FIRESTOPPING 20 YEARS IN THE MAKING: WHAT DO WE KNOW ABOUT POTENTIAL SOURCES OF LIABILITY?

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INTRODUCTION

• General primer on the development of legal theories of potential sources of liability over the last two decades

• What contractors should know from the construction documentation and bidding phase

• Defense of an arbitration or litigation claim related to alleged defective firestopping.

• Document retention policies; and

• Spoliation claims, for failure to maintain electronically stored information or ESI
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Fire Statistics:

• U.S. fire departments responded to an estimated 1,319,500 fires in 2017

• These resulted in 3,400 civilian fatalities

• $13 billion in direct property loss (excluding $10 MM in California wildfires)
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Example of Law firm marketing to represent fire victims:

BAUM HEDLUND ARISTEI GOLDMAN PC

Camp Fire | California Wildfire Lawsuit

Multiple reports indicate that Pacific Gas & Electric Company (PG&E) equipment may have sparked the 2018 Paradise Camp fire, now the deadliest and most destructive wildfire in California history.

The Camp Fire started on Nov. 8, 2018, in the small town of Pulge. According to local media, PG&E sent an email on Nov. 7 to Pulge residents, Betsy Ann Cowley, informing her that the utility company needed to access her property due to power lines emitting sparks. Days later, fire investigators declared the power lines near Cowley’s property a crime scene.

If you or your family have been affected by the devastation of the California wildfires call us now for a free consultation.

Our lawyers are representing wildfire victims in lawsuits against the entities responsible for causing the fire. We are helping clients prepare insurance and FEMA claims forms at no cost. If you insurance payment, satisfactory to you, is achieved without the need for litigation, then there will be no attorneys’ fees charged against that payment. However, in the event your property insurance claims become disputed and require mediation, arbitration or litigation, we will represent you for a contingent fee.
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Example of Law firm marketing to represent fire victims:

Recovering clients' losses for 2017 PG&E wildfires: Making our clients whole beyond insurance

2017 PG&E FIRE LAWSUITS

Recover All of Your Wildfire Losses

The PG&E fire lawsuits seek to recover money for fire survivors to cover a wide variety of losses, including the full value of properties and personal belongings, evacuation, and temporary housing costs, emotional trauma, and loss of income. The fire lawsuits seek money in excess of what is already covered by insurance. We assist our clients with home insurance & personal property insurance.

Read about what's currently happening with the PG&E North Bay Fire lawsuit.

CAL FIRE Official Report: PG&E At Fault

In 2016, CAL FIRE, a government agency, investigated and issued official reports concluding that PG&E caused at least 11 of the 2017 North Bay fires.

A team of experts identified 910 specific factors that led to the catastrophic North Bay fires.

"We have determined that PG&E's actions and omissions caused the fire. Our investigation and findings will support the legal case for those affected by the fires."

We represent hundreds of homeowners, renters, and businesses in PG&E fire lawsuits alleging that PG&E violated California laws and is legally responsible to pay money to those who were affected by the fires.

Specifically, the PG&E fire lawsuits allege that by failing to properly inspect and maintain its infrastructure and other vegetation from its power lines, PG&E has violated the law and is in legal responsibility for the substantial damages caused by the fires.

Read a copy of the PG&E wildfire lawsuit.

Questions? Find out why you should file a claim

For a free consultation with a PG&E Wildfire Attorney, fill out the form to the right now. PG&E has already settled with thousands of property owners.
Legal theories of potential sources of liability over the last two decades:

◆ General Legal Definition of Firestopping:

  o as defined by the courts, a firestop system is

    ▪ a specific construction consisting of a wall or floor assembly, a penetrating item passing through an opening in the assembly, and the materials designed to prevent the spread of fire.”
Legal Theories:

potential sources of liability over the last two decades:

◆ Violations of Building Codes or Standards
  • (in many states constitutes negligence per se)

◆ Contractual Liability

◆ Products Liability (defective products installed as proximate cause of the injury/damage)

◆ Criminal liability
Who are Potential Legally Responsible Parties?

In short . . . Everyone!

• Manufacturers of the firestop materials,

• Sellers of the products

• Designers of firestop systems

• Installers / contractors

• Owners of buildings in which fires occur

• Governmental agencies (wanton and willful failure to inspect)
What contractors should know from the construction documentation and bidding phase:

- Who is the engineer of record for the firestop system?

- What are local governing codes (and what requirements are included in the Project specifications)

- What liability / indemnification are you buying into under your contract for firestop liability?

  (general catch-all provisions that each subcontractor will firestop its own Work)
Defense of an arbitration or litigation claim related to alleged defective firestopping

- What are your insurance limits and duties to defend?

- What is “Horizontal Exhaustion?”

- Does my contract allow my company to obtain the records we need to defend a firestop claim?
Document retention policies:
(no longer document destruction policies)

How long in this industry is long enough to retain records? Exs.

What if all the project records are maintained in the Cloud? How to protect my company?
Spoliation claims, for failure to maintain electronically stored information or ESI

• What is spoliation?

• What is potential liability for spoliation?

• In the firestop context, are there any special potential land mines?
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CONCLUSION/TAKE AWAYS

1. Familiarize yourself with all applicable codes and standards;

2. Follow developments in performance based codes and NFPA, FCIA Code efforts;

3. Keep abreast of legal developments in construction negligence and firestopping cases;

4. Maintain insurance and investigate available coverage and limits; and

5. Read and understand your contract obligations before you sign!
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THANK YOU!

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