

*Testimonial of Michael J. Dietrich
Retired Forest Fire Management Officer, USFS*

During the last 10 years of my career, I have observed or witnessed numerous investigations or reviews on serious accidents or fatalities. We have all watched well meaning actions with sometimes tragic results in the world of firefighting. While these events are truly tragic and life-changing, the liability and legal aftermath is even more life changing; and with potential criminal, civil or career implications.

The need for PLI is real. Within the last 3 years, I have witnessed many firefighters and managers finding themselves involved in various serious accident or fatality investigations. What is most disturbing is that the majority of the folks involved with these "unplanned, never happen to me events", do not have PLI! The reasons are highly varied and usually center around the concept it will never happen to me or the cost is too high.

Unfortunately, I have personally witnessed the stress and anxiety experienced by friends, co-workers and other firefighters who find themselves thrust into this arena without PLI.

Fact: If you are involved with Forest Service serious accident or fatality, a 2009 Chief's Memo has declared that the Forest Service Law Enforcement and Investigations (LE&I) branch is in charge of the investigation. So, a serious accident or fatality undergoes scrutiny for potential negligence or misconduct, before any other investigation occurs. An unwitting or innocent statement made at that initial time, could actually turn into a violation of your Fifth Amendment Rights.

Fact: A fatality will automatically result in numerous investigations: Forest Service LE&I, FS Serious Accident Investigation Team, OSHA (Fed), and Office of Inspector General (OIG). All are theoretically independent investigations. It gets even more complicated if the event involves multiple agencies -- federal or state.

Fact: The Federal Government has the **option** of whether or not it will defend you. The Department of Justice (DoJ) may or may not defend you, despite claims of being "within the scope of your duties". And, in some cases, DoJ cannot represent you because it is conducting a parallel investigation possibly against you.

Fact: Most employees do not understand "Kalkines Warnings" or "Garrity Warnings". If these terms mean nothing to you, then you need to! The criminal investigators certainly do. The accident investigators may or may not understand them, or possibly misrepresent their implications.

Rule 1 of self protection: DO NOT PRACTICE LAW WITHOUT A LICENSE. FEDS has amassed a tremendous skill set in terms of today's litigious world, specifically with regard to wildland firefighting.

PLI is cost effective! With or without reimbursement for 50% of the cost, it is truly a Best Buy. Depending on how you file taxes, it may also be considered tax deductible as well. It is less than 5 to 10 hours of overtime.

***Testimonial of G. Elton Thomas
Retired Forest Fire Management Officer, USFS***

I first heard of Professional Liability Insurance in the early-1980s from several co-workers. As a District Ranger then for the U.S. Forest Service, I was advised to get this insurance; however, I could not justify it, believing instead that I would always be protected by my agency. I continued to hold that belief until 2001 when I was Fire Management Officer for the Okanogan and Wenatchee National Forests. A fatal wildfire changed many lives that year. I had obtained a Professional Liability policy; however, I still thought I would never use it.

Following the various investigations, I was proposed for discipline. Three charges and eight specifications were asserted that shocked me. I began to see my agency in a very different light. My professional liability policy secured me very competent legal representation from Shaw, Bransford, Veilleux, and Roth. At the conclusion of the administrative process, one charge and six specifications could not be supported by the Regional Forester. I credit this to solid legal representation.

Later on I was required to testify in a product liability lawsuit involving Thirtymile Fire and since this litigation did not involve the government, I was not represented by the United States Attorney. Once again, my professional liability policy was called upon to provide me personal legal counsel. This was essential due to the United States Attorney's investigation into the criminal aspects of the Thirtymile Fire.

Following these events, I was issued a separate subpoena to testify in a civil case against the U.S. Government resulting from the Thirtymile Fire. Once again, I was provided excellent legal counsel through my liability protection. When the final bill was rung up, my legal fees were well in excess of \$50,000.

Given the paradigm shift that has occurred within the U.S. Forest Service to discipline employees involved with fatal fires and the statute requiring Office of the Inspector General involvement in specific investigations, I strongly recommend **all** wildland firefighters and managers obtain Professional Liability Benefits from FEDS. I personally know the founder of FEDS, Tony Vergnetti, and he truly cares about federal employees. Don't let another day go by without having Professional Liability protection. It is very affordable and will bring you peace of mind that you cannot otherwise buy.

***Testimonial of Debra L. Roth
Partner, Shaw, Bransford and Roth, P.C.***

The legal landscape associated with wildland firefighter may have forever changed after the Thirty Mile Fire tragedy in the summer of 2001. I know this having represented fire management officials involved in the Thirty Mile, Cramer, and Esperanza tragedies. Federal law passed one year after Thirty Mile now requires the Department of Agriculture Office of Inspector General to investigate any fatality of a Forest Service employee due to an entrapment or burnover. An IG investigation means criminal investigators conducting criminal investigations, and has resulted in the bringing of criminal charges (involuntary manslaughter and false statements made in federal investigations) against the lower level Forest Service employees involved in Thirty Mile and Cramer fires. Before this law passed, who would have ever thought

that you could go to prison for doing your job –fighting fire? It’s a whole new set of rules.

At the same time as a federal criminal investigation was ongoing, all Forest Service employees in Thirty Mile and Cramer Fires had to deal with a Forest Service Accident Investigation, an OSHA investigation, and administrative disciplinary proceedings. The legal complexities of being subject to a federal criminal investigation while these other investigations and disciplinary proceedings are also underway is truly remarkable. No one can ever fully prepare for these tragedies, but having professional liability insurance (which meant having legal counsel experienced in the array of federal investigations and proceedings) made a world of difference. It saved my clients from prosecution and then saved their jobs. Having to effectively defend yourself in these various concurrent investigations and disciplinary actions is outright cost prohibitive for any federal employee. Nothing could be more critical to preserving your career, livelihood, freedom from prosecution than knowledgeable, tenacious, and experienced counsel. If you are engaged in wildland firefighting, you have to ask yourself in the post-Thirty Mile legal realm if you are willing to gamble your life savings, your job, and the risk of prosecution, when you can so readily purchase an affordable safety net such as professional liability insurance.

***Testimonial of Rick Hafenfeld
Retired Regional Aviation Officer (Region 1), USFS***

I first learned of professional liability insurance coverage at a retirement seminar I attended in 1997. The recommendation was that anyone who was a supervisor should obtain coverage to protect their assets and retirement from lawsuits brought against you personally, so I bought my first coverage that year and kept it up until my retirement from the U.S. Forest Service in March 2007. I had always been very confident of my professional skills and was quite sure that my agency would defend me if there ever was a situation that resulted in me being personally named in a legal action, and the thought of disciplinary action against me never crossed my mind. However, as I observed my agency respond to such tragedies as the Thirtymile and Cramer Fires, I quickly learned differently. When my agency investigated these fires and other similar accidents, my opinion was that the focus was to assess blame and hold employees accountability in order to protect the perceived integrity and reputation of the organization and its upper management, as well as to appease outside stakeholders such as the media and Congress. In these situations, you, as a federal employee, may find that you are completely on your own to protect your professional and personal livelihood. Such a situation did happen to me personally and if it were not for outstanding legal representation provided by my professional liability provider, I am not so sure the results would have been as positive as it was in the end. In today's murky legal environment, a government employee, supervisor or not, absolutely should maintain outside professional liability coverage.

***Testimonial of Pete Soderquist
Retired District Fire Management Officer, USFS***

Anthony Vergnetti (President of FEDS) defended me against a number of false allegations that were the result of political pressure placed against numerous high-ranking officials in the US Forest Service. From the moment of his first phone call, which came promptly on the heels of my first phone call to my then professional liability insurer, Mr. Vergnetti provided excellent and compassionate counsel. He brings extensive knowledge to the administrative arena from a legal perspective, as well as from the position of a teaching professional from whom the

administrative law profession seek training. He has a broad view of assistance to his clients and has generously supported others with advice and counsel during some of the most difficult periods in their professional firefighting careers. Because of his perspective that he was there to protect me, his client, from all sources in a contentious, complicated, and often unreasonable legal/political environment I was reassured, as was my family, friends, and coworkers that we were all in very capable hands.