

WISCONSIN CIVIL TRIAL JOURNAL

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Habitual Mistakes and
Preventable Fire Causes in
the State of Wisconsin**
Don VanOss



Wisconsin Defense Counsel
*Defending Individuals and
Businesses in Civil Litigation*

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WDC Members and other readers are encouraged to submit articles for possible publication in the *Wisconsin Civil Trial Journal*, particularly articles of use to defense trial attorneys. No compensation is made for articles published and all articles may be subjected to editing.

Statements and expression of opinions in this publication are those of the authors and not necessarily those of the WDC or Editor. Letters to the Editor are encouraged and should be sent to the WDC office at 6737 W. Washington St., Suite 4270, Milwaukee, WI 53214. The Editor reserves the right to publish and edit all such letters received and to reply to them.

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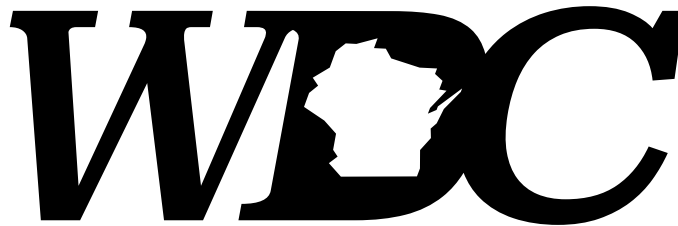
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Wisconsin Defense Counsel

*Defending Individuals and
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WDC: The Voice of the Wisconsin Defense Bar

Wisconsin Defense Counsel (“WDC”) is a premier statewide organization consisting of more than 375 defense attorneys. Founded in 1962, WDC (formerly known as the Civil Trial Council of Wisconsin) is dedicated to defending Wisconsin citizens and businesses in a professional manner, maintaining an equitable civil justice system, educating its members, creating referral sources for its members, providing networking opportunities for its members, and influencing public policy. To be eligible for membership, WDC bylaws require that an individual be a member of the State Bar of Wisconsin and “devote a substantial portion of his or her professional time in the defense of civil litigation.”

WDC Mission, Vision, and Values

Our Mission: Wisconsin Defense Counsel exists to promote and protect the interests of civil litigation defense attorneys and their clients by providing professional education and development, fostering collegiality, promoting principles of diversity and inclusion and striving to ensure equal access to justice for all defendants.

Our Vision: Delivering superior legal services with integrity and professionalism.

Our Values: Educate; Diversity & Inclusion; Collegiality; Integrity; Development; and Service.

WDC Benefits of Membership

Education: WDC holds three education programs during the year, all of which provide continuing legal education (CLE) credits.

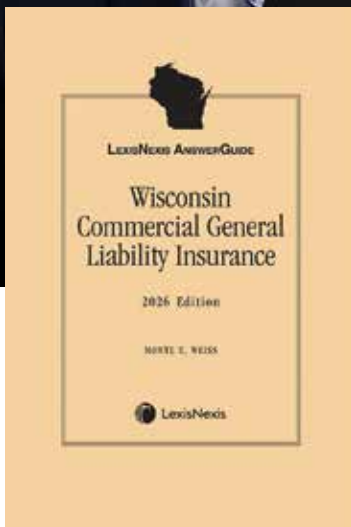
Expert Witness & Deposition Requests: Members can find expert witnesses or copies of depositions in various subject fields by using the knowledge and experience of other members. Requests are sent by broadcast email to all WDC members.

Web Resources: Members are included in a searchable database on the WDC website. Members can also obtain all the seminar outlines that are presented at WDC educational events online. These outlines are a quick and easy way to get access to the latest information on various topics.

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Wisconsin Commercial General Liability Insurance

by Monte E. Weiss

Attorney Monte E. Weiss has earned a reputation as one of the most trusted sources in Wisconsin for analyzing and litigating insurance coverage issues. In addition to drafting personal lines auto as well as property and casualty insurance policies, Monte recently authored and published an insurance coverage treatise for practitioners titled "Wisconsin Commercial General Liability Insurance."



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President’s Message: Setting the Pace: How Strong Opponents Elevate the Practice

*by: Danielle Schroder, President, Wisconsin Association for Justice, and
Grace Kulkoski, President, Wisconsin Defense Counsel*



Each issue of the Journal traditionally begins with a message from the current President. For this issue, we are straying from tradition slightly to offer the combined perspective of the current President of the Wisconsin Association

of Justice (WAJ)—Danielle Schroder—and the current President of the Wisconsin Defense Counsel (WDC)—Grace Kulkoski. Danielle and Grace weigh in on their goals and hopes for their respective organizations and discuss the shared perspective that a strong opponent and a fair fight brings out the best in each of us.

WAJ President Danielle Schroder

I live just outside of Madison, in Verona, Wisconsin. I’m married, have three kids ages 12, 10 and 4, and a dog who loves to run in the snow (Siberian Husky). I grew up in Rhineland, Wisconsin, “home of the hodag.” I practiced law for twelve years at a plaintiff’s labor and employment firm in Madison. I transitioned my practice to exclusively plaintiff’s personal injury work, and in 2023, I joined MacGillis Law Group, LLC.

Outside of professional life, I enjoy going outside for a run, which is a perfect pastime in Madison with its vibrant running community. Notwithstanding my disdain for the activity during my formative years (after all, running was the punishment when we messed up in basketball – I can still hear my

coach yell, “Get on the line!”), I developed a love for running in college and beyond. It serves as an escape from the built-up stress while working in the office. It is a breath of fresh air. Often new ideas pop into my head while I’m out on the trail. I’m currently a member of Fleet Feet Running Club, which Grace is a part of as well.

WDC President Grace Kulkoski

I live in Verona, Wisconsin with my husband, three children, two dogs, and a goldfish named Mr. Bubbles who will probably outlive all of us. I work as in-house counsel for Wisconsin Mutual Insurance Company, where I am fortunate enough to handle a variety of duties, including representing the company and our insureds in litigated matters. I love working in the insurance field and the variety that every day brings.

In my spare time, or more appropriately, in the minutes that I carefully carve out for myself each day, I love to run. Weekend mornings are always reserved for a long run on one of the many bike trails in Madison. In the summer, it’s my daily dose of vitamin D. In the winter, it’s my way of getting outside and “conquering winter.” I met Danielle through work, and she got me connected with the Fleet Feet Running club, where we frequently get a chance to meet up for group runs and catch up. In fact, we got together for a run to chat about writing this article together!

As pals on the trail, but opponents in the courtroom, we both feel strongly that a fair fight with a skilled adversary is the best recipe for quality advocacy.



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We both hope to lead our organizations in a way that improves the quality of the practice and serves the interests of our clients. During our run, we chatted about our goals and plans for our organizations and found that we share many of the same aspirations.

Wisconsin Association for Justice

At the forefront of WAJ's mission this year is to build robust connections amongst our membership. We strive to develop our trial lawyers so that we shape the law for the better in years to come. As stated during my speech at The President's Dinner, I am struck by the simple, yet significant words of advice, "Don't do it alone." We must connect as professionals to support each other, share our knowledge and experience. This is how we raise the bar. This is how we all succeed in our practices. This is how we effectuate the quality administration of justice. Dare I say, we cannot competently do our jobs without connecting and learning from other humans in the profession.

Similarly, we need to be "includers" of young lawyers and students. WAJ continues to reach out to law students, supporting them in their mock trial programs and joining them in their classrooms and student groups to discuss civil trial law practice. I encourage law firms to provide training and mentorship to new lawyers and law clerks, as so many of you already do.

Wisconsin Defense Counsel

WDC is prioritizing mentorship as a way to provide guidance to our newer attorney members and strengthen the industry as a whole. During my time serving as President to our organization, I have been working on a program to pair up newer attorneys with more experienced members. Our industry benefits when we can share knowledge, experience, and skill.

Our organization provides a space for our members to teach one another, offer different perspectives on issues and collaborate. We keep each other sharp and aware of changes in the law and emerging

trends. My hope for WDC is that our members feel supported in their work and we can continue to share the responsibility of educating and mentoring the next generation of advocates. Mentorship, quality journal content, and valuable seminar education continue to be at the heart of the mission of WDC, and I'm glad I can have a small part in fulfilling that mission.

Iron Sharpens Iron. Strong Opponents Make Us Better.

As we ran together, pushing the pace a bit, we talked about the shared goals of our organizations, and how much we both value the strong guidance and support that our organizations provide to our members. We shared examples of impressive advocacy we've seen from opponents, and the respect we have for skilled attorneys who are prepared and straightforward about the strengths and weaknesses of their case. We were both out of breath and tired by the end of the run but felt great for pushing each other through a tough workout!

It is not uncommon for the performance of a sports team to change based on the quality of their opponent. For instance, a team playing a less talented opponent can become complacent, playing down to their level. On the flip side, in the context of running, folks often find they are able to go faster and farther in a group setting than they ever could alone. Runners will set new "PR's" (personal records) when they are racing against quality competitors. The same is true in the law. The legal system functions best with formidable opponents – ones that challenge us and sharpen our skills but don't play dirty.

Our Rules of Professional Conduct support this notion. For instance, SCR Ch. 20 Preamble states, "A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done."



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As residents of competing civil trial lawyers associations, we stand together on the notion that justice is served when everyone plays by the rules. Our members must be competent (SCR 20:1.1) and diligent (SCR 20:1.3). If lawyers fail in these obligations, trial work surely will expose their shortcomings ... to the detriment of clients. Refuse to engage in unethical or unfair practices (SCR 20:3.4). Don't hide evidence or misrepresent the truth (SCR 20:3.3, 3.4). Instruct clients and witnesses in their obligation to be truthful and forthcoming (SCR 20:3.3). As officers of the legal system, we must zealously advocate for our clients while running a clean race.

When asked to share some words during the Olympics, freestyle skier Eileen Gu told her interviewer, "What I yearn for most is a worthy opponent. Then I have a reason to be better every day." We can all serve our clients and maintain the integrity of our industry by being that worthy opponent to one another. When you're at a deposition, or in the courtroom, bring your absolute best. Know your case, be prepared, and fight for your client. When it's over, acknowledge a job well-done by the other side, win or lose. As our two organizations look toward the future, we hope to continue to challenge each other to be better through advocacy backed by skill, knowledge, and preparation, and grounded in mutual respect and integrity.

Author Biographies:

Danielle M. Schroder is a partner in the Madison office at MacGillis Law Group, LLC. She practices exclusively in personal injury law, representing individuals who have been injured in car crashes and other circumstances that were not their fault. Danielle has fully committed her legal practice to helping her clients recover from hardship and ensuring they get a fair shake when pursuing injury claims with insurance companies. She has successfully resolved various injury cases including car crashes, construction accidents, trip and falls,

slip and falls, defective products and more. Danielle also serves as a guardian ad litem for minors who have been injured. Danielle has been recognized as a SuperLawyers "Rising Star" and a "Top 40 Under 40" with the National Trial Lawyers organization.

Danielle graduated magna cum laude from the University of Wisconsin Law School in 2011. During law school, she was a member of the mock trial team and the Wisconsin International Law Journal. She also was a member and coach of the Wisconsin Vis Moot Court team, which traveled to Vienna, Austria to compete against other law students from around the world.

Danielle is an officer and board member of the Wisconsin Association for Justice (WAJ), the state's largest voluntary bar organization whose mission is to promote a fair and effective civil justice system by providing education and support for the trial bar profession and by working with government entities to advocate for the legal rights of all Wisconsin citizens. In 2022, Danielle served as Chair of the WAJ's Women's Caucus.

Grace Kulkoski serves as in-house legal counsel to Wisconsin Mutual, where she oversees litigation, advises claims and performs other legal duties for the company. Before joining the Wisconsin Mutual team, Grace spent the first part of her career in private practice as a litigation attorney. Grace received her law degree from the University of Wisconsin, and her undergraduate degree from the University of Notre Dame.

Grace is an active member of various organizations supporting the insurance defense industry. She currently serves as the President of the Wisconsin Defense Counsel, and is also active in DRI, where she serves as a Vice-Chair of the Corporate Counsel Committee. She also serves on the litigation section of the Wisconsin State Bar. Outside of work, Grace enjoys running, spending time outside and providing taxi services for her family.

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2026 WDC Spring Committee Awards

The WDC Spring Committee Awards recognize the talent, effort, and accomplishments of our incredible committee members and volunteer leaders. Congratulations to the following award recipients who will be recognized during the WDC 2026 Spring Conference on April 23-24, 2026!



Amicus Committee Award Recipient: Caleb Gerbitz

Congratulations to Caleb Gerbitz for being selected by the Amicus Committee and the Awards Committee for the 2026 Amicus Committee Award!

Caleb has been one of the more active members of the committee, often bringing cases to the committee's attention for review, even if he was not directly involved in them. Most recently, he brought *Wren v. Columbia St. Mary's Hospital Milwaukee* to the attention of the committee. This case concerned a COVID-era civil immunity statute that the court of appeals invalidated as violating the state constitutional right to a jury. Though the particular statute at issue had relatively limited reach, the court of appeals' analysis in this case could be used to invalidate every single civil immunity statute. The committee readily concluded that calling into question every civil immunity statute was an issue of deep concern to the WDC membership and therefore voted to file an amicus brief in the Wisconsin Supreme Court. Caleb then took the lead in drafting the brief, coordinating research activities from multiple firms. The Amicus Committee is grateful for Caleb's participation and efforts on behalf of WDC.

Caleb is an attorney in Meissner, Tierney, Fisher & Nichols, S.C.'s litigation practice group. He focuses on assisting clients in complex commercial, insurance, employment, and appellate matters. Caleb brings to his work a dedication to client service and a focus on providing skillful representation throughout a dispute—from pre-litigation, to trial, and through appeal if necessary.



Bylaws Committee Award Recipient: Doug Ross

Congratulations to Doug Ross for being selected by the Bylaws Committee and the Awards Committee for the 2026 Bylaws Committee Award!

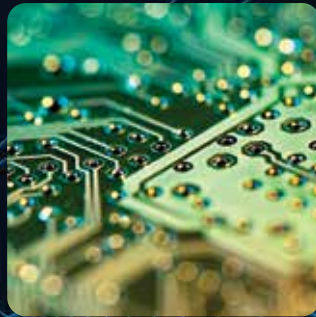
Doug's dedication to the Bylaws committee is only rivaled by his devotion to the Oxford comma. His attention to detail is legendary—whether he's untangling the most complex bylaw or championing the cause of clarity in every committee document. He's the person you want in your corner if there's even a whiff of ambiguity or a missing punctuation mark. In fact, his steadfast commitment to the Oxford comma has saved us all from more than one grammatical disaster and, arguably, several potential lawsuits (or at least some very confusing sentences). Doug has a knack for finding the perfect balance between technical precision and collegial good humor, making every meeting both productive and enjoyable. Doug's outstanding effort, participation, and engagement have truly elevated the Bylaws Committee's work. He's always willing to review bylaws, share his expertise, and advocate for best practices—all while keeping the committee members on their grammatical toes.

Doug is the Director of Casualty & Auto Claims at Rural Mutual Insurance Company. Prior to joining Rural, Doug spent his career as a trial attorney

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Privacy Please: The Case Against Recorded Medical and Vocational Examinations

by: Katherine E. Cortesy, Baker Sterchi Cowden & Rice LLC

“We intend to have [plaintiff] audio record the session so that there can be no dispute as to what is said. Are we going to litigate that or will you stipulate to that?”

The email came in response to a request for a psychological evaluation. Plaintiff’s counsel was willing to have her attend the session, so long as she could audio record it. The plaintiff claimed she had severe PTSD, depression, and anxiety because of the subject incident, and plaintiff’s psychologist produced a report stating that she was severely traumatized and would require psychological treatment in the future. To investigate these claims, the defense retained a neuropsychologist to conduct an independent psychological evaluation, which her attorney wanted to have recorded. I did not agree, and we litigated it.

Demands to let a plaintiff record psychological, vocational, and medical examinations are common. From a defense perspective, there are few, if any, reasons to agree to a recording, especially for a psychological or vocational exam. If the parties do not agree on the conditions and scope of an examination, judges have broad discretion to set the parameters.¹ Part of this discretion includes whether the examination will be recorded, but unfortunately, there is very little guidance in Wisconsin caselaw on this issue. Decisions by the circuit courts are trending towards allowing recordings,² but the defense bar still has an opportunity to push back, and when faced with a demand to record an evaluation, should argue against it.

I. The Law in Wisconsin

Wisconsin cases focus primarily on counsel being physically present at examinations. In *Whanger v. Am. Family Mut. Ins. Co.*, the plaintiff alleged he suffered a heart condition as a result of a motor vehicle accident.³ The court made an oral ruling that plaintiff would cooperate with a medical examination. The attorney for the defendants was instructed to draft a written order, but the judge signed an order drafted by plaintiff’s counsel that included a provision that an attorney would be present at the examination. The defense appealed only the part of the order that allowed plaintiff’s counsel to be present at the examination.

At the time, the Court was interpreting a slightly different version of the statute on independent examinations,⁴ but, like today, the trial court had broad discretion to order an examination and determine the details of said examination, including the presence of counsel.⁵ The Court noted that, generally, opposing counsel’s presence is not necessary and adds nothing to the adequacy of the examination.⁶ However, there may be certain situations where having counsel at the examination is helpful.⁷ This includes when the character, personality, or sophistication of the claimant requires the attorney to assist with communication, if there is hostility between the examiner and claimant, or the claimant is particularly fearful or reluctant.⁸ The case was remanded to the trial court for a determination of whether counsel needed to observe the examination in this case, based on the considerations listed above.

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In *Karl v. Emp'rs Ins. of Wausau*, the plaintiff submitted to a psychological evaluation with a defense psychiatrist.⁹ Unknown to defense counsel, her attorney accompanied her to the evaluation.¹⁰ On appeal, the defense argued that plaintiff's counsel should have been barred from cross-examining the expert on the portions of the evaluation that he observed.¹¹ Applying *Whanger*, the court commented that counsel should not attend an examination unless the court has determined otherwise but ultimately found that the plaintiff exhibited fear behaviors and the trial court would have been justified in allowing her attorney to accompany her.¹²

In *Stone v. Am. Family Mut. Ins. Co.*, an unpublished opinion, the court of appeals affirmed a trial court's decision to not allow a third-party observer or recording.¹³ Plaintiff sought to have her attorney at medical and vocational examinations, or in the alternative, record the sessions.¹⁴ She argued it was necessary to alleviate her anxiety about the examinations and because her chiropractor spoke unfavorably about the agency conducting the examinations.¹⁵ The appellate court found that these non-specific arguments and critiques did not meet the *Whanger* burden. The Court also commented that plaintiff could discuss the examinations with her attorney, the examiners would produce a written report of their findings, and counsel could further investigate the methods and conclusions via deposition and cross-examination.¹⁶

II. The Arguments Against Recording Independent Medical, Vocational, and Psychological Examinations

Now, the more common request is for a recording of the meeting, versus having counsel present. By requesting recordings, plaintiffs attempt to circumvent the factors set forth in *Whanger* and monitor the session without any showing of a specific need. This should not become the norm.

a. Recording Compromises the Integrity of the Examination

The goal of these examinations is to allow the defense an equal opportunity to assess and evaluate

claimed injuries, whether mental, physical, or vocational. This requires a spontaneous, forthcoming, and honest conversation between the examiner and examinee. The methodology of the examination and ultimate conclusions are compromised if the participants are not fully engaged. The presence of a recording device, no matter how small or unobtrusive, threatens this necessary candor. Even unintentionally or subconsciously, individuals being recorded will change behaviors and responses. This can result in self-censorship, increased anxiety and discomfort, or performance bias, where the individual will exaggerate strengths and downplay weaknesses because they are aware they are being observed or that the recording will be listened to later.

Other courts have recognized the need for an unimpeded private exchange between the examiner and examinee. When deciding the issue of allowing recording under Fed. R. Civ. P. 35, the equivalent of Wis. Stat. § 804.10(1), courts have commented that recording constitutes an intrusion into the evaluative process,¹⁷ lends a degree of artificiality that is inconsistent with professional standards,¹⁸ and impedes the one-on-one communication between the examiner and examinee.¹⁹ To maintain the authenticity of the independent medical or vocational examination, it is important to remove all encumbrances which may, even subconsciously, cause participants to adjust their behaviors.

b. Recording Creates Partisanship in Something That is Not Inherently Adversarial

The mere act of an expert examining or evaluating a plaintiff is not inherently adverse, and all parties have an interest in divesting as much adversarial character from the examination as possible. A non-adversarial interaction leads to a better experience for both the plaintiff and the expert and produces more accurate results, which should be the goal for both sides. The *Whanger* court characterized these exams as part of investigation and trial preparation, not an adversarial proceeding.²⁰ This theme persists in other courts, who have extended this principle

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past the presence of counsel and included audio recordings as something that unnecessarily injects adversity into the interaction.²¹

Yes, the defense selects and retains the experts that will conduct independent examinations. However, there is no other avenue for the defense to assess a plaintiff's claimed injuries. A plaintiff may place their health and vocational capability in controversy and support these claims with the opinions of treating providers. The defense has no other option besides retaining a third party.

Further, independent medical and vocational exams are just that: independent. An expert is not retained to act as an advocate for the defense or arrive at a pre-determined conclusion that aids one side or another. All possible precautions should be taken to ensure the examination or evaluation remains as neutral as possible. This includes removing any attorney oversight from the examination room.

c. Adequate Safeguards Exist to Resolve Any Disputes About What Occurred in an Examination

Opposing counsel in the above example requested a recording so there could be "no dispute" about what happened in the evaluation. While this is a prime example of plaintiffs seeking to monitor a session without showing a specific need, the concern about dishonesty is also grossly misplaced. Unrecorded independent medical examinations do not occur in a black hole. There are means by which plaintiff and defense counsel can understand what was discussed in the examination without needing to monitor the entire exchange. The court in *Stone* offered a few examples.²² Individuals can take written notes and discuss the examination with counsel after it has been concluded. The expert produces a written report summarizing the exam and the findings. The expert may also testify under oath at deposition or trial about the methods that were used, impressions from the examination, and the overall conclusions.

Additionally, the retained experts are knowledgeable within their respective fields and

often have prior experience with legal cases. Examiners are capable of performing evaluations and distilling findings into comprehensive reports. To suggest that an expert may lie or commit egregious errors is an unfounded concern in most, if not all, instances. Any potential disagreement about the contents of the examination or the conclusions drawn from it can be addressed via the defense expert's testimony, the plaintiff's testimony, and testimony from the plaintiff's expert. It is up to the jury, in fact it is their explicit role, to weigh the credibility of each of these witnesses and determine the truth. They can do this without an audio recording.

d. Recording Only Defense Examinations is Contrary to Principles of Fairness

Finally, and perhaps most importantly, it is unfair to only record conversations with defense experts. If plaintiff's expert is a treating provider, conversations likely occurred as part of appointments, sometimes before a lawsuit was even filed. If the expert has been retained specifically for the case, the plaintiff often meets with the expert before the defense is made aware of the expert's identity. There is no option for the defense to request a recording of the interaction. Thus, the defense relies on any notes taken, reports produced, and testimony given to understand the examination and the expert's opinions. The information available to the defense is identical to the information available to plaintiffs when an examination is not recorded.

The goal of an independent medical or vocational examination is to put both parties on equal footing when evaluating a plaintiff's claimed injuries. The idea of giving each party equal opportunity to assess the plaintiff goes beyond simply allowing the examination. Plaintiff's experts are allowed to assess the plaintiff unencumbered by oversight from counsel, and the defense experts should be given the same opportunity. Additionally, each party is better placed on equal footing if neither receives the benefit of a recorded examination. The same safeguards discussed above that the plaintiffs can rely on in the absence of a recording

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are the same safeguards that the defense must necessarily rely on. Plaintiffs do not suffer any disadvantage by not having a recording of defense examinations and if conversations with plaintiff's experts are candid and uninformed, then fairness requires conversations with defense experts to be equally uninformed.

Ultimately, there is no absolute right for a party to be present at an independent examination or to have the exam recorded. Without a showing of a specific need, as was contemplated in *Whanger*, these examinations should be done with complete privacy between the examiner and the plaintiff. Any argument that recording promotes truth in fact-finding is contradicted, as recordings undermine the independent nature of the examination and potentially compromise the outcome. Defendants should not agree to plaintiff recording an examination and, when the issue arises, should litigate it.

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- 1 Wis. Stat. § 804.10(1).
- 2 As part of his briefing, opposing counsel included several orders and motion hearing transcripts of Wisconsin circuit courts permitting plaintiffs to record examinations.
- 3 *Whanger v. Am. Family Mut. Ins. Co.*, 58 Wis. 2d 461, 207 N.W.2d 74 (1973).
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The Hot, Hard Truth: Habitual Mistakes and Preventable Fire Causes in the State of Wisconsin

by: Don VanOss, Midwest Consulting & Associates, LLC

I. Introduction

Fires across Wisconsin often originate from ordinary, everyday activities that most people never imagine could lead to disaster. The prevailing mindset—“It won’t happen to me”—continues to fuel preventable losses across the state.

Over the past two decades, Midwest Consulting & Associates, LLC (MCA) has conducted thousands of fire investigations throughout Wisconsin. Drawing from this extensive experience, MCA has compiled and analyzed a dataset of fire causes from 2004 through 2024, with this article focusing on the most accurate and verifiable data collected between 2017 and 2024.

The goal of this article is to assist claim representatives and attorneys in the litigation process who are presented with fire claims. Using data collected across all regions of the state, this article provides a statistically meaningful, geographically diverse overview of the leading fire causes. The results can serve as a practical reference for insured homeowners, insurers, and counsel seeking data-driven insights into fire prevention and preparedness.

While national standards and classification systems for fire causes exist, this paper intentionally uses terms and categorizations that are straightforward, relatable, and understandable to the general public. By bridging technical accuracy with public accessibility, MCA aims to transform fire investigation findings into actionable knowledge that reduces risk and saves lives.

From an insurance and investigative standpoint, the data indicates that most fires show no evidence of arson, liability exposure, or subrogation potential. This finding underscores a critical need for improved internal insurance investigations and for greater collaboration between the private and public sectors to share verified information.

Ultimately, fire prevention begins with education and transparency. The causes presented in this study, ranging from cooking and smoking to heating, electrical, and natural events, reflect real and preventable incidents. MCA believes that the responsibility to prevent future fires lies not only with the public but also with those tasked with educating it. The greatest failure is not negligence itself, but the lack of shared knowledge that allows it to persist.

II. Overview

Founded in 2004, MCA has completed thousands of fire investigations across the Midwest under the leadership of Don VanOss, Owner and Lead Investigator. The data collected and analyzed since 2017 was gathered with the assistance of Adam Vogelsang, CFI, of Forensetec, Inc. Each investigator independently reviewed every fire claim.

A qualified fire investigator applies a systematic and scientific approach to determine both the origin and cause of a fire. This process requires a comprehensive understanding of fire dynamics, building construction, and ignition sources. In addition, strong knowledge of legal procedures,



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fire codes, and reporting standards, along with the ability to serve as an expert witness in court, are essential skills that distinguish a professional investigator.

Throughout thousands of investigations, MCA has identified a significant lack of public awareness of the most common causes of fires. It is concerning that findings from private-sector investigations are often kept secret, limiting opportunities for public education and prevention. The goal of any fire investigation should extend beyond identifying the cause; it should also contribute to public knowledge and help prevent similar incidents.

While many fires are attributed to homeowner negligence, MCA believes greater accountability lies with the investigative and educational systems. Investigators who have conducted countless examinations have not collectively provided a centralized, data-driven resource identifying common fire causes. In this regard, the responsibility rests more with the educator than the uneducated.

III. Existing Data Gaps and Reliability

Fire departments, particularly volunteer-based agencies, play a vital role in collecting data on fire causes and prevention. However, many lack the specialized training, education, and experience necessary to conduct scientifically sound investigations or provide reliable findings. MCA advocates for stronger collaboration between the private and public sectors to bridge these knowledge gaps and ensure the public receives accurate, actionable information.

Data accuracy remains a persistent challenge in both public and private fire investigation sectors. In many cases, inadequate training and failure to adhere to the scientific method result in inconsistent or unreliable reporting. The scientific method for fire investigations is outlined in the National Fire Protection Association (NFPA) 921 Handbook. This article shows the process of this method.

Another factor influencing data reliability is the financial incentive structure inherent in private

investigations. Independent investigators often represent clients pursuing or defending subrogation claims. In a profit-driven environment, insurers may feel the need to keep investigative results confidential, and thus, many causes may not be made available to the public.

A rapid and well-coordinated response following a fire loss is essential. Prompt arrival at the scene allows investigators to secure the origin area, preserve evidence, and initiate timely mitigation efforts elsewhere. However, pressure to reach quick conclusions, often driven by scheduling or restoration demands, can lead to premature determinations that compromise the accuracy of origin and cause analysis.

IV. Methodology

For over two decades, MCA has gathered extensive data on numerous factors related to fire investigations. To identify the most common causes of structural fires across Wisconsin, MCA conducted an in-depth review of eight years of investigation reports, encompassing more than 1,200 individual fire incidents. This dataset, collected between 2017 and 2024, constitutes a statistically representative sample for analyzing fire trends in the state. Each case record includes specific variables such as year, quarter, location, and the determined cause of the fire. These data points provide valuable insight into when and where structure fires are most likely to occur, information that can be instrumental in shaping effective prevention and public awareness strategies.

The State of Wisconsin experiences an average of 3,000 to 4,000 structure fires annually. Fire risk levels vary considerably based on geographic, demographic, and structural factors. To ensure more precise regional analysis, MCA divided the state into four geographic quadrants: Northwest, Northeast, Southwest, and Southeast.

This segmentation allows for a more detailed examination of how population density, housing characteristics, and socioeconomic conditions influence fire occurrence patterns. A foundational



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understanding of these variables enables several general observations:

- Urban areas with higher population densities, specifically in the southeastern quadrant, exhibit increased rates of structure fires, particularly those involving cooking accidents, electrical malfunctions, and heating equipment failures in multi-unit housing.
- Lower-income regions may face elevated fire risks due to aging infrastructure, outdated appliances, and limited investment in fire safety measures.
- Rural and forested areas, such as Wisconsin’s Northwoods, in the northwest and northeast quadrants, experience more fires related to wood-burning stoves, heating equipment, and wildfire ignition sources.

This methodological approach ensures that MCA’s findings are grounded in both empirical data and regional context, providing a comprehensive basis for identifying trends and supporting statewide fire prevention initiatives.

V. Results

The data collected over the past eight years indicate that most fires are accidental and caused by negligence or carelessness. As with any accident, fires are largely preventable with proper training. Unfortunately, this education often comes in hindsight rather than in advance.

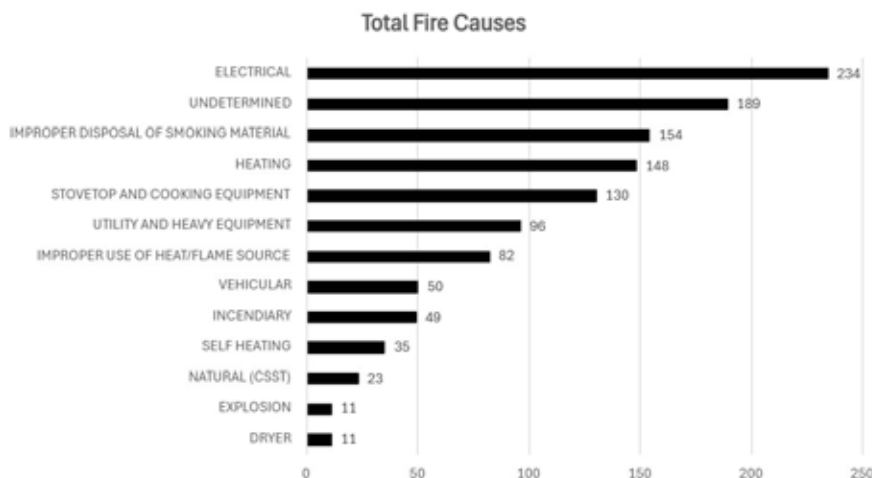
As detailed in the previous section, common fire causes varied by geographic region across the state and by time of year. The table below summarizes the total number of fires by cause category, representing a total of 1,212 fires.

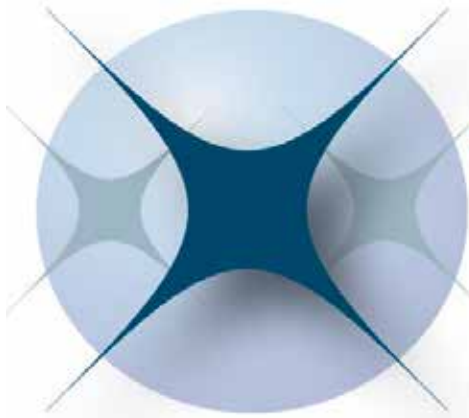
The most common causes of fire identified in the collected data are presented in the following sections. As demonstrated, many fires originate from routine activities that are often overlooked by the general public. Each cause includes recommendations for preparedness, prevention, and key actions to reduce overall fire risk.

a. Electrical

Electrical fires are often the first type of fire the public considers, and this perception is not without merit. Throughout MCA’s tenure, members of the public have often asked whether a fire was caused by an electrical issue or by arson, two causes that are among the most widely recognized by the general public. Additionally, MCA has encountered situations in which volunteer and career fire chiefs state they do not know the cause of a fire. Yet the incident is labeled as electrical rather than undetermined. In many of these cases, there is little or no physical evidence to support an electrical cause. When this occurs, fire cause statistics can become skewed, placing increased emphasis on electrical fires when other ignition sources or contributing factors may have been involved.

Of the 1,212 fires investigated by MCA between 2017 and 2024, nearly 20% were deemed electrical in nature, representing the highest percentage of fire causes identified in the dataset. The elevated percentage is not entirely unexpected, as electricity can be difficult to definitively exclude as an ignition source. As a result, electrical causes are often assigned based on circumstantial indicators such as witness statements, damaged wiring, or the presence of an electrical device within the





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area of origin. While these indicators often suggest electrical involvement, they do not always confirm that electricity itself was the root cause of ignition.

Many fires classified as electrical involve underlying issues related to misuse, maintenance, or environmental factors rather than a failure of the electrical system alone. For example, an overloaded extension cord represents improper use of electricity, not an inherent electrical defect. Similarly, a toaster fire may be categorized as electrical, yet ignition often results from accumulated debris, lack of maintenance, or internal mechanical failure. These distinctions are important for insurers, adjusters, and the public alike, as accurate cause determination directly influences loss-prevention strategies and risk-mitigation efforts.

Approximately one-fifth of the electrical fires in the dataset were classified as “electrical–general.” In these cases, the area of origin contained electrical components or conditions consistent with electrical involvement; however, a specific ignition source, such as a device, appliance, or wiring failure, could not be positively identified. Electrical involvement could not be ruled out, but the available evidence did not support classification into a more specific electrical subcategory.

Despite these complexities, MCA’s investigation data consistently identify electrical-related fires as a major contributor to fire incidents throughout Wisconsin. Frequently observed ignition sources include lithium-ion batteries, dehumidifiers, extension cords, aging or deteriorated wiring, damage caused by rodents, and other electrical appliances. Understanding not only what is labeled an electrical fire, but also why those fires occur is critical for improving fire prevention practices, guiding safer consumer behavior, and ultimately reducing the risk of future fire losses and injuries.

i. EV and Lithium Batteries

An emerging cause of fires is the increased use of lithium-ion battery devices and components. Of the 234 total electrical fires, nearly 18.38% were caused

by lithium-ion batteries, with the majority occurring in the last few years. The recent issues associated with lithium-ion batteries are beyond the scope of this article. However, lithium-ion batteries do not have the same mechanical integrity as standard cell batteries.

Many lithium-ion battery failures result from damage to the battery pack, overcharging, charging at extreme temperatures, manufacturing defects, or other related causes. Often, simply using the wrong charger is the issue. MCA has identified several lithium-ion battery fires in which the use of an incompatible charger was a contributing factor. In many cases, chargers appear similar to the correct charger for a given battery pack, leading to improper use. It is important to ensure the charger is identical and manufacturer-approved, as differences in voltage or current requirements can cause overheating and ultimately result in thermal runaway. Overcharging, physical damage to the battery pack, or internal defects can trigger thermal runaway, leading to rapid heat release, fire, or explosion.

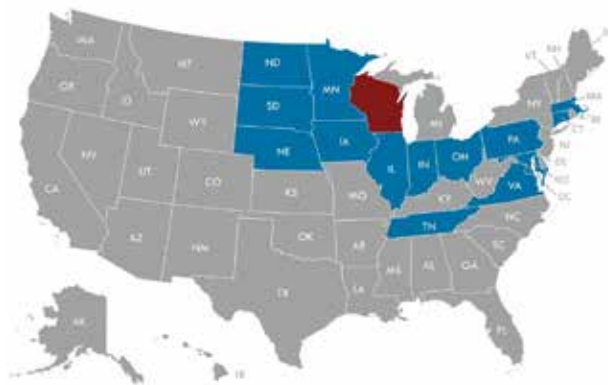
Lithium-ion battery technology is still relatively new compared to traditional electrical and mechanical systems, and its long-term performance characteristics are not as well understood or as extensively studied in real-world fire scenarios. As use continues to expand across consumer, commercial, and industrial applications, ongoing investigation and data collection will be critical to understand failure mechanisms better and reduce the fire risks associated with this technology.

ii. Dehumidifiers

Another common worldwide source of electrical fires, including in Wisconsin, is dehumidifiers, which accounted for approximately 16.2% of the electrical fires identified in the Wisconsin dataset. There have been thousands of dehumidifier recalls, with many attributed to manufacturing defects rather than electrical malfunctions.¹ These incidents highlight how widely used household appliances, particularly those operating for extended periods



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and often unattended, can present significant fire risks. Increased awareness of recall information, proper maintenance, and discontinuing use of recalled or damaged units may significantly reduce the likelihood of dehumidifier-related fires.



iii. Extension Cords and RPTs

One of the most common errors associated with extension cord use is its application as a substitute for permanent wiring rather than for temporary purposes. Extension cords are designed for short-term use and should be unplugged when not actively in service. While their convenience is widely recognized, prolonged or improper use has been associated with significant property damage.

Extension cords must be properly matched to the electrical load of the appliance or power tool being supplied. Standard residential branch circuits typically utilize 12 or 14-gauge conductors. When an extension cord with a smaller-gauge conductor is used, it can become overloaded, resulting in excessive internal heating and an increased risk of fire. In these situations, circuit protection devices designed for fixed 12 or 14-gauge wiring may not detect an overload and may fail to trip before ignition occurs.

Improper placement of extension cords further increases fire risk. Cords that are coiled, pinched, or routed beneath rugs, furniture, or shelving can sustain physical damage and restrict normal heat dissipation associated with current flow. This restriction can lead to localized heat buildup and eventual failure of the cord insulation.

RPTs, commonly known as power strips or surge protectors, raise similar concerns. Although convenient, they are frequently overloaded and

misused. RPTs are not intended for permanent installation and should be de-energized when not in use. Improper or continuous use significantly increases the likelihood of overheating and fire.

For added safety, undersized extension cords should be avoided. Electrical breakers are not designed to detect overloaded extension cords, as the cord itself becomes the point of failure rather than the circuit. Extension cords



should remain exposed to ambient air and not be covered by furniture, rugs, or carpeting. Extension cords and RPTs are intended for temporary use and should not be relied upon as permanent electrical solutions. Within MCA's dataset, approximately 12% of all electrical fires were attributed to extension cords and RPTs.

iv. Rodents

According to some sources, there are as many as 10,000 confirmed rodent-caused fires in the United States every year. MCA has experienced several rodent-caused fires, with nearly 4% of electrical fires in the dataset linked to rodents. While this may seem like a small percentage, the damage caused by rodents can be sudden and severe, often affecting multiple circuits or hidden wiring within walls, attics, or crawl spaces. In a recent 2024 fire, an MCA fire investigation revealed a large rodent nest near an older circuit board and wiring.

Rodents such as mice, rats, and squirrels gnaw on electrical wiring, damaging or completely removing the insulation around conductors. Once the insulation is compromised, exposed wires can touch each other or nearby conductive materials, creating electrical arcs. These arcs generate intense heat that can ignite surrounding combustible materials, such as wood framing, insulation, or stored items. Fires caused in this manner often start in concealed locations, making them particularly

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dangerous and sometimes difficult to detect until they have progressed.

If rodent activity is identified within a residence or structure, appropriate eradication and prevention measures should be implemented promptly. This includes sealing entry points, maintaining proper sanitation, and, when necessary, using traps or professional pest control services. Addressing rodent problems early not only protects property but can also significantly reduce the risk of potentially devastating electrical fires.

b. Improper Disposal of Smoking Material

The data shows that approximately 12.7% of the 1,212 analyzed fires were caused by improper disposal of smoking materials, primarily cigarettes. An unventilated lit cigarette can reach temperatures of roughly 750°F, while a ventilated cigarette tip can glow up to 1,100°F during a puff. Most smoking-material fires occur because cigarettes are not fully extinguished. They are often discarded in plant holders filled with dry vegetation or in modified ashtrays. Many people assume that burying a cigarette in soil is sufficient to extinguish it, but dry vegetation within the soil, particularly when not consistently watered, can ignite.

Smoking-related fires most commonly occur on exterior decking at homes and apartments. Since the 2010 smoking ban in bars and restaurants, smoking material-related fires have occurred most often on the front or back steps of the exterior rather than in the garbage containers behind the bar. It was common practice to empty ashtrays into the garbage before the ban, which led to many internal bar fires.

These smoking material fires frequently result in significant property damage and, in some cases, fatalities. Fires can spread rapidly when exposed to outdoor elements, especially wind, and smoke detectors are often absent in these locations. Many people do not fully appreciate the hazards of improperly extinguished smoking materials. Smokers, like anyone else, are creatures of habit. Most of the time, an improperly discarded cigarette

does not ignite a fire. However, the chemical conditions for ignition are present whenever combustible material is consistently exposed to a lit cigarette without adequate means of extinguishing it.

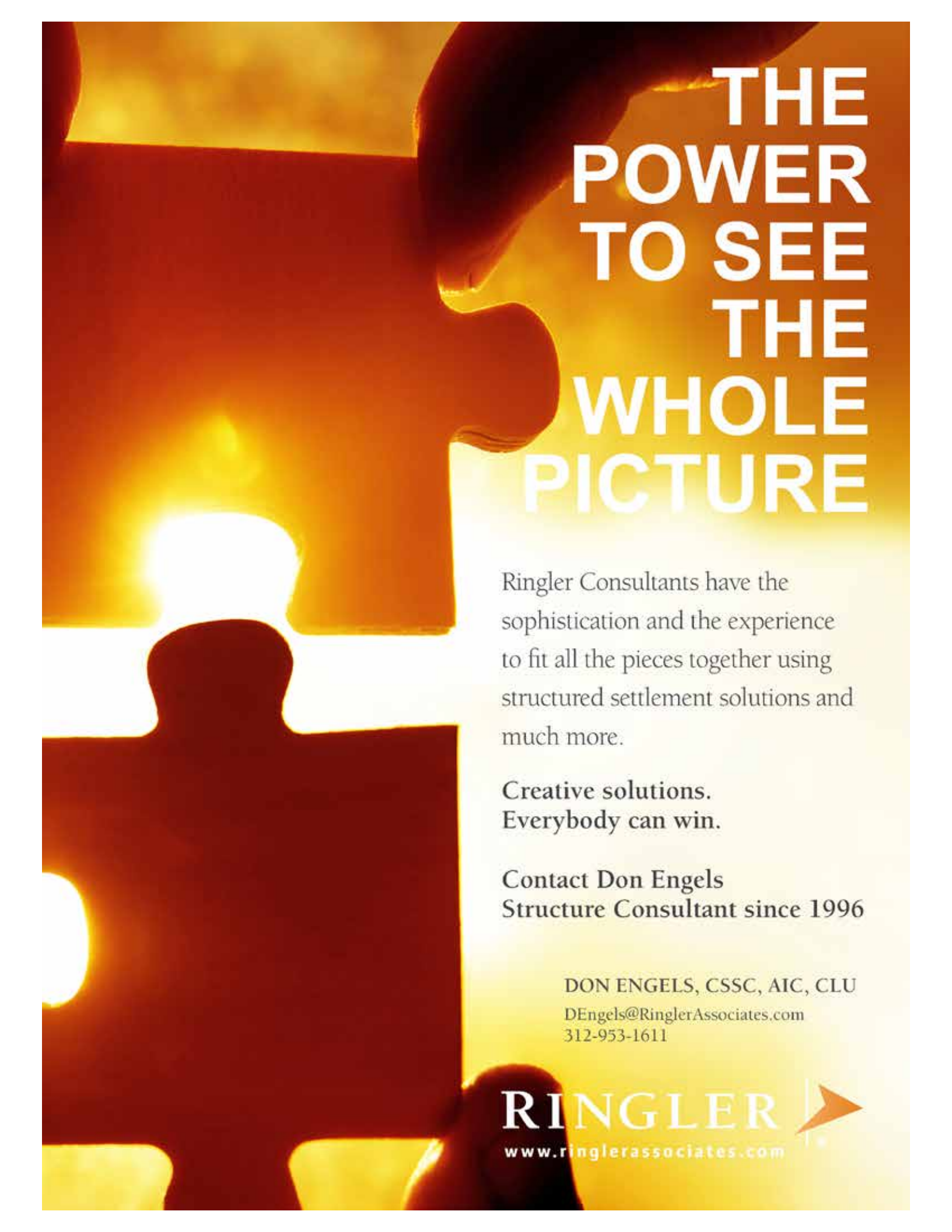
To prevent fires from smoking materials, it is critical to fully extinguish cigarettes and other smoking materials before disposal. Ashtrays should be deep, stable, and filled with sand, water, or other non-combustible material. Cigarettes should never be discarded in plant holders, dry soil, mulch, or other combustible materials. When outdoors, ensure that smoking materials are completely out and cool to the touch before leaving them unattended. Regularly empty and maintain ashtrays to prevent the accumulation of embers and consider using metal or ceramic containers designed for the disposal of smoking materials. By following these simple precautions, the risk of ignition from smoking materials can be substantially reduced, thereby protecting both property and life.

The photographs below depict a fire that occurred when a plastic-modified ashtray was used on the front porch of a residential property:



c. Heating

Wisconsin experiences several cold months during which heating appliances are used for extended periods. Within the dataset, just over 12.2% of fires were heating-related, and of the 148 total heating fires, approximately 72% occurred between October and March.



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The data indicate that wood-burning fireplaces and space heaters are more frequently involved in household fires than other heating systems. Home heating appliances are often more diverse than a standard basement forced-air furnace, the least likely type to cause a cold-weather fire.

Contrary to popular belief, most chimney fires are not caused by creosote or soot buildup inside the chimney. Instead, the majority result from insulation or other combustible materials contacting the exterior of the chimney pipe. Metal chimneys, which are commonly used, are either air-cooled or insulated between the pipe walls, thereby reducing the likelihood of creosote accumulation within the chimney. The most common cause of chimney fires is inadequate clearance from combustibles. This is typically due to missing or improperly installed insulation shields or insulation inadvertently contacting the flue pipe. Many incidents occurred in new construction or remodels where insulation was either installed in direct contact with the pipe or blown over the top, creating a combustible path.



The photo above shows insulation within the space where the chimney pipe passes to another level of the home. An attic insulation shield is required in this area, from the top of the firestop to approximately eighteen inches above the pipe, to prevent the insulation from contacting the pipe. In this fire loss, the flue pipe installer was responsible for installing the shield. The insulation contractor should have inspected this and any other areas where chimney flue pipes or other heat-producing items, such as recessed lighting, were present to ensure that no insulation was in contact with these heat sources.

Similarly, the photographs below depict a fire associated with a pellet stove. The cause was improper installation inside the thimble. By design, a thimble must maintain an air space to prevent any building materials, including insulation, from

contacting the flue pipe. The installer, a licensed contractor, claimed that the installation was acceptable; however, it did not meet required safety standards, resulting in a fire that endangered the home and its occupants.



The photographs below show a multimillion-dollar home that was a total loss after insulation came into contact with the chimney flue pipe.



In another heating-related fire, a contractor installed chopped fiberglass insulation, stating to MCA that its placement was acceptable because it was “non-combustible.” Note the thermal patterns on the exterior of the pipe in the photograph below, visible within the circle. Similar to the previous photographs, these patterns show elevated temperatures that compromise the required clearance and allow conductive heating, creating a significant fire hazard.

Another common cause of heating-related fires that MCA has encountered over the years is the improper disposal of fireplace or firebox ashes. Similar to fires caused by improperly discarded smoking materials, many of these incidents result from ashes or embers not being fully extinguished before disposal.



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Although the surface of an ash pile may feel cool to the touch, the interior can remain extremely hot due to its insulating properties. Ashes should be fully spread out or thoroughly doused with water before disposal. Simply adding a layer of water to the top of a container, such as a plastic bucket, can actually trap heat inside, sometimes melting the container and igniting nearby combustibles. Proper extinguishing and safe disposal are critical to preventing such fires.

Here are some preventative actions that can be taken to reduce the risk of heating-related fires:

- During construction or remodeling, confirm that the general contractor communicates with all subcontractors to properly install insulation shields around chimney pipes and verify that no insulation or combustible material is in contact with the pipe.
- Do not use undersized extension cords with space heaters and keep all combustibles at least three feet from the front and sides of the heater.
- Have your furnace serviced annually to ensure it is functioning properly and efficiently.
- Have your fireplace and flue system inspected every year to verify safe operation and identify any potential hazards.

d. Stovetop and Cooking Equipment

Nearly 11% of all fires investigated during the research period were caused by stovetop or cooking-related activities. While these incidents are generally classified as cooking fires, only a small portion are formally attributed to specific cooking appliances or actions. Most people are familiar with the typical grease fire. Still, MCA's investigations show that the majority of stovetop fires result from three key factors:

1. Leaving cooking unattended.
2. Placing combustible items too close to the heat source.

3. Failing to turn off burners after use.

Simple household habits can greatly reduce the risk of stovetop fires. Avoid using the stovetop as a countertop for storage, keep combustible materials at least fifteen to eighteen inches away from the sides and top of burners, and always double-check that burners are turned off after cooking. By adopting these basic precautions, homeowners and occupants can significantly reduce their risk of a preventable, potentially tragic stovetop fire.

MCA has observed a troubling trend of homeowners using their stovetops as counter space. A quick search on Amazon for "stovetop cover board" reveals numerous options, including wooden boards designed to sit on top of a stovetop when it is not in use. The problem is that placing any combustible material directly over a potential ignition source creates a serious fire hazard and significantly increases the risk of a preventable stovetop fire. The board increases counter space, but the photographs below show exactly what happens when a burner is accidentally turned on with the board in place. This fire was caused by the homeowner accidentally turning on the back burner knob when placing grocery bags against the back panel.



e. Improper Use of a Heat/Flame Source

Candles, fireworks, outdoor burning, and welding or torching activities accounted for roughly 6.8% of fire causes in MCA's dataset. Of the 82 fires in this category, just over 35% were caused by candles. Before using candles in the home, it is important to perform a simple risk-versus-reward evaluation.



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According to the National Fire Protection Association:²

- Half of all candle fires started when a flammable item, such as furniture, mattresses, bedding, curtains, home décor, paper, or clothing, was too close to a lit candle.
- In 21% of home candle fires, the candle was left unattended, improperly discarded, or otherwise misused.
- Approximately 36% of candle fires started in the bedroom, and of those, 11% involved occupants who were asleep.

A study by the U.S. Consumer Product Safety Commission suggests that up to 85% of candle fires could be prevented if consumers followed three basic safety rules:

1. Never leave a burning candle unattended.
2. Never burn a candle on or near anything that could catch fire.
3. Keep candles out of the reach of children and pets.

Candles can create a pleasant atmosphere, but their use carries real risk. By following these simple precautions, homeowners can significantly reduce the likelihood of injury, property damage, or a tragic fire.

f. Utility and Heavy Equipment

MCA investigated 96 fires classified as related to utility- or heavy-equipment. Approximately 66% of these occurred in Wisconsin's northeastern and northwestern regions, where logging, brush cutting, and other heavy-equipment operations are common. These incidents also involve residential and utility equipment, such as lawn mowers, riding tractors, snowblowers, and utility vehicles. The combination of mechanical systems, combustible fuels, and outdoor environments creates conditions where ignition can occur if proper precautions are not followed.

Common contributing factors include overheating engines, fuel or hydraulic leaks, electrical system failures, and debris build-up. Fires can spread rapidly in areas with dry grass, brush, mulch, or accumulated debris, particularly during periods of low moisture. Residential equipment, such as lawnmowers or riding tractors, can ignite fires when combustible materials, such as grass clippings or leaves, accumulate near hot engine components or exhaust systems.

MCA has examined several homes that sustained severe damage due to use of riding lawnmowers. In most cases, the fires were caused by dry vegetation accumulating on the mower deck and within the engine compartment. A critical factor in these incidents was that the mowers were parked inside garages immediately after use. For a short period following the operation, the engine remains at its highest temperature. Equipment should be allowed to cool and remain parked away from combustible materials for at least ten minutes before being placed in a garage or shed.

Homeowners should routinely clear equipment decks, cutting blades, and surrounding areas of debris and combustible materials. Fire extinguishing equipment should be readily accessible. By following these precautions, the risk of fire associated with utility and heavy equipment can be significantly reduced.

The incident shown in the photographs below involved a witnessed fire that originated at the riding lawnmower shortly after it was parked inside the garage. The mower had been operated for more than two hours in tall, dry grass and was driven directly into the garage after use. The photographs illustrate the extensive damage caused by this otherwise preventable mistake.





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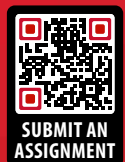


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MCA found that a significant number of heavy-equipment fires involving logging and farming machinery were attributable to inadequate maintenance and the accumulation of dry vegetation contacting the exhaust system. Many of these fires originated in the exhaust, particularly on equipment with horizontal exhaust configurations, where wood chips and other debris can readily accumulate. While production demands are understandable, the lack of routine cleaning within the engine compartment remains a leading cause of heavy-equipment fires.

Preventive measures are essential for both industrial and residential equipment. Regular maintenance, including inspection of fuel lines, electrical wiring, hydraulic hoses, and engine components, can substantially reduce the risk of failure. Cleaning the exhaust system and surrounding areas is critical for fire prevention. Although stopping production to clean equipment during a shift may seem counterproductive for farmers and loggers, practical solutions exist. Based on field experience, keeping a small leaf blower readily available and taking breaks to inspect and clean the engine compartment, particularly near the exhaust, is an effective and reasonable preventive practice.

In the photographs below, the logging harvester experienced a fire in the engine compartment due to inadequate maintenance. In the second photograph, a large accumulation of wood chips and debris is visible.



g. Other Common Causes

Other common causes of fire were identified in the dataset, though in smaller numbers. Although these fire causes are less frequent than those discussed above, they collectively accounted for nearly 15% of the dataset.

i. Vehicular (4.1%)

Fires involving cars, trucks, and other vehicles are often caused by mechanical or electrical failures, fuel leaks, or overheating components. These fires can occur both on public property and in residential garages. **Prevention Tip:** Maintain vehicles regularly, inspect fuel lines and wiring, and store nearby combustible or flammable materials safely.

ii. Incendiary (4.0%)

The general public often perceives arson to be far more prevalent than it actually is; however, incendiary fires are relatively uncommon in Wisconsin. Among intentionally set fires, 51% occurred in the southeastern quadrant of the state, primarily in and around Milwaukee. These fires often involve residential or commercial structures and can start in hidden or hard-to-access areas. **Prevention Tip:** Install security measures, maintain awareness of suspicious activity, and secure combustible materials to reduce opportunities for intentional ignition.



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iii. Spontaneous Combustion & Self-Heating (2.9%)

The term *spontaneous combustion* or *self-heating* is used because these incidents typically occur without an external or obvious ignition source. Instead, heat is generated internally by chemical reactions within the materials. Oil-based paints, stains, and varnishes are particularly hazardous because they oxidize and generate heat, especially when rags or other absorbent materials are piled, compressed, or confined.

Through investigations and field experience, MCA has encountered even seasoned professional painters and stainers who report routinely disposing of used staining rags in bags or buckets without incident. However, documented cases demonstrate that ignition can and does occur under these conditions. Additionally, many members of the public perform similar work without professional training or awareness of these hazards. **Prevention Tip:** Rags or materials contaminated with oil-based products or animal byproduct-based substances should be either fully submerged in water or laid out individually to dry in a well-ventilated area, allowing heat to dissipate safely.



iv. Natural Gas (CSST) (1.9%)

Gas corrugated stainless steel tubing (CSST) fires occurred most frequently during Quarter 3 of the year (78%). This timing aligns with Wisconsin's stormiest months, when lightning activity is most common. During a nearby lightning strike, electrical energy can be introduced into a building's grounding system. If CSST is not properly bonded, that energy can arc to the tubing, causing pinhole perforations that allow natural gas to escape and ignite. **Prevention Tip:** Ensure CSST systems are installed and bonded in accordance with manufacturer specifications and applicable codes. Periodic inspections of gas lines, particularly

following severe storms, can help identify damage early.

The following photographs show an unbonded CSST Gas pipe. A nearby lightning strike to a large tree traveled underground to this unbonded CSST pipe, creating a pinhole and allowing more pressurized gas to fuel the fire.



v. Explosion (0.9%)

Fires originating from explosive events include pressurized containers, compressed gases, or combustible dust incidents. These events can cause rapid ignition and significant property damage, often compounding secondary fire hazards. **Prevention Tip:** Store pressurized containers safely, follow manufacturer instructions, and maintain proper housekeeping to prevent dust accumulation.

vi. Dryer (0.9%)

Fires caused by lint accumulation, overheating, or mechanical failure in clothes dryers can start behind walls or in confined spaces, making early detection difficult. **Prevention Tip:** Clean lint screens and ducts regularly, inspect venting systems, and avoid leaving dryers unattended while in use.

h. Undetermined Fires

A significant portion of the fires reviewed, approximately 15.6% of the total dataset, were classified as undetermined. While this percentage may appear high compared to other fire statistics, it reflects a conservative, evidence-based investigative approach rather than a lack of findings.

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In many fire investigations, there is pressure to assign a specific cause even when the physical evidence does not support a conclusion with reasonable certainty. This can result in causes being forced or inferred. An undetermined classification is used when fire damage, scene conditions, or the absence of reliable indicators prevents a cause from being identified without speculation. Common contributing factors include extensive fire damage, structural collapse, suppression activity, or multiple potential ignition sources within the area of origin.

Classifying a fire as undetermined is not a deficiency in the investigation, but an acknowledgment of the limitations of the available evidence. This approach is consistent with accepted fire investigation principles and helps preserve the integrity of the data. By avoiding unsupported conclusions, the dataset more accurately reflects real-world fire conditions and prevents distortion of fire-cause trends that could otherwise mislead prevention efforts or public understanding.

VI. Summary

Fire has existed throughout the history of the universe. Fires caused by natural forces, or those that spread beyond human control, are often the most difficult to prevent. However, the fires investigated by MCA demonstrate a clear and consistent reality: the overwhelming majority are the result of human error. Across thousands of investigations, MCA has encountered countless victims, many injured or killed, due to their own actions or the negligence of others. Despite this, the true human impact of fire loss is not discussed as often as it should be, and national fire statistics are frequently incomplete, inconsistent, or misreported. Increasing education and awareness remains one of the most effective ways to reduce fire-related injuries, deaths, and losses. While some fires are unavoidable, many are preventable.

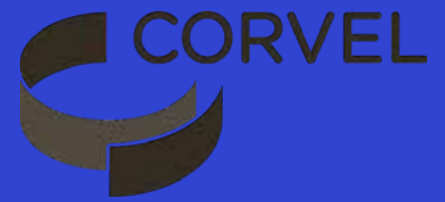
Do-it-yourself projects can be beneficial and provide a sense of accomplishment, but they also carry significant risk when individuals exceed their level of training or experience. Licensed electricians

should perform electrical work. Qualified professionals should complete gas and plumbing work. Attempting complex or code-regulated work without proper knowledge can introduce hidden hazards that may not present themselves until a fire occurs. When uncertainty exists, hiring licensed, insured, and properly qualified professionals is not only prudent; it is a critical life safety decision.

Another often-overlooked consequence of fire loss is its impact beyond the immediate victim. MCA routinely assures fire victims that, if it has not already occurred, someone they have never met will step forward to help them. That assistance is a tangible outcome of fire victimization. An equally important, though less visible, result is that those who learn about a fire are often prompted to take proactive steps of their own, such as checking smoke alarms, reviewing escape plans, or reconsidering unsafe habits. In this way, every fire carries the potential to prevent the next one.

Fire prevention is widely discussed, yet the most common and preventable causes identified in this article are often overlooked in broader conversations. The findings presented here are specific to Wisconsin, but the lack of a comprehensive, independent national fire cause database limits broader comparisons. Thousands of independent investigators and firms operate across the country, yet consistent reporting of fire causes, locations, and contributing factors remains limited. While many fire trends are similar across regions, others vary significantly based on climate, housing structures, and local practices.

There is also a need for greater consistency and transparency among independent investigative firms. Too often, findings are used solely to support insurance claim determinations and are not systematically tracked or shared. For the sake of public safety, more firms must collect, analyze, and report their data in a way that enables meaningful comparisons with public agencies and law enforcement. Far too many causes of fire loss remain underreported or undocumented.



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MCA hopes this article not only provides useful insights for insurers, adjusters, and professionals but also serves as a practical resource for the general public. Increased awareness, informed decision-making, and attention to everyday hazards can save property and, more importantly, lives.

Author Biography:

Don VanOss is the owner of Midwest Consulting and Associates and a Certified Fire and Explosion Investigator with more than twenty years of experience specializing in origin and cause investigations. He holds a bachelor's degree in criminal justice and a master's degree in business, with an emphasis in Organizational Leadership and Quality.

Based in the Fox Valley region of Wisconsin and the Upper Peninsula of Michigan, Don has conducted more than 4,000 fire investigations throughout his career, encompassing both first- and third-party losses. Before founding his firm, he served as a Special Investigations Unit (SIU) Manager, investigator, and loss-analysis consultant, during which time he developed a comprehensive, methodical approach to complex fire investigations.

References

- 1 Consumers can visit www.cpsc.gov to cross-reference their dehumidifier with the published recall information regarding fire and electrical failures.
- 2 <https://www.nfpa.org/education-and-research/home-fire-safety/candles>

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The Jury System From the Perspective of a Lawyer Picked for Jury Duty

by: Erik M. Gustafson, von Briesen & Roper, s.c.

At last April's WDC Spring Conference, Heather Nelson presented a panel of jurors who sat on a trial in which she was involved earlier in the year. This panel provided interesting insight on the jury system from the perspective of "normal people" (*i.e.*, nonlawyers).

On February 16 and 17, 2026, I was summoned for jury duty in Milwaukee County. This provided me with a perspective of juries in the 21st Century from the perspective of a lawyer. While my coverage practice has taken me into many a courtroom, my time in courtrooms consists of scheduling conferences and motion hearings, not juries. If memory serves, this was the first time I was in a courtroom for jury selection since I was a circuit court intern during my 3L year.

I. Jury Assembly Room

Pursuant to the summons, I first reported to the jury assembly room at 8:00 a.m. on Monday the 16th. Upon checking in, I found that a number of early arrivers had beat me to all the best seats. Nonetheless, I was able to find a seat with a table where I could start getting to work while I awaited further instruction. Somewhere around 8:30 a.m., a video created by the Director of State Courts Office played, featuring former Chief Justice Roggensack and former Milwaukee County Chief Judge Maxine White, along with a number of other judges throughout the state. The video provided a general overview of the jury system and jury service.

After the video, a representative with Versiti Blood Center of Wisconsin came on screen to announce

that Versiti holds a blood drive for prospective jurors every week in the courthouse, and he invited any interested jurors to come find him. I found this to be an effective coordination as the Milwaukee County Courts have a large group of captive people who might be interested in going to a cooler (by temperature) area of the courthouse for a time. Though I was eligible to donate blood at this time, I decided that wisdom dictated getting to work and billing as much as I could from the courthouse. That work, however, did not last long. Shortly after this video concluded, court staff came over the PA system to announce the first set of jurors. I was part of the thirty selected for this first case.

Upon going to the marked areas of the floor for jurors going to a courtroom, I immediately sensed that this would be a civil jury because a law clerk was handling the jury. My suspicion gained some support when we went to the fourth floor of the courthouse, which I recalled as being the floor I most commonly visited for hearings in civil matters I was arguing. This was quickly confirmed in the courtroom, presided over by Judge Reyna Morales.

II. The First Jury Selection Process

Upon entering the courtroom, I quickly noted the plaintiff's table had two attorneys with a client-looking person at the front table, and another person at the rear table. The defense table had a single person at it. When Judge Morales read the caption of the case, I came to the conclusion that this was likely an uninsured/underinsured motorist dispute because the same insurance company was listed as an involuntary plaintiff and a defendant. The Court

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began with a standard set of questions that anyone who has visited the Milwaukee County Courthouse has likely seen: Name, city of residence, occupation, marital status, and hobbies. All thirty members of the panel answered these questions going down the line. Among the interesting people on the panel were two Milwaukee Brewers staffers, and a retired attorney.

Plaintiff's counsel, Allan Foeckler of Cannon & Dunphy, began his *voir dire*. Attorney Foeckler asked a number of questions about experiences with car accidents and insurance companies, all very expected questions.

Attorney Foeckler's questioning made clear that the primary dispute here was damages, with the insurance company relying on a records review IME. He asked many questions that got around the point to whether a doctor who is providing an opinion on a person should actually meet the person. The general consensus of the jury pool was "yes."

Defense counsel asked the group about believing a treating physician who says that a person is fully healed years before a lawsuit comes around. Attorney Foeckler objected to this line of questioning as getting into the facts of the case too much; this surprised me because it seemed to be only a slight deviation from the "hypotheticals" that Attorney Foeckler presented to the panel. Judge Morales sustained the objections, and defense counsel instead pivoted his questioning to asking if people can keep an open mind and see the evidence before judging whether the insurance company or the insurance company's doctor was in the wrong.

Voir dire ended right about at lunch, so Judge Morales released the jurors for lunch while the attorneys considered strikes and selected the final jury. Thus, upon returning from lunch, Judge Morales quickly announced that the jury had been selected and announced the names of those who would stay. Not surprisingly, I was not selected for that jury. I suspected that I was out as soon as Attorney Foeckler learned that I was an insurer-side coverage attorney. I thought that I could've been fair

in a valuation claim, thought I might have struggled if the case included a bad faith claim—something that was not clear from jury selection.

At this point, those who were not selected for the panel in that case were instructed to return to the jury assembly room. I was candidly not sure if my service was complete having gone through jury selection, but I quickly found it was not.

III. Between Cases

Upon returning to the JAR, after some tables opened up, I was able to work for a short time before my name was again called. I quickly inferred that this was going to be a criminal case because a deputy was now in charge of marshalling the jury, and we headed toward the safety building. A handful of people who were in the pool for Judge Morales' courtroom were again in this pool.

IV. The Second Jury Selection

We walked toward the Safety Building, confirming this was going to be a criminal case. We ended up in Judge Katie Kegel's courtroom. As in Judge Morales's courtroom, Judge Kegel asked a number of standard questions, though the list was slightly different than the civil courtroom in that it omitted discussion of hobbies and placed questions in a slightly different order. Judge Kegel also asked many questions related to the process to ensure that everyone would treat the defendant fairly and not make any assumptions based on his prosecution. Naturally, when my turn came, and I stated that I was a lawyer, Judge Kegel asked for further details about my work and my employer. Both Judge Kegel and the attorneys asked questions of me to nail down my experience in criminal matters. I confirmed that my only interaction with criminal law was in my Wisconsin Supreme Court clerkship; all my legal work has been in the judiciary or in the insurance industry.

The case involved two related charges, felon in possession of a firearm and bail jumping for possessing a firearm. The prosecutor's questioning



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focused on thoughts toward police and guns. The most interesting question he asked was if anyone was a member of the NRA, which no one was.

Defense counsel's questioning was far shorter, primarily focusing on the rights of the accused and guns. His questioning was aimed more at finding people who had a particularly unfavorable view of guns, which many on the panel did.

By the end of *voir dire*, I had the suspicion that I might end up on this jury panel based on the number of people who claimed to have scheduling conflicts and who had strong opinions about the police and/or guns. After the attorneys finalized jury selection during the afternoon break, I learned that my prediction was correct: I was one of the fourteen jurors selected to go through trial.

Jury selection ended around 4:45p.m. on Monday. We were informed that, by local rule, all court business must end at 5:00 p.m. Those who were not selected were released to grab their belongings and leave, while those selected received a few more instructions before being sent away with instructions to provide contact information to the deputy who had been in charge of the jury. When I gave him my phone number, the deputy was shocked that a lawyer actually got picked for a jury.

Judge Kegel directed us to return by 8:45 a.m. the next morning so that trial could begin by 9:00 a.m.

V. The Trial

Thirteen of fourteen jurors appeared Tuesday morning—one apparently called in sick. During opening statements, we learned a little more about the case. The charges arose out of the same incident in which the State alleged that the defendant possessed a firearm outside his house during a shooting in the summer of 2025. The prosecutor led us to believe that the only real question for both counts is whether he could prove beyond a reasonable doubt that the defendant possessed a firearm because the other elements were easily proven. In what became a trend for the trial, defense counsel waived his right to an opening.

The prosecutor then began with his witnesses. First up was a third-party witness who happened to be in the area when he heard gunfire erupt. He took a photo of someone who he thought was part of it, who he identified as the defendant. At least to my eyes, I was not so sure that the photo shown to the jury (via screen only) was actually the defendant, based primarily on dramatically different hairstyles. This witness nonetheless identified the defendant as a person who he saw involved and was excused after no more than fifteen minutes of testimony.

The prosecution then called a detective to the stand, and this questioning was primarily focused on setting foundation for security camera footage from a nearby park. The cameras did show a person getting out of a pickup truck with an arm pointed as though to be pointing a firearm at another group of individuals. Shortly thereafter, persons playing basketball at the park began running from the area. Because the focus of the cameras was on the park, the person getting out of the pickup truck was in the background, so the video was not particularly clear at that distance.

In an attempt to persuade the jury that the person seen on video was the defendant, the prosecution called a different detective who had conducted a videotaped interview of the defendant. In this first interview, the defendant described being in a work truck similar to the one seen on video and describing his clothes for the day as matching what was seen in the person on the video. However, he steadfastly denied having a gun, readily acknowledging that he knew he was not allowed to possess a firearm.

He had a different detective then testify concerning a third interview he conducted with the defendant. In this interview, the defendant told the same story at first, before admitting to possessing a .22 caliber pistol. He stated in this interview that he fired it only once, in the air, to help disperse matters. We learned through these interviews that the defendant was at his girlfriend's house, where he often resided, with the children he had with this girlfriend. The other group that came to the house with the intention of shooting (and presumably killing) the inhabitants, were a woman with whom the defendant had a

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prior relationship, and who had given birth to a few more of the defendant's children. Thus, the defendant's story ultimately made sense in that he was attempting to keep the peace between two factions of his own family to avoid seeing any of his children seriously injured or killed.

By this point, the prosecution's theory was coming together. The prosecution had entered into evidence through a detective court records showing that the defendant had been convicted of felony operating a vehicle without consent in 2003, and he had been released on bail in a previous matter with one of the conditions being no possession of a firearm, and no further violation of the law. As the prosecutor promised during opening statements, the only real question was whether the defendant possessed a firearm as alleged. Based on what we had seen thus far, the answer appeared to be yes, though I, at least, still had some questions about the prosecutor's case.

In one of the final sets of testimony for the day, the prosecutor recalled one of the detectives primarily to ask if Milwaukee Police found any .22 casings at the scene. To my surprise, the detective answered that he was unaware of any .22 casings. Based on opening and other testimony, I was of the impression that police found a .22 shell in between two of the houses, on its own. This presented a potential problem for the prosecution because there was now no direct corroborating evidence for the confession showing that the defendant possessed a firearm. At most, the state had shown that the defendant confessed to possessing a firearm and that his story concerning the events of the day were a general match to the video. At least in my mind, defense counsel had a real opportunity to secure an acquittal if he could provide a reasonable basis for the jury to disbelieve the confession.

Defense counsel, however, did not call any witnesses (including his own client, who exercised his right to stay silent), and in fact did not extensively cross-examine many of the state's witnesses. Further, I thought there were many opportunities for defense counsel to object to leading questions by the prosecutor or testimony without foundation, though

I could understand in the moment why defense counsel would not object because it was unlikely to get him anywhere as all the objectionable questions could have been cured.

This trend continued in closing arguments. The prosecutor gave a closing that was essentially as expected based on the evidence. Defense counsel gave a closing argument, but it was short and candidly not satisfying. Defense counsel made some reference to the figure in the video not being entirely perceptible as his client. He barely acknowledged the confession, questioning whether it really should count, but not giving any compelling reason to disbelieve it.

VI. Deliberations

Jury instructions ended around 4:00 p.m. The jury recalled that court activities had to end at 5:00 p.m. To no one's surprise, upon entering the jury room for deliberations, I was quickly selected as the foreperson. I thought the most efficient way to go about this was to start with the elements of each crime that appeared easy: that the defendant was previously convicted of a felony (for purposes of a felon in possession count), and that the defendant was subject to conditions of bail that prohibited possession of a firearm (for purposes of bail jumping). Everyone quickly agreed that the state proved its burden on these elements.

Discussions on the question of whether the defendant possessed a firearm were more lively. A number of jurors were quick to believe guilt based on his confession. They did not see any reason why he would have given a false confession to the police. Another group of jurors was a little more skeptical because they could see an analytical path to acquittal if the defendant had admitted to possessing the .22 in order to protect one of his children who in fact had possessed that firearm and (perhaps) fired a warning shot at some point.

This latter group was also somewhat concerned about timelines. They were ready and willing to believe beyond a reasonable doubt that the



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defendant possessed a firearm at some point during the summer of 2025, but they were more hesitant to reach that conclusion as to the specific date alleged. Thus, at approximately 4:30 p.m., I sent a series of three interrelated questions to the Court concerning whether the jury had to unanimously agree that he possessed a firearm on the date alleged, what “on or about” the date alleged in the Information meant, and what the verdict should be if the panel all agreed that the defendant possessed a firearm at some point in the summer of 2025, but were less than unanimous as to the specific date alleged.

After about fifteen minutes, we began to wonder if asking these questions would backfire because we did not have to return the next day just to deliberate for a short period of time. While we were waiting, we discussed the third element of the bail jumping charge, which was that the defendant intentionally violated the terms of bail. The jury unanimously agreed that, if he possessed a firearm, he did so intentionally.

At 4:45 p.m., we received a written response from Judge Kegel. The response was, candidly, not very useful, though I was not overly surprised. Essentially, the Court directed us to read “on or about” in a normal, rational way. With this instruction, we resumed discussion about whether the defendant possessed a firearm. After a few minutes of discussion, the panel unanimously agreed that the State had carried its burden to prove that he had. Thus, I signed the proper verdict forms and sent a message to the Court that the verdict was ready.

A number of members of the jury appeared in agreement with my thoughts, which was that neither side did a particularly great job. We were not entirely sure based on the video and other evidence presented that the figure in the video was the defendant. At the same time, we were not given any reason by the defense not to believe the confession. Thus, with the confession and the surrounding evidence, we saw no reasonable doubt for the conclusion that the defendant had possessed a firearm.

After sending the message that the jury reached a verdict, the deputy came to take us into the courtroom. Consistent with standard practice, the Court read the two verdict forms. Both the prosecution and the defense asked to poll the jury after reading the verdicts, and the jury all agreed that the verdicts read were the verdicts for which that jury had voted. The Court then thanked us, informed us that we could now talk to anybody about any aspect of the trial that we wished, and sent us into the jury room. I stayed in the jury room briefly because Judge Kegel indicated she would be coming back. One other juror stayed, as well. I asked if it was common in the criminal realm for attorneys to reach out to jurors. Judge Kegel indicated that it was not. Earlier—I believe while waiting for our questions to be answered—it was mentioned to the jurors that attorneys will sometimes reach out to jurors, and while they are under no obligation to speak to the attorney, attorneys often find it quite valuable if they do. Judge Kegel, though, confirmed my suspicion that such post-trial conversations with jurors are less common in the criminal realm because the attorneys simply do not have the time to do so.

In walking out of the courtroom, I saw defense counsel and asked if he would like to speak. He readily agreed. I shared feedback that the jury was generally open to acquitting the defendant, but we would have needed a reason not to believe the confession. Defense counsel intimated that he understood that concern but was unable to come up with a good reason not to believe the confession. He explained that his client took the matter to trial based on an evidentiary issue that could have gotten the confession excluded from trial. However, Judge Kegel had denied his motion to exclude the confession, so he felt like he needed to go through trial in order to preserve the issue for a potential future appeal.

This made sense to me, and quite frankly comforted me about the process. Though I am not a criminal lawyer, the legal doctrine recited, if it in fact exists as described by defense counsel, made sense as a defense strategy, especially with multiple jurors



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expressing that the State would not have met its burden of proof without the confession. This gave me some comfort that defense counsel was not deficient. Further, the prosecutor's case made more sense in that he likely saw no need to waste too much time with cumulative evidence in light of the confession. (I never saw the prosecutor, and he has not reached out in the four weeks between trial and writing of this article.)

VII. Conclusion

Overall, I came away comforted in our system. I thought Judge Kegel did a very nice job presiding over the trial in a fair and efficient manner. Though I had some questions about both sides' legal strategy during the trial, I came away with an appreciation and understanding that both sides did what made the most sense for their respective clients. This highlighted how trials are standard fare for criminal lawyers, in contrast to most civil attorneys for whom a trial would be the highlight of the year.

I also came away with a greater appreciation for juries themselves. The panel really was a cross-section of young to old, blue collar to white collar, etc. All members of the jury put legitimate thought and concern into the deliberation process.

My biggest takeaway from this trial is the value in acknowledging and addressing the obvious holes in your case. While I am not sure what explanation defense counsel could have given that would have been satisfying (and consistent with the evidence—arguing that the defendant gave a false confession in order to protect a family member likely would have required some evidence that he actually did so), a stronger attempt might have resulted in an acquittal. I suspect that the jury was closer to an acquittal than anyone else in the courtroom realized.

Author Biography:

Erik M. Gustafson is an Income Shareholder at von Briesen & Roper, s.c., in the Milwaukee office. His practice focuses on insurance coverage (both first- and third-party) and appeals. Erik graduated from Marquette University Law School, magna cum laude, in 2017, where he was Technology Editor of the Marquette Law Review and earned a certificate in litigation practice. Prior to joining von Briesen, Erik was a law clerk at the Wisconsin Supreme Court and associate at a Milwaukee law firm.

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The Strategic Value of Appointing a Special Master or Court-Appointed Neutral for Discovery in Complex Litigation

by: Jeffrey A. Conen, Hansen Reynolds LLC

This article is a follow up to Using a Section 805.06 Referee To Resolve Coverage Disputes by: Monte E. Weiss, Weiss Law Office, S.C. which appeared in the Wisconsin Civil Trial Journal, Winter 2025 edition Volume 23 Number 3.

Modern civil litigation, especially business, construction, employment, insurance, and class action or multi-party cases, has transformed discovery into one of the most resource-intensive and contentious phases of litigation. The exponential growth of electronically stored information (ESI), coupled with heightened proportionality requirements, privilege complexity, and motion practice, has placed extraordinary pressure on trial courts and litigants alike.

Federal rules, Wisconsin statutes, and nationally-recognized best practices all converge on a common solution: the strategic appointment of a Special Master, referee, or Court-Appointed Neutral to manage discovery in complex cases. Far from being an extraordinary measure, the use of Discovery Neutrals reflects a mature, pragmatic approach to modern case management.

Federal courts have explicit and flexible authority to appoint Special Masters under Federal Rule of Civil Procedure 53(a)(1)(C) to address pretrial matters that “cannot be effectively and timely addressed” by the district court. Complex discovery disputes, especially those involving ESI, fit squarely within that framework. Rule 53 establishes a structured framework for appointing and supervising a

Special Master while preserving the court’s ultimate authority over the case. Before appointing a Master, the court must give the parties notice and an opportunity to be heard, and parties may suggest candidates.

The Federal Rules also set forth the required contents of the Order. The Appointing Order must define the Master’s duties and limits of authority. Unless limited by the appointing order, a Master may regulate proceedings related to assigned duties, take appropriate measures to perform those duties efficiently and fairly, along with conducting evidentiary hearings, including compelling and recording evidence. A Master may also impose non-contempt discovery sanctions under Rules 37 and 45 and may recommend contempt sanctions to the court. This Rule further requires the Order specify whether and when ex-parte communications with the Court or a party are permitted, identify what materials constitute the record of the Master’s work, establish procedures, deadlines, and standards of review, and set the basis and method for compensation. This authority suggests that courts are encouraged to manage discovery actively and creatively when traditional motion practice proves inefficient.

Wisconsin courts have similar authority under Wis. Stat. § 805.06, which authorizes the appointment of a referee “in all cases.” The statute grants broad discretion to define the referee’s powers and permits the court to adopt, modify, or reject the referee’s findings and recommendations. Wisconsin’s discovery statutes also emphasize judicial control over discovery that is unduly burdensome,

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expensive, or disproportionate. In complex cases, particularly those involving ESI, the appointment of a Discovery Neutral provides Wisconsin judges with a practical mechanism to exercise that control without diverting limited judicial resources from other matters.

The appointment of Discovery Neutrals is also suggested by The Sedona Conference. This is a nonprofit, nonpartisan legal think tank dedicated to advancing the law and practice of complex litigation, with a particular focus on eDiscovery, information governance, and emerging technologies. It is best known for its influential Sedona Principles, which provide practical, consensus-based guidance widely relied upon by courts, litigators, and discovery professionals nationwide, including Wisconsin and the Federal Courts.¹ This document states that discovery should be “reasonable and proportional to meet the needs of the case.”² Discovery Neutrals are uniquely positioned to operationalize proportionality by evaluating custodian selection, data sources and preservation scope, search methodologies, and production formats. These determinations are often fact-intensive and technical, making them ill-suited to serial motion practice. A Neutral with discovery expertise can make informed, case-specific recommendations that align directly with the Federal and Wisconsin Rules.

Furthermore, The Sedona Principles highlight cooperation as a cornerstone of effective discovery.³ In practice, cooperation often diminishes under the pressure of high-stakes, high pressure litigation. A Court-Appointed Neutral can serve as a stabilizing force—providing structure, credibility, and accountability when adversarial dynamics threaten to derail discovery. By facilitating dialogue, discouraging gamesmanship, and resolving disputes promptly, Discovery Neutrals help restore professionalism without sacrificing enforcement.

Court-Appointed Neutrals with expertise can assist with a number of matters that routinely arise when dealing with complicated ESI issues. First, the Neutral can assist in defining search protocols and validation by facilitating agreement on

custodians, data sources, time frames, and search methodologies. The methodologies can include keywords, analytics, or TAR (Technology Assisted Review) to ensure the approach is reasonable, transparent, and proportional. The Neutral can also oversee validation through sampling and quality-control measures, helping resolve disputes early and providing confidence that discovery results are reliable and defensible. Second, a Neutral can help the parties agree on which metadata fields matter and on a practical production format that works for both sides. Resolving these issues early avoids unnecessary disputes and ensures the production is usable and proportional. Finally, a Neutral can help the parties establish clear privilege review and clawback procedures, including the use of privilege logs and non-waiver agreements. By setting these ground rules early, the Neutral reduces disputes and protects against inadvertent waiver while keeping discovery efficient and proportional. As a result, courts are assisted in informed and flexible decision-making rather than rigid, one-size-fits-all discovery orders.

Discovery delay is a driver of cost escalation and strategic abuse. Unresolved discovery disputes can distort litigation outcomes and settlement leverage. Discovery Neutrals mitigate these risks by resolving disputes on accelerated timelines through informal conferences, targeted technical hearings, or prompt written recommendations. Therefore, courts retain ultimate authority while benefiting from rapid issue resolution that keeps cases on track.

Contrary to common perception, the use of a Discovery Neutral often reduces overall litigation cost. Discovery expenses should be allocated fairly and proportionately.⁴ Both federal and Wisconsin rules expressly permit courts to allocate Special Master compensation equitably, including consideration of party conduct. When Discovery Neutrals prevent serial motions, excessive production, or discovery abuse, their involvement frequently yields net savings—both for litigants and the court system.

The Sedona Conference commentary repeatedly



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observes that disciplined, transparent discovery promotes earlier and more informed settlement. By narrowing disputes, clarifying evidentiary realities, and removing discovery as a strategic weapon, Discovery Neutrals help parties assess risk realistically and move toward resolution. In many cases, this process advances settlement without formal mediation, simply by restoring balance and predictability to discovery.

The Federal Rules of Civil Procedure, the Wisconsin statutes and procedural rules, and The Sedona Principles all point in the same direction: effective discovery in complex litigation requires active, informed, and proportionate management. The appointment of a Special Master, referee, or Court-Appointed Neutral is therefore not an extraordinary remedy, but a best practice grounded in procedural authority and broad national consensus. When carefully selected and properly scoped, Discovery Neutrals advance the central goals of the civil justice system—fairness, efficiency, proportionality, and the conservation of judicial resources. As electronically-stored information continues to expand in both volume and complexity, courts and litigants increasingly benefit from Neutrals with judicial or litigation experience who can assist in managing discovery disputes, developing search protocols, and supervising complex production issues. Many retired judges and experienced practitioners now serve in these roles, providing practical case management support while allowing courts to focus on the merits of the case.

Author Biography:

Jeffrey A. Conen joined Hansen Reynolds LLC in 2020 after a 23-year career as a Milwaukee County Circuit Judge, in which he presided over 400 jury trials in both civil and criminal cases. Prior to serving as a Circuit Judge, Jeff was elected Municipal Judge in the City of Glendale and was in private practice, handling a variety of civil and criminal litigation matters. His extensive background as a judge and experience in private practice gives Jeff the unique ability to see the parties' needs and interests from a neutral position in a wide variety of legal areas.

Jeff has served on the faculty for the Office of Judicial Education for over 25 years and has taught judges in the areas of evidence, alternative dispute resolution, domestic violence and a variety of civil litigation matters. This, combined with his years on the bench, has given him the foundation needed to consult on effective trial presentation, evidentiary analysis, and jury selection.

Jeff's practice concentrates on mediations, arbitration, trial and jury consulting, and general civil litigation. He has a passion for finding alternative ways to resolve disputes in a quick and cost-effective manner.

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- 1 *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1 (2018).
- 2 *Id.* at 111.
- 3 *Id.* at 30.
- 4 *Id.* at 187.



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 - Verdict amount; and
 - Any other interesting information, issues, rulings, etc.
-

Glenn Travnick v. Rodney Firari, et al.

Dodge County Case No. 24-CV-61

Trial Dates: February 3-4, 2026

Facts: This case arose from a snowmobile accident that occurred on February 10, 2021, in The Town of Fox Lake, Dodge County, Wisconsin. The plaintiff, Glenn Travnick, claimed that he was operating his snowmobile when he was struck from behind by a snowmobile operated by the defendant, Rodney Firari. Mr. Travnick claims that he was thrown 50 feet from his snowmobile and was rendered unconscious for a brief period. Mr. Travnick did not immediately seek medical attention but was evaluated by a chiropractor two days later. He claims that since the accident, he has been in “near constant” neck pain. He went to his Medicare physical on February 22, 2021, and mentioned the accident but did not complain of neck pain and his exam was “normal.” A year later he sought medical treatment. It was not until after suit was filed (three years after the incident) that he went to a pain management doctor.

According to Mr. Firari, he was leading the group. Mr. Travnick was behind him, followed by three others. Mr. Firari could see Mr. Travnick approaching on his left, and he therefore sped up. He told us that this “racing” is something that he and Mr. Travnick would routinely do when they snowmobiled together. They would not do it every time, but they would do it frequently. Mr. Travnick was able to overtake and pull ahead of Mr. Firari. Mr. Travnick was then about 50-75 feet ahead of Mr. Firari when Mr. Firari pulled to the left side of the trail and began to speed up, trying to overtake Mr. Travnick. Mr. Travnick then veered onto the left side of the trail, cutting Mr. Firari off and the collision occurred. Mr. Firari and Mr. Travnick were both ejected from their snowmobiles. Mr. Firari was injured as a result and ultimately sustained a rotator cuff tear. His snowmobile was not drivable after the incident. Mr. Firari does not doubt that Mr. Travnick was injured, but states that he and Mr. Travnick were equally at fault for causing the collision.



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Issues for Trial: Liability was contested with the plaintiff claiming that Firari was 100% at fault and the defense claiming it was 50/50.

Damages were also contested. Mr. Travnick had a pre-existing but not symptomatic degenerative condition of his cervical spine and also did not treat with a medical doctor for a year after the incident. The parties stipulated to the amount of the medical bills but not relatedness. The plaintiff was not claiming his chiropractic bills because his own expert stated that chiropractic care is not reasonable or necessary. Plaintiff was claiming future medical expenses but did not have an expert to testify about the amount. The defense moved to exclude any argument or evidence regarding future medical expenses and the motion was granted.

At Trial: At trial, plaintiff testified and so did his wife. Plaintiff's pain management doctor Arpan Patel of Edgerton Hospital testified by pre-recorded video deposition. The defendant, his brother (who snowmobiled with plaintiff after the incident), and another member of the group snowmobiling with plaintiff on the date of the incident testified. In addition, the defense presented a pre-recorded video deposition of Dr. Ravi Garg, who completed an IME, and the testimony of Gary Yashinsky, a former DNR snowmobile safety instructor.

Plaintiff asked the jury to find that defendant was 100% liable and asked for \$586,000, including \$300,000 in past pain and suffering, \$200,000 in future pain and suffering, and \$86,000 in medical bills.

Defense asked the jury to find the plaintiff and defendant each 50% liable and suggested \$0 for past medical bills but suggested that the portion of the medical bills that pre-dated the lawsuit might be reasonable, \$13,000. Defense suggested \$100,000 in past pain and suffering. Defense suggested \$0 for future pain and suffering but stated if the jury was inclined to make an award something more like \$50,000 would be reasonable.

The jury found that the defendant was 60% liable and the plaintiff 40% liable, and awarded \$206,500, including \$56,500 in past medical, \$100,000 in past pain and suffering, and \$50,000 in future pain and suffering.

Plaintiff's Final Pre-Trial Demand: Plaintiff settled at mediation with the underlying carrier, Farmers, for \$200,000 of its \$250,000 policy and provided a *Loy* Release. Trial proceeded on the umbrella policy that had a \$1,000,000 limit. Plaintiff's last demand from the umbrella carrier was \$200,000.

Defendant's Final Pre-Trial Offer: The umbrella carrier made an offer of judgment for \$50,000 in new money.

Verdict: After applying plaintiff's contributory negligence, the net verdict in favor of the plaintiff was \$123,900, which is less than the underlying policy limit, resulting in no judgment against the umbrella carrier.

For more information, contact Mara Spring at mspring@conwayjosetti.com.



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A large, multi-story brick building with a prominent central tower and arched windows. The building is identified as the Monroe County Court House. An American flag flies on a tall pole in front of the building. The scene is set in winter with some snow on the ground.

CALENDAR OF EVENTS

APRIL 23-24, 2026

2026 Spring Conference

American Club

Kohler, WI

AUGUST 13-14, 2026

2026 Annual Conference

The Kalahari Resort and Convention Center

Wisconsin Dells, WI