

Getting creative with meaning of 'security'

By L. Samuel Pfeifle, editor

Though I haven't been at it long, so far the best part of this job is talking to guys like system integrator Jim Morris, of American Detection. As will probably become perfectly clear after a read through my story "Cave Men," on page 13, Jim Morris is the type of guy who has people lining up to say nice things about him. When he gets a hold of a security job, he doesn't try to squeeze every last penny out of it. Rather, he asks, "What's your day like?" He asks, "Who do you care about?" Most importantly, he asks, "How can I help you?" Then he makes people feel more secure in their everyday lives.

This is where the security industry is at its best. Rather than playing upon people's fears, as so many outsiders might cynically

surmise, it can often feed into people's hopes and dreams. Rather than lead us down the path to 1984's "Big Brother," as critics of the security industry might accuse, it can instead make people feel more liberated than ever before.

The member of Morris's community who suffered from Prader-Willi Syndrome wanted simply to live an independent life, to be unencumbered by the watchful eyes of institutional living, so Morris designed a way to make the man safe not from those who would break and enter, but safe from himself. Morris rigged the cupboards and front door to keep him from literally eating himself to death.

That's creative thinking in the pursuit of life safety.

Then there's Matt Forir, who found

himself the oldest cave in North America, chock full of more fossils than could be uncovered in a hundred years, and needed someone to keep it safe. Morris was the first to think of keeping Forir safe, instead of just the artifacts. In the first days of the cave's exploration, Forir was frequently in the half-mile-deep cave by himself. Morris designed a system that included a panic button, so that help could be called for from deep under the ground. Forir would later affectionately say the system felt like a "big brother."

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With "security" becoming an empty buzzword of the global business community akin to the "quality" of the 1990s, it's heartening to read stories about people who are simply focused on keeping people safe.

Good contracts practices lead to better profits

Guest commentary by Eric Pritchard

As a rule, our legal system allocates liability to the party who causes a loss. In our society the "guilty" party always pays. As every first year law student learns, however, all rules have exceptions.

Historically, the allocation of risk in the alarm industry is one such exception to the general rule. It is much more likely to be the alarm company's acts or omissions (and not those of the subscriber) that cause some portion of a subscriber's damages. Rather than accepting liability for wrongful conduct, the industry has consistently sought to re-allocate the risk of loss, primarily by contract, to subscribers and their insurers.

Indeed, over the years, industry attorneys have developed a rather comprehensive and effective set of contract provisions designed to allocate the risk away from the alarm company. Thus, a well-written contract works on several distinct, yet inter-related levels.

Among other things, a contract should require the subscriber to insure against the loss of property and third-party claims and limit recovery to these coverages. The contract should include exculpa-

tory and limitation of liability clauses to limit liability to no more than an agreed sum. The contract should require the subscriber to indemnify the alarm company for third-party claims, even if caused by the alarm company's negligence. This puts the subscriber's assets and insurance at risk, which can be key in resolving claims. The contract should include a waiver of the subrogation rights of the subscriber's insurers, which effectively waives the insurer's rights against the alarm company following a loss.

At the end of the day, the contract should limit the alarm company's liability to subscriber and insurer for all claims except those that cannot be limited as a matter of law (e.g., gross negligence, wanton and willful misconduct and intentional torts).

Subscribers, their lawyers and a subscriber's insurers often contend that these sorts of provisions are patently unfair. After all, they argue, an alarm company should be liable for negligence or breach of contract.

Of course, these critics are right if the issue of fairness is to be determined solely by which party is at fault and what portion of the fault caused the subscriber's loss. These comments—and a subscriber's reluctance to enter into a contract—arise primarily because subscribers simply don't understand (or appreciate) the economic realities underlying their relationship with an alarm company.

In the context of providing electronic security equipment and services, the issue of fairness is not so much about fault as it is about the subscriber's opportunity to protect against the risk of loss, primarily through the use of insurance. After all, the subscriber, not the alarm company, is in the best position to determine how much insurance is necessary to protect the subscriber's economic interests. Nothing in life, including electronic security, is fool-proof or without risk. Subscribers must appreciate that the potential risk of loss simply has no relationship to the amount they are paying for the goods and services.

This is a difficult message to convey, particularly when trying to close a sale. These sorts of educational efforts should be part of negotiating the service contract after a subscriber has decided to do business with you. In my experience, subscribers are often willing to make reasonable concessions, if they really want to do business with you. Moreover, there are means and methods to make both sides comfortable when negotiating these sorts of contracts. If a subscriber is unwilling to agree to these sorts of terms, the threshold question for the alarm company is not whether it can afford *not* to do the work. Rather, the threshold question should be whether the alarm company will be able to afford to do work for *other* subscribers following a catastrophic loss.

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