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Resource Center



Fire Investigation Ethics and Product Liability

by
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Bloom, Chris; Bloom, Joseph M. Fire Investigation Ethics and Product Liability.
Fire and Arson Investigator. Vol. 47. No. 2 (December 1996). p 22-23.

Technology has given us a vast variety and quantity of small electrical appliances. Occasionally one may malfunction, and that product's failure may cause a fire. However, guesswork or haste in conducting a fire investigation can result in the erroneous blame of a product simply because of its location near the area of origin. Manufacturers and insurance carriers, who in the past would readily pay a claim, are taking a hard line stance and making the plaintiff prove a case before offering a settlement.

Many insurance carriers depend solely on fire agencies to provide a fire report stating the fire's cause, and use that information as prima facie evidence that an electrical component failed. However, the scenario as stated on a fire report may not be correct. Often, a product is listed as cause without a complete and thorough scene examination, and the elimination of other possible causes. The rationale is if there are both a plastic housing and a source of heat, then the fire triangle is satisfied. Further testing by a reputable lab may indicate the appliance or component did not fail.

Questions an insurance carrier should consider before pursuing subrogation or subrogation defense are:

1. What is the geographical location of the fire? Is the product normally used in the area?
2. Is this a paid or volunteer fire department?
3. What is the background and training of the investigator?
4. How many times has the investigator blamed this product as cause before?
5. Was a complete and independent investigation performed by a private investigator, and was the same conclusion reached?

The following is an example of the importance of knowing the geographical location of the fire. In cold climates, heating tape is designed to de-ice roofs and gutters. A fire in a temperate climate, which is blamed on this device, should be questioned. Does the investigator have sufficient knowledge about a particular product? The investigator may have heard or read of similar fires second-hand, but is not aware of the intrinsic circumstances required for this type of fire to occur. A wood shake roof fire may result from illegal fireworks, or sparks from a chimney, as well as from heat tape.

Determining if the fire department is paid or volunteer is another important consideration. In a volunteer fire department, the investigator or fire chief may have a separate full-time job, and not have much time to devote to fire determination-related activity. Also, there may not be enough fires in the locale to provide opportunity to acquire experience. There may be little or no fire investigation training in the person's background, but the chief is required by state statutes to render a cause in all fire cases. There also may be strong community pressure to render a cause other than "electrical" or "unknown."

It is extremely important for an insurance carrier or attorney to ask the cause and origin investigator or fire department inspector about prior training and background with respect to defective products. Voir dire should not alienate or threaten the investigator if that person has credible experience.

Another important question for insurance carriers or attorneys to ask is how many times prior to this

incident the fire department or private investigator has blamed a particular product as cause. Our firm was retained in a fire case by a manufacturer, as the burn patterns observed clearly did not match the scenario the plaintiff claimed. During the eventual courtroom testimony by the plaintiff's fire expert, it was learned that this expert had blamed the same appliance as cause numerous times, and worked almost exclusively for the same plaintiff's insurance carrier.

Unfortunately, a defective appliance can be considered as an "easy hit" for blame, as most of the vital components are destroyed or are melted during a fire. However, much of this damage may result from fire activity instead of the cause of the fire.

A fire scene was recently examined in a large city. The area of origin was definitely determined to be inside the wall of a church, and was caused by a lay parishioner's recent substandard electrical work. The fire department concurred as to the cause, determined to be loose splicing and no use of wire nuts. The area of origin was well-defined and also agreed. However, one investigator had removed a severely damaged copy machine which had been located on the same wall and adjacent to the area of origin, and had taken it back to the station. We were asked by that investigator if we wanted to take it and get it tested. We declined, as it was not the cause of the fire, and would not be ethical. It definitely was not the cause of the fire.

Simply because a product is listed for recall by a federal agency or manufacturer does not necessarily mean that the product failed in every specific fire case. Each fire must be investigated on its merits and individually proven or negated by an objective and impartial investigator.

A product may be blamed as cause by a consumer on the basis of imagined recall, without any merit to the claim, with hopes of an additional monetary settlement. These allegations of defect and recall should be thoroughly researched by the cause and origin investigator, to determine the worthiness of the allegations.

A product failure may also result from someone attempting to repair the device or appliance, removing and discarding components without replacement. This is a common occurrence in coffee makers, where thermal fuses are mistakenly identified as resistors by someone attempting to fix a non-functioning unit. A subsequent fire or failure is in no way the responsibility of a manufacturer. If at all possible, the investigator must determine the service history and repair record for that product.

If a product indeed failed, the following should be substantiated on a fire report.

1. The area of origin and burn patterns should coincide with the location of that product.
2. The rate of heat release and flame height should also be consistent with the amount of combustibles available.(6)
3. Results from a reputable lab should confirm the cause, if the parts can be found. Initially, only non-destructive testing should be the only examination performed, and a representative of the potential defendant company should be notified. Destructive testing and documentation should be done only when all sides agree what tests are to be performed and by whom and who is to be present.
4. The appliance must be plugged in to an electrical receptacle, and current flowing.
5. Other potential causes must be eliminated.
6. Prior repairs by the owner or others must be eliminated.
7. There should be clear and concise photographs, leading to an area of origin and product failure, which are presented in a logical format.

Care, objectivity and impartiality are paramount in all fire cases. An investigator's thoroughness, integrity, ethical standards and credibility are on the line whenever a product is blamed as cause.

About the Authors

Joseph M. Bloom is a retired Los Angeles County Fire Captain, who has operated Bloom Fire Investigation in Grants Pass, Oregon, for 14 years. He serves on three NFPA Technical Committees, including Recreational Vehicle Fire safety, Recreational Vehicle Campgrounds and Welding and Cutting Practices, and is a member of the Fire Research Section. He has written numerous publications and a book, The Fire Investigation Handbook For Insurance Adjusters. Joe is a community college instructor in beginning and advanced fire investigation.

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Joe and Chris also present seminars throughout the United States dealing with cause determination for structures, vehicles, mobile home and recreational vehicle fires.

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