



Fire Litigation Perspectives

JUNE 2005

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What Did He Say?

Believe it or not, there are over a million words in the English language. While it's likely none of us have that large a vocabulary, those involved in fire investigations and/or litigation frequently use certain key terms and phrases.

Here are just a few common terms and their definitions to help you get started in the world of fire:

Fire Science: The body of knowledge concerning the study of fire and related subjects (such as combustion, heat release, heat transfer, fire and explosion chemistry) and their interaction with people, structures, and the environment.

Fire Cause: The circumstances, conditions, or agencies that bring together a fuel, ignition source, and oxidizer (i.e., air ,oxygen) resulting in a fire or combustion explosion.

Combustible: Capable of burning, generally in air under normal conditions of

ambient temperature and pressure, unless otherwise specified.

Ignition: The process of initiating self-sustained combustion.

Flashover: A transition phase in the development of a compartment fire in which surfaces exposed to thermal radiation reach ignition temperature more or less simultaneously and fire spreads rapidly throughout the space, resulting in full room involvement or total involvement of the compartment or enclosed space.



Welcome to FIRE LITIGATION PERSPECTIVES

Welcome to Perspectives – a quarterly briefing on fire science issues brought to you by Tedford & Henry, LLP, the only law firm with a national practice devoted to fire science litigation.

In sharing Perspectives with our business colleagues, our goal is to educate the community on fire science issues, discuss developments in the law, and serve as a valuable resource for those involved in the world of fire science litigation. We invite you to share Perspectives with your colleagues, or simply have interested parties sign up for their own copy on our website:

www.tedfordhenry.com.

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Setting the Record Straight: Fire Science Litigation News

In the last year, there have been two interesting federal court cases which explicitly deal with fire science issues and which should have a bearing on fire science litigation. Here is a brief synopsis of both:

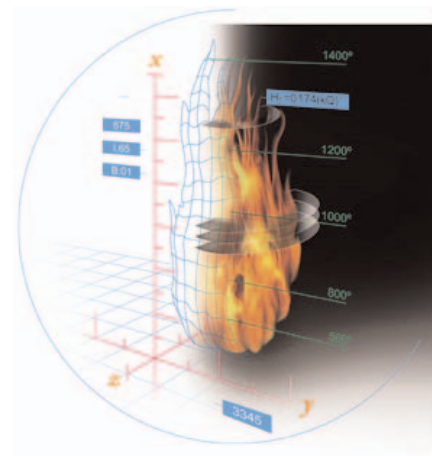
Truck Ins. Exchange v. MagnaTek, Inc., 360 F.3d 1206 (10th Cir. 2004):

In February, 2004, the United States Court of Appeals for the Tenth Circuit held that a particular theory of fire causation advanced by the plaintiff failed to meet the standards for reliability as outlined in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Although mislabeled by the plaintiff in *MagneTek* as “pyrolysis,” the scientific viability of the theory of long-term, low-temperature ignition of combustible materials through pyrophoric heating has been debated for years. The Tenth Circuit held that the theory had yet to reach acceptance

in the scientific community, and the Court upheld the trial court’s preclusion of the testimony.

Fireman’s Fund v. Canon USA., Inc., 2005 WL 53309 (8th Cir.):

In January, 2005, the Eighth Circuit held that certain opinions failed to meet reliability standards set forth in *Daubert*. In *Fireman’s Fund*, the plaintiff claimed that a fire originated in a copier manufactured by the defendant, and that the fire was caused by the “upper fixing heating assembly.” The Court took note of the fact that, in order for the plaintiff’s experts to reach their conclusion as to cause,



three significant assumptions had to be made. Since the Court found that the assumptions were not supported by the evidence, it ruled the experts’ opinions inadmissible. In reaching its decision, the Court specifically referred to the scientific method outlined in NFPA 921, and the requirement that investigators compare their hypotheses with all known facts. Most interestingly, the Court referred to NFPA 921 as the “standard” in fire investigations, as opposed to a “guide,” three times.

Tedford & Henry : News & Facts

From time to time, we receive calls or emails about our firm — what our practice focus is, who our attorneys are, and what types of cases we work on. To keep our readers updated as to T&H happenings, each issue of *Perspectives* will contain some brief information about Tedford & Henry.

New Attorney: This quarter, we are pleased to announce that attorney Peter J. Casey has joined our firm. Mr. Casey is a graduate of Boston University (B.S., 1987) and the University of Bridgeport (J.D., 1990), and has fifteen years of experience as a trial attorney in the areas of product liability and premises liability. During the course of his career, he has represented product manufacturers, distributors, and commercial entities of all types. We welcome Mr. Casey to T&H, and look forward to his work with our friends and clients.

Tedford & Henry Launches Information Campaign:

One of the most difficult aspects of our business is convincing potential and existing clients that fire science cases should be handled by experienced fire science attorneys rather than one’s usual counsel. Since fire science litigation is a relatively new specialty in the law, with Tedford & Henry being the only nationally-practicing firm devoted to the field, the public is often unaware and uninformed about issues related to fire science litigation.

To counter that point, Tedford & Henry launched an information campaign in late 2004 to provide some information to the public on this new specialty in the law.

The following articles have been published which help to shed some light on the field:



T&H recent articles

“Exculpating Your Product at the Fire Scene Inspection,”

by Ted Tedford, New England In-House
— April, 2005

“Choosing the Right Attorneys and Experts for Your Fire Litigation,”

by Brian P. Henry, Corporate Legal Times
— Feb., 2005

“Truck Ins. Exchange v. MagneTek, Inc. — The Tenth Circuit’s Analysis of a Questionable Fire Causation Theory,”

by Brian P. Henry, DRI Products Liability Newsletter
— January, 2005

Feel free to contact us to obtain reprints of these articles, and look for more articles in upcoming issues of *For the Defense*, *New England In-House*, *Corporate Legal Times*, and *Corporate Counsel*.



We issue this *Perspectives* newsletter every quarter. A lot can happen in the world of fire science litigation in 3 months. To keep up with the burning issues — **WHY NOT SUBSCRIBE?** Send in this form or sign up on line at: www.tedfordhenry.com/newsletter

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Tedford & Henry
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Upcoming: **Tedford & Henry Events**

June 9th and 10th, 2005

Ted Tedford will be a featured speaker at the Fire Investigation and Product Liability Litigation Conference, University of Wisconsin. Topic: "Products and Fire, Separating Fact from Fiction".

July 28, 2005 Webinar at 2pm EST

Topic: "Staying Out of the Hot Seat — Answers to Why it Takes Expert Counsel to Litigate a Fire Claim". Call 1(860) 293-1200 to register to attend.

September 2005

The next issue of Perspectives, the Tedford & Henry newsletter on fire science litigation. Subscribe now to be on the distribution list.

November 17-18, 2005

DRI will host its biennial Fire & Casualty Conference in Chicago, Illinois. The conference program will include discussions on litigation strategies, on recent developments in the law pertaining to the field, and on many other topics. Tedford & Henry is pleased to sponsor the First Night Reception for the conference, and we hope you will attend.