

# **SUCCESSFUL CLAIM INVESTIGATION: THE CLAIMS PROFESSIONAL/ATTORNEY PARTNERSHIP**

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## **I. INTRODUCTION**

How do you measure a successful claim investigation? How you answer this question will determine, in large part, the quality of the investigation you, and your company, will undertake. How you answer this simple question is the key to making sure you, and your company, do not engage in any action which will ultimately be determined to constitute “bad faith.”

The answer to what constitutes a successful claim investigation is an investigation which is complete, thorough and leads to the **CORRECT** decision regarding the claim. A thorough and complete investigation of the claim does not mean a denial of the claim. In fact, a complete and thorough investigation of the claim may ultimately result in a highly questionable claim being paid to the insured.

The purpose of any claim investigation should be to make certain all relevant information and documentation concerning the claim is gathered, evaluated and considered before a final decision to accept or deny the claim is made. A thorough and complete investigation by every person involved in that claim, from the initial adjuster, through the SIU investigator, claims management and outside counsel means each person must view the claim fairly and impartially and not be looking for ways to justify a claim denial.

If you have any doubt regarding what an impartial review of the claim means, then consider the standard used by court systems in many states: *“In issues regarding insurance coverage the insured should always receive the reasonable benefit of the doubt in favor of finding coverage.”* In print this seems so simple, yet, failing to adhere to this standard has cost insurance carriers untold millions of dollars in bad faith judgments.

Please note, the text I cited above contains an important word, and that is “reasonable.” Yes, the insured should always receive the **REASONABLE** benefit of the doubt regarding any claim. Reasonable means, however, exactly that. The facts need not be twisted or manipulated to find some highly unusual or improbable explanation to justify finding coverage. The test is whether when considering all of the facts and evidence, would a reasonable person come to the same conclusion to deny the claim.

I am now in my twentieth year of practicing law, all of which has been in service to the insurance industry. For many of those years I have had the privilege of representing a number of carriers in handling claims investigations and bad faith matters. I have told every carrier, which I have the privilege to represent, the test I use in evaluating whether to deny a claim. That test is simply as follows: *“Can I explain this claim investigation and denial to a jury on closing argument in a manner in which I believe the jury will rule in favor of the insurance carrier?”*

Above all else, all of us associated with claim investigation should be committed to making certain each claimant is afforded every opportunity to present their claim, and the decision to pay or deny that claim is made fairly and impartially based upon the evidence presented. The day any of us, including myself, begin to look at claims from the viewpoint the insured is guilty and the claim should be denied, is the day, quite frankly, we should be looking for a new form of employment.

Although there may be exceptions, you will serve yourself, your company and your insureds well if you adhere to these simple principles.

In the pages which follow we will address what constitutes a complete and thorough claim investigation, and will attempt to assist you through this process.

## **II. ACTIVITIES PRIOR TO ASSIGNMENT**

Most carriers do not choose to involve outside counsel until well into the claim investigation process. Although I have urged carriers for many years to involve outside counsel in large loss claims from the initial notice, that still is the exception rather than the rule. The initial investigation which you undertake of the claim may well dictate the final outcome of the claim litigation process even before outside counsel is involved. For these reasons it is extremely important the initial steps in the claim investigation process be done properly.

### **A. COMMUNICATION.**

One of the most important aspects of a complete and thorough claim investigation is good, prompt and accurate communication with the insureds. If improper, or incorrect, information is communicated to the insureds at the start of the claim, or if timely communication is not adhered to from the initial claim reporting, these are the type of issues which can ultimately be decisive in a jury trial several years later.

Especially in this era of companies attempting to do more work with fewer employees, the daily workload can be tremendous. Remember, however, the insurance industry is above all else a service-based industry. Customers expect prompt and accurate service, especially when a claim is submitted. Virtually every person who will ultimately sit on a jury in a bad faith trial is a consumer of insurance services, and will expect, and hold you accountable for, the same. For these reasons it is important telephone calls or written communication from the insureds be responded to in a timely and correct manner.

**B. KNOW YOUR POLICY.**

You also cannot begin the investigation of any claim without knowing what specific terms and conditions are contained in the policy of insurance under which the claim is being submitted. If there are specific limits of coverage, or exclusions, under the particular policy issued to the insured, those limitations or exclusions should be conveyed to the insureds in writing as soon as practicable following the loss.

I recently was involved in an examination under oath with an insurance carrier involving limits on cash and jewelry. Prior to starting the examination under oath the adjuster confirmed to me the available limits, but got up and left the room during the course of the examination under oath and returned only to advise me I had been given incorrect information, and lower limits applied. I was able to correct this at the examination under oath, but this is certainly far too late in the claim investigation process for the insured to have been notified of these specific limits under her coverage.

Ideally you should be aware of the general terms and conditions of all policies of insurance which are regularly used by your company. It does not hurt, however, to verify when a claim is presented there are no additional endorsements, schedules, or other information associated with the policy which would alter or change the normally available limits or exclusions. Please review the claim file to make certain the insured is timely notified of all applicable limits and exclusions of the policy as soon as practicable.

### **C. PRIVACY STATEMENTS.**

Many of you will remember several years ago when your mailbox was flooded by banks, doctor's offices and other business providers sending you written notification of their privacy policy when the new federal right to privacy act was adopted. Under the new federal law companies are required to notify their customers, or patients, of the company's privacy policy, and what records will, and will not, be released. My strong suspicion is most claims professionals, and SIU personnel, are engaged in claim investigation activities on a daily basis and have never read their own company's privacy policy which has been sent to their insureds. Trust me, it is only a matter of time before a very innovative plaintiff's counsel secures your company's right to privacy policy (which was mailed to your insured) and then uses it to cross-examine you at a jury trial pointing out your investigation violated your own company's right of privacy policy. I cannot stress to you enough the importance of knowing, reviewing and following your company's written right of privacy policy. If you have not already done so, as soon as you return from this training seminar you should request a copy of your company's privacy policy and keep it in your desk drawer for immediate and regular review.

### **D. RESERVATION OF RIGHTS LETTERS.**

From a legal perspective, perhaps there is no document in your file more important than the Reservation of Rights letter. Your company will have waived many of its rights under the policy if you do not timely forward a Reservation of Rights letter to your insureds. Most states also require the Reservation of Rights letter to be specific, citing the specific sections of the policy under which your company is reserving its rights. Reservations of Rights letters which do not comply with this requirement may ultimately be rejected by a court of law as being insufficient. Should that occur your company may have wasted thousands of dollars and

countless hours of time on a claim investigation where a proper Reservation of Rights letter was not initially issued and the claim is ultimately then owed.

**E. CLAIMS AUTHORIZATIONS.**

It is also important early on in the claim investigation process to secure a claim authorization signed by all insureds. Many times I will receive a file only to find either no claims authorization exists or a claim authorization may be in the file, but only signed by one insured when there are multiple insureds on the policy. As soon as it practicable I would recommend you secure authorizations from each insured named on the policy, and utilize those authorizations to secure relevant records and documentation early on in the claims investigation process.

**F. STATUS UPDATES TO INSUREDS.**

One of the important documents, or series of documents, I look for in a claim file when it is transmitted for review is timely and effective communication with the insureds regarding the status of the claim. Obviously the Reservation of Rights letter should be in the file, but I also am looking for regular status reports and communications regarding the claim with the insureds. It is not sufficient to tell me, or later try to tell a jury, key information regarding the claim was conveyed to the insureds orally, whether in person or via telephone. We have a saying in our law firm which I adopted from a construction company we represented many years ago, which is: “verbal orders do not go.”

Timely written communication with the insureds is key to documenting your claim file properly. It is extremely important these letters be accurate and contains timely and correct information. You do not want to have to apologize from the witness stand for letters which were out-of-date or conveyed wrong information. I have interviewed jurors in bad faith trials who

have made a point of noting their displeasure with the insurance carrier because of minor errors in letters or even poor transcription of recorded statements. Remember the documents in your file reflect your commitment to the quality and accuracy of your company's entire claim investigation.

The reason these letters are so important to me as outside counsel, is letters which are well written and are timely can be an extremely effective tool during a trial. These letters should form a clear trail evidencing the attempts by your company to conduct a timely and thorough investigation of the claim, and show repeatedly you have given the insureds every reasonable benefit of the doubt to cooperate in the investigation process.

#### **G. POLICE AND FIRE REPORTS.**

Complete copies of police and fire reports regarding the claim are an extremely crucial part of the claim investigation process, and should be secured as promptly as possible. One of the common errors which occur, unfortunately, is, in the rush of an insurance company to get these reports, the investigating agency has not yet had the opportunity to prepare its final, or complete, report concerning the incident. For this reason it is important to make certain you have secured all of the relevant police and fire reports available for your consideration concerning the claim.

Although it is wise to secure the reports as soon after the loss as possible, you should diary your file for fourteen (14) and again thirty (30) days to follow-up with the investigating agency to see if any new information or supplemental reports have been prepared. Do not simply rely on the fact the initial report you secured constitutes the complete and final report of the investigating agency.

Due primarily to privacy concerns, many law enforcement agencies are now also not automatically releasing witness statements with police or fire reports. When you secure the police or fire report concerning the incident, make certain to inquire of the records custodian, or ideally the investigating officers, whether any statements were taken and of whom. You should also do your best to make certain you can secure copies of the witness statements. Even though these records may not be voluntarily turned over, normally you can secure the witness statements without the necessity of a subpoena.

It may also be wise to invest the money in securing a complete copy of any photographs, or even videotape, taken by the police or fire investigating agency at the time of the claim incident. These photographs or videotape may contain relevant evidence, not only concerning the loss, but also witnesses who may have been present. With the increasing use of technology it is also not unusual anymore for police and fire agencies to have extensive videotape available of accidents and fire scenes.

In addition to securing the actual police or fire reports, I generally believe it is also worth the time to attempt to interview key police and fire officials who were the first responders to the claim incident scene. Although often police officers and fire officials respond to so many calls they have no recollection of a specific incident, I have also handled cases where the testimony of police or fire officials became crucial to the final outcome of the claim. Specifically you want to inquire of these first responders what they remember observing of the scene, the demeanor of the claimants, any comments made by the claimants to them, or in their presence, and any unusual circumstances or occurrences they recall concerning the subject claim.

In a fire investigation several years ago I visited with the fire chief and deputy chief with the claim adjuster. In that meeting we learned for the first time of an additional fire at the

claimant's residence on the same night of the loss for which no written record had ever been prepared. The fire official's testimony regarding this additional fire became crucial evidence in the final determination of the claim.

In my opinion there are very few claims where, at least, a telephone call to the initial responding officers and fire officials is not warranted as part of a thorough investigation.

#### **H. EXPERT WITNESSES.**

One of the most important decisions you will make relative to any claim investigation is the retention of expert witnesses. Generally, expert witness testimony will center upon the origin and cause of fires, but may also relate to other aspects of claim investigations, including locksmiths and electrical or mechanical engineers.

The time to identify and select which experts you will use in a claim investigation is not after the loss has occurred. It is imperative your company interview and secure competent and qualified expert witnesses to assist your company when the loss occurs. I would strongly recommend your claim management personnel meet in advance with your team of expert witnesses explaining to them how your company expects the investigation to be conducted when they are retained after a loss occurs.

One of the greatest sources of input regarding qualified experts should be your outside counsel team. The ideal expert witness will not only have excellent qualifications, but will also be able to write a clear and concise report and be able to convey his or her opinions clearly and convincingly to a jury. I do not care how reasonable an expert witness' rate for services are, how well a report they write, or even what their level of expertise may be, if that person is not capable of conveying their opinions from the witness stand to the jurors and, perhaps more importantly, is not capable of withstanding cross-examination by opposing counsel. If the final outcome of

the claim investigation is going to be determined by a jury deciding whether, or not, your company acted in bad faith, then it certainly makes sense to consider how your expert witness will present to that jury before any loss even occurs.

It is also important to involve your expert witness in the investigation of the claim as soon as possible. This is especially true in origin and cause fire investigations. Last year I jury tried a case involving arson of a mobile home where the insurance carrier waited nearly two weeks before having an origin and cause investigator visit the scene. The day following the fire the state arson investigator responded, finding the fire scene area was too contaminated by overnight rains to conduct an accurate investigation.

I have been involved in numerous files where, notwithstanding an otherwise excellent investigation and substantial evidence, the claim has still been paid because the origin and cause report only stated the cause of the fire was “undetermined.” Under no circumstances should you ever try to influence the opinion of any expert witness. There is nothing wrong, however, with working with your experts to make certain their opinions do not unduly hinder the investigation of a claim. For example, rather than simply having your origin and cause investigator state the cause of the fire is “undetermined”, if the expert is willing to do so, utilize the following language instead: *“At this time, and within a reasonable degree of scientific certainty, the origin and cause of this fire cannot be determined. I would recommend, however, your company continue with further investigation of this loss which may lead to additional evidence bearing upon the origin and cause of the fire.”*

#### **I. RECORDED STATEMENTS.**

Recorded statements are one of the most crucial pieces of evidence I look for in any claim investigation file. What I am looking for are thorough, but manageable in length, recorded

statements taken of the insureds and key witnesses. Where possible, avoid taking multiple recorded statements of the same insured or witness, as this can be viewed by a jury, or judge, as either “harassing” the person or evidence a thorough and well-planned claim investigation did not occur.

One of the things you should establish at the start of the recorded statement is the insured’s understanding giving the recorded statement does not waive your company’s right to a subsequent examination under oath. This simple cautionary instruction can save thousands of dollars later in legal expenses arguing over whether the recorded statement waived the right to the examination under oath. Although I have never lost on this issue in court, I have had this argument raised on several occasions by overly-aggressive opposing counsel.

#### **J. SWORN STATEMENT IN PROOF OF LOSS.**

Under the laws of many states your company does not actually have a legally valid claim presented until the insured submits a fully executed Sworn Statement in Proof of Loss. Far too often I see files where proofs of loss have not been secured at all, have been accepted even though vital and crucial information is missing, or have never been acknowledged or rejected in writing, as required under the laws, or regulations, of most states. Especially if you believe there is any potential of criminal prosecution for insurance fraud, the Sworn Statement in Proof of Loss is a critical document in the claims process.

It is my recommendation Sworn Statements in Proof of Loss be secured on any claim file where you are investigating the claim for possible insurance fraud. The proof of loss should be requested as soon in the claim investigation process as possible.

When you receive a Sworn Statement in Proof of Loss, review the document carefully to make certain all key information is provided. Courts, and juries, do not look kindly upon an

insurance carrier rejecting a proof of loss for mere technicalities, or where the information not listed (such as the available policy limits or amount of deductible) can be secured readily by the insurance carrier from their own files.

You should also check the proof of loss to make certain it has been signed by all insureds and properly notarized.

Virtually every state requires you to acknowledge the Sworn Statement in Proof of Loss in writing. Your company has the right to accept, reject or acknowledge receipt of the proof of loss advising the insured it is being held without decision pending completion of the claim investigation. All Sworn Statements in Proof of Loss should be acknowledged within seven (7) days of the date of receipt.

#### **K. CONTENTS SHEETS.**

It is important Contents Inventory Sheets are completed properly. Key information, including the date and place of purchase, must be provided for each item. It is also important to provide adequate detail on all items to support replacement cost values. Wherever you can, be as specific as possible in detailing the type of item allegedly damaged or destroyed, including specific information regarding the size of items such as sofas, or beds, and brand descriptions on items such as appliances and pots and pans. Even clothing items should be identified in specific rather than general terms. For electronics you should identify the brand and a complete description of the electronic equipment. One problematic concern with contents inventory analysis is on specific items such as collectibles or antiques. For these items you must provide detailed and very specific information, as prices can vary greatly.

It is also important to break out items individually, including being as descriptive as possible regarding food items and common items such as CDs, DVDs and VHS tapes.

I also recommend making certain each page of the Contents Inventory Sheet submission is signed by the insured, or where a husband and wife are making a claim, both should sign the Contents Inventory Sheets.

#### **L. PHOTOGRAPHS.**

Photographic evidence is key to a thorough and complete insurance claim investigation. Time is of the essence in securing photographic evidence and, in all probability, you may only have one opportunity to photograph and document the loss scene. For this reason it is much better to over-photograph than under-document the file.

On theft claims you should photograph all points of entry, exit and all areas from where any items were allegedly removed.

A key point in photographic evidence is to have the insured identify areas where large items such as big screen TVs, furniture, safes or computers were located. Photograph the area where the item allegedly was placed to determine if there is any evidence of carpet indentation or other signs the property ever existed in that location.

On items such as DVDs, VHS tapes and the like, it is important to photograph where in the home these items were allegedly stored, including the storage racks.

I recently handled a claim involving the alleged theft of thousands of dollars worth of CDs, yet the area where the CDs were allegedly removed from had dust marks on the furniture in a pattern which was entirely inconsistent with this large quantity of CDs having been in that location.

I have also found it extremely important in fire loss analysis to have photographs, and perhaps a content debris inventory, done either by the claims personnel or your origin and cause investigator. Many years ago I handled a claim for a client involving a fire loss to a residence.

The entire structure burned to the ground, and we had a contents inventory done by the origin and cause investigator with accompanying photographs of the fire debris. Later the insureds claimed four very expensive mahogany bedroom suites, a large screen television and numerous pieces of furniture were destroyed in the fire. The photographic evidence and debris inventory done by the origin and cause investigator dispelled any belief the insureds actually had all of this furniture in a home which only contained 750 square feet of living space.

In appropriate weather conditions it is also important to document whether any footprints or other evidence of improper entry to the residence occurred. Although oftentimes it may be impossible to document this type of information, it is, at least, something you should be aware of when inspecting either a fire or theft loss scene.

#### **M. PROOF OF OWNERSHIP AND VALUE.**

This is perhaps the most contentious area in many claims investigations. Even in legitimate claims oftentimes issues arise relative to whether the contents being claimed by the insured have been increased or inflated.

In most states the duty rests upon the insured to provide evidence of proof of ownership and value for items being claimed in an insured loss. Generally, in order of preference, the following proof of ownership and value documentation should be secured for all contents items for which any type of question exists:

- (1) Receipts.
- (2) Owner's manuals or warranty registrations.
- (3) Photographs of the item(s) taken prior to the loss.
- (4) Independent third party witness statements supporting ownership and value for each item.

Even though receipts are generally considered the best evidence of proof of ownership and value, it is also important to verify the receipt information and make certain at no point did the insured return the items for exchange or credit.

Especially in the computer age, I have had a number of claims where receipts have been fabricated and the stores were able to verify when they saw the receipts they were not correct. Even photographs can be circumspect as it is possible to digitally alter photographs. I am aware of a claim for a major insurance carrier where the fraud was detected by a magnifying glass examination of a photograph showing the shadows in the room were inconsistent in direction. Further analysis allowed the carrier to demonstrate the photograph had been manipulated to insert a very expensive item which the insured actually never owned.

#### **N. CLAIM REPORTS.**

With the rise of computerization it is now possible to secure numerous reports in the claim investigation process for not only your review, but for forwarding to outside counsel. Specifically, information which I look for when a file is forwarded to me include:

- (1) Background Reports. These reports from Faces of the Nation, or other similar services, can provide key information regarding prior residences of the insured(s), criminal convictions, and even use of alternative identifying names and social security numbers. My only criticism of many of these reports is they provide far too much information, and can run into 50 to 70 pages worth of largely irrelevant data. Nevertheless, these type of reports are beneficial and can actually save time during the examination under oath process.
- (2) Credit Reports. Financial motive is always an important consideration in any potentially fraudulent insurance claim. For this reason it is important to secure

background credit information regarding the insured(s). One caution I would advise you of is to make certain what your company's policy is in releasing credit bureau reports if your claim file is requested by law enforcement or by the State Department of Insurance.

- (3) **Prior Claim History.** These reports, as well, can be extremely beneficial in determining the degree of knowledge an insured may have regarding the insurance claim process, and whether a pattern exists of the insured being involved in a long history of insurance claims. In my experience, especially where a jury hears a person has had multiple fire loss claims, they are much more predisposed to rule in favor of the insurance carrier. One of the best reports available to you is a PILR which should be requested on all theft claims in a timely manner, and preferably within twenty-four hours of loss assignment.

#### **O. USE OF INTERNET SERVICES.**

There are a number of investigation tools literally available through any PC or laptop computer. These reports and related information can be extremely valuable in your claim investigation process. Although not applicable to each and every claim, consider for the appropriate file the types of information which are available through the internet:

- (1) **Court Records.** Most counties, and virtually all the federal courts, now have complete docket information available via the internet. It is now possible to search for both civil and criminal court activity involving any insured anywhere they have lived in the country. To a more limited extent, this can also include bankruptcy court filings, which we have addressed earlier. A

complete and thorough review of an insured's civil and criminal litigation history can be extremely relevant to many questionable claim investigations.

- (2) **Maps and Travel Time Analysis.** We recently handled a claim in Kentucky where using the simple MapQuest program we were able to establish the insured could not have traveled between the two locations claimed within the time period asserted by the insured. Using this information we were able to develop an exhibit plotting where the insured told us under oath he had been at key identifiable points, and then show successfully how this testimony could not be believed regarding his whereabouts at the alleged time of the loss.
- (3) **House Sales and Inquiries.** Websites such as [housevalues.com](http://housevalues.com) can be utilized to assist in the investigation of fire losses. We are currently in litigation involving a claim for a fire where the insured in the examination under oath denied any attempt to sell, or even list his home for sale, yet through this website we were able to establish only days before the fire the insured had done a web search, requested a value on the home where the fire occurred, and had even been referred to a local realtor prior to the fire. None of this information would have ever been found without using the authorization and checking this website provider.
- (4) **Prison Records.** In addition to checking criminal records of the insured, certain states now have databases where you can search a person's name and find out if they have ever been incarcerated at any time in the state. Often these websites are even thorough enough to include a photograph, the charge

upon which the person was incarcerated, and a listing of the state prisons in which they were held.

Although there is no such thing as a “perfect” claim file, if you attempt to conduct an impartial and thorough investigation of the claim using the guidelines and recommendations set forth above, your company is well on the way to making the correct decision regarding acceptance or denial of the claim. Additionally, if these investigation steps have been followed in the initial phase of the claim analysis, the file you forward to outside counsel will be complete, and will provide your defense counsel with most, if not all, of the information he or she needs to move forward with their phase of the claim investigation process. Ultimately this will also save your company legal fees if these steps in the investigation have already been completed by the claims professional and need not be conducted by the attorney.

### **III. THE ATTORNEY REVIEW PROCESS**

By this time the file has reached a point where, either for purposes of examination under oath testimony, or to make certain the carrier is operating in accordance with all legal requirements, your investigation is going to be referred to outside counsel. The most important thing in this process is to make certain the claims investigation team and the attorney are working cooperatively in the investigation process to ensure the correct ultimate decision is made regarding the claim.

When a new file is referred to me by an insurance carrier I consider it to be my duty to first check the file for completeness and impartiality of the investigation done to date. Specifically what I am looking for is to review the claim file for timeliness of the investigation, accurate and timely communication with the insured(s), and whether a thorough and complete investigation had been conducted.

Key initial items which I also look for include the origin and cause report and, specifically, whether, or not, the expert investigator believes the fire was incendiary, accidental, or is an undetermined cause. I am also looking for information such as the local fire and police reports, and whether the loss inventory reported to the police on a theft claim matches the loss inventory reported to your company.

Other crucial information in the initial file review process includes what evidence you have developed regarding any financial motive of the insured to have been involved either in the loss, or to have inflated the loss.

Remember, when the file is referred to me as outside counsel, what I am going to be looking for predominantly is whether a thorough and complete investigation has been done, in a timely manner, with proper communication to your insureds. Although rarely, there have been occasions where I have returned the file back to an insurance carrier without even requesting the insured's examination under oath based upon the poor quality of the investigation done prior to assignment. This is certainly not an ideal situation for anyone involved in the claim investigation process.

After I have the opportunity to review your file, I will not only acknowledge receipt of the file and the new assignment for purposes of assisting your company in their investigation, but I will also set forth to you any additional recommendations I may have based upon the review of your claim file records. Although each file is completely unique and different and requires different types of investigation, I have included a sample recommendation letter in Appendix A to these materials.

Please understand in forwarding this type of letter to the insurance carrier it is not my intention to merely have you engage in more work, or any unnecessary work. Instead, the

purpose of my recommendation letter is to point out to you certain areas of the claim investigation which may be prudent for you to follow-up upon which have not be undertaken to date.

As you will note in the letter in the appendix, it is generally always my practice to merely offer these as recommendations, realizing the final decision as to what steps in the investigation process to undertake does not rest with me, but with the claim adjuster and claim manager or supervisor.

Once I have completed my review of the file and forwarded to your attention any additional recommendations, I am then ready to begin the initial contact with your insureds, leading to their examinations under oath. With extremely rare exception, I strongly recommend this contact be done in writing. Enclosed as Appendix B is a copy of the examination under oath request letter which our firm routinely sends. This letter is forwarded to the insureds via certified mail only. Even experienced attorneys will tell me they routinely send letters via certified and regular mail. At least personally, I do not believe this is wise. The reason I am opposed to this is when you send a letter via regular mail and certified mail, the regular letter arrives first with no proof of the letter actually being delivered to the insured. Once the insured reads the letter, and is then notified later of a certified letter from the same address, there is a strong probability the insured will not sign for the certified letter. Absent the certification you have no way of proving the insured received the examination under oath request letter, and has violated the policy by refusing to cooperate.

Because of this, our firm only sends the examination under oath request letter via certified mail and, if it is refused by the insured, we then photocopy the front and back of the envelope for our file records, place the unopened returned certified letter into another envelope sent via

regular mail with a cover letter explaining to the insured they are in breach of the policy by refusing to sign for the certified letter and are delaying the claim investigation by not submitting to their examination under oath. In this second letter we explain the importance of their complying with the requirements under the policy, and request them to immediately open and read the enclosed certified mail letter and contact our firm to schedule their examination under oath.

As you will note in the examination under oath request letter, at the onset of that letter I notify the insured(s) of our role, and that I am serving as counsel solely to the insurance company. I also notify them their insurer has invoked the policy provision requiring them to submit to examination under oath testimony.

I also feel it important in this letter to notify them they have the right to have an attorney of their own selection, and at their own expense, present with them at their examination under oath. Please note, I clearly state they are entitled to have an attorney present with them. At least in the states where I practice, we do not permit public adjusters to sit in on the examination under oath, or to in any way counsel the insureds during the examination under oath process. At least in my opinion, such actions constitute the unauthorized practice of law and are forbidden. Just several weeks ago I took an examination under oath on a large commercial fire loss claim where the public adjuster flew to Ohio from Florida (no doubt at his client's expense) and we advised the public adjuster he was not permitted in the examination under oath.

Additionally, in the examination under oath request letter, I notify the insured(s) to bring with them the key documentation their insurance carrier wishes to review as part of the claim evaluation process. At a minimum this request includes the following:

- (1) Complete copies of all Federal and State income tax returns for the three (3) year period prior to the occurrence of the loss.
- (2) All documents such as receipts, photographs, owner's manuals or other information as outlined above to support proof of ownership and value of the items allegedly damaged or destroyed.
- (3) Any other information or documentation the insureds believe their insurance carrier should review prior to making a final decision relative to their claim.

There is a specific reason why I include the third request above. Once again it is important to remember we are attempting to in all respects avoid any potential claim for bad faith. I want to make certain in the initial examination under oath request letter we notify the insured [Insurance Company Name] is undertaking a thorough and complete investigation, but wants to make certain the insured is provided every opportunity to submit to their insurance carrier any information or documentation which the insureds believe may be relevant for [Insurance Company Name's] consideration before a final decision is made concerning their claim. By including this request in the examination under oath request letter, I believe we are taking reasonable steps to preclude the insureds from later claiming in any bad faith proceeding they were not afforded the opportunity to provide relevant evidence to support their claim to their insurance carrier.

Once this letter has been forwarded to your insureds, it is then important for the attorney to have appropriate follow-up diaries calendared if the insureds, or their attorney, do not promptly schedule the examination under oath. At least in our firm, every fraud file is diaried for a minimum of fourteen (14) days for status report to the carrier, and follow-up as may be required, with the insureds.

For example, if the insureds do not respond to my initial examination under oath request letter within fourteen (14) days, then I direct a second letter, also via certified mail, advising them of their failure to cooperate in the investigation of the claim, and that their claim may be denied if they do not cooperate by submitting to the examination under oath. Although each carrier has differing standards, generally forwarding two to three requests for cooperation is deemed sufficient in most states for the carrier to make a final decision denying the claim based upon the refusal of the insureds to cooperate in the investigation, and for breach of the examination under oath requirement under the policy.

In like manner, if the insureds, or their attorney, do contact the law firm to schedule their examinations under oath, it is important the examinations under oath be scheduled as promptly as possible. If the examination under oath cannot be scheduled within approximately 10 to 20 days, you may be leaving your company open to a situation where accusations can be made your counsel is now delaying the claim investigation. This should be avoided wherever possible.

When I have a situation with opposing counsel, or the insureds, where their scheduling does not permit the examinations under oath to occur promptly, I make certain to document in the follow-up letter the examinations under oath is being delayed, not due to the insurance carrier or its counsel, but at the specific request of the insureds, or their attorney, to delay the examination under oath or, if appropriate, that earlier dates have been provided and the attorney, or insureds, are not available until the later selected and agreed to date. Having said this, however, you should not permit a situation to occur where the investigation is unreasonably delayed due to the insureds or their attorney. Frequently this occurs where there is a separate criminal investigation underway, and the insureds, or their attorney, will not agree to submit to the examinations under oath until the criminal investigation is complete.

We have routinely argued this in several courts with mixed results. Although on some occasions the court will be sympathetic to the insured and not require them to give their examination under oath while criminal charges are pending, I have had an equal number of courts agree with our position that taking the Fifth Amendment in an examination under oath proceeding, or refusing to submit to the examination under oath while criminal charges are pending, constitutes a breach of the duty to cooperate provision under the policy. You will need to review this issue with your individual counsel in each state, as the laws on this issue may differ and, even judges within the same judicial district or circuit, may have differing opinions on this issue.

Once a date is set for the examination under oath, it is imperative that date, time and location be confirmed in writing to the insureds, or their attorney. Again, it is important to document the file fully. It is certainly much cheaper to send a confirming letter to the insureds, or their counsel, than to have your attorney, court reporter, claim adjuster and SIU investigator all present for an examination under oath where the insureds fail to appear.

#### **IV. PRE-EXAMINATION UNDER OATH CONFERENCE**

One of the things I always prefer to do is have a brief conference with the claims professional and SIU investigator immediately prior to starting the examination under oath. These conferences generally take less than one hour. The purpose of this conference is to have a face-to-face meeting prior to questioning the insureds to review any new, or additional, records or information concerning the claim, and to confirm the key points and areas to be addressed during the examination under oath.

Although this is perhaps the simplest phase of the investigation process, in my opinion it is extremely important for this meeting to occur to make certain all of the key individuals

involved in this claim investigation are “on the same page”. Additionally, and depending upon the claim circumstances, I have been able to save our carriers time and expense in the examination under oath process by agreeing in advance certain issues are not in dispute and need not be covered during the examination under oath.

This relatively brief conference before taking of testimony will make certain the crucial point of the investigation, the examination under oath, moves forward in a prompt and efficient manner with all of the key points being addressed.

## **V. THE EXAMINATION UNDER OATH**

This is perhaps the most crucial phase of any claim investigation. The examination under oath, however, is not a chance to “get” the insured or “trap” the insured. The purpose of the examination under oath is to secure all of the relevant facts, determine what additional information, or cooperation, is needed from the insured, and make certain the insured has been afforded every opportunity to document their claim prior to making a final decision to accept or deny the claim.

**A. BEFORE GOING ON THE RECORD.**

I personally do not like the idea of videotaping examinations under oath. Nor do I permit the insureds to tape record the examination under oath. It has recently come to my attention this is an issue you may wish to have your counsel address on the record, as reportedly an examination under oath taken by an attorney was recently recorded on a cellular phone style device by an insured without the consent or authority of the attorney or the insurance carrier.

The reason I am opposed to video and audio recording of the examination under oath is the written transcription should stand as the final, and definitive, record of the proceeding. You do not want a situation to occur where disputes are being argued before a court or jury as to whether the written transcription taken by the court reporter, or the alleged audio or videotape taken by the insured, constitutes the "correct" record. Additionally there are times when the attorney may use the tenor of inflection in his or her voice to express a matter to the insured, which although appearing neutral in the written transcript, may have a completely different context on a video or audio recording.

If the insureds are not represented by legal counsel, I also recommend little or no contact or discussion be had with the insureds prior to placing them under oath, and when they are placed under oath, the insureds should be asked at the start of the examination under oath to confirm neither the attorney nor the insurance company representatives had any communication or dealings with the insured, nor made any comments regarding the claim or their testimony, prior to going on the record. These are steps which will endeavor to protect your company and your counsel from further accusations which may be made by the insureds if the claim is denied.

I also personally insist the examinations under oath occur at one of our law firm's offices. Since this is questioning being done by the insurance company, I believe it is reasonable for the

insureds, and their attorney, to come to the offices of the carrier's counsel. Additionally, this affords you the opportunity to control the examination under oath environment, to make sure the facilities are large enough and a proper setting for the taking of testimony, and, if necessary, to have sufficient private space to speak with the adjuster and claims investigator during recesses in the examination under oath without fear of lack of confidentiality.

Assuming each of these issues have been addressed properly, you are now ready to begin the examination under oath.

## **B. CAUTIONARY INSTRUCTIONS.**

At the start of each examination under oath which I take, I explain to the insured what the examination under oath process is about and distinguish the examination under oath from a deposition. I explain to the insured, the examination under oath process arises as a duty and obligation under the policy, and is a serious occurrence. I explain to them examinations under oath are under no circumstances ordinary, nor regularly used, even by insurance carriers. I then explain to the insured, the examination under oath is a requirement under the policy when the insurance carrier has identified issues, problems or concerns which have arisen in the investigation of a claim. In like manner, I also explain to the insured, the examination under oath is their opportunity to not only give their sworn testimony concerning their claim, but also provide information to their insurance carrier which will hopefully clear up and alleviate the issues, problems and concerns which have arisen to date in the investigation of their claim.

Having completed an explanation of the examination under oath process, I then turn to important cautions regarding the taking of their testimony. Routine cautions include making certain the insured understands it is their duty, and not mine, to make certain they understand and comprehend each question. I advise them if they do not tell me they did not hear, or understand,

the question, then I will assume for all purposes they are fully and completely answering each and every question truthfully and honestly. I also remind the insured they are under oath and all of their testimony may be used in a court of law, if necessary.

If the insureds are not represented by an attorney, I will have them confirm they did receive the examination under oath request letter sent earlier via certified mail, that they read the letter, and understand they have the right to be represented at the proceeding by an attorney. I then take a rather risky approach and do ask them if they want to proceed with giving of their examination under oath without the benefit of having an attorney present. In approximately 10% percent of all claims, even at this late date, the insured will stop the examination under oath stating they want to be represented by an attorney. Although this does constitute additional expense to your company by needing to reschedule the examination under oath, at least in my opinion, this is still an important step for the insurance company to take.

I have heard from other attorneys across the country of situations where courts have stricken the examination under oath on the basis the attorney did not again instruct the insured of their right to be represented by an attorney even if a letter had been sent in advance advising of the right to legal representation. Certainly no one can criticize the insurance company for again reminding the insured at the start of the examination under oath of their right to be represented by a lawyer, and agreeing to cease the examination under oath if the insured elects to invoke that right.

If the insured states to me they wish to continue their examination under oath without an attorney, then I further caution the insured unless the insured tells me during the course of the examination under oath he or she has changed their mind, then I will continue to assume for all purposes throughout the taking of their examination under oath, they are continuing to waive

their right to be represented by a lawyer. This caution makes certain the insured understands they have the right at any point to cease the examination under oath, and to invoke attorney representation. In like manner, if the insured continues to give testimony, then I have found we are on very firm ground to introduce this testimony in a jury trial without any ability of opposing counsel to later raise any type of an objection to the insured not being represented by an attorney at the examination under oath.

The next caution I give is one not routinely done by many attorneys, but which I believe is extremely important. I next caution the insured and ask them to confirm they are aware under the laws of the particular state, their insurance carrier may be obligated to turn over to law enforcement, the fire department or the state department of insurance a complete copy of the insurance claim file, including a complete copy of the examination under oath of the insured.

I advise the insured, they would ordinarily have a Fifth Amendment right to not speak to police or fire officials or the state department of insurance. I advise them by giving the examination under oath they may be indirectly waiving this right. This impresses upon the insured the seriousness of the proceeding they are undertaking, and also protects your company if you later do turn over the examination under oath transcript and the insured is criminally prosecuted. I believe it is prudent to make certain the insured is advised such actions may occur to prohibit any later claim being brought against your company of not advising the insured of the potential for criminal charges.

The final introductory caution which I give is also not used by many attorneys. Very cautiously I advise the insured of their right to voluntarily withdraw their claim at any time. Specifically, I make a point of telling the insured I am not advising them there is any reason, or need, for them to voluntarily withdraw their claim, but that I want to make certain they

understand they have the right to do so at any time. I then explain the voluntary withdrawal means under no circumstances will the insurance carrier make any payment to them concerning the claim, but the need for the insurance carrier to continue the investigation, and the examination under oath, would cease. I then advise the insured if at any point during the examination under oath they believe they wish to invoke their right to voluntarily withdraw their claim, they need to advise me of that and we would place the voluntarily withdrawal on the record.

There are some examinations under oath where this type of caution is not given, such as when a lienholder may be involved, or other third parties, whom the insurance carrier would still owe for the loss. Additionally, there may be occasions where your company wants to protect its right of subrogation back against your own insured, or the right to file a separate action against your insured, to recoup all attorneys fees and costs for a claim investigation if it is ultimately determined the insured engaged in fraud.

### **C. BACKGROUND DATA.**

Having completed the initial cautionary instructions, I then turn to the background information regarding the claimant. Information I am specifically looking for includes not only the obvious information of date of birth, social security, address and the like, but also any aliases or other social security numbers ever used by the insured to identify themselves at any point. I also explore the educational background of the insured, including any military training. This is especially true in fire cases where I am looking for information regarding training in fire fighting, ordnances, or even possibly timing devices. The type of military discharge a person may have received may also be relevant to the claim investigation.

One series of questions which many insureds do not anticipate is asking them about extended family such as parents and siblings. I will generally ask about family members who live in the area, or who have visited with the insured for holidays or other occasions in the past year. I will then ask if those relatives are on good terms with the insured. I then next ask whether those relatives will be able to verify the personal property contents being claimed by the insured as items they saw in the home or have seen the insured wear. On more than one occasion we have had successful claim investigations where family members have actually testified in favor of the insurance carrier stating the insureds did not own expensive electronics or jewelry items being claimed on the insurance loss.

#### **D. EMPLOYMENT.**

The next area of inquiry deals with the employment of the insured. In addition to obvious information, what I am looking to find is information such as whether the employer requires the insured to keep time records, or has a time clock which the insured is required to use. This type of information can be extremely crucial in identifying whether the insured was actually at work at times they claimed.

In a growing number of claims, we also receive requests from the insured to have an interpreter at the examination under oath. Numerous times I have had an insured claim they did not understand English and required an interpreter only to question them about their employment and find they are fully capable of doing their job and communicating with their employer, co-workers and customers without the necessity of an interpreter. In, at least, one claim we subpoenaed the employer to testify the insured fully and completely understood English and had worked for him for many years without any language barrier difficulties.

In the area of employment I am also looking for the insured to identify co-workers who can be interviewed the insurance company to verify items such as expensive jewelry worn by the insured. When an insured tells me they owned an expensive Rolex watch, but none of their family members, nor any of their co-workers ever saw them wear the watch, this is the type of information I look for to challenge the credibility of the insured, and upon which I believe a jury would find the claim of the insured to be highly questionable.

#### **E. FINANCIAL RECORDS.**

Additional information I am looking for in regard to employment is also payroll records and pay stubs. Especially on large theft and fire loss claims, it is often interesting to do an analysis detailing the amount of purchases of items allegedly made by the insured within the past one to two years. It is not at all unusual to find the insured claiming purchases of new items in the past year where the amount of those purchases meets, or exceeds, the insureds total annual income. It is important to note, this is only a portion of the evidence as you do need to still verify the insured did not have other income sources or savings from which these items could have been purchased.

This leads to the next area of inquiry, which is the financial condition of the insureds. I have developed a monthly expense analysis form which I utilize, and is attached as Appendix C. I also inquire of the insureds regarding all bank and financial accounts they had in the year period leading up to the loss, and generally ask them to produce copies of all monthly banking and financial statements for the twelve month period leading up to the loss. I also make similar requests for information such as credit card statements, mortgage payments, and any loan payments.

Other areas of inquiry regarding the financial condition of the insured include asking the insured what they believe their credit report would show concerning their financial condition and, if I have received a copy of their credit report, in addition to asking them about past-due statements, I will also ask them about any credit inquiries regarding the insureds in the days or weeks leading up to the loss. On more than one occasion I have found credit inquiries from car dealerships only several days before a vehicle was reported stolen or burned, when the insured has denied any attempt to trade the vehicle.

Another area of financial inquiry is to ask the insured whether they have submitted any loan applications for any purchases or refinancing in the year preceding the loss. Especially if loan applications have been denied, this may be relevant information which your company should consider before making a final decision regarding the claim.

#### **F. PRIOR CLAIMS AND LITIGATION HISTORY.**

The next area of general inquiry focuses upon the prior claim and litigation history of the insureds. What I am looking for in this section of inquiry is the frequency of prior claims and any similar losses, such as multiple fire or multiple theft claim histories. Although your prior claim report and PILR reports do disclose most of this information, I want to confirm the entirety of the claim history with the insureds on the record in the examination under oath, and frequently following the examination under oath we will follow-up with the other insurance carriers to which claims have been submitted, and attempt to secure copies of their claim investigation files as well.

In this same general area of inquiry I will also inquire regarding any prior criminal records and convictions of the insured, as well as whether any criminal charges are currently pending. This type of information can be extremely important at jury trial regarding the

credibility of the insured, although you will need to check your individual state law to determine what evidence of prior criminal convictions is admissible in the jurisdiction where the claim is pending.

Two areas of litigation records which are frequently overlooked are bankruptcy court records and divorce or dissolution of marriage records. I will always inquire of the insureds regarding any bankruptcy court filings. The bankruptcy court schedules of personal property require the filing party to detail all items of personal property, including jewelry, furs, electronics and household goods, and to state a fair market value for those items. We currently have pending in our firm a file where the insureds have filed bankruptcy on three separate occasions, listing the complete value of all of their assets at no more than three thousand dollars (\$3,000.00). As is required by the federal bankruptcy court, each of these schedules is signed under oath by the insureds who are filing for bankruptcy. Only weeks after their most recent bankruptcy was filed, these individuals sustained two fire losses in which they are claiming one hundred twelve thousand dollars (\$112,000.00) of personal property contents. One of the questions most insureds do not want to answer in an examination under oath is whether they were not telling the truth to their insurance company on their personal property contents, or whether they committed perjury by failing to disclose all of their assets to the bankruptcy court.

In like manner, in most state court proceedings involving divorce or dissolution, the court will require a property schedule or distribution of property agreement to be filed. These records should be checked carefully and compared to the list of personal property contents for which the insured is seeking compensation. Obviously the further the time separation between the divorce or dissolution and the loss, can influence whether new items were purchased. This is why it is

important on the personal property contents inventory to make certain all information is properly filled out, including the original date of purchase for items being claimed.

#### **G. FACTS OF THE LOSS.**

My next area of inquiry will be the actual facts of the loss at issue. One of the first things I attempt to do is build a timeline of the insured's activities leading up to the occurrence of the loss. What I am looking for are any particular inconsistencies, as well as having the insured identify any independent witnesses who can verify their whereabouts leading up to the occurrence of the loss.

One of the important goals of developing a timeline of activities is to eliminate any later changes of testimony of the insured after the claim is denied. For that reason you want to go into as much detail as possible establishing a clear timeline with which the insured recounting all of their activities and whereabouts leading up to the loss occurrence.

In like manner, you also want to determine definitively how the loss was discovered by the insured, and the specifics of what the insured recalls observing, either at the scene or upon their arrival at the loss scene. Additional relevant information is when did the insured first report the incident to the police or fire agencies, and how, and by whom, the report was made. Oftentimes you are able to verify information from the insured based upon times calls were received by 911 operators, or police or fire agencies. In the appropriate claim, you also may wish to consider promptly securing copies of the 911 tapes to determine exactly what information was imparted by the insured, and at what time. On more than one occasion I have also found juries to deem it important to consider the tenor of voice of 911 calls placed by an insured reporting a fire at their home.

## **H. POLICE AND FIRE REPORTS.**

During this phase of the examination under oath I will generally also mark as an exhibit, and question the insured regarding, police or fire reports regarding the subject loss. Before showing them the report I will ask them if they were truthful and honest in all information they imparted to the police or fire officials regarding the incident giving rise to the claim. I will then show them the report and ask them if there is anything contained in the report with which they disagree, or believe the police or fire officials took down incorrectly. At least in my experience, juries, especially after September 11, 2001, place great weight upon the findings and testimony of police and fire officials, and do not look kindly upon an insured claiming the police or fire investigators were biased, or did not accurately report information told them by the insured.

I will also question the insured regarding any supplemental reports which were made, or not made, by the insured concerning their claim. Especially in theft losses where the insured claims to the insurance carrier items which were never reported to the police, this can be an extremely important area of questioning.

## **I. REVIEW OF THE CLAIMS PROCESS.**

Depending upon the nature of the claim, I will also frequently show the insureds, at the examination under oath, the Origin and Cause Report or key pathway steering column analysis reports involving a vehicle theft. I tell them their insurance carrier is already undertaking a thorough investigation and has an expert report setting forth the fire is incendiary, or the vehicle could not have been operated other than with the proper key. I then ask the insured directly, whether there is anything in the report they disagree with, and whether there is any evidence they can offer to their insurance carrier to contradict the findings in the expert's report.

As part of this same analysis, I generally try to have the insureds commit to either their version of how the fire started, or get the insured to commit on the record they have no opinion either as to how the fire might have started, who may have started the fire (i.e., any potential suspects the insurance company should consider) or even on theft claims whether there is anyone the insured can identify to their insurance carrier whom they believe would be responsible for such criminal activity. This avoids the situation later at a jury trial of the insured claiming the insurance company attempted to accuse them from the start, and did not consider other relevant suspects who may have been responsible for the fire or theft.

The next area of questioning I address is the claim handling process itself. During this phase of the examination under oath I mark as exhibits all written communications forwarded by your company to your insured concerning the claim. Although this questioning is brief, I simply want the insured to confirm they received each and every letter forwarded to them concerning the claim. This extremely short phase of questioning in the examination under oath can save untold pain later in a civil suit when the insureds try to argue they never received the reservation of rights letter or other crucial information concerning their claim.

I next mark as exhibits any claim authorizations or non-waiver agreements, having the insured identify they did sign those documents and understood fully what they were signing.

The next area of inquiry regarding the claim handling process may oftentimes make the adjuster, or SIU personnel, nauseous. I inquire of the insured regarding their oral communications with the claim investigator or SIU personnel. In this series of questioning I will ask whether they believe they were treated politely, or have any complaints regarding the handling of the investigation of their claim. Although I understand there are two schools of thought regarding whether you want this information potentially in the examination under oath

transcript, I personally believe it is better to know this information up front than to learn this information either in a deposition after a denial, or even from the witness stand at trial, during a bad faith lawsuit. In my opinion, the insurance carrier does not benefit in any way from not having this information, at least, available to consider before a final decision is made to accept or deny the claim. By additionally providing the insured this opportunity during the examination under oath to state any criticisms or complaints they have of the claim investigation process, you are minimizing, or perhaps even eliminating, the opportunity for the insured to later come forth with allegations after the claim has been denied.

In claims where the insured does have complaints of being treated rudely or improperly by the claim adjuster, or SIU personnel, I will inquire, as well, to determine whether any independent evidence (tape recordings or the like) or independent witnesses exist to document any of the claims of mistreatment being asserted.

#### **J. PROOF OF LOSS AND SUPPORTING DOCUMENTS.**

The next important area of inquiry is the claim documentation submitted by the insured to the insurer. In this phase of questioning I will have the insured confirm they understand their duty to cooperate and their duty to document proof of ownership and value of the items they are claiming.

I will generally take great pains to explain to the insured the steps they can go through to document proof of ownership, including receipts, photographs, owner's manuals, original packaging boxes, warranty registrations, repair invoices, or even independent service or maintenance personnel who may have visited their home and can identify the items they are claiming as actually being present in the residence prior to the loss.

I will also explore with the insured the claim and values they have set forth on their Sworn Statement in Proof of Loss, or Personal Property Contents Inventory, and ask how they derived the values they are claiming to their insurance carrier.

It is important during this phase of the examination under oath to give the claimants every opportunity to properly document their claim. Explaining to them at length how they can properly document their claim, and then providing them a reasonable period after the examination under oath (no more than thirty days) to provide any such documentation regarding proof of ownership and value, demonstrates your company was not trying to deny the claim, but was more than reasonable in providing the insured every opportunity to document their claim for proper consideration. Oftentimes at jury trial I will use this phase of the examination under oath to have the insured admit to the jury they were told at their examination under oath their insurance carrier would give them yet another opportunity to document their claim and bring forth evidence of proof of ownership and value, and that they failed to provide any additional records or documents to support their claim whatsoever, even when given the opportunity to do so.

#### **K. POLICY PROVISIONS.**

I will generally next review with the insured any key policy provisions which may affect the claim. During this phase of the examination under oath, it is always best to have a certified, or reconstructed, copy of the policy marked as an exhibit. I review the key policy provisions with the insured on the record, including any exclusions of coverage, or limits of coverage, for items such as business equipment, jewelry, cash or collectible items.

**L. INCONSISTENCIES.**

As the examination under oath nears its completion I review with the insured any key elements of the claim investigation. Confronting them with discrepancies between the police and fire reports and information submitted on the proof of loss or contents sheets, use of their bankruptcy court schedules, or divorce of dissolution property settlement agreements, or other information which has been disclosed during the course of the claim investigation. These type of activities need to be determined on a claim-by-claim basis, and should be agreed upon in advance between the claim professional and the attorney as to what information will, or will not, be disclosed during the course of the examination under oath.

**M. RECORDED STATEMENT TRANSCRIPT.**

One of the final steps I take in any examination under oath is to ask the insured if they remember giving a recorded statement to their insurance company concerning their claim. I will then have them verify they gave permission to the adjuster, or investigator, to record the statement, and I will then ask them a crucial question: *“Did you truthfully and honestly answer all of the questions asked of you by your insurance carrier in the recorded statement?”* At that point I then mark the transcription of the recorded statement as an exhibit and ask the insured to take whatever time is necessary to review their recorded statement transcript, mark any corrections on the transcript which they believe were taken down in error, and then confirm on the record, to the best of their knowledge and belief the transcription, as corrected, accurately reflects what they told their insurance carrier in their recorded statement. By going through this process I have now converted your previously un-sworn recorded statement to a sworn statement (as the insured has testified under oath to its accuracy) which can be utilized at trial to impeach the insured. There is little evidence more powerful than being able to play to the jury an excerpt

of the recorded statement of the insured which directly contradicts evidence determined through the independent claim investigation.

**N. CONCLUDING INSTRUCTIONS.**

At the end of the examination under oath it is important the attorney review with the insured the duty to read and sign the transcription, and the implications of claim denial if the transcription is not read and signed as required under the policy terms and conditions. If additional items have been requested of the insured to be produced during the course of the examination under oath, it should also be reviewed with the insured that a follow-up letter will be sent detailing each of the items which have been requested during the course of the examination under oath, and setting a deadline by which the insured agrees to provide all requested information and documentation back to the insurance carrier.

**O. POST-EXAMINATION UNDER OATH FOLLOW-UP.**

Following completion of the examination under oath, the attorney should also follow-up with the court reporter if the transcription has not been prepared within approximately fourteen (14) days, and the attorney is also responsible for making certain to secure for his or her file a copy of the letter forwarded by the court reporter to the insureds notifying them of the need to read and sign the examination under oath transcript. Once the insured has been notified of the examination under oath being ready for signature the attorney should keep the file on diary every fourteen (14) days to forward follow-up letters as may be required to the insured documenting their failure to comply with the policy by reading and signing the transcription. If the insureds have not read and signed the transcript within approximately forty-five (45) days after being notified of the duty to do so, it is appropriate at that time to consider a possible denial of the claim.

## **VI. POST-EXAMINATION UNDER OATH INVESTIGATION**

You are now nearing the final phase of the claim investigation process. This portion of the claim investigation should begin immediately following the examination under oath with a brief meeting with the attorney, claim adjuster and SIU personnel.

If the attorney has taken notes correctly during the examination under oath, he should be able to detail immediately thereafter all of the information and documentation which was discussed with the insured on the record, and which the insured is to produce for further investigation of the claim. In like manner, the attorney should also have been taking notes regarding what additional follow-up he or she believes the insurance carrier should undertake as part of the claim investigation process.

This list of activities should be reviewed with the claim adjuster and SIU investigator to develop a final “to do” list detailing the responsibilities of each person involved in the claim investigation process for appropriate follow through. The same as in the early phase of the claim investigation, it is imperative the insurance carrier move forward promptly with undertaking whatever additional investigation steps are warranted after the examination under oath. In like manner, it should also be the duty and responsibility of the attorney to make certain follow-up letters are forwarded timely to the insureds, or their attorney, to make certain the investigation of the claim is not being delayed.

Also in the post-examination under oath phase of investigation, information such as receipts provided by the insured should be verified for authenticity, and to also make certain none of the items were later returned by the insured.

If the insured claims they made purchases at locations for which they cannot find receipts, it is oftentimes prudent for the insurance carrier to follow-up with those retailers, and using the claim authorization, secure what records may exist to prove, or disprove, whether purchases were made by the insured.

One of the best tools now available for claim investigation is the large chain stores, such as Circuit City and Best Buy, keep amazingly complete records which can be searched by name, address, and even the method of payment used. As the computer age continues I anticipate more retailers will keep these types of detailed customer records. As the use of the internet also increases for retail purchases, consider contacting services such as PayPal, which also may be able to provide you evidence regarding purchases allegedly made by your insured.

Also during the post-examination under oath investigation stage, you want to follow-up regarding bank statements and credit card statements received from the insured. These records, as well, can be extremely beneficial in determining whether any financial motive exists on the part of the insured, and can also be utilized to verify whether, or not, purchases claimed by the insured were actually made, as well as whether the insured even had the financial wherewithal to have made the purchases being claimed.

During this phase of claim investigation it may also be appropriate to follow-up regarding any information, such as any attempts by the insured to refinance their home, credit applications, or rejected applications for credit in the time period leading up to the loss.

A crucial phase of the investigation is for the insurance carrier to document and follow-up regarding any alibi witnesses, or locations which the insured may claim would exonerate them from any involvement in the loss. One key case regarding insurance fraud actually centered upon the failure of the insurance carrier to follow-up on the alibi of the insured he was in

Pennsylvania skiing at the time the fire occurred. It was devastating to the insurance company's case when the investigator admitted on the witness stand, the insurance carrier never followed up with the hotel in Pennsylvania and the alibi witnesses identified by the insured, whom he claimed would exonerate him. This lack of proper investigation led to a multi-million dollar verdict for bad faith against the insurance carrier.

During the post-examination under oath phase of the investigation, it may also be important for you to follow-up with the police and fire officials who investigated the original loss. During this phase of the investigation you want to follow-up regarding any new information asserted by the insured at their examination under oath regarding either the facts of the loss or their dealings with police and fire officials. You also want to make certain, prior to making a decision whether to accept or deny the claim, no additional evidence has been uncovered by the police or fire officials and no additional or supplemental reports have been prepared concerning the claim of which your company is not aware.

One of the worst things is for your company to deny the claim, only to learn a report existed in the police or fire official's files of which you were not aware which cleared the insured from any involvement in the loss. I can remember at least one claim where we felt very strongly we had an excellent case against the insured, only to find out shortly before issuance of the denial, an arrest had been made and the thief had admitted to stealing the insured's vehicle.

One of the items I frequently ask the insured to produce at the examination under oath is a complete copy of their cellular phone records for the time period surrounding the loss. I will ask the insured a series of questions having them identify all cellular phones or pages available for their use, the appropriate numbers, and the identity of the service providers. I then ask if the service is in the name of the insured, or some other name, and once all of this information has

been testified to, I will then ask the insured to agree to produce the itemized statement showing all incoming and outgoing call activity on the cellular phone or pager for the time period surrounding the loss. We recently denied a claim where the insured was adamant he learned about the fire loss from his wife who called him on his cellular phone, and he was absolutely certain they spoke for, at least, forty-five minutes talking about how devastated they were by the fire. When the cellular phone records for both the husband and wife were produced, there was no call recorded in excess of two minutes during the entire time the insured claims he was speaking with his wife.

With new cellular phone technology it is difficult, but not impossible, for some cellular phone companies to actually go back and reconstruct for you from what cell a telephone call was placed, or received, by the insured at a given time. This type of information can be extremely crucial if the insured claims they were in one location at the time the fire occurred, but a cellular phone call is placed or received in a cell in direct proximity to the fire location at the same time the fire occurred.

One of the new up-and-coming areas of technology to also consider, both in vehicle and property claims, is the black box technology becoming more prevalent in automobiles. Depending upon the sophistication of the system, it may be possible to reconstruct with timestamp data whether a vehicle was being driven on a certain date and time. For example, if this type of data is available, it could be extremely important if the insured claims they were home sleeping at the time a rental property fire occurred. As black box technology improves, it may be possible to get a printout of the black box from the insured's vehicle showing the vehicle was actually driven, and the distance the vehicle was driven during the time period the insured claims they were sleeping.

Remembering it is your goal to make a complete and thorough investigation of the claim, you should also consider in the post-examination under oath phase of the investigation whether new information has been garnered in the case investigation which needs to be shared with your origin and cause investigator, or police and fire officials, at least to the extent permitted by law. There is certainly nothing worse than having your origin and cause investigator cross-examined on the witness stand, only to have that investigator admit they were not aware of new evidence learned through the examination under oath, or other claim investigation process, after they have completed their report which would have had a direct bearing upon the opinions contained in the report they authored.

Finally, you may also wish to consider whether additional interviews are required prior to your company making a final decision regarding the claim. For example, family members, co-workers, former spouses and neighbors may all be individuals who, based upon the examination under oath and claim investigation, may be relevant witnesses who, at least, should be contacted and interviewed before a final decision is made regarding the claim.

## **VII. CLAIM DECISION**

You have now reached the point where a final decision to accept or deny the claim needs to be made. This is where the claim investigation process truly comes full circle.

It is now your duty to take all the information and data you have gathered throughout the entirety of the claim investigation process and view all of that information impartially and honestly. Remember, you are not looking to deny the claim, but actually if you are guided by the principle of looking for every reasonable way possible to pay the insured for their loss, you will be more likely to reach the right decision. This is especially true if you look at the claim as trying to find every logical reason why the insured should be paid under the policy, and you still

reach the conclusion at every turn there is no other alternative other than to deny the insured's claim.

Although it may not be perfect, I would urge you to also remember the test I use when I evaluate any claim, which is simply: "Can I explain this claim investigation and denial to a jury on closing argument in a manner in which I believe the jury will rule in favor of the insurance carrier?"

On some level equally important with making the right decision, is that you make your decision promptly. It is important to understand, no claim investigation is ever truly finished unless you have a complete confession, and then you generally do not need to worry about the denial letter. At some point you must decide that you have completed your investigation to the extent a proper and complete decision can be made regarding the claim. Be certain to remain cognizant of what time deadlines your own state may impose, either by law, or administrative proceeding on the claim investigation and decision process.

It is also important to remember there is no such thing as the "perfect" claim. I am not aware of any jurisdiction requiring an insurance carrier to be 100% correct in making the decision to accept or deny a claim. This is certainly an unrealistic standard for any company to adhere to. The test which is applied by most states is whether your company has reasonable justification to deny the claim. In the same manner as was set forth at the start of this presentation, the word "reasonable" means exactly that, and should not be construed to twist and turn the facts to find coverage in favor of, or against, the insured. When you look at the claim to decide whether there is reasonable justification to deny the claim, you should use the same standard of making certain you are not twisting and turning the facts to justify your desire to deny the claim. Remember, as well, the standard utilized in most states in issues regarding

insurance coverage is the insured should always receive the reasonable benefit of the doubt in favor of finding coverage.

Once you have reached your decision regarding the claim, your decision should be communicated promptly and clearly in writing to the insured. Especially if you are denying the claim, most states obligate you to inform the insured of the specific provisions under the policy upon which you are basing your denial, and many states also require you to, at least, summarize the evidence upon which you base your denial.

If you deny the claim, it is also my recommendation you consider advising the insured in the denial letter if the insured believes your company has reached the decision in error, you are willing to consider any new, or additional, evidence provided by the insured within 10 to 14 days of the date of the denial letter. If you are later sued, this provides an excellent argument to the jury showing the insurance carrier was willing to give the insured every benefit of the doubt, including allowing them to submit any new or additional information after the decision to deny the claim was made. In most cases the insured will not respond to this letter, and I have found this can be important to the jury in arguing the insurance carrier was more than reasonable, and even gave the insured the opportunity to submit additional information if they disagreed with the denial.

We recently took a very novel approach with a carrier's approval in a denial letter, not only offering to consider new evidence, but also advising the insured with their written permission the insurance carrier was willing to file at its expense an action for declaratory judgment to have a court review the decision of the insurance carrier, and determine whether the denial was proper. We advised the insured we would only file the declaratory judgment action if the insured authorized us to do so, since the insureds would be named as defendants. The

insureds did not accept this offer, but later sued the insurance carrier for bad faith. Interestingly, the bad faith suit was filed by a new attorney who had never seen the denial letter. When shown the denial letter at his clients' deposition, the attorney, who was an experienced insurance litigator, agreed to dismiss the bad faith claims with prejudice, stating in light of the offer of the insurance company to have its decision reviewed by a court at its expense, he did not believe he had any chance of sustaining any bad faith argument.

Depending upon the state in which you are handling claims, you may also be obligated in the denial letter to advise the insured as to when the statute of limitations would run on any claim for breach of contract, or possibly even bad faith. Please check with your local counsel, or be fully acquainted with your state law, to make certain your denial letter is in keeping with all requirements of your jurisdiction.

## **VIII. CONCLUSION**

It is my hope this presentation has assisted you in evaluating and critiquing yourself, and your company, regarding the claim investigation process. One of the most fascinating things to me in dealing with insurance claims, is no two are exactly alike, and each requires a tremendous degree of professionalism and insight to determine what a thorough and complete investigation is. The materials we have covered in this presentation will not apply to each and every claim you handle. It is my hope, however, whether it is next week, or several years from now, the ideas, thoughts and suggestions explored in this presentation will come back to you and cause you to stop, think and consider the appropriate action to take in the investigation of your claims so the proper and correct decision is made in the final analysis.

One closing note I would share with you, is that for the past twenty years we have seen numerous best-seller books encouraging us as individuals, and corporations, to adopt goals and

mission statements. As I set forth at the start of this presentation, the goal of a proper claim investigation should be to conduct a complete and thorough investigation leading to the correct decision regarding the claim.

What I have not seen in twenty years is any insurance company adopting a written mission statement for their investigation of insurance claims. I would love nothing more as a trial attorney defending insurance carriers in bad faith litigation, than to be able to show the jury my client has adopted (and follows) a mission statement governing and directing the entirety of its claim investigation process. I have never had the privilege of doing so.

I would respectfully submit, every insurance carrier owes it to itself, and to its insureds, to have a mission statement adopted, and more importantly applied, governing the investigation of every insurance claim it handles. I would leave you with the following as the mission statement which should guide you in your investigation of all insurance claims:

*“It is our duty to investigate claims completely, thoroughly and in a fair manner. Claims which are owed to our insureds should be paid. Where our investigation leads us to reasonably determine coverage is not afforded under the policy, we will recommend those claims be denied.”*

# Sample Law Firm Letterhead

1125 Morris Road  
New York, New York 11111

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## ATTORNEY RECOMMENDATION LETTER

Dear Adjuster:

This letter will confirm assignment of the above captioned matter to our firm for purposes of assisting your company in regard to your investigation of the above referenced claim. I have had the opportunity to review the file records which you have forwarded and, based upon that review, do believe your company has reasonable justification to continue forward with investigation of this matter.

Enclosed with this letter you will find a copy of the correspondence which I have directed to your insureds advising them of the request for their examinations under oath. Please also note I have requested at time of the examinations under oath your insureds bring with them complete copies of their Federal and State income tax returns for the past three (3) years, as well as banking and financial records for the past one (1) year, and any and all other information or documentation which your insureds wish for [Insurance Company Name\*] to consider as part of the ongoing investigation of their claim.

I have noted our file for fourteen (14) days to follow-up with your insureds if they, or their attorney, have not contacted me to schedule their examinations under oath.

Based upon my review of the file records, I would offer for your consideration the following additional recommendations for investigation of this claim:

- 1. It appears more items may be claimed on the Personal Property Contents Inventory than were reported on the police report. You may wish to follow-up with the police department to determine whether any supplemental reports have been filed.*
- 2. According to the police report there are two witnesses listed who may have relevant information regarding this claim. If you have not already done so, I would recommend you attempt to contact and do preliminary interviews of these individuals to determine what knowledge they may have relative to this claim.*
- 3. Many of the items claimed on the Personal Property Contents Inventory were allegedly purchased within the past year, including multiple electronic items each valued in excess of \$500.00. Initially it appears the income of the claimants would not support this level of purchases in the past year. Prior to the examinations under oath I would appreciate your authority to prepare an exhibit breaking out the Contents Inventory Sheets and listing all purchases made within the past three years and the amount of purchases claimed each year. I will then request the insureds to explain why it appears the amount of purchases exceeded their available income.*

4. *In the same manner, it appears many of these items were purchased from Circuit City. The majority of these types of chain stores do have computerized purchase history records and I would recommend using the claims authorization to contact Circuit City to determine what records of purchases they may be able to provide to document the items being claimed by the insureds.*
5. *I note in the recorded statement the insureds filed for bankruptcy protection in 2002. On the Contents Inventory Sheets it appears many of the items allegedly stolen were purchased prior to the date of the bankruptcy filing. I would recommend we secure a complete copy of the insureds bankruptcy schedules to determine what property was claimed in the bankruptcy court proceeding.*
6. *I also note in the recorded statement, upon arrival at home Mr. Insured states they immediately called 911 using their cell phone. At the examination under oath I will request copies of all cellular phone statements which should show the itemized calls being made on the date of loss. I would also recommend we check the cellular phone records to see whether any other incoming or outgoing calls were placed to or from the insured's cellular phone in the hours preceding this claim, as the insureds claim they were at a movie, so presumably there should be little or no cellular phone activity.*
7. *As it appears this was a new policy, issued only thirty (30) days prior to this alleged theft, I would also recommend you contact the agent who placed the policy and possibly take a recorded statement of the agent to determine what recollection the agent has concerning the insureds and their securing of this insurance coverage. Specifically I would be interested in knowing if there was any discussion as to why the insureds had lived in this home for a number of years without securing any insurance, and then decided to purchase this policy only thirty (30) days before this loss. I would additionally inquire of the agent whether there was any discussion regarding scheduling of any of the jewelry items which are claimed on the Personal Property Contents Inventory, and what value of items, if any, was disclosed to the agent at the time the policy was secured.*

Thank you again for assignment of this matter, and I look forward to working with you as the investigation of this claim proceeds. I will plan to provide you with our next status report within no more than fourteen (14) days, and will, of course, notify you immediately once I have received contact from the insureds, or their attorney, relative to scheduling of the examinations under oath.

Sincerely yours,

Attorney Signature

Enclosure

*\* Counsel as well should use the correct corporate entity name.*

# Sample Law Firm Letterhead

1125 Morris Road  
New York, New York 11111

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## EXAMINATION UNDER OATH REQUEST LETTER

Dear Mr./Mrs./Ms. Insured:

Please be advised this law firm has been retained by [Insurance Company Name\*] to serve as counsel on its behalf in reference to the claim you have submitted for a [theft] occurring on or about (*fill in date of loss*).

Pursuant to your policy of insurance, this letter is to notify you we wish to take your examination under oath regarding this [theft] and the claim you have submitted to [Insurance Company Name\*]. I anticipate your examination under oath to take at least two hours to complete. You have the right to be represented by legal counsel, at your expense, at the examination under oath should you desire. Under the policy of insurance you are obligated to submit to the examination under oath and to thereafter review and sign the transcript of the examination under oath. Due to the nature of the claim, [Insurance Company Name\*] would also like to inspect your tax records in order to evaluate the claim. Please bring copies of your Federal and State tax returns for the past three (3) years to the examination.

Immediately upon your receipt of this letter, please contact me so we may schedule a convenient date and time for taking of your examination under oath. Please understand no further consideration can be given to your claim until you comply with this requirement under the policy.

Please also understand, nothing contained in this letter, or request for your examination under oath, waives any prior reservation of rights issued to you by your insurance carrier and your insurer continues to reserve all rights relative to any issues concerning this claim.

I look forward to hearing from you.

Sincerely yours,

Attorney Signature

\* Counsel as well should use correct corporate entity name.

**APPENDIX C**

**MONTHLY LIVING EXPENSES**

<b>EXPENSE</b>	<b>AMOUNT</b>
<b>Home Mortgage</b>	
<b>Second Mortgage on Primary Residence</b>	
<b>Third Mortgage</b>	
<b>Other Real Estate Mortgages</b>	
1.	
2.	
3.	
<b>Installment/Debt Consolidation Loans</b>	
1.	
2.	
3.	
4.	
5.	
<b>Credit Cards</b>	
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
<b>Utilities:</b>	
<b>Electric</b>	
<b>Propane</b>	

<b>Telephone</b>	
<b>Cellular Phones</b>	
<b>Water</b>	
<b>Cable TV</b>	
<b>Satellite TV</b>	
<b>Real Estate Taxes</b>	
<b>Homeowners' Insurance</b>	
<b>Automobile Insurance</b>	
<b>Life Insurance</b>	
<b>Health Insurance</b>	
<b>Automobile Expenses:</b>	
<b>Car Payment No. 1</b>	
<b>Car Payment No. 2</b>	
<b>Car Payment No. 3</b>	
<b>Gasoline</b>	
<b>Automobile Maintenance</b>	
<b>Household Expenses:</b>	
<b>Food:</b>	
<b>Sundries/Supplies/Toiletries</b>	
<b>Clothing:</b>	
<b>School Expenses</b>	
<b>Household Furnishings</b>	
<b>Dining Out</b>	
<b>Entertainment ( i.e., movies, etc.)</b>	
<b>Union Dues</b>	
<b>Charitable Giving</b>	
<b>Child Support Payments</b>	
<b>Liens &amp; Judgments</b>	
<b>TOTAL:</b>	

# Insurance Company Letterhead

10000 Main

New York, New York 11112

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## RESERVATION OF RIGHTS

Dear Mr./Mrs./Ms. Insured:

As you are aware, you have submitted the above referenced claim to [Insurance Company Name\*] for a loss occurring on *(fill in date of loss)* for which you are seeking compensation under your Policy No. *(fill in policy number)*. At this time we are writing to advise you, [Insurance Company Name\*] is specifically reserving all rights relative to this claim, and will be undertaking a thorough investigation of this claim which you have submitted. Please understand no action taken on the part of [Insurance Company Name\*] in ascertaining any issues regarding coverage, or the amount of loss and damage which may have occurred, shall in any way waive, invalidate or prejudice the rights of [Insurance Company Name\*] in any way.

The purpose of this Reservation of Rights letter is to preserve all rights of [Insurance Company Name\*], as well as any rights you may have under your policy so a thorough and complete investigation of the cause of the loss, the amount of the loss or any other relevant information may be secured.

It is important you carefully review your policy of insurance as [Insurance Company Name\*] in no respect is waiving any of the terms, conditions, requirements or statute of limitations contained within your policy. Although [Insurance Company Name\*] is reserving all rights relative to this claim, we would specifically direct your attention at this time to the following provisions of your policy of insurance under which we are reserving our rights:

*(Insert all relevant sections of the policy under which the Reservation of Rights is being asserted. In many states generalized Reservation of Rights letters are not permitted and you must specifically identify the sections of the policy under which your rights are being reserved. It is also possible any sections of the policy which you do not include specifically in the Reservation of Rights may be waived if you have not placed the insured on proper notice).*

At this time our investigation is ongoing. Under your policy of insurance you are obligated to cooperate with us in the investigation of your claim, as well as produce relevant records and documentation which we may request. We are also reserving the right to take your examination(s) under oath concerning this loss. Additional information will be forthcoming to you from our company, or our legal counsel, as the investigation of your claim proceeds.

Mr./Mrs./Ms. Insured

DATE

Page 2

Any further action we take relative to investigation or handling of your claim should not be construed as a waiver, invalidation, prejudice or relinquishment of any rights or defenses we may possess. Nothing contained in this Reservation of Rights letter shall in any way waive any of your rights, or our rights, under your insurance policy. Additionally, [Insurance Company Name\*] also reserves the right to amend or supplement this Reservation of Rights letter at any time in the future as the investigation of your claim proceeds.

We request you extend your full and complete cooperation to us in our handling of the investigation of your claim. We will investigate your claim as quickly as possible, and make a final determination regarding what amounts, if any, you may be entitled to under your policy. We will also continue to keep you informed as the investigation of your claim proceeds, however, should you have any questions or concerns at any time, please do not hesitate to contact us.

At the time of this letter, the following information and documentation is being requested from you to be forwarded to our attention within fourteen (14) days for review and consideration as part of the ongoing investigation of your claim:

*(Insert any documentation or other requests to the insured at this point).*

On behalf of our company, we again thank you for your anticipated cooperation. Please understand, nothing contained in this letter in any way waives or voids any of the terms or conditions of your policy in any respect, and [Insurance Company Name\*] will continue to insist upon full compliance with all policy terms and conditions.

Sincerely yours,

Insurance Company Representative

*\* Use correct corporate entity name.*

# Insurance Company Letterhead

10000 Main

New York, New York 11112

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## PROOF OF LOSS REQUEST

Dear Mr./Mrs./Ms. Insured:

We have received a report of your claim resulting from the loss you incurred as referenced above. It is our intention to give your claim our prompt and courteous attention. It is important you acquaint yourself with your rights and responsibilities under your policy. Please review carefully your policy of insurance and the time limitations in the policy which may affect your claim.

For us to properly evaluate and process your claim, and for you to present a complete claim to us, we are hereby requesting you complete and sign the enclosed Sworn Statement in Proof of Loss. Your policy of insurance specifically provides as follows regarding our request for your Sworn Statement in Proof of Loss:

*(Insert policy language regarding duties to submit proof of loss.)*

It is important you complete the Sworn Statement in Proof of Loss and return the completed proof of loss to us by U.S. mail within sixty (60) days of your receipt. Please note it is also a requirement to sign it in the presence of a notary public.

To assist you in completing the Sworn Statement in Proof of Loss the following information may be of benefit:

- (1) **Time and Origin** – Please state the time when this loss occurred and your understanding as to the cause of the loss.
- (2) **Occupancy** – Describe any and all uses of the dwelling and if any persons other than the named insured(s) and immediate family members were residing in the home, please list those individuals by name.
- (3) **Title and Interest** – State the nature of the rights in the insured property such as ownership, leasing, land contract or other type of title. Please also state the rights of any other person or entity such as a finance company, etc.
- (4) **Changes** – If any information concerning occupancy or title and interest to the property has changed since the time you applied or acquired your policy of

insurance, or if there has been any change in the location or exposure to risk of loss to the insured property, it is important you describe any and all such changes.

- (5) **Total Insurance** – If all, or any part of the loss, which is involved in this claim is covered under any other insurance policy, please list the policy number and the name of the insurance carrier.
- (6) **Actual Cash Value of the Property and Whole Loss and Damage** – Provide a detailed estimate of the total value of the property located on the premises and a detailed estimate of the damage sustained to the property as a result of the loss described above. Include the cost of repairing such damage by a person competent to undertake such repairs, and such estimates which, if requested, must be authenticated by bids from a general contractor or subcontractor competent to make the repairs. Please also furnish a comprehensive inventory of all personal property damaged or destroyed by the loss, stating the price, place and date of purchase, current value allowing for age, use and condition, and estimates for repairs if the personal property can be repaired. Please also attach any and all evidence of purchase or value in your possession, such as invoices, cancelled checks, photographs, receipts or other documentation.
- (7) **Additional Living Expense** – Your policy may also cover for the increase in living expenses actually incurred by you and directly necessitated by the loss. Such a claim is subject to the terms and conditions of the policy for that coverage. Please calculate the amount of any direct increases you are actually experiencing as a result of this loss, and provide documentation for each of these expenses such as motel or hotel charges, additional food expense or other similar expenses, and provide evidence by receipts and cancelled checks to document any such claim.
- (8) **The Amount of Claim** – After you have determined the amount of the actual cash value and the whole loss and damage, insert the lesser of these two figures on the proof of loss in the appropriate blank taking into account any limitations contained in the policy and any applicable deductions. Please carefully review your policy to determine the amount of your deductible, as well as any specific limitations for jewelry, money or other limits for specific items of personal property or structures.

It is important you read the entirety of the information contained on the Sworn Statement in Proof of Loss carefully. This document attests to the truthfulness and completeness of your Sworn Statement in Proof of Loss, and your recognition [Insurance Company Name\*] does not waive any of its rights under your policy by furnishing this document or assisting you in the completion of the Sworn Statement in Proof of Loss. It is important you understand, [Insurance Company Name\*] continues to reserve all rights concerning your claim, and no decision has been yet reached with respect to your claim.

Mr./Mrs./Ms. Insured

DATE

Page 3

After you have completed the Sworn Statement in Proof of Loss, sign the document where indicated before a notary public, and return it to this office via United States mail delivery, together with all documents, estimates, inventories, receipts and any and all other documentation which you have relied upon to prepare your Sworn Statement in Proof of Loss, or which you wish for [Insurance Company Name\*] to consider before making a final decision concerning your claim.

In some cases, additional information may be necessary for a proper review of your claim. When such information is requested, your policy requires you to produce your books and records concerning relevant information for review of this loss and for copying of those records, if so required. Your policy also requires, if requested, you appear for an examination under oath and permit reasonable inspection of all damaged or destroyed property by a representative of [Insurance Company Name\*].

Please understand as well, this letter, nor any of the enclosed documents, in any way supersedes or waives any of the terms and conditions of the policy of insurance issued to you in any manner. [Insurance Company Name\*] continues to reserve all rights, and will continue to insist upon full compliance with all policy terms and conditions.

We will look forward to receiving your Sworn Statement in Proof of Loss, and look forward to continuing to assist you relative to this claim.

Sincerely yours,

Insurance Company Representative

Enclosure

*\* Use correct corporate entity name.*

# Insurance Company Letterhead

10000 Main

New York, New York 11112

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## RECEIPT OF COMPLETED SWORN STATEMENT IN PROOF OF LOSS

Dear Mr./Mrs./Ms. Insured:

[Insurance Company Name\*] hereby acknowledges receipt of your Sworn Statement in Proof of Loss concerning the above referenced claim. Thank you for your assistance and cooperation in providing us your Sworn Statement in Proof of Loss as required under your policy.

At this time I am writing to advise you [Insurance Company Name\*] is holding your proof of loss pending completion of our investigation of this claim. We are currently conducting a thorough and complete investigation of your claim, and will continue to keep you advised of our progress in the investigation, and what information or assistance may be required from you as part of the claim investigation.

Should you have any question regarding the status of the investigation of your claim, please contact us at any time. We will make certain to update you regarding the status of our investigation by no later than *(fill in a specific date under your state's laws or requirements by which the next status report will be sent)*.

Please also understand, nothing contained in this letter in any way waives or voids any of the terms or conditions of your policy of insurance, and [Insurance Company Name\*] will continue to insist upon full compliance with all policy terms and conditions, and continues to reserve all rights relative to this claim.

Sincerely yours,

Insurance Company Representative

\* *Use correct corporate entity name.*

# Insurance Company Letterhead

10000 Main

New York, New York 11112

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## RECEIPT OF INCOMPLETE SWORN STATEMENT IN PROOF OF LOSS

Dear Mr./Mrs./Ms. Insured:

[Insurance Company Name\*] hereby acknowledges receipt of your Sworn Statement in Proof of Loss concerning the above-referenced claim.

Although we appreciate your efforts to cooperate with us in the timely investigation of your claim, unfortunately I am writing to advise you we are rejecting your Sworn Statement in Proof of Loss as it does not comply with the specific requirements of your insurance policy.

As we have advised you in our previous correspondence, your policy does obligate you to submit a properly executed and fully completed Sworn Statement in Proof of Loss. The Sworn Statement in Proof of Loss you have submitted fails to comply with these requirements. Specifically, we are rejecting your Sworn Statement in Proof of Loss due to the following reasons:

*(Insert specific reasons for rejection of proof of loss. Be specific concerning failure to have all relevant information included. Note: it is generally not proper to reject the proof of loss where the information omitted is non-essential to the claim, or the information can be easily determined. Make certain all insureds have signed the proof of loss, failure of one or more of the insureds to have signed the proof of loss is a valid reason for rejection. You should also carefully review the Contents Inventory Sheets to make certain they are in acceptable form if they are returned simultaneously with the proof of loss.)*

It is important you comply with your policy by submitting a properly executed Sworn Statement in Proof of Loss. Enclosed with this letter is a new blank Sworn Statement in Proof of Loss form which it will be necessary for you to complete correctly and return to our company by no later than *(fill in date)*. Your failure to submit a properly executed Sworn Statement in Proof of Loss in a timely manner may lead to denial of your claim so it is important you give this matter your most immediate attention.

Please carefully refer to your policy of insurance which does contain the following provision:

*(Insert relevant policy language concerning Sworn Statement in Proof of Loss.)*

Mr./Mrs./Ms. Insured

DATE

Page 2

We look forward to receiving your properly executed Sworn Statement in Proof of Loss so our investigation of your claim may move forward promptly. Please also understand, nothing contained in this letter in any way waives or voids any of the terms or conditions of your insurance policy, and [Insurance Company Name\*] will continue to insist upon full compliance with all policy terms and conditions.

Sincerely yours,

Insurance Company Representative

Enclosure

*\* Note – use correct corporate entity name.*

# Insurance Company Letterhead

10000 Main

New York, New York 11112

\*\*\*\*\*

## FAILURE TO COOPERATE

Dear Mr./Mrs./Ms. Insured:

As you are aware, [Insurance Company Name\*] has been undertaking investigation of the above referenced claim which you have submitted under your policy of insurance.

I am writing at this time to advise you, your failure to cooperate with [Insurance Company Name\*] in the investigation of your claim is a violation of the terms and conditions of your policy of insurance. Specifically, I am writing to advise you, you have failed to cooperate in our investigation by:

*(Be very specific in detailing the attempts made to secure the cooperation of the insureds, including attaching letters and reciting each attempt [Insurance Company Name\*], or your legal counsel, have made to secure the cooperation of the insureds. Remember this letter may ultimately be used as an exhibit at a jury trial and should clearly set forth your company has made more than reasonable efforts to secure the cooperation of the insureds).*

It is also important you carefully review your policy of insurance, as your policy does obligate you to assist us in the investigation of your claim. Specifically, your insurance policy provides as follows:

*(Cite here each and every specific section of the policy which supports any contention the insureds have failed to cooperate).*

Although at this time you are in violation of the terms and conditions of your policy, [Insurance Company Name\*] is once again requesting your assistance and cooperation in the ongoing investigation of your claim. [Insurance Company Name\*] will provide you one final opportunity to cooperate with us in the investigation of this matter. By way of this letter you are advised if we do not *(fill in appropriate action requested)* within fourteen (14) days of the date of this letter we will assume your claim is being voluntarily withdrawn by you for all purposes, at which time we will consider your claim to be denied.

Please understand, it is our goal to conduct a thorough and complete investigation of your claim, but we cannot do so without your assistance and cooperation. As we have advised you previously, nothing contained in this letter in any way waives or voids any of the terms or

Mr./Mrs./Ms. Insured

DATE

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conditions of your policy of insurance, and [Insurance Company Name\*] will continue to insist upon full compliance with all policy terms and conditions, and continues to reserve all rights relative to this claim.

Sincerely yours,

Insurance Company Representative

*\* Use correct corporate entity name.*

# Insurance Company Letterhead

10000 Main

New York, New York 11112

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## AUTHORIZATION FOR DEMOLITION OF PROPERTY

Dear Mr./Mrs./Ms. Insured:

We are writing to advise you our on-site investigation concerning the above referenced fire loss has now been completed. Although we are continuing to reserve all rights concerning your claim, at the current time all inspection and testing of the [fire] scene required by our company has been completed.

Since it is necessary to proceed with demolition of this property, we have a demolition company ready to complete the required demolition. Before doing so, however, we do require having your signed approval prior to demolition and, within a reasonable time, you are also welcome to undertake any investigation or testing you may deem necessary to protect your interest concerning this claim.

If we have your approval to proceed with demolition of the property, please sign this letter where indicated below, and return the original to us as soon as possible. Demolition will begin promptly upon receipt of your signed approval.

Please understand, nothing contained in this letter in any way waives or voids any of the terms or conditions of your policy of insurance, and [Insurance Company Name] will continue to insist upon full compliance with all policy terms and conditions, and continues to reserve all rights relative to this claim.

Sincerely yours,

Insurance Company Representative

\_\_\_\_\_  
*Mr./Mrs./Ms. Insured Signature*

\_\_\_\_\_  
*Date*

# Insurance Company Letterhead

10000 Main

New York, New York 11112

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## ATTORNEY REFERRAL LETTER

Dear Attorney:

We are referring the above captioned claim to you to assist our company in our investigation of this loss. We are specifically retaining your services to serve as legal counsel to our company. Our company will continue to direct all claim related matters, and we request you undertake no specific action unless so directed by our company. Our goal is to conduct a thorough and complete investigation of this claim which has been submitted by our insured. We have not yet reached any final decision relative to acceptance or denial of this claim.

At this time we are requesting you review the claim file records which we have forwarded to you, and advise whether, in your opinion, [Insurance Company Name\*] does have reasonable justification to move forward with further investigation of this claim. Assuming you do agree further investigation of this claim is warranted, we are requesting at this time you proceed with the following actions concerning this claim:

*(List here any specific responsibilities assigned to legal counsel. This would include specific individuals from whom examinations under oath should be taken of, or any documentation you may wish for the attorney to secure directly).*

It is important you keep us advised regarding the status of this matter. Please submit status reports regarding this claim to our attention, at least, every fourteen (14) days. Please also make certain our insured is updated regarding the status of the investigation of their claim in accordance with all applicable state laws or department of insurance guidelines. If you need any information from us to comply with these requirements, please contact me in advance so our insured is kept fully advised as required regarding the status of their claim.

Thank you for agreeing to serve as legal counsel regarding this matter, and I look forward to working with you as our claim investigation proceeds.

Sincerely yours,

Insurance Company Representative

\* Use correct corporate entity name.

# Sample Law Firm Letterhead

1125 Morris Road  
New York, New York 11111

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## STATUS REPORT TO INSURED

Dear Mr./Mrs./Ms. Insured:

I am writing to update you regarding the status of the investigation of your claim. As you are aware, [Insurance Company Name\*] is continuing to investigate the above referenced claim, and is doing so under a full and complete Reservation of Rights.

Since the last status report to you regarding the investigation of your claim dated (*fill in the date*), [Insurance Company Name\*] has proceeded forward with the investigation of your claim. Since our last report to you the following actions have occurred relative to our investigation:

*(Be as specific as possible giving as much non-privileged information to the insured as possible evidencing the investigation of the claim is moving forward.)*

As this time in our investigation we are (*still awaiting the following information and documentation from you to assist us in our investigation*) OR (*have received all information from you which we have requested concerning investigation of your claim, but are still awaiting additional information and documentation from third parties before a final decision may be made concerning your claim.*) It is important we receive the additionally requested information and documentation listed above from you within the next ten (10) days so the investigation of your claim may move forward promptly.

We will continue to keep you advised as the investigation of your claim proceeds forward. Should you have any question regarding the status of the investigation of your claim at any time, please do not hesitate to contact us. As we have also advised you previously, nothing contained in this letter in any way waives or voids any of the terms or conditions of your policy of insurance, and [Insurance Company Name\*] will continue to insist upon full compliance with all policy terms and conditions, and continues to reserve all rights relative to your submission of this claim.

Sincerely yours,

Attorney Signature

\* Counsel as well should use the correct corporate entity name.