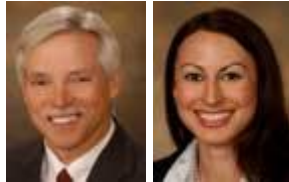




And The Defense Wins

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DRI members [Russell E. Reviere](#) and [Erin Melton Shea](#) 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 four and a half day jury trial in the Western District of Tennessee before the Honorable Bernice B. Donald. 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 and fraud and concealment. Because the defense was successful in eliminating extra-contractual claims by motion before trial, the only issues before the jury were the insurer's affirmative defenses to the insured's breach of insurance contract claim.

The insured's home, a large two-story wood framed house, burned quickly, and according to responding fire personnel, abnormally. In addition, shortly after the fire, the insured gave conflicting stories as to how the fire may have started. The defendant insurance company retained an origin and cause expert to analyze the fire scene and determine the origin and cause of the fire. In addition, debris samples were obtained by the insurance company's origin and cause expert and were sent to a lab for chemical analysis. The lab results revealed the presence of ignitable liquids in several of the samples. The defendant's origin and cause expert opined that the fire was intentionally set.

At trial, the defense offered expert testimony from its origin and cause expert, as well as testimony from two chemists, one of whom was retained later in the case as a rebuttal expert when the plaintiff challenged the positive findings made by the insurer's original chemist expert. The insured offered opposing expert origin and cause testimony. In addition, despite vigorously challenging the defendant's chemical fire debris analysis throughout the case by arguing that the positive readings for the debris samples were really caused by "background material" from the finish used in the hardwood flooring in the area from which the debris samples were removed, no opposing chemist testimony was offered by the insured at trial. The trial court only allowed the defense counsel's rebuttal chemist expert to testify briefly and only to respond to points raised by the plaintiff to the jury concerning the "background material" theory.

After a relatively short deliberation, the jury returned a verdict for the defendant insurer.

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