

**Editorial Contact:** Richard Hahn (716-372-2443)

First North American Rights  
© 1995 Richard Janis

## **Insurance With Assurance**

### **Contract Basics**

*by Rick Janis*

An installer working without contracts might as well hand over his recurring monthly revenue to a subscriber who suffers any type of loss. Yes, that did happen.

The law of tort and specifically the Bailee and Warehouseman Statutes state that the person/entity holding someone's property for safekeeping is liable to that party for damages caused to that property. The owner of the property also has the option of setting a value for that property and paying a fee to insure it for that value. Knowledgeable security attorneys suggest contracts maintain that dealers and/or monitoring companies are not insurers and that the value of the system and/or monitoring fee is not based on the value of the property being protected.

A properly worded contract prevents subscribers from successfully suing you for damages/loss of property. It also reminds the subscriber that the alarm system does not prevent a burglary, but is designed to identify an event and report it to a central station. If this does not take place, then the subscriber has cause for action. This is when your Liability/Errors & Omissions policy steps in to defend and pay the claim.

When telephone lines to his home were cut, an attorney subscriber sustained a loss of property valued at \$31,250. Only \$10,000 was covered by his homeowners insurance. In this case, the dealer had both the insurance carrier (who had subrogation rights from the burglary loss payment) and the attorney subscriber breathing down his neck. We sent a copy of the properly executed contract to both the insurance carrier and to the subscriber pointing out the clause that prevented third party action against our insured dealer. We also pointed out to the attorney

subscriber that according to the contract, the dealer was not liable for loss since the alarm system could be compromised. In this claim, the dealer had the subscriber sign his refusal of the dealer's recommendation for cellular backup. The claim against our dealer ended with no claim payment. As an aside to this real life event, the dealer kept the account and ended up selling cellular backup to this subscriber.

The other side of the coin is a recipe for disaster. A subscriber sustained extensive water damage to his seasonal home when the water pipes froze. Evidently, the low temperature device and control panel did not send a signal to the monitoring company. No type of contract existed with the subscriber. The dealer may be liable (it must first be determined whether product failure, faulty installation or negligence on the part of the monitoring company was the proximate cause of loss), AND is without any defense. The subscriber's homeowner insurance paid the water damage repair to the premises that totaled \$27,500 and subrogated against the dealer and the monitoring company. The dealer's insurance company denied the claim since his Liability/Errors & Omissions policy required properly executed contracts with each subscriber. The appellate court applied the doctrine of comparative negligence and held the monitoring company 40% liable for damages, which their Liability/Errors & Omissions carrier paid. The court held the dealer 50% liable for which he was personally responsible. His recurring revenue income was attached to pay the damages.

In future articles we will discuss in depth, a contract's three clauses employed to protect you, explain what they do and how they work, requested changes to contracts, and the purchase of additional insurance to cover a subscriber.

*Rick Janis is a Certified Insurance Counselor and president of the Alarm Insurance Agency. With over 7 years of experience in the security industry, he has been responsible for developing and managing comprehensive insurance and bonding programs for alarm dealers and monitoring companies. Rick is CEU certified by NBFAA and teaches CEU courses to the alarm industry on General Liability/Errors and Omissions and Worker's Compensation. He can be reached at 800-474-0933 or by fax at 800-240-0631. You may also e-mail him at [rjanis@alarmins.com](mailto:rjanis@alarmins.com).*