

# What is an "Accidental" or an "Undetermined" Fire?

The preeminent reference for fire investigators is the National Fire Protection Association's *Guide for Fire and Explosion Investigations*, NFPA 921. This reference was developed in 1992. Previously, ad hoc and scientifically untested approaches were employed by fire investigators to attempt to determine fire cause. These myths and speculation on fire causation have since been debunked through scientific testing.

The purpose of this article is to address what some have erroneously commented to be as a logical inconsistency between the NFPA 921 guideline in determining fire causation and the definition of an "accident" under a perils based insurance policy.

NFPA 921 brought the scientific method into the fire investigation process, providing credible and reliable evidentiary bases for determining the origin and cause of a fire. Included in that guidance of fire cause determination was the categorization of the cause of a fire into one of four classifications:

1. **Accidental:** the cause does not involve an intentional human act to ignite or spread the fire into an area where the fire should not be.
2. **Incendiary:** intentionally ignited under circumstances in which the person knows that the fire should not be ignited
3. **Natural:** caused without any direct human intervention or action such as lightning, earthquake and wind
4. **Undetermined:** where any opinion regarding the cause is less than probable, or where the fire is still under investigation and cause might be determined later if new information or evidence is discovered.

When one considers this protocol

in the face of a perils based policy that covers the peril of "fire" some have opined that fire cause determination of accidental may affect recovery, particularly as it relates to third parties and subrogation rights. This is an unfortunate consequence of lack of consideration of detail and methodology as it relates to the definitions and interpretation of the word accidental as contained in NFPA 921 and the insurance industry's use and interpretation of the word accident.

Firstly, the term accidental refers simply to the classification of the fire cause and not the responsibility for the fire. NFPA 921 states that "cause" is separate from "responsibility":

*"The nature of responsibility in a fire or explosion incident may be in the form of an act or omission. It may be something that was done, accidentally or intentionally, that ultimately brought about the fire or explosion, or it may be some failure to act or correct or prevent a condition that caused the incident, fire/smoke spread, injuries, or damage. Responsibility may be attributed to a fire or explosion event notwithstanding the classification of the fire cause: natural, accidental, incendiary, or undetermined. Responsibility may be attributed to the accountable person or other entity because of negligence, reckless conduct, product liability, arson, violation of codes or standards, or other means."*<sup>1</sup>

Confusion has arisen in the insurance context when one considers an accidental loss that is outside the control of the beneficiary of the insurance policy. This is based upon the erroneous notion by some that negligent acts are not considered to be accidental in origin. Although NFPA 921 does not consider the impact of

such language and states that, where there is at least a probable level of certainty, the three cause classifications are accidental, incendiary and natural, when one considers that one of the prime functions of negligence law is to provide compensation to accident victims as the result of the negligent acts of others, negligent acts could be responsible for an accidental fire. Thus the protocol of the NFPA is consistent with indemnity under the perils policy and tort compensation based upon accidental fire loss.

Consider a fire that was caused by the flame from a roofer's torch. Assuming that there was no evidence that it was incendiary and the level of certainty was at least probable, the fire would be classified as accidental according to NFPA 921. However, the cause was certainly within the control of the roofer, would not be considered to be accidental within the context of typical policy wording and would clearly have an impact on recovery from third parties. One could see how the insurer for the roofer would like the NFPA 921 classification of accidental, because in insurance terms, the insurer for the building likely would not be able to claim damages against the roofer's insurance if it was accidental in typical insurance parlance. However, that would be a case of misapplying the NFPA 921 meaning to an insurance context.

An investigator following NFPA 921 may assign the responsibility for a fire separate from the determination of the cause as accidental, incendiary, natural or even undetermined. For the example given above, the roofer was responsible for the fire because of their careless or negligent handling of their torch despite the

fact that the cause was accidental. Thus the building insurer should be able to recover damages from the roofer's insurer.

Further, responsibility for a fire may even be assigned when the cause is undetermined. For example, if the origin of an apartment fire has been determined and the only viable potential causes were either tenant careless smoking or careless candle use, then it must be classified as undetermined (because one of two possible causes remains). The responsibility would be assigned to the tenant despite the cause being undetermined. In such cases recovery by the property insurer against

the tenant insurance may be possible, since responsibility was determined, but specific cause was not. We have, however, seen situations where the tenant insurer tries to use NFPA 921's undetermined classification as justification for denying the building insurer's claims, despite evidence that the tenant was responsible for the fire. That is an incorrect manipulation of NFPA 921: Undetermined relates to cause, not responsibility. Of course the wording of different types of policies may also have an impact on recovery.

In summary, when you read that the cause of the fire was accidental or undetermined, read further to

determine who or what was responsible for the fire to determine the insurance coverage or subrogation potential. If the fire investigator has not assigned responsibility for the fire, ask that he or she do that, as it certainly is within their mandate according to NFPA 921.

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1. Paragraph 19.5.1 in the NFPA 921, 2008 edition.