

Water is the New Arson - Episode #151

Posted: Thur., Mar 28, 2019



Hosted by: John Czuba, Managing Editor

Guest Attorney: Shelly Lee Griffin of [Secrest Wardle](#)

Qualified Member in *Best's Insurance Professional Resources* since: 1936



John Czuba: Welcome to the “Best’s Insurance Law Podcast,” the broadcast about timely and important legal issues affecting the insurance industry. I’m John Czuba, Managing Editor of *Best’s Insurance Professional Resources*.

We’re pleased to have with us today Attorney Shelly Lee Griffin, from the law firm [Secrest Wardle](#), in Michigan. Shelly is an executive partner with the firm. She specializes in insurance defense litigation, with an emphasis on fraud investigations. Her areas of expertise include first-party and third-party property insurance matters and coverage disputes.

Shelly assists insurers in investigating fire, water, and theft claims suspected of fraud. She also handles multi-party complex, large loss litigation, gas explosion losses, and subrogation. Shelly, we’re very pleased to have you with us today.

Shelly Lee Griffin: Thank you. This is my pleasure.

John: Today’s topic for discussion is; water is becoming the new arson. Shelly, for our first question this morning, what does “water is the new arson,” mean?

Shelly: Those that are familiar with the insurance fraud area, I think that arson has been a long staple in the insurance industry. It’s an easy go-to people can imagine. You see it in the movies about people setting their home or their business on fire in order to collect insurance proceeds.

Water is the new arson is meant to convey that we’re seeing a shift in the way people are committing fraud. It’s much easier, at least in my opinion, to stage a water loss than to stage a fire loss. They both can have the same kind of profitability for someone that wants to commit insurance fraud.

Both a water loss and a fire loss, they both cause damage to a structure, a building. It causes damage to the contents. It might be you get additional living expenses or loss of business income. Those are ways that it's just as profitable, but it's easier for them to get away with it, I guess, is why I think it's an easier water is the new arson.

John: Why is it that a large water loss is less risk for an insurer to commit than arson?

Shelly: There's lots of similarities in them. If you think about a fire loss and a water loss, usually, the person that wants to stage those sorts of insurance claims, they are away from the home when they happen. In a typical fire loss, you have people that are out of the house. They're away from the home and a fire occurs inside the house.

Someone, a passerby will notice the smoke or the fire shooting from the building, and they call the fire department. The fire department comes, and maybe the police comes, and they put the fire out. You have all this damage to the house, the contents, the building, everything that would go with it.

Sometimes, it's water damaged. When you have a water loss, the family is away from the house. If it's a water line from your second floor bathroom and it's running, and it's run for days, if you say you're on vacation or you're out for the night, or you've just gone away for the weekend, it continues to run, and run, and run.

You get to come home and say, "I discovered my house was flooded while I was gone." It doesn't involve the fire department, and it doesn't involve law enforcement coming. It's much harder for someone in the neighborhood to detect it. In that sense, you can get as much if sometimes more damage accomplished.

There's times where I've taken insureds, found out that they set their house on fire, and a witness will say that the homeowner is standing in the street yelling, "Who called the fire department?" Because they didn't get to commit as much damage as they wanted to.

Making it harder to detect, the homeowner has more control over the situation and how much time they can have the damage occurring. It can be hours, days. If it's a long vacation, a week or more, and then they come back and they are the ones that are the first responders.

You don't have the fire department coming in. You have them calling, "I called my plumber," or, "I called a family friend, and then we addressed it," and then they make the claim. By then, they've been able to cause as much damage, and it's going unnoticed. There's not the kind of criminal implications that you would get if a fire department arrived.

In a fire, you could be charged with arson. You could be causing injury to the fire department personnel. You can have it spreading to your neighbor's property, and then even in some instances, harming your neighbors if the fire spreads.

Water just doesn't have those kind of risks. You're not worried about someone charging you with staging a water loss, where you would be worried as a person perpetrating fraud of being charged with arson.

What we're finding is that not only is it easier to perpetrate, but the insurance companies, there is a rush to deal with water. You can't leave water sitting. They want to mitigate the damages immediately.

They are worried about mold growth over time, and so the first course of action in a water loss is to say, "Let's begin mitigation and remediation immediately. Let's dry the structure out." Sometimes, they're doing that even before they've determined if there's coverage.

No one's actually said, "Let's figure out, how did this water loss occur? Was it a legitimate one?" Because that rush to judgment, they're starting to pay on a claim before they've even determined, "Should we be paying on this claim?"

People aren't suspecting that it's happening, and so they're not asking for a full investigation like you would with the fire loss. With the fire loss, companies always hire an origin and cause investigator, hence they ask someone to determine, an expert to come in and say, "Where did this fire originate? What was the cause of it?"

There is scientific data that backs it up through like NFPA 921, which is a widely accepted scientific material that helps them determine the cause of the loss. You don't have that same equivalent in a water loss.

There's certainly codes and standards. If an insurance company has just come in and said, "We're worried about stopping further water damage. We want to prevent the spread of mold," and they're not taking the step to first figure out, "Is this a legitimate loss?" then they've missed that.

They've rushed to assuming liability and coverage, whereas the fire, I think there's more about, "We need to investigate. We need to determine what was the cause of this fire." If it's an intentionally caused fire, or if it's considered undetermined or suspicious, it will get a referral to an insurance special investigation unit, and then further investigation is conducted.

That's when you see insurance companies look more closely at the insured, the homeowner, the business owner, and saying that they have a possible motive for setting this fire, and then they look further to see if it's been staged.

I think that people are accustomed to thinking...this goes back to, why is water the new arson, but we're accustomed to suspecting fire losses don't just happen. We know that something triggered it.

I think people have for a long time just assumed nobody would stage a water loss, but for the reasons that I was just saying, I think it's much easier to get away with. It just doesn't get the level of scrutiny and can cause the same if not more damage because of especially the mold growth is an issue.

John: Shelly, when investigating, what are some indicators that adjusters or special investigators should look for?

Shelly: Like you would in a fire loss, you're always looking at someone's claim history. You want to see if they have experience with prior claims, because I think once you know how the claim process works and how much money you can ultimately be paid under a claim, you've learned. It's your beginning introduction to how much money can be made, so claim history is important.

I think financial distress is always an issue. You want to know, is there a motivating factor, something that's changed in their situation that would prompt them to want to commit an insurance fraud. Sometimes, that might be something like a bank or tax foreclosure, like their mortgage, they might be behind on their mortgage. They might have not been able to pay their property taxes.

There's things that are pushing them towards a situation where they might be losing their house, and this is a way of getting some money out of the house before that happens.

We look also at related losses. In the area of fraud investigation for insurance companies, the insurance companies are getting so much more savvy. There's so much more information out there to pull together from social media.

We actually have discovered rings, people that all know each other. Maybe they're all friends, or maybe they are all family that are having all water losses around the same time.

Sometimes, it's a domestic discord, like maybe there's a marital issue. You think that a couple might be divorcing and the house is their biggest asset. They're not going to get as much money as they think out of it, and so it's much better to have a staged water loss because they'll get more money for it as a result.

You always want to wonder, why is everyone gone from the house when these things happen? Where did they go? Why weren't they home? Sometimes, you'll see it will be a weekday and something will happen in the middle of the night.

Especially if that's a family that has children and it's a school year, you're like, "Why wasn't the family home? Why weren't those kids in bed? They had school the next day, or what is their explanation?"

Some of the claims that I've seen were, a couple said, "We went to go stay with family." The family lived two miles away, and there would be no reason. "If they lived so close, why would you have to go and stay with them for the weekend instead of being back at your own house that's so close?"

Then, there's always the idea of like, "We're moving our furnishings." The neighbors will tell you, "Well, we saw them moving a baby grand piano out of the house the week before all this happened."

These aren't really all necessarily indicators just for water losses, but they're indicators in general. A lot of them follow what is a NICB, National Insurance Crime Bureau indicators.

John: Shelly, can you tell us some examples as to how it's being committed?

Shelly: What we see for example is, a lot of the losses will be in a second floor bathroom. If you're in a second floor bathroom, the reason that's an ideal location is that water runs down.

If the second floor bathroom of a residence has a water failure, and I'm just going to explain the damages, then I'll talk more specifically, but by having it go on the second floor, it means it's damaging everything on the second floor.

Depending on how long they're gone, it's running down to the first floor. It's causing damage to the walls, the ceilings, the floor, subfloor. Depending how bad it is, it can affect the ceiling joists, and then just keeps running down just by gravity.

You've effectively caused damage on all levels of the house. By starting at the top level, by gravity, water is going to run down. That's one of the things that we see.

Some examples that I can tell you cases that I've been a part of, one was the second floor bathroom scenario. The person was saying that the water lines, the cold and hot water lines, one of them had become disconnected from where your water connects to the faucet underneath the sink.

It was connected with a device that's called a SharkBite. The SharkBite, though, is almost like it sounds. It's a way of connecting the two pieces of piping together, and it almost has teeth in it. Once you insert it, the teeth become permanently implanted into the other.

If you're saying the female and male end and they become connected, it's impossible to remove them. You physically cannot pull them apart. Because that was analyzed by a mechanical engineer, they said there was no failure. The way they're describing the loss couldn't have possibly happened. At the time, that family was at an amusement park.

There's another one, same scenario, second floor bathroom. These people are at a water park for the week, and they said that the PVC pipes...water can be flown...they carry it through different...you might have copper, you might have PVC.

This, the PVC, which is a white plastic tubing that you see, again, you have the male and female ends, and there's a furrow, that's the white, the cap that you would, so to speak, that you see when the female part is inserted into what you'd say the male connector part of it.

You put a lot of cement on it, PVC cement, and that creates this chemical bond. In that case, they tried to say that there was cement failure, but actually, that also we learned through an expert, if there's a sufficient amount of glue, it just won't fail.

It changes chemically, and when it's connected, it's not going to become unconnected. They become almost fused together, so that's how that was discovered.

We've seen people, where they actually will heat a solder joint. If you're looking at a copper piece, there was a case involved -- I'm in Michigan right now -- and we had heavy, heavy rainfalls in an area, historic rainfalls that caused a lot of flooding.

Most of the people, and this affected several cities, did not have flood insurance, so there wasn't anything that could protect them for all the damage they had to their basement. This was an insured that had that exact loss, and so a few weeks later, she presented a claim saying that the bar sink in her basement had failed.

When it was investigated, we had a metallurgist look at it and she found that they had actually heated the solder joint, heated what was already a previous solder joint to make it seem as though the solder joint failed, but instead, it was a second reheating.

Other times, we see people using razor blades to try and disconnect the compression nut. It can be as simple as using a hair dryer. You can use a hair dryer to heat those flexible hose lines and pull them apart, and so it looks as though it just failed. Instead, it was heated and then someone manipulated it.

These kind of examples were only detected because an expert was brought in. It's not something that you can see with a naked eye. You needed the proper expert to come in, figure out what was the cause. That's how in all of those cases the fraud was detected.

John: Shelly, what are the key takeaways?

Shelly: The most important thing I'm hoping people understand is that even if it's a water loss, you should treat it like a fire loss in the sense that you have to first determine, where did the loss originate? What was the cause? What caused it?

You're going to find times where it's not actually a staged loss. There might be a manufacturing defect in the product and it legitimately failed, and there's a subrogation potential.

It might have failed because there was corrosion or improper maintenance, but that isn't covered under a homeowner's policy, so you might have an exclusion. Sometimes, especially in Michigan, because we're a colder climate, you see pipes freeze often, but the policies usually say you have to maintain heat.

It's not that you're always going to find fraud, but you have to investigate it because you still might have other things to consider, that being the subrogation or other policy provisions that would affect coverage. I'm hoping that that's the thing is that you've got to determine the cause first. To determine the cause, you have to hire the right expert.

You have to make sure you're getting someone that...You would want to make sure they have the right qualifications if you had a fire investigator. You want to make sure that the plumber, an engineer, a forensic failure analyst, that they're the people looking into the cause.

From outside of the expertise, if you're someone that's in the insurance, like a field adjuster, someone that's first person to be on the site of where a loss occurs, you have to take photographs. You have to make sure you know the area of origin. You've got to look at plumbing.

Plumbing, I've learned in this process, actually has date codes, so you can look to see. Sometimes we're seeing people, families sharing the same...There might have been one legitimate failure, and they're passing that piece around to their friends and family so they can make the same kind of water loss claim.

The pipe codes will show you, if you compare it, if the house was all built at the same time, then you'll know the date code if it matches. If it was built in October of 2000, you'll see a code similarly on all the other plumbing.

That's something you want to look at. Even more basically, you want to look at the utility records. For example, I have a water loss right now where I think that the house had been unoccupied and vacant for long time. They went and got it insured just so they could get covered for a water loss that had already occurred.

The utility records showed there wasn't electricity at the house, and there wasn't any water usage. There wasn't significant to show that someone had been occupying the house. You can actually study those water records to say how significant the damage was.

You can look at the cubic feet over a period of time, how much water was released during the time that they were gone, and calculate, if you know the size of the room, how high the water should have gone up on the walls, for instance.

There's, for a different topic, and I think what people are used to seeing is that there's been water mitigation fraud.

That's where there's excessive mitigation. By looking at the water records and seeing, figuring out, calculating, it might have only gone up a couple of inches, but now they've torn out dry wall that goes up six feet of it, from the bottom to the middle, when they didn't need to.

Likewise, you can look at heating records and say, "Well, here's historically what they were using, and it shows that from last year, they reduced their heat by 75 percent," and you know they probably weren't maintaining the heat in the house at this time.

Finally, I think that you really have to make sure you're doing exams under oath to really pinpoint the insured. You're really only going to find out some of this information by taking examination under oath, getting the insured to provide. That's where you make the document demands for all of the utility records.

That's where you get the information about whether the insured was experiencing financial distress, if there was domestic discord, and that's where you get them, really to pin them down onto the facts of loss.

What was so interesting for me as someone that has been doing this work for more than 20 years, the arsons that I had been seeing in the past, they were homes that you might not think that. You'd say, "This isn't a very nice home that was burned down."

The water losses that I'm seeing are in very affluent neighborhoods. One of the claims that I've mentioned, the house was 5,400 square foot home. It was covered in marble. That was the house where the neighbors saw them moving out a baby grand piano, and it was valued in the millions.

It was surprising to us to say. You wouldn't have suspected when you approached this house that they would have any financial difficulty, but they were.

Those are the things you just can't take anything for granted. I'm seeing these fraudulent water claims occurring in a much nicer neighborhood and homes that you would think that these people are flush with cash. They're living very high life, but fraud is fraud. It's still a way of making money, and they've learned a new way to try and beat the system.

John: Shelly, thank you very much for joining us today.

Shelly: Thank you.



John: That was Shelly Lee Griffin, Executive Partner from the law firm [Secrest Wardle](#), in Michigan. Special thanks to today's producer, Frank Vowinkel.

Thank you all for joining us for the "Best's Insurance Law Podcast." To subscribe to this audio program, go to our web page, www.ambest.com/claimsresource. If you have any suggestions for a future topic regarding an insurance law case or issue, please email us at lawpodcast@ambest.com.

I'm John Czuba, and now this message.

Transcription by CastingWords

To find out more about becoming a Qualified Member in *Best's Insurance Professional Resources*, contact claimsresource@ambest.com or visit our [Learn More](#) page to start the application process.

BEST'S INSURANCE PROFESSIONAL RESOURCES

Copyright © 2019 A.M. Best Company, Inc. and/or its affiliates ALL RIGHTS RESERVED.



No portion of this content may be reproduced, distributed, or stored in a database or retrieval system, or transmitted in any form or by any means without the prior written permission of AM Best. While the content was obtained from sources believed to be reliable, its accuracy is not guaranteed. For additional details, refer to our Terms of Use available at AM Best website: www.ambest.com/terms.