



And The Defense Wins

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Russell E. Reviere and Erin A. Melton of **Rainey, Kizer, Reviere & Bell, PLC** in Jackson and Memphis, Tennessee obtained a defense verdict on behalf of an insurer in a civil arson case following a three day jury trial in the Middle District of Tennessee before the Honorable Judge Aleta A. Trauger. The lawsuit alleged that the defendant insurer breached the policy of insurance issued to the insured by failing to pay on a fire loss. The insurer asserted the defenses of arson, fraud and concealment, and misrepresentation in the application for insurance.

The insured's home was burned in two separate fires. On the first occurrence, the fire was confined to a small area of the basement level of the home and was extinguished before spreading further. Firemen obtained a debris sample from the area of the fire's origination and photographs indicated a visible pour pattern in that area. The defendant insurance company retained an origin and cause expert to analyze the fire scene and determine the origin and cause of the fire.

Before the expert could make it to the fire scene, the home burned to the ground a few days later. After the second fire, additional debris samples were obtained by the insurance company's origin and cause expert and were sent to a lab for analysis. The lab results revealed the presence of ignitable liquids in several of the samples, including the sample obtained by the fire department in the area of origin before the second fire occurred. The defendant's origin and cause expert opined that both fires were intentionally set.

The insured offered testimony that he was out of town at the time of the first fire and that he was asleep in his motor home parked behind an adjacent shop at the time of the second fire. The insured also suggested that perhaps an ex-husband of the wife or neighborhood children had started the fire.

An especially challenging aspect of the case for the defense was the fact that the insured's wife, also a named insured, had fled the jurisdiction just a few days before the first fire, taking with her funds which she had obtained by placing a mortgage on the home that eventually burned. Although the insurer had taken the Examination Under Oath of the wife before suit was filed, the trial court only allowed the defense to use limited portions of the prior testimony due to evidentiary concerns. Although the lawsuit originally contained allegations of bad faith against the defendant insurer, these allegations were voluntarily dismissed in the later stages of the suit, presumably to limit the defense's use of the Examination Under Oath of the insured wife at trial.

Additionally, in the process of investigating the fire claim, the insurer learned that the insured and his wife had suffered a substantial fire loss in the year before they applied for insurance with the defendant. This prior fire loss history was not disclosed on the application for insurance, which was signed by the wife on behalf of the married couple, and that application asked for information on past losses. The insurer provided proof, and the trial court ruled, as a matter of law, that the false information on the application increased the risk of loss to the insurer.

After a relatively short deliberation, the jury found that the insured husband caused both fires and made intentional misrepresentations to the insurer during its investigation of the fire losses. Additionally, the jury found that the insured wife did make a misrepresentation when she failed to disclose the prior fire on the application.