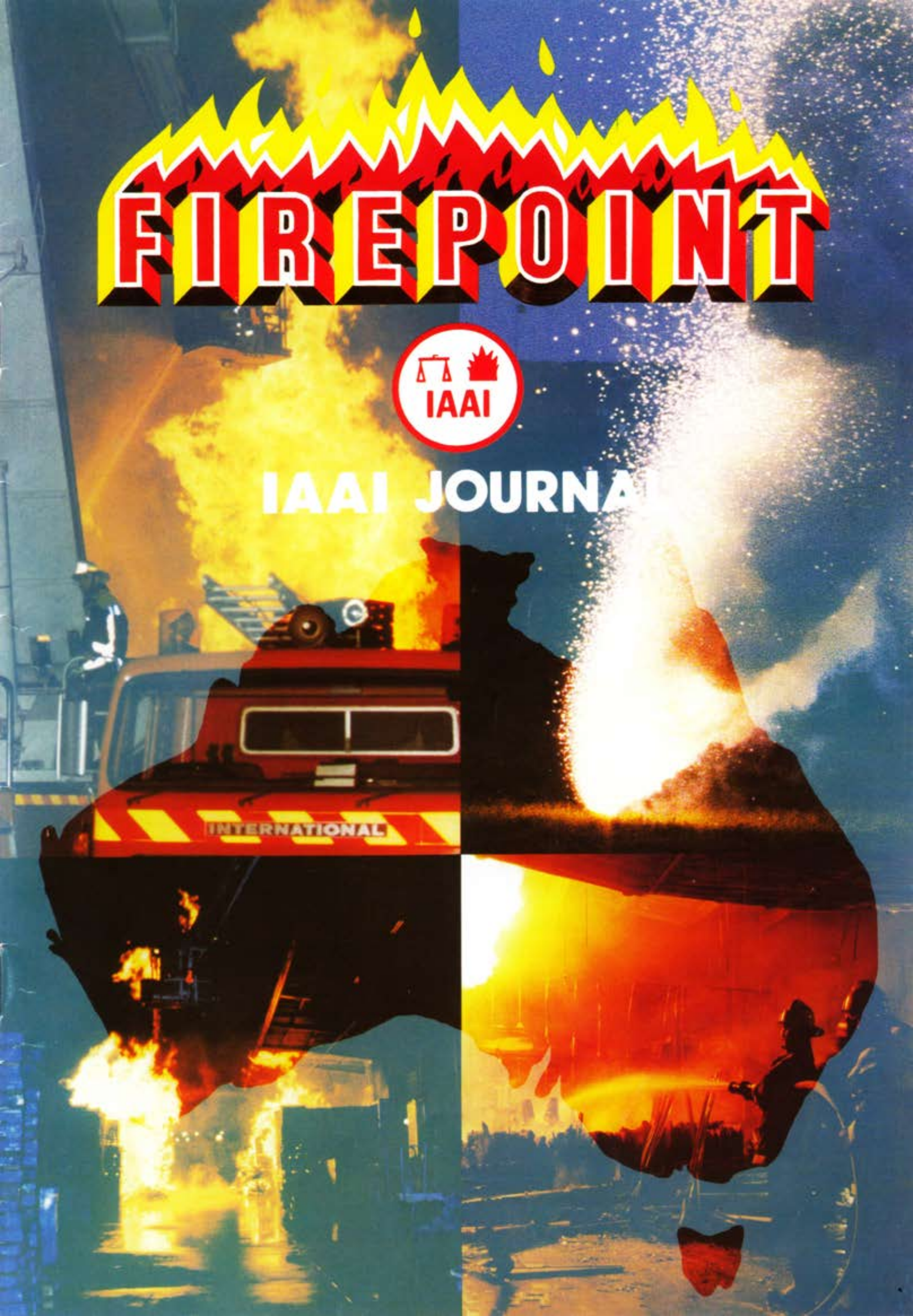


FIREPOINT



IAAI JOURNAL



Firepoint

ISSN 1035 2287

Editor: Wal Stern

Phone/Fax: (02) 9417 4921

Mobile: 0412 492 100

E-Mail: wsfern@bigpond.net.au

Postal Address: 93 Deepwater Road

Castle Cove NSW 2069

**Victorian Association of Fire
Investigators Chapter No. 58****www.vafi.org****President:** Alex Conway

Phone: (03) 9420 3883

Fax: (03) 9420 3886

Mobile Phone: 0416 211 581

Vice President: Brian Neal

Firepoint Representative

Phone: (03) 9754 4569

Fax: (03) 9762 2969

Mobile: 0409 197 913 or then 018 836 869

E-Mail: neal@hard.net.au**Secretary:** Trevor Pillinger

Phone: (03) 9761 8333 or 0417 323 667

Email: pillinger@investigatortraining.org**Treasurer:** Bob Hetherington

Phone: (03) 9420 3876

Email: bhetherington@mffb.vic.gov.au**Postal Address:** IAAI

Victorian Chapter No. 58

c/- Alex Conway

FIA-MFESB

2nd Floor, 619 Victoria Street

Abbotsford, Victoria 3067

**Queensland Association of Fire
Investigators Inc. Chapter No. 59****www.qafi.asn.au****President:** Kate Ridgway

Phone: (07) 3822 4700

Fax: (07) 3822 3900

E-Mail: kridgway@ocw.com.au**Administration:** Julianne Foley

Phone: (07) 3822 4700

Fax: (07) 3822 3900

E-Mail: admin_officer@qafi.asn.au**Postal Address:** Qld. Assocn. of Fire Investigators

P.O. Box 5173

Alexandria Hills Qld 4161

**Association of Fire Investigators
(N.S.W.) Chapter No. 47****www.nswafi.com.au****President:** Richard Woods

Phone: (02) 4722 8444 (w)

Mobile: 0418 290 519

E-Mail: richard.woods@rfs.nsw.gov.au**Secretary:** Norm Hewins

Phone: 9629 2872 (w)

Mobile: 0418 654 584

E-Mail: firefly_511@bigpond.com**Postal Address:** NSW Assocn. of Fire Investigators

P.O. Box 6129

Baulkham Hills Business Centre

NSW 2153

**FIREPOINT: INTERNATIONAL WINNER OF THE IAAI
2001/2002 AWARD FOR THE OUTSTANDING PUBLICATION
OF A CHAPTER NEWSLETTER OR MAGAZINE.**

Reminder:

**If you have not yet paid your annual membership fee,
you can do so now.**

EDITORIAL

It is our intention to include a simple case study in each issue of this year's "Firepoint" magazine. The first of these is presented for your information on page 10 of this issue.

Do you have a case study to present? If you have, jot down the details, and email it, with any suitable photographs, to the Editor at wstern@bigpond.net.au

As we move into March, we can breathe a sigh of relief that, in spite of some very hot weather, we appear to have had a better bushfire season than in recent years. Let's hope it is a portent for a good year ahead.

Wal Stern



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NSW ASSOCIATION OF FIRE INVESTIGATORS

(IAAI CHAPTER No.47)

ABN 91 718 947 405

P.O. Box 6129

BAULKHAM HILLS

BUSINESS CENTRE 2153

Phone.. Norman Hewins: 0418 654584

Richard Woods: 0418 290519

Fax: 02 9629 4590

e-mail: firefly_511@bigpond.com

Web: www.nswafi.com.au

President: Richard Woods
Secretary: Norman Hewins

PRESIDENTS REPORT

The Committee of the NSWAFI have already met to finalise the activities being planned for 2004. At this time we are hoping to hold four training evenings in 2004 and a field based training day aligned with the 2004 AGM to be held in Canberra.

Some of the themes that are being proposed for the evening training are a session on electrical fire cause, fire modeling and investigation, fatal fire investigations and fires scene photography.

We are also considering the staging of some of these evenings in regional country areas of NSW.

To this end I ask our country members to provide feedback to committee members on preferred locations to benefit as many members and guests as possible. The Canberra seminar is being proposed to focus on the practical aspects of fire/explosion investigations.

More information will be released as we move toward the staging of the events this year.

We are also looking to expand the information and interaction available to members via the Association's web-site. Please keep an eye out for developments.

Finally, my apologies to those members who requested copies of

conference papers as promised at our two day conference in August last year. We have had considerable difficulty in getting access to and formatting the information for distribution. It is hoped to advise those who requested the papers will receive them shortly.

On behalf of your Committee we look forward to your support and another successful year in the NSW Association of Fire Investigators.

Yours Sincerely,

Richard Woods
PRESIDENT

VICTORIAN NEWS

AGM 2003

The Annual General Meeting of the Victorian Chapter was held at the Australian Institute of Public Safety, 244 Flinders Street, Melbourne on 29th November 2003.

Reports from the President, Secretary and Treasurer, indicated to the membership that the Chapter was back on track and still financial.

Elections this year for the vacant positions of President, Secretary and 3 committee members resulted in nominations and election of:

President :

Alex Conway
(2004/2005)

Secretary :

Trevor Pillinger
(2004/2005)

Committee Members:

Nicole Harvey
CFA

Russell Lee
Private Investigator

John Lording
Insurance Rep

Congratulations to those elected.

Following the AGM Committee Member John Kelleher presented an information session on the Bali Bombing, covering the investigation, and associated topics, together with bomb scene procedures.

The committee wish to thank John for his presentation, to Tony Zalewski for the use of the facilities and to those members who attended.

It was highlighted to the membership that there was still a number of promotional items for sale and that these could be obtained by contacting any of the committee, or Bob Hetherington (9420 3884). We have for sale polo shirts (\$25.00), and Caps (\$12.00)

Membership

The committee will be forwarding accounts to members for fees; 2003/2004 at a cost of \$10.00, with the return of

\$30.00 for the period 2004/2005, due as of the 1st July this year.

Training Sessions

The committee will be presenting training sessions in the near future. Information will be forwarded directly to members. There is planned a seminar later this year in conjunction with the Coroner, on Occupational Health and Safety issues for Fire Investigators.

Police Life

For the information of members, in the Police Life Magazine October 2003 there is an article entitled "Evidence Among the Ashes" featuring Forensic Fire Investigators Karen Ireland and Rachel Noble.

The article gives an overview of the Fire and Explosion Investigation Section within the Chemistry Laboratory of the Victoria Police Forensic Services Centre and the work they do for the Police.

QUEENSLAND CHAPTER REPORT

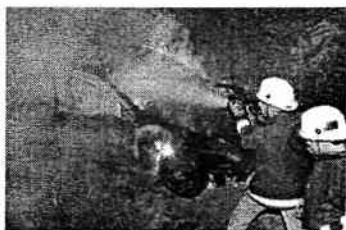
Welcome

Welcome to the first edition of Firepoint for 2004.

The Association had a very successful training program in 2003 with three major initiatives being undertaken, the Fire & Explosion Investigation Workshop, Marine Fire Investigation – Staying Afloat Conference and the Childers Investigation Symposium. Both members and non-members alike benefited from attending these training initiatives which would not have been possible without the sponsorship received from Deacons, Kennedy's (Forensic) and Maunsell Australia Pty Ltd – thank you!.

2004 is shaping up to a good start with our main focus being the Conference.

Conference 2004



Planning for the Major Project on July 16 & 17, 2004 (Motor Vehicle & Machinery Fire Investigation) is

well under way with most speakers (including case study presenters) having been selected and the program for the practical day largely decided upon.

The project will commence with a full day of seminars where there will be 6 papers and 6 x 10 minute Case Studies presented. The presenters include electrical engineers, materials scientists, a forensic locksmith, a police investigator, a fire brigade investigator, solicitors and active fire investigators. The second day will revolve around the burning of 3-4 cars and all going well, a piece of machinery (anyone have a D6 or Harvester they're not using??).

To separate the burning of the vehicles from the inspection session, there will be a series of structured displays illustrating fraud indicators and causes of ignition, including ignition of fuel/oil, mechanical failures and electrical malfunctions. Following final confirmation of speakers, a draft program for the conference will be released (expected in late February), along with a call for sponsors. It is expected that the conference registration brochure will be sent by the end of March.

All enquiries should be directed to Gary Nash, Chairman 2004 Conference Committee.

gary@forensicservices.com.au

Annual General Meeting

The date and venue for the Queensland Chapter's "Annual General Meeting" for the year ended 31st December 2003 has been set.

Notification to members of the upcoming AGM has been distributed along with nomination forms for the 2004 Committee positions and a proxy form.

Date: Friday 19th March 2004
Time: 4.00pm
Venue: Level 40 Central Plaza One
Brisbane

If you are unable to attend the AGM, please ensure that you complete and submit a "Proxy" to ensure the AGM proceeds.

Membership

QAFI Membership renewals for the period 1 January to 31 December 2004 are now due for payment.

If you did not receive your membership renewal notice, please contact admin_officer@qafi.asn.au

Not sure if you have advised your current e-mail address? Send a quick e-mail to Julianne anyway. admin_officer@gafi.asn.au

Editorial - Underinsurance

By – Trevor Pohlmann, RACQ

Underinsurance is a word that most members of the public rarely use, let alone consider the effects that it may have in the event of a claim.

When considering underinsurance in respect to home and contents insurance, many people currently have inadequate sums insured on either the home or contents, or in a large number of cases, inadequate sums insured on both.

Generally speaking, there are a number of reasons why this has happened. Some have selected a low sum insured on the home and/or contents with the thought of saving money, believing that a large or total loss will not happen to them. Many others including the elderly, who have owned their home and contents for a considerable time, simply do not realise that the cost of replacing their home and contents has escalated significantly since they last reviewed their sum insured/s.

Whilst most domestic policies are subject to indexation at renewal, the amount of indexation will not be sufficient to overcome the problem of the choice of an inadequate sum insured at inception of a policy.

Unfortunately, for those with a low sum insured, they may find themselves in a financial nightmare should they ever suffer a large or total loss. The people who do not read their Product Disclosure Statement (Policy Wording), the vast majority, would therefore be unaware of any wording which may influence the basis of the claim settlement. Depending on the particular wording, the claim may be settled on

Reinstatement or Replacement conditions, or as a worst case scenario, it could revert to an Indemnity based settlement.

Without enough finances to replace the home and/or contents, their standard of living may suffer unless further debt is incurred to make up the shortfall.

An example that demonstrates the vulnerability of people with inadequate Sum insured's is where the total loss of a home occurs, Sum Insured is \$200,000 and Replacement Cost is \$250,000. The insurer pays \$200,000 and the distressed clients either have to either fund the \$50,000 themselves to rebuild the same house or elect to choose a lesser construction. In this example, the clients decision to choose an inadequate Sum Insured, has really placed them in a position of being a self insurer for the amount of the shortfall.

It is a timely reminder for everyone to review the sum insured of what is generally regarded as their most prized possessions.... the family home and contents.

If unsure how to calculate the replacement cost of your home and contents, contact your current insurer who should have a calculation guide available for this purpose or ask a local builder for advice.

Fire Fraud "is easy money"

Courtesy Courier Mail – Article by Kay Dibben, Chief Reporter

Many insurance fraudsters are making easy money out of arson with little chance of being caught, a leading insurance fraud investigation lawyer says..

In Queensland, Police cleared up only 15 percent of reported arson last year, which meant 85 percent of the time "arsonists got away with it", said David Muir, of Deacons.

QUEENSLAND CHAPTER REPORT

Mr Muir, who helped to establish CrimeStoppers in Queensland, said that even when fraudsters were found out by insurance companies many were not prosecuted.

He said Queensland Police had only a small team working on often complex cases through-out the state. Some cases took many months to investigate.

"Police haven't the resources to satisfactorily respond, and there is an attitude in government and police circles that it is not a government problems, it's an insurance problem", Mr Muir said. "But it's a community problem because there are hundreds of millions of dollars in losses annually through fire, and it gets passed on in insurance premiums." Mr Muir said insurance companies sometimes took cases to civil courts when police took no action. In one case, an insurance company which had rejected a claim for more than \$100,000 because it suspected arson, took the matter to a civil court and won.

Mr Muir said although the judge found that there had been arson-related fraud in the civil case, the matter was never investigated by police.

Fire investigator Murray Nystrom of Australian Forensic Pty Ltd said about 500 to 600 Queensland fires were privately investigated each year and about 20 percent were suspected of having been deliberately lit.

Mr Nystrom, a former police scientific officer, said Queensland Police arson officers were "terrific investigators" but were under-resourced.

He had seen cases where police had taken more than 12 months to present a brief of evidence to prosecutors.

Acting Detective Superintendent Mark Slater said police took arson investigation very seriously.

Police worked closely with Queensland Fire & Rescue, insurers, forensic examiners and the community to solve such crimes, he said.

Diary Dates

Friday 19th March 2004

QAFI "Annual General Meeting"

Time – 4.00pm

Venue – Level 40 Central Plaza One, Brisbane

For further details contact Julianne (07) 3822 4700 or email admin_officer@qafi.asn.au

16th & 17th July 2004

2004 QAFI Conference / Major Project

The conference theme for the 2004 Conference / Major Project will be "Commercial Motor & Machinery Fire Investigation".

Once again it will be a two day conference encompassing theory sessions on day 1 and practical demonstrations (*must have a burn*) and static displays on day 2. The QFRS – Training Academy at Whyte Island has been booked for day 2.

The committee has called for expressions of interest – speakers & case studies. Expressions of interest – exhibitors, sponsors etc will be issued shortly. We will also need to secure some heavy machinery/vehicles for the project. If you are able to assist in this area, please do not hesitate to contact Gary Nash on 3352 6077 or email gary@forensicservices.com.au

18-23 April 2004

55th IAAI Annual General Meeting & Conference

The registration form and Agenda has been released and can be downloaded from the IAAI web site www.firearson.com The AGM & Conference is being held in St. Louis, Missouri, USA.

Acetylene Explosion

This is an incident which occurred in Newcastle, NSW, in September. A fitter with a works van left an E size oxygen and acetylene cylinder (similar to that shown below) on the back seat of a Toyota dual cab over the weekend. The acetylene cylinder must not have been fully closed and a small leak apparently occurred.

Over the weekend acetylene accumulated in the van. On the

Monday morning the fitter approached the van and opened the door, at which time a large explosion took place. The ignition could have been caused by either the internal light, the automatic door control or by a mobile phone which was on the front seat of the van. The fitter was a smoker. He has damage to his ear drums and facial damage. As you can see by the attached photo he was also very lucky.



Information and photos supplied by Mitch Parrish (JD Thomas & Associates, Sydney)

Australian Chapters Report to IAAI End of Year 2003

*From IAAI Australian
Chapters Liaison Officer
Ross Brogan*

The second half of 2003 was a very busy time for most of the members of the Australian Chapters, with many training opportunities presented for their education. Some of our members were lucky enough to attend the Annual International Conference and AGM, in Reno, Nevada and by all accounts were treated to an enjoyable conference.

Unfortunately, after arranging trips to the ATF in Washington, conference in Reno and working attachment to the Los Angeles County Bomb & Arson Unit, I had to withdraw at the last moment due to family concerns over travelling during the Iraq war. Unfortunate, but a safer option.

Ted Beitz, from the Qld Chapter certainly enjoyed his extended trip; as did Greg (CFI) and Helen Hancock from the NSW Chapter.

Unfortunately the Victoria Chapter, who have the facilities of the Metropolitan Fire Service Training College at their disposal, have not had the opportunities made available to them because of a refurbishment of the facility and discovery (and subsequent removal activity) of asbestos in the building. Training opportunities were taken as they became available, but were limited.

NSW – The Chapter holds evening sessions available to members and anyone interested in attending, once each two months, with differing topics and speakers. The sessions are held at a local club facility, with refreshments made available for members and guests free of charge. May 1st saw an evening with different videos shown and a discussion on the topics shown by Professor Wal Stern and Inspector Ross Brogan.

26th June was a night with the topic of bushfires (wildfires)

and the speaker President Richard Woods. Richard spoke on the threat, proliferation, fighting and investigating of bushfires in NSW.

The major conference was held in August. In October the evening session was conducted by James Munday and was a discussion on a fire that he investigated in a laboratory in Antarctica and fire investigation training in Britain. All sessions were well attended and participants were enthusiastic.

On 7/8th August 2003 a major conference was held, conducted by the NSW Chapter. The meeting was held at the Carlton Crest Hotel conference centre, in Sydney, with in excess of one hundred and twenty participants from all over Australia, New Zealand and the USA.

The conference theme was "Fire & Explosions: The Changing Scene" Speakers included Dr. John DeHaan, IAAI 2nd VP Kirk Hankins, FBI Agent Carl Adrian and local speakers, D/Sgt Bob Campbell (Arson, Qld. Police), Paul Westwood (forensic documents), Snr. Constable Danielle

Holmes NSW Police Incident Reconstruction (I.T. software), Herman Metz (Aust. Federal Police), Snr State Coroner Jacqueline Milledge (evidence requirements) & A/Prof. Tracey Green (Charles Sturt Uni) Fire Investigation course availability.

Topics discussed included document examination, explosion investigation and analysis, evidence collection and scene reconstruction, the Bali bombing and Childers' Backpackers fatal fire investigation.

The participants were presented with the most knowledgeable speakers on the topics from all over the world and were provided with extremely valuable information and educational opportunities. For the attendance price of \$400, for two days, no one could have provided better value than presented by the attending speakers. The attendees also received a banquet dinner and presentation on the first evening.

At the banquet dinner both Greg Hancock (CFI) and Ross Brogan (CFI) were presented with Life Membership awards. A special

achievement for service to the Chapter and its members.

A special presentation of \$2,000 was made to the Children's Burns unit of a local hospital, from the NSW Chapter. Special guest and after-dinner speaker was Commissioner Greg Mullins of the NSW Fire Brigades. The conference was deemed a great success, with a record attendance and great benefits delivered to all attending from around the world.

Qld. – Monday 12th May was chosen for the AGM, held to choose a new committee for the coming year.

On return from the Reno IAAI conference, Ted Beitz provided some discussion and return of information benefits from his IAAI sponsorship by detailing the information gathered at the conference. He especially detailed the ever-present threat of terrorism covered at the meeting.

24th October was a day dedicated to a symposium on the Childers Backpacker fatal fire investigation. This day covered scene examination, fire safety aspects, investigation, computer modelling, litigation arising from the incident and DVI (Disaster Victim Identification).

2004 will prove to be a very busy year, with the Qld Chapter holding a seminar on July 16/17th with the theme of "Commercial Motor and Machinery Fire Investigation".

The NSW Chapter is planning a full programme of evening sessions on differing topics of interest to the members and one/two day seminar in the NSW countryside (somewhere to be decided) to take education out to people in distance-disadvantaged country areas (away from centralised city centres).

In closing the report the Australian Chapters would like to thank the international guests who attended the conference in Sydney and thank them for their enthusiasm and for the professional presentations that had us all enthralled.

“Arson for Profit - A Dangerous Game for Many”

*by Glenn Gibson
Chief Executive Officer
Crawford Adjusters Canada Inc.*

It is a cold, moonless night. The wind is blowing from the west. The clock has just ticked past 2:30 a.m. John Archibald¹ slowly creeps through his house. He checks first on his wife Janet, and then on his two sons. Everyone is in a deep sleep. It is not unusual of late for John to still be awake. His hardware business has not been doing well in the last year and he is worried about an upcoming meeting with his bank manager. John knows from talking to other business associates that the bank is not going to show him any reprieve.

John wanders back to the main floor family room. There is a slight tremble in his hand as he lifts his third drink of rye. Should he go through with it? Does he really have any choice? How did everything get to this stage? John thought about his chance meeting a week ago with Billy Holmes. They had played football together on the high school team. Billy didn't finish high school before he fell in with a local motorcycle gang. Billy has spent the last 10 years in and out of jail. Still...they had been close in high school and after a few drinks together he spilled out his financial problems. Billy listened quietly until he blurted out, “Why not sell the place to the insurance company?” And so, the ‘conspiracy’ began.

Now, it is 2:45 a.m. John Archibald reflects on whether or not he should go ahead with the plan. He thought about how much money he has paid in insurance premiums. He had never made a claim? It has to be over \$100,000. Didn't he deserve to get

something back! John's plan is fool proof. No one will get hurt. It's all about bricks, mortar, equipment and stock. No one is a victim here... just the insurance company ... and they have lots of money. Isn't it his time to collect? With that thought, John quietly leaves his house careful not to awake anyone. He drives very slowly as he makes his way downtown to his store.

It's 3:10 a.m. John walks to the rear of his building. As he approaches the door, he fumbles to get out the key. It takes him a few tries to get his key into the deadbolt lock. He isn't worried about the alarm system. He knows it is “off”. This is all part of John's plan. His cashier, Joan Smith, lives near his house. John occasionally gives her a ride home after closing up. He made sure she was with him at 7 p.m. the night before. He recalls how she was standing next to him when he cursed at the alarm system for not activating when he hit the number pad. He chuckles at what he had done as part of his plan. She saw him curse as he said, “It isn't working”. She watched him as he pretended to phone the alarm company. She overheard him get angry as he yelled into the phone and told them he wasn't prepared to stay and wait for the company to send someone out to see him. Joan would be able to confirm that the reason the alarm was ‘off’ that particular night was simply because of a malfunction.

John turns on his flashlight as he makes his way towards the front of the building. He quickly turns the Venetian blinds so that no one can see inside the building. He ensures the front door is locked, as he does not want to be disturbed. He's thought of everything: he gathers up a toaster, extension cord and a light timer from his store inventory. He sets the toaster down on the main floor aisle. He plugs the toaster into the extension cord.

¹ Names and scenario are fictitious

John walks to the rear wall where he plugs the extension cord into the light timer and then sets the timer in place into the wall outlet. Man, is he smart!

He walks slowly back to the front counter area where he reaches under the counter to pull out a stack of old newspapers. He walks back to the toaster where he rolls up newspaper, which he jams into the toaster so the paper is touching the elements. He then continues to roll up newspaper to create a paper 'rope' that the fire can follow. He lays the trail of newspapers throughout the main floor area. He goes to the basement where he gets a small container of gasoline that he purchased several days ago. He returns to the main floor and pours small quantities of gasoline along the newspaper 'rope'.

It's 3:45 a.m. John walks to the light timer. He checks his watch and sets the timer to go "on" at 6 a.m. He leaves quietly by the rear door using his key to lock up to ensure no one walks in on his handiwork. He drives home and slips quietly into bed with Janet. Everything is in place.

It's 5:45 a.m. Steve Anderson goes to the front door of the hardware store. He has been delivering the morning newspaper to this location for the past 5 months. As he approaches the door, he finds it unusual to see the blinds closed. As he opens the mail slot in the door to push in the newspaper, the sudden smell of gasoline overwhelms him. He knows that smell. His last job had been working at a gas station. He drops his paper bag and races across the street to a restaurant that is just opening. He yells at them to call '911'. Steve runs back to the hardware store. He tries the front door. It is locked. He runs around behind the building and tries the rear door. It is locked as well. He runs back to the front. He hears the siren of an approaching fire truck. As the fire truck arrives, he yells to a firefighter that he smelled gasoline at the front door area.

Within seconds, a second fire truck arrives. A police cruiser pulls up from a different direction. Three firefighters approach the front door with one of the police officers. They check the door and confirm it is locked. They decide against breaking the door glass. They don't know what's beyond the door. They use a pry bar and breach the door. The police officer looks at his watch. It's 6:01 a.m. They step inside. The police officer sweeps the area with his flashlight. Their eyes are wide with amazement as they see the toaster sitting on the floor ten feet in front of them. The toaster is just beginning to show a wisp of smoke. Firefighter Mike Fiddler immediately steps towards the toaster. Giving it no thought, he breaks the connection between the toaster and the extension cord. Time freezes for a split second as the small arc from the disconnection ignited the vapors from the gasoline. An explosion rocks the building. The police officer and two firefighters closest to the door are blown backwards and land outside the building. They are dazed from the explosion but not seriously hurt. As they gather their wits someone asks, "Where's Mike?"

It's 7 a.m. John is wide-awake but he continues to pretend to be sleeping. His wife, Janet, slips out of bed and gets dressed for work. John wonders why there has been no phone call about the fire. What could have gone wrong?

It's 7:20 a.m. Janet enters the bedroom. There are two police officers at her door. John throws on some clothes and rushes downstairs. The two uniformed officers tell him they have bad news. They tell him his business is on fire. John asks what caused the fire. They don't know but they told him a police officer and several firemen had been hurt in an explosion. John was stunned at this news. This was not part of the plan!

The police drive John Archibald to the fire scene. The building is still burning. The fire

seemed under control. Detective Ted Harris is introduced to him. Detective Harris asks John questions about how he locked up the previous night. John is quick to tell him that there was a problem with the alarm system and the detective should speak to his cashier about it. John Archibald is shocked when the detective asks him how many keys there are to the building. John tells the detective there is only one key and he has it. The detective asks to see the key. John produces it and the detective immediately draws an outline of the key in his notebook and hands the key back to him. What's this all about? The officer suggests that they will need to interview John in detail. They agree to meet at 2 p.m. at the local police station.

John Archibald walks across the road to the restaurant. Several people offer their condolences. A couple of people ask if he has insurance. John is in a state of shock as Gus Amodeo, the restaurant owner, tells him that a firefighter was taken to the hospital with serious injuries.

As John drinks a cup of coffee he notices a fellow enter the restaurant. He vaguely remembers him from somewhere. He sees him talking with Gus. He watches Gus point towards John. Within seconds the fellow walks over to John and introduces himself as Bruce Barch of Barchese Alarm Company. The penny dropped- Barch was the guy who installed the alarm system in the building. What's he doing here?

Bruce quickly explains that the police called him that morning requesting he come to the scene bringing copies of their records relating to John's alarm system. John immediately mentions that on closing up last night the alarm system failed to work and he had phoned their company. Bruce seems surprised at this comment. He lowers his voice as he tells John that all phone calls are recorded and they have no record of his phone call.

Things are starting to overwhelm John Archibald. It is all supposed to go according to the 'plan'. The fire should have started when no one was around. No one should have been hurt. It is only about getting the insurance money. Things are starting to spin out of control. What are these questions about the keys? What should he say about the alarm system? John makes the decision to hire a lawyer immediately. He needs help!

Arson for Profit Schemes

This scenario is not far-fetched and contains many of the traditional elements that one sees at this kind of fire. The crime of arson is a cowardly crime. One usually sees a strong element of pre-planning in this type of crime. The arsonist doesn't want to hurt anyone. The goal is to get the lottery ticket-the insurance money. This type of arsonist usually sets their fire under cloak of darkness. They quite often will use a delayed ignition device that is designed to get some distance between them and the start of the fire. The goal of this arsonist is to ensure total, complete destruction of the premises. The arsonist is aware that early discovery of the fire (passerby or alarm system) defeats their goal. Many fire services have response times of 3-5 minutes. Therefore, it is not unusual for the arsonist to 'accelerate' the fire. This can be done by pouring ignitable liquids to ensure rapid-fire spread utilizing strategically placed 'trailers'.

This type of arsonist is not usually a 'professional torch' but someone who gets ideas from watching movies / television or reading books. These amateur arsonists believe falsely that fire destroys all evidence of their misdeeds. The reality is that fires create evidence they do not destroy it. The ability to investigate a fire scene with a view to the collection and preservation of evidence is an important feature to any fire

investigation. This expertise exists both within our public authorities and private sector.

Criminal Law versus Civil Law

The scenario outlined would presumably run its course with a very strong investigation conducted by the police and fire marshal. They would gather evidence with a view to proving the three elements of the 'Arson Triangle'. How will they prove the fire cause? How will they prove motive? Is there exclusive or ample opportunity for the suspect(s) to have started the fire?

The criminal investigation follows its own distinct path. Proving the fire cause would require reliance, in Ontario, of the Office of the Fire Marshal. Their fire investigator is an unbiased public official who has one distinct role to play in the investigation-what caused the fire?

Once the criminal investigation is completed, the police would review their evidence to determine if there is reasonable grounds to lay a charge. If there were not, the case would remain open but inactive until evidence was developed to lay a charge. If a charge was laid, the local crown attorney would have to determine if this case had a reasonable prospect of conviction. If it was determined to be so, then the matter runs its normal course through the criminal courts. There are several distinctions in the criminal process that are at play. One is that the accused is not compelled to provide a defense or testify on their own behalf. Secondly, the crown must prove the accused is guilty "beyond a reasonable doubt".

A civil court process is what would evolve if a policyholder, like John Archibald, had their claim denied by the insurer and John Archibald sued the insurer for breach of contract. The lawsuit would run its course through Affidavit of Documents,

Examinations for Discovery and onwards to a Trial. The policyholder is required to give evidence under oath in the Discovery process and is compelled to testify in the civil trial. There would be a requirement for the insurer to defend the lawsuit based upon evidence they have collected and itemized the three components of the Arson Triangle. The burden of proof in a civil case is not "beyond a reasonable doubt" but based upon the "balance of probabilities". Insurers are aware that by pleading the defense of "Arson" by or at the behest of their insured, they are alleging a criminal activity on the part of the policyholder and they must produce strong evidence to support their defense.

Public Policy

We all pay insurance premiums. The concept being that the premiums of the many pays the losses of the few. If policyholders intentionally set fire to their insured property and get away with it, then we all pay for those losses with increased premium costs.

The scenario outlined in this article is based on real-life events. Fires are not just about damage to property. They do involve personal injury or death. They do result in great hardship for many innocent victims. Arson for profit schemes put members of the public at risk. Consider the person who sees smoke and runs to a building to help only to walk into an accelerated fire. Think of the first police officer arriving at the scene of a working fire or the 'Search and Rescue' crew entering a building. Each puts their lives at risk as they attempt to do the right things to save human life. Surely public policy must look to protect people from walking into a 'juiced up' building?

The Balancing Act

We can probably all agree that “Arson for Profit Schemes” are devious, cowardly acts. The problem is that the nature of this type of crime is such that arrest rates are low and conviction rates even lower. Part of the problem is that we have limited resources in some parts of the country for the public authorities to carry out proper training that can lead to better quality investigations. Crimes against property in some police departments are simply a low priority. In the United States, they have established “Arson Immunity Laws” in many jurisdictions so the police and insurance community can interact with the exchange of appropriate information on the basis that they will have immunity from a “bad faith” exposure if they do so. Why did they go this route? Probably the same logic that is beginning to hit us in Canada with respect to fighting this crime.

Let’s look at recent cases involving civil fire loss litigation and punitive damages:

1. Plesser et al versus Wawanesa Mutual Insurance Company, February 11, 2003. This was a recent jury trial. The fire marshal provided evidence at the trial the fire cause was “arson”. The jury decided the insurer had not proved their case and on top of a direct damage award they awarded \$525,000 in “aggravated and punitive damages”.
2. LaPlante et al versus Grenville Patron Mutual Insurance Company, Ont. Ct. of Appeal, June 3 2002. This was a jury trial. There was no “arson” dispute but significant issues surrounding the amount of the loss. The jury awarded full direct damages and \$750,000 in punitive damages against the insurer. The Ontario Court of Appeal reviewed the case overturned the entire award.
3. Khazzaka vs. Commercial Union, Ont. Ct. of Appeal, May 29 2002. This was a jury trial. The insurer was alleging this was “arson”. There was no active police or fire marshal investigation. The evidence of the insurer’s fire expert did not stand up in court. The jury awarded \$200,000 in punitive damages. The Ontario Court of Appeal reviewed the case and upheld that award.
4. Whiten vs. Pilot Insurance Company’, Supreme Court of Canada, Feb. 22, 2002. This is the leading case in Canada on the topic of punitive damages. This was a jury trial on a fire claim. There was no public authority investigation into the fire cause. The jury awarded \$1 million in punitive damages. The Ontario Court of Appeal reduced that award to \$100,000. The top court in our country reinstated the original award of the jury.
5. Kogan vs. Chubb, Ont. Superior Court, J. Forget, May 3, 2001. This was a lengthy trial by judge alone. An experienced fire marshal investigated the fire and deemed the fire cause to be “arson”. The fire marshal’s opinion was reinforced at the trial with evidence from two other fire experts. There was effective cross-examination of the insurers witnesses and the judge eventually concluded that the fire cause was not “arson”. The judge awarded \$100,000 in punitive damages against the insurer. This case is under appeal.
6. 702535 Ontario Inc. V Non-Marine Underwriters, Lloyds of London Ontario Court of Appeal, J. O’Connor (Finlayson and Weiler), March 22, 2000. An “arson defense” was abandoned prior to the trial, which was held by judge alone.

Damage issues resulted in claims exceeding policy limits. Arguments were made for punitive damages to be awarded against the insurer for the manner in which they handled the claim. The trial judge did not feel that this case should attract punitive damages. The plaintiff appealed from the lack of an award in this area. No doubt the appeal was based upon cases that were breaking at this moment in time where punitive damages were starting to be awarded. The Ontario Court of Appeal reviewed the case in detail and agreed with the trial judge's decision and did not allow for punitive damages.

7. M.Barker versus Zurich Insurance Company, Ont. Ct. of Appeal, Dec. 18, 2000. This was a jury trial involving a theft claim submitted on a \$7,500 vehicle. The jury awarded \$250,000 in punitive damages. The Ontario Court of Appeal overturned the entire award.

Most of these decisions are Ontario-based. The Ontario Court of Appeal has been attempting to provide guidance to the lower courts on the appropriate situations that they feel should attract aggravated and/or punitive damages. Usually, an Appeal Court is very reluctant to overturn a jury-trial decision. As you can see from recent events, the Ontario Court of Appeal has not been shy about applying their own reasoning to the lower court decisions that they feel are 'offside'.

Summary

The goal of this article is to try and highlight for the reader how difficult a job it is for an insurer to do what's right when dealing with an arson defense. Arson defenses are grounded in circumstantial evidence. Any

lawyer will tell you these are the most difficult cases to take to trial. When we see outcomes where insurers are being whacked huge sums of money to "punish them" for their outrageous conduct one has to wonder if the insurers will begin to take the position that it's easier to pay than to fight these type of cases.

A trial provides an interesting set of dynamics that many people have never been exposed to in their careers. How a witness gives their evidence and then stands up to a rigorous cross-examination can turn a trial in many different directions in a very short period of time. Evidence might look good on paper but can self-destruct right in front of you with a good cross-examination. The twists and turns of a trial require the daily attendance of the decision-maker from the insurance carrier so they know first-hand how the case is unfolding. The outcome should be predictable if the evidence stands up. The predictability factor could also change depending upon whether the matter is heard before a judge alone or in front of a jury.

Each case inevitably must be judged on its own merits. We cannot allow arsonists to set fires to obtain money and by doing so expose the public to clear dangers. On the other hand, no innocent policyholder should be deprived of insurance proceeds. To achieve the right balancing act is a very difficult task. People should understand that by an insurer taking their case to trial they are really doing no more than defending their case. They are trying to do the right thing so we are all protected by the cowardly crime of "arson for profit" schemes that people like John Archibald feel are so easy to plan and getaway with, in their desire as in this case, to sell their business to the insurance company.

NSW AFI Donation Helps NSW Severe Burn Injury Service Paediatric Unit at The Children's Hospital at Westmead.



Dr Hugh Martin, Head of the NSW Severe Burn Injury Service Paediatric Unit at The Children's Hospital at Westmead.

On Thursday the 6th November 2003, the NSW Association of Fire Investigators President Richard Woods, accompanied fellow Committee Member Barbara Bailey, to present a cheque for \$2,000 to Dr Hugh Martin of the NSW Severe Burn Injury Service Paediatric Unit at The Children's Hospital at Westmead. This money was collected out of the proceeds of the Associations' 2003 Bi-annual Conference held in Sydney in August of this year.

In presenting the cheque to Dr Martin, Richard Woods spoke of the close association that has developed between the NSW Association of Fire Investigators and the NSW Severe Burn Injury Service Paediatric Unit at The Children's Hospital at Westmead over the last few years. He also mentioned that the Association is very proud to be able to support the efforts of the Unit wherever possible. Dr Martin thanked all members of the Association and those who attended the 2003 Conference, for their contribution to the challenging field developing in the treatment of child burn victims at Westmead.



The \$2000.00 donation is presented to the Severe Burn Injury Service Paediatric Unit at The Children's Hospital at Westmead. (L to R) Nurse Unit Manager Carrie Hopwood, President NSW AFI Richard Woods, Dr Hugh Martin and NSW AFI Committee Member Barbara Bailey.

Whilst at the Unit, Dr Martin showed Richard Woods and Barbara Bailey through the specialist areas. Capable of treating up to 16 patients at any one time, the Ward is fitted out to ensure the treatment is made as comfortable and as least traumatic as possible for the young patients.



Nurse Deborah Maze (Second in Charge of the Ward, and in Charge of the Burns and Plastic Surgery Outpatient Clinic) in one of the Treatment Rooms in the Unit for dressing changes.

Dr Martin explained that the treatment of burns victims had undergone significant advances in recent years. For instance, the need to change burns dressings is now less frequent with enhanced dressings now available

resulting in reduced hospital time and less trauma for the child. Additionally, a \$120,000.00 Laser Doppler Scanner in the Unit now allows for earlier determination of the depth of the burn which greatly assists planning of treatment, avoiding the need to wait to see how healing progresses before making a decision as to whether operation will be necessary or not.



Laser Doppler Scanner- used to determine depth of burns.

The majority of child burn victims treated by the Unit result from scalds arising from hot liquids being spilt. Many through accident, regrettably others through assaults committed by adults.



Bathing burns victims is completed with great care to prevent contamination of burns wounds, Nurse Deborah Maze is pictured with one of the purpose built baths within the Unit.

The Unit is located at The Children's Hospital at Westmead, Sydney. NSW AFI Members wishing to visit the facility are welcome to contact the Nurse Unit Manager Carrie Hopwood on 98451114.

Application for Membership

Association of Fire Investigators

(A Chapter of the International Association of Arson Investigators)

I hereby apply for membership of the Association of Fire Investigators in the State of..... in accordance with its constitution and by-laws, and agree to be bound thereby.

I attach the amount of \$..... in payment of annual dues.

1. Name in Full
2. Address for Mail
3. Position Held (e.g. police or fire brigade officer, lawyer, investigator, assessor)
4. Company/Agency
5. Telephone
6. Mobile
7. Fax No.
8. E-mail Address
9. Signature
10. Name of Member Recommending you
11. Telephone No. of Member
12. Address or E-mail No. of Member
13. Signature of Recommending Member

Give your completed form with your payment to any committee member of the Association, or mail it to the appropriate postal address, as shown on page 3.

This page lists names, numbers and web pages if you have any inquiries.