

The *Electrical* CONTACTOR

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INSIDE:

FAEC Honors David DeBerry
with the FAEC "Edison Award"

"From the President" Joe Bell
I Waived What?

Risk Management Strategies
from Federated Insurance

The tension between young
insurance consumers and the
Affordable Care Act



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FAEC Magazine



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FAEC CALENDAR OF EVENTS

FAEC Calendar of Events 2014


April TBD	FAEC 1-Day CE Symposium, DoubleTree Hilton, 60 S. Ivanhoe Blvd., Orlando, FL
May TBD	FAEC Annual Golf Tournament, Windermere Country Club, Windermere, FL
Aug. TBD	FAEC Fall Golf Scramble, Kissimmee Bay Country Club, Kissimmee, FL
Sept. TBD	FAEC 1-Day CE Symposium, DoubleTree Hilton, 60 S. Ivanhoe Blvd., Orlando, FL
Nov. TBD	FAEC Edison Award & Casino Night

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The Regular Legislative Session Opens on March 4, 2014

The regular 2014 Legislative session starts on March 4, 2014:

Journeyman Bill filed for 2014, Sen. Soto filed SB 154 relating to electrical contracting. The bill authorizes a municipality or county to require that one electrical journeyman who

possesses a certificate of competency be present on certain commercial and industrial construction sites. At this time there has not been a companion bill filed in the House.



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By Joe Bell Territo Electric, Inc.

As I come to the end of my two year term as president of FAEC, I would like to acknowledge the officers and the board members for their tremendous support and dedication over the years. Thank you to the associate members and vendors for supporting and sponsoring the FAEC events. Your commitment to FAEC allows us to provide classes, events and programs to strengthen and grow the electrical trade.

Congratulations to Dave DeBerry as recipient of the FAEC Edison Award. Your continued support of the electrical industry is greatly appreciated.

Over the past several years, the electrical industry has experienced slow economic growth and the rebuilding process is underway. I am encouraged to hear FEAT enrollment is increasing and young high school graduates are now entering the electrical field. Throughout the state, employees' children are entering the electrical work force. Our children are the conduit to continue our legacy.

As your association, we invite you to get involved and we look forward to serving you in 2014!

Merry Christmas and Happy New Year!
Joe Bell



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HEALTHCARE REFORM

Are you **sick of it** yet?

Yes, we know—it seems like it's all Healthcare Reform (HCR), all the time.

Everyone's talking about implementation delays, discussing part-time vs. full-time employee hours, and speculating about what happens in 2014, 2015 and beyond. In the background, the political debate continues to boil over. Meanwhile, you're stuck analyzing mountains of information and trying to make decisions about Healthcare Reform that won't hurt your business. With the weight of compliance pressing on your mind, it's no wonder you have a headache. Don't worry, Corporate Synergies knows employee benefits compliance from the inside-out, where the snags are located, what to do about them, and when. We can help make your Healthcare Reform headache go away. **The cure begins with actionable information. Here are some remedies to help you feel better:**

Compliance Webinars

We start by researching employee benefits compliance requirements and translating the information into digestible and usable take-aways. Our popular webinars, hosted by our internal HCR and employee benefits experts, deliver these easy-to-understand action items. Our next webinar, scheduled for the first quarter of 2014, will present the steps you must take to comply with HCR requirements.

A Private Insurance Marketplace

If you're looking for better group employee benefits cost control, our **SynergiesSELECTSM** private exchange is just the cure. You'll receive our full suite of traditional group benefit services to help you maintain compliance with the Affordable Care Act (ACA) and other regulations. Your employees will get more coverage choices as well as enrollment, advocacy and education support.

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The alphabet soup of benefit plan compliance is enough to give anyone a bad case of indigestion. ERISA plan documents, SPDs, HIPAA, COBRA, etc., can leave your business (and your executives and managers) exposed to risk. Our Healthcare Reform Resource Center is a treasure trove of articles and compliance alerts about everything benefits-related.

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We have the remedies to help make your Healthcare Reform pain go away.



HCR Timeline



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I WAIVED WHAT?

What it Means to Contractually Waive Consequential Damages

By Mark T. Snelson, Partner, Wright, Fulford, Moorhead & Brown, P.A.

Effective risk management in the construction industry begins with properly drafting a contract that shields away the unanticipated consequences of a project gone wrong. No matter where your company lies in the hierarchy of a construction project (owner, design professional, design subconsultant, general or prime contractor, subcontractor, sub-subcontractor, or material supplier), you are no doubt aware that the rights and remedies enjoyed by you and the party with whom you have contracted are primarily determined by the terms of your contract. One of the quintessential risk management provisions often included in construction contracts is a waiver of the right to recover consequential damages in claims between the contracting parties. You have almost certainly seen such provisions (commonly used AIA contract forms include clauses waiving consequential damages), and you may have signed contracts containing them in the past. However, have you ever wondered what exactly a “consequential damage” is, and, therefore, what you were agreeing to give up in the event your contractual relationship sours? The purpose of this article is to explain the differences between “direct” or “general” damages and consequential damages, and to identify certain categories of damages typically considered to be consequential, so that you can be fully informed before agreeing or disagreeing to these often-arising contract provisions.

In Florida and many other jurisdictions, parties are generally free to contractually limit or waive claims for certain damages that may arise as a result of a breach of their contract, including claims for consequential damages. A typical example of a contractual waiver of consequential damages may read as follows:

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract.

Many times the contract will then list specific examples or categories of damages being waived. Such provisions are not the exclusive province of owner-contractor agreements; consequential damage waivers frequently appear in contracts between owners and design professionals and between general contractors and subcontractors.



Mark T. Snelson



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An important question, then, is “What is a consequential damage?” To answer that question we have to understand the nature of “direct” or “general” damages that flow from a breach of contract. Direct or general damages are those costs that immediately and necessarily follow the violation of a contract. They “are commonly defined as those damages which are the direct, natural, logical, and necessary consequences of the injury.” These are expenses that “follow immediately upon the act done” and “naturally and necessarily flow” from the breach of contract. Examples of direct or general damages are easy to understand. An owner and a contractor agree to a contract that requires the contractor to replace the windows in the owner’s building for a price of \$15,000. The contractor mobilizes, removes the windows on the front of the building, and begins installing new windows. After the contractor has installed the first new window the contractor leaves the job and never returns to finish. The owner then hires a replacement contractor to finish the project at a price of \$20,000. In this example the owner has direct or general damages of \$5,000, the difference between the amount he would have paid to the original contractor to perform the job as contracted and the higher amount he had to pay the replacement contractor.

There are many other examples in the context of deficient construction services. Let’s say a hotel owner retains a pool building contractor to expand and renovate the hotel pool, and, after completion and full payment to the contractor, the parties discover that the renovated pool leaks. Assuming the leak was a result of an act or omission on the part of the contractor, the hotel owner’s direct damage would be the cost to repair the leak.

By contrast, consequential damages are defined as damages that “do not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act.” While they are the result or consequence of a breach of contract, they do not immediately spring from the breach because, to some extent, their existence depends on both the breach of contract and other circumstances. Florida courts have defined conse-

quential damages as those expenses that are specific to the non-breaching party which typically stem from losses incurred by that party’s dealings with third parties that were reasonably foreseeable by the breaching party at the time of contracting. It is evident from the definitions attached by legal authorities and commentators that, next to the directness, immediacy, and necessity of the expense, a key factor in segregating consequential damages from general damages is whether the expense arose, at least in part, due to the involvement of a third party or circumstances other than the wrongful act itself. For instance, in the construction context, delay damages such as material escalation costs and additional interest and finance charges are typically classified as consequential damages. The classification is to be expected considering these types of damages arise due to the impositions or requirements of parties that are outsiders to the breached contract. For instance, while the owner of a construction project has to pay more in interest to its lender as a result of its general contractor’s breach of contract and delay in completing the job, the requirement to pay that interest is imposed by the terms of the agreement between the lender and owner.

Going back to the previous examples, if a storm came through between the time the original window installation contractor left the job and the replacement contractor started, and the storm caused water infiltration which ruined the hardwood floors in the owner’s building, the costs to repair the floors would be the owner’s consequential damages. If the hotel pool could not be used during the time it was leaking and the hotel lost guests and revenue as a result, the lost revenue or profits would be the hotel owner’s consequential damages.

It is difficult to identify all forms of damages that are classified as consequential, and the facts of each case and the other terms in the contract will influence whether a certain cost is ultimately determined to be a direct or consequential damage. However, as a general proposition, typical examples of consequential damages in the construction context include lost rents, rental costs for replacement property, damages to business reputation or the loss of goodwill, down time or idle time, material escala-



tions, home office overhead costs, additional energy costs, increased construction management/supervision costs, and additional interest and finance charges. If you sign a contract waiving claims for consequential damages, these are the types of expenses you will not be able to recover from the party that breaches the contract. Now that you know what is at stake you can decide whether agreeing to a contract containing a waiver of consequential damages is prudent for your business.

About the author:

Mark Snelson is a Partner in the law firm Wright, Fulford, Moorhead & Brown, P.A., in Altamonte Springs, Florida. The firm is an HBA Member and its entire practice is devoted to construction law. If you have any questions about the subject of the article or any other legal issue affecting your business, Mark can be reached at (407) 425-0234 or msnelson@wfmbllaw.com.

1 See *Doctor Diabetic Supply, Inc. v. POAP Corp.*, 41 So. 3d 916 (Fla. 3d DCA 2010) (enforcing a contractual provision barring the recovery of consequential damages); *Action Orthopedics, Inc., v. Techmedica, Inc.*, 759 F.Supp. 1566, 1568 (M.D. Fla. 1991) (contracts may limit damages recoverable for breach of contract, and if such provisions are made, greater damages may not be awarded); *Marriott Corp. v. Dasta Constr. Co.*, 26 F.3d 1057, 1067 n.17 (11th Cir. 1994) (no damage for delay clauses in construction contracts are enforceable under Florida law); *Hardwick Properties, Inc. v. Newbern*, 711 So. 2d 35, 38 (Fla. 1st DCA 1998) (commenting that parties unquestionably enjoy

2 *Florida Power Corp. v. Zenith Industries Company*, 377 So. 2d 203, 205 (Fla. 2d DCA 1979).

Black’s Law Dictionary (6th ed. 1991); *Hardwick Props.*, 711 So. 2d at 39.

Black’s Law Dictionary (6th ed. 1991)

Hardwick Props., 711 So. 2d at 40; *Saey v. Xerox Corp.*, 31 F.Supp.2d 692 (E.D. Mo. 1998) (defining “consequential damages” as “such damage, loss or injury as does not flow directly from the act of a party, but only from some of the consequences or results of such act”); *Trimed, Inc. v. Sherwood Medical Co.*, 977 F.2d 885, 893 n. 7 (D. Mass. 1990) (same). Florida’s Uniform Commercial Code defines consequential damages resulting from a seller’s breach to include “[a]ny loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise.” §672.715, Florida Statutes.

See Kenneth M. Block, *Time is Money: Contractual Treatment of Delay Damages*, *New York Law Journal* (Aug. 29, 2007) (“More often than not, consequential damages in the construction context result from delays in construction and can include . . . material escalation, additional increased interest costs, consultant expenses and lost profits.”); see also Jason L. Richey and William D. Wickard, *Consequential Damages in Today’s Construction Industry*, *Constructioneer* (May 5, 2008) <available at http://www.klgates.com/files/Publication/d2f0d5fa-7ebb-4c2c-9d96-94577868f2d7/Presentation/PublicationAttachment/35e1a2c8-ef0c-466d-aea0-9cd6af9dd6ca/constructioneer_article_richey.pdf>



RISK MANAGEMENT STRATEGIES



Build a Risk Management Culture with Your Employees' Help

There is a business axiom that states, “No one knows more about the job than the person doing it.” A wise business owner weighing the options for improvements or changes knows the value of seeking an employee’s opinion on particular job-related matters.

Your employees are on the front line of your business. They experience the day in, day out routines and perform certain tasks with regularity. They are often the first to notice an unsafe condition or the need for a change in procedure. Who better to involve in the push for a safer working environment?

All you may need to do is ask

You have a wealth of knowledge working for you right now. Why not tap into it and empower your employees by encouraging them to contribute to your company’s safety and risk management program.

Employees appreciate being heard, but aren’t always sure their input matters. Some may even be guarded when sharing thoughts and ideas. By willingly listening to what they have to say, and persuading them to become involved, you not only inspire them to become safer, more conscientious workers, you make it clear that safety is everyone’s job, every day.

Help them help you

Giving your employees the tools and incentives to complete their job safely can help instill a unified, safety-focused attitude that supports your company’s risk management culture.

There are many ways to accomplish this. Here are just a few to consider:

- Hold regular safety meetings
- Provide personal protection equipment
- Set clear expectations
- Ask for employee input
- Offer incentives for suggestions or attaining safety goals
- Provide training on new jobs and follow up with scheduled reviews
- Reinforce positive behavior with recognition, compensation, or other rewards

You hired your employees for a reason: You saw their potential and had faith in their abilities. Let them show you what they’re capable of by involving them in the company’s risk management initiatives.

It’s Our Business to Protect

This publication is intended to provide general recommendations regarding risk prevention. It is not intended to include all steps or processes necessary to adequately protect you, your business, or your customers. You should always consult your personal attorney and insurance advisor for advice unique to you and your business. © 2013 Federated Mutual Insurance Company. All rights reserved.

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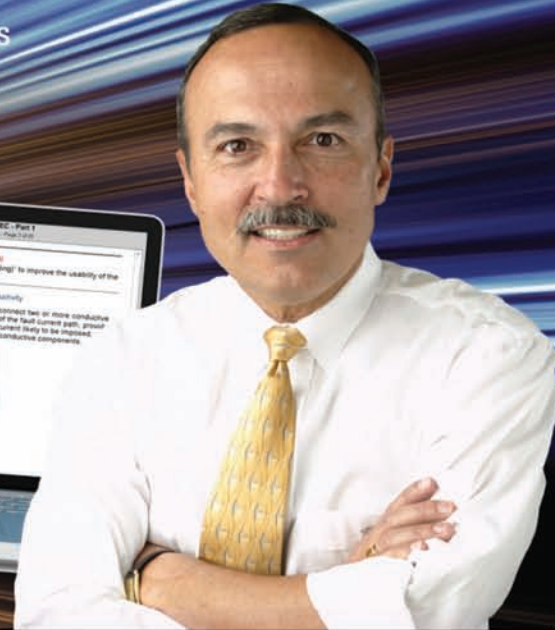


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"...as for me and my house, we will serve the Lord." [Joshua 24:15]



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RISK MANAGEMENT STRATEGIES



Risk Management Culture – A Vision for Your Future

In today's business environment, workplace safety, employee screening, and other risk management practices are being viewed by successful companies as a way to improve the bottom line. Why? Because expenses related to workers compensation claims, auto accidents, medical costs, legal fees, lost production time, and stolen or damaged equipment can quickly add up. Not to mention the fact that it's impossible to put a price tag on an employee who has been seriously injured or killed on the job.

Every injury, every lawsuit, every poor hire, every missed opportunity to plan for the future pulls money away from your bottom line. A single injury claim can cost tens of thousands of dollars in both insured and uninsured costs. Insurance is designed to pay for the direct costs, such as property damage, medical bills, and legal expenses. But, who pays for the hidden costs of losses, such as expenses related to hiring and training a new employee, lost productivity, lowered employee morale, damaged company reputation, and higher insurance premiums that result from higher experience ratings? The answer is YOU.

Think about that: A chunk of your profits can be lost every time an employee slips, strains, falls, or fails to follow company policies and procedures. Even seemingly small injuries can result in major financial consequences. Of the estimated \$53 billion American employers pay in direct workers compensation costs every year, more than \$13 billion is a result of injuries caused by employees simply overexerting their bodies.*

Even the best businesses can get better. A risk management culture—the sum total of all the efforts, attitudes, and investments related to workplace safety and preventing losses at your business—can help protect your people and your profits. From senior management to front line employees, making risk management a top priority can have a significant financial impact, ultimately helping you achieve your vision for the future of your business.

What can be done to prevent profits from walking out the door? Following these steps can help:

1. Analyze your losses. What types of claims, injuries, or near misses are consistently being reported? What are the “problem areas” at your business?
 2. Analyze associated costs. What are these recurring issues costing you each year? Remember to factor in the expenses related to direct and hidden costs.
 3. Make a plan and an investment. Develop a plan to tackle your problem areas one at a time. Allocate the necessary resources, including time and money. As long as you're spending less money improving problem areas than you were paying expenses related to them, you'll come out ahead.
 4. Take action. Engage employees at every level through training, communication, and enforcement of company policies and procedures that support your risk management culture.
- The good news is you don't have to do it alone. Federated provides clients with an annual Risk Control ReviewSM. As one of its Major Client Service Standards, Federated's Risk Control Review is designed to help identify ways to better protect your money and your employees. Federated also supports your risk management culture with a variety of loss prevention tools, employee training and screening materials, and personal consultation services through its Risk Management Resource Center.

In a fast-paced, competitive world, where the pressure to turn a profit is often the highest priority, it's tempting to sweep risk management under the rug. But, turning a blind eye to this critical issue can be one of the most costly decisions you ever make. With your vision clearly focused on a risk management culture, you can positively impact your bottom line. Contact your local Federated marketing representative to learn more about how a Risk Control Review can benefit you—it may be the most important call you make all year.

*Source: “National Safety Council Injury Facts 2012 Edition.” National Safety Council. 2012



FAEC 2013

Edison Award Recipient

“David Alan DeBerry”



Past Edison Award Recipients:

- 2000 Clarence Wilson
- 2001 Buddy Eidel
- 2002 Danniell J. Petro
- 2003 Donald C. Manley, Jr.
- 2004 Joseph L. Territo
- 2005 Jamie Fugate
- 2006 Mike Freiner
- 2007 Craig Eddington
- 2008 Ed Fox, Jr.
- 2009 David Beasley
- 2011 Joe Bell
- 2012 Blake Ferguson, Jr.

“Genius is one percent inspiration and ninety-nine percent perspiration”

These words were spoken by one of the outstanding geniuses in the history of technology, Thomas Alva Edison. Mr. Edison earned patents for more than a thousand inventions, including the incandescent electric lamp, the phonograph, the carbon telephone transmitter and the motion-picture projector. In addition he created the world’s first industrial research laboratory. By the age of 10 he had set up a small chemical laboratory in the cellar of his home after his mother had aroused his interest in an elementary physical science book. He found the study of chemistry and the production of electrical current from voltaic jars especially absorbing and soon operated a homemade telegraph set.

This year’s “Edison Award” was presented to a most deserving and respected industry icon. I suspect the same dedication and drive for success exhibited by the award namesake is also emulated in this years recipient.

The Edison Award is presented to an individual who has unselfishly given their time and heart through charitable work and has strived to improve the electrical industry in Florida. As the award clearly states....“These are the true craftsmen of our industry.”

David’s family has been involved with FAEC since the early 1980’s. David’s dad served on the FAEC State Board in various positions including State President. David Sr was honored as a FAEC “ Hall of Fame Honoree” in 1994. David Sr. always said that “the electrical industry had been good to him and his family and that he felt that it was his responsibility to give back to the industry.” David Sr. passed this belief on to his children all of whom have been involved in the family business at some point.

David and his sister Kim have both been involved with FAEC serving in various board positions and both have served as State President.

David has worked in the electrical trade for approximately 35 years and is a State Certified Electrical Contractor in Florida and Georgia. He began attending FAEC State board meetings with his dad in the early 90’s and filled his fathers position on the board in 1995 after David Sr passed away. David has contributed to FAEC in many ways, some of which include: Teaching electrical code classes at conventions and conferences. Leading CEO Round Table Discussions during conventions. Serving as Liason between the Duval County Masters Association and FAEC and its Lobbyist. He has served as Legislative Chair and has worked on several committees working to preserve journeyman licensing ... and has contributed to FAEC as a Sponsor at many events.

David is a big supporter of apprenticeship training and is involved with the NEFBA Electrical Apprenticeship program in Jacksonville.

Over the past 30 years David has served in many volunteer positions representing the electrical industry. Some of which are the Construction Trades Qualifying Board in Jacksonville, American Subcontractors Association and the Duval County Master Electricians Association.



The tension between young insurance consumers and the Affordable Care Act

By Brian Feeley, Senior Vice President of Marketing, Corporate Synergies

While TV pundits continue a game of political football over the Affordable Care Act (ACA), employers attempt to move forward with preparations. While not every detail of the law is settled, make no mistake about it, the ACA is here to stay.

Of the many questions that remain unanswered, here's a big one: How strongly will young people embrace the law?

Why does that matter? Because one of the key assumptions behind the ACA is that the young and healthy will balance the insurance costs of older, typically less healthy people. Equilibrium between the two demographics allows the risk pool to be spread evenly and ensures that the system works properly.

There is concern that these so-called "young invincibles" will opt out of coverage because they (stereotypically) feel they are indestructible and don't need insurance. The theory goes that they'll choose to pay the penalty instead of purchasing coverage. If that's the case, the risk pool becomes less healthy, resulting in higher premiums, a scenario that is quite the opposite of the affordability the authors of the law were hoping to achieve.

"If premiums spiral upward, millions of young people will choose not to buy coverage—whether on their own or through their employers—and instead pay fines the law prescribes for being uninsured," wrote Janet Trautwein, CEO of the National Association of Health Underwriters, in an article published in the Hawaii Reporter. "If there aren't enough young people paying into the insurance pool to subsidize coverage for older Americans, premiums will shoot up even further. This process can repeat itself again and again, resulting in what actuaries call a "death spiral" of higher and higher premiums—and lower and lower coverage rates."

Experts consider several contributing factors when theorizing why young people won't participate in obtaining health-care coverage. For example, while changes in insurance premiums will vary widely among carriers and markets, the biggest projected boost in monthly rates will be for males in their 20s. There is good reason to believe this demographic take objection to that rate increase. In fact there is already precedent for younger people to be ambivalent about health coverage. A survey done earlier this year by ADP showed that 50% of employees under the age of 30 participated in their employer's group health benefits program. Compare that to the 70% of employees age 40 and older who participate.

Another reason why the young could make up the shallow end of the risk pool is that the ACA calls for dependent coverage to be available until age 26. Younger workers may opt to stay on mom or dad's group employee benefit plans longer, parents would then remain on company health plans longer, and demographics would be pushed still higher. There's some indication that this shift could already be happening—enrollment rates for older employees are steadily increasing while enrollment for younger workers is declining.

While history and current trend suggest a continual disengagement from insurance on the part of the young, there is evidence that at the very least they are considering health insurance to be a major priority. In a recent Kaiser Family Foundation survey, more than three-quarters of 18-to-25 year olds said having health insurance was "very important." A similar number (76%) said health insurance is "something I need" and "insurance is worth the money it costs." The percentages were virtually the same for 26-to-30 year olds in the survey.

The important question is how a young person will feel when it is time to write a check. How the Affordable Care Act impacts business will depend in part on the answer to this fiscal question.

About the Author:

Brian Feeley is Senior Vice President of Marketing for Corporate Synergies and provides messaging on the firm's ability to deliver unique services focused on group employee benefits and business insurance. He leads a skilled in-house marketing and communications team focused on client education and industry thought leadership.

Corporate Synergies' in-house experts are frequent contributors to the national dialogue on group employee benefits and business insurance. Their continuous interaction with the industry contributes to our overall deeper understanding of employee benefits and property and casualty risk mitigation. For more information, contact 407.612.6324.

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