

## **ARSON**

Tedford & Henry, LLP (“T&H”), is pleased to offer this article as the first of a two-part series on arson. In this segment, we will describe two fire investigations where arson was quickly ruled out as the cause of the fire. In a third investigation, arson was determined to be the cause of the fire, but basic fire science principles were not followed and a homeowner suffered the consequences of a poor investigation. In the next issue of *Perspectives*, we will discuss in detail why each of these three investigations failed to arrive at the correct cause of the fire.

### **Fire Investigation #1**

During Fire Investigation #1, T&H represented the manufacturer of a motorcycle blamed for causing the total destruction of a recently-built suburban home having in excess of 4000 square feet. The house had a three-bay garage, with the bay closest to the main structure of the house being identified as the area of origin (“the subject bay”). When we arrived at the fire scene, the subject bay had been completely cleaned of all fire debris, washed with fire hoses, and swept clean.

When we began our origin and cause investigation, subrogation counsel and his expert advised us that the subject motorcycle had been parked in the middle of the subject bay. We were further advised that the homeowner had started the motorcycle and left it running in the garage while he went into the house. When he came back into the garage, he observed fire in the area of the motorcycle engine. We were further advised that the homeowner then ran back into the house to obtain water. When the homeowner came back into the garage with the water, he noted that the fire was “blazing up to the garage ceiling” and that his attempt to extinguish the fire with the water failed.

The fire department was called but, despite their best efforts, the house burned to the ground. The fire investigator for the homeowner's insurer concluded that the fire was caused by "some defect" in the fourteen year old motorcycle. The claim for damages was in the amount of 1.5 million dollars for the loss of the house and its contents.

The fire did extensive damage to the home but it was apparent that the fire started in the garage. The investigator for the homeowner's insurance carrier was aggressive and condescending. He offered little background information and appeared impatient as we began our investigation. Nevertheless, throughout day he begrudgingly provided us with bits and pieces of background information. He was resistant to our efforts to speak with the homeowner about the fire events, but we were eventually allowed to do so. When we pressed, the investigator refused to provide an explanation for the cleaned out area of origin, saying only that it was in that condition when he arrived at the fire scene. When confronted with the prospects of a spoliation defense, he simply shrugged and claimed that it was not his fault and asserted that the motorcycle was preserved and available for inspection at another location. We were advised that he had concluded that an unspecified malfunction in the motorcycle caused the fire and that another expert would be involved to examine the bike and render further opinion on the matter.

## **Fire Investigation #2**

A nursing home under renovation had burned to the ground a week before the construction was completed. The fire marshal quickly ruled out arson on the grounds that the accelerant detection canine did not alert to the presence of an accelerant. The fire marshal asked the general

contractor if they were using any heating devices in the building, as the fire occurred during the winter and the heating system was not yet reactivated. The general contractor told him that a portable propane heater (salamander type) was in a basement hallway and was operational during the night to assist in drying fresh paint. The general contractor also confirmed that the main power supply to the building was not in service, but that there was temporary electrical service available for the contractors.

The fire marshal began his investigation the next day by digging out the area where the portable heater was located. After finding the heater, he concluded that the fire was caused by the heater being placed in close proximity to combustible material which he identified as the hallway wall. Although the building was a total burn and its design and construction very complex, all investigators quickly agreed that the fire started in the basement of the building, at the location of the heater.

Suit was ultimately brought against the manufacturer of the heater to recover the 13 million dollars in building losses.

### **Fire Investigation #3**

A fire started on the first floor of a three-story home with the owner/occupant asleep on the second floor. The fire burned quickly, consuming the entire home with the owner escaping with his two dogs through a second floor window onto the porch roof where he and the dogs were rescued by fire fighters. The fire marshal concluded that the fire was an arson fire and that the homeowner had set the fire. He based that conclusion on the process of elimination, contending

that he eliminated all accidental causes in the area of origin and that only an incendiary fire remained as a potential cause. The fire resulted in a total burn of the building and first arriving witnesses observed and photographed a well developed fire throughout the building. Before commencing his investigation, the fire marshal was told that the homeowner was involved in a hotly contested divorce and that his wife believed that her husband intentionally burned the house so it would not be given to her in the divorce proceeding.

In the next issue of Perspectives we will discuss each of these three fire investigations and demonstrate how in each case the investigators were incorrect about their conclusion that arson was either the cause of the fire or was ruled out as the fire cause. To keep you interested in our analysis, we are providing you with a few additional facts on two of the fires and a comment on the third. The following additional facts were readily available at the time of the initial investigations but were either overlooked or intentionally discarded as not important: In fire investigation #1, the homeowner described going back into the house after attempting to put the fire out in the garage, but he stated that he was met with fire inside the house in a hallway that ran adjacent to the garage wall. In fire investigation #2, there was a videotape of the fire taken by a neighbor, who told us that he had shown the video to the fire marshal on the night of the fire. The fire marshal had said that he wanted a copy of the video but he never followed up to obtain one. There was also the pesky issue of the disgruntled subcontractors and the 42 battery chargers that were scattered throughout the building for use by for the workers to recharge their hand tools. In fire investigation #3, there was the troublesome issue of the lack of a well defined area of origin and the reliance by the fire marshal on the process of elimination in a total burn fire scene.

~ **Frederick B. Tedford** ~