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Litigating a fire related case presents unique challenges to an attorney
What follows are some points to consider.

1. Every attorney assigned a fire related case must get a copy of NFPA 921 (Guide to Fire Investigations) from the National Fire Protection Association. It is considered a consensus document put together by fire investigators and it explains many of the techniques of a fire investigation. You can be sure in a criminal case, or in a subrogation case, related to fires, the opposing counsel will be familiar with the book. It is revised every couple of years so it is vital that you be sure you have an updated copy of the document. Without it you are dead in the water.

2. Be familiar with NFPA 921—there is nothing more discouraging then an attorney telling an expert he had not had time to become familiar with the document. When I hear that comment I always feel sorry for the client.

3. A second book that is often used in training fire investigators is Kirk’s Fire Investigation by John Dehaan. Dr. Dehaan is one of the powerhouse experts in the field of fire investigations. The book is published by Prentice Hall. The most recent edition is the Fifth Edition. Also useful a book co authored by John De Haan and David Icove titled Forensic Fire Scene Reconstruction also published by Prentice Hall.

4. Get an expert in Origin and Cause to assist you in reviewing the various reports from the other side. If it is at all possible have your Fire Investigator visit the scene to make his own evaluation as to the physical evidence and the burn patterns that he is seeing. The cost is well worth the money and can make or break a case. I recently worked on a case in a Southern U.S. Town that still amazes me (not the town but the investigation). The fire report from the fire investigator and what I saw at the scene were seemingly two different events.

5. When seeking the services of a fire investigator ask the tough questions. Ask him (or her) to tell you what the most recent books and research they have read about or been involved with. Are they certified as a fire investigator by any national organization? Both the National Association of Fire Investigators and the International Association of Arson Investigators have certification programs. Be sure your expert is knowledgeable about recent research in the field. Ask the
investigator to name two or three people doing research in the field of fire investigation. Silence on their part is not a good option.

6. Ask for the documents from the other side for review by your Fire Expert. Documents should include the following:

   - Lab reports and the accompanying graphs of a Gas Chromatograph if it was used.
   - Underwriting files from the Insurance Company
   - Claims file including adjusters notes
   - Copies of ALL photographs both used in the report and not used in the report
   - Copies of all outside investigators reports and photographs
   - Copies of all inspections and underwriting files
   - Copies of all insurance agents files.
   - Police and Fire reports
   - 911 tapes where they are obtainable. These generally have to be requested within thirty days of the event or they are destroyed
   - All computer records and disks
   - All Special Investigation Unit reports from the insurance carrier.

7. Your Fire Expert should be able to assist you in getting any additional experts that may be required. You may require electrical engineers or metallurgists. If you choose to use a laboratory for review of any of your tests, be sure your lab is an accredited lab by some major Forensic Group; State Labs are accredited by the American Society of Crime Lab Directors. Private labs should meet the standards of the International Standards Organization (ISO).

8. We recently ran into a problem in New England in which the lab being used by two major insurance carriers often found gasoline in the cases in which we were involved in, even if the police lab did not. The insurance companies loved their private fire investigation company that they were hiring and the accompanying lab. It was truly a miracle in blocking claims until we found that the lab they were using had already been convicted of fraud several years ago regarding lab samples. Whether that was the case in this situation remained unclear but finding “traces of gasoline” five days after the state crime labs reported none was at best interesting.

9. To avoid such incidents as described above, we have recommended using “blind proficiency testing”. That is a case in which a known clean sample is sent in to be tested under a seemingly real case. It insures that the lab is being both honest and professional in their testing for accelerants or drugs.
10. Regardless of whether you are the defendant or the plaintiff, you should be up to speed on rules regarding spoliation of evidence and destruction of evidence. Under all circumstances involving potential subrogation or a related matter, both you and your fire expert must understand the ramifications of moving or altering potential evidence before all parties are notified.

11. Do not tie the hands of your expert by telling him to “go easy on the photographs” or take a “quick look”. Too many cases over my thirty years of investigating fires in which investigators did an economy look has resulted in disaster. One of my all time favorites was in a case in which Fireman’s Fund Insurance was defending one of their insured’s following a serious burn to the face of a teenager. The White Plains, New York claims office, which has long ago closed and merged, was on an economy kick and had only a few Polaroid photos of the fire site when I was contacted about a year after the incident. The problem was we had little information to work with.

12. Before you advise your client that you are taking the case, it is generally a good idea to sit down with an expert and let them at least do a review of the material you have gathered or that is available. Your expert should be able to review the case and give you an honest appraisal of both the technical reports and your positive and negative points so that you can make a professional judgment.

My final bit of advice is be sure that your expert understands exactly what Daubert means with regard to his or her testimony and theories. The theory must be an accepted theory and experiments must be duplicatable by others. If your expert does not know anything about Daubert you really should consider another expert.