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FIRE INVESTIGATION LED TO STRONG RETALIATORY CHALLENGE

CASE TYPE: Insurance Bad Faith

CASE: *Namerow v. The Travelers Insurance Co.*, No. CV 97-0568124S (Super. Ct., Hartford Co., Conn.)

PLAINTIFFS' ATTORNEYS: Austin J. McGuigan, Glenn E. Coe and Joseph B. Burns, of Hartford, Conn.'s Rome, McGuigan Sabanosh P.C.

DEFENSE ATTORNEY: Frederick B. Tedford, of Hartford's Danaher, Tedford, Lagnese & Neal P.C.

DATE OF VERDICT: April 14, 1999

Two separate actions were combined in this trial. In one, Travelers Insurance Co. acted as the plaintiff, seeking the return of money given to Barbara and Robert Namerow, whose insured house burned down. In the other, Travelers was the defendant on a bad-faith and invasion-of-privacy claim brought by the Namerows when Travelers refused to pay off their insurance claim. The case is listed as a defense win because Travelers' defense in denying the claim was the essence of the case.

The Namerows' 5,000-square-foot house in Avon, Conn., burned down on Feb. 3, 1995. Namerow called 911 when she saw smoke coming from the garage. But within minutes, the garage was completely on fire and the house was soon consumed as well, said Travelers attorney Frederick B. Tedford.

In the days following, said Tedford, "the fire was investigated by the state fire marshal's office, who concluded the origin was unknown." On the day of the fire, Travelers paid the Namerows \$10,000, then followed with checks for \$15,000 and \$25,000, and ultimately paid off the Namerows' mortgage, as required by the insurance policy, he said.

But in the meantime, Travelers investigated the fire and concluded that it had been deliberately set, said Tedford. In the initial investigation, he said, the Travelers investigator had found gasoline in the Namerows' Mercedes in the garage. "We began investigating it as arson and took samples from the garage floor. We found gasoline in a number of places where it shouldn't have been." In June 1995, Travelers denied the claim and sued to recover money already paid to the Namerows. The Namerows then filed their own lawsuit, seeking \$2.6 million in compensatory damages to pay for rebuilding their home and providing living expenses since the fire, plus additional damages for bad faith.

The insurance company was faced with several significant problems, said Tedford. The fire marshal had not concluded that the fire was caused by arson, and no criminal actions had ever been filed against the Namerows charging arson. "The plaintiffs were very sympathetic," he added. "This was a husband and wife and two small children who had lost their home." In addition, he said, the plaintiffs' experts offered evidence backing the Namerows' contention that the fire was electrical in origin and that it had begun in the Mercedes parked in the garage.

"I had to prove the Namerows intentionally damaged their house to recover money from

Travelers," said Tedford. "I had to prove arson." He also had to prove that the fire marshal and the police were wrong in failing to find or charge arson.

To prove arson, the defense focused on several elements: that gasoline in the garage was evidence of arson; that the burn pattern did not suggest an electrical fire that began in the Mercedes, but an incendiary fire fueled by gasoline; and that the fire could not have spread as quickly as Ms. Namerow contended.

Travelers called expert witnesses to support its contentions about the gasoline, fire speed and the burn patterns, but the insurance company's most effective defense points came in Tedford's examinations of the state fire marshal and Ms. Namerow.

"Many people believe that fire marshals are like God," he said. "But in reality, they vary with experience. They're not always right." In this case, the fire marshal "had screwed up," he said, and it was Tedford's intention to attack the fire marshal's findings. " But you have to be very respectful; you have to do it gently.

"I brought out that he was new on the job, that he was taking suggestions from his superiors who weren't at the scene and that he didn't know a lot of things." The approach proved successful, as the witness not only conceded these points, but during the examination, Tedford said, "I got him to admit that the burn pattern was not what you would expect from an accidental fire."

He was also respectful in his courtroom examinations of the Namerows. "I didn't raise my voice or in any way attack them." But he did point out inconsistencies in their testimony in trial and in depositions. This was particularly necessary with Mrs. Namerow. " Her credibility was crucial because she was the only one home when the fire started," he said. During the trial, he recalled, " she started screaming at me after 20 minutes of questioning." Mrs. Namerow complained that, in the depositions, " I kept cutting her off and wouldn't let her answer the questions." Tedford said that this complaint was a " strategic maneuver" by the opposition to account for any inconsistencies between the testimony in the deposition and that at trial.

But Tedford countered by asking the court whether he could play the videotape of her deposition. " The other side objected," he said, and the judge denied Travelers' motion. "It was one [request] I was glad I lost," he noted, because it left the effect the Namerows were hiding something. " I stopped asking questions," he said. "At that moment, the jury believed she was lying."

On April 14, 1999, a Hartford jury found Travelers was justified in denying the claim, then ordered the Namerows to reimburse the company more than \$400,000. Post-trial motions to set aside the verdict were denied. The judgment has been appealed.