5 – Detecting Suspicious Property Claims

**1 – Detecting and Investigating Fraud**

**Objective**: Identify indicators of insurance fraud and resources that can be used in fraud investigations

Insurance fraud is a crime that costs insurers and insureds billions of dollars each year. To control fraud – and the premium increases that can result from it – insurers must be vigilant about spotting and investigating suspicious claims fairly and accurately.

Property claim representatives are primarily responsible for detecting and investigating fraud, so they need to know the early indicators that a claim may be fraudulent. They should also be familiar with common types of fraud schemes, federal and state laws regarding fraud, and the available resources that can aid an investigation.

**Detecting Fraud**

Claim reps assigned to investigate suspicious claims must have an in-depth knowledge of the policy, proper investigative methods, and the laws applicable to insurance fraud. Claims reps must also guard against being overzealous and conduct the investigation fairly, being careful not to reach premature conclusions about a claim’s legitimacy.

Fraudulent claims come in many forms. Hard fraud usually refers to staged or fictitious losses. Soft fraud is fraud of opportunity, such as padding or exaggerating an otherwise legitimate loss.

Arson for profit is probably the best-known example of how insureds create losses and commit property insurance fraud, but dishonest insureds can create losses by explosion, water, or almost any other peril. Staged burglaries and thefts, in which the insured fabricates circumstances to make it look like a theft or burglary has occurred, are also common. The property supposedly stolen is stored off premises or hidden. In commercial losses, the allegedly stolen merchandise might have been sold before the burglary was reported or might not have existed at all. Fake or altered receipts and other fraudulent documents might be submitted as proof of purchase. In some cases, dishonest insureds purchase duplicate insurance to increase the recovery amount while concealing the existence of duplicate coverage from both insurers.

**A legitimate loss can become an opportunity for soft fraud if the insured grossly exaggerates the extent of the loss. The insured might exaggerate the amount and value of personal property that was destroyed or stolen. Some insureds might claim loss of property that was not on the premises at the time of loss, while others might claim the destruction of property that never existed. With building losses, some insureds misrepresent the type and value of building materials to increase their recovery**.

**Federal and State Laws Relating to fraud**

Various federal laws address fraud, including these:

* The Violent Crime Control and Law Enforcement Act of 1994 – makes insurance fraud a crime when it affects interstate commerce
* The Federal Mail Fraud Statute – prohibits the use of the US Postal Service for the purpose of defrauding or obtaining money or property by means of false or fraudulent pretenses, representations, or promises.
* The Racketeer Influenced and Corrupt Organization Act, (RICO Statute) specifies these acts as racketeering activities: arson, theft from interstate shipments, mail fraud, wire fraud, band fraud, and interstate transportation of stolen vehicles or property. Prosecution under the RICO statute requires at lest two of the racketeering activity.

In addition, every state and the District of Columbia have laws regarding various fraudulent activities, including reporting statutes and immunity statutes. Reporting statutes outline what types of activities must be reported and to which authorities. Immunity statutes grant immunity to those who provide information to public authorities investigating suspected fraud. Claim reps must become familiar with the laws in the states in which they operate.

Fraudulent schemes can be simple or complex, involving one or several people. Claim reps who work in property claims become attuned to elements of a claim that might indicate a fraudulent scheme. Such schemes usually involve one or more common elements, such as a person who deliberately causes an accident or a loss, claims that a loss or event occurred when it didn’t, or exaggerates the amount of a loss.

To be prepared to spot potentially fraudulent claims and schemes, a property claim rep should be aware of some common fraud indicators. The National Insurance Crime Bureau (NICB) offers a number of tools and databases to help insurers and law enforcement agencies detect and fight fraud. It also updates and publishes extensive lists of fraud indicators for various types of claims. **Common fraud indicators for property losses include these:**

* **The claimant will accept a small settlement rather than provide documentation for all losses**
* **The losses include numerous appraised items or scheduled property**
* **The claimant contacted an agent to verify coverage or increase coverage just before the loss date**

When reviewing a claim, a claim rep might notice indicators of fraud, but that doesn’t mean the claim is fraudulent. When such indicators are identified, the claim rep must ask these questions:

* How likely is it that a business owner would not have any receipts to document the losses?
* What are the chances that a loss would occur immediately after coverage was increased?

Some insurers are using technology to enhance the fraud-screening process. They use software that screens claims data for specific indicators and then assigns them a score or weight. A particular score or weight designates a claim as potentially fraudulent. These systems search the insurer’s own claims data to find similar patterns.

**Investigating Fraud**

A claim rep has a good-faith obligation to conduct a fair and adequate investigation to determine whether a loss is legitimate. Likewise, insureds are expected to document their losses. Insureds should also know that their documentation will be verified. How far can a claim rep go when requesting documentation in a fraud investigation without crossing over the line into invasion of privacy? Local law can vary, so a claim rep should consult with legal counsel to determine whether specific investigative techniques are acceptable in the jurisdiction.

Claim reps for insurers that have a special investigation unit should involve SIU as soon as they suspect that a claim is suspicious. Reps for insurers that don’t have an SIU should report suspicious claims to their managers as soon as possible. Early involvement preserves the investigation’s integrity and facilitates additional investigation. It also allows the rep to continue to work on the loss while a parallel investigation is conducted.

**Industry Resources**

**Industry and government resources can also help a claim rep identify and investigate potentially fraudulent claims.**

**Industry resources that are useful in identifying and investigating potentially fraudulent claims include index systems (or index databases), investigative support organizations, and educational organizations**. Various index systems/databases are available for conducting research on individual claimants and specific properties involved in claims. These indexes should be an integral part of every claim investigation even for claims that don’t initially appear to be suspicious. These systems can identify previous fraudulent claimants and can detect whether the same property has been involved in multiple claims.

For example, ISO Claim Search system is an extensive database of more than 1 billion claims, including casualty, property, and auto claims. When a claim is entered into the database, the system searches for and provides information on previous claims submitted by the same individuals or businesses. It examines past claims to find matching names, addresses, Social security numbers, vehicle identification numbers, driver’s license numbers, and more. When matches are found, the information is flagged in the user interface, which helps users establish loss histories, see claim patters and identify suspicious claims.

**These are some other resources claim res can use during an investigation**:

* **The Art Loss Register** – private online database of stolen artwork that can aid in its identification and recovery
* **The National Equipment Register (NER)** – online database of heavy equipment, construction equipment, and agricultural equipment. Insureds are encouraged to register their equipment so if a piece is stolen, ownership can be traced.
* The NICB – Organization that works with law enforcement to fight all types of insurance crime, including arson. Sponsors a Special Investigations Academy to educate claims personnel
* The Insurance Committee for Arson Control (ICAC) – multiple leading insurers that includes participation from NICB and Independent Insurance Agents & Brokers of America. ICAC is an educational and communications investigation training seminar, a training program for claim reps that focuses on the law, investigative techniques, and scientific principles related to fighting arson
* The International Association of Arson Investigators (IAAI) – grants the Certified Fire Investigator (IAAI-CFI) designation to those dedicated to investigating fire origin and cause and who meet education and experience requirements. Publishes quarterly Fire & Arson Investigator journal

Various other educational programs are specifically devoted to detecting and proving fraud, including arson. These include the Fraud Claim Law Associate (FCLA) program of the American Educational Institute and the fraud examiner education courses of the Association of Certified Fraud Examiners.

**Local and State Information**

In addition to insurance industry resources, a claim rep can access information from many local and state government sources, including county registrars, local tax assessors/collectors, the state division of motor vehicle, and utility companies. Federal agencies may be able to provide valuable information as well. Some of these sources may require written authorization before releasing information. A special investigator or local attorney can help determine what can and cannot be obtained without a written authorization.

Financial information may be obtained from the United States Bankruptcy Court and from credit reporting agencies. Some of these agencies may require written authorization before releasing any information. Claim reps should be aware of what they cannot obtain under the Fair Credit Reporting Act and individual state acts. Because of the many privacy issues involved in obtaining financial information, claim reps should strictly adhere to their company’s guidelines regarding the acquisition and use of such information.

**2 – Voiding Coverage For Concealment, Misrepresentation, Or Fraud**

**Objective**: Explain what an insurer must prove to void coverage under the concealment, misrepresentation, or fraud condition

If a claim rep has detected and documented a fraudulent claim, the insurer may give the rep the authority to deny the claim on the grounds that the insurer has breached the concealment, misrepresentation, or fraud condition in the applicable insurance policy.

Although the final decision to deny a fraudulent claim is often made by one or more senior members of the insurer’s Claims Department, every claim rep should understand the legal definitions of concealment, misrepresentation, and fraud; the substance of typical concealment, misrepresentation, or fraud condition in an insurance policy; and what the insurer must prove in order to void coverage under this condition.

**Concealment, Misrepresentation, and Fraud Defined**

Although the terms concealment, misrepresentation, and fraud might seem to by synonymous, they have distinct legal meanings.

**Concealment occurs when someone knowingly withholds information that he or she has a duty to disclose**. Fore example, concealment can occur when someone is applying for insurance and intentionally **withholds any material fact** regarding the risk that he or she, in honesty and good faith, should communicate to the insurer. **The material fact is one that would affect the insurer’s decision** to provide or maintain insurance or to settle a claim.

**Misrepresentation is representing something that is false as a fact, including statements that are only partially true**. For example, an insured could misrepresent his or her loss history by revealing only one loss when several have actually occurred.

**Fraud is a general term that encompasses all types of acts (intentional misrepresentation) intended to deceive another person or organization**. **It is an intentional deception, by word, deed, or concealment meant to cause another to part with something of value or to surrender a legal right.**

The opportunity for insurance fraud can appear at anytime, beginning even before an insurance policy is issued. For example, and applicant for insurance may misrepresent or conceal information during the application process. False information may be given to the underwriter about a risk’s nature. Claims may be staged or exaggerated. And attorneys and insureds might conspire to obtain fraudulent claim payments. It’s important to be aware of these opportunities to commit fraud, but keep in mind that most people don’t pursue such opportunities when presented with them.

**Concealment, Misrepresentation, or Fraud Condition**

Insurance policies normally contain a condition stating that the policy will be void or the coverage will not be provided to an insured if the insured engages in concealment, misrepresentation, or fraud, either before or after a loss.

The condition reads: This coverage part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning; This Coverage Part, The Covered Property, Your interest in the Covered Property, or A claim under this Coverage Part.

One purpose of this type of condition is to prohibit payment of fraudulent claims, which would go against public policy by promoting criminal activity or by harming the state or its citizens. The condition applies to fraud in the application for insurance as well as to claims fraud.

**What the Insurer Must Prove to Void the Policy**

Misrepresentation in the application occurs when an insured has concealed or misrepresented a material fact that the insurer relied on when issuing the policy. Common misrepresentations concern the insured’s true loss or claims history, insurance history, interest in the property, and concurrent or duplicate coverage.

**In an insurance application, fraud, concealment, or misrepresentation is deemed material if the information provided by the insured influenced an underwriter to accept a risk he or she wouldn’t have otherwise accepted or to charge a lower premium**.

In the context of claims, a misrepresentation or concealment is material if it would have made a difference to the insurer in its investigation or in the amount paid under the policy.

To void the policy, the insurer must prove that the misrepresentation or concealment was willful (intentional). **Concealment or misrepresentation is considered willful or intentional when the insured knows that his or her statements are false, swears falsely with reckless disregard of the truth, or swears that matters are true when he or she knows little or nothing about the facts**. Intent to defraud can be assumed whenever the misrepresentation or concealment is both material and willful.

**3 – Investigating A Suspicious Fire Loss**

**Objective**: Explain how to properly investigate a property loss involving a potential insured-involved incendiary fire

An arson investigation is, at its core, a fire investigation that resulted in a finding of an incendiary fire. An insurer’s detection of a suspicious fire and the evidence gathered in the resulting investigation are crucial to properly handling a claim involving an insured-involved incendiary fire.

Claim reps may become suspicious of the cause of fire because of certain fire circumstances, the insured’s behavior, or other information potentially indicating an insured’s involvement.

**Preliminary Steps**

In any significant loss, the claim rep should preserve all of the insurer’s rights as soon as the claim rep discovers a potential coverage issue. The claim rep can do this by obtaining a nonwaiver agreement from the insured or issuing a reservation of rights letter to the insured. The claim rep must also inform the insured of the claim’s issues so the insured has the opportunity to cooperate with the investigation. The insurer must not conduct its investigation with even a vague appearance of premedication of an insured-involved incendiary fire. The insurer must make its decision regarding the insured’s involvement in the fire only **after the investigation concludes**.

The claim rep should immediately involve the insurer’s special investigation unit (SIU), experts, and other resources needed to determine origin and cause of the fire and (if it was an incendiary fire) who was responsible. If the claim involves an incendiary fire and the claim rep tires to handle it alone or waits to seek help until late in the investigation, important evidence could be lost, the claim might have to be paid, and the insurer could face bad-faith litigation if the claim were to be improperly denied.

A finding of a deliberately set fire does not mean that the claim will not be paid, because the insured may not have been involved. Moreover, a finding of an accidental fire does not end the need to preserve evidence, because subrogation possibilities may exist and the evidence may be needed to prove the responsible third party’s liability.

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| --- | --- | --- | --- | --- | --- |
|  |  | **Determine Origin and Cause of the Fire** |  |  |  |
|  |  |  |  |  |  |
|  | **Deliberately Set Fire** |  |  | **Accidental Fire** |  |
| / |  | \ | / |  | \ |
| **Fire set by, or at the direction of, the insured** |  | Fire Set by someone else | Fire caused by the insured, an employee, or an unknown person |  | **Fire caused by an outside party** |
| **|** |  | | | | |  | **|** |
| **Assert arson defense** |  | Adjust claim | Adjust claim |  | **Adjust claim and pursue Subro** |

The fire investigation experts must act promptly as physical evidence can degrade or disappear quickly. The experts must ensure that their investigation techniques will stand up to scrutiny at trial.

**Insured’s Duties Following Loss**

The claim rep must remind the insured of the duties that the insured must perform after covered property is damaged, including submission of a proof of loss, production of documents, and examination under oath (EUO), and that the claim cannot be resolved unless these duties are performed.

A proof of loss must state the cause of loss and must be signed and sworn to by the insured. Thus, the proof of loss is a crucial document in a suspicious fire claim. A false statement about the fire’s cause is grounds to void the policy. The claim rep should check the proof of loss thoroughly for any misrepresentations and should ensure the investigation is completed within the insurer’s time limitations.

After receipt of the proof of loss, the insurer may require the insured’s EUO. An experienced examiner, typically an attorney who is experienced in fire investigations and fire claim litigation, should conduct the EUO. Most policies require the examinee to write his or her signature on the transcript of the questions and answers. The insurer should require the insured’s signature to confirm that the insured reviewed the transcript.

An insured’s failure to appear for EUO, failure to bring requested documents, or refusal to answer questions can prevent the insurer from substantially completing its investigation. Any of these may be grounds for claim denial because of a breach of the insurance contract.

**Was the Fire Incendiary?**

**Incendiary fire investigations involve four areas:**

* **Proof of incendiary fire**
* **Proof of motive**
* **Proof of opportunity**
* **Connective evidence**

An incendiary fire is a fire that is intentionally ignited in an area or under circumstances where and when there should not be a fire. Compare this to a camp fire, which is intentionally set fire, but is ignited under circumstances where and when it should be. Forensic fire investigators often differentiate between incendiary and accidental fires by how they begin and progress. Fire investigators must thoroughly explore the potential accidental cause to rule out such causes or to determine what role they played in the fire.

Signs that a fire was incendiary include multiple fires; trailers (fuel contained in a manner to spread a fire); lack of fuel load; lack of ignition sources; incendiary or delay devices; absence, removal, or replacement of contents prior to the fire; or sabotaged fire protection systems. The fire investigator must learn to recognize when the conditions are present at a fire scene and carefully consider their impact in the overall scope of the fire.

**Origin and Cause of Fires**

The origin is the general location where a fire begins, and it is critically important. Accidental fires tend to originate in electrical wiring, appliances, heating equipment, and where human activity occurs. Arsonists often use ignitable liquids or trailers to accelerate the production of heat and spread the fire.

**Fires typically begin as a small flame, which must grow and spread to destroy a structure. As a fire grows and spreads, the fire’s point of origin usually burns longer**, and more destruction occurs in that area. Investigators trace the spread of a fire from its perimeter to its origin, from least fire damage to greatest fire damage. Additionally, the investigator looks for areas of lowest burning, as fires spread upward and outward much more readily than they spread downward.

Firefighters regularly open the roof of a burning building to relieve the built-up heat inside. Once the heat and flames escape upward, the fire’s intensity and horizontal spread subside considerable. Investigators examining the origin of a fire with significant horizontal spread must examine the debris to explain why the fire spread. For example: Did the fire originate at multiple points? Was an accelerant or trailer (which may be introduced in the form of an accelerant or other materials such as crumpled newspaper) present?

When the spread of a fire suggests the presence of accelerants, an investigator must search for and preserve any such evidence. Fire consumes accelerants, but traces may survive the fire. Detection devices or trained dogs can help locate possible accelerants in fire debris for subsequent laboratory analysis.

Once the fire’s origin is known, the fire investigator then determines: **the first fuel ignited, the source of hear or ignition, and the circumstances that brought them together. These combined steps are known as the cause of the fire**.

Mechanical and electrical devises are designed to handle fuel, heat, or electricity safely, but they can malfunction. When a fire originates in or at one of these devices, the fire investigator, or other forensic expert, can examine the physical evidence and often determine the reason the fire began (that is, the cause of the fire).

A complete fire investigation includes interviews with witnesses. An investigator must compare the statements of witnesses to physical evidence for consistency.

Questions for Fire Witnesses

* Who discovered the fire?
* Who initiated the alarm?
* How did the witnesses happen to observe the fire?
* Where was the witness when he or she first observed the fire?
* Was the alarm given by an alarm or by telephone?
* Do the witnesses go near the building?
* Did the witnesses enter the building?
* What did the witnesses see?
* In what room or portion of the building was the fire burning when the witness first saw it?
* How large was the fire?
* What color were the flames?
* If the witness was close enough to observe, specifically what was burning?
* How rapidly did the fire spread to other portions of the building and contents?
* Whom else did the witness observe around the building in the early stages of the fire?
* Was anyone observed in the building?
* Was anyone observed leaving the building when or just before the fire was observed?

**Fire Investigator Methodology**

Fire investigators must use proper fire investigation methodology to ensure they consider all possible fire cause explanations that are consistent with the evidence. To ensure they use proper methodology, fire investigators should use a series of questions during the investigation.

Fire Investigation Checklist for Adjusters:

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| --- | --- |
| Scene | Was the scene systematically examined, sufficiently dug out and reconstructed, and properly document with photos and diagrams? |
| Origin | Were an area of origin and then a point of origin properly established, and were all other potential areas of origin considered and eliminated? |
| Cause | Was an ignition source identified, and were all other potential ignition sources considered and eliminated? Is the ignition source a competent heat source for the material first ignited? What was the material first ignited? What was the series of events that brought the ignition source, fuel, and or oxidant together? |
| Evidence | Was necessary evidence identified, documented, and properly secured? |
| Interviews | Were all necessary interviews conducted, and were they comprehensive? |
| Engineering & Laboratory | Was engineering/laboratory assistance necessary and utilized, and were the engineering/laboratory findings integrated into the origin and cause opinion? |
| Report | Was the investigator’s report reflective of investigation protocol, evidence, and all findings? |

**Did the Insured Cause the Incendiary Fire?**

Claim reps should not presume that the insured was involved in intentionally causing the fire just because an incendiary fire occurred. There may be no direct evidence of who started the fire. An insured’s involvement or noninvolvement in a fire is usually established through this **connective evidence**:

* An agent is contacted shortly before the fire for coverage and policy limit verification
* The insured is the only one at the property at the time of the loss or is the last person to be at the property before the fire
* Sentimental items or family pets are absent at the time of the fire
* The insured and his or her family pets are staying elsewhere for a short period of time

**The Insured’s Motive**

In the absence of direct evidence of who set the fire, the insured’s motive becomes an important element in the insurer’s determination of insured involvement. A claim rep should diligently investigate both an insured’s motives to burn the property and motives not to do so.

**Financial gain is a common motive for an insured-involved incendiary fire. An insured’s adverse financial condition might create need; in other cases the motivation is merely greed. A loss settlement may substitute cash for an illiquid asset. A claim rep investigating an insured’s financial motives to commit arson must examine whether the insured would be better off with cash or with the insured property**.

Financial motives are not the only motives for an insured-involved incendiary fire. The insured might act out of revenge or hatred. A revenge fire is typically not an accidental fire. Another motive for an insured-involved incendiary fire could be fore the insured to gain insurance coverage. The claim rep should look for evidence of concealment or misrepresentation on the part of the insured. A thorough coverage investigation by the insurer is necessary so an appropriate claim decision is made regarding the application of all policy provisions.

**The Insured’s Opportunity**

**An insured’s opportunity to start the fire is powerful connective evidence of involvement**. Opportunity can be demonstrated by lack of an alibi, behavior that enables another to commit the act, **behavior demonstrating knowledge that the fire was going to occur**, evidence establishing an insured was in the vicinity of the fire, or by an insured’s exclusive opportunity to access the structure.

An alibi is an assertion that the insured was elsewhere when the fire started or when it was set with a delay device. A claim rep should thoroughly explore the alibi, including the insured’s relationship with the motive of the supporting witnesses. **Alarm systems, internet-connected devices, and cameras are increasingly valuable tools for evaluating the activities leading up to the fire and should be fully explored**.

**If an incendiary fire is set inside securely locked premises that have not suffered a break-in, an inference might be made that someone with keys to the premises started the fire. If, contrary to all previous practice, the premises were unlocked and burglar alarms where disabled, an inference might be made that an insured was involved**.

An insured’s involvement can be inferred when the insured apparently knew that a fire was about to occur. Following a fire, debris of personal property should be present throughout the premises. **Even in a total loss fire, portions of the contents will survive because fire will not destroy them, such as component made of certain metals. The absence of expected contents suggest they were moved before the fire, especially if the missing items are high-value or sentimental objects. If items seem to be missing, the claim rep should canvass for witnesses who may have observed their removal, and should consider sifting the debris to verify the absence of these items. When fire-resistant remains of claimed items are not found in the debris, it is an indication that the claimed property was either removed from the structure prior to the fire or was not in the structure when the fire occurred**.

**4 – The Fire Investigation Team**

**Objective**: Explain the role of the members of a fire investigation team

A fire can be the source of devastating, unanticipated loss for an insured. It can leave a family vulnerable or a business on the brink of bankruptcy – but n some circumstances, it could be seen as a way out of a mortgage that’s underwater or as a chance for making one final profit from a business that’s about to fail. For these reasons, claim reps need to be ready and able to bring together a team of experts to analyze whether an insured-caused fire may have been started on purpose.

**A claim reps should involve various experts** when he or she suspects an insured-involved incendiary fire (arson). Such experts may include:

* **The insurer’s special investigation unit (SIU)**
* **An origin and cause expert**
* **A forensic chemist, engineer, and/or fire scientist**
* **A forensic accountant**
* **Public authorities**
* **A “fire-savvy” attorney**

Forensic experts provide information suitable for use in court as to how a specific event may have occurred or what effect it may have had. A forensic chemist, engineer, or fire scientist, for example, may be able to explain why an explosion, a building collapse, or a fire occurred, while a forensic accountant could determine and testify as to whether the insured had a financial incentive to cause the accident.

**The Claim Representative and Professional Investigator**

An investigation of a suspicious fire loss should not focus on attempting to prove an insured participated in the fire. Rather, if, at the end of the investigation, it is established that the insured did not participate, then the insurer’s claim decision can be made with confidence that the claim was investigated in good faith.

**A claim rep acts on the insurer’s behalf. The insurer has promised to pay covered claims but is not obligated to pay for intentionally caused losses. The claim rep must not only fulfill the insurer’s promise, but also must protect the insurer’s rights to investigate and properly evaluate fraudulent claims.** Thus, **the claim rep faces the fundamental issue in any coverage investigation: Should the claim be paid or contested**?

Although insurers do not prosecute crimes, they may report a known or suspected crime to law enforcement in accordance with a statue in the particular jurisdiction. The term “arson” should be avoided. In its place, the terms “**questionable loss” or “questionable claim”** convey the message that the insurer is merely investigating the claim to determine policy coverage, rather than prosecuting the insured.

The coverage decision has enormous consequences for both the insurer and the insured. Claim reps have an ethical obligation to deny claims that involve an insured causing or procuring an intentionally caused fire (arson) and to pay claims that do not. Claim reps must therefore be familiar with the circumstances that might indicate an insured-involved incendiary fire.

Failure to recognize the indicators of what in insured-involved incendiary fire could cause the insurer’s rights to be waived. A representative who sees indicators of a possible insured-involved incendiary fire must know how his or her employer responds to such claims. The claim rep should involve the people and resources necessary to conduct a thorough and appropriate fire investigation.

The representative might serve as an investigator, or the insurer might hire an independent professional investigator. An insurer’s claim rep can usually identify relevant sources of information and take statements from witnesses. Reps should also check industry resources for information on past claims. A professional investigator may be preferable for obtaining background information on the insured, such as financial, legal and personal records.

The representative’s responsibilities include coordinating all the efforts of all others involved in the fire investigation, providing clear instructions on the scope of an assignment, responding promptly to all inquiries, and thoughtfully making (or recommending) the ultimate decision on the claim. The claim rep can make good decision in cases of suspected insured-involved incendiary fires by gaining experience and education in the elements of intentional acts and concealment/misrepresentation claims.

**Origin and Cause Expert and Other Forensic Experts**

In the past, origin and cause experts were former fire department investigators. Increasingly, they have scientific, technical, or specialized knowledge in addition to their expertise rom fire department experience. Regardless of an origin and cause expert’s background, he or she must have specific training and education in areas including fire-scene analysis, interpreting and analyzing fire patterns, preservation of evidence; providing investigative findings verbally and in writing, and testifying during legal proceedings.

**An origin and cause expert is crucial to determining where and how a fire started and whether an insured was involved in causing or procuring the fire. To be an effective witness, the expert must be able to demonstrate that his or her conclusions are based on specific scientific, technical, or specialized knowledge. The methods and techniques used to reach the findings and conclusions must be scientifically valid.** A claim rep should select an origin and cause expert in consultation with senior claim staff and legal counsel so that the potential for a challenge of the expert’s methods and qualifications are minimized.

Origin and cause experts should not rely solely on the fire marshal’s investigation. An insurer that hires an origin and cause expert should expect an independent determination of where and how a fire began.

Other forensic experts who could assist in a fire investigation include these:

* Mechanical engineers – can evaluate the role of a variety of systems, including motors, air conditioning, and heating equipment. (eliminating the failure of such items as the cause, and can also provide an analysis of heat transfer and identifying component ignition sources)
* Electrical engineers – can examine electrical systems and provide context relating to origin, ignition sequence, and cause. (electrical circuits in a home can be evaluated or perhaps eliminated.
* Forensic chemists – can detect, identify, and preserve chemical residue from a fire scene. (gasoline found in an area where it should not be located. They must consider innocent explanations such as synthetic carpets, upholstery, and plastics can display a chemical signature similar to some accelerants)

These forensic experts must be trained in preserving evidence in a legally admissible manner. Because it’s likely they will be called on to testify in court, they should be articulate and capable of explaining scientific procedures in terms that are easy to understand.

**Accountants**

**Because one of the most common motives for insured-involved incendiary fire is financial**, **involving a forensic accountant in an investigation of such a fire is important. By the time an examination under oath (EUO) takes place, the claim rep should know as much about the insured’s financial condition as the insured. A forensic accountant has the skills to provide this analysis.**

Upon becoming suspicious of an insured-involved incendiary fire, a claim rep should immediately request complete financial records from the insured. The Building and Personal Property Coverage Form’s Duties in The Event of Loss condition, for example, specifically provides, “As often as my be reasonably required, permit us to…. examine your books and records.” A representative should request at least the insured’s tax returns, records from suppliers, all evidence of indebtedness, all regularly prepared financial statements during the past year, and all bank statements from the past year.

The claim rep should also consult with an expert accountant to determine what other records are important and likely to exist. An accountant might want several years’ worth of records to look for trends in the insured’s business. For example, the insured’s business might have seasonal or annual trends. Is the insured’s business failing, or has it recently lost some revenue? Have the owners tried selling the business recently? **An accountant can answer these questions and can spot other telltale signs of trouble that might address the ultimate question about the insured’s financial motive. Would the insured be better off with an insurance settlement than with an intact building**?

**Public Authorities**

A city, county, or state fire marshal may investigate the fire. While some communities require all structural fires to be inspected, others inspect only suspicious fires. The claim rep should ascertain the fire marshal’s scope of authority when beginning his or her investigation. **The fire marshal’s conclusions are used to prevent future fires, strengthen building codes with respect to fire protection, and identify suspects for criminal prosecution – not to provide evidence for insurance claims investigations**.

While claim reps may be interested in criminal prosecutions, they **cannot defer their investigation on the assumption that public authorities will investigate the cause of the fire and prosecute those involved**. Doing so may establish that the claim rep and the insurer were predetermined in their claim decision, meaning that they had decided the insured intentionally started the fire for the purpose of gaining insurance benefits before their own investigation even began. This could be a gateway to bad-faith litigation against the insurer.

The insurer’s goal in any fire claim investigation is proper determination of coverage, while the public authority’s goal is that of public safety and law enforcement. Because of these different objectives, the insurer must be careful to ensure that everyone, public and private, is looking at the same set of facts and circumstances. Independent but parallel investigations must be conducted, especially when an insured-involved incendiary fire is suspected.

When reviewing a claim, **claim reps should speak with firefighters to determine these factors:**

* **What firefighters observed with respect to the fire’s origin**
* **Whether the premises were locked and secured**
* **Whether fire alarms and sprinklers functioned**
* **Whether unusual smoke or odors were present**
* **What fire suppression actions took place**
* **Whether an investigation was conducted**
* **Whether firefighters collected any evidence or took photographs on arrival**
* **What time they arrived**
* **Whether there was any difficulty extinguishing the fire**
* **Whether the owner appeared during the firefighting and, is so, how he or she behaved**

Firefighters might not have any special training in determining origin and cause, but their opinions about whether the fire seems suspicious are valuable.

When public authorities investigate a suspicious fire, they may obtain a statement from the owner. The owner’s statement to the public authorities or, in most cases, and insured’s statement to the insurer does not relieve the insured of the obligation to submit to an EUO. The examiner conducting the EUO should look for discrepancies between the EUO and any prior statement, including one given to the public authorities.

**Attorneys**

Part of an adequate claim investigation is the EUO. Attorneys usually conduct the EUO as they are familiar with the style and scope of questioning the EUO requires. An EUO is an excellent opportunity to see what kind of witness the insured will make. The success or failure of an intentional acts and/or concealment/misrepresentation defense depends heavily on the insured’s credibility. Claim reps should attend EUOs if possible.

Claim reps should also involve a fire-savvy attorney in suspected insured-involved incendiary fire cases as soon as possible. Attorneys with the right experience can advise claim reps about what evidence is essential, persuasive, and favorable to the insured. If insurers follow an experienced attorney’s advice, they will benefit from a comprehensive evaluation of the claim, including the intentional acts and/or concealment/misrepresentation defenses.

**A claim denied as an insured-involved incendiary fire is likely to result in a civil lawsuit. Claim reps must foresee having to prove their position to a judge or jury.** Claim reps who investigate suspicious fire claims must learn the rules of testifying in court and presenting evidence, and develop their investigations accordingly. Attorneys experience in litigating civil cases involving insured-involved incendiary fires can help prepare claim reps for court and can answer legal questions. Attorney involvement helps to ensure a successful defense.

**5 – Staged Burglaries and Thefts, Padded Claims, and Multiple Policies**

**Objective:** Explain how to evaluate suspicious burglaries and thefts

In addition to arson, adjusters should be alert for other types of property loss fraud, including staged burglaries and thefts, padded claims and claims under multiple policies.

As with arson, the two keys to fighting any type of fraud are detection and proof. Adjusters must be alert for indicators of fraud and, once alerted, must diligently gather evidence that proves the fraud.

Following a burglary or theft, the insured property is gone and is rarely recovered. Thus, burglaries and thefts are easy to stage. An insured staging a burglary might break a door or window lock with a crowbar to simulate a burglar’s break-in. A damaged lock can be included in the claim, but there need not be any physical evidence of the event. Most homeowners cannot document the vast majority of their personal property.

**Staged Burglaries/Theft**

The National Insurance Crime Bureau (NICB) compiles indicators of fraudulent burglary and theft claims that can be helpful to adjusters in detecting suspicious claims. These indicators are not proof of fraud. An adjuster who is suspicious about the circumstances of any loss must gather solid evidence to prove fraud. As with arson investigations, adjusters must reserve the insurer’s rights, must require the insured to perform all the duties listed in the policy, and must move rapidly in the investigation.

Adjusters must exercise judgment with burglary and theft claims. Although most homeowners cannot document most of their personal property, they are more likely to have evidence of high-value items. They might have owner’s manuals, checks, or receipts, or they might remember where they bought the items. Many stores have records of purchases that go back several years by individual customer name. If the property was alleged to have been a gift, the donor may be able to identify the store where it was purchased.

Nevertheless, some homeowners who suffer genuine burglaries or thefts cannot produce documentation or remember how they obtained their property. Adjusters should be creative and reasonable regarding documentation. Photos, videos, boxtops, and labels can be useful in documenting ownership when the receipt is no longer available. However, just about anything can be created to document a fraudulent claim, so adjusters should scrutinize all information about the loss. The NICB has the technology to analyze receipts or documents to determine whether they are forgeries or whether alterations have been made to them.

**Adjusters must evaluate the plausibility of every reported burglary or theft. For homeowners:**

* **Is the type and amount of property allegedly stolen consistent with the insured’s standard of living?**
* Does the claim include items such as artwork, antiques, jewelry, guns, or musical instruments that often have individual floater coverage and individually underwritten?
* Were all items supposedly purchased recently?
* Does the claim include high-value items that burglars might not take because of their bulk or weight, such as large Oriental carpets or large power tools?
* Does the claim include items that burglars virtually never target, such as clothes, kitchen utensils, books, sofas, or washing machines?

**Alleged burglaries to commercial insureds present different challenges than do homeowner claims.** Commercial insureds should have complete records of their property, including types, amounts, quality, and sources and dates of purchase**. A typical fraudulent burglary involves relocating the “stolen” property**.

* **Adjusters should canvas the neighborhood for witnesses of extensive moving operations**, especially during irregular hours.
* **The adjuster should try to interview employees, alone and separate from each other,** about the alleged event.
* Adjusters need information about the financial condition of the insured’s business. A successful business with good current inventory is much less likely to stage a burglary than is a failing business with unsalable inventory.

**Adjusters should require all insureds to report all burglaries or thefts to the police. The duties after loss condition in homeowners policies typically requires the insured to notify the police in case of loss by theft. In commercial property policies, the insured is typically required to notify the police if a law may have been broken.** Generally speaking, adjusters should require a signed sworn proof of loss with every burglary or theft claim unless the insurer allows exceptions in certain cases.

**Padded Claims**

A legitimate loss can be the occasion for an insured to inflate the claim by including items that were not part of the loss or by inflating the value of items that were stolen. Insureds who engage in this behavior rationalize it in terms of recovering their deductible or premium payments. Some in the insurance industry even regard this “soft” fraud as less objectionable than the “hard” fraud or completely fabricated claims. Nevertheless, an insured who intentionally misrepresents a material fact commits fraud. Items that are the subject of a claim and their value are material facts to which the insured must swear in a proof of loss.

Requiring the insured to prove his or her claim is crucial to fighting padded claims. **Adjusters can require that insureds submit sworn proof of loss and all required documentation in all cases of suspected padding. As with suspicious burglaries, adjusters should consider the inherent plausibility or implausibility of the insured’s claim**. Unfortunately, padding can be difficult to detect.

**Multiple Policies**

An insured who has two or more policies covering the same loss and who does not disclose the multiple coverages to all insurers may have intended fraud from the outset. There are valid reasons why an insured might have two or more polices in effect on the same property at once, but the insured should disclose these polices to all affected insurers when a loss occurs. Application of the other-insurance clauses of the policies will then result in the insured’s receiving an amount from all insurers that does not exceed the monetary loss actually sustained by the insured. However, if the insurers do not know about the multiple polices’ existence and if the insured has submitted a fraudulent proof of loss to each insurer, swearing in each that no other coverage exists, there is the potential for duplicate recovery.

An insured who submits the same burglary or theft claim to several insurers without acknowledging the existence of other insurance has probably staged the claim. Any indicators that a claim might have been staged should also alert the adjuster to the possibility of multiple polices. By using one of the available claim index systems, the adjuster can detect multiple claims from the same loss or multiple claims involving the same property. Adjusters should make a habit of submitting all claims to an appropriate index system, even those that seem legitimate.