

Arson Investigation- The American Approach

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What can we learn from the way Insurers and adjusters in America investigate arson claims? PAUL MAY discusses the key issues that arose from the 6th National Arson Investigation Seminar held in Arizona last January.

Although arson for profit has been a serious problem for Insurers and law enforcement agencies for over 20 years, this was only the sixth such seminar.

Over 300 insurance company claims staff, investigators, attorneys and adjusters attended from across America. Organised by the Insurance Committee for Arson Control, the seminar offered general sessions as well as concurrent workshops to cater for the different factors encountered in motor, residential and commercial fire claims.

The ever present spectre of damages for bad faith in claims handling provided the backdrop for consideration of the extent and time consuming investigations by the adjuster, claims handler, cause investigator and attorney. Spinning out enquiries, using delay as a tactic and maintaining an "ostrich" approach are all ways in which the adjuster can incur significant liabilities for failing to act in good faith to the policy holder. Consequently, claims investigation is geared to gaining the fullest information at the earliest opportunity.

Even the premature issue of a reservation of rights letter can cause difficulties. The underlying message from the speakers, case studies and delegate contributions is that a focused and managed approach is needed with a team including the adjuster, cause and origin investigator, attorney and other specialists such as accountants.

There is also an increasing trend for the establishment of a special investigation units within the insurer's claims department, who can concentrate on "slow track" cases.

Appointing lawyers

Concern was expressed that the appointment of a lawyer before the case became a suspect claim could mean that privilege would not be available.

The lawyer can be regarded as an "investigator", with the result that a separate lawyer has often to be appointed for the litigation process.

Immunity

Immunity Acts allow the exchange of information between Insurers and police/fire/prosecution authorities without risk of defamation actions from the policy holder. However, there is still a need to ensure that independent enquiries are conducted, eg merely reproducing the opinion of the Fire Marshall as to cause was seen as a recipe for losing credibility.

The adverse effect that this could have on the claim was demonstrated during a mock trial examination of a cause investigator.

Interagency co-operation

The seminar was well attended by both civil and criminal lawyers, including several state prosecutors. Communication between the insurance industry and the criminal prosecution agencies is far more advanced than in the UK. In particular, greater involvement by the Crown Prosecution Service in the issue of fraudulent arson could be of benefit.

Fire Investigation Standards

Significant forensic investigation standards and guidelines exist in America. The National Fire Protection Association (NFPA) has, in recent years, developed and issued two sets of reference standards which have led to considerable debate and disagreement within the insurance industry and legal profession.

Guide for Fire and Explosion Investigations seeks to establish benchmarks for investigators on aspects such as collection, testing and storage of samples. However, criminal defence and civil plaintiff lawyers have sought to use the publication as a method of discrediting investigators. One attorney felt that the document had created more problems than it had solved as omissions during the investigation now take on a greater significance at trial. Considering that the innocent policy holder's business, home or liberty may be at stake, this is surely the way forward. There must be no place for incomplete, tardy, partial and incorrect cause investigations.

The second reference work - Standard for Professional Qualifications for Fire Investigators - establishes objective competency standards to measure the qualifications and training for fire investigators.

One speaker, an attorney, suggested that unless the US forensic industry could establish and enforce ethical standards, Government regulation is inevitable.

The use of outside cause and origin investigators is common practice in America and it may only be a matter of time before the US approach becomes UK practice. It would certainly be interesting to learn how the concept of such standards would be received by UK Insurers, lawyers and forensic scientists. Considering that in the UK the cause and origin of a fire is often arrived at solely by the adjuster, there would appear to be justification for early development of cause investigation and competency standards for loss adjusters.

Problems and solutions developed in America are often imported to the UK. There are areas clearly where the UK can benefit from the American approach to fraudulent arson claims and fire investigation.

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