

Prepared for:
NYSSIU MEETING

The Adjustment & Investigation of a Suspicious Fire Loss

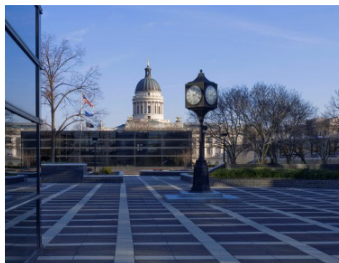
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The Adjustment & Investigation of a Suspicious Fire Loss

The Claim

Your company insures Tom Blaze and his wife, Betty, under a standard Homeowner's policy for a house located in a residential section of Brooklyn, New York. During the early morning hours of July 22, 2017, a fire broke out at that location. The house is situated on a one acre plot, which is unusual for this urban residential area. The insureds' property also abuts a large and ever-expanding private Country Club.

The fire was called into the FDNY at approximately 3:20 a.m. by a neighbor who lives directly across the street. The neighbor observed a large volume of black smoke and flames shooting from the roof. Upon making this observation, he also observed a dark colored mini-van or SUV driving away from the house. The insured owns a black Nissan Murano. There is a 7-11 convenience store across the street from the insureds' house. An employee at 7-11 was on a break in the parking lot and he too saw the dark colored vehicle and told the Fire Marshal that "he thinks a man was driving."

The first units from the FDNY arrived at 3:30 a.m. By this time, the house was fully involved, making entry by the fire department impossible. The house, which was a wood frame structure totaling approximately 5,500 square feet, burned for another 45 minutes before it could be fully extinguished. The remains of the structure collapsed into the basement. The New York City Fire Marshal took control of the scene and advised that he would permit a Cause & Origin investigator retained by the insurer to conduct a scene investigation. You are notified of the fire the next morning, at approximately 8:00 a.m. In addition to the above, you are advised of the following:

- 1) several FDNY firefighters reported the smell of gasoline at the scene;
- 2) most, but not all, of the electrical wiring in the building was consumed in the fire and not available for analysis or inspection;
- 3) the fire was so extensive and the destruction so complete that it will take at least one or two days to dig out the scene, which will require the use of heavy equipment;
- 4) the insureds and their two young children were not in the house at the time of the fire. In fact, you learn that the house had been under renovation for approximately 18 months and, during that time, the Blaze family was living in a rental Apartment in Queens;
- 5) the two entrance doors to the house, one in the front and one at the rear, were recovered from the debris. The deadbolts for both doors were protruding from the side of the door, indicating that they were engaged (locked) at the time of the fire;
- 6) a Notice that says "STOP WORK ORDER" is found laying on the grass in front of the property;
- 7) the Fire Marshal tells you that the fire "looks like an arson", but the city will not authorize the expense associated with a dig out of the scene; and
- 8) the Fire Marshal also advises that the FDNY's arson dog, "Sparky", made a positive indication for an accelerant in 2 different spots on the "debris pile" and that samples from those areas have been sent for analysis.

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In connection with your responsibilities, you retain Joe Bennett, a local Cause and Origin Expert. Bennett conducts an immediate scene examination and furnishes you with the following Preliminary Findings:

- 1) a crane (or similar equipment) will be required to dig out the scene. He also states that the Fire Marshal asked “if the insurance company would pay for this, as the City will never authorize this type of expense;”
- 2) there does not appear to be much electrical wiring to test or inspect and Bennett recommends against hiring an electrical engineer; and
- 3) Bennett has set up an interview with the named insureds and several neighbors. He states that he promised to share the results of these interviews with the Fire Marshal.

Questions Regarding Cause and Origin

- 1) What if anything, will you tell Bennett with regard to the Fire Marshal’s investigation?
- 2) What is your assessment of Bennett’s opinion regarding the electrical engineer? What is it that you really need to know?
- 3) In addition to providing an opinion as to the Cause and Origin of the fire, what else will you ask Bennett to do in connection with his assignment?
- 4) Will you authorize Bennett to share the fruits of his investigation with the Fire Marshal, and if so, under what circumstances?

Preliminary Adjustment and Investigation

As the Investigator on the claim, you decide to take a statement from the insureds. You schedule a time to meet with the insureds at their Queens apartment. You take separate recorded statements from the insureds, but they are each present for the other’s statement. Once the tapes are transcribed, you send the transcripts to the insureds and request that they sign them before a Notary Public and return them to you. During the statements you learn the following relevant facts:

- 1) the insureds were up to date on all financial obligations;
- 2) at the time of the fire the house was undergoing a major renovation and the insureds had not lived there for approximately 18 months;
- 3) during the 18 month period, the insureds re-financed the property to pay for cost overruns on the project;
- 4) a few months before the fire, the house was listed for sale with a local realtor for one million dollars (the mortgage debt on the property was \$500,000.00)—the listing stated that the house “must come down.” The insureds admit that they decided to move elsewhere and would not complete the renovations;
- 5) two months before the fire, representatives from the neighboring Country Club complained about noise from the construction, lack of proper permits, etc. This resulted in the issuance of a Stop Work Order from the New York City Building Department. The Board of the Country Club also previously complained that the general condition of the house and lack of maintenance of the Blaze property created an “eye sore;”

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- 6) one month before the fire, the Country Club made an offer to purchase the property in the amount of \$800,000.00. During the negotiations, the Country Club reduced their offers because they had to “factor in the cost to demolish and remove the existing house;”
- 7) at the time of the fire, Betty and her two children were vacationing at a relative’s summer cottage in upstate New York. Tom had returned to Brooklyn a day before the fire to work. He claims that he was at his Queens apartment, sleeping, when he learned of the fire.

Questions Regarding the Claims Investigation

- 1) Would you have taken the recorded statement in the same manner described above? If not, why not?
- 2) What investigative steps would you take prior to scheduling the insureds’ Examinations Under Oath?

The Examination Under Oath

As your investigation progresses, you are advised by Bennett that he has determined that the fire was incendiary (deliberately set). He advises you that he spent 5 days digging out the scene and that all samples he took were negative for an accelerant. He also tells you that the Fire Marshal has a positive sample for gasoline, taken from a location in the area of a first floor bedroom. The Fire Marshal has listed the cause of the fire as “Suspicious—Undetermined.” Based on this information, and all other details gathered to date, you refer the matter to local counsel to conduct an EUO of the named insureds.

Your local counsel, Perry Mason, immediately sends a letter to the insureds scheduling their EUOs. The letter advises that he has been retained by your company “to complete the investigation and conduct the EUOs.” You receive a copy of the letter and realize that Perry has requested a number of documents that have already been provided by the insureds. You also receive a message from Perry stating that he refused the insureds’ request for a copy of the transcript from their recorded interviews, (they lost copies you sent them) and also refused to provide them with a copy of the building damage estimate prepared by the company’s contractor. You subsequently attend the EUOs. A few days later, counsel provides you with a report regarding the testimony. A few weeks later, the insureds return the executed transcripts from their EUOs, along with most of the information and documents requested by your counsel. The insureds did not produce their 2009 income tax returns and have not provided a reason for their failure to do so. Perry provides you with his coverage opinion, in which he provides no citations to legal standards or case law. He refers to Mr. Blaze in a very derogatory fashion and says “he must have set the fire.”

Questions Regarding The EUO

- 1) What was wrong with counsel’s letter to the insureds?
- 2) How would you have handled the insureds’ request for information?
- 3) Was it necessary for counsel to send you a report regarding the testimony at the EUO.

Questions Regarding The Claims Decision

- 1) What is your procedure for reaching a claim decision?
- 2) What information will you consider?
- 3) How will you document the decision? What should be written in the claim file?