



ILCA
ILCA

Insurance Loss Control Association

ILCA E-News

August, 2011

Founded by and dedicated to the professional insurance company loss control representative

Go to the Website and join us: www.insurancelosscontrol.org

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BECOME INVOLVED

Looking for volunteers to serve on the ILCA Board of Directors

Contact Scot Gudenrath at scot.gudenrath@countryfinancial.com or
Betty Ayrton at bayrton@aol.com

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2011 Conference Update

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SECOND TRIP SCHEDULED FOR CONFERENCE

The ILCA Board of Directors is delighted to provide yet another exciting off site tour. You may now choose between The Ohio State University, Ergonomics Institute or SEA, Ltd.

Established in 1970, SEA, Ltd. is a recognized worldwide leader in forensic analysis, testing, and investigation. Our firm provides a wide range of services to reveal the cause of product, material and/or structural failures. For over forty years, our engineers and investigators have served nationally and internationally as analytical litigation experts.

Additional information regarding this organization can be seen at: sealimited.com

All tours are subject to change and limited to numbers, please be sure you register early to get the tour of your choice.

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In This Issue:

2011 Conference Update

HYPER LINK

Website Link

Article by Mark A. Lies II, & Elizabeth Leifel Ash

Agenda for Conference

[HYPER LINK](#)

We are trying to get more exposure to the ILCA website. We have future plans on implementing a means enabling members to collaborate on issues through the website. We have many experts in varying fields within the ILCA organization that could provide a valuable source of information to all members. However, this year we are focused on increasing membership without creating a huge advertising budget.

One easy and free way to do this is to advertise ILCA in our email signatures. We use email everyday and connect with many people. Other people may forward our original email to more people thus spreading the ILCA website to many people. The signature, with an ILCA website link via a hyperlink, will help increase the ILCA website exposure to many people. We are asking all members to put some reference in your email signature with the word ILCA. Below are instructions converting the word ILCA to a hyperlink. For those that do not have automatic signatures, the instructions will also describe the steps to create any type of signature.

The instructions below enable you to automatically insert a signature and create a hyperlink to ILCA's website. An example is also provided at the bottom. Hyperlinks are a word or phrase that if clicked, opens up your browser and goes to the web address defined by the hyperlink.

The instructions are for Microsoft Outlook 2007 but the same steps are similar in all standalone and web email programs.

To create a signature:

Navigate to the signature options by clicking on Tools, Options, Mail Format, and Signatures. With the Signatures and Stationary box open, to create a new signature:

- 1) Click on New
- 2) Type a name for the signature as you can have more than one and click OK.
- 3) Type your new signature in the Edit Signature Box and include ILCA without the quotes.
- 4) Highlight ILCA and left click on the Insert Hyperlink icon which is a globe with a chain link icon below it.
- 5) In the box that appears, type the ILCA website www.insurancelosscontrol.org. In the address box.
- 6) Click OK and you are done. If you want to change the color of the hyperlink from the default blue, highlight the ILCA hyperlink and change to whatever color you desire before clicking OK.

The signature should look something like below:

Scott Doyle,
[TranStar Technical Services, Inc.](#)
[3225 Shallowford Rd Marietta, GA 30062](#)
[678-236-9005](#)

Proud [ILCA](#) Member Since 2007

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Links to Website of Interest

<http://biodynamics.osu.edu/labtour.html>

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DISTRICT COURT CREATES CONFLICT BETWEEN INSURER AND INSURED OVER SAFETY INSPECTION REPORTS

By Mark A. Lies II
& Elizabeth Leifel Ash

INTRODUCTION

In July 2010, OSHA began an inspection of Haasbach, LLC following the death of two teenage workers at a Mt. Carroll, Illinois grain elevator. The employees became entrapped in corn more than 30 feet deep in the elevator and suffocated. During the OSHA investigation, OSHA issued a document subpoena to Haasbach’s workers’ compensation insurer, Grinnell Mutual Reinsurance Co., seeking inspection reports and other documents related to Haasbach. Grinnell objected to the subpoena, arguing in part that loss control inspection reports created by an insurer are privileged documents that may end up in the hands of plaintiffs’ lawyers or other outside parties if turned over to OSHA.

On May 2, 2011, the U.S. District Court for the Northern District of Illinois rejected Grinnell’s arguments and upheld OSHA’s subpoena, requiring Grinnell to provide the requested documents. *Solis v. Grinnell Mut. Reins. Co.*, No. 11 C 50014, 2011 WL 1642534 (N.D. Ill. May 2, 1 Mark A. Lies, II, is a partner with the law firm of Seyfarth Shaw LLP, 131 South Dearborn Street Suite 2400, Chicago, IL 60603 (312) 460-5877, mlies@seyfarth.com. He specializes in occupational safety and health and related employment law and civil litigation. Elizabeth Leifel Ash is an associate with Seyfarth Shaw, (312) 460-5845, eash@seyfarth.com. Her practice focuses on regulatory compliance and litigation, including occupational safety and health and environmental matters. 2011). This article discusses the potential effects of this decision on insurers and the documents prepared in the course of the insurer/insured relationship.

THE RELATIONSHIP BETWEEN WORKERS’ COMPENSATION AND OSHA

Generally speaking, workers’ compensation systems are creations of state law and are entirely separate from occupational safety and health standards. In some situations, however, the two systems overlap. For example, some states require workers’ compensation insurers to provide consultation services to insureds whose employee injury rate (also referred to as an experience modification rate) exceeds a certain level. These consultations are designed to assist employers in improving their workplace health and safety programs with an eye toward reducing employee injuries. Often, workers’ compensation insurers will provide these consultations even where not required by state law.

Thus, in some cases, workers’ compensation insurers’ loss control efforts align with OSHA’s overall goal of improving employee safety. However, the insurer has a fiduciary duty to act in the best interest of its insured. While these interests may align, conceptually, the insurer is in a tight spot when OSHA begins investigating an insured. Loss control reports from insurers, for example, may be used by OSHA to prove that the insured had prior knowledge of a particular condition or practice that OSHA believes is violative of one of its regulations. In that case, the insurer’s report is used against the insured, to whom the insurer owes a fiduciary obligation. The blurring of these interests creates concern over OSHA’s ability to access and use insurers’ reports during the course of an investigation.

Under the Occupational Safety and Health Act, 29 U.S.C. § 657(b), OSHA is empowered “to require the attendance and testimony of witnesses and the production of evidence under oath.” Where the recipient of a subpoena under Section 657(b) objects to the subpoena, the federal courts are authorized to order the subpoena recipient to comply. In the *Grinnell* case, OSHA issued a subpoena to the employer’s workers’ compensation insurer to obtain site safety inspections, applications for insurance coverage, and correspondence with the insured. Over Grinnell’s objection, the court held that the subpoena was proper in that all of the requested documents “reasonably relate to the investigation of the incident and the question of OSHA jurisdiction.”

The court also rejected Grinnell’s arguments that the reports were privileged and would result in “chilling effect” on employers’ willingness to allow their insurers to conduct safety inspections to determine the risk of loss. The court avoided resolving the “chilling effect” argument by calling it a policy decision “to be made somewhere other than in the federal courts.” The court also held that insurers’ reports are not necessarily privileged. The court acknowledged, however, that such reports may be privileged if they are conducted at the direction of an attorney.

RECOMMENDATIONS

The *Grinnell* decision has the potential to drive a wedge between workers’ compensation insurers and their insureds when it comes to loss control activities. Therefore, it is recommended that insureds who consent to safety inspections by their insurers take the following steps to ensure that those inspections do not create liability under the OSHA Act:

- Unless compelled by state law, authorize an insurer’s inspection only after consulting with legal counsel;
- Request an opportunity to review a draft report from the insurer and review the draft carefully to identify potential factual errors or editorializing;
- Ensure that any report issued by the insurer is addressed to the insured’s legal counsel and that the report is marked as Privileged and Confidential. The report should not be distributed beyond the insured’s decision-makers with regard to employee health and safety;
- If the report identifies hazards to employees or areas of non-compliance with occupational safety and health regulations, correct the condition immediately, and document all efforts to correct the conditions or respond to the insurer’s recommendations. Taking corrective measures is not an admission that the condition violated any statute or regulation, but will help avoid “high-gravity” OSHA citations;
- Ask your insurer to notify you, before responding, of any subpoena received by OSHA or other third party, and ask for a copy of any documents provided.

Permission to use article granted by Mark A. Lies II, Seyfarth Shaw LLP

Our new sponsor and partner.



ILCA and Pictometry have signed a marketing agreement that offers ILCA members a 10% discount on the basic service, and based on the initial agreement for time purchased, they will add additional time for no charge.

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Conference Agenda

Monday, October 3th, 2011

7:00 am
Upper Terrace

Full Breakfast

7:30 am
Outside Alder

Registration

8:00 <i>The Alder</i>	<i>General Session</i>	Welcome & Opening Remarks Scot Gudenrath, President, ILCA Country Financial
8:15-9:45 <i>The Alder</i>	<i>General Session</i>	“The Growing Threat from Product Recalls & Product Liability Lawsuits” Randall Gooden, President Randall Gooden International
9:45-10:00 <i>Upper Terrace</i>	<i>General Session</i>	Break
10:00-10:30 <i>The Alder</i>	<i>General Session</i>	ILCA Business Meeting Scot Gudenrath, President, ILCA Country Financial
10:30-12:00Noon <i>The Alder</i>		“Building Construction Classifications” Ken Lowery, ISO
12:00-1:00pm <i>Upper Terrace</i>		Lunch
1:00-2:15 <i>The Alder</i>	<i>General Session</i>	“TBA” John Kneiss Chubb
2:15-2:30 <i>Upper Terrace</i>		Break
2:30-4:00 <i>The Alder</i>	<i>General Session</i>	“Cooking Fire Protection & NFPA 96 – 2011 Changes” R. T. Leicht, The Fire Marshal’s Office for Dover, Delaware
4:00-5:00 <i>The Alder</i>	<i>General Session</i>	“Workers Comp” Mark Briggs, CSP, ARM Director of Risk Management Ohio State University
5:00PM <i>The Alder</i>	<i>General Session</i>	Closing Remarks Scot Gudenrath, President, ILCA, Country Financial
5:00-6:00 <i>Upper Terrace</i>		Reception Sponsored by: ILCA

Dinner on your own!

Tuesday, October 4th, 2011

7:00 am
Upper Terrace

Full Breakfast

8:00-9:00 *General Session*
The Alder

“Risk Transfer”
David Ludwin, Product & General Liability Director,
CNA

9:00-10:15
The Alder

“Bed Bugs”
Steve Garvy, CPP, Senior Risk Engineering Consultant
Zurich Services Corporation

10:15-10:30
Upper Terrace

Break

Concurrent Sessions

10:30-12:00 Noon

<i>The Alder</i>	<i>Oak Hill</i>
“Industrial Explosion Protection” Michael D. Hard, SET Hard Fire Suppression Systems, Inc. & David Grandaw	“Workplace Violence” Chuck Smith, Director Security/Protective Services Ohio Health

12:00-1:00pm
Upper Terrace

Lunch

1:25-1:30

LOAD BUSES FROM LOBBY TO FIELD TRIPS TO THE OHIO STATE UNIVERSITY AND
SEA, Ltd
Please be sure you are on the correct bus.

Thank you for your cooperation.

4:00 SHARP

Load buses from The Ohio State University and SEA, Ltd.
for the return trip to the Hotel.

4:30
Upper Terrace

Grab a Snack

Dinner on your own!

Wednesday, October 5th, 2011

7:00 am
Upper Terrace

Full Breakfast

8:00-9:45

Concurrent Sessions

<i>The Alder</i>	<i>Oak I-III</i>
<p>“Drug Testing in the Private Industry”</p> <p>Cheri B. Hass, Partner, Downes Fishel Hass Kim, Attorneys at Law</p>	<p>“Emergency Services”</p> <p>Fred Bales, ISO</p>

9:45-10:00
The Terrace

“Break”

10:00-11:30 *General Session*
The Alder

“ The Elements of an Effective Accident Analysis Program”
Brett Gillilan, Ohio Bureau of Workers’ Compensation

11:30-11:45 *General Session*
Alder

Closing Remarks
Jack Aroucette, President, ILCA

Adjourn

See you at ILCA 2012

October 7, 8, and 9, 2012

DoubleTree Worthington/Columbus, Ohio

Additional information will be posted on the website.

www.insurancelosscontrol.org

Thanks to our vendors and sponsors!

Please visit the ILCA Website. Follow the links to our Vendor Directory for info about these companies and their services:

To our sponsors, thank you so much! Your assistance and support are greatly appreciated!



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