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**HEADLINE: TRANSCRIPT: ATTORNEYS RUSS MELTON AND JOE GERBER
ON RESPONDING TO CATASTROPHES**

BODY: OLDWICK, N.J. (BestWire) - Recent disasters such as industrial explosions in Kansas City, Mo. and Apex, N.C., have led to large losses. For insurers, the best way to keep abreast of claims and contain catastrophe-related litigation is often for law firms and insurance counsel to become involved quickly. In a roundtable discussion, attorneys Russ Melton and Joe Gerber discussed the role of law firms and insurance counsel in responding to catastrophic incidents. An audio file of this interview is available at <http://podcast.insuranceattorneysearch.com>.

JOHN CZUBA: Welcome to the Insurance Law Podcast, the broadcast about timely issues affecting the insurance industry. I'm John Czuba, editor of Best's Directory of Recommended Insurance Attorneys. We're pleased to have with us today two outstanding attorneys from very prestigious firms. Joining us is Russ Melton from the firm of Foley & Mansfield in Minneapolis, Minnesota and Joe Gerber from Cozen O'Connor in Philadelphia, Pennsylvania. Good morning, gentlemen.

RUSS MELTON: Good morning.

JOE GERBER: Good morning.

JOHN CZUBA: For the past 15 years, Russ has led Foley & Mansfield's catastrophic loss practice group. Russ has also worked as a qualified nuclear engineer with the United States Navy, Westinghouse and General Electric. Joe Gerber has 37 years of experience with Cozen O'Connor. He presently chairs the firm's client relations activities and co-chairs the firm's crisis response and management practice. Joining me in the studio today is Brendan Noonan of our communications team. Recently chemical plant explosions in Kansas City made national news. Several explosions there forced the broad evacuation that affected local residents and the area school districts. Today's focus is on managing the catastrophic loss scene and a law firm's crucial role in that process. I'll turn the first question over to Brendan Noonan.

BRENDAN NOONAN: Russ, your firm does a lot with large fire scenes and chemical exposure risks and Foley & Mansfield has closely monitored this particular situation. If you worked specifically on this case, how soon would your firm be involved?

RUSS MELTON: That's an excellent question. The problem is I have to drop back a little bit to address it. There are several factors that are involved other than the incident itself. There's the question of cause of the fire and the release but then there's also "who's your client." Initially the client assignment, and that's followed by the assigned scope of work. So looking at this, the client, if it's the owner/operator we usually receive notice quite rapidly that there's an incident -- the owner/operator is self-insured. That would allow you to respond pretty much just a few hours after the emergency response teams have gone in -- the local teams to either fight the fire or secure the release. If, however, it's a carrier, there may be some slight delay either reporting from the owner or reporting from the broker or the agent before you have information sufficient for them to assign the job to the firm to go in and commence the initial investigation or crisis management. It may be that the insurer would be involved in another matter depending upon the area, the type of insurance, the type of coverage that they're providing. Regardless though, probably a few hours if it's owner/operator to a half a day if it's broker and if the carrier has identified that it is their risk, then we'll be there the following morning.

JOHN CZUBA: Joe, I'll follow up with a question for you. How important is this early intervention at the scene?

JOE GERBER: Early intervention is absolutely critical. If you think about a fire scene, an explosion scene or any large catastrophic loss, obviously it's critically important to understand the condition of the post-loss site, the physical evidence, the physical condition of the scene. At the same time, that evidence gives you the opportunity to bring in your photographers and your videographers, so that you can preserve exactly how the scene looked immediately following the release or the extinguishment of the flames, or the collapse, or whatever the calamity might be. At that point, while the scene is fresh, you then start with the various investigators. Probably, the first on the scene will be the public entities, the fire departments and the police departments. Then, of course as Russ mentioned, the insurers are critically interested and they will have people there in the early going. Then to the extent that you're pursuing claims against third parties or responsible parties, you will want to invite them to the scene before the scene is altered. So, the critical stage here is in those first hours and days when you do everything you can to preserve the scene as is. There's an enormous pressure and temptation to start bulldozing and clearing the debris. But, that must be resisted as the various experts and consultants and public entities come onto the scene.

At the same time, you want to make certain that you have early access to the various witnesses. Those would include the eyewitnesses to the event. Then of course, the first responding fire department or police department, folks who were first at the scene. You want to get to those witnesses as early as possible, while their memories are fresh and before they're involved in a lot of other activities.

BRENDAN NOONAN: Thank you. Russ, although you were not specifically involved in the Kansas City situation, how closely do you work with the law firms and the insurance companies involved even if you're not directly assigned to the case?

RUSS MELTON: I think I'll expand that question slightly because when an incident like this occurs, there's a small group of entities across the nation that work on a catastrophic loss. The phone call will come in perhaps from emergency response - say air monitoring. As Joe started out, yes, you've got a variety of government entities, which could be everything from EPA, CSB, ATF, FBI and it continues onto the state as well as the local agencies. At this time everyone is talking back and forth trying to identify what happened. As a consequence, while my phone will ring and say, "Russ, check CNN. There's an incident in North Carolina." We start watching. The phone will ring from someone in Oklahoma indicating that they have information on the loss. Part of the problem is at the very beginning no one really knows what happened -- a processing facility, a power generation plant. They work thousands and thousands of hours without an incident and then all of the sudden the incident occurs. They have emergency action plans. They do not have plans usually in place for conducting an investigation or coordinating the 40 or 50 people that will show up on site seeking access.

As a consequence, we talk back and forth not only with agencies but also with the emergency responders and then rapidly right behind the responders comes what Joe was talking about, which would be remediation teams that want to go in and tear down, tear apart and put everything back in place to try to minimize the business interruption or the duration of the incident.

JOHN CZUBA: Now Russ, you yourself have engineering experience. In a situation like this, a chemical explosion or a fire disaster, tell us a little bit about the process for securing additional experts to the scene.

RUSS MELTON: Well, I've been on both sides of the table. When I was in manufacturing, I first started out in design engineering and then production engineering and then went into division management and then corporate management. I've had fires and explosions at my site. So that's one area to discuss. Secondly, as far as the experts, attorneys usually move directly into choice of an expert as an expert witness and looking at how it's going to be presented, the evidence that is at trial. We start looking at the experts that we know we need to bring in because although you may have MSDS's, the material safety data sheets to identify the chemicals that were shipped in, that really doesn't help you too much when you've had an incident where there's been commingling, there's been fire, there's been explosions. The chemicals that you have there are not necessarily the chemicals that are listed on the MSDS. We consider all sites extremely dangerous.

So the first expert I want to get on the ground would be air monitoring. Now, this is depending upon the scope of my involvement, what is my assignment? Usually it's through the crisis management of which a subpart would be the investigation. Regardless, you're going to have evacuations at most of these incidents, some as a result of plume, some as the result of odor. We want to have hard data on what's occurring downwind, where the plume settles in or where you have the water runoff or the storm water runoff. It might be the firefighting water, to make a degree of determination of contamination onsite and offsite. So you have to look at your experts not only as far as for litigation but as far as actually working and getting the site back under control.

So the best thing to do is to have what I call a preferred vendor list, a list of experts in different categories that you have gone out and met with, worked with, identified the credentials or assisted in getting the credentials necessary to support the endeavor, to minimize the duration and the damage from the incident.

BRENDAN NOONAN: Joe, what lines of insurance are most impacted by the handling at the scene?

JOE GERBER: Almost every line on insurance is impacted. When you're dealing with a catastrophic loss at a factory or chemical plant or refinery, you start off with your property lines of business which insure the buildings, the contents of the buildings and, of course, your boilers, your machinery and equipment. So, all of your property lines are potentially impacted. Then, of course, if there's been some form of release, a leak or a spill, you're worried about your pollution coverages, which would include air pollution coverages and water and ground pollution coverages. As Russ mentioned, business interruption jumps to the forefront. All the business interruption coverages, including extra expense, come into focus. You're immediately worried about your period of suspension. How long will the plant be down or part of the plant be down? You need to make some very early decisions about whether you're talking about a partial interruption or a complete interruption at that location. Then, also, inside the business interruption extra expense considerations, can you make up this production at another facility, at another location, another factory? Your casualty coverages are potentially triggered because frequently there are losses or claims by third parties and they take the typical forms of both personal injury and property damage. Your workers' compensation is no doubt triggered because you probably have some injuries to your own workers and, sadly, your life insurance coverages may also be triggered, if there's been a loss of life. Certainly a disability package would be triggered to the extent that any of your workers sustain either a short-term or a long-term disability. So, in short, then, I would suggest that almost every line of coverage is triggered by a catastrophic event.

BRENDAN NOONAN: So Russ, would you discuss this topic with insurance clients ahead of time so they would know what to do when a catastrophe happens?

RUSS MELTON: This is difficult. I've tried the last 10 years to approach potential clients by doing seminars across the United States in which we have training on, for example, dust explosions, vapor release, static electricity ignition, electrical ignition, et cetera, in hopes that I can prepare them for this type of an incident. What I like as Joe was identifying all the different insurance lines that may be impacted as the result of a catastrophic loss, once you drop back a little bit because starting even with property, what you're going to have is an adjuster who wants to come in with a team of three to four people. The property is also going to have their origin and cause investigator and that would probably be one or two,

perhaps two. As you go through this listing, you also see the causation engineers who might be electrical or mechanical, chemical, et cetera. So just talking about property, we probably have five to eight people that would want to go in and take a look at the site, which is going to be closed at least for a while by the public entities and hopefully they won't be disturbing the scene -- because the best evidence is the scene itself.

This brings up the point of the convergence today between science and law. It's reached the point if you could see me I'm running my hands that once ran parallel to another and now we have the convergence of law and science. Whether it be Daubert or NFPA921, everyone has to have an opportunity to inspect and examine the site and the potential evidence in a pristine condition. As a consequence, the public entities, as well as the interested parties, that would be your carriers, and as Joe started to talk about, if you identify potentially responsible parties, they need to be put on notice so they can bring their teams in. We're now up to probably 50 to 60 people that want access to a restricted or controlled area in an exclusionary zone that is extremely dangerous. In all probability they may not have the right training. They do not have the right credentials and they definitely do not have the appropriate protective equipment. So crisis management is much more than just showing up to make sure that the evidence is not disturbed. Speaking of evidence, one of the primary concerns is once you've identified and reached a protocol on removal of evidence, the problem remains this: evidence is contaminated. So how are you going to remove it? How are you going to store it, and what type of facility do you need to do the destructive testing on it or analysis at a later date? All these are elements that I try to teach at the courses to potential clients to insure that when an incident does occur it is not a sudden jolt of reality. They've had some information to lead them to put plans together so they have the appropriate experts available.

JOHN CZUBA: And Joe, we talked a little bit about the immediate responses. You also do a lot of subrogation work. In comparison, how deliberate is that process?

JOE GERBER: It's extraordinarily deliberate. It's really an extension of what we've been discussing already. You start at the scene with all of those immediate activities during the first 24 and 48 hours. Then you just continue that process as the subrogation claim takes shape and matures. So, you begin, of course as we discuss with cordoning off the area, protecting the boundary limits of the facility, preserving the scene until all interested parties have been through it. We've mentioned many of those. You move to the photography and videography that we mentioned, the preservation of the evidence, and then, you start working very intensely with your experts who include both the generalists and specific experts -- the chemists, the metallurgists, the electrical, the HVAC, your technical consultants. Then, you start gathering documents as the process matures. You need to gather all of the computer tapes and disks and records for the facility at the time the accident took place. You need to gather service records, instruction manuals, maintenance guides and so forth. All of those documents need to be identified and obtained very early on. You also have to be in touch later with the public authorities as they reach their conclusions in terms of cause and origin. At the same time, because you're dealing with subrogation and potential third-party liability, you need to focus on what theories you'll be pursuing and the elements of those theories. For example, if it's a negligence theory, what are the various duties of care and to whom are they owed and what were the breaches of those duties that gave rise to the loss and then of course the damage aspect. As the claim matures, the damages come into focus, both the property damage and the business interruption damage. If you're pursuing a warranty cause of action, of course, you need the contracts and you need to identify where the breaches of those contracts occurred and the damages that followed. Products liability analysis proceeds in much the same fashion.

One of the key issues I would suggest to you is that there should not be a rush to judgment. Very early on in these matters you will hear and see people on TV and radio and within matter of hours and they'll have some theory. For those of us that do this day in and day out, you've really got to resist the temptation to rush to judgment and be far more deliberate and gather as much of the evidence and as much of the expertise as you can, so that you can make an intelligent decision as to exactly what happened and what the ramifications are in terms of potential subrogation or third-party liability.

BRENDAN NOONAN: So Joe, how important is the relationship or the trust factor between the insurance company and the hired counsel?

JOE GERBER: I would suggest to you that it's paramount. At Cozen O'Connor we have relationships that go back literally decades. More than the three-and-a-half decades that I've been here. As a result, you're involved in dozens and hundreds and even thousands of claims throughout the year. The trust relationship comes into focus because the insurance companies are anxious to be relying on people that they know and that they have worked with previously and have had success with. One reason that the carriers choose an outside firm like my firm or Russ's firm is that they know we have the skills and the expertise, that we've been involved in the area and that it's a specialty and a concentration for us. It's not something that we get in and out of like a fad but something that we've specialized in for many, many years. So, I would say that the trust factor is critically important.

JOHN CZUBA: Gentlemen, thank you very much. I want to thank Russ Melton from Foley & Mansfield and Joe Gerber from Cozen O'Connor. We appreciate your taking the time to speak with us this morning and special thanks to Brendan Noonan for joining us in the studio today and of course to our producer, Brian Cohen. Thank you all for joining us for the Insurance Law Podcast. To subscribe to this audio program visit podcast.insuranceattorneysearch.com or go to online directories such as iTunes or Google or Yahoo's podcast directory. I'm John Czuba joined by Brendan Noonan. (By: Lee McDonald: Lee.McDonald@ambest.com)

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