

Haiti Earthquake !!!!

On January 12, 2010, a major earthquake, measuring 7.0 on the Richter scale, wreaked havoc in the impoverished Caribbean Island of Haiti. The earthquake struck at approximately 5:00 PM (EST) in a highly populated region near the capital city of Port-au-Prince. Thousands died, many buildings collapsed and the under-developed infrastructure was severely damaged.

This island has never experienced an earthquake of this intensity and humanity efforts are overwhelming.

One of our own friends, Farmers Insurance Group Large Loss Adjuster Bruce Lilleveld and his wife Robin were in the midst of this disaster and their story is printed on Page 6-7 of this newsletter.

So many times we see the images on our television or newspaper and feel removed from the heartache and loss that others experienced. But, the story provided by Bruce and Robin and how close they came to being another statistic in this natural disaster puts everything in perspective.

We are happy that our friends are okay physically, but this event I'm sure has changed them forever. Please join Whitmore Fire Consultants, Inc. in their support of the humanitarian efforts of organizations providing assistance to the citizens of Haiti.



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Recent Spoliation Decisions in Wisconsin & Minnesota, by Alexander Jadin



Alexander Jadin

The past six months have seen new spoliation decisions from both Wisconsin and Minnesota. Last summer, the Wisconsin Supreme Court issued an opinion addressing the duty to preserve evidence and when and how that duty can be discharged. This past December, the Minnesota Court of Appeals issued an opinion regarding the necessity of advance notice of any action that would lead to the destruction of evidence, whether of the scene or of the artifacts. These new opinions present a good opportunity to review and address the current standards of scene and evidence preservation and the avoidance of spoliation sanctions in both Wisconsin and Minnesota. Whether working a scene in the capacity of an expert, attorney or behalf of an insurer, it is imperative to be aware of the standards regarding the preservation of evidence, as failure to adhere to them can be very expensive.

American Family Mutual Insurance Company v. Golke, 768 N.W.2d 729, (Wis. 2009).

This loss was the result of a residential house fire. American Family brought suit against the Defendants (three brothers and their roofing and siding company), who performed previous roof repairs near the chimney of the insured's home. American Family sent two notice letters to the Defendants, notifying them of the potential claim and of the deadline to inspect the scene. There was no response to American Family's notice letters. American Family demolished the roof after the inspection deadline, with the Defendants never having inspected the fire scene. Neither American Family nor its experts retained any artifacts from the roof or the chimney area.

The Wisconsin Supreme Court held that a party of

control by providing the opposing party or potential litigant with: 1) reasonable notice of a possible claim; 2) the basis for the claim; 3) the existence of evidence relevant to the claim; and 4) a reasonable opportunity to inspect the evidence. The Court reasoned that a rule that does not allow a party or potential litigant to discharge its duty to preserve evidence unless all the parties consented is neither practical nor fair to the party in control of the evidence. The notice may be effectuated by first-class mail, and evidence of mailing creates a presumption of receipt that may create an issue for the fact finder only by denial of the receipt. There is no requirement for notice by certified mail. The dismissal of a case as a sanction for spoliation is appropriate only when the party in control of the evidence acted egregiously in destroying that evidence.

“These new opinions present a good opportunity to review and address the current standards . . .”

There is still the potential for lesser sanctions, such as discovery sanctions or an adverse inference instruction to the jury, when a party fails to preserve relevant evidence but the failure does not meet the level of egregious conduct. In order to find spoliation, however, there must be something more than mere negligence. Dismissal is a sanction that is rarely granted and is appropriate only in

cases of “egregious conduct.” Garfoot v. Fireman's Fund Ins. Co., 599 N.W.2d 411, 417 (Wis. Ct. App. 1999). The Court further stated that finding bad faith or egregious conduct in the context of evidence destruction involves more than negligence and consists of a conscious attempt to affect the outcome of the litigation or a flagrant, knowing disregard of the judicial process.

Continued on Page 2



Recent Spoliation Decisions in Wisconsin & Minnesota (Continued)

The Court's ruling in American Family further confirms the decision in Garfoot, which identified clear steps to take in order to discharge the duty to preserve evidence. It identified the means and content by which a plaintiff must notify a potential defendant of a claim and which factors the court will weigh to determine the sufficiency of the notice. Further, the Court held that the destruction of evidence must rise to the level of egregious conduct to warrant dismissal of a sanction.

This is an important difference from the State of Minnesota, where dismissal can arise from a mere negligent destruction of evidence.

The Court said a trial court may use its discretion, guided by the totality of the circumstances, to judge the sufficiency of the content of the notice. Relevant factors include: 1) the length of time evidence can be preserved; 2) the ownership of the evidence; 3) the prejudice posed to possible adversaries by destruction of the evidence; 4) the form of the notice; 5) the sophistication of the parties; and 6) the ability of the party in possession of the evidence to bear the burden and expense of preserving that evidence. While there is no defined language articulated for putting potential parties on notice of a claim, investigators should be mindful that a court will likely give stronger consideration if a party had actual notice of a claim and a reasonable opportunity to inspect.

The Wisconsin Supreme Court held that the duty to preserve evidence is discharged once the party in possession has given: 1) reasonable notice of a possible claim; 2) the basis for that claim; 3) the existence of evidence relevant to the claim; and 4) a reasonable opportunity for inspection of the evidence.

Miller v. Lankow, 2009 WL 4910258 (Minn. Ct. App. 2009)

In addition to the general notice requirement in Hoffman v. Ford Motor Co., the Minnesota Court of Appeals has added an additional notice requirement prior to the destruction of the scene or destruction of relevant artifacts. Prior to selling a house to Miller, Defendant Lankow hired the other defendants to address a moisture intrusion problem with the home. After completion of the repairs, Lankow sold the home to Miller and disclosed the previous moisture and mold problems. Two years later, there was further water intrusion in the house. Miller put the parties on notice that there was water intrusion in the house and one of the contractor's representatives inspected the scene. Miller notified the defendants that he was "interested in obtaining the contractors' assistance in remediating the problem, rather than providing them with a notice of a breach or a claim."

Moreover, there is no evidence in the record Miller attributed the problems to defective workmanship by the contractors. The Court held that merely discussing the work performed and theorizing about potential causes of the damage does not constitute sufficient notice of a potential breach of claim. Ultimately, Miller's home was repaired prior to the parties being provided with notice of his intent to proceed with the repairs to the home. The Court concluded "that a party must provide actual notice of the nature and timing of any action that could lead to destruction of evidence and afford a reasonable amount of time from the date of notice to inspect and preserve evidence."

In Practice

There are few issues that can more easily be avoided than a dismissal of a subrogation lawsuit for spoliation of evidence. Standards are now clearer than ever. Being well versed on the standards of scene and evidence preservation can save that case in suit. Proper notice to all potentially responsible parties and effectuating the notice is imperative. Retain what you can as long as you can. Make sure that the insurance carrier, experts, legal counsel and the property owner are all communicating.

As we all know, we must first let any potential target defendant inspect the scene or evidence. Therefore, you must acquire your expert, identify the targets and notify them immediately, potentially through your legal counsel. It is important to give the parties deadlines, but be flexible within reason. It is imperative for the notified parties and liability carriers not to

ignore notice letters. Communication is important both between the claimant and potential defendant, as well as between the team assembled to handle the determination of the loss. A good rule is that it's better safe than sorry in the preservation of evidence.

Alexander Jadin is an attorney with Hanson, Lulic & Krall in Minneapolis, Minnesota. The views of Mr. Jadin do not necessarily reflect the views of Whitemore Fire Consultants, Inc. For more information pertaining to Mr. Jadin's article, please contact him directly or visit their website: www.hlk.com.

"While there is no defined language articulated for placing potential parties on notice of a claim, investigators should be mindful that a court will likely give stronger consideration if a party had actual notice . . ."

Recently, I received a telephone call from the Scott County Attorney's office advising me that after three years of intensive investigation, 1st Degree Arson charges were being filed against the homeowner and his son in connection with a residential fire in Prior Lake.

This investigation was a perfect example of collaborative investigation efforts conducted by City, State and insurance investigators. As insurance investigators, it is our job to objectively investigate fire claims and to render independent opinions. However, in this case, all entities came to their own conclusions based on evidence, artifacts and scene inspections.

Working with such professional governmental agencies who are truth seekers and fact finders is a perk to our jobs as independents.

I'd like to think that the upper Midwest has the process right. We work in conjunction with authorities but are provided the latitude to opine our independent results based on our investigations, not a group consensus.

The ultimate 1st Degree Arson charge in this incident is the result of thorough, thoughtful, prudent and detailed forensic and physical evaluations of the evidence.

I am honored to be a part of that investigation team.

Innovage LLC Recalls Discovery Kids Lamps Due to Fire and Burn Hazards

The U.S. Consumer Product Safety Commission, in cooperation with Innovage, LLC of Foothill Ranch, California announced a voluntary recall of the Discovery Kids™ Animated Marine and Safari Lamps. Approximately 360,000 units were sold through Mass merchandisers, department, drug and hardware stores nationwide, online and through direct sales from July 2009 through January 2010 for about \$10 and were imported by Innovage LLC, of Foothill Ranch, California and were manufactured in China.

A defect in the lamp's printed circuit board can cause an electrical short, posing a fire and burn hazard to consumers.

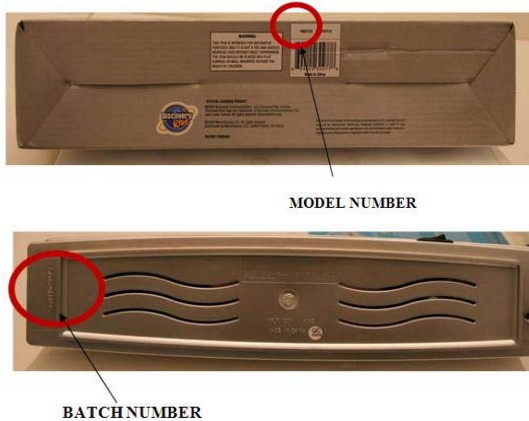
Innovage has received nine reports of incidents, including seven reports of lamps catching fire, one involving smoke inhalation injury to a child and three involving minor property damage.



This recall involves the Discovery Kids™ Animated Marine Lamp with model number 1627121 or 1628626 and the Animated Safari Lamp with model number 1627124 or 1628626. All models have batch numbers beginning with "2". The decorative lamps are silver in color and feature rotating films with marine or safari scenes. "Discovery Kids" is printed on the front top left corner. The batch number is an 11 digit number located on the bottom of each unit. The model number can be found on the bottom of the packaging.

Consumers should immediately stop using the lamps, and contact Innovage for information on returning the product for a full refund.

For additional information, contact Innovage toll-free at (888) 232-1535 between 9 a.m. and 5 p.m. PT Monday through Friday, visit the firm's Web site at www.lamprecall.org or email info@lamprecall.org



Arson Charges Filed in Prior Lake Fire

Arson charges against two men in connection with a December 2004 residential fire were filed in Scott County one day before the statute of limitations was to expire. What may have been a tragedy following two fires and vandalism now appears to have been a calculated arson case. After five years of information gathering and forensic investigation, and putting everything together, the sequence of events just didn't add up.

The State Fire Marshal's Office and the Prior Lake Police and Fire Department worked closed with insurance investigators following the fire. "This was a tremendous group effort in working this case and ultimately

it is very satisfying that this case culminated in criminal charges, Detective Chris Olson of the Prior Lake Police Department stated. "Forensically, this case was very impressive."

Whitemore Fire Consultants, Inc. conducted the investigation on behalf of the insurance carrier along with the assistance of OnSite Engineering & Forensic Services.

The first hearing on the arson charges was scheduled for January 29, 2010.

Upcoming Events

We are in the planning stage of our annual educational seminar to be held at the Legend's Golf Course in May 2010. In an effort to provide new information and to make your attendance worthwhile, we are asking for suggestions, recommendations, etc. on what topics you would like to obtain more information about. Please email your suggestions to: pwhitemore@whitemorefire.com.

More information about our seminar will be released next month! Watch your email, mail and you copy of *Inside Fire*.



The Minnesota Chapter of the International Association of Arson Investigators will hold their annual meeting & seminar in St. Cloud, Minnesota March 24-26, 2010. For more information or to download registration forms, please go to the IAAI website at: www.mniaai.org

CPSC Recalls

Dehumidifiers Recalled by LG Electronics Tianjin Appliance Due to Fire and Burn Hazards

The U.S. Consumer Product Safety Commission, in cooperation with LG Electronics announced a voluntary recall of Portable Dehumidifiers. Approximately 98,000 units manufactured by LG Electronics Tianjin Appliance Co., of China were sold at The Home Depot, Wal-Mart and Heat Controller Inc. nationwide from January 2007 through June 2008 for between \$140 and \$150.

The power connector for the dehumidifier's compressor can short circuit, posing fire and burn hazards to consumers. LG has received 11 reports of property damage incidents involving arcing, heat, smoke, including four fires that spread to the building structure and involved significant smoke/water damage. No injuries have been reported.

This recall involves 30 pint portable dehumidifiers sold under the brand names in the chart below. The dehumidifiers are white with a red shut-off button, controls for fan speed and humidity control and a front-loading water bucket. "Goldstar" or "Comfort-Aire" is printed on the front. The model and serial numbers are printed on the interior of the dehumidifiers and can be viewed after the water bucket is removed.

Consumers should immediately stop using the recalled dehumidifier, contact LG to determine if it is included in the recall and return it to an authorized LG service center for a free repair.

Consumer Contact:

For additional information, contact LG toll-free at (877) 220-0479 between 8 a.m. and 7 p.m. CT Monday through Friday and between

8 a.m. and 2 p.m. CT on Saturday for the location of an authorized LG service center for the repair, or visit the firm's Web site at www.30pintdehumidifierrecall.com



Christmas Tree Toppers Recalled by Precious Moments Due to Fire Hazard



The U.S. Consumer Product Safety Commission, in cooperation with the Precious Moments, Inc. of Carthage, Missouri, announced a voluntary recall of the Precious Moments Christmas Tree Toppers. Consumers should

stop using recalled products immediately unless otherwise instructed. Approximately 4,300 units were sold at Menards, Shopko and Blain's Farm and Fleet nationwide from August 2009 through December 2009 for about \$18.

Undersized wiring can cause the tree topper's switch assembly to overheat and melt posing a fire hazard. Precious Moments has received two reported incident involving the tree topper overheating. No injuries have been reported.

The recalled tree toppers are 10 inch tall vinyl angels with LED lighted wings. The angels are white, gold and yellow and they are holding either a star or a set of bells and were manufactured in China.

Consumers should immediately stop using the tree toppers and return them to the place of purchase for a full refund.

For additional information, contact Precious Moments at (877) 778-7275 between 8 a.m. and 6 p.m. CT, or visit the firm's Web site at www.preciousmoments.com



RECALLS



KEEPING AN EYE ON ...

Home Depot Recalls Dehumidifiers Due to Fire and Burn Hazards

The U.S. Consumer Product Safety Commission, in cooperation with Home Depot announced a voluntary recall of the Hampton Bay Dehumidifiers. Approximately 2,000 units were sold from November 2000 to May 2006 for between \$120 and \$150 and imported by Home Depot, of Atlanta, Georgia and manufactured in China.

An internal component can fail causing the dehumidifier to overheat, posing fire and burn hazards to consumers. Home Depot has received 18 reports of the dehumidifiers catching fire. One consumer reported a burn injury to his forearm.

The dehumidifiers are beige, have four wheels, and measure 21 inches high, 13 1/2 inches wide and 17 1/2 inches long. "Hampton Bay" is printed on the front panel. Model HB-50 is being recalled. The model number is printed on the back interior panel.

Consumers should immediately stop using the recalled dehumidifiers and contact Home Depot to receive a gift card for the full amount of the purchase price. For additional information, contact The Home Depot at (800) 553-3199 between 8:30 a.m. and 5:30 p.m. ET Monday through Friday, or visit the firm's Web site at www.homedepot.com



Goodman Company Announces Recall of Air Conditioner/Heat Pump Units Due to Fire Hazard



The U.S. Consumer Product Safety Commission, in cooperation The Goodman Company of Houston, Texas announce a voluntary recall of the Packaged Terminal Air Conditioner/Heat Pump (PTACs) Units. Approximately 30,000 units were previously recalled in [August 2008](#). The units were sold at Goodman and heating and cooling equipment dealers nationwide from February 2007 through June 2008 for between \$700 and \$1,000 and are manufactured in the United States.

The power cords on the PTACs can overheat, posing a burn or fire hazard. Goodman has received eleven reports of smoke or fire associated with the PTAC's power cords. No injuries have been reported.

The recall includes 5.0 kW Amana-brand, Comfort-Aire-brand and Century-brand Packaged Terminal Air Conditioner units with model numbers PTxxx3x50xx (Amana) and EKTxxx-150x (Comfort-Aire and Century) and serial numbers 0702112056 through 0804237539. The model and serial numbers are located on the control board plate found under the PTAC unit's front cover.

Consumers should contact Goodman to receive a free replacement power cord. Commercial and institutional owners will be contacted directly and will install the power cord.

For additional information regarding Amana-brand units, contact Goodman at (800) 366-0339 between 8 a.m. and 5 p.m. CT Monday through Friday; for Comfort-Aire and Century-brand units call (877) 442-4482 between 8 a.m. and 5 p.m. ET Monday through Friday; or visit www.regcen.com/ptaccord for all products.

Data Base Update

We're up and running with our new database that launched on December 30, 2009. Although we have experienced a few hiccups in the system, all in all things are going as we expected.

I want to thank all of the staff as well as our clients for their patience as we continue to improve the services provided by White-more Fire Consultants, Inc. We are much more automated, electronic reporting-based and able to control our archive files in a more efficient manner.

It is never easy when you perform an entire database upgrade, but now that it is 75% complete, the difficulties and obstacles have been worthwhile, and you, our end user will reap the benefits.

Thank you again for your understanding as we build our new system.



Mission Trip & Haiti Earthquake Devastation , By Bruce Lillevold

Bruce Lillevold and his wife Robin, both Farmers Insurance Group adjusters, departed the Twin Cities on January 6, 2010 to participate in their church mission trip in Port Au Prince, Haiti. Their mission was to prepare for the opening of an orphanage in the remote area of Port Au Prince. The following is Bruce's brief outline of the events leading up to and after the earthquake.

On the morning of the day of the earthquake, our group identified and photographed several students at two separate church schools supported by our church that are in need of financial support for their education. We then traveled up the mountain to a Baptist Mission where we enjoyed a nice lunch. From there we started back down the mountain, the road down along the mountain was narrow, in poor condition and is against the mountain on one side but has very few barriers along the other side where it drops several thousand feet into a canyon. We stopped at a look-out for photos and to purchase a few souvenirs from local vendors along the way. Our Haitian driver, Leonard, who was also a friend and a guide, and his family had invited us to their home for an evening meal. We were hot and dirty from the trip back and decided to return to our hotel to freshen up before going to Leonard's for dinner. We were at the hotel for approximately 15-minutes when the earthquake hit.

At first it sounded like a large truck was coming down the alley behind our hotel and then it seemed as if the truck had hit the back wall of our hotel. However, my wife Robin, being a California native, immediately identified that it was an earthquake. We made our way to an exterior door frame just before the earthquake intensified. The building shook, lifted, rolled and twisted but stayed mostly intact. There were 4' high waves coming out of the hotel swimming pool and most of the concrete block security walls around the perimeter of the hotel collapsed. We could see a large wall of dust and debris heading our way.

Leonard, who was still with us, advised all of us to get back inside the hotel because the dust could be dangerous. When the main earthquake subsided, Leonard left us his bus in case we needed a safe place to gather, then left on foot to return to his home and family. There were three men in our group, all of which went to alley side of the hotel to assess the situation and determine if anyone needed assistance. Most of the structures around the hotel for several blocks were destroyed and we observed many people making their way out of the rubble and into the alley and the remaining roads. One man stopped us and said that five of his family members were in the bottom level of their three level building and he asked us to help. Two of us crawled down in to the lowest part of the rubble but the dust and debris was too heavy to move. We yelled into the small openings but did not get any response. An aftershock caused us to return to the street level because the remaining structures that were still standing were too unstable.



We continued down the hill and were met with a large number of Haitians going in all directions. We saw several dead and injured men, women and children. We were approached by a young girl, who we found out later was 18-years old, and her eight year old brother. The young boy had head, neck and rib injuries and she had an injured knee. We carried the boy and assisted the sister back to our hotel. We carried mattresses from the hotel and placed them by the pool area and provided as much medical aid as possible with what limited resources we

had. We stayed with them through the night, sharing what food and water we had. The young woman shared with us that her brother and she were in the upper level of their home when the earthquake hit and that her mother, father and another sibling were in the lower level and she believed that they had perished. However, we did learn that in morning when she returned to her home, she was met by her father who informed her that everyone was okay.

John, another Haitian friend, then walked into our complex to check on us. At that time, John told us that three of his son's had perished in the quake, and after now knowing we were safe, was going to return to his neighborhood to help his neighbors.

A strong aftershock occurred followed by another wall of dust and debris heading our way and we realized that several more structures had collapsed. We continued to carry additional mattresses from the hotel and place them around the pool. We also gathered what limited food and water we had in order to distribute what was needed. A few of us stayed awake throughout the night to provide what protection we could should the need arise. I was able to send a couple of quick text messages to my family before all communication systems failed.

At around 7:30 AM the next morning, Leonard appeared and informed us that his family members were all safe and that he had limited damage to his home. However, a large portion of his security wall was destroyed. We then assessed our options, which were limited. Leonard informed us that it was not safe to stay at our hotel as time went on, and that he could attempt to take us to the airport. If the airport was closed, he would take us to his home so he could retrieve his passport and attempt to drive us to the Dominican Republic. If he was unable to drive us to the Dominican Republic, Leonard offered us to stay at his home with his family.

We traveled to the airport, only to find that it had incurred heavy damage as well and UN troops blocking off the area. Leonard retrieved his passport and we attempted to travel to the Dominican Republic before the roads were closed. While at Leonard's home, we observed total destruction down the hill, people crying and screaming and running in all directions. We quickly became aware that the situation would become much worse in the next few hours.

Haiti Earthquake News

Fortunately, Leonard's daughter, a UN employee, was at his home and advised us to immediately go to the U.S. Embassy before panic and desperation of the survivors intensified. We arrived at the Embassy around 11:30 AM and were escorted inside where our passports were examined and we were told to wait for further instructions. A while later, we were escorted down a hallway into a larger holding area where we discovered several other American citizens. We were there about four hours when we received word that a couple of U.S. Coast Guard cargo planes had arrived with supplies and would then load about 80 people to be air lifted to a location yet to be determined or shared with us. We were informed that additional planes would arrive over the next several days. We were directed to complete an application that included a promissory note to the United States government for all airfare and related expenses or we were to leave the Embassy and wait until regular air transportation was available at the airport.



Upon completing the application, we were told to wait and that the names of those



selected to be air-lifted out of Haiti would be announced.

Approximately one hour later we were overjoyed to hear the names of the eight members of our Mission group called. However, as happy as we were for our own good fortune, we immediately felt for those left behind.

Most of us had not slept since Monday night or had eaten since noon the day of the quake and emotions were running high. A very short time later, the people that had been selected were instructed to get into a single line and follow an Embassy guard outside where we were loaded into U.S. Diplomat suburban's with blackened windows and bullet proof exteriors. A convoy of five vehicles then left at a high rate of speed, heading toward an air base where supplies and several armed forces personnel had been off-loaded. We were then loaded

into a U.S. Coast Guard supply plane and flew to Santa Domingo in the Dominican Republic. We were processed at an Air Force base and took an hour away to a hotel where we were provided rooms and a buffet dinner. At 6:00 AM we prepared to be taken two hours away to an airport where we would board an American Airlines jet (what a wonderful site) to Miami then later from Miami to Minneapolis. My wife Robin and I thank you for your prayers, thoughts and support during this extremely difficult time. We are running on massive amounts of adrenaline and hope to rest over the next several days.

Please keep the people of Haiti in your thoughts and prayers and if you are capable of contributing to their recovery, you will be helping a nation that has endured indescribable devastation.

Employee Anniversaries



Congratulations to Doug Noah who celebrated his 1 year anniversary in December.



Congratulations to Brian Haag who celebrated his 9th anniversary with Whitmore Fire Consultants, Inc. in January.



Amy Powell, who celebrates her 1 year anniversary this month.

WHITEMORE
FIRE CONSULTANTS, INC.

Fire/Explosion Investigations

Office 952-461-7000
Toll Free 877-362-FIRE (3473)

www.whitemorefire.com

P.O. Box 1261—Prior Lake, MN 55372

TECHNOLOGY:

WORKING TO GET
THE INFORMATION
To You

This Month's Q&A Tips



Q: I submitted a new loss assignment on line and did not receive any type of confirmation? Is there a way where I can receive confirmation that the new loss has been accepted?

A: Back last January (2009) we launched a new website where our clients could submit new losses on line. At the time of the launch, a confirmation notice returned after a new loss is submitted on line was not implemented. We now have added this new feature confirming that your new loss has been successfully submitted. Thank you for your assistance in improving our website.

Q: Can I make suggestions on articles I'd like to see discussed in future copies of *Inside Fire*?

A: Absolutely! In fact, we encourage you to submit requests or articles. *Inside Fire* is a newsletter based on industry trends and events and is only as good as our users. Please feel free to call me at 952-461-7000 or email me at :
pwhitemore@whitemorefire.com



PO Box 1261
Prior Lake, MN 55372

952-461-7000 (Telephone)
952-461-7100 (Fax)

www.whitemorefire.com