



Are you ready for a lawsuit?

Insurance Bulletin #105

of



5 Third St., Suite # 1025
San Francisco, CA 94103
Phone # (415) 856-0709
Toll Free # (800) 333-9166
Fax # (415) 856-0716
Email: fisi@mindspring.com

INSIDE

Court Decisions
Page 2

Worker's Compensation
Penalty
Page 3

RCH-Commercial Auto
Page 4

California is a litigious state and no matter how prudent you are in handling your business, you will very likely be sued. Thus, even if you think the lawsuit is baseless and without merit, you still have to hire a lawyer to defend yourself. It can cost a minimum of \$ 10,000 to defend your business. One of our old clients unfortunately lapsed her liability policy, and she told us that \$10,000 is actually a very conservative figure. Accordingly, she is only into the third month of her lawsuit and so far, she has spent close to \$ 25,000. Costs can also depend upon the complexity of the case because of the preliminary steps required prior to trial.



If your business is registered as a sole proprietorship, you risk the possibility of losing all your assets. You need to evaluate the registration of your business organization, and you need to consult a lawyer before it is too late. Specifically, you need to ask yourself: Should I consider a corporation, a limited partnership, etc.?

Regardless of the type of business organization you have selected, it is extremely important that you purchase a business liability insurance policy designed for your type of business, the Residential Care Home (RCH) Insurance Policy.

Some RCH owners tell us that they don't need liability insurance because they anticipate no liability claim. Additionally, they inform us that their homeowner's liability insurance will respond to their claim.

On the next page, let us share with you some actual cases.

Continued on Page 2

The Torched Resident This incident involved two mentally ill elderly clients. During the day, both residents were fighting, and the administrator subsequently pacified both of them. However, at about 2:00 A.M., one of the residents took a matchbox and torched the other resident. By the time the situation was taken care of, the resident's body was thirty (30) percent burned. She had to be transferred to a nursing home and our **insurance carrier paid close to \$1,000,000.**



The Torched Facility At a residential care home for the mentally ill, a resident had a heated altercation with the owner. They eventually reconciled. However, at about 1:00 AM, the resident torched the house. The structure was totally destroyed and **our carrier paid approximately \$ 400,000 to reconstruct the dwelling.**

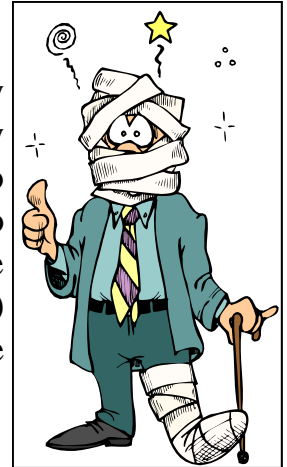
The Fallen Wheelchair This case involved a Residential Care Facility for the Elderly (RCFE) that had a particularly stubborn client who sometimes refused to walk, even though he could ambulate. From the ground floor, he refused to stand from his wheelchair to walk up the stairs. To accommodate him, two caregivers carried up the wheelchair with the client on it. Unfortunately, one of the caregivers missed a step and all of them fell. **It cost the insurance carrier approximately \$ 100,000 to settle the claim.**

Epilepsy in the Pool This case involved a RCH (with a pool) for developmentally disabled individuals. The resident's parent specifically told the administrator that her son is an excellent swimmer. However, occasionally, he had epileptic seizures. One day, the child went into the pool with the administrator's supervision. The doorbell rang and she was ecstatic because the visitor was a long lost friend. They talked for a long time and by the time she came back to check on him, he was underwater. Apparently, he had suffered an epileptic seizure while he was swimming. Prior to this accident, the resident was able to speak slowly, but subsequent to this incident, he could only stutter. **The insurance company paid about \$ 100,000.**

Failure to Assist Resident At a Residential Care Facility for the Elderly in Ventura County, there was an alleged failure to assist an 87-year old woman with food intake, fluid intake, ambulating and physician notification of any changes in physical condition. This resulted in a **policy settlement of \$500,000** after the resident died from the effects of dehydration, starvation and skin pressure sores.

Workers Compensation Insurance

You need workers compensation insurance to defray employee's bodily injury sustained while working at your business. This is mandatory insurance coverage required by the State of California. If you have no workers compensation at the time of an employee's injury, you have no defense, and thus you are liable for all claim expenses. Moreover, the State of California through the Department of Industrial Relations (DIR) will impose civil and criminal penalties. Let us share with you a couple of unfortunate situations.



Stabbed Caregiver The night caregiver was stabbed by an intruder. Fortunately, he survived but he was seriously wounded, disabled for life and unable to return to work. The owner did not have a workers compensation insurance. Thus, he was sued and the **court ordered him to pay for the employee's salary for the rest of his life**. In addition, **DIR assessed him a \$10,000 civil penalty**.

A Surprise Visit DIR usually conducts spot audits of home based businesses, including the residential care home business, for verification of workers compensation insurance.

This residential care home had 15 clients and no workers compensation insurance at the time of the audit. Thus, the facility was immediately **penalized approximately \$ 25,000 for non-compliance**. Additionally, they were given a specific deadline to comply and failure to do so would lead to more penalties.

Please make sure that you have workers compensation insurance. Here is a summary of the applicable California Civil Code.

FAILURE TO PROVIDE WORKER'S COMPENSATION INSURANCE IS A CRIMINAL OFFENSE

Section 3700.5 of the California Labor Code specifies that it is a misdemeanor punishable by either a fine up to \$10,000 or imprisonment in a county jail for up to a year, or both. Additionally, the state issues penalties of up to \$100,000 against illegally uninsured employers.

Commercial Automobile Insurance

A significant number of Residential Care Home administrators have a misconception and or misunderstanding of the need for commercial automobile insurance. They argue that their personal automobile insurance is sufficient to meet their needs. Thus, they resist the recommended change. However, after a thorough review of their personal automobile insurance exclusions, they



decide to purchase commercial auto insurance. **Specifically, personal auto insurance excludes transporting your clients as this is deemed “livery” (a vehicle used for a fee).** If you disagree, you can sue the insurance carrier but they have had several precedents (previous court cases) and most likely you would not prevail. It is hard enough to have a claim, but can you imagine the agony and frustrations you would experience if you are compelled to sue the carrier and unfortunately lose the case too?

Please protect your interests. **You run the risk of losing all your assets when transporting your clients with a personal automobile insurance policy.** (Our commercial auto insurance can protect you **up to \$ 1,000,000** for bodily injury and property damage).



Ferrer Insurance Services, Inc.
5 Third Street, Suite 1025
San Francisco, CA 94103

Services Provided

401K Plan/SEP
Annuities
Automobile (Personal/ Commercial)
Personal Umbrella
Boat/Yacht
Business Buy/Sell Agreement
Commercial Fire
Commercial/Professional Liability
Condo/Co-op
Disability Insurance
Estate Planning
Group & Individual Health
Homeowners
IRA/Keogh
Key Person Insurance
Life Insurance
Long Term Care
Mortgage Life
Surety Bonds
Tenants Policy
Valuable Items Floater
Workers Compensation