

# Chapter 3

## Investigation of Cause of Loss, Liability, and Damages

To handle a claim with good faith, a claim representative must investigate and determine the cause of the loss, the liability for the loss, and the amount of damages that result from the loss. The claim representative must have a thorough understanding of the concept of legal liability to decide what general investigative tools to use and what aspects of the claim to investigate.

Claim representatives use the same general investigative tools regardless of whether the claim is for property damage, bodily injury, or workers' compensation benefits. Each type of claim investigation can call for any or all of these tools, and each tool may provide different information about causes of loss, liability, and damages. In addition to explaining legal liability concepts and describing investigative tools, this chapter describes the investigation of a property claim, a liability claim, and a workers' compensation claim.

### BASES FOR LEGAL LIABILITY

For first-party losses, claim representatives determine cause of loss, amount of damage, policy coverage for the loss, and amount payable under the policy. A third party may be responsible for some first-party losses. If this is the case, the claim representative must be able to apply legal liability concepts to subrogate against the responsible third party. For third-party liability claims, claim representatives focus on determining the liability, or establishing legal fault, among all parties involved, along with determining damages. The claim representative who handles workers' compensation must also apply legal liability principles for subrogation purposes.

Legal liability is different from criminal liability or criminal responsibility. Criminal liability or responsibility arises from laws that apply to wrongful acts that society deems so harmful to the public welfare that the government takes responsibility for prosecuting and punishing the wrongdoers. Criminal laws are always statutory. In contrast, civil law is based on the rights and responsibilities of citizens with respect to one another; it applies to legal matters not governed by criminal laws. Civil laws include common law, or case law, and administrative laws and regulations, as well as some statutory laws. Civil law governs liability for civil wrongs against people, entities, or property (torts), which include negligent acts, intentional acts, and strict