

Brought to you by El Dorado Insurance Agency, Inc., Your Security Industry Insurance Specialists.

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## Wackenhut Sues the SEIU

On prior occasions we have reported on the acrimonious battle between Wackenhut and the Service Employees International Union (SEIU). Apparently having its fill of accusations made by the SEIU, Wackenhut filed a suit with the US District Court of the Southern District of New York. Wackenhut alleges that the SEIU is part of a group that meets the RICO statute's definition of a "racketeering enterprise", with extortion as the crime.

Wackenhut also says that its security officers would be denied their right to free choice if SEIU demands are met.

(Source": Security Letter, December 3, 2007.)



## Malicious Prosecution Charge Denied

**Facts:** Nicolas Summerville entered a mall jewelry store and asked to see the most expensive diamond in the store. He was acting nervous and had a white substance on his hands. Employees of the store became suspicious of Summerville's behavior because of several recent jewelry store robberies where an unknown assailant would ask to see an expensive piece of jewelry and then run from the store. One of the saleswomen called the security office and reported Summerville to Ted Smith, the director of mall security. During this time, Summerville exited the jewelry store, walked down a restricted access hallway and entered the security office door, and asked an employee if anyone had reported him. The security officer told him that no one had made a report, noting that Summerville was sweating and appeared nervous. She then notified a security officer working in the mall and reported Summerville's actions. Soon after, Summerville was taken into custody and arrested for criminal trespass. After the charges were

dismissed against him, Summerville filed a lawsuit against the security company. The company filed a motion for summary judgment, which the trial court granted. Summerville appealed.

**Decision:** In order to successfully prove his case for malicious prosecution, Summerville was required to show the security company intentionally and maliciously reported the incident without any reasonable cause to do so and that he suffered damages as a result. The court of appeals noted that Summerville was acting suspiciously and that he entered a restricted area of the mall without permission, causing the security office to alert an officer. The state court of appeals determined the security officer had probable cause to arrest Summerville and that the company should not be held liable for malicious prosecution as a result of the arrest. The court of appeals therefore upheld the trial court's decision.

*CHARGE DENIED continued on page 3*

## Security Guard Attacked Visitor

**Facts:** Davey James, a cab driver, was waiting in line for fares outside a shopping mall when another driver cut him off. The two men began yelling at each other, and a security guard, employed by a grocery store located in the mall, came outside to calm the situation. The guard, Jason Jeffrey, testified that when he attempted to intervene, James became angry with him and a fight ensued. James stated that Jeffrey spit on him and stabbed him in his right thigh. Jeffrey denied the stabbing, but admitted that he ran back outside and “jumped in the air and kicked” James after the fight had ended. Both of the men were arrested at the scene as a result of the incident.

James later filed suit against the mall premises owner, the mall security provider, the grocery store owner and Jeffrey. This case focused on James’ claims against the mall security provider, which argued it was not liable for the incident. The security provider was under contract with the mall premises owner to provide minimal security to the mall’s common areas.

The security provider filed a motion for summary judgment, arguing it was not liable to any of the parties because the altercation was not a foreseeable event and did not take place in the common area of the mall. James, the mall premises owner and the grocery store owner all argued that the mall security provider owed a duty to protect mall patrons and was liable to James for his injuries.

**Decision:** The state court reviewed the contract between the mall premises owner



and the mall security provider and agreed that the security provider was only hired to “patrol the common areas of the mall and report any criminal activity and/or unsafe conditions.” The court noted that the security provider was not hired to protect individuals from personal injury and did not have any duty to protect the grocery store premises or its patrons.

It was undisputed that mall guards were not present at the time of the fight. Yet, James argued that mall guards often patrolled the store’s entrance and therefore assumed the duty of protecting grocery store patrons.

The state court did not agree, deciding that the grocery store did not have a contract with the mall security provider and was not included in its duty of protection. The grocery store hired its own independent security guards and, therefore, the mall security provider was not required to intervene in the altercation between the store’s employee and James. The state court granted the mall security provider’s motion for summary judgment.

**Implications:** In order to provide adequate protection against foreseeable harm, premises owners often contract with third parties to provide security services. Generally, the language of that contract will determine the location and the level

of protection the third party is expected to provide. This case illustrates the importance of security providers’ understanding for whom they work and the level of their responsibilities as defined by the contracts.

Source: James v. Path Mark, Inc. No 13214/04, New York Supreme Court, Dec. 11, 2000. Unpublished. Strafford Publications.

## Assault of a Security Officer

According to Jeff Moore of Associated Security Services and Investigators of the State of Texas (ASSIST), there is a general misunderstanding of The Assault against a Security Officer Law which was passed in 2003. The law makes it a third degree felony to assault and cause bodily injury to a security officer on duty and in uniform. A violation can only be charged when an assaulted security officer sustains some form of visible body injury such as red marks around the neck, bruises, lacerations, bleeding, open wounds and broken bones. A good form of evidence in such cases is to photograph the trauma and have the officer examined by a medical professional. In the absence of evidence, the assaulting person cannot be charged.

(Source: <http://www.assisttexas.org>)

## Private Security Officer Employment Authorization Act (PSOEAA)

A House amendment to the PSOEAA would allow security officer employers to deal directly with NCIC when requesting background checks on prospective

employees. Currently, contact cannot be made without a state law that permits the arrangement. Some states specifically forbid hiring of job applicants that have a

criminal history, a provision that excludes employers from making its own hiring decisions. Except for Guardsmark, the security industry is in favor of passage.

*CHARGE DENIED continued from page 1*

**Implications:** The store employees and mall personnel followed appropriate procedures in this case. Although the patron's explanation of his activities was apparently credible in his criminal trespass case, the guards did not act wrongly in detaining the patron and summoning police based on what they saw and knew. By training your security employees in the proper procedures to follow when they detain a suspect and summon and make a report to police, you can diminish your company's exposure to false arrest and malicious prosecution claims.

(Source: *Summerville v. Allied Barton Security Services*, No. 01-06-00757, Texas Court of Appeals, November 1, 2007. [www.straffordpub.com](http://www.straffordpub.com).)

## Emergency Evacuation Planning

Two major threats jeopardize business. First is the criminal act such as arson, deliberate release of a hazardous material or a bombing. The second type of threat is non-criminal in nature such as hurricanes, earthquakes and accidents. These events directly threaten a company's most important asset, i.e., its employees.

An essential first element in providing an orderly escape from life-threatening conditions is an evacuation plan. To develop an evacuation plan, the employer and/or contract guard company should:

Determine the conditions under which an evacuation would be necessary.

- Establish a clear chain of command and control.
- Designate certain employees to assist others during an evacuation.
- Establish a system for accounting for personnel.
- Designate personnel to activate or shut down equipment.



## Private Security Industry Booming in India

A booming private security industry has become a major contributor to employment among India's youth. With the demand for private security guards rising, the industry is growing at an estimated rate of 25 per cent per year, with 15,000 security guard agencies registered across the country. To ensure that guards are capable of handling various security

situations, applicants are given a mandatory 20-day training course. This boom was precipitated by India's Private Security Agency (Regulation) Act of 2005. The legislation was enacted with an objective that security guard agencies would supplement police forces.

(Source: <http://economictimes.indiatimes.com/News/>)



- Coordinate the plan with local first-responder agencies such as police and fire departments.
- Designate primary and secondary evacuation routes and exits that are clearly marked and well lit.
- Ensure that fire stairwells are:
  1. Wide enough to accommodate mass evacuation.
  2. Treaded to reduce falls that would impede movement.
  3. Unobstructed at all times.
  4. Not likely to expose evacuating personnel to secondary hazards.
  5. Illuminated.
  6. Pressurized to keep smoke from entering.
- Set up an assembly area where a head count can be made and instructions given.
- Establish "shelter-in-place" locations for use when an adverse event strikes so quickly that normal evacuation is not possible or when an evacuation poses a greater risk than remaining on the premises.
- Store and keep in readiness emergency supplies.
- Conduct evacuation exercises.
- Train in-house first-responders such as guards and maintenance personnel.

## Alarm Services Provider Not Liable

**Facts:** Land Air & Sea Inc. (LAS) filed suit against its alarm services provider after an unknown intruder cut the telephone line and silent alarm wire and broke into LAS' building and stole an unknown quantity of merchandise, including several guns. LAS alleged the security company negligently installed the security system when it failed to encase the exposed wires, knowing that an intruder would have the ability to compromise the security system and break into the building without triggering the alarm. LAS argued the security company performed below-industry standards in its installation and breached a duty to warn LAS about the potential security threat. The security company filed a motion for summary judgment and the trial court granted the motion. LAS appealed.

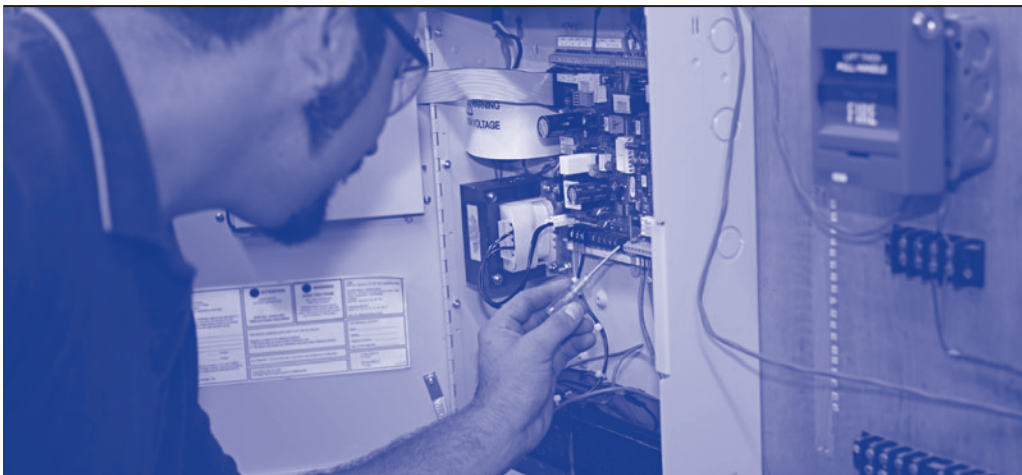
**Decision:** The state court of appeals reviewed the evidence on the record and determined that LAS failed to introduce any evidence to support its claims. The court noted that LAS relied only on "its own conclusory allegations ... and failed to offer more than unsubstantiated assertions." Furthermore, LAS signed a contract that specifically warned that the alarm would not function properly if the telephone wire was disconnected or did not work for any other reason. The court determined that LAS was required to read and understand the terms of the contract before signing it and was properly warned of the potential security risk. Because



LAS did not support its claims with any reliable evidence, the state court of appeals upheld the trial court's decision.

**Implications:** This case illustrates the importance of taking the time to read and understand any contract before signing the document. The case also serves as a reminder to businesses using security systems that rely on telephone wires to use caution and encase, or otherwise protect, the wires to deter tampering by would-be intruders.

(Source: Land Air & Sea Inc. v. ADT Sec. Serv. Inc., No. 06-CA-11130, Kentucky Court of Appeals, October 16, 2007. Strafford Publications, [www.straffordpub.com](http://www.straffordpub.com).)



## Locksmiths and Alarm Installers Arrested in Texas

The Texas Department of Public Safety arrested 10 persons for operating as locksmiths and alarm installers without having a state license. The arrests were spurred by Rick Milliorn, President of the West Texas Locksmith Association, who said DPS had taken no action to enforce the law until he filed a complaint with state legislators. Milliorn said that many people with criminal backgrounds are re-keying homes and businesses and installing alarms; and they have the expertise to set the locks and alarms, making it possible for them to return later and burglarize the premises or worse. He believes the only purpose of the law is to collect license fees, not protect the citizens.

The Texas Department of Public Safety's Private Security Bureau is responsible for enforcing the licensing law. The person in charge, Captain Reneral Bowie, said there is no sure-fire way to know in advance of an arrest if a non-licensed person has a criminal record, and he knows of no incident in which a burglary was facilitated by altering a lock or alarm. As it turned out, 7 of the 10 arrestees had criminal records, and if convicted face penalties of up to a year in jail and a \$4,000 fine.

(Source: El Paso Times, [http://www.elpasotimes.com/business/ci\\_9146014](http://www.elpasotimes.com/business/ci_9146014).)

## Texas Acquisitions

Argyle Security of San Antonio has acquired two physical security electronic firms: Peterson Detection of Los Angeles and FireQuest of San Antonio. Argyle, along with its two new acquisitions, are expected to increase revenues from \$128 million to \$142 million.

(Source: Security Business Newsletter, New York, NY.)

## A Message from the U.S. Fire Administration

Since the 1970's, the U.S. Fire Administration has promoted research studies, development, testing, and demonstrations of residential fire sprinkler systems and smoke alarms. These efforts, in concert with heroic efforts by many organizations and individuals, have resulted in the adoption of requirements to install smoke alarms in all new residential construction. In many jurisdictions, the retrofit of smoke alarms into existing residential occupancies has been mandated. Together, these initiatives have saved many lives.

The results have been different, however, with respect to residential fire sprinkler systems; only a few jurisdictions have mandated their installation in new construction, and none have mandated retrofit of existing one- and two-family housing

stock. The Center for Fire Research at the National Institute of Standards and Technology has studied the impact of both smoke alarms and sprinklers in residential occupancies, and estimates that:

- When fire sprinklers alone are installed in a residence, the chances of dying in a fire are reduced by 69%.
- When smoke alarms alone are installed in a residence, a reduction in the death rate of 63% can be expected.
- When both smoke alarms and fire sprinklers are present in a home, the risk of dying in a fire is reduced by 82%, when compared to a residence without either.

Much has been written about the reduction of residential fire deaths due to



improvements in building codes and the installation of smoke alarms. Without a doubt, these have had a substantial impact on the home fire problem. The annual number of fire deaths in residential occupancies continues to decline. The trend in fire death data, however, shows that the number of residential fire deaths is declining at a slower rate over the past 10 years than it did in the period 1977 through 1995.

(Source: U.S. Fire Administration, <http://www.usfa.dhs.gov/>)

## Guard Prohibited From Recovering Damages

**Facts:** Rosalind Youngblood, an employee of Covenant Security Services, was a security guard at a facility owned by Air Products. When Youngblood was hired, Air Products trained her and gave her all of her supplies. Youngblood never worked anywhere else while she was an employee of Covenant.

Youngblood sustained injuries when she slipped and fell on the premises at work. She sued Air Products in order to recover for her injuries. The company moved to dismiss, contending that Youngblood's damages were limited to workers' compensation because she was a "borrowed employee."

**Decision:** Generally, employees cannot sue their employers for injuries sustained on the job if they can recover workers' compensation benefits. The rule does not apply to an independent contractor who works for a company but is not employed by the company. However, where a company exercises enough control over an independent contractor, the contractor may be

considered a "borrowed employee" subject to the workers' compensation limitations.

The district court found that because the company exercised a great amount of control over Youngblood, she was a borrowed employee. Factors such as that her work was performed on the business' premises and the business provided the training and materials made her a borrowed employee. Thus, Youngblood was barred from bringing a personal injury action. The district court dismissed the case against the business.

**Implications:** An employee cannot usually recover damages for injuries sustained on the job if there is a workers' compensation program available. However, an independent contractor can recover for injuries under a theory of premises liability unless the employer can show that the contractor was a borrowed employee subject to the employer's control.

Youngblood v. Covenant Security Services, LLC, No.07-0250, US District for the Middle District of Louisiana, Jan 15, 2008, unpublished. Source: Security Law Newsletter, published monthly by Strafford Publications, Atlanta, GA. [www.straffordpub.com](http://www.straffordpub.com), phone: 800-926-7926 ext. 10 or email: [custserv@straffordpub.com](mailto:custserv@straffordpub.com).



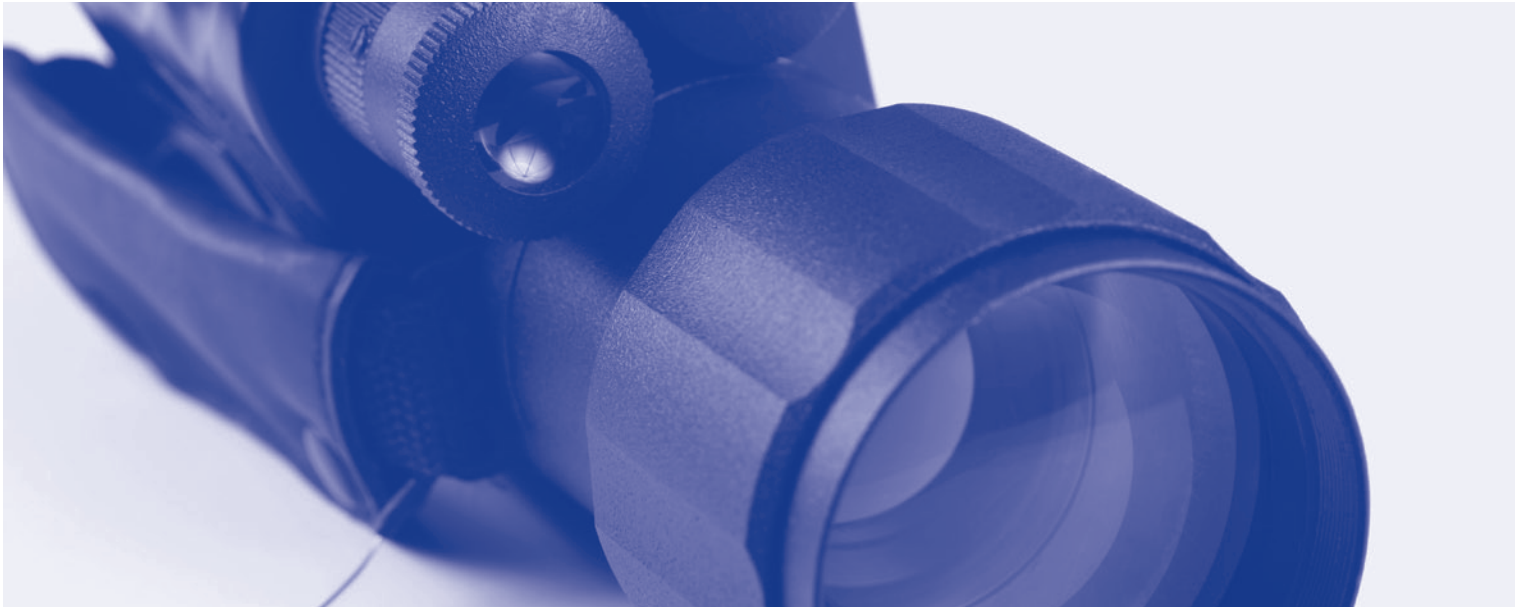
## Digital Photographs

The problem with digital photos is that they can be more easily altered than hard-copy photos. Counsel for either side will challenge them on that premise unless both parties agree to allow their introduction into evidence. The principal requirements to admit a photograph, whether digital or film-based, are relevance and authentication. Relevance requires a photo to be significantly meaningful to the issue at hand, and authentication requires testimony that the photo is an accurate representation.

To increase the chance that a digital photo

*DIGITAL PHOTOS continued on page 7*

## The PI and Technological Advances



Advancements in technology during the past 25 years have taken private investigations from tiring gumshoe work and tedious leafing through paperwork to the ease of pushing PC buttons. But according to veteran PI Ross Rolshoven, face-to-face conversations remain one of the best ways to gather information. Interviewing witnesses to accidents or workplace incidents continues to be the main practice in private investigation. Increasingly, private investigators are hired by employers to talk to workers suspected of offenses against the company. The suspect's neighbors, friends

and families, co-workers and anyone else who may have information are interviewed to get a full picture.

On the other hand, high-tech surveillance devices have become common. In the PI's tool box are infrared cameras, night-vision goggles and miniature fiber-optic video cameras. Forensic technology is used to examine weapons, burglar tools, body fluids, drugs and other forms of physical evidence. The Internet is used to find thieves that have skipped town, reunite families and discover proof of former crimes.

Not all is a rose garden, however. Technological advances have not eliminated the physical challenges private investigating work sometimes requires. For example, government regulations prohibiting access to personal records, such as cell phone records and birth dates, create problems. In some cases, a defendant is denied information that would prove innocence. Restricted access to key data often means the PI has to go back to plain old footwork. In the process, the client experiences delay and high cost.

(Source: Susanne Nadeau, Herald Staff Writer, Grand Forks, NE, published January 20, 2008.)

## The Hiring Decision

According to ServeNow, a resource for private investigators and process servers, an employer is essentially entrusting a new hire to work with the company's interest in mind. There is no question that an employee's job performance can affect the future of a small company one way or the other. A good employee can make customers happy and bring more business and more enthusiasm into the workplace. However, the wrong employee can literally destroy a business.



According to U.S. Department of Commerce statistics, employee dishonesty alone causes 30 percent of all business failures.

(Source: ServeNow, <http://www.serve-now.com>)

## Securitas Doing Well in US, Struggling Elsewhere

Securitas, the security services industry based in the United Kingdom, is making profits in the United States mainly due to a growing demand in the private and government sectors. Their Loomis operations in Spain are failing and they are finding it difficult to break into the Canadian market. Their brightest prospect is US Government contracts and even in an economic slowdown will more than hold its own.

(Source: Security Business Newsletter, New York, NY.)

# The Serious Interrogation

Every once in a while a private investigator will be interviewing a witness concerning a serious incident such as a wrongful death, aggravated assault or rape. The witness says or does something that causes the PI, who is most likely a criminal defense investigator, to believe the witness is not a witness at all, but the guilty party. The PI switches to the interrogation mode, but what is that mode? Interrogation experts say that an interrogation should consist of three stages:

- (1) establish rapport,
- (2) let the suspect tell the story and
- (3) challenge the story.

In the rapport stage the interrogator engages the suspect in innocent conversation such as asking questions about the suspect's hobbies, interests and so forth. The objectives are to assess the suspect's intelligence and attitude; get the suspect use to talking; and establish a relationship in which the interrogator is the dominant person.

In the second stage the suspect is encouraged to tell the story. Interruptions should be as infrequent as possible and non-threatening such as to say "Go on" or "What happened then?" The interrogator looks for obvious lies, such as comments that contradict what is already known, and other indicators that the suspect is untruthful or omitting facts. The interrogator wants to obtain as much information as possible so that there will be plenty to discuss in the third stage.

In the third stage the interrogator points out the discrepancies and gauges the suspect's verbal and body language responses. These are called Deception Cues and can be (1) phrases like "Honest to God" and "This is the truth", (2) avoiding the interrogator's eyes, (3) twitching, (4) bouncing knees, (5) drumming fingers, (6) licking the lips, (7) arms across the chest; (8) picking imaginary lint from clothing, (9) showing no emotion such as not inquiring about or expressing concern as to the victim's condition and (10).giving answers that are protective and show self-concern.

Another Deception Cue is called Cognitive Dissonance. The suspect's mind is furiously

concocting an answer but his mouth can't keep up. Words are garbled and out of order.

The suspect may offer an explanation before a question is asked. For example, "By the way, that blood spot on the seat of my car was caused by her when she sneezed and had a nosebleed." The blood spot may not have been detected by the police, a circumstance that would weaken the prosecution's case and strengthen the defense. Another example is, "The stairs are very steep and that is why she fell down them." If the private investigator has already been to the scene and taken photographs, they might reveal that the stairs are not steep at all. Showing the photos to the suspect is a way to point out an obvious lie.

If the incident involved physical violence, the interrogator will want to look for cuts, scratches and bruises inflicted by the victim.

When the interrogator reaches a point where further questions will not be helpful he or she moves to a method called Theme Development. In this method the interrogator suggests a scenario in which the suspect had little choice except to commit the offense. The theme is a story that portrays the suspect as a decent person that was confronted with unavoidable circumstance requiring a course of action. The interrogator might suggest that the victim was at fault, that the offense is not all that serious, that the average person would do the same and that people understand and be sympathetic. Theme Development offers the suspect an opportunity to



make excuses that are self-exculpatory (yet incriminating).

Care must be taken not to elicit a false confession through extended interrogation, verbal abuse, inappropriate touching or misuse of the Two-Path technique by describing harsh punishment that is inevitable when the suspect does not confess as opposed to describing positive help and understanding that results from an admission. (Note: Many people believe that false confessions are rare but the advent of DNA testing shows that not to be the case.) Care must be taken to prevent the suspect from later claiming that he or she was denied use of the bathroom, not allowed to rest and not given water or food.

It can be helpful to have another private investigator present to take notes and serve as a witness. A video recording is extremely important because it can be used at a later time to verify and discover new Deception Cues, show that the interrogation was not excessively coercive (an interrogation is coercive to some extent always) and create pictorial evidence for presentation at trial.

### *DIGITAL PHOTOS continued from page 5*

will be accepted into evidence, the private investigator should:

Protect the original image. It can be saved to another file but the actual image cannot be altered in any way such as by converting it from a GIF file to a jpg file.

Assign the read-only function to the file that contains the original.

Copies of the original should be given names different than that of the original, for example; Copy #1\_original.

(Source: The Admissibility of Digital Photographs in Court, Steven B. Staggs, www.crime-scene-investigator.net.)



## EL DORADO NEWS You Need To Know

### Arlene McConney Joins Florida Team

Please join us in welcoming Arlene McConney to our team in Florida.

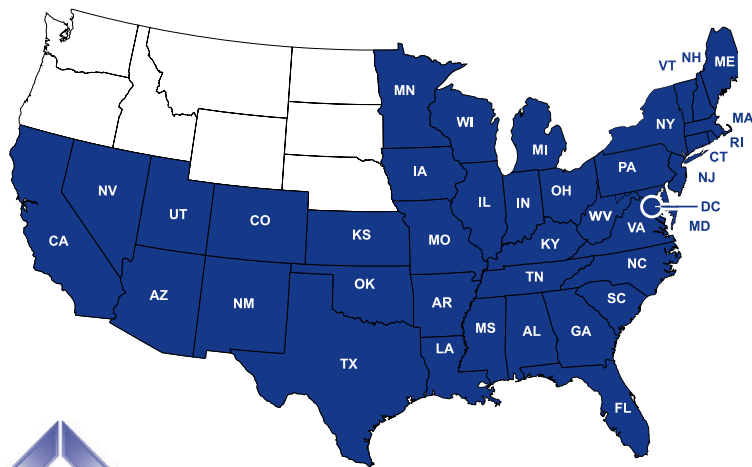
Arlene has been working in the Florida insurance industry for more than thirty years. For the last twenty, she has specialized in serving the unique needs of the security industry. So, she knows the

challenges you face when shopping for insurance coverage, and she is ready to put the right program together for you. So, don't wait, contact Arlene today at 800.221.3386 or [amcconney@eldoradoinsurance.com](mailto:amcconney@eldoradoinsurance.com).

### New Texas Healthcare Product

El Dorado is very pleased to announce our new Homeland SecureCare™ limited-benefit health insurance product for the private security industry in Texas. SecureCare offers a wide variety of benefits to provide broad insurance services to security workers and their families. Benefits include emergency room care, health screenings, doctor office visits, outpatient services, and prescription coverage.

SecureCare will provide the private security industry with a benefit rich product, that is aggressively priced, and customizable to any firm. In addition, by offering a limited benefit medical plan to employees, Security Companies will be able to reduce employee turnover and associated costs.



40<sup>TH</sup> ANNIVERSARY

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### Associations

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