

Moving on...

"FIRE FINDINGS" PACKS UP THEIR OFFICES AND MOVES ON TO A LARGER TESTING AND SEMINAR FACILITY

On June 1, 2006, one of the premier fire science testing and educational laboratories in the country, Fire Findings Laboratories, packed-up and moved to a bigger, better location at 2026 Plaza Drive in Benton Harbor, Michigan. The new 6,000 square foot facility combines offices, testing and research facilities as well as an in-lab seminar site all under one roof.

Fire Findings has always provided excellent results from their unique testing and experiments, but due to lack of space in the prior facility, they were fairly limited in their set-ups and demonstration abilities. This new location provides Fire Findings with ample space to put forth a fresh focus on testing and also opens the doors to examine products more closely. For instance, clients can now take products from a scene and hold product examinations at this new facility in a fully equipped laboratory environment. They will be able to document those examinations using digital, still, video and micro-photography. This expanded space also offers the opportunity to re-create or experiment with fire-causing scenarios for cases that require deposition or trial testimony.

In addition to the new exceptional facilities, Fire Findings now has more room to host seminars and demonstrations with a focus on a more personal group setting. Although sessions will be taught in a laboratory setting that is used for product examinations and testing, a specific space that houses

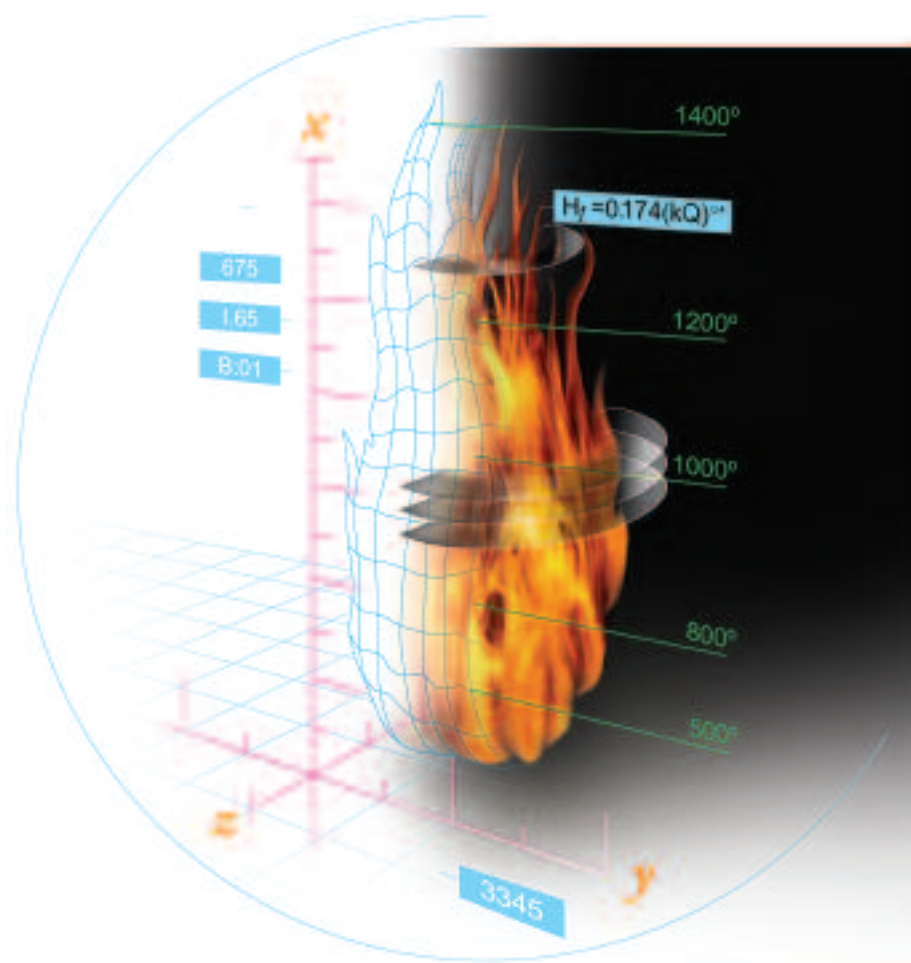
approximately 40 people has been designed. It includes larger washrooms and a kitchen, making it a more comfortable and pleasant experience for all attendees.

This new facility also allows Fire Findings the space to incorporate the voluminous number of artifacts it has accumulated over the years which are used in seminar demonstrations. There is a larger staging area from which to view demonstrations.

Finally, Tedford & Henry, LLP is pleased to announce that Brian Henry will be

joining the faculty of Fire Findings Laboratories. In January, 2007, at a yet-untitled seminar, Brian will lecture on litigation techniques in fire science litigation, specifically covering the nuances of the relationship between fire origin and cause investigations and any eventual litigation. Brian will be joining a team that has provided such valuable fire science training for many years.

Congratulations and best of luck to Fire Findings!



Tedford & Henry, LLP
750 Main Street, Suite 510, Hartford, CT 06103

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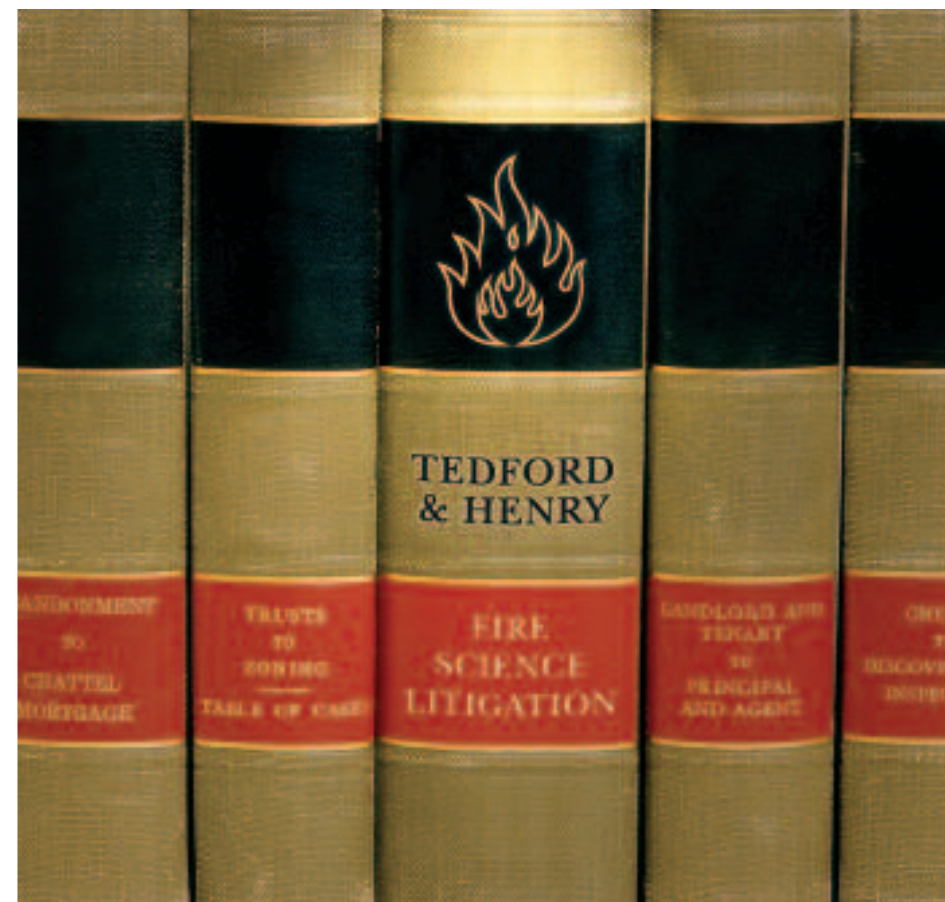


Perspectives from the Hotseat

Tedford & Henry News & Facts

Tedford & Henry, LLP was a sponsor of The International Symposium on Fire Investigation Science and Technology Seminar that took place at the University of Cincinnati, Ohio, on June 26-28.

Brian P. Henry will be a featured speaker on the topic of "National Fire Science Multi-District Subrogation: The Benefits, Pitfalls and Suspect Products" at the National Association of Subrogation Professionals 2006 Conference taking place on November 12-15 in Orlando, FL. For information regarding this conference go to: www.subrogation.org.



Fire Litigation Perspectives

Tedford & Henry, LLP · 750 Main Street, Suite 510, Hartford, Connecticut 06103 · P (860) 293-1200 · F (860) 293-0685 · www.tedfordhenry.com

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What Did We Say?

There are an estimated 13,000 fire investigators in the United States. With that many people investigating the origin and cause of fires, we think it is a good idea to cover some of the basic terminology being utilized in the fire science community. Knowledge of these terms and their definitions can be an asset to any investigator.

Arc: A high-temperature luminous electric discharge across a gap or through a medium such as charred insulation.

Auto-ignition: Initiation of combustibles by heat but without a spark or flame.

Auto-ignition Temperature: The lowest temperature at which a combustible material ignites in air without a spark or flame.

Clean Burn: A fire pattern on surfaces where soot has been burned away.

Fire Dynamics: The detailed study of how chemistry, fire science, and the engineering disciplines of fluid

mechanics and heat transfer interact to influence fire behavior.

Glowing Combustion: Luminous burning of solid material without a visible flame.

Pyrolysis: The chemical decomposition of a compound into one or more other

substances by heat alone; pyrolysis often precedes combustion.

Spoilation: Loss, destruction, or material alteration of an object or document that is evidence or potential evidence in a legal proceeding by one who has the responsibility for preservation.



Welcome to FIRE LITIGATION PERSPECTIVES

This quarterly publication is brought to you by Tedford and Henry, LLP, a law firm with a national practice devoted to fire science litigation. Our readership is growing, as manufacturers and business colleagues find it a resource for fire science issues as well as interesting developments in the law.

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Setting the Record Straight: Fire Science Litigation News

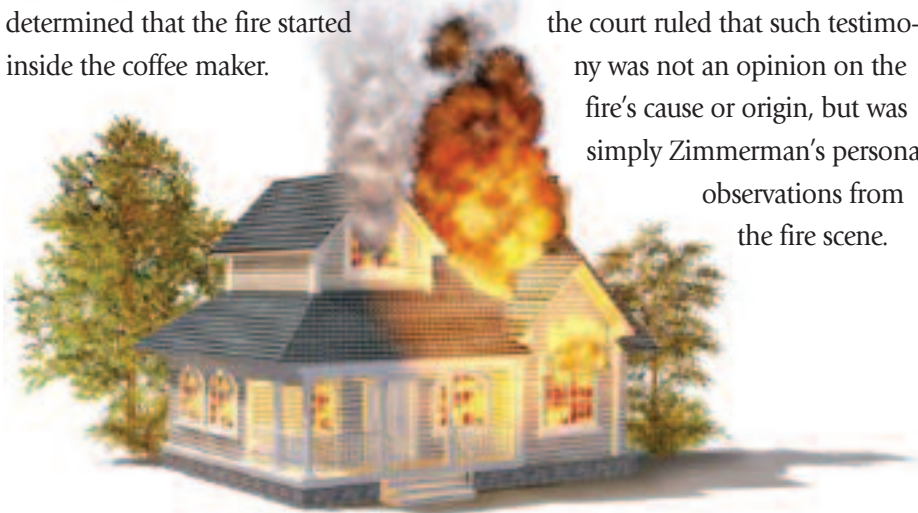
A federal district court case that was recently published bears on the field of fire science litigation. In *Vigilant Insurance Company v. Sunbeam Corp.*, a court walked the tightrope between expert testimony and lay opinions, and came down on the side of admissibility.

Vigilant Insurance v. Sunbeam Corp., 231 F.R.D. 582 (D. Ariz 2005): In March 2005, a jury in Arizona returned a verdict for plaintiff Vigilant Insurance against defendant Sunbeam Corporation. Through subrogation, Vigilant sought recovery for payments to its insured for damages resulting from a house fire caused by the defendant's product, a "Mr. Coffee" coffee maker. The jury awarded damages in excess of \$2,000,000.00.

The defendant filed a Motion for New Trial, claiming that the verdict was against the clear weight of the evidence because there was insufficient evidence to support a design or manufacturing defect. Essentially, the defendant claimed its experts had disproved the plaintiff's experts' theory of origin. The court denied the motion, finding that the plaintiff's experts had ruled out all other ignition sources and appropriately determined that the fire started inside the coffee maker.

Also of note was the court's decision to allow one of the plaintiff's experts, Zimmerman, to testify as a lay witness, but not as an expert. The court ruled Zimmerman could not testify as an expert because he did not investigate or test the coffee maker power cord, the toaster power cord, the coffee maker's safety devices, or the fluorescent light. Thus, Zimmerman's opinions were not based on sufficient facts, and his opinions did not conform to generally accepted standards for fire investigation.

However, the court did allow Zimmerman to testify as a lay witness about his fire scene examination and what he observed at that time. Specifically, the court allowed Zimmerman to testify about his knowledge of "V-patterns" and what he observed at the fire scene, including locating the coffee maker at the base of a "V-pattern." Interestingly, the court ruled that such testimony was not an opinion on the fire's cause or origin, but was simply Zimmerman's personal observations from the fire scene.



The admission of Zimmerman's testimony illustrates the razor-thin line between expert origin and cause testimony and lay observation testimony in fire science litigation. While *Daubert* remains crucial in a "battle of the experts," the use of lay testimony to make an end-run around *Daubert* should not be overlooked.

Tell Us What You Think

Just as we welcome all readers to submit articles for publication in our newsletter, we welcome all readers to submit their thoughts and opinions in response to articles we print. We will be glad to publish any comments or contrary opinions in either a future newsletter or on our website.

You may submit any comments directly to:
info@tedfordhenry.com

Guest Articles

The practice of fire science litigation is dependent on the expertise and strong thinking of associates in this exacting field. These knowledgeable individuals have authored fire-related articles which we have posted in their entirety on the Tedford & Henry website. We appreciate the submission of these articles, and note that the opinions expressed therein are those of the authors. If any reader wishes to comment on the submissions, please send us your thoughts and we will be glad to include them in a future issue. Read excerpts of those informative articles here in *Perspectives*, and then get the full story at www.tedfordhenry.com/articles

The Neon Sign Fire

Neon, from the glitz and glitter of your favorite nightclub or restaurant to the glow in the distance of the motel you are trying to find on that rainy night, the neon is very versatile and economical. When used for neon and electric signs, or general and outline lighting applications, such signs usually require a small amount of maintenance. Neon tubing is still mostly hand-fabricated, processed with inert gases (neon, argon and mixtures of the two) and powered by high voltage, and in some cases, high frequency.

Neon tubing and signs are generally safe and trouble-free when installed and maintained in conformance with the National Codes and Standards. (NEC National Electric Code, UL Underwriters Laboratories Standards UL 48 Electric Signs).



Neon signs and outline lighting in disrepair or left non-operational for any amount of time are a prescription for fire.

Neon signs are powered by high voltage and the wiring must be contained, loaded and installed properly, especially when a fault (outage) occurs. Neon signs operate at voltages up to 15,000 volts. The voltage is very high in these installations, but the current is low (in the 30-60 millampere range). This means that electrocution is normally not the hazard, but the static electric field, once in contact with ground, creates a breakdown in the secondary circuit wiring insulation and dielectric properties of the system.

— BY RANDALL WRIGHT

Mr. Wright is an industry expert consultant who performs neon sign fire investigations and educates sign companies, fire investigators and electrical inspectors. He is a 37-year veteran of the electric sign industry. He can be contacted at RKW Consulting in PA at (570) 368-1091 or email: www.rkw-consulting.com.

The full article appears on the Tedford & Henry website at: www.tedfordhenry.com/articles

Submit Your Articles

Tedford and Henry encourages readers of *Perspectives* to submit topical guest articles for inclusion in this Quarterly Newsletter and on our website.

Contact Brian Henry at 860.293.1200 or via e-mail at bhenry@tedfordhenry.com

Guest Articles, continued

The Pitfalls, Perils and Reasoning Fallacies of Determining the Fire Cause in the Absence of Proof: The Negative Corpus Methodology

The concept of determining the ignition source, or as some would characterize it as the "fire cause," in the absence of proof has long standing in the fire investigation community. This concept has been referred to as "Negative Corpus." Negative Corpus is not a legal term, but a term of art used within the fire investigation community. Generally, Negative Corpus refers to a methodology in which an ignition source is determined without physical evidence of it.

Conclusions regarding the cause of fires and explosions are routinely made by many fire investigators in the absence of physical evidence, or proof. Yet, investigators cite their reliance on the "elimination of all other fire causes," except for the one they proffer, or the "elimination of all accidental causes." By their nature, claims of an ignition source using the process of elimination are not supported by physical evidence. The only proof or support for many of these opinions using the Negative Corpus Methodology (NCM) is the unsupported belief of the investigator.

NFPA 921, Guide for Fire and Explosion Investigations provides procedural guidance and limitations to the conditions and circumstances to determine the ignition source in the absence of physical evidence. This discussion is entitled the "Process of Elimination."¹

Unfortunately, the phrase "Process of Elimination" (POE) as well as "the elimination of all accidental causes" have become euphemisms for negative corpus. As a result, there is no assurance that the investigator who states he is using the POE, is abiding by the guidance or limitations discussed in §18.2 of NFPA 921.²



While statements such as "I eliminated all accidental causes" may sound like a definitive statement regarding a fire cause, what is really being said? A critical and logically-based review of the NCM in which an investigator eliminates "all accidental causes" shows how specious the claims of cause and NCM really are.

The following will discuss the conceptual and logical reasoning flaws used to support the Negative Corpus Methodology.

WHAT IS NEGATIVE CORPUS?

The term negative corpus is derived from the Latin term corpus delicti, which means "body of the crime." Negative corpus is generally recognized as the opposite of corpus delicti, or "without the body of the crime." The NCM is a method that allows for the determination of the ignition source, or as some say "the fire cause," without physical evidence or proof.

There are investigators who do not recognize the term "negative corpus," but employ the "process of elimination" methodology. Whether the term "negative corpus" is used or not is irrelevant.

— BY DENNIS SMITH

This article is published by Dennis W. Smith, a senior fire expert with Kodiak Enterprises, Inc. of Ft. Wayne, Indiana, where he is responsible for origin & cause investigation. This article has been re-printed with permission. Mr. Smith can be contacted at (260) 432-6590 or Denny@kodiakconsulting.com.

The full article appears on the Tedford & Henry website at: www.tedfordhenry.com/articles