

# The Text Messaging Revolution

March 31, 2016

Aaron Simon, Esq.

Brownson & Linnihan, PLLP



# The Text Revolution

- ① Texting is one of most, if not **the most** prevalent forms of communication that exists today.

**Best party**



**EVER**

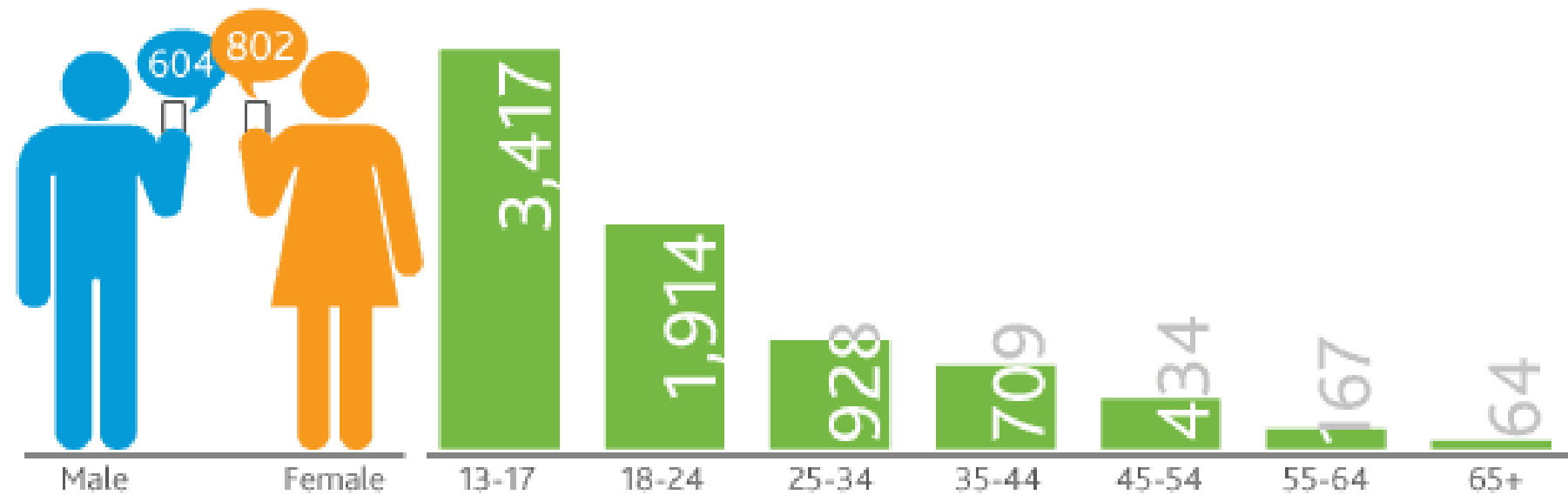
**WHAT'S THE POINT OF BEING AFRAID  
OF THE ZOMBIE APOCALYPSE**



**WHEN YOU'RE ALREADY A ZOMBIE?**

## Average Number of Messages Exchanged per Month

By Age and Gender, Q3, 2011



Source: Nielsen

nielsen

## Global SMS



## TEXT MESSAGES SENT IN THE UNITED STATES

2.5 trillion

2.0

1.5

1.0

0.5

0.0

2005

2006

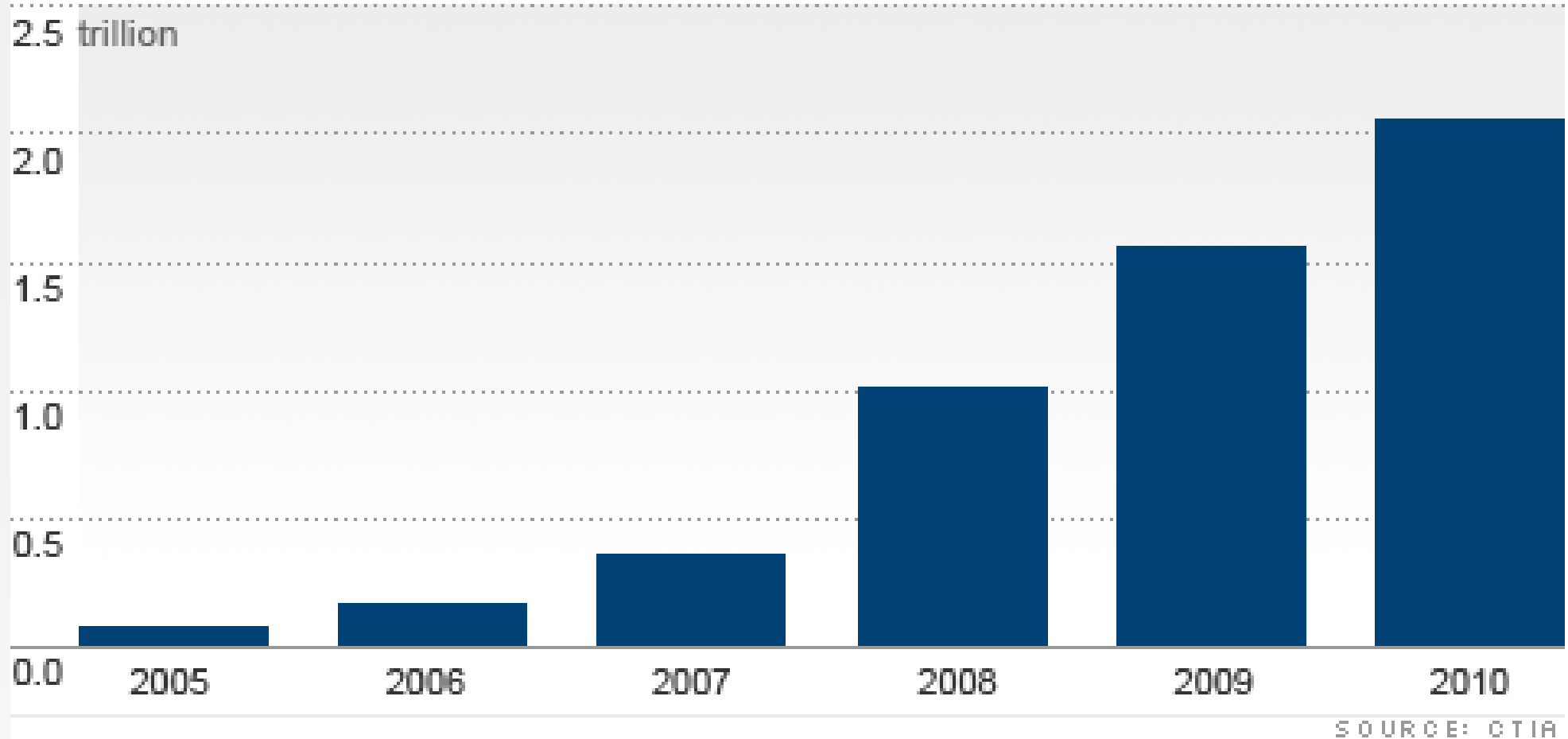
2007

2008

2009

2010

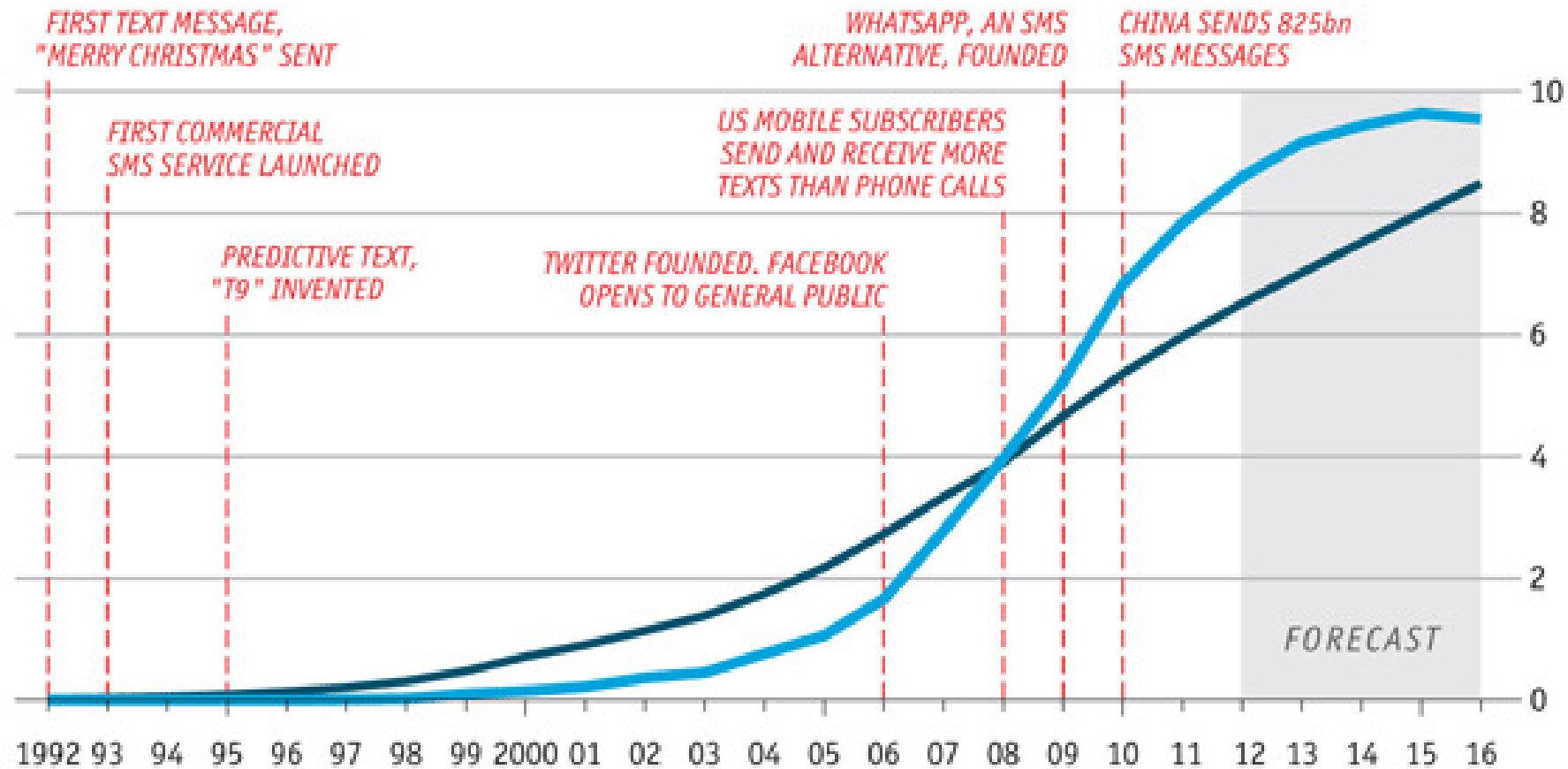
SOURCE: CTIA



## Text messaging

— Global short message service (SMS) traffic, trn

— Global mobile subscriptions, bn



Sources: Portio Research; Nielsen; Acision; national sources

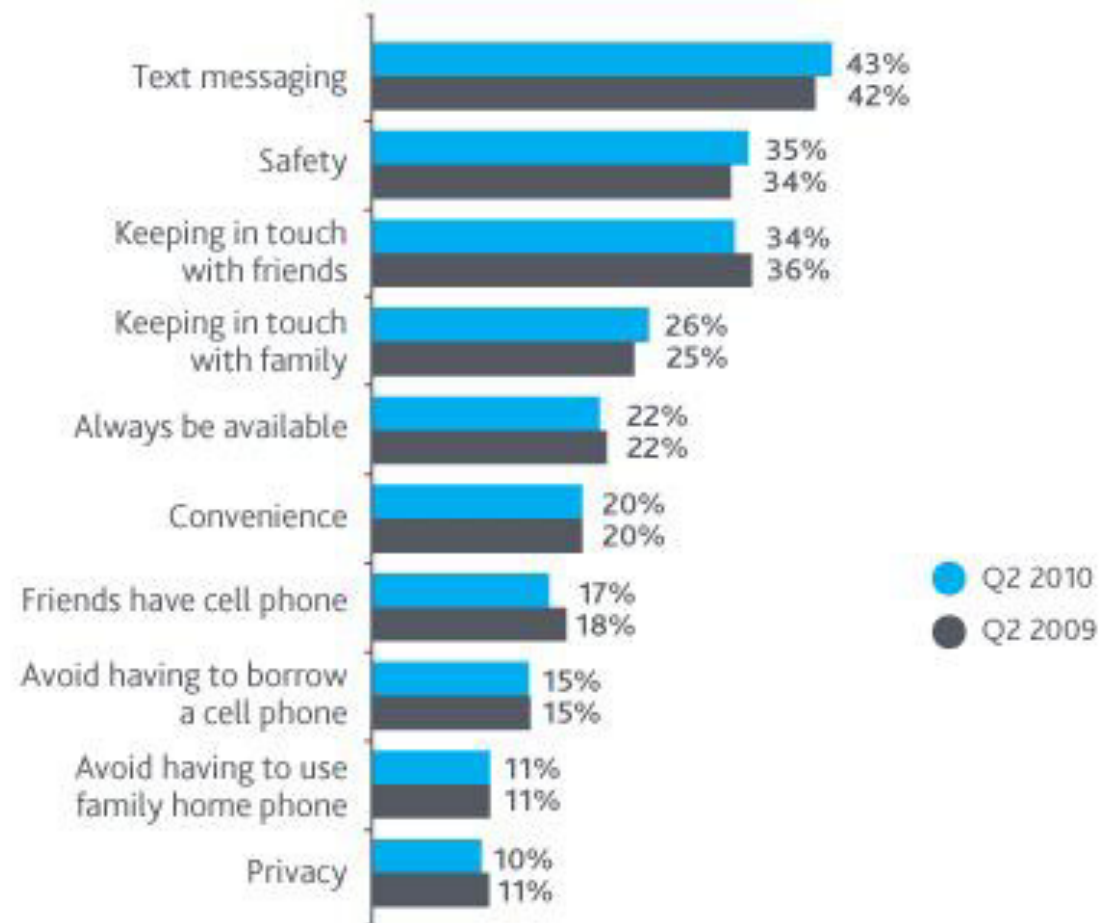
[Economist.com/graphicdetail](http://Economist.com/graphicdetail)



## Top Reasons for Mobile Adoption vs. Yago

### Teens' Top Reasons for Mobile Adoption

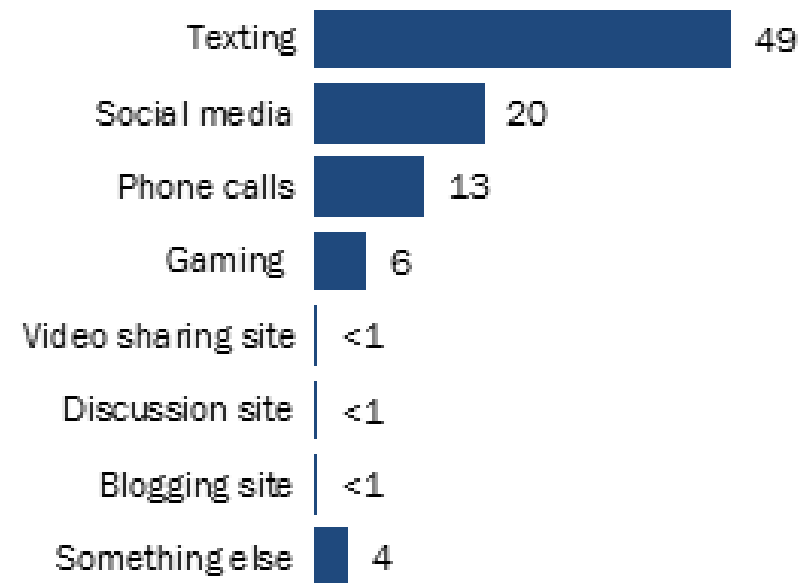
Teen Subscribers (n=3,250/3,128)



---

## Texting Is Most Common Way Teens Get in Touch With Closest Friend

*% of teens who say ... is the most common way they get in touch with their closest friend online or on a phone*



Source: Pew Research Center's Teens Relationships Survey, Sept. 25-Oct. 9, 2014, and Feb. 10-March 16, 2015. (n=1,009 teens ages 13 to 17 with a close friend).

**PEW RESEARCH CENTER**

---

## ADAPTATION OF TEXTING IN BUSINESS (CONT...)

- In 2012, SMS use for work-related communication was limited to only 15% of adults (Lam 2012).
- Most recent survey found that 67% of individuals surveyed using text messaging for business related communications every day (HeyWire 2014).
  - The survey also found individuals using their personal phones for business related communications.

How Often Do You Use Your Personal Mobile Phone for Business Communications?

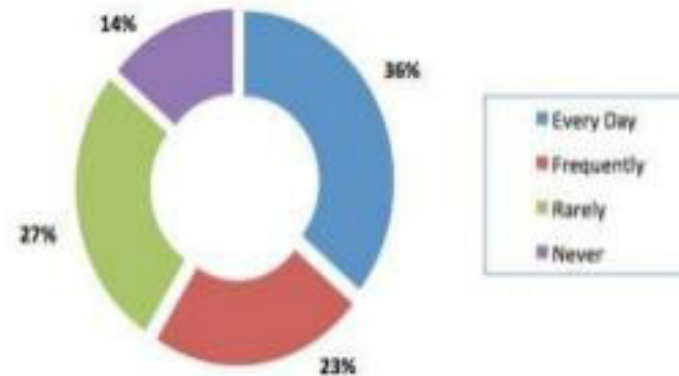


Image Source: HeyWire Survey 2014

## Other facts to consider.

- ◎ Some research has shown that “sending and receiving text messages is the most prevalent form of communication for Americans younger than 50”; and “[m]ore than two-thirds of 18- to 29-year-olds say they sent and received text messages ‘a lot’ the previous day, as did nearly half of Americans between 30 and 49.” In addition, some studies have shown that more than 90 percent of people read a text message within the first three minutes of receiving it.

# Implications to insurance industry, in particular Professional Liability

## POSITIVES:

- ① First, as a marketing tool, allowing your customers to reach you via text messaging, should you choose to do so, gives them access to you 24/7
- ① Text messaging is also a way for you to successfully reach your customers, with instant confirmation that a text has been sent, and statistics showing that it will likely be read.
- ① Text messaging is, likewise, generally a reliable and a universal way of communicating with customers and others not just in the United States but throughout the world.
- ① Text messaging is instant and to the point.
- ① Text Messaging is inexpensive.

# Implications to insurance industry, in particular Professional Liability

## NEGATIVES:

- ⦿ Abbreviations used in texting, while common, may be confusing.
- ⦿ Context and tone are very hard to convey in a text message.
- ⦿ Errors in spelling and content are also more prevalent in text messages as opposed to emails and traditional letters.
- ⦿ Some people are just not yet comfortable sending and receiving text messages.







# Legal Implications of Text Messaging

- ① While text messaging has taken over as the dominant form of communication, there is little case law or legal authority that discusses text messaging in the insurance agent insurance customer dynamic. Currently, there is no legal prohibition on the use of text messaging, or other forms of instant messaging, in communications with your insurance customers. In fact, courts have recognized text messaging as a valid and predominant form of communication.
- ① However, text communications do have potential legal implications. The most obvious issue is making sure you receive and acknowledge communications that you receive via text message from your insurance customers.

# Legal Implications of Text Messaging

- ⦿ What is the effect of an insurance customer texting you “please add my new 2015 Camaro to my automobile policy, the VIN is....” Does this bind coverage? Probably not. However, if you as the agent fail to add the new vehicle, and a claim involving that vehicle later arises, you might very well be exposed to a professional liability claim.
- ⦿ Another potential legal implication of text messaging is sending a text message to the wrong customer. There is likely limited liability exposure here, but there certainly is a chance to upset and offend your customers.

# Legal Implications of Text Messaging

- ① Another legal issue that arises with using text messaging in business is sending sensitive information (such as driver's license numbers, social security numbers, bank information, etc...). First, it is highly recommended that you do not send sensitive information via text message. However, if you or your customers are sending sensitive information via text message, then make sure at minimum you are always locking your phone when not in use; and you should encrypt the data on your phone.
- ① One should also take care if you are sending mass marketing via text messaging. There are federal and state regulations that exist that apply to this and that should be carefully followed

# Recommendations

- ① Even though text messaging is less formal than other forms of communication, carefully composing and sending text messages is important.
- ① Only communicate via text or instant message with customers who have specifically agreed to this form of communication.
- ① Have the customer confirm on the first text message that you have the right contact number. In fact, a best practice is to ask your customers what form of communication they prefer.

# Recommendations

- ① As always from a professional liability standpoint, documentation is key. Set standards and follow them: all “conversations” with a customer - whether by text message, email, phone or in person - should be documented and preserved.
- ① You should also obtain written acknowledgement from your customer regarding all decisions and transactions. Unfortunately, it is sometimes not enough to have one-sided documentation.
- ① It is also recommended that if you regularly communicate with a customer via text messaging that you send that customer a written statement regarding your policies and limitations regarding your agencies’ text message communications

# Thank you!

Aaron Simon, ESQ.

Tel: (612) 332-4020

[Asimon@brownsonlinnihan.com](mailto:Asimon@brownsonlinnihan.com)

