

## SUPPLEMENTARY INFORMATION

### *A Survey of District Court and Associate District Court Judges in Texas and Oklahoma*

#### Background questions

1. How many years have you been on the bench and how many years in the legal profession overall?  

On the Bench \_\_\_\_\_ years

In the Legal profession \_\_\_\_\_ years
2. How familiar are you with prescribed fire? Please provide an explanation.
3. What potential benefits do you associate with the use of prescribed fire?
4. What are the potential negative aspects that you associate with the use of prescribed fire?
5. Have you ever heard a case about damages sought for personal injury or property damage resulting from an escaped prescribed fire or smoke from a prescribed fire?    ☐ Yes            ☐ No

If yes, please answer the next three questions, otherwise skip to the next page.

6. Approximately how many prescribed fire cases have you heard?  

\_\_\_\_\_ number of cases heard
7. What proportion of those cases were bench trials and jury trials?  

Bench trials \_\_\_\_\_ %

Jury trials \_\_\_\_\_ %
8. What was the disposition of those cases (i.e. what proportion were resolved through settlement, dismissal, granting a motion for summary judgment, or an adjudicated disposition?)  

Settlement \_\_\_\_\_ %

Dismissal \_\_\_\_\_ %

Granting a motion for summary judgment \_\_\_\_\_ %

Adjudicated disposition \_\_\_\_\_ %

### Questions about prescribed fire and the law

9. Are you familiar with the state statute regarding open burning/ agricultural burning? Please explain. ☉ Yes ☉ No

The Statute regarding open or agricultural burning for the State in which you are located is attached.

10. What instructions would you give to the jury (or what standard would you apply yourself in a bench trial) regarding the applicable legal standard and types of evidence to consider in a trial for personal injury or property damage resulting from an escaped prescribed fire or smoke from a prescribed fire? If you are uncertain please explain.
11. If the state statute were amended to require a finding of gross negligence (rather than simple negligence) on the part of the burner in order for a plaintiff to collect damages, how would your instruction to the jury change? Please explain.
12. Which of the following undisputed facts would alone constitute evidence from which a jury could reasonably conclude that a defendant failed to exercise ordinary care and was negligent in conducting a prescribed fire? Please check all that apply.
- ☉ Failing to submit prescribed burn notification plan to nearest rural fire department (OK only)
  - ☉ Failing to have a certified prescribed burn manager on site during the burn (TX only)
  - ☉ Failing to have an experienced burner on site during a burn
  - ☉ Failing to create a firebreak next to adjacent property or busy roadway
  - ☉ Failing to have a burn plan
  - ☉ Failing to notify the local fire department that a burn was being conducted
  - ☉ Failing to notify adjacent landowners that the burn is to be conducted
  - ☉ Failing to check the weather throughout the burn
  - ☉ Failing to have cell phones on hand for communication with fire authorities
  - ☉ Failing to contact fire dept. immediately upon weather changing to where it is no longer in prescription (i.e. winds pick up speed, relative humidity drops)
  - ☉ Failing to cease ignition immediately upon weather changing to where it is no longer in prescription (i.e. winds pick up speed, relative humidity drops)
  - ☉ Burning out of prescription (i.e. relative humidity too low)
  - ☉ Burning late in the day
13. Which of the following (if any) undisputed facts would alone constitute evidence from which a jury could reasonably conclude that a defendant failed to exercise even slight diligence and was grossly negligent in conducting a prescribed fire? Please check all that apply.
- ☉ Failing to submit prescribed burn notification plan to nearest rural fire department (OK only)
  - ☉ Failing to have a certified prescribed burn manager on site during the burn (TX only)

- ⊗ Failing to have an experienced burner on site during a burn
  - ⊗ Failing to create a firebreak next to adjacent property or busy roadway
  - ⊗ Failing to have a burn plan
  - ⊗ Failing to notify the local fire department that a burn was being conducted
  - ⊗ Failing to notify adjacent landowners that the burn is to be conducted
  - ⊗ Failing to check the weather throughout the burn
  - ⊗ Failing to have cell phones on hand for communication with fire authorities
  - ⊗ Failing to contact fire dept. immediately upon weather changing to where it is no longer in prescription (i.e. winds pick up speed, relative humidity drops)
  - ⊗ Failing to cease ignition immediately upon weather changing to where it is no longer in prescription (i.e. winds pick up speed, relative humidity drops)
  - ⊗ Burning out of prescription (i.e. relative humidity too low)
  - ⊗ Burning late in the day
14. Would any items on the above list constitute negligence per se rather than simply evidence of negligence? ⊗ Yes ⊗ No

If yes, please list by number which ones?

15. Do you consider a statutory violation (or violations of permitting requirements) negligence per se or simply evidence of negligence? Please explain.
16. Rank in order of your preference (1-most preferred, 5-least preferred), the type of expert witness you would rather have providing evidence in a prescribed fire case. Please use each number from 1 to 5 only once).
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|-------|--|
| _____ | Rural fire chief   |
| _____ | Professional wildland fire fighter   |
| _____ | Certified prescribed burning trainer   |
| _____ | Agency personnel familiar with prescribed fire   |
| _____ | University academic or extension with expertise in prescribed fire science and application |
17. What jury instructions would you provide regarding expert testimony in a case about damages sought for personal injury or property damage resulting from an escaped prescribed fire or smoke from such a fire?
18. What instruction would you give to the jury regarding award valuation for the following causes of action in cases against prescribed burners?
- a. Wrongful death
  - b) Personal injury
  - c) Property Damage
19. Regarding property damage, what valuation theory would you use in instructing the jury regarding the following items? (i.e. for structures, would you limit plaintiff's recovery to the

actual diminution in value to the realty, or could they also consider the specific value of the items of property lost?)

- a) Vehicles
- b) Equipment
- c) Structures (homes, barns, outbuildings, fences, etc.)
- d) Crops
- e) Livestock
- f) Trees
- g) Wildlife

20. Specifically, for valuation of trees, would you allow the jury to consider the following valuation theories? (If you would allow any of the following, under what circumstances?)

- a. Specific value of the trees lost
- b) Intrinsic value
- c) Aesthetic loss
- d) Loss of income productivity
- e) Replacement cost