

QWarterly Chronicles

Fall 2009

What's Inside:

Wildfires Should Spark Review

James F. Henshall

Cover Your Exposure! Please!

Patrick C. Quinlivan

Spotlight On: For California Doctors

QUINLIVAN WEXLER LLP

6 Hutton Centre,
Suite 1150
Santa Ana, CA
92707

Telephone:
714.241.1919

Facsimile:
714.241.1199

Email:
info@QWLLP.com

URL:
www.qwllp.com

WILDFIRES SHOULD SPARK REVIEW

The California wildfires have caused widespread property damage in Los Angeles County. Unfortunately some of the fire victims may receive another surprise—they were not properly insured for their losses.

The wildfires should remind all property owners to check their insurance policies to make certain they have sufficient coverage. Some

California courts have held it is up to property owners to ask insurance companies for the insurance coverage they want. Insurance companies and insurance agents do not have an obligation to make certain property owners have sufficient insurance coverage. This burden falls on the property owners.

To make certain their insurance coverage is sufficient; property owners should review their policies and check the following items:

Policy Limits

Make certain the policy limit for Building Coverage is appropriate. Verify the policy limit for Building Coverage would be sufficient to rebuild the structure in the event of a total

loss. After the wildfires in 2003 and 2007, many victims in Los Angeles and San Diego counties discovered that because of increased building material costs, and rising labor costs, their policy limits were not sufficient to reconstruct their homes. Even if your policy has guaranteed replacement

coverage for the building, the insurance company may have capped the coverage at 125% of the stated policy limit. You should discuss your limits with a

local contractor, and make sure the limit is sufficient to rebuild. Many contractors will provide this information over the phone.

Other Structures

Make certain all the separate structures on the property such as garages, swimming pools, or storage sheds are covered by the policy. Some policies do not include these structures under the Building Coverage. Also make sure the policy provides guaranteed replacement cost coverage for these structures.

Personal Property

Many insurance policies only cover the buildings and other structures, and do not provide

Fire victims may receive another surprise - they were not properly insured for their losses.

See "Wildfires" page 4

Partners:
Patrick C. Quinlivan
Daniel J. Wexler
James Clough, JD, LL.M.
James F. Henshall

Associates:
Sarah A. Kirland, JD, LL.M.

Of Counsel:
Jacqueline M. Jensen
W. Vito Lanuti

COVER YOUR EXPOSURE! PLEASE!

It is a surprisingly common occurrence that we find our clients or those doing business with our clients do not have the liability insurance they need. Sometimes they have delayed obtaining the insurance. We were contacted just this past month by a company that had been formed in 2007 that is involved in the manufacture and shipment of equipment. The company did not obtain insurance until 2008. Unfortunately, a visitor on their premises was injured prior to when the insurance policy was purchased. The company, which is struggling like many others in the current economy, must now deal with defending or settling the resulting lawsuit entirely with their own funds. Obtaining liability insurance should be one of first steps taken by any new business. Failure to do so can destroy an otherwise promising venture.

More frequent is the failure to secure the kind of coverage that will provide protection against

the very claims that are most likely to occur. Following are some actual recent examples.

In our first example, Mr. A, in the business of doing handyman work such as cleaning up water leaks within an apartment complex, was sued in an action in which a tenant claimed injury due to exposure to mold. Mr. A's work involved drying out carpeting and installing new padding after a major leak in an upstairs apartment. Because the time period from when the work was performed to when the claimed injury occurred covered a period of over three years, we tried to find a policy that provided coverage during the relevant timeframe. We uncovered two major problems. First, we found that the broker Mr. A dealt with during the time he performed the services out of which the claim arose never obtained a policy on Mr. A's behalf. Although the broker had issued a certificate of insurance, the client never received a copy of a policy and failed to

confirm that the insurance was obtained. The second problem related to a policy that was obtained more recently. That policy contained an exclusion for liability based on exposure to mold. Because of the type of work Mr. A frequently performs, coverage for exposure to mold is just the type of coverage that is critical for him.

In our next example, Company B is in the business of sending blast text messages to individuals who sign up on line to receive such messages from a specific source. Such messages might include special offers from a business. Blast messages of this type are perfectly legal so long as the individual who initially requested such messages can opt out and stop future messages from being sent. A suit was brought against a business that used the services of Company B to send blast messages. The individual filing the suit claims that messages were sent after she had opted out and the lawsuit was filed as a class action.

WONDERFUL ENGLISH FROM AROUND THE WORLD

A sign Posted in Germany's Black Forest:

It is strictly forbidden on our Black Forest camping site that people of different sex, for instance, men and women, live together in one tent unless they are married with each other for this purpose.

Company B notified its insurance carrier and was advised that it did not have coverage for liability based on violation of laws related to blast text messages. Although it is likely that Company B will be successful in establishing that it did not violate any law and did eliminate from future text blasts those who opted out, Company B may incur significant expenses in defending itself in the litigation.

In our third example, Company 1 supplied component parts for a product manufactured by Company 2. Under an agreement, Company 1 is required to cover any liability that may arise due to a claimed defect in the component parts it supplied. These parts have no use except as a component of another product. A lawsuit was brought against Company 2 alleging a defect in the component part supplied by Company 1. Company 2 demanded, pursuant to the agreement, that Company 1 defend the action and indemnify Company 2. When Company 1 submitted the claim to its insurance carrier it learned that the policy provided no coverage if the product made by Company 1 was used as a component of

another product. Incredibly, Company 1 had paid for a completely useless policy since its product is always used as a component of another product.

What are the lessons to be learned from these examples? First, when obtaining insurance, be sure that a thorough analysis is made of the potential risks for which coverage may be needed. Ask your broker questions and educate your broker about your business and the risks it creates. Get a sample of the standard policy issued by each company you are looking at for possible coverage. Find out what the standard exclusions would be and determine whether

those exclusions are likely to apply to the type of occurrences that would result in claims against your company. Generally, coverage can be obtained for an increased premium to cover those risks for which coverage might otherwise be excluded. You will need to weigh the added cost against the potential exposure – both in the likelihood of an occurrence and the amount of damage that may result from an occurrence.

Once a decision is made to purchase a policy, obtain a copy of the actual policy that was issued, including all endorsements and exclusions. Read the policy or have someone knowledgeable about insurance and your business review the policy to ensure that it provides the coverage you thought you were receiving. If it does not, take appropriate action to correct any error. Finally, be sure to reevaluate the risks your business faces each year when you renew your coverage. The time and effort it takes to ensure that you have the coverage needed can be well worth it.

*Quinlivan Wexler LLP
publishes
**QWLLP QWarterly
Chronicles***

as a service to clients and friends. This publication is intended for general information and should not be relied upon for any other purpose. QWLLP encourages questions, comments, and ideas for future articles. Please call us; we'd love to hear from you.

Contact:

Kathleen A. Quinlivan
(714) 241-1919
or k.quinlivan@QWLLP.com

Patrick C. Quinlivan

MORE WONDERFUL ENGLISH FROM AROUND THE WORLD

Cocktail lounge, Norway:

Ladies are requested to not have children in the bar.

“Wildfires”

coverage for personal property. Make certain the policy provides coverage for all personal property owned by you if you live at the property, and if you are a landlord make sure the policy covers items such as refrigerators or other appliances; ladders, tools, gardening equipment, or other items used to maintain the property; and furniture or other items used to furnish the units. Make an inventory of the personal property at the building. If possible, photograph or videotape the personal property items to demonstrate they are kept at the building.

Loss of Rents/Additional Living Expenses

Make certain the policy provides for additional living expense or loss of rents coverage in the event the property cannot be occupied because of a loss. In certain instances it can take several months to fully repair a building due to fire, water, or earthquake damage. Many insurance companies now offer this coverage for a period as long as 2 years from the date of loss.

Liability Limits

Make certain the liability limits are sufficient so you don't pay out of your own pocket for damages or attorney's fees in the event of a lawsuit. Liability coverage tends to be one of the least expensive coverages to upgrade. Many times it can be relatively inexpensive to raise the limit. Talk with your



financial advisors, property manager and lawyer about whether your current liability limits would protect you and your personal assets.

Umbrella Policy

Umbrella policies provide an additional layer of liability coverage known as excess insurance. If you have

umbrella coverage, make sure the umbrella coverage also applies to your investment property. A personal liability umbrella policy issued to you individually may not apply to investment properties you own through a corporation, limited liability company, or partnership. In addition, review the umbrella policy's limits and determine if you need to raise the limit. The cost to raise the limit may be relatively inexpensive when compared to the protection it would provide.

Worker's Compensation Coverage

Check your policy to determine if it offers worker's compensation coverage. You may need this coverage if you have people you employ at your home or property.

Proper Parties Should Be Named in the Policy

Make certain the appropriate individuals, corporation, limited liability company, or partnership that owns the property are named as insureds in the policy. All appropriate individuals should be named as insureds, and their names should be spelled correctly. If a

AND STILL MORE!
In a Nairobi restaurant:
Customers who find our waitresses
rude ought to see the manager.

SPOTLIGHT ON



“Wildfires”

building is owned by a corporation, limited liability company, or partnership, make certain the insurance company has listed the right entity as the named insured in the policy. Also, most lenders and property management companies require they be named as additional insureds in apartment policies. Make certain the insurance company has named the lender, property management company, or any other appropriate party, as an additional insured. Most insurance companies do not charge extra premiums for listing additional insureds in a policy.

Taking the time to make certain you have the appropriate insurance coverage shall protect you in the event of a loss. In addition, most agents are happy to schedule insurance check-ups with clients. Take advantage of this service, and have your agent schedule you for an insurance check-up at least once a year. These insurance check-ups can be “life-savers” for you and your real estate investment.

James F. Henshall

FOR CALIFORNIA DOCTORS

Partners Patrick (“Rick”) C. Quinlivan and Danniell (“Danny”) J. Wexler are proud to announce the publication of For California Doctors - A Guide to Asset Protection, Tax and Estate Planning. This new book is a collaborative effort between some of the most respected individuals in their respective fields, including, but not limited to, Christopher R. Jarvis, MBA, David B. Mandell, JD, MBA, Joseph Strazzeri, JD, Stephen J. Mancini, JD, John K.

Kelly, CLU, RHU, Lori Asasiewicz, JD and of course Rick and Danny.

For California Doctors sets out to educate healthcare professionals about a wide area of subjects, including asset protection, estate planning, investment management, tax planning and insurance. The book takes a unique multidisciplinary approach in an attempt to provide physicians, including MD’s, DO’s, DPM’s, DC’s and DDS’, with the information that they need in order to protect and provide for themselves and their loved ones. For California Doctors sets out to explore topics, discuss potential approaches and provide solutions for doctor’s consideration and discussion with their trusted advisors.

See “Doctors” page 6

Office Hours:

Our normal office hours are 8:30 a.m. to 5:30 p.m. Monday through Friday, Saturday by appointment only.

Closures:

Thurs., Nov. 26	Thurs., Dec. 24	Fri., Jan. 1
Fri., Nov. 27	Fri., Dec. 25	New Year’s
Thanksgiving	Christmas	

QUINLIVAN WEXLER LLP
ATTORNEYS AT LAW
6 Hutton Centre, Suite 1150
Santa Ana, CA 92707
Telephone: (714) 241-1919
www.QWLLP.com

QWLLP QUARTERLY CHRONICLES

About Quinlivan Wexler LLP

Patrick “Rick” C. Quinlivan and **Danniel “Danny” J. Wexler** bring almost 55 years of combined legal experience to Quinlivan Wexler LLP. With careful selection and addition of talented professionals to the firm, QW has grown over the years to the point where we now boast of many specialty areas to suit the needs of our clients.

Located near South Coast Plaza, QW engages in a general civil practice that includes civil litigation, business and corporate law, estate planning, probate, conservatorships and elder law.

The breadth of our litigation experience assures our clients’ representation by lawyers who fully understand the techniques, not only of trial advocacy, but of negotiations and persuasion as well. So, while being very meticulous about doing our homework, planning ahead, and writing precise contracts to prevent litigation, we are also fully prepared to litigate when it is in the best interests of our clients.

“For California Doctors”

We here at QW LLP are proud of Rick and Danny’s accomplishment in being part of this targeted multidisciplinary book which is a one of a kind resource for California healthcare professionals to use and rely on during these unpredictable times that we find ourselves in.

If you are interested in learning more about [For California Doctors](#) please contact Danniel J. Wexler directly.