



**FRAUDULENT ACTIVITY
AWARENESS AND THE
STRUGGLING ECONOMY**
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FRAUD BY THE NUMBERS

- Insurance Fraud is one of America's costliest crimes*
 - Cost to property/casualty insurers and policy holders, conservatively, is about \$30 billion annually.
 - Fraud losses across all lines amount to about \$80 billion annually, perhaps as high as \$120 billion by some estimates.
 - If Insurance Fraud was a legitimate business, it would rank in the top 20 of Fortune 500 in annual revenue.

*Coalition Against Insurance Fraud, December 2006

FRAUD BY THE NUMBERS

- ◉ National Insurance Crime Bureau - issues half year reports detailing referrals received
- ◉ July 14, 2010 Report, covering up through first half of 2010, reflects increases consistent with the struggling economy

FRAUD BY THE NUMBERS - REFERRAL REASONS (PROPERTY)

	2008	%	2009	%	2010
Hail Damage	104	135%	244	107%	506
Flood/Water Damage	288	29%	372	24%	460
Suspicious Theft/Loss (non-vehicle)	2733	15%	3136	16%	3647
Inflated Damage	1086	20%	1301	8%	1403
Fire/Arson	972	8%	1054	-3%	1024

FRAUD BY THE NUMBERS - REFERRAL REASONS (CASUALTY)

	2008	%	2009	%	2010
Staged/Caused Accidents	1621	43%	2320	27%	2938
Billing Svcs Not Rendered	1654	11%	1838	18%	2163
Excessive Treatment	2145	21%	2599	28%	3332
Inflated Billing	1381	-1%	1368	16%	1584
Prior Injuries	1682	13%	1895	11%	2097

FRAUD BY THE NUMBERS - REFERRAL REASONS (COMMERCIAL)

	2008	%	2009	%	2010
Cargo Theft	19	-11%	17	47%	25
Foreign Object in Food	66	14%	75	29%	97
False/Inflated Business Interruption	42	-8%	34	12%	38
Inflated Inventory	79	23%	97	6%	103

FRAUD BY THE NUMBERS - REFERRAL REASONS (VEHICLE)

	2008	%	2009	%	2010
Auto Glass Fraud	136	76%	239	527%	1498
Inflated Tow Bill/Storage	161	2%	164	92%	315
Auto Repair/Body Shop	608	19%	724	29%	934
VIN/HIN/PIN Manipulation	111	-33%	74	22%	90
Paper / Phantom Accident	612	46%	894	15%	1025
Faked Damage	1628	30%	2111	10%	2318
Water /Flood Damage	95	24%	118	8%	128

FRAUD BY THE NUMBERS - REFERRAL REASONS (WORKERS' COMPENSATION)

	2008	%	2009	%	2010
Material Misr. (E.A.)	15	-7%	14	86%	26
Material Misr. (F.W.F.)	15	7%	16	25%	20
Inflated Medical Billing	91	48%	47	21%	57
Prior Inj. / Not Related	278	17%	324	-3%	315

FRAUD BY THE NUMBERS - REFERRAL REASONS (MISCELLANEOUS)

	2008	%	2009	%	2010
Vendor Fraud	147	1%	148	135%	348
Malingering	439	11%	486	42%	689
Organized Group/Ring Activities	1109	20%	1328	38%	1837
Medical Provider	2431	-1%	2403	30%	3131
Excessive Loss History	1322	39%	1832	21%	2209
Application Misr.	2225	27%	2822	15%	3246
Fictitious Loss	3133	25%	3914	10%	4299

FRAUD BY THE NUMBERS

- ◉ **Victims: financial costs.** Insurance buyers pay billions of dollars in higher premiums annually by absorbing fraud costs. Fraud, for instance, can add several hundred dollars to a family's annual auto premium in some states. Insurance schemes also cost victims their life savings. Swindled businesses also can be weakened and even bankrupted, and may have to freeze salaries or lay off employees.
- ◉ **Victims: personal costs.** Thousands of fraud victims pay a steep personal price. People die and are injured by swindles. They also suffer humiliation, despair, depression, lost productivity and lower earning capacity. Families are broken up when convicted fraudsters go to jail.
- ◉ **Victims: societal costs.** *Fraud steadily drains America's economic vitality. Swindles also erode our* social order and sense of justice, reinforcing a crime-pays mentality that encourages insurance fraud to become an accepted way of moving up in life. This encourages more people to commit fraud, thus threatening a costly upward fraud spiral. Millions of young people and recent immigrants, who are looking for role models of behavior, are especially at risk.

Coalition Against Insurance Fraud, December 2006

WHAT IS FRAUD

Elements of common law fraud

- 1) A misrepresentation;
- 2) A fraudulent utterance thereof;
- 3) An intention by the maker that the recipient will thereby be induced to act
- 4) Damage to the recipient as the proximate result

WHAT IS FRAUD

Fraud consists of anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or silence, word of mouth, or look or gesture.

Frowen v. Blank, 425 A. 2d 412 (Pa. 1981).

INSURANCE FRAUD BY STATUTE

- ◉ Pennsylvania

- ◉ §4117. Insurance Fraud.

(a) Offense defined.—A person commits an offense if the person does any of the following:

(1) Knowingly and with the intent to defraud a State or local government agency files, presents or causes to be filed with or presented to the government agency a document that contains false, incomplete or misleading information concerning any fact or thing material to the agency's determination in approving or disapproving a motor vehicle insurance rate filing, a motor vehicle insurance transaction or other motor vehicle insurance action which is required or filed in response to an agency's request.

INSURANCE FRAUD BY STATUTE

- Pennsylvania

(2) Knowingly and with the intent to defraud any insurer or self-insured, presents or causes to be presented to any insurer or self-insured any statement forming a part of, or in support of, a claim that contains any false, incomplete or misleading information concerning any fact or thing material to the claim.

INSURANCE FRAUD BY STATUTE

- Pennsylvania

(3) Knowingly and with the intent to defraud any insurer or self-insured, assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to any insurer or self-insured in connection with, or in support of, a claim that contains any false, incomplete or misleading information concerning any fact or thing material to the claim, including information which documents or supports an amount claimed in excess of the actual loss sustained by the claimant.

.....

INSURANCE FRAUD BY STATUTE

- Pennsylvania

(5) Knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this section due to the assistance, conspiracy or urging of any person.

(6) Is the owner, administrator or employee of any health care facility and knowingly allows the use of such facility by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this section.

(7) Borrows or uses another person's financial responsibility or other insurance identification card or permits his financial responsibility or other insurance identification card to be used by another, knowingly and with intent to present a fraudulent claim to an insurer.

INSURANCE FRAUD BY STATUTE

- Pennsylvania

(8) If, for pecuniary gain for himself or another, he directly or indirectly solicits any person to engage, employ or retain either himself or any other person to manage, adjust or prosecute any claim or cause of action against any person for damages for negligence or for pecuniary gain for himself or another, directly or indirectly solicits other persons to bring causes of action to recover damages for personal injuries or death, provided, however, that this paragraph shall not apply to any conduct otherwise permitted by law or by rule of the Supreme Court.

INSURANCE FRAUD BY STATUTE

Examples of Other State Insurance Fraud Statutes

- ◉ Oklahoma - Title 15. Contracts v Chapter 1 - Nature of Contracts - J. Section 58 - Definition of Actual Fraud
- ◉ New Hampshire - Title 62 - Section 638-20 - Insurance Fraud
- ◉ Illinois - 720 ILCS 5 - Section 46-1 - Insurance Fraud

INSURANCE FRAUD BY STATUTE

- Insurance fraud accounts for billions of lost taxpayer dollars and results in increasingly high insurance rates for everyone. The penalties are significant and typically stepped to reflect the seriousness of the fraudulent claim and the number of claims in the particular charge. Often, each act of fraud is treated as a separate count, increasing the penalties even on a first arrest.

- Possible Penalties Include
 - Jail Time
 - Significant Fines
 - Probation
 - Parole
 - Restitution
 - Community Service

- See <http://criminaldefenselawyer.com/crime-penalties/federal/Insurance-Fraud.htm>.

TYPES OF FRAUD

A. Fraud in the Application

An attempt by an applicant to procure insurance on false terms (i.e. an attempt to prejudice the insurer in assessing the risk).

Elements -

- a. a false application statement;
- b. on a subject material to the risk to be insured against; and,
- c. the applicant's knowledge that the statement was made in bad faith or was untrue

TYPES OF FRAUD

A. Fraud in the Application

Ramifications - policy void *ab initio*
(premium must be returned)

note: Evidence must be clear and convincing

TYPES OF FRAUD

A. Fraud in the Application

Indicators -

- a. unsolicited new, walk-in business, not referred by existing policyholder
- b. applicant walks into agent's office at the end of the day
- c. applicant neither works nor resides near agency
- d. applicant gives post office box as address
- e. applicant pays premium in cash and pays minimal amount etc.

TYPES OF FRAUD

A. Fraud in the Application

note: Line representative is at the mercy of the agent - most likely won't detect fraud in the application unless there are other fraud indicators present during the investigation of the claim

TYPES OF FRAUD

B. Fraud in the Claims/Investigation Process

An attempt by the insured to recover the benefits on false pretenses.

Elements

- a. a representation by the insured which was false

- b. the representation was made in bad faith or with knowledge of its falsity

- c. material to the risk being insured

TYPES OF FRAUD

B. Fraud in the Claims/Investigation Process

note - Issue of materialism - in the investigations process materiality is met if the false statement is relevant and germane to the insurer's investigation (i.e. would a reasonable insurer, in determining its course of action attach importance to the fact misrepresented

note - Proven by a preponderance of the evidence

TYPES OF FRAUD

B. Fraud in the Claims/Investigation Process

Indicators

- a. insured overly pushy for a quick settlement
- b. financial hardship at the time of loss
- c. insured has had multiple insurance claims
- d. inconsistencies in loss scenario or basic facts

TYPES OF FRAUD

B. Fraud in the Claims/Investigation Process

Indicators

- e. recently purchased insured item
- f. recently increased the insurance limits
- g. criminal background

TYPES OF FRAUD

B. Fraud in the Claims/Investigation Process

note - Too many indicators present - an internal company decision should be made to transfer to SIU.

HANDLING CLAIMS / INVESTIGATION

- A. Reservation of Rights - on all potential bases of denial within policy

HANDLING CLAIMS / INVESTIGATION

B. Methods of Investigation

1. Authorizations for financial records, phone records (land lines and cell), medical information, etc.

2. Third party search services (prior losses and financial information)

3. Civil and criminal docket information

HANDLING CLAIMS / INVESTIGATION

C. Adjustment

Procure necessary adjustment service companies, disaster relief companies and forensic experts (origin and cause, forensic automotive, electrical engineer, etc.)

HANDLING CLAIMS / INVESTIGATION

D. Recorded Statements

1. Conduct in person if possible to measure the demeanor of the insured
2. Establish foundation of trust by explaining the process and why the statement is necessary (i.e. there are certain questions about the claim that must be resolved, and that you are attempting to find evidence to exonerate the insured)
3. Do not conduct in the presence of any other insured or potential witness
4. Company decision whether to confront insured with inconsistencies or damaging evidence (forensic or other wise)

HANDLING CLAIMS / INVESTIGATION

E. Adjuster's Log / Claim Handling Notes

1. Running notes of claims/investigation process

2. Enter notes as if you are an impartial reporter or observer to AVOID BAD FAITH (i.e. never inject you feelings of the claim or insured)

HANDLING CLAIMS / INVESTIGATION

F. Examination Under Oath

1. Importance of counsel involvement
2. Claim representative should attend to access demeanor)
3. Insureds' Examinations should be taken separately (most likely a right under the policy)
4. Company decision whether to confront insured with inconsistencies or damaging evidence (forensic or other wise)

HANDLING CLAIMS / INVESTIGATION

G. Follow-up on new areas of investigation uncovered as a result of the Examination process

IMPORTANCE OF EFFECTIVE INVESTIGATION IN DETECTING FRAUD

H. Surveillance

A. Determine if appropriate for case - where physical activities do not appear to correlate with injuries claimed

B. Investigate claimant information to determine if surveillance can be limited to most likely times / locations of physical activities

HANDLING CLAIMS / INVESTIGATION

I. Claim Recommendation by Counsel

1. Should include a detailed summary of the facts of the investigation

2. Should break down the elements of the fraud defense

a. Arson - Incendiarism, Motive, Preparation and Opportunity

b. Auto - Motive, Preparation and Opportunity (including findings of forensic automotive expert)

HANDLING CLAIMS / INVESTIGATION

J. Denial letter - include all potential bases for denial

K. Report any suspected fraudulent claim to the proper authorities

1. Immunity Acts

2. Role of NICB

HANDLING CLAIMS / INVESTIGATION

Examples of Past Fraud Claims

ETHICS FOR CLAIMS ADJUSTERS

- ◉ Division of Insurance in most states has regulations dealing with ethics of claims handling
- ◉ Important to be aware of these in the investigation, assessment and ultimate determination as to whether to assert fraud has taken place
- ◉ These are often dealt with in addition to or instead of regulation via various state claims activity statutes

ETHICS FOR CLAIMS ADJUSTERS

Good example of set of ethics regulations - Florida
Administrative Code Annotated:

Title 69: Financial Services

Subtitle 69B: Division of Insurance Agents and Agency
Services

Chapter 69B-220. Adjusters

ETHICS FOR CLAIMS ADJUSTERS

Code of Ethics - The work of adjusting insurance claims engages the public trust. An adjuster shall put the duty for fair and honest treatment of the claimant above the adjuster's own interests in every instance. The following are standards of conduct that define ethical behavior, and shall constitute a code of ethics which shall be binding on all adjusters

ETHICS FOR CLAIMS ADJUSTERS

An adjuster shall not provide favored treatment to any claimant.

An adjuster shall adjust all claims strictly in accordance with the insurance contract.

An adjuster shall not approach investigations, adjustments, and settlements in a manner prejudicial to the insured.

An adjuster shall make truthful and unbiased reports of the facts after making a complete investigation.....

An adjuster, upon undertaking the handling of a claim, shall act with dispatch and due diligence in achieving a proper disposition of the claim.....

ETHICS FOR CLAIMS ADJUSTERS

An adjuster shall exercise extraordinary care when dealing with elderly clients to assure that they are not disadvantaged in their claims transactions by failing memories or impaired cognitive processes.

An adjuster cannot negotiate with a third party represented by an attorney, if he has knowledge of the attorney. (This does not apply to an insured or the insured's resident relatives.)

An adjuster is permitted to interview any witness without the consent of the opposing counsel or party. However, the adjuster must avoid any suggestion calculated to induce a witness to suppress or deviate from the truth. If the witness gives a signed or recorded statement and requests a copy the adjuster must provide a copy.

ETHICS FOR CLAIMS ADJUSTERS

An adjuster cannot advise a claimant to refrain from seeking legal advice or retaining legal counsel.

An adjuster cannot negotiate with or obtain a statement from a claimant or witness at a time they would reasonably be expected to be in shock or serious mental or emotional distress as a result of physical, mental, or emotional trauma associated with a loss.

An adjuster cannot conclude a settlement when the settlement would be disadvantageous to a claimant who has been traumatized or distressed by a loss.

ETHICS FOR CLAIMS ADJUSTERS

An adjuster cannot give legal advice.

An adjuster must be competent and knowledgeable as to the terms and conditions of the insurance coverage.

CAUTION: UNFAIR INSURANCE PRACTICES ACTS

Most states have statutory guidelines in essence codifying the ethical and legal standards for adjusters

40 P.S. 1171.1 - Unfair Insurance Practices Act

Section 1171.5 defines “unfair methods of competition and unfair or deceptive acts or practices”

CAUTION: UNFAIR INSURANCE PRACTICES ACTS

- ◉ *misrepresenting pertinent facts or policy or contract provisions relating to coverages at issue;*
- ◉ *failing to acknowledge and act promptly upon written or oral communications with respect to claims arising under insurance policies;*
- ◉ *failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;*

CAUTION: UNFAIR INSURANCE PRACTICES ACTS

- ◉ *refusing to pay claims without conducting a reasonable investigation based upon all available information;*
- ◉ *failure to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed and communicated to the company or its representative;*
- ◉ *not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which the company's liability under the policy has become reasonably clear;*

CAUTION: UNFAIR INSURANCE PRACTICES ACTS

- ◉ *compelling persons to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts due and ultimately recovered in actions brought by such persons;*
- ◉ *attempting to settle or compromise claims on the basis of an application which was altered without notice to or knowledge or consent of the insured of such alteration at the time such alteration was made;*
- ◉ *delaying the investigation or payment of claims by requiring the insured, claimant or the physician of either to submit a preliminary claims report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;*

CAUTION: UNFAIR INSURANCE PRACTICES ACTS

- ◉ *failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;*
- ◉ *failure to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;*

CAUTION: BAD FAITH

Most states recognize a cause of action for bad faith, either at common law or by statute

42 Pa. C.S. Section 8371 provides as follows:

Section 8371. Actions on insurance policies.

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

1. award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%;
2. award punitive damages against the insurer;
3. assess court costs and attorney fees against the insurer.

CAUTION: BAD FAITH

"Bad faith" has been identified by the courts of Pennsylvania as a "*frivolous or unfounded refusal to pay proceeds of a policy.*"

A plaintiff must present clear and convincing evidence that (1) an insurer denied benefits under a policy *without any reasonable basis to do so* and (2) the insurer *knowingly or recklessly disregarded its lack of reasonable basis* for denying the claim.

Terletsky v. Prudential Prop. and Cas. Ins. Co., 437 Pa. Super. 108, 649 A.2d 680 (1994).

CAUTION: BAD FAITH

Later adopted definition from Black's Law Dictionary

“Bad Faith” on the part of an insurer is *any frivolous or unfounded refusal to pay proceeds of a policy*; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a *dishonest purpose and means a breach of a known duty (i.e. good faith and fair dealing), through some motive of self-interest or ill will*; mere negligence or bad judgment is not bad faith.

- *O'Donnell v. Allstate Ins. Co.*, 1999 Pa. Super. 161, 734 A.2d 901 (1999)(internal quote from Black's Law Dictionary 139 (6th ed. 1990).

CAUTION: BAD FAITH

Common theories of Bad Faith which could play a role

- Inadequate investigation
- Lack of Communication with the insured

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