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Résumé de l'article

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L'auteur mentionne que le processus d'investigation et de judiciarisation des plaintes par le Bureau a été amorcé à la demande des sociétés d'assurance de l'État. Un an plus tard, la mission du Bureau s'est étendue aux sociétés d'assurance garantissant l'indemnisation des accidents du travail. Cet article porte principalement sur ce dernier aspect.

COMBATING FRAUD: HANDCUFFING FRAUD IMPACTS BENEFITS*

by Daniel J. Johnston

RÉSUMÉ

À l'occasion de son cinquième anniversaire, l'auteur décrit les activités du *Massachusetts Insurance Fraud Bureau*, dont la création remonte à l'année 1991. Cet organisme est une agence gouvernementale regroupant des organismes publics. Son personnel est composé de ressources humaines venant à la fois de l'industrie de l'assurance et d'anciens fonctionnaires de justice chargés de faire respecter la réglementation en matière de fraude à l'assurance. Son conseil d'administration comprend dix dirigeants de sociétés d'assurance et cinq officiers publics.

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ABSTRACT

The author describes the operations of the Massachusetts Insurance Fraud Bureau, which began operations in 1991 and recently passed its fifth anniversary. The Fraud Bureau is a public partnership despite being a private entity. Its staff includes people from the insurance industry as well as former law enforcement officials. Ten insurance company executives and five government officials sit on its board of directors.

While the process was created by auto insurance companies, after one year workers compensation carriers began making an equal contribution to the Fraud Bureau's efforts. Its the workers compensation side of the story that is the focus of this article.

L'auteur:

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* This article was adapted from the author's remarks at the Workers Compensation Fraud: Advanced Issues, Fresh Perpectives Conference sponsored by the National Council on Compensation Insurance Inc. (NCCI) and the Journal of Commerce.

In the late 1980s, the Massachusetts auto insurance industry received tremendous pressure from regulators and the legislature to do something about fighting insurance fraud. At that time, Massachusetts did not have any state governmental agency to monitor and regulate insurance fraud.

Companies were frustrated, so they approached government with a plan to create the Insurance Fraud Bureau of Massachusetts. The insurance industry would volontarily pay for the Bureau: however, legislation was required to give the Fraud Bureau authority to investigate and refer for prosecution, matters of insurance fraud. By 1990, a statute passed allowing the Bureau to pursue insurance fraud with the appropriate authority. The Fraud Bureau began operations in 1991 and just recently passed its fifth anniversary.

The Fraud Bureau is a unique public partnership despite being a private entity. Its staff includes people from the insurance industry as well as former law enforcement officials. Ten insurance company executives and five government officials sit on its board of directors. Public officials who serve on the Fraud Bureau's board include the state's Commissioner of the Department of Industrial Accidents, several cabinet level secretaries and the Registrar of Motor Vehicles.

Part of the original statutes requires the insurance industry to provide grant money to the Attorney General of the state of Massachusetts for strict use in hiring prosecutors that work only on insurance fraud cases that the Fraud Bureau investigates. There are 13 prosecutors in the Attorney General's office currently working insurance fraud cases the industry has bought to them. Funding for the Attorney General's office reached almost $1 million last year. In a sense, fighting insurance fraud in Massachusetts is a public-private partnership.

Wile the process was created by auto insurance companies, after one year workers compensation carriers began making an equal contribution to the Fraud Bureau's efforts. And, it's the workers compensation side of the story that is the focus of this article.

Massachusetts's statute requires that anyone who encounters fraud report the fraudulent event to the Fraud Bureau. So far, more than 10,000 insurance fraud referrals have been received. Most referrals came from insurance companies, but a sizeable portion came from the public via a tollfree hotline that is heavily publicized.

The statute also provides that in any criminal prosecution fraud case that results in a guilty verdict, restitution must be paid to the defrauded insurance company. In the early days, getting judges

to understand the severity of insurance fraud was difficult and many cases went without restitution. But, more and more, judges understand the urgency of fraud, and restitution is given in almost all cases.

The statute also provides the Fraud Bureau with confidential access to records that otherwise would not be available to the insurance industry or Special Investigation Units (SIUs). Those records include registry of motor vehicles, Department of Industrial Accidents, Department of Revenue, tax, unemployment and welfare. A common finding is that most people who commit insurance fraud are also running another scam to take money out of a government system – particularly welfare. Putting the fraud and welfare databases together has provided fruitful hunting for bad guys.

The Fraud Bureau also has access to all police records in Massachusetts. It is not a police agency; however, it is authorized to receive the agency's database information online. The Bureau also has access to insurance information police agencies typically would not get.

A key piece of the statute was to provide civil immunity to anyone who reported fraud to the Bureau. In the early days, people were concerned about reporting fraud. Now, everyone operating in Massachusetts understands that they will be granted civil immunity for referring cases. This is important because it allows an uninhibited flow of information to the Fraud Bureau.

The Bureau prosecutes most of its cases – about 95 percent – through the Massachusetts Attorney General's office. But many cases are more appropriate for prosecution at the federal level by the United States Attorney General's office. These involve bigger cases of mail fraud, interstate commerce and other such cases. The Federal Bureau of Investigation provides major assistance on U.S. attorney cases, and the state police often work with the Fraud Bureau on cases brought through the state court system.

Some cases are prosecuted by district attorneys. In fact, district attorneys come to the Bureau with insurance fraud cases that they do not have the resources to investigate and ask for the Bureau's assistance.

Insurance companies are instrumental in working with the Fraud Bureau on its criminal prosecutions and investigations. And,

insurance companies often follow a criminal prosecution with a civil proceeding.

There are 43 people at the Fraud Bureau, a large number of whom are investigators. Most investigators – 75 percent – have a federal, state or local law enforcement background. The rest come from the insurance investigative community. Putting this mix together has really paid dividends because the law enforcement types and the insurance folks are experts in their respective areas and can share knowledge. Combining these backgrounds provides a good balance.

The Bureau prides itself in being automated so it can draw external data into its system. Many insurance fraud investigations, as you may know, involve a paper chase. So, having data available to the Fraud Bureau is extremely important. The Bureau has automated access to 37 data links, including state welfare and revenue records, police data and insurance company data.

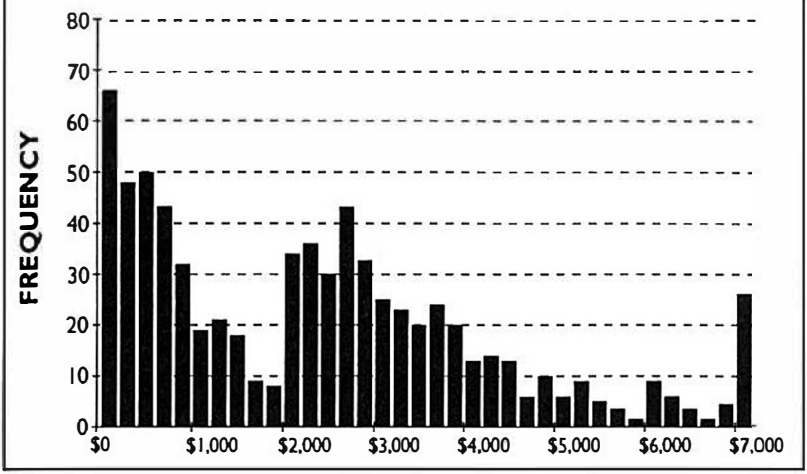
The most significant and useful database is known as DCD – Detail Claim Database. This is a mandatory reporting system for all auto injury claims that has interesting possibilities for workers compensation.

DCD began in Massachusetts when there was perceived to be a large number of fraudulent events surrounding the personal injury arena. To better understand the situation, a system that could focus on the dilemma was needed. The Fraud Bureau asked companies to provide data about each auto injury case that closes. For each case, the DCD database requires the following:

- Lawyer(s) and doctor(s);
- Injury type(s);
- Billing amout(s);
- Amount(s) paid by insurance carriers;
- Claim types;
- Investigate techniques used by the insurance companies;
- Whether the insurance companies sent the case to an SIU;
- Whether an independant medical exam was ordered;
- Whether a medical audit was done on billings;
- And much more.

With this information in the database, the Bureau can extract information by company, provider, attorney, injury type – whatever

EXHIBIT 1
DISTRIBUTION OF TOTAL MEDICAL CHARGES
ALL AUTO PIP CLAIMS
NON-STRAIN/SPRAIN INJURY



it needs. It's a gold mine of useful information, and not just for the Fraud Bureau. Insurance companies are using this data via online Massachusetts access.

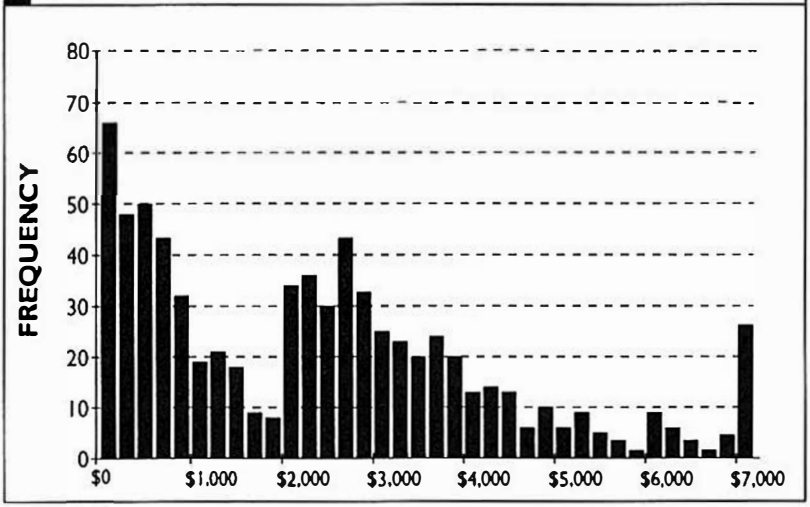
One use of DCD is understanding the distribution of approximately 300,000 no-fault medical claims in Massachusetts during the DCD program's duration. Exhibit 1 shows a normal distribution of the objective-type injuries – for example, broken arms and broken legs – that came into the no-fault system. Massachusetts has an $8,000 medical limit, which explains why a tall bar appears on the right.

When you look at the strain and sprain injury types (see Exhibit 2), quite a different pattern develops.

Massachusetts' no-fault medical threshold is $2,000. Note the sharp increase of claim frequency at the $2,000 level, creating suspicion of "buildup" of these types of claims. Most of these claims involve chiropractic treatment. While DCD currently is available only for auto insurance, the concept is certainly workable for workers compensation.

The Fraud Bureau's budget is running about $4,6 million a year. The statute requires auto and workers compensation insurers be assessed equally for the cost of running the Bureau. And,

EXHIBIT 2
DISTRIBUTION OF TOTAL MEDICAL CHARGES
ALL AUTO PIP CLAIMS
PURE STRAIN/SPRAIN INJURY



because these companies are represented on the board of directors, they direct how the money is spent. While the cost of running the Bureau may sound like a lot, it costs only onethenth of 1 percent of the premium for the auto and workers compensation insurance lines in Massachusetts.

Interestingly, last year all of Massachusetts' property mutual companies came to the Bureau and said: "We want to participate. We'd like to give you a voluntary contribution because we want you to process some property claims, too." The Fraud Bureau handles all lines of insurance whether they be property and casualty or life and health.

The Fraud Bureau has a special group to handle workers compensation premium fraud cases. In the beginning, the Bureau focused mostly on auto cases. As it got involved in compensation cases, a small number of very large cases began getting attention. A group of people who specialize in compensation was formed to serve as the workers compensation premium fraud unit. Only 1.5 % of the more than 10,000 referrals deal with premium fraud. Not surprisingly, these referrals make up about 25 percent of the insurance fraud dollars. Because the payroll is quite large, these

cases are priorities to which the Bureau obviously dedicates resources.

At the Fraud Bureau, premium fraud is categorized three ways:

- Avoidance of experience modifications.
- Hiding payroll from insurance company auditors.
- Misclassification of job types that are in a particular company.

A recent case involving a steel erecting company offers a good example of experience modification avoidance. Each time experience modifications became too high, this steel erecting company reincorporated itself using a different name. It was the same company, it just had another identity. The company avoided paying many dollars in workers compensation premiums and, obviously, it had an advantage in the governmental bidding process against companies that are played by the rules.

A close look at the actual payroll for the three "different" steel erecting companies showed the company was getting bigger and bigger. Each time the company grew, it reincorporated and became a "new" company. The progress this particular company made during eight years was apparent.

Finally, the Bureau tracked a small group of individuals within the company and found that almost everyone in this group worked for the first company, moved to the second company, went to the third company and ended up back at the original company. They moved in succession at about the same time. Enough evidence was discovered to convict the company's president and risk manager. The company paid approximately $6 million in restitution and 36 months of federal jail time was required.

Hidden payroll is another major issue and it happens when a company masks its real payroll from insurance company auditors. In this example, the Bureau subpoenaed records from a local union to find out a company's real payroll. The company's actual audit records for three consecutive years showed a $2.5 million difference in payroll from the union records – the records shared with the union by the company for union reporting purposes. Again, the Fraud Bureau got a conviction.

Misclassifying jobs is a violation the Bureau sees all the time. A favorite example is one about a roofing company that tried to avoid workers compensation premium by classifying all of its employees as secretarial and clerical. Basically, there were no roofers in this roofing company! In fact, the insurance company's

payroll audit showed mostly clerical and very little sales personnel. When the Fraud Bureau got involved, it found few clerical personnel and many roofers. The hidden payroll in this particular case was about $500,000. The company's owner is now doing federal jail time.

Now that the Bureau has been active for five years, it is starting to see a major progression of convictions that have resulted from its work. To date, the Bureau has had 150 convictions. It takes about three years from when a referral is received to get a criminal conviction in Massachusetts. Its a time-consuming process – and it can be frustrating – but the payoff is very important. In addition, the number of people who are being indicted before Massachusetts grand juries continues to grow. To date, about 300 people have been indicted, so quite a few cases are still in the pipeline.

An interesting by-product involving the Internal Revenue Service (IRS) can result from getting a fraud conviction. If a person accepts a claim payment for a legitimate insurance claim, it is not taxable. If this same person accepts a claim payment for an illegitimate insurance claim, it is indeed taxable income. So when the Bureau gets a conviction for insurance fraud, it works closely with the IRS, whose agents visit monthly to review closed cases. In many cases, the IRS goes after parties who fraudulently took money but did not report it. So violaters risk tax evasion charges on top of insurance fraud penalties.

The Bureau takes the investigation process quite seriously. But close behind investigating is publicizing its efforts. Putting people in jail is one thing. Letting people know there is a group watching for fraudulent activity that is going to persevere and try to investigate as many cases as possible is another. The Bureau employs a publicity firm to publicize cases – both indictments and convictions – to the public and trade press.

As part of its publicity work, the Bureau developed a series of workplace ads that were made available to the state's employers. The campaign includes a "Free Jewelry for Workers' Comp Fraud" poster that features a pair of hands bound by handcuffs – the jewelry of workers compensation fraud. The poster asks persons knowing of fraudulent activity to report it by calling 800-32-FRAUD.

So what has the Fraud Bureau done for Massachusetts and its insurance rates? First, Massachusetts was not a good place to write workers compensation insurance for many years. Since 1991 things have improved remarkably. The loss ratio in 1994 and 1995 was down. Granted, this is not just because of the Fraud Bureau.

Workers compensation reform in 1991 featured several items which provided very healthy improvement for the system. These changes included involving workers compensation insurance carriers in funding the Fraud Bureau, including workers compensation in the Bureau's activities and putting workers compensation on the Bureau's board of directors.

Massachusetts has had three successive workers compensation rate reductions totaling one-third of premium. Everyone – the business community, politicians and regulators – is quite pleased. It is a win-win situation for all parties associated with workers compensation insurance in Massachusetts.