

The MountainGuard[®]

REPORT

September, 2011

Service Dogs for the A.D.A.

By Ev Hatch, Claim Specialist

A couple months ago, one of my colleagues posed a question about disabled persons using service dogs at ski areas, and it was tossed around among our claims and loss control team. I probably gave some general response on a subject I know little about. I don't even recall now what I said. This same colleague then suggested that I write an article about it for this newsletter.

My first approach was to Google "disability service dogs". I got 3,150,000 hits in 0.20 seconds. I started sifting through it and reading what I could. There is an endless supply of information online, some factual, some commentary, much of it undated. As it turns out, the part of the Americans with Disabilities Act (ADA) that deals with service animals changed significantly on March 15, 2011. These changes affect all businesses that are open to the public, including ski areas. In my online search, however, it was initially difficult to figure out which articles dealt with the new law, which ones dealt with the old law, and thus which ones were accurate.

Another colleague then suggested that I check out the NSAA website. Sure enough, there was an NSAA memo right on



point, summarizing the most recent changes in the law on disability service dogs. My point being, the NSAA website is an extremely valuable resource. If you're confronted with a new problem or confounding legal issue, don't hesitate to look there first. If you have some extra time, it's also a good place to bone up on your risk management summer reading list. Please also check out the MountainGuard website while

you're at it.

Back to service dogs. The new law goes like this. All businesses that are open to the public should modify their policies, practices and procedures to allow disabled persons to bring their service animal onsite and to access any area, with their service animal, that other customers are allowed to access. The new law now limits the type of species that qualify as service animals: it includes dogs of any kind and, yes, miniature horses. You are no longer mandated to admit seeing-eye parrots and medical-response iguanas. A business can ask a disabled person to remove a service dog from the premises under the following limited circumstances: (1) if the animal is out of control and the

animal's handler does not take effective action to control it; or (2) if the animal is not housebroken. In the case of miniature horses, a business can also consider, in addition to the foregoing, (A) the type, size, and weight of the miniature horse and whether the facility can accommodate these features, and (B) whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation. *28 C.F.R. §302(c)(2) and (9)*.

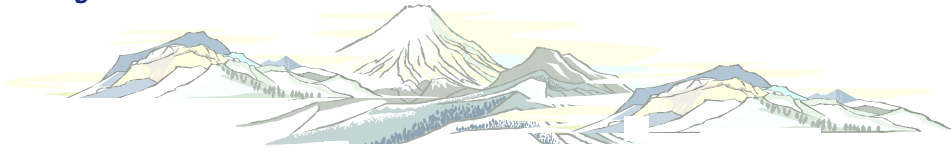
According to the statute, you can exclude a miniature horse from parts of your operation based on safety considerations. So can you also exclude a service dog? The section on service animals doesn't appear to allow it, so long as the dog is otherwise



under the handler's control. However, the Justice Department has published comments indicating that other sections of the ADA may apply to service dogs as well. *See 28 C.F.R. 36, Appendix A, SubPart C--Specific Requirements*. For example, a service dog may be excluded if its presence or behavior fundamentally alters the nature of the service being provided, such as repeated barking during a live performance. *28 C.F.R.*

§36.302.(c)(1). Also, a service dog may be excluded if it poses a direct threat to the health or safety of others, after "an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modification of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk." *28 C.F.R. §36.208*.

So what happens when someone arrives at your resort with a dog, claiming they need it with them to enjoy the amenities? Can you ask them why they need the dog? The ADA says the following: You cannot ask a disabled person about the nature of their disability. However, you can ask them two questions to determine if the animal qualifies as a service animal: (1) is the animal required because of a disability and (2) what work or task has the animal been trained to perform? You can generally *not* ask these questions if it is readily apparent that the animal is trained to assist the disabled person, for example, if the dog is in a harness and guiding a person who is obviously blind. Also, you cannot require proof that the animal is trained. *28 C.F.R. §302(c)(6)*.



What about the twenty something girl toting the teacup mini poodle in the Gucci purse who says she brings it everywhere and needs it with her to enjoy the place? The simple answer: you don't have to allow pets or companion animals. You only have to allow dogs that provide real disability-related services. The ADA defines it as follows:

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting



individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. 28 C.F.R. §104.

To qualify, the dog must be trained to perform a specific task that mitigates the handler's disability. This could include guide dogs for blind persons; hearing dogs for deaf persons; mobility assistance dogs for physically disabled persons; medical response dogs for people with diabetes, allergies or other medical conditions; seizure response dogs for people with epilepsy; psychiatric service dogs that assess the environment for persons with schizophrenia, guide handlers away from stressful situations, interrupt injurious behaviors, remind handlers to take medication, and/or act as a brace if the handler becomes dizzy. It does not include pets, emotional support dogs, therapy dogs, or guard dogs. An emotional support dog, for example, may provide a person with a sense of well-being merely by virtue of its presence; however, unless the dog is trained to perform a specific task that mitigates a specific, recognized disability, then you are not required to admit the dog under the ADA as a service dog.

So what happens when a disabled person approaches the ticket window with a service animal and asks to buy a lift ticket during summer operations? Do your employees know how to respond? Who at your resort will determine whether the disabled person is sufficiently "in control" of the animal to bring it on the

lift? Or will you exclude the animal based on safety considerations after an informed and objective assessment? Who will conduct this assessment? And if you exclude the animal, how will you otherwise meet your obligations to your disabled guest? Do you have a written policy? How is your policy communicated to your employees and disabled guests? The answer to these questions will vary depending on the circumstances of your operation. It's safe to say though, that some advance planning can help you and your disabled guests avoid unnecessary delays, potentially embarrassing misunderstandings, and a loss of public confidence in your hospitality. It may also reduce your exposure to ADA-related claims.

I have not tried to summarize the entire law on service dogs in this article. The other requirements are described in a two-page memo on the NSAA website, www.nsaa.org, and it definitely warrants a read by risk managers and mountain ops people.

Willis North America Announces Bed Bug Infestation Insurance Protection for Hotel and Residential Industries

Comprehensive Insurance Solution Includes Crisis Management Component to Reduce Brand Damage

As the Bed Bug epidemic in the US escalates, property owners continue to grapple with the tiny bugs that have caused big problems. Extensive publicity is shedding light on the scope of the problem and the liability landscape continues to evolve.

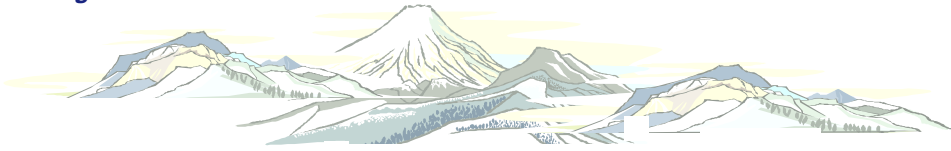
Bed Bug infestation incidents have given rise to a range of allegations and claims including bodily injury, property damage, and mental anguish. In addition, hotel and residential real estate companies involved in a bed bug outbreak may incur costs to remediate the infestation, suffer revenue loss, and incur expenses associated with managing the crisis. Any organization involved in an infestation also faces significant brand damage.

Most standard Property and Casualty insurance policies provide little, if any, coverage for this emerging exposure. To



meet the growing demand from hotel, hospitality and residential property owners, Willis has announced **Bed Bug Infestation Recovery Insurance™ (BBIR)**. This innovative product developed in collaboration with Lago Vista, Texas-based

Professional Liability Insurance Services offers a comprehensive risk management and insurance solution that extends coverage



beyond what is generally available under standard property and liability policies.

The BBIR product delivers a range of solutions, including:

- Insurance to cover the cost of decontamination services
- Insurance to cover the cost of rehabilitation expenses
- Insurance to cover the loss of profit due to business interruption
- Crisis management services including a 24/7 crisis hotline, and expert operating teams to coordinate with regulatory authorities, public health authorities, customers, employees, and media
- Risk control techniques, including a bed bug prevention guide, customized action plans and training material for staff education
- Decontamination services provided by locally and nationally recognized pest control specialists including Orkin, LLC, a wholly owned subsidiary of Rollins Inc.

“This timely and innovative product will be a powerful ally for the hotel and residential property industries,” said **Brian Ruane**, Willis North America’s National Real Estate and Hotel Practice Leader said. “This program offers organizations a comprehensive approach to addressing the risks involved with this exposure - from tools to help prevent an infestation, to coverage for the economic consequences, through crisis management and remediation. The Program is intended to close a critical gap in most insurance policies.”

“The crisis management component of this program is critical,” said **John Lafakis**, Senior Vice President and Program Manager for BBIR. “Any bed bug outbreak big or small has the potential to damage an organizations’ reputation or brand, resulting in financial loss. The BBIR product includes a team of experts that that can respond and coordinate with customers, the media, and regulatory authorities. This will go a long way towards minimizing the impact of an occurrence,” he said.

Please contact your insurance representative if you are interested in pursuing this coverage.

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Cyber Liability: More than just kicking the tires

By Tim Barnhorst, Client Services Specialist/Associate Producer

When a new product first hits the market, consumers are generally wary of its dependability, longevity, and performance.

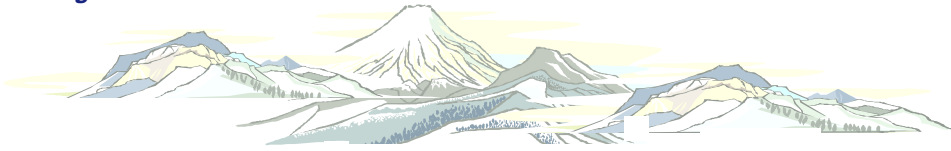
Cyber Liability coverage is one of the newest insurance coverages on the market and despite its relatively young age, it is one of the fastest evolving coverages available. As more network and security breaches are being reported by the media, Cyber Liability coverage has moved away from being a, “luxury coverage,” to rapidly becoming a coverage of necessity.

To maintain a high level of customer service, the ski industry has used advancements in technology to develop and grow their products and services. From selling tickets, to booking reservations, and tracking demographics, the ski industry like most others is very dependent on the benefits of technology. The number one priority in your line of business is to keep your customers happy and to keep them coming back to your resorts. What happens when your customers find out that the personal and confidential information that they entrusted to your resort is suddenly compromised? What if that information breach included credit card numbers, social security numbers, birth dates, or billing addresses? The cost to simply notify one customer of a possible breach can be upwards of \$200. This does not include credit monitoring, credit card re-issuing, or the ensuing public relations costs. Two of the largest costs of network and security breaches are the costs of notification and the cost of forensic analysis on the compromised network. In defending a cyber breach in the court systems, once the case reaches the discovery period, the costs of forensics quadruples.

You might be asking yourself, “Could this happen to our resort? I thought cyber criminals only targeted agencies like NATO or big corporations like Sony and TJX?” To answer your question, if it can happen in a small town in southern Maine, (coincidentally the same town I called home for 17 years recently lost \$28,000 to cyber thieves), it can happen anywhere. Many cyber criminals are shifting their focus from big corporations to smaller businesses and local governments. Why? The answer is simple. The small business owners and small local governments often do not have the security measures in place to prevent an attack from happening. It’s much easier for cyber criminals to access bank accounts and confidential information without all of the leg work involved in a more sophisticated cyber security system.

With the controls your resort has in place, can you ascertain that your network security will thwart a cyber attack? This question is not an affront on your IT department by any means but at the very least should be the admission of understanding the problems we face. Until recently, most ski resorts did not buy Cyber Liability coverage. This coverage will not prevent cyber attacks from taking place nor should it be construed as a security measure. This coverage should be used in conjunction with robust, yet practical Cyber Security controls.

An often neglected question is, “What happens to the credibility of our resort after a cyber breach occurs?” The public relations exposure is perhaps as important as the actual breach



itself. If your customers' information has been compromised, who is to say that they will return to your resort? The longer it takes to acknowledge a cyber breach has occurred the harder it becomes to restore a company's *perceived* reputation. Cyber Liability coverage can include sub-limits to pay for the Public Relations component necessary after a cyber breach has occurred as well as a direct contact at a nationally recognized public relations firm to help quell the doubt suddenly cast in the eyes of your customers.

Cyber Liability insurance is specifically designed to deal with claims resulting from network and security breaches. Through the purchase of insurance, this exposure will be transferred to the insurer up to the coverage limits and will alleviate many of the headaches associated with dealing with a Cyber Liability claim. You can easily mitigate this exposure by adding this line of coverage to your insurance program. The threat of hackers is real. The threat of releasing confidential information is real. We are naïve to think that this risk is only associated with large public companies. The ski industry needs to take a hard look at its cyber exposure and understand that a cyber breach could be the next catastrophic event.

Claim Scenarios*

Rogue Employee:

- *Incident:* Insured was sued when an employee misappropriated confidential information from a competitor.
- *Payment:* Settled and paid approximately \$200,000.

Hacking:

- *Incident:* Hackers gained access to the computer systems of 26 hotel locations and were able to access the names and credit card numbers of approximately 480,000 individuals.
- *Payment:* Reimbursed the insured over \$980,000 for crisis management related expenses.

Rogue Employee:

- *Incident:* Rogue employee at a large consumer reporting agency illegally stole and sold personal information of over 3,000,000 customers.
- *Payment:* Paid over \$5,100,000 in damages, over \$1,000,000 in legal defense

*Taken From "Security and Privacy: Claims Scenarios" Chartis 2011.

http://www.chartisinsurance.com/ncglobalweb/internet/US/en/files/Security%20%20Privacy%20Claims%20Highlight%20Sheet_tcm295-299432.pdf

Sources for this article:

http://contentm.mkt3955.com/lp/17267/75051/Client_Advisory-lost-laptop-data-breach-6.11_0.pdf

<http://www.lexplorations.com/databreach/>

<http://www.businessinsurance.com/apps/pbcs.dll/article?AID=/20110609/NEWS/110609911>

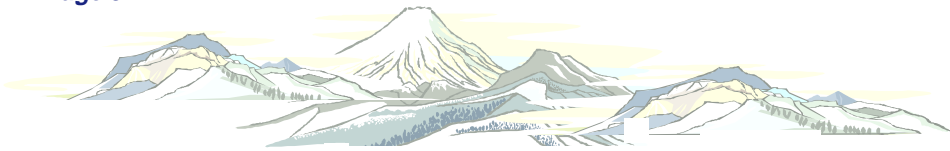
<http://www.roughnotes.com/rnmagazine/2010/october2010/201010p122.htm>

Claims Corner

This is a new section to the MountainGuard Report where you will find real claims and real outcomes within our program.

A skier lost control on a trail, skied into the woods and was injured. The incident was witnessed by a resort employee. The employee contacted ski patrol as well as his direct supervisor and verbally explained the accident. By his account, the skier was travelling at a high rate of speed, lost control, and then skied off of the trail and into the woods. Neither the ski patrol, nor the employee's direct supervisor took a written statement. Weeks after this event, the resort terminated this employee for unrelated reasons. Months after the initial accident the injured skier filed a claim seeking compensation for his injuries for which he alleged were a result of unsafe conditions on the insured's ski trail. The insured obtained a statement from the terminated employee which was drastically different than his original verbal statement. There were no other witnesses to the accident and the insured was forced to settle with the claimant for an amount of \$65,000. There is speculation that the disgruntled former employee was unwilling to give an accurate account of the accident. Had the insured obtained a written statement following the accident, they would have been in a much better position to defend against the claim.

A ski area employee, skiing as part of his work activities, collided with a 7 year old boy resulting in injuries to the young boy including a fractured clavicle and bumps and bruises. Immediately prior to the accident the insured's employee had been traveling down the ski trail when he claims to have suddenly become momentarily distracted, resulting in him running into the young child. The employee hit the child from behind and was therefore viewed as being primarily responsible for the collision. Within 24 hours of the incident, the employee contacted the boy's



parents to apologize for the collision; he also visited the boy during his recovery. The employee also presented the young boy new skis and boots. This file was closed without a claim ever having been filed.

Willis/MountainGuard Welcomes 2 New Members to the Team

Ward Emanuelson, Sr. Production Underwriter

Ward Emanuelson joined Willis Programs on Monday, July 18, 2011. He will assume the role of Sr. Production Underwriter for the MountainGuard Program.

Ward is bringing approximately 15 years of insurance expertise to Willis Programs. Prior to accepting the position, Ward was employed as an Agency Management Specialist, with Selective Insurance Company, in Branchville, NJ, as a field based commercial lines Production Underwriter. In this position, Ward was responsible for business planning, underwriting and rating new business, product training, while maintaining and building a profitable book of business. Prior work history also



includes employment with Utica National Insurance Company, in Wakefield, MA, where Ward held the position of Regional Marketing Representative.

Ward is a native of Massachusetts and graduated from U-Mass at Dartmouth with a BS in Business Administration. After a brief career working at a ski resort in VT, Ward entered the Property and Casualty Insurance Industry, and went on to obtain his CPCU, AU, and CIC designations, while working in both Underwriting and Marketing capacities in New England territories.

Other interests include sea kayaking, mountain biking, and hiking.

Lori Zilioli, Account Executive

Lori Zilioli joined Willis Programs on June 27th, 2011. Lori will assume the role of Account Executive in our MountainGuard Program.

Lori previously worked at Melcher & Prescott Insurance



Agency located in Laconia, NH where her responsibilities included the handling of a large book of Commercial Insurance business as well as new business sales as a Producer. Lori previously worked for Willis in the RecycleGuard program as an Associate Underwriter.

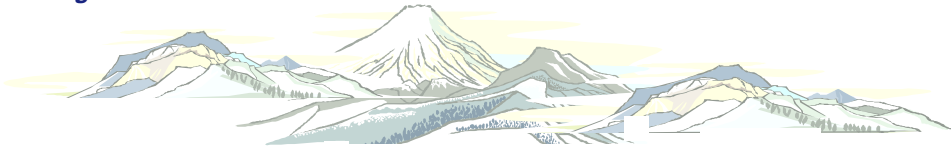
Value Added Services available to MountainGuard Clients

As an insured of Willis and The MountainGuard Insurance Program; Global Loss Prevention, a division of your insurer, Chartis Insurance, offers value added services available to you at no cost. Below is access information.

To Access the On-Line General Safety and Safe Driver courses log into www.lexingtoninsurancetrainer.com website. Follow the easy five-step process outlined in the enclosed Lexington Insurance Trainer document to set up your account and access the training courses. You will 'pay' for courses with this VIP payment code: MTNCHL5MQP. This code gives you 5 tokens (coupons) to use in any combination you need. (one token = one course for one employee). The token will expire on 12/31/2011. When you wish to obtain additional tokens, please contact Global Loss Prevention at ProgramsLC@chartisinsurance.com or call 1-800-611-3994.

If you are interested in Educational Webcasts/Webinars, you may register for free one hour webcasts at <http://www.lexcasts.com/>. Topics include preventing slips and falls, driver selection and training, best practices for hiring, risk management strategies to help prevent claims of negligence and many more. If you would like to be notified of upcoming webcasts, please contact Global Loss Prevention at the above email address with your name, company name and business email address.

If you are interested in a discount program for criminal background checks, we have enclosed information on IntelliCorp. Please contact Matt Garbincus at IntelliCorp at



mgarbincus@intellicorp.net or 800-539-3717 x145 should you wish to discuss the program further and set up the service if you choose.

If you have any additional questions or comments, feel free to contact Global Loss Prevention's Customer Service Line at 800-611-3994.

September 23
Massanutten, VA

October 5
Breckenridge, CO

October 7
Snowbird, UT

October 12
Hood River, OR

October 14
Northstar-at-Tahoe, CA

October 20
Angel Fire, NM



The MountainGuard Insurance Program is proud to sponsor the 2011 NSAA Fall Education Seminars

This fall the NSAA and MountainGuard are partnering for the 19th season to present the 2011 Fall Education Seminars. The Seminars, some are held in conjunction with Regional Ski Area Associations, will offer a variety of classroom and practical sessions aimed at educating your operations and maintenance staff.



Jimmy Lawrence, VP of Loss Control for MountainGuard and The Willis MountainGuard team is pleased to help present material at each of these seminars. Jimmy has been with the Willis/MountainGuard Team for over ten years, and resides in Park City, UT. His responsibilities include loss control program development, loss analysis and performing loss control surveys for the

MountainGuard program and other Willis program clients. He is also responsible for training clients in liability loss control, property conservation and employee safety. Jimmy came to Willis with 28 years of experience in the ski industry. He began his career at Heavenly Ski Resort in Lake Tahoe. Jimmy has worked extensively in the ski industry as a consultant, trainer and speaker at many National Ski Areas Association seminars.

We hope to see you there. Seminar dates and locations:

September 14-16
Sunday River, Maine

In conjunction with the Northeast Winter Sports Summit

September 19-21
Lake Placid, NY

In conjunction with SANY/PSAA Fall Tradeshow and Seminars

Current and previous "MountainGuard Report" issues will be archived under the Risk Management topic under the Client Services section of www.MountainGuard.com. You will require a user name and password to enter this site. Current MountainGuard clients requiring user information may contact linda.demeritt@willis.com.

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