

LOSS SITE INVESTIGATIONS - AN OVERVIEW

COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
(215) 665-2000
(800) 523-2900
Fax: (215) 665-2013
www.cozen.com

Atlanta, GA
Charlotte, NC
Cherry Hill, NJ
Chicago, IL
Dallas, TX
Denver, CO
Houston, TX
Las Vegas, NV*
London, UK
Los Angeles, CA
New York, NY
Newark, NJ
San Diego, CA
San Francisco, CA
Seattle, WA
W. Conshohocken, PA
Washington, DC
Wichita, KS
Wilmington, DE

**Affiliated with the Law Office of J. Goldberg*

The views expressed herein are those of the author and do not necessarily represent the views or opinions of any current or former client of Cozen O'Connor. These materials are not intended to provide legal advice. Readers should not act or rely on this material without seeking specific legal advice on matters which concern them.

Copyright (c) 2000 Cozen O'Connor

ALL RIGHTS RESERVED

I. Introduction

A. Overview of Presentation

B. Special Focus:

1. Elimination of other reasonable potential causes for a loss.
2. Spoliation of evidence and evidence retention.

II. Early Investigation - The Key To A Successful Subrogation Case

A. The Need for Immediate Notice

1. Notice to the local recovery manager.
2. Notice to the regional or national recovery manager.
3. Notice to counsel.
4. Notice to the investigators.

B. Loss Site Investigation

1. Analysis of the scene with a cause and origin investigator/specialty investigator.
2. Who to obtain for investigations.
 - (a) General cause and origin.
 - (b) Electrical.
 - (c) Chemical.
 - (d) Metallurgical
 - (e) Mechanical: Heating, air conditioning, ventilation.
 - (f) Plumbing.
 - (g) Fire Safety Engineers.
 - (h) Code Compliance Experts.
 - (i) Damage Experts.

3. Expert's role in a subrogation investigation - reports, discovery issues.
- C. Public Authorities.
1. Fire Department, Fire Marshal.
 2. Police Department.
 3. Public Works Department.
- D. Contact with the Insured.
1. The need to establish a relationship and enlist the cooperation of the insured.
 2. Is a public adjuster involved?
- E. Obtaining Statements and Interviews.
1. Who should obtain statements.
 2. What information is necessary.
 3. Discovery issues.
- F. Photographs.
1. The need for both qualitative and quantitative photographs.
 2. Who should take photographs.
 3. Determine what public or private agencies (newspapers, television stations) or individuals also have photographs or videotapes.
- G. Gathering Relevant Documents.
1. Warranties.
 2. Instruction booklets.
 3. Sales agreements.
 4. Installation manuals.
 5. Service records.
 6. Maintenance agreement.
 7. Labels, tags, etc.

III. Focus During The Loss Site Investigation

- A. The earlier on the scene, the greater the recovery potential.
- B. Determining the cause of the loss.
- C. Interaction between experts, insurance carriers and attorneys at the loss site.
- D. Eliminating all reasonable secondary causes, however remote.
- E. Malfunction theory.
- F. Preparing for defenses while on the offensive.

IV. Evidence

- A. Retention of evidence is critical.
- B. Spoliation of Evidence.
 - 1. Rapidly changing area of the law.
 - 2. Scope of evidence to retain.
 - 3. Method of gathering, transporting and retaining evidence.
 - 4. Remedies available in cases of spoliation.
 - (a) Separate cause of action.
 - (b) Inference to jury that evidence was unfavorable to party who spoliated it.
 - (c) Sanctions: range from monetary to the ultimate sanction of dismissal of lawsuit.
- C. How to Avoid Spoliation Problems.

V. Legal Theories of Recovering Against Third Parties

- A. Negligence.
 - 1. Commission.
 - 2. Omission.
- B. Contract or Warranty.
 - 1. Express.

- 2. Implied.
- C. Products Liability.
 - 1. Section 402A of the Restatement of Torts.
- D. Defenses.
 - 1. Statute of Limitations.
 - 2. Statute of Repose.
 - 3. Comparative/contributory fault.

VI. Latent Cases

- A. Cause of Fire Unknown.
 - 1. Spread cases.
 - 2. Creation of hazard cases.
- B. "Act of God" Cases.
 - 1. Lightning.
 - 2. Hurricane/wind storm.
 - 3. Floor.
 - 4. Freezing.
- C. Failure of Alarm Systems.
 - 1. Smoke and beat detector alarm failures.
 - 2. Burglar alarm failures.
 - 3. Sprinkler system failures.
 - 4. Security person on site.

VII. Conclusions, Questions and Answers