

**VERDICT: Defense, home fire alleging unattended heaters used by stucco contractor.**

A Bozeman jury found 12-0 that Cornerstone Wall Systems was not negligent in connection with destruction of Gary & Pauline Sager's home by fire.

Sagers purchased property in Bridger Canyon in 2003 to build their 6,000 sq ft home and bed & breakfast. Construction started in 2004 and was 90% complete 12/6/05. Cornerstone had been applying a stucco product to the exterior. The work areas were tented with Rhinohide and heated with "Mr. Heater" propane heaters. Sagers contended that they were improperly left unattended in violation of the Fire Code and provisions & warnings in the Mr. Heater manual. At 6:15 a.m., Gary Sager, who lived with his wife and son in a nearby carriage house, discovered fire on the west end of the house and drove to the site. Sagers testified that they discovered fire in the immediate vicinity of the Mr. Heater units. VFDs responded. There were competing reports as to whether the fire started inside or outside. The house was determined to be a total loss. Gallatin Co. Fire investigator Gregg Heath concluded that the heater was the cause of the fire. Cornerstone contended that he leaped to conclusions and did not perform a proper investigation. Experts retained by Sagers' and Cornerstone's insurers investigated the scene 12/8. Lynn Davis concluded that the heater caused the fire; Lonnie Larson concluded that it did not. Cornerstone owner David Hoover apologized to Sagers the day of the fire, which Sagers claimed was an admission against interest. Hoover admitted that he had read the Mr. Heater manuals and they specifically required that the units not be left unattended. Sagers contended that homeowner covenants were binding on Cornerstone and specifically required compliance with the "National Fire Protection Codes." Even though the covenants were never provided to Cornerstone, Judge Salvagni permitted testimony that they were binding and required compliance with fire codes which prohibited unattended use of the heaters.

Plaintiffs' expert: Lynn Davis, Portland (fire cause & origin).

Defendants' expert: Lonnie Larson, Huntley (fire cause & origin).

Plaintiffs' initial demand of \$1 million policy limits was rejected; Cornerstone offered \$150,000 8/29/11; Plaintiffs demanded \$865,000 8/30/11; Cornerstone offered \$265,000 the same day. On the day of trial Cornerstone offered to settle on a complete mutual release; Plaintiffs made no counteroffer. Jury request, \$1.73 million actual construction cost at time of fire plus 10% interest; jury suggestion, 0.

Jury deliberated 3 hours including lunch 5<sup>th</sup> day.

***Sager v. Cornerstone Wall Systems and Hoover, Gallatin DV 07-622, 9/26/11***

David McLean & Ryan Willmore, Missoula, and Troy Bentson, Bozeman (Browning, Kaleczyc, Berry & Hoven), for Sagers (Zurich Ins.); James Halverson & Thomas Mahlen (Halverson & Mahlen), Billings, for Cornerstone and Hoover (FUMIC).