

April 1, 2009



INSIDE FIRE

Whitemore Fire Consultants Host 10th Annual Seminar

Whitemore Fire Consultants, Inc. is pleased to assemble a panel of some of the most notable and respected attorneys in the upper Midwest for our 10th Annual Educational Seminar.

What's HOT In Fire Litigation is being held at the Legend's Golf Course in Prior Lake, Minnesota on May 1, 2009. This program is directly centered on the potential recovery of insurance fire claims and will be presented by legal firms that have devoted their careers and practices in litigating and subrogating the fire claim.

Topics such as **When to Hire an Expert and Who** by Jon Hanson, of Hanson, Lulic & Krall; **Vehicle & Heavy Equipment** fires will be presented by Jeff Baill, Larry Baill and Dave Taylor from

the Yost & Baill Law Firm; **Arson Defense** by Brad Ayers of Flynn & Gaskins; **Handling the Complex Large Loss** by Russell Melton of the Meagher Geer Law Firm; **Subrogation** by David Reddan of the Arthur Chapman Law Firm; and **EUD—An Effective Tool and New Case Law** by Robert Terhaar of the Terhaar, Archibald, Pfefferle & Griebel Law Firm.

All of these topics are an important aspect of handling the fire claim and are timely as we all attempt to identify potential recovery in our claims process.

A continental breakfast and lunch will be provided. If you are interested in attending or for additional information, please contact Pam Whitemore via email @pwhitemore@whitemorefire.com or telephone: 952-461-7000.

Space is limited to 120 guests. CLE's have been applied for and are pending.

WHAT'S HOT IN FIRE LITIGATION

When:
May 1, 2009

Where:
Legend's Golf Course
8670 Credit River Blvd.
Prior Lake, MN 55372

Time:
8:00 AM—4:00 PM

RSVP: 952-461-7000
By April 24, 2009

Did You Know?

- On average, in the United States in 2006, someone died in a fire about every 162 minutes and someone was injured every 32 minutes.
- Four out of five US fire deaths occurred in homes.
- Smoking is the leading cause of fire-related deaths.
- Cooking is the primary cause of residential fires.
- In 2005, residential fires caused nearly \$7 billion in property damage.

Statistics from Center for Disease Control & Prevention



Inside this issue:

10th Annual Seminar

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Welcome Amy Powell



Please join us in welcoming our newest staff member, Amy Powell to Whitemore Fire

Consultants, Inc. Amy has been hired as our Executive Customer Service Assistant. She will be that friendly and helpful voice when you call to request our services for a new loss or to provide needed information.

She recently worked for a local mechanical engineering firm in Eden Prairie and comes with many years of administrative experience.

Over the next few months, hopefully you will have the opportunity to meet and work with Amy along with our other office staff, Shelley Menke and Jodi Davis, all who will be attending our upcoming seminar. So come on up and introduce yourselves to our staff, especially Amy, so she can put a face to name.

Collection & Preservation of Physical Evidence

Collecting artifacts from a fire scene is not something that most investigators take lightly. Retaining and preserving evidence takes on a new life form when it may be utilized in litigation. And, the steps and processes that are used are as important as the evidence itself. Not only do we deal with the actual identification and removal of the evidence, ultimately the storage and possible submitting the artifact for testing play into the claim handling process or any potential litigation.

NFPA 921-Chapter 16—Physical Evidence outlines the various recommendations in handling evidence from the fire scene to potentially being submitted to a laboratory for analysis or testing. The fire investigator should be careful that the identification of the physical evidence cannot be easily damaged, lost, removed or altered. The fire investigator also should be careful that the placement of the identification, especially adhesive labels, does not interfere with subsequent examination or testing.

Whenever possible, it is recommended that physical evidence be hand delivered for examination or testing. Hand deliv-

ery minimizes the potential for physical evidence becoming damaged, misplaced or stolen.

However, it may be necessary to ship physical evidence to a laboratory or testing facility for examination and testing. When shipping becomes necessary, the fire investigator should take every precaution to preserve the integrity of the evidence.

It is the policy of Whitmore Fire Consultants, Inc. that whenever it is necessary for the investigator to retain evidence, that a series of processes take place. Once the item has been identified, and tagged, it is transported to our warehouse in Elko, Minnesota. At that time, the evidence is logged into our database with your claim number, date of loss, insured name, artifact description and date it was retained. From that point forward, through discussions with the adjuster and/or legal counsel, a determination is made on the status of the evidence. Should it be submitted to an independent laboratory for analysis, x-rays,

electrical analysis, etc. Once the type of testing is identified, the



artifact is either hand delivered to the testing facility or sent via Certified Mail or Federal Express with a return receipt

to ensure care, custody and control sequence. A transmittal form is prepared and attached to the artifact with the receiving agency accepting the evidence and Whitmore Fire Consultants, Inc. releasing the item(s). Results of the analysis/testing are sent directly to the client with a copy to legal counsel and the investigator for the file.

In the case where an artifact is retained by Whitmore Fire Consultants, Inc., the evidence is tagged, logged into our database and placed in a secure storage facility for potential future inspections. The evidence is held for one year with status notifications sent annually to determine the necessity to continue holding the evidence.

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Mission Statement:

To provide the highest quality fire and explosion investigations from the scene to the courtroom. It's not our slogan, it's our commitment!

Team Investigation of the Year Honor



Bob Whitmore, along with members of the Burnsville Fire Department, Dan Choudek, PE and Gary Hong, PE of OnSite Engineering &

Forensic Services and Bruce McLaughlin of the Minnesota State Fire Marshal's Office were named Investigation Team of the Year at the Minnesota IAAI Annual Seminar and Meeting held in St. Cloud, Minnesota March 25-27, 2009.

This award was presented for the investigation performed on the Burncliff Apartments in Burnsville, Minnesota that occurred on December 22,

2008.

"It was a collective effort by all parties involved; insurance, public, private and state agencies that helped us to determine the cause of this fire." It is with great effort and cooperation that any large loss is investigated. Congratulations Team!

Pam Whitmore—Named Director of Client Development



With many recent changes at Whitmore Fire Consultants, Inc., one of them is the naming of Pam Whitmore as Director of Client Development.

Pam will now serve as contact to our clients, ensuring investigation satisfaction, responsiveness and efficiency.

Pam will also be scheduling all seminars, conducting client visits, implementing new report policies, etc. while working with the office administrative staff.

With 15-years of working with Bob in the administrative

end of the fire investigation community, we believe that she will be a valuable resource to our clients. We encourage you to contact Pam with questions or to initiate complex loss assignments or to discuss concerns.

Pam also will continue as Editor of *Inside Fire* a quarterly newsletter published by Whitmore Fire Consultants, Inc. that is distributed to our clients.

Collection & Preservation of Physical Evidence (Continued)

NFPA 921, Chapter 16 states that "Physical evidence should be maintained in the best possible condition until it is no longer needed. It should be protected from loss, contamination and degradation. Heat, sunlight and moisture are the chief sources of degradation of most kinds of evidence. Dry and dark conditions are preferred and the cooler the better.

The value of physical evidence entirely depends on the fire investigator's efforts to maintain the security and integrity of that physical evidence from the time of its initial discovery and collection to its subsequent examination and testing. At all times after its discovery and collection, physical evidence should be stored in a secured location that is designed and designated for this purpose. Access to this storage location should be limited in order to limit the chain of custody to as few persons as possible. Whenever possible the desired storage location is one that is under the sole control of the fire investigator.

Once collected, physical evidence is usually examined

and tested in a laboratory or other testing facility. Physical evidence may be examined and tested to identify its chemical composition; to establish its physical properties; to determine its conformity or lack of conformity to certain legal standards, to establish its operation, inoperation, or malfunction; to determine its design sufficiency or deficiency, or other issues that will provide the fire investigator with an opportunity to understand and determine the origin of a fire. The investigator should consult with the laboratory or other testing facility to determine what specific services are provided and what limitations are in effect.

ASTM International states in their standard pertaining to the procedure of examining and testing of evidentiary items as follows: The person, firm or corporation conducting examinations or tests of the evidence must document the nature, state, and condition of the evidence by descriptive, photographic or other suitable methods prior to any test examination, disassembly or alteration. It should attempt to determine changes, alterations or contamination of the evidence

subsequent to the incident and report its findings.

If proposed tests, examinations or other actions are likely to alter the nature, state or condition of the evidence so as to preclude or limit additional examination and testing, person, firm, or corporation planning to perform the proposed action shall:

- Notify its client that the proposed action is likely to alter the nature, state or condition of the evidence so as to preclude or limit additional examination or testing of the evidence.
- Recommend that its client notify other interested parties of the proposed action described.
- Recommend to its client that the other interested parties be given the opportunity to participate in the procedures.
- If compelling reasons exist for the performing actions without notifying other parties, then the person, firm

NFPA 921, Chapter 16 states that Physical Evidence should be maintained in the best possible condition . . .



*Check out our
New Website
www.whitemorefire.com*

Whitemore Fire Consultants, Inc.
PO Box 1261
Prior Lake, MN 55372

Collection & Preservation of Physical Evidence (Continued)

or corporation planning the actions must draft and preserve documentation supporting the compelling reasons for such action.

Upon completion of the actions, each component not returned to serve must be preserved in a manner which protects and maintains its identity and integrity.

Methods used and results obtained in tests, examinations, disassembly or other actions conducted in compliance with this practice, shall be documented and preserved.

Evidence and information gathered by investigators must be admissible in the event of litigation. Validity and authenticity must be established and the chain

of customer traceable. Validity and authenticity of evidence is established by documentation that defines the relationship of the evidence to the incident. Such documentation includes but is not limited to:

- Identity of the evidence and any unique labeling.
- Location where the evidence was found.
- Date and time evidence was found or obtained.
- Name and address if the individual who initially removed the evidence from the incident scene.
- During subsequent custody transfer, names and addresses of the previous

custodian and the new custodian.

It is important to have solid policies and procedures in place as well as a database to inventory stored items. Auditing evidence is an ongoing effort that needs to be maintained.

It is also important that legal counsel and insurance adjusters keep the investigator apprised of a file status to ensure that evidence is continued to be held as well as advising in writing when the file has been closed and the evidence can be destroyed. Oftentimes, evidence is held by investigators or other experts long after the case has been resolved accumulating additional fees that are not necessary. Communication can resolve a lot of these open issues.



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WHAT'S HOT IN FIRE
LITIGATION

May 1, 2009