

The Investigator



I.A.A.I. Illinois Chapter News

2015 - Summer
www.il-iaai.com

PRESIDENT'S PERSPECTIVE

By Thomas Wegner, IAAI-CFI

I certainly hope this issue of The Investigator finds you and yours well. The Fourth of July has now past and I am sure we have heard a horror story or two of injuries and property damage caused by illegal fireworks. Unfortunately, many do not see these small tubes of paper or cardboard for what they are, explosives. In every city big or small throughout Illinois, you can always "find a guy" selling quarter sticks, M-80s, mortars, or the latest and loudest whatever. All too often these items are; poorly made, using the cheapest materials, under no safety guidelines, by amateurs. Despite warnings, thrill seekers buy these items out of the trunk of a car someplace and set them off at some party without actually being aware of what danger lies ahead.

Case in point, a few years back, my family and I were at a block party. There was the blow up castle for kids to jump around in, adults playing bean bags, grills fired up and beverages abound. One of our neighbors purchased a cache of fireworks "from a guy" at a jobsite. Well into the night after the bottle rockets, fire crackers and other smaller fireworks were set off, now it was time for the grand finale. He brings out a round ordinance about the size of a 12" softball with about a foot long fuse. He proceeds to the middle of the street where adults are sitting around a fire pit, kids riding their bikes, you know the scene. He takes his lighter and lights the fuse with the ordinance in his hand to allow the fuse to burn down a little before tossing it in the air. The fuse burns down and he throws it in the air only to strike an overhanging tree causing it to fall into the crowded street prior to detonation. Fortunately, no one was seriously injured, there were minor burns, plenty of ringing ears and some cars damaged but what a catastrophe this could have been.

My point is we as an organization of fire investigation professionals really need to support efforts to outlaw these fireworks. Nothing good ever comes from these impromptu fireworks displays. I encourage you to visit the Office of the State Fire Marshal's website at <http://www.sfm.illinois.gov/Commercial/Pyrotechnics-Fireworks>, to learn more about laws, permit processes and other vital information.

An excerpt from the OSFM 2014 injury report reads as follows; In June 2014, the Division of Fire Prevention requested data from 293 hospitals within the State to determine various facts about injuries associated with fireworks occurring during a four-week time period, which included the July 4th holiday. Some of the information on the injury reporting form was not completed in full; therefore we cannot guarantee 100% accurate information. The number of responding hospitals were down from last year's 78 to 61 respondents. Twenty of the 61 hospitals responding to the survey had no fireworks related injuries during the time period of June 23 through July 20, 2014. There were 127 persons injured by fireworks this year. Injuries to males increased from 72 to 91; female injuries decreased to 36 from last year's 43. The fireworks causing the highest number of injuries were the "unknowns" at 31; followed by sparklers wire/wood cord (22) and firecrackers at 21. The "unknown" type is usually marked when the person injured is not the one actually handling the firework, but happened to be in the wrong place at the wrong time. Injuries affecting fingers (46) and hands (37) were the highest this year with a combined total of 83, followed by eye injuries at 28. Second degree burns were the leading type of injury at 58, followed by 28 first degree burns.



So I am sure you will agree this is a very serious issue that deserves our support. Our membership is close to 800 strong, that is plenty of voices to be heard.

Finally, I would like to thank all who attended this year's 2015 IAAI ITC in Rosemont. Our members in attendance represented the Chapter well and always willing to lend a hand when necessary. The staff of the IAAI was very impressed by our members and considers Illinois a model Chapter.

Please be sure to check our website www.il-iaai.com for upcoming training events including our 2015 ATC in Champaign, September 13-17 and a free one day training conference in Rockford on October 23, 2015.

Hope to see you at the ATC, until then be safe and take care of yourselves.

NORTHERN ZONE REPORT

Northern Zone Director Craig Burgess, IAAI-CFI, T/E Chairman

Greetings one and all!! The 2015 ITC came and went. Hopefully some of you were able to take it in. Please remember to vote in the International elections every year. Our Chapter membership is about 750 strong and we can speak loudly, but only if we all participate in the voting process.

As mentioned previously, a free 8-hour class is scheduled for Friday, Oct. 23, 2015 at Rock Valley College, in Rockford. The class is titled, "Fire Investigation in Today's Environment". Please see our website for further information and registration. Class size is limited to 80 seats, so don't delay! Planning for the 2016 Terrence Hoyle Northern Zone Training Conference is in full swing. Please contact your board members with training ideas.

If you are in need of an accelerant detecting K-9, in the Northern Zone of the state, Mitch Kushner and his K-9 Zoey are your only OSFM option at this time. If Mitch is unavailable, you may have to wait for several hours for an OSFM K-9 handler to respond from down South. There is another local option from Bensenville PD. Officer Jack Barba and his K-9 Zoe can be contacted by calling the Bensenville Police Department.

Hopefully everyone is enjoying the summer. Always know our mission is to provide you with the best training available, so please, if you have any suggestions or concerns, let your board members know. Keep on training and stay safe and cool everyone!

CENTRAL ZONE REPORT

Central Zone Director John Knapp, IAAI-CFI

Greetings from the Central Zone. I hope all is well with you and you are enjoying summer. The IAAI Annual Training Conference was held in Chicago in May and it was a success thanks to all of the effort put forth. Thank you to all of those who were involved in bringing the conference to Chicago including the Illinois Chapter past President's and current and former board members and membership.

The Illinois Chapter Annual Training Conference is fast approaching and will be held Sept. 13-16. We have another great line up of speakers and we hope to see you there. Plans are currently underway in preparation for the Central Illinois Fire Investigators Association Seminar in March of 2016. Information provided to me by the Training Committee suggests that the speaker which has been tabbed for this event is respected around the world in the field of fire investigation. More details to come and you will want to be there!

As you can't miss in each issue of this newsletter there are numerous opportunities throughout the state (and country) for continuing education. Whether or not you choose to attend the Illinois Chapter sponsored seminar or seminars which are held in the Northern, Central, or Southern Zones, I suggest that you try to plan ahead to attend at least one or two. Not only will you find that the instruction is more that what would meet expectations but you will discover that the networking possibilities and information sharing with other agencies will be as advantageous. Last but not least I suggest you visit *CFItrainer.net* as a wealth of information available to you. Until next time, Be Safe!

SOUTHERN ZONE REPORT

By Southern Zone Director Amy Beasley

As always the Southern Zone will start its report with a quote. "The function of education is to teach one to think intensively and to think critically. Intelligence plus character – that is the goal of true education." Martin Luther King, Jr. This quote reminds us that as we educate our members we need to impart information that allows them to think intensively and critically, instilling that intelligence and character needed to perform their jobs with integrity and thoroughly.

The Southern Zone is preparing for next year's Buxton/Mazzone conference. There are a number of changes we are looking at making, as well as some things that will remain the same, based on information provided by our members. We are currently looking for speakers and topic ideas. If you have any ideas or suggestions, please let one of the Southern Zone Board Directors know so we can look into the possibility of inviting them to come and visit. We want to provide speakers you want to hear and your suggestions are valuable to a successful conference. Keep your eyes and ears open for next year's Buxton/Mazzone conference dates.

The Central Zone is busy planning for the Annual ATC that is held in Champaign every year. This year the ATC is following a little different format to make the yearly chapter meeting and elections flow more smoothly. The conference is being held at the Hilton Gardens Hotel and Convention Center at 1501 Neil St., Champaign, IL on Sept. 13 – 16, 2015. The topics being covered are Current Trends in Fire Investigation, Electrical Fire Investigations, Origins of a kitchen fire, and Fire death Origin and cause investigations. Please visit the IL-IAAI Chapter website for more information on this conference and to register. www.il-iaai.com.

The Northern Zone is also busy planning educational events, which include a free one day training class on Fri., Oct. 23, 2015. Please visit the IL –IAAI Chapter website for more information on this one day training class. Space is limited so please register early.

It has been a busy year for the IL-IAAI and we are only half way through. We will keep you updated regarding next year's Buxton/Mazzone conference as well as any other training opportunities that arise. As always, suggestions, ideas, and volunteers are welcome and appreciated. We are here to provide for our members, because without our members we wouldn't have an organization. Enjoy the remainder of the summer and be safe in any travels or vacation plans you may have.



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INTERNATIONAL REPORT

by Joe Mazzone, IAAI-CFI

THE 2015 INTERNATIONAL TRAINING CONFERENCE held in Rosemont was a great success. 615 investigators attended, including 101 non-USA students representing 25 countries. Lots of Illinois Chapter members were there. Top-notch training was given, as always. Several of the sessions were taught in Spanish or translated for our Spanish-speaking attendees. The facility was great and very convenient to the airport and some of the local attractions. I heard nothing but good feedback. The financial accounting is not completed, but I hope and believe that the IAAI made a good profit.

ANNUAL GENERAL MEETING – 41 of the 79 IAAI Chapters were represented at the Annual General Meeting. Most of the unrepresented Chapters were off-continent members. As you probably know, the IAAI ITC has two permanent locations, Orlando and Las Vegas. Every third year is the floater. As long as I remain on the Board of Directors I will be pushing to have that third year up here in the Midwest, hopefully within easy striking distance of our home state. Stay tuned to this channel.

ELECTIONS – Scott Bennett from Ohio, running unopposed, is the new Second Vice President. Incumbent Board members Darryl Sanders, LA, and Bumper Moylan, FL, were reelected. New Board members are Kevin Crawford, CO, and Chris Van Vleet, KS. Joe Sesniak, AZ, was elected to the IAAI Foundation. Congratulations to all. 623 ballots were cast, rather disappointing for an 8000 member group. Only 46 of those ballots, about 7%, were from Illinois members. We usually have a much stronger showing. Congrats also to immediate Past President Peter Mansi for a job well done.

Bumper Moylan and Ricardo Torres, TX, were nominated for Second Vice President. Nine members were nominated for the Board. The nominations are still open for another month. We expect next year's voter turnout to be somewhat higher.

RESOLUTION – The membership passed a resolution requesting the IAAI Officers and Directors to compose and issue a resolution stating our full support for the Bureau of Alcohol, Tobacco and Firearms and opposing efforts to dissolve or downsize the agency. The motion was passed by an overwhelming margin.

AWARDS – The 2015 Outstanding Accomplishment Award was won by Assistant Cook County State's Attorney Mary Lacey, Mitch Kushner from OSFM and the MABAS Division 11 team for the successful investigation and prosecution of an arson fire in Cicero. Life Membership Awards were given to Mike Deckelmann and Joe Mazzone.


ILLINOIS CHAPTER – The Illinois Chapter has always had its fingerprints all over this organization and we are very proud of it. Over the years we've had dozens of committee members, a flock of Board members, four Presidents, one Executive Director and bunches of award winners, including the Outstanding Chapter Award. Everyone can be involved and help out. You can start by checking out the Join a Committee or Suggest an Idea sections on the members page of the International website.



IL Chapter Members in attendance at the 2015 International Training Conference. Left to right, Corey Reeves, Mike Presson, Tom Wegner, Chris Ward, Roger Krupp, Mike Deckelmann, Joe Mazzone, Matt Duzek, Ron Krupp, and Russ Nummer



Roger Krupp poses with Life Membership Awardees Joe Mazzone and Mike Deckelmann.



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NEWS FROM OSFM

By Chris Valentine

Greetings from the State Fire Marshal's Office. Well it looks like the warm weather has finally arrived. I hope everyone had a safe and enjoyable 4th of July. We are starting to gear up for the State Fair, Aug. 13-23, 2015. We have a lot of things planned including some canine demos and activities for the kids. Speaking of canines, three of our canine teams just returned from Colorado where they were all recertified for another year. We continue to set up canine demonstrations for schools and other organizations, so if you would be interested in a demonstration please let me know.

Investigator Mitch Kushner along with the MABIS Division Fire Investigation Team and the Cicero Police and Fire Dept. received an award at the IAAI International Convention in Chicago for their work in connection to a fatal fire in Cicero, IL. in 2010. Congratulations to Mitch and all that were involved.

Well that's about all from the Fire Marshal's Office, hope to see all of you at the Champaign Conference, Sept. 13-16, 2015, and as always be safe.

Open House Held For New Fire Marshal

Photos by Harlem-Roscoe Fire Photographer Sheryl Drost

Harlem Roscoe Fire Prot. Dist. hosted an Open House for newly appointed IL State Fire Marshal Matt Perez on July 6 at their Fire Station One in Roscoe. The open house was organized by IL State Representatives John Cabello and Joe Sosnowski to introduce Fire Marshal Perez to fire departments and village leaders of Winnebago and Boone Counties of Illinois.



L-r, Belvidere Mayor Mike Chamberlain, Illinois State Representative John Cabello, Office of the State of IL Fire Marshal Legislative Liaison George M. Korda, IL Fire Marshal Matt Perez, IL State Representative Joe Sosnowski, IL State Senator Steve Stadelman, Boone County Chairman Bob Walberg, Machesney Park Mayor Jerry Bolin, and Harlem-Roscoe Fire Chief Don Shoenlin.



IL State Fire Marshal Matt Perez also posed with all the fire personnel from several local fire departments that were in attendance.

Training Topic

By Northern Zone Director Craig Burgess IAAI-CFI

All of the investigators, who were subject to OSFM's original recertification cycle, just recertified last June 30th. Some of you may wonder why you have to be bothered with this administrative pain in the derriere, but it is for your own protection. Think about it...if it isn't required, human nature will let it slide. I suggest the majority of you would rather stick a hot poker in your eye, rather than work on your continuing education requirements! Our esteemed colleague, Steve Hoyle, posted the following court case on the Chapter's Facebook page, along with all credits, references, and acknowledgements. The following case dealt with several experts, whose testimony was tossed after losing Daubert challenges. In the interest of brevity, I have parsed much of the article to highlight the case of one origin and cause expert involved in the litigation. In summary, if you wonder why continuing education is required, please don't be this guy!.....

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISIANA SHREVEPORT DIVISION

INTERNATIONAL PAPER CO., ET AL CIVIL ACTION NO. 11-cv-0017 VERSUS DEEP SOUTH EQUIPMENT CO., ET AL MAGISTRATE JUDGE HORNSBY

MEMORANDUM RULING

Introduction

International Paper ("IP") operates a paper mill near Mansfield, Louisiana. It leased from Murphy Bonded Warehouse ("Murphy Bonded") a warehouse in nearby Red River Parish to store used paper and corrugated containers that would be used as feedstock. Tango Transport ("Tango") operated the warehouse for IP.

Tango rented a lift truck from Deep South Equipment Company ("Deep South") to use in the warehouse. The truck was built by NACCO Materials Handling Group, Inc. ("NACCO"). Several days after the truck arrived at the warehouse, an employee smelled smoke and discovered that a fire had broken out near the truck. The warehouse was destroyed. IP had an insurance policy from Factory Mutual Insurance Company ("FM"). The insurer paid IP for its losses, including the cost of demolition and rebuilding the warehouse. IP and FM ("Plaintiffs") then filed this complaint against defendants including Deep South and NACCO, whom they faulted for the fire. Before the court are several expert-related motions.

Applicable Law

Rule 702 provides that "a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

F.R.E. 702. Rule 702 "assign[s] to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on

scientifically valid principles will satisfy those demands.” Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 597 (1993).

The Daubert court provided an illustrative list of factors that courts may use when evaluating the reliability of expert testimony. These factors include whether the expert’s theory or technique can be or has been tested, whether it has been subjected to peer review, whether it has a known or potential rate of error or standards controlling its operation, and whether it is generally accepted in the relevant scientific community. “In short, expert testimony is admissible only if it is both relevant and reliable.”

At the time of the fire, Tango owned two or three Hyster lift trucks that had been purchased from Deep South for use at the warehouse. All were purchased with a Paper Package. Tango also occasionally rented a lift truck from Deep South when the need arose. A few weeks before the fire, Tango contacted Deep South and requested an immediate short term rental of a H80FT lift truck. Tango was expecting an increase in paper volume in the coming weeks. The rented lift truck did not contain a Paper Package.

Plaintiffs do not allege that the rented lift truck was defective or that NACCO was negligent. Instead, Plaintiffs allege that NACCO, which does not sell directly to end users, failed to adequately warn their dealers that a “Paper Package” should be installed on all lift trucks operated in the paper handling industry. The Paper Package helps reduce the accumulation of paper debris in the engine compartment. The package includes, among other things, a vented hood and muffler wraps.

Deep South and NACC seek an order excluding the testimony of Plaintiff’s cause and origin expert, Johnny Thornton (“Thornton”). Thornton opines that: (1) the area of origin of the fire was within the engine compartment of the Hyster 80 lift truck that was parked in “D” aisle of the warehouse; (2) the fire was caused by ignition of paper products in close proximity to the unprotected exhaust manifold of the Hyster 80 lift truck; and (3) the fire was not caused by sparks or heat from baling wire, sparks from the forks/bale clamp, lightning, smoking, or overhead lights. Deep South and NACCO argue that Thornton’s opinions are based on inadequate facts and data, are not the result of a reliable application of any principles and methods to the facts, and are per se defective under the provisions of the applicable standard, NFPA 921.

In response to this motion, Plaintiffs submitted affidavits from Thornton (the expert in question) and Charles Watson (a previously undeclared expert). Both of those affidavits were submitted after the expert report deadline in the court’s scheduling order. Thornton’s affidavit is an obvious attempt to correct the problems with his analysis that were identified in his deposition and the Daubert motion, specifically his failure to consider the updated version of NFPA 921. Watson’s affidavit impermissibly attempts to bolster and give credibility to Thornton’s opinions. Watson was never identified as an expert in this case. Deep South’s Motion to Strike (Doc. 123) both affidavits is granted.

The court has serious reservations about Thornton’s qualifications to testify as an expert in this case. He is no longer licensed in Texas (he let his license lapse and has never been licensed in Louisiana (incredibly, he testified that he was told that he could “funnel” his cases). He has failed to maintain his CFEI certification; he needs 40 hours of continuing education credits to become certified.

However, it is not merely Thornton’s lack of certifications and licenses that disqualifies him as an expert; courts typically hold that such matters go to the weight – and not the admissibility – of an expert’s testimony. Here, it is Thornton’s failure to review and apply the most current version of the applicable fire investigation techniques and methodologies that, combined with his weak credentials, leads this court to exclude his opinions.

The National Fire Protection Association (“NFPA”) is an international nonprofit that promotes codes and standards to minimize the possibility and effects of fire and other risks. and Explosion Investigations”) is a peer reviewed and generally accepted standard in the fire investigation community. *Travelers v. General Electric*, 150 F.Supp.2d 360, 366(D. Conn. 2001). It was first issued in 1992, and it is revised every three years or so due to new information and advances in science. *Bunch v. State*, 964 N.E.2d 274, 287-288 (Ind. Ct. App. 2012). Thornton purported to rely on NFPA 921 in reaching his conclusions. But his deposition testimony on this point, like much of his other deposition testimony, was evasive. When asked whether he relied on NFPA 921, Thornton stated that he relied on “knowledge of it, yes.” Thornton stated that his knowledge of 921 is a “working knowledge.” When asked which edition of 921 he used in this case, he testified: “As I said, I utilized my knowledge of it. The one that would be applicable may be a better question, sir.” He then testified: “I utilized my knowledge of 921 from the creation date with all the peer review changes that have occurred. The 2008 volume or – excuse me – publication was in effect.” Thornton then testified that he does not own or have a copy of most recent edition of 921 – the 2011 edition. He incorrectly stated that, “2012 was the next edition.”

Plaintiffs argue that, even though Thompson did not cite the 2011 version in his report, the methods that he used in arriving at his opinions were based on the scientific method, which is the basis of all versions of NFPA 921. Under this reasoning, Thompson could have used the original 1992 version because it, too, is (or was) based on the scientific method at the time. But the standards are revised because of advances in science. The 2011 revisions to NFPA 921 made numerous changes to Chapter 18 (“Fire Cause Determination”). The court’s side by side comparison of the 2008 version to the 2011 version shows that the 2011 version is a substantial rewrite. The 2011 version is twice as long and contains new criteria regarding the collection and consideration of data, the assessment of ignition sequencing, and the development and testing of a cause hypothesis. For Thornton to purport to rely on his working knowledge of NFPA 921, but not take the 2011 revisions into account, highlights the unreliability of his work in this matter.

The court does not hold that NFPA 921 is the only possible method to determine fire cause and origin. But, when an expert purports to rely on NFPA 921 from the date of its creation, including all of the peer reviewed changes that have occurred, but omits the most recent and significant changes, there must be a good explanation for the omission. Perhaps had Thornton kept up with his certifications, licenses, and continuing education, the glaring omission would not have occurred. Accordingly, Deep South’s Daubert motion that challenges Johnny Thornton is granted.

BANKRUPTCY ESTOPPEL

By James DeFranco

<http://www.examinationsunderoath.com>

James DeFranco is the president of DeFranco & Bradley, P.C. author of the book "Examinations under Oath," a long time member of IAAI, and a frequent author on the subject of arson and insurance fraud. DeFranco & Bradley makes this available for informational purposes only. The information is general in nature and does not constitute legal advice.

GENERAL PRINCIPLE. No party may take a position in litigation before any court, gain advantage from that position, and then take a contrary position in a subsequent proceeding. Most frequent bankruptcy applications:

- (1) A debtor who concealed the existence of a claim for insurance benefits and received either a discharge or a dismissal cannot wait until the bankruptcy ends and then pursue the claim. The debtor is "estopped" from pursuing the claim;
- (2) A debtor who does not disclose an asset cannot later claim that asset existed and suffered a covered loss under a policy of insurance.

A bankruptcy filing for Chapter 7 protection must declare all of his or her assets on SCHEDULE B – PERSONAL PROPERTY so that all non-exempt property may be liquidated by the creditors to satisfy the bankrupt's indebtedness at the time of filing.

The beginning of the schedule provides: "Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an 'x' in the appropriate position in the column labeled 'None.' If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category..."

With regard to a plaintiff's claims involving loss of personal property, the following categories of "types of property" should be reviewed:

- (1) "Category 4" requires the bankrupt to list "household goods and furnishings, including audio, video, and computer equipment."
- (2) "Category 5" requires the bankrupt to list "books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles."
- (3) "Category 6" requires the bankrupt to list "wearing apparel."
- (4) "Category 7" requires the bankrupt to list "furs and jewelry."
- (5) "Category 8" requires the bankrupt to list "firearms and sports, photographic, and other hobby equipment."
- (6) "Category 25" requires the bankrupt to list "automobiles, trucks, trailers, and other vehicles and accessories."
- (7) "Category 26" requires the bankrupt to list "boats, motors, and accessories."
- (8) "Category 28" requires the bankrupt to list "office equipment, furnishings, and supplies."
- (9) "Category 29" requires the bankrupt to list "machinery, fixtures, equipment, and supplies used in business."

(10) "Category 35" is the catch-all category, requiring the bankrupt to list "other personal property of any kind not already listed. Itemize."

Once you determine what category property claimed on the insured's personal property inventory form corresponds with the category of property set forth in Schedule B of the bankruptcy form, then determine whether the insured acquired the property before the date of filing of the bankruptcy petition or any amendment thereafter.

If an Insurance Company can establish that the insured acquired the property before the date of filing and did not list any such property in the category in which it belonged, then the insured is collaterally estopped from recovering under the subsequent insurance claim.

If the insured listed some contents but was vague as to the description of the contents, then the next question is whether the insured is estopped from recovering under the insurance claim when the amount was grossly undervalued in the bankruptcy claim. For example, if the insured simply states that under category 4, he had "\$500" of "household contents" and then claimed stereo equipment, televisions, and computers of \$5,000, the investigator must determine if the disparity between the current value of the debtor's interest in the property is grossly disproportionate to the amount claimed in the insurance claim.

Under a Chapter 13 wage earners' plan, the bankrupt discharges debts by paying on a plan over a given time period. At a minimum, the wage earners' plan must pay the creditors more than what they would have received had the insured liquidated his or her estate.

While the same rules generally apply to judicial estoppel based on Chapter 13 wage earner plans as they do under Chapter 7 liquidation bankruptcies, establishing that the insured gained advantage may be more difficult in certain situations, especially if the bankrupt repaid his/her debtors in full, other than accrued interest.

Debtors have a continuing duty to disclose their assets during the pendency of the bankruptcy. By failing to reveal the existence of an insurance claim, debtors avoid having creditors potentially object to, or seek modification of, the wage earner plan. That alone is sufficient to satisfy the benefit-received requirement of judicial estoppel.

Some insureds will claim that at the time of the bankruptcy, they did not own property as it was temporarily out of their possession or they transferred their ownership interest in the property before they filed the bankruptcy petition.

Any such claim requires close scrutiny.

- (1) If an ownership is transferred before bankruptcy and then returns to the bankrupt for less than full value consideration, which must be documented, the transfer is presumptively fraudulent.
- (2) Temporary changes in possession, such as giving property to creditors as collateral, is legally irrelevant for estoppel purposes.

The rules of fraudulent transfer can be intricate, so if it appears to be a gray area, you should seek a legal opinion if you are not certain whether the transfer was presumptively fraudulent or did not transfer ownership.

The bankrupt/insured will be given the benefit of the doubt by the courts when it is not clear that the insured should have listed the property. Courts generally draw all reasonable inferences in favor of the bankrupt. The courts assume, absent any contrary evidence, that the insured made a true and accurate representation of the value of his or her personal property during his or her bankruptcy.

Use common sense and good judgment. If you are straining or stretching to fit the property into a category other than category four or the catch-all category, or if the valuations can be explained by the difference between liquidation valuation and replacement cost, get a legal opinion before you deny the claim based on bankruptcy estoppel. If the case presents a question of fact, consider whether a typical lay person sitting on a jury would be offended by the insured's conduct before denying the claim.

The doctrine of judicial estoppel provides that a party who assumes a particular position in a legal proceeding is estopped from assuming a contrary position in a subsequent legal proceeding. *Seymour v. Collins*, 19 N.E.3d 674, 680 (Ill. App. 2d Dist. 2014) appeal allowed, 23 N.E.3d 1207 (Ill. 2015)

State courts have jurisdiction over whether judicial estoppel applies to a claim filed with them that was not disclosed in bankruptcy proceedings. *Berge v. Mader*, 2011 IL App (1st) 103778, ¶ 7, 957 N.E.2d 968, 971.

Judicial estoppel, like all estoppels, must be proved by clear and convincing evidence. *Seymour v. Collins*, 19 N.E.3d 674, 679 (Ill. App. 2d Dist. 2014) appeal allowed, 23 N.E.3d 1207 (Ill. 2015).

Judicial estoppel has five elements: (1) the two positions must be taken by the same party; (2) the positions must be taken in judicial proceedings; (3) the positions must be (with some exceptions) given under oath; (4) the party must have successfully maintained the first position and received some benefit thereby; and (5) the two positions must be totally inconsistent. *Berge v. Mader*, 957 N.E.2d 968, 972 (Ill. App. 1st Dist. 2011); *Ceres Terminals, Inc. v. Chicago City Bank and Trust Co.*, 635 N.E.2d 485, 495 (Ill. App. 1st Dist. 1994).

The doctrine of judicial estoppel is designed to promote the truth and to protect the integrity of the court system by preventing litigants from deliberately shifting positions to suit the exigencies of the moment. *Bidani v. Lewis*, 285 Ill. App. 3d at 545, 675 N.E.2d at 650. It "rests upon public policy which upholds the sanctity of the oath and its purpose is to bar as evidence statements and declarations which would be contrary to sworn testimony the party has given in the same or previous judicial proceedings." *Id.*

The courts will not allow a gross disparity in valuation based on an insured's argument that the different methods of valuation (i.e. replacement cost versus actual cost) explain the discrepancies. See e.g. *Liberty Mut. Fire Ins. Co. v. Scott*, 486 F.3d 418 (8th Cir. 2007). In certain cases the disparity in values is too great to be explained away simply by a difference in method of calculation:

Even if the insurance claim was based solely on replacement cost and the bankruptcy petition on actual cash value, the disparity was too great to be reconciled, absent evidence that the bankruptcy petition was inaccurate or that the proof of loss values were the result of a mistake

Scott, 486 F.3d at 421-22; see also *Williams v. Farmers Ins. Co., Inc.*, 2011 WL 96672 (W.D. Ark. Jan. 11, 2011).

Insureds will frequently claim that they were using "liquidation" or "garage sale" valuation methods on their personal property form filed with the bankruptcy court but used "replacement cost" values when submitting the insurance claim. As the case law set forth above establishes, the courts have taken a somewhat dim view of this approach. If the property is relatively new, such as one or two years old, and the disparity in value is ten times or more, the courts have generally applied the rules of judicial estoppel to prevent the insureds from recovering. If the items are somewhat old, or the disparity in value is not as great, the insurer and its counsel must make a judgment call as to whether the insured gained advantage from the undervaluation on the bankruptcy schedules such that it would be unfair to permit the insured to collect higher values after depriving creditors of information which might have led the creditors to seek to liquidate those assets.

A chapter 13 bankruptcy estate encompasses all property, including legal claims, acquired after the petition is filed but before the case is closed. *Seymour v. Collins*, 19 N.E.3d 674, 680 (Ill. App. 2d Dist. 2014) appeal allowed, 23 N.E.3d 1207 (Ill. 2015). Debtors have a continuing duty to disclose their assets during the pendency of the bankruptcy. *Id.* Therefore, debtors have a continuing duty to schedule newly acquired assets while the bankruptcy case remains open. *Id.* That is equally true of a legal claim arising after confirmation of a plan in a chapter 13 proceeding. *Id.*

One of the reasons that ongoing disclosure is required in a chapter 13 proceeding is so that creditors can object to, or seek modification of, a confirmed plan. *Seymour v. Collins*, 19 N.E.3d 674, 681 (Ill. App. 2d Dist. 2014) appeal allowed, 23 N.E.3d 1207 (Ill. 2015). In a 2014 case, the Fourth District Appellate Court held that the plaintiff was judicially estopped from maintaining a personal injury suit that arose after confirmation of his chapter 13 plan. *Shoup v. Gore*, 2014 IL App (4th) 130911, 383 Ill.Dec. 179, 14 N.E.3d 11.

By failing to reveal the existence of a pending personal injury action, a plaintiff avoided having the creditors potentially object to, or seek modification of, the plan. That alone was sufficient to satisfy the benefit-received requirement of judicial estoppel. *Seymour v. Collins*, 19 N.E.3d 674, 680 (Ill. App. 2d Dist. 2014) appeal allowed, 23 N.E.3d 1207 (Ill. 2015).



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Cost of Attendance:

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Non-Members—\$225.00/\$250.00 after 8/12/15

For More Information

www.il-iaai.com

Amy Beasley
Midwest Fire Consulting Group
530 Duffers Fore, Cape Girardeau, MO 63701
P—618-967-9488 F—618-687-4805
Email—abeasley@midwest-fire.com

Sunday, September 13, 2015—1900—2300 –IL-IAAI
Welcome –Current Trends in Fire Investigation /
Networking Tailgating Event

Monday, September 14, 2015—0800—1700
Electrical Fire Investigation— Dave Cusatis, NFA/
Liberty Mutual Insurance

This course addresses the critical skills essential to the effective investigation and evaluation of fires involving potential electrical causes. This course utilizes state of the art techniques, practices, protocols and standards to assist investigators to properly and effectively evaluate electrical systems and associated components to ascertain their role in a fire. Students will be provided with a basic knowledge of electrical faults and failures of electrical components and circuits, as well as a working knowledge of the National Electrical Code (NEC) and how it applies to the fire investigations. The use of 'Arc Mapping' will also be discussed and how it can be effectively used to assist in fire origin determination. Participants will also be able to demonstrate a general knowledge of electricity; electrical circuits, systems and arc mapping principles through a series of instructor led 'hands-on' practical exercises.

General Meeting and Elections will be held directly following the end of the 1130 class time. Lunch will be provided.

Tuesday, September 15, 2015 - 0800—1700
Origins of a Kitchen Fire : “ A Global Analysis”
Lester Rich, Forensic Fire Analysis, LLC, Bill Johnson, CORE Engineering, Corp, David E. Bridges, Meagher & Greer, PLLP

Building a successful criminal or civil fire case does not rest solely on the collection of data. Performing meaningful analysis or “showing your work” is what really counts. This hybrid interactive hands-on tabletop investigation experience incorporates a panel discussion that will shepherd participants through a series of kitchen fire scenarios. A conversational-styled learning environment will be used with case illustrations for the purposes of identifying (1) the proper investigative analysis, (2) whether the methodology is the appropriate “fit” for the case, and (3) precise investigative leads that will further the case.

Teams will be developed in order to promote a working relationship between students with varying degrees of experience and disciplines. The panel discussion will be composed of professionals and subject matter experts from the private industry and public sector, forensic fire/explosion investigation and litigation arena. This unique environment encourages participants to share ideas with the panel and with each other, regardless of job function and/or varying experience levels. This hybrid presentation is designed for public sector fire service, emergency management/fire marshals, law enforcement, insurance SIU investigators, insurance claim professionals (subrogation and defense), and other professionals and subject matter experts from the private industry and public sector. As such, participants with varying assignments and degrees of experience are encouraged to attend.

Illinois Chapter of the IAIFI Annual Awards Luncheon 11:30 am - 1:00 pm

Wednesday, September 16, 2015—0800—1700

Fire Death and Origin and Cause Investigations and Fatal Fire Investigation with “The Dame of Flames” - Dr. Elayne Pope

An educational program about research into how the human body burns. Education for fire investigators dispelling common myths. Training for law enforcement use in criminal investigations. Dr. Pope researches the process of how the human body burns in a variety of forensic fire environments for training law enforcement, death investigators, and fire investigators. Her professional research is how the human body burns in a variety of fire environments that include: structural, vehicular, and outdoors.

Disclaimer: No liability is assumed by the IL-IAAI for changes in program content, speakers, or venue. The speaker's presentation and content of his program is the responsibility of the individual instructor.

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Cost of Attendance:

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For More Information www.il-iaai.com

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Midwest Fire Consulting Group
530 Duffers Fore, Cape Girardeau, MO 63701
P—618-967-9488 F—618-687-4805
Email –abeasley@midwest-fire.com

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International Association of Arson Investigators

Illinois Chapter

**2015 32nd Annual
Fire Training Conference
September 13 - 16, 2015**

In Cooperation with the Illinois Fire Service Institute



Registration Form

NAME: _____ E-MAIL ADDRESS: _____
ORGANIZATION/COMPANY: _____ PHONE: _____
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Midwest Fire Consulting Group
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OR:

For more information, please call or visit our website at www.il-iaai.com

Registration Fees:

IL- Chapter Member - \$200.00/\$225.00 after 8/12/15

IAAI Member No. _____

*Voting Members Must Include IAAI Member Number (This is international number not your Illinois Chapter Number)

Non-Members - \$225.00/\$250.00 after 8/12/15

Pay at door \$15.00 surcharge - \$215.00/\$240.00 Direct Bill

Cancellations subject to 50% fee if received after August 12, 2015. No Refunds will be made for any cancellations received after August 30, 2015. Substitution of registrants will be allowed only with prior notification of substitution.

Payment Information: Credit Card Check
*Please make checks payable to IAAI.

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The IL-IAAI will be providing lunch all three days of the training conference. The awards banquet will be held during lunch time on Tuesday, September 15, 2015. Everyone is encouraged to attend. As always, a hospitality room will be open every evening from September 13 - 15th from 7:00 p.m. until midnight.

Testing and certificates will be provided by CFITrainer.net. You must be present for the entire seminar to receive a pin # for your certificate and optional test.

Disclaimer: No liability is assumed by the IL-IAAI for changes in program content, speakers, or venue. The speaker's presentation and content of his program is the responsibility of the individual instructor and not necessarily endorsed by any of the persons or organizations associated with this seminar. The IL-IAAI reserves the right to cancel, alter, or substitute any class or instructor without advanced notice.



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Wishing IAAI on another
successful year



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2015

Terrence Hoyle Memorial

Golf Open

For IL-IAAI Members and Guests

The 2015 Illinois Chapter of the International Association of Arson Investigators golf outing will be held on **Thursday 27, August 2015 at the Old Oak Country Club, 14200 S. Parker Road, Lockport, Illinois.** We will have a shotgun start at 9:00 AM and we will play to a scramble format with each member of your team using a minimum of four drives. Please be at the course forty-five minutes to an hour early. The cost of the outing is \$90.00 per person. The price includes 18 holes of golf, with a cart, sandwich of your choice with a beer or soft drink, potato chips, and prizes. We will also have a buffet type meal upon completion of your round of golf.

If you or your company would like to donate a prize or a hand out gift as advertisement please feel free to do so. Signs will be displayed for all donations. We are expecting approximately 80 members and guests to participate. Please contact Mike Deckelmann, or Vic Megaro with any donations at least two week prior to the outing with your company name and the amount of the donation. Come on out and have some fun!

FOR FURTHER INFORMATION:

PLEASE CALL VICTOR MEGARO 312-497-9334 or MIKE DECKELMANN AT 815-806-9903, or TEAR OFF BOTTOM OF THIS PAGE AND MAIL YOUR ENTREE TO:

MIKE DECKELMANN
10833 W. Doral Drive
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**Please send name and phone number of a contact person
For Your foursome**

PLAYER # 1. _____

PLAYER # 2. _____

PLAYER # 3. _____

PLAYER # 4. _____

**Your entree fee is requested at least one week in advance of the outing.
Please make checks payable to the Terrence Hoyle Memorial Open.**

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Illinois Chapter of the IAAI - Elections

Articles and Sections from our currently published Bylaws.

Article III Elections, Terms, and Offices

Section 1.

Eligibility of Office – Illinois Chapter.

A. All Officers and Board members must be active members, in good standing for one (1) year in the Illinois Chapter. The President and Vice-President candidate(s) shall have served on the Board for at least one full term.

Below is the definition of an active member;

Article II Membership

Section 2.

Active Membership. Any active member of the International Association of Arson Investigators with current dues paid in full to the Illinois Chapter, and resident of or employed in the State of Illinois is eligible for active membership in the Chapter.

2015 IAAI Nomination Form

The Illinois Chapter of the IAAI is conducting the 2015 nominations, balloting and election process in accordance with the Constitution and By Laws as well as the Standard Operating Procedures of the Nominating Committee for Elected Offices.

In doing so the committee is accepting nominations by written form as is being published in the Newsletter, mass mailing and also available on the IL-IAAI Web site as well as upon request. The dead line for submission in writing is Sunday September 7, 2015. The committee encourages all who want to nominate someone to do so as early as possible.

The three positions available for nominations for 2015 are: Director Northern Zone, Director Central Zone and Director Southern Zone one eligible person from each zone will be elected to the appropriate office.

FORM *****

This form can be delivered to Nominating Committee Chair, Chapter Director Cory Reeves, by mail, email or in person by the deadline date of September 7, 2015.

Cory Reeves
PO Box 23677 Belleville, IL 62223
coryreeves@originfirst.com
618-623-8584

Nominated Member: _____

Position Nominated for: _____

Nominating Member: _____

Nominating Member Signature: _____

Nominated Date: _____

Nominating Committee Use Only

Date Nomination Received: _____

Nominee eligible for Elected Office: _____ Nominee accepted nomination: _____

If Eligible date questionnaires sent: _____ If not eligible date notifying letter sent: _____

Notes:

Chapter History – 1980

Thirty Five years ago the IL Chapter was given the James L. Smith Award for outstanding chapter. We had 325 active members (555 today). In 1980 Bill Buxton was on the IAAI Board of Directors, he also served on the Grant and Project Committee, Awards Committee, Photography Committee, and Seminar Planning Committee. Joe Mazzone was on the Insurance Advisory Committee. Members who were active then and still are today include current IAAI Board Member Joe Mazzone, current Chapter Liaison James Pioth, Douglas Brown III, and past President, Bill Buxton.

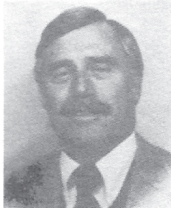
IL Chapter Life Members: Dan Econ, Bill Buxton, Ernie Arnze, Bob May, August Mazzone, Joe Mazzone, James Pioth, Steve Hoyle, and Mike Deckelmann.

DIRECTORS

Term Expires 1981



W. R. "Casey" Jones
Sherwood, AR



Bruce C. Potts
Tuscon, AZ



Rodney G. Fender
Duncanville, TX

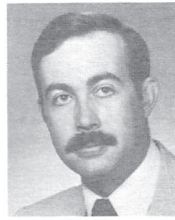


Fred J. H. Klages
Newville, PA



Wes Werner
Minneapolis, MN

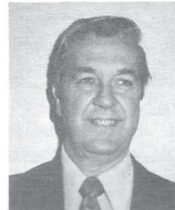
Term Expires 1982



T. R. Brace
Olympia, WA



R. J. Doran
Nasau County, NY



J. A. Gamm
Cincinnati, OH

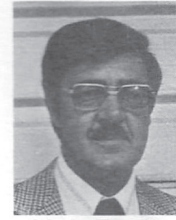


B. W. Scott
Oklahoma City, OK



D. L. Price
McPherson, KS

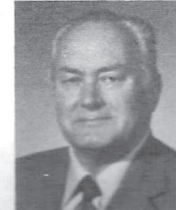
Term Expires 1983



M. A. Franks
East Lansing, MI



W. H. Buxton
Cahokia, IL



R. E. Diltz
Sacramento, CA



N. Gonzales
Albuquerque, NM



Andre C. Schalk
Anchorage, AK

INTENTIONALLY SET FIRES, 2004-2013

Year	Structures		Vehicles (2)	
	Number of fires	Property loss (\$ millions) (1)	Number of fires	Property loss (\$ millions)
2004	36,500	\$714	36,000	\$165
2005	31,500	664	21,000	113
2006	31,100	755	20,500	134
2007	32,500	733	20,500	145
2008	30,500	866	17,500	139
2009	26,500	684	15,000	108
2010	27,500	585	14,000	89
2011	26,500	601	14,000	88
2012	26,000	581	12,500	480 (3)
2013	22,500	577	10,500	86

Illinois Chapter Officers

PRESIDENT

Thomas Wegner
IAAI-CFI
State Farm Insurance
PO Box 558007
Chicago, IL 60655
708-774-9741

Term expires Sept. 2016

VICE-PRESIDENT

Chris Ward
IAAI-CFI
24901 S. Donegal Drive
Manhattan, IL 60442
815-405-5491

Term expires Sept. 2016

SECRETARY TREASURER

Tiffany Koerner
PO Box 558007
Chicago, IL 60655
(847)-812-9155
tkoerner@aenpi.com
Term expires Sept. 2016

LEGAL COUNSEL

John C. Cassidy
Sudekum, Cassidy &
Shulruff, Chtd.
20 North Clark Street
Suite 1400
Chicago, Illinois 60602
(312) 803-6250

NEWSLETTER

Sheryl Drost
firefoto4@aol.com
(815)-509-3706

John Knapp
309-427-7673

NORTHERN ZONE

Pat Kane IAAI-CFI
Wauconda Fire District
109 W Liberty
Wauconda, IL 60084
847-526-2821
Term expires Sept. 2015

Guy Maisonneuve IAAI-CFI

Kankakee Fire Department
383 E. Oak Street
Kankakee, IL. 60901
815-936-3629
Term expires Sept. 2016

Craig Burgess

791 Fairway Drive
Bensenville, IL 60106
630-364-0933
Term expires Sept. 2017

CENTRAL ZONE

John Knapp, IAAI-C.F.I.
Assistant Fire Chief/Fire Marshal
East Peoria Fire Department
201 W. Washington St.
East Peoria, IL 61611
Office: 309-427-7673
Cell: 309-712-9081
Term expires Sept. 2015

John High IAAI-CFI

15805 S. Markley Rd
Danville, IL. 61834
(217) 443-5836
Term expires Sept. 2016

Chris Valentine

1035 Stevenson Drive
Springfield, IL 62703
217-785-4713
Term expires Sept. 2017

SOUTHERN ZONE

Cory Reeves IAAI-CFI

PO 23677
Belleville, IL. 62223
618-623-8584
Term expires Sept. 2016

Mike Presson IAAI-CFI

Pyt-Tech, Inc.
843 St. Louis Road
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618-401-4991
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The Investigator



is the official publication of the Illinois Chapter of the International Association of Arson Investigators, Inc. This newsletter is published quarterly and is solely an educational and advisory aid to fire departments, police

departments, fire investigators, state police departments, sheriff's departments, insurance personnel and individuals working to investigate, prosecute, and suppress the crime of arson. Opinions expressed in this newsletter are those of the authors and do not necessarily represent the official opinion of the IAAI or the Illinois Chapter.

Newsletter Deadlines:

Winter - January 15 * Spring - April 15
Summer - July 15 * Fall - October 15



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ARSON - KEY STATISTICS

<http://www.iii.org/issue-update/arson>

- National Fire Protection Association (NFPA) Data [1]: According to the NFPA, arsonists set fires that destroyed \$663 million worth of property in 2013, down 62 percent from \$1,061 million in 2012. These include fires at factories, residential buildings and churches and in motor vehicle and other types of vehicles.
- There were 10,500 vehicle arsons in 2013, compared with 12,500 in 2012, one of which produced \$400 million in losses from a fire set aboard a U.S. submarine. Excluding the submarine loss, intentionally set vehicle fires in 2012 caused \$88 million in losses, higher than the 2013 total of \$86 million.
- In 2013 there were 22,500 intentionally set structure fires, down 13.5 percent from 2012 and down 38.4 percent from 36,500 in 2004. Arsons accounted for 4 percent of all structure fires in 2013. These figures do not count suspicious fires.
- In 2013 intentionally set structure fires cost \$577 million in property damage, about the same as the \$581 million in 2012.
- The number of civilians killed in arson fires in buildings in 2013 totaled 150, down 16.7 percent from 2012.
- FBI Data: According to the FBI's Uniform Crime Reporting Program [2], law enforcement agencies in the United States reported 44,245 arson offenses in 2013, down 13.5 percent from 51,126 offenses in 2012. Only the fires that investigators have determined to have been willfully set—not fires labeled as suspicious or of unknown origin—are included in the FBI report.
- Arsons involving structures (residential, storage, public, etc.) accounted for 45.9 percent of the total number of offenses in 2013. Mobile property (composed of motor vehicles, trailers and the like) accounted for 23.8 percent of arsons. The rest were arsons involving other types of property.
- According to the FBI, the rate of arson was 15.9 offenses for every 100,000 inhabitants of the United States in 2013. Arson rates were highest in cities with populations of 500,000 to 999,999 people, at 27.9 per 100,000 inhabitants. This compares with 17.9 in all cities. The arson rate for suburban areas was 11.5 per 100,000 inhabitants.
- In 2013 the average loss value per arson offense was \$14,390. The average dollar loss for arsons in structures was \$25,761 and was \$7,686 for motor vehicles. Arsons of industrial and manufacturing structures resulted in the highest average dollar losses—\$126,606 per arson.
- Arson in the nation's cities fell 14.2 percent in 2013 from 2012. The number of arson incidents in 2013 fell fastest in smaller cities, with populations of from 25,000 to 49,999 residents, where arson incidents were down 23.1 percent. In metropolitan counties arson offenses fell 10.9 percent from 2012 to 2013. Arson offenses fell 11.4 percent in nonmetropolitan counties. In suburban areas arson offenses fell 15.4 percent.
- Of all major crimes, arson has one of the lowest clearance rates (either by arresting the offender or closing the case when there is evidence to identify an offender but the person cannot be prosecuted for technical reasons). The national rate in 2013 was 21.0 percent.
- Arson clearances involving people under the age of 18 were 27.9 percent in 2013.
- Vandalism is the leading cause of arson. An Insurance Research Council study indicates that only 14 percent of arson suspects are motivated by a desire to defraud an insurance company, but other studies find the percentage is higher. Between 20 and 25 percent of arson fires are drug-related.
- Children are responsible for more than one-third of the arson fires set in the United States.

[1] NFPA data on arson fires are defined as fires that are intentionally set. The NFPA annually surveys a sample of fire departments in the United States to make national projections of the entire fire problem.

[2] The FBI's Uniform Crime Reporting (UCR) Program defines arson as any willful or malicious burning or attempting to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, or personal property of another. The UCR Program is a nationwide statistical effort of state, county,