



PERSPECTIVES

**How Proper Protocols
Help Large Loss Fire
Investigations Stay
Focused**



Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

INTRODUCTION

According to the National Fire Protection Association (NFPA):

“In 2018, there were 36 large-loss fires in the United States. This is the highest number of such incidents since the 47 that occurred in 2007. The large-loss fires of 2018 resulted in more than \$12.91 billion in direct property damage and losses, the highest figure since the \$34.38 billion in losses experienced in 2001, which included losses associated with the attacks of 9/11. This makes 2018 the second-costliest year since the large-loss study started in 1975.”

Large losses such as these account for some of the most complex and comprehensive fire investigations encountered by fire investigators. As such, they are often at risk of losing focus, resulting in delays, issues in evidence collection and preservation, and more. If you are the entity-in-control, it is often your burden to produce the facts and evidence to be used in proving the case, therefore keeping an investigation on course is of utmost importance.

This paper will discuss large-loss fires and the factors that can cause a complex investigation to lose focus, as well as the importance of establishing an entity-in-control and how to have planned, effective meetings and ensure safety. It will also cover some example protocols and/or steps that may be taken to help ensure an investigation proceeds with focus and integrity intact.

LARGE-LOSS FIRE INVESTIGATION KEY TERMS

To better understand the major points of discussion that follow, it is first important to familiarize with some key terms:

- **Large Loss:** Defined by the NFPA as a fire loss with damages greater than \$10M.
- **Plan:** Typically, any diagram or list of steps with details of timing and resources, used to achieve an objective to do something.

- **Procedure:** Defined by the NFPA as an organizational directive issued by the authority having jurisdiction or by the department that establishes a specific policy that must be followed.
- **Protocol:** A description of the specific procedures and methodologies by which a task or tasks are to be accomplished.
- **Safety Data Sheets (SDS):** Formatted information provided by chemical manufacturers and distributors of hazardous products about chemical composition, physical and chemical properties, health and safety hazards, emergency response, and waste disposal of the material.
- **Understanding and Agreement:** A written or oral consensus between the interested parties concerning the management of the investigations.

COMMON ISSUES IN COMPLEX LARGE-LOSS FIRE INVESTIGATIONS

Complex, large loss fire scene investigations are often hindered by other interested parties for issues that are not necessarily relevant to the insurance investigation or for requests that are unreasonable. Some of the most common mistakes that lead to distraction, delay, and/or disagreements include:

- Improper and/or incomplete planning.
- Infrequent and/or non-inclusive meetings.
- Failure to establish an entity-in-control.
- Failure to establish protocols early on.
- Failure to provide the equipment necessary to complete the task at hand (safety measures, heavy equipment, etc).

Seemingly simple missteps, untimely requests, skipped planning, and other factors can cause much bigger problems than expected. Imagine the following scenarios:

- A tenant carrier obtains an order history for all electronic items purchased by the tenant in the previous year, then places them all on notice after a fire. This results in an unexpected and overwhelming number of investigators, engineers, and attorneys wanting to examine items that were potentially not even near the area of origin or involved in the fire loss. The efforts, involving numerous uninvolved parties, often distracts from the primary focus of the investigation and complicates matters beyond what is reasonable.
- The presentation of a protocol or work plan happens prior to the large-loss investigation date and all parties agree to the protocol. Once all interested parties arrive, someone interjects a request regarding how something should be done differently, and efforts that are in motion are potentially required to return to square one.

ESTABLISHING THE ENTITY-IN-CONTROL & UNDERSTANDINGS AND AGREEMENTS

Understandings—or each party’s expectations—and agreements are an important part of a successful complex scene examination, and they benefit from having an established entity-in-control. At all times it is important to remember who the entity-in-control is and to adhere to protocols regarding meetings and plans.

Entity-in-Control

The entity-in-control can be defined as the interested party who has or represents ownership of the property damaged by the fire—typically, the building or property owner’s representative.

It is imperative that this role be established in the initial stages of the investigation process and all parties are made aware of whom this party will be and why.

Though sometimes not easily identifiable in the early stages of a large loss investigation, any and all attempts

to determine the entity-in-control should be paramount to avoid any delays or confusion. Once determined, this representative should be prepared to ensure that the integrity of the fire scene is preserved and secured to the best of their ability. This is not an easy task with large losses and may involve working closely with local municipalities, equipment contractors, and security measures. Having the entity-in-control perform these tasks also allows for streamlined and effective communications, avoiding any additional confusion when and if payment for any of these additional services is required.

Meetings & Planning

As early as possible into the investigative process, in-person or conference call meetings should be scheduled with all known parties to provide information known to date and to discuss the next course of action. Again, taking the opportunity to identify and acknowledge the entity-in-control is a top priority at this stage.

Depending on the type of loss, these initial meetings can and should include the responding fire department(s), local authorities, and all known parties to date. The safety of the fire scene (discussed in more detail below) and those attending the scene examinations is always an immediate concern and should be discussed before proceeding. Joint scene protocols can then be established based on the safety and security findings. The entity-in-control is responsible for providing the initial scene protocol and then ensuring all parties have the opportunity to review, modify, and agree to the final version.

Involving all known parties and reaching an agreement of the protocol helps avoid potential confusion and further delays while on scene. Though sometimes a complicated and timely process, the understanding and agreement of all parties to the final protocol prior to the joint scene examination can prevent costly and time-consuming delays.

Navigating & Preventing Disagreements

Disagreements often arise out of large-loss scene investigations. Disagreements can be addressed and settled in the best interest of all parties involved; however, sometimes legal intervention must be sought until answers

can be found. Although unforeseen issues can arise, thorough written understandings and agreements are developed to avoid such delays. Below are some steps that can be taken to create clear expectations and prevent disagreements:

- Narrowing down a general area of origin by sharing of information such as witness interviews, witness photos, and videos.
- Utilizing proper, modern, and/or industry standard technology.
- Sharing of data from secure databases, thereby providing everyone access to the same factual data.
- Cost sharing of heavy equipment, x-rays, or other types of expenses if they are for common goals for the parties involved.

ESTABLISHING SITE SAFETY

Fire scenes are inherently unsafe sites. Aside from the actual fire damage, there are often hazardous materials present. Obtaining safety data sheets (SDS), recognizing the potential hazards, and sharing that data with other parties is crucial for everyone's safety. This may require additional efforts towards making the area safe to work and warrant additional personal protective equipment (PPE) for those involved.

Safety is of paramount importance to each individual on a site. These situations often bring to light participants' varying levels of experience and willingness to work in these environments. The first party or entity-in-control should only proceed:

- Once the site's initial condition and relative safety have been determined.
- Once expressed safety concerns have been noted and appropriately addressed (site has been made safe).
- Once the entity-in-control and investigators are comfortable with the site conditions they are faced with.
- Once resulting protocols have been established and agreed upon.

Further, the understandings and agreements should address safety issues for the interested parties or anyone else who may enter the investigation site, such as tenants, contractors, or other logistical support personnel. As it concerns protocols:

- In some instances, it may be necessary to designate a safety officer who will be responsible for monitoring conditions at the investigation site to ensure the safety of all interested parties.
- Escorts may need to be provided for everyone to effectively examine the entire fire scene safely and efficiently.
- For some sites, all entering the scene may need go through site specific safety training before entering a damaged facility.

The protocols above provide the entity-in-control and all investigation participants with the ability to further assist in maintaining the focus of an investigation, allowing the lead investigator to maintain focus on the matter at hand.

EVIDENCE COLLECTION & PRESERVATION

One of the most important reasons for a protocol for evidence preservation in the early stages of a scene exam is to provide a general understanding of how post-fire artifacts will be identified and collected for further examination and, more importantly, who will be retaining the post-fire artifacts. This information should be detailed and agreed upon in the early stages of protocol development. Ownership of these items is paramount to the decision process on retention. However, parties may need to agree to the transfer of items to other parties to maintain everything in one location for further examinations. Entities in control of any large-loss investigation should utilize evidence technicians to assist in the proper retention of post-fire artifacts that will be examined in a laboratory setting later.

One successful protocol method allows for investigators from all parties present to photograph the evidence in place. Afterward, the evidence is measured and flagged. Once the evidence is collected and removed from its location, it is to only be handled and photographed by

the evidence technician. By agreement, all photos of the post-fire artifacts obtained by the evidence technician are provided via a password-protected link along with a list of items for review. This keeps the investigation moving along and establishes a phenomenal chain of custody procedure.

CONCLUSION

Too often party representatives advocate for their own interests or their client's interests rather than work toward the overall goal of determining cause, and where proper protocols are missing, it becomes easier for various factors to pull an investigation off-course. However, facts are facts, and representatives should adhere to understandings and agreements, work professionally with the entity-in-control, and strive for objectivity and integrity.

Remember that if you are the entity-in-control, it is often your burden to produce the facts and evidence to be used in proving the case. Taking the proper steps to avoid distraction, including making sure the correct protocols are in place for general site processes, safety, and preservation of evidence, can help ensure an investigation is not impeded by the complexities of the event and that experts are able to conduct a thorough and proper examination of the loss.

ABOUT THE AUTHOR

Chad Forshee is a Vice President in J.S. Held's Fire Origin & Cause Practice. Mr. Forshee has more than 25 years in both public and private sectors conducting background and fire scene investigations. Prior to joining J.S. Held, Mr. Forshee was employed as a fire investigator with EFI Global for over 16 years. Mr. Forshee has also been employed as a Deputy State Fire Marshal with the Missouri State Fire Marshal's Office, conducting inspections and instructing fire-related certification courses throughout Missouri. He has testified in Arkansas State Court, Connecticut State Court, and Federal Court on both fire origin and cause, as well as fire code related cases. Mr. Forshee is domiciled in Little Rock, Arkansas and available to investigate fires throughout Arkansas, Tennessee, Oklahoma, Missouri, and Mississippi.

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REFERENCES

1. NFPA 921 Chapter 28 Complex Fire Investigations ¹

¹ NFPA Chapter 28.1.3 Purpose. The purpose of this chapter is to provide guidance for the management and coordination of investigative activities among multiple interested parties, which affords an opportunity for all to investigate the incident, to protect their respective interests, and to allow for cost-effective and expeditious investigations. It is not the purpose of this chapter to instruct interested parties how to investigate the incident. The organization of investigative teams, functions, and activities are provided in Chapter 15. The scene examination should be conducted according to the principles recommended in this guide.
2. NFPA Journal - Large-Loss Fires and Explosions in the United States During 2018
3. NFPA – Glossary of Terms (2021 Edition)

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