



UNDETERMINED CAUSE:

WHAT'S THAT ABOUT?

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There's a misconception that an undetermined classification for a fire, or any sort of loss, leaves insurers empty handed and without recourse. Although this may be frustrating at times, the fact is, a report with an undetermined classification represents a carefully thought-out expert opinion, and that, ultimately is in your best interest. A technical opinion that "goes your way" may seem desirable, but it could work against you down the road. Understanding this leads to more viable claims settlement strategies, and at the end of the day, saves you money.

CAUSE VS. CLASSIFICATION

While there may be many possible causes for a fire, there are only four possible classifications:

- Accidental
- Natural
- Incendiary
- Undetermined

As fire investigators, our final determination has to involve one of those four classifications. If there is more than one likely cause, and both have the same probability, then we must classify the fire as undetermined.

MULTIPLE CAUSES

It's not unusual to have a fire where multiple causes are being considered and all are equally likely. Consider a fire that took place in an apartment, where upon investigation, we were able to eliminate the building's infrastructure as the cause of the fire (meaning the electrical receptacles, lighting, heating system, etc.). Meanwhile, the unit where the fire occurred contained disposed smoker's materials and excessive use of extension cords on the part of the tenant. Unfortunately, because of the level of fire damage, we weren't able to determine whether it was the extension cord failure or the improper disposal of smoker's materials that caused the fire. So in that scenario, with two equally likely causes, we would have to classify the fire as undetermined.

However, it is worth noting that even in the event of an undetermined cause, an investigator may be able to address liability potential on behalf of one of the involved parties. In this case we were able to eliminate the items of the building infrastructure as the cause, addressing liability for the fire on behalf of the landlord's insurer, and placing responsibility on the tenant because both causes were within his control.



POSSIBLE VS. PROBABLE

When investigating a fire scene, we're looking to determine the probable cause of the loss. Something is probable if it's more than 50 percent likely, whereas, if it's less than 50 percent likely, we say that it's "possible." If we are only certain enough as to the cause of a fire to say that it was possible, it must be classified as undetermined, as in the following case:



The fire in question took place on the deck of a house in a residential neighbourhood. The neighbours reported that the homeowner sometimes smoked on the deck, however, upon interviewing the homeowner, he said that at the time of the fire it had been a couple of days since he'd last smoked there. We still considered that as a possible ignition source, but we had to take the timing into context (two days is a little long for smoker's materials to result in a fire). We also had a second possible cause – incendiary. Because the fire took place outside, in an unsecured area, we couldn't rule out the possibility that someone set the fire intentionally.

At that point, barring the discovery of additional

evidence or information that could elevate either cause from possible to probable, we had to classify the fire as undetermined.

While in these instances our clients may prefer a classification that allows them to pursue subrogation or deny a claim, our job is to develop a hypothesis consistent with the available data. It would be a grave error on our part, and ultimately bad for an insurer, if we were to classify this otherwise. As experts, we know when a hypothesis will or won't hold up to scrutiny. An opposing expert will be able to poke holes in a baseless cause and determination, and our client would ultimately not succeed in a subrogation or liability case.

UNDER FIRE

It should be said that as forensic experts we must remain non-partisan and unbiased. During an investigation we can't factor in our clients' interests – that would actually work against them – because when we testify in court we can't be seen to be advocating on anyone's behalf. As officers of the court, our sole objective is to interpret the physical evidence from a technical standpoint and report our findings.

Litigation strategies in subrogation and liability cases have changed significantly in the past 5 years. More and more, lawyers aren't disputing the expert's opinion; they're attacking the process. If we haven't taken the proper steps outlined by NFPA 921 in an investigation – even if the condition of a scene prevented it – that's a weak point. If we show any bias towards our client, that's also a weak point, and a lawyer will exploit it. For that reason, we treat every file like it's going to court and we're going to be on the stand defending our position. Our reports are designed to be interpreted by the courts, and to be compliant with NFPA921.

The onus on us is not just to indicate what caused a fire, but to eliminate all other ignition sources as well. The defense, on the other hand, doesn't need to provide an alternative theory. They just have to prove that we may not have considered all other possibilities. If an insurance company takes a case to court, with a determination that is anything less than airtight, it will probably get turned down. Now on top of the claim, the insurer is saddled with legal

fees, court costs and the expense of having the expert testify, which may add up to a substantial amount. So while our clients may not always be pleased to hear it, even if we determine that they are on the losing side, it's to their advantage. At least then they understand their position and liability exposure.



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With more than 25 years of professional experience, Vladimir has completed over 600 forensic cases, investigating fires and explosions, product failures, and other types of losses. Recently, Vladimir has assisted in the of writing a book published for the legal industry, contributing a chapter on Forensic Fire Investigation. The book, "The Lawyers Guide to the Forensic Sciences," edited by Caitlin Pakosh and published by Irwin Law, has received rave reviews, with specific reference made to Vladimir's own contribution.

Learn more about the book and read the review at: <http://smithforensic.blogspot.ca/2017/01/book-review-lawyers-guide-to-forensic.html>

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