

## And The Defense Wins

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The Dollar Tree store in Hollister, California, was completely destroyed by a fire in the early hours of the morning on December 8, 2013. The fire was lit by burglars who stole money from the safe in the manager's office and committed the arson to hide the theft. In addition to the fire destroying Dollar Tree's store, it also resulted in fire damage to the neighboring liquor store in the strip mall and smoke and water damage to the pizza restaurant next to the liquor store. Plaintiff, the owner of the pizza restaurant business, sued both Dollar Tree and the landlord, as well as his uncle who sold him the business.

Plaintiff alleged that Dollar Tree was negligent for failing to have a monitored alarm system that would have alerted the authorities to the fire earlier than a passerby did, thereby allowing the fire department to control and suppress the fire and prevent the smoke and water damage to the pizza restaurant. Plaintiff also alleged that the retailer was negligent and vicariously liable because it was possible that the burglar(s) and arsonist(s) were employees or former employees. Plaintiff alleged that the retailer should have reasonably foreseen the actions of its employees. Plaintiff further alleged that Dollar Tree was in violation of various provisions of the CA Fire Code and of provisions of the CA Health & Safety Code regarding the storage and transport of hazardous waste that contributed to the harm suffered by plaintiff, and was therefore negligent per se.

Dollar Tree argued that there was no evidence that it was the standard of care within the retail industry to have a monitored fire alarm system in its store. It presented evidence that it complied with all relevant Building Codes and Fire Codes when the store was first built out in 2001 and obtained a Certificate of Occupancy from the City. Dollar Tree further argued that even if it had a monitored alarm system, it would not have made a difference given that the fire was seen by a passerby soon after it was started and given that an accelerant was used to start the fire intentionally.

Further, the evidence from the fire origin and cause expert witnesses was that the smoke and water damage to the restaurant was caused by the way the fire was fought, essentially to sacrifice the retail store where the fire started to save the adjacent liquor store and pizza restaurant from fire damage. Finally, the retailer called a former ATF agent who testified about the ATF's investigation into the fire and who confirmed that the ATF concluded it was an arson and a crime and that, approximately 14 months after the fire, they called a press conference to offer a monetary reward for information leading to an arrest as they had exhausted all investigative leads.

Notwithstanding that the subject fire occurred in December 2013, plaintiff was allowed to introduce evidence at trial, over vigorous objections, regarding Dollar Tree's CA Fire Code violations back as far as 2008 as well as in 2016 after the fire. In addition, plaintiff was allowed to introduce at trial complaints from the County Department of Environmental Health regarding the condition of the retailer's rear stock room and how it stored its products, also over vigorous objections from defense counsel.

Plaintiff served a pretrial statutory demand on Dollar Tree for \$250,000. Dollar Tree served a pretrial statutory offer on the plaintiff for \$2,501.00. Plaintiff's counsel asked the jury to award economic and noneconomic damages in excess of

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\$1 million. Defense counsel and DRI members Paul Caleo and Katrina Durek, asked the jury to return a defense verdict. The result was a complete defense verdict on all claims for personal injuries and economic loss.

[Paul Caleo](#) is a partner at **Burnham Brown** and one of the firm's premier trial lawyers who has extensive experience in complex tort, personal injury and large loss cases involving claims of products liability, premises liability, government and public entity defense, construction site accidents and trucking/motor carrier accidents. He routinely represents retail corporations of all sizes in a wide variety of cases including wrongful death, serious personal injuries, traumatic brain injury (TBI), loss prevention and retail theft cases, and injuries caused by the criminal acts of third parties, in addition to prosecuting and defending contractual indemnity claims and breach of retail lease contract claims.

[Katrina Durek](#) is an associate at **Burnham Brown** and counsels and represents businesses of varying sizes, including large and mid-size restaurant franchises, small businesses, and transportation companies in contract disputes, employment and civil litigation matters. Ms. Durek represents parties in all phases of litigation, including discovery, law and motion, and mediation.

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