

Consorting with the Enemy

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As a result of the rise of the spoliation doctrine in the last 15 years, almost all scene investigations result in subrogation professionals working closely with our potential enemies. The days are long gone when we could conduct our own private examination outside of the prying eyes of our future defendants. This results in the adversarial process taking a back seat to the idea of working together early on at a loss site to get the work done that needs to be completed before any claim can move forward.

The other interesting phenomenon at these loss sites, especially in fire cases, is the small size of the community in each jurisdiction who handle these claims. At virtually every loss site I appear at in our state all of the players, attorneys, cause and origin experts, and electrical engineers, know each other very well and have been at hundreds of sites together. Even on cases where out of state experts are brought in, the experts usually have some connection.

Whenever I bring inexperienced or newer attorneys or adjusters to the scene of a major loss, they are always surprised by the amount of collegiality that exists. It is the rare scene where tempers flare over some issue. Usually issues regarding collection of evidence or possession of artifacts is calmly discussed and agreed to by multiple players at the scene. In some respects, there is more professionalism demonstrated at loss scenes than at any other time in the handling of the claim.

The question is: Why does such professionalism exist at these scenes between parties who will inevitably argue with each other vociferously over time? I think there are definite reasons for this collegial culture. On the one hand this is the only time we really can work together because, likely, no one is in a position to assert a solid claim against anyone else before the investigation is completed. This part of the claim process is almost like the shaking of hands before a boxing match. It is easy to get along BEFORE the fight begins.

I think there is another reason for this time when parties can “play nice” together. I really believe most of the people in our business, including those on the defense side strive to be professionals. At loss sites, everyone participates in this exercise to “find out what happened” by working cooperatively. There is almost a sense of “its good to see you again” and have another shot at each other. Unfortunately, but realistically, the dust will settle and the cooperation will disappear.