



Article Number IV
Unfair Claims Settlement Practices:
General Advice for Investigating Arson & Fraud

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In the previous article we discussed the provisions found in 19 states' versions of the Unfair Claims Practices Regulations which extend deadlines for accepting or rejecting a claim and/or waive the requirement for providing the claimant the reasons the insurer is seeking an extension of time for investigation if evidence of fraud or arson is found. In this article we will discuss claims handling in those states where no such protections appear to exist. We will also discuss some general concepts regarding handling of arson or fraud claims in both types of jurisdictions.

The 31 states which do not appear to waive the regulations in the face of evidence of arson or fraud are:

Colorado	Massachusetts	South Carolina
Connecticut	Michigan	South Dakota
Delaware	Mississippi	Tennessee
Florida	Missouri	Utah
Georgia	Montana	Vermont
Hawaii	New Mexico	Virginia
Idaho	North Carolina	Washington
Illinois	North Dakota	Wisconsin
Indiana	Nevada	Wyoming
Louisiana	Ohio	
Maine	Oregon	

There are certain basic guidelines which should assist the adjuster when confronted with a suspicious loss (fire, theft, vandalism, etc.) or a damage claim that appears to be intentionally exaggerated. In the states listed above, these become particularly important given the tight time frames under which the adjuster must operate.

These guidelines are:

1. Begin the investigation immediately. In the case of a fire or other incident which will be investigated by either fire service or the police, do not wait for a formal claim to be filed. By then the scene will be contaminated and

- any evidence gathered is subject to impeachment. Also, depending upon the language in your particular jurisdiction, you may buy a few extra days if the time does not start to run until the insured has filed a formal claim.
2. Develop a reference list of professionals that you can call upon when the need arises. These include :
 - origin and cause experts (electrical, chemical, and mechanical engineers and persons experienced in the building trades),
 - attorneys (for taking sworn statements and protecting evidence),
 - professional photographers
 - appraisers (personal property and structural)
 3. Develop good working relations with both fire service and police investigators but make certain that your coverage investigation stays focused on the insurance issues and is not taken over by the authorities for their own purposes. This can occur in several ways:
 - Insurers will sometimes retain experts that local fire and police departments cannot obtain the funding to hire.
 - The insured's obligations to (a) turn over financial documentation to the insurer, (b) allow repeated access to the premises after the incident, and (c) give one or more sworn statements will often give an adjuster information that fire and police personnel, because of constitutional protections could not obtain.
 - The crime being investigated by the police may bear little relationship to the actual claim for damages, e.g. illicit drugs, storing and disposal of stolen property or crimes of violence. While many states provide immunity for insurance personnel who report potential insurance fraud to the appropriate agency, such protection will not exist for an adjuster who misuses the powers given by the insurance contract to support a non-insurance fraud related investigation.
 4. Make certain that you have the complete insurance policy and all written material that is sent to the insured which describes all duties assumed by the insurer. We hear often of horror stories involving identity theft resulting in misappropriation and misuse of personal financial information. Insurance carriers have begun to send out to their insureds letters containing broadly worded guarantees as to the protection of such information. These could impact the ability of the adjuster to share financial information learned in the investigation with other agencies or individuals.
 5. Anticipate that you will be pressured for a quick decision by the claimant including threats to take the matter to the insurance commission. If the investigation is begun promptly and EVERYTHING is documented completely, a trip to the commissioner's office should not be a major problem.

6. Fraud while less interesting than arson to a jury is infinitely easier and less expensive to prove. Examine early and in great detail all of the personal property claimed lost in the fire or theft. Many individuals who burn their property have a difficult time avoiding the temptation to add to the profit potential by improving upon the quantity, value, age and/or condition of items that were lost.
7. Generally do not plan to use a polygraph as an investigative tool. There are several reasons for this:
 - In some states, for example Alabama, Iowa and Rhode Island, it is illegal to request that the insured undergo a polygraph examination unless it is provided for in the insurance policy or by some other statute;
 - The results of such an examination that supported a denial of the claim would not be admissible in court; and
 - The defense of the denial of a claim following a polygraph that appeared to exonerate the claimant would become infinitely more complicated and fraught with the danger of a bad faith claim if the claimant's attorney can find some exception to the standard prohibition of introducing the results as evidence in trial.
8. If the time runs and the claimant must be advised that the investigation is not completed as more work must be done to determine issues of causation and/or fraud, do not mislead the claimant. The consequences of intentional misleading the claimant could range from loss of ability to assert the policy defense at a later coverage trial to the creation of a basis for a bad faith claim. Neither is worth the risk.

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