

Inside Fire

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A Quarterly Newsletter Distributed by Whitemore Fire Consultants, Inc.



There Are NO Shortcuts in Fire Investigations

By Robert B. Whitemore, CFI

In today's business environment, everyone is looking for a "more bang for their buck" approach in conducting business. How can we achieve the same or better results at a lower cost? In some cases, the discount approach to many business decisions is a frugal and appropriate way to pass on savings to your end user and can make you more competitive in this dog-eat-dog world we live in. My question to you, the insurance professional, "is this really the best way to represent your insured?"

Fire investigation is a complicated profession, one that requires education, qualifications and the ability to represent the client in an ethical, credible and professional manner. Over the past few years, our company has been approached by a few insurance companies to consider a "flat fee" investigation rate. I would argue that if you were diagnosed with a life-threatening disease, would you go to a medical professional because he/she could perform that surgery at a discounted rate. In many cases, it is the same with hiring a fire investigation professional.

**WHITEMORE**
FIRE CONSULTANTS, INC.

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There are NO Shortcuts in Fire Investigation

We asked 5 accomplished insurance professionals the things they would have done differently when it comes to hiring a fire investigator

There comes a time when you need to look at the bottom line and what you receive for your investigation dollars to determine if the cost savings for the flat fee is really cost-effective. Oftentimes fire scenes become more complicated as you begin excavation and debris removal. As such, potential subrogation is identified.

Professional fire investigation firms must meet the criteria for licensing in their respective areas, obtain errors and omissions insurance to protect themselves as well as the company they are representing, provide secure locations to retain evidence, possess a policy and procedures into the handling of evidence and other confidential or sensitive information, be responsive to timely scene investigation and reporting, and provide a professional image while representing the insurance company that retained their services.

Difficult fire scenes that may have a number of red flags are even more troublesome as insurance professionals navigate the claim process. It is necessary for the investigator, the adjuster and their legal team to work together to avoid future issues. Simply eliminating every potential cause does not a case make. It is important to apply the scientific as well as good old fashion common sense to origin and cause investigations. However, it is paramount that the investigator can relay his/her findings with credibility and confidence in courtroom proceedings.

Attorneys representing the interests of insurance providers are faced with the dilemma of retaining qualified investigators that will provide necessary assistance, courtroom credibility and qualifications within

the confines of a "flat fee" agreement. Recovery of claim payments is high on the priority list for insurance companies, however hiring an expert that may not possess the track record in subrogation recovery can hamper their ability to have a successful outcome for a subrogation case.

During the research for this article, we reached out to several members of the insurance and legal community to determine if the flat fee arrangements were working for them. In all cases, these professional adjusters and attorneys all stated that they felt handcuffed to use fire experts that the upper level of their companies had allegedly vetted to represent their company. In many cases, most of these professionals had positive relationships with other companies that they had come to know and trust and felt comfortable with the service they had been provided. However they were precluded from using a company that had proven results time and time again because of the fee contract that was in-place. Furthermore, most of those that responded to our questions stated that the recovery percentage with those providing flat fee services was considerably less.

All of the respondents felt that they needed the latitude to hire the expert, in their opinion, would provide a better chance at recovery.

Insurance companies have a duty to their policyholders to conduct a factual, cost-effective investigation into their claims. They also have a duty to themselves to provide their best chance at any potential recovery.



It's hard to believe that we are already half-way into Summer. July marks the birthday party for our Nation as well as the time to relax with family and friends. Whether your travels take you to the cabin, outside the region or just around the grill, please be sure to be safe.

These past few months many members of my staff and I have spent a great deal of time at the Verso Paper Mill fire in Sartell, Minnesota. I've met many of my colleagues as we continue the investigation into one of Minnesota's largest fire losses. Sadly, this fire was deadly as one person lost his life and several others were injured.

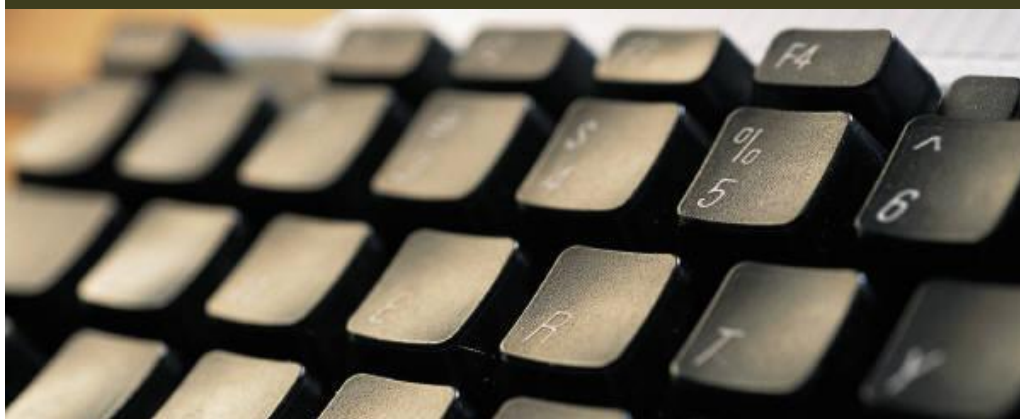
I am grateful that Whitmore Fire Consultants, Inc. is located in the Upper Midwest, as there always is a concerted effort to work well together to find answers, regardless of our clients.

I'd like to thank the Minnesota State Fire Marshal's Office, John Steinbach, Ron Rahman, Jim Iammatteo, Rick Kleis and Casey Stotts for their leadership and efforts to work beside the private sector to help us find answers. To the many fire departments that responded to this fire, we as a state and a region are grateful for your response to help a community.

Consultants and representatives coming from around the country are in awe of our shared working environment. We are professionals and everyday it is recognized by those outside of the Midwest.

Thanks again to all, and have a great rest of summer.

Bob Whitmore



Subrogation—Vetting the Expert

By Frederick B. Tedford, Attorney at Law

Every subrogation professional wants to efficiently recover monies paid out to an insured from a responsible third party for causing the underlying claim. At the same time, most product manufacturers would choose to negotiate valid claims for damage caused by their product rather than engage in litigation. This article describes two key elements to a subrogation program used by many insurers to reduce subrogation processing costs and increase their bottom line recovery pre-litigation: having a set of qualified, vetted experts capable of accurately determining the cause of a loss and effectively communicating their findings and making a demand reflective of the maximum recovery allowed in the relevant jurisdiction.



have sufficiently screened their consultants. A successful subrogation program begins with the vetting and identification of qualified experts by the insurer.

The Expert Vetting Process

A vetting process can be applied to any type of insurance claim investigator and any type of loss.

Fire loss subrogation, however, presents an area that is ripe for the development of a formalized vetting process because the identification of a fire's origin and cause is often a scientific, complicated and difficult process that will make or break a subrogation claim. While it may be a relatively simple matter to determine the origin and cause of a fire that is extinguished in its very early stages, a fire that has spread and caused extensive damage presents a different kettle of fish. Certainly, not all experts are created equal; and, fire experts are increasingly held to a higher standard in the fire science community and in the legal field. Simple reliance on having attended "hundreds of fire scene investigations" to arrive at an opinion as to the area of a fire's origin, is now met with a high degree of scrutiny. While experience remains of great value, advances in the science of fire investigation have led to a point where the use of the scientific method is mandatory and experts are precluded from testifying for

failing to follow NFPA 921, Guide for Fire & Explosion Investigations, the accepted method of fire investigation. Today's fire investigators must be well-versed on NFPA 921 and vigilantly keep abreast of the advancements in fire investigation techniques and concepts in order to present credible theories of causation and to avoid evidentiary challenges to their credentials and methodologies in litigation.

As such, the identification of qualified fire investigators who have maintained a current level of training and understanding of the advances in fire investigation methodology is one of the cornerstones of an effective subrogation fire program. The most successful subrogation programs have instituted formalized vetting procedures to prescreen and identify qualified fire origin and cause investigators. There are no "shortcuts" for this selection process; however once instituted, it yields results by increasing the likelihood of presenting a valid claim; one that will encourage immediate negotiation.

"Cause" experts, such as those retained to attend laboratory inspections to examine potential ignition sources found in the area of origin, should likewise be competent and appropriate certified. Again, a selection process should be undertaken by the insured to identify qualified cause experts and should not be accomplished on an ad-hoc basis. An effective subrogation program will have access to a stable of experts previously identified as being qualified who are ready to examine the types of ignition sources typically found at fire scenes, whether electrical, mechanical or chemical. Some individuals may qualify as both origin and cause experts, but often two separate experts are required for those two separate and distinct tasks.

The expert selection process begins with the assembly of a vetting committee to evaluate potential expert candidates and monitor their eligibility on an

Assemble an Effective Investigative Team

Certainly, the presentation of a clear liability claim to a third party tortfeasor increases the likelihood of a quick and low cost recovery. Likewise, it is axiomatic that the subrogating insurers' play a critical role in this regard. The investigative team assigned to determine the cause of a loss must be adept at both evaluating the cause and communicating it persuasively. In practice, however, this is difficult to achieve if your subrogation program utilized outdated panels of "approved" experts or only presumes that the companies they retain for hiring experts

Subrogation: Vetting the Expert

By Frederick Tedford, Attorney at Law Continued

ongoing basis. The committee itself should include at least one “qualified” fire investigator, a fire science attorney, and an expert in the scientific method as it applies to fire losses. Committee members may be qualified to serve more than one role, but at least three members is preferred.

A committee with knowledge of the investigative and litigation processes involved in fire losses will likely have an existing network of experts to create a list of “pre-qualified” candidates. Such persons, who are proven experts in the field with a track record as origin and/or cause experts need not undergo the vetting process. This saves time and allows the insurer to start with a list of qualified experts.

Next, the vetting committee creates a list of both tangible and non-tangible qualifications for both the origin and cause categories of experts. Qualifications will include appropriate licensure, certification, and background education and investigative experience. The vetting committee should also set standards to evaluate a candidate's experience in testifying at depositions, trial and Daubert/Frye hearings. If costs are an issue, the committee can set a fee schedule that is reasonable and acceptable to both the insurer and the expert. However, cost should not be a large contributing factor in vetting experts. As in most cases, qualified experts come at a premium.

Candidates that meet the “on paper” requirements of the vetting committee should next be thoroughly interviewed in person or by video-conference, after all, these individuals are an extension of your company and expert representatives should not only be qualified but professional as well. The interview should include discussion points to

flush out a candidate's understanding of fire science and the scientific method as it is applied to fire losses. Moreover, such an interview will allow the committee to evaluate the candidate's “jury appeal” and teaching ability.

Finally, once a candidate has been deemed acceptable and approved, a periodic review should be performed by the committee to monitor the expert's performance and continued compliance with committee standards.

Seek Recovery Only for Lawful Damages

Even with a clear case of liability through qualified and effective experts, a subrogation program's efforts at prompt recovery will be undermined if the damages sought are not recoverable by law in the relevant jurisdiction.

An effective subrogation program must ensure that its specialists understand the law of recoverable damages from third-party tortfeasors. The oft-cited measure of damages allows recovery so as to place the injured party (insured) in the position that the insured was in just prior to the time of the loss. The insurer “steps into the shoes of the insured” and recovers only to the extent that the insured should recover from a responsible third-party. Consequently, the tortfeasor is liable only for actual cash value (ACV) of the loss, not the replacement cost value (RCV) of the damaged property.

However, insurance policies today often provide for the insured's recovery of the replacement cost for property damage as a result of a covered casualty. In some instances, commercial policies provide coverage for the full retained value of goods damaged in a covered loss. These examples of



broad coverage policies often provide payment for losses which are not fully recoverable from third-party tortfeasors. Regardless of whether the insured has received a greater value by virtue of its contract of insurance, if the jurisdiction only allows damages to make the insured whole, the insurer will only be able to recover the actual cash value. Thus applying the majority rule, for commercial retail losses for example, the wholesale value, not the retail value, is recoverable. These are not new concepts yet insurers often attempt to recover replacement cost or retail value in the course of settlement negotiations, thus undermining their position, creating unnecessary questions about the value of a claim, and delaying claim resolution.

Conclusion

Subrogation specialists strive for increased recovery at diminished costs. Those ends can be achieved by utilizing vetted investigators who will present sound determination of the origin and cause of the loss and by simply seeking to recover only lawful damages. Presentation of a claim that is sound in liability and reasonable in damages can lead the way toward an early resolution of a great percentage of an insurer's subrogation claim.

Frederick B. Tedford is a Partner and attorney with the law firm of Tedford & Pond. For more information or to contact Mr. Tedford please visit their website: www.tedfordpond.com

Recalls



COURTESY: GENERAL MOTORS

Frigidaire Recalls Gas Ranges

The Consumer Product Safety Commission in cooperation with Frigidaire of Charlotte, NC has issued a voluntary recall of the Frigidaire Self-Clean Gas Range manufactured in the United States. There can be a delayed ignition on the bake/broil features of the oven posing a fire threat.

Approximately 185 units were sold exclusively at Lowe's stores from February 2012 through March 2012 for between \$800 and \$1,000. There has been one incident reported with no injuries or property damage.

This recall is for the inspection and/or repair involves Frigidaire Gas Ranges Model #LGGF3043KFM with serial numbers within the following range: VF20457216 to VF20457555. The model and serial numbers are located near the base of the range just below the bottom right portion of the oven door. This gas range has five burners, stainless steel exterior and Frigidaire nameplate centered on the lower part of the oven.

Consumers with the recalled model and serial numbers should stop using the bake and broil functions immediately and contact Frigidaire. Frigidaire will provide information about an inspection and arrange for a free in-home service and repair if necessary.

For more information, please contact Frigidaire directly at 888-360-8556 or visit their website at

www.selfcleangasrangesrecall.com.



GM Recalls 400,000 Chevy Cruzes

General Motors is recalling Chevrolet Cruze small cars to modify an engine shield that could create a fire hazard. The engine shield, a large plastic piece that is installed under the front of the car to protect the engine, could trap oil that is accidentally spilled or dripped during oil changes.

Also cars with manual transmissions, driving with a worn clutch can cause burning hydraulic fluid to squirt from the clutch housing. The flaming fluid can ignite the engine shield leading to an engine compartment fire.

There are no known crashes, injuries or fatalities related to this recall. GM dealers will modify the engine shield by cutting away parts of it, creating holes that will allow fluids to drip through. The modification process will take approximately 30-minutes. Owners should make an appointment with their dealers "at their earliest convenience."

For more information pertaining to this recall, please visit the Consumer Product Safety Commission website at www.CPSC.gov or General Motors at www.gm.com

RECALLS

Family Dollar Stores Recall Decorative Lights

The Consumer Product Safety Commission in cooperation with Family Dollar Services, Inc. of Matthews, North Carolina has issued a voluntary recall of the 200 Mini Lights decorative lights due to a possible fire and shock risk. The light sets do not meet the UL standard for this product. There have been three reports of overheating, however no injuries or property damage has been reported.

The recalled decorative lights sets have "200 Mini Lights" and "Multi Lights, Green Wire" printed on the red box. The product is identified by SKU #2211428 and UPC #049696720465 found on the back of the package. The product contains labels attached to a tag on the power cord with UL Listing #E346525 and Model # FOL200A4S. The product was sold exclusively at Family Dollar stores from September 2011 through December 2011 for \$8.00 and were manufactured in China.

Consumers should immediately stop using the light sets and return the product to the Family Store for a full refund.

For additional information, please visit the firm's website at www.familydollar.com.



Identifying the
“Positive” in the
Negative Corpus



& Other Aspects of Fire
Investigation & Subrogation

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pwhitemore@whitemorefire.com

Visit our website to request a subscription.

Your subscription will include fire-related recall notifications as well as upcoming events and seminars.

Whitemore Fire Consultants, Inc. Presents 15th Annual Seminar

When: Friday, September 7, 2012

Time: 8:00 AM—8:30 AM—Continental Breakfast

8:30 AM—Program

- Tim Poeschl, Attorney at Law— Conducting An Ethical Investigation & Hiring the Ethical Team of Experts
- Mike Carmoney, Attorney at Law—Subrogation Success Despite the Negative Corpus
- David Reddan, Attorney at Law—NFPA 921—2011 Edition
- Steven Pfefferle, Attorney at Law—Building Your Subrogation Case
- Kurt Roeder & Alex Jadin, Attorneys at Law—Fire Case Law and How it Relates to the Subrogation Case
- Brian Haag, CFI & David Yarosh, Attorney at Law— The Ford Motor Fix—Failed to Fix the Cruise Control Problem

Where: Legends Golf Course, 8670 Credit River Blvd., Prior Lake, Minnesota

RSVP: 952-461-7000—pwhitemore@whitemorefire.com

OR visit our website: www.whitemorefire.com

Space is Limited to 125 attendees

Recalls

EDIC Recalls Air Movers

The Consumer Product Safety Commission in cooperation with EDIC Of Los Angeles, California has issued a voluntary recall of the EDIC Air Movers manufactured in the United States. The air mover/blower's internal electrical capacitor can fail and overheat, posing a fire hazard.

Approximately 53,000 blowers were sold to flood remediation contractors and other service professionals nationwide from January 2003 through September 2011 for between \$160 and \$285.

EDIC is aware of four incidents involving fires that resulted in property damage. No injuries have been reported. This recall involves air movers/blowers that are used to dry floors in homes and other buildings. "Aqua Dri" is printed on the top of some of the air movers. Model "3004AD" or model "3004Dxxx" (with additional letters) is printed on the serial numbers plate on the back of the units. Model numbers with "N" are not included in this recall. The air movers' plastic housing measures approximately 18" high by 18" long by 18" deep and has 25' yellow electrical cord.

Users should immediately stop using the recalled air movers/blowers and contact EDIC for a free repair kit to be installed by users.

For more information contact the firm toll free at 888-289-8720 or visit their website at www.recal@edic-use.com.

Bel Air Lighting Recalls Outdoor Wall Mount Lanterns

The U.S. Consumer Product Safety Commission in cooperation with Bel Air Lighting of Valencia, California has issued a voluntary recall of outdoor wall mount lanterns manufactured in Guangdong, China. Approximately 99,700 units were sold at Lowe's stores and lighting showrooms nationwide and at Lowes.com from June 2006 through May 2012 for about \$48. The firm has received seven reports of incidents, including two reports of lanterns catching fire. An electrical short can occur in the lanterns' internal wiring, posing a





Whitemore Fire Consultants— Retained to Investigate Verso Paper Mill Fire

Whitemore Fire Consultants, Inc. was retained to head up the investigation into the tragic explosion and fire at the Verso Paper plant in Sartell, Minnesota that occurred on Memorial Day. The explosion rocked the small suburb of St. Cloud, resulting in one fatality, several injured and millions of dollars in damages. Robert Whitemore, CFI along with a team of experts including Brian Haag, CFI, Brian Whitemore, FIT and Doug Noah, CFI have been at the site sifting through the damaged portions of the plant, collecting data and artifacts to determine the root cause of this incident for over the past 50 days.

Over 90+ fire departments as well as the Minnesota State Fire Marshal's Office responded to this incident making it one of the largest of its' kind in Minnesota history. Whitemore was retained by the insurer of the Verso Paper plant.





Submit a Loss Online

It's Easy go to the Whitemore Fire Consultant's Website:

www.whitemorefire.com

Click on "Submit a Loss" tab

Complete the online form and press "submit" and you will receive an electronic confirmation of our receipt of your loss request. You will also receive a response from our on-call representative as well as a follow-up all during the next business day.

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