



2015 CLM Annual Conference
Palm Desert

Identifying the Unexpected

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Date of Loss: February 2000

Policy: HO 3 ISO Policy

Risk: Three Story Home located on Sullivans Island, SC Managed by Carolina Rental Company

Outline of Discussion:

1. **Details the facts of the loss-** The claimant rented the insured home on Sullivans Island with her mother and friend for three days in February of 2000. The home is two blocks from the beach. It is elevated with two floors above the main elevation and a Jacuzzi on the ground level. The claimant alleges that when she first arrived at the home that the property was swarming with ants and the HVAC unit was not working. The claimant contacted the rental company and reported the HVAC problem. In turn, the rental company sent an HVAC vendor to repair the HVAC system. Despite the claim that the home was infested with ants, the claimant did not complain about the ants until several weeks after the three day rental. More specifically, the claimant claims that somehow ants got into her pants before leaving the rental home, she drove home to Raleigh NC with the ants in her pants, and when she arrived at her home 180 ants bit her at once when she pulled her pants down in the bathroom.
2. **Discuss the Claimant and injuries-** The claimant stated that she sustained 180 fire ant bits on her bum at the same time. She stated that she was in extreme pain and she could not believe that the ants had been in her pants for the three hour drive prior to biting. She stated that she did not have knowledge of fire ants and she had never encountered them while living in Raleigh, NC. Her claim was for mental distress for 180 ants biting her bottom at the same time.

Her injuries included: She felt like she had the flu, fever, high blood pressure, aches, pains, heart palpitations, nausea, headaches, poisoned liver from ant venom, fibromyalgia
Treatment consisted of- Steroids, cleansing to get venom out of her body, pain medicine, acupuncture, chiropractic care.

3. **How could the Risk Manager for Carolina Rental Company have controlled the loss?**- The manager could have a policy and procedure in place to have the home inspected (for ants or any other potential hazard) prior to each and every rental. The manager could have had a rental agreement which included liability and hold harmless language to protect the home owner and rental company from claims arising from a tenant's injuries.

What is the industry standard for vacation rental homes for in Charleston?

From our experience, the current industry standard is for a property management company to rely upon the cleaning service that cleans rental properties between rentals to report any problems or hazards. In addition, rental agreements appear to be lacking proper clauses concerning claims and issues arising from injuries or property damage sustained by tenants.

- a. **What could have been done to mitigate the damages-** When the claimant called to report the HVAC problem, the property manager should have placed a call to the claimant at that time. The agent that took the call just called the HVAC repair man and it was left up to him to fix the "problem". The claimant stated that she did not report the ants as she thought they had killed all of them by her own application of an insect repellent. If the manager would have called the claimant when the HVAC was reported, the claimant might have reported the ant problem at that time. Also, a follow up visit or call could have gotten the ant problem acknowledged and pest control could have been called. We do believe that the claimant shares fault for not placing the rental company on notice of the ant problem. She stated at one point, she looked outside and saw 6 to 8 inches wide of ants marching towards the house. If this was true, why did she report the ant problem?
- b. **What documents should have been in place prior to the tenant entering the risk?** The risk manager should have forms in place for tenants to sign waiving liability for injuries sustained on the property. Also, a hold harmless agreement should be signed between the agency and the insured. These forms are tough to enforce but they may deter some persons from pursuing illegitimate claims.
- c. **What processes/inspections should have been in place?** Inspection prior to tenant entering homes as well as a follow up call after first 6 hours. If there was an ant problem to this degree, why did the cleaning crew not report it? A lot of rental agencies rely on cleaning services to notify the agency of problems and this should not be the case. The risk manager for the rental agencies should have processes or checklists in place for the cleaning services to complete. Also, all problems that are reported directly to the agency, should be directed to the risk manager for investigation. This did not occur in this instance as the risk manager was not aware of any problems- not even the HVAC issue.
- d. **How could the Risk Manager have controlled or changed the outcome of the loss?** The risk manager could have controlled the situation by visiting the property when the HVAC was reported as being down. If the risk manager had visited the home, she could have been notified or have recognized the ant problem and moved

the claimant to another rental property of like kind and quality. February is not peak season in SC, and therefore; such a move would have been easy.

4. **Outline the key points of the recorded statement that was taken from Claimant prior to attorney representation- the importance of recorded statements**
5. **Take opinions of how the loss occurred, if it did occur.** We now get into the issue of did the loss actually occur. There is no documentation of the ants other than a small stream of ants found by the trash can underneath the home. The claimant did not report the ant problem to the agency until she returned home. The claimant stated that she took ants home in her luggage, but her luggage never left the third floor. She stated there were no ants on the third floor. The claimant also stated that she and her friend stopped at a plantation and had a picnic lunch on their return trip to Raleigh—possible she could have gotten the ant then? Or---did she take a towel down to the Jacuzzi? She did advise that she and her friend used the Jacuzzi which was underneath the house. We know there were ants confirmed to be by the trashcan underneath house near the Jacuzzi. She possibly could have set the towel on the ground while in the Jacuzzi. When she got out of Jacuzzi, she could have wrapped the towel around her waist and ants could have stung her at that time.
6. **Discuss settlement of the claim, how it was settled and if it should settle? The medical specials were \$13082.50 and total disability due to conditions which manifested following her alleged ants bites.** Should the claim settle? Would you settle the claim? If so, where is the negligence on the insured? Where is the negligence on the realty company? Was there negligence on the claimant?

The claimant went through four attorneys prior to finding one to file suit. The suit was filed on the last day before the statute of limitations expired. What do you think the case settled for? The medical bills totaled.....When the suit was filed, defense counsel was hired to defend the insured. The insured was a paraplegic himself. The insured stayed in the home the week prior to this claimant checking into the rental and he was adamant there was not an ant problem.

Defense counsel filed a third-party claim against the rental company. The claim was settled at mediation for the \$5000 medical payments coverage.
7. **What other factors could the Risk Manager have addressed after this loss to prevent losses like this one to occur?**