

Don't Get Burned Twice – The Arson Checklist

Arson is defined as “[t]he crime of maliciously and intentionally, or recklessly, starting a fire or causing an explosion.” *NFPA 921: Guide for Fire and Explosion Investigations*, § 3.3.11 (2004 ed.). However, precise legal definitions vary from jurisdiction to jurisdiction. Thus, investigators do not typically classify a fire as “arson”; rather, it is deemed “incendiary.” Incendiary fires are those that are “deliberately ignited under circumstances in which the person knows the fire should not be ignited.” *Id.* at § 22.1. This is but one classification of fire, the others being accidental and undetermined.

When arson or incendiary fire is suspected, the investigator and the insurance adjuster should take every step to ensure that a thorough cause and origin investigation is conducted. If the insured is suspected of committing an act with the intent to cause a loss (arson), a thorough investigation reduces the odds of an incorrect or hasty conclusion about insurance coverage and, thus, diminishes the chance of a successful bad faith claim against the insurer if coverage is ultimately denied.

Arson Indicators.

- Multiple fires; for example, fires in different rooms or on different stories
- Fire patterns from fuels or “trailers,” such as gasoline
- Evidence of accelerants
- Suspicious fuel loads or potential ignition sources that are inconsistent with the area of origin; for example, deliberately stacked furniture or contents in an unusual configuration
- Incendiary devices
- Unusual or excessive fire growth and fire damage
- Removal or replacement of personal items/contents prior to fire
- Interference with fire suppression; such as sabotaged sprinkler systems or blocked entry

This is not meant to be an exhaustive list. The existence of a single indicator or a combination of indicators is not necessarily conclusive proof of incendiary fire. *NFPA 921*, § 22.1. The presence of indicators, however, suggests that the fire deserves further investigation. *Id.*

Have a Solid Origin & Cause.

Hire qualified investigators and involve the insurer’s Special Investigations Unit. In this modern age, many arsonists, especially those who are fairly intelligent, can set a fire that appears accidental. Investigators can obtain special training related to arson investigation through a variety of organizations and agencies including, the National Fire Academy, the FBI, State Fire Marshals’ Offices, and the International Association of Arson Investigators. As with any fire investigation, the scientific method as set forth in *NFPA 921* should be followed.

Use an Attorney

Direct involvement of an attorney with knowledge of fire science and insurance coverage issues from the time that arson is first suspected can be invaluable. With the knowledge of coverage issues, the investigation of the insured, and an understanding of the strengths and weaknesses of the cause and origin investigation, the attorney can evaluate when, and if, denial of coverage is sound.

Investigate Motive

Motive, opportunity and suspicions are no substitute for a properly conducted fire origin and cause investigation. See *NFPA 921 § 22.4.1.1* While some states may not require proof of motive; see *Travelers Property Cas. Corp. v. Namerow*, 261 Conn. 784 (2002) (requiring only proof of incendiary fire and opportunity to cause fire for civil arson); a denial of a claim based on the insured's intentional act in setting the fire is serious and exposes the insurer to claims of bad faith and unfair insurance practices. Establishing motive, even if not required, can be the "nail in the coffin" or, at least, can reinforce the denial of coverage.

The motives for committing arson are countless and depend on the individuals involved, their circumstances, and psychological and sociological factors. Some of the most common motives are vandalism, revenge, crime concealment, domestic violence, and hate crime, to name a few. Economic motives are also myriad and include insurance fraud, debt removal, and direct monetary gain.

Coordinate with Prosecutors

If arson is suspected, it is likely that police, state investigators, and prosecutors will be involved. While the flow of information may be restricted during an ongoing investigation, or even during prosecution, establishing a good working relationship with these officials is crucial. The fruits of their investigation may be useful in establishing a basis for coverage denial or in defending a bad faith claim.

Investigating arson is difficult and presents unique circumstances for the investigator and claim handler. To ensure that a claim is not paid when arson is involved and that the denial of coverage is unassailable, it is imperative to employ reliable investigative practices and thoroughly analyze all facts and circumstances of the case.

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