



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

INSURANCE LOSS CONTROL ASSOCIATION

# eNews

A U G U S T 2 0 1 6

[www.insurancelosscontrol.org](http://www.insurancelosscontrol.org)

## INSIDE THIS ISSUE:

### Investing in our Future—Emerging Leaders as LCRs, Specialists, Supervisors, Managers and VPs of Loss Control.

Registration and Hotel Information	2
2016 Annual Conference Topics and Presenters	3
Sponsorship Opportunities	4
Motivational Speaker	5
Student Afternoon Session	6
OSHA's Multi-Employer Worksite Doctrine Update: Civil and Criminal Liability	7-11

We all started somewhere and some of us (you student members) are just getting started. Most business in our industry struggle to fill the demand for skilled labor as the baby boomers retire coupled with the general lack of skilled safety professionals entering or being trained in our industry. Yes, there are exceptions with the larger carriers hiring and training again and a few vendors doing the same thing but the industry as a whole is in dire need of skilled, competent, educated safety professionals that understand the insurance industry and the clients they serve. We, the Insurance Loss Control Association (ILCA) continue to offer the opportunity for skill set enhancement while also providing the basics of our career choice simultaneously. This year's 2016 ILCA Annual Conference in Louisville, KY is no exception to this.

Over the many years I have been a part of ILCA, it amazes me when I reconnect face to face with the conference attendees, how the members have progressed in this industry. Everyone always seems happy in what they do and or have been promoted, or took a better position elsewhere but all along have remained in the industry. I cannot recall anyone ceasing to attend or renew membership because they 'left the industry'. Now 'retiring' from it is a different story. The Loss Control / Risk Control / Insurance safety career is a life-long love of career thing. The ILCA organization is the only one of its kind supporting and serving the insurance safety professional.

This year we are offering a specialized forum of coinciding presentations, on Tuesday afternoon, to cater specifically to our student member attendees as well as anyone else wanting to learn the basics in Risk Control/Loss Control as they pertain to General Liability/life safety, Property hazards and controls, Commercial Auto, Workers Compensation / safety and several others. This investment in the emerging members of ILCA and the future of our industry is a priority value we as a Board have placed on the organization. We also have a packed agenda of very interesting and relevant technical topics that are sure to increase your 'street cred' back at the office as well as active participation in the conference while enjoying a few days with fellow conference attendees. See details provided in this newsletter.

The annual conference ILCA sponsors and produces has been a successful technical learning event since our founding and will continue for many years into the future. Speaking of entering the future, we are rolling out our new website in early August. The backbone of reasons for the website change was to offer the membership a better forum and content display. It is also programmed to handle membership issues, renewals, and provides easy to navigate screens and content management.

I look forward to seeing the familiar faces in Louisville as well as many new faces from the regional area that will be attending this Louisville, KY event.

Safe travels the rest of the summer and to Louisville.

Sincerely,

Dan

# 2016 Annual Conference

**IMPORTANT NOTE: If you have NOT received your Username and Temporary Password from the NEW WEBSITE, please email Kristi Ruxlow at [administration@insurancelosscontrol.org](mailto:administration@insurancelosscontrol.org) for that information.**

[Click Here to Register](#)

The ILCA conference will be held on October 3, 4, and 5 in Louisville, KY. The conference will be held at the Marriott—Louisville East, 1903 Embassy Square Boulevard, Louisville, Kentucky 40299, (502) 491-1184. Rooms for the hotel will be discounted to \$129 per night for ILCA attendees. Attendees should identify themselves as coming to the ILCA conference to receive the discounted room rate. Members staying at the hotel will receive a full hot breakfast which is included in the nightly room rate. To make a room reservation by phone, call 877-901-6632. To make a room reservation online for the conference:

[Book your group rate for ILCA Annual Meeting .](#)

All conference registrants will have a reception Monday night, lunch on Monday and Tuesday, and snacks/beverages for breaks. We have lunch and break sponsorships available. If your company would like to sponsor a break, please contact Dan Finn [dan@us-reports.com](mailto:dan@us-reports.com) or Kristi Ruxlow [administration@insurancelosscontrol.org](mailto:administration@insurancelosscontrol.org).

Our conference will open with Motivational Speaker, Mark Klein, Corporate Jester. We will also have a business meeting that must be conducted at each conference. All attendees are encouraged to attend the business meeting.

Conference cost is \$345 for members of ILCA and \$430 for nonmembers. Any group bringing 10 or more persons can take advantage of a group rate of \$325 per person.

2016 ILCA ANNUAL  
CONFERENCE  
OCTOBER 3—5  
LOUISVILLE, KY

E NEWS

The topics for the conference this year are as follows:

Topic	Speaker	Company Represented
Safety Program Management	Dr. David Guess	Usher Transport
Construction Safety	Dana Nathan Blose	Builders Ins. Group
Infection Control Risk Assessment	Duane Hathaway	
Wineries / Microbreweries	Bruce Tagg	FM Global
Interpersonal Skills	Ralph Hines	Grange Insurance
Res. WC Issues	Steven Wurzelbacher	NIOSH
Builders Risk	Robert Tull	Nationwide
Drones	Scott Patterson & Mary Russo	Alexander & Schmidt / Verisk Ins.
Multi-employer / Joint Employer Job Sites	Todd Logsdon	Fisher Phillips
Fleet Safety	Paul Farrell	Nationwide

E NEWS

## SPONSORSHIP OPPORTUNITIES FOR THE 2016 ANNUAL CONFERENCE

ILCA is pleased to announce the following sponsorship and advertisement opportunities available during the two and a half day conference on October 3—5, 2016.

*Sponsorship and / or advertising for the 2016 Conference will now include advertising on the ILCA website as well as in the ILCA eNews for one year following the conference.*

### **Conference Partner—\$1,500**

Includes: exhibit space and 2 full registrations. (Registrations must be submitted by **9/16/16**). We welcome you to make a ten minute presentation to the attendees during the conference. We will insert your 3-hole punched brochure into our conference binder. This fee does not include Hotel registration.

### **Exhibitor**

1 Table—One day only—\$200

1 Table—Entire conference—\$350

### **Luncheon—\$600**

Includes: Announcement before and after lunch, signage, notation and thank-you in conference agenda, web link to your website, table for materials and a vendor's insert in the conference binder. Encouraged to have small logo giveaways and all the possible contacts you can create by networking.

### **Break—\$300**

Includes: Announcement before and after break, signage, notation and thank-you in conference agenda, web link to your website and a vendor's insert in the conference binders. Get all of the possible contacts you can create by networking.

### **Vendor's Insert—\$150—Insertion of your company brochure and information**

- Black and white advertisement we reproduce in black and white and include in the binder. You provide the original document. Material must be submitted by **September 16, 2016**.
- Color advertisement, brochure, or flyer we will add to our binder. You provide and ship the materials in advance. These must be 3 hole punched. Materials must be submitted by **September 16, 2016**.

Sponsorship opportunities are on a first come, first serve basis. Sponsorship payments must be received no later than **September 16, 2016**.

Contact Kristi Ruxlow at 309-696-2551 or by email at [administration@insurancelosscontrol.org](mailto:administration@insurancelosscontrol.org) for reservations and payment information.

## MOTIVATIONAL SPEAKER

2016 ILCA ANNUAL  
CONFERENCE  
OCTOBER 3—5  
LOUISVILLE, KY

E NEWS

**HE TALKS. YOU LAUGH.**

*Mark Klein, the CorpJester, brings message-driven laughter to your corporate meeting. His clean, unique comedy can be customized by client or industry to make your event productive and memorable.*

*He entertains at corporate events, comedy venues, and on cruise ships around the world.*

**Profiles and Appearances:**

**Forbes**



LOOK SHARP//LIVE SMART

**Bio:**

Mark Klein is a native of Louisville, Kentucky. This Colgate University graduate (with a Bachelor of Arts in English) has been making laughter his living for 30 years. He began his career as a stand-up comedian in comedy clubs from Alaska to Florida, headlining top rooms across the country. Mark expanded his schedule to include corporate and cruise ship entertainment. His performance calendar now comprises shows in venues ranging from special events to dinner theaters to comedy clubs. He is able to customize his show to accommodate his clients' needs for both content and context.

Mark, who is married and has a son, is also a Thoroughbred racehorse owner, real estate investor, writer, bourbon aficionado, and the official walker of the dumbest dog in the world.

Contact Mark Klein: 502-500-4233 • [corpjester@hotmail.com](mailto:corpjester@hotmail.com)

# NEW THIS YEAR!

## SPECIAL STUDENT SESSION

Insurance Loss Control Association (ILCA) would like to welcome students to our annual conference in Louisville, Kentucky on Tuesday, October 4th at the Marriott—Louisville East.

The Executive Committee has set up an afternoon of informative sessions that will allow students to gain knowledge as well as network with Loss Control professionals in attendance.

This student conference session is available for \$20 to any student that would like to attend. To register online, please [CLICK HERE](#).

Questions? Email [administration@insurancelosscontrol.org](mailto:administration@insurancelosscontrol.org).

### AGENDA—TUESDAY, OCTOBER 4th

TIME	TOPIC	PRESENTER
12:00PM—1:00PM	Lunch	Network with Loss Control Professionals in Attendance
1:00PM—1:30PM	Overview / Definition / Purpose of Loss Control within the insurance industry	Mark Bates, CSP First VP, ILCA Grange Insurance
1:45PM—2:15PM	Property Loss Control (basics)	William Doornbos Iowa Mutual Ins. Co.
2:15PM—2:30PM	Break	Network with Loss Control Professionals in Attendance
2:30PM—3:00PM	CGL Loss Control (basics) A. Products Liability B. Premises Liability	Stig Ruxlow, CSP Financial Secretary, ILCA Zurich Services Corporation
3:15PM—3:45PM	Commercial Auto Loss Control (basics)	Jon Finn Secretary, ILCA Lockton Companies
3:45PM—4:00	Break	Network with Loss Control Professionals in Attendance
4:00PM—4:30PM	Workers Comp Loss Control (basics)	Chuck Noty, CSP, ARM Member-At-Large, ILCS Iowa Mutual Insurance Co.
4:30PM—5:00PM	Occupancy Hazard Analysis—wrap up session bringing it all together (hazard / controls) (basic)	Chuck Noty, CSP, ARM William Doornbos

# OSHA's Multi-Employer Worksite Doctrine Update: Civil and Criminal Liability

By Mark A. Lies II<sup>1</sup> and Adam R. Young<sup>2</sup>

## INTRODUCTION

Multi-employer worksites have long complicated labor and employment law compliance, raising difficult questions as to which company constitutes an employee's "employer" for purposes of federal and state law. The NLRB has taken a rigorous approach, targeting multi-employer worksites and finding alleged "joint employers" liable for labor law violations. The federal Occupational Health and Safety Administration (OSHA) is even more aggressive. For years, OSHA has advanced a policy at work sites, particularly construction sites, under which it can cite direct employers, general contractors, consultants, and temporary employers for a single safety or health violation. We can expect OSHA to focus this special enforcement agenda at multi-employer worksites, targeting temporary employees and subcontractors. Because of new regulations, employers on multi-employer worksites face increased fines, costly abatement responsibilities, and potential criminal liability.

---

<sup>1</sup> Mark A. Lies, II is an attorney in the Environmental, Safety and Toxic Tort Group in the Chicago office of Seyfarth Shaw LLP. Mr. Lies is a partner who focuses his practice in the areas of products liability, occupational safety and health, workplace violence, construction litigation and related employment litigation. Mr. Lies can be contacted at [mlies@seyfarth.com](mailto:mlies@seyfarth.com) (312/460-5877).

<sup>2</sup> Adam R. Young is an associate attorney in the Environmental, Safety and Toxic Tort Group in the Chicago office of Seyfarth Shaw LLP. Mr. Young focuses his practice in the areas of occupational safety and health, employment law, and associated commercial litigation. Mr. Young can be contacted at [ayoung@seyfarth.com](mailto:ayoung@seyfarth.com) (312/460-5538).

## OSHA'S ENFORCEMENT INITIATIVES

The presence of multiple employers, contractors, consultants, and temporary workers at the same workplace is increasingly common in construction, manufacturing and other industries. OSHA has long maintained a Multi-Employer Worksite Policy, the Agency's enforcement position on multi-employer worksites. Under OSHA's Multi-Employer Worksite Policy, more than one employer may be cited for a hazardous condition that violates an OSHA standard, so long as OSHA determines that they violated a duty under the Act. This can occur even when the employer being cited had no employees exposed to the hazard at issue.

The Agency will use a two-step process to determine whether more than one employer is to be cited. The first step is to determine whether the employer is a creating, exposing, correcting, or controlling employer.

- The **creating employer**, who created or caused a hazardous condition, may be cited even if the only employees exposed to the alleged hazard are those of other employers at the site. At a construction site, an employer could be liable as a "creating employer" for negligent conditions it created, even if that employer has finished its work and left the work site.
- The **exposing employer**, whose own employees are exposed to the hazardous condition, may be cited if (1) it knew of the hazardous condition or failed to exercise reasonable diligence to discover the condition, and (2) it failed to take steps consistent with its authority to protect its employees.
- The **correcting employer**, who is responsible for correcting the hazardous condition, may be cited if it fails to meet its obligations of correcting the allegedly hazardous condition.
- The **controlling employer**, who has supervisory authority over the worksite and the power to correct safety and health violations or require others to correct them, may be cited if it fails to exercise reasonable care to prevent and detect violations on the site. In General Industry, the host employer is typically the general contractor. These employers carry a higher compliance burden than other employers. Accordingly, a general contractor with supervisory authority and control over a construction site will be expected to detect and abate OSHA violations.

If OSHA determines that an employer falls into one (or more) of the four categories under the Multi-Employer Worksite Policy, the second step is to determine whether the employer met its obligations with regard to preventing and correcting the violations. If not, OSHA will issue a citation to the employer under the Multi-Employer Worksite Policy.

## **POTENTIAL CRIMINAL PROSECUTION**

It is important to note that the Multi-Employer Worksite Policy can also be utilized for criminal prosecution of employers if the following elements are present: (1) a fatality, (2) violation of a specific regulation, (3) the violation was willful and (4) there is a causal connection between the violation and the death. As OSHA continues its aggressive application of the Multi-Employer Worksite Policy, employers should be wary as to potential liabilities for contractors, temporary workers, and other non-employees at their workplace.

In addition, OSHA is also intensifying its criminal prosecution of management representatives. The Department of Justice announced a recent criminal enforcement agenda on December 17, 2015, to seek additional liability against employers when there is a workplace safety violation having nothing to do with a fatality. The DOJ will seek criminal penalties under other criminal laws for lying during an OSHA inspection, making false statements in government documents, obstructing justice and tampering with witnesses which are felonies and can result in imprisonment ranging from 5 to 20 years and enhanced monetary penalties.

## **RECOMMENDATIONS**

The re-invigorated Multi-Employer Worksite Policy has been another tool employed by OSHA in its mission to more aggressively enforce compliance with workplace safety and health laws and regulations. Employers who exert control over other employers must assess their potential liability as a “controlling employer” and develop appropriate administrative procedures and written documentation to demonstrate compliance with a controlling employer’s duties. Accordingly, it is recommended that all employers carefully evaluate the degree to which they control the means and methods of a subcontractor’s work and implement immediate actions to ensure the exercise of reasonable care in identifying and correcting violations, including:

- Carefully reviewing contractual language to identify which employer is responsible for OSHA compliance and degree of control the employer exercises over other employers and employees. While an employer cannot discharge its OSHA liability by contract, contractual language can be protective to the extent to which a particular employer limits its responsibility and ability to correct or abate dangerous conditions at a multiple employer site. We are attaching a contract rider that is meant to be considered as a template for drafting the safety for defining the safety of components of a contract with subcontractors.

- Reviewing the subcontractor's safety-related documentation when working with a subcontractor, including personal protective equipment records and safety programs and policies, to ensure they are up-to-date and address the particular hazards (e.g., fall, electrical, excavation hazards) to which the subcontractor's employees are expected to be exposed.
- When working at a multiple-employer worksite, the employer with supervisory responsibility must either inspect the worksite itself or ensure that inspections are being conducted by a subcontractor frequently enough to be able to identify and correct observed safety and health violations. This includes training on-site managers and supervisors to identify safety and health violations.
- The employer must also implement an effective system either for correcting any safety and health violations that it observed during these inspections or for ensuring that the subcontractor corrects any observed violations. This should include documenting the completion of any corrective action recommended.
- The employer should develop a system to ensure that subcontractors monitor their employees, correct violations, and report to the general contractor, the construction manager, or foreman.
- The employer should require the subcontractor to report injuries immediately, both to the proper regulatory authority (as applicable) and to the employer. The employer should maintain documentation of any worksite injuries to subcontractors' employees, as well as any corrective action taken to address any hazardous conditions that led to the injury.
- An OSHA 300 log should be maintained at the work site to record work-related injuries and illnesses.

**NOTE: If you wish to receive complimentary copies of this article and future articles on OSHA and employment law related topics, please contact Mark A. Lies, II at [mlies@seyfarth.com](mailto:mlies@seyfarth.com) to be added to the address list.**

**Subcontractor Rider Template**

Dear \_\_\_\_\_,

We wish to inform you of certain requirements that your Company will be expected to comply with when you perform the work under our agreement dated \_\_\_\_\_, as follows:

- Contractor agrees that it will perform the work in compliance with the Occupational Safety and Health Act of 1970, and all applicable state and local statutes, regulations and ordinances, including those relating to any hazards associated with performances of Contractor's work under the agreement.
- Contractor acknowledges that it has had an opportunity to inspect the jobsite to identify any existing hazards and that it has a safety or health compliance program to protect its employees against any hazards which may exist at the jobsite, including any and all necessary personal protective equipment required to perform such work.
- Contractor acknowledges that it will conduct all training required for its employees for any hazards that they may be exposed to at the jobsite, as required by the Occupational Safety and Health Act of 1970, and all applicable state and local statutes, regulations and ordinances, including those relating to any hazards associated with performance of Contractor's work under the agreement and will maintain all documentation required for such training and make it available for inspection by the Company, if requested.
- Contractor agrees that it will conduct frequent and regular inspections of the work being performed pursuant to the agreement to confirm that its employees are complying with applicable OSHA regulations, including all regulations relating to any hazard to which its employees may be exposed, and will enforce appropriate discipline of its employees, with documentation, for any violations.
- Contractor agrees that it will defend the Company in any regulatory action brought by the Occupational Safety and Health Administration for any citations that are issued to the Company as a result of Contractor's failure to perform the work under this agreement in accordance with the Occupational Safety and Health Act of 1970, and any state and local laws, regulations or ordinances that apply to the Contractor's work, including any and all attorney's fees, costs and expenses and penalties incurred by the Company in defending against such citations.

The Company and Contractor agree that the foregoing terms and conditions are incorporated into and made a part of the agreement dated \_\_\_\_\_ between the Company and Contractor.

Company [Name]

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

Contractor [Name]

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_



## Insurance Loss Control Association

PO Box 346  
Morton, IL 61550  
Phone: 309.696.2551  
E-mail: administration@insurancelosscontrol.org

### 2016 Board Members:

President — Dan Finn  
First Vice President — Mark Bates  
Second Vice President — Scott Patterson  
Secretary — Jon Finn  
Financial Secretary — Stig Ruxlow

## Thank you to our conference sponsors!



**Risk Control Technologies Inc.**  
3-1750 The Queensway Suite 1105  
Toronto, ON, Canada  
M9C 5H5  
Toll Free: 1-877-777-2231  
Phone Number: (416) 249-2260  
[www.riskcontroltech.com](http://www.riskcontroltech.com)



**Alexander & Schmidt**  
P.O. Box 337  
Yarmouth, ME 04096  
Toll Free: 1-800-491-6484  
Phone Number: (207) 869-1300  
Fax Number: (207) 869-1301  
[www.alexanderschmidt.com](http://www.alexanderschmidt.com)



**Grange Insurance**  
671 South High Street  
Columbus, OH 43206  
Toll Free: 1-800-247-2643  
[www.grange.com](http://www.grange.com)



PREMIUM AUDITS | INSPECTIONS | RISK SERVICES

**US-Reports**  
5819 Lockheed Avenue  
Loveland, CO 80538  
Toll Free: 1-800-223-2310  
[www.us-reports.com](http://www.us-reports.com)



**Utilant LLC.**  
1738 Elmwood Ave., Suite 104  
Buffalo, NY 14207  
Toll Free: 888-884-5268  
[www.losscontrol360.com](http://www.losscontrol360.com)



**Brotherhood Mutual Insurance Company**  
6400 Brotherhood Way  
Fort Wayne, IN 46825  
Toll Free: 800-333-3735  
[www.brotherhoodmutual.com](http://www.brotherhoodmutual.com)



**TranStar Technical Services, Inc.**  
4485 Tench Rd, Suite 1720  
Suwanee, GA 30024  
Toll Free: 1-800-993-2990  
Phone Number: (678) 236-9005  
Fax Number: (678) 236-9014  
[www.transtartech.com](http://www.transtartech.com)



**Motorists Mutual Insurance Company**  
471 East Broad Street  
Columbus, OH 43215  
Toll Free: 1-800-876-6642  
[www.motoristsmutual.com](http://www.motoristsmutual.com)