Learning Objectives

- Outline the factors to consider in planning an investigation
- Distinguish between effective and ineffective questioning techniques for a claims situation
- Outline the general approach a loss adjuster might take to conducting an interview and obtaining a statement
- Discuss the value and challenges of obtaining information from witnesses
- Explain the function of evidence and how it is categorized
- Describe the types of evidence a loss adjuster might collect on a claims file and how the evidence should be preserved
- Identify the types of experts who might be consulted in the course of a claims investigation

Insurance Glossary of Terms

**Non waiver agreement** – a document that the insurer provides to the insured to inform of a possible coverage issue; also informs that an investigation is underway to determine coverage & quantum; also advises the insurer has the right to deny a claim for reasons that may become apparent during the investigation; the agreement is signed by both parties

**Indemnity clause** – a clause in the non waiver agreement typically for liability claims that states the insured will reimburse the insurer for payments made if a court finds no coverage

**Reservation of rights letters** – when an insured refuses to sign the non waiver agreement, the insurer may issue the Reservation of Rights Letter which is a unilateral assertion that it is preserving options and waiving no rights; does not acknowledge coverage

**Witness**: a person who was present at some event and can provide facts about it from his/her own perspective

**Direct evidence**: evidence based on witness’s own experience

**Indirect evidence**: evidence that can be inferred from other evidence

**Spoliation**: the alteration or destruction of evidence

**Expert**: a person who is properly qualified to provide an analysis or opinion regarding a point in question

**Forensic means** used with or connected to court; **forensic experts** are specifically qualified to appear in court as a witness

Purpose of Investigation: confirm, record, and document facts in order to make a decision (pay or deny)

**Investigation Plan**:
- Consider legal obligation of an insurer
  - Provide blank proof of loss
- Scope of investigation determined based on magnitude of loss
- Prioritize claims activities (what will and won’t be done)
- Identify possible fraud & respond with caution; don’t jump to a conclusion
- Watch for motives, financial distress or recent changes to policy
- Respect privacy laws and company protocol; ensure authorization for release of information obtained
- Careful for one’s safety and security
- Utilize available means to protect rights of insurer (non waiver agreement including the indemnity clause, or the reservation of rights letter)

**Model Interview approach** (page 10-11)

1. Introductions; role of adjuster, build rapport
2. Start with open ended questions
3. Listen as to what is being said
4. Use direct or closed questions to clarify details
5. Include company required questions
6. Pace questions; use patience; pause
7. Maintain composure
8. Show sensitivity; evaluate body language; ease rising tension
9. Record information appropriate to the risk/loss

**Evidence** includes statements, notes, photos, expert reports

- **Oral evidence**: interviews in the form of a statement
- **Physical evidence**: tangible objects; photos, property, reports, books
- **Secondary evidence**: expert reports
- **Direct evidence**: evidence based on witness’s own experience
- **Indirect evidence**: evidence that can be inferred from other evidence

**Collection & preservation of Evidence**

- Storage of electronic data needs to be designed to limit risk of tampering & deterioration; Paper documents stored in main file; dated; indicate where/how received and must be in original form; watch for spoliation and caution to inform other party if destructive testing to take place

**Interview Techniques** (page 6-10)

- Be prepared; know what you are getting into, where you are going, and what information is needed to determine if the claim is to be paid, and what the quantum and use a checklist
- Anticipate there could be coverage issues, be prepared to discuss limits, deductibles and conditions
- Schedule interviews as soon as possible & allocate enough time; choose a location that has minimal distractions; interrogations not appropriate

- **Types of questions**:
  - **Open**: no implications; free flowing answer
  - **Closed**: requires short answer (yes, no, or a simple fact)
  - **Leading**: a phrase that suggests a particular response
  - **Prosecutorial**: a phrase or tone that implies blame
  - **Judgemental**: a phrase or tone that suggests disapproval

**Taking statements** – forms part of a claims investigation and provides documentation and a record of an accident/claim and can preserve the facts; may even be needed for judicial proceedings. Can be used to refresh memories in the future. Usually written by loss adjuster while interviewing the witness in the form of a narrative from the witnesses perspective; diagrams/sketch’s should accompany a statement; the statement is a record of the conversation

**Interviewing witnesses** – encourage cooperation, allow for time, choose an appropriate location & collect contact information; not legally enforceable for witness who chooses to not cooperate

- Experts used to determine causation, quantum, coverage.
- **Appraiser**: assess cost, value, cost of repair
- **Property restoration contractors**: repairs immediate damage/restore
- **Suppliers**: traditionally electronic & camera stores
- **Engineers**: accident reconstruction, origin & cause, equipment failures
- **Accident reconstruction specialists**
- **Origin & Cause specialists**: causation forensics – fires
- **Investigative specialists**: private investigator
- **Photographer**
- **Doctors**: perform independent medical examination
- **Accountants**: to investigate or review financial records
- **Lawyers**: interpretation of a special area of law