



# IN-HOUSE

## Excultating Your Product At The Fire Scene Inspection

By Frederick B. Tedford

**A**s corporation counsel, you occasionally receive notification from an attorney or an insurer advising you of an impending fire scene inspection, and that your product is considered to be a potential cause of the fire.

The actions taken by your company after receiving that notification can have different

repercussions, and if the right course is taken, litigation can be completely avoided through a total excultation of your product.

Typically, product manufacturers do not receive notice of the first fire scene examination. Rather, the notice you receive is a "follow up" examination allowed by plaintiff's counsel to avoid spoliation claims.

By the time your investigators reach the scene, experts retained by opposing counsel (often subrogation counsel) are attempting to finalize their opinions on the origin and cause of the fire. Even at that early stage, the insurer's fire origin and cause experts have already arrived at tentative opinions with respect to the origin of the fire and its cause.

In fact, in many instances, the experts for the insurer have developed hypotheses that one or more products located in their defined area of origin may have caused the fire. In all likelihood, these experts have not prepared written reports by the time of your team's examination of the scene, and might be persuaded that their defined area of origin is incorrect or that your product could not have

caused the fire.

Additionally, since subrogation counsel often are compensated on a contingency fee basis, such counsel will not want to waste time pursuing false leads or an action against a company which provides a solid defense from the moment it arrives on the scene. The time to assert that defense is at the fire scene – long before a lawsuit is initiated.

Excultating your product at this early stage requires advance preparation. In most cases, sending two experts to the inspection is the most preferable course of action – one having expertise in fire origin analysis, and one on fire causation. If that fire causation expert has experience with your product, you are one step closer to avoiding litigation.

It is not uncommon at fire scene inspections to see subrogation experts, as well as fire marshals (who should be invited to attend the inspection), looking for confirmation of their hypotheses with respect to both origin and cause. The time to have input into their decisions on both topics is *before* they have committed themselves in writing with respect to these issues.

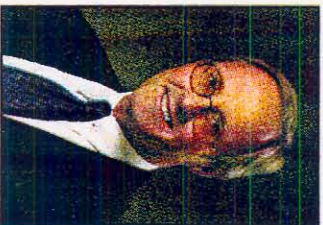
While it is less likely, although possible, that

you can alter their opinions with respect to the fire's origin, your experts can have a significant impact on their hypothesis that your product played a role in causing the fire. Demonstrating the *correct* origin and cause of a fire at the fire scene can help your company avoid litigation altogether.

While at the fire scene, your experts should work with opposing experts and the local or state fire officials to demonstrate through the physical evidence that your product is not responsible for causing the fire.

In some instances, you will be able to establish the true cause of the fire and in others you will only be able to demonstrate that your product could not have caused the fire. In either circumstance, however, you will certainly be able to demonstrate that you are prepared to present a formidable defense if the case proceeds to litigation.

Being proactive in the early stages of the investigation can excultate your product and can help you avoid a lawsuit and the cost associated with litigation.



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