



The smell and remnants of soot and debris are finally out of your clothes, hair and nostrils. Tubs and bags of debris are safely stored in a laboratory and repairs have begun to return the fire scene to what it once was. What happens now? What are the protocols and strategies, who are the team members necessary to investigate a loss pre-scene exam, and what are the proper protocols to follow during the scene exam? No matter what your specific role may be, it is necessary to take an active role in the investigation.

The claimant may have the burden of proving what caused the fire, but the gathering of information to

analyze potential alternative causes may be up to the target defendant so that they can be raised in defense of their client. It is not beyond the realm of possibility that a subrogating carrier will enter into a claim investigation with the preconceived notion that a particular entity was at fault. This mindset of taking an active role in an investigation must continue even after the scene has been released.

Seek Answers Early

In litigation, people often use the phrase, “don’t wake a sleeping lion.” When it comes to claims management and whether a claimant intends to pursue a particular party, the lion is eventually going to wake up on its own before the



After the Fire

Evaluating Exposure and Expenses Post-Scene Exam

By Brian Benoit and Fred Perez

statute of limitations expires. It is therefore more beneficial to find out whether a claimant intends to pursue the claim earlier rather than later, and it often takes a request from the potential defendant to find out. This will ideally result in a closed file, but if it does not, it moves the claim along and provides insight to your client about what they can expect to expend in fees and potential settlement.

Remind the Claimant

Always remind the claimant of their burden. Assuming that the claimant decides to go forward with the claim, they must follow the proper channels, i.e., the scientific method to show not only what caused the fire, but

whether the cause of the fire was related to your client and related to the negligence of your client and/or a defect in your client's product or workmanship. When the alleged instrumentality that caused the fire is reduced to a pile of rubble, it is most often very difficult to identify the particular point of origin or specific cause of a fire.

NFPA 921 defines point of origin as "the exact physical location within the area of origin where the heat source and fuel interact creating a fire or explosion." An example of this is when starting a campfire, the point of origin is where the match came in contact with the kindling. The concept of point of origin is important because it requires

the expert to pinpoint exactly what about a particular product was defective and caused the fire. How can this be done if the evidence has been charred by a 1200 degree inferno?

A Closer Look

Prior to assembling a team of highly trained, educated, and well-paid experts to attend an evidence exam, there are measures that should be taken to ensure that an evidence exam is in fact necessary. The first and most inexpensive non-destructive test that can be conducted is an X-ray of the evidence. An X-ray will pick up any metallic component within an appliance such that it may uncover potential faults or areas of interest within an appliance. X-rays also serve to identify component parts of an appliance that would not otherwise be observable. If there are areas of interest that need further observation, X-rays can assist during the evidence exam to serve as a roadmap for attempting to uncover certain components. The downside to X-rays is that they are 2-D and black and white.

The other option that has been using CT scans to detect anomalies or potential failures within suspected culprits for the cause of a fire. CT scans are considerably more expensive than X-rays, but they are a more informative and thorough method of analyzing component parts of a product destroyed in a fire. CT scans can provide a 3-D rendering of the internal components of a product, which provide a better overall image of what the product looks like amidst all of the debris. A CT scan can provide the expert the ability to not only spot an anomaly, but identify where the anomaly was located in relation to other components with greater clarity than an X-ray is able to provide.

X-rays and CT scans should be requested in advance of an evidence exam in order to permit the experts' time to evaluate them. The party asserting the claim should bear the costs of a CT scan or X-ray if they think it is necessary to move forward with their claim. The production of CT scans or X-rays is another point in the claim wherein any party of interest should request whether the claimant intends to pursue the claim. If an expert has not reviewed the X-rays or CT scans prior to an evidence exam, this should be carefully scrutinized at deposition.

Evidence Exam

If the claimant elects to proceed with an evidence exam, the decision must be made whether to attend the evidence exam and if attendance is warranted, what testing must be conducted to ensure that the scientific method is followed. Consideration should always be given to cost benefit analysis of a claim. The claim resolution manager and client should always evaluate to what extent the investigation can follow the tenets of the scientific method and still warrant

EVIDENCE EXAM CHECKLIST

Here is a checklist for evaluating the findings during and after an evidence exam:

- ✓ **Was there any sign of failure within our product?**
 - What was it?
 - How could it cause a fire?
 - Could it be caused by an external fire attack?
- ✓ **Was there any sign of failure within any other product?**
 - What was it?
 - How could it cause a fire?
 - Could it be caused by an external fire attack?
- ✓ **Can you tell whether the claimant's experts are focusing on a specific appliance?**
- ✓ **Can you tell whether the claimant's experts are focusing on a specific failure?**
- ✓ **Is there anything else that needs to be done? Has any additional work been proposed by the claimant's experts?**

This checklist should be undertaken before anyone leaves the lab. Far too often, parties determine that there was not enough time spent analyzing a specific product or component, requiring an additional exam in the future.

the expense. The protocol for an evidence exam should be carefully calculated to ensure that all evidence is evaluated equally and that the proper testing is conducted.

Most fire claims require a great deal of preliminary investigation and analysis even before suit is filed. This consequently results in the expenditure of a great deal of resources even before a complaint is served on the client. In order to make the best use of resources at the outset, it is important to have an internal protocol about how these claims are handled depending on the situation. There should be constant contact with the client to provide information on any developments and changes that may affect the necessary expenditures required to defend or settle the claim. Claims and litigation management means taking control of the claim and not letting the claim take control of you.

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