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Who Else Owns This Fire Loss?

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A life is lost in an apartment fire. Was the death the result smoking in bed? Or were the bars on the window in violation of the building codes, preventing timely escape? Was the victim responsible for her death or just for the fire? Could she have escaped if the locks on the door were thumb-locks as required by the building and fire code, instead of a key lock that was missing the key? Who bears the blame? The victim? The manager of the building for installing window bars to keep burglars out? Or does the fault lie in the contractor, for installing doors with locks that violate building codes?

Subrogation (third party liability) of fire losses is a big business. Here are some basic rules that will help you investigate your case.

- Prompt Recognition of the need to investigate: Most fire losses are predictable and preventable. All have a cause. Most have multiple causes. Always ask, "Who else owns this loss?" Most subrogation is missed because someone failed to recognize it.
- Investigate the fire quickly: Time changes everything. Witnesses' memories fade. The scene gets disturbed. If possible, let your origin investigator or engineer arrive on the scene first.
- Make sure your investigators use the only peer reviewed fire investigation publication, NFPA 921. As a result of Supreme Court rulings, peer-reviewed scientific method is critical when it comes time to testify.
- Document the scene and interview witnesses: Photographs are cheap. You cannot take too many, but you can take too few. Write down, videotape, or tape-record witness statements. There is plenty of time later to reach conclusions and assign responsibility.
- Locate the origin: Utilize witness statements and evidence at the scene to determine where the fire started; then hire an engineer to analyze the cause.
- Determine the cause: Remember that the cause of the fire or explosion, the cause of the spread, the cause of the property damage and the cause of the bodily injury or harm are often different. With different causes, different parties may be responsible. Keep asking, "Who Else Owns This Loss?"

- **Secure the Evidence:** Put all parties on notice before disturbing or removing the evidence. After inspecting and agreeing on the evidence to keep, it should be tagged, itemized, and moved to an agreed upon secure site by the expert working for the party that owns the evidence. Down the road, things that did not start the fire are as important as those things that did.
- Utilize an "Involvement Matrix" to understand responsibility. This tool assists you in investigating and analyzing exactly who bears primary and secondary responsibility for the loss or casualty.

Remember, the fault may lie in the design and manufacture, or in failure to follow building codes or safety instructions. Careful investigation and analysis of the site and incident may reveal who really owns the loss.