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Liability for Scalding: How to Stay Out of Hot Water

by Ted Cushman

Personal injury lawyers are licking their chops following a jury's recent decision to award \$15 million to the parents of a child who was severely burned by bath water. Everyone connected with heating the water was hit for damages, including the plumber, the water heater manufacturer, the building

owner, the property manager, and the local gas utility. The parents won the huge award even though the mother of the seven-month-old girl who received the burns had placed the child in the bathtub and left the room, giving the victim's three-year-old brother a chance to enter the room unsupervised and turn on the hot water tap.

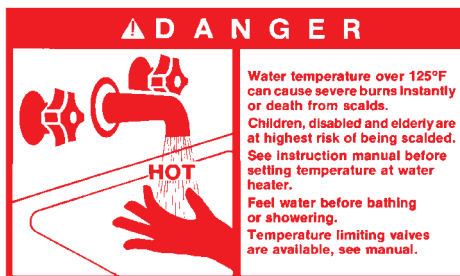
The plumber in the case had installed the water heater 13 years before the incident, and the building had been sold twice since then. No matter — the plumber had to kick in \$2 million for the mega-award, more than enough to cover the \$1.2 million in legal fees reaped by the plaintiff's attorneys.

In a recent Chicago meeting, members of the American Trial Lawyers Association (ATLA) attended a seminar entitled "Winning a Hot-Water Scalding Suit." They were advised to take advantage of a jury's natural sympathy for a child or old person whose life is ruined by a severe burn.

Gruesome photographs and graphic descriptions of chronic, intense pain are handy tools in this effort to sway the jury against the presumably well-off and well-insured defendants.

Unfortunately for plumbers and others, injured plaintiffs often have a legal case as well as an emotional one. Product liability law is founded on court precedents set in the early 1900s and before. Lawyers may argue the fine points, but common law holds that if you sell a product that you can reasonably foresee might harm someone, you are obliged to take reasonable steps to prevent that

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A warning sticker for water heaters is available free from GAMA. (4 W. Nebraska St., Frankfort, IL 60423; 815/469-9100.)

Lumber Company Presents All-LVL Package House

Laminated veneer lumber (LVL) is showing up on more and more job sites, mainly for use as beams and headers. But the characteristics of engineered wood — consistent strength, uniform straightness, and resistance to warping and shrinkage — also make it good for studs. LVL-framed walls are said to have fewer of the shrinkage-caused drywall defects that create costly callbacks. LVL is expensive compared with sawn lumber, however, so it's seldom used to frame walls.

Louisiana-Pacific, a lumber company that produces a lot of LVL, has adopted a new strategy for convincing builders to use LVL for wall

framing. A builder who wants to try the technique can send L-P his house plans, and engineers at the company will provide detailed plans for framing the entire house with LVL studs and engineered I-joists and rafters.

Louisiana-Pacific engineer David Tryba explains that there is more to framing with LVL than just substituting an LVL member for each ordinary 2-by stick. "You take advantage of a piece of material that is two to four times the strength of what you are replacing," he maintains. In the plans Tryba produces, stud spacing is increased, some sticks are eliminated altogether, and header and beam sizes



RICK FRIEDMAN/BLACK STAR

Louisiana-Pacific engineers say their new LVL house designs conserve forest resources and cut labor costs.

are reduced to allow for LVL's higher-rated strength.

Engineering data are provided with the package to convince dubious code officials, says Tryba. "We can put

an engineer's seal on it, and we put a lifetime transferable warranty on the materials."

Using L-P's framing plan, the LVL studs in a typical

continued

STATE BY STATE

Massachusetts. The legislature has overridden Governor Weld's veto of a law barring developers from filing libel suits against citizens who oppose building projects. The new law stems from a number of cases in which citizens who testified before planning boards or government agencies were sued for defamation by the developers. The law holds plaintiffs liable for court costs if harassment suits are dismissed.

Rhode Island. Beacon Mutual Insurance Co., the state's workers comp insurer, has filed for a 5% rate decrease. Members of the Rhode Island Builders Association (RIBA) who have clean safety records for two years can qualify for an additional 5% discount. For information, call RIBA at 401/438-7400.

New York. The state Department of Health is working on a radon prevention code for New York. A group of counties in central New York have been identified as high-radon areas, though radon levels within those counties vary considerably. Downstate counties and far northern counties generally have lower radon levels.

Vermont. The State Housing Finance Agency, VHFA, is providing \$66 million in new mortgage financing to low- and moderate-income Vermonters. The loans will be made at below-market interest rates. For information call 800/339-5866.

Flood Advisory: High Doesn't Always Mean Dry

The words "flood damage" conjure up an image of someone's house floating away down the river, while the residents (if they're lucky) wade to the safety of a Red Cross boat.

But in heavy rains, a house doesn't have to be anywhere near the floodwaters to suffer damage. Ned Dominick, owner of National Home Inspections in Macon, Georgia, wrote in December's *ASHI Reporter* about a North Macon home damaged in last year's flooding there. Even though the river was miles away, 3 feet of water in the crawlspace ruined the home's furnace and water heater, and humidity attacked the hardwood flooring. The water that



A good set of gutter screens, such as these by Crane Plastics, can prevent severe water damage from clogged gutters during heavy rains.

ended up in the home's crawlspace had started out on the roof. "A good set of gutters with extended downspouts would have saved the day," explains Dominick.

Another home had gutters, French drains, and a water-proofed foundation, but the homeowner hadn't bothered to

keep his gutters clean. "He lost \$5,000 worth of carpet, furniture, and wall covering because his gutters were clogged," says Dominick. The home inspector recommends a good set of gutter screens — the arched, rigid kind hinged at the outside edge. He says they're strong and easy to clean. □

Risks Rising for Spec Builders, Says NAHB Economist

Unemployment is down, the economy is growing like a weed, and home sales remain surprisingly strong in spite of rising mortgage rates. After a couple of profitable years, now's the time to build a spec house, right?

Wrong, says National Association of Home Builders economist David Seiders. Writing in the NAHB newsletter *Housing Economics*, Seiders points out several signs that today's spec market is an increasingly risky place — especially for smaller builders.

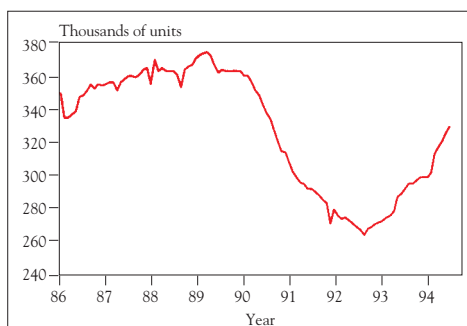
Seiders says policy statements by the nation's central bank make it clear that the Fed, fearing a return of inflation, will raise interest rates until it sees an economic slowdown. When the downturn comes, it could be sharp.

Meanwhile, the nation's

banking industry has come out of the last recession with a renewed appetite for speculation. Lenders around the country are flush with cash, and they're loaning it to developers and spec builders. The result is a rise in unsold inventory. After bottoming out in 1993, the number of unsold units on the market is halfway back to the peak level it hit in 1989.

Smaller builders are the ones most often reporting that

spec financing is easy to get, Seiders said. But he noted that because they aren't holding large numbers of homes themselves, smaller builders may be the last ones to recognize that the market in their area is overbuilt. "The demand for housing will be weakening," he warned, "and the cost of carrying unsold inventory will be rising as the prime rate goes up." Seiders's advice: Nail down the sale before you take out the loan. □



The number of unsold homes on the market is halfway back to prerecession levels. (Source: Census Bureau)

New Wall System Offers Warmth and Strength

An innovative masonry wall system used in more than 8,000 buildings in the Southwest is looking to expand nationwide. The *Integra* wall system is engineered for strength and thermal efficiency.

Integra's open-ended concrete blocks create big voids inside the wall, reducing the

threaded rod on 4-foot centers, with the bottom ends buried in the concrete footing. Special plates and tensioning nuts installed at the top of each reinforcing rod are torqued down to specified levels to place the wall in compression before foaming. According to the inventors,



Skilled masons have no trouble with *Integra's* unusual block shape (left), but foaming the completed walls (above) requires a specially trained crew.

thermal bridging usually seen with block walls. They're laid up with mortar just like ordinary block, but with a couple of twists. To increase insulating value, the extra-large voids inside the wall get filled with injected polyurethane foam. And for added strength, the system's designers have replaced the traditional rebar-in-grout reinforcement with

post-tensioning gives the completed wall greater rigidity and resistance to buckling forces than a conventionally reinforced wall. And with injected foam, the wall system R-value is estimated at R-16 to R-20 for an 8-inch block wall.

Information is available from Superlite Block of Phoenix, Ariz.; 800/366-7877. □

Scalding, continued

A person could argue over the definition of "reasonable," but it's hard to justify taking no action at all to protect the end user. Lawyers for the defendants in the recent case decided not to appeal the jury's decision.

Anticipating an onslaught of similar suits from eager attorneys, the Gas Appliance

Manufacturers Association (GAMA) has compiled a laundry list of prudent steps installers should take. These include labeling water heaters with a "Danger" label (supplied by GAMA for free), setting water temperature no higher than 120°F, checking the water temperature at the tap, offering anti-scald valves, and warning homeowners not to leave children alone in the bath. □

FROM WHAT WE GATHER

Deaths due to asthma are up sharply in the U.S., according to government health figures. The 5,106 deaths attributed to asthma in 1991 represent a 40% rise from the 1982 level. Nearly 5% of the population is estimated to suffer from the disease, which causes wheezing and shortness of breath. Researchers point to air pollution and poor indoor air quality as possible causes for the rising asthma incidence, with poverty as a potential related cause. Drug and alcohol abuse may also contribute to asthma deaths, researchers say.

Would you pay less for a house if you thought it was haunted? Appraisal specialists say that usually such rumors drive down the value of a house by about 15%. The same is true of houses believed to have been the scene of a particularly grisly crime. The up side? Experts say such "stigmatized" houses can be great deals for people who aren't bothered by the house's reputation.

SBCCI now offers plan review services to architects and designers. Certified professionals associated with the code group, whose standard codes apply to most of the southern U.S., will review plans or preliminary conceptual drawings to identify code violations before completed plans are submitted to local building departments. For an application, contact SBCCI Plan Review Service at 205/599-9800.

Coming soon to a job site near you: Robot Landscapers from Outer Space. With funds provided by NASA, Ohio State University researchers have developed software that enables grading equipment to communicate with the Global Positioning System, a satellite network developed by the military for land and sea navigation. Early in the project, the machines drive over the construction site to develop an accurate 3D site map. Then when grading begins, dozer operators are guided by signals from the satellite. Eventually, engineers hope to develop a system that runs automatically, without human operators.

Mom, that robot's digging up the backyard again!

Logging doesn't have to be ugly. Several large timber companies have reportedly hired landscaping consultants to help reduce the visual offensiveness of tree harvesting operations. Techniques include following natural contour lines instead of clear-cutting large square areas, and feathering cut areas into unharvested patches of forest. Timber company executives reportedly see preventing eyesores as key to staying in business.

Suppliers of stainless-steel building products can now be located from a single directory. Compiled by Canada's Nickel Development Institute, the directory gives names, addresses, and phone numbers of companies that make a variety of products from range hoods to roofing. For a free copy of the *Directory of Stainless Steel Products*, contact Specialty Steel Industry of America, 3050 K St. N.W., Suite 400, Washington, DC 20007; 202/342-8630.

Code Body Endorses Shallow Frost-Protected Foundations

The Council of American Building Organizations (CABO) has written a provision for shallow frost-protected foundations into its 1995 model building code, paving the way for the cost-saving technique to be adopted nationwide.

South and Southwest, where it helps to reduce sitework costs. Once frost-protected foundations are permitted in the North, the same economics will apply. NAHB's Dick Morris says a house with a shallow, frost-protected footing and slab costs about



Rigid foam insulation board can protect shallow footings from frost action in northern climates.

Protecting footings from frost action by insulating the perimeter with rigid foam, instead of digging down below the frostline, has become standard practice in cold European countries like Norway and Sweden, where the method has been used successfully for decades. The NAHB, which has been pushing for years to get the practice accepted in the U.S., is pressing local code bodies to adopt the change and is encouraging builders to apply the technology.

Slab-on-grade building technology is common in the

\$2,000 less than a similar house built over a frost wall and crawlspace.

The savings compared with a full basement foundation are even greater. But the cost savings, Morris notes, have to be balanced against the loss of usable basement space. Still, not every homeowner wants a basement. Morris reports that North Dakota townhouses built with the new method have proved popular, especially among elderly residents who appreciate not having to climb stairs or ramps to enter their homes. □

LVL Houses,

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house would cost about \$200 more than using sawn studs with a conventional framing plan, Tryba says. But he claims the real savings are in labor efficiency. With fewer pieces to handle, carpenters can frame faster, according to Tryba. The entire framing package arrives on the site prelabeled; there is very little job site cutting and almost

no waste.

Big builders are showing some interest in the new L-P program. Tryba says one Southwest builder is considering ordering more than 600 LVL framing packages for a large development. That's enough to consume a month's worth of output from a typical LVL mill, Tryba observed.

For information, call Louisiana-Pacific at 800/999-9105. □

TAX TALK

Tax Update: What's Changed

by Martha Myron

Tax time is upon us again. Here's a brief roundup of tax rule changes since last year.

The Good News

- The deduction for business equipment purchases under Section 179 has been raised to \$17,500. Vehicle or tool purchases up to this amount qualify for the deduction, which is computed against total business income (including W-2s). People who work both as subs and as employees, for instance, can deduct equipment expenses from their wage income combined with their business earnings. But you can't deduct equipment costs from passive income such as interest or capital gains.
- Purchasers of a business can now amortize goodwill and "going concern" values over 15 years.
- The targeted jobs credit, which reimburses employers for the wages of employees hired as part of qualified training programs, was extended through Dec. 31, 1994.
- The new earned income credit maximum is \$2,527, and now applies to both single and married workers.
- Losses from rental properties may now be offset against other business income under the Revenue Reconciliation Act of 1993. Contractors who buy and renovate buildings can benefit from this change, but the rules are complicated — consult your accountant.
- Another change will help taxpayers who owe money on property that isn't worth what it used to be. If your lender forgives a portion of your debt, the reduction in your indebtedness will no longer be taxable income. However, the difference will be applied to reduce the basis of the property in question.

The Bad News

- The 25% health insurance premium for self-employed persons expired in 1993.
- The depreciation period for business property has gone up from 31.5 years to 39 years. This means a smaller annual deduction for property depreciation.
- The business meals deduction has been reduced from 80% to 50%.
- Professional dues (for instance, builders association dues) are no longer deductible.
- The deduction for employer-provided education assistance expired on Dec. 31, 1994.

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