

December 2012

# Inside Fire

**WHITEMORE**  
FIRE CONSULTANTS, INC.

## Identifying the Right Expert, by Timothy Poeschl



Whether it is in our personal or professional life, everyone is guilty of pressing someone to get the answer we want. This is especially true in our line of business, when you are an adjuster, an attorney, cause and origin expert, or an engineer. However, the individual pressing for the desired answer and/or result, must keep in mind that cause and origins and engineers, and even attorneys have a code of ethics, that must be followed.

Cause and origin experts' code of ethics must be followed during an investigation and in forming an opinion, but they also extend to dealings with clients, and the opinions they render. The relevant standard states: (International Association of Arson Investigators, Code of Ethics)

- I will avoid alliances with those whose roles are inconsistent with an honest and unbiased investigation . . .
- I will make no claim to professional qualifications which I do not possess . . .
- I will bear in mind that I am a truth seeker and not a case maker.

Engineers also have Fundamental Canons that all engineers must follow: (National Society of Professional Engineers, Code of Ethics)

- Perform services only in areas of their competence . . .
- Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation and usefulness of the profession.

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Wouldn't it be convenient if you could identify a "bad" expert by the truck they drive?

## Inside this Newsletter

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By Tim Poeschl, Attorney at  
Law, Hanson, Lulic & Krall  
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## Identifying the Right Expert, by Timothy S. Poeschl, Continued

Obviously, everyone knows that they should not push their experts into an area where they do not have expertise. However, duties and boundaries get blurred when, either due to budget constraints or simple oversight, the correct engineer has not been retained. For example, following an electrical fire, an attorney or an adjuster may request that the cause and origin render an opinion on not only the origin, but what could have caused the loss. While cause and origins may see hundreds, if not thousands of the same type of electrical fire year after year throughout their careers, the simple fact is rendering an electrical opinion is outside their area of expertise, and their opinion will be excluded on a motion in limine or on a Daubert or Fry-Mack challenger.

Likewise, everyone understands that all engineers are not created equal, and that a mechanical engineer cannot render an opinion on an electrical failure, and vice versa. However, on a small loss that is a first assumed to be an electrical failure, and turns out to be mechanical, an electrical engineer may be pushed to render an opinion that will be outside of his/her expertise.

It is important to understand the exact roles of the parties that have been retained. The engineers and cause and origins are required to stay within their area of expertise and competence and are the “truth seekers.” The attorneys and/or claims adjusters are the “case makers.” Simply put, engineers and cause and origins are required to discover facts and the truth, and present them to the entity or entities that retained them. It is the attorney’s job to take the truth, and represent their clients in a vigorous and tenacious manner, to the fullest extent allowed under the Rules of Professional Ethics.

Often, following a scene or lab examination, the parties will meet and the expert will be asked what his/her opinions are. The attorney will question the opinion, finding the strengths and weaknesses of the case and challenging the expert to not spin the facts, or manipulate them, simply because doing so will give the client that retained them a better case. Further, the expert should not render an opinion outside of his/her expertise. The attorney should not push the expert past this point, and the expert must recognize their limitations and not render an opinion that their education and qualifications, and at times, license cannot support.

This is important because the attorney takes the expert’s opinions and presents them to the Court and the adverse parties consistent with their duty to vigorously represent their client. To be clear, attorneys’ statements should always be true, but they can advocate facts are more or less important, and which facts the court should consider more strongly or discount entirely. If the expert that has attended the lab or scene examination presents their facts to the attorney with a slanted view, the simple fact is that the truth will not be presented to the client or to the court.

It is important that when an attorney meets with cause and origins and engineers and other experts, they need to be respectful of the duties and ethics that each professional must adhere to. As previously stated, attorneys question the experts’ opinions to determine if their client has a viable defense or a subrogation claim. The attorney

... If an expert presents slanted views, the simple fact is that the truth will not be presented to the client or to the Court. . .

must remember that if they push an expert past the point of where they are comfortable in their opinion, or into an area where they are outside their expertise, they will simply be eliciting a flawed, inadmissible opinion. To that extent, both experts and attorneys must remember that the simple fact that experts are the “truth seekers” who are not

permitted to spin the facts, or simply give an opinion that is favorable to the client who retains them, and the attorneys’ role is that of the “case maker”. If this simple method is followed, there is no question that the opinion rendered will be solid, ethical and admissible.

It is also recommended that when you hire experts, keep in mind the scope of the loss, the qualifications and expertise necessary and perform your due diligence on the integrity, ethics, professionalism of your representatives. Does this expert possess the ability and qualifications to perform the duties necessary to provide factual testimony to the Court? Have you ever heard of the old adage, “You get what you pay for?” Hiring experts falls directly into this saying. Your job as an attorney AND an expert is to provide the best case for your client . . . Hiring a less expensive, less qualified expert at the onset of your case may put your success in jeopardy. If only “bad experts” could be identified by the truck they drive.

Timothy S. Poeschl, Attorney at Law



# Recalls



## **Harbor Freight Tools Recalls Cordless Drill**

The U.S. Consumer Product Safety Commission in cooperation with Harbor Freight Tools of Camarillo, California has announced a voluntary recall of the Drill Master cordless drill. The black trigger switch on the 19.2v cordless drill can overheat, posing a fire and burn hazard to consumers. Approximately 108,000 units were sold at Harbor Freight Tools stores nationwide, via catalog and online at [www.harborfreight.com](http://www.harborfreight.com) from April 2008 through May 2012 for between \$27 and \$30 and were manufactured in China. Harbor Freight Tools has received one report of a drill overheating and burning through the handle of the unit which resulted in a consumer receiving a minor injury.



This recall involves Harbor Freight Tools Cordless Drills, model number 96526. The drills are blue and black and have a black trigger switch. They have a 19.2v rechargeable battery pack. The drill's model number is located on a yellow label on the left side of the drill. "Made in China" appears in black and red lettering on a yellow warning sticker located on the right side of the unit.

Consumers should immediately stop using the recalled product, remove the rechargeable battery and contact Harbor Freight Tools to receive a free replacement drill. For more information, contact Harbor Freight Tools at (800) 444-3353 or via their website: [www.harborfreight.com](http://www.harborfreight.com).





# Recalls

## Toro Riding Mowers Recalled



The U.S. Consumer Product Safety Commission in cooperation with The Toro Company of Bloomington, Minnesota has announced a voluntary recall of the Toro ZMaster® Riding mowers. The traction belt can wear through the mower's fuel tank and cause fuel to leak, posing a fire hazard. Approximately 2,600 units were sold nationwide at Toro dealers from January 2012 through August 2012 for between \$7,700 and \$8,700. Toro has received five reports of incidents. No injuries have been reported.

This recall involves 2012 Toro Z Master Commercial 2000 Series ZRT riding mowers. The mowers are red and black. "Toro" and "2000 Series" are printed on the side and "Z Master Commercial" on the front of the mowers. The model and serial numbers are on a metal plate located at the front of the mower, below the seat, on the left-hand side. The following models and corresponding serial numbers are included in this recall: model number 74141 with serial numbers ranging from 312000101 to 312000784; model number 74143 with serial numbers ranging from 312000101 to 312000887; and model number 74145 with serial numbers ranging from 312000101 to 312001178.



Consumers should stop using the recalled mowers immediately and contact a Toro dealer to schedule a free repair and/or to check if the repair has already been made to the mower. Toro has contacted registered owners of the recalled mowers. For more information, please visit the firm's website at:

[www.toro.com](http://www.toro.com).





# Recalls

## ***Ford Announces Recall for 2013 Escape SUVs Due to Fire Risk***



Ford Motor Company is recalling more than 89,000 new Ford Escape SUVs and Fusion sedans because the engines can overheat and cause fires. The recall affects vehicles from the 2013 model year with a 1.6-liter turbocharged engines that were sold in the U.S. and Canada.

Ford says it's working on a fix and is asking owners to contact dealers, who will arrange for loaner cars at no charge until the repairs are made. The company says the engines can overheat and leak fluids onto hot parts, causing fires. Ford is trying to find out what causes the overheating problem.

It's the fourth recall in four months for the all-new Escape, a top seller for Ford in the important compact SUV segment of the market. The new 2013 version went on sale in the spring, and it already has had problems with coolant leaks, cracked fuel lines and carpet padding. Safety advocates say that more than three recalls in a car's first year are a sign of quality problems, although Ford has said previously that the recalls show it's moving quickly to address safety problems.

Ford said the recall comes after the company received reports of 12 fires in Escapes and one in a Fusion. No injuries have been reported. Deep said he did not know what fluids are leaking. Ford urged owners of the recalled vehicles to call dealers to get loaner cars. The cars can still be driven, but owners whose dashboard warning lights illuminate should pull off the road, turn off the engine and leave the vehicle.

"It is important that affected customers not ignore this recall and contact their dealer as soon as possible," Steve Kenner, director of Ford's Automotive Safety Office, said in the statement. Escape and Fusion owners can find out more about the recall by going to Ford's website, [WWW.FORD.COM](http://WWW.FORD.COM), and clicking "View Notices and Recalls" in the "Support" tab. Owners can type in the 17-digit vehicle identification number to see if their vehicles are included. They can also call Ford at (866) 436-7332 in the U.S. or (888) 222-7814 in Canada, Ford said in a statement.

The recall affects Fusions and Escapes with "SE" and "SEL" packages. Models with different engines don't have the problem and are not involved in the recall. About 73,000 Escapes and 16,000 Fusions are affected.

In September the company recalled 7,600 new Escapes to fix coolant leaks that can cause engines to overheat or catch fire. Those Escapes also have 1.6-liter four-cylinder engines. Plugs in the engine may not have been installed properly and can fall out while the motor is running. Coolant can leak and cause engines to overheat.

In July, the company recalled 11,500 Escapes to fix fuel lines that can crack, leak and cause fires. In the same month Ford recalled more than 10,000 of the vehicles to fix carpet padding that can interfere with braking.

Both the Fusion and Escape are among Ford's top-selling vehicles. So far this year, the Dearborn, Mich., automaker has sold nearly 220,000 Escapes and 207,000 Fusions, according to Autodata Corp. But many of those are from the previous model year and have different engines. Both vehicles seat five. The 2013 Escape has a starting price of \$22,470, while the Fusion starts at \$21,700.



December 2012



*Can you believe that we are coming to an end of 2012? I think the older I get the faster the years seem to go by.*

*This is the time of year that with a little nostalgia, we all look back and reassess. In May, Whitmore Fire Consultants, Inc. was the lead investigation team for one of Minnesota's largest industrial fires in history, Verso Paper Mill. One man lost his life in this explosion and this year, his family is celebrating the holidays without him. We were on the scene for 65+ days, but with the commitment of my investigators, we continued to provide our day-to-day investigation services to our clients. In September we had our 16th Annual Seminar with over 115 attendees . . . I have heard numerous comments from those that attended that it was one of our best. I am grateful to our many clients who continue to utilize our services for their origin and cause needs and do not take your loyalty and commitment to us lightly.*

*I am thankful for my staff, Brian Haag, Doug Noah, Brian Whitmore, Mark McCue, Amy Powell and Jodi Davis for their work ethic, commitment to providing their best day in and day out and for challenging me to be the best I can be.*

*It is court decisions like the recent verdict in Hennepin County that makes us all strive to do our best for our clients and the citizens of the communities and states that we work in. Thank you seems so insignificant, but I truly am thankful for being able to go out each and everyday to do what I love, even when it's -20° to 100°. Happy Holidays!*

*Bob Whitmore*

## First Degree Arson Conviction in Hennepin County

On Friday, November 16, 2012, a Hennepin County jury returned a guilty verdict against a defendant who was charged with deliberately setting his home on fire in Brooklyn Park, Minnesota in August 2011.

Doug Noah, CFI of Whitmore Fire Consultants, Inc. as well as Dan Choudek of OnSite Engineering, Mike Tremain, SIU Investigator for State Farm Insurance, Bruce McLaughlin of the Minnesota State Fire Marshal's Office, Cassandra Crego-Ofsthun of the Brooklyn Park Fire Department, the Brooklyn Park Police Department and the Minnesota Bureau of Criminal Apprehension all worked in cooperation to present the case to the Hennepin County Attorney.

Congratulations on your hard work and verdict.







*Don't forget during this holiday season and every day ... You can assign new losses to us via our website: [www.whitemorefire.com](http://www.whitemorefire.com) It's easy, just "click" on the "submit a new loss" tag, complete the form and press "submit." You will receive an email and/or telephone call from our on-call representative as well as a follow-up the next business day. Just another way that we want to make your busy days a little less stressful.*

**Happy Holidays!**  
**From All of Us at**  
**Whitemore Fire Consultants**



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