



THE WARRIOR INSIDE EACH OF US

Phil Rosenberg

The HR Doctor

This is one of several HR Doctor articles stemming from an amazing trip to South Africa and time spent in the Zulu homeland. Besides meeting many new friends and learning a great deal about public administration in South Africa, other highlights of two weeks in Africa stood out.

One in particular, of course, is the amazing animal life inhabiting the large game reserves. Three days spent in the Ehluhluwe-Umfolozi Game Reserve led to more than a thousand photos, a greatly enhanced appreciation for nature and the critical importance of environmental protection.

The fact that I was accompanied by the beautiful HR Daughter Elyse, as well as the amazing HR Spouse Charlotte, helped reinforce that particular sense since Elyse works as a senior manager for Broward County, FL's Environmental Protection Department.

Another major highlight was all that I learned about Zulu culture and history. The Zulu are a spirited as well as gentle and kind people. They also have a strong military history and pride in their past as a warrior nation.

Each individual young man who learns the traditional ways of his forefathers learns the importance of the basic weaponry in the Zulu arsenal: the cowhide shield, the short stabbing spear and a club called the knobkerrie. They also learn the importance of when the warrior spirit should pop out versus when quieter and reverential interactions with other people should dominate.

Within each of us, whether we come from Zululand or from Brooklyn, rural California or North Carolina, there is a warrior persona. That warrior persona is marked by understanding the importance of sticking up for your beliefs and not simply being a follower, especially down a path or with a policy you feel is wrong.

The warrior within us involves being an individual, proud of who you are and where you came from, but also being open to co-operation with others and participating in the successes of groups. The warrior persona

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HR Daughter Elyse poses with the Shakaland Zulu village chief during the family's trip to South Africa.

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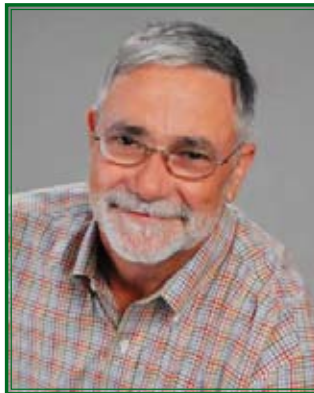
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As board chairman for the Preferred Governmental Insurance Trust, I am pleased to report that our trust is as healthy and sound as ever as we enter our 10th year of existence in 2009. Our primary focus continues to center on a combination of rational and equitable pricing and underwriting practices in unison with an increasing emphasis on membership education and training.

We continue our ongoing communication and coordination with FEMA and are striving to fulfill our goal of conducting monthly webinars

on cutting edge risk management topics affecting public entities. We just recently concluded our "Why PGIT/Why Now" seminar series around the state which highlighted a number of our products and services available to you as members.

Our 15-month renewal plan option on package coverages, effective from 7/1/08-9/30/09, was met with considerable success as over one third of our PGIT members took advantage of the premium credits and budgeting certainty the plan offered.

The trust's conservative excess of loss structure was successfully maintained for the 2008-2009 year and as a positive enhancement, we were able to lower our workers' compensation self-insured retention to \$75,000 from \$100,000 the previous year. Be assured that we will continue to closely monitor the financial strength and stability of our participating carriers on a regular basis, as has been our practice since PGIT's inception.

Finally, with the extreme budget challenges currently faced by local governments, the Board has made the difficult decision to postpone our membership conference, originally scheduled for December, until Spring 2009. Our anticipation is that budgets will be smoothed out by then and our attendance will be that much stronger.

We thank you for your support and participation in PGIT and we look forward to being of service for the next 10 years!

Dwight "Ed" Wolf II, Chair

Editorial Calendar

Issue	Writers Deadline
Winter 2008-2009	Monday, December 15, 2008
Spring 2009	Monday, March 16, 2009

THE WARRIOR INSIDE EACH OF US....continued from page 1

involves becoming adept at various skills including our professional skills as well as our hobbies. It means being a willing teacher and a role model of professional, humane behavior towards other people. The noble tradition of the Zulu warrior kept that society together even in the face of overwhelming British and Boer colonization and dominance.

Anyone familiar with the movie *Zulu Dawn* is aware of the defeat in the late 1870s of more than a thousand professional British soldiers equipped with the *Her Majesty's latest Martini Henry* rifles by the army divisions of the Zulus, known as Impis. Those Impis and their tactics crushed a modern army and successfully, for a while at least, defended a homeland against invasion.

The British Empire decided that it would not accept the risk of another battlefield failure after its major defeat at Isandwanda and brought in "weapons of mass destruction," such as Gatling guns. Even the great Zulu warrior tradition on the battlefield couldn't prevail against machine guns.

However, the tradition of pride, personal strength of character and the importance of being a balanced person remain present in the traditional Zulus we met. This heritage means not only learning to be a well-seasoned individual but also being able to be a strong, committed team member. These are noble characteristics from which every society and every workplace can learn.

I saw no sign that in modern South Africa workplace issues were resolved by spears, shields and clubs, but I saw many examples of struggles being addressed constructively, respectfully and with a common sense of purpose and spirit.

The lesson for all of us as employees as well as members of the community, family members and individuals, is to realize that we too have a "warrior" inside ourselves. Allowing that warrior spirit to display the character traits of the noble committed warrior can help each of us become more respectful

and assertive at the same time. "Respectful assertiveness," backed by strong presentation skills and practiced communications with others, can help us be identified early in our careers as people marked for success at work and in life.

Many of the habits present in our "more modern" society aim at suppressing that individual warrior spirit. Fashion trends, hours spent each day watching television, declining civic engagement, loss of emotional intelligence at critical times and walking by troubles instead of addressing them are all symptoms of the repression of the noble warrior spirit within us.

As leaders in government and in our individual organizations, it would not hurt at all to deliberately think about how to help someone you know become more assertive and engaged by helping them release their own warrior in a constructive way.

Phil Rosenberg,
The HR Doctor

Recent Supreme Court Decision: Damage To Utility Lines *By Michael J. Roper, Esq.*

On July 10, 2008, the Supreme Court of Florida held that loss-of-use damages based on rental replacement value was not an appropriate measure of damages to a telecommunications carrier because no such damages were incurred and the telecommunications traffic carried by the damaged cable was accommodated within the carrier's own network. *MCI Worldcom Network Services, Inc. v. Mastec, Inc.*, ___ So.2d. ___, 2008 WL 2678024, 33 Fla. L. Weekly S473 (Fla. 2008).

Factual and Procedural History. Mastec, an excavation company, inadvertently severed one of MCI's underground fiber-optic cables in downtown Miami, and the cable was not repaired until 97 hours later. However, MCI did not suffer a disruption of services because it was able to redirect the telecommunications traffic from the damaged cable to other cables in its system. As a result, MCI avoided any loss of profits. MCI brought a negligence and trespass action against Mastec and claimed compensatory damages in the amount of \$23,000 for the cost of repairs, loss-of-use damages in the amount of \$868,000 and punitive damages. The loss-of-use damages claim was based upon the amount that MCI claims could have paid, but did not, to rent the use of an equivalent substitute cable from another telecommunications company for the time reasonably necessary to make repairs. The district court found against MCI on its loss of use damages claim. The Eleventh Circuit Court of Appeals found that this case raised unsettled questions of Florida tort law and certified the question presented to the Florida Supreme Court.

Legal Analysis. Generally, a person or entity injured by either a breach of contract or by a wrongful or negligent act or omission of another is entitled to recover a fair and just compensation that is commensurate with the resulting injury or damage. See, *MCI Worldcom Network Services, Inc. v. Mastec, Inc.*, 2008 WL 2678024, at 2 (citations omitted). A plaintiff can receive compensatory or actual damages for the loss or injury caused by the action of the defendant. *Id.* Compensatory damages are designed to make the injured party whole to the extent that

it is possible to measure such injury in monetary terms. *Id.* A plaintiff, however, is not entitled to recover compensatory damages in excess of the amount which represents the loss actually inflicted by the action of the defendant. . *Id.* Compensatory damages are designed to make the injured party whole to the extent that it is possible to measure such injury in monetary terms. *Id.* A plaintiff, however,



is not entitled to recover compensatory damages in excess of the amount which represents the loss actually inflicted by the action of the defendant. *Id.* Also, the purpose of compensatory damages is to compensate, not to punish defendants or bestow a windfall on plaintiffs. *Id.* (citing *Cooperative Leasing,*

Inc. v. Johnson, 872 So.2d 956, 958 (Fla. 2d DCA 2004). In the case involving MCI and Mastec, there was "no loss of use of any part of the cable system because the service was rerouted to another part of the system." *Id.* at 3.

The Court concluded that since MCI did not actually suffer the loss of use of its telecommunications service, damages for loss of use measured by rental replacement value would result in a windfall to MCI. Further, any damages to MCI based on rental replacement are purely theoretical. The Court found persuasive the majority of cases which deny loss-of-use damages for rental of replacement cable when there has been no rental because they further the goal of awarding damages in an amount equal to the loss sustained. Therefore, the Court held that loss-of-use damages based on rental replacement value is not the appropriate measure of damages when there have been no such damages incurred and the telecommunications traffic carried by the

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Workers' Comp Doesn't Have To Be Alphabet Soup *by Tim Templeton*

While MMI, PIR, W, D, IME, ELR, 440, 5, 6, O, F, MOD, WC, RTW, TTD, TPD, PPD, PTD, NOI, NCCI may look like alphabet soup, they are actually a handful of the acronyms which are critical to an entity's Workers' Compensation program. As an entity, you do not need to know what these mean, but you better be sure your Insurance Agent does. If your agent doesn't know what these mean, how they affect your MOD rating and ultimately your annual premium, chances are their lack of knowledge can cost your entity thousands of dollars over the long term.

Florida's Workers' Compensation (WC) is governed within Chapter 440 of the Florida Statutes. It is so important that the Florida Legislature mandates that all qualifying employers provide WC benefits (or alternative package), or they can be charged with a felony. WC is the broadest and most comprehensive insurance policy ever created, but it does come with a price. This is because benefits provide employees who are injured on the job with three key coverages: (1) \$150,000 death benefit and up to \$7,500 in funeral expenses, (2) lifetime medical coverage with no co-payments or deductibles, and finally (3) indemnity or disability income (the lower of 2/3 of a person's salary or \$746 per week) up to age 75 in some cases.

Because many agents don't know how to work within the WC system, their clients may end up being overcharged. The National Council of Compensation Insurance (NCCI), is the entity which determines the Experience Rating Modifier (MOD) for every qualifying entity in Florida, as well as 34 other states. Located in Boca Raton, the NCCI determines how much money each type of employee (i.e. administrative, public works, police, etc.) can expect to lose each year due to job related injuries, for medical and lost time payments. These "expected" losses are divided into a company's "actual" losses to determine the MOD (1.00 = par). Entities with actual losses lower than NCCI's expected losses will generate a MOD less than 1.00, resulting in a discounted premium. Conversely, entities with

actual losses greater than NCCI's expected losses will result in a MOD greater than 1.00 and will pay a premium. This is where the learning usually ends for insurance agents and the overcharging begins for entities. However, if your agent knows their alphabet soup, they know to ask claims adjusters if the treating physician has declared MMI (Maximum Medical Improvement) status for the claimant, and if so, if the PIR (Permanent Impairment Rating) has been established. They will show you how several small, or frequent claims, can have a larger impact on your MOD and premium, than larger, severe claims. In addition, they understand that on the 8th consecutive day (Indemnity Day) an injured employee stays home from work, your MOD can shoot straight up. Knowing all this, they will help you implement a RTW (Return To Work) program to get employees back to work as soon as possible to help avoid any indemnity claims. In addition, they will implement a drug free work-place and safety program, which provide 5% and 2% discounts respectively to your WC premium. Furthermore, they will help you implement a "No Accident Certification" form and teach you how to properly complete a NOI (Notice of Injury) form.

If your agent is not doing all these things, ask them what they are doing to deserve to be your agent. Hopefully, they are at least taking advantage of the "evaluation period," which allows you to correct any errors on your MOD sheet. Errors costing your entity thousands of dollars will stay on your MOD for three years unless they are corrected during this evaluation period. Finally, an informed agent can promulgate your MOD six months before its inception date, adding value to your budgeting process.

Florida's WC system is riddled with fraud and designed with such complexity that most insurance agents never attempt to learn how it works. However, by understanding WC's alphabet soup, an educated agent will help you design a program to take control of your MOD and premiums, rather than just letting you go along for the ride.

Proactive Strategies Can Help Avoid Expensive Employment Lawsuits

By: Leonard J. Dietzen, III, Esq.

Sexual harassment. Unlawful termination. Failure to comply with the ADA. All of these can provide grounds for employment lawsuits. According to the U.S. Equal Employment Opportunity Commission (EEOC), more than 80,000 employment discrimination charges were filed against employers last year. Often, large jury settlements in such cases are the result of something very simple – and preventable: a company's failure to keep its policies and practices up to date.

Being proactive in complying with new laws and regulations can help your company steer clear of making costly mistakes. The following are some tips to keep in mind:

Examine Hiring Practices

Hiring is always tricky – and is often compounded by complex new regulations. There are several things you can do to ensure that your company complies with federal and state laws.

- Make sure that the employment application not only asks required information, but also omits prohibited questions. Remember, issues such as religion, medical illness and sexual orientation are sensitive and not usually relevant to hiring.
- Train hiring personnel on what to ask and not to ask during an interview. For example, teach them to balance obtaining needed information with side-

stepping touchy subjects that may raise red flags.

- Finally, cast a wide net to include a diverse applicant pool.

Employee Handbook

On a new employee's first day of work, it is important to set your company's standards. The best way to do this is to make sure the handbook includes all company policies and to update it as rules change.



Make sure your handbook:

- Clarifies your business's email and internet procedures. Many employees – old and new – may not be aware of their privacy rights or the company's level of control over computer usage.
- Explains rules on sick leave and workers' compensation. Note that it is important to review FMLA regulations when creating absence policies, as many leave requests implicate legal responsibilities.
- Addresses all anti-discrimination and retaliation policies. Although the majority of employment discrimination lawsuits are race discrimination claims,

anti-discrimination policies must address other forms of intolerance such as religion, national origin, sex, age, disability and marital status. After educating employees on protocol, obtain written proof that they received training on these issues.

Wage and Hour Compliance

Wages are often a point of contention between employers and employees. Although it is difficult to avoid disputes on this issue, your company can protect itself from accusations of unfair practices in a couple of ways:

- Examine each employee's position to determine if he or she is properly classified for overtime purposes. Conduct appropriate factual and legal analysis to determine whether an employee is exempt or nonexempt.
- Review overtime payment methods. Comp time records must be accurate.

Americans with Disabilities Act (ADA) Compliance

Adhering to anti-discrimination policies relating to disabled individuals is more complex than many other categories of intolerance. Compliance requires diligent record-keeping and protection.

- Keep medical records separate from personnel files. Medical records should be kept in a secure location, where they can remain confidential.



- Make sure that detailed descriptions for each job posting are written down and recorded. This will help determine whether an individual's disability and condition will honestly prevent him or her from effectively executing job responsibilities.

Performance and Promotional Evaluations

Although performance reviews and promotional opportunities will vary from person-to-person, the manner in which a company conducts them should not.

- Ensure that your performance evaluations are specific to the classification of the position ... one size does not fit all.
- Examine evaluations for trends. Keep in mind that although your company may have an excellent staff, not every employee is a "10."
- All employees must have equal opportunities to advance. Promotional practices should not prevent specific groups from progressing.

Document, Document, Document

All employment decisions must be reduced to writing. Progression,

while not always possible, should be the goal. Your employee who is terminated should not be surprised because his or her personnel file should show ample written warnings.

Never Retaliate

Do not over react when an employee brings forth a workplace complaint. Often the complaint lacks merit but the retaliation claim can be difficult to defend. Investigate all complaints respectfully.

Termination Policies and Practice

Firing workers is often necessary and is perfectly legal. To effectively fire an underperforming employee, it is important to implement and understand the guidelines in place.

- Review previous termination files and compare with policies. Consistency in firing is essential in protecting your company from accusations made by disgruntled ex-employees.
- Review termination files for progressive disciplinary action. Most terminations should be preceded by warnings notifying employees of consequences to their behavior.

Call Preferred Governmental Insurance Trust Before Termination is Final

Your Preferred Governmental Insurance Trust (PGIT) Coverage Agreement includes limited coverage for pre-termination consultation. After speaking with one of PGIT's experienced employment counselors, your unique legal circumstances will be timely addressed. Contact your PGIT representative at 1-800-237-6617 prior to final adverse employment actions.

Unfortunately, many employers do not learn just how complex employment laws are until it is too late. Do not wait until your agency is faced with a lawsuit or a government agency is knocking on your door. Protect yourself now. By simply familiarizing yourself with regulations and keeping your business's policies up to date, you can avoid a costly and time-consuming battle down the road.

Seacoast Utility Authority

The Florida Water Environment Association awarded the PGA Wastewater Treatment Facility with the Top Ten Facility Safety Award. This statewide award is given to recognize an outstanding safety program and the dedication and commitment demonstrated to both public and worker safety. Training records on effective safety programs such as Respiratory Protection, Lockout/Tagout, Confined Space Entry and Personal Protective Equipment are evaluated to determine award winners. Public education efforts and participation in wastewater utility related support organizations are also considered by the FWEA Safety Committee when choosing the winners.

The Florida Water and Pollution Control Operators Association (FWPCOA) Safety Award was given to 3 SUA facilities:

- The Distribution crew who is responsible for maintenance and repair of the water distribution system.
- The Collection crew who is responsible for maintenance and repair of wastewater pump stations and pipes.
- The Richard Road Water Treatment Plant.

The FWPCOA award is given annually to the men and women that operate and maintain water and wastewater treatment plants, water distribution systems, wastewater collection systems, storm water and reuse systems. Safety training records, number of injuries, safety committees and the overall safety program description is included in the application to win this award.



**Seacoast Utility Authority
won 4 statewide safety awards
for calendar year 2007.**



Congratulations!



ADMINISTRATIVE ALLEY



PRU E-Tools

A PRU E-Tools account provides clients with immediate access to all the services listed below:

(Please note that some services may not be available upon accessing due to possible development, changes and/or updates being performed ...)

- Access to all PGIT 411 Newsletters
- Access to PGIT Safety & Risk Management Resources, including forms and articles
- Access to webinars / presentations on current topics i.e.: Hurricane Preparedness

Registering for E-Tools:

To register, just go to www.publicrisk.com and click on the “register” button located at the top right corner of the web site and complete and submit the registration form.

Activation of E-Tools Account:

You will receive an email within 72 hours per the activation of your account...

PGIT Member Forum

This feature is an on-line bulletin board for PGIT Members and Agents. It is located on the E-tools web page. Members may post questions, comments and review policies and procedures posted by other public entities.

PGCS E-Accounts

The PGCS E-Accounts provide PGIT members with secure, up to date claims information. With this tool, members can review claims, get loss runs, and analyze trends with statistical and graphical reports. The on-line data is updated every 24 hours.

Registering for E-Accounts:

To register, just go to www.pgcs-tpa.com and click the Member/Client button, in the upper right corner of the web site and complete and submit the registration form.

Activating E-Accounts:

Upon receipt of the form, the PCL will review the registration, determine the appropriate parameters for the account and authorize the webmaster to activate it. Once authorized, the webmaster will apply those parameters to the account settings, activate the account and notify the member by email.

Public Risk Underwriters
Insurance Solutions for Public Entities
E-Tool Login:
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Password:
Enter
Register



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GOVERNOR CRIST APPOINTS FIVE TO THE FLORIDA PUBLIC TASK FORCE ON WORKPLACE SAFETY

September 4, 2008

Contact:

GOVERNOR'S PRESS OFFICE

(850) 488-5394

TALLAHASSEE – Governor Charlie Crist today announced the following appointments:

Florida Public Task Force on Workplace Safety

(Newly Created Task Force)

- Marianne Capozziello, 48, of Winter Haven, president, Polk Education Association, appointed for a term beginning September 4, 2008, and ending January 1, 2009.
- Mark A. Friend, 59, of Port Orange, chair of the Department of Applied Aviation Sciences, Embry-Riddle Aeronautical University, appointed for a term beginning September 4, 2008, and ending January 1, 2009.
- Paul Imbrome, 50, of Boca Raton, vice president of external affairs, Macy's Florida, appointed for a term beginning September 4, 2008, and ending January 1, 2009.
- Mike Marinan, 50, of Longwood, safety and risk control manager, Public Risk Underwriters, appointed for a term beginning September 4, 2008, and ending January 1, 2009.
- Linda H. South, 52, of Tallahassee, secretary, Department of Management Services, appointed for a term beginning September 4, 2008, and ending January 1, 2009. Secretary South will also be appointed as chair of the task force.



Contact Numbers

You may now dial PRU staff members directly instead of dialing the main switch board. A listing of the numbers follows:

Aamena Kanji	Underwriting	321-832-1714	Kurt Heyman	Marketing	321-832-1455
April Dean	Underwriting	321-832-1468	Laura Vedrin	Marketing	321-832-1454
Carolyn Clews	Underwriting	321-832-1465	Margaret Gross	Marketing	321-832-1506
Cori Hairel	IT Department	321-832-1415	Mary Lou Abraham	Marketing	321-832-1480
Cristina Stegmann	Underwriting	321-832-1691	Mary Walck	Accounting	321-832-1503
Daryl Klinger	IT Department	321-832-1406	Mike Marinan	Loss Control	321-832-1473
Diana Doll	Marketing	321-832-1451	Mike Scholl	Underwriting	321-832-1453
DJ Lebo	Underwriting	321-832-1469	Mike Stephens	Loss Control	321-832-1658
Greg Brubaker	IT Department	321-832-1418	Niki Drane	Underwriting	321-832-1716
Hoa Nguyen	Underwriting	321-832-1655	Rey DeArriba	Loss Control	941-916-1848
Janice Gadson	Underwriting	321-832-1463	Pam Lester	Underwriting	321-832-1464
John Kamp	Accounting	321-832-1461	Pam Stone	Loss Control	941-468-3167
Karen McBride	Underwriting	321-832-1659	Viviane Vasconcelos	IT Department	321-832-1402

Recent Supreme Court Decision: Damage To Utility Lines *Continued from Page 4*

damaged cable has been accommodated within the telecommunications carrier's own network so there has been no loss of service.

Other Considerations. It should be noted that in contrast to these cases, there have also been court decisions where a telecommunications company was able to demonstrate there was a loss of service sustained; under those circumstances courts have found that telecommunications company were

entitled to loss-of-use damages. See, e.g., *AT&T Corp. v. Lanzo Construction Co.*, 74 F.Supp.2d 1223 (S.D. Fla. 1999); *MCI Worldcom Network Services, Inc. v. Kramer Tree Services, Inc.*, No. 02 C 7150, 2003 WL 22139794 (N. D. Ill. 2003). Accordingly, *Mastec* should not be read to stand for the proposition that loss-of-use damages are never recoverable. On the contrary, if a telecommunications can prove actual loss-of-use damages, it may be entitled to collect these damages.

SHARE YOUR EXPERTISE ON
RISK MANAGEMENT ISSUES
IN THE NEXT PGIT 411
NEWSLETTER BY WRITING
AN ARTICLE.

PLEASE SEND ALL
SUBMISSIONS TO
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