

WORKERS' COMPENSATION UPDATE 2000

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FRAUD IN WORKERS' COMPENSATION FROM THE PRESPECTIVE OF CLAIMANT'S COUNSEL

I. Employers and Carriers Also Commit Fraud

- The topic of fraud in workers' compensation is a constant drumbeat of workers' compensation carriers in their ongoing attempt to campaign for legislative changes and increase policy premiums. In reality, the occurrence of claimant fraud is relatively rare in relation to the number of legitimate claims. Arguably, fraud may be as likely, if not more likely, to occur on the employer and insurance carrier side.
 - The definition of fraud includes any "deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury". Black's Law Dictionary (fifth edition 1979). Certainly, we can argue about whether this meaning encompasses the behavior of insurance companies and employers which turn a "blind eye" towards the existence of practices that they know result in the violation of workers' rights. Perhaps, with carriers this occurs in boardrooms, office buildings, and committee meetings; all in the name
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of saving insurance company dollars. With employers, it occurs when they attempt to resolve workers' compensation claims outside of the system.

II. How the Fraud Occurs

- Claims are often denied or delayed even if there is little or no basis for the denial or delay. Carriers know that the worst thing that can happen to them is that they will ultimately have to pay what they should have had to pay to begin with. This may be considered "good business" from the standpoint of some workers' compensation insurance companies. This appears to be the message that executive officers have passed down to employees of some health insurance and workers' compensation insurance companies. Perhaps it is just bureaucratic incompetence or poor management. This is not to say that there are not many capable professionals and caring, decent people who work for insurance companies, but rather that it is cost savings and return on the dollar that the shareholders are interested in. Executives of some of these carriers appear to train (or fail to train) their people accordingly. Part of the reason for this is that the injured workers are not insureds. They are not customers. They are merely a liability to be dealt with.
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- Many small employers which are tight on dollars pay employees “under the table”, treat employees as independent contractors or discourage reporting accidents and filing claims.
 - Some large employers incentivize workers to avoid work injuries. Company bonus programs make reporting or filing claims very unpopular.
 - It is also a fact of life that the vast majority of worker's compensation claimants are unrepresented. Therefore, if it turns out that the worker's compensation claimant is paid based on an understated average weekly wage, is paid for a shorter period of time, has to fight to get his medical benefits, or has his prescriptions paid for through his health insurance company, this all saves the carrier money. By the same token, claimants are not often advised that they have the right to reimbursement for travel for job hunting or travel for doctor's appointments or that they are entitled to cost of living increases on their weekly checks.
 - That is something that some insurance companies seem happy to live with. Insurance carriers are not set up to help claimants. They are set up to save money and collect large premium dollars. Whether this is fraud or whether this is
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considered "good business" in Virginia or any other state will have to be addressed within the hearts and minds of the various individuals working within the system, day-to-day in the trenches, handling files and having conversations with injured claimant's who do not know their rights.

- The core of the problem is that the workers' compensation system is designed to be self-regulating. Many State Legislators naively believe workers' compensation is a no fault non-adverarial system where attorneys are seldom necessary.
 - All that said, there are workers' compensation statutes on the books in the State of Virginia that deal with Fraud (see Exhibit 1 hereto). Under Section 65.2-312 of the Workers' Compensation Laws, it is indicated that it is unlawful for any person to knowingly make, file or use any writing or document that is fraudulent. The violation of this provision could result in a felony prosecution. This statute obviously relates to both, claimants or employers and insurance companies and their personnel.
 - In addition, under Section 65.2-712 of the workers' compensation statutes, a claimant is required to report to the employer and workers' compensation insurance company any incarceration or change in earnings. If the claimant does
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not report this, it can be considered fraud or misrepresentation. A copy of both statutes are enclosed herewith.

- I also enclose a copy of a recent article on fraud investigations from North Carolina which I obtained from the Workplace Injury Litigation Group (see Exhibit 2 hereto).

III. Summary of Fraud Committed by Employers and Carriers

- Not listing all body parts injured on Memorandum of Agreement.
 - Understating average weekly wage
 - Not advising claimant of rights to travel reimbursement and cost of living increases
 - Allowing prescriptions to be covered through health insurance
 - Making voluntary payments without intending to forward an award order
 - Padding workers' compensation liens
 - Premium increases to create new Legislation
 - Late payments problems
 - Failure to report accidents/file claims
 - Underreporting # of employees and wages
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- Forcing settlement by harassing Vocation Rehab

IV. How to Prevent Fraud From Occurring

- Be aware of workers rights so as to not misrepresent same
- Voluntarily pay undisputed wage and medical benefits on a timely basis
- Accurately fill out award forms
- Provide workers' compensation prescription cards
- Regularly audit files for compliance
- Properly train and compensate carrier employees
- Fairly distribute work loads
- Recognize abusing rights of workers eventually costs carriers and employers as well as families of injured workers
- Promptly fill out accident reports and encourage medical treatment
- Encourage a culture of fairness at carrier's and employer's place of business

V. Conclusion

- Fraud will always be an issue in Workers' Compensation. But, fraud occurs on both sides. It is helpful to remember this fact and not let its occasional occurrence in claimants' cases color our attitude about other decent hard working people who have been unfortunate enough to be injured at work.
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**BIOGRAPHY OF
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Date of Birth: 10/13/53

Graduated St. Lawrence University 1975 and
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Current Position: Partner – Kerns, Kastenbaum & Reinhardt
Specializing in Workers' Compensation, Personal Injury and Social Security Disability

Previous Positions of Responsibility:

-Vice Chairman of Workers' Compensation Section of the
Virginia Trial Lawyers Association

-Chairman of the legislative and CLE committees of the Workers' Compensation
Section of the Virginia Trial Lawyers Association

Current Positions of Responsibility:

-Chairman of the CLE committee of the Workers' Compensation Section of the
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-Frequent lecturer on Workers' Compensation, Personal Injury and Social Security topics

Member: Virginia, Maryland and D.C. Bars
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