**August 21, 2018**

**RE: The Rogers L. Williams National Regulators College**
**"Fraud and Uninsured Employers"**

Dear Attendees,

The attached whitepaper details the efforts the Enforcement Division of the Georgia State Board of Workers' Compensation takes in combating all forms of workers' compensation fraud occurring within the workers' compensation system. The paper also addresses our efforts in dealing with what I consider to be one of the more egregious types of **Employer Fraud; Failure to be Insured for Workers' Compensation Insurance.** This and premium fraud committed by the employer is the primary focus of today's panel discussion.

When Georgia's Enforcement Division was created in 1995 the percentage of uninsured employers hovered around 20% overall. Depending on the type of business, this figure was much higher. Today, the percentage is calculated to be around 10%. Thousands of additional employees are now protected from the devastating effects of a non-covered injury as result of the Division's efforts.

The unfortunate truth with regards to a non-covered injury is that rarely does the injured employee receive the benefits they are entitled to under the workers' compensation system. Yes, many will file a claim with the Board, come to a hearing with or without an attorney and obtain an award from the ALJ. Only those fortunate enough to have self-pay insurance coverage are receiving adequate medical attention in the interim. Having obtained the award is just the beginning of the fight. In most of the cases the employer will have either disappeared or go bankrupt if the injury is severe and costly.

Another unfortunate consequence is in obtaining legal representation. Attorneys like to get paid. Taking a non-covered case is a gamble and more likely than not will result in a lot of pro bono work. With legal representation the claimant may still prevail with an award and then the attorney must do more work to perfect a judgement against the employer to collect the benefits owed. If the claimant's attorney is lucky, the employer has assets and will hire a good defense attorney to attempt to protect these assets. When this occurs, the claimant may be assured of some level of benefits although not what they would have received under an insurance covered case. These type case typically end with a no-liability stipulation agreement. If there is self-pay insurance coverage it will continue to pay the medical and the employer will pay some portion of indemnity benefits and attorney fees.

My participation in this panel discussion is to provide the attendees insight on how the Georgia's Enforcement Division deals with Employer Fraud and Non-Compliance

with insurance requirements. Although the Enforcement Division's involvement is separate and apart from any action filed by the employee, any settlement of civil or criminal sanctions sought by the Enforcement Division will be geared toward assisting the employee obtain their benefits. In some of the cases we can provide the injured employee more leverage in obtaining benefits. If a criminal action is brought against the employer, the charges will not only include the criminal charge of not having insurance but will also include a charge of willful denial of benefits to the employee. The accused will then take the situation more seriously and through some form of probation attempt to pay benefits in conjunction with a nolo plea.

Alongside Andrew Sabolic, Assistant Director of Florida's Division of Workers' Compensation and Grace Nicholas, Senior SIU Manager of Texas Mutual Insurance Company, I hope this panel discussion will provide you more insight on how our States are dealing with Uninsured Employers and other fraud the employers commit. Our states may have different perspectives on dealing with the employers. However, the one thing we can all agree upon is, the employers are the primary source of workers' compensation fraud in the system and the primary focus of our individual agencies.

With Best Regards,

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# AN ANATOMY OF WORKERS' COMPENSATION FRAUD

**BY**

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**ENFORCEMENT DIVISION**

**GEORGIA STATE BOARD OF WORKERS' COMPENSATION**

**(Revised August 1, 2018)**

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## I. Introduction

It is unbelievable how easy it is for someone to become injured or pretend to be injured. Who can tell? Who really knows the difference? How does one know when an injured employee goes back to work for wages simultaneously with their continued receipt of indemnity benefits? Does the average workers' compensation system participant realize that claimant fraud is not the system's real problem? If the employee is not, then who is?

This paper is designed to not only provide helpful information to guide all participants of the workers' compensation system in detecting workers' compensation fraud but also to guide you in preventing it as well. This paper is also designed to provide a breakdown of who is committing the fraud, the types of fraud being committed and the estimated costs to the system. I call this breakdown "An Anatomy of Workers' Compensation Fraud."

## II. Enforcement Division

### A. Criminal Investigations Unit

I would be remiss if I did not begin this paper by bragging about the Enforcement Division of Georgia's State Board of Workers; Compensation. Because of a highly trained and dedicated staff this Division continues to lead the way in fighting fraud in the workers' compensation system.

Created in 1995 by Legislative enactment and originally called the Fraud and Compliance Division of the State Board of Workers' Compensation, the Enforcement Division became a reality. The creation was in response to both national and State of Georgia concerns about the high cost of workers' compensation insurance coverage and a perception of a high incidence of claimant fraud. You will note, I said "a perception of high incidence of claimant fraud."

At the time of its creation, the Division had no law enforcement authority and was provided few effective means by which to carry out its intended mission. District Attorneys gave thumbs down to our cases asking us if we wanted them to put aside their prosecutions for murder, rape and robbery to prosecute white collar workers' compensation fraud. Other law enforcement agencies with whom we attempted to work would not cooperate with us. They said they could not divulge sensitive information to a non-law enforcement agency. It did not matter at the time that the Division's fraud investigators were all currently police certified with many years of law enforcement experience with other police agencies.

All of this soon changed. The 1997 Georgia Legislature gave the Division the teeth it needed in the form of police powers. The Enforcement Division became one of only a handful of sworn law enforcement agencies in the United States dedicated solely to investigating workers' compensation fraud. Today, the Enforcement Division's Criminal Investigations Unit has (5) five sworn investigator positions as well as (5) non-sworn compliance officer positions who are charged with uncovering the serious problem of employer's failure to carry the required workers' compensation insurance coverage. Although these numbers may appear to be small, we have amassed amazing results in combating fraud and non-compliance in the State.

The Criminal Investigations Unit is authorized by statute to criminally investigate any case involving Georgia workers' compensation. Investigators are armed and have powers of arrest as well as search and seizure with warrants. In addition, the Unit has full subpoena power.

The Unit now has the credibility and power to effectively pursue its intended mission of criminally prosecuting workers' compensation fraud. Investigators who before could not get the DA's office interested in a case now have the authority necessary to have warrants issued and make the arrests. This authority now requires the local prosecutors to deal with workers' compensation fraud.

**B. <u>Criminal Investigation Unit Statistics</u>**

For Calendar Year 2017, operating with 3 investigators, 128 cases of workers' compensation fraud were assigned out for criminal investigation. As a result, 21 of these cases resulted in an arrest and criminal prosecution. The breakdown of these cases are as follows:

**<u>Cases Assigned/Prosecuted</u>**
Employee----------72/9
Employer----------37/8
Insurance Agents----------7/3
Providers----------7/0
Other----------5/1

**C. <u>Compliance Unit</u>**

The Compliance Unit, created simultaneously with the creation of the Criminal Investigations Unit is comprised of five (5) non-sworn compliance officer positions whose primary mission is to conduct random and complaint-based compliance inspections of businesses.

The compliance officers using web base sites crossmatch government records as well as use old fashion foot work to canvass businesses to determine whether the business is subject to the workers' compensation Act by employing the requisite number of employees and then determining if the business is required to have workers' compensation insurance coverage. If the business is subject to the Act and does not have the required insurance coverage, the business faces fines ranging from $500.00 to $5000.00 per violation. If the compliance inspection results in egregious willful conduct, the case is referred to the Criminal Investigations Unit for investigation and criminal prosecution. Willful failure to have a valid policy of workers' compensation insurance is a misdemeanor offense punishable by up to one year in prison.

In addition to checking for coverage, the compliance officers will assist the business owner with their posted panels of physicians and answer questions regarding workers' compensation. The compliance officers are a great public relations tool for the Board and the Division.

**D. <u>Compliance Unit Statistics</u>**

For Calendar Year 2017 the Compliance Unit with 3 Compliance Officers conducted over 3800 random and complaint-based inspections.

As a result of these inspections, 434 additional employers were required to obtain workers' compensation insurance coverage. Over 2100 additional employees are provided protection with insurance coverage should they suffer a compensable work-related injury.

Annually, approximately 6 Employers are criminally prosecuted by the Criminal Investigations Unit for willful non-compliance with insurance requirements.

It is estimated that as of 2017, 9% of all businesses operating in the State of Georgia do not carry the required insurance coverage. This is down from the approximate 20% in 1995 when the Division was first created.

Fines totaling over $525,000 were assessed and collected in 2017 by the Enforcement Division's legal unit as a result of administrative legal cases brought against those employers found to be non-compliant. These fines along with criminal restitution received for investigative costs are remitted to the State Treasury.

## III. Perception (Misconception) of Fraud

At the beginning of this paper I stated that Georgia's Enforcement Division was created because of a high perception of claimant fraud. This has proven to be a nationwide misperception.

Claimant fraud is not the only type of workers' compensation fraud. It does account for 60% of all investigated cases. However, it only accounts for approximately 15% of the monetary loss to the system.

The Enforcement Division classifies Workers' Compensation Fraud into (3) three general categories.

1. Claimant or Injured Employee Fraud.
2. Employer Fraud.
3. Provider Fraud.

Provider fraud includes providers of insurance services such as agents, adjusters and insurance companies. It also includes providers of medical and legal services.

Employer fraud has accounted for 27% of Georgia's investigated cases of workers' compensation fraud. However, it accounts for millions of dollars in loss to the system.

Provider fraud accounts for our least number of cases, yet this category seems to account for some of our highest monetary loss. Most of this loss lies with insurance agents who sell bogus policies for workers' compensation insurance. Large losses accrue in the form of lost premium as well as non-covered injury claims that must be written off by the medical providers or paid for by public assistance.

It is apparent from these figures where our focus should lie. However, all cases of fraud are important and should be investigated. Many agencies will set a monetary amount guideline for cases to be investigated. This however can set a bad precedent. Agencies should request increased funding and manpower to accommodate the investigation of all cases. The Enforcement Division assesses all cases referred to it. A determination is made of whether a crime has been committed or is the case better suited for an administrative hearing. If the necessary elements of a crime being committed are present, then the case is assigned out for investigation. The reader should note that the burden to prove a criminal case is "beyond a shadow of doubt" rather than a preponderance of the evidence as it is with civil cases.

## IV. Claimant Fraud

### A. Staged Accident

The staged accident may occur to promote either a completely fictitious claim or to cover for a real injury that occurred outside the workplace. In either case the fraud is difficult to prove.

The bogus injury will typically be unwitnessed and involve a soft tissue or other subjective complaint to the lower back area. The employee will try to see a less than reputable medical provider who will use less sophisticated means of detecting this type of injury.

Georgia requires the posting of a panel of physicians that an employee must choose from. These physicians should be carefully screened prior to being placed on the panel. The Posted Panel of Physicians is an employer's first line of defense against fraud.

But, what if there is no panel of physicians or one is not required by your State. The employee can then pick his or her own medical provider who may be as fraudulent as they are.

Let's go back to the employee who was actually injured, just not injured at work. What is the profile of this type of fraud? Why would, or how could, someone wait any significant length of time to be treated for a serious injury.

First, let's discuss the whys.

The employee may work for an employer that does not offer any form of benefits such as health insurance or sick leave. Even if the health insurance is offered it can be very expensive and the employee chooses not to take it. Lack of health care coverage is a major national concern. Obamacare can be debated as the remedy for this. However, it appears that many are risking the penalties not to carry health insurance. This is a story for another paper by another author to undertake. Suffice it to say, an employee is not going to commit workers' compensation fraud to get rich quick. The fraudulent claimant in most cases are not going to deliberately hurt themselves to be able to stay out of work and draw a maximum benefit of $550.00 a week. Most that actually receive weekly indemnity do so at a lower rate than the maximum amount.

Typically, the case that involves an off the job injury will involve a person who has a family and is the principle provider of the family. The employee is

knowledgeable enough to know that their employer has workers' compensation insurance coverage. They also may be aware that their employer does not have a Post Panel of Physicians allowing them to go to a doctor of their own choosing. In my over twenty years of investigating fraud, I have never had a fraud complaint filed against an employee whose employer did not have the required workers' compensation insurance coverage. Some employees actually think they are entitled to the coverage regardless of where the injury occurred.

This type of fraud will almost always occur on Monday. Most "at home injuries" occur over the employee's weekend. This of course takes into account a traditional Monday through Friday workweek.

After the injury occurs the employee takes enough pain medication to get them through until Monday morning when at work they suddenly suffer an injury.

We prosecuted an employee who was injured on a Sunday afternoon while out in his yard playing with his children riding a 4-wheeler when it flipped over throwing him off. He was tough enough to withstand his pain until Monday morning. The employee was transported to work by his wife early so that no one would see him limping in. He went to his assigned work station where he laid down on the floor and began screaming in pain. He claimed to have fallen from a ladder while reaching for something. Although the accident was suspicious, no one could tell that the injury did not occur at work. No one that is except for his soon to be ex-wife that provided us with enough details to prosecute the employee. Once transported to the ER it was discovered that he had a fractured leg. After costing the insurer 10s of thousand in medical cost and lost indemnity, the marriage got rocky and the wife contacted the Enforcement Division. Neighbors who witnessed the 4-wheeler accident confirmed to us that the event did occur and the employee was complaining about severe leg pain.

Did you pick up on the red flag indicators just described? The first one was a Monday morning injury. The injury was unwitnessed. No health insurance and no leave time were available.

The last indicator in this case is the employee had his wife drive him to work. Something he had never had her do before because he knew he would be leaving work via medical transport. He didn't want to leave his vehicle at work.

**B. Fraudulent Workplace Injury**

An employer may encounter a rarer type of fraudulent injury claim and that is one which actually occurs at work. We recently prosecuted a case of an employee who instigated a fight with his cousin at work and received a severe nose injury because of contact with his cousin's fist. Both the injured employee and cousin gave sworn statements that the injury was caused by a stack of doors falling on the employee. Not long after receiving extensive reconstructive surgery, a family member called the Enforcement Division to complain about the fraud. The cousin, once advised of the potential consequences of being charged with a party to a crime, readily told us what had occurred. The injured employee was successfully criminally prosecuted.

These are just a few of the types of non-work-related or faked injuries. Remember, most fraudulently staged injures will be primarily subjective and soft tissue. Typically, this is to the back.

**C Receipt of Unentitled to Benefits**

The next type of claimant fraud involves the receipt of unentitled to benefits and is codified in O.C.G.A. 34-9-21. The statute in part states that any employee who, with the intent to defraud, receives and retains any income benefits to which he or she is not entitled shall be guilty of a misdemeanor……. This is one of the most common types of fraud prosecuted by the Enforcement Division.

This type of crime typically involves an injured employee returning to work for income while simultaneously receiving temporary total disability. The employee will fail to notify the insurer of the return to work so that the insurer can assess whether or not to suspend benefits or adjust the benefits to temporary partial disability.

The injured employee has a continuous legal obligation to notify the employer/insurer of any change in status which may affect the claim and payment of benefits. Unfortunately, some injured employees attempt to hide the fact they have returned to work so that they can continue to draw weekly indemnity. In many cases, the employee will compound the problem and lie about working while giving a sworn deposition or at a later court hearing.

Georgia's law regarding unentitled to benefits is a misdemeanor offense. However, the giving of false testimony during a deposition or hearing is a felony

## D. False Documentation

The next form of claimant fraud is Submission of False Documents. The submission of false documents to an employer or insurer for the purpose of obtaining benefits meets the legal requirement of giving false and misleading statements under O.C.G.A. 34-9-18 & 19, "Georgia's Workers' Compensation Fraud Statute."

These statutes provide both a civil and criminal forum where the claimant can be prosecuted. Civilly, the claimant faces a fine of $1000 to $10,000. Criminally, one may face a year in prison or fine or both. It is a misdemeanor.

If this documentation is submitted to the Board, an agency of the State of Georgia, the Enforcement Division is able to charge the claimant with a felony under the "filing of false documentation to a government agency statute." This can occur when someone is attempting to hide their identity. Why would someone won't to hide their identity? First, it may be an attempt to avoid the employer/insurer locating prior workers' compensation claims. Secondly, they may be attempting to avoid Child Support Recovery liens or criminal prosecution for child abandonment. The issue of false identity will be discussed more in a moment. However, the following war story is a great example of several types of fraud all rolled up into one that will provide the reader a better understanding of how the parts of the puzzle come together. It was a successful and exciting case to prosecute.

The alleged claimant was actually injured in a fight with drug dealers wanting their money. After they dislocated his shoulder and gave him a rotator-cuff tear we think he decided to pay his debt. However, now he was injured and had no way of receiving or paying for medical treatment. This was not a problem for him. He went to work for a roofing company under an assumed name and false social security number. Two days on the job he suddenly falls off a single-story house. The accident is unwitnessed. He began receiving benefits and medical treatment. Three months later while drawing Temporary Total Benefits he begins to work for another company under another name and another social security number. The first day on the job as a chimney sweep helper they find him screaming on the lawn of another single-story house. More benefits are now being paid.

Guess what happens next? Yes, another company, another name, false social security and another injury similar to the first two.

By the time number three rolls around, case number one is settling for $45,000. This person was receiving an income from working, weekly disabilities and lump sum settlements all at the same time. The Enforcement

Division received a call simultaneously with the payment of one of the settlements being paid to the claimant. Warrants were issued, and an arrest was made by our investigators. The claimant was in possession of (3) three Georgia Drivers Licenses with (3) different identities, plus the license reflecting his real identity. He obtained each of these from Georgia's Driver's Services.

This case was spotlighted in the Georgia General Assembly several years ago when "thumb printing to obtain a driver's license" became a big issue. The thumb print won out. However, much to our dismay this law was revoked several years later and identity theft with regards to obtaining counterfeit driver's licenses became rampant again. This has been curtailed today by Georgia leading the way in being one of the first states to adopt federal regulations requiring positive proof of identity and changing its license to one that is very difficult to counterfeit.

**Georgia Illegal Immigration Act of 2011**

Tailored after Arizona's immigration act passed during the same time period, Georgia made it an aggravated felony for someone to obtain employment using a fictitious identity. It doesn't matter if it is of the identity of someone living, dead or doesn't exist. If you use a false identity to obtain employment it is a crime. This is one of the few sections of Georgia's Illegal Immigration Act that was not struck down by the Federal Court. The Enforcement Division is also one of the few state law enforcement agencies that has jurisdiction to enforce this section. The State Attorney General's Office Official Opinion 2012-3 provided that the Enforcement Division could investigate any case of identity fraud if it arises out of a complaint for workers' compensation fraud. If an individual uses a false identity to obtain employment and then files a subsequent workers' compensation claim using the same identity or a false social security number, the Enforcement Division can investigate and prosecute the individual for aggravated identity fraud.

## E. <u>Prevention</u>

What can you the employer or insurer do? There are no absolute answers. Nothing will prevent someone from attempting to commit fraud. There are some suggestions that might prevent a successful commission or lesson the impact of an employee getting away with workers' compensation fraud.

First, you as the employer should have workers' compensation insurance coverage. Most states laws differ in their coverage requirements. Georgia requires with some exceptions that every employer with 3 or more full time, part time or seasonal employees regularly employed maintain workers' compensation insurance. Georgia requires that if the business is incorporated

or a LLC, the corporate officers or LLC members will be counted as employees to reach the number of 3 or more. This is regardless of whether the officer or member elects to reject coverage.

The insurance coverage protects the employer from direct losses associated with fraudulent claims as well as provides representation from the insurer who is more experienced in dealing with fraud than the employer. Without workers' compensation coverage the employee would be able to bring tort suits for negligence against the employer resulting in increased litigation and expense to the employer.

Every insurer has special investigations units (SIU) to handle fraudulent claims whether the claim involves workers' compensation or other property line claims.

The Enforcement Division of the Board works closely with SIUs to assist in developing criminal cases. Many of the SIU personnel are former law enforcement investigators.

The issue of coverage will be discussed again when we learn more about employer fraud.

The second defense against employee fraud is to maintain properly posted panels of physicians. Here again, the states differ on this issue. Some states allow an injured employee to choose any doctor. Georgia does not.

Georgia requires the employer to conspicuously post a traditional 6 (six) physician panel. If the panel is not posted or is invalid, the injured employee may choose their own physician. This is where the potential for fraud arises.

A well-trained physician, particularly one trained in occupational medicine can recognize a bogus injury through proper testing. Research your panel physicians to insure they accept work comp patients and you have a valid address and phone number as a part of your posted panel.

Other preventive measures include having an aggressive safety program at work. Hold weekly safety meetings. An employer should thoroughly train its supervisors about workers' compensation and the value of prevention of work place injury and violence.

These supervisors will be able to assist the employer in explaining workers' compensation reporting procedures to employees should an injury occur. Explain the value of the system to your employees including the reporting of

fraud. Let them know how fraudulent claims hurt the system and may prevent legitimately injured employees from obtaining benefits.

**F. Cure**

What if an accident occurs? What should you do to prevent it from becoming fraudulent? I hear employers and insurers complain all the time about how every claim they have is fraudulent. The fact is less than 2% of legitimately filed claims are reported as fraudulent. A lessor percentage is found to be fraudulent. This means that more than 98% of your injured workers should expect the best possible medical care and timely benefits. But, do they always get it?

The best way to prevent a claim from becoming fraudulent is to show compassion and care to your injured employee. First, get the employee prompt medical attention. This is regardless of whether you think it may be fraudulent. Let the medical provider make that initial decision.

Go with your employee to the doctor. This doesn't mean you go into the examining room. However, you can speak with the doctor regarding treatment and cure. You may even be able to tell the doctor what happened to cause the accident. You may be able to suggest alternative job duties for the employee if the doctor allows the employee to return to work under light duty restrictions.

An employer invests money into an employee just as they do machinery or inventory. It is not a wise business decision to discount an injured employee. An employer who discriminately terminates or treats differently a legitimately injured employee will face a potential fraudulent situation. "Don't throw the baby out with the bathwater". Treat them with legitimate, respect and care and that employee will want to heal and return to work.

An employer may say, "I showed care and respect. However, the employee has only been here a week and was trouble from the start. What should I do?" As stated before, get them immediate medical attention. Advise the employee of proper workers' compensation procedures and their respective rights under the system. Then, investigate the claim.

Although most fraudulent claims will be unwitnessed, the employer/insurer needs to conduct witness interviews as soon as possible. This includes interviewing the injured worker. Remember a moment ago I suggested the employer or supervisor go to the doctor with the worker. This would be a great opportunity to find out exactly what happened.

The insurer and insurers' SIU should conduct a more in-depth investigation starting with both written and recorded statements. These may include interviews with neighbors and friends. Someone may have information that the injury occurred somewhere else besides work.

## V. Employer Fraud

Employer fraud accounts for approximately 27% of our investigated cases resulting in millions of dollars in loss to the work comp system. It has been reported that for every dollar lost through employee fraud, $5 to $10.00 is lost in employer fraud. What makes employer fraud account for such losses?

- **Premium Fraud**

There are two types of premium fraud. One type is misrepresenting payroll to the insurer and the other is misclassifying employee jobs. The simplest way of explaining these two forms of fraud is to give examples of cases the Criminal Investigations Unit has investigated.

A perfect example of misrepresenting payroll is the case of XYZ Trucking Company located in Americus, Georgia. The owner, Mr. Z had no workers' compensation insurance coverage and subsequently an injury to a truck driver occurred. The administrative law judge ordered Mr. Z to produce coverage or face additional penalties.

The Enforcement Division conducted a follow-up investigation of the coverage applied for by Mr. Z.

A review of Mr. Z's insurance application revealed 5 drivers and 2 clerical workers with $100,000 annual payroll. The annual premium was calculated at $12,000.

We compared these figures with XYZ's quarterly State Labor Department filings. What we discovered was premium fraud. XYZ had 20 truck drivers and 4 clerical workers. Their annual payroll was over $400,000. The annual premium should have been approximately $45,000. This was a theft of over $30,000 from the insurer. Mr. Z has been indicted and is currently awaiting trial.

A perfect example of misrepresenting employee's classifications revolves around the case of XYZ Roofing Company located in Macon, Georgia. This

investigation revealed the employer was using clerical workers priced at $.80 a hundred for premium instead of roofers priced at $40.00 a hundred.

This case which took over six months to investigate became very complicated. We first discovered that XYZ Roofing was passing a phony certificate of insurance to clients. The owner of XYZ Roofing became aware of us investigating his insurance coverage. He suddenly has coverage through an employee leasing service owned and operated by Sherry. However, Sherry was only involved in the employee leasing business part time. The remainder of her time was spent as XYZ Roofing's accountant and the owners' paramour.

The investigation revealed that Sherry had procured a $750.00 minimum premium policy for clerical workers who were to be assigned out to other companies. The investigation located these clerical workers installing roofing for XYZ Roofing Company. The estimated premium loss was $15,000.

Both Sherry and the owner of XYZ Roofing were indicted. The owner has settled his case for extensive probation and a heavy fine. Sherry's case is pending trial.

Today, the premium for roofing companies in the assigned risk pool is over $100.00 per $100.00 of payroll. The motivation to commit fraud is even higher today than when the aforementioned scenario took place.

- **<u>Fraudulent Certificates of Insurance</u>**

I just mentioned XYZ Roofing Company was originally investigated for insurance fraud involving a phony certificate of insurance. This was a typical example of what we confront on a regular basis particularly involving the construction industry.

For those readers of this paper who are not familiar with what a certificate of insurance is; it is proof of insurance coverage, either general liability, auto or workers' compensation, that is issued by an insurance agent and sent to a general contractor on behalf of a subcontractor. The certificate will have details such as what insurance company is providing the different lines of coverage, the policy limit amounts and the effective dates of coverage. It will also list a certificate holder who should be notified if the policy cancels. However, this is not always the case.

These certificates are easy to cut, paste and copy. Anyone can take an old certificate or borrow someone else's and alter the dates of coverage and the

policy numbers. With today's modern copy technology you cannot tell the difference.

I suggest anyone who receives certificates of insurance to verify with the insurance company or your state's data bank for verification of coverage. Georgia's State Board maintains a coverage link with NCCI and one can now download an app to their smart phone to check to see if the coverage is current. If they want additional information they can call the Board's coverage unit.

- **Failure to Provide Insurance Coverage**

In Section II you learned about the Enforcement Division's Compliance Unit and the steps they take to insure Georgia's employers maintain the required insurance coverage. We treat non-compliance as a serious employer fraud perpetrated against employees.

There is nothing more devastating in the workers' compensation system than to have a severely injured employee and no insurance coverage. This fraud affects everyone in the system involving the general public. If the injury is severe enough the employer will go out of business and skip town. Many of the employers are judgment proof. Although an injured worker can file a claim and get an award issued by an Administrative Law Judge ordering the employer to pay the benefits, if benefits cannot be collected, the award is worthless.

Last year alone, employers in Georgia paid out over $500,000 in fines after being caught without the required insurance coverage.

## VI. Provider Fraud

Provider fraud in Georgia accounts for the least number of cases investigated. However, it does account for the highest in monetary loss as well as the highest number of man-hours to investigate. These types of cases can become very time consuming because they involve schemes and conspiracies.

The category of provider fraud includes providers of medical services such as doctors, chiropractors and rehabilitation specialists. It includes the providers of legal services or attorneys. The largest offender of provider services in Georgia involves insurance service providers. This primarily concerns insurance agents and adjusters.

Medical providers are submitting fraudulent bills for services or what is commonly called unbundling services. Attorneys are participating in or have knowledge of staged accidents. They may be utilizing recruiters or runners to increase business. The most horrendous of legal offenses, the stealing of settlement proceeds from clients.

As I just stated, insurance agents have accounted for the majority of provider fraud cases as well as monetary loss. The typical insurance agent scheme will be to sell unsuspecting businesses bogus policies. Most of these businesses are small construction companies.

The agent will sell a minimum premium policy to a construction subcontractor and never place the coverage with an insurance company. The agent will provide the contractor with the necessary certificates of insurance. This is why earlier I did not suggest calling the insurance agent when verifying certificates of insurance. That is, unless you absolutely know the agent and their reputation.

One of our largest fraud case resulted from an insurance agent by the name of Peter O'Malley. Mr. O'Malley of Warner Robbins, Georgia was convicted in Federal Court for mail fraud involving an estimated $1 million in bogus workers' compensation and general liability insurance policies.

Mr. O'Malley had issued so many policies that the inevitable began to occur. Claims started being filed for work related injuries. Mr. O'Malley then began paying claims out of his theft proceeds. He was so bold as to actually represent himself as an insurance company at a Georgia workers' compensation hearing. This raised suspicions and the rest is history. He served over 4 years in prison and was ordered to repay his victims.

Another interesting case involved an Atlanta insurance agent that had been previously arrested and convicted of insurance fraud involving the sale of bogus workers' compensation policies. While in prison with just one month left to go on a six month sentence he began contacting former clients he had sold bogus policies to and advised them that their policies would soon expire and needed to be renewed. These were customers/victims that the Enforcement Division was unaware of during prosecution of the first case.

However, we had conducted a random compliance check on one of his clients and required the business to get valid insurance. The business had earlier purchased one of the bogus policies. The owner of the business contacted us after being called by the convicted agent regarding his bogus policy being close to expiring.

We made arrangements for the agent and business owner to meet. Money was exchanged for the bogus policy and the agent went back to prison to serve the remainder of his sentence. We estimate this particular agent stole $100,000 from unsuspecting business owners.

One other interesting case we have investigated involved an adjuster for a large insurance company. She has been indicted for Insurance fraud for stealing approximately $35,000. The adjuster was creating false workers' compensation claims and providing payment to a health care provider. This provider was a fictitious person whom she had opened a joint checking account with. The checks were sent to a closed P.O. Box where they were then rerouted back to the adjuster for further disposition. She would then take the checks and deposit them in the joint account set up with the fictitious person. Today's new Homeland Security banking laws would have prevented a case like this from occurring.

These are but a few examples of the schemes providers are capable of. Cases referred to the Enforcement Division involving medical providers are turned over to the Georgia Bureau of Investigation who has a special unit to investigate medical provider fraud. Most cases involving attorneys are turned over to the State Bar of Georgia for disciplinary action.

## Conclusion

There is no simple answer to the problem of fraud. The National Insurance Crime Bureau (NICB) estimates workers' compensation fraud costs the nation's insurance industry approximately $5 billion annually. Insurance fraud is one of the costliest forms of white-collar crime in the United States ranking second only to tax evasion.

We have all heard from people that say, "Who does it hurt to cheat a little on our tax or to file a less than honest claim with our insurance carrier. "Everyone knows we paid all this money to them for premiums, we should get something in return."

What we get overall is higher premiums, less effective service, and a dark cloud over the heads of 99% of the honest claimants.

Just how can we improve upon this part of the system? Can we make a difference in workers' compensation fraud? Joseph T. Wells, a noted author and expert on white collar crime parallels insurance fraud with alcoholism. He says,

> "It really is a compulsion. They say of alcoholics that one drink is too many, all the drinks in the world aren't enough. These characteristics are indicative of individuals who commit fraud. Once they got a "taste", they couldn't stop. Take someone like Charles Ponzi who was smart enough to know the conception of pyramid mathematics. He knew his scam would not work forever and that is was only a matter of time before the numbers caught up with him. But even in the face of imminent demise, Ponzi didn't stop, he was addicted."

If in fact fraud can become an addiction, then one must think an aggressive prevention and enforcement program may be the key components in the system. Let's not allow an employee to feel they can get one week's worth and then another and then another worth

of unentitled benefits or allow them to think they can return to work and collect benefits simultaneously.

We should not let an employer get away with being without workers' compensation insurance coverage and deny a legitimately injured employee their benefits. We should not allow the provider to find out how easy it is to charge for services not rendered. If we do, they will continue to become addicted to their ill-gotten gain and destroy the system.

If all the participants in the system are cognitive of the perils and assist in the cure, the workers' compensation system will remain strong and viable in meeting the needs of the injured worker. Whether your system is from Mississippi, Florida, Georgia or some other state, our mission statements all continue to be the same. "To fairly administer the workers' compensation law as it applies to the injured employee and employer/insurer."

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