

INSIDE FIRE



Minnesota's Arson Immunity Law: What is Covered?

By Kerry A. Trapp, Attorney at Law

In an effort to curb arson crimes and related damage, all states provide some type of immunity from liability for information supplied in connection with arson investigations. This issue arises most frequently in the context of authorities requesting an insurer's investigation file or insurance policy information in connection with potential criminal prosecution or the reverse, where an insurer is requesting information from a state agency in connection with a coverage investigation.

Without an immunity law, the subject of the investigations could have claims against a sharing party or its agent for slander, defamation, invasion of privacy, negligence, etc. The laws in place in most states, including Minnesota, facilitate the sharing of arson investigation information by making those persons covered by the statutes "immune" from liability for such claims.

The specific types of immunity provisions found throughout the country fall into four categories. The first category extends immunity to insurers and their representatives exclusively¹. The second category grants immunity to insurers *and* authorized state and local agencies². The third category applies to insurers and their representatives *unless* fraud, malice, lack of good faith or criminal conduct is shown³.

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What's Inside this Newsletter

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The fourth category, which is how Minnesota’s statute operates, represents a combination of the first three by granting immunity to insurers *and* authorized agencies, *unless* fraud, malice, lack of good faith or criminal conduct is shown⁴.

Sections 299F.052 to 299F.057 of the Minnesota Statutes are known as the Minnesota Arson Reporting Immunity Law. The statute defines “authorized person” as the state fire marshal charged with investigation of the fire, superintendent of the BCA, prosecuting attorney in the county of the fire, sheriff or chief of police in the county of the fire, the county attorney responsible for prosecution, the FBI or any other federal agency, the U.S. Attorney’s Office, the chief of the arson squad or fire department responsible for the investigation of the fire or the commissioner of commerce.⁵

Pursuant to the statute, any “authorized person” can require that an insurance company release all relevant information relating to a fire loss. This could include the insurance policy, application for insurance, policy premium payment records, history of claims, and any materials relating to the investigation of the loss such as statements of any person, proof of loss and any other evidence relevant to the investigation⁶.

¹AL, FL, HI, UT, WV

²IN, MA, NE, NM, ND, RI, SC, SD

³AK, AR, DC, GA, KY, LA, MD, MI, MS, MO, MT, NJ, NY, OH, NC, TX, VT

⁴AZ, CA, CO, CT, DE, ID, IL, IA, KS, ME, MN, NV, NH, OK, OR, PA, TN, VA, WA, WI

⁵See Minn. Stat. §299F.053

⁶See Minn. Stat. §299F.054 Subd.1

In Minnesota, any insurance company providing information to an “authorized person” may similarly request in writing any relevant information from the “authorized person”⁷. This request is to be granted within 30 days but will *not* include any nonconviction criminal history, identities of confidential informants or anything detrimental to another ongoing criminal investigation⁸.

Requests for Information Required in Writing

Each state’s arson reporting and immunity laws indicate the general form by which authorized agencies may statutorily request relevant information from insurers to help facilitate their fire loss and arson investigations. The majority of states, including Minnesota, require these requests be made in writing⁹.

Confidentiality Requirements

In most states, including Minnesota, authorized agencies are required to maintain the confidentiality of all policy-related information they request and receive from insurers¹⁰. Minnesota does, however, provide an allowance that the information may be shared with other authorized agencies in furtherance of official purposes¹¹.

Insurer Notification Requirements

Keep in mind that in nearly every state’s arson reporting and immunity laws there is a requirement that insurers notify authorized agencies anytime they suspect arson may have played a part in an insured property loss. Notably, Wisconsin is one of only three states that do *not*

require such notice. Minnesota’s law expressly states that “if an insurance company has reason to believe that a fire loss...may be of other than accidental cause, the company *shall, in writing*, notify an authorized person and provide the person with all relevant material...developed from the company’s inquiry...”¹²

If the company notifies any one of the authorized persons of a fire loss, that is considered sufficient notice¹³. An insurance company’s failure to release requested information or to notify an authorized agency of suspected arson could carry significant consequences. Pursuant to the statute, any intentional refusal to provide the information or required notice is a violation and considered a misdemeanor.

⁷Minn. Stat. §299F.054 Subd.3a.

⁸*Id.*

⁹*Id.* at Subs. 1 and 3a.

¹⁰Minn. Stat. §299F.055

¹¹Minn. Stat. §299F.054 Subd.3

¹²Minn. Stat. §299F.054 Subd.2(a)

¹³Minn. Stat. §299F.054 Subd.2(b)

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While the law is rarely litigated, a recent unpublished Minnesota Court of Appeals case decided in March 2014, addressed disclosures under the Arson Immunity Act, Minn. Stat. 299F.054¹⁴. In the case, *Hanson v. Bahma*, a homeowner sued a fire investigator for breach of contract and negligence resulting from the investigator’s disclosure to the state fire marshal¹⁵. The investigator had been hired by the homeowner for the sole purpose of examining the scene and taking photographs¹⁶. After leaving the home, the investigator contacted the state fire marshal and opined that the fire was the result of arson¹⁷.

The investigator moved for summary judgment, alleging he was immune from civil liability under the Arson Immunity Act¹⁸. The trial court agreed, and

the Court of Appeals affirmed, reasoning that “Minnesota law provides immunity from civil liability for any ‘person, who, acting in good faith, reports to an authorized person information ... that is or may be relevant to the investigation of a fire....”¹⁹ The homeowner argued that the investigator’s disclosure was not made in good faith but the court said this involves a “subjective test.”²⁰ The relevant question is whether the reporter (investigator) honestly believed he had a duty to report.²¹

“A reporter acting in good faith will be immune even if [he] is negligent or exercises bad judgment.”²² The court found that based on the record, it could not find that the report was made in bad faith and therefore the disclosure was immune from liability.²³

Each state law contains some minor variations and a thorough review of the relevant statute is recommended when faced with a potential arson scenario. A helpful summary of all state statute references in table format may be found at www.arsoncontrol.org/legal/table.htm

¹⁴*Hanson v. Bahma*, A13-1447, 2014 WL 997031 (Minn. Ct. App. Mar. 17, 2014), review denied (May 28, 2014)

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.* at *2.

²⁰*Id.*

²¹*Id.*

²²*Id.*

²³*Id.*

Comings & Goings— A Message From Robert Whitemore



Welcome to the latest edition of Inside Fire. It seems like I just wrote a short note in our last edition a few weeks ago . . . you know what they say about time flying by! Wow, we’ve already enjoyed the Fourth of July.

There have been a few changes at our company over the past few weeks. Jodi Davis, our Administrative Assistant/Receptionist, resigned and moved to Fort Meyers, Florida with her family the end of June. Jodi’s son, Jaimie, was admitted to a prestigious college preparatory school in Fort Meyers starting in August. This is a bittersweet time for us, as we are happy for the opportunities that Jodi’s son has before him, we are also saddened to see Jodi go. She was always a happy and helpful person and loved working with our clients for the past seven years. Congratulations to Jodi and her family as they embark on this new adventure.



Jodi Davis



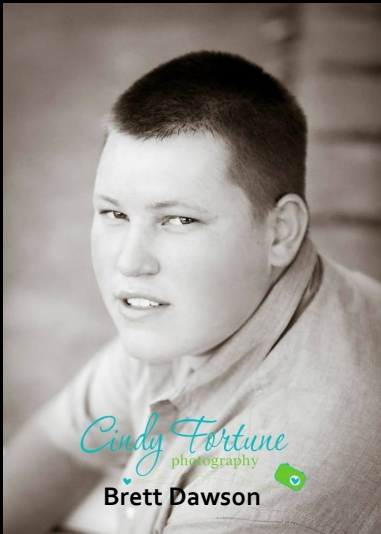
Lewey

We also have a new addition to our staff . . . Lewey! Amy Powell, our Business Manager, adopted Lewey, a 9-week old Golden Retriever, who is now reporting to work daily protecting the staff and office. You will have to watch for his updates and adventures in future editions. Whenever you have the opportunity to stop by our office, he will be the short 4-legged blonde greeting you at the door. Doggie treats are always welcome. Lewey does have a habit of sleeping on the job, but we are working on his work productivity. Welcome Lewey, the new mascot at Whitemore Fire Consultants!!!!

Also, a special thank you to Kerry Trapp of Morrison Sund for providing the article pertaining to Arson Immunity. Many of us deal with the affects of the Arson Immunity Act each day as we investigate fires. It is important that all of us understand the ramifications and requirements of the law. Kerry provided insight and case law on this subject to assist us as we navigate through the investigation process.

News About Us—

Whitemore Fire Consultants, Inc. Award Lead By Example Scholarships



Congratulations to our four **2014 Lead by Example Scholarship** recipients. This year, marks the 14th year that Whitemore Fire Consultants, Inc. presents scholarships to outstanding seniors who epitomizes the characteristics of being a “true leader.” General H. Norman Schwarzkopf, U.S. Army, Retired who led the American forces in Operation Desert Storm once said, “Peers select their leaders based on the character of those leaders. People want to be led by someone special.” Without question, all of these students demonstrated the values and characteristics referred to by General Schwarzkopf as someone that is “truly special” and someone who leads by example in their daily lives.

Brett Dawson, is son of Connie (and the late Mark) Dawson of Prior Lake. Brett plans to attend Crown College next year and major in Business Management.

Kara Lattery, is the daughter of Meg (and the late Gary) Lattery of Savage, Minnesota. Kara holds a special spot in all of our hearts as her dad, Gary, was an adjuster with Federated Insurance and a colleague of Whitemore Fire Consultants. Kara will be attending South Dakota State University this fall and will be playing softball for the Jackrabbits.

Hannah Painter, is the daughter Steve and Jean Painter of Savage, Minnesota. She will be attending the University of Minnesota—Twin Cities campus. Hannah will be entering the U of M as a “Super Sophomore” after having completed two years of PSEO studies at Normandale Community College while still attending high school.

Joseph Sopczyk is the son of Thomas and Candace Sopczyk of Prior Lake, Minnesota. Joseph will be attending Iowa State University with a focus on Chemical Engineering and is a three time board scholar recipient.

Congratulations to all of our scholarship winners.

Ford Issues Six New Recalls for 101,000 Vehicles

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Ford is recalling 100,610 vehicles in North America for various safety defects. The company reported no injuries, accidents or fires to any of the defects have been reported.

The largest recall of 92,022 vehicles affects the 2013-2014 Ford Taurus, Lincoln MKS and Police Interceptor sedans; 2013-2014 Ford Flex and Lincoln MKT crossovers; 2012-2014 Edge crossover and 2014 Lincoln MKX crossover. Ford says the right-hand half shaft, which is part of the axle, isn't properly seated and may disengage over time, making the vehicle inoperable. The

vehicles are also at risk for rolling unexpectedly if they are parked without the parking brake on .

Ford will notify owners of the vehicles in the half shaft recall by mail beginning the week of August 25. In all of the cases, dealers will repair the vehicles for free.

Ford is also recalling:

- 5,264 2011-2014 commercial stripped chassis. The company says corrosion in the electrical junction block could cause the vehicles to short circuit, increasing risk of a fire or the loss of electrical power.
- 2,124 2014 Ford Escape SUVs. Ford says their panoramic glass roofs have an improperly cured bond that could cause the roofs to leak or separate from the vehicles.
- 635 2-14 F53 motor home stripped chassis and F59 commercial stripped chassis. The company says the brake calipers may have been incorrectly made, which could result in a leak and loss in braking performance.
- 368 2014 Transit Connect vehicles. Ford says their brake reservoir caps in vehicles shipped to Puerto Rico have European labels that don't conform to U.S. labeling requirements.
- 197 2014 Ford Fiesta subcompacts. Ford says their fuel tanks may be missing an adhesive layer, which could cause them to leak fuel and increase the risk of fire.

Ford stated that they had identified all of the problems through internal tests as well as warranty claims. Ford will begin notifying owners affected by the five additional recalls this month.

For more information pertaining to these recently released recalls and all other recall information, please visit the firm's website at: www.fordmotor.com.

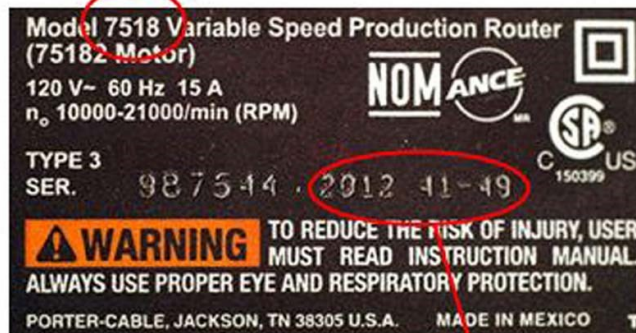


Porter-Cable Fixed-Base Product Routers Recalled

SAFETY RECALLS



Model Number



Date Code

The United States Consumer Product Safety Commission in cooperation with Black & Decker (U.S.), Inc. dba Porter-Cable, of Towson, Maryland, has voluntarily issued a recall of the Fixed-base routers and router bases. The router base handles are not insulated, posing an electrical shock hazard. Approximately 100,000 units were sold in the United States and 7,800 in Canada major industrial equipment suppliers and woodworker supplies nationwide from 1990 to April 2014 for about \$85 to \$690, depending on the model. No injuries have been reported.

Four Porter-Cable 3 1/4 horsepower, electric, fixed-base production routers and one production router base are being recalled. The recalled routers are about 11 inches tall and 7 inches wide. The top of the router motor is black plastic and has the on/off switch for the router. The base is painted gray and has two side handles, an adjuster ring on the top and a clamp screw on the rear. The side handles on the base of recalled routers have no insulation. The Porter-Cable name and logo are on the front of the base. The recalled routers and base were manufactured from 1990 to April 2014. The following router models are being recalled:

Model Number	Speed/Feature
7518	5-speed
7519	1-speed
7519EC	1-speed/has an extended chuck
22-7519-60	1-speed/ uses 220-volt power source

The router model number and the manufacture date code are on a metal plate on the back of the upper motor housing. The date code consists of the year of manufacture, the week of manufacture and the manufacturing plant code in the YYYY WW-XX format.

The router base is model number 75361 and is also sold separately. The model number is located on the side of the base opposite the Porter-Cable label.

Consumers should immediately stop using the recalled routers and router bases, unplug the routers and contact Porter-Cable for a free replacement router base with insulation on the handles. For more information, please visit the firm's website at: www.portercable.com and click on "Important Safety Notice/Recalls."

WHITEMORE

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www.whitemorefire.com

Click on "registration", complete the form and press "submit". It's easy and you won't miss a thing!



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.

Submit Your Loss Online