

# PERSPECTIVES

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## Editorial: Retain the Right Expert for Your Fire Case

A fire occurs with resulting property damage or personal injury. You are the property insurer, or the company placed on notice that your product or service may have caused the fire. You need the right expert to investigate the fire's origin and cause, but there are hundreds, if not thousands, of experts to choose from. Are they all qualified to investigate *this* fire? Are they all qualified to investigate *all* types of fires?

There are large fires, small fires, explosions resulting in fire, industrial fires, residential fires, lawn mower fires, marine fires, and the list goes on. An expert fully capable and qualified to handle a small kitchen fire may not be qualified to investigate a turbine generated power plant fire, or a motor vehicle fire, or a shipyard fire. So how do you select the right expert for your fire? [Read more...](#)

## Justifiable Delay of Notice of Claim: Burden of Proof of Prejudice on Insurers

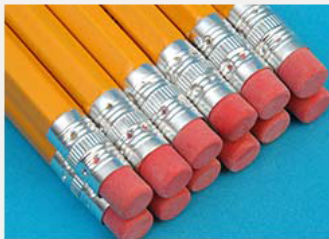
It is well-understood by law practitioners that courts (most, anyway), tend to exercise judicial discretion in rendering their opinions. If a matter can be resolved by answering one simple legal question, then there is no need to address the remaining questions—they are, in essence, rendered moot. In the legal world, however, these unanswered questions may be moot for the instant case, but are expected to recur again. In such a circumstance, a court may very well decide issues that are not critical to the appeal, but tangential and in need of elucidation for the legal community at large.



I recently learned about the Connecticut Supreme Court's decision in *Arrowood Indemnity Co. v. King*, 304 Conn. 179, 39A.3d 712 (2011), in which the Court overruled *Aetna Casualty & Surety Co. v. Murphy*, 206 Conn. 409, 538 A.2d 219 (1988), to the extent that it allocated the burden to the insured to disprove prejudice to an insurer as a result of the insured's failure to comply with a notice provision in a homeowners' liability policy. Now, under *Arrowood*, the insurer bears the burden of proving, by a preponderance of the evidence, that not only was the notice unreasonably delayed, but that the insurer has been prejudiced by the insured's failure to comply with a notice provision. *Arrowood Indemnity Co. v. King*, supra, 304 Conn. 203.

Two questions were put to me by a colleague: (1) "Did the Supreme Court even need to overrule *Murphy* at this time?" and (2) "Is this a case of *Arrowood* 'winning the battle, but losing the war' for insurers?" This article is my attempt to answer those questions. [Read more...](#)

## Learning From Others' Mistakes



The National Fire Protection Association's publication *NFPA 921: Guide for Fire and Explosion Investigations* ("NFPA 921"), was first issued in 1992, and is now widely accepted as the recognized standard in the fire investigation industry. Even so, some attorneys and experts still have difficulty using *NFPA 921* to convince courts that their reasoning

and methodology is reliable under the *Daubert* factors. Reviewing these recent examples of their errors might help us to avoid making the same mistakes.

### Lesson One: Select a Proper Expert

Selecting the wrong expert can easily cause a party to "lose" their case before it even gets to trial. A prime example is *Dorn v. BMW of North America, LLC*, 2010 WL 3913226 (D.Kan. 2010). The *Dorn* litigation arose out of a fire that occurred in the Plaintiffs' garage and originated in their car. The Plaintiffs' complaint sounded in product liability, negligent manufacture and design and breach of warranties. [Read more...](#)

## NEW NATIONAL DIRECTORY OF EXPERTS

Tedford & Pond is pleased to announce our new [National Directory of Experts](#) to help our clients and friends find expert resources for their fire litigation cases. The Directory contains experts across the country with specialties ranging from Fire Origin and Cause to Fire Suppression Systems, Heavy Equipment and Fire Modeling. [Click here](#) to request access to view the Directory.

## INSURANCE COVERAGE BRIEFLY

Take a minute to review recent Connecticut cases pertaining to insurance coverage issues in this [Insurance Coverage Briefly](#) sidebar...

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