slowed down production. Again, employees had been told to lie to the inspector regarding presence and removal of these devices.

SENTENCES

The indictments charged the Company, the Plant Manager, the Human Resources Manager, the Maintenance Supervisor and the Finishing Department Supervisor with environmental crimes as well as obstruction of the lawful functions of OSHA in enforcing workplace safety. After the trial, the court entered sentencing on the crimes, which included the OSHA conspiracy crimes, as follows:

- **Company—a fine of \$8,000,000, four years probation, and appointment of a monitor**
- **Plant Manager—70 months' imprisonment**
- **Human Resources Manager—40 months' imprisonment**
- **Maintenance Supervisor— 30 months' imprisonment**
- **Finishing Department Supervisor—6 months' imprisonment**

INSPECTION RISKS

Obviously, the facts of this case reveal conduct that is not ever remotely anticipated by any responsible employer or manager. Unfortunately, after a serious accident when a regulatory inspection occurs, managers sometimes lose focus and attempt to avoid liability by responding to the inspector with less than complete information or outright misstatements. In such situations, there are serious risks of criminal liability for being less than truthful in the employer's responses.

RECOMMENDATIONS

In order to avoid these liabilities, it is critical to pre-plan for regulatory inspections so that the employer has a strategy in how to respond with safeguards to avoid "admissions" of liability or "misstatements" of facts, that could lead to criminal liability. This preplanning should include:

- Designation of a qualified employer "point person" to direct the employer's response to the inspection and act as the contact person for OSHA information requests
- Real time involvement of appropriate management representatives to review the agency information requests and develop accurate and timely responses
- Engagement of competent legal counsel to advise management of the respective rights of OSHA, the employer and the employees during the inspection

CONCLUSION

If the employer pre-plans and executes its inspection response plan in a professional and honest manner, it will avoid the potential criminal liability for the employer and management that occurred in this case. The author has represented hundreds of employers in OSHA inspections and looks forward to assisting employers to develop their pre-plans, manage OSHA inspections and respond to any citations that may be forthcoming.



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