

ARSON

Tedford & Henry, LLP (T&H), is pleased to offer this as the second of a two-part series on arson. In the Winter/Spring 2009 issue of Perspectives, we described two fire investigations where arson was quickly ruled out as the cause of fire and a third investigation where arson was determined to be the cause of the fire, but basic fire science principles were not followed during each investigation, resulting in incorrect conclusions. In this issue of Perspectives, we will discuss in detail why each of these three investigations failed to arrive at the correct cause of the fire. You can find our Winter/Spring 2009 issue of Perspectives on our website at www.tedfordhenry.com.

Fire Investigation #1

T&H was retained to represent a motorcycle manufacturer whose product allegedly caused a fire which totally damaged a 1.5 million dollar house with a three bay garage. The motorcycle blamed for causing the damage was in the bay closest to the main structure of the house. The area of origin was completely cleaned of all fire debris when we arrived for our inspection and the motorcycle was removed to another location by the subrogation investigator and preserved as evidence. (We learned later that the local authorities had cleaned the area of origin to examine the floor for evidence of arson.)

After completing our origin investigation, we agreed that the fire originated in the garage bay closest to the main structure where the motorcycle had been parked. At the time of the fire, two off-road vehicles had also been parked in that bay, but were not available for inspection nor preserved as evidence.

Our frustration was somewhat relieved when we were permitted to speak with the homeowner, Mr. X. I chose to have my discussion with Mr. X while standing in the garage bay closest to the main structure where he stated that he had observed the motorcycle on fire. Mr. X described his observations for us. He stated that he had opened the garage man door between the house and the bay closest to the main structure and started his motorcycle. He went into the house for about five minutes and re-entered the garage to find the motorcycle on fire with a two foot flame height in the area of the seat. He immediately went back into the house to get a container of water so that he could put the fire out. When he re-entered the garage, he stated that the flames were now reaching the ceiling and his attempt to douse the fire was unsuccessful. He stated that at that point he re-entered the house and immediately turned to his left to climb a set of stairs leading to his daughter's bedroom on the second floor. The stairs ran along the inside of the wall which separated the garage from the main structure of his home. He stated that as he turned to go up the stairs, he was faced with a wall of fire in the stairway which prevented his ascent to the second floor. He stated that he received burns to his arms while making an attempt to reach the second floor. At that point, I asked him to explain how he thought that the fire could have gotten from the motorcycle to the inside stairway in the two to three minutes between his first entry into the garage when he

observed a flame height of approximately two feet and his re-entry into the garage three minutes later. The homeowner suggested that the fire must have reached the ceiling of the garage and entered the stairway through the wall structure while he was attempting to put water on the motorcycle. In response to questioning, he told us that the home was newly constructed and that the garage had sheetrock on the walls and ceiling. At that point during our conversation, the two fire investigators looked at each other in amazement having realized that a fire with a two foot flame height at the motorcycle could not have breached either the ceiling of the garage or the wall separating the garage from the main structure in the time period described by the homeowner. Further, he told us that he passed by the stairway each time he exited or entered the main structure of the home without seeing fire in the stairway to the second floor.

Further investigation revealed that Mr. X had recently been divorced and was in terrible financial difficulty. The claim against the motorcycle manufacturer was dropped. The cause of the fire was arson by the insured. A great deal of expense could have been saved by the motorcycle manufacturer and the subrogor if the subrogation investigator had questioned the homeowner more thoroughly about his observation of the fire. I considered his efforts to be sloppy at best.

Fire Investigation #2

Our firm was retained to represent an insurer which inadvertently misplaced a salamander type heater which had been blamed for causing a fire that totally destroyed a nursing home under construction. Tedford & Henry was brought into this case several years after litigation had been commenced against the manufacturer of the heater, the painting contractor who was using the heater to speed dry the paint, and the general contractor. Our investigation revealed that neither the first arriving police officer nor the 911 caller, a firefighter who participated in extinguishment efforts, had never been interviewed by any of the fire investigators. Additionally, a video tape taken by an eye-witness had never been reviewed by any of the investigators, including the fire marshal, despite his awareness that video existed at the time of his investigation.

Our investigation disclosed that the fire was first observed on the porch outside the main entrance to the nursing home, a significant distance from the location of the salamander heater which was located in the basement of the nursing home at the opposite end of the building. The first public service person on the scene, a police officer, confirmed that when he arrived the only place he observed fire was on the front porch. The video tape clearly demonstrated that the fire occurred on the front porch of the nursing home and burned upward and across the upper levels of the two-story structure and eventually burned down into the basement. The 911 caller verified that the fire he reported was at the front door of the building.

Our investigation further developed evidence that, on the morning of the fire, the fire marshal was told by the building inspector that he suspected arson as the cause of the fire. He based this suspicion on his observations of violently angry employees of one of the subcontractors who were being pushed hard to complete construction by a deadline

set by the building owner. The fire marshal had discounted arson solely on the basis of the accelerant detection canine's failure to alert to the presence of an accelerant.

Following the completion of our investigation, the 13 million dollar suit was settled for nuisance value. It is safe to say that the poor investigation of this fire resulted in the expense of hundreds of thousands of dollars in defense and subrogation costs.

Fire Investigation #3

Tedford & Henry was retained by the defendant in a criminal arson fire where the fire marshal concluded that the total destruction of a three story home was an arson fire set by the homeowner. The home was a total burn and the basis of the arson determination was alleged to be the ruling out of all accidental causes in the area of origin.

Our investigation concluded that the cause of the fire was undetermined. The home was so badly damaged that the area of origin could not be narrowed to an area smaller than the first floor of the structure. The first eye-witnesses observed that the home was fully involved; further, inhibiting investigators' ability to arrive at a conclusion about the fire's origin. The homeowner narrowly escaped the fire.

Arc mapping of the electrical circuits on the first floor could not be accomplished because of the damage and there was evidence of malfunctioning electrical circuits on the first floor prior to the fire. The fire marshal relied heavily upon evidence of a pending acrimonious divorce as a basis for his conclusion that it was an arson fire. The area of origin was not well defined as required by *NFPA 921* when relying on the process of elimination to make the determination that a fire was incendiary. Further, all accidental causes could not be identified let alone ruled out. The result was that a homeowner was charged with arson based on circumstantial motive evidence, rather than on solid forensic evidence of arson.

Conclusion

In fire investigations #1 and #2, incomplete investigations at the time of the fire by the subrogation investigators resulted in substantial and unnecessary costs to product manufacturers and subrogation interests, when the fires were caused by arson. In fire investigation #3, a homeowner was devastated by criminal charges based on a hasty rush to judgment where the basic principles of fire science were replaced by presumption and scientific emotion.