



# MALPRACTICE ALERT!

**OBLIC**

Ohio Bar Liability  
Insurance Company

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## OSBA CONVENTION SEMINAR: COULD THIS HAPPEN TO YOU? PRACTICE TIPS FOR FRAUD PREVENTION

Yes, you could be the victim of fraud in your law office. It often comes from the least likely source. This seminar will present measures you can implement for **Fraud Prevention**.

**David Bodiford**, Director of Internal Audit Services with GBQ Partners LLC, will headline the annual seminar during the OSBA Annual Convention at the Columbus Convention Center/Hyatt Regency Hotel in Columbus on Thursday, May 12, 2004 from 2:00 P.M. to 5:15 P.M. The convention seminar will again be co-sponsored by the Ohio Bar Liability Insurance Company (OBLIC) and the OSBA Lawyers' Assistance Committee.

David Bodiford is a seasoned audit executive with over 25 years of accounting and audit experience, focused on financial and operational audits with an emphasis on internal control assessment. Prior to joining GBQ in 2004, David spent three years as an Internal Audit Director for Limited Brands, Inc. He also spent eight years with various national accounting firms, most recently PricewaterhouseCoopers, in their risk management / IAS practices. David is currently leading audit activities in the areas of process mapping, internal controls assessment, and Sarbanes-Oxley Section 404 compliance.

Disciplinary Counsel **Jonathan Coughlan** will present **Applicable Ethics** and OLAP Executive Director **Scott Mote** will cover the topic of **Substance Abuse** to complete the seminar.

Mark your calendar now and plan to attend! Remember, your OBLIC coupon can be used toward your Convention Registration. You can register online via the OSBA website at [www.ohioabar.org](http://www.ohioabar.org) and click on

the Convention links. You won't want to miss this! See you in Columbus!

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## BE ON THE LOOKOUT FOR "EVIL-TWINS"

Mark Bassingthwaighe, Esq., Attorneys Liability Assurance Society (ALPS)

Just when I think I've heard it all, along comes another computer security threat that catches my attention. This threat involves wireless networks and underscores, yet again, that wireless networking may not be ready for widespread use in the law firm setting.

Researchers are warning that hackers can set up Wi-Fi hot spots that resemble legitimate hot spots. These attackers send a stronger signal from a base station in close proximity to a legitimate wireless client (think Starbucks, Delta Crown Room, etc.) that interferes with a connection to the legitimate base station. The fake hot spot, also known as a base-station clone, is now being referred to as an "evil twin." One problem with evil twins would be that unsuspecting users could be lured into passing along sensitive data such as user names and passwords via bogus log-in prompts.

Here are a few rules worth implementing if you have deployed or are considering deploying a wireless network. Make certain that all wireless devices have their security measures activated, use non-obvious encryption keys and change the encryption keys regularly. Install anti-virus and firewall software on all wireless devices and keep these programs updated. Don't keep confidential information on a Wi-Fi network. If confidential information does reside on mobile wireless devices, the use of mobile wireless devices in public hot spots should be prohibited, particularly in the absence of strong encryption programs.

Be aware that there are a number of programs collectively known as "Hacker Freeware" available for

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download. There are decrypting programs, programs that allow a hacker to examine a live Wi-Fi data stream, and programs that seek to ascertain passwords. Remember that Wi-Fi technology is broadcast radio technology. Data is being transmitted beyond the wires and hardware of a wired network into the physical space that surrounds us all. For the time being, that fact alone makes a wireless network the more vulnerable network. When it comes to Wi-Fi networks and public hot spots, extreme caution is the name of the game.

Now, I love wireless and enjoy the convenience of it in my own home. My message here is not to lecture on the evils of Wi-Fi. I simply wish to share one more reason for suggesting that the decision to use a wireless network within a law firm is one not to be taken lightly. More importantly, the decision to use mobile wireless devices such as laptops should receive even more scrutiny. There is just too much at stake.

*The Risk Management Report* is not legal advice. It does not, and is not intended to, respond to any individual situation or concern. The reader must conduct independent research and analysis to determine the constraints and best way to act for each matter in each jurisdiction.

OBLIC wishes to thank Mr. Bassingthwaigthe and ALPS for permission to reprint this article that recently appeared in "The Risk Management Report."

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U.S. District Judge Sandra Beckwith recently held that a statement made in an affidavit regarding collection of a debt is not entitled to protection under the witness-immunity rule, and that attorneys involved in the action to collect the debt, who submitted the affidavit, were not entitled to judgment on the pleadings, *Blevins v. Hudson & Keyse, Inc. et. al.* (unreported), No. 1:03-CV-241 (S.D. Ohio, Sept. 29, 2004). The Court ruled that the provisions of the FDCAP (Fair Debt Collection Practices Act) are to be construed literally, and that a false statement made in the collection of a debt, even if inadvertent or harmless, may give rise to liability under the FDCPA.

This decision is contrary to *Etopa v. Asset Acceptance Corp.* (unreported), No. 03-86-KSF (E.D. Ky, April 29, 2004), discussed in the September 2004 edition of "Malpractice Alert!"

OBLIC would like to remind attorneys who collect consumer debts for clients to be certain that their initial collection letters or correspondence comply with the FDCPA. Of course, appropriate use of such a letter will not avoid the issues raised in *Blevins* or *Etopa*, where an affidavit was relied upon or used in the filing of complaints to collect debts, and the affidavits contained allegedly false statements. However, most FDCPA claims that we have seen involve issues regarding the content of an initial collection letter.

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