

CLAIMS, CONTRACTS and
UNEXPECTED
CONSEQUENCES

April Yearby
Rand Moritzky

Property Loss

- Business Income is an often overlooked Exposure
- Tornado in Tennessee destroys a Cell site and CO (\$250 K for Tower and CO)
- 2 months to get the Cell site back up and Running
- Over 2 years to get Customers Sub level to pre-loss level (Additional \$700 K Loss of Use/Business Income)

General Liability Loss

- Contractor at a Cell Site Backs into a tower
- Tower collapses onto the telephone CO Tower
- Multiple policies respond to loss
- \$500,000+ to Replace loss of income and Property damage.

Auto Loss

- Employee takes personal auto to post office for work
- Opens door to get out of car just as a motorcyclist is passing
- Motorcyclist is severely injured
- Settled for \$5,000,000

Directors and Officers Loss

The plaintiff filed a complaint against their competitor alleging that a former employee, now working for the competition, engaged in unauthorized use of confidential and proprietary information and committed other acts of unfair competition. As a result, the plaintiff alleges it has suffered irreparable and immediate injury. In addition, the plaintiff alleges that the defendant has possession of its confidential information and intellectual property. The plaintiff asserts causes of action for misappropriation of trade secrets, confidential information, and unfair competition. Total Defense Cost and settlement exceeded \$450,000.

Errors & Omissions Loss

- Company is an internet service provider for local bank.
- Bank hires third party for software installation
- Breach occurs
- Finger pointing begins...

- ▶ Telco hires Contractor to install antennas on Tower, Contractor has no worker's comp, employee falls, severe injury!



Contracts & Insurance Awareness

Where Connections Make a Difference

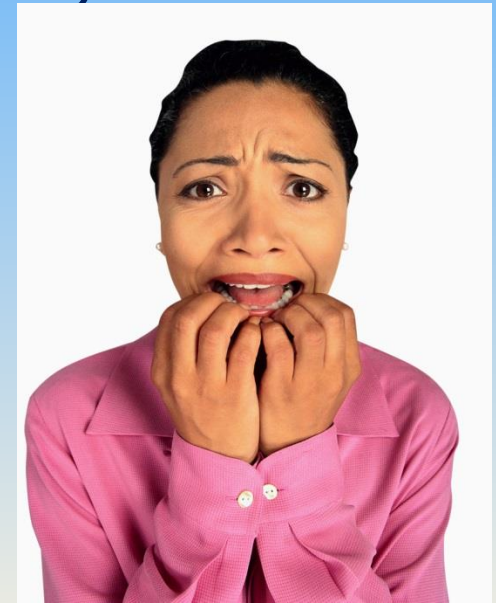
unitelinsurance.com

Specimen Indemnification

- **INDEMNIFICATION.** WITHOUT LIMITING COMPANY'S RIGHTS UNDER LAW, DEALER AGREES TO PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY AND REPRESENTATIVES FROM AND AGAINST AND PAY (WITHOUT ANY CONDITION OR OBLIGATION THAT COMPANY OR REPRESENTATIVES FIRST PAY) FOR **ALL CLAIMS, DEMANDS, SUITS, LIABILITIES, DAMAGES, JUDGMENTS, LOSSES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES,** WHICH MAY BE ASSERTED AGAINST OR INCURRED BY COMPANY OR REPRESENTATIVES BY OR DUE TO ANY **(I) DEFAULT OR BREACH OF THIS AGREEMENT, (II) ACT, ERROR OR OMISSION OF DEALER, OR (III) PERSON NOT A PARTY TO THIS AGREEMENT,** INCLUDING, WITHOUT LIMITATION OR EXAMPLE, DEALER'S INSURANCE OR BONDING COMPANY, FOR ANY EXPENSE, LOSS OR DAMAGE INCLUDING, WITHOUT LIMITATION, STATUTORY CIVIL DAMAGES, PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, REAL OR PERSONAL, ARISING OUT OF OR FROM, IN CONNECTION WITH, AS A RESULT OF, RELATED TO OR AS A CONSEQUENCE OF ANY EQUIPMENT OR SERVICE, THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES, RECORDING OF COMMUNICATIONS, OPERATION OR NONOPERATION OF ANY EQUIPMENT OR THE MONITORING STATION FACILITIES, **THE ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE OF ANY KIND OR DEGREE OF REPRESENTATIVES OR COMPANY OR ITS SUPPLIERS OR SUBCONTRACTORS, BREACH OF CONTRACT, EXPRESS OR IMPLIED, BREACH OF WARRANTY, EXPRESS OR IMPLIED, PRODUCT OR STRICT LIABILITY, OR ANY CLAIM FOR CONTRIBUTION OR INDEMNIFICATION, WHETHER IN CONTRACT, TORT OR EQUITY.**

More Contractual Specimen Language

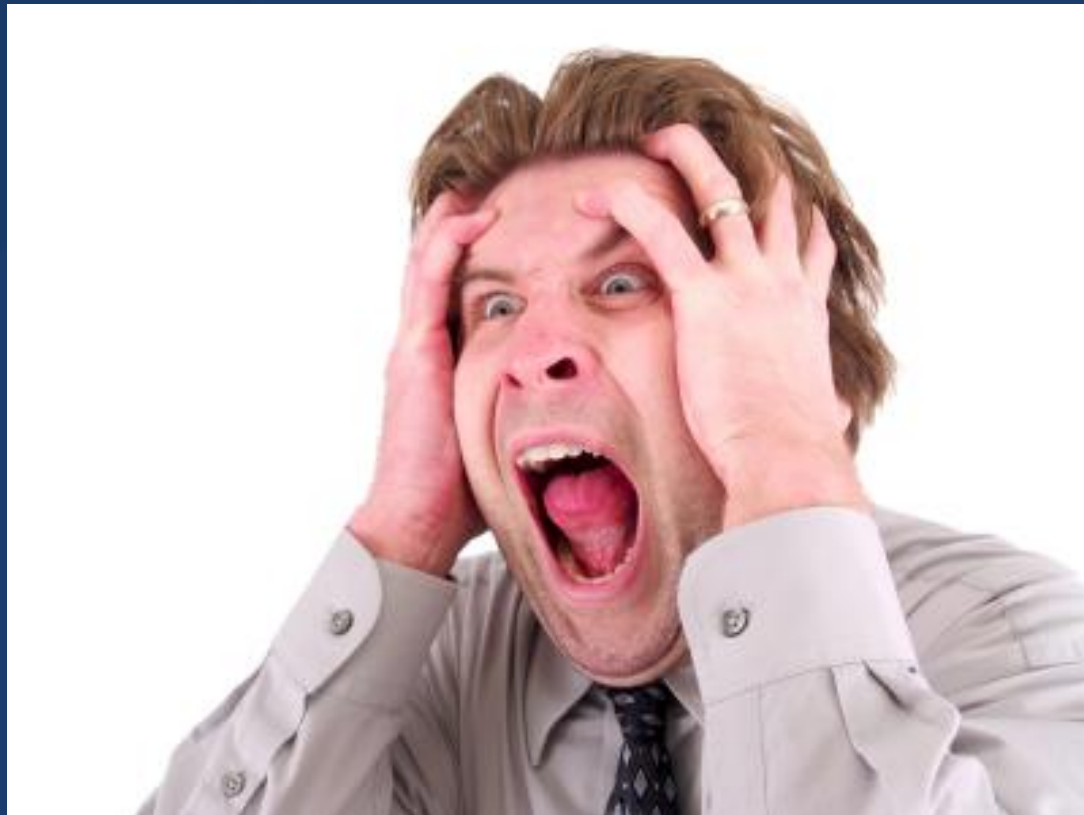
- **Surety**. *In the event the Dealer is a business entity, e.g., corporation, LLC, LP, etc., **the individual signing the Agreement** on behalf of the Dealer acknowledges and **agrees to be personally liable** as a surety for the financial obligations of the Dealer .*



Hold On!! There Is More!!!

- **A. Indemnification.** Licensee hereby agrees to **indemnify, defend, and hold harmless** Licensor, the Owner, and their respective officials, officers, directors, agents, employees, successors and assigns from and against **any** and **all claims**, damages, expenses, costs (including, without limitation, reasonable attorneys' fees) and liabilities (collectively, "Claims") arising or alleged to arise from **(i)** any breach of this Agreement by Licensee, **(ii)** any alleged or actual violation or infringement by Licensee or its employees, agents or contractors of any copyright or other intellectual property right of a third party in connection with the Event or activities occurring at the Event, **(iii)** the use of occupancy of the Center by Licensee, its employees, agents, contractors, exhibitors, invitees, guests or patrons, and **(iv) the acts or omissions, or violation of any applicable law, rule, regulation or order, of or by Licensee or any of its employees, agents, contractors, exhibitors, invitees, guests or patrons.** Notwithstanding the foregoing, the obligations of Licensee in this paragraph shall not apply to the extent the Claims or Costs arise out of the gross negligence or intentional misconduct of Licensor or its employees or agents.

Really???



Where Connections Make a Difference

unitelinsurance.com

Contractor Liability



Where Connections Make a Difference

unitelinsurance.com

Contractor Liability

- ▶ Line builder hired by local telecom subs to another firm, bores into natural gas line, explosion destroys historic site!



Aerial View



Where Connections Make a Difference

unitelinsurance.com

Aftermath



Where Connections Make a Difference

unitelinsurance.com

Specimen Insurance Language

- During the term of this Agreement and all renewals thereof, Dealer shall maintain in full force and effect comprehensive general liability insurance (**broad form**) occurrence coverage (**naming Company as an additional insured**) in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate including, without limitation, errors and omissions and **broad form contractual liability** coverages for bodily injury, death, **personal injury** and property damage. Dealer shall, upon execution of this Agreement, and at the anniversary of Dealer's insurance policy(ies), deliver to Company certificates of insurance confirming (i) the type and amount of coverages, (ii) that Company is an additional insured, and (iii) that no cancellation, termination or **material change** regarding the policies will become effective except **upon thirty (30) days prior written notice to Company**. If Dealer fails to deliver the certificates of insurance, in a form acceptable to Company in its reasonable discretion, within thirty (30) days of executing this Agreement or any anniversary date of the policies, Company, in its sole and absolute discretion, may, upon notice, terminate this Agreement for good cause; provided, however, Company's failure to demand certificates or evidence of full compliance with these insurance requirements or to identify any deficiency in such coverage shall not constitute a waiver of Dealer's obligation to maintain the insurance required hereunder;

More Specimen Insurance Language

A. Coverage. Licensee shall obtain, at its own cost and expense, **with insurance companies currently rated A VIII or better** by Best's Key Rating Guide, commercial general liability insurance that insures all operations of Licensee contemplated by this Agreement. Such insurance shall name Licensor, and the Owner, the City, and the Convention Center as additional insured's. Such insurance shall be written with a limit of at least One Million Dollars (**\$3,000,000**) per occurrence combined single limit for bodily injury, property damage and **personal injury**. Licensee shall also maintain, at its own cost and expense, with insurance companies currently rated A VIII or better by Best's Key Rating Guide, commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles, in the minimum amount of One Million Dollars (\$1,000,000) per accident (PI and PD combined single limit). Such commercial general liability insurance shall be **primary to and not contributory** with any insurance coverage or self-insured program of Licensor. Licensee shall also maintain, at its own cost and expense, workers' compensation insurance in respect of all employees and any borrowed, leased or other person to whom such compensation may be payable by Licensee.

Read the Fine Print...

COMMERCIAL GENERAL LIABILITY
CSGA 395 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL EVENT EXCLUSION - PARTICIPANTS AND CONTESTANTS

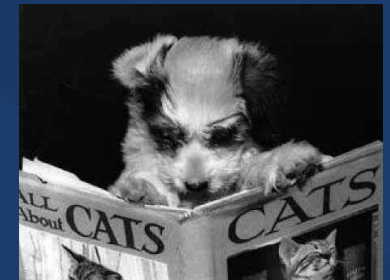
This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

- A.** The following exclusion is added to Paragraph 2. Exclusions of Section 1 - Coverage A - Bodily Injury And Property Damage Liability and Paragraph 2. Exclusions of Section 1 - Coverage B - Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" to any person while practicing, instructing, supervising, officiating, training or participating in any physical exercise, game, sport, contest, race, exhibition, demonstration, performance or show.]

SPECIMEN



CSGA 395 10 12

Includes copyrighted material of Insurance
Services, Inc., with its permission.

Page 1 of 1

Where Connections Make a Difference

unitelinsurance.com

...and Read All The Pages

THIS ENDORSEMENT CHANGES THE POLICY. READ IT CAREFULLY.
**SPECIAL EVENT EXCLUSION- PARTICIPANTS AND
CONTESTANTS**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE FORM

- A. The following exclusion is added to paragraph 2. **Exclusions of Section I- Coverage A- Bodily Injury And Property Damage Liability** and Paragraph 2. **Exclusions of Section I – Coverage B- Personal and Advertising Injury Liability.**

This Insurance does not apply to “bodily injury”, “property damage” or Personal and advertising injury” to any person while practicing, instructing, supervising, officiating, training or practicing in any physical exercise, game, sport, contest, race, exhibition, demonstration, performance or show.

What Was The Effect?

This Insurance does not apply to “bodily injury”, “property damage” or “Personal and advertising injury” to any person while practicing, instructing, supervising, officiating, training or practicing in any physical exercise, game, sport, contest, race, exhibition, demonstration, performance or show.

- This just took the very coverage away that the group needed!

Contractual Considerations

- *-THERE IS ALWAYS SOME RETAINED RISK!*
- *-Transfer as much risk as possible*
- *-Accept as little risk as possible*
- *-There is little, if any, control of others performance.
What happens if there is failure of performance,
stipulations of contracts are not met or insurance doesn't
respond?*



Lessons Learned

- ***Understand risk transfer*** : A way to reduce risk to the entity and/or transfer a portion of risk to someone else.
- ***-Understand that insurance*** may not respond to all stipulations of a contract.
- ***-Establish service agreements for contractors*** that you are doing business with. Contracts should spell out the scope of agreement, insurance requirements, risk transfer language to include hold harmless, indemnification, additional insured, waiver of subrogation and insurance limits.
- ***-Consult with your Risk Advisor*** to ensure you meet ALL stipulations of contracts. Not just limits!!!!
- ***-Always consult with your legal counsel*** to address levels of risk, assess your willingness to retain risk and assistance with contract negotiation.

Questions?

April Yearby | Account Executive, Risk Advisor • CIC, CISR, CWCS

UNITEL Insurance

Ayearby@unitelinsurance.com

402-434-7269(d)

Rand Moritzky, National Program Director AU, CIC, CRM, MBA

UNITEL Insurance

Rmoritzky@unitelinsurance.com

402-434-7268

