

President's Message

— by Shawntele Wickman, President

Greetings to all Nevada State Claims Association members. As your Northern Chapter's new president for the 2007-2008 term I want to welcome everyone's participation as this year plans to be great. I have been involved with the association holding the Secretary's position for both the North and the State for the past 3 years, currently filling the vice president's chair.



I, as you, know the success of the association is dependent on all of it's memberships. This Newsletter is the first attempt to getting our association back on track. If you are interested in contributing to the newsletter please be sure to contact Brian Foote of W.E.T through our new website, NevadaStateClaims.org. W.E.T. has offered to host and maintain the website. You are more than welcome to utilize the site for job opportunities, advertising and much more.

The luncheons were a thing of the past but the goal is to bring them back, better than ever. Continuing education is the current mindset of the board and we are working to provide educational speakers who are experts in their fields. There has been talk of a Fire Investigation Certification seminar to be held in Tahoe. Darren Foote of W.E.T. is qualified and has offered to train and certify our members in the art of water loss investigation and cutting edge technology of structural drying. Further, planning is continuing for certification in the California Fair Claims Practices, to be taught by our own Vice President Paul Camacho.

Last but not least... We are planning a bowling tournament this year in place of our annual golf tournament. It will be held on September 19th. The hope is to attract members and their spouses that ordinarily would not participate in a golf event. Watch your e-mail for notices and e-vites! Whether you plan to bowl or not, please make every effort to attend our bowling tournament—you can socialize with all (and laugh at our amateurish attempts).

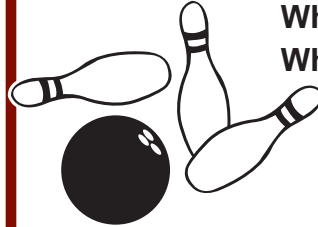
Again, your participation will make or break our association and we believe everyone will benefit!! I look forward to working with all of you and making this association a true success.

No pessimist ever discovered the secret of the stars, or sailed to an uncharted land, or opened a new heaven of human spirit.
— Helen Keller

Events

Bowling Tournament

Northern Nevada Claims Association is having their First Annual Bowling Tournament! We want you to be a part of it!



When: September 19th, 3:00 pm

Where: High Sierra Lanes
3390 S. Virginia St.
Reno, Nevada
(775) 825-1048

Pizza and drinks will be served while bowling. Awards ceremony immediately following. Teams of three at \$ 75.00 per team. Three games of bowling, food and drinks! For room rates at the Peppermill or other questions about the tournament, please contact Denise Garcia at 408-483-7370.

All sponsor proceeds will benefit C*A*R*E Chest, a Northern Nevada nonprofit agency providing medical resources to individuals in need. Support C*A*R*E Chest by becoming an event sponsor!

Gold Sponsor: \$ 500.00 - Food Sponsor
Silver Sponsor: \$ 250.00 - Beverage Sponsor
Bronze Sponsor \$ 100.00 - CARE Chest Sponsor

Please send your team and sponsor information directly to Denise Garcia or complete the online form at www.nevadastateclaims.org.

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Mission Statement

The object of the Association shall be to guide the activities of insurance adjusters in Nevada in such a way as to maintain the dignity of the profession; to establish standards of conduct and technical abilities; to encourage cooperation and foster cordial relations among them; to improve adjusting methods; to encourage educational efforts in all subjects relating to adjusting and to promote the general welfare of the insurance business.

Property Claims

Water Damage to Electronics

By Lawrie N. Hollingsworth, E.E.

President, The Price-Hollingsworth Company, Inc. © PHC, Inc.

Introduction

With hurricane season here, not to mention the usual roof leaks, water main bursts etc, many property claims will be made for water damage to electronics. These claims can pose a number of challenges for the adjuster.

1. How bad is the damage?
2. What if it was only moisture/humidity and not direct contact?
3. Should the electronics be replaced or can they be recovered?
4. If there is data can it be recovered?
5. Does it matter if the equipment wasn't powered on?

To begin to sort out the issues involving water/moisture damage to electronics, we must first start with the most basic forms of damage such as moisture exposure/high humidity and move to the damage from direct contact and submersion of electronic equipment.

Moisture and Humidity

Many times, it is not clear if the computers, phone systems, office equipment, cash registers, etc have actually been impacted during a water loss. You may have been informed by the Insured or a contractor that there is "no damage to the computers because they were all up on desks".

The assumption here is that if water only rose to a few inches, or certainly a height less than desk level, that everything electronic is fine.

Within days, you may begin getting frantic calls from the Insured as their computers begin to fail, the phone system repeatedly crashes etc, etc. It is now realized that the moisture has somehow affected the electronics, but how? And is it claim related? Lets look at what is going on:

Most electronic equipment has cooling fans and/or cooling vents. These provide a stream of air to cool electronic components against the severe build-up of heat

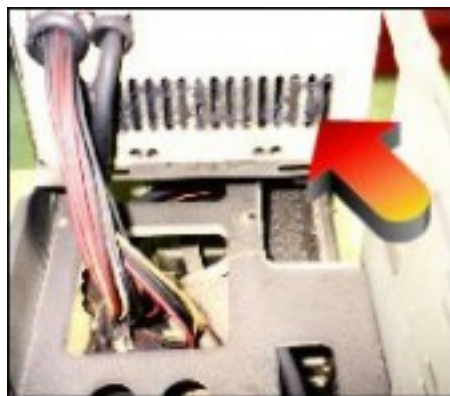


Close-up of PC cooling fan: note dust!

generated by the electrical operation. Over time, these fans draw dust into the interior of the electronics. This fine dust may be heavy or lightly deposited throughout the printed circuit cards, components and assemblies. After a disaster such as fire or flood, the relative humidity may be high due to water released from fire fighting, burst pipes, or weather elements from an open roof. The dust immediately absorbs this moisture even if the equipment is not directly impacted by the water. Without this dust, the moisture would not adhere to the surfaces of the electronics.

This moisture begins to corrode the electronic components on the printed circuit cards causing short circuiting and damage. Additionally, if powered on, "electrolytic" corrosion ensues. This occurs when electricity causes the destruction of protective metals and results in attack of the underlying copper circuitry. It may be because the device is powered on, or if the equipment has a battery such as a PC does for time and date, the battery will supply electricity. This corrosion resembles the corrosion on the terminals of a car battery.

Left unmitigated, the circuit cards will begin to corrode and may produce intermittent failures. These failures can be very hard to diagnose and may result



Inside of PC showing power supply. Note dust deposits in cooling vents.



Corrosion on printed circuit board from moisture under power.

in lost data, computer failure and network problems. In equipment such as a phone system, the result may be static sound and noise when listening to a call, lost voicemail, lost programming (e.g., extension numbers) and so forth. Other types of electronics such as CNC control systems in machinery, medical electronics and office equipment are equally as vulnerable to this type of damage.

Preempting Chapter 40 Claims in Nevada

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It goes without saying that claims by homeowners (and their attorneys) under NRS Chapter 40 have become the bane of many developers' existence in Nevada. Such claims are very attractive to plaintiff attorneys because they require relatively little effort and come with a guarantee of recovering the plaintiff's attorney's fees under NRS 40.655, which Nevada courts have even referred to as an "entitlement" even though the award of attorney's fees is only discretionary under the language of the statute. Given this extraordinarily state of affairs, the question is often raised: is there any way for a developer to avoid being subjected to Chapter 40 claims in Nevada?

Not surprisingly, the answer to the above question is a qualified "maybe," and the key could lie in a very old federal law: the Federal Arbitration Act (9 U.S.C. §1-16). The Federal Arbitration Act could provide the key because of the doctrine of federal preemption. A properly worded and enforceable arbitration provision under the Federal Arbitration Act could allow a developer to avoid Nevada law altogether, including NRS Chapter 40, and to proceed to arbitration of the homeowner's claims.

If the client is interested in trying to use the Federal Arbitration Act to preempt Chapter 40 claims, then the issue becomes constructing an arbitration provision that a Nevada court will rule is enforceable. There is, of course, no case law directly on point in Nevada that provides a laundry list of what a developer needs to do in order to construct an arbitration clause that a Nevada court will honor, but there are numerous instances where the courts have gone to some length to strike them down. There is also some antidotal evidence of what would be needed to prevail on the issue, which has been gleaned from hearings before one of the three Nevada state court judges who routinely handle constructional defect claims.

First, the Federal Arbitration Act requires "interstate commerce." In the original construction of a home, it is very likely that materials come, from many different states, so the developer should be able to satisfy this requirement. However, the arbitration provision could also be drafted to include a statement that the parties agree that the transaction involves and concerns interstate commerce, thereby avoiding a judicial determination.

Second, to gain the benefits of this proceeding, the developer will have to be willing to risk submitting the claims to binding arbitration. Otherwise, the

homeowner could simply go through arbitration and then file a Chapter 40 claim.

Third, the indications are that Nevada judges will require more than just the presence of a binding arbitration clause pursuant to the Federal Arbitration Act. The Nevada courts may require the developer to show that the homeowner knowingly elected to submit claims to binding arbitration and to give up any rights under the statutory Chapter 40 scheme, as well as the right to a jury trial on any claims against the developer. This likely means that the arbitration provision, itself, will have to specifically state that the homeowner is giving up these rights. It is also likely that the homeowner would have to sign an acknowledgement to this effect.

Fourth, the arbitration provision should be incorporated into the purchase agreement of the home, and not contained within a separate document (such as in lengthy CC&R's that the homeowner will argue were never read). The arbitration provision should, of course, meet all the standard requirements of bold face type, prominence, etc.

Lastly, the drafter of the arbitration provision should be careful to avoid giving the arbitrator too much latitude during the proceeding. For instance, a clause allowing the arbitrator to choose which law will be applied during the arbitration could lead to the arbitrator choosing to apply the provisions of NRS Chapter 40, thereby defeating the purpose of the arbitration clause.

Of course, the real possibility exists that some homeowners will refuse to sign an addendum to the purchase agreement subjecting them to binding arbitration and forgoing any rights under NRS Chapter 40 or to a jury trial. This is clearly the Nevada court's intent. However, if some number of homeowners do decline, it is not necessarily a bad thing, as it will enable the developer to show that homeowners in general are considering the arbitration provision and making decisions based upon its inclusion.

Developers in Nevada have some unique challenges in any constructional defect proceedings. As such, if methods other than the Chapter 40 process are available for resolving constructional defect claims, they should certainly be given consideration. One method to avoid the Chapter 40 regime and the Nevada state court system may exist by submitting an arbitration clause into the purchase agreement for new residence in Nevada, and it is a possibility many developers could be interested in exploring further.

For further reading, please see: D.R. Horton, Inc. v. Green, 96 P.3d 1159 (Nev. 2004); and Burch v. Second Judicial Dist. Court, 49 P.3d 647 (Nev. 2002)

Risks of a Democracy

A Washington, DC airport ticket agent offers some examples of why our country is in trouble!

1. I had a New Hampshire Congresswoman ask for an aisle seat so her hair wouldn't get messed up by being near the window.
2. I got a call from a candidate's staffer, who wanted to go to Capetown. I started to explain the length of the flight and the passport information, then she interrupted me with, "I'm not trying to make you look stupid, but Capetown is in Massachusetts," Without trying to make her look stupid, I calmly explained, "Cape Cod is in Massachusetts, Capetown is in Africa," Her response - click.
3. A senior Vermont Congressman called, furious about a Florida package we did. I asked what was wrong with the vacation in Orlando. He said he was expecting an ocean-view room. I tried to explain that's not possible, since Orlando is in the middle of the state. He replied, "Don't lie to me, I looked on the map and Florida is a very thin state!"
4. An aide for a cabinet member once called and asked if he could rent a car in Dallas . When I pulled up the reservation, I noticed he had only a 1-hour layover in Dallas . When I asked him why he wanted to rent a car, he said, "I heard Dallas was a big airport, and we will need a car to drive between gates to save time."
5. An Illinois Congresswoman called last week. She needed to know how it was possible that her flight from Detroit left at 8:30 am and got to Chicago at 8:33 am. I explained that Michigan was an hour ahead of Illinois, but she couldn't understand the concept of time zones. Finally, I told her the plane went fast, and she bought that.
6. A New York lawmaker called and asked, "Do airlines put your physical description on your bag so they know whose luggage belongs to whom?" I said, "No, why do you ask?" She replied, "Well, when I checked in with the airline, they put a tag on my luggage that said (FAT), and I'm overweight. I think that's very rude!" After putting her on hold for a minute while I looked into it (I was laughing) I came back and explained the city code for Fresno, CA is (FAT), and the airline was just putting a destination tag on her luggage.
7. A Senator's aide called to inquire about a trip package to Hawaii. After going over all the cost info, she asked, "Would it be cheaper to fly to California, and then take the train to Hawaii?"
8. I just got off the phone with a freshman Congressman who asked, "How do I know which plane to get on?" I asked him what exactly he meant, to which he replied, "I was told my flight number is 823, but none of these planes have numbers on them."
9. A lady Senator called and said, "I need to fly to Pepsi-Cola, Florida. Do I have to get on one of those little computer planes?" I asked if she meant fly to Pensacola , Florida on a commuter plane. She said, "Yeah, whatever, smarty!"
10. A senior Senator called and had a question about the documents he needed in order to fly to China After a lengthy discussion about passports, I reminded him that he needed a visa. "Oh, no I don't. I've been to China many times and never had to have one of those." I double checked and sure enough, his stay required a visa. When I told him this he said, "Look, I've been to China four times and every time they have always accepted my American Express!"

11. A New Mexico Congresswoman called to make reservations, "I want to go from Chicago to Rhino, New York ." I was at a loss for words. Finally, I said, "Are you sure that's the name of the town?" Yes, what flights do you have?" replied the lady. After some searching, I came back with, "I'm sorry, ma'am, I've looked up every airport code in the country and can't find a Rhino anywhere." The lady retorted, "Oh, don't be silly! Everyone knows where it is. Check your map!" So I scoured a map of the state of New York and finally offered, "Yo u don't mean Buffalo, do you?" The reply? "Whatever! I knew it was a big animal".

Now you know why Government is in the shape that it's in!

Virus Alert!!!

There is a dangerous virus being passed around electronically, orally, and by hand. This virus is called Weary-Overload-Recreational-Killer (WORK).

If you receive WORK from any of your colleagues, your boss, or anyone else via any means DO NOT TOUCH IT.

This virus will wipe out your private life completely. If you should come into contact with WORK, put your jacket on and take two good friends to the nearest grocery store. Purchase the antidote known as Work-Isolating-Neutralizer-Extract (WINE) or Bothersome-Employer-Elimination-Rebooter (BEER). Take the antidote repeatedly until WORK has been completely eliminated from your system.

You should forward this warning to 5 friends. If you do not have 5 friends, you have already been infected and WORK is controlling your life.

