COMMISSION ON INSURANCE
COUNTY OF LOS ANGELES

LOS ANGELES COUNTY
INSURANCE COMMISSION
SUBCOMMITTEE ON FRAUD

Meeting December 8, 2011
INSURANCE FRAUD UPDATE

INTRODUCTION

Insurance fraud is more widespread and costly than most people imagine. According to the National Insurance Crime Bureau (NICB), insurance fraud is the second most costly white-collar crime after tax evasion, costing Americans approximately $30 billion every year. According to the Rand Institute for Civil Justice, more than one third of people involved in an automobile accident will exaggerate their injuries, racking up an additional $13 to $18 billion on the country's annual insurance bill. Workers' compensation fraud alone costs the insurance industry $5 billion annually. The NICB characterizes workers' compensation fraud as the "fastest growing segment of insurance fraud" in the nation.

Insurance fraud occurs every day, in every state, and targets every organization and industry. With the global recession continuing to bring more layoffs, downsizing, and business closures, and with the cost of living continuing to rise, people are financially stretched. As a result, the County of Los Angeles can expect to continue to experience exaggerated and suspicious workers' compensation and third party liability claims and activity.

Some employees will choose to seek alternative ways to make ends meet and support their families by reporting fraudulent workers' compensation claims and/or malingering. Some employees may choose to file fraudulent third party claims in an attempt to boost their income or pay a bill. Unfortunately, many employees feel that filing a false claim or exaggerating a claim is acceptable or that they are entitled to the benefit. Then, there are those "opportunistic fraudsters" who study the County of Los Angeles workers' compensation system for its weaknesses, in an attempt to learn its loopholes and take advantage of any weaknesses they identify in the areas of identifying, detecting and defending against workers' compensation and third party liability fraud, waste and abuse.

I. OVERVIEW OF FRAUD IN CALIFORNIA

The Workers' Compensation Fraud Program was established in 1991 through the passage of Senate Bill 1218 (Chapter 116). The law made workers' compensation fraud a felony, required insurers to report suspected fraud, and established a mechanism for funding enforcement and prosecution activities. The Fraud Division's mission is to protect the public and prevent economic loss through the detection, investigation, and arrest of insurance fraud offenders.

Senate Bill 1218 also established the Fraud Assessment Bureau to determine the level of assessments to fund investigation and prosecution of workers' compensation insurance fraud. The funding comes from California employers who are legally required to be insured or self-insured.

The following is an overview of various types of workers' compensation fraud.

Public Sector Fraud

Fraud committed on government entities has a direct negative impact on all taxpayers. The California District Attorney's Office has assigned prosecutors to handle only that fraud which is committed within the public sector. The program attempts to detect, prevent and eliminate public sector fraud.

Claim Mills

Organized workers' compensation fraud involving doctors and lawyers is an ongoing problem, especially in Los Angeles County. Fraud rings make a practice of recruiting people to file phony work injury claims. The workers are sent to medical clinics or legal referral centers (commonly known as "claim mills"), which in turn refer them to doctors or lawyers who are in on the scheme.

Provider Fraud

Regardless of the legitimacy of the original claim, many medical or other health practitioners fraudulently maximize the number of medical reports and referrals in each case to increase the number of billings. They may also over bill or render unnecessary treatment.

Employer and Insurance Carrier Fraud

In this type of fraud, employers or employees of an insurance carrier will make a false statement regarding a worker's entitlement to benefits. The statement is designed to discourage the worker from pursuing a legitimate claim. A 2007-08 payroll reporting study concluded that in the year 2005 alone, under-reported insurance premiums ranged from $2.09 billion to $2.87 billion.

Applicant Fraud

These cases involve workers who fake an injury, lie about the extent of their injury, lie by denying filing previous claims, fail to disclose a prior injury to the same body part, claim a non-work injury is work-related, or illegally work while obtaining benefits. Sub rosa surveillance tapes regularly expose applicants who are fraudulent.

II. PROSECUTION AND CONVICTION FIGURES FOR FY 2009/2010

The total California aggregate assessment for Fiscal Year 2009-10 was $51,525,700. During Fiscal Year 2009-10, the Fraud Division identified and reported 5,728 cases of suspected fraud, assigned 754 new cases, made 269 arrests and referred 280 submissions to prosecuting authorities. The potential loss amounted to $1,150,136,727.

In Fiscal Year 2009-10, the county district attorneys reported a total of 682 arrests, which also included the majority of Fraud Division arrests. During the same time frame, district attorneys prosecuted 1,339 cases with 1,506 suspects, resulting in 593 convictions. Restitution of $120,977,446 was ordered in connection with these convictions and $73,501,711 was collected during Fiscal Year 2009-10. The total chargeable fraud was $370,320,520, representing only a small portion of actual fraud since many fraudulent activities had not been identified or investigated.

III. APRIL 2010 FRAUD SURVEY RESULTS

In April 2010, the Los Angeles County Insurance Commission Subcommittee on Fraud distributed a survey to the Los Angeles County Board of Supervisors in an effort to ascertain what areas of insurance liability and workers' compensation fraud were most prevalent in Los Angeles County. The response was minimal, but following are the results:

1) *What types of complaints are most received through the Office of County Investigations (OCI) Fraud hotline?*

A) The most common type of allegation is time abuse.

2) *What seems to be the most common complaints about insurance fraud made through the OCI Fraud hotline?*

A) Workers' compensation fraud.

3) *What seems to be the most common concerns about insurance fraud in the County of Los Angeles?*

A) Workers' compensation fraud.

4) *What are the most common complaints about workers' compensation fraud?*

A) False reports of work-related injuries.

5) *What, if any, proposals or programs are currently in place, or are being considered by the County of Los Angeles regarding the determination and implementation of fraud prevention solutions?*

A) The OCI currently offers general Fraud Awareness Training sessions to County departmental mangers/supervisors on fraud detection, prevention and reporting requirements.

6) *Would the OCI be receptive to a summary of the Subcommittee on Fraud's recommendations?*

A) Yes.

IV. LOS ANGELES COUNTY STATISTICS

A Citizen's Economic Efficiency Commission 2004 Report on workers' compensation fraud released the following estimates of the monetary impact of fraud in Los Angeles County for the preceding 2002-2003 fiscal year, stressing that all such figures are probably lower than the actual numbers due to unreported fraud claims.

2002-2003 Level of Benefits	Potential Range of Fraud Percentages	Monetary Impact of Fraud
$244M	3%	$7.32M
	15%	$36.6M
	25%	$61.0M

The following California Department of Insurance/Workers' Compensation Division chart reflects the number of fraud convictions achieved by the Los Angeles County District Attorney's Office in 2011. No information was available beyond August 2011. Only 10% of those convicted of workers' compensation fraud are actually sent to prison. And only a small percentage of suspected cases of fraud are ever investigated.

MONTH IN 2011	NUMBER OF CONVICTIONS
January	3
February	3
March	3
April	1
May	0
June	4
July	2
August	2

The following information was gathered from *Public Fraud Unit Favors Those Who Privately Fund It,* published by the Los Angeles Times on August 6, 2000, news accounts and reports by various sources, and the California Commission on Health and Safety and Workers' Compensation report entitled, *Report on the Workers' Compensation Anti-Fraud Program.*

"The Los Angeles County District Attorney's Office has never prosecuted an insurer for defrauding injured workers' by not paying them benefits. In fact, the D.A.'s office has never prosecuted an insurance company for any reason whatsoever. In eight years the D.A.'s office has spent $38 million received through the private funds. Prosecutions number more than 250, mostly low-paid workers, fewer than 20 lawyers, doctors or other medical personnel and approximately two dozen employers, all of them small or medium-sized businesses. The practices occurring in Los Angeles County are the norm throughout California's district attorney offices. The Los Angeles District Attorney's office did not investigate the finding of a civil jury in Los Angeles Superior Court. The jury concluded that the state's largest workers' compensation insurer, the quasi-public State Compensation Insurance Fund, defrauded an employer of hundreds of thousands of dollars. California Court of Appeal justices upheld the jury verdict of civil fraud and ordered the insurer to pay a $5-million punitive damage award, asserting: "There was substantial evidence that senior management personnel at SCIF intentionally misled prospective insureds." Obviously, the district attorney's office would have been biting the hand that fed it had it prosecuted the State Compensation Insurance Fund."

V. INVESTIGATION

According to the website for the Los Angeles County District Attorney; "Suspected workers' compensation fraud is investigated by a variety of state and local government agencies, including the Department of Insurance's Fraud Division, the Employment Development Department, the Franchise Tax Board, the Department of Industrial Relations and the District Attorney's Bureau of Investigation. Investigative agencies refer cases to the District Attorney's Workers' Compensation Fraud Division for prosecution."

Therefore, it is important to establish evidentiary criteria and standards so the submitting agency knows what kind of evidence needs to be gathered in order to support a suspected case of fraud being prosecuted in the legal arena.

VI. 2012/2013 PROPOSED BUDGET FOR FRAUD

According to the Department of Insurance, the budget recommended and adopted for 2011/12 was $31,774,392. That money is allocated to DAs throughout California. The Los Angeles County district attorney's office has historically gotten the lion's share of available funds. Los Angeles County is also the largest employer in the state.

On July 8, 2011, Insurance Commissioner Dave Jones announced $32 million in grants to District Attorneys across the state to assist them with the investigation and prosecution of workers' compensation insurance fraud. Grants are subject to approval in the final state budget. The grant funding is the result of assessments on California employers that are determined annually by the Fraud Assessment Commission. Los Angeles County got $5.7 million while Alameda County got $1,400,000 and Fresno County got $1,240,000.

VII. FRAUD AWARENESS WEEK

At the September 2011 meeting of the California Department of Insurance Fraud Assessment Commission, it was suggested that California establish a "Fraud Awareness Week" specifically to educate the public about the effect of fraud on their insurance premiums and coverage. This is an issue that needs to be approached from both the public and private sectors. No follow up to this recommendation was available.

VIII. AUTO INSURANCE FRAUD

"Approximately 45% of all suspected fraudulent automobile insurance claims in California are from Los Angeles County. In total, it is estimated that automobile insurance fraud results in losses in excess of $8 billion a year. Because losses are passed to consumers in the form of higher insurance premiums, everyone bears the financial burden. When fraud artists resort to staged accidents or other dangerous tactics, the safety of everyone on the road can be jeopardized by their crimes.

"The District Attorney's Office recognizes that with the growing sophistication of automobile insurance fraud rings, an equally sophisticated and aggressive law enforcement effort is required to combat them. To that end, the District Attorney's Office has established an **Automobile Insurance Fraud Division** with specially trained staff to investigate and prosecute this costly criminal activity, which can include:

- Staged accidents
- "Paper" accidents which never actually occurred
- Medical treatment fraud
- Fraudulent claims by auto body repair shops
- Fraud involving the issuance of insurance policies or processing of claims
- Feigned or staged automobile thefts

- Crimes of violence, such as manslaughter, which may arise from staged accidents

"The Division focuses on the prosecution of individuals or groups engaged in multiple acts of insurance fraud. Defendants can include claimants, policy holders, attorneys, doctors, chiropractors, law office administrators, body shop operators, and insurance agents or brokers."

(Excerpted from the Los Angeles County District Attorney website)

IX. SUBCOMMITTEE ON FRAUD RECOMMENDATIONS

1) The Los Angeles County Board of Supervisors must make workers' compensation insurance fraud a priority for 2012. The priorities of the District Attorney's Office as they pertain to which entities (i.e. doctors, lawyers, medical clinics, insurance carriers, employers and applicants) are investigated and brought to trial must be upgraded to include all perpetrators of fraud.

2) Establish Fraud Awareness Week to educate the public about the ramifications of fraud on their daily lives.

3) The ratio of suspected cases of fraud, prosecuted cases of fraud and convicted cases of fraud must be brought closer together.

4) More investigation must be funded in order to support recommendation #3.

5) Evidentiary standards must be established for submitting agencies to support case prosecution.

6) We suggest that an RFP be created and released to solicit a firm to conduct a professional assessment of workers' compensation and third party liability fraud, waste and abuse.