

# Missouri



FOLAND, WICKENS, ROPER, HOFER & CRAWFORD, P.C.

## Roper and Brigg Obtain Defense Verdict, Despite Admitting Negligence



**Joe Roper**

Joe Roper and John Brigg successfully defended a case involving a large cave fire, which resulted in millions of dollars of claimed property damage. This result was achieved despite admitting negligence on the part of our client's employee.

Part of our client's business was the application of polyurethane foams used to lift concrete structures. An employee left bags of test spray of the foam in the back of a company box truck, which was parked inside a two million square foot underground cave complex known as Industrial Underground Warehouse. Sometime later, employees of IUW noticed smoke coming from the area of the parked truck and reported that to the office of Profoundation. The employee returned to the warehouse and opened the back doors of the truck to investigate. The foam, which had apparently been smoldering, burst into flame. The employee attempted to fight the fire with a portable fire extinguisher, to no effect. The fire department was then notified by the employees' spouse, and the complex was evacuated. The fire department responded and conducted a six and half hour firefighting operation to clear the caves of smoke and extinguish the blaze.



**John Brigg**

The Plaintiff originally claimed in excess of thirty million dollars in damages. By the time of trial, the damages sought were 3.5 million dollars, which was claimed to be the difference in the fair market value of the cave complex before and after the fire.

In opening statement, we admitted negligence, and that the cause and origin of the fire was the spray foam in bags, in the back of the truck. Two primary defenses were asserted on behalf of Profoundation. First, that there was a waiver of subrogation clause in a lease for nearby storage space that barred any such claims for damage caused by fire. Second, that IUW failed to mitigate its damages in that they failed to notify the fire department of the smoke when it was discovered, which would have enabled a much quicker response and avoidance of most if not all the damage caused.

The jury deliberated for approximately three hours before returning a verdict in favor of IUW but finding the damages at "none".