

## A SECOND OPINION

On a number of occasions, we have been retained by product manufacturers involved in large loss fire cases to render a second opinion regarding the strengths or weaknesses of a case. In many of these situations, the manufacturer felt its case was stronger than the evaluation of their defense counsel. When presented with this “second opinion” assignment, we begin our evaluation by closely scrutinizing the origin and cause evidence and opinions.

In many cases, the original analysis of the origin of the fire by the plaintiff’s investigator is simply wrong or, at a minimum, inadequately presented. In others, there has never been an analysis conducted regarding whether the manufacturer’s product is a competent ignition source for the available fuels. This finding is especially troubling in cases where the manufacturer was sued simply because its product was allegedly the “only ignition source in the area of origin.” Competent fire scientists understand that determining the available ignition sources in a defined area is only part of the analysis.

We generally find that a claim or lawsuit is based on that faulty premise: that the area of origin is “obvious” to the plaintiff’s investigators, and that the manufacturer’s product is the only ignition source in that “obvious” area of origin. Unfortunately, such a determination often stems from an inadequate investigation of the fire scene, or a non-existent or faulty analysis of the ignition sources and fuels present at the scene. We find that the “obvious” area of origin or ignition source

becomes less obvious when all of the available evidence is analyzed.

For example, fire origin and cause investigators often overlook key pieces of evidence such as \*911 audiotapes. Those recordings sometimes contain information regarding the reporting witness’s first observation of the fire, often placing the fire a distance away from the “obvious” area of origin proposed later by the plaintiff’s investigator. Similarly, such investigators draw conclusions regarding ignition source/fuel combinations which are scientifically invalid – conclusions which are later disproved when it is determined that the blamed product is not a *competent* ignition source for the available fuels due to the source’s inability to generate the requisite heat energy to sustain combustion. The “obvious” ignition source becomes much less “obvious” at that point.

When asked to provide a “second opinion” in these types of cases, we employ strategies not often recognized or pursued by other defense counsel inexperienced in fire science litigation. Once the “second opinion” is offered, a remarkable change generally occurs in the positions of the parties, with the manufacturer’s position being strengthened considerably.

The next time you evaluate one of your cases and you think there is cause for concern with respect to the defense of the case, trust your instincts and invest in a second opinion.