

In the Supreme Court of the State of California

**Presbyterian Camp and
Conference Centers, Inc.,**

Petitioner,

Case No. S259850

v.

**The Superior Court of Santa
Barbara County,**

Respondent,

**California Department of Forestry
and Fire Protection,**

Real Party in Interest.

Second Appellate District, Division Six, Case No. B297195
Santa Barbara Superior Court—Main, Case No. 18CV02968
The Honorable Thomas P. Anderle, Judge

REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES

XAVIER BECERRA (SBN 118517)
Attorney General of California

MICHAEL J. MONGAN (SBN 250374)
Solicitor General

JANILL L. RICHARDS (SBN 173817)
Principal Deputy Solicitor General

ROBERT W. BYRNE (SBN 213155)
Senior Assistant Attorney General

*SAMUEL T. HARBOURT (SBN 313719)
Deputy Solicitor General

GARY E. TAVETIAN (SBN 117135)
Supervising Deputy Attorney General

JESSICA BARCLAY-STROBEL (SBN 280361)
CAITLAN McLOON (SBN 302798)

Deputy Attorneys General

KRISTIN A. LISKA (SBN 315994)
Associate Deputy Solicitor General

455 Golden Gate Ave.,
Suite 11000

San Francisco, CA 94102-7004

(415) 510-3919

Samuel.Harbourt@doj.ca.gov

*Attorneys for Real Party in Interest
California Department of Forestry and
Fire Protection*

TO PETITIONER AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rules 8.520(g) and 8.252(a) of the California Rules of Court, Real Party in Interest California Department of Forestry and Fire Protection moves this Court to take judicial notice of certain materials cited in the Department's Answer Brief on the Merits.

This motion is made on the following grounds:

1. Evidence Codes sections 452 and 459 authorize this Court to take judicial notice of the materials set forth in this motion;
and
2. The materials are relevant to the issues addressed in the Department's brief.

This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Samuel Harbourt, and the attached exhibits, which are true and correct copies of the documents described.

Dated: July 23, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
JANILL L. RICHARDS
Principal Deputy Solicitor General
ROBERT W. BYRNE
Senior Assistant Attorney General

/s/ Samuel Harbourt

SAMUEL T. HARBOURT
Deputy Solicitor General
GARY E. TAVETIAN
Supervising Deputy Attorney General
JESSICA BARCLAY-STROBEL
CAITLAN MCLOON
Deputy Attorneys General
KRISTIN A. LISKA
Associate Deputy Solicitor General
*Attorneys for Real Party in Interest
California Department of Forestry and
Fire Protection*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rules 8.252(a) and 8.520(g), Real Party in Interest California Department of Forestry and Fire Protection hereby requests that this Court take judicial notice of the following documents:

1. **Exhibit A**, several reports, analyses, bill mark-ups, and bill printings of Assembly Bill No. 1247 (1971 Reg. Sess.), which amended Health and Safety Code section 13009. Exhibit A was previously filed with and noticed by the Court of Appeal in this case. (See *PCCC v. Superior Court* (2019) 42 Cal.App.5th 148, 156, 160, fn.4 [granting the Department's motion for judicial notice].) It is included here for the convenience of the Court and the parties.

2. **Exhibit B**, several reports and analyses, as well as a letter to the Governor's Office, from the legislative history to Senate Bill No. 1568 (1982 Reg. Sess.), which amended Health and Safety Code section 13009.

3. **Exhibit C**, several reports and analyses, as well as a letter to the Governor's Office, from the legislative history to Assembly Bill No. 3177 (1984 Reg. Sess.), which enacted Health and Safety Code section 13009.1.

4. **Exhibit D**, several reports and analyses from the legislative history to Senate Bill No. 208 (1987 Reg. Sess.), which amended Health and Safety Code sections 13009 and 13009.1.

5. **Exhibit E**, Supplemental Response of PCCC, Inc. to Form Interrogatories, filed in the superior court in this case on January 18, 2019. This document was filed in superior court but was not included in the exhibits submitted in support of PCCC's petition for writ of mandate before the Court of Appeal.

Additionally, for the convenience of the Court and the parties, the Department also attaches:

6. **Exhibit F**, a photocopy of A.K. Wylie & S.M. Schick A Study of Fire Liability Law (1957). This document is no longer in print.

The Department is aware of this Court's guidance that a "request for judicial notice of published material is unnecessary. Citation to the material is sufficient." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45, fn. 9, citing *Stop Youth Addiction v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 571, fn. 9.) Accordingly, this exhibit is attached solely for the convenience of the Court and the parties.

True and correct copies of all Exhibits are attached to the accompanying declaration.

II. THE EVIDENCE CODE AND THE RULES OF COURT AUTHORIZE JUDICIAL NOTICE OF THESE MATERIALS

The materials that are the subject of this request are relevant to this matter for the reasons explained in the Department's Answer Brief on the Merits. Exhibits A, B, C, and D are documents from the legislative history of Health and Safety Code sections 13009 and 13009.1, including analyses and reports of prior bills amending those sections. These documents are

relevant to the interpretation of the current version of sections 13009 and 13009.1.

Exhibit E is a document filed in the superior court in this case. The Department cites the document because it may be relevant to the Court's consideration of the statements in PCCC's opening brief about the potential availability of insurance for fire-suppression cost liability under Health and Safety Code sections 13009 and 13009.1. (See Opening Brief on the Merits 31.) While this document was filed in the superior court in this case, it is not contained in the exhibits submitted in support of PCCC's petition for writ of mandate before the Court of Appeal.

Finally, as noted above, Exhibit F is a published work for which judicial notice is unnecessary, but is included for the Court's and the parties' convenience.

Pursuant to Evidence Code section 452, this Court may take judicial notice of legislative history materials, including reports and bill analyses. (See, e.g., *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 150, fn. 6.) The Court may also take judicial notice of court filings and records. (See Evidence Code § 452, subd. d.) The Court of Appeal previously took judicial notice of Exhibit A. Exhibits B through D were not presented to the superior court or the Court of Appeal. Exhibit E was not presented to the Court of Appeal but, as noted, was filed with the superior court. None of the materials relate to proceedings occurring after the order that is the subject of this appeal.

Copies of all materials are filed and served with this motion. (Rules of Court, rule 8.252(a)(3).)

III. CONCLUSION

For these reasons, the Department respectfully requests that the Court take judicial notice of the exhibits described above.

Dated: July 23, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
JANILL L. RICHARDS
Principal Deputy Solicitor General
ROBERT W. BYRNE
Senior Assistant Attorney General

/s/ Samuel Harbourt

SAMUEL T. HARBOURT
Deputy Solicitor General
GARY E. TAVETIAN
Supervising Deputy Attorney General
JESSICA BARCLAY-STROBEL
CAITLAN MCLOON
Deputy Attorneys General
KRISTIN A. LISKA
Associate Deputy Solicitor General

DECLARATION OF SAMUEL HARBOURT

I, Samuel T. Harbourt, declare:

1. I am a Deputy Solicitor General, in the Office of the Solicitor General, California Attorney General's Office, California Department of Justice. I am one of the attorneys representing the California Department of Forestry and Fire Protection in this matter. I have personal knowledge of the contents of, and may competently testify concerning, this declaration.

2. I execute this declaration pursuant to California Rules of Court, rules 8.252 and 8.54(a)(2), which require a motion for judicial notice of matters outside the record to be accompanied by a supporting declaration.

3. The information in this declaration concerns reports, analyses, and other documents from the legislative history of Health and Safety Code sections 13009 and 13009.1. It also concerns a document filed in superior court in this case but not submitted as an exhibit in support of PCCC's petition for a writ of mandate in the Court of Appeal. The information provided is sufficient to allow the Court in its discretion to take judicial notice of these documents, as they may assist the Court in ruling on the appeal for the reasons set out in the accompanying memorandum of points and authorities.

4. **Exhibit A** is the set of legislative history materials submitted before the Court of Appeal in this case. As discussed in the accompanying memorandum of points and authorities, the Court of Appeal took notice of those materials. A true and correct copy is attached for the Court's convenience as Exhibit A.

5. **Exhibit B** includes several reports and analyses, as well as a letter to the Governor's Office, from the legislative history to Senate Bill No. 1568 (1982 Reg. Sess.). Exhibit B was in the Attorney General's copy of the legislative history file for that bill, which was obtained at my direction. A true and correct copy is attached as Exhibit B.

6. **Exhibit C** includes several reports and analyses, as well as a letter to the Governor's Office, from the legislative history to Assembly Bill No. 3177 (1984 Reg. Sess.). Exhibit C was in the Attorney General's copy of the legislative history file for that bill, which was obtained at my direction. A true and correct copy is attached as Exhibit C.

7. **Exhibit D** includes several reports and analyses from the legislative history to Senate Bill No. 208 (1987 Reg. Sess.). Exhibit D was in the Attorney General's copy of the legislative history file for that bill, which was obtained at my direction. A true and correct copy is attached as Exhibit D.

8. **Exhibit E** is the Supplemental Response of PCCC, Inc. to Form Interrogatories, filed in the superior court in this case on January 18, 2019. This document was filed in superior court but was not included in the exhibits submitted in support of PCCC's petition for writ of mandate before the Court of Appeal. A true and correct copy is attached as Exhibit E.

9. Additionally, for the convenience of the Court and the parties, a copy of A.K. Wylie & S.M. Schick, A Study of Fire Liability Law (1957), is attached as **Exhibit F**.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration in San Francisco, California on July 23, 2020.

/s/ Samuel Harbourt

SAMUEL T. HARBOURT
Deputy Solicitor General
*Attorney for Real Party in
Interest California Department
of Forestry and Fire Protection*

Exhibit A

ASSEMBLY BILL

No. 1247

Introduced by Assemblyman Bagley

March 25, 1971

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 13009 of the Health and Safety Code, relating to fires.

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as introduced, Bagley (Jud.). Fire suppression costs. Amends Sec. 13009, H. & S.C.

Provides that the expenses of fighting a fire are a debt of the person who willfully, negligently, or unlawfully sets the fire, allows it to be set, kindled, or to escape, rather than providing such liability only where the fire damages the property of another.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

1. SECTION 1. Section 13009 of the Health and Safety Code
- 2 is amended to read:
- 3 13009. *The expenses of fighting any fires mentioned in Sec-*
- 4 *tions 13007 and 13008 are a charge against any person made*
- 5 *liable by those sections for damages caused by such fires. Any*
- 6 *person who willfully, negligently, or in violation of the law*
- 7 *sets a fire, allows a fire to be set, or allows a fire kindled or*
- 8 *attended by him to escape is liable for the expense of fighting*
- 9 *the fire and such expense shall be a charge against that person.*
- 10 Such charge shall constitute a debt of such person, and is col-
- 11 lectible by the person, or by the federal, state, county, or pri-
- 12 vate agency, incurring such expenses in the same manner as
- 13 in the case of an obligation under a contract, expressed or
- 14 implied.

O



AMENDED IN ASSEMBLY MAY 7, 1971

CALIFORNIA LEGISLATURE—1971 REGULAR SESSION

ASSEMBLY BILL

No. 1247

Introduced by Assemblyman Bagley

March 25, 1971

REFERRED TO COMMITTEE ON JUDICIARY

*An act to amend Section 13009 of the Health
and Safety Code, relating to fires.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as amended, Bagley (Jud.). Fire suppression costs.
Amends Sec. 13009, H. & S.C.

Provides that the expenses of fighting a fire are a debt of the person who ~~willfully~~, negligently, or unlawfully sets the fire, allows it to be set, kindled, or to escape *onto any forest, range or nonresidential grass-covered land*, rather than providing such liability only where the fire damages the property of another.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13009 of the Health and Safety Code
2 is amended to read:
3 13009. Any person who ~~willfully~~, negligently, or in viola-
4 tion of the law sets a fire, allows a fire to be set, or allows a
5 fire kindled or attended by him to escape *onto any forest, range*
6 *or nonresidential grass-covered land* is liable for the expense of
7 fighting the fire and such expense shall be a charge against that
8 person. Such charge shall constitute a debt of such person, and
9 is collectible by the person, or by the federal, state, county, or
10 private agency, incurring such expenses in the same manner as
11 in the case of an obligation under a contract, expressed or
12 implied.

O



AMENDED IN SENATE JULY 19, 1971

AMENDED IN ASSEMBLY MAY 7, 1971

CALIFORNIA LEGISLATURE—1971 REGULAR SESSION

ASSEMBLY BILL

No. 1247

Introduced by Assemblyman Bagley

March 25, 1971

REFERRED TO COMMITTEE ON JUDICIARY

*An act to amend Section 13009 of the Health
and Safety Code, relating to fires.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as amended, Bagley (Jud.). Fire suppression costs.
Amends Sec. 13009, H. & S.C.

Provides that the expenses of fighting a fire are a debt of the person who negligently, or unlawfully sets the fire, allows it to be set, kindled, or to escape onto any forest, range or nonresidential grass-covered land, rather than providing such liability only where the fire damages the property of another.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13009 of the Health and Safety Code
2 is amended to read:
3 13009. Any person who negligently, or in violation of the
4 law sets a fire, allows a fire to be set, or allows a fire kindled or
5 attended by him to escape onto any forest, range or nonresi-
6 dential grass-covered land is liable for the expense of fighting
7 the fire and such expense shall be a charge against that per-
8 son. Such charge shall constitute a debt of such person, and
9 is collectible by the person, or by the federal, state, county,
10 *public*, or private agency, incurring such expenses in the same
11 manner as in the case of an obligation under a contract, ex-
12 pressed or implied.



Exhibit A-4 AMENDED IN SENATE SEPTEMBER 24, 1971
AMENDED IN SENATE JULY 19, 1971
AMENDED IN ASSEMBLY MAY 7, 1971

CALIFORNIA LEGISLATURE—1971 REGULAR SESSION

ASSEMBLY BILL

No. 1247

Introduced by Assemblyman Bagley

March 25, 1971

REFERRED TO COMMITTEE ON JUDICIARY

*An act to amend Section 13009 of the Health
and Safety Code, relating to fires.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as amended, Bagley (Jud.). Fire suppression costs.
Amends Sec. 13009, H. & S.C.

Provides that the expenses of fighting a fire are a debt of the person who negligently, or unlawfully sets the fire, allows it to be set, kindled, or to escape onto any forest, range or nonresidential grass-covered land, rather than providing such liability, only where the fire damages the property of another.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13009 of the Health and Safety Code
2 is amended to read:
3 13009. Any person who negligently, or in violation of the
4 law, sets a fire, allows a fire to be set, or allows a fire kindled
5 or attended by him to escape onto any forest, range or nonresi-
6 dential grass-covered land is liable for the expense of fighting
7 the fire and such expense shall be a charge against that per-
8 son. Such charge shall constitute a debt of such person, and
9 is collectible by the person, or by the federal, state, county,
10 public, or private agency, incurring such expenses in the same
11 manner as in the case of an obligation under a contract, ex-
12 pressed or implied.

LIS - 1d

SEC. 2. Section 38181 of the Agricultural Code is amended to read:

38181. Skim milk or nonfat milk is the product which results from the complete or partial removal of milk fat from milk. It shall contain not more than twenty-five hundredths of 1 percent of milk fat and not less than 9 percent of milk solids not fat, except that milk produced and marketed pursuant to Article 7 (commencing with Section 35921) of Chapter 2 of Part 2 of this division as skim milk shall contain not more than twenty-five hundredths of 1 percent of milk fat and not less than 8.5 percent of milk solids not fat.

SEC. 3. The provisions of this act shall become operative on January 1, 1972.



CHAPTER 1202

An act to amend Section 13009 of the Health and Safety Code, relating to fires.

[Approved by Governor October 21, 1971. Filed with Secretary of State October 21, 1971.]

The people of the State of California do enact as follows:

SECTION 1. Section 13009 of the Health and Safety Code is amended to read:

13009. Any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him to escape onto any forest, range or nonresidential grass-covered land is liable for the expense of fighting the fire and such expense shall be a charge against that person. Such charge shall constitute a debt of such person, and is collectible by the person, or by the federal, state, county, public, or private agency, incurring such expenses in the same manner as in the case of an obligation under a contract, expressed or implied.

CHAPTER 1203

An act to amend Section 13010 of the Penal Code, relating to the Bureau of Criminal Statistics.

[Approved by Governor October 21, 1971. Filed with Secretary of State October 21, 1971.]

The people of the State of California do enact as follows:

SECTION 1. Section 13010 of the Penal Code is amended to read:

13010. It shall be the duty of the bureau:

(a) To collect data necessary for the work of the bureau, from all persons and agencies mentioned in Section 13020 and from any other appropriate source;



CALIFORNIA LEGISLATURE
AT SACRAMENTO
1971 REGULAR SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT
AND JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened January 4, 1971
Recessed April 2, 1971
Reconvened April 12, 1971
Recessed August 12, 1971
Reconvened September 7, 1971
Recessed November 24, 1971
Reconvened November 29, 1971
Constitutional Recess December 2, 1971
Reconvened January 3, 1972
Adjourned Sine Die January 3, 1972

Legislative Days ----- 193
Calendar Days ----- 365

Last Day for Filing Referendum, March 3, 1972

All Bills Chaptered, Unless Otherwise Specifically Provided for in the Bill,
Become Effective March 4, 1972

HON. BOB MORETTI <i>Speaker</i>	HON. CARLOS BEE <i>Speaker pro Tempore</i>
HON. WALTER KARABIAN <i>Majority Floor Leader</i>	HON. BOB MONAGAN <i>Minority Floor Leader</i>

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk
GUNVOR ENGLE
History Clerk



1247—Bagley.

An act to amend Section 13009 of the Health and Safety Code, relating to fires.

Mar. 25—Read first time.

Mar. 29—Referred to Com. on JUD.

April 5—To committee.

May 6—From committee: Amend, and do pass as amended.

May 7—Read second time and amended. Ordered returned to second reading file.

May 10—Read second time. To third reading.

May 11—Read third time, passed, and to Senate.

May 11—In Senate. Read first time.

May 13—Referred to Com. on JUD.

July 19—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.

Sept. 23—From committee: Amend, and do pass as amended.

Sept. 24—Read second time, amended, and to third reading.

Oct. 1—Read third time, passed, and to Assembly.

Oct. 4—In Assembly. Concurrence in Senate amendments pending.

Oct. 12—Senate amendments concurred in. To enrollment.

Oct. 14—Enrolled and to the Governor at 2 p.m.

Oct. 21—Signed by the Governor

Oct. 21—Recorded by Secretary of State—Chapter 1202.

1248—Burton and Brown.

An act to add Chapter 1.5 (commencing with Section 1870) to Part 7 of Division 2 of the Labor Code, relating to labor.

Mar. 25—Read first time.

Mar. 29—Referred to Com. on LABOR REL.

April 7—To committee

Jan. 3, 1972—From committee without further action.

1249—Burton and Brown.

An act to add Chapter 1.65 (commencing with Section 5096.51) to Division 5 of the Public Resources Code, relating to financing of a program of acquiring and developing community recreational facilities by providing the funds necessary therefor through the issuance and sale of bonds of the State of California, and by providing for the handling and disposition of such funds, and making an appropriation therefor, and providing for the submission of this act to a vote of the people at the next general election.

Mar. 25—Read first time.

Mar. 29—Referred to Com. on URBAN DEV. & H.

April 7—To committee.

May 20—From committee: Do pass, and re-refer to Com. on W. & M. Re-referred to Com. on W. & M.

June 3—From committee chairman, with author's amendments: Amend, and re-refer to Com. on W. & M. Read second time and amended.

June 7—Re-referred to Com. on W. & M.

June 10—From committee: Amend, and re-refer to Com. on W. & M.

June 11—Action rescinded whereby committee report was read. Re-referred to Com. on W. & M.

July 15—From committee: Do pass.

July 16—Read second time. To third reading.

July 23—Read third time and amended.

July 28—Read third time, passed, and to Senate.

July 28—In Senate. Read first time.

July 27—Referred to Com. on N.R. & W.

Jan. 3, 1972—From Senate committee without further action.



Exhibit A-8

ASSEMBLY COMMITTEE ON JUDICIARY

CHARLES WARREN, CHAIRMAN

AB 1247

AB 1247 (Bagley)

Fire suppression costs - financial responsibility

Health & Safety C §§ 13007-13009 provide that any person is liable for damages caused to another's property on account of his negligently attended or started fires. The costs of fire suppression on such victim's property is also chargeable against the fire starter.

AB 1247 makes a person who willfully, negligently or unlawfully burns his property liable for fire suppression expenses.

COMMENT:

1. This measure has been opposed previously on the grounds that:
 - (a) fire suppression costs are a matter of community concern and an item of property ownership that should be subsidized by the entire community through property taxes.
 - (b) Insurance carriers will substantially replace property taxes as the funding for fire suppression even though some property owners are uninsured.
 - (c) Fire starters will jeopardize their neighbors by refusing to obtain fire suppression relief on account of cost consideration.
2. Fire suppression service must be distinguished from fire suppression cost. Does the assertion that fire suppression liability will dilute fire suppression service truly follow?

5/3/71
N



*Put across
do pass A/A 5/6/71*

MAY 4 1971

Req. #10867

AMENDMENTS TO ASSEMBLY BILL NO. 1247

AMENDMENT 1

On page 1, line 6, of the printed bill, strike out "willfully,"

AMENDMENT 2

On page 1, line 8, after "escape" insert:

onto any forest, range or nonresidential grass covered land

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 1247 (Bagley)

Fire suppression costs - financial responsibility

Health & Safety C §§ 13007-13009 provide that any person is liable for damages caused to another's property on account of his negligently attended or started fires. The costs of fire suppression on such victim's property is also chargeable against the fire starter.

AB 1247 makes a person who willfully, negligently or unlawfully burns his property liable for fire suppression expenses.

COMMENT:

1. This measure has been opposed previously on the grounds that:
 - (a) fire suppression costs are a matter of community concern and an item of property ownership that should be subsidized by the entire community through property taxes.
 - (b) Insurance carriers will substantially replace property taxes as the funding for fire suppression even though some property owners are uninsured.
 - (c) Fire starters will jeopardize their neighbors by refusing to obtain fire suppression relief on account of cost consideration.
2. Fire suppression service must be distinguished from fire suppression cost. Does the assertion that fire suppression liability will dilute fire suppression service truly follow?

5/3/71
N

*Put across
de la 2/14 5/6/71*

MAY 4 1971

Req. #10867

AMENDMENTS TO ASSEMBLY BILL NO. 1247

AMENDMENT 1

On page 1, line 6, of the printed bill, strike out "willfully,"

AMENDMENT 2

On page 1, line 6, after "escape" insert:

onto any forest, range or nonresidential grass covered land

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 1247 (Bagley)
As amended July 19
Health and Safety Code

A
B
1
2
4
7

FIRE FIGHTING EXPENSES
-LIABILITY-

HISTORY

Source: Dept. of Conservation

Prior Legislation: AB 736 (1968) - held in Assembly
Committee on Judiciary
AB 131 (1969) - held in Assembly
Committee on Judiciary

Support: Unknown

Opposition: No Known

DIGEST

Repeals provision of law which governs the liability
of a person for the expense of fighting a fire.

Imposes liability for such expense upon a person
who negligently, or in violation of the law, does
any of the following:

- (1) Sets a fire
- (2) Allows a fire to be set.
- (3) Allows a fire kindled or attended by him
to escape onto any forest, range, or non-
residential grass-covered land.

PURPOSE

Require persons who unlawfully set a fire or who
negligently allow a fire they have set or attended
to escape to bear the expense of fighting such fire.

(More)

AB 1247 (Bagley)
Page Two

A
B
1
2
4
7

COMMENT

1. Under existing law, a person is liable for the expense in fighting a fire if he does either of the following:

(a) Willfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled or attended by him to escape to, the property of another.

(b) Allows any fire burning upon his property to escape to the property of another without exercising due diligence to control the fire.

This bill changes the existing law in the following manner:

(a) Eliminates any liability for such expense in any case in which a person willfully sets fire to, allows fire to be set to, or allows a fire kindled or attended by him to escape to, the property of another.

(b) Eliminates the requirement that a fire be set to the property of another before any liability for such expense may be imposed (i.e., such liability may be imposed when a person sets fire to his own property).

(c) Requires that a fire which is kindled or attended by a person escape onto any forest, range, or nonresidential grass-covered land, rather than any land, before any liability for such expense may be imposed.

(More)

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 1247 (Bagley)
Page Three

A
B

(d) Eliminates any liability for such expense in any case in which a person allows a fire burning on his property to escape to the property of another without exercising due diligence to control the fire.

1
2
4
7

2. This bill does not effect the liability of a person who willfully or negligently sets fire to the property of another for any damages to the property caused by the fire (Secs. 13007 and 13008, H. & S.C.).

3. It is contended that this bill will remedy an inequity in the law which requires, as a condition precedent to recovery of fire suppression expenses, that a fire spread to the property of another.

4. Technical Amendment:

On page 1, line 4, after "law" insert a comma.

This will clarify which terms the phrase "in violation of the law" modifies.



SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 1247

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?

The Department of Conservation.

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

None.

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

AB 736 (1968), AB 131 (1969)

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

Present law prevents recovery of suppression costs unless fire escapes the property of origin, regardless of negligence or law violation. Major offenders are exculpated because the fire is confined to their ownership - a blatant inequity.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

None.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2183, AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 10 DAYS BEFORE THE SCHEDULED HEARING OF THE BILL.



AB 1247 (Bagley)

Fire suppression costs - financial responsibility

Health & Safety C §§ 13007-13009 provide that any person is liable for damages caused to another's property on account of his negligently attended or started fires. The costs of fire suppression on such victim's property is also chargeable against the fire starter.

AB 1247 makes a person who willfully, negligently or unlawfully burns his property liable for fire suppression expenses.

COMMENT:

1. This measure has been opposed previously on the grounds that:
 - (a) fire suppression costs are a matter of community concern and an item of property ownership that should be subsidized by the entire community through property taxes.
 - (b) Insurance carriers will substantially replace property taxes as the funding for fire suppression even though some property owners are uninsured.
 - (c) Fire starters will jeopardize their neighbors by refusing to obtain fire suppression relief on account of cost consideration.
2. Fire suppression service must be distinguished from fire suppression cost. Does the assertion that fire suppression liability will dilute fire suppression service truly follow?

5/3/71
N

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 1247

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?

The Department of Conservation.

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

None.

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

AB 736 (1968), AB 131 (1969)

2. Purpose

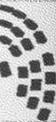
What problem or deficiency under existing law does the bill seek to remedy?

Present law prevents recovery of suppression costs unless fire escapes the property of origin, regardless of negligence or law violation. Major offenders are exculpated because the fire is confined to their ownership - a blatant inequity.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

None.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2183, AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 10 DAYS BEFORE THE SCHEDULED HEARING OF THE BILL.



SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 1247

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?

Dept. of Conservation

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

None

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

1968 - AB 736; 1969 - AB 131

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

Present law prevents recovery of suppression costs unless fire escapes the property of origin, regardless of negligence or law violation. Major offenders are exculpated because the fire is confined to their ownership - a blatant inequity.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

none

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2183, AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 10 DAYS BEFORE THE SCHEDULED HEARING OF THE BILL.



ENROLLED BILL REPORT

AGENCY	RESOURCES	BILL NUMBER AB 1247
DEPARTMENT, BOARD OR COMMISSION	CONSERVATION	AUTHOR Bagley

Subject: Recovery of fire suppression costs from persons who negligently or in violation of law cause fires.

Sponsorship: Department of Conservation.

Related Bills: None.

History: Public agencies are presently prevented from recovering fire suppression costs incurred on forest fires which do not escape from the property of origin. This creates an inequality in favor of the very large property owner. Recovery of major suppression costs is, in some cases, based on ownership pattern rather than irresponsible acts.

Analysis: Specific Findings:

1. Does not change two-year statute of limitations.
2. Leaves as an element of proof, for each plaintiff where grass lands were burned, the definition of "non-residential grass-covered lands".
3. Eliminates prior condition that fire must escape property of origin before there was liability for fire suppression work.

Fiscal Analysis:

Creates potential liability of about \$250,000 annually for fire suppression work that would be recovered by the State.

Vote:	<u>Assembly</u>	<u>Senate</u>
	Ayes 57	Ayes 31
	Noes 6	Noes 0

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE-1

RECOMMENDATION:

SIGN

LIS - 7a

DEPARTMENT HEAD

DATE

AGENCY HEAD NH

PAGE 19

OCT 19 1971

[Signature]

10/18/71

[Signature]

Exhibit A-20

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE October 20, 1971
BILL NO. Assembly Bill 1247	AUTHOR Bagley

Vote—Senate
Ayes— Unanimous
Noes—

Vote—Assembly
Ayes— 57
Noes— 6 - Belotti, Burton, Davis, Mobley, Powers, Waxman

Assembly Bill 1247 provides that the expenses of fighting a fire are a debt of the person who negligently, or unlawfully sets the fire, allows it to be set, kindled, or to escape onto any forest, range or nonresidential grass-covered land, rather than providing such liability only where the fire damages the property of another.

The bill was introduced at the request of the Department of Conservation. Public agencies are presently prevented from recovering fire suppression costs incurred on forest fires which do not escape from the property of origin.

The Legal Affairs Unit recommends approval.

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE-2

Recommendation APPROVE	Legislative Secretary <i>[Signature]</i>	PAGE 20
---------------------------	---	---------

ENROLLED BILL REPORT

AGENCY	RESOURCES	BILL NUMBER AB 1247
DEPARTMENT, BOARD OR COMMISSION	CONSERVATION	AUTHOR Bagley

Subject: Recovery of fire suppression costs from persons who negligently or in violation of law cause fires.

Sponsorship: Department of Conservation.

Related Bills: None.

History: Public agencies are presently prevented from recovering fire suppression costs incurred on forest fires which do not escape from the property of origin.) This creates an inequality in favor of the very large property owner. Recovery of major suppression costs is, in some cases, based on ownership pattern rather than irresponsible acts.

- Analysis:** Specific Findings:
1. Does not change two-year statute of limitations.
 2. Leaves as an element of proof, for each plaintiff where grass lands were burned, the definition of "non-residential grass-covered lands".
 3. Eliminates prior condition that fire must escape property of origin before there was liability for fire suppression work.

Fiscal Analysis:

Creates potential liability of about \$250,000 annually for fire suppression work that would be recovered by the State.

Vote:	<u>Assembly</u>	<u>Senate</u>
	Ayes 57 Noes 6	Ayes 31 Noes 0



PE-4

RECOMMENDATION: SIGN

DEPARTMENT HEAD <i>[Signature]</i>	DATE 10/18/71	AGENCY HEAD NH <i>[Signature]</i>	PAGE 22 DATE OCT 3 1971
---------------------------------------	------------------	--------------------------------------	-------------------------------

LEGISLATIVE INTENT SERVICE (800) 666-1917

ASSEMBLY BILL NO. 1247

1971 REGULAR SESSION

CHAPTER 1202

Exhibit A-23

AUTHOR Bagley

DATE RECEIVED 10/14 1971

1ST DAY OF ACT 10/26 1971

ACTION OF H. GOVERNOR 10/31 1971



Exhibit A-24

ENROLLED BILL MEMORANDUM TO GOVERNOR		DATE	October 20, 1971
BILL NO.	Assembly Bill 1247	AUTHOR	Bagley

Vote—Senate

Ayes— Unanimous
Noes—

Vote—Assembly

Ayes— 57
Noes— 6 - Belotti, Burton, Davis, Mobley, Powers, Waxman

Assembly Bill 1247 provides that the expenses of fighting a fire are a debt of the person who negligently, or unlawfully sets the fire, allows it to be set, kindled, or to escape onto any forest, range or nonresidential grass-covered land, rather than providing such liability only where the fire damages the property of another.

The bill was introduced at the request of the Department of Conservation. Public agencies are presently prevented from recovering fire suppression costs incurred on forest fires which do not escape from the property of origin.

The Legal Affairs Unit recommends approval.

LEGISLATIVE INTENT SERVICE (800) 666-1917



Recommendation APPROVE	Legislative Secretary <i>[Signature]</i>
----------------------------------	---

AMENDED IN SENATE SEPTEMBER 24, 1971

AMENDED IN SENATE JULY 19, 1971

AMENDED IN ASSEMBLY MAY 7, 1971

CALIFORNIA LEGISLATURE—1971 REGULAR SESSION

ASSEMBLY BILL

No. 1247

Introduced by Assemblyman Bagley

March 25, 1971

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 13009 of the Health and Safety Code, relating to fires.

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as amended, Bagley (Jud.). Fire suppression costs.

Amends Sec. 13009, H. & S.C.

Provides that the expenses of fighting a fire are a debt of the person who negligently, or unlawfully sets the fire, allows it to be set, kindled, or to escape onto any forest, range or nonresidential grass-covered land, rather than providing such liability only where the fire damages the property of another.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13009 of the Health and Safety Code
2 is amended to read:

3 13009. Any person who negligently, or in violation of the
4 law, sets a fire, allows a fire to be set, or allows a fire kindled
5 or attended by him, to escape onto any forest, range or nonresi-
6 dential grass-covered land is liable for the expense of fighting
7 the fire and such expense shall be a charge against that per-
8 son. Such charge shall constitute a debt of such person, and
9 is collectible by the person, or by the federal, state, county,
10 public, or private agency, incurring such expense in the same
11 manner as in the case of an obligation under a contract, ex-
12 pressed or implied.

0

GOVERNOR'S OFFICE ENROLLED BILL REPORT REQUEST

Date ° 10-14-71

Bill No. ^{AB} 1247
~~SB~~

Date Due 10-19-71

° Please reply within five working days of above date unless a different due date is indicated.

EDUCATION SECTION

LEGAL AFFAIRS SECTION

*OK
Hess*

The above bill has been received by this office for Governor Reagan's consideration.

An analysis of this bill, together with your recommendations will be appreciated.

LEGISLATIVE SECTION

48445 508 72 50 24 054



AMENDED IN SENATE SEPTEMBER 24, 1971

AMENDED IN SENATE JULY 19, 1971

AMENDED IN ASSEMBLY MAY 7, 1971

CALIFORNIA LEGISLATURE—1971 REGULAR SESSION

ASSEMBLY BILL

No. 1247

Introduced by Assemblyman Bagley

March 25, 1971

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 13009 of the Health and Safety Code, relating to fires.

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as amended, Bagley (Jud.). Fire suppression costs. Amends Sec. 13009, H. & S.C.

Provides that the expenses of fighting a fire are a debt of the person who negligently, or unlawfully sets the fire, allows it to be set, kindled, or to escape onto any forest, range or nonresidential grass-covered land, rather than providing such liability only where the fire damages the property of another.

Vote—Majority: Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13009 of the Health and Safety Code
- 2 is amended to read:
- 3 13009. Any person who negligently, or in violation of the
- 4 law, sets a fire, allows a fire to be set, or allows a fire kindled
- 5 or attended by him to escape onto any forest, range or nonresi-
- 6 dential grass-covered land is liable for the expense of fighting
- 7 the fire and such expense shall be a charge against that per-
- 8 son. Such charge shall constitute a debt of such person, and
- 9 is collectible by the person, or by the federal, state, county,
- 10 public, or private agency, incurring such expenses in the same
- 11 manner as in the case of an obligation under a contract, ex-
- 12 pressed or implied.

0

LEGISLATIVE INTENT SERVICE (800) 698-6177



ENROLLED BILL REPORT

AGENCY	RESOURCES	BILL NUMBER
DEPARTMENT, BOARD OR COMMISSION	CONSERVATION	AB 1247
		AUTHOR
		Bagley

Subject: Recovery of fire suppression costs from persons who negligently or in violation of law cause fires.

Sponsorship: Department of Conservation.

Related Bills: None.

History: Public agencies are presently prevented from recovering fire suppression costs incurred on forest fires which do not escape from the property of origin. This creates an inequality in favor of the very large property owner. Recovery of major suppression costs is, in some cases, based on ownership pattern rather than irresponsible acts.

- Analysis: Specific Findings:
1. Does not change two-year statute of limitations.
 2. Leaves as an element of proof, for each plaintiff where grass lands were burned, the definition of "non-residential grass-covered lands".
 3. Eliminates prior condition that fire must escape property of origin before there was liability for fire suppression work.

Fiscal Analysis:

Creates potential liability of about \$250,000 annually for fire suppression work that would be recovered by the State.

Vote:	<u>Assembly</u>	<u>Senate</u>
	Ayes 57 Noes 6	Ayes 31 Noes 0

RECOMMENDATION:

SIGN

DEPARTMENT HEAD	DATE	AGENCY HEAD	NH
<i>[Signature]</i>	10/18/71	<i>[Signature]</i>	

LEGISLATIVE INTENT SERVICE (800) 666-1917



SUMMARY DIGEST

of

Statutes Enacted and Resolutions Adopted

Including Proposed Constitutional Amendments

and

1969–1971 Statutory Record



CALIFORNIA LEGISLATURE

1971 Regular Session

and

1971 First Extraordinary Session

DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
GEORGE H. MURPHY
Legislative Counsel



Ch. 1198 (AB 1101) CHAPPIE Amends Sec. 6723, Ag.C., re nursery stock licenses.

Increases maximum limit of fee from \$30 to \$35 which the Director of Agriculture may fix as minimum fee for a license to sell any nursery stock

Provides for, in addition to prescribed fees, an acreage fee in an amount to be established by the director, but the total acreage fee shall not be less than \$25 nor more than \$140 for each licensee, for land used in the production, storage, or sale of nursery stock in excess of one acre.

Ch. 1199 (AB 1102) BRIGGS Amends Sec. 263 4, S. & H.C., re state highways

Adds that portion of Route 57 from Route 90 to Route 60 near Industry to the state scenic highway system.

Ch. 1200 (AB 1162) RYAN Amends Sec. 4500, amends Sec. 10843, as added by Ch. 143, Stats. 1971, and adds Sec. 4500.5, F. & G.C., and adds Sec 653q, Pen.C., re seals.

Prohibits, with prescribed exceptions, the taking of any seal. Eliminates provision permitting taking under Fish and Game Commission regulations and permitting the Department of Fish and Game to reduce the seal herds whenever such a course is deemed advisable.

Makes it a misdemeanor, with prescribed penalties, to import into this state for commercial purposes, or to sell within the state, the dead bodies, or any parts or products thereof, of seals.

Specifies exemption from application of act.

Specifies that notwithstanding the provisions of Section 4500 or Section 4500.5 of the Fish and Game Code, rather than only Section 4500, fishermen are prohibited from taking any seal or sea lion while in the Farallon Islands Game Refuge.

Ch. 1201 (AB 1173) LACOSTE Amends Secs. 35784, 38181, Ag C., re milk.

Increases from 8.5 to 8.7 percent of solids not fat in market milk and from 8.5 to 9 percent of solids not fat in skim milk, except in certified whole milk and certified skim milk produced and marketed pursuant to designated provisions

To be operative January 1, 1972.

Ch. 1202 (AB 1247) BAGLEY Amends Sec. 13009, H. & S.C., re fire suppression costs.

Provides that the expenses of fighting a fire are a debt of the person who negligently, or unlawfully sets the fire, allows it to be set, kindled, or to escape onto any forest, range or nonresidential grass-covered land, rather than providing such liability only where the fire damages the property of another.

Ch. 1203 (AB 1254) CROWN Amends Sec. 13010, Pen.C., re Bureau of Criminal Statistics.

Requires Bureau of Criminal Statistics to periodically review governmental units using criminal statistics, and to make recommendations to the Attorney General for changes it deems necessary in the design of criminal justice statistics systems.

Ch. 1204 (AB 1267) BURKE Amends, adds, repeals, various secs., Gov.C., re counties: population.

Revises population figures for 58 counties to reflect 1970 federal census. Reclassifies counties on basis of population. Revises law relating to jurors' fees to reflect reclassification. Declares legislative intent not to affect compensation of those whose compensation is regulated by the Legislature. Declares legislative intent not to affect special laws based on classification of counties, such laws to remain to be based upon the 1960 federal census.

Ch. 1205 (AB 1268) MURPHY Amends Sec. 13671, R. & T.C., re inheritance tax.

Declares that where husband and wife deposit property in a bank or savings and loan association in their joint names as joint trustees under specified conditions, for purpose of the Inheritance Tax Law such deposit shall be treated in same manner as if it had been held in their joint names as a joint tenancy account.

Ch. 1206 (AB 1358) DEDDEH Adds Secs. 5010.2, 5067, P.R.C., re state park lands.

Prohibits Department of Parks and Recreation from collecting any fee from any group of pupils in kindergarten or grades 1 to 12 or their escorts who are visiting any



Exhibit B

Exhibit B-1

From Consent Calendar

SB 1568

ASSEMBLY THIRD READING

SB 1568 (Campbell) As Amended: April 15, 1982

SENATE VOTE: 33-0

ASSEMBLY ACTIONS:

COMMITTEE E. & N. R. VOTE 11-0 COMMITTEE W. & M. VOTE 23-0
(Recommend Consent Calendar) (Consent Calendar)

Ayes:

Ayes:

Nays:

Nays:

DIGEST

This bill allows recovery of fire suppression costs for fires set through negligent or unlawful acts on any public or private property. Additionally, this bill would make the person who sets the fire liable for the cost of providing rescue or emergency medical services required in connection with the fire.

FISCAL EFFECT

According to the Legislative Analyst, this bill would bring about minor, undetermined costs to collect for fire damage.

The Department of Forestry and the Office of the State Fire Marshal indicate that the bill would probably increase the amount of revenues collected by state and local governments.

SENATE COMMITTEE ON NATURAL RESOURCES AND WILDLIFE

SB 1568 (Campbell)

~~as amended in the Senate~~

~~April 12, 1982~~

S
B

1
5
6
8

RE: COSTS OF FIRE PROTECTION, RESCUE, AND EMERGENCY
MEDICAL SERVICES.

BACKGROUND:

Existing law specifies that any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by that person to escape onto any forest lands, rangelands, or non-residential grass-covered lands is liable for the expense of fighting that fire. According to the sponsor, recovering expenses for fighting fires which escape to non-wildlands, must rely solely on litigation, which is less effective and more time-consuming than this statutory collection procedure for wildland fires.

ANALYSIS:

This bill would expand geographically the liability for fire suppression costs for escaped fire to any person who allows fire to escape anywhere, rather than just in wildland areas. In addition, this bill would extend this liability to cover not only fire suppression costs but also the costs incurred in providing rescue and emergency medical services.

SUMMARY OF WRITTEN COMMUNICATION OF SUPPORT/OPPOSITION:

Support: County of Orange

Oppose: None received.

* * * * *

4/6/82

THIRD READING

SENATE DEMOCRATIC CAUCUS SENATOR PAUL B. CARPENTER Chairman	Bill No.: SB 1568 Amended: 4-15-82 Author: Campbell (R) Vote Required: Majority Assembly Floor Vote:
--	---

SUBJECT: Costs of fire protection and rescue and paramedic services

POLICY COMMITTEE: Natural Resources and Wildlife

AYES: (6) Doolittle, Johnson, Mello, Nielsen, Watson, Presley

NOES: (0)

FINANCE COMMITTEE:

Be placed on Second Reading File pursuant to Senate Rule 28.8.

SUMMARY OF LEGISLATION:

Existing law generally provides that any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by that person to escape onto any forest, range, or nonresidential grass-covered land is liable for the expense of fighting that fire.

This bill would make that person liable, instead, for the cost of suppressing a fire that escapes onto any public or private property and would, in addition, make that person liable for the cost of providing rescue and emergency medical services.

FISCAL EFFECT: Undetermined

PROPOSERS: (Verified by author 4-16-82)

Carpenter Associates (sponsor)
California State Firemens Association, Inc.
City of Orange

OPPOSERS:

ARGUMENTS IN SUPPORT:

Proponents state that fires that have escaped control, cause damages, and require the use of paramedics and rescue services, are very expensive. Proponents state that recovering expenses for fighting such fires must rely solely on litigation, which is less effective and more time-consuming than a statutory collection procedure for wildland fires.

CONTINUED

OWEN K. KUNS,
CLAY H. WHITAKER
CHIEF DEPUTIES

JERRY L. BASSETT
KENT L. DECAMBRE
STANLEY M. LINDSAY
EDWARD A. PURCELL
JOHN T. STEINBAKER

JOHN CONZINI
ROBERT CURLEN DUFFY
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
ANN M. MAHER
TERRY C. POND
RUSSELL L. SPARKING
JIMMIE WING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95834
(916) 445-3157

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
August 23, 1982

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, CA

Senate Bill No. 1568

Dear Governor Brown:

Pursuant to your request we have reviewed the above-numbered bill authored by Senator Campbell and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By *Robert D. Gronke*
Robert D. Gronke
Principal Deputy

RDG:AB

Two copies to Honorable William Campbell,
pursuant to Joint Rule 34.

GERALD ROSS ADAMS
DAVID D. ALLEN
MARTIN J. ANDERSON
PAUL ANTELA
CHARLES C. ANSEL
JAMES J. ANGELO
WILLIAM G. BISHOP
DLEEN J. BOYTON
FRANK J. CANTREAN
DON E. DAVE
CANTON J. DEWITT
C. DAVID DEKRESON
MATTHEW E. DUNNAN
FRANCIS S. DUNNAN
LAWRENCE H. LEON
SANDOR H. FISHER
JOHN FOSNELL
HARVEY J. FONTER
CLAY FRIER
ALVIN D. GROSS
JOYCE T. HILL
THOMAS H. HUBER
JACK E. HORTON
SANDRA HUGHES
MICHAEL J. KESTER
E. DONALD KINNEY
VICTOR KOZLOFF
HOWARD J. LUMBY
JAMES A. MANNA
ROBERT G. M...
JOHN A. MURPHY
VERNE J. OLSEN
EUGENE C. PAINE
MARGUERITE POTT
JERRY J. RIZ
MICHAEL H. SALERNO
MARY SHAW
WILLIAM P. STARR
MARR ENARRON TERRY
JILL THOM
RICHARD H. WENNING
DANIEL A. WILGMAN
THOMAS D. WILAN
CHRISTOPHER CRAIG
DEPUTIES

Exhibit B-5

ENROLLED BILL REPORT

Form DF-44 (Rev. 1/82 4 M)

DEPARTMENT Finance Yes No X AUTHOR Campbell BILL NUMBER SB 1568

SUBJECT: _____ DATE LAST AMENDED April 15, 1982

This bill would hold a person liable for fire suppression costs for negligently set fires or fires in violation of the law that escape onto public or private land and for the costs of rescue and emergency medical services.

SUMMARY OF REASONS FOR SIGNATURE:

The California Department of Forestry will receive additional revenues for fire suppression costs to property not covered by existing law. These revenues would offset any collection costs. These funds would accrue to the General Fund.

FISCAL SUMMARY

Department/Agency	FC	1981-82	FC	1982-83	FC	1983-84	FC	1984-85	Fund
Forestry									
Revenues		-- R	Unknown	R	Unknown	R	Unknown	R	General
		--	Minor		Minor		Minor		
Expenditures		-- S	Unknown	S	Unknown	S	Unknown	S	General
		--	Minor		Minor		Minor		
Local Agencies									
Revenues		-- R	Unknown	R	Unknown	R	Unknown	R	Local
		--	Minor		Minor		Minor		
Expenditures		-- S	Unknown	S	Unknown	S	Unknown	S	Local
		--	Minor		Minor		Minor		

ANALYSIS

A. Specific Findings

Existing law generally holds a person liable for fire suppression costs for negligently set fires or fires in violation of the law that escape onto any forest, range or nonresidential grass-covered land.

This bill would extend that liability to any public or private property and, in addition, for rescue or emergency services.

(continued)

RECOMMENDATION Sign the bill.

PRINCIPAL ANALYST [Signature] PROGRAM BUDGET/MANAGER [Signature]

DEPARTMENT REPRESENTATIVE [Signature] DATE [Date] DIRECTOR [Signature] DATE [Date]

ENROLLED BILL--(continued)

Form DF-44

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Campbell	April 15, 1982	SB 1568

ANALYSIS**B. Fiscal Analysis**

This bill clarifies existing law. Liability would extend to residential grasslands and provide the California Department of Forestry, as well as other fire suppression entities, with additional revenues, the extent of which would depend on the fire season and incidences of negligence or fire violations and whether the fire suppression agency chose to collect. No other State agency will be affected. Insignificant costs would be associated with investigation and reports as well as the costs to collect for services, as presently occurs. Local municipalities are potentially eligible to receive revenues for rescue and emergency services.

627762

ENROLLED BILL REPORT

AGENCY	RESOURCES	BILL NUMBER
DEPARTMENT, BOARD OR COMMISSION	DEPARTMENT OF FORESTRY	SB 1568
		AUTHOR
		Senator Campbell

SUBJECT: Amend Section 13009 of the Health and Safety Code to make a person liable for suppression cost on any public or private land. It would also include the cost of providing rescue and emergency medical services.

SPONSORSHIP: This bill is sponsored by the author.

HISTORY: Presently, Section 13009 of the Health and Safety Code provides that a person is liable for the expense of suppressing a fire negligently set by that person when he or she allows it to escape onto any forest, range, or nonresidential grass-covered land.

ANALYSIS:

Specific Findings: Would change wording from "forest, range, or nonresidential grass-covered land" to "public or private property".
 Would add the collection of rescue and emergency medical services.

Fiscal Effects: Would increase the amount of funds that local government could collect for fire suppression services, and would also effect a limited increase at the state level as well.

REASON FOR RECOMMENDED POSITION:

Currently the California Department of Forestry and other public agencies have difficulty recovering suppression costs from negligently set fires which escape to rural residential subdivisions. These large, grass-covered subdivisions can have parcels 10 acres and more in size. They do not fall into the category of "forest, range, or nonresidential grass-covered land" according to some judges. This disparity will be alleviated if SB 1568 becomes law.

<u>FINAL VOTE:</u>	<u>Senate</u> (5/6/82)	<u>Assembly</u> (8/17/82)
	Ayes 30	Ayes 69
	Noes 0	Noes 0

Prepared by: Loren Poore, 445-9886 wk., 685-3058 hm.

RECOMMENDATION: SIGN

DEPARTMENT HEAD <i>Bob Campbell</i>	DATE AUG 24 1982	AGENCY HEAD <i>J. C. ...</i>	DATE <i>8/11/82</i>
--	---------------------	---------------------------------	------------------------

INVOLVED BILL REPORT

AGENCY Health and Welfare Agency	BILL NUMBER SB 1568
DEPARTMENT BOARD OR COMMISSION Emergency Medical Services Authority	DISTRICT Campbell

BILL SUMMARY

SB 1568 proposes that any person who negligently, or in violation of the law sets a fire, allows a fire to be set or allows a fire kindled or attended by that person to escape onto public or private property, be liable for the cost of suppressing a fire and the cost of providing emergency medical services.

HISTORY

Orange County is the sponsor of this bill. They initiated it at the request of the Orange County Fire Department who also has paramedic service. They estimate that it will save Orange County about \$25,000 per year.

SPECIFIC FINDINGS

This bill as written would have no impact on the Authority at the present time.

REGULATION IMPACT

This bill would require no new regulation.

FISCAL IMPACT

This bill has no fiscal impact on the Authority at the present time.

RECOMMENDATION

Sign.

<u>RECOMMENDATION</u>			
Sign. <i>[Signature]</i>			
DEPARTMENT DIRECTOR Roger S. Taylor, M.D.	DATE 8-23-82	AGENCY SECRETARY Douglas X. [Signature]	DATE 8/23

Exhibit B-9

Carpenter & Associates
Legislative Advocates

DENNIS E. CARPENTER
ALETA R. CARPENTER
KAREN M. COOKER

August 18, 1982

SACRAMENTO
916/446-7988
916/447-2251

IRVINE
714/657-8200

The Honorable Edmund G. Brown
State Capitol
Sacramento, CA 95814

Re: SB 1568 - SUPPORT

Dear Governor Brown,

The County of Orange is the sponsor of SB 1568. This bill would include any property (public or private) within an expanded definition of the types of land permitted to recover costs for fire suppression activities, as well as, rescue and emergency medical services.

Orange County has found that payment of county costs for suppressing a fire is an effective deterrent in preventing fires from re-occurring through negligent or unlawful acts. However, these costs can only be recovered if the fire occurs in specified areas. In those instances when the county puts out a fire in non-wildlands areas (residential areas, etc.), any attempt to recover those county costs must be sought through court action. This is usually a lengthy and ineffective procedure for the county to pursue. In Orange County, only one of three cases are substantiated with sufficient evidence for the county to recover the costs of fire suppression.

This bill would allow any federal, state, county, public, or private agency to recover the costs of fire suppression and emergency medical services without any restrictions on land areas or types of property. A substantial cost recovery will occur with counties and state agencies with the passage of this legislation.

This bill is supported by the Department of Forestry, the Emergency Medical Services Department, the City of Manteca, the City of Los Angeles, and the Federated Firefighters. There is no opposition to this measure.

Sincerely,


Dennis E. Carpenter
dc

cf

Exhibit C

OWEN K KUNS
 RAY H WHITAKER
 CHIEF DEPUTIES

JERRY L BASSETT
 KENT L DeCHAMBEAU
 STANLEY M. LOURIMORE
 EDWARD K PURCELL
 JOHN T. STUDERAKER

JAMES L. ASHFORD
 JOHN CORZINE
 ROBERT CULLEN DUFFY
 ROBERT D. GRONKE
 SHERWIN C. MACKENZIE JR
 ANN M. MACKAY
 TRACY O. POWELL, II
 JIMMIE WING
 PRINCIPAL DEPUTIES

3021 STATE CAPITOL
 SACRAMENTO 95814
 (916) 445-3057

8011 STATE BUILDING
 107 SOUTH BROADWAY
 LOS ANGELES 90012
 (213) 620-2550

Legislative Counsel of California

BION M. GREGORY

DAVID D. ALLES
 MARTIN L. ANDERSON
 PAUL ANTILIA
 CHARLES C. ASKEL
 SHARON G. BIRNBAUM
 AMELIA I. BUDD
 EILEEN J. BURTON
 HENRY J. CONTRERAS
 BEN E. DALE
 CLINTON J. DEWITT
 C. DAVID DICERSON
 KATHRYN E. DONOVAN
 FRANCES S. DOWDY
 MAUREEN S. DUNN
 LAWRENCE H. FEIN
 SHARON R. FISHER
 JOHN FORSETTE
 HARVEY J. FOSTER
 CLAY FULLER
 ALVIN D. GRESS
 JOYCE E. HER
 THOMAS R. HEUER
 JACK I. HORTON
 SANDRA HUGHES
 MICHAEL J. KERSTEN
 L. DOUGLAS KINNEY
 VICTOR KOZIELSKI
 EVE KROTINGER
 ROMULO I. LOPEZ
 JAMES A. MARSALE
 PETER MELNICOE
 ROBERT G. MILLER
 JOHN A. MOGER
 VERNE L. OLIVER
 EUGENE L. PAINE
 ISA R. RODRIGUEZ
 MARGUERITE ROTH
 MICHAEL B. SALERNO
 MARY SHAW
 ANN ELLIOTT SHERMAN
 RUSSELL L. SPARLING
 WILLIAM K. STARK
 MARK FRANKLIN TERRY
 JEFF THOM
 MICHAEL H. UPSON
 RICHARD B. WEISBERG
 DANIEL A. WEITZMAN
 THOMAS D. WHELAN
 CHRISTOPHER ZIRKLE
 DEPUTIES

Sacramento, California

September 11, 1984

Honorable George Deukmejian
 Governor of California
 Sacramento, CA

Assembly Bill No. 3177

Dear Governor Deukmejian:

Pursuant to your request we have reviewed the above-numbered bill authored by Assembly Member Kelley and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
 Legislative Counsel

By: *Stanley M. Lourimore*
 Stanley M. Lourimore
 Principal Deputy

SML: TR

Two copies to Honorable David G. Kelley
 pursuant to Joint Rule 34.

ENROLLED BILL REPORT

Analyst : Jim Wakefield
 Tel: 427-4198
 Home Tel: 457-1507

AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: AB 3177
DEPARTMENT, BOARD OR COMMISSION: STATE FIRE MARSHAL	AUTHOR: Kelley

SUMMARY

- 1 Description
- 2 History
- 3 Purpose
- 4 Sponsor
- 5 Current Practice
- 6 Implementation
- 7 Justification
- 8 Alternatives
- 9 Responsibility
- 10 Other Agencies
- 11 Future Impact
- 12 Termination

SUMMARY

AB 3177 would require that any person who negligently or willingly sets a fire, allows it to be set, or leaves a fire unattended or left to escape onto public or private property is responsible for the cost of investigating and making any reports with respect to the fires and administrative costs incurred in recovering these costs from that person.

IMPACT ASSESSMENT

Existing law provides that the cost of providing rescue or emergency medical services and those costs incurred in the suppression of the fire shall be charged against any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by that person to escape onto any public or private property.

The charge shall constitute a debt of that person, and is collected by the person, or by the federal, state, county, public, or private agency, incurring those costs. The presiding court would impose the amount of liability for violation of the acts described above.

At the present time the Department of Forestry receives no reimbursement for their role in investigating and preparing reports on wildland fires. Costs associated with these activities are a drain on already strained budgets. The purpose of this bill is to allow the Department and other public safety agencies to recoup a portion of these costs by assessing persons whose negligence results in fires which require the attention of state or local firefighting personnel.

FISCAL IMPACT ON STATE BUDGET

The Department of Forestry estimates this bill will generate approximately \$58,000 annually. Approximately \$25,000 would be used to cover administrative costs and \$33,000 for investigative work.

FISCAL IMPACT ON STATE BUDGET

- 13 Budget
- 14 Future Budget
- 15 Other Agencies
- 16 Federal
- 17 Tax Impact
- 18 Governor's Budget
- 19 Continuous Appropriation
- 20 Assumptions
- 21 Deficiency Measure
- 22 Deficiency Resolution
- 23 Absorption of Costs
- 24 Personnel Changes
- 25 Organizational Changes
- 26 Funds Transfer
- 27 Tax Revenue
- 28 Other Fiscal

SOCIO-ECONOMIC IMPACT

- 29 Rights Effect
- 30 Monetary
- 31 Consumer Choice
- 32 Competition
- 33 Employment
- 34 Economic Development

INTERESTED PARTIES

- 35 Proponents
- 36 Opponents
- 37 Pro/Con Arguments

RECOMMENDATION JUSTIFICATION

- 38 Support
- 39 Oppose
- 40 Neutral
- 41 No Position
- 42 If Amended

(continued page 2)

VOTE:	Assembly		Partisan		Senate		Partisan	
	Aye	No	R	D	Aye	No	R	D
Floor:	71	0	()	()	40	0	()	()
Policy Committee:	11	0	()	()	6	0	()	()
Fiscal Committee:	Aye <u>meat</u>	No	()	()	Aye <u>meat</u>	No	()	()

RECOMMENDATION

TO GOVERNOR: SIGN VETO DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR: *[Signature]* DATE: 9/4/84 AGENCY SECRETARY: *[Signature]* DATE: 9/6/84

ARGUMENTS PRO & CON

Pro

1. Persons who negligently or willingly set fires or allow them to spread should be held accountable for their actions.

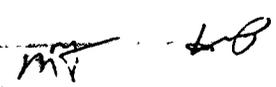
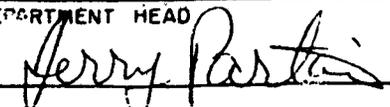
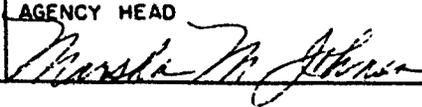
Con

1. None.

RECOMMENDATION

The State Fire Marshal is in SUPPORT of the legislation. This bill properly places responsibility for costs associated with negligence in allowing fires to start and get out of control and reduces the budgetary drain on agencies providing fire protection services.

ENROLLED BILL REPORT

AGENCY	RESOURCES	BILL NUMBER AB 3177
DEPARTMENT, BOARD OR COMMISSION	Department of Forestry	AUTHOR Kelley
<u>SUBJECT:</u>	This bill would make a person liable not only for suppression costs, but also for the costs of investigating and preparation of reports with respect to the fire and administrative costs incurred in recovering these costs from the person.	
<u>SPONSORSHIP:</u>	Assemblyman Kelley and the California Department of Forestry. Proposal #RA-84-25.	
<u>RELATED BILLS:</u>	None.	
<u>HISTORY:</u>	The California Department of Forestry is sponsoring this bill in order to try and collect the Department's cost for investigating and administering the Fire Suppression Cost Recovery Program on those fires caused by fire law violation or negligence.	
<u>ANALYSIS:</u>		
<u>SPECIFIC FINDINGS:</u>	<ol style="list-style-type: none"> 1. Presently the State Administrative Manual Section 87551 states that the State of California will collect those administrative supervisory and indirect clerical expenses for bills due and owed to the State of California. In the proposed legislation with the establishment of Section 13009.1, we ask that an administrative fee be added to any civil case the California Department of Forestry pursues in the amount of 10 percent of the total cost. The Forestry Departmental Accounting Office calculated the 10 percentage rate. This would include and would cover those indirect clerical, auditing, and preparation expenses, along with the expenses to administer the Program. 2. Also requested in addition to this amount, is that the Department be allowed to collect the actual investigative fees which would vary from fire to fire, but at present, are costs that are not recoverable. 	
<u>FISCAL EFFECT:</u>	No fiscal impact on the General Fund would be created.	
<u>FINAL VOTE:</u>	<u>Assembly (6-13-84)</u> Ayes 71 Noes 0	<u>Senate (8-27-84)</u> Ayes 40 Noes 0
Prepared by: Loren B. Poore Phone - 445-9886 (work) 685-3058 (home)		
RECOMMENDATION: Sign		
DEPARTMENT HEAD 	DATE 8/21/84	AGENCY HEAD 
		DATE 8/29/84

DEPARTMENT
Finance

BILL NUMBER
AB 3177

AUTHOR
Kelley

DATE LAST AMENDED
August 7, 1984

SUBJECT

This bill would provide for the collection of administrative costs and investigative fees from persons who, through negligence or disregard for the law, set a fire or allow a fire to be set that escapes onto any public or private property.

SUMMARY OF REASONS FOR SIGNATURE

This bill, which was sponsored by the Department of Forestry, would provide for the recovery of accounting and other costs incurred when persons negligently set a fire.

FISCAL SUMMARY--STATE LEVEL

Department/Agency or Revenue Type	Code	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code	Fund
			(Dollars in Thousands)							
			FC	1984-85	FC	1985-86	FC	1986-87		
Forestry	1200	RV	U	\$30,000	U	\$60,000	U	\$60,000	001	GF

ANALYSIS

A. Specific Findings

Under current law, any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto public or private property, is liable for fire suppression costs and the cost of providing rescue or medical services.

This bill would provide for the collection of accounting and other administrative costs, in addition to fire suppression costs. This bill would also provide for the collection of an investigative fee to provide for the recovery of actual costs of investigating such fires, consistent with the State Administrative Manual Section 8755, which requires State agencies to charge individuals and firms for all the appropriate costs of performing the services. In addition, this bill would provide that in a civil proceeding, the burden of proof as to liability is on the plaintiff, and that any testimony, admission, or any other statement made by the defendant shall not be admissible as evidence.

The Department of Forestry sponsored this bill in order to be able to recover additional costs incurred when fighting certain fires. Both CDF and Finance staff recommend that the Governor sign this bill.

B. Fiscal Analysis

The Department of Forestry estimates that enactment of this bill would result in approximately \$60,000 in administrative and investigative fees being generated annually. Since these fees would be deposited directly to the General Fund, there would be no impact on the department's budget.

RECOMMENDATION

Sign the bill.

Department Director

Date

Principal Analyst

Date

Program Budget Manager

Date

Governor's Office use

(431) TDT

9/7/84

Wayne E. Amador

[Signature]

9-7-84

Position noted

Position approved

Position disapproved

by:

date:

C:009413108L

CALIFORNIA LEGISLATURE

SACRAMENTO OFFICE:

STATE CAPITOL
SACRAMENTO 95814
(916) 445-7852

ANCI LUCCHESI
ADMINISTRATIVE ASSISTANT

COMMITTEES:

AGRICULTURE
WATER, PARKS & WILDLIFE
WAYS & MEANS



DISTRICT OFFICES:

41555 E. FLORIDA, NO. E
HEMET 92344
(714) 652-5023

GARY LOCKOWANDT
ADMINISTRATIVE ASSISTANT

340 S. FARRELL DRIVE, NO. A-102A
PALM SPRINGS 92262
(619) 323-8301

1245 W. SIXTH STREET, NO. 5
CORONA 91720
(714) 737-2930

DAVID G. KELLEY

ASSEMBLYMAN, SEVENTY-THIRD DISTRICT

August 30, 1984

Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, California 95814

Dear Governor Deukmejian:

I am asking for your approval and signature on my AB 3177, a bill sponsored by the Department of Forestry.

Under existing law, any person who negligently or unlawfully sets or attends a fire is liable for the costs of fire suppression and providing rescue and emergency medical service in connection with the fire.

This bill would also make the person liable for investigation and reporting costs with respect to the fire, and for administrative costs of recovering the fire suppression costs from the person. In addition, it would permit a court in a civil action to set in its discretion the amount of liability for the investigative, reporting, and collection costs, and would enact procedures for the civil action.

The purpose of AB 3177 is to generate revenues for the Department so that it can operate a cost effective fire suppression cost recovery program.

Assembly Bill 3177 has no known opposition and I respectfully request that you sign it when it comes before you for consideration.

Sincerely,


DAVID G. KELLEY

DGK:nl

Exhibit D

Honorable Ed Royce
 Member of the Senate
 State Capitol, Room 4053
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Royce	BILL NUMBER SB 208
SPONSORED BY CA State Firemen's Association		RELATED BILLS
		AMENDMENT DATE August 18, 1987

BILL SUMMARY

SB 208 would make the mortgagee and/or the person(s) other than the mortgagee, as defined in this bill, who fail, after issuance of a notice of violation by a public agency, to correct unlawful fire hazards that result in damage to, or destruction of, the structure by fire, liable for the costs of fighting the fire. This bill would also allow fire districts to recover all actual costs for accounting and collecting fire cost recoveries attributable to the fire.

SUMMARY OF CHANGES

This version of SB 208 makes the following technical changes to our previous analysis of the April 29, 1987 version of this bill. Clarifying amendments have been added to further define under what circumstances a certain individual(s) can be held liable for fire cost recoveries pursuant to the provisions of this bill. These amendments do not change the intent of SB 208.

SUMMARY OF COMMENTS

The intent of SB 208 is to provide local fire protection districts and city/county fire departments with the legal authority to collect fire cost recoveries from persons who fail, after issuance of a notice of violation, to correct unlawful fire hazards that result in fire. The sponsors of the bill believe that SB 208 would provide an incentive to comply with noticed fire violations.

This bill could provide additional revenues to both State and local government General Funds. Finance estimates the State's portion to be up to \$35,000 annually and the local portion to be up to \$12 million annually for the State's 1,000 local fire protection districts and local fire departments.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code Fund
		1987-88		1988-89		1989-90		
		FC	U	FC	U	FC	U	
3540/Forestry & Fire Protection	RV	\$18	U	\$35	U	\$35	U	001/GF

Impact on State Appropriations Limit--Yes

FISCAL SUMMARY--LOCAL LEVEL

Reimbursable Expenditures	--	--	--
Non-Reimbursable Expenditures	--	--	--
Revenues	\$6,000	\$12,000	\$12,000

POSITION: Neutral Department Director Date

Principal Analyst (281) D.A. Rascon	Date 8/24/87	Program Budget Manager Wallis L. Clark	Date 8/24/87	Governor's Office Position noted Position approved Position disapproved by: date:
--	-----------------	---	-----------------	---

CJ:CB1/0048A/0902C

BILL ANALYSIS

Form DF-43 (Rev 03/87 Buff)

Exhibit D-2

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Royce

August 18, 1987

SB 208

ANALYSIS

A. Specific Findings

Under existing law, any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire to escape onto any public or private property is liable for the costs of that fire. Recoverable costs from the individual include fire suppression, rescue and emergency services, investigating and reporting activities, and administrative costs. Existing law limits the recovery of costs of accounting for the fire and collection to 10 percent of the liability for costs of fire suppression and rescue and emergency medical services.

This bill would expand the liability to include the mortgagee and/or the person(s) other than the mortgagee in possession of a structure who fail, after issuance of a notice of violation by a public agency, to correct unlawful fire hazards that result in damage to, or destruction of, the structure by fire. This bill would also eliminate the 10 percent limitation on liability for fire cost recoveries, thus allowing fire districts to recover all actual costs attributable to the fire.

This legislation was introduced by the California State Firemen's Association on behalf of the Los Angeles City Fire Department (LACFD). According to the LACFD, this legislation is a result of the City's legal inability to recover suppression costs from an owner, whose structure caught on fire, after being noticed for various fire code violations. Such fires have occurred three times to the same individual in the last ten years. After the last fire, the LACFD filed suit in Superior Court to recover its fire suppression costs. The Court's decision ruled against the LACFD because the LACFD did not have any legal authority to collect such fire cost recoveries. The LACFD is currently appealing this decision in the State Court of Appeals. The LACFD indicates that the intent of SB 208 is to provide local fire districts and city/county fire districts with the legal authority to make fire cost recoveries on structural fires as defined in the bill. Further, this bill would shift the burden of suppression costs, as a result of ignoring fire code violations, from the taxpayer to the violator. SB 208 may also act as a deterrent for potential violators.

B. Fiscal Analysis

The Department of Forestry and Fire Protection (CDF) believes that the changes proposed to existing law by SB 208 would have very little effect on the department's current ability to collect fire cost recoveries. There may be a potential for some minor, added revenue to the State's General Fund as a result of this bill. While the additional revenue is dependent upon the number of fire cost recoveries that are made pursuant to SB 208, Finance estimates additional revenues to be \$35,000 annually statewide.

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Royce

August 18, 1987

SB 208

ANALYSIS

B. Fiscal Analysis (continued)

The LACFD and CDF both agree that the most significant fiscal impact as a result of SB 208 would be the potential for local fire protection districts and city/county fire departments to collect fire cost recoveries. Such recoveries are deposited in each local General Fund. For Los Angeles, the LACFD estimates additional annual revenues of between \$12,000 to \$35,000 on the average. Neither the LACFD nor the sponsors of the bill, the California State Firemen's Association, have made statewide estimates on the potential for additional revenues to local agencies. Assuming \$12,000 as a minimum annual fire cost recovery for each of the State's approximately 1,000 local fire protection districts and city/county fire departments, Finance estimates potential additional local government General Fund revenues of up to \$12 million.

CJ:CB3/0048A/0902C

BILL ANALYSIS

RESOURCES AGENCY

DEPARTMENT FORESTRY AND FIRE PROTECTION	AUTHOR SENATOR ROYCE	BILL NUMBER SB 208
SPONSORED BY CALIF STATE FIREMENS ASSOC	RELATED BILLS	DATE LAST AMENDED ORIGINAL

SUBJECT
RECOVERY OF FIRE SUPPRESSION AND RELATED COSTS

BILL SUMMARY:

SB 208 would change Section 13009 of the Health & Safety Code by extending the ability to collect suppression and related costs to include structure fires, with regard to negligence or violation of law resulting in a fire being set or allowed to escape. This bill would include as being liable, owners or other persons in lawful possession of a structure who fail to correct obvious unlawful fire hazards that result in damage to, or destruction of, the structure.

ANALYSIS:

1) Specific Findings:

- a) History and Sponsorship: History is unknown, sponsor is the California State Firemens Association.
- b) Existing Law: Does not provide for collection of suppression and related costs related to structure fires.
- c) Changes in Law Provided by This Bill: see summary above.
- d) Discussion: This bill should have a positive effect for enforcing the compliance of fire hazard laws and codes.

2) FISCAL EFFECT:

This bill has the potential of increasing the General Fund revenue by a small amount with no additional expenditures. The bill would have a more dramatic effect on local government general fund revenue enhancement.

3) Reasons For Position:

- a) Adds incentive for compliance with law.
- b) Adds revenue to State General Fund.
- c) Adds revenue to Local Government General Fund.

Date Prepared: March 5, 1987
 Analyzed By: Ronald L. Bywater, Fire Cost Recovery Officer
 (916) 445-7406

POSITION SUPPORT	DATE 3/9/87	AGENCY Original Signed By Marsha M. Johnson	DATE MAR 11 1987
----------------------------	-----------------------	--	----------------------------

GOVERNOR'S OFFICE USE	
Position noted	<input type="checkbox"/>
Position approved	<input checked="" type="checkbox"/>
Position disapproved	<input type="checkbox"/>
By:	Date: 3/19

CC:

AGENCY

BILL ANALYSIS

Analyst: Jim Wakefield
Bus. Ph: 427-4198
Home Ph: 457-1507

Department California State Fire Marshal	Author Royce	Bill Number SB 208
Sponsored by Calif. State Firemen's Association	Related Bills AB 3177 (Kelley) Chp 1445-84	Date Last Amended Original

SUMMARY

This bill would provide that the owners or other persons in lawful possession of a structure who fail to correct obvious unlawful fire hazards that result in damage to, or the destruction of the structure is liable for the expenses related to fighting the fires, the cost of providing rescue and emergency medical services, the cost of investigating and making any reports regarding the fire, and the administrative costs incurred in recovering these costs.

BACKGROUND

Existing law, AB 3177 (Kelley), Chp. 1445, Statute of 1984, provided that any person who negligently or willingly sets a fire, allows it to be set, or leaves a fire unattended or left to escape onto public or private property, is responsible for the cost of fighting the fire, the cost of providing rescue and emergency medical services, the cost of investigating and making any reports with respect to the fires and administrative costs incurred in recovering these costs from that person.

This bill would extend this liability to owners or other persons in lawful possession of a structure who fail to correct obvious unlawful fire hazards that result in damage to, or destruction of the structure.

As in AB 3177, the change would constitute a debt of that person and would be collected by the person, or by the federal, state, county, public, or private agency, incurring those costs. The presiding court would impose the amount of liability for violation of the acts described above.

The costs associated with responding to fire incidents are a drain on already strained budgets. The purpose of this bill is to allow public safety agencies to recoup a portion of the costs by assessing persons who, through failure to correct obvious unlawful fire hazard, create a fire incident response.

The State Fire Marshal supports this addition to the existing fire incident recovery law.

- Description
- History
- Purpose
- Sponsor
- Current Practice
- Implementation
- Justification
- Alternatives
- Responsibility
- Other Agencies
- Future Impact
- Termination
- FISCAL IMPACT ON STATE BUDGET
- Budget
- Future Budget
- Other Agencies
- Federal
- Tax Impact
- Governor's Budget
- Continuous Appropriation
- Assumptions
- Deficiency Measure
- Deficiency Resolution
- Absorption of Costs
- Personnel Changes
- Organizational Changes
- Funds Transfer
- Tax Revenue
- State Mandated
- SOCIO-ECONOMIC IMPACT
- Rights Effect
- Monetary
- Consumer Choice
- Competition
- Employment
- Economic Development
- INTERESTED PARTIES
- Proponents
- Opponents
- Pro/Con Arguments
- RECOMMENDATION
- JUSTIFICATION
- Support
- Oppose
- Neutral
- No Position
- If Amended
- Amended Language Attached

Dept. Director Position <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> In <input type="checkbox"/> Defer	Agency Sectry. Position <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input checked="" type="checkbox"/> N <input type="checkbox"/> Defer See CON #2	Governor's Office Use <input checked="" type="checkbox"/> Position Noted <input type="checkbox"/> Position Approved <input type="checkbox"/> Position Disapproved By: [Signature] Date: 5/5
---	--	---

Department Director [Signature]	Date 4/13/87	Agency Secretary Original signed by KALEN L. MORGAN Assistant Secretary Legislation	Date MAY 4 1987
------------------------------------	-----------------	---	--------------------

FISCAL IMPACT ON STATE BUDGET

There may be some funds generated by this bill to the Department of Forestry and Fire who respond to state wildland fires and to the State Fire Marshal for investigation, report preparation and related administrative costs. This amount is unknown. There is no negative General Fund impact.

SOCIO-ECONOMIC IMPACT

Persons who, through their failure to correct obvious fire hazards, create a fire incident that must be responded to by a fire agency should be responsible for any costs associated with the incident. This is not an infringement of an individual's rights but simply a correct assumption of responsibility.

INTERESTED PARTIES

Proponents: Department of Forestry and Fire
California Fire Chief's Association
California State Firemen's Association

Opponents: None Known

Arguments:

PRO

1. Since the passage of AB 3177, Chp. 1445-84, established the right for fire agencies to recover costs for negligently or willfully set fires, this bill is a logical addition to this fire incident response cost recovery law.
2. Persons who fail to correct obvious fire hazards to their buildings, and thereby create a fire incident response, should be held accountable for their inaction, inattentiveness, and lack of concern for the safety of others.

CON

1. The public already pays taxes to support public agencies including fire agencies. This fire incident response cost recovery law is like a tax on a tax and is unfair.
2. There is some concern that advantage may be taken with the application of this law and persons who were not knowledgeable that an "obvious" fire hazard existed, will be burdened with paying for a fire response incident and its associated costs.

RECOMMENDATION JUSTIFICATION

The State Fire Marshal recommends a SUPPORT position. This bill properly places liability for the costs associated with responding to a fire incident when a person fails to abate obvious fire hazards.

UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 208
	Author:	Royce (R)
	Amended:	8/18/87
	Vote Required:	Majority

Committee Votes.

COMMITTEE: REGULAR		
BILL NO.: SB 208		
DATE OF HEARING: 4-7-87		
SENATORS:	AYE	NO
Doolittle	✓	
Keene		
Marks	✓	
Petris		
Presley	✓	
Richardson	✓	
Roberts	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	9	0

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Senate Floor Vote. Page 3732, 9/9/87

Senate Bill 208—An act to amend Sections 13009 and 13009.1 of the Health and Safety Code, relating to fires.

Bill presented by Senator Royce.

The question being: Shall the Senate concur in the Assembly amendments to SB 208?

Roll Call

The roll was called and the Senate concurred in Assembly amendments by the following vote:

AYES (37)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Campbell, Davis, Deddeh, Dills, Doolittle, Ethis, Garamendi, Cecil Green, Bill Greene, Leroy Greene, Hart, Keene, Kopp, Lockyer, Maddy, Marks, McCorquodale, Mello, Montoya, Morgan, Nielsen, Petris, Presley, Robbins, Rogers, Rosenthal, Royce, Russell, Seymour, Torres, Vetch, and Watson.

NOES (0)—None.

Above bill ordered enrolled.

Assembly Floor Vote: 78-0, p. 4477, 9/3/87

(Passed Assembly on Consent)

SUBJECT: Fires: recovery and suppression and related costs

SOURCE: California State Firemen's Association

DIGEST: This bill would hold a person liable for costs arising from the suppression and investigation of a fire on his or her property attributable to his or her failure to correct conditions constituting a fire hazard.

Assembly Amendments correct an error in stating existing law, by deleting "investigating and reporting" costs and replacing with "accounting and collection" costs.

The amendments also add clarifying language relating to "mortgagee and person in actual possession" of property in question.

ANALYSIS: Existing law provides that any person who negligently or unlawfully sets or attends a fire is liable for the costs of fire suppression, of providing rescue and emergency medical services associated with the fire, of investigating and filing reports regarding the fire, and of collecting the funds due as a result of the fire.

Existing law limits recovery of costs of accounting for the fire and collection to 10% of the liability for costs of fire suppression and rescue and emergency medical services.

This bill would delete the above limitation on liability for costs of accounting and collection. This bill would extend the above described liability to (1) persons in actual possession of a structure, other than mortgagees, who fail

to correct, within the allotted time, an unlawful fire hazard, after proper issuance of a notice of violation by a public agency, and (2) persons, including mortgagees who fail or refuse to correct an unlawful fire hazard after proper notification. This would apply in both stated cases that a fire occurs that results in damage to, or destruction of, the structure or other property located at the notified property.

The purpose of this measure is to shift the burden of fire suppression costs from the taxpayer to those individuals whose failure to remove hazardous conditions resulted in a fire.

Under specified conditions, fire departments are already permitted to recover costs from individuals whose actions negligently or intentionally cause a fire. However, current law does not permit costs to be assessed against chronic violators of the fire codes, whose failure to correct hazards results in the expenditure of millions of fire fighting dollars.

Prior Legislation

AB 3177 (Kelley), Chapter 1445, Statutes of 1984, passed the Senate 40-0.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

According to the Legislative Analyst, the fiscal effect is:

Cost: Unknown potential liability cost to various state funds, to the extent fire hazards present in state buildings result in state reimbursements for costs by a fire district/department.

Revenue: Unknown potential revenues to local fire districts/departments to offset local costs for fire suppression, emergency medical, investigation and/or collection costs.

SUPPORT: (Verified 5/20/87) (Unable to reverify support and opposition due to time limitation.)

California State Firemen's Association (source)
California State Fire Marshal
Department of Forestry and Fire Protection
City of Los Angeles

ARGUMENTS IN SUPPORT: In expressing their support for this bill, the City of Los Angeles states. "Our Fire Department advises that chronic violators of Fire Codes cause municipalities to incur millions of dollars annually in fire suppression costs. However, current State law does not provide a remedy for municipalities to recover these fire suppression costs. Although there are several State statutes which permit recovery of fire suppression costs under certain specified circumstances, there is currently no law which permits recovery of fire suppression costs from a property owner who has repeatedly violated fire codes and on whose property a fire has occurred which was not set or kindled by any instrumentality of the property owner."

The State Fire Marshal feels that, "Persons who, through their failure to correct obvious fire hazards, create a fire incident that must be responded to

) by a fire agency should be responsible for any costs associated with the incident. This is not an infringement of an individual's rights but simply a correct assumption of responsibility."

The State Fire Marshal goes on to state that, "Persons who fail to correct obvious fire hazards to their buildings, and thereby create a fire incident response, should be held accountable for their inaction, inattentiveness, and lack of concern for the safety of others."

RJG:lm 9/5/87 Senate Floor Analyses

THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 208
	Author:	Royce (R)
	Amended:	4/29/87
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	SB 208	
DATE OF HEARING:	4-7-87	
SENATORS:	AYE	NO
Doolittle	✓	
Keene		
Marks	✓	
Petris		
Presley	✓	
Richardson	✓	
Roberti	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	9	0

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Assembly Floor Vote:

SUBJECT: Fires: recovery and suppression and related costs

SOURCE: California State Firemen's Association

DIGEST: This bill would hold a person liable for costs arising from the suppression and investigation of a fire on his or her property attributable to his or her failure to correct conditions constituting a fire hazard.

ANALYSIS: Existing law provides that any person who negligently or unlawfully sets or attends a fire is liable for the costs of fire suppression, of providing rescue and emergency medical services associated with the fire, of investigating and filing reports regarding the fire, and of collecting the funds due as a result of the fire.

This bill would impose an identical liability on an owner or person in actual possession of a structure who fails to correct obvious conditions constituting a fire hazard which ultimately result in damage or destruction of the property by fire.

The purpose of this measure is to shift the burden of fire suppression costs from the taxpayer to those individuals whose failure to remove hazardous conditions resulted in a fire.

Under specified conditions, fire departments are already permitted to recover costs from individuals whose actions negligently or intentionally cause a fire. However, current law does not permit costs to be assessed against chronic violators of the fire codes, whose failure to correct hazards results in the expenditure of millions of fire fighting dollars.

Prior Legislation

AB 3177 (Kelley), Chapter 1445, Statutes of 1984, passed the Senate 40-0.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

According to the Legislative Analyst, the fiscal effect is:

Cost: Unknown potential liability cost to various state funds, to the extent fire hazards present in state buildings result in state reimbursements for costs by a fire district/department.

Revenue: Unknown potential revenues to local fire districts/departments to offset local costs for fire suppression, emergency medical, investigation and/or collection costs.

SUPPORT: (Verified 5/20/87)

California State Firemen's Association (source)
California State Fire Marshal
Department of Forestry and Fire Protection
City of Los Angeles

ARGUMENTS IN SUPPORT: In expressing their support for this bill, the City of Los Angeles states, "Our Fire Department advises that chronic violators of Fire Codes cause municipalities to incur millions of dollars annually in fire suppression costs. However, current State law does not provide a remedy for municipalities to recover these fire suppression costs. Although there are several State statutes which permit recovery of fire suppression costs under certain specified circumstances, there is currently no law which permits recovery of fire suppression costs from a property owner who has repeatedly violated fire codes and on whose property a fire has occurred which was not set or kindled by any instrumentality of the property owner."

The State Fire Marshal feels that, "Persons who, through their failure to correct obvious fire hazards, create a fire incident that must be responded to by a fire agency should be responsible for any costs associated with the incident. This is not an infringement of an individual's rights but simply a correct assumption of responsibility."

The State Fire Marshal goes on to state that, "Persons who fail to correct obvious fire hazards to their buildings, and thereby create a fire incident response, should be held accountable for their inaction, inattentiveness, and lack of concern for the safety of others."

RJG:lm 5/20/87 Senate Floor Analyses

JACK I. HORTON
ANN MACKEY
CHIEF DEPUTIES

JAMES L. ASHFORD
JERRY L. BASSETT
STANLEY M. LOURIMORE
EDWARD K. PURCELL
JOHN T. STUDEBAKER

DAVID D. ALVES
JOHN A. CORZINE
C. DAVID DICKERSON
ROBERT CULLEN DUFFY
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
TRACY O. POWELL II
JIMMIE WING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-3057

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES, CA 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
September 21, 1987

Honorable George Deukmejian
Governor of California
Sacramento, CA 95814

Senate Bill No. 208

Dear Governor Deukmejian:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Royce and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel


Sherwin C. MacKenzie, Jr.
Principal Deputy

SCM:wld

Two copies to Honorable Edward R. Royce,
pursuant to Joint Rule 34.

GERALD ROSS ADAMS
MARTIN L. ANDERSON
PAUL ANTILLA
DANA S. APPLING
CHARLES C. ASBILL
RANEENE P. BELISLE
AMELIA I. BUDD
EILEEN J. BUXTON
HENRY J. CONTRERAS
BEN E. DALE
JEFFREY A. DELAND
CLINTON J. DEWITT
SHARON R. FISHER
JOHN FOSSETTE
HARVEY J. FOSTER
CLAY FULLER
ALVIN D. GRESS
THOMAS R. HEUER
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
EVE B. KROTINGER
DIANA G. LIM
ROMULO I. LOPEZ
JAMES A. MARSALA
FRANCISCO A. MARTIN
PETER MELNICOE
ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
MICHAEL B. SALERNO
MARY SHAW
WILLIAM K. STARK
MARK FRANKLIN TERRY
JEFF THOM
MICHAEL H. UPSON
RICHARD B. WEISBERG
DANIEL A. WEITZMAN
THOMAS D. WHELAN
JANA T. WHITGROVE
DEBRA J. ZIDICH
CHRISTOPHER ZIRKLE
DEPUTIES

DEPARTMENT Finance	BILL NUMBER SB 208
AUTHOR Royce	AMENDMENT DATE August 18, 1987

SUBJECT

SB 208 would make the mortgagee and/or the person(s) other than the mortgagee, as defined in this bill, who fails, after issuance of a notice of violation by a public agency, to correct unlawful fire hazards that result in damage to, or destruction of, the structure by fire, liable for the costs of fighting the fire. This bill would also allow fire districts to recover all actual costs for accounting and collecting fire cost recoveries attributable to the fire.

SUMMARY OF REASONS FOR SIGNATURE

The intent of SB 208 is to provide local fire protection districts and city/county fire departments with the legal authority to collect fire cost recoveries from persons who fail, after issuance of a notice of violation, to correct unlawful fire hazards that result in fire. The sponsors of the bill believe that SB 208 would provide an incentive to comply with noticed fire violations.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands)						Code Fund
		FC	1987-88	FC	1988-89	FC	1989-90	
3540/Forestry & Fire Protection	RV U		\$18	U	\$35	U	\$35	001/GF

Impact on State Appropriations Limit--Yes

FISCAL SUMMARY--LOCAL LEVEL

Reimbursable Expenditures	--	--	--
Non-Reimbursable Expenditures	--	--	--
Revenues	\$6,000	\$12,000	\$12,000

ANALYSIS

A. Specific Findings

Under existing law, any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire to escape onto any public or private property is liable for the costs of that fire.

(Continued)

RECOMMENDATION:

Sign the bill.

Department Director

Date

Richard Royce

SEP 17 1987

Principal Analyst
(281) D. A. Rascon

Date

Program Budget Manager
Wallis L. Clark

Date

Governor's Office

D. A. Rascon 9/16/87

Wallis L. Clark 9/16/87

Position noted

Position approved

Position disapproved

by: date:

BILL ANALYSIS/ENROLLMENT BILL REPORT--(Continued)	Form DF-43
AUTHOR	BILL NUMBER
Royce	SB 208
AMENDMENT DATE	
August 18, 1987	

ANALYSIS
A. Specific Findings (Continued)

Recoverable costs from the individual include fire suppression, rescue and emergency services, investigating and reporting activities, and administrative costs. Existing law limits the recovery of costs of accounting for the fire and collection to 10 percent of the liability for costs of fire suppression and rescue and emergency medical services.

This bill would expand the liability to include the mortgagee and/or the person(s) other than the mortgagee in possession of a structure who fail, after issuance of a notice of violation by a public agency, to correct unlawful fire hazards that result in damage to, or destruction of, the structure by fire. This bill would also eliminate the 10 percent limitation on liability for fire cost recoveries, thus allowing fire districts to recover all actual costs attributable to the fire.

This legislation was introduced by the California State Firemen's Association on behalf of the Los Angeles City Fire Department (LACFD). According to the LACFD, this legislation is a result of the City's legal inability to recover suppression costs from an owner, whose structure caught on fire, after being noticed for various fire code violations. Such fires have occurred three times to the same individual in the last ten years. After the last fire, the LACFD filed suit in Superior Court to recover its fire suppression costs. The Court's decision ruled against the LACFD because the LACFD did not have any legal authority to collect such fire cost recoveries. The LACFD is currently appealing this decision in the State Court of Appeals. The LACFD indicates that the intent of SB 208 is to provide local fire districts and city/county fire districts with the legal authority to make fire cost recoveries on structural fires as defined in the bill. Further, this bill would shift the burden of suppression costs, as a result of ignoring fire code violations, from the taxpayer to the violator. SB 208 may also act as a deterrent for potential violators.

B. Fiscal Analysis

The Department of Forestry and Fire Protection (CDF) believes that the changes proposed to existing law by SB 208 would have very little effect on the department's current ability to collect fire cost recoveries. There may be a potential for some minor, added revenue to the State's General Fund as a result of this bill. While the additional revenue is dependent upon the number of fire cost recoveries that are made pursuant to SB 208, Finance estimates additional State revenues to be \$35,000 annually.

The LACFD and CDF both agree that the most significant fiscal impact as a result of SB 208 would be the potential for local fire protection districts and city/county fire departments to collect fire cost recoveries. Such recoveries are deposited in each local General Fund.

(Continued)

<u>BILL ANALYSIS/ENROLLMENT BILL REPORT--(Continued)</u>	<u>Form DF-43</u>	
<u>AUTHOR</u>	<u>AMENDMENT DATE</u>	<u>BILL NUMBER</u>
Royce	August 18, 1987	SB 208

ANALYSIS**B. Fiscal Analysis (Continued)**

For Los Angeles, the LACFD estimates additional annual revenues of between \$12,000 to \$35,000 on the average. Neither the LACFD nor the sponsors of the bill, the California State Firemen's Association, have made statewide estimates on the potential for additional revenues to local agencies. Assuming \$12,000 as a minimum annual fire cost recovery for each of the State's approximately 1,000 local fire protection districts and city/county fire departments, Finance estimates potential additional local government General Fund revenues of up to \$12 million.

CJ:CB3/0048A/0902C

ENROLLED BILL REPORT

Analyst: Jim Wakefield
 Bus. Tel: 427-4198
 Home Tel: _____

AGENCY: STATE AND CONSUMER SERVICES AGENCY

BILL NUMBER: SB 208

DEPARTMENT, BOARD OR COMMISSION:
 State Fire Marshal

AUTHOR: Royce

- Description
- BACKGROUND
- History
- Purpose
- Sponsor
- Current Practice
- Implementation
- Justification
- Alternatives
- Responsibility
- Other Agencies
- Future Impact
- Termination
- FISCAL IMPACT ON STATE BUDGET
- Budget
- Future Budget
- Other Agencies
- Federal
- Tax Impact
- Governor's Budget
- Continuous Appropriation
- Assumptions
- Deficiency Measure
- Deficiency Regulation
- Absorption of Costs
- Personnel Changes
- Organizational Changes
- Funds Transfer
- Tax Revenue
- Other Fiscal
- SOCIO-ECONOMIC IMPACT
- Rights Effect
- Monetary
- Consumer Choice
- Competition
- Employment
- Economic Development
- INTERESTED PARTIES
- Proponents
- Opponents
- Pro/Con Arguments
- RECOMMENDATION
- JUSTIFICATION
- Support
- Oppose
- Neutral
- No Position
- If Amended

SUMMARY

This bill would provide that persons in actual possession of a structure, other than mortgagees, and including mortgagees, who fail or refuse to correct within a reasonable allotted time, an unlawful fire hazard after proper notice of violation are liable for cost incurred by a public agency in response to a fire or other emergency resulting from the violation. This bill deletes the existing liability limitation for costs incurred by a public agency of accounting and collection.)

BACKGROUND

Existing law, AB 3177 (Kelley), Chp. 1445, Statute of 1984, provided that any person who negligently or willingly sets a fire, allows it to be set, or leaves a fire unattended or left to escape onto public or private property, is responsible for the cost of fighting the fire, the cost of providing rescue and emergency medical services, the cost of investigating and making any reports with respect to the fires and administrative costs incurred in recovering these costs from that person.

This bill would extend this liability to non-mortgagees and mortgagees in possession of a structure who, upon issuance of a notice of correction by a public agency, fail or refuse to correct within the allotted time, an unlawful fire hazard when such condition results in a fire or other emergency response by a public agency. The costs of such emergency response shall result in a debt to the person responsible collectible by the public or private agency incurring those costs.

The costs associated with responding to fire incidents are a drain on already strained budgets. The purpose of this bill is to allow public safety agencies to recoup a portion of the costs by assessing persons who, through failure to correct obvious unlawful fire hazards, create a fire incident response.

The State Fire Marshal supports this addition to the existing fire incident recovery law.

VOTE:	Assembly		Partisan		Concurrence	Senate		Partisan	
	Aye	No	R	D		Aye	No	R	D
Floor:	Aye 78	No 0	(to)	(to)	Floor:	Aye 37	No 0	(to)	(to)
Policy Committee:	Aye 8	No 0	(to)	(to)	Policy Committee:	Aye 9	No 0	(to)	(to)
Fiscal Committee:	Aye 8	No 0	(to)	(to)	Fiscal Committee:	Aye 8	No 0	(to)	(to)

RECOMMENDATION TO GOVERNOR: SIGN VETO DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR: _____ DATE: 9-14-87 AGENCY SECRETARY: _____ DATE: 9-14-87

FISCAL IMPACT ON STATE BUDGET

There may be some funds generated by this bill to the Department of Forestry and Fire who respond to state wildland fires and to the State Fire Marshal for investigation, report preparation and related administrative costs. This amount is unknown. There is no negative General Fund impact.

SOCIO-ECONOMIC IMPACT

Persons who, through their failure to correct obvious fire hazards, create a fire incident that must be responded to by a fire agency should be responsible for any costs associated with the incident. This is not an infringement of an individual's rights but simply a correct assumption of responsibility.

INTERESTED PARTIES

Proponents: Department of Forestry and Fire
California Fire Chiefs' Association
California State Firemen's Association

Opponents: None Known

Arguments:

PRO:

1. Since the passage of AB 3177, Chp. 1445-84, established the right for fire agencies to recover costs for negligently or willfully set fires, this bill is a logical addition to this fire incident response cost recovery law.
2. Persons who fail to correct obvious fire hazards to their buildings, and thereby create a fire incident response, should be held accountable for their inaction, inattentiveness, and lack of concern for the safety of others.)

CON:

1. The public already pays taxes to support public agencies including fire agencies. This fire incident response cost recovery law is like a tax on a tax and is unfair.
2. There is some concern that advantage may be taken with the application of this law and persons who were not knowledgeable that an "obvious" fire hazard existed, will be burdened with paying for a fire response incident and its associated costs.)

RECOMMENDATION JUSTIFICATION

The State Fire Marshal recommends a SIGN. This bill properly places liability for the costs associated with responding to a fire incident when a person fails to abate obvious fire hazards.

ENROLLED BILL REPORT

AGENCY	RESOURCES	BILL NUMBER SB 208
DEPARTMENT, BOARD OR COMMISSION FORESTRY AND FIRE PROTECTION		AUTHOR Edward Royce
SUMMARY: SB 208 will extend the ability to collect fire suppression and related costs to include structure fires and eliminate the ten percent cap on administrative charges.		
IMPACT STATEMENT: SB 208 will change Section 13009 of the Health and Safety Code by eliminating the existing ten percent limitation on liability for costs of accounting and collection and extend the liability for fire suppression costs to structure fires.		
ARGUMENTS PRO & CON: Pro: This change will provide an added incentive for violators of fire safety laws to comply. Con: It will cause a person in violation of this section to pay for his mistakes.		
FISCAL EFFECT: This bill has the potential of increasing the General Fund revenue by a small amount and would have a more dramatic effect on local governments' general fund revenue enhancement.		
FINAL VOTES:		
Senate - 5/28/87	Assembly - 9/3/87	
Ayes 35	Ayes 78	
Noes 0	Noes 0	
PREPARED BY: Ronald L. Bywater, Cost Recovery Officer		
PHONE: 445-7406		

RECOMMENDATION:

SIGN

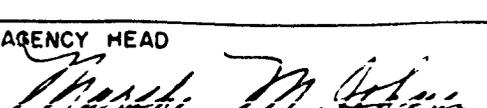
DEPARTMENT HEAD 	DATE 9/11/87	AGENCY HEAD 	DATE 7/15/87
--	------------------------	--	------------------------

Exhibit E

1 Daley & Heft, LLP
 Attorneys at Law
 2 Robert W. Brockman, Jr., Esq. (SBN 123546)
 Lee H. Roistacher, Esq. (SBN 179619)
 3 Garrett A. Marshall, Esq. (SBN 310978)
 462 Stevens Avenue, Suite 201
 4 Solana Beach, CA 92075
 Telephone: (858) 755-5666
 5 Facsimile: (858) 755-7870
 E-mail: rbrockman@daleyheft.com
 6 lroistacher@daleyheft.com
 gmarshall@daleyheft.com

7
 8 Attorneys for Defendant
 Presbyterian Camp and Conference Centers, Inc.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA BARBARA, ANACAPA DIVISION**

11 CALIFORNIA DEPARTMENT OF
 FORESTRY AND FIRE PROTECTION ,

12 Plaintiff,

13 v.

14 PRESBYTERIAN CAMP AND
 15 CONFERENCE CENTERS, INC., a
 California corporation; CHARLES
 16 EUGENE COOK III; and DOES 1
 THROUGH 50,

17 Defendants.

Case No.: 18CV02968

**SUPPLEMENTAL RESPONSE OF
 PRESBYTERIAN CAMP AND
 CONFERENCE CENTERS, INC., TO
 FORM INTERROGATORIES
 PROPOUNDED BY CALIFORNIA
 DEPARTMENT OF FORESTRY AND
 FIRE PROTECTION, SET ONE**

Dept: 3
 Judge: Thomas P. Anderle
 Complaint Filed: August 13, 2018
 Trial Date: None set

18
 19
 20 **PROPOUNDING PARTY:** Plaintiff California Department of Forestry and Fire
 Protection

21 **RESPONDING PARTY:** Defendant Presbyterian Camp and Conference Centers,
 22 Inc.

23 **SET NUMBER:** One

24 Defendant Presbyterian Camp and Conference Centers, Inc. hereby responds to Plaintiff
 25 California Department of Forestry and Fire Protection General Form Interrogatories fully and
 26 under oath.

27 ///

28 ///

PRELIMINARY STATEMENT

1
2 It should be noted that this responding party has not fully completed the investigation of
3 the facts relating to this case, has not fully completed discovery in this action, and has not
4 completed preparation for trial. All of the responses contained herein are based upon such
5 information and documents which are presently available to and specifically known to this
6 responding party and disclose only those contentions which presently occur to such responding
7 party.

8 It is anticipated that further discovery, independent investigation and legal research and
9 analysis will supply additional facts, add meaning to the known facts, as well as establish entirely
10 new factual conclusions and legal contentions, all of which may lead to substantial additions to,
11 changes in, and variations from the contentions set forth herein.

12 The following responses are given without prejudice to the responding party's right to
13 produce evidence of any subsequently discovered fact or facts which this responding party may
14 later obtain or recall. Responding party accordingly reserves the right to change any and all
15 answers herein as additional facts are ascertained, analyses are made, legal research is
16 completed, and contentions are formed. The answers contained herein are made in a good faith
17 effort to supply as much factual information and as much specification of legal contentions as is
18 presently known, but should in no way be to the prejudice of this party in relationship to further
19 discovery, research or analysis.

RESPONSES TO FORM INTERROGATORIES

FORM INTERROGATORY NO. 1.1:

22 State the name, **ADDRESS**, telephone number, and relationship to you of each
23 **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories.

24 *(Do not identify anyone who simply typed or reproduced the responses.)*

FURTHER RESPONSE TO FORM INTERROGATORY NO. 1.1:

26 Garrett A. Marshall, Daley & Heft, LLP, 462 Stevens Ave., Ste. 201, Solana Beach, CA
27 92075-2099, (858) 755-5666, counsel of record for defendant Presbyterian Camp and
28 Conference Centers, Inc. Rev. Richard F. Harrison, 575 Prairie Lane, Big Bear Lake, CA 92315-

Exhibit E-3

1 1512, (909) 866-2360, defendant Presbyterian Camp and Conference Centers, Inc., employee of
2 responding party who may be contacted through counsel of record for responding party.

3 **FORM INTERROGATORY NO. 3.7:**

4 Within the past five years has any public entity registered or licensed your business?

5 If so, for each license or registration:

- 6 (a) identify the license or registration;
7 (b) state the name of the public entity; and
8 (c) state the dates of issuance and expiration.

9 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 3.7:**

10 Objection to this interrogatory being vague, ambiguous, and otherwise unintelligible
11 with regard to the use of the undefined terms and phrases “public entity,” “registered” and
12 “licensed,” which improperly call for speculation to determine what constitutes being
13 “registered” or “licensed” by a “public entity” in this context.

14 Subject to and without waiving any objections, responding party states as follows: No.
15 However, to the extent it is responsive to this interrogatory, PCCCI maintains a Conditional Use
16 Permit applicable to the property at Rancho La Scherpa issued by the County of Santa Barbara
17 which includes annual inspections by the Santa Barbara County Fire Department and County of
18 Santa Barbara Department of Public Health. Further, PCCCI is registered as a 501(c)(3) Non-
19 Profit Organization with the State of California and has been a registered domestic non-profit
20 religious corporation with the State of California since on or about October 5, 2004.

21 **FORM INTERROGATORY NO. 4.1:**

22 At the time of the **INCIDENT**, was there in effect any policy of insurance through which
23 you were or might be insured in any manner (for example, primary, pro-rata, or excess liability
24 coverage or medical expense coverage) for the damages, claims, or actions that have arisen out
25 of the **INCIDENT**? If so, for each policy state:

- 26 (a) the kind of coverage;
27 (b) the name and **ADDRESS** of the insurance company;
28 (c) the name, **ADDRESS**, and telephone number of each named insured;

Exhibit E-4

- 1 (d) the policy number;
- 2 (e) the limits of coverage for each type of coverage contained in the policy;
- 3 (f) whether any reservation of rights or controversy or coverage dispute exists
- 4 between you and the insurance company; and
- 5 (g) the name, **ADDRESS**, and telephone number of the custodian of the policy.

6 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 4.1:**

7 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
8 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
9 adequately defined in the context of this case by the propounding party.

10 Objection as to this request being vague, ambiguous, and calling for a legal conclusion
11 and speculation with regard to whether or not a certain policy of insurance was “in effect” at any
12 relevant time period, or whether such a policy of insurance “insured” or “might have insured”
13 the responding party “in any manner” for the damages, claims, or actions that have arisen out of
14 the “INCIDENT.”

15 Subject to and without waiving any objections, responding party states as follows:

16 ***Primary – Commercial General Liability Policy***

- 17 (a) Commercial General Liability.
- 18 (b) Lexington Insurance Company, 99 High Street, Floor 24, Boston, MA 02110-2378.
- 19 (c) The United Church Insurance Association and affiliated entities and organizations of
20 the United Church of Christ, the Christian Church (Disciples of Chris), and the
21 Presbyterian Church (USA) that participate in the insurance program of the United
22 Church Insurance Association (also dba: The Insurance Board) as listed on individual
23 memorandums of insurance as on file with the United Church Insurance Association
24 and as per Endorsement No. 1; including Presbyterian Camp and Conference
25 Centers, Inc.
- 26 (d) Policy No. 114-49743-02.
- 27 (e) Limits of Coverage: \$500,000.
- 28 (f) Yes.

Exhibit E-5

- 1 (g) Lexington Insurance Company, 99 High Street, Floor 24, Boston, MA 02110-
2 2378 and/or United Church Insurance Association 700 Prospect Ave.,
3 8th Floor, Cleveland, OH 44115 and/or PCCCI.

4 ***Excess Liability Policy 1***

- 5 (a) Excess Liability Coverage.
6 (b) Lexington Insurance Company, 99 High Street, Floor 24, Boston, MA 02110-2378.
7 (c) United Church Insurance Association (See Endorsement #005), 700 Prospect
8 Avenue, 5th Floor, Cleveland, OH 44114.
9 (d) Policy No. 048409888.
10 (e) Limits of Coverage: \$1,500,000.
11 (f) Yes.
12 (g) Lexington Insurance Company, 99 High Street, Floor 24, Boston, MA 02110-
13 2378 and/or United Church Insurance Association 700 Prospect Ave., 8th
14 Floor, Cleveland, OH 44115 and/or PCCCI.

15 ***Excess Liability Policy 2***

- 16 (a) Excess Liability Coverage.
17 (b) National Union Fire Insurance, 175 Water St, New York, NY 10038.
18 (c) United Church Insurance Association, 700 Prospect Avenue, 5th Floor, Cleveland,
19 OH 44114.
20 (d) Policy No. XS 3464086.
21 (e) Limits of Coverage: \$5,000,000.
22 (f) No.
23 (g) National Union Fire Insurance, 175 Water St., New York, NY 10038 and/or United
24 Church Insurance Association, 700 Prospect Ave., 8th Floor, Cleveland, OH 44115
25 and/or PCCCI.

26 ***Excess Liability Policy 3***

- 27 (a) Excess Liability Coverage.

28 ///

Exhibit E-6

1 (b) Starr Indemnity & Liability Company, 399 Park Ave., 8th Floor, New York, NY
2 10022.

3 (c) United Church Insurance Association, 700 Prospect Avenue, 5th Floor, Cleveland,
4 OH 44114.

5 (d) Policy No. 1000011297.

6 (e) Limits of Coverage: \$10,000,000.

7 (f) No.

8 (g) Starr Indemnity & Liability Company, 399 Park Ave., 8th Floor, New York, NY
9 10022 and/or United Church Insurance Association, 700 Prospect Ave., 8th Floor,
10 Cleveland, OH 44115 and/or PCCCI.

11 ***Excess Liability Policy 4***

12 (a) Excess Liability Coverage.

13 (b) National Fire and Marine Insurance Company, 3024 Harney Street, Omaha, NE
14 68131.

15 (c) Churches and Affiliated Entities and Organizations of the United Church of Christ,
16 700 Prospect Avenue, 5th Floor, Cleveland, OH 44114.

17 (d) Policy No. 42-XSF-100120-03

18 (e) Limits of Coverage: \$15,000,000.

19 (f) No.

20 (g) National Fire and Marine Insurance Company, 3024 Harney Street, Omaha, NE
21 68131 and/or United Church Insurance Association, 700 Prospect Ave., 8th Floor,
22 Cleveland, OH 44115 and/or PCCCI.

23 **FORM INTERROGATORY NO. 4.2:**

24 Are you self-insured under any statute for the damages, claims, or actions that have
25 arisen out of the **INCIDENT**? If so, specify the statute.

26 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 4.2:**

27 No.

28 ///

1 **FORM INTERROGATORY NO. 12.1:**

2 State the name, **ADDRESS**, and telephone number of each individual:

- 3 (a) who witnessed the **INCIDENT** or the events occurring immediately before or
4 after the **INCIDENT**;
- 5 (b) who made any statement at the scene of the **INCIDENT**;
- 6 (c) who heard any statements made about the **INCIDENT** by any individual at the
7 scene; and
- 8 (d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge
9 of the **INCIDENT** (except for expert witnesses covered by Code of Civil
10 Procedure section 2034).

11 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 12.1:**

12 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
13 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
14 adequately defined in the context of this case by the propounding party.

15 Subject to and without waiving any objections, responding party states as follows:

- 16 (a) PCCCI was not present at the scene and did not witness the ignition of the Sherpa
17 Fire. Upon information and belief, Charles Cook, 2504 Refugio Road, Goleta,
18 California, 93117, (310) 775-5858, is the only individual who witnessed the ignition
19 of the Sherpa Fire or events immediately before or after said incident.
- 20 (b) PCCCI was not present at the scene and did not witness the ignition of the Sherpa
21 Fire. PCCCI has no knowledge of any statements made by any individuals occurring
22 at the scene at the time of the ignition of the Sherpa Fire. Upon information and
23 belief, the following individuals made statements subsequent to the ignition of the
24 Sherpa Fire at the scene of the ignition of the Sherpa Fire: Charles Cook,
25 2504 Refugio Road, Goleta, California, 93117, (310) 775-5858, James Snodgrass,
26 Fire Investigator (Lead), (805) 686-5061, Santa Barbara County Fire Department,
27 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805) 681-5500, and

28 ///

Exhibit E-8

1 Shawn Steiner, Fire Investigator, Santa Barbara County Fire Department,
2 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805) 681-5500.

3 (c) PCCCI was not present at the scene and did not witness the ignition of the Sherpa
4 Fire. PCCCI has no knowledge of any statements made by any individuals occurring
5 at the scene of the ignition of the Sherpa Fire at the time of the ignition of the Sherpa
6 Fire. Rev. Richard Harrison, employed by responding party, and, upon information
7 and belief, the following individuals heard statements about the ignition of the
8 Sherpa Fire by individuals who were at the scene at the time of the incident: James
9 Snodgrass, Fire Investigator (Lead), (805) 686-5061, Santa Barbara County Fire
10 Department, 4410 Cathedral Oaks Road, Santa Barbara, California 93110,
11 (805) 681-5500, and Shawn Steiner, Fire Investigator, Santa Barbara County Fire
12 Department, 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805) 681-
13 5500.

14 (d) PCCCI was not present at the scene and did not witness the ignition of the Sherpa
15 Fire. Upon information and belief, Charles Cook, 2504 Refugio Road, Goleta,
16 California 93117, (310) 775-5858, is the only individual who witnessed the ignition
17 of the Sherpa Fire or events immediately before or after said incident. Rev. Richard
18 Harrison, employed by responding party, and, upon information and belief, the
19 following individuals have knowledge relating to the fire investigations conducted
20 on Rancho La Scherpa by the Santa Barbara County Fire Department and Rev.
21 Harrison concerning the Sherpa Fire: Robert A. Ryan, 2504 Refugio Road, Goleta,
22 California 93117, (816) 585-4453; Charles Cook, 2504 Refugio Road, Goleta,
23 California 93117, (310) 775-5858; Sally Cook, 2504 Refugio Road, Goleta,
24 California 93117, who may be contacted through counsel of record for defendant
25 Charles Cook; employees of the Santa Barbara County Fire Department, including
26 James Snodgrass, Fire Investigator (Lead), (805) 686-5061, Santa Barbara County
27 Fire Department, 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805)
28 681-5500, Greg Nuckols, Fire Investigator, (805) 686-5072, Santa Barbara County

Exhibit E-9

1 Fire Department, 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805)
2 681-5500, Shawn Steiner, Fire Investigator, (805) 686-5074, Santa Barbara County
3 Fire Department, 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805)
4 681-5500, and Steve Selle, Captain – VMP2, (805) 686-5068, Santa Barbara County
5 Fire Department, 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805)
6 681-5500, and employees of the United States Forest Service, including Shawn
7 Brandow, Patrol 41, (805) 698-8151, Eric Verdries, Patrol 44, (805) 698-8151, and
8 Darrell Scott, Law Enforcement Officer #1984, and Bob Lowry, Investigator from
9 the Santa Barbara County District Attorney’s Office, (805) 568-2323. Other contact
10 information unknown.

11 **FORM INTERROGATORY NO. 12.2:**

12 Have YOU OR ANYONE ACTING ON YOUR BEHALF interviewed any individual
13 concerning the **INCIDENT**? If so, for each individual state:

- 14 (a) the name, **ADDRESS**, and telephone number of the individual interviewed;
- 15 (b) the date of the interview; and
- 16 (c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted
17 the interview.

18 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 12.2:**

19 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
20 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
21 adequately defined in the context of this case by the propounding party.

22 Objection to this interrogatory to the extent it seeks information protected by the
23 attorney-client or attorney work-product privileges. (See, e.g., *Payless Drug Store, Inc. v.*
24 *Superior Court* (1976) 54 Cal.App.3d 988; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87
25 Cal.App.3d 626, 647-648; *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
26 Cal.App.4th 214.) The work product privilege protects interviews conducted by counsel. (*Coito*
27 *v. Superior Court* (2012) 54 Cal. 4th 480; *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th

28 ///

1 807.) The work product protection extends to pre-litigation insurance investigations. (*Soltani-*
2 *Rastegar v. Superior Court* (1989) 208 Cal.App.3d 424, 425.)

3 Subject to and without waiving any objections, responding party further states as
4 follows:

5 ***Rev. Richard Harrison's June 16, 2016, Discussion with Captain, SBCFD***

- 6 a) Upon information and belief, a Captain from the Santa Barbara County Fire Department,
7 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805) 681-5500, and other
8 employees of the Santa Barbara County Fire Department that had responded to the
9 Sherpa Fire, the identities of which are unknown
10 b) June 16, 2016.
11 c) Rev. Richard Harrison, employed by responding party.

12 ***Rev. Richard Harrison's Discussions with Robert A. Ryan***

- 13 a) Robert A. Ryan, 2504 Refugio Road, Goleta, California 93117, (816) 585-4453.
14 b) June 15, 2016; June 16, 2016; June 28, 2016; and several other unknown dates between
15 those dates.
16 c) Rev. Richard Harrison, employed by responding party.

17 ***Rev. Richard Harrison's Discussions with Charles Cook***

- 18 a) Charles Cook, 2504 Refugio Road, Goleta, California 93117, (310) 775-5858.
19 b) Approximately June 24, 2016, or June 25, 2016. June 28, 2016.
20 c) Rev. Richard Harrison, employed by responding party.

21 ***Subsequent Discussions with Charles Cook and Robert A. Ryan***

- 22 a) Charles Cook, 2504 Refugio Road, Goleta, California 93117, (310) 775-5858.
23 b) Counsel for responding party, Robert W. Brockman, Jr., Daley & Heft, LLP.
24 c) November 2, 2017.
25 a) Robert A. Ryan, 2504 Refugio Road, Goleta, California 93117, (816) 585-4453.
26 b) Approx. 2017-2018, exact dates unknown.
27 c) Counsel for responding party, Garrett A. Marshall, Daley & Heft, LLP.

28 ///

1 **FORM INTERROGATORY NO. 12.3:**

2 Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained a written or
3 recorded statement from any individual concerning the **INCIDENT**? If so, for each statement
4 state:

- 5 (a) the name, **ADDRESS**, and telephone number of the individual from whom the
6 statement was obtained;
- 7 (b) the name, **ADDRESS**, and telephone number of the individual who obtained the
8 statement;
- 9 (c) the date the statement was obtained; and
- 10 (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the
11 original statement or a copy.

12 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 12.3:**

13 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
14 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
15 adequately defined in the context of this case by the propounding party.

16 Objection to this interrogatory to the extent it seeks information protected by the
17 attorney-client or attorney work-product privileges. (See, e.g., *Payless Drug Store, Inc. v.*
18 *Superior Court* (1976) 54 Cal.App.3d 988; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87
19 Cal.App.3d 626, 647-648; *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
20 Cal.App.4th 214.) The work product privilege protects interviews conducted by counsel. (*Coito*
21 *v. Superior Court* (2012) 54 Cal.4th 480; *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th
22 807.) The work product protection extends to pre-litigation insurance investigations. (*Soltani-*
23 *Rastegar v. Superior Court* (1989) 208 Cal.App.3d 424, 425.)

24 Objection to this interrogatory to the extent it seeks the premature disclosure of expert
25 opinions, materials, and work-product, in violation of Code of Civil Procedure sections
26 2034.010 et seq., including, but not limited to, sections 2034.210, 2034.220, and 2034.270.

27 Subject to, and without waiving any objections, responding party states as follows: No.

28 ///

1 **FORM INTERROGATORY NO. 12.4:**

2 Do YOU OR ANYONE ACTING ON YOUR BEHALF know of any photographs,
3 films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or
4 plaintiff's injuries? If so, state:

- 5 (a) the number of photographs or feet of film or videotape;
6 (b) the places, objects, or persons photographed, filmed, or videotaped;
7 (c) the date the photographs, films, or videotapes were taken;
8 (d) the name, **ADDRESS**, and telephone number of the individual taking the
9 photographs, films, or videotapes; and
10 (e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the
11 original or a copy of the photographs, films, or videotapes.

12 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 12.4:**

13 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
14 otherwise unintelligible with regard to the use of the term "INCIDENT" which has not been
15 adequately defined in the context of this case by the propounding party.

16 Objection to this interrogatory to the extent it seeks the disclosure of information in
17 violation of a party's, witness', and/or third-party's common law and California and Federal
18 Constitutional rights to privacy, of which responding party is obligated to protect. (Cal. Const.,
19 art. I, § 1; *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1; *Cobb v. Sup. Ct.* (1979)
20 99 Cal.App.3d 543; *Britt v. Superior Court* (1978) 20 Cal.3d 844; *Valley Bank of Nevada v.*
21 *Superior Court* (1975) 15 Cal.3d 652, *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123,
22 130.)

23 Objection to this interrogatory to the extent it seeks information protected by the
24 attorney-client or attorney work-product privileges. (See, e.g., *Payless Drug Store, Inc. v.*
25 *Superior Court* (1976) 54 Cal.App.3d 988; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87
26 Cal.App.3d 626, 647-648; *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
27 Cal.App.4th 214.) The work product privilege protects interviews conducted by counsel. (*Coito*
28 *v. Superior Court* (2012) 54 Cal. 4th 480; *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th

Exhibit E-13

1 807.) The work product protection extends to pre-litigation insurance investigations. (*Soltani-*
2 *Rastegar v. Superior Court* (1989) 208 Cal.App.3d 424, 425.)

3 Objection to this interrogatory to the extent it seeks the premature disclosure of expert
4 opinions, materials, and work-product, in violation of Code of Civil Procedure sections
5 2034.010 et seq., including, but not limited to, sections 2034.210, 2034.220, and 2034.270.

6 Subject to, and without waiving any objections, responding party states as follows: Yes.

7 Santa Barbara County Fire Department – Nuckols Photo Log

8 (a) 324 photographs.

9 (b) Upon information and belief, Rancho La Scherpa.

10 (c) Upon information and belief, 107 on June 15, 2016, and, 217 on June 16, 2016.

11 (d) Upon information and belief, by Greg Nuckols, Santa Barbara County Fire
12 Department.

13 (e) Counsel for responding party has copies. Upon information and belief, the Santa
14 Barbara County Fire Department has the originals.

15 Santa Barbara County Fire Department – Brandow Images

16 (a) 7 photographs.

17 (b) Upon information and belief, Rancho La Scherpa.

18 (c) Upon information and belief, on June 15, 2016, or June 16, 2016.

19 (d) Upon information and belief, by Captain Shawn Brandow, United States Forest
20 Service.

21 (e) Counsel for responding party has copies. Upon information and belief, the Santa
22 Barbara County Fire Department has the originals.

23 Santa Barbara County Fire Department – Aerial Photos of General Origin Area

24 (a) 3 photographs.

25 (b) Upon information and belief, Rancho La Scherpa.

26 (c) Unknown.

27 (d) Unknown.

28 ///

Exhibit E-14

1 (e) Counsel for responding party has copies. Upon information and belief, the Santa
2 Barbara County Fire Department has copies.

3 Rev. Rick Harrison's Post-Fire Photographs

4 (a) 31 photographs.

5 (b) Rancho La Scherpa.

6 (c) June 28, 2016.

7 (d) Rev. Rick Harrison, employee of PCCCI.

8 (e) Counsel for responding party has copies. PCCCI has the originals.

9 Robert A. Ryan's Post-Fire Video

10 (a) One video.

11 (b) Upon information and belief, Rancho La Scherpa.

12 (c) Upon information and belief, June 17, 2016.

13 (d) Upon information and belief, by Robert A. Ryan, 2504 Refugio Road, Goleta,
14 CA 93117.

15 (e) Counsel for responding party has a copy. Upon information and belief, Robert A.
16 Ryan has the original.

17 Plaintiffs' Discovery Responses in Related Matter: Responding party is aware of
18 hundreds of photographs and videos produced by the plaintiffs in response to defendant
19 Presbyterian Camp and Conference Center's Request for Production (Set One) served in a
20 related matter filed by La Paloma Ranch, LLC and Eric P. Hvolboll. The plaintiffs in the related
21 matter claim that some of those photographs and videos depict Rancho La Scherpa and the
22 Sherpa Fire. Counsel for responding party has copies of certain photographs and videos which
23 were produced by the aforesaid plaintiffs in the related matter. Upon information and belief, La
24 Paloma Ranch, LLC and Eric P. Hvolboll, and/or their counsel have the originals and/or copies
25 of said photographs and videos. The plaintiffs in the related matter can be contacted at and such
26 materials and information can be requested from their counsel, Melissa J. Fassett, Price, Postel
27 & Parma, LLP, (805) 962-0011, ext. 102, mjf@ppplaw.com, 200 E. Carrillo Street, Suite 400,
28 Santa Barbara, CA 93101.

1 **FORM INTERROGATORY NO. 12.5:**

2 Do YOU OR ANYONE ACTING ON YOUR BEHALF know of any diagram,
3 reproduction, or model of any place or thing (except for items developed by expert witnesses
4 covered by Code of Civil Procedure section 2034) concerning the **INCIDENT**? If so, for each
5 item state:

- 6 (a) the type (i.e., diagram, reproduction, or model);
- 7 (b) the subject matter; and
- 8 (c) the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

9 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 12.5:**

10 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
11 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
12 adequately defined in the context of this case by the propounding party.

13 Objection to this interrogatory to the extent it seeks information protected by the
14 attorney-client or attorney work-product privileges. (See, e.g., *Payless Drug Store, Inc. v.*
15 *Superior Court* (1976) 54 Cal.App.3d 988; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87
16 Cal.App.3d 626, 647-648; *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
17 Cal.App.4th 214.) The work product privilege protects interviews conducted by counsel. (*Coito*
18 *v. Superior Court* (2012) 54 Cal.4th 480; *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th
19 807.) The work product protection extends to pre-litigation insurance investigations. (*Soltani-*
20 *Rastegar v. Superior Court* (1989) 208 Cal.App.3d 424, 425.)

21 Objection to this interrogatory to the extent it seeks the premature disclosure of expert
22 opinions, materials, and work-product, in violation of Code of Civil Procedure
23 sections 2034.010 et seq., including, but not limited to, sections 2034.210, 2034.220, and
24 2034.270.

25 Subject to and without waiving any objections, responding party states as follows: Yes.

26 **Scene Diagram and Fire Direction Indicator Log**

- 27 (a) Diagram.
- 28 (b) Scene Diagram and Fire Direction Indicator Log.

Exhibit E-16

1 (c) Responding party has a copy. Upon information and belief, the Santa Barbara
2 County Fire Department has the original.

3 Santa Barbara County Live Fuel Moistures

4 (a) Diagram

5 (b) Santa Barbara County Live Fuel Moistures

6 (c) Responding party has a copy. Upon information and belief, the Santa Barbara
7 County Fire Department has the original.

8 Lightning Strike Maps for June 3-15, 2016

9 (a) 4 Diagrams

10 (b) Lightning Strike Maps for June 3-15, 2016

11 (c) Responding party has a copy. Upon information and belief, the Santa Barbara
12 County Fire Department has the originals.

13 **FORM INTERROGATORY NO. 12.6:**

14 Was a report made by any **PERSON** concerning the **INCIDENT**? If so, state:

15 (a) the name, title, identification number, and employer of the **PERSON** who made
16 the report;

17 (b) the date and type of report made;

18 (c) the name, **ADDRESS**, and telephone number of the **PERSON** for whom the
19 report was made; and

20 (d) the name, **ADDRESS**, and telephone number of each person who has the original
21 or a copy of the report.

22 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 12.6:**

23 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
24 otherwise unintelligible with regard to the use of the term "INCIDENT" which has not been
25 adequately defined in the context of this case by the propounding party.

26 Objection to this interrogatory to the extent it seeks information protected by the
27 attorney-client or attorney work-product privileges. (See, e.g., *Payless Drug Store, Inc. v.*
28 *Superior Court* (1976) 54 Cal.App.3d 988; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87

Exhibit E-17

1 Cal.App.3d 626, 647-648; *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
2 Cal.App.4th 214.) The work product privilege protects interviews conducted by counsel. (*Coito*
3 *v. Superior Court* (2012) 54 Cal. 4th 480; *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th
4 807.) The work product protection extends to pre-litigation insurance investigations. (*Soltani-*
5 *Rastegar v. Superior Court* (1989) 208 Cal.App.3d 424, 425.)

6 Subject to and without waiving any objections, responding party responds as follows:
7 Yes. Responding party did not prepare a report concerning the incident. Responding party is
8 aware of the following reports concerning the incident:

9 Santa Barbara County Fire Department Fire Investigation Report

10 (a) James Snodgrass, Fire Investigator (Lead), Santa Barbara County Fire
11 Department, 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805) 681-5500; Greg
12 Nuckols, Fire Investigator, Santa Barbara County Fire Department, 4410 Cathedral Oaks Road,
13 Santa Barbara, California 93110, (805) 681-5500; Shawn Steiner, Fire Investigator, Santa
14 Barbara County Fire Department, 4410 Cathedral Oaks Road, Santa Barbara, California 93110,
15 (805) 686-5072; Shawn Brandow, Patrol 41, United States Forest Service, and, Bob Lowry,
16 Investigator, Santa Barbara County District Attorney's Office. Other contact information
17 unknown.

18 (b) June 15, 2016 (rev. 5/2017), Fire Investigation Report.

19 (c) Santa Barbara County Fire Department, 4410 Cathedral Oaks Road, Santa
20 Barbara, California 93110, (805) 681-5500.

21 (d) Santa Barbara County Fire Department, 4410 Cathedral Oaks Road, Santa
22 Barbara, California 93110, (805) 681-5500, upon information and belief, has the original.
23 Counsel for responding party has a copy.

24 United States Department of Agriculture Forest Service Incident Report

25 (a) Unknown, Reporting Officer, ID Number Unknown, Incident Name:
26 MASM09Q.

27 (b) June 16, 2016, Incident Report, Incident Type: Fire.

28 (c) United States Department of Agriculture.

1 (d) United States Department of Agriculture, upon information and belief, has the
2 original. Counsel for responding party has a copy.

3 **FORM INTERROGATORY NO. 12.7:**

4 Have YOU OR ANYONE ACTING ON YOUR BEHALF inspected the scene of the
5 **INCIDENT?** If so, for each inspection state:

6 (a) the name, **ADDRESS**, and telephone number of the individual making the
7 inspection (except for expert witnesses covered by Code of Civil Procedure
8 section 2034); and

9 (b) the date of the inspection.

10 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 12.7:**

11 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
12 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
13 adequately defined in the context of this case by the propounding party.

14 Objection to this interrogatory as to the use of the vague, ambiguous, and undefined
15 terms and phrases “inspected,” as that term is vague, ambiguous, undefined, unintelligible, and
16 otherwise improperly requires speculation with regard to what facts or circumstances would fall
17 into such categories of information.

18 Objection to this interrogatory to the extent it seeks information protected by the
19 attorney-client or attorney work-product privileges. (See, e.g., *Payless Drug Store, Inc. v.*
20 *Superior Court* (1976) 54 Cal.App.3d 988; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87
21 Cal.App.3d 626, 647-648; *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
22 Cal.App.4th 214.) The work product privilege protects interviews conducted by counsel. (*Coito*
23 *v. Superior Court* (2012) 54 Cal. 4th 480; *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th
24 807.) The work product protection extends to pre-litigation insurance investigations. (*Soltani-*
25 *Rastegar v. Superior Court* (1989) 208 Cal.App.3d 424, 425.)

26 Subject to and without waiving any objections, responding party responds as follows:
27 Yes.

28 (a) Rev. Richard Harrison.

1 (b) June 28, 2016.

2 **FORM INTERROGATORY NO. 13.1:**

3 Have YOU OR ANYONE ACTING ON YOUR BEHALF conducted surveillance of
4 any individual involved in the **INCIDENT** or any party to this action? If so, for each surveillance
5 state:

- 6 (a) the name, **ADDRESS**, and telephone number of the individual or party;
- 7 (b) the time, date, and place of surveillance;
- 8 (c) the name, **ADDRESS**, and telephone number of the individual who conducted
9 the surveillance; and
- 10 (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the
11 original or a copy of any surveillance photograph, film, or videotape.

12 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 13.1:**

13 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
14 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
15 adequately defined in the context of this case by the propounding party.

16 Subject to and without waiving any objections, responding party states as follows: No.

17 **FORM INTERROGATORY NO. 13.2:**

18 Has a written report been prepared on the surveillance? If so, for each written report
19 state:

- 20 (a) the title;
- 21 (b) the date;
- 22 (c) the name, **ADDRESS**, and telephone number of the individual who prepared the
23 report; and
- 24 (d) the name, **ADDRESS** and telephone number of each **PERSON** who has the
25 original or a copy.

26 ///

27 ///

28 ///

1 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 13.2:**

2 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
3 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
4 adequately defined in the context of this case by the propounding party.

5 Subject to and without waiving any objections, responding party states as follows: Not
6 applicable.

7 **FORM INTERROGATORY NO. 14.1:**

8 Do YOU OR ANYONE ACTING ON YOUR BEHALF contend that any **PERSON**
9 involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation
10 was a legal (proximate) cause of the **INCIDENT**? If so, identify the name, **ADDRESS**, and
11 telephone number of each **PERSON** and the statute, ordinance, or regulation that was violated.

12 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 14.1:**

13 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
14 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
15 adequately defined in the context of this case by the propounding party.

16 Subject to and without waiving any objections, responding party provides the following:
17 No.

18 **FORM INTERROGATORY NO. 14.2:**

19 Was any **PERSON** cited or charged with a violation of any statute, ordinance, or
20 regulation as a result of this **INCIDENT**? If so, for each **PERSON** state:

- 21 (a) the name, **ADDRESS**, and telephone number of the **PERSON**;
- 22 (b) the statute, ordinance, or regulation allegedly violated;
- 23 (c) whether the **PERSON**, entered a plea in response to the citation or charge and, if
24 so, the plea entered; and
- 25 (d) the name and **ADDRESS** of the court or administrative agency, names of the
26 parties, and case number.

27 ///

28 ///

1 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 14.2:**

2 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
3 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
4 adequately defined in the context of this case by the propounding party.

5 Objection to this interrogatory to the extent it seeks information protected by the
6 attorney-client or attorney work-product privileges. (See, e.g., *Payless Drug Store, Inc. v.*
7 *Superior Court* (1976) 54 Cal.App.3d 988; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87
8 Cal.App.3d 626, 647-648; *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
9 Cal.App.4th 214.) The work product privilege protects interviews conducted by counsel. (*Coito*
10 *v. Superior Court* (2012) 54 Cal.4th 480; *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th
11 807.) The work product protection extends to pre-litigation insurance investigations. (*Soltani-*
12 *Rastegar v. Superior Court* (1989) 208 Cal.App.3d 424, 425.)

13 Objection to this interrogatory to the extent it seeks the premature disclosure of expert
14 opinions, materials, and work-product, in violation of Code of Civil Procedure sections
15 2034.010 et seq., including, but not limited to, sections 2034.210, 2034.220, and 2034.270.

16 Subject to and without waiving any objections, responding party provides as follows:
17 Not to responding party’s knowledge.

18 **FORM INTERROGATORY NO. 16.1:**

19 Do you contend that any **PERSON**, other than you or plaintiff, contributed to the
20 occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff? If so, for each
21 **PERSON**:

- 22 (a) state the name, **ADDRESS**, and telephone number of the **PERSON**;
- 23 (b) state all facts upon which you base your contention;
- 24 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who
25 have knowledge of the facts; and
- 26 (d) identify all **DOCUMENTS** and other tangible things that support your
27 contention and state the name, **ADDRESS**, and telephone number of the
28 **PERSON** who has each **DOCUMENT** or thing.

1 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 16.1:**

2 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
3 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
4 adequately defined in the context of this case by the propounding party.

5 Objection to this interrogatory to the extent it seeks information protected by the
6 attorney-client or attorney work-product privileges. (See, e.g., *Payless Drug Store, Inc. v.*
7 *Superior Court* (1976) 54 Cal.App.3d 988; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87
8 Cal.App.3d 626, 647-648; *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
9 Cal.App.4th 214.) The work product privilege protects interviews conducted by counsel. (*Coito*
10 *v. Superior Court* (2012) 54 Cal. 4th 480; *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th
11 807.) The work product protection extends to pre-litigation insurance investigations. (*Soltani-*
12 *Rastegar v. Superior Court* (1989) 208 Cal.App.3d 424, 425.)

13 Objection to this interrogatory because responding party has not yet had a reasonable
14 opportunity to conduct an investigation and discovery into the propounding party’s injuries and
15 damages, including, but not limited to, by deposition and site inspection. This interrogatory is
16 therefore premature and improper and violates Instruction Section 2(d) provided on the Form
17 Interrogatories - General. Investigation and discovery in this case continues and the responding
18 party reserves the right to amend or supplement this response as more information is discovered.

19 Subject to and without waiving any objections, responding party states as follows: Yes.

- 20 (a) Charles Cook, 2504 Refugio Road, Goleta, CA 93117, (310) 775-5858.
- 21 (b) Upon information and belief, the actions of Charles Cook led to the ignition of the Sherpa
22 Fire. Responding party did not witness the ignition of the Sherpa Fire, nor did any of its
23 employees or agents. However, upon information and belief, after strong winds caused
24 smoke from a fire set in an indoor fireplace to back up into a building, Charles Cook
25 carried a log outside of the building which led to embers from that log coming in contact
26 with dry grass which then ignited the Sherpa Fire.

- 27 (c) Charles Cook, 2504 Refugio Road, Goleta, CA 93117, (310) 775-5858.

28 ///

1 (d) County of Santa Barbara Fire Department Fire Investigation Report. Counsel for
2 responding party has a copy of the report. The County of Santa Barbara Fire Department,
3 upon information and belief, has the original report.

4 **FORM INTERROGATORY NO. 16.6:**

5 Do you contend that any part of the loss of earnings or income claimed by plaintiff in
6 discovery proceedings thus far in this case was unreasonable or was not caused by the
7 **INCIDENT**? If so:

- 8 (a) identify each part of the loss;
9 (b) state all facts upon which you base your contention;
10 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who
11 have knowledge of the facts; and
12 (d) identify all **DOCUMENTS** and other tangible things that support your
13 contention and state the name, **ADDRESS**, and telephone number of the
14 **PERSON** who has each **DOCUMENT** or thing.

15 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 16.6:**

16 Objection to this interrogatory being vague, ambiguous, overbroad, argumentative, and
17 otherwise unintelligible with regard to the use of the term “INCIDENT” which has not been
18 adequately defined in the context of this case by the propounding party.

19 Objection to this interrogatory to the extent it seeks information protected by the
20 attorney-client or attorney work-product privileges. (See, e.g., *Payless Drug Store, Inc. v.*
21 *Superior Court* (1976) 54 Cal.App.3d 988; *Rodriguez v. McDonnell Douglas Corp.* (1978) 87
22 Cal.App.3d 626, 647-648; *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
23 Cal.App.4th 214.)

24 Objection to this interrogatory to the extent it seeks the premature disclosure of expert
25 opinions, materials, and work-product, in violation of Code of Civil Procedure sections
26 2034.010 et seq., including, but not limited to, sections 2034.210, 2034.220, and 2034.270.

27 Objection to this interrogatory because responding party has not yet had a reasonable
28 opportunity to conduct an investigation and discovery into the propounding party’s injuries and

1 damages, including, but not limited to, by deposition and site inspection. This interrogatory is
2 therefore premature and improper and violates Instruction Section 2(d) provided on the Form
3 Interrogatories - General. Discovery in this case continues and the responding party reserves
4 the right to amend or supplement this response as more information is discovered.

5 Subject to and without waiving any objections, responding party states as follows: the
6 propounding party has not disclosed any information regarding a claim of loss of earnings or
7 income in discovery proceedings thus far in this case. This interrogatory is therefore not
8 applicable to the case and premature. Therefore, no response can be provided at this time.

9 **FORM INTERROGATORY NO. 17.1:**

10 Is your response to each request for admission served with these interrogatories an
11 unqualified admission? If not, for each response that is not an unqualified admission:

- 12 (a) state the number of the request;
- 13 (b) state all facts upon which you base your response;
- 14 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who
15 have knowledge of those facts; and
- 16 (d) identify all **DOCUMENTS** and other tangible things that support your response
17 and state the name, **ADDRESS**, and telephone number of the **PERSON** who has
18 each **DOCUMENT** or thing.

19 **FURTHER RESPONSE TO FORM INTERROGATORY NO. 17.1:**

20 Responding party hereby incorporates the objections it included in its responses to the
21 propounding party's requests for admission as if fully included here in this response. Subject to
22 and without waiving those objections, responding party states as follows:

23 ***RESPONSE TO REQUEST FOR ADMISSION NO. 1:***

- 24 (a) 1
- 25 (b) Responding party lacks sufficient information and knowledge as to whether the
26 SHERPA FIRE started on the PROPERTY and therefore denies. A reasonable inquiry
27 concerning whether the SHERPA FIRE started on the PROPERTY has been made, and
28 the information known or readily obtainable is insufficient to enable responding party to

1 admit the matter. Responding party was not present on the PROPERTY at the time the
2 SHERPA FIRE is alleged to have started on the PROPERTY. No employee or agent of
3 responding party is known by responding party to have been present on the PROPERTY
4 at the time the SHERPA FIRE is alleged to have started on the PROPERTY. Therefore,
5 responding party lacks personal knowledge of the information necessary to enable it to
6 admit the matter.

7 (c) Rev. Rick Harrison, PCCCI.

8 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
9 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
10 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
11 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
12 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
13 Department has the original.

14 ***RESPONSE TO REQUEST FOR ADMISSION NO. 3:***

15 (a) 3

16 (b) Responding party denies that responding party operated a camp/conference center on the
17 PROPERTY on June 15, 2016. It is not clear what the propounding party means by the
18 phrase “operating a camp/conference center on the PROPERTY.” However, responding
19 party was not operating a camp/conference center on the PROPERTY on June 15, 2016
20 as responding party understands the request. Responding party was not present on the
21 PROPERTY on June 15, 2016. Responding party does not have knowledge of any
22 employee or agent of responding party being present on the PROPERTY on June 15,
23 2016.

24 (c) Rev. Rick Harrison, PCCCI.

25 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
26 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
27 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
28 Hvolboll in the related matter are believed to have a copy. Upon information and belief,

1 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
2 Department has the original.

3 ***RESPONSE TO REQUEST FOR ADMISSION NO. 4:***

4 (a) 4

5 (b) Responding party denies that defendant Charles E. Cook was a property manager of the
6 PROPERTY for responding party on June 15, 2016. It is not clear what the propounding
7 party means by the phrase “property manager of the PROPERTY.” However, defendant
8 Charles E. Cook was not a property manager of the PROPERTY for responding party on
9 June 15, 2016, as responding party understands this request.

10 Responding party lacks sufficient information and knowledge as to whether defendant
11 Charles E. Cook was a property manager of the PROPERTY for any other individual
12 and/or entity and/or third-party and therefore denies. A reasonable inquiry concerning
13 whether defendant Charles E. Cook was a property manager of the PROPERTY for any
14 other individual and/or entity and/or third-party has been made, and the information
15 known or readily obtainable is insufficient to enable responding party to admit the
16 matter. Responding party was not present on the PROPERTY on June 15, 2016. No
17 employee or agent of responding party is known by responding party to have been
18 present on the PROPERTY on June 15, 2016. Responding party also lacks personal
19 knowledge of the intent of defendant Charles E. Cook. Therefore, responding party lacks
20 personal knowledge of the information necessary to enable it to admit the matter.

21 (c) Rev. Rick Harrison, PCCCI.

22 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.

23 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
24 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
25 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
26 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
27 Department has the original.

28 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

2 (a) 5

3 (b) Responding party lacks sufficient information and knowledge as to whether defendant
4 Charles E. Cook was overseeing the PROPERTY on June 15, 2016, and therefore denies.
5 A reasonable inquiry concerning whether defendant Charles E. Cook was overseeing the
6 PROPERTY on June 15, 2016, has been made, and the information known or readily
7 obtainable is insufficient to enable responding party to admit the matter. It is not clear
8 what the propounding party means by the phrase “overseeing the PROPERTY.”
9 Responding party was not present on the PROPERTY on June 15, 2016. No employee
10 or agent of responding party is known by responding party to have been present on the
11 PROPERTY on June 15, 2016. Responding party also lacks personal knowledge of the
12 intent of defendant Charles E. Cook. Therefore, responding party lacks personal
13 knowledge of the information necessary to enable it to admit the matter.

14 (c) Rev. Rick Harrison, PCCCI.

15 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
16 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
17 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
18 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
19 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
20 Department has the original.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

22 (a) 6

23 (b) Responding party denies that defendant Charles E. Cook was employed by responding
24 party on June 15, 2016. It is not clear what the propounding party means by the phrase
25 “employed.” However, defendant Charles E. Cook was not employed by responding
26 party on June 15, 2016, as responding party understands the request. Defendant
27 Charles E. Cook was not an employee of responding party on June 15, 2016. Responding
28 party was not on the PROPERTY on June 15, 2016. Responding party has no knowledge

1 of any employees or agents of responding party being present on the PROPERTY on
2 June 15, 2016.

3 (c) Rev. Rick Harrison, PCCCI.

4 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
5 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
6 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
7 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
8 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
9 Department has the original.

10 ***RESPONSE TO REQUEST FOR ADMISSION NO. 7:***

11 (a) 7

12 (b) Responding party denies that defendant Charles E. Cook was an agent of responding
13 party on June 15, 2016. It is not known what the propounding party means by the
14 phrase "agent." However, responding party has no knowledge of defendant
15 Charles E. Cook being an agent of responding party on June 15, 2016, as responding
16 party understands the request. Defendant Charles E. Cook was not an agent of
17 responding party on June 15, 2016. Responding party was not present on the
18 PROPERTY on June 15, 2016. Responding party has no knowledge of any
19 employee or agent of responding party being present on the PROPERTY ON
20 June 15, 2016.

21 (c) Rev. Rick Harrison, PCCCI.

22 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire
23 Department. Defense counsel for responding party has a copy. Counsel for
24 defendant Charles Cook is believed to have a copy. Counsel for plaintiffs La Paloma
25 Ranch, LLC, and Eric P. Hvolboll in the related matter are believed to have a copy.
26 Upon information and belief, CALFIRE has a copy. Upon information and belief,
27 the Santa Barbara County Fire Department has the original.

28 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

2 (a) 8

3 (b) Responding party lacks sufficient information and knowledge as to whether defendant
4 Charles E. Cook lived in house on the PROPERTY on June 15, 2016 and therefore
5 denies. A reasonable inquiry concerning whether defendant Charles E. Cook lived in
6 house on the PROPERTY on June 15, 2016, has been made, and the information known
7 or readily obtainable is insufficient to enable responding party to admit the matter. It is
8 not clear what the propounding party means by the phrase “lived in house on the
9 PROPERTY.” Responding party was not present on the PROPERTY on June 15, 2016.
10 No employee or agent of responding party is known by responding party to have been
11 present on the PROPERTY on June 15, 2016. Responding party also lacks personal
12 knowledge of the intent of defendant Charles E. Cook. Therefore, responding party lacks
13 personal knowledge of the information necessary to enable it to admit the matter.

14 (c) Rev. Rick Harrison, PCCCI.

15 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
16 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
17 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
18 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
19 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
20 Department has the original.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

22 (a) 9

23 (b) Responding party denies that defendant Charles E. Cook was renting or leasing a
24 residence on the PROPERTY from responding party on June 15, 2016. It is not clear
25 what the propounding party means by the phrase “renting or leasing a residence on the
26 PROPERTY.” Responding party has no knowledge of defendant Charles E. Cook
27 renting or leasing a residence on the PROPERTY from responding party on June 15,
28 2016, as responding party understands the request.

1 Responding party lacks sufficient information and knowledge as to whether defendant
2 Charles E. Cook was renting or leasing a residence on the PROPERTY from any other
3 individual and/or entity and/or third-party on June 15, 2016, and therefore denies. A
4 reasonable inquiry concerning whether defendant Charles E. Cook was renting or leasing
5 a residence on the PROPERTY from any other individual and/or entity and/or third-party
6 on June 15, 2016, has been made, and the information known or readily obtainable is
7 insufficient to enable responding party to admit the matter.

8 (c) Rev. Rick Harrison, PCCCI.

9 (d) Unknown at this time, investigation continues.

10 ***RESPONSE TO REQUEST FOR ADMISSION NO. 10:***

11 (a) 10

12 (b) Responding party lacks sufficient information and knowledge as to whether defendant
13 Charles E. Cook was residing in a house on the PROPERTY with permission from
14 responding party on June 15, 2016, and therefore denies. A reasonable inquiry
15 concerning whether defendant Charles E. Cook was residing in a house on the
16 PROPERTY with permission from responding party on June 15, 2016, has been made,
17 and the information known or readily obtainable is insufficient to enable responding
18 party to admit the matter. It is not clear what the propounding party means by the phrases
19 “residing” and “with permission.” Responding party was not present on the PROPERTY
20 on June 15, 2016. No employee or agent of responding party is known by responding
21 party to have been present on the PROPERTY on June 15, 2016. Responding party also
22 lacks personal knowledge of the intent of defendant Charles E. Cook. Therefore,
23 responding party lacks personal knowledge of the information necessary to enable it to
24 admit the matter.

25 (c) Rev. Rick Harrison, PCCCI.

26 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
27 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
28 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.

1 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
2 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
3 Department has the original.

4 ***RESPONSE TO REQUEST FOR ADMISSION NO. 11:***

5 (a) 11

6 (b) Responding party lacks sufficient information and knowledge as to whether defendant
7 Charles E. Cook had a fire in his residence’s indoor fireplace on the PROPERTY on the
8 morning of June 15, 2016, and therefore denies. A reasonable inquiry concerning
9 whether defendant Charles E. Cook had a fire in his residence’s indoor fireplace on the
10 PROPERTY on the morning of June 15, 2016, has been made, and the information
11 known or readily obtainable is insufficient to enable responding party to admit the
12 matter. It is not clear what the propounding party means by the phrases “had a fire,” “the
13 indoor fireplace,” and “Defendant Charles E. Cook’s residence on the PROPERTY.”
14 Responding party was not present on the PROPERTY on June 15, 2016. No employee
15 or agent of responding party is known by responding party to have been present on the
16 PROPERTY on June 15, 2016. Responding party also lacks personal knowledge of the
17 intent of defendant Charles E. Cook. Therefore, responding party lacks personal
18 knowledge of the information necessary to enable it to admit the matter.

19 (c) Rev. Rick Harrison, PCCCI.

20 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
21 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
22 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
23 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
24 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
25 Department has the original.

26 ///

27 ///

28 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

2 (a) 12

3 (b) Responding party denies that it performed no maintenance on the indoor fireplace at
4 Defendant Charles E. Cook’s residence on the PROPERTY. It is not clear what the
5 propounding party means by the phrases “performed,” “maintenance,” “performed no
6 maintenance,” “the indoor fireplace,” and “Defendant Charles E. Cook’s residence,” and
7 “residence.” However, responding party has no knowledge of performing no
8 maintenance on an indoor fireplace on the PROPERTY as it understands the request.
9 Responding party contends that the indoor fireplaces on the PROPERTY were
10 reasonably maintained. Responding party has allowed for the PROPERTY, including
11 any indoor fireplaces on the PROPERTY to be regularly inspected as part of the required
12 annual inspections performed by the County of Santa Barbara Fire Department and
13 County of Santa Barbara Department of Public Health as required by the County of Santa
14 Barbara relating to its issuance of the Conditional Use Permit applicable to the
15 PROPERTY. Upon information and belief, the indoor fireplaces on the PROPERTY
16 have also been cleaned periodically after their use in the past. The Santa Barbara County
17 Fire Department Fire Investigation Report relating to the Sherpa Fire also evidences the
18 fact that the Santa Barbara County Fire Department inspected an indoor fireplace on the
19 PROPERTY and did not document any type of violation of law on the PROPERTY.

20 (c) Rev. Rick Harrison, and upon information and belief, defendant Charles Cook.
21 Robert A. Ryan, Chief Executive Officer for Hope Refuge, Inc. Employees of the Santa
22 Barbara County Fire Department, including Damien Manuele, Inspector, Inspection
23 Engine Company. D. Wilson. Station 18, James Snodgrass, Fire Investigator (Lead),
24 (805) 686-5061. Santa Barbara County Fire Department, 4410 Cathedral Oaks Road,
25 Santa Barbara, California 93110, (805) 681-5500, Greg Nuckols, Fire Investigator, (805)
26 686-5072, Santa Barbara County Fire Department, 4410 Cathedral Oaks Road, Santa
27 Barbara, California 93110, (805) 681-5500, Shawn Steiner, Fire Investigator, (805) 686-
28 5074, Santa Barbara County Fire Department, 4410 Cathedra Oaks Road, Santa Barbara,

1 California 93110, (805) 681-5500, and Steve Selle, Captain – VMP2, (805) 686-5068,
2 Santa Barbara County Fire 4410 Cathedral Oaks Road, Santa Barbara, California 93110,
3 (805) 681-5500, and employees of the United States Forest Service, including Shawn
4 Brandow, Patrol 41, (805) 698-8151, Eric Verdries, Patrol 44, (805) 698-8151, and
5 Darrell Scott, Law Enforcement Officer #1984, and Bob Lowry, Investigator from the
6 Santa Barbara County District Attorney’s Office, (805) 568-2323. Employees of the
7 Santa Barbara County Department of Public Health Environmental Health Services,
8 including Norma Campos-Bernal, REHS, and Kimberly Lindsey, MPH, REHS, and
9 former employees of responding party, Jack Drake, former Camp Director (918) 779-
10 8245, jackldrake@gmail.com; Jack Morrow, former Facilities Manager; and Dave Davis
11 (505) 699-6202.

12 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
13 Counsel of record for responding party has a copy. Counsel of record for defendant
14 Charles Cook is believed to have a copy. Counsel of record for plaintiffs La Paloma
15 Ranch, LLC, and Eric P. Hvolboll in the related matter are believed to have a copy. Upon
16 information and belief, plaintiff CAL FIRE and counsel of record for plaintiff CAL FIRE
17 have copies. Upon information and belief, the Santa Barbara County Fire Department
18 has the original. Counsel of record for plaintiff CAL FIRE, responding party, defendant
19 Charles Cook, and plaintiffs La Paloma Ranch, LLC and Eric P. Hvolboll in the related
20 matter are also believed to have copies of the following documents (where applicable
21 the County of Santa Barbara is also believed to have the originals of their respective
22 department’s reports): January 9, 2009, Santa Barbara County Fire Department
23 Inspection Report Permit Application for Rancho La Sherpa (00223-00224); April 30,
24 2009, Santa Barbara County Fire Department Inspection Report Permit Application for
25 Rancho La Scherpa Reinspection Report (00186); January 16, 2014, Santa Barbara
26 County Department of Public Health Environmental Health Services Organized Camp
27 Inspection Report for Rancho La Scherpa (00498-00504); August 6, 2015, Santa Barbara
28 County Fire Department Inspection Report for Rancho La Scherpa (00490, LPR00105);

1 August 30, 2015-August 31, 2015, Santa Barbara County Department of Public Health
2 Environmental Health Services Organized Camp Inspection Report for Rancho
3 La Scherpa (00482, 00484-00489, 00491); December 1, 2016, Santa Barbara County
4 Department of Public Health Environmental Health Services Health Permit for Rancho
5 La Scherpa (00483); January 18, 2017, Santa Barbara County Fire Department Fire
6 Inspection Report for Rancho La Scherpa (00002-00003); Campfire, Barbecue, and
7 Fireplace Fires Policies and Procedures of Synod of Southern California and Hawaii
8 (00141); Rancho La Scherpa Facility Guidelines (00099-00103); Facilities Maintenance
9 Inspection (00191); Facilities Inspection Form (00191); Rancho La Scherpa Christian
10 Conference Center Maintenance/Repair Request (00192); Rancho La Scherpa Christian
11 Conference Center Maintenance Procedures/Safety Inspections (00189); Memorandum
12 of Understanding (01548-01553).

13 ***RESPONSE TO REQUEST FOR ADMISSION NO. 13:***

14 (a) 13

15 (b) Responding party denies that it performed no maintenance on the chimney attached to
16 the indoor fireplace at Defendant Charles E. Cook’s residence on the PROPERTY. It is
17 not clear what the propounding party means by the phrases, “performed,”
18 “maintenance,” “performed no maintenance,” “the chimney connected to the indoor
19 fireplace,” “Defendant Charles E. Cook’s residence,” and “residence.” However,
20 responding party has no knowledge of performing no maintenance on a chimney attached
21 to any indoor fireplace on the PROPERTY as it understands the request. Responding
22 party contends that the chimneys attached to the indoor fireplaces on the PROPERTY
23 were reasonably maintained. Responding party has allowed for the PROPERTY,
24 including any chimneys attached to the indoor fireplaces on the PROPERTY to be
25 regularly inspected as part of the required annual inspections performed by the County
26 of Santa Barbara Fire Department and County of Santa Barbara Department of Public
27 Health as required by the County of Santa Barbara relating to its issuance of the
28 Conditional Use Permit applicable to the PROPERTY. Upon information and belief, the

1 indoor fireplaces, including portions of the chimneys attached thereto on the
2 PROPERTY have also been cleaned periodically after their use in the past. The Santa
3 Barbara County Fire Department Fire Investigation Report relating to the Sherpa Fire
4 also evidences the fact that the Santa Barbara County Fire Department inspected an
5 indoor fireplace and chimney attached thereto on the PROPERTY and did not document
6 any type of violation of law on the PROPERTY.

7 (c) Rev. Rick Harrison and, upon information and belief, defendant Charles Cook. Robert
8 A. Ryan, Chief Executive Officer for Hope Refuge, Inc. Employees of the Santa Barbara
9 County Fire Department, including Damien Manuele, Inspector, Inspection Engine
10 Company. D. Wilson. Station 18, James Snodgrass, Fire Investigator (Lead), (805) 686-
11 5061. Santa Barbara County Fire Department, 4410 Cathedral Oaks Road, Santa
12 Barbara, California 93110, (805) 681-5500, Greg Nuckols, Fire Investigator, (805) 686-
13 5072, Santa Barbara County Fire Department, 4410 Cathedral Oaks Road, Santa
14 Barbara, California 93110, (805) 681-5500, Shawn Steiner, Fire Investigator, (805) 686-
15 5074, Santa Barbara County Fire Department, 4410 Cathedra Oaks Road, Santa Barbara,
16 California 93110, (805) 681-5500, and Steve Selle, Captain – VMP2, (805) 686-5068,
17 Santa Barbara County Fire 4410 Cathedral Oaks Road, Santa Barbara, California 93110,
18 (805) 681-5500, and employees of the United States Forest Service, including Shawn
19 Brandow, Patrol 41, (805) 698-8151, Eric Verdries, Patrol 44, (805) 698-8151, and
20 Darrell Scott, Law Enforcement Officer #1984, and Bob Lowry, Investigator from the
21 Santa Barbara County District Attorney’s Office, (805) 568-2323. Employees of the
22 Santa Barbara County Department of Public Health Environmental Health Services,
23 including Norma Campos-Bernal, REHS, and Kimberly Lindsey, MPH, REHS and
24 former employees of responding party, Jack Drake, former Camp Director (918) 779-
25 8245, jackldrake@gmail.com; Jack Morrow, former Facilities Manager; and Dave Davis
26 (505) 699-6202.

27 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
28 Counsel of record for responding party has a copy. Counsel of record for defendant

Exhibit E-36

1 Charles Cook is believed to have a copy. Counsel of record for plaintiffs La Paloma
2 Ranch, LLC, and Eric P. Hvolboll in the related matter are believed to have a copy. Upon
3 information and belief, plaintiff CAL FIRE and counsel of record for plaintiff CAL FIRE
4 have copies. Upon information and belief, the Santa Barbara County Fire Department
5 has the original. Counsel of record for plaintiff CAL FIRE, responding party, defendant
6 Charles Cook, and plaintiffs La Paloma Ranch, LLC and Eric P. Hvolboll in the related
7 matter are also believed to have copies of the following documents (where applicable
8 the County of Santa Barbara is also believed to have the originals of their respective
9 department's reports): January 9, 2009, Santa Barbara County Fire Department
10 Inspection Report Permit Application for Rancho La Sherpa (00223-00224); April 30,
11 2009, Santa Barbara County Fire Department Inspection Report Permit Application for
12 Rancho La Scherpa Reinspection Report (00186); January 16, 2014, Santa Barbara
13 County Department of Public Health Environmental Health Services Organized Camp
14 Inspection Report for Rancho La Scherpa (00498-00504); August 6, 2015, Santa Barbara
15 County Fire Department Inspection Report for Rancho La Scherpa (00490, LPR00105);
16 August 30, 2015-August 31, 2015, Santa Barbara County Department of Public Health
17 Environmental Health Services Organized Camp Inspection Report for Rancho
18 La Scherpa (00482, 00484-00489, 00491); December 1, 2016, Santa Barbara County
19 Department of Public Health Environmental Health Services Health Permit for Rancho
20 La Scherpa (00483); January 18, 2017, Santa Barbara County Fire Department Fire
21 Inspection Report for Rancho La Scherpa (00002-00003); Campfire, Barbecue, and
22 Fireplace Fires Policies and Procedures of Synod of Southern California and Hawaii
23 (00141); Rancho La Scherpa Facility Guidelines (00099-00103); Facilities Maintenance
24 Inspection (00191); Facilities Inspection Form (00191); Rancho La Scherpa Christian
25 Conference Center Maintenance/Repair Request (00192); Rancho La Scherpa Christian
26 Conference Center Maintenance Procedures/Safety Inspections (00189); Memorandum
27 of Understanding (01548-01553).

28 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

2 (a) 14

3 (b) Responding party denies that it is not aware of Defendant Charles E. Cook having
4 performed any maintenance on the indoor fireplace at his residence on the PROPERTY.
5 It is not clear what the propounding party means by the phrases “aware,” “performed,”
6 “maintenance,” “the indoor fireplace at,” “his residence,” and “residence.” However,
7 PCCCI denies that it is not aware of Defendant Charles E. Cook performing maintenance
8 on fireplaces on the PROPERTY as it understands the request. Upon information and
9 belief, responding party believes that defendant Charles E. Cook has allowed for the
10 PROPERTY, including any indoor fireplaces on the PROPERTY to be regularly
11 inspected as part of the required annual inspections performed by the County of Santa
12 Barbara Fire Department and County of Santa Barbara Department of Public Health as
13 required by the County of Santa Barbara relating to its issuance of the Conditional Use
14 Permit applicable to the PROPERTY. Upon information and belief, responding party
15 also believes that defendant Charles E. Cook has cleaned indoor fireplaces on the
16 PROPERTY periodically after their use in the past. The Santa Barbara County Fire
17 Department Fire Investigation Report relating to the Sherpa Fire also evidences the fact
18 that the Santa Barbara County Fire Department inspected an indoor fireplace on the
19 PROPERTY and did not document any type of violation of law on the PROPERTY.

20 (c) Rev. Rick Harrison, and, upon information and belief, defendant Charles Cook.
21 Employees of the Santa Barbara County Fire Department, including James Snodgrass,
22 Fire Investigator (Lead), (805) 686-5061. Santa Barbara County Fire Department,
23 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805) 681-5500, Greg
24 Nuckols, Fire Investigator, (805) 686-5072, Santa Barbara County Fire Department,
25 4410 Cathedral Oaks Road, Santa Barbara, California 93110, (805) 681-5500, Shawn
26 Steiner, Fire Investigator, (805) 686-5074, Santa Barbara County Fire Department,
27 4410 Cathedra Oaks Road, Santa Barbara, California 93110, (805) 681-5500, and Steve
28 Selle, Captain – VMP2, (805) 686-5068, Santa Barbara County Fire, 4410 Cathedral

1 Oaks Road, Santa Barbara, California 93110, (805) 681-5500, and employees of the
2 United States Forest Service, including Shawn Brandow, Patrol 41, (805) 698-8151, Eric
3 Verdries, Patrol 44, (805) 698-8151, and Darrell Scott, Law Enforcement Officer #1984,
4 and Bob Lowry, Investigator from the Santa Barbara County District Attorney’s Office,
5 (805) 568-2323. Upon information and belief, employees of the Santa Barbara County
6 Department of Public Health Environmental Health Services. Further contact
7 information unknown.

8 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
9 Counsel of record for responding party has a copy. Counsel of record for defendant
10 Charles Cook is believed to have a copy. Counsel of record for plaintiffs La Paloma
11 Ranch, LLC, and Eric P. Hvolboll in the related matter are believed to have a copy. Upon
12 information and belief, plaintiff CAL FIRE and counsel of record for plaintiff CAL FIRE
13 have copies. Upon information and belief, the Santa Barbara County Fire Department
14 has the original. Counsel of record for plaintiff CAL FIRE, responding party, defendant
15 Charles Cook, and plaintiffs La Paloma Ranch, LLC and Eric P. Hvolboll in the related
16 matter are also believed to have copies of the following documents (where applicable
17 the County of Santa Barbara is also believed to have the originals of their respective
18 department’s reports): December 1, 2016, Santa Barbara County Department of Public
19 Health Permit (00483); January 18, 2017, Santa Barbara County Fire Department Fire
20 Inspection Report for Rancho La Scherpa (00002-00003); Memorandum of
21 Understanding (01548-01553).

22 ***RESPONSE TO REQUEST FOR ADMISSION NO. 15:***

23 (a) 15

24 (b) Responding party denies that it is not aware of Defendant Charles E. Cook having
25 performed any maintenance on the chimney connected to the indoor fireplace at his
26 residence on the PROPERTY. It is not clear what the propounding party means by the
27 phrases “aware,” “performed,” “maintenance,” “the chimney connected to the indoor
28 fireplace at,” “his residence,” and “residence.” However, the responding party denies

1 that it is not aware of Defendant Charles E. Cook performing any maintenance on
2 chimneys on the PROPERTY as it understands the request. Upon information and belief,
3 responding party believes that defendant Charles E. Cook has allowed for the
4 PROPERTY, including any indoor fireplaces and chimneys attached thereto on the
5 PROPERTY to be regularly inspected as part of the required annual inspections
6 performed by the County of Santa Barbara Fire Department and County of Santa Barbara
7 Department of Public Health as required by the County of Santa Barbara relating to its
8 issuance of the Conditional Use Permit applicable to the PROPERTY. Upon information
9 and belief, responding party also believes that defendant Charles E. Cook has cleaned
10 indoor fireplaces, including portions of the chimneys attached thereto, on the
11 PROPERTY periodically after their use in the past. The Santa Barbara County Fire
12 Department Fire Investigation Report relating to the Sherpa Fire also evidences the fact
13 that the Santa Barbara County Fire Department inspected an indoor fireplace and
14 chimney attached thereto on the PROPERTY and did not document any type of violation
15 of law on the PROPERTY.

16 (c) Rev. Rick Harrison and, upon information and belief, defendant Charles Cook.
17 Employees of the Santa Barbara County Fire Department, including James Snodgrass,
18 Fire Investigator (Lead), (805) 686-5061. Santa Barbara County Fire Department, 4410
19 Cathedral Oaks Road, Santa Barbara, California 93110, (805) 681-5500, Greg Nuckols,
20 Fire Investigator, (805) 686-5072, Santa Barbara County Fire Department, 4410
21 Cathedral Oaks Road, Santa Barbara, California 93110, (805) 681-5500, Shawn Steiner,
22 Fire Investigator, (805) 686-5074, Santa Barbara County Fire Department, 4410
23 Cathedra Oaks Road, Santa Barbara, California 93110, (805) 681-5500, and Steve Selle,
24 Captain – VMP2, (805) 686-5068, Santa Barbara County Fire, 4410 Cathedral Oaks
25 Road, Santa Barbara, California 93110, (805) 681-5500, and employees of the United
26 States Forest Service, including Shawn Brandow, Patrol 41, (805) 698-8151, Eric
27 Verdries, Patrol 44, (805) 698-8151, and Darrell Scott, Law Enforcement Officer #1984,
28 and Bob Lowry, Investigator from the Santa Barbara County District Attorney’s Office,

1 (805) 568-2323. Upon information and belief, employees of the Santa Barbara County
2 Department of Public Health Environmental Health Services. Further contact
3 information unknown.

4 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
5 Counsel of record for responding party has a copy. Counsel of record for defendant
6 Charles Cook is believed to have a copy. Counsel of record for plaintiffs La Paloma
7 Ranch, LLC, and Eric P. Hvolboll in the related matter are believed to have a copy. Upon
8 information and belief, plaintiff CAL FIRE and counsel of record for plaintiff CAL FIRE
9 have copies. Upon information and belief, the Santa Barbara County Fire Department
10 has the original. Counsel of record for plaintiff CAL FIRE, responding party, defendant
11 Charles Cook, and plaintiffs La Paloma Ranch, LLC and Eric P. Hvolboll in the related
12 matter are also believed to have copies of the following documents (where applicable
13 the County of Santa Barbara is also believed to have the originals of their respective
14 department's reports): December 1, 2016, Santa Barbara County Department of Public
15 Health Permit (00483); January 18, 2017, Santa Barbara County Fire Department Fire
16 Inspection Report for Rancho La Scherpa (00002-00003); Memorandum of
17 Understanding (01548-01553).

18 ***RESPONSE TO REQUEST FOR ADMISSION NO. 16:***

19 (a) 16

20 (b) Responding party lacks sufficient information and knowledge as to whether the fire in
21 Defendant Charles E. Cook residence's indoor fireplace on the morning of June 15, 2016
22 caused smoke to back up inside the residence, and therefore denies. A reasonable inquiry
23 concerning whether the fire in Defendant Charles E. Cook residence's indoor fireplace
24 on the morning of June 15, 2016 caused smoke to back up inside the residence, has been
25 made, and the information known or readily obtainable is insufficient to enable
26 responding party to admit the matter. It is not clear what the propounding party means
27 by the phrases "the fire," "Defendant Charles E. Cook residence's indoor fireplace,
28 "caused," "back up," and "residence." Responding party was not present on the

1 PROPERTY on June 15, 2016. No employee or agent of responding party is known by
2 responding party to have been present on the PROPERTY on June 15, 2016. Responding
3 party also lacks personal knowledge of the intent of defendant Charles E. Cook.
4 Therefore, responding party lacks personal knowledge of the information necessary to
5 enable it to admit the matter.

6 (c) Rev. Rick Harrison, PCCCI.

7 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
8 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
9 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
10 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
11 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
12 Department has the original.

13 ***RESPONSE TO REQUEST FOR ADMISSION NO. 17:***

14 (a) 17

15 (b) Responding party lacks sufficient information and knowledge as to whether defendant
16 Charles E. Cook carried a smoldering log from his residence's indoor fireplace to outside
17 of the residence on the morning of June 15, 2016, and therefore denies. A reasonable
18 inquiry concerning whether defendant Charles E. Cook carried a smoldering log from
19 his residence's indoor fireplace to outside of the residence on the morning of June 15,
20 2016, has been made, and the information known or readily obtainable is insufficient to
21 enable responding party to admit the matter. It is not clear what the propounding party
22 means by the phrases "smoldering log," "his residence's indoor fireplace," and
23 "residence." Responding party was not present on the PROPERTY on June 15, 2016.
24 No employee or agent of responding party is known by responding party to have been
25 present on the PROPERTY on June 15, 2016. Responding party also lacks personal
26 knowledge of the intent of defendant Charles E. Cook. Therefore, responding party lacks
27 personal knowledge of the information necessary to enable it to admit the matter.

28 (c) Rev. Rick Harrison, PCCCI.

1 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
2 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
3 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
4 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
5 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
6 Department has the original.

7 ***RESPONSE TO REQUEST FOR ADMISSION NO. 18:***

8 (a) 18

9 (b) Responding party lacks sufficient information and knowledge as to whether defendant
10 Charles E. Cook carried a smoldering log from his residence’s indoor fireplace with
11 metal fireplace tongs on the morning of June 15, 2016, and therefore denies. A
12 reasonable inquiry concerning whether defendant Charles E. Cook carried a smoldering
13 log from his residence’s indoor fireplace with metal fireplace tongs on the morning of
14 June 15, 2016, has been made, and the information known or readily obtainable is
15 insufficient to enable responding party to admit the matter. It is not clear what the
16 propounding party means by the phrases “smoldering log,” “his residence’s indoor
17 fireplace,” and “residence.” Responding party was not present on the PROPERTY on
18 June 15, 2016. No employee or agent of responding party is known by responding party
19 to have been present on the PROPERTY on June 15, 2016. Responding party also lacks
20 personal knowledge of the intent of defendant Charles E. Cook. Therefore, responding
21 party lacks personal knowledge of the information necessary to enable it to admit the
22 matter.

23 (c) Rev. Rick Harrison, PCCCI.

24 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
25 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
26 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
27 Hvolboll in the related matter are believed to have a copy. Upon information and belief,

28 ///

1 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
2 Department has the original.

3 ***RESPONSE TO REQUEST FOR ADMISSION NO. 19:***

4 (a) 19

5 (b) Responding party lacks sufficient information and knowledge as to whether the
6 smoldering log defendant Charles E. Cook carried from his residence’s indoor fireplace
7 on the morning of June 15, 2016, dropped burning embers on the floor of the residence,
8 and therefore denies. A reasonable inquiry concerning whether the smoldering log
9 defendant Charles E. Cook carried from his residence’s indoor fireplace on the morning
10 of June 15, 2016, dropped burning embers on the floor of the residence, has been made,
11 and the information known or readily obtainable is insufficient to enable responding
12 party to admit the matter. It is not clear what the propounding party means by the phrase
13 “smoldering log,” “his residence’s indoor fireplace,” “dropped,” burning embers,” and
14 “residence.” Responding party was not present on the PROPERTY on June 15, 2016.
15 No employee or agent of responding party is known by responding party to have been
16 present on the PROPERTY on June 15, 2016. Responding party also lacks personal
17 knowledge of the intent of defendant Charles E. Cook. Therefore, responding party lacks
18 personal knowledge of the information necessary to enable it to admit the matter.

19 (c) Rev. Rick Harrison, PCCCI

20 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
21 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
22 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
23 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
24 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
25 Department has the original.

26 ///

27 ///

28 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

2 (a) 20

3 (b) Responding party lacks sufficient information and knowledge as to whether the
4 smoldering log defendant Charles E. Cook carried from his residence’s indoor fireplace
5 on the morning of June 15, 2016, dropped burning embers into vegetation outside of the
6 residence, and therefore denies. A reasonable inquiry concerning whether the
7 smoldering log defendant Charles E. Cook carried from his residence’s indoor fireplace
8 on the morning of June 15, 2016, dropped burning embers into vegetation outside of the
9 residence, has been made, and the information known or readily obtainable is insufficient
10 to enable responding party to admit the matter. It is not clear what the propounding party
11 means by the phrases “smoldering log,” “his residence’s indoor fireplace,” “dropped,”
12 “burning embers,” “vegetation,” and “residence.” Responding party was not present on
13 the PROPERTY on June 15, 2016. No employee or agent of responding party is known
14 by responding party to have been present on the PROPERTY on June 15, 2016.
15 Responding party also lacks personal knowledge of the intent of defendant Charles E.
16 Cook. Therefore, responding party lacks personal knowledge of the information
17 necessary to enable it to admit the matter.

18 (c) Rev. Rick Harrison, PCCCI.

19 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
20 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
21 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
22 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
23 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
24 Department has the original.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

26 (a) 21

27 (b) Responding party denies that any fire alleged by the propounding party to have been
28 caused by a smoldering log defendant Charles E. Cook carried from his residence’s

1 indoor fireplace on the morning of June 15, 2016, escaped responding party's control.
2 Responding party lacks sufficient information and knowledge as to the remaining
3 allegations and therefore denies. A reasonable inquiry concerning whether a fire was
4 caused by a smoldering log defendant Charles E. Cook carried from a residence's indoor
5 fireplace on the morning of June 15, 2016, has been made and the information known or
6 readily obtainable is insufficient to enable responding party to admit those matters. It is
7 not clear what the propounding party means by the phrases "the fire," "caused by,"
8 "smoldering log," his residence's indoor fireplace," "residence," "escaped," and
9 "control." Responding party was not present on the PROPERTY on June 15, 2016. No
10 employee or agent of responding party is known by responding party to have been
11 present on the PROPERTY on June 15, 2016. Responding party lacks personal
12 knowledge of the intent of defendant Charles E. Cook. Responding party has no
13 knowledge of any fire escaping its control on the morning of June 15, 2016.

14 (c) Rev. Rick Harrison, PCCCI.

15 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
16 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
17 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
18 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
19 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
20 Department has the original.

21 ***RESPONSE TO REQUEST FOR ADMISSION NO. 22:***

22 (a) 22

23 (b) Responding party lacks sufficient information and knowledge as to whether defendant
24 Charles E. Cook attempted to take a smoldering log he carried from his residence's
25 indoor fireplace on the morning of June 15, 2016, to a debris-filled outdoor fire pit, and
26 therefore denies. A reasonable inquiry concerning whether defendant Charles E. Cook
27 attempted to take a smoldering log he carried from his residence's indoor fireplace on
28 the morning of June 15, 2016 to a debris-filled outdoor fire pit, and therefore denies, has

1 been made, and the information known or readily obtainable is insufficient to enable
2 responding party to admit the matter. It is not clear what the propounding party means
3 by the phrases “attempted,” “smoldering log,” “his residence’s indoor fireplace,”
4 “residence,” and “debris-filled outdoor fire pit.” Responding party was not present on
5 the PROPERTY on June 15, 2016. No employee or agent of responding party is known
6 by responding party to have been present on the PROPERTY on June 15, 2016.
7 Responding party also lacks personal knowledge of the intent of defendant Charles E.
8 Cook. Therefore, responding party lacks personal knowledge of the information
9 necessary to enable it to admit the matter.

10 (c) Rev. Rick Harrison, PCCCI.

11 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
12 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
13 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
14 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
15 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
16 Department has the original.

17 ***RESPONSE TO REQUEST FOR ADMISSION NO. 23:***

18 (a) 23

19 (b) Responding party lacks sufficient information and knowledge as to whether defendant
20 Charles E. Cook carried a smoldering log from inside his residence on the morning of
21 June 15, 2016, to a water spigot on the outside of the residence, and therefore denies. A
22 reasonable inquiry concerning whether defendant Charles E. Cook carried a smoldering
23 log from inside his residence on the morning of June 15, 2016, to a water spigot on the
24 outside of the residence, has been made, and the information known or readily obtainable
25 is insufficient to enable responding party to admit the matter. It is not clear what the
26 propounding party means by the phrases “smoldering log,” “residence,” and “water
27 spigot.” Responding party was not present on the PROPERTY on June 15, 2016. No
28 employee or agent of responding party is known by responding party to have been

1 present on the PROPERTY on June 15, 2016. Responding party also lacks personal
2 knowledge of the intent of defendant Charles E. Cook. Therefore, responding party lacks
3 personal knowledge of the information necessary to enable it to admit the matter.

4 (c) Rev. Rick Harrison, PCCCI.

5 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
6 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
7 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
8 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
9 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
10 Department has the original.

11 ***RESPONSE TO REQUEST FOR ADMISSION NO. 24:***

12 (a) 24

13 (b) Responding party lacks sufficient information and knowledge as to whether responding
14 party was responsible for any vegetation maintenance in the area around defendant
15 Charles E. Cook’s residence on June 15, 2016, and therefore denies. A reasonable inquiry
16 concerning whether responding party was responsible for any vegetation maintenance in
17 the area around Defendant Charles E. Cook’s residence on June 15, 2016, has been made,
18 and the information known or readily obtainable is insufficient to enable responding
19 party to admit the matter. It is not clear what the propounding party means by the phrases
20 “responsible,” “vegetation,” “maintenance,” “vegetation maintenance,” “the area around
21 Defendant Charles E. Cook’s residence,” “Charles E. Cook’s residence,” and
22 “residence.” Responding party was not present on the PROPERTY on June 15, 2016.
23 No employee or agent of responding party is known by responding party to have been
24 present on the PROPERTY on June 15, 2016. Responding party also lacks personal
25 knowledge of the intent of defendant Charles E. Cook. Therefore, responding party lacks
26 personal knowledge of the information necessary to enable it to admit the matter.

27 (c) Rev. Rick Harrison, PCCCI.

28 ///

1 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
2 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
3 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
4 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
5 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
6 Department has the original.

7 ***RESPONSE TO REQUEST FOR ADMISSION NO. 25:***

8 (a) 25

9 (b) Responding party lacks sufficient information and knowledge as to whether responding
10 party was responsible for clearing any vegetation in the area around defendant Charles E.
11 Cook's residence on June 15, 2016, and therefore denies. A reasonable inquiry
12 concerning whether responding party was responsible for clearing any vegetation in the
13 area around defendant Charles E. Cook's residence on June 15, 2016, has been made,
14 and the information known or readily obtainable is insufficient to enable responding
15 party to admit the matter. It is not clear what the propounding party means by the phrases
16 "responsible," "clearing," "vegetation," "the area around Defendant Charles E. Cook's
17 residence," "Charles E. Cook's residence," and "residence." Responding party was not
18 present on the PROPERTY on June 15, 2016. No employee or agent of responding party
19 is known by responding party to have been present on the PROPERTY on June 15, 2016.
20 Responding party also lacks personal knowledge of the intent of defendant Charles E.
21 Cook. Therefore, responding party lacks personal knowledge of the information
22 necessary to enable it to admit the matter.

23 (c) Rev. Rick Harrison, PCCCI.

24 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
25 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
26 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
27 Hvolboll in the related matter are believed to have a copy. Upon information and belief,

28 ///

1 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
2 Department has the original.

3 ***RESPONSE TO REQUEST FOR ADMISSION NO. 26:***

4 (a) 26

5 (b) Responding party lacks sufficient information and knowledge as to whether responding
6 party failed to clear the vegetation in the area around defendant Charles E. Cook's
7 residence on June 15, 2016, and therefore denies. A reasonable inquiry concerning
8 whether responding party failed to clear the vegetation in the area around defendant
9 Charles E. Cook's residence on June 15, 2016, has been made, and the information
10 known or readily obtainable is insufficient to enable responding party to admit the
11 matter. It is not clear what the propounding party means by the phrases "failed," "clear,"
12 "vegetation," "the vegetation in the area around Defendant Charles E. Cook's residence,"
13 "Charles E. Cook's residence," and "residence." Responding party was not present on
14 the PROPERTY on June 15, 2016. No employee or agent of responding party is known
15 by responding party to have been present on the PROPERTY on June 15, 2016.
16 Responding party also lacks personal knowledge of the intent of defendant Charles E.
17 Cook. Therefore, responding party lacks personal knowledge of the information
18 necessary to enable it to admit the matter.

19 (c) Rev. Rick Harrison, PCCCI.

20 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
21 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
22 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
23 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
24 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
25 Department has the original.

26 ///

27 ///

28 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

2 (a) 27

3 (b) Responding party lacks sufficient information and knowledge as to whether responding
4 party was responsible for maintaining FIRE PREVENTION EQUIPMENT on the
5 PROPERTY on June 15, 2016, and therefore denies. A reasonable inquiry concerning
6 whether responding party was responsible for maintaining FIRE PREVENTION
7 EQUIPMENT on the PROPERTY on June 15, 2016, has been made, and the information
8 known or readily obtainable is insufficient to enable responding party to admit the
9 matter. It is not clear what the propounding party means by the phrases “responsible,”
10 “maintaining,” “responsible for maintaining,” and “FIRE PREVENTION
11 EQUIPMENT.” Responding party was not present on the PROPERTY on June 15,
12 2016. No employee or agent of responding party is known by responding party to have
13 been present on the PROPERTY on June 15, 2016. Therefore, responding party lacks
14 personal knowledge of the information necessary to enable it to admit the matter.

15 (c) Rev. Rick Harrison, PCCCI

16 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
17 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
18 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
19 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
20 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
21 Department has the original.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

23 (a) 28

24 (b) Responding party lacks sufficient information and knowledge as to whether defendant
25 Charles E. Cook started the SHERPA FIRE when he allegedly carried a smoldering log
26 outside of his residence through vegetation on June 15, 2016, and therefore denies. A
27 reasonable inquiry concerning whether defendant Charles E. Cook started the SHERPA
28 FIRE when he allegedly carried a smoldering log outside of his residence through

1 vegetation on June 15, 2016, has been made, and the information known or readily
2 obtainable is insufficient to enable responding party to admit the matter. It is not clear
3 what the propounding party means by the phrases “started,” “smoldering log,” his
4 residence,” “residence,” “through vegetation,” and “vegetation.” Responding party was
5 not present on the PROPERTY on June 15, 2016. No employee or agent of responding
6 party is known by responding party to have been present on the PROPERTY on June 15,
7 2016. Responding party also lacks personal knowledge of the intent of defendant
8 Charles E. Cook. Therefore, responding party lacks personal knowledge of the
9 information necessary to enable it to admit the matter.

10 (c) Rev. Rick Harrison, PCCCI.

11 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
12 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
13 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
14 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
15 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
16 Department has the original.

17 ***RESPONSE TO REQUEST FOR ADMISSION NO. 29:***

18 (a) 29

19 (b) Responding party denies it was negligent and denies it caused the SHERPA FIRE. It is
20 not clear what the propounding party means by the phrases “negligence” and “caused.”
21 Responding party denies that it was negligent and denies that it caused the SHERPA
22 FIRE as it understands the request. Responding party was not present on the
23 PROPERTY at the time that plaintiff alleges the Sherpa Fire was caused by defendant
24 Charles Cook. Defendant Charles Cook was not an employee or agent of responding
25 party. Responding party has no knowledge of any employee or agent of responding party
26 being present on the PROPERTY at the time that plaintiff alleges the Sherpa Fire was
27 caused.

28 (c) Rev. Rick Harrison, PCCCI.

1 (d) Sherpa Fire Investigation Report prepared by Santa Barbara County Fire Department.
2 Defense counsel for responding party has a copy. Counsel for defendant Charles Cook
3 is believed to have a copy. Counsel for plaintiffs La Paloma Ranch, LLC, and Eric P.
4 Hvolboll in the related matter are believed to have a copy. Upon information and belief,
5 CALFIRE has a copy. Upon information and belief, the Santa Barbara County Fire
6 Department has the original.

7 Dated: January 18, 2019

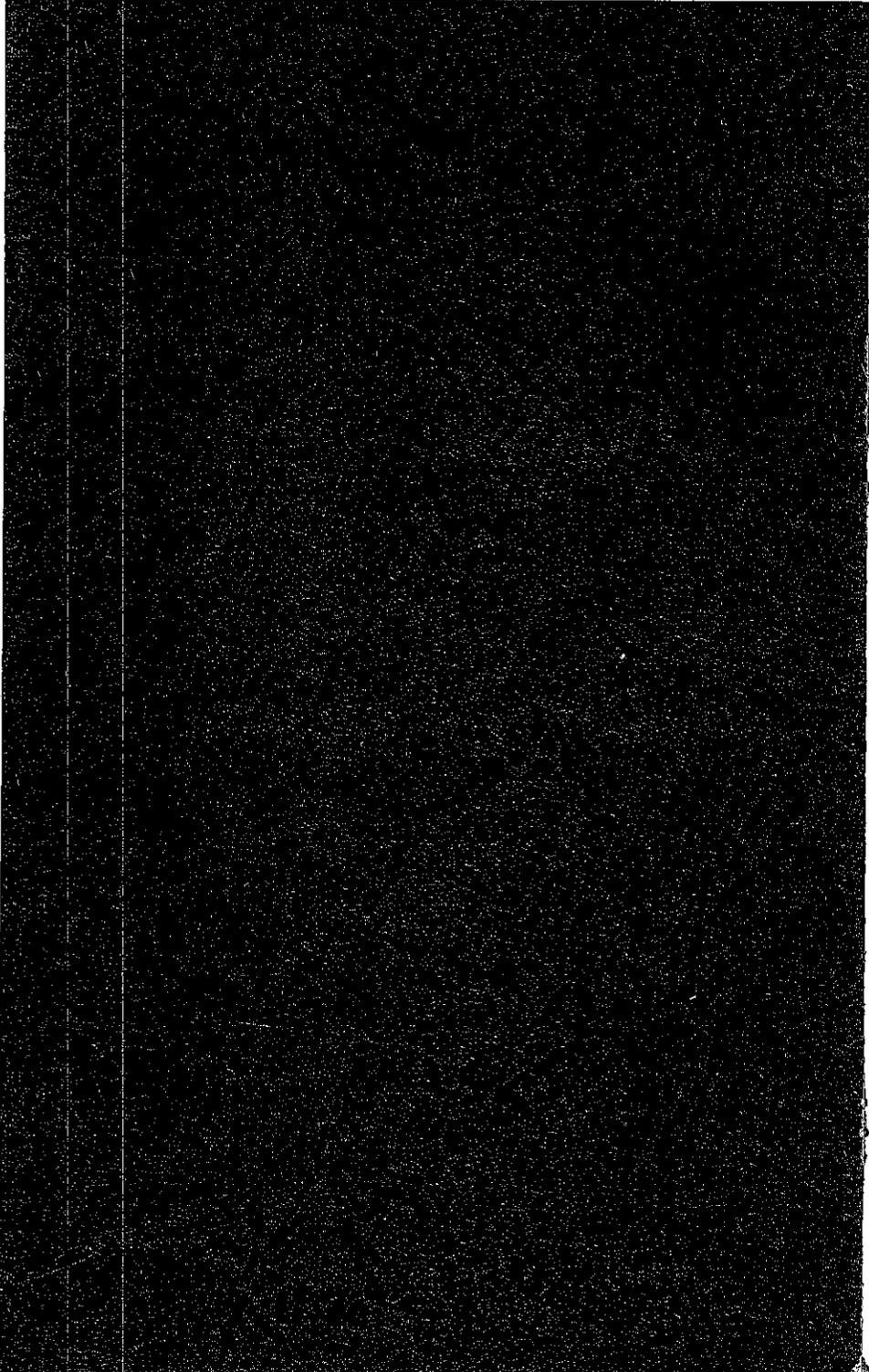
Daley & Heft, LLP

8 */s/Garrett A. Marshall*

9 By: _____

10 Robert W. Brockman, Jr.
11 Garrett A. Marshall
12 Attorneys for Defendant
13 Presbyterian Camp and Conference
14 Centers, Inc.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit F



A Study of Fire Liability Law

**A composite of Legal Philosophy and Principles
Related to Liability for Injury by Fire**

§ § §



A. K. WYLIE

and

S. M. SCHICK

1957

§ § §

An Elementary Textbook for Fire Protection Officers

Published and Distributed by

M. J. KAY

Post Office Box 655, Calistoga, California

PRICE \$3.00

A STUDY OF FIRE LIABILITY LAW

C O N T E N T S

§ § §

	Page
Chapter 1. SOURCE AND CLASSIFICATION OF LAW	7
A word of explanation about law, its primary source and its classification.	
Chapter 2. HISTORY OF FIRE LIABILITY LAW.	11
When was the rule of liability for fire damage first established in law; and, is evidence of negligence necessary to make a person liable for such damage?	
Chapter 3. CIVIL LIABILITY FOR FIRE DAMAGE.	13
What does the term "civil liability" mean, and how may a person become liable for fire damage?	
Chapter 4. NEGLIGENCE	16
What constitutes negligence; and how may a person avoid being negligent in regard to fire?	
Chapter 5. MEANING OF ORDINARY CARE, PRUDENCE, DILIGENCE, DUE CAUTION.	19
What constitutes ordinary care, reasonable care, prudence, diligence and due caution?	
Chapter 6. DUTY TO CONTROL, EXTINGUISH ANY FIRE BURNING ON PROPERTY.	22
Is it the responsibility of the owner or occupant of property to control or extinguish a fire on his property which he did not start; can he be held liable for damage from such fire,	
Chapter 7. ACT OF GOD: FORCE OF NATURE.	25
Is a person responsible and liable for a fire which starts, or spreads because of an act of God?	
Chapter 8. DUTY TO EXTINGUISH FIRE BURNING ON NEIGHBORING LAND.	28
Do we have a legal duty to control or extinguish fire before it reaches our property from adjoining land?	
Chapter 9. LIABILITY FOR DEATH OR PERSONAL INJURY FROM FIRE.	31
If a person does not intend or mean to cause a fire which results in a death or bodily injury to someone, can he be held responsible?	
Chapter 10. VIOLATION OF LAW IS NEGLIGENCE.	34
Can a person who inadvertently violates a fire protection law, and is fined therefore, be held liable for fire damage?	
Chapter 11. LIABILITY BASED ON CONDITION OF PROPERTY.	36
How does the condition of a person's property, or the activity he allows upon it affect his liability for fire damage?	
Chapter 12. ABSENTEE OWNERSHIP OF PROPERTY.	41
If the owner of a parcel of property lives elsewhere and remote from such property, does he have any responsibility in regard to fire on such property or for safeguarding against its spread to other property?	

Exhibit F-3

A STUDY OF FIRE LIABILITY LAW

	Page
Chapter 13. MACHINERY OR DEVICES CAPABLE OF CAUSING FIRE.	43
Is a person liable for damages caused by an accidental fire occurring from sparks from machinery or other equipment?	
Chapter 14. SMOKING HABITS.	46
Is an employer responsible for a fire which is caused by an employee being careless in discarding burning tobacco or matches?	
Chapter 15. LAWFUL USE OF FIRE.	48
If a person has occasion to use fire for a lawful purpose and complies with all laws respecting such use, is he liable if such fire should accidentally escape from his control and spread to adjoining property?	
Chapter 16. FUNCTION OF GOVERNMENTAL FIRE PROTECTION AGENCY.	53
Is the property owner relieved of responsibility for extinguishing fire on his property when his taxes support a governmental fire protection agency for that purpose; and can a property owner keep firemen off his property?	
Chapter 17. FIRE SUPPRESSION EXPENSE.	57
If a person, who pays taxes for the maintenance of a governmental fire protection agency, is made to pay for the expense incurred by such agency in extinguishing a fire on his property, wouldn't this be the same as double taxation?	
Chapter 18. FIRE SUPPRESSION EXPENSE.	60
If a person goes upon neighboring property to extinguish a fire, and he extinguishes it before it reaches his own land, and before the fire protection agency arrives, is he entitled to be reimbursed for his time and expense by the neighbor, or, by the fire protection agency?	
Chapter 19. EVIDENCE.	62
Is circumstantial evidence sufficient to prove negligence in a lawsuit for fire damage?	
Chapter 20. DAMAGE TO TIMBER.	63
When timber is destroyed by fire is damage recoverable for only such timber as is considered merchantable at the time?	
Chapter 21. LIABILITY INSURANCE.	65
If a person has liability insurance to pay for damage in case fire spreads from his property, does this relieve him from liability for such fire?	
Chapter 22. FIRE PROTECTION BY AGENCY OF FEDERAL GOVERNMENT.	67
Do forest rangers of the United States Forest Service have the right to order a private property owner to extinguish a fire on his own property; or to go upon private property and extinguish a fire thereon?	
Chapter 23. CONCLUSION.	71
TABLE OF JUDICIAL AUTHORITIES.	72
APPENDIX, A BRIEF SUMMARY OF FOREST FIRE LAW IN CALIFORNIA.	79

A STUDY OF FIRE LIABILITY LAW

INTRODUCTION

§ § §

In preparing the following pages, the purpose has been to set forth with reasonable clearness, the general aspects of liability that may result from negligence either in causing a fire, or in allowing it to spread.

It was supposed that a textbook composed on a considerably broader basis of fact than has yet been adopted, would be acceptable to those interested or engaged in the prevention of waste and destruction from fire.

Under this impression, the work was undertaken, and, if justification is necessary, the record of fire waste in this country should be sufficient.

A survey reported by "Encyclopedia Americana," 1953 edition, volume 11, page 244, reveals that direct fire losses mean an annual tax of about thirty-three dollars per family in the United States, and that added indirect costs make such tax about eighty-five dollars per family.

Records compiled by the National Board of Fire Underwriters indicate that property destroyed by fire in past years was valued at more than nineteen billion dollars. The Encyclopedia Americana points out that this figure does not include the cost of maintaining fire protection agencies and fighting fires; nor the cost of fire insurance and other safeguards made necessary by the menace of fire.

In 1956, for forest fire protection alone, the State of California appropriated about thirteen million dollars, and forest fire protection officials say they are in need of a much larger appropriation if they are to provide adequate fire protection forces and facilities to protect the forest and range resources and watershed land within the State.

If the public money appropriated for fire protection in cities, counties, towns and fire districts, and funds appropriated by the United States Government for fire protection on federal prop-

Exhibit F-4

A STUDY OF FIRE LIABILITY LAW

erty within the State were added together, it would total a considerable figure. Multiplied nation wide, the figure should shock all of us into a realization of the need for each of us to actively assume our individual responsibility and obligation to prevent against and extinguish fire on our property.

If the monetary waste from fire is not sufficient to justify the essential care and effort to safeguard against the menace of fire, the waste of human life most certainly should be.

The death toll from fires is estimated at more than ten thousand persons each year, with many times that number suffering burns and other injury. At the moment of this writing (November 1956) two raging forest fires are burning in Southern California, and twelve persons have been burned to death in them.

Similarly, a forest fire in 1933 took twenty-eight lives; in 1943, nine lives were taken in a single fire, and in 1953, fifteen persons were trapped and burned to death in one fire.

Once a fire gains headway, no one can know how far it will go, or how many lives it may take in its blazing path of destruction.

The majority of fires that occur are the result of an act of carelessness or negligence on the part of someone. Therefore, this book endeavors to give a general view of the nature of the law in respect to fire, and what is expected of us.

Our problem has been to condense an abundance of reference material into one volume of reasonable proportions to be convenient for use by fire protection officials in directing public attention to aspects of negligence that should be guarded against, so as to avoid becoming liable for injuries or damages from fire.

The material presented has been extracted with considerable labor from cases of actual occurrence, thus furnishing a repository of judicial expositions not otherwise easily accessible to fire protection officials or the general public.

To focus the attention of people upon the law which defines

A STUDY OF FIRE LIABILITY LAW

their rights, their obligations, and their responsibilities in respect to fire, should be a most important function in the administration of fire protection laws.

A. K. W.

Judge A. K. Wylie has been in the practice of law for more than 45 years. For the past eighteen years he has been a judge of the Superior Court of California. Without opposition, he has been re-elected (1956) for a fourth term in office.

He has lived all his life in the forest area of Northern California and has witnessed many fires and destruction brought about by fire throughout the years. Thus, his interest in fire prevention and in the problems of fire protection officers is deep and personal.

As a judge, he has also witnessed the plight of people inadvertently involved in litigation and found liable for the payment of damages that they could ill-afford, and that they would have avoided had they been aware of their personal obligations and responsibilities and acted accordingly.

His work with this book has been done with the wholehearted objective of providing a source of information whereby people could readily ascertain what they should or should not do to avoid becoming liable in connection with fire.

It has been my privilege to be closely associated with him for more than 25 years, first as an employee in his law office, and as a close friend throughout the years. The opportunity to work with him in drafting this book was a great privilege and educational experience.

S. M. S.

A STUDY OF FIRE LIABILITY LAW

PREFATORY NOTE

§ § §

This book is not a literary thesis merely expressing the viewpoint of its author; it is a composite of views, opinions and conclusions expressed by many courts throughout the United States, in respect to liability for injury or damage from fire.

A question which is frequently asked of fire protection officials is presented in each chapter.

In making reply to the question, the philosophy, and the point of view and opinions which have been expressed by the courts in their deliberation of actual cases involving the same question have been studied, compiled, abridged and composed into a small chapter.

The volume is, in fact, an elementary textbook for the study of fire liability law; and, so long as our established concept of law and judicial process continue, its content will not become obsolete.

A STUDY OF FIRE LIABILITY LAW

FOREWORD

§ § §

One of the most substantial rules established by law for the protection of our lives and property, is the rule that we have no right to stand by and allow a dangerous thing or force existing upon our property to be communicated to our neighbor's property. If this were not so, any neighbor so inclined could, by stealth or cunning, employ such dangerous thing or force to inflict injury or damage upon us without much risk of being held accountable.

To protect us against such happening, our law holds the principle that we must act with prudence and diligence to prevent any dangerous thing or force existing upon our property from being communicated to neighboring property.

And, so it is with fire; the law places the duty of preventing and extinguishing fire on our property squarely upon each one of us.

We should not forget that if we could prevent a fire burning on our property from spreading and destroying our neighbor's property, and we do not do so, it is as if we took his property from him without compensation, and the object of the doctrine of liability for damage from fire is to protect us from having our property taken from us by the negligence or carelessness of another, without being compensated for it.

This book is made up in two parts. The first part endeavors to answer certain questions respecting fire, by bringing together the thoughtful consideration, reaction and conclusions of many courts which apply to the question, and generally, the philosophy and rules expressed have been adopted by the majority of the courts throughout the country and are therefore applicable in most all States.

The second part briefly summarizes in a general way, the laws and fire protection system that has been developed in the

A STUDY OF FIRE LIABILITY LAW

State of California, for the protection of its forest, range and wildland resources and water shed areas.

It may appear that the material presented relates only to forest fires. This is not the case. The rules of liability are the same for any fire, whether it occurs on forest or watershed land, or in the yard of a city lot.

A STUDY OF FIRE LIABILITY LAW

CHAPTER I

SOURCE AND CLASSIFICATION OF LAW

§ § §

Law is simply a system of rules created by society as a substitute for violence. Courts are established to settle disputes between individuals as to the meaning of the rules; to determine which is the right and which is the wrong point of view. A word of explanation as to the source of law and how it is classified may be desirable.

§ § §

PRIMARY SOURCES of our law are the common law, Constitutions of the States and United States, statutes enacted by legislative bodies, and judicial decisions of the high courts.

COMMON LAW is perhaps the earliest source of our law. It had its origin in early times when law was mostly a matter of deciding rights and wrongs on the basis of common custom as it existed at any given time. As disputes between individuals were settled, the reasoning and principles which were accepted were developed into maxims and adopted as guiding principles to be applied in reaching solutions for future cases of a similar nature.

The common law is sometimes referred to as the "unwritten law," but this is not now true. Over the years, the maxims and principles of common law rights and wrongs have been transmitted into positive law by the written decisions of the courts, and many of the most valued maxims and principles of the common law have been embodied in State and Federal Constitutions, and in statutes enacted by State and Federal legislative bodies.

Exhibit F-7

A STUDY OF FIRE LIABILITY LAW

CONSTITUTIONAL LAW is established by the direct action of the people. It is the fundamental law which directs the principles upon which the government is founded, and defines the powers and limitations of public authority over individual rights; it is absolute and unalterable, except by direct action of the people, and no function of government can be discharged in disregard of, or in opposition to, it.

STATUTE is the word used to distinguish law which is enacted by State and Federal legislative bodies from that which is derived from constitutional, judicial, or common law sources.

Statutes are legal standards intended to guide and regulate the conduct of people. They are classified in several categories, such as public or private, declaratory or negative, preceptive, prohibitive, or permissive, and remedial or penal.

Generally, no single statute is complete within itself. Most of them are a part of a chapter of a whole body of law, and the words of a single statute should be construed in the light of other statutes relating to the same subject matter. Many statutes can be understood only in the light of common law principles.

In using statutes, there are two non-technical rules of primary importance. First, when a question arises about a law, one should not trust to memory or to paraphrase; he should examine the very words of the statute involved. Secondly, when a question arises as to a law, no matter how well acquainted one may be with the very words of the statute, and with the construction previously placed upon it, one should examine the statute from the point of view of the new question.

This philosophy, it is reported in legal textbooks, was expressed by an eminent English jurist named Lord Coke, when having been told that his opinion was desired upon a question of law, he replied: "If it be common law, I should be ashamed if I could not give you a ready answer; but, if it be statute law, I should be equally ashamed if I answered immediately."

In the construction of statutes, it should not be presumed that

A STUDY OF FIRE LIABILITY LAW

the legislature, in its enactment of a statute, foresees every possible result that may ensue from the unguarded use of a single word. All statutes should receive a sensible construction, and general terms should be so limited in their application as not to lead to injustice, oppression, or absurd consequence.

Remedial statutes are enacted to provide a remedy or compensation for wrongs or injuries, and penal statutes are those which provide for punishment in some form. Some statutes are both remedial and penal.

JUDICIAL DECISIONS are the source of our knowledge of law. Courts are relied upon to harmonize statutes with Constitutional provisions, and to settle disputes as to how a law is applicable to a certain state of facts. In this manner, the courts provide interpretation of the meaning and intent of a law.

Once the courts have established a principle of law as applicable to a certain state of facts, they will adhere to that principle and apply it to all future cases which have substantially the same facts. It is this process which brings about the stability and certainty of our law, and makes it possible for us to conduct our affairs in an orderly manner.

For this reason, one who is responsible for administering laws will do well to keep informed of, and stay within the bounds of, judicial opinions and decisions.

The major portion of the content of this volume consists of general legal principles which were gleaned from many judicial opinions and decisions relating to liability in connection with injuries and damages resulting from the spread of fire.

CLASSIFICATION OF LAW is made into two broad categories, referred to in general terms as: (1) Civil Law, and (2) Criminal Law.

In every relation of life, and in every position in which a person may possibly be placed, some duty is necessarily imposed upon him to secure the protection of others, and it is the acceptance by each of us of the duty and responsibility to respect,

A STUDY OF FIRE LIABILITY LAW

care for, and protect the lives, rights, and property of each other, which makes it possible for us to have individual rights and freedom in the conduct of our affairs.

Civil law defines the rights of individuals which the law will recognize and protect; and it defines the obligations and responsibilities which the law imposes upon individuals for the protection of each other's life and property.

One difference between civil law and criminal law is that the latter involves conduct which is specifically declared by law to be offensive to the people of the State as a whole, and for which punishment is prescribed; while civil law generally involves conduct detrimental to private rights of individuals for which they may, if they choose, seek personal compensation or reimbursement.

A substantial purpose and objective of civil law is to place within the reach of each individual, whose person or property has been injured or damaged as a result of the carelessness or negligence of someone, a means of redress, usually in the form of compensation to reimburse for the injury or damage occurring as a result of such neglect.

A civil law rule may, however, be declared a public wrong by statute, because of the fact that its violation may be offensive to the public as a whole; and if such is the case, an offender may be subject to punishment by the State, and he may be compelled to remunerate the person injured by his act.

Legal principles are grouped into types, such as the law of contracts, of agency, of real and personal property, of negligence, of nuisance, of equity, of torts, and a number of others. To understand causes of liability for damage occurring from the spread of fire, it is necessary to examine legal principles related to many of the several types of law, and particularly those connected with negligence and nuisances.

A STUDY OF FIRE LIABILITY LAW

CHAPTER II

HISTORY OF FIRE LIABILITY LAW

§ § §

When was the rule of liability for fire damage first established in law; and, is evidence of negligence necessary to make a person liable for such damage?

§ § §

We know that the doctrine of liability for fire damage was in effect more than nineteen-hundred years ago, for it is written in the Old Testament, Exodus, 22:6, "If fire break out, and catch in thorns, so that stacks of corn, or the standing corn, or the field, be consumed therewith; he that kindled the fire shall surely make restitution."

As far back as legal history is traceable, the law has recognized and upheld the principle of liability for damage resulting from fire spreading to neighboring property.

Early English common law was very strict in this respect. It held a person liable for the consequence of any fire regardless of what the circumstances surrounding its origin or spread might have been.

However, in the formative stages of law in the United States, the strict rule of the English common law, in respect to liability for accidental fires, was not generally adopted.

Most States have enacted statutes whereby the question of liability for fire damage is predicated upon the law of negligence. In other words, a person is not made liable for fire damage, as a matter of law; that is, without evidence that he was negligent in some respect.

However, some states have adopted what is referred to as a rule of absolute liability, which, in effect, means that evidence of the fire occurring, and of the damage done by it, is all that is required to fix liability. But this rule does not eliminate the question of negligence; it just reverses the legal procedure. In-

A STUDY OF FIRE LIABILITY LAW

stead of the damaged party having to establish proof of negligence before he can recover, the party responsible for the fire must show that he was not negligent in respect to it, if he would avoid payment of the damage claim. The rule of absolute liability has been specifically applied to fires occurring from railroads, in a number of States.

Perhaps one of the first statutes drafted and enacted in this country, for regulating fire and fixing liability, was one adopted by the colony of Massachusetts in the year 1660. It provided that "whoever shall kindle any fires in the woods, or grounds lying in common, or enclosed, so as the same shall run into corn grounds, or inclosures," at certain seasons, should "pay all damages, and half so much for a fine; provided that any man may kindle fire in his own ground so as no damage come thereby either to the country or to any particular person."

A STUDY OF FIRE LIABILITY LAW

CHAPTER III

CIVIL LIABILITY FOR FIRE DAMAGE

§ § §

What does the term "civil liability" mean; and how may a person become liable for fire damage?

§ § §

The term "civil liability" denotes an obligation to make payment or restitution in some form, to a person who has received injury or damage to his person or property from some negligent act, or failure to act, on the part of another person. It may come about from an act, or a failure to act, which in itself, is not wrong or unlawful, but which was performed or neglected without thought or care, thus causing the injury or damage.

Under the rules governing civil liability, a person may unintentionally or inadvertantly cause injury or damage to someone, and yet be made to pay for such consequence. Thus, it differs from criminal liability, which requires that injury or damage must be intended, and generally provides punishment in some form.

It should be noted, in reference to civil liability, that if the act, or failure to act, which resulted in injury or damage, was in violation of law, the law will presume the injury or damage resulting was intentional. The reason for this, is because whatever is prohibited or commanded by law is public recognition of the fact that injury or damage would, or could result from it; thus, the inference is that a person violating such law intends whatever injury or damage that may result from his unlawful conduct.

There are four primary ways by which a person may become liable for injury or damage resulting from fire.

1. Negligently permitting any fire to spread on one's property, and thereby extend to adjoining property, is one aspect of liability.

A STUDY OF FIRE LIABILITY LAW

It is immaterial how a fire may start on our property; if it does start, we have a legal duty to do everything we can do, to keep it from extending or being carried to our neighbor's property. This is to say, you have a right to expect your neighbor to do everything he can do, to extinguish any fire that may start on his property, and if your property is damaged because he did not do what he could have done, to extinguish or stop its spread, he may be made liable for the damage occurring to your property. Conversely, you have the same duty, should fire start on your property. And, it should be noted, that if you are aware of a fire on neighboring property which will spread to your property, if it is not extinguished or controlled, you have an obligation to go to such fire and do what you can do, so as to save your property.

2. Negligently causing a fire that results in injury or damage to someone's person or property, is a second basis upon which liability may be founded.

For example, using machinery capable of expelling sparks or cinders in a location where such may come in contact with combustible material or vegetation, and thereby communicate fire to adjoining property; or, placing a trash burning incinerator where sparks or embers may reach something which will burn, and thereby communicate fire to adjoining property; or, smoking tobacco in a place where thoughtless discarding of burning residue would contact combustible material; or placing inflammable materials or liquids in locations or places where they might be exposed to ignition from some heat or spark expelling device; and, placing coins or other metal in an electrical fuse receptacle, are a few of the things we must use thought and care about in our daily affairs. For, should fire occur as a result of our doing such things as these, and someone is injured or damaged thereby, we may be made liable and required to compensate for the damage.

3. Liability based on the condition of property, is a third aspect of liability for fire damage.

A STUDY OF FIRE LIABILITY LAW

The rule which has been stated in this regard is, that if an owner of property allows it to remain in such condition as to constitute a danger to other property, in case of fire, this negligence will make him liable for damage done to such other property by any fire starting on his land, although he has no connection with the origin of it.

4. Liability based upon the spread of a fire which is started, or is being used for some useful and lawful purpose, is a fourth aspect of fire liability.

A person who starts, or uses fire for a lawful purpose, has a duty to thoughtfully determine what measures are necessary to safeguard such fire, and where he neglects to take essential precautions to prevent it from spreading, or is negligent or careless in managing it, he may be made liable for damage occurring to the property of others. In the lawful use of fire, one must exercise reasonable prudence and care to prevent it from injuring others, the degree of care depending on the facts and circumstances, and the risk to be apprehended in each case; the greater the danger to others from mistakes, the greater is the degree of care required.

Perhaps the instructions given in a California case, and approved by the Supreme Court of the State, would best summarize two basic aspects of liability for fire damage — "The court instructs you that if you believe from the evidence in this case that the plaintiffs suffered injury by any negligent act of the defendants in setting out fire, or, by the negligent omission of the defendants in suffering any fire burning on their land to extend beyond their land, then the plaintiffs are entitled to a verdict for damages for the injury so suffered . . . These instructions are, in our opinion, correct . . . Plaintiffs are entitled to recover if they show by a preponderance of evidence either that the damage was caused by a fire which defendants negligently set out on their land, or, that it was caused by a fire burning on their land, no matter how it originated, which defendants negligently permitted to extend onto the land of the plaintiffs."

A STUDY OF FIRE LIABILITY LAW

CHAPTER IV
NEGLIGENCE

§ § §

What constitutes negligence; and how may a person avoid being negligent in regard to fire?

§ § §

The word "negligence" denotes carelessness, or indifference, or neglectfulness. The doctrine of liability for negligence is the essence of civilized society. It's philosophy is, that no one shall injure the person or property of another if he has it within his power to avoid it.

Each of us, in the conduct of our affairs and management of our property, is under a legal duty to act with care and forethought, and if by our act, or, our failure to act when we should, the person or property of another is injured or damaged, we may be found guilty of negligence, and made to pay for such injury or damage, even though we did not intend or mean to cause harm to anyone.

Negligence has been defined as "the failure to observe, for the protection of others, that degree of care, precaution, and vigilance which circumstances justly demand, whereby others suffer injury."

It is something that a reasonable person, guided by those considerations which ordinarily regulate the conduct of human affairs, would do; or, doing something that a prudent, reasonable person would not do.

As the term is used in law, negligence is a recognized ground of legal liability and, as a general rule, is the basis of a legal action to recover compensation for injury or damage resulting as a consequence of fire.

To outline or prescribe any uniform or fixed standard of care with respect to fire, is not possible, because the duty is so peculiarly dependent upon varying conditions and circumstances. The magnitude of the fire, the condition of the soil and material

A STUDY OF FIRE LIABILITY LAW

upon it, the state of the weather, the direction and force of the wind, and the relative situation and exposure of neighboring property are all factors to be considered in relative proportion, and as conditions, circumstances and risk may dictate.

Negligence may be inferred from a failure to act, as well as from an act. That is, failing to do something that should be done, or, doing something that should not be done.

For example, if a specially (sometimes referred to as "extra" or "ultra") hazardous fire condition exists, or is created upon our property, and we do not give thoughtful attention to the likelihood of such hazard being the cause of communicating fire to neighboring property, and fail to take measures prudence would dictate to prevent the hazardous condition from being the cause of communicating fire to adjoining property, should fire occur, we may be found to have been negligent and made to pay for all the injury resulting to our neighbor.

Our negligence, in such case, would be an act of omission, or failure to do something that we should have done in view of the dangerous condition of our property; and would have done if we had given prudent attention to the conditions and circumstances surrounding us, and the risk imposed upon neighboring property.

Conversely, if we do something that we should not do; or, if we do something we have a right to do, or, should do, but which, if not done with thought, care, and attention, may result in injury to someone, and we do not exercise the care, or give the thought and attention necessary to prevent the act from causing such injury, we may be found negligent and made liable because of an act of commission. Both acts of omission and acts of commission combined, may infer negligence.

Whether the circumstances surrounding us in the conduct of our affairs call for activity or passivity, if we do not do what we rightfully should do, to prevent injury or damage to others, we may be charged with negligence and required to make restitution.

A STUDY OF FIRE LIABILITY LAW

When a person is charged with negligence in an action to recover compensation for harm suffered from fire, his good intentions, or his belief that there was no danger or risk to be apprehended, will not be the test of whether or not he was negligent.

The test of negligence is, whether or not, the conditions and circumstances surrounding the fire were such that a person of reasonable prudence would have recognized that there was danger or risk to be apprehended. It is determined in all cases by reference to the situation and the knowledge of the person involved, and all attendant conditions and circumstances. What might be extreme care under one state of circumstances, could be gross negligence with different knowledge and changed circumstances.

While good intention may refute an imputation of criminal liability, it will not serve to relieve a person of civil liability for negligent conduct. Good intentions furnish no excuse for negligence, and the fact that our careless act or thoughtless omission to act, may have been inadvertant, does not take away our neglect.

In most all cases of civil liability for fire damage, the persons involved had no intention of harming themselves or anyone else, and when they were found to be negligent, it was not because they lacked good intention. It was because they acted, or failed to act, without thought, care, and attention to the likelihood that someone could be injured or damaged thereby.

In a word, negligence is lack of foresight or forethought; its essence is thoughtless inattention to surrounding conditions, circumstances, and things.

A STUDY OF FIRE LIABILITY LAW

CHAPTER V

**MEANING OF
ORDINARY CARE, PRUDENCE, DILIGENCE**

§ § §

What constitutes ordinary care, reasonable care, prudence, diligence and due caution?

§ § §

The terms, "ordinary care," "reasonable care" and such like terms, as they are applied to the affairs and conduct of people, have a relative significance and cannot be arbitrarily defined. Such care depends upon many considerations, but it must always be proportioned to surrounding circumstances, conditions, and risk.

It may and often does require extraordinary caution. That is, a person of reasonable prudence will deem necessary a greater degree of caution and attention to circumstances surrounding himself and the person with whom he is dealing, or with whose property he is dealing, where the circumstances are difficult to manage and a mistake is likely to result in injury or damage, than where the circumstances are simple, uncomplicated, and easy to manage, and where a mistake will not be likely to harm anyone. This is equivalent to saying a person of reasonable prudence governs his conduct according to the nature, character and gravity of the circumstances with which he is dealing.

For example, fire is an agency or element well known to be capable of inflicting serious injury or death, and it is known to be very difficult to manage once it gets out of hand. Thus, care, ordinary care, reasonable care, or due care in dealing with fire, is necessarily a high degree of care.

While the amount or degree of care must be in proportion to the amount or degree of the danger, hazard or risk involved, the standard is the same. It is still no more than ordinary or reasonable or due care; the care a reasonable person would use under the circumstances of a particular situation.

A STUDY OF FIRE LIABILITY LAW

The question of care is tested by reference to what a person of ordinary prudence would have anticipated as likely to happen and not in the light of what did happen. For instance, would a person of ordinary judgement have known the fire would likely spread to adjoining property in view of the circumstances then existing? What would have prevented it from spreading, and could it have been done? Would a person of ordinary prudence have known that it should be done, and would he have done it?

Affirmative answers to these questions would infer negligence, if the question of care was being considered in a case where fire had spread and damaged adjoining property.

The law has fixed no exact standard of care other than it must be such care as a reasonable, prudent person would exercise in the particular circumstances surrounding him at the time and place of the incident.

The word "prudence" or "prudent" implies good judgement or normal sense, or what is frequently termed "common sense;" it denotes a quality in a person which enables him to distinguish a sensible course of conduct in the management of his affairs. It is measured in terms of what ordinary people, with a proper regard for themselves and others would do, or not do, to avoid harm to themselves and others.

The word "diligence" denotes carefulness; perseverance or persistence in effort. It implies the application of effort to the full extent of a person's reasonable capacity. The law does not expect us to do what we cannot do; it expects and requires us to do what we are capable of doing to prevent harm to ourselves and others. There is no standard of diligence other than such effort as each of us is capable of exercising.

The word "caution," or term, "due caution" denotes vigilance, alertness, or attentiveness to circumstances, conditions, or things surrounding a person, particularly where harm may come to himself or others.

Everyone owes to everyone else, the duty of exercising caution

A STUDY OF FIRE LIABILITY LAW

so as not to injure him in his person or property. Caution implies the exercise of foresight and forethought in anticipation of danger or risk. It is exercised in taking appropriate measures to prevent harm from the danger or risk present, or which may be created by some act.

For example, lightning, an act of God, or someone in trespass may start a fire on our property. Caution would dictate that a fire thus started, will likely spread if it is not extinguished or otherwise controlled. The danger from such fire should be anticipated and cautionary measures taken for the safety of our own property and that of our neighbors. Otherwise, we would be responsible for any harm accruing to our neighboring property.

Another illustration might be a case of doing something on our property that may be conducive to causing fire, or conducive to spreading fire. Caution would dictate thoughtful attention to the danger or risk imposed upon adjoining property, and the taking of cautionary measures to readily control or extinguish any fire that may start.

Public policy requires that we shall exercise care, caution, and diligence for the protection of our own person and property as well as that of others to whom we owe the duty of care. But the quantum of care, the safeguards to be used, the precautions to be observed, the foresight and forethought to be exercised vary in each case in accordance with the facts and circumstances involved.

Perhaps the best interpretation for any of the words or phrases used connotatively with negligence, would be: "doing what you can do when you should do it."

A STUDY OF FIRE LIABILITY LAW

CHAPTER VI

**DUTY TO CONTROL OR EXTINGUISH ANY FIRE
BURNING ON ONE'S PROPERTY**

§ § §

Is it the responsibility of the owner or occupant of property to control or extinguish a fire on his property which he did not start; can he be held liable for damage from such fire?

§ § §

It is well established in law, that an owner or occupant of property is responsible for controlling or extinguishing any fire occurring thereon, regardless of how it may have been started; and he may be made liable for damages if he is guilty of neglect in respect to such fire spreading from his property. The courts, in many cases, have stressed the peril of liability for negligently standing by and allowing fire to spread and injure the property of others.

In our country, when we own or possess property, we acquire certain Constitutional rights, privileges, and protection. Every man controls his property as he pleases, puts it to such use as he pleases, improves it or not, as he may choose, subject only to the obligation to perform, in respect to it, the duties he owes to the State, to his community, and to his neighbors. The State cannot substitute its judgement for his, as to the use he should make of it for his own advantage.

Included among the duties we owe our State, our community, and our neighbors, in return for our rights and protection, is the duty to control or extinguish any fire existing on our property, notwithstanding the cause of its origin.

For instance, in one such case, the court hearing the matter said, that "the owner or occupant of property on which any fire starts, has a legal obligation and duty to control or extinguish it, so as to prevent its spread to neighboring property, whether or

A STUDY OF FIRE LIABILITY LAW

not he has any connection with its origin. His failure to perform this duty in a reasonable manner may make him liable for any damage done by the fire, to the property of another."

In this regard, a California Court said, that "responsibility for payment for damage done by fire, is designed to stimulate precautionary measures, aimed at preventing the spread of fire, and thereby eliminating needless conflagrations destructive of property and dangerous to the safety and welfare of the public." "Even though a person is not responsible for the starting of a fire upon his property, if he could prevent it from spreading to other property, but fails to do so, he may be made liable for the damage resulting from its spreading; liability is predicated upon the owner of property, on discovering or having notice of a fire thereon, failing to take prompt and reasonable measures to control or extinguish it and prevent it from spreading to the property of others, though the act which caused the fire was not a negligent one."

And a Federal Court said, that "the law rendering the owner of property liable for fire thereon, is intended to place responsibility for guarding against fire upon the person whose ownership includes the right of possession.

Perhaps another California case, McGillivary vs. Hampton, would serve to illustrate the question being discussed in this chapter.

"It appears that the defendant was not present on his lands when the fire was discovered. How the fire started is not known. When the foreman discovered the fire burning, he, with the assistance of several persons, proceeded to attempt to put it out along the line where the land of the defendant bordered that of plaintiff. One witness testified that the men fighting the fire 'apparently put it out,' it seemed to be out of fuel. The foreman testified: 'We put it out; we thought we had put it out, and watched it there until almost 12 o'clock, when we left for dinner. And we went to dinner, and

A STUDY OF FIRE LIABILITY LAW

it was still burning over to the west and north, and the only place we thought there was any danger of its getting out was on the east, because there was roads on the west and plowed land on the north' . . . The further fact appears that after the men had returned to the ground the wind had shifted to the west, and the fire was then on the land of the plaintiff. Notwithstanding further efforts of the men to control the fire, it destroyed property of the plaintiff. While the foreman did testify that the fire was apparently out, it at once appears as a reasonable deduction from the testimony of others, that the foreman was not diligent in making his observation to determine whether the fire was in fact extinguished, before he left the field. The finding that the defendant was negligent must be sustained."

In most all cases of fire damage liability, had the owner or occupant of the property acted with appropriate diligence when he knew, or had notice of the existence of fire upon his property, he could have controlled or extinguished it and, thus, avoided litigation expense and payment of compensation for damages.

The measure of diligence which is necessary to free one from liability for damage done by fire spreading from his property is such reasonable effort as a prudent person, actuated by a proper and humane regard for the safety of his neighbors, would put forth.

It is fundamental in law, that, regardless of its cause, one who knows, or has notice that a fire is burning uncontrolled on his property, may be made liable for damage it may cause others, if he neglects to make prudent and diligent effort to stop its spread.

We are responsible for controlling or extinguishing any fire burning on our property whether or not we had anything to do with starting it; and, we may be made liable for damage to adjoining property, if we do not do what we could do, to control or extinguish such fire.

A STUDY OF FIRE LIABILITY LAW

CHAPTER VII

ACT OF GOD: FORCE OF NATURE

§ § §

Is a person responsible and liable for a fire which starts, or spreads because of an act of God?

§ § §

The term "act of God" or "force of nature," is used to designate the cause of an injury to person or property, where such injury is due directly and exclusively to natural causes without human intervention, and for injury so caused, no one is responsible or liable.

However, while it is true that no human agency can prevent or stay an act of God, it is frequently the case, that the results or natural consequences of an act of God may be foreseen and guarded against, by the exercise of reasonable foresight and prudence, and when this can be done, a failure to do so would be negligence, although the original cause was an act of God.

For instance, wind is a natural force that propels or carries fire. But wind can be, and should be expected where fire is concerned, because wind is created by heat, a component of fire. In primary school days, we learned that wind was a result of the effect of heat upon air; heated air rising and cool air moving in to fill the void. Thus, wind can, and should be, anticipated in conjunction with fire, and its velocity will be affected by the magnitude of the fire.

Therefore, in respect to fire, prudence, care, and caution necessarily demand, that attention be given to conditions that will make it possible for wind to propel or carry it where it could harm someone; and, thus, if proper safeguard measures are not taken in anticipation of wind conditions, which should be expected, any harm occurring is a result of neglect to exercise care, and not the fault of an act of God.

A STUDY OF FIRE LIABILITY LAW

In an action for damages due to the spread of a fire set to fallen trees and brush piled in heaps over an area of two or three acres, at a time when there was little, if any, wind, the defendant was held liable because he failed "to do all that could be reasonably expected of a man in such a situation to prevent injury to adjacent property," even though it was claimed by him that the cause of the fire was the sudden and violent wind that unexpectedly came up. The court said, in respect to the case, that, "An act of God is an occurrence happening without the intervention or concurrence of any human agency. Whatever may be said of the effect of high winds, yet it is plainly not an act of God if it seizes upon a fire started by human agency and causes injury."

In another case, the court, commenting on wind and fire, said: "Certainly it cannot be said, as a matter of law, that a man may tempt the winds, and then charge the consequences to Providence. If the fire was conducted to, or maintained at, or negligently suffered to reach a point where a reasonably prudent man would not have started a fire, then it was unlawfully there, and the fact that the wind contributed to the injury does not relieve the defendant from liability."

Another illustration, in reply to the question being considered in this chapter, is a case where neither the defendant nor fire-wardens supervising the burning operation, made any provision against the spread of fire by a high wind which they knew was likely to occur in the locality. The defendant was held liable for the damage which occurred when a high wind carried the fire to adjoining land. The court said, in this case, "that while the owner may be required to follow the directions given by a forester, it is always within his power to refuse to proceed if the forester's precautions are inadequate, or to take precautions in addition to those prescribed by the forester."

The cases holding that wind cannot be used to excuse negligence in fire damage actions are numerous, and while wind may

A STUDY OF FIRE LIABILITY LAW

be the reason a fire is communicated to neighboring property, if we are guilty of negligence in any respect, the effect of the wind is not apt to excuse us from liability.

Lightning is another natural element which is frequently responsible for causing fires. However, while an owner of property cannot be said to be responsible for the cause of such fires, if he fails to do what he could do to extinguish them, or otherwise prevent their spread, he may be held liable for the consequence of such fires.

It is possible the act of God, or some excusable accident may cause a fire, or be the reason for its spreading and harming others, but this explanation is expected to be made by the one charged with the special duty of care and skill in the management of his property.

We have the right to expect our neighbor to protect us and our property from fires which are started on his property from lightning, and he has a right to expect the same protection from us.

A STUDY OF FIRE LIABILITY LAW

CHAPTER VIII

**DUTY TO EXTINGUISH FIRE BURNING
ON NEIGHBORING PROPERTY**

§ § §

Do we have a legal duty to control or extinguish fire before it reaches our property from adjoining land?

§ § §

It is said that public policy requires that each of us shall exercise reasonable care and prudent diligence for the protection of our own person and property, and, the law is said to be well settled, that when a person knows of the existence of a fire on adjoining property, and sees or knows that it will advance to his property, he cannot negligently stand by and allow it to advance and destroy his property.

The legal rule in this respect, is stated in the Restatement on torts, 919, as follows: "One who is aware of approaching harm and who does not take reasonable efforts to avert it is guilty of contributory negligence." And it has been held by numerous courts, that one who does not take prudent measures to keep fire from spreading onto his property is guilty of contributory negligence.

A fire burning uncontrolled is a public nuisance under the common law, and by statute in many states, and it is well settled in law, that a private person, to whom a public nuisance eminently threatens a special harm, is privileged to enter upon property in the possession of another to abate the nuisance, provided he does so without bringing about a breach of the peace.

And, in this respect, a Federal Court said "that when property is being endangered by the approach of a rapidly spreading fire, the owner is not a volunteer when he takes action to stop its spread and prevent the destruction of his property. Un-

A STUDY OF FIRE LIABILITY LAW

der such circumstances, the owner of the endangered property is impelled by the conditions that exist, and the evident danger of the destruction of his property, and his action is taken not as a volunteer, but in the protection of his property. The fact that he was requested by no one to take necessary steps to protect his property, but takes such steps under impelling circumstances, does not make him, in any sense, a volunteer."

A California Court has said "that where one's property is in danger of being destroyed, the law requires him to take all reasonable precautions to minimize damage by lessening the destruction. A person has no right to invite peril upon his property, and when his property is exposed to imminent danger of being damaged or destroyed by fire spreading from neighboring property, it becomes his duty to exercise diligent effort to stop it before it reaches his property."

Thus, we do have a legal duty to exercise ordinary prudence and care to avoid injury or damage to our person or property; and, this duty includes the exercise of ordinary diligence to observe and appreciate the danger, or threatened danger, to which our property is or might be exposed.

Perhaps it should be noted, that once a fire reaches our property from adjoining land, we have the duty of exercising prudent effort to prevent it from spreading beyond our property to that of others; otherwise, we may be involved in liability for damages. A person is not excused from liability for failure to perform a duty because another person has failed to perform his.

The need for the rule of law, that we must exercise care and diligence to protect our property, should be obvious; if this were not so, and it were us who became victims of our own negligence, a neighbor with little regard for his property as such, would be in a position to enhance its destruction at our expense; that is, force us to pay for it in damages which need not have occurred if he had really valued his property and endeavored to save it.

A STUDY OF FIRE LIABILITY LAW

Perhaps the matter of expense incurred in extinguishing fire on adjoining property should be mentioned.

The duty of extinguishing fire necessarily includes the reasonable expenditure of money. In the case of fire on adjoining land, the owner of the property would be liable if he were in any way connected with the cause of the fire, or its spread, and under such circumstances, the neighboring owner who was forced to incur expense in preventing such fire from invading and destroying his property, would have a cause for legal action to recover his expense.

However, there are occasions when such fire may not be attributable to any legal fault or negligence on the part of the owner or occupant of the property where the fire was burning, and if this be so, the expense incurred by a neighbor in the performance of his legal obligation to protect his own property, must be borne by him as part of the duty required of him.

A STUDY OF FIRE LIABILITY LAW

CHAPTER IX

**LIABILITY FOR DEATH
OR PERSONAL INJURY FROM FIRE**

§ § §

If a person does not intend or mean to cause a fire which results in a death or bodily injury to someone, can he be held responsible?

§ § §

In our thinking about liability for fire damage, we are somewhat inclined to limit our thoughts to the damage of inanimate property, overlooking the fact that fire is a death dealing agency.

If everyone who could prevent or extinguish a fire, would, at that moment, recall that fire is a potential death trap, he undoubtedly would do everything he could to prevent or extinguish it.

Fire is not just a dangerous element; it is a death causing agency, and this fact is generally known to all of us at an early age in life.

It is the rule, in law, that reasonable care, in dealing with a dangerous agency, is a higher degree of care than is required in ordinary affairs of life or business which involve little or no risk. The law exacts of one who puts a dangerous force in motion, that he shall control it with skill and care proportioned to the danger created.

The law does not excuse thoughtlessness, especially where the situation is such as to call for a high degree of care, and it is a rule of law, that where death or bodily injury can result from an agency, such as fire, every means known, or that with reasonable inquiry would be known, must be used.

Many of the cases holding civil liability for death or bodily injury from fire, have been instances where the injured or de-

A STUDY OF FIRE LIABILITY LAW

ceased person received such injuries while attempting to save his property from fire being allowed to spread from adjoining property.

In respect to one such case, a California Court said, that "when one suffers personal injuries while attempting to save his property from fire, the negligence of the person responsible for the fire is the proximate cause of the injuries, and the negligent person is liable for the injuries to person and property. When a person's property is threatened with fire spreading from adjoining land, the law imposes upon such person the duty to make every reasonable and prudent effort to keep such fire from burning his property. Thus, if he performs his legal duty in this respect, and is injured thereby, he is entitled to compensation for such injury, if the owner or occupant is guilty of negligence in respect to the spread of the fire, or in starting it."

Similarly, an Iowa Court said: "In attempting to extinguish the fire in question, plaintiff was in strict line of her duty; and if she acted with ordinary care, there is no reason, in justice or law, why she should not recover for the injuries received, bound as she was to save herself and property from the consequences of the defendants negligence."

And, an Oklahoma Court considering such case said: "The plaintiff was not at the place of injury at his own volition. He was not engaged in the act of extinguishing the fire of his own choosing. He was discharging a duty owed by him to defendant to minimize the loss of his property, and this by reason of the defendant's own negligence. Equitably, he should not be required to bear his personal loss."

Another illustration, in reply to the question being discussed in this chapter, might be a case occurring in North Dakota, in which the Supreme Court said: "When a person finds his property threatened with damage or destruction, he must use all reasonable means to minimize the loss, and he cannot stand still and permit the loss to increase and then hold the negligent party liable. It is incumbent upon him to use reasonable exertion and

A STUDY OF FIRE LIABILITY LAW

reasonable expense, and the question in such cases is always whether his action is reasonable in having regard for all the circumstances."

The court then went on to say, that "the injured party was using a well recognized and adopted method of preventing the spread of fire, and that he was not at the place of injury or engaged in the act of preventing the spread of fire to his property by his own volition or choosing; that he was discharging a duty to minimize damage for which the owner of the property where fire originated would be liable if he were guilty of negligence in allowing the fire to spread from his property." And injury produced from over-exertion is held to be damage for which a negligent person may be made to compensate for.

In view of the reasoning expressed in these, and many other cases, it should be clear to us that the degree of care and diligence we must exercise in preventing the spread of fire from our property, must necessarily include anticipation of the possibility that our neighbors may be seriously or fatally injured in attempting to prevent damage or destruction of their own property, if it spreads thereto. Their effort in this respect, is required by law for our benefit; to minimize the amount of damage we may have to pay should we be the victim of our own negligence.

In discussing fire protection problems with people, fire protection officials should not over-look directing their attention to the fact that fire can be a death dealing agency; that neighbors are required by law to make reasonable effort to keep it from invading their property, and that if they are injured thereby, the negligent property owner may be made liable for such injury.

When people habitually assimilate and reflect this aspect of fire, they will better understand what fire protection officials have in mind, when they point out laws to be complied with, and hazards demanding attention.

Perhaps it should be noted, that should death or bodily injury occur from a fire which was a result of a violation of law, the negligent party may be made subject to criminal liability and also civil liability.

A STUDY OF FIRE LIABILITY LAW

CHAPTER X

VIOLATION OF LAW IS NEGLIGENCE

§ § §

Can a person who inadvertently violates a fire protection law, and is fined therefore, be held liable for fire damage?

§ § §

As a general rule of law, the violation of a statute, ordinance, or other legally enacted regulation, constitutes negligence, the rule being that where a statute or law imposes upon a person a specific duty for the safety and protection of others, he is liable to those who may be injured or damaged as a result of his failure to comply with the requirements or terms of the law.

A statute having for its purpose the preservation of life and the minimizing of injury may impose a duty of care which is greater than the ordinary care as such duty exists at common law, and a person who is charged by a statute with the necessity of exercising increased diligence must perform such duty, or bear the consequences of his neglect.

A California Court said in this respect, that "the failure of any person to perform a duty imposed upon him by statute or other legal authority should always be considered evidence of negligence or something worse. The omission to perform a legal duty being established, a plaintiff should not be required to prove further that the act committed was inherently essential to the exercise of due care by the defendant. It is an axiomatic truth that every person, while violating an express statute, is a wrongdoer, and, as such, is negligent in the eyes of the law, and every innocent party whose person or property is injured by the act which constitutes the violation of the statute is entitled to a civil remedy for such injury, notwithstanding any redress the public may also have."

A STUDY OF FIRE LIABILITY LAW

Whenever the legislature enacts a safety statute, it declares that injury from violation of it is reasonably to be anticipated.

It should be noted, that mere compliance with the terms of a statute or law does not necessarily absolve one from negligence, unless in acting in conformity to the terms of the enactment, he exercises the amount of care which is required under existing conditions and circumstances.

And, while we may have complied with all the laws for protecting against fire, we are not at liberty to neglect all further precautions; if we can prevent injury or damage by the exercise of prudent care and diligence, we will have no defense against liability if we fail to do so.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XI

LIABILITY BASED ON THE CONDITION OF PROPERTY

§ § §

How does the condition of a person's property, or the activity he allows upon it affect his liability for fire damage?

§ § §

Land in its natural vegetative state is not in itself considered as an unusual fire hazard or risk. Thus, ordinary care on the part of the owner of such land does not necessarily include anticipation of, or the taking of any specific measures to protect adjoining property. His liability for fire would arise only when a fire actually occurred and he failed to make a reasonable and prudent effort to control or extinguish it when he was aware of, or had notice of its existence on his property; provided he had no connection with its origin.

But, when such land is exposed by the owner to an activity, use, or occupation from which, ⁱⁿ a view of common experience, fire may be expected, prudent caution and care would include thoughtful attention to the danger or risk that fire might be carried to adjoining property by such natural vegetation in the event it was started from the industry on the property, and such caution and care would require that adequate measures be taken to safeguard against such happening.

A second instance where the condition of property affects the owner's liability in respect to fire, is where an unnatural condition or situation of a combustible nature is created or allowed to exist on property in such a way that, should fire occur, it would be communicated to adjoining property.

When a condition or situation of a combustible or inflammable nature is created or allowed to exist upon property so as to

A STUDY OF FIRE LIABILITY LAW

expose adjoining land to an unnecessary danger from fire, such condition or situation is in the category of a nuisance; and to neglect to take prudent measures to eliminate the danger is in the category of negligence.

There have been many lawsuits in which liability has been predicated on the condition of the property where the fire originated.

In one such case, the court, first noting that the defendant had created an unusual hazard in allowing slashings from logging operations to accumulate, and that such slashings constituted the fuel which gave the fire volume and caused it to believe that if the slashings had been properly attended to, send embers high into the air, said that it was not unreasonable the fire might have been stopped, and that if they had not increased the volume of the fire, the burning embers would not have been carried to distant property.

The court then went on to say: "The defendant was warned of the existing fire hazard, including the caution that the green timber upon which he relied as a fire stop might fail him. The succession of events which began at the close of the noon hour demonstrated in dramatic manner that the warnings were well justified. But, while the defendant mentioned the surrounding green timber, he did not plead ignorance of the fact that 'crown fires' carry fire through green timber, and that fire can also run along the ground through forests. Likewise, he did not claim to be unaware of the fact that burning embers arise from fires and are carried by air currents to other places. The spread of fire was not due to some extraordinary factor which the logger rarely sees develop, but was due to the fact that fires can run through treetops; that they can run along the ground through underbrush and that embers arise from hot fires and; drift long distances. The extraordinary size and fury of the fire could have been foreseen. The fire, of that size when it was first seen, was burning in materials of such in-

[lines transposed

A STUDY OF FIRE LIABILITY LAW

flammable character that four loggers, doing their utmost, could not kick it out. Others who came with firefighting implements were driven back by the flames, which, fanned by the wind, raced through the old slashings. We know of nothing that occurred in the course of these events which should be classified as an independant intervening cause, excusing defendant from responsibility for the fire damage."

Another case which might serve to illustrate the proposition being discussed in this chapter, came about as a result of debris from dismantled buildings being left in such manner that a fire, caused by a person in trespass, was communicated to inflammable vegetation and thence, to adjoining property.

In determining the issue of negligence, the court said: "We know of no decision which holds that one who maintains his property so negligently that it menaces his neighbors, is liable for the destruction of their premises by a fire which started upon his, only in the event that he himself applied the match. To the contrary, we are satisfied that the owner's negligence is the proximate cause of the damage to the neighbor, even if a stranger communicated the spark; unless the circumstances are such that no prudent persn would have anticipated the stranger's act. Of course, inflammable material, such as lay upon defendant's property, does not ignite spontaneously; an Ellis Miller (trespasser) is generally required. But this Ellis Miller (trespasser) would not have succeeded in starting this conflagration, had it not been for the defendant's negligent conduct. The duty to refrain from littering one's property with inflammable material is imposed for the protection of the neighbors, and a person who breaches that duty thereby creates a casual connection between his negligent act and his neighbor's loss if a fire starts among the debris. A property owner who places his property in the condition of the defendant's knows that he endangers his neighbor's property and the adjacent forest. He also knows that his property will allure the Ellis Millers (trespassers) with

A STUDY OF FIRE LIABILITY LAW

their matches and their cigarettes. If the thing happens, which generally happens under such circumstances, the law rightfully says that the negligent owner intended from the outset that it should happen. We think that the issue before us is governed by the principle which is thus stated by 449, Restatement of the law of torts: 'If the realizable likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act, whether innocent, negligent, intentionally tortious, or criminal, does not prevent the actor from being liable for harm caused thereby.' The careless, the heedless, and the thoughtless, are always with us. That is why we have fire departments and laws. One of the chores of the prudent is to be on the alert for the petty shortcomings of the imprudent. We are satisfied that when the defendants littered their property with piles of combustible material it was their duty to anticipate trespasses by such persons as Ellis Miller, and also to anticipate that the intruders might cast about lighted tobacco."

It is also held, that the duty which an owner of property is under to keep it in a reasonably safe condition cannot be delegated by him so as to avoid personal responsibility. Such duty cannot be divested by contract with others by which the latter are to decide and determine the extent and obligations of the owner.

In this respect, 835, Restatement on torts, states: "A person who employes an independant contractor to carry on an activity which he should realize will necessarily involve an unreasonable risk of interference with the use and enjoyment of another's land unless means are adopted by which consequences may be prevented, has a duty to do that which is necessary to prevent such interference and is subject to liability for the harm which results from his failures to take reasonable steps to avoid it."

As to the meaning of "natural condition of land," 363, Restatement on torts comments as follows: "Natural condition

of the land is used to indicate that the condition of land has not been changed by any act of a human being, whether the possessor or any of his predecessors in possession or a third person dealing with the land either with or without the consent of the possessor. It is also used to include the natural growth of trees, weeds, and other vegetation upon the land not artificially made receptive thereto. On the other hand, a structure erected upon land is a non-natural or artificial condition, as are trees or plants planted or preserved and changes in the surface by excavation or filling, irrespective of whether they are harmful in themselves or become so only because of the subsequent operation of natural forces."

And it should be noted that prudence and care in respect to fire risks existing on property includes providing and maintaining adequate apparatus, implements and means for extinguishing fires which may start, as well as establishing and maintaining firebreaks to stop the spread of fire.

The owner of property who puts it to a use or in a condition which exposes adjoining property to an unusual fire hazard must provide proper safeguards; the owner who does ^{not} has a right to remain quiescent.

CHAPTER XII

ABSENTEE OWNERSHIP OF PROPERTY

§ § §

If the owner of a parcel of property lives elsewhere and remote from such property, does he have any responsibility in regard to fire on such property or for safeguarding against its spread to other property?

§ § §

Providing there is no statute to the contrary, the owner of property who may live remote from such property, as a general rule, would not be liable for fire on such property if it was in its natural condition and not being put to any use, provided that such owner had no connection with the cause of the fire in any respect, and had no knowledge of the existence of the fire; or, having knowledge of such fire, if he was not in any position to do anything whatever toward extinguishing it.

However, if upon acquiring ownership of such property, there existed upon it, an unnatural condition or situation which would expose adjoining property to danger in the event fire occurred thereon, the owner has a duty to anticipate such risk and to take prudent measures to safeguard adjoining property from such risk.

Perhaps the rule of law in this regard is best expressed by Restatement on torts, 364, as follows: "A possessor of land is subject to liability for harm caused to others outside the land by a structure or other artificial condition thereon, which the possessor realizes or should realize as involving an unreasonable risk of such harm, if, (a) the possessor has created the condition, or (b) the condition is created by a third person with the possessor's consent or acquiescence while the land is in his possession, or (c) the condition is created by a third person without

the possessor's consent or acquiescence, but reasonable care is not taken to make the condition safe after the possessor knows or should know of it, or (d) the possessor when he takes possession knows or should know of the condition which was created before he took possession."

And, 366, Restatement on torts states that, "One taking possession of land upon which there is a structure or other artificial condition which he knows, or which with reasonable inspection would have disclosed, to be unreasonably dangerous to others outside the land, is subject to liability for harm thereby caused to them although the harm is caused before the possessor has an opportunity to make it safe by repair or otherwise."

Thus, an owner of property living remote from such property, has responsibility for providing for fire protection measures on such property when he puts it to use, or allows it to be put to a use which is conducive to causing fire; or, if he creates, or knows, or should know of an unnatural condition existing thereon which requires fire protection measures for the protection of adjacent property in the event of fire occurring from any cause whatever.

In either case, an owner of property who will be absent therefrom, should provide all necessary safeguards for preventing the spread of fire from his property, and he should arrange for an agent to attend to his legal obligations in respect to fire during his absence.

CHAPTER XIII

SPARK EMITTING MACHINERY
OR DEVICES CAUSING FIRE

§ § §

Is a person liable for damages caused by an accidental fire occurring from sparks from machinery or other equipment?

§ § §

Fires which occur as a result of sparks, friction, or otherwise from machinery or instrumentalities which are known to be capable of starting fire, are not considered in law as accidental fires, because anyone using such instrument in proximity to combustible or inflammable material should know that any instrument or equipment which is capable of starting fire, is likely to do so if it is used in such environment.

Thus, if we use any instrument, machinery or device capable of starting fire by the expulsion of sparks, embers or flame, or from friction, in a place or location where such can contact and ignite combustible or inflammable material, we may be made liable for injury or damage that may result, if such material communicates fire to the property of others.

In respect to machinery, the United States Supreme Court said: "It is just and reasonable that if a person uses a dangerous machine, he should pay for the damage which it occasions; if the reward which he gains for the use of the machine will not pay for the damage, it is mischievous to the public and ought to be suppressed, for the loss ought not to be borne by the community or the injured person. If the use of the machine is profitable, the owner ought to pay compensation for damages."

It has been held, that where a defendant offered no evidence to show that he had taken precautions to prevent sparks from arising from his engine, or being carried to places where fire

A STUDY OF FIRE LIABILITY LAW

occurred, it was proper to infer that the engine was being negligently operated, notwithstanding a showing that the engine was clean and in good working order and in charge of an experienced operator.

And it has been said, that one making use of machinery or devices capable of expelling sparks, cinders, or flames, must exercise prudent care and diligence to prevent injury to others through communication of fire by such equipment; this rule has been applied to stationary boilers, refuse burners, traction engines, tractors, threshing machines, logging engines, hoisting engines, and many other type of engines, equipment and devices.

In determining the degree of care required in the use of such engine, regard must be had for the character of the season, the weather, prevailing winds, and the nature of the vegetation or material near where it is to be used. For instance, what would be ordinary prudent care in using such engine in a plowed field or during a downpour of rain, would be gross negligence if the engine was used during the dry season and in the neighborhood of dry grass, stubble, timber, or other tinder.

In one case the court said, that "a machine from which sparks or flame may be expelled, placed in such environment as dry stubble, is sufficient to place in the minds of reasonable men the negligence of such act."

Unless by statute it is otherwise provided, the operation of spark or cinder-expelling equipment or devices is not within itself negligence. The negligence arises when such instrumentalities are used in an environment in which sparks or cinders can be communicated to combustible matter through which fire may spread to the property of others.

In one case the court said: "Where an operator of a logging skidder for the removal of logs from his woods allowed dry and combustible material to accumulate on his land in such close proximity to the engine as to expose adjacent property to un-

A STUDY OF FIRE LIABILITY LAW

necessary peril, and a fire was caused by sparks from the engine, a prima facie case of negligence, authorizing a recovery for the destruction of adjacent property was established."

In a similar case it was held, that where fire originated by sparks from the engine of an independent contractor working for a lumber company, falling on property in foul condition belonging to the lumber company, the lumber company was liable for damage occurring to adjoining timberland.

Most States have enacted statutes requiring the use of adequate spark-arresting devices on spark expelling machinery or equipment; and requiring adequate apparatus and implements for extinguishing any fire that may start therefrom.

And in respect to spark-arrestors it has been held, that there is no difference between no spark-arrestor at all and a defective or inefficient one.

In a case involving a sawmill waste burning device, the court approved an instruction that if the operation of a sawmill endangered adjoining property to the extent that a prudent man would have shut down such mill until the violence of the wind abated, the failure of the mill operator to do so was negligence. It is the duty of a mill owner to shut down the mill during violent wind which, on account of dry atmosphere, endangers surrounding property to an extent that would lead an ordinarily prudent man to shut down the mill.

And it has been said that omission to make use of appliances reasonably adequate to prevent the escape of sparks and fire, and in failing to make daily inspection of spark-arresters and fire protection equipment, is negligence.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XIV

FIRES CAUSED FROM NEGLIGENT SMOKING HABITS

§ § §

Is an employer responsible for a fire which is caused by an employee being careless in discarding burning tobacco or matches?

§ § §

It has been established in law, that if an employer knows, or ought to know, that his employees are addicted to the habit of smoking, and he allows them to work in a place or location where carelessness with the use of tobacco or matches may result in a fire which will likely destroy the property of others, and he neglects to take prudent measures to guard against the possibility of such happening, he may be held liable for such neglect.

The employer is not held liable for the act of smoking by his employees; his responsibility arises when he sends or allows an employee, who is addicted to the smoking habit, to work in the proximity of an environment where carelessness in the act of smoking is likely to start a fire. If the environment is such as will communicate fire to other people's property, if it should be started, and it does start and communicate with and damage property of others, the employer is responsible.

It has been held, that if smoking on a particular job creates an unreasonable risk to the property of others, the employer may be held liable despite the care he has taken to prohibit smoking or the fact that smoking itself does not result in negligent performance of the work being done.

The rule is that an employer is liable for the personal habits of his employees if injuries to third persons are caused, in whole, or in part, thereby, if he knew, or ought to have known, that

A STUDY OF FIRE LIABILITY LAW

such habits would be likely to cause injury to another under the circumstances in which the employee was employed.

In one such case the court said: "If defendant knew, or ought to have known, that his employees smoked, or knew, or ought to have known, that they might smoke while on the job, the sending of such employees to work on such a day, in such a place, and in a dry time of year, and failing to take such precautions as would prevent fire, should it start, from spreading, was negligence on the employer's part."

In another such case, the court said: "One contracting to set out trees in a field covered with parched grass must use reasonable means to protect the property from fire which may be set by carelessness of his employees in indulging their habits of smoking. If defendant knew, or ought to have known, they were in the habit of smoking cigarettes, he must have known that the habit, if practiced by them when setting out trees in a field which was abnormally dry and parched, might reasonably be expected to set grass on fire and do serious damage to the property of others. The question is not whether the men in dropping lighted matches into the grass, were acting within the scope of their employment, but whether the doing of the act was reasonably to be apprehended by the employer. If it is, he is liable for the resulting damage."

And it was said in another case, that "the defendant's enterprise required the presence of employees in the warehouse and was attended by the risk that smoking on the part of an employee would set fire to the bailments. The risk is one arising out of the employment.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XV

LAWFUL USE OF FIRE

§ § §

If a person has occasion to use fire for a lawful purpose and complies with all laws respecting such use, is he liable if such fire should accidentally escape from his control and spread to adjoining property?

§ § §

Every lawful act is presumed capable of being done in a manner that will be consistent with safety to the person and property of others.

The law does not prohibit the use of fire for any lawful purpose. It has always been one of the most common and efficient agencies in clearing and subduing wild lands; and burning has been, from the first, an ordinary process in preparing land for cultivation.

But, while it is necessary for many uses of man, it is a dangerous, volatile, and destructive element which often escapes from control in the form of sparks, cinders and embers capable of being carried far through the air, and of destroying any combustible property on which it may fall; and which, when it has gained headway, can hardly be arrested or controlled.

Therefore, the use of fire is regulated by the law, and it is a fundamental rule of law that we are liable for injury or damage occasioned to another by the spread of fire because of a negligent or unlawful act or omission of duty.

The object of regulating the use of fire and fixing rules of liability for neglect is to provide some assurances that it will not be used in a negligent or careless manner; and to secure the rights of those who may be injured or damaged, by placing compensatory remedy within their reach so that they may be com-

A STUDY OF FIRE LIABILITY LAW

pensated for the loss of their property or injury to their person.

While the general rule of law is that a person has a right to use fire on his property for a lawful purpose if he does it at a proper time and in a suitable manner, and uses prudent care and diligence to prevent its spreading and doing damage to others, the rights which the law permits an owner to exercise over his property are not so broad as to permit him to neglectfully injure the person or property of another by the use of his own property.

Although he is entitled to an uninterrupted use and enjoyment of his property, the exercise of such right must be with due regard for the public good, and with humane regard for the rights and welfare of others.

The right of others not to have their property destroyed by fire without being compensated for it, is no less to be regarded than the right of a person to use fire for his own advantage.

A maxim of the common law is — so use your own property as not to injure another — and the doctrine of this maxim is not inconsistent with the rule of law that a man may use his own property as he pleases, for all purposes for which it is adaptable, provided he is not an active agent in causing injury; that he does not create a nuisance; and that he exercises due care and caution to prevent injury to others.

In one case it was said, that "liability for damage from fire is designed to stimulate precautionary measures aimed at preventing the spread of fire, or negligence in starting it, and thereby eliminate needless conflagrations destructive of property and dangerous to the safety and welfare of the public. Both willful misconduct and negligence by one in the use of his own property, which results in injury to another, are grounds for imposing liability."

Another court said: "In dry weather defendant was bound to exercise prudence and discretion in setting fire on his property; and if he did so rashly and inconsiderately, in a place

A STUDY OF FIRE LIABILITY LAW

where, and at a time when, it was likely to injure his neighbor, and it did injure him, he was liable for the damages. These rules deducible from considerations of natural right, and from time immemorial have been embodied in the legal maxim — so use your own as not to injure another's property."

And it was said in another case, that "when the injured party shows damage resulting from the act of another, which act, with the exercise of proper care, does not ordinarily produce damage, he makes out a prima facie case of negligence which cannot be repelled but by proof of care or some extra-ordinary happening which makes care useless. Common experience shows that fires do not ordinarily spread and inflict damage if due care is exercised in setting them out and watching them afterward."

Also, in connection with another fire liability case, it was said, that "the standard from which to determine the question as to whether a person exercised such care as a reasonably prudent person would exercise under like circumstances is the common knowledge and experience of men, and not the scientific knowledge and experience possessed by experts."

Thus, if a fire being used for a lawful purpose should escape control as a result of an accident in its legal sense, the law does not impose liability; but fire is known to be a dangerous agency, and those who make use of it in the operation of a lawful business are required to exercise prudence and care to prevent its escape; and where adequate precautions are not taken in that respect, it follows as a matter of law that it constitutes negligence, and therefore liability is authorized in the event of injury to the person or property of another.

In other fire liability cases it has been said: "One is bound to anticipate the results which could naturally follow, and if conditions as to combustible materials on the land, the season of the year, dryness, the topography of the land, prevailing winds, and proximity to adjacent property and combustible material thereon, are such that starting a fire would be intrinsi-

A STUDY OF FIRE LIABILITY LAW

cally dangerous, and could result in a conflagration that could reach adjoining lands, the starting of fire would be a highly dangerous act."

"Topography has considerable effect on wind direction, and courts take note, as a matter of common knowledge which everyone should know, that fire itself creates drafts, winds, and whirlwinds which are capable of carrying sparks and burning embers through the air for considerable distances; that fire itself creates wind which increases in volume as the magnitude of fire increases, and that hills and draws act much the same as smokestacks, giving draft to fire and velocity to wind."

"Where a fire is negligently started the fact that it is subsequently carried by a violent wind to the land of an adjoining owner does not relieve the person starting it from liability."

"In the starting of a fire, the time may be suitable, and the preparation for its safe conduct may be prudent, yet, if one is negligent in managing and attending it until it is extinguished, and it is communicated to and damages the property of others in consequence of such negligence, he is liable in damages to the injured party."

"The thought or belief of a person that a fire is extinguished is not a measure or test of his carefulness or negligence, and the lapse of two days during which a fire smoldered before spreading was not enough to relieve a person from liability."

"An action for fire liability is founded on negligence, and if that exists, either in starting a fire or in its management thereafter, and injury is done in consequence thereof, liability attaches; and it is immaterial whether the evidence establishes gross negligence or only a want of ordinary care. Ordinary prudence requires every person who is in full enjoyment of his faculties of hearing and seeing, to exercise them before attempting a dangerous act or operation."

"A high degree of care in making preparation to secure the safety of a fire is essential; and if inadequate preparation for

A STUDY OF FIRE LIABILITY LAW

securing the control of such fire is the cause of injury to another, the one responsible for the fire, after seeing his mistake and doing everything possible to prevent its spread to other property, will not be relieved from being liable for any damage which does occur."

Perhaps the following statement would best summarize a reply to the question under consideration in this chapter: "In a country like this, where it is necessary to clear land and burn brush and stumps thereupon, it is appropriate that fire should be employed at proper times and under suitable conditions; but when we remember that the defendant started this fire at a time when there had been no rain for nearly two months, and when much of the surrounding neighborhood contained combustible material that could be readily ignited by the sparks that would naturally fly from the burning of such a large amount of brush, we cannot say that the trial court was in error in adjudging the defendant guilty of negligence. The defendant may possibly have believed that it would rain soon, and he doubtless relied much upon a green strip of timber and the creek to prevent the fire spreading in the direction of the plaintiff's property. He however, knew there was no certainty of rain, and he must have known that the burning of so much brush would tend to increase the wind and scatter sparks to a long distance from the location of the fire."

It is fundamental in law, that if we kindle or maintain a fire on our property for a lawful purpose, we may be made liable for damage caused to others by its spread, if we are guilty of negligence, either in preparation for safeguarding against its spread, in managing it after it is kindled, or in guarding it until it is completely extinguished.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XVI

**FUNCTION OF GOVERNMENTAL
FIRE PROTECTION AGENCY**

§ § §

Is the property owner relieved of responsibility for extinguishing fire on his property when his taxes support a governmental fire protection agency for that purpose; and can a property owner keep firemen off his property?

§ § §

Responsibility for preventing, controlling and extinguishing fire on our property is our personal responsibility; it is a legal duty we owe to our State, our community, and our neighbors, and a governmental fire protection agency does not serve to remove any part of our responsibility or duty in respect to fire, our duty being, to do what we should and can do, to prevent, control, or extinguish fire, as the case may be, upon our property.

However, when, for some reason or other we fail in this duty and a fire is burning uncontrolled on our property, it is a matter of public concern and governmental fire protection agencies have the power and duty to take necessary action for safeguarding the community and general public.

The basic purpose of governmental fire protection agencies is to see that we comply with fire protection laws, and, when it becomes necessary, a primary function of such agency is to abate the public nuisance of uncontrolled fire by controlling or extinguishing it.

Restatement on torts, 202, states the rule of law in this respect, as follows: "A public officer who, by virtue of his office, or by statute, is authorized to abate a public nuisance, is privileged, in a reasonable manner, to enter upon privately owned land for the purpose of determining whether a public nuisance exists, and for the purpose of abating it, if it does exist."

A STUDY OF FIRE LIABILITY LAW

When governmental fire protection agencies are established, their purpose is to protect the general public from conflagrations which may result from fire originating on an individual's property. The protection afforded the individual is incidental.

Neither the State or subdivisions of government owe any duty to an individual to extinguish fire upon his property; or to insure or indemnify individuals against loss, or against liability for careless conduct, breach of duty, or violation of law.

To believe that the taxpayers, by the maintenance of a public fire protection agency, intend that the individual citizen is to be relieved of his obligation to protect his own property, or his liability to others in connection with negligent, careless, or unlawful conduct in respect to fire, is a dangerous misconception of the law, because it may cause a person, so believing, to, unwittingly, become liable for negligence.

While considering the same question being discussed in this chapter, one State Supreme Court made the following statement: "In most instances firemen respond to a notice, call or alarm of some nature. This alarm apprises the firemen of the existence and location of conditions indicating fire, and the law, when such conditions exist, creates their right and imposes upon them the duty to enter upon the property. The right to enter exists before the alarm is sounded, and indeed exists without an alarm if the conditions are present. The right thus created extends not only to the particular property upon which the conditions exist, but to adjacent property, which, in the opinion of the fireman, it may be necessary to enter in order to facilitate the discharge of their duties. The occupant may stand at the boundry of his property and forbid the entrance of firemen thereon, and he may attempt to keep the firemen therefrom, yet the firemen may brush him aside and with impunity enter the property over his protests, in the discharge of their duty. The firemen are on the property, not in discharge of any duty due from them to the occupant, but of public duty. Indeed it may

A STUDY OF FIRE LIABILITY LAW

be said, the firemen are more concerned to keep a fire confined to one property and to prevent its spreading into a general conflagration, than they are in the preservation of the property of the occupant, although the latter also concerns them. Within the limits of the authority by which they are employed, firemen and policemen are authorized by law to go upon the premises of anyone in the discharge of their duties. The owner cannot prevent their entry, nor can he control their actions while they are there."

It should be noted that firemen of governmental fire protection agencies are not servants or agents of the owner of property which they attempt to save, consequently, if they fail in extinguish a fire, their action, whether negligent in failing to extinguish the fire, or in failing to take any action whatsoever, will not relieve the liability of the person who is originally responsible for preventing, controlling, or extinguishing it.

The common law has always considered a fire burning uncontrolled to be a public nuisance because of its propensity to rapidly spread far and wide, thus menacing lives and property. And it is upon this premise that the police power is exercised by the State and subdivisions of government in maintaining public fire protection agencies; and that fire protection officers are authorized to enter upon private property and extinguish fires burning uncontrolled thereon.

Many States have, by statute, adopted the common law rule that uncontrolled fire is a public nuisance. For instance, California has by statute defined an uncontrolled fire to be one which is not burning within the confines of cleared firebreaks, or which is burning with such velocity that it cannot be readily extinguished with ordinary tools commonly available to private property; and the statute goes on to declare such fire to be a public nuisance, the public fire protection agencies are specifically authorized to go upon private property and summarily extinguish it.

A STUDY OF FIRE LIABILITY LAW

Similarly, Oregon law declares any fire which is burning uncontrolled on forest land to be a public nuisance, and provides, that if the owner of the property refuses, neglects, or fails to extinguish it, the Forester or any forest protective agency is authorized to enter upon private land and do so. The Oregon statute goes on to provide, that the expense of extinguishing such fire shall be recovered from the owner of the property, unless he shall have regularly paid a fire patrol assessment on such land, provided, that he is not connected with the origin of the fire.

The courts are well in concurrence that the maintenance of public fire protection agencies is for the benefit of the community and not for the private advantage of individuals; and that the maintenance of such agencies in no way relieves us of our personal responsibility or liability in respect to preventing, controlling, or extinguishing fire which rests upon us as a matter of law.

To the contrary, it has been consistently held, that if we are guilty of any breach of legal duty or negligence in connection with the origin or the spread of fire, we may be made liable for reimbursement of the public funds which were expended by a governmental fire protection agency in extinguishing such fire.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XVII

FIRE SUPPRESSION EXPENSE

§ § §

If a person, who pays taxes for the maintenance of a governmental fire protection agency, is made to pay for the expense incurred by such agency in extinguishing a fire on his property, wouldn't this be the same as double taxation?

§ § §

The law does not make a person liable for the expense incurred by a governmental fire protection agency in extinguishing a fire on his property, unless the expenditure was made necessary because the property owner in some respect, failed in performing the legal obligation or duty he owed to his fellow taxpayers; that is, the obligation and duty we have to do what we should or can do to prevent fire from originating on, or spreading from our property, so as not to force the expenditure of public funds unnecessarily.

When, through our legislative authority, a governmental fire protection agency is established, it signifies our willingness to have our tax money appropriated for the purpose of defending us against those inevitable fires which are bound to occur, but it does not indicate that we are willing to, or intend to subsidize individual negligence, carelessness, or breach of duty. If this were not so, the cost of maintaining governmental fire protection agencies could very well become prohibitive.

Perhaps the following statement made by a court while it was deliberating the question being discussed in this chapter, would best serve in making reply: The court said, "the clear intent of the fire liability law is to require reimbursement by the wrongdoer for expenses incurred in the suppression of fire.

Exhibit F-32

A STUDY OF FIRE LIABILITY LAW

This liability may be enforced by any agency or person entitled thereto, and not solely by the agencies of government. The purpose is not to secure revenue, but to compel compensation by one who has, by his willful act, negligence, or violation of law, forced the expenditure of money by others. That this compensation is eminently fair and equitable seems clear from the fact that the expenses of firefighting normally are beneficial to the wrongdoer in that they serve to limit the extent of destruction and thereby mitigate the damages he would have to pay. The burden of suppressing a fire set to, or allowed to spread to, the property of another thus rests squarely upon him whose willful or negligent acts or omissions necessitated that expense, and not upon the government, or careful property owner. Compensation required to be made under these circumstances cannot be deemed a tax."

The court went on to say, that "even where he is not responsible for the starting of a fire, if he knew of its existence upon his property, and by reasonable effort could prevent it from spreading to other property, but fails to do so, he may be made liable for the damage resulting from its spreading. That the legislature may impose liability for the expense incurred in fighting and extinguishing a fire, as well as for damage, cannot be doubted."

In another such case, the court said: "Action by the State to recover expenses incurred by Department of Forestry in extinguishing a fire which defendants set or negligently permitted to be set and escape to other property, was founded on an implied contract which every person enters into with the State to observe the laws. Where defendants negligently set or negligently permitted a fire to spread to other properties with the result that Department of Forestry incurred expense in extinguishing fire. State's action to recover such expense was one for a civil liability for a 'debt' growing out of breach of an implied contract to exercise due care with respect to fire. The statute

A STUDY OF FIRE LIABILITY LAW

imposes a personal liability to pay the 'debt' created for expenses incurred by the State in fighting and extinguishing a fire negligently set or negligently permitted to spread to other properties."

The Federal Courts, also, have consistently upheld the right of the Federal Government to recover expenses incurred by the United States Forest Service and other federal agencies, in fighting fires threatening to invade national forests and other government owned land.

In one such case the court said that the Forest Service was not a volunteer when it takes action to stop fire from invading and destroying National Forest property; that it is impelled by the conditions that exist and the evident danger of destruction of government property, and such action is taken, not as a volunteer, but in protection of such property; that the fact that the Forest Service is requested by no one to take necessary steps to protect government property, but takes such steps under impelling circumstances does not make it, in any sense, a volunteer. And if the circumstances surrounding the fire are such that the owner of the property where a fire originates, is guilty of negligence in respect to the cause, or the spread of such fire, the United States Forest Service is entitled to recover the expense it necessarily incurred in extinguishing the fire.

In another case where the question of fire suppression expense was being considered, it was said, that the fact that the cost of fighting a fire might exceed the value of defendant's land does not amount to taking property without due process of law.

Thus, in respect to the question involved in this chapter, when a property owner is made liable for payment of fire suppression expense, it is because he is guilty of negligence, carelessness or otherwise in breach of a duty he owes to his fellow taxpayers; the duty to do what he should or can do to prevent unnecessary expenditure of public money in respect to fire.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XVIII

FIRE SUPPRESSION EXPENSE

§ § §

If a person goes upon neighboring property to extinguish a fire, and he extinguishes it before it reaches his own land, and before the fire protection agency arrives, is he entitled to be reimbursed for his time and expense by the neighbor, or, by the fire protection agency?

§ § §

In respect to the neighbor on whose property the fire existed, such neighbor would be liable for reimbursement of any expense necessarily incurred by an adjoining neighbor, if he was guilty of neglect in connection with the fire, and if that be the case, such expense may be recovered whether or not the fire is extinguished before it spread off of the property of origin.

The rule in this regard is, that a person whose legally protected interests have been endangered by the negligent conduct of another is entitled to recover for expenditures reasonably made in an effort to avert the harm threatened, and if no statute provides for such recovery, action may be taken under the common law rules of negligence.

Regarding the matter of reimbursement by the fire protection agency for expense incurred by a person extinguishing a fire on neighboring property, when a person goes upon adjoining land to extinguish a fire, he is performing a legal duty he owes to himself; the duty of protecting himself and his property.

The public owes no duty to reimburse individuals for any expenditure they incur in the performance of a duty required by law; particularly when such duty serves to the private advantage of the individual and his property.

A STUDY OF FIRE LIABILITY LAW

Thus, under no circumstances would a person extinguishing or fighting a fire burning on, or threatening to spread to his property, have any claim against public funds appropriated for the use of a governmental fire protection agency for any work or expense he incurred in so doing.

On the contrary, a person failing to exercise proper effort and reasonable expense to extinguish a fire spreading toward his property, should such fire extend onto his land because of such neglect, might be made liable for reimbursement of any public funds which were required to suppress such fire so as to keep it from advancing on to other property.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XIX

EVIDENCE

§ § §

Is circumstantial evidence sufficient evidence to prove negligence in a lawsuit for fire damage?

§ § §

Circumstantial evidence can be sufficient to prove negligence in any type of case, and in fire liability cases it is rare to find any other kind of evidence.

In this respect one court said "we apprehend that there are few cases of damage caused by a defendant's negligence in setting fire, or allowing it to spread, in which anyone actually saw the fire at the moment it escaped, or the place when it first started. The law does not require demonstration, or absolute certainty, because such proof is rarely possible. Moral certainty only is required. Nearly all cases are determined on the reasonable probability of the fact being as found."

Circumstantial evidence is evidence of facts or circumstances, which, when considered altogether lead to necessary or probable conclusions. For instance, if a fire resulted from an occupational hazard, or spread as the result of a hazard existing on the land, evidence of these facts afford prima facie evidence of negligence.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XX

DAMAGE TO TIMBER

§ § §

When timber is destroyed by fire is damage recoverable for only such timber as is considered merchantable at the time?

§ § §

It has been said in respect to this question that, "In cases of injury to real estate the courts recognize two elements of damages: (1) the value of the tree, or other thing, taken after separation from the freehold, if it have any; (2) the damage to the realty, if any, occasioned by the removal.

Cases are not wanting where the value of the thing detached from the soil would not adequately compensate the owner for the wrong done, and in those cases a recovery is permitted, embracing all the injury resulting to the land. This is the rule where growing timber is destroyed. Because not yet fully developed, the owner is deprived of the advantage which would accrue to him could the trees remain until fully matured. His damage, therefore, necessarily extends beyond the market value of the trees after separation from the soil, the difference between the value of the land before and after the injury constitutes the compensation to which he is entitled."

"The value of young timber, like the value of growing crops, may be valueless. The trees, considered as timber, may from their youth be valueless; and so the injury done would be but imperfectly compensated unless the owner could receive a sum that would equal their value to him while standing upon the soil. The same rule prevails as to shade-trees, which, although fully developed, may add a further value to the freehold ~~of~~ for ornamental purposes, or in furnishing shade for livestock."

A STUDY OF FIRE LIABILITY LAW

And in the case of logs sustaining a sawmill operation, it was said: "We are of the opinion that the proper measure of damages in this case is the value of the logs destroyed, plus the rental value of the mill during the period plaintiff lost its use through the burning of his logs."

Also, damage has been allowed for injury to the soil from wind and rain carrying it away as a result of brush being destroyed thus exposing the land to damage from the natural elements.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XXI

LIABILITY INSURANCE

§ § §

If a person has liability insurance to pay for damage in case fire spreads from his property, does this relieve him from liability for such fire?

§ § §

It is not the purpose of liability insurance to relieve us from liability, nor does it do so. The object of such insurance is to make it possible for us to pay those who may be injured or damaged in a manner for which we are liable, the compensation rightfully due them, so that such burden suddenly befalling us will not immediately require the liquidation of our property and resources to pay such debt.

Insurance is simply a system whereby a group of people join together in a matter of common interest and concern, with each individual contributing a stipulated sum of money into a mutual fund to be used, if necessary, for the benefit of a member of the group who may suffer liability for some unavoidable cause.

The object of course, is to have each member pay as little as possible into the fund, but the amount paid by each member must be sufficient to maintain the fund so that immediate payment of obligations may be made. Thus, the fewer obligations arising against the fund, the less each member will have to pay to keep the fund solvent.

Therefore, a policyholder in an insurance group owes it to himself and his fellow policyholders in the group, to do what he should and can do to avoid unnecessary liability obligations against the mutual fund.

By law, in many States, insurance companies are authorized to take legal action against a policyholder, to recover funds they

A STUDY OF FIRE LIABILITY LAW

were forced to pay as a result of the policyholder's willful negligence, misconduct or violation of law.

Many people have a peculiar concept of the nature of an insurance company; vaguely visualizing it to be some vast institution with a great deal of money, and which can never become insolvent.

The fact is that an insurance company is merely a medium through which a large enough group of people are brought together so that between them, they can, at low cost, build up a mutual fund of sufficient amount to meet ordinary inadvertant liability claims against the individual members. The company functions as the agent of the group in managing the affairs of the fund, attending the books, accounting for the fund, and otherwise attending to business matters in the interests of the policyholders. As a rule, sound investment of the fund is made for the purpose of bringing a return from the fund, which tends to hold the individual premium rate as low as possible commensurate with the demands made upon the fund.

A policyholder with an insurance group owes himself and fellow policyholders the duty of exercising reasonable care and caution in the conduct of his affairs so as not to unduly burden the mutual fund with unnecessary obligations.

In the case of fire, insurance seldom replaces the whole damage, and it certainly will not bring back those lives which have been unnecessarily taken by fire.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XXII

**FIRE PROTECTION BY AGENCY
OF FEDERAL GOVERNMENT**

§ § §

Do forest rangers of the United States Forest Service have the right to order a private property owner to extinguish a fire on his own property; or to go upon private property and extinguish a fire thereon?

§ § §

When a forest officer of the United States Forest Service, or a federal officer of any agency of the Federal Government, calls upon an owner of private property to extinguish or control a fire burning on his property, it is because such fire threatens to advance and destroy property of the United States Government for which they have protection responsibility. And when federal officers call upon a private property owner and request him to take necessary action to suppress a fire, they are not ordering him to do so. They are giving notice to such owner that an unlawful fire exists upon his property. With such notice at hand, it then becomes a legal duty of such owner, to do what he should do and can do, to control, extinguish or otherwise prevent such fire from spreading to government-owned property. If the owner, so notified, fails to respond to his duty, or does not perform such duty in a prudent and reasonable manner, thus making it necessary for forest officers to provide the means for extinguishing the fire, it is not only their right, but it is their duty to do so. And when the circumstances are such, that the expenditure of public funds was made necessary because of the negligence or breach of duty of a private property owner, he may be made liable for reimbursement of public funds so expended.

A STUDY OF FIRE LIABILITY LAW

Legal action for recovery of public funds of the United States Government, which are expended by United States Forest Service officers in suppressing fires spreading from private property to National Forest property, or threatening to spread thereto, is taken in the Federal Courts, and these courts have consistently upheld the right of the Federal Government to be reimbursed for such expenditures, when they were made necessary by reason of negligence or breach of duty on the part of adjoining owners of private property.

United States/^{Forest}officers are federal officers with authority and the duty to enforce laws pertaining to the protection of National Forest property.

Fire protection on lands owned by the United States Government is provided for in the United States Code, Title 18, Sections 1855 and 1856, which provide that:

“Whoever willfully, and without authority, sets on fire any timber, underbrush, or grass, or other inflammable material, upon the public domain, or upon any lands owned or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States, or under contract for purchase, or for the acquisition of which condemnation proceedings have been instituted, or upon any Indian reservation, or lands belonging to, or occupied by, any tribe or group of Indians under authority of the United States, or upon any Indian allotment, while the title to the same shall remain inalienable by the allottee, without the consent of the United States, shall be fined not more than \$5000.00, or imprisoned not more than five years, or both.”

And, “Whoever, having kindled, or caused to be kindled, a fire in or *near* any forest, timber, or other inflammable material, upon any lands owned, controlled, or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United State, . . . leaves

A STUDY OF FIRE LIABILITY LAW

said fire to burn or spread beyond his control, or leaves, or suffers said fire to burn unattended, shall be fined not more than \$500.00 or imprisoned not more than six months, or both.”

The word “near” should be noted in the above quoted law, for it has been construed to mean a fire started anywhere close enough to be communicated to timber, brush, or grass on National Forest or public domain, even though such fire may be started on adjoining private property. In other words, a fire started and left unattended on private property is a criminal violation of federal law if it is situated in such manner that it can be communicated to timber, brush, or grass on public domain or other property possessed by the United States Government. And a violation of this provision of law is prosecuted in the Federal Court.

In this respect, a Federal Court held it to be within the constitutional power of congress to prohibit one from leaving unextinguished a fire built by him on private land, but near timber or other inflammable material upon the public domain. The court said: “The purpose of the act is to prevent forest fires which have been one of the great economic misfortunes of the country. The danger depends upon the nearness of the fire and not upon the ownership of the land where it is built. The statute is constitutional. Taken in connection with the danger to be prevented, it lays down a plain enough rule of conduct for anyone who seeks to obey the law.”

Whenever fire on private property endangers National Forest property, United States forest officers not only have the right, but also the duty to enter upon such property and do all things necessary to extinguish such fire, if possible before it reaches and destroys government property.

And this right and duty is not necessarily contingent upon statutory law; it also prevails under common law.

With the rapid growth of population in this country requir-

A STUDY OF FIRE LIABILITY LAW

ing more extended use of private land for home communities, so grows the importance of our National forest reserves. With out the timber resources we possess in these forest reserves, we could very well become a second rate nation in this world.

A STUDY OF FIRE LIABILITY LAW

CHAPTER XXIII

CONCLUSION

§ § §

Every lawful activity and occupation is supposed capable of being carried on in a manner that will be consistent with safety to the person and property of others. The use of sawmills and other industries having a fire risk potential, and the use of fire for many purposes, could not be permitted if such must necessarily create and spread fire. But, experience shows that this may be avoided by the exercise of reasonable care and prudent caution. Reasonable care with fire is unquestionably a high degree of care, because the risk of injury or death, when care is not observed, is very great, not alone to one neighbor, but to whole communities of people. There is, consequently, nothing unreasonable in presuming negligence from the occurrence of the injury, and calling upon the responsible person to rebut the prima facie case by showing that he exercised the requisite care, prudence, and diligence in the management of his property and the activities thereon to the degree required of him under the circumstances then existing.

If we do what we should do, or can do, when we should do it, in respect to fire on, or threatening, our property, so that fire protection officials are not constantly harried by our neglectful fires, they will have the time to devote their efforts to apprehending those maladjusted people who willfully, deliberately, and maliciously endanger our lives and property with fire.

Exhibit F-39

A STUDY OF FIRE LIABILITY LAW

AUTHORITIES

§ § §

The following is but a partial list of authorities which, over a period of ten years, were sought out, studied and abridged into the composition of this volume.

§ § §

Adams v. Toledo, 163 Ore 185, 96 P2d 1078.
Asher v. Pac. Elect. Ry., Cal., 187 P. 976.
Archuleta v. Floersheim, 25 NM 632, 187 P. 272.
Atlas Assur. Co. v. State, 102 CA2D 222, 229 P2d 13.
Alechoff v. L. A. Gas, 84 CA 33, 257 P 567.
Adams v. S. Bell T & T, 295 F 586.
Algier v. Steamer Maria, 14 C 167.
Aman v. Rowland Lbr. Co. 160 NC 369, 75 SE 931.
Anderson v. W. P. Ry., 17 CA2d 244, 61 P2d 1209.
Arnel v. Schnitzer, Ore.

Belk v. Stewart, 160 Mo A 706, 142 SW 485.
Bolton v. Calkins, 102 Mich 69, 60 NW 297.
Peekham v. Sea Board Ry., 127 Ga 550, 56 SE 638.
Erummit v. Furness, 1 Ind A 401, 27 NE 656.
Baird v. Chambers, 15 ND 618, 109 NW 61.
Burbank v. Bethel Mill, 75 Me 373, 46 Am Rep 400.
Boyd v. Rice, 38 Mich 599.
Berg v. Great N. Ry., Minn, 73 NW 648.
Butcher v. V. V. Ry., 67 C 518, 8 P 174.
Bolles v. Boone, 66 CA, 238 P 775.
Bartholomi v. Owl Drug, 42 CA2d 38, 108 P2d 36.
Brown v. Brooks, 85 Wis 290, 55 NW 395.
Bizzell v. Booker, 16 Ark 308.
Board v. Veeder, 89 NJL 561, 99 A 335.
Baylor v. Stevens, 16 Pa 365.
Bain v. Hodges, 4 Ala A 421, 58 S 957.
Bowles v. Hickson, 22 CA 264, 133 P 1149.
Burnett v. Atl. CL Ry., 132 NC 261, 43 SE 797.
Braden v. St. L. Ry., 223 Ala 659, 137 S 663.
Brooks v. Willig, 40 C2d 669, 255 P2d 802.
Butts v. Ward, 227 Wis 387, 279 NW 6.
Bryant v. Ellis, 222 Ky 272, 300 SW 610.
Brown v. Chattahooche Lbr. Co., 121 Ga 809, 49 SE 839.
Bryant v. Sampson Lbr. Co., 174 NC 360, 93 SE 926.
Barrett v. Veneer Works, 110 Mich 6, 67 NW 976.
Bratz v. Stark, 138 Wis 599, 120 NW 396.
Bostwick v. Minn. Ry., 2 ND 440, 51 NW 781.

A STUDY OF FIRE LIABILITY LAW

Bassler v. Sac. Gas. Co., 158 C 514, 111 P 530.
Barrett v. S. P. Ry., 91 C 296, 27 P 666.
Biber v. O'Brien, 138 CA 353.
Bushnell v. Telluride Power C., 145 F2d 950.
Bedtke v. Chicago, 240 Ill A 493.

Cameron v. McLouth, 70 F2d 6.
Conrad v. Gerber, 106 NJL 158, 147 A 476.
Cobb v. Twitchell, 91 Fla 539, 108 S 186.
Chipman v. Hibbard, 6 C 163.
Clark v. S. F. Ry., 142 C 614, 76 P 507.
Clark v. Kansas City Ry., 129 F 341.
Central Ry. v. Griffin, 55 S2d 218.
Catron v. Nichols, 81 Mo 80, 51 Am Rep 222.
Cleveland etc. Ry. v. Tauer, 176 Ind 621, 96 NE 758.
Continental Imp. Co. v. Stead, 95 US 161.
Carrol v. Central Gas Co., 74 CA 306.
Cleland v. Thornton, 43 C 437.
Corvallis etc. Ry. v. U. S., 191 F 310.
Cincinnati etc. Ry. v. S. Fork Coal Co., 139 F 528.
Cook v. Johnson, 58 Mich 437, 25 NW 388.
Carter v. La Dee Logging, 142 Ore 439, 18 P2d 234.
Conrade v. Cascade Timber, 166 Wash 369, 7 P2d 19.
Collins v. George, 102 Va 509, 46 SE 684.
Curtis v. Laconia, 73 NH 516, 63 A 400.
Campbell v. Fong Wan, 60 CA2d 553, 141 P2d 43.
Chicago Mill v. Ross, 99 Ark 597, 139 SW 632.
Cleveland v. Crawford, 24 Ohio 631, 15 Am Rep 633.
Cronkrite v. Walen, 111 Wash 31, 189 P 94.
Cecil v. Mundy, 28 Del 291, 92 A 850.
Cook v. Doud, 147 Wis 271, 133 NW 40.
County Ventura v. So. Cal. Edison, 85 CA2d 527, 193 P2d 512.

Day v. Akely Lbr. Co., 54 Minn 522, 56 NW 243.
Dwight v. Elmira Ry., NY, 30 NE 398.
De France v. Spencer, Iowa, 52 AM Dec 533.
Dunleavy v. Stockwell, 45 Ill A 230.
Dilwood v. Riecks, 42 CA2d 602.
Dibble v. San Joaquin Lite, 47 CA 112, 190 P 198.
Davis v. Hearst, 160 C 143, 116 P 530.
Dippold v. Cathlamet, 111 Ore 199, 225 P 202.
Dodd v. Read, 81 Ark 13, 98 SW 703.
Devine v. Koeger, Mo, 162 SW2d 813.
Davidson v. Am. Gas Co., 32 CA2d 382, 89 P2d 1103.
De Mirjain v. Ideal Heat, 112 CA2d 251, 246 P2d 51.

Eastman v. Jennings, 69 Ore 1, 138 P 216.
Excelsor v. Kans. City Ry., Mo, 172 SW 359.
Elmgren v. Chicago Ry., 102 Minn 41, 112 NW 1067.
Eisenkramer v. Eck, 162 Ark 501, 258 SW 368.
East St. L. Ry. v. Reams, 173 Ill 582, 51 NE 68.

A STUDY OF FIRE LIABILITY LAW

Foley v. N. Cal. Power, 112 P 467.
 Fay v. Cox, 45 CA 696, 188 P 623.
 First State Bank v. U. S., 92 F2d 132.
 Farrell v. Minneapolis Ry., 121 Minn 357, 141 NW 491.
 Flynn v. SF & SJ Ry., 40 C 14, 6 Am Rep 595.
 Fowler v. Vleveland, 126 NE 72.
 Fabry v. San Joa. Light, 55 CA 752, 204 P 558.
 Fero v. Buffalo, etc Ry., 22 NY 209.
 Friedman v. Out. Ad. Co., 74 CA2d 946, 170 P2d 67.
 Fairbairn v. Am. River E. Co., 170 C 115, 148 P 788.
 Fowler v. Atl. CL Ry., 147 NC 491, 61 SE 684.
 Fletcher v. Baltimore Ry., 168 US 135.
 Fredricks v. Alt. Ref. Co., 282 Pa 8, 127 A 615.
 Fox v. Texas Co., 180 NC 543, 105 SE 437.
 Feeney v. Std. Oil., 58 CA 587, 209 P 85.
 Fisher v. S. P. Ry., 72 CA 649, 237 P 787.
 Garnier v. Porter, 90 C 105, 27 P 55.
 Gloster Lbr. Co. v. Wilkinson, 118 Miss 289, 79 S 96.
 Gute v. Halstead, 75 CA2d 369, 170 P2d 1016.
 Gates v. Boston Ry., 255 Mass 297, 151 NE 320.
 Groeble v. Betz, 38 SW2d 289.
 Grimes v. Richfield Oil, 106 CA 416.
 Gallichotte v. Cal. Mut. Bldg., 4 CA2d 503, 41 P2d 349.
 Gett v. P. Gas & E., 192 C 621, 221 P 376.
 George v. Bekins Van, 33 C2d 834.
 Glanz v. Chicago Ry., 119 Iowa 611, 93 NW 575.
 Gradden v. Knight, 99 CA2d 700, 222 P2d 329.
 Goodwin v. Price, 48 Idaho 129, 279 P 1094.
 Grube v. Missouri Ry., 98 Mo 330, 11 SW 736.
 Gerke v. Cal etc. Co., 9 C 251.
 Gaster v. Hinckley, Cal App., 258 P 988.
 Grant v. Keystone Lbr. Co., 119 Wis 229, 96 NW 535.
 Galvin v. Gualala Mill, 98 C 263, 33 P 93.
 Haverstick v. S. P. Ry., 1 CA2d 605, 37 P2d 146.
 Higgins v. Dewey, 107 Mass 494.
 Hawkins v. Collins, 89 Neb 140, 131 NW 187.
 Howey v. Nourse, 54 Me 256.
 Hanifin v. CR Const. Co., 313 Mass 651, 48 NE2d 913.
 Henry v. S. P. Ry., 50 C 182.
 Humiston v. Hook, 86 CA2d 107, 194 P2d 122.
 Hughes v. State, 299 NYS 387.
 Hudspeth v. St. L. Ry., 172 Mo A 579, 155 SW 868.
 Finchman v. Golding, 85 CA2d 146, 192 P2d 489.
 Harrigan v. Choppran, 118 CA2d 167, 257 P2d 716.
 Haverly v. So. L. Ry., 135 Pa 50, 19 A 1013.
 Hines v. Bellah, 26 Ga A 361, 106 SE 559.
 Hagle v. Franklyn, 199 NY 388, 92 NE 794.
 Hanson v. Kimmish, 201 Iowa 1008, 208 NW 277.
 Haldeman v. Brunkhart, 45 Pa 514.
 Hull v. Sac. V. Ry., 14 C 387.
 Hodges v. Baltimore E. Co., 126 Md 307, 94 O 1040.
 Hall v. S. Joaquin Light, 5 CA2d 755, 43 P2d 856.
 Huff v. Compton School, 92 CA 44.

A STUDY OF FIRE LIABILITY LAW

Ill. Cent. Ry. v. Siler, 229 Ill 390, 82 NE 362.
 Ill. Cent. Ry. v. Buckner, 28 Ill 299.
 Ill. Cent. Ry. v. Fry, 157 Tenn 378, 8 SW2d 363.
 Ill. Cent. Ry. v. Thomas, 109 Miss 536, 68 S 773.
 Johnson v. Jennings McRea, 70 Ore 16, 138 P 236.
 Jennings v. Weibel, 204 C 488, 286 P 901.
 Jefferson Lbr. Co. v. Berry, 247 Ala 164.
 Johnson v. Fontana F. D., 15 C2d 380, 101 P2d 1092.
 Jacobs v. Andrews, 4 Iowa 506.
 Judson v. Giant Powder, 107 C 549, 40 P 1020.
 Johnson v. Veneman, 75 Kan 278, 89 P 677.
 Kennedy v. Minarets Ry., 90 CA 563, 266 P 353.
 Kendrick v. Towel, 60 Mich 363, 27 NW 567.
 Kiethly v. Hellinger, 133 Minn 36, 157 NW 897.
 Kahle v. Hobein, 30 Mo A 242.
 Krepner v. Buell, 28 Minn 139, 9 NW 671.
 Kelly v. Anderson, 15 SD 107, 87 NW 597.
 Keyser v. Klotz, 94 W Va 346, 118 SE 521.
 Kbiegel v. Aitkin, 94 Wis 432, 69 NW 67.
 King v. San Diego Ry., 176 C 266, 168 P 131.
 Kenard v. Rosenberg, 127 CA2d 340, 273 P2d 839.
 Kung v. S. P. Ry., 109 C 90, 41 P 131.
 Linn v. Barker, 106 Me 339, 76 A 700.
 Losee v. Buchanan, 51 NY 476.
 Louisville Ry. v. Nitsh, 126 Ind 229, 26 NE 51.
 Lawden v. Shaffner, 109 F2d 956.
 Lenning v. Ry. Co., Iowa, 47 NW 66.
 Liverpool Ins. v. S. P. Ry., 125 C 434, 58 P 55.
 Lewis v. Bjornestad, 111 CA2d 409, 244 P2d 497.
 Louisville Ry. v. Beeler, Ky, 103 SW 300.
 Lloyd v. Mathis, 145 Mo A 675, 123 SW 528.
 Linsey v. Winona Ry., 29 Minn 411, 13 NW 191.
 Leary v. Becker, 190 Mich 697, 157 NW 359.
 LeBlane v. Brown, 78 CA2d 63, 177 P2d 347.
 Lczano v. P. G. E. Co., 70 CA2d 415, 161 P2d 74.
 Louisville Ry. v. Young, 153 Ala 232, 45 S 238.
 Louisville v. Lawrence, 113 Ky 75, 230 SW2d 103.
 Lawton v. Giles, 90 NC 374.
 Longfellow v. Quimby, 33 Me 457.
 Lunning v. London Ins., 70 CA 94.
 Lunsford v. Oil Co., 84 CA2d 459, 191 P2d 82.
 McFarlane v. Sayden, 156 Mich 426, 120 NW 794.
 Malony v. Pet. Co. 49 F2d 146.
 Miller v. Martin, 16 Mo 506.
 Miller v. Neal, 137 Wis 426, 119 NW 94.
 Mahaffey v. Rumberger Lbr., 61 W Va 571, 56 SE 893.
 Mizzil v. Branning, 158 NC 265, 73 SE 802.
 Montgomery v. Locke, 72 C 75, 13 P 401.
 McNally v. Colwell, 91 Mich 527, 52 NW 70.
 Mensik v. Cascade Timber, 144 Wash 528, 258 P 323.

A STUDY OF FIRE LIABILITY LAW

Marvin v. Chicago Ry., 47 NW 1123.
 Magee v. N. Pac. Ry., 78 C 430, 21 P 114.
 McQuillan v. Seattle, 10 Wash 464, 38 P 1119.
 McKenna v. Baessler, Iowa, 53 NW 103.
 Maris v. Crummy, 55 CA 573, 204 P 259.
 McDermott v. SF & NP Ry., 68 C 33.
 Morris v. Warner, 207 C 499, 279 P 152.
 Morrison v. App. Power, Va, 84 SE 506.
 McLaughlin v. Tie & Post Co., 138 NW 434.
 Milwaukee etc. Ry. v. Kellogg, 94 US 469.
 McCully v. Clark, 40 Pa 399.
 McGillivray v. Hampton, 39 CA 726, 179 P 733.
 McVey v. Calif. Invest., 6 CA 184, 91 P 745.
 McKay v. Alt. CL Ry., 160 NC 260, 75 SE 1081.
 Missouri P. Ry. v. Cunningham, 214 Ark 468, 217 SW2d 240.
 Menth v. Breeze, 4 NJ 428, 73 A2d 183.
 Moise v. Fairfax, 106 CA2d 798, 236 P2d 216.
 McCormack v. W. P. Co., 214 C 658, 8 P2d 145.
 Mastin v. Levagood, 47 Kan 36, 27 P 122.
 Melker v. N. Y., 190 NY 481, 83 NE 565.
 Morrison v. Lee, 16 ND 377, 113 NW 1025.
 Manny v. Housing, 79 CA2d 453, 180 P2d 69.
 Matteoni v. P. G. E., 53 CA2d 260, 127 P2d 574.
 McCapes Re., 157 C 26, 106 P 229.
 McMahan v. Hetchy H. Ry., 2 CA 400, 84 P 350.
 N. Y. C. Ry. v. Roper, 176 Ind 497, 96 NE 465.
 New Zealand Ins. v. Brown, 110 CA2d 411, 242 P2d 674.
 N. Bend Lbr. v. Seattle, 199 P 988.
 Niose v. Empire Co., 117 C 257, 49 P 185.
 Needham v. King, 95 Mich 303, 54 NW 891.
 Nixon v. Stillwell, 5 NYS 248.
 Nashville Ry. v. Wade, 127 Tenn 154, 153 SW 1120.
 Neihause v. Contra Costa Water, 159 C 307, 113 P 375.
 Osborne v. City Whittier, 103 CA2d 609, 230 P2d 132.
 Owen v. Cook, 9 ND 134, 81 NW 285.
 Ordainer v. Stafford, 98 W Va 499, 127 SE 330.
 Osborne v. Winters, 138 CA 664, 24 P2d 892.
 O'Conner v. Menie, 169 C 217.
 O'Dowd v. Newnham, 13 Ga A 220, 80 SE 36.
 Oregon Box v. Jones Lbr., 117 Ore 411, 244 P 313.
 Pavia v. Cal. Door, 75 CA 323, 242 P 887.
 Pigford v. Goldsboro, 179 NC 683, 102 SE 389.
 Propert v. Flanagan, 277 Pa 145, 120 A 783.
 Pollard v. Walton, 55 Ga A 353, 190 SE 396.
 Palmer v. Keene, 80 NH 68, 112 A 798.
 People v. Zegras, Ca-165 P2d 541, 29 C2d 67, 172 P2d 883.
 Pruitt v. Williams, 21 Tenn A 171, 106 SW2d 892.
 Peterson v. Gibson, 322 Ill A 97, 54 NE2d 79.
 Peter v. Chicago Ry., 121 Mich 324, 80 NW 295.
 Phillips v. S. Cal. Edison, 23 CA2d 222, 72 P2d 769.
 People v. George, 42 CA2d 568, 109 P2d 404.
 Pulliam v. Miller, 108 Neb 442, 187 NW 925.

A STUDY OF FIRE LIABILITY LAW

People v. Dillon, 199 C 1.
 Penn Co. v. Whitlock, 99 Ind 16.
 People v. Oliver, 86 CA2d 885, 195 P2d 926.
 Pribanic v. Fulton, 178 Wis 393, 190 NW 190.
 Polloni v. Ryland, 28 CA 51, 151 P 296.
 Penso v. McCormack, 125 Ind 116, 25 NE 156.
 Planters v. Taylor, 64 Ark 307, 42 SW 279.
 People v. Foerst, 10 CA2d 274, 51 P2d 186.
 People v. Cap. Co., 26 CA2d 297, 79 P2d 186.
 Piraccini v. Hines, 95 NJL 114, 112 A 311.
 Phillips v. Hobbs, 67 CA 199, 227 P 622.
 Parker v. Union Wool, 42 Conn 399.
 Pickens v. S. C. Ry., 54 SC 498, 32 SE 567.
 Presto Lite v. Skeel, 182 Ind 593, 106 NW 365.
 Pitcher v. Lennon, 42 NYS 156.
 Perry v. S. P. Ry., 50 C 578.
 Phoenix Ins. v. Pac. Lbr., 1 CA 156, 81 P 976.
 Pulsifer v. Berry, 87 Me 405, 32 A 986.
 Quay v. Duluth Ry., Mich, 116 NW 1101.
 Quint v. Dimond, 147 C 707, 82 P 310.
 Robinson v. Cowan, 158 Ala 603, 47 C 1018.
 Rochester A. Ins. v. Plumbers, 258 Wis 519, 46 NW2d 765.
 Reynolds v. G. N. Ry., 119 Minn 251, 138 NW 30.
 Rodgers v. Parker, 159 Mich 278, 123 NW 1109.
 Russell v. Reagan, 30 Mo A 242.
 Richter v. Larabee, 136 CA 16, 27 P2d 954.
 Richter v. Harper, 95 Mich 221, 54 NW 768.
 Russell v. Monroe, 116 NC 720, 21 SE 550.
 Raynowski v. Ry., Mich, 41 NW 847.
 Ross v. Traction, Pa, 73 A 188.
 Rauch v. S. Cal. Gas., 96 CA 254.
 Railway v. Ins. Co., 139 US 223.
 Reuter v. S. P. Ry., 37 CA 277, 174 P 927.
 Roundtree v. Mt. Hood, 86 Ore 147, 168 P 61.
 Roselip v. Raisch, 73 CA2d 125, 166 P2d 340.
 Rylander v. Larson, 124 Wis 2, 102 NW 341.
 Ramirez v. Cheyenne, 34 Wyo 67, 241 P 710.
 Sampson v. Hughes, 147 C 82, 81 --- 292.
 Silver F. T. v. E. & W. Lbr., 149 Ore 126, 40 P2d 703.
 St. L. & SF Ry. v. Mathews, 165 US 1.
 Stebbens v. C. V. Ry., 54 Vt 464.
 State v. Marshfield, 122 Ore 323, 259 P 201.
 Spokane Inter. Ry. v. U. S., 72 F2d 440.
 Sweeny v. Merrill, 38 Kan 216, 16 P 454.
 Smith v. Ogden Ry., Utah, 93 P 185.
 Stand. Oil v. Midgett, 116 F2d 562.
 Smith v. O'Donnel, 215 C 714, 12 P2d 933.
 Schuck v. Carney, 22 Tenn A 125, 118 SW2d 896.
 Swinarton v. LeBouillier, 28 NYS 53, 43 NE 990.
 Stang v. Mill Valley, 38 C2d 486, 240 P2d 980.
 S R. Co. v. Power Co., 152 F 917.
 Sycamore v. N. W. Ry., 366 Ill 11, 7 NE2d 740.

Exhibit F-42

A STUDY OF FIRE LIABILITY LAW

State v. Phillips, 223 NW 912.
St. L. Ry. v. Ford, Ark, 45 SW 55.
St. P. Ins. v. S. P. Ry., 30 CA 140, 157 P 247.
Stillwell v. RCA, 62 CA2d 374, 144 P2d 638.
Spencer v. Gedney, 45 Idaho 64, 260 P 699.
St. L. Ry. v. Ginn, Okla, 264 P2d 351.
Spence v. Price, 48 Idaho 121, 279 P 1092.
Searle v. Parle, 68 NH 311, 34 A 744.
Specht v. Waterbury, 127 NYS 137, 129 NYS 1147.
Steel v. Mill Co., 50 F2d 1037.
Shea v. Piletti, 108 Vt 446, 189 A 154.
Siemers v. Eison, 54 C 418.
Smith v. Whittier, 95 C 279, 30 P 529.
Sauczak v. Frankoski, 100 Conn 700, 124 A 719.
Simmons v. Everson, 124 NY 319, 69 NE 911.
Stiles v. Laird, 5 C 120.
Steppe v. Alter, 48 La 363, 19 S 147.
Sherman v. West Trans, 62 NY 150.
Silver v. Ward, 102 CA2d 114, 226 P2d 732.
Stephens v. S. P. Ry., 109 C 90, 41 P 783.
Steel v. Pac. Ry., 74 C 323, 15 P 851.
Surocco v. Garry, 3 C 69.
Tackett v. Henderson, 12 CA 658, 108 P 151.
Tomlinson v. Sharp, 267 NC 177, 37 SE2d 498.
Toledo v. Fenstermaker, 163 Ind 534, 72 NE 561.
U. S. v. Chesapeake Ry., 130 F2d 308.
Ulrich v. Stephens, 48 Wash 199, 93 P 206.
Ukiah v. Ukiah Water, 142 C 173, 75 P 773.
U. S. v. Feather River Lbr. Co., 23 F2d 936.
United Supply v. L. A., 42 CA2d 220, 108 P2d 735.
Valentine v. Ratner, 105 CA2d 358, 233 P2d 667.
Vierra v. AT & SF Ry., 10 CA 267, 101 P 690.
Ventura v. S. Cal. Edison, 85 CA2d 527, 193 P2d 512.
Wood v. N. W. Lbr., 138 Wash 203, 244 P 712.
White v. Wehrhan, 202 Ala 87, 79 S 534.
Wallace v. Goodell, 18 NW 439.
Willard v. Bethurem, 234 SW2d 18.
Whitney v. Serria Ry., 123 CA 430.
Wilson v. N. P. Ry., 30 ND 456, 153 NW 429.
Ward v. Silvera, 102 CA2d 358, 233 P2d 667.
Wilson v. Cent. Ry., 132 Ga 215, 63 SE 1121.
Whitman v. Mobil Ry., 217 Ala 70, 114 S 912.
Wichita Falls v. Hibbs, Tex, 211 SW 287.
Walters v. Mason Logging, 139 Wash 265, 246 P 749.
Washington v. S. Francisco, 123 CA2d 798, 266 P2d 828.
Wilkerson v. Brown, 84 CA2d 401, 190 P2d 958.
Webster v. Symes, 109 Mich 1, 66 NW 580.
Wilmington v. Fulton, 205 US 60.
Weaver v. Shell, 34 CA2d 713, 233 P2d 667.
Young v. S. Joaquin Lite, 83 CA 585, 257 P 152.
York v. Cleaves, 97 Me 413, 54 A 915.
Yore v. P. G. E., 99 CA 81, 277 P 858.

Appendix

**A BRIEF SUMMARY
OF FOREST FIRE LAW IN CALIFORNIA**

Because the economy of California is so vitally dependent upon the timber and grazing resources of the State, and the adequacy of the State's water supply is so dependent upon the preservation of its watershed land, the legislature has provided that the State shall take direct action in protecting these essential resources from waste by fire.

To accomplish such protection the State Department of Natural Resources, acting through the State Forester and Division of Forestry, has been delegated by law to enforce the civil and criminal laws enacted for the prevention of fire, and the department is authorized to enter upon private property and abate uncontrolled fires, which by law constitute a public nuisance.

California law defines an "uncontrolled-fire" as any fire burning on land covered wholly or in part by timber, brush, grass, grain, or other inflammable vegetation, which is not burning within the confines of cleared firebreaks, or which is burning with such velocity that it could not be readily extinguished with ordinary tools commonly available to private property.

While California law does not follow the rule of absolute liability for fire suppression expense incurred by the State, or other governmental fire control agencies, the law, both common and statutory, does provide that when the State or other governmental fire control agencies are compelled to use public funds to extinguish a fire which was caused or allowed to spread uncontrolled because of someone's negligence or violation of law, the person responsible is liable for reimbursement of such funds.

Also, in this connection, California has by statute, declared that anyone who, through negligence or violation of law, causes a fire or allows a fire to spread uncontrolled, and thus compels the State or other fire control agencies to expend money to suppress such fire, is indebted to the State or other agency, or private person for that matter, for the expense incurred.

A STUDY OF FIRE LIABILITY LAW

And California law provides that no person may be released in whole or in part of any indebtedness, liability, or obligation owing to the State.

The object of fire liability law in California was clearly expressed in the case of County of Ventura v. So. California Edison Co., which was an action to recover the expense of suppressing a fire which resulted from a power-line failure.

The court said: "The clear intent of the fire liability law is to require reimbursement by the wrongdoer for expenses incurred in the suppression of fire . . . The burden of suppressing a fire set to, or allowed to spread to, the property of another thus rests squarely upon him whose willful or negligent acts or omissions necessitated that expense, and not upon the government or careful property owner. Compensation required to be made under these circumstances cannot be deemed a tax . . . The liabilities imposed were designed to stimulate precautionary measures aimed at preventing the starting and spreading of fire, and thereby eliminate needless conflagrations destructive of property and dangerous to the safety and welfare of the public. Liability in the form of compensatory recovery for firefighting costs is merely one of the sanctions devised for the achievement of the larger purpose indicated by the statute as a whole. We think the statute evinces an intention to make this additional liability as broad as the mischief it was designed to prevent."

And, in the case of People v. Zegras, which was an action by the State Division of Forestry to recover suppression expense incurred in suppressing a fire that had been allowed to spread uncontrolled, the court said: "The statute imposes a personal liability to pay the debt created for expenses incurred by the State in fighting and extinguishing a fire negligently set or permitted to spread to other properties. It is a civil liability for a debt growing out of the breach of an implied contract which every person enters into with the State to observe the laws."

A STUDY OF FIRE LIABILITY LAW

Thus, it is clear that it is not the policy of the State of California to condone or subsidize negligence or violation of law in respect to suppressing uncontrolled fires.

California law authorizes the State Forester and his agents, and county fire protection officers to summon able-bodied male persons to assist in suppressing any forest fire, and any person who fails to obey such summons, without lawful excuse, is guilty of a misdemeanor.

It should be noted, that summoning help for fighting forest fires should not be confused with fire protection officers notifying people having a legal obligation to suppress a fire, to do so. A person having a legal obligation to suppress a fire burning on his property, or threatening to spread thereto, should be notified by fire protection officers to so do, and he is not entitled to be compensated at public expense for performing a legal duty. Conversely, his failure to heed such notification may subject him to liability for all expense incurred by public officers, or anyone else lawfully justified in suppressing it.

The State Forester and designated officers of the Division of Forestry are authorized to exercise the power of peace officers, and have authority to inspect all properties, except dwellings, which are subject to compliance with fire protection laws.

The area within the State over which the State Forester has jurisdiction is determined by the State Board of Forestry in accordance with a land classification standard set forth by law.

RESUME OF PENAL FIRE LAWS IN CALIFORNIA

Statutes relating to fire are concerned with uncontrolled fire, or the possibility of fire escaping control, and the law provides that no person shall willfully or knowingly allow fire to burn uncontrolled on his land.

Throwing or placing any flaming or glowing substance, or any substance or thing which may cause a fire, in any place where it may directly, or indirectly, cause a fire, is prohibited.

Using any device or thing which may cause a fire, without

A STUDY OF FIRE LIABILITY LAW

clearing inflammable vegetation or material away from it, or using any spark or fire-emitting machinery or equipment of any sort on lands covered with inflammable vegetation, without providing adequate spark or flame-arresting devices and tools or equipment to extinguish fire, is unlawful.

Sawmills or wood manufacturing plants located on lands covered with inflammable vegetation are special subjects of legislation. They are required to dispose of mill refuse by burning it in closed burning devices, and to provide minimum clearance of inflammable vegetation or material surrounding such burning operations, or to provide prescribed clearances around such refuse as may be left unburned for a limited time; and mill refuse left on the ground beyond a prescribed period is declared to be a public nuisance.

Logging operations are also subject to special legislative attention, with requirements calling for the removal of snags and slashings as logging progresses, maintenance of firefighting tools and equipment and fire suppression plans, the employment of watchmen, and other such requirements conducive to protection from fire. The failure of a logging operator to comply with these requirements may subject him to forfeiture of his timber operator's permit.

Leaving a campfire unattended is unlawful, and the use of a campfire on another person's property without a written permit from the owner is forbidden.

To interfere in any way with the efforts of any firemen to extinguish a fire, to injure or damage any firefighting equipment or apparatus, or to disobey the lawful orders of firemen, is unlawful and subject to fine of not less than fifty dollars.

The setting of a backfire without the permission of a fire control officer is unlawful, unless it can be established that it was necessary to save life or valuable property.

And the possession of tracer bullets on forest or brush land is prohibited.

A STUDY OF FIRE LIABILITY LAW

While there is no statute which prohibits an owner of property to use fire upon it for any lawful purpose, such use of fire is regulated by a statutory requirement that a permit for such fire must first be obtained from the State Forester, or other fire control authority.

Most all of these regulations are punishable as misdemeanors; however, the willful or malicious burning of any grass, forest, woods, timber, or brush-covered land, or slashing on cutover land, which is the property of another, is punishable by imprisonment in the State prison for not less than one, nor more than ten years.

FIRE PROTECTION DISTRICTS

The legislature has, by law, authorized the formation of fire protection districts whereby the people therein may assess themselves and provide for more compact and intensified fire protection.

In some instances the Board of Supervisors of the county may make the determination of the need for such protection, and thereupon establish a county fire protection district, for which they are authorized to levy special taxes for the maintenance and operation of such agency.

Other types of fire protection districts may be formed in portions of a county upon the petition of the property owners therein. Following the creation of such a district, a governing body is appointed, or elected by popular vote. Such governing body is delegated the power to enact, within limitations of certain fundamental laws, fire protection ordinances which become law within their area of jurisdiction. Under certain procedures and limitations, they are authorized to borrow money and to issue bonds in anticipation of taxes to be collected.

In fire protection districts the people pay a special tax for the purpose of protecting their community from the spread of fire, and when funds are available they are authorized to build fire-breaks, and fire trails, and do other things incidental to pre-

Exhibit F-46

A STUDY OF FIRE LIABILITY LAW

paring the district to safeguard itself against the spread of fire.

State fire protection laws apply in fire protection districts in the same manner as they do elsewhere. In effect, a fire protection district is an extension of the State's forest fire protection system. Compensatory relief laws apply therein, so that individual citizens may enforce their rights if they are injured or damaged by fire because of a breach of duty on the part of another.

And, in the same manner as a citizen, or the State, the authorities of a fire protection district have a right to recover the expense they incur in controlling or extinguishing a fire, when such expense is a result of negligence, carelessness or a breach of duty on the part of someone, in respect to the cause or spread of such fire.

In regard to entering upon private property to extinguish an uncontrolled fire, county or district fire control agencies do so, in accordance with the public nuisance rule of the common law, and by the authority granted by statute.

These extra blank pages are provided so that fire protection officers might insert statutory fire protection laws prevailing in their respective jurisdictions, for convenient reference in using this book.

DECLARATION OF ELECTRONIC SERVICE
AND SERVICE BY U.S. MAIL

Case Name: ***Presbyterian Camp & Conference Centers, Inc. v.
Superior Court of Santa Barbara County
(California Supreme Court)***

No.: **S259850**

I declare:

I am employed in the Office of the Attorney General, and a member of the California State Bar. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. All participants in this case are registered electronically. I am also familiar with the business practice at the Office of the Attorney General for collecting and processing physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 23, 2020, I served the **Request for Judicial Notice and Exhibits** by the following methods, on the following parties and participants:

U.S. Mail (by providing a copy of the request and exhibits to Staci Caston, another employee of the Office of the Attorney General, who deposited the request and exhibits in the U.S. mail as directed by me):

Hon. Thomas P. Anderle
Santa Barbara County Superior Court
Historic Anacapa Courthouse
1100 Anacapa Street, Dept. 3
Santa Barbara, California 93101-2099

TrueFiling Electronic Service

William Michael Slaughter: slaughter@srlplaw.com

Daniel Gonzalez: dgonzalez@horvitzlevy.com

H. Thomas Watson: htwatson@horvitzlevy.com

Robin Steiner: rsteiner@horvitzlevy.com

Kathy Turner: kturner@horvitzlevy.com

Lee Roistacher: lroistacher@daleyheft.com

Second District Appellate Court: Second.District@jud.ca.gov

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 23, 2020, at San Francisco, California.

Samuel T. Harbourt

Declarant

/s/ Samuel T. Harbourt

Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PRESBYTERIAN CAMP AND CONFERENCE CENTERS v. S.C.**
(CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION)

Case Number: **S259850**

Lower Court Case Number: **B297195**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **samuel.harbourt@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REQUEST FOR JUDICIAL NOTICE	PCCC v. Superior Court - Request for Judicial Notice and Exhibits
PROOF OF SERVICE	Request for Judicial Notice - Proof of Service 7.23

Service Recipients:

Person Served	Email Address	Type	Date / Time
William Slaughter Slaughter & Reagan LLP	slaughter@srllplaw.com	e-Serve	7/23/2020 12:37:22 PM
Lee Roistacher Daley & Heft LLP 179619	lroistacher@daleyheft.com	e-Serve	7/23/2020 12:37:22 PM
Jessica Barclay-Strobel Office of the Attorney General 280361	Jessica.BarclayStrobel@doj.ca.gov	e-Serve	7/23/2020 12:37:22 PM
Robin Steiner Horvitz & Levy LLP	rsteiner@horvitzlevy.com	e-Serve	7/23/2020 12:37:22 PM
H. Thomas Watson Horvitz & Levy 160277	htwatson@horvitzlevy.com	e-Serve	7/23/2020 12:37:22 PM
Melissa Fassett Price, Postel & Parma	mjf@ppplaw.com	e-Serve	7/23/2020 12:37:22 PM
Samuel Harbourt California Department of Justice 313719	samuel.harbourt@doj.ca.gov	e-Serve	7/23/2020 12:37:22 PM
Kathy Turner Horvitz & Levy LLP	ktturner@horvitzlevy.com	e-Serve	7/23/2020 12:37:22 PM
Daniel Gonzalez Horvitz & Levy LLP	dgonzalez@horvitzlevy.com	e-Serve	7/23/2020 12:37:22

73623			PM
Theodore Mccombs Attorney General of California, Natural Resources Law Section	theodore.mccombs@doj.ca.gov	e-Serve	7/23/2020 12:37:22 PM
Second District Court of Appeal	Second.District@jud.ca.gov	e-Serve	7/23/2020 12:37:22 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/23/2020

Date

/s/Samuel Harbourt

Signature

Harbourt, Samuel (313719)

Last Name, First Name (PNum)

California Department of Justice

Law Firm