

## Water Losses, NFPA 921, and Subrogation

In 30 years of investigative experience with fire and water losses, I have found that when investigating fire losses, there are many books, guides and other resources on how to properly conduct a fire investigation. Documents such as NFPA 921, "Guide to Fire and Explosion Investigation" and books by Lenitini and DeHaan are all useful references. When it comes to the investigation of water losses there is no comparable body of literature, that I am aware of, that provides guidance on how to properly conduct such an investigation. While NFPA 921 specifically addresses fire losses, I believe that the investigative principles in this document are equally applicable to water losses.

NFPA 921 has as its foundation the scientific method. The steps in the scientific method consist of:

- Recognize the need
- Defining the problem
- Collecting data
- Analyzing the data
- Developing a hypothesis (or hypotheses)
- Test the hypotheses and
- Select the final hypothesis

This methodology is applicable to any type of investigation, regardless of whether it is a fire loss or a water loss.

Many of the reports I have reviewed on water losses have as their most common problem the lack of collected data. These are some questions that should be addressed in evaluating the cause of a water loss:

- Was the water pressure in the residence measured?
- Was there a pressure reducing valve present?
- What type of water supply (municipal or well) served the residence?
- Was water conditioning equipment present?
- What was the repair or service history for the appliance suspected as the cause of the loss?
- Were the homeowners interviewed to determine if anyone was home at the time of the loss; if so, what did they do and what did they observe? if not, when was the last person in the residence?
- Who actually installed the appliance?

Answers to the above questions can either support the conclusion that the appliance was the cause of the loss or they can raise other issues that need to be considered in your evaluation of the subrogation potential. For example, excessive water pressure in the home can cause problems in an appliance due to exceeding the ratings of component parts. Knowing the type of water supply is a factor in determining if debris could be an issue. If there have been prior

repairs or service, the company that performed that work could be a potential party to a subrogation effort. An interview with the homeowners provides information that can be used to support that the claimed damages are consistent with the homeowners' timeline and observations.

Many times the appliance has been examined by a service technician who gives an opinion as to what they believe was the cause of the loss. The allegedly failed parts are then removed from the appliance, new parts installed and the allegedly failed parts are sent to an expert for examination. The remainder of the appliance remains at the residence and may still be in service. This methodology is contrary to the spoliation guidance in NFPA 921 and is also contrary to the guidance in ASTM E860, "Standard Practice for Examining and Preparing Items that are or may become Involved in Criminal or Civil Litigation" and ASTM E1188, "Standard Practice for Collection and Preservation of Information and Physical Items by a Technical Investigator." While a service technician may be knowledgeable on how to repair an appliance, they are typically not trained in, nor do they have the time to properly document their examination of the appliance. Further, they are most likely not trained in the impact of spoliation and how to avoid spoliation claims.

Most homeowner insurance policies do not cover the item that caused the loss, but they do cover the damage caused by the loss. As applied to water losses this means that replacement of the appliance that caused the loss is not a covered expense. However, to properly investigate the claim and to reach a determination of the ultimate cause of the loss, it is required that the entire appliance be preserved. Therefore, the carrier must make the decision if they want to proceed with a potential subrogation claim. If so, they must reimburse their policy holder for the appliance even though it is not required by the policy. In addition, it may seem unnecessary to conduct a scene exam since it may appear obvious which appliance may have caused the loss. As indicated earlier, the information gained from a proper and thorough scene examination can support the ultimate determination as to the cause of the loss and may in fact bring up other issues that need to be considered in the evaluation of potential causes of the loss.

If one is going to proceed with a potential subrogation claim, the value of a thorough and proper initial investigation cannot be underestimated. The initial cost of a proper investigation can provide the information and documentation to support the conclusions regarding the cause of the loss. This will result in a more successful recovery, both in improving your probability of a successful claim and also a better financial recovery. The investigation of a potential subrogation claim is not the place to cut corners if you wish to maximize your recovery.

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