

PLRB Large Loss Sample Proposal

A 24-Hour Water Loss Mystery

PRESENTERS:

- **XXX, Esquire**
 - **Partner**
 - **ABC Law firm, LLP**
- **xxx**
 - **General Adjuster**
 - **Insurance Company**

Curricula: Personal Lines

FACT PATTERN SUMMARY:

This presentation will focus on a personal line claim involving a suspect water loss that allegedly occurred in the span of 24-hours while the homeowners were away.

KEY ISSUES:

- Strategies for handling a suspect personal lines claim which could involve multiple fraudulent aspects
- Implement a good-faith investigation strategy which allows the evidence to dictate the outcome
- Resolve differences between the appearance of fraudulent conduct and actual fraudulent conduct
- Avoidance of bad-faith allegations when investigating the possibility that the insureds are either victims of or co-conspirators in a suspect loss
- Strategies for dealing with public adjusters who present an impediment to the investigation of a claim

OUTLINE:

- 1. Introduction of Claim** **(20 mins)**
 - a. Introduction of Presenters
 - b. Overview of Claim:
 - i. Center hall colonial home (built 1985) valued at \$2M+ in upscale suburb of Philadelphia sustains a water loss
 - ii. Initial claim submitted to insurer electronically (via insurer website submission) by public adjuster on behalf of homeowners 3 days after loss
 - iii. Public adjuster alerts insurer of extensive water damage and requests referral to large loss division
 - iv. Insurer directed to contact public adjuster regarding claim, no contact information for insured
 - c. Initial Contact with Public Adjuster
 - i. Public adjuster does not return insurer's phone messages for 2 days (5 days post-loss)
 - ii. Broker does not have updated contact information for homeowners

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- iii. When public adjuster does speak with insurer, advises of the following:
 - 1. Water loss occurred while homeowners were traveling away from home for approximately 24 hours
 - 2. Water loss attributed to sudden failure of toilet supply line located in second floor bathroom
 - 3. That extensive emergency demolition and dry-out is completed
 - 4. Insured are living in hotel as they are displaced from home
- iv. Demand from demolition contractor received same day
- d. Initial Inspection of Property
 - i. Walk through of property with public adjuster occurs 2 days later (7 days post-loss)
 - ii. Source of water identified as second floor bathroom at top of main stairs
 - iii. Failed toilet supply line was allegedly discarded by mistake or otherwise lost during demolition
 - iv. Extensive demolition of the interior of the home down to studs
 - 1. 3 of 4 second floor bedrooms had carpeting removed
 - 2. Second floor hallway and stairs had hardwood flooring removed
 - 3. First floor kitchen, half bath, dining room, living room, den all removed;
 - 4. Finished basement completely removed
 - v. Demolition contractor owned/controlled by public adjusting company
 - vi. Over 1,000 photographs taken by demolition contractor depicting entire process from their arrival through completion, including failed toilet supply line

2. Claim Investigation Strategy

(20 mins)

- a. Issue Spotting
 - i. Volume of water necessary to cause scope damage observed did not appear to correspond with single failed toilet supply line
 - ii. Time frame for loss to occur (max 24 hours) did not appear to correspond with such an extensive scope of demolition
 - iii. Discarding of failed toilet supply line which purportedly caused loss
 - iv. Extensive demolition of home prior to first inspection by insurer
 - v. Delays which prevented inspection by insurer prior to completion of demolition
 - vi. Reliance upon photographic evidence to determine scope of loss and pre-demolition condition of home
- b. Big picture questions needed to be resolved
 - i. What was the cause and origin of the loss and did it correspond with details of the loss reported?

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- ii. What was the scope of loss and did it correspond to the scope of demolition?
- iii. Was this a legitimate loss or was it an intentionally staged loss?
- iv. If this was a legitimate loss, was the loss enhanced in any way prior to the reporting of the loss?
- v. Was there any improper conduct by public adjuster /demolition contractor?
- vi. Was there any improper conduct by homeowners?
- vii. Was there any collusion between the public adjuster /demolition contractor and the homeowner?
- c. Retention of Coverage Counsel
 - i. Investigate claim subject to ROR letter
 - ii. Need for engineering experts to evaluate cause and origin of loss
 - iii. Need secure photographs of loss and demolition from public adjuster
 - iv. Need for documentation from homeowners
 - v. Need for EUOs from homeowners
- d. Need for SIU involvement
 - i. Investigate potential finical motives of homeowners
 - ii. Investigate similar pattern of conduct by public adjuster /demolition contractor in other losses

3. Investigation of Claim

(40 mins)

- a. Informal recorded statement from Insureds
 - i. Joint ownership and residence in home, but no romantic or marital relationship between owners
 - ii. One homeowner was fully retired (75+) and had limited financial means as only source of income was social security
 - iii. Other homeowner was younger (mid-50's) and operated a failing pet-supply store business (ultimately failed 4-months post loss)
 - iv. No mortgage payments had been made 6 months prior to loss, but home was not in foreclosure
 - v. Mortgage was not particularly large relative to value of home, and monthly mortgage payments were modest
 - vi. Both homeowners were away from home at the same time, traveling to visit each of their respective families which could be independently corroborated
 - vii. Younger homeowner discovered loss and handled all details of loss, older homeowner was not directly involved in retaining of public adjuster or reporting of claim
 - viii. Younger homeowner relied heavily on public adjuster for guidance regarding submission and presentation of claim
- b. Preliminary Engineering Findings
 - i. Estimation of maximum theoretical volume of water discharged given time period for loss

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- ii. Causation of loss was likely not related to failure to maintain heat due to review of temperature records at time of loss
 - iii. Detailed photographs taken of interior of home post-demolition
 - iv. Structural analysis of home used to map path of water flow to identify areas likely damaged by water flow
 - v. Preliminary opinion was that maximum theoretical volume of water discharged did not correspond with scope of damage observed
 - vi. Some areas of home that were damaged by water could not have been damaged by water originating from second floor bathroom
 - vii. Possibility of second source of water contributing to damage
 - viii. Inspection of water damaged furniture and some pieces secured as evidence
- c. Analysis of Photographs taken by Demolition Contractor
- i. Photographs depict time line over the course of 4 days
 - ii. Contractor began immediate demolition without first attempting to dry out and salvage interior of home
 - iii. Water extraction and dry-out did not occur until after demolition
 - iv. Justification for demolition was based upon moisture meter readings showing 100% saturation
 - v. Moisture meter in photographs appears to malfunction as numerical readout does not correspond with graphical readout
 - vi. Possibility of either damaged moisture meter or manipulation of moisture meter to display false readings
 - vii. Scope of water damage areas appear to expand because of delay to immediately undertake water extraction and dry-out
 - viii. Evidence of pre-existing, unrepaired water damage which was unrelated to current loss
 - ix. Contractor was aggressive in scope of demolition, including areas not related to current water loss
- d. SIU Investigation
- i. No prior claims history of property damage claims, sole prior claim loss was a car accident 10+ years ago
 - ii. Financial reports confirmed status of mortgage arrearages and amount owed on home
 - iii. Quarterly water bill and usage history from water company did not provide any additional insight into volume of water discharged
 - iv. Invoice from “plumber” that was hired to fix broken supply line was not a licensed plumber, but was actually a licensed electrician
 - v. Recorded SIU statement from “plumber “ revealed that
 1. He replaced the toilet supply line and left it on the bathroom counter as directed
 2. The toilet supply line failed at the nylon nut which connected the line to the shut-off valve
 3. He was hired by demolition contractor and was frequently used by them despite initial representation that homeowner had hired plumber

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4. He performed a second repair (not previously disclosed) to the water line in the wall that had failed at a joint in addition to the supply line failure
- e. Damage Claim Submitted by Public Adjuster
 - i. Anticipated \$350,000 - \$450,000 property damage estimate based on scope of demolition
 - ii. Property damage claim submitted was \$115K
 - iii. Anticipated \$300,000+ contents damage estimate based upon scope of areas affected
 - iv. Contents damage claim submitted was \$50,000
 - v. Demolition claim submitted was \$75,000
- f. EUO of Insureds
 - i. Represented by counsel who had a large referral business with public adjuster/demolition contractor
 - ii. Confirmed that elderly homeowner had little or no knowledge of the details of the loss (scope, damage, causation) as well as whereabouts at time of loss
 - iii. Confirmed that the younger homeowner knowledge of the loss (scope, damage, causation) was based primarily upon information provided by public adjuster
 - iv. Younger homeowner made no attempt to hide failure of pet-store business or arrearages owed on mortgage
 - v. Younger homeowner secured new employment at grocery store within 6 months of failure of his business
 - vi. Younger homeowner whereabouts at time of loss were independently confirmed by SIU investigation
 - vii. Younger homeowner confirmed that there was pre-existing water damage which was not part of the loss being presented

4. Claim Resolution

(35 mins)

- a. Issues affecting resolution of claim
 - i. Were there sufficient proofs to establish this was a staged loss and/or an enhanced loss scenario?
 - ii. Was the younger homeowner somehow involved in staging or enhancing the loss, and to what extent?
 - iii. Was the public adjuster involved in staging or enhancing the loss, and to what extent?
 - iv. Was the demolition contractor involved in staging or enhancing the loss, and to what extent?
 - v. Were the homeowners victims in the above scenario?
 - vi. Does the insurer have an affirmative duty to protect a homeowner from its public adjuster and/or other vendors?
 - vii. Ethical issues presented by homeowners' choice of counsel
- b. Disposition of Claim
 - i. Coverage analysis and recommendations by counsel

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- ii. Legal standard in jurisdiction of “clear and convincing” evidence required to prove insurance fraud
- iii. Scope of conduct of public adjuster/demolition contractor that can be imputed to homeowners
- iv. Settlement of claim with homeowners
- v. Offer and compromise strategy on demolition claim

5. Lessons Learned/Takeaways?

(5 mins)

Total Time:

120 mins