



## News From Our Florida Chapter

### The Chapter President's Message from Michael Reynolds...



The Florida chapter had a great meeting in late October, with 33 members and guests attending. First VP Robert Groelle and Traci Payne (Insurance Network Services-SIU) presented a very informative program that discussed public adjusters and what happens when they commit fraud. Some of those attending the training meeting subsequently joined the NSPII membership.

Our next meeting is planned for February 19, 2009 in the Ft. Lauderdale area. The meeting will be held at the Florida Highway Patrol office, located at 14190 State Road 84 in Davie, Florida. Registration is from 8:30-9:00 AM. Speaking from 9-10 is Frank Goldstein (Goldstein Law Group) whose program is Preparing for Depositions. Following a break and business meeting, Randy Lasure (Rimkus) will present his program on the investigation of dropped object/chipped tile claims. Both classes are approved for Florida adjuster CE credit (1 hour each) for those attending.



We have four new members since our last meeting and as President, I welcome those. The new members include: David Dixon (Unified Investigations & Sciences), Brian Tenzer & Stephen Rosansky (both with the Goldstein Law Group) and Gina Clausen (Groelle & Salmon).

Our annual meeting will be held during the FIFEC (Florida Insurance Fraud Education Committee) conference in Orlando June 10-12, 2009. Information about that conference is available at their website ([www.fifec.org](http://www.fifec.org))

The 2009-2010 NSPII Florida board officers are:

- President: Michael Reynolds (Unified Investigations & Sciences - 904-751-9696)
- 1<sup>st</sup> VP: Robert Groelle (Groelle & Salmon, PA. - 561-963-5500)
- 2<sup>nd</sup> VP: Jon J. Loomis (State Auto SIU - 941-741-8230)
- Secretary: Aimee Nocero (Neilson & Associates, PA - 407-843-6514)
- Treasurer: Timothy S. Kazee (Vernis & Bowling of Central FL. - 386-734-2505)
- Past President: Steve Lucas (Cincinnati Insurance SIU - 386-437-5336)

Our Board Member and Chapter Delegate is Melissa K. McCullough (Vernis & Bowling of Central FL. - 386-734-2505).

We hope to increase our membership this coming year while offering our members more training opportunities. If any member has suggestions for training topics, any particular speakers they would like to hear at a future meeting or if they would like to host a future meeting at their office building, please contact me.

## Federal Authorities Bring Charges in Alleged Florida Arson Scheme, by

J. Patrick Schomaker, Smith, Rolfes & Skavdahl Co., L.P.A.



insurance proceeds by intentionally setting fires to insured properties in exchange for monetary compensation.

On October 24, 2008 six individuals were arrested and in a criminal complaint charged with conspiracy to commit arson in connection

with an insurance fraud scheme. According to the criminal complaint, the defendants worked together during a three month period from August 2008 to October 2008 to set fire to a "target home" in order to collect insurance proceeds. The "target home" was insured with State Farm Insurance Company. According to an affidavit of a special agent of the Bureau of Alcohol, Tobacco, Fire Arms and Explosives, who investigated this scheme, the defendants were employed by, or associated with a Florida public adjusting firm. According to the affidavit, the defendants claimed to have experience burning homes and further claimed they were "efficient" at the scheme and bragged they "do this all the time." According to the affidavit, as payment for their "services" the defendants would receive Six Thousand Dollars (\$6,000.00) in cash, plus twenty percent (20%) of the insurance settlement.

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## Federal Authorities Bring Charges in Alleged Florida Arson Scheme, (cont'd.)

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It is important to note at this time there has been no legal determination regarding the allegations at issue in this case. For more information see the websites for the U.S. Attorney's Office, <http://>

[www.usdoj.gov/usao/fls](http://www.usdoj.gov/usao/fls) and the District Court for the Southern District of Florida at <http://www.flsd.uscourts.gov> or on <http://pacer.flsd.uscourts.gov>, *United States v. Alvarez, et al.*, case number 1:08-MJ-03373-BL6.

## The Florida Senate—Analysis of Law Relating to Admissibility of Expert Testimony and Scientific Evidence. Issue Brief 2009-331, October 2008

### Issue Description

The standards governing admissibility of scientific evidence by expert witnesses are often discussed in the context of two federal court cases. *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), articulated what some scholars characterize as the “general acceptance” test, under which the evidence may be admitted if the court finds that it has “gained general acceptance in the particular field in which it belongs.” That standard governed for most of the 20th Century until the U.S. Supreme Court articulated a different test in the case of *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). Under *Daubert*, and subsequent cases, the Court required federal trial judges to evaluate expert testimony based on factors such as testing, peer review, error rates, and acceptability in the relevant scientific community. The *Daubert* decision is cited for the principle that the judge should be a “gatekeeper” in the area of admission of scientific or similar evidence, and the decision has been embraced by some proponents of litigation reform as prescribing a tougher standard for admission of such evidence. Because it was interpreting the Federal Rules of Evidence, the *Daubert* decision is binding on federal courts. In addition, it has been adopted by some state courts. Florida, however, follows the *Frye* standard. During the 2007 and 2008 regular sessions of the Florida Legislature,

measures were introduced to move the state toward a standard and procedures closer to that articulated in and stemming from *Daubert*. [See, e.g., SB 1960 (2007 Reg. Session) and SB 1448 (2008 Reg. Session).] The purpose of this issue brief is to review the standards governing admissibility of scientific expert witness testimony based on the *Frye* and *Daubert* decisions and other relevant case law, in order to provide the senators with a foundation for evaluating policy proposals in this area. The issue brief also examines the extent to which evidence law in Florida may be prescribed in statute by the Legislature versus in rules by the Florida Supreme Court.

### Background

In Florida, expert witness testimony is used when scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or determining a fact in issue. Expert testimony is used in a wide variety of both criminal and civil actions ranging from issues involving, for example, DNA, blood samples, toxic molds, crime scene reenactments, and battered spouse syndrome. An expert is defined in the Florida Rules of Civil Procedure as “a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special

knowledge or skill about the subject upon which called to testify.”<sup>1</sup> Thomas D. Sawaya, author of a Florida personal injury practice guide, points out that “[t]hese definitions distinguish expert witnesses from lay witnesses and establish the criteria that must be met in order for their opinions to be admitted into evidence and considered by the trier of fact.”<sup>2</sup>

To qualify, an expert must demonstrate knowledge, skill, experience, training, or education in the subject matter.<sup>3</sup> If the subject matter involves new or novel scientific evidence, the party who wants to introduce expert opinion testimony on the evidence must show that the methodology or principle has sufficient scientific acceptance and reliability. This is what is known as the *Frye* standard.

### Frye Standard

The U.S. Supreme Court adopted the *Frye* standard in 1923. At issue was the admissibility of an expert's testimony on the result from a systolic blood pressure deception test (an early form of a polygraph test) taken on a defendant who was accused of second-degree murder. The Court considered this test a new and novel scientific theory of its time and held that:

while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific

principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.<sup>4</sup>

As a result of this standard, expert opinion testimony based on a new or novel scientific principle, theory, or methodology is admissible only when the scientific principle, theory, or methodology is generally accepted in the field in which it belongs. The procedures followed to apply the technique or process must also be generally accepted in the relevant scientific community.<sup>5</sup>

Florida first applied the *Frye* standard in 1989<sup>6</sup> when it evaluated whether refreshed posthypnotic testimony of a defendant accused of murder was admissible. In the case, the Florida Supreme Court examined the practicality and reliability of posthypnotic testimony by evaluating the history of its admissibility in what the Court described as a “rollercoaster ride through the courts.”<sup>7</sup> While the Court acknowledged that the *Frye* test had come under some criticism since its inception in 1923 as too harsh and inflexible, it found that other recognized judicial approaches to admissibility of expert testimony on this particular subject were not applicable to this type of testimony.<sup>8</sup>

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