

# Failure to Test Ignition Theory Results in Exclusion

Article By:

Fire and Electrical Liability

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The court in ***United Fire and Casualty Co. v. Whirlpool Corp.***, 2011 WL 4375049 (N.D. FL 2011) emphasized the critical importance of testing of an expert's theory. The court held that the expert's testimony was not reliable "because it appears to be based solely on opinions that have not been substantiated. Although testing on exemplars is not required, in an area such as fire science, testing is an important way to show reliability. Without testing or peer-reviewed publications to support is theories, [the expert's] opinion are just that--opinions. Unsubstantiated opinions fail to meet the standard set forth in ***Daubert***."

The expert failed to perform any tests on an exemplar nor did he test his ignition sequence theory that he claims started the fire. His ignition theory had never been published in any peer-reviewed journal of scientific literature or engineering studies. Additionally, the expert in a "remarkably similar case" was excluded by the **Eighth Circuit Court of Appeals** for the same reasons. In excluding the expert, the court concluded that the expert "failed to perform any tests that would support his opinions." Experts who fail to test their ignition hypotheses run a substantial risk of exclusion.

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