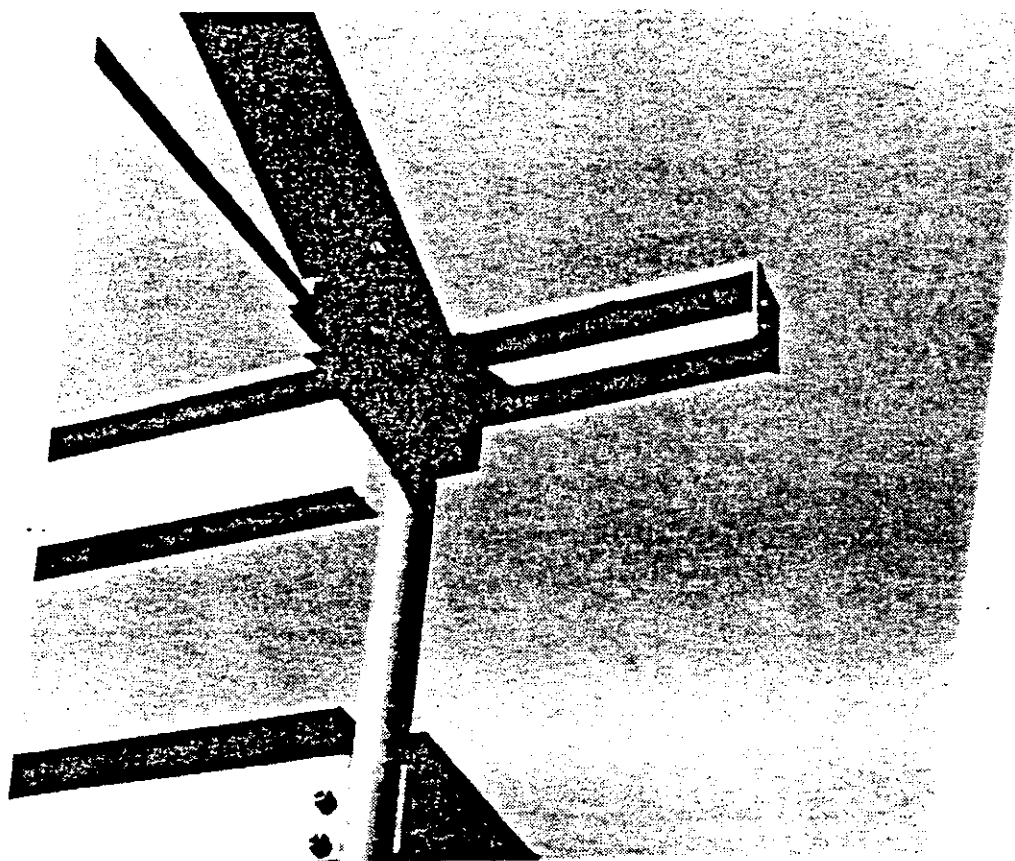


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A Study of Fraudulent Workers' Compensation Claims



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BCIAC Project Coordinators: Donald R. Dolan and Russel P. Smith

July 1, 1994

This research project was sponsored by the Building Construction Industry Advisory Committee under a grant from the State of Florida Department of Education. Additionally, matching funds were provided by Florida Home Builders Association, The Associated Business & Commerce SIF, The National Council on Compensation Insurance, The Associated General Contractors SIF, Florida Association of Self-Insurers, Florida Roofing, Sheet Metal & Air Conditioning Contractors Association, and Florida AFL-CIO.

**School of Building Construction
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1994

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EXECUTIVE SUMMARY

One of the single greatest areas of undeterminable costs in the construction industry has been the cost of workers' compensation insurance. The past five years have seen increases averaging over 30% per year in many states. Through recent legislation, the state of Florida has attempted to find ways to control these increases by enacting major changes in the statutes. In two of the past three years the governor and the legislature have commissioned special committees and "oversight boards" to study the problems creating these increases. The results of these efforts and the subsequent laws that were enacted have sent a strong message to industry, namely that committing workers' compensation fraud (WCF) will have severe consequences.

A number of factors have been reported to the legislature as causes for increases in workers' compensation premiums, including **poor management of claims** by both the insurance carrier and the construction contractors, **poor safety practices** in the industry, and **steadily rising medical costs**. The one factor that has no place in workers' compensation is WCF. The prevalence of **fraudulent claims** by employees was the focus of this study, but in many cases such claims are intertwined with fraud committed by employers, insurance agents, and professionals, including medical providers and lawyers.

The research in this report included surveys of insurance carriers, contractors and all fifty state insurance agencies in order to identify the extent of their involvement with WCF. The state involvement was very important because of the inter-state activity of WCF perpetrators.

Actual case studies of WCF are included in this report to better illustrate typical scenarios of how WCF is accomplished. These studies also point out examples of what needs to be avoided within the construction industry.

The results of this study indicate that concern for WCF is at a high level, but in many cases, the systems to effectively deal with the perpetrators of WCF are still not in place on the state agency, insurance carrier or contractor levels.

As state legislators, state agencies, insurance representatives and contractors develop strategies to combat WCF, they must incorporate methods to identify and prosecute perpetrators of fraud. Fraud is so widespread that state agencies, insurers, and private investigators hired by contractors cannot possibly police the entire construction industry. Instead, their role needs to be one of creating a synergistic approach to reducing WCF.

The new system must find ways to encourage those within the industry to report WCF. The battle can only be won with the help of those on the front lines, namely the employees, who ultimately get hurt worst by the backlash of WCF in the form of lower wages, reduced health benefits, questions of credibility, low morale, and layoffs. Incentives to report should be individually designed for:

- 1) **Fellow workers** to report employees who commit WCF,
- 2) **Employees of contractors and subcontractors** to report employers who commit WCF, and
- 3) **Employees of professionals** (attorneys, doctors) to report employers who commit WCF.

These incentives to report violators should be advertised by requiring employers to post such incentives at places of business (similar to Equal Employment Opportunity posters). These posters would also include a toll-free reporting hotline and a guarantee of source anonymity. Such action would do much to dispel the notion that WCF is acceptable, and would alert potential violators of the serious consequences of committing WCF.

The state of Florida has greatly increased its efforts in combatting WCF, and has established a new toll-free hotline as of June, 1994, for reporting WCF. The hotline number is 1-800 / 378-0445, and is available between 8:00 AM and 4:00 PM on weekdays.

As a whole, the construction industry needs to be a proactive unified force in combatting WCF. Labor and trade associations have a tremendous opportunity to work in a collaborative way to rid WCF from their industry.

The following recommendations, as taken from the comprehensive list in Chapter XI of this research, represent a few of the proactive steps that need to be taken in combatting workers' compensation fraud.

- * The requirements outlined in the legislation related to WCF must be disseminated with a proactive methodology. This dissemination needs to be actively accomplished through insurance carriers, to their insured.
- * Trade associations working with states' WCF agencies must increase their cooperation to allow for better industry communications. As indictments are handed down, trade associations must communicate these consequences to their members, who must in turn communicate with their employees.
- * There needs to be an effort to strengthen inter-state cooperation, and ideally the consistency of the WCF laws. The professional WCF claimant offenders need to be dealt with in a consistent enforcement format, regardless of the state in which they perpetrated the fraud.
- * The public perception and acceptance of WCF must change. This is an issue that will require a great deal of effort to educate employers and employees as to the consequences of participating in WCF. The penalties at this time appear harsh enough that if enforcement can be accomplished, the public will have a new standard to live by. The next step is to disseminate this information to the public.
- * Rewards need to be put in place to provide incentive for people to turn in WCF violations, including: ex-girl/boy friends, ex-spouses, coworkers or neighbors. Such persons have been very active in identifying fraudulent workers. This concept would be analogous to what the Internal Revenue Service (IRS) does for tax evasion. These rewards should be offered both at the governmental level and within individual companies.

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LIST OF TERMS

ABA	American Bar Association
ABC	Associated Builders and Contractors
ADA	Americans with Disabilities Act of 1990
AFL-CIO	American Federation of Labor - Congress of Industrial Organizations
AGC	Associated General Contractors of America
AIF	Associated Industries of Florida
AMA	American Medical Association
ASA	American Subcontractors' Association
ASSE	American Society of Safety Engineers
BNA	Bureau of National Affairs
BLS	Bureau of Labor Statistics
CCQ	Contractors' Company Questionnaire
CSLC	Center for Construction Safety and Loss Control at the University of Florida
DLES	Department of Labor and Employment Security
DOI	Department of Insurance
DOL	Department of Labor
DBPR	Department of Business and Professional Regulations

EMR or "Mod"	Experience Modification Rate
EEO	Equal Employment Opportunity
FHBA	Florida Home Builders Association
FRSA	Florida Roofing, Sheet Metal & Air Conditioning Contractors Association
ICQ	Insurance Company Questionnaire
IRS	Internal Revenue Service
MBE	Minority Business Enterprise
MILL	Business that repeatedly files WCF claims
MILLER	Owner or operator of a mill
NCCI	National Council on Compensation Insurance
NICB	National Insurance Crime Bureau
SFUQ	State Fraud Units' Questionnaire
SIF	Self Insurance Funds
SIIS	State Industrial Insurance System
SIU	Special Investigative Unit
UF	University of Florida
WC	Workers' Compensation
WCF	Workers' Compensation Fraud
WCFB	Workers' Compensation Fraud Bureau

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CHAPTER I

INTRODUCTION

1.1 Overview

The research contained in this report has involved a broad reaching study on workers' compensation fraud (WCF) as it relates to the employees and employers in the construction industry, as well as the insurers, physicians and attorneys that serve the construction industry, all of whom interact within the scope of WCF.

Topics of discussion include indications of potentially fraudulent claims, schemes utilized by WCF perpetrators, state government and insurer actions against fraud, contractors' involvement with WCF and recent developments in the Florida Workers' Compensation Law. Some of these issues have been bifurcated and reviewed as individual topics and then analyzed regarding their effect on claimant fraud.

Legislation that Florida has recently enacted provides a basis from which other state WCF agencies can model their programs, but legislation is only one step in the process that will reduce WCF. Compiled results of questionnaires completed during this research have been provided, as well as a comprehensive set of recommendations that require affirmative action to reduce employee claimant WCF. These recommendations are listed in Chapter XI.

1.2 Research Objective

The purpose of this study was to investigate the reported problem of fraudulent workers' compensation claims by employees in the construction industry. This report identifies the extent of such claims and delves into how WCF is being addressed within the construction industry by state agencies, insurance companies, and contractors. Surveys from the industry were designed to indicate the types of claims filed, and the outcome of investigations on reported claims. Efforts towards early WCF identification and mitigation will be discussed, as well as the effects of WCF within the construction industry.

1.3 Benefits of the Study

The benefits of this study will include making those in the construction industry aware of the quantity and complexity of fraudulent claims that are reported, and to provide an impetus for continued efforts towards seeking new ways to mitigate the impact of these claims on the cost of workers' compensation insurance.

Studies have shown that one-third of Florida's residents feel that insurance fraud is acceptable (U.F., 1991). This image needs to change through the enactment of laws, through aggressive enforcement, and through the dissemination of information as contained in this report. These combined efforts are necessary to dispel the belief that WCF is an acceptable practice.

Through this report, contractors will be able to identify characteristics of fraudulent activities by employees and hopefully will

learn how to deal with WCF in the early stages. Although employee benefits as covered under workers' compensation laws serve a good purpose when used correctly, abuse of benefits severely retards the effectiveness of an already burdened system. This report is intended to help reduce WCF, through an education process for contractors and their employees.

1.4 Methodology

The methodology used in this report started with a literature search into the history of workers' compensation and the creation of the first WCF units. The intent of gathering this information was to have an understanding of what workers' compensation originally was, and how the system has been plagued with schemes that incorporate fraudulent activity.

To obtain current information regarding WCF, it was determined that multiple surveys would be necessary. These surveys included those who were:

1. Experiencing WCF (contractors),
2. Providing the WC insurance, (insurance companies, who are targets for the employees who commit the fraud), and
3. Enforcing WCF (state prosecutors and WCF agencies).

After the literature search and the preliminary interview process were completed, surveys were conducted with the following entities:

1. Contractors, who were experiencing WCF;
2. Insurance companies, who were paying for WCF; and
3. State insurance fraud units, who were charged with the enforcement of laws prohibiting WCF.

To obtain the survey information, a combination of written questionnaires and also telephone interviews were necessary. The telephone interviews focused on obtaining information from those who were reluctant to provide written information, and in some cases those who were offering additional information, to include case studies.

The remaining part of the report was intended to:

1. Describe the results of the survey,
2. Analyze the results in a descriptive method,
3. Discuss how WCF is presently being committed,
4. Review and analyze how WCF is being dealt with at the present time,
and
5. Provide recommendations for future mitigation and elimination of WCF.

1.5 Background on WCF

There is a need in the industry to understand the serious consequences of fraud within the workers' compensation system. The four most common types of fraud are **claimant fraud**, **employer fraud**, **professional fraud**, and **agent fraud**.

1.5.1 Claimant Fraud

In claimant fraud an employee may receive wage replacement benefits under false pretenses. The malingering claimant is one of the most visible types of workers' compensation fraud (NICB, 1993). Medical practitioners can be paid for excessive or even nonexistent treatments, and attorneys can also be involved in scams, wherein they are well paid for their efforts in showing an employee how to develop a fraudulent claim.

To prove claimant fraud it is necessary to catch the employee in the act, but this alone may not be sufficient. In order to prosecute, the intent to defraud must be proved (NICB, 1993). To this end, insurance companies have used surveillance cameras to record claimants who have been receiving compensation benefits for injuries that, if valid, would prevent them from performing such videotaped activity at their place of work. See the introduction to Chapter IV for more details regarding prosecution of claimant fraud.

Claimant fraud is more fully discussed in Chapters IV and V of this research. Although the claimant may be fully responsible for the fraud, this type of fraud often involves ignorance on the part of the

claimant. In such cases, the claimant is in essence "recruited" by the attorney or medical practitioner.

1.5.2 Employer Fraud

Employer fraud is perpetrated by contractors who desire to manipulate the system for their personal gain. This fraud is discussed in more detail in Appendix C, section C.1. Employer premium fraud occurs when employers misrepresent their operations in order to obtain lower rate classifications, defrauding insurers of proper premium. This occurs in at least five ways:

- 1) By misclassifying work done in a high risk, high rate category of work to a lower risk, lower rate category (i.e., concrete form work to painting), contractors reduce their premiums.

Note: This has become an especially difficult problem for state investigators in the case of labor pools which manage payroll for multiple contractors and/or other businesses and lease employees back to the contractors. The difficulty lies in the fact that all employees are combined in the labor pool's records, and auditing for classifications of any given contractor's employees quickly becomes a burdensome task for a team of investigators, if it is even possible to sort out the proper classifications from the labor pool's records.

- 2) By deliberately understating their total payroll, some employers cause insurance companies to be unaware of their liability and thus are charged lower premiums.
- 3) In some disciplines within the construction industry, cash is paid to workers, creating an employee *and* employer fraud situation (see Chapter V, section 5.5 for further discussion).
- 4) Misrepresenting the location of a business in order to take advantage of lower rates in another state can significantly, but illegally, reduce premium costs.
- 5) By claiming that many of their workers are independent contractors, contractors can elude workers' compensation premiums for these individuals. This type of fraud is also known as 1099 fraud, referring to the 1099 IRS form required for self-employed individuals.

The Florida Legislature created the Bureau of Workers' Compensation Fraud within the Department of Insurance's Division of Insurance Fraud in 1990 for the sole purpose of fighting workers' compensation fraud. But the anti-fraud battle cannot be left only to state agencies, insurance companies and private investigators hired by contractors.

Since workers' compensation is so involved it is easy for contractors to let someone else deal with the problems of WCF, but contractors that are running their businesses according to the laws are eventually the losers when WCF goes unchecked. As with any legislation, the new laws enacted in Florida that relate to WCF will only be as effective as the enforcement system that polices the new laws.

1.5.3 Professional Fraud

Professional fraud is perpetrated by unscrupulous medical providers and attorneys. These activities are further discussed in Appendix C, section C.4.

Medical provider fraud includes such things as psychiatric or laboratory testing, therapy or other medical procedures that are not necessary for diagnosis or treatment of an injury. In some cases there is a mill operation, wherein the medical group works in cooperation to defraud employers and their insurance companies.

Attorney fraud occurs when a lawyer encourages an employee claimant to make money from an injury, whether the injury itself is valid or phony. Enticing the claimant with promises of a large settlement from the insurance carrier, an unscrupulous attorney abuses the legal system to harass both the employer and the insurer, seeking to obtain an out of court settlement. Personal injury lawyers normally accept workers' compensation cases on a contingent-fee basis. If fraud is intended, the quickest way to make large profits is to have a high case volume with pre-litigation settlements, and with a substantial percentage of the settlement awarded to the attorney.

These profits often elude the claimant, however, due to costly legal expenses and medical bills. When this type of fraud is carried out, some lawyers blatantly con their clients, even forging the claimant's signature on the insurance company's settlement check and pocketing the entire amount. Guilty of conspiracy and fraud themselves, such claimants are reluctant to report the attorney and have no effective means of recourse.

1.5.4 Agent Fraud

Unscrupulous insurance agents have their own methods of committing workers' compensation fraud. Two schemes are conning clients out of premiums and conspiring with clients to reduce premiums. Agent fraud is discussed in detail in Appendix C, section C.2.

1.6 Objectives of Workers' Compensation

Six basic objectives underlie workers' compensation laws:

- 1) Provide a timely and reliable source of medical and income benefits to injured employees and/or their dependents, regardless of fault;
- 2) Separate work-related injuries from court delays and legal costs often associated with personal injury litigation by providing a single, specialized system;
- 3) Relieve both public and private charities of financial drains resulting from uncompensated industrial accidents;
- 4) Eliminate lawyer fees, witness fees, and time consuming trials and appeals;
- 5) Encourage employer involvement in safety and worker rehabilitation through the use of the experience modification rating (EMR); and
- 6) Promote research in to the causes of accidents in order to reduce preventable accidents and human suffering.

The success of these original objectives was evaluated in 1972 by the National Commission on State Workmen's Compensation Laws. The

Commission concluded that state laws were not living up to their potential, and they proceed to develop 84 recommendations for improvement, 19 of which were deemed "essential."

The constructive criticism of the Commission helped pave the way for development of new workers' compensation laws, which have become more stable within the United States social insurance system (U.S. Chamber of Commerce, 1993).

1.7 Workers' Compensation Benefits

Workers' compensation benefits are designed to cover the economic loss of an injured employee. This includes both loss of earnings and expenses resulting from the injury. Benefits come in three basic forms, namely:

- 1) **Cash Benefits** - Include both *impairment* benefits (cover certain specific physical and disability benefits) and *disability* benefits (available whenever there is an impairment and a wage loss).
- 2) **Medical Benefits** - Normally provided without limits on dollar amount or time.
- 3) **Rehabilitation Benefits** - Include both medical and vocational rehabilitation (U.S. Chamber of Commerce, 1993).

The intent of the workers' compensation benefits was to provide workers with a fair settlement and thus avoid the litigation process. Although the concept was good for both employees and employers, the present day functioning of the benefit system is under considerable inquiry, and it calls for change.

Conformity of benefits varies from one state to another. In some cases this variation is justified because of the different exposures from one state to another. Until fraud is purged from the benefit system, however, the benefits cannot be correctly evaluated.

CHAPTER II

HISTORICAL OVERVIEW OF WCF

2.1 Background on Workers' Compensation

Workers' compensation (WC) originated in the nineteenth century. German Chancellor Otto Von Bismarck created the first workers' compensation law in 1846. In the United States, however, the first workers' compensation law was not passed until 1911. The program then spread throughout the country. With workers' compensation, however, came those who abuse the system, and that is why WCF has become such a major concern in this country.

2.2 Development of Florida's WCF Bureau

In 1976, Florida's Division of Insurance Fraud was formed under the Department of Insurance with the enactment of F.S. 626.989. The Legislature increased the Division's investigative authority and gave investigators the power to make arrests in 1977, after which time the Division has investigated both outsider (claim) fraud and insider (licensee) fraud (Florida DOI, 1994).

The key provisions of F.S. 626.989 are as follows:

- 1) Suspected insurance fraud must be presented to the Division by the insurance company involved.
- 2) Information of possible fraud can be reported to the Division.
- 3) Protection from civil liability for libel, slander or other relevant torts is provided to anyone reporting possible fraud to the Division.
- 4) In the case of adjudication of guilt, companies are entitled to recovery of compensatory damages including attorney fees and litigation costs.

Activities of the Division of Insurance Fraud helped create procedures and methods of operation that would be emulated in developing the Bureau of WCF. In the first five years, this division focused on automobile insurance fraud, and its operation led to forty-two such convictions. Not limited only to auto-fraud, they later expanded to other forms of fraud. Through the efforts of this fraud division, a model legislation was developed, and insurance fraud included the following offenses:

1. The intent to injure, defraud, or deceive any insurance company by presenting or causing to be presented any false, incomplete or misleading information on certain documents.
2. Assisting, abetting, soliciting, or conspiring with another to or make any written or oral statement that is intended to be presented to any insurance company or in connection with or in support of any claim for payment or other benefit pursuant to an insurance policy, when it is

known that such a statement contains false, incomplete, or misleading information concerning any fact or item material to such a claim.

Florida's WCF Bureau was later formed within the Division of Insurance Fraud in 1990. It now has 30 full-time employees, including 21 sworn investigative personnel located in eight regional offices throughout Florida (see Chapter IX, section 9.1, subsection 440.1051 for the regional office locations and phone numbers). The Bureau was created for the purpose of enforcing the provisions of the workers' compensation law.

2.3 Operations of Florida's WCF Agencies

Although WCF in Florida is handled by the Bureau of Workers' Compensation Fraud, the Department of Labor and Employment Security (DLES) monitors employers to see that they have workers' compensation insurance.

2.3.1 Bureau of Workers' Compensation Fraud

Florida's Bureau of Workers' Compensation Fraud is responsible for carrying out the actual criminal investigation of WCF cases. They receive information through various informants, such as co-workers, ex-spouses, neighbors, insurance companies and their employees, third party administrators, labor unions, and governmental risk management agencies. At the time of this report, there are 21 investigators employed within this bureau; a three-fold increase within the past four years. The investigators are dispersed among eight regional offices in the state.

Once a fraud report or complaint is filed, the bureau proceeds with a thorough investigation to validate the authenticity of the complaint. After sufficient evidence is gathered, the case is sent either to the local district attorney or to the state-wide prosecutor for possible prosecution.

2.3.2 Department of Labor and Employment Security (DLES)

The DLES has a Bureau of Compliance in their Division of Workers' Compensation. This area only verifies that all employers have valid WC coverage. They do not verify whether or not the employer has reported the proper payroll to the carrier. Every company sends a copy of their certificate of insurance to the DLES.

CHAPTER III

THE SCOPE OF WCF

The scope of workers' compensation fraud is far reaching, which makes prosecution of offenders a difficult task. To begin the investigative process, determining the parameters and complexities of the claim is primary to quantifying the WCF.

The next step is to see if the injury would fall into a category that is a typical method of operation for experienced employee claimants. This type of injury includes injuries where precise diagnosis is difficult, such as back injuries, the most common WCF injury. In such cases, x-rays are used to document the claim, but they often cannot validate the reported time of the injury, thus leading to previous injuries being claimed as new.

Investigations often detail the extent of the WCF. These investigations can come from the insurance adjustors, private detectives hired by the contractors, or the in-house Special Investigative Units (SIU's) of the insurance companies. Another step in some states is the investigation by the state WCF unit. In some states, both civil and criminal penalties are in place for perpetrators of WCF, depending on the particular offense.

3.1 The Extent of Claims Reporting

The reporting of claims and the subsequent investigation are crucial to the success of prosecuting WCF abusers. Both civil and criminal remedies are available for prosecution of WCF.

3.1.1 When Does the Accident Occur?

When the alleged accident *occurs* can indicate fraud.

Accidents that occur at:

1. lunch time,
2. the start of work on Monday mornings, or at
3. the end of work on Friday afternoons

should alert investigators to the possibility of fraud.

3.1.2 Who Witnessed the Accident?

Good accident reporting procedures will require obtaining statements from the witnesses of the accident. At a minimum, this information will include questions regarding:

1. The witness's physical location in relationship to the accident,
2. Details of what happened, and
3. The witness's relationship with the injured party.

3.1.3 When Was the Accident Reported?

When the accident was *reported* may lead to the need for further investigation in relation to a possible off-the-job injury.

3.1.4 How Detailed are the Circumstances of the Accident?

The details of the accident need close examination and must stand up to thorough inquiry. The case study in Appendix E is an example of a situation where independent interviews by experienced investigators may lead to fraud identification.

3.1.5 How Does the Accident Compare with Past Medical History of the Claimant?

The pre-employment questionnaire should be compared with the circumstances surrounding the accident in question. This is an area where further investigation, beyond the questionnaire and into the employee's past medical history, may be appropriate.

3.2 Injuries, Fraud and Second Injuries

Injuries need to be compensated for as the applicable laws provide. Fraud needs to be identified and purged from the system, and second injuries need to be clearly delineated so they can be paid for through the "Special Disability Trust Fund" (see subsection 3.2.4).

3.2.1 Overview of Injuries

Unfortunately, injuries are common in the construction industry. Safety must be a top priority, and safety programs should strive for the goal of zero injuries. When injuries do occur, however, the fraud associated with these injuries must be eliminated. On a broad level, injuries are classified according to their effect on employees' ability to work. In classifying injuries, four categories of disability are used:

- 1) **Temporary Total Disability** - Disables employee from performing any gainful employment for a limited period of time.
- 2) **Permanent Total Disability** - Disables employee from performing any gainful employment for life.
- 3) **Temporary Partial Disability** - Disables employee from performing their normal job for a limited period of time, but does not prevent light duty work.
- 4) **Permanent Partial Disability** - Disables employee from performing their normal job for life, but does not prevent performance of other gainful employment (U.S. Chamber of Commerce, 1993).

Soft tissue injuries and skeletal injuries are often the most problematic injury claims. Another difficult claim comes from an employee who has been previously injured. The second injury fund is a vital part of not increasing a contractor's WC premium rate.

3.2.2 Soft Tissue Injuries

This type of injury often involves the back and is very hard to confirm, except by physicians specifically trained in identifying this type of fraud. These physicians have claimants do a series of tests designed to identify the fraudulent "injuries."

Soft tissue claims often include traumatic symptoms such as headaches or pain in various parts of the body.

Section 440.02(33) of the law defines "soft tissue injury" as one that specifically damages the soft tissues, as medically defined, rather than an injury that damages the skeletal tissues or soft organs.

3.2.3 Skeletal Injuries

These injuries are sometimes hard to detect. Even x-rays do not always show the definition necessary to decide if the injury is pre-existing or new. In this case a second, well-qualified medical opinion may save the payment of extensive WC benefits.

3.2.4 Second Injuries

Recurrent injuries, such as back injuries, have been very costly to the construction industry. Under workers' compensation, injuries are to be compensated for through the place of employment at which the injury occurred, but some injuries are paid for with the help of the state government. Florida has a second injury fund, entitled the "Special

Disability Trust Fund" that provides compensation for people that have a recurring injury (US Chamber, 1993). Without a second injury fund, the experience modification rating (EMR) for an individual contractor would be severely raised by an extensive lost-time injury.

Before the "Special Disability Trust Fund" was established, a contractor was fully responsible for an employee's claims, whether or not the severity of injury was due to a prior injury. Through this fund, however, a contractor will not be unduly impacted by hiring a previously injured worker. If a new injury is complicated by a prior injury, compensation is provided in part through this second injury fund.

3.3 Investigations of WCF

3.3.1 Insurance Company Investigations

Insurance companies often assist the state WCF agencies in investigating claims against fraudulent WC claimants. By the use of Special Investigative Units (SIU's), the insurance companies indicate a high success in this regard. When an insurance company suspects fraud, it should contact the appropriate fraud bureau of its state and provide the bureau with the following:

- 1) Letter explaining the situation.
- 2) Copies of documents verifying WC coverage for the employee in question.
- 3) Documentation that the claim was actually submitted.
- 4) Documentation supporting the belief that the claim may be fraudulent (Florida DOI, 1994).

3.3.2 Contractor Investigations

Any Florida contractor suspecting workers' compensation fraud should call or write the WCF Bureau. As listed in Chapter IX, section 9.1, statute 440.1051, Florida's new WC legislation established a provision for a toll-free fraud reporting hotline so the bureau can take investigative action. This new line will be available at the end of June, 1994.

Many contractors have taken investigations into their own hands, however. These investigations are on the increase with many contractors hiring private investigators. Their motivation is often to avoid increases in their EMR, or, in some instances, to stop a specific case that has caught their attention. See Chapter VIII, section 8.1 for results of the contractor surveys and further discussion of contractors' use of private investigators.

3.3.3 State WCF Agency Investigations

Once the state WCF agency is aware that a possible WCF situation exists, they make a decision whether to investigate. These are variables that differ from state to state, but they often include:

- 1) Likelihood of prosecution,
- 2) Availability of staff for investigation, and
- 3) Previous success of claimant investigation prosecution.

In Florida, the state agency investigation process involves:

- 1) Case Screening,
- 2) Case Referral,
- 3) Confidentiality of Records, and
- 4) Criminal Investigative Procedures.

Once a case is referred to the Fraud Bureau, a supervisor conducts a **case screening** to determine if enough evidence exists to merit prosecution by a state or U.S. attorney. Although cases with high dollar amounts or multiple victims are given higher priority, all cases with enough evidence of WCF to be opened are aggressively pursued by the Fraud Bureau.

Upon reviewing the case, if the Bureau determines that the act involved does violate the Insurance Code but is not criminal, it will perform a **case referral**, referring the case to the appropriate compliance section within the Department of Insurance for possible administrative action such as fines, and suspension or revoking of licenses.

Confidentiality of records must be observed when criminal investigations are pending in order to protect the reputation of the subject, ensure the safety of witnesses, and prevent interference of the investigation. Any leakage of information about pending criminal investigations constitutes an "obstruction of justice," punishable under criminal law. Any law enforcement agency releasing criminal history information obtained from the law enforcement computer network may permanently lose access to the network.

Criminal investigative procedures must be followed by the Fraud Bureau. The Bureau cannot invoke the regulatory powers of the Department of Insurance during their investigation. For instance, the regulatory divisions of the Department can inspect a licensee's books and records without a criminal subpoena or a search warrant, but the Fraud Bureau cannot. After investigative procedures such as gathering documentation, taking sworn testimony, and conducting surveillance are completed, written summary reports are presented to the state or U.S. attorney or other appropriate prosecuting entity, such as the state-wide prosecutor or attorney general.

CHAPTER IV

INDICATIONS OF POTENTIALLY FRAUDULENT CLAIMS

Employee claimant fraud often has some identifiable similarities, including the following general areas:

- 1) **Past workers' compensation history** of the claimant.
- 2) **Time of the accident**, both the hour of the day, the day of the week, and the time of the year.
- 3) **Job characteristics**, including length of the job, type of work performed, supervision and weather conditions.
- 4) **Stress at home**, which has varying complexities, but which can seriously affect the performance of the worker.
- 5) **Circumstances** surrounding the accident, including witnesses and unusual working conditions.

There are some accepted standards that the insurance industry uses to determine if a claim can be successfully prosecuted. These include:

- 1) **Intent to Defraud** - claimant deliberate deceived the insurer,
- 2) **Knowledge** - claimant knowingly committed the fraud,
- 3) **Misrepresentation** - claimant created or reinforced fraud,
- 4) **Reliance** - misrepresentation caused insurer to pay the claim
- 5) **Benefit** - claimant obtained a benefit from fraud (NICB, 1993).

4.1 Job Coming to an End

In the construction industry, many employment durations are only for the length of the project. This situation is typical of contractors performing work in an area that is out of their normal sphere of operations. An example of this type would be a North Carolina contractor following a hospital owner to Florida to build a single medical facility.

It will be clear when this type of employment is coming to an end. Thus, employees intending to commit this type of fraud will schedule their fake accident to coincide with this termination time, or just prior to their notice of termination.

The way this type of fraudulent act occurs is discussed in Chapters III, IV and V of this text, in sections 3.2, 4.1 and 5.1, respectively.

4.1.1 Long Time Friends

When construction projects come to an end, the means of family support may also diminish for some workers. Friends lying to validate a fraudulent accident, thereby helping to provide a source of income for a laid off worker, is not uncommon in this situation. In many cases, the friends do not even believe they have committed a wrongful act.

4.1.2 Relatives

Nepotism is an area that some companies discourage from the start, thus requiring that relatives are not hired, at least within the same working division. The potential fraud may occur when a supervisor relative fills out a fraudulent claim to further provide for the claimant relative.

4.1.3 New Phase Superintendent

Construction projects are often accomplished in phases, including site work, foundation, dry-in, finishes and owner indoctrination. The end of certain phases may also result in job termination and new superintendents or foremen for the next phase. In turn, this may lead to fraudulent claim attempts.

4.1.4 Supervision Reputation

In the case of tough supervision, employees may not be able to cope with the excessive workload. In past years, such employees were fired and eventually found their way out of the construction industry. Today, however, tough supervision is a good excuse in the claimant's mind to make a WC claim. These same supervisors are also often so production oriented that they do not follow up with these employees when a claim is filed so the employee is not encouraged to come back to work.

4.2 Seasonal Changes

WCF claims are prevalent where seasonal changes are more drastic than in Florida. In one respect, Florida has become a haven to escape the cold winters of the northern states. Outside construction work during the summers in Florida, however, is uncomfortable because of the heat and high humidity, which may cause potential claimants to respond with WCF.

A related factor is that in some cases, Florida WC claims pay more than their northern counterparts for the same injury or illness. This data is also supported by an OSHA study that found that "the greatest injury rates occur during the period of June to October" (USDOL, 1992).

4.3 Stress at Home

Stress at home involves a large group of potential situations including:

1. **Marital Problems** - include lack of time together, separation, divorce, or the transient nature of many construction work forces.
2. **Financial Difficulties** - could occur when a second income is necessary to meet family obligations; typical in the construction industry because of the underwork cycles prevalent in the construction industry.

3. **Child-Parent Problems** - include school, drug or other child development problems; the desire to spend more time with a child may be incentive to stay home from work, leading to a fraudulent extension of benefits.
4. **Health Concern of Family Member** - could be either caring for a family member or earning extra income to support the medical needs that have depleted current resources.

4.4 Change of Supervision

The supervision for the construction of a project can be the inspiration or the death of the job culture, which in turn may have a direct effect on employee job satisfaction. Changing supervisors will often have a negative impact on this job culture, and in turn deflate worker morale. The workers relate to the supervision in multiple ways that are readily identifiable, but employee contentment is one of the criteria identified in this research that relates to some employees' involvement in WCF. Some of the areas that supervisors directly affect are as follows:

- 1) Job Safety
- 2) Worker Concerns
- 3) Environmental Control (where applicable)
- 4) Start and Stop Times
- 5) Travel Time (where applicable)
- 6) Productivity Schedule
- 7) Break Times

- 8) Lunch Breaks
- 9) Incentives for Extra Work
- 10) Praise for Work Well Done

4.5 Change of Work Conditions

The following situations illustrate change of work conditions that may induce WCF:

- 1) Splitting up of an existing crew, putting the claimant in a position where he/she cannot perform effectively.
- 2) Revising job benefits such as break times, food wagon service, or travel times.
- 3) Increasing production requirements to a level that requires a significantly faster pace or extended overtime.
- 4) Increasing physical requirements on the job.
- 5) Increasing safety requirements and/or quality standards.

4.5.1 Outside vs Inside Work

Statistics show that the majority of serious injuries occur while performing outside work, as opposed to inside work. "During site preparation and excavation, laborers and equipment operators together

experience 60% of the lost time injuries" (USDOL, 1992). One contributing factor is the prevalence of heavy equipment use for outdoor work.

4.5.2 "New Trade" Work

Cross-training that would require employees to perform undesirable work may lead to fraudulent WC claims. One example would be using carpenters to lay pipe.

4.5.3 Loss of Prestige in Work Force

If a worker is demoted to a lesser position, job satisfaction tends to decrease and WCF tends to increase. In the hierarchy of needs, job satisfaction is critical to self image. If a worker loses position or prestige in the workplace, absenteeism and the probability of WCF may increase.

4.6 Time of Accident

The time when an accident occurs is a key indicator of potential WCF. It should be pointed out that the time of an accident in and of itself does not implicate an employee with WCF, but an accident occurring at a suspicious time does draw attention for a more careful analysis of a workers' compensation claim. The following times are typical of those that are used by WCF offenders.

4.6.1 Probationary Period

Many companies are using probationary periods to evaluate employee performance. Employees who either do not perform in a satisfactory manner or from the start plan to commit WCF use this probationary period as an opportunity to obtain workers' compensation rewards. This period of time, which is usually 90 days, has been reported to be a high accident period. "Workers experience a higher percentage of accidents during the first few months on a particular job site regardless of age" (USDOL, 1992).

4.6.2 Labor Strike

In times of labor conflicts, workers will usually be without income for some uncertain period of time. Workers compensation may be the only means of support for their family. Since the labor strike times are predictable, accidents can be planned to occur just prior to a strike.

4.6.3 Start or End of Work

The start of the work day is a prime time for claimants who have been hurt away from work to report that they were hurt on the jobsite. In some cases these injuries are so severe that the employees are not able to perform their jobs. Some companies require that all workers meet at one place for stretching exercises before work begins. Besides helping employees to warm up safely before they start to work, such a program helps identify any employee who may have arrived at work with an existing injury. This practice is standard operating procedure in

many European and Asian countries.

Fraudulent accidents occurring at the end of the work day often focus on obtaining the maximum pay prior to a time-off situation, such as a labor strike.

4.6.4 Day of Week

Monday morning or the first day of the work week is a prime time for injuries that occurred over the weekend to be reported as jobsite accidents. The greatest number of injuries occur on Monday and the fewest on Friday (USDOL, 1992). Case Study 1 in Appendix E is typical of this type of fraud.

The climate in the area of work will play a role in this respect, but OSHA has found that "the highest injury rates occur during the period of June through October" (USDOL, 1992).

4.7 Worker History

This background, whether it comes from pre-employment applications or insurance industry sources, is a basic tool in identifying possible WCF.

4.7.1 Medical History

Medical history needs to be reviewed and evaluated to see if the situation at hand is either a *second*, or *recurring injury* (see Chapter III, section 3.2.1) or if it is a *fraudulent injury* (see Chapters III, IV and V, sections 3.2, 4.1 and 5.1).

4.7.2 Workers' Compensation History

Analyzing an employee's workers' compensation history may lead investigators to a pattern of WC claims. Professional claimants are most likely have a *modus operandi* by which they perpetrate WCF, and detailed records of claims history can facilitate the detection of professional fraud.

4.7.3 Job Performance History

Job performance history is an area that needs to be reviewed for both quality and quantity. Either of these can be indicative of job longevity.

4.7.4 Absenteeism History

Absenteeism is an indicator that may be a symptom of a poor work ethic, which in turn may indicate a desire to seek undue enrichment, such as benefits from fraudulent workers' compensation claims. Absenteeism and fraud are not always synonymous, but when absenteeism is a regular activity management needs to investigate the circumstances.

4.7.5 Age of Worker

The age of a worker has been shown to be directly correlated with the incident rate. Workers 25 to 34 years of age experience the highest percentage of accidents (USDOL, 1992). The data for this study was accumulated from 1984 to 1988. OSHA has now targeted this age group of employees as workers that may need additional safety training.

Fraud is an issue that may also contribute to the high percentage of accidents within this age group, but at this point in time studies have not been conducted to investigate the role fraud might play in such results. As suggested in Chapter XI of this research, recommendation No. 32, this factor should be investigated.

CHAPTER V

SCHEMES UTILIZED

The schemes utilized by WCF employee claimants fall into some basic categories, or combinations of these categories, including 1) fraudulent accidents, wherein the accident either did not occur or some aspect of the accident was misrepresented, 2) collusion with unscrupulous professionals, in which case primarily lawyers and doctors take advantage of the WC system for personal gain, 3) extension of benefits beyond their statutorily indicated time period, 4) claiming independent contractor status, wherein WC is avoided by employers (also known as "1099 Fraud," referring to the 1099 IRS form that is required to be filled out by self-employed individuals), and 5) cash payments, where WC is totally avoided.

Although the schemes utilized by WCF claimants vary in their magnitude and complexity, they tend to follow one or more of the scenarios listed above. Scheme identification is the first step towards scheme elimination. In some cases the schemes may be a combination of more than one of the schemes listed in section 5.1 on the following page. In these cases there is also often collusion whereby there are secondary parties who wrongfully collaborate or encourage claimant WCF.

5.1 Fraudulent Accidents

In general, fraudulent WC claims occur in the construction industry when:

1. A person does not have the accident for which they have filed a claim.
2. The complexity of the accident is exaggerated or misrepresented.
3. A person self-inflicts the accident so as to collect WC benefits.
4. A claimant files an old injury, using an X-ray that shows an unidentifiable past injury, to make a new claim.
5. An injury occurs outside the employer's responsibility for coverage and a claim is made under the coverage of the employer.
6. An employee conspires with a doctor to extend the coverage beyond the need for care.

5.2 Collusion with Unscrupulous Professionals

Some professionals, including physicians, chiropractors and attorneys have been involved in WCF to various degrees. Their involvement includes assisting claimants in formulating and filing falsified claims (UF Insurance Survey, 1994).

5.2.1 Motivations for Collusion

Some fundamental reasons motivate collusion, including:

1. The professionals are tempted by the apparent availability of such claim money, which carries with it the low risk of prosecution. The professionals accomplish this fraud in a variety of ways, but the common denominator is that the employee, whether knowledgeable or ignorant of the situation, is a participant. In some cases professionals, particularly those in the medical profession, have set up what is known as a mill. This term is used for a business which repetitively creates charges that are in excess of what should have been charged, by filing fraudulent claims (NICB, 1993).

2. The claimants are motivated by paid time off from work, which is compensated for by workers' compensation insurance. In some states this compensation allows the claimant to make more money than if he/she were actually working.

5.2.2 Use of Cappers

Cappers, or runners, are people who have been hired by professionals to develop the professionals' business. They often will go to unemployment lines or even to job sites and solicit clients for doctors or lawyers or both, encouraging them to see the professionals regarding workers' compensation claims. Although these recruiters may or may not suggest fraud, WCF schemes are often a by-product of such activity. Cappers are paid either a flat fee per referral or as a percentage of any final settlement (WCF, 1994).

5.3 Fraudulent Extension of Benefits

A fraudulent extension of benefits occurs when claimants, with or without the aid of professionals, do not go back to work when the effects of the accident have subsided. This occurs for a variety of reasons, but has been documented by contractors and insurance companies who have installed measures to counter this type of trend.

Fraudulent extension of benefits is a process that benefits professionals and claimants alike. The professionals benefit by the extended billable time for their services, and the claimants receive compensation benefits without working. The claimants may not actually benefit as much as one would think, however, since employees that are off work for too long often develop a fear of competition back at the work place.

5.3.1 Health Problem Not Related to Injury

This situation occurs when a claimant has an injury on the job, but complains and seeks compensation for a previous or other injury that is not job-related. Experienced investigative reviewers would look at the amount of time an injury should have taken to heal versus the actual time out of work. When there is an unbalance in this regard, the validity of the original claim should be reviewed.

5.3.2 Worker Refuses to Return to Work

Workers that do not come back to work after the time the injury has healed are committing fraud by taking benefits when they no longer

meet the requirements for receiving these benefits. Contractors surveyed in this research reported that this situation is a major problem within the construction industry.

According to construction industry surveys conducted during this research, many companies have modified work programs, which enable employees to perform less strenuous tasks while recovering from an injury. In addition, these companies often make the direct supervisor of injured workers responsible for encouraging them to come back to work. These same companies train supervisors in fraud identification.

The claimants may not be the only wrongdoers in refusing to come back to work, as it is sometimes encouraged by unscrupulous professionals. The incentives of the professionals to commit this fraud is extended profit taking, in the form of unnecessary office visits or buyout settlements with the insurance company involved.

In some cases, the claimants commit the fraud since they have developed a fear of returning to work due to diminished skills or physical fitness. These cases are not atypical, and in many cases these employees do not see the error in their ways. Again, this is an area in which their immediate supervisors can positively influence them and encourage them to return to work, ideally in a modified work program (Coble, 1992). Such return-to-work programs will communicate to the claimant that management will not reward chronic illness behavior (Gice, 1988).

5.3.3 Changing Medical Diagnoses

When medical diagnoses change, they usually change from diagnosable physical conditions to unverifiable physical or mental conditions. It has been recorded in this and other research that this often occurs when unscrupulous professionals become involved with the claimant (NICB, 1994).

5.4 Claiming Independent Contractor Status

This type of fraud benefits the employer more than the employee, because the employer pays no workers' compensation insurance premiums. The employee benefits in that if he does not pay his own taxes, he will be unduly enriched. On the employee's part, this type of fraud often occurs because of *ignorance* more than a *willful intent* to commit fraud.

The new Florida Workers' Compensation Law, however, specifies criteria that a contractor must meet in order to claim independent contractor status. See Chapter IX, section 9.1, subsection 440.2(13)(d) for details.

5.5 Cash Payments for Work

Fraud resulting from cash payments has its own multi-faceted problems. This type of WCF is very hard to trap, because neither the employer offering the payment, nor the employee receiving the payment are willing to incriminate themselves (Florida's Bureau of WCF, 1994).

Cash payments are common in low value construction, where there are multiple violations including environmental, licensing, and safety violations. This type of employer violator is often eliminated by other agencies that include the Department of Business and Professional Regulations (DBPR), the Department of Environmental Regulations (DER), the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA).

5.6 "Double Dipping"

Double dipping is a term that is commonly used when a claimant attempts to receive payment from two sources for the same accident. In the case of WCF, the two insurance carriers would be the "disability carrier" and the "WC carrier," respectively. This situation would typically occur where an employee is hurt on the job, resulting in an injury that would be covered under workers compensation. A claim would also be turned in for being hurt for a disability unrelated to the job.

Another use of the term "double dipping" is when an employee receiving disability compensation benefits is actually working another full or part-time job, sometimes under another name (Florida DOI, 1994). For an example of this situation, see Case Study 3 in Appendix E. Key indicators of "double dipping" are as follows:

- 1) Claimant is difficult to reach at home during normal working hours.
- 2) Co-workers, ex-spouses or other sources provide tips that the injured employee is working another job.

- 3) Medical rehabilitation reports suggest that the claimant has been physically active, as indicated through good muscle tone, suntan or calloused hands.
- 4) Claimant receives mail at a post office box, or an address other than home or place of work at which the injury occurred.
- 5) Claimant is self employed, works in a family business, or works in a cash business.

There are numerous ways double dipping is attempted, and although the insurance industry is aware of this potential problem, at times insurers are forced to make the business decision not to investigate suspicious claims. For the insurer, the cost of investigation must be evaluated in multiple aspects, including 1) precedence set by pursuing the case in question, 2) likelihood of governmental "followup" prosecution, 3) historical information available about the case, 4) company policy on investigations and 5) effects on the insurance industry as a whole.

The insurance industry has shown a comprehensive commitment to reduce WCF in all forms. Fraudulent activity as willful as double dipping is an area into which considerable efforts have been put forth, on both a joint and several basis.

CHAPTER VI

INVOLVEMENT OF THE STATE INSURANCE FRAUD AGENCIES

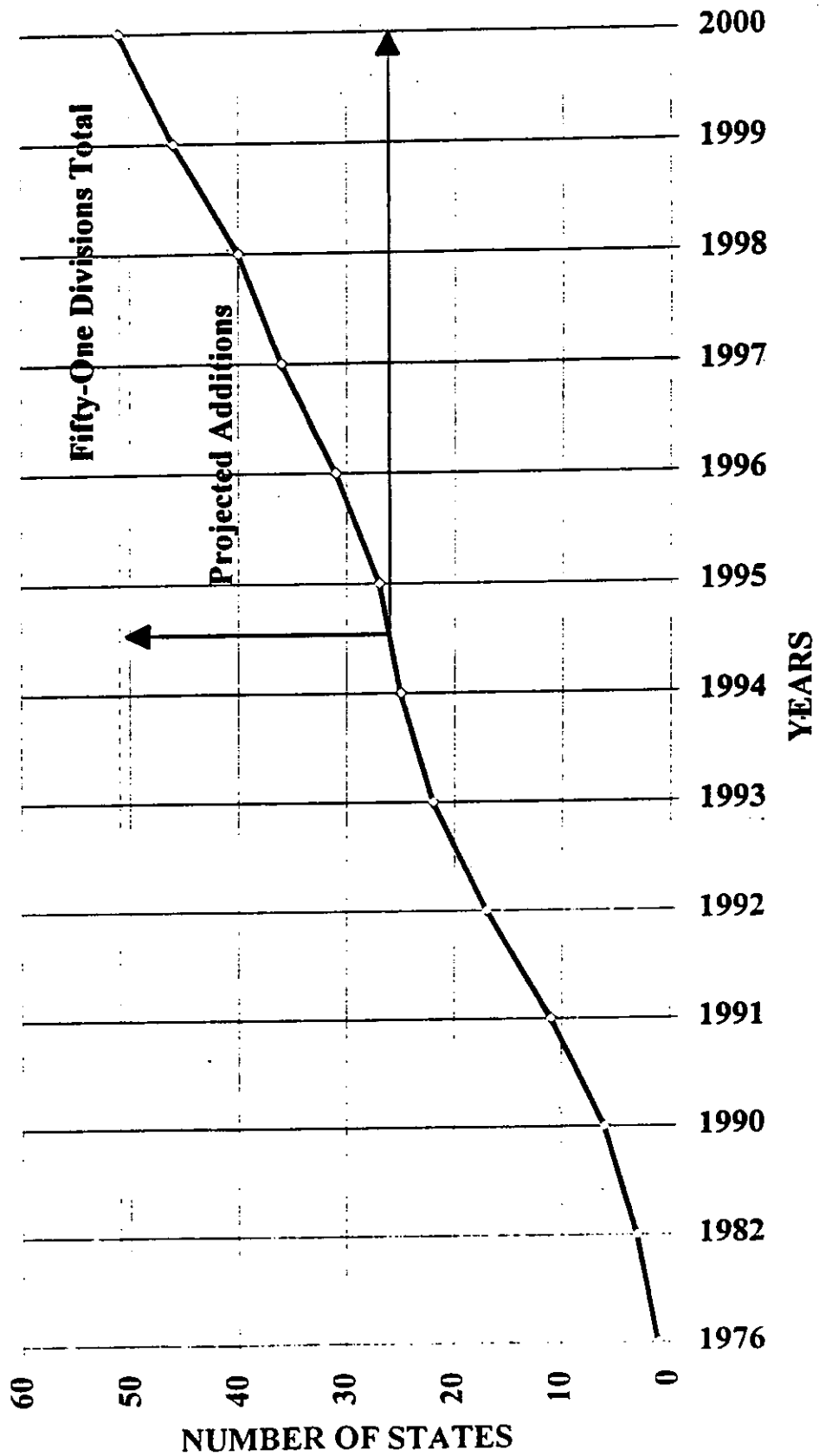
The involvement of the state insurance fraud agencies is very diverse. Some states report no intent to legislate or enforce laws that would curb WCF. At the other end of this spectrum, states like California and Florida have taken a very proactive approach in enacting comprehensive legislation and establishing aggressive enforcement mechanisms to begin limiting WCF.

When the fifty states were contacted, the Insurance Commissions that had legislation dealing with WCF were quick to respond and were quite descriptive as to the composition of the law. On the other hand, if a state did not have legislation in place to combat WCF, they were reluctant to disclose detailed information. Chart 6.1 shows the growth of state WCF bureaus.

The state fraud agencies have certain fundamental needs to function effectively. Legislation is the first step to successful prosecution. Next, funding is required to provide for the hiring of investigators that can assess the validity of the cases. Lastly, prosecutors must be trained and encouraged to follow cases through to indictment. Without continuity among legislation, funding, and prosecution, professional claimants will not be hindered in their WCF schemes.

CHART 6.1: GROWTH OF WCF AGENCIES

Source: UF WCF State Survey, 1994



6.1 Growth of Florida's WCF Bureau

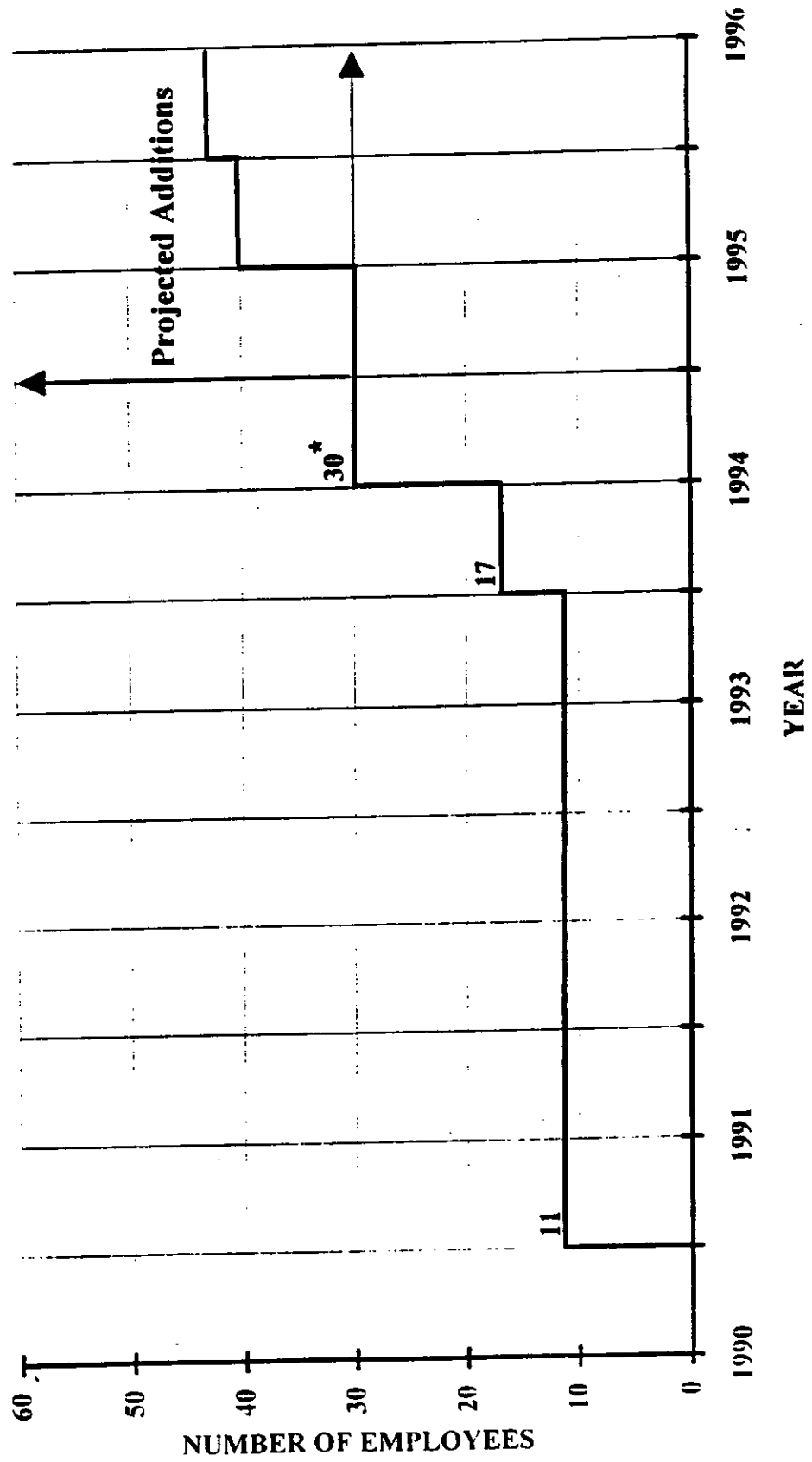
Nationwide, the growth of WCF agencies has been consistent and from this research it is documented that the WCF issue is being dealt with by most state legislatures. The surveys conducted in this research indicate a present movement towards the enforcement and prosecution of WCF, which is clearly the case in Florida.

In the state of Florida the number of state employees combatting WCF is growing quickly, as can be seen in Chart 6.2 on the following page. Florida's Bureau of Workers' Compensation Fraud was started in July of 1990 with a staff of seven full-time investigators and four support personnel. In July of 1993, the Bureau added six full-time investigators, for a total of thirteen investigators and four support personnel. As of January 1, 1994, the Bureau added eight more investigators and five support personnel. The current staff of 30 includes twenty-one investigators and nine support personnel. This growth is a quantitative indication that the state of Florida is taking steps to actively pursue and prosecute the perpetrators of WCF. Chart 6.2 also projects future growth of the Bureau over the next two years.

The Florida WCF Bureau employs investigators in eight regional offices throughout the state, and the headquarters are located in Tallahassee (see Chapter IX, section 9.1, subsection 440.1051 for the regional office locations and phone numbers). Through legislation, the state of Florida has shown their support for the Bureau of WCF. The activities within this bureau have proven to be progressive and successful, both in investigation of WCF and dissemination of information about the consequences of WCF.

CHART 6.2: GROWTH OF FLORIDA'S W.C. FRAUD BUREAU

Source: UF WCF State Survey, 1994



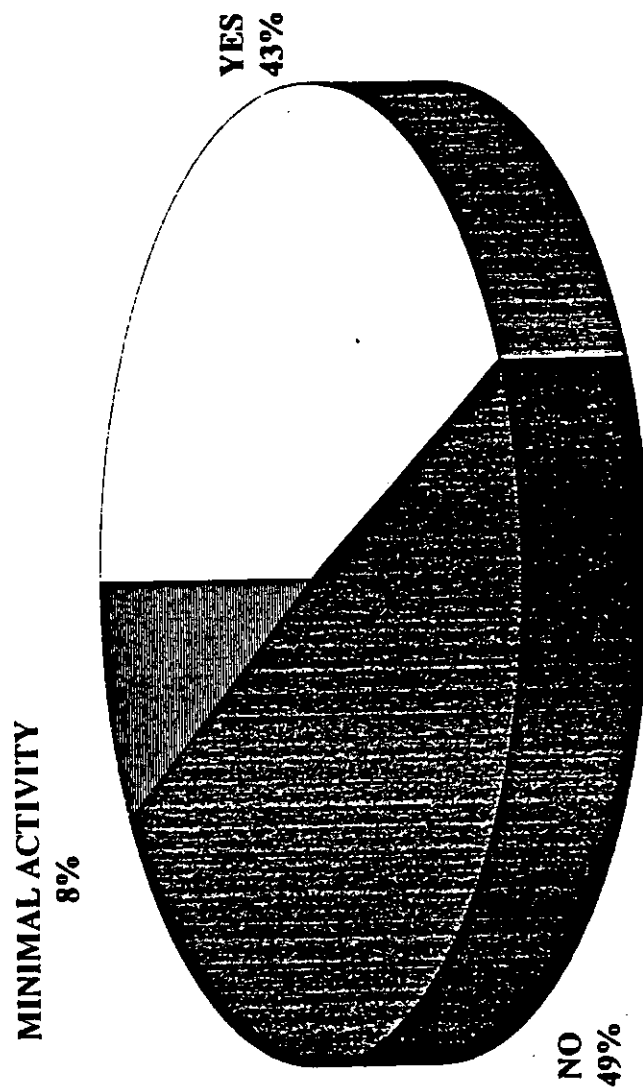
6.2 State Involvement

State involvement is not dictated by federal mandate at this juncture, but there is clearly a need for consistency from state to state. Professional claimants that abuse the worker's compensation system are afforded protection in states where there are limited or no anti-WCF laws, or where there are limited or no enforcement processes. From the surveys of the states, it was found that many states, through their lack of legislation and/or prosecution, have created a safe harbor for WCF offenders.

Among the states that do have legislation dealing with WCF, the type of enforcement and the penalties that are allowed under the law vary in degree. The pie chart on the next page shows the percentage of states that presently have some type of legislation in place that is designed to curb WCF.

In states where offenders are punished for WCF, a clear message is sent to their potential partners in crime. The inconsistencies in the laws of various states allow for an offender's actions to be ruled as misuse of the workers' compensation system in one state, although the same actions would be judged as a fraud in another.

CHART 6.3: PERCENTAGE OF STATES WITH WCF AGENCIES



Source: UF WCF State Survey, 1994

6.3 Inter-State Involvement

Some states have developed good cooperative efforts to instigate the reforms necessary for minimizing the worker's compensation fraud. Presently, some states are working together to try to pursue systematic offenders. Such offenders are normally employers, but there certainly are claimant offenders that make a living going from state to state, carrying with them a scheme that worked previously. An example of this type of fraud would be a fraudulent, recurring back injury.

Until states can stop WCF perpetrators from committing fraud in one state and seeking refuge in a state that does not have WCF laws, a competitive edge will be given to contractors who operate in this mode. The amount of savings that a contractor who does not pay WC has over one who does varies with the labor intensity of the job, and has a significant effect on "labor only" contracts. In some work classifications, the WC premium can be as much as the base pay that an employee would receive.

States and contractors have voiced their resistance to having the federal government meddling in their business, but presently there is a need for legislation and enforcement that is not being met. The lack of anti-WCF activity in some states has resulted in contractors that work within the WC laws being severely burdened by having to compete with contractors who are not paying proper WC premiums.

6.4 Intra-State Involvement with other Agencies

The Department of Business and Professional Regulation (DBPR) is a vital part of the WCF movement in the state of Florida. States that do not register contractors lack the advantage of states like Florida who work with the DBPR and WCF agencies to combat WCF.

The Florida Bureau of Workers' Compensation Fraud within the Department of Insurance has been tremendously bolstered by the recent special legislative session of November, 1993. New legislation increased the number of enforcement personnel, created a fraud hotline, and provided incentives for prosecutors to pursue WCF cases. The growth of the agency as seen on Chart 6.2 has been substantial, and the management and training of personnel has progressed on a systematic, well-founded basis.

In the new workers' compensation law, the Bureau of WCF has been provided funding and the ability to contract with any state attorney's office for the prosecution of criminal violations of the workers' compensation law (WC 1994). Entitled the "Prosecutorial Reimbursement Program," this anti-fraud legislation is an appropriation of funds to stimulate the prosecution of fraud. This added prosecution tool will enable the bureau to be more effective in fighting WCF.

The National Council on Compensation Insurance (NCCI) has been an active representative for the insurance industry throughout the state of Florida, and also in many other states. The NCCI is committed to the identification and illumination of WCF, both as a participant and as a source of funding.

6.5 Federal Cooperation

The federal government has limited involvement in workers' compensation. The National Commission on Workmen's Compensation Laws of 1972 and the Inter-Agency Workers' Compensation Task Force of 1976 both rejected proposals to replace individual state WC programs with one federal program. Legislation has been introduced in the U.S. Congress for the past few years proposing to give the federal government a direct role in the state systems by establishing mandated "minimum standards," but these bills have not moved beyond the committee level. If the individual states that are failing to pass or enforce anti-fraud legislation continue to be a refuge for offenders, however, it will only be a matter of time before the federal government becomes more actively involved.

The one federal agency that is a large threat to certain types of WCF offenders is the Internal Revenue Service (IRS). The reason for its involvement is that when cash is being paid to employees, there is usually a clear omission of WC premium and federal withholding taxes. Tax evasion carries a penalty that in many cases would be more severe than the state agencies' penalty for WCF. The problem lies in the difficulty of proving that such cash payments are given or received. These types of claimant offenders are usually turned in by ex-spouses, co-workers, or ex-girl/boy friends.

Because of the interstate involvement of sophisticated fraud offenders, there is definitely a need for some format to stop this type of activity.

One possible solution is to follow the Brady Bill model. By linking fraudulent WC claims to social security numbers on a national computer network, investigators would have instant access to detailed claims histories of employee WCF claimant offenders. The legal aspects of this type of activity are now being questioned, but if this hurdle is overcome the Brady Bill would be a good model.

CHAPTER VII

INSURANCE COMPANIES' INVOLVEMENT WITH WCF

Insurance Companies have had mixed involvement with WCF. The active ones have been, and are doing an excellent job of supporting the prosecution of WCF violators (ICQ, 1994). Not only are they reducing WCF losses within their own companies, but they are also working with other agencies and state prosecutors to:

1. Provide the information that leads to indictments,
2. Lobby to have the laws changed so that WCF laws have potency to discourage WCF when the laws are properly enforced, and
3. Equip local auditors with their list of indicators for WCF.

Some of the insurance companies that are dedicated to reducing WCF are going to a higher level of commitment, wherein they have created VCR films that use strong support information to show how WCF can be dealt with (CNA, 1994). Other insurance companies have established a national fraud hotline to combat WCF and other insurance fraud (AIG, 1994).

Some insurance companies are pursuing WCF in the construction industry. This research indicates, however, that such efforts have not yet been in a consistent format suitable for presentation herein. As suggested in Chapter XI, recommendation No. 31, research that is organized by insurers as a whole, in a format consistent throughout the industry, would be extremely valuable in combatting WCF.

7.1 NCCI's Action Against Fraud

The National Council on Compensation Insurance (NCCI) has taken some aggressive action steps to combat fraud in starting the Workers' Compensation Fraud Advisory Commission. This commission was established in 1992 and is made up of professionals in workers' compensation and WCF that are committed to "exploring and promoting strategies for eliminating fraud through **prevention, education and prosecution**" (NCCI Fraud Advisory Commission, 1994). Their objectives include:

- 1) Identification of WCF's multiple dimensions.
- 2) Development of a public relations and communications program to educate key constituencies about WCF.
- 3) Recommendations of methods of for carrying out civil actions and criminal prosecutions.
- 4) Proposal of strategies to combat fraud.

Actions of the NCCI have included:

- 1) Supporting establishment of fraud hotlines.
- 2) Civil actions including RICO.
- 3) Criminal prosecutions.
- 4) Conducting WCF seminars.
- 5) Participation on WCF task forces.

7.2 Special Investigations Units (SIU's)

SIU's are the investigative units within insurance companies that are charged with the investigation of WCF. Although the intent of these units is similar, their effectiveness varies greatly from one insurance

company to another. There are various factors contributing to the quality of these units, but the following is a list of the key ingredients that are essential for successful SIU's:

1. Management's commitment, within the insurance company, to reduce WCF.
2. Funding available to support these units. The insurance survey and interviews from this research indicates there are multiple reasons why insurance companies support these SIU's, as enumerated below(ICQ, 1994):
 - 2.a. Losses sustained by the company often necessitate action which includes support of their in-house SIU's.
 - 2.b. Exposure, because the coverage is a high percentage of a company's business. When the risk is high because of the large amount of WC business, then the justification for strong risk management dictates strong SIU's.
 - 2.c. The insurance company's commitment within the industry to emphasize and support risk management.
3. Qualified investigators that are properly trained, which requires: basic WCF education, supervised field experience and a constant networking with State WCF Units.
4. Cooperation with other insurance companies. Although this seems simple in concept, antitrust consequences limit cooperation efforts.
5. Support of state prosecutors.
6. Close relationships with contractor's policy holders.

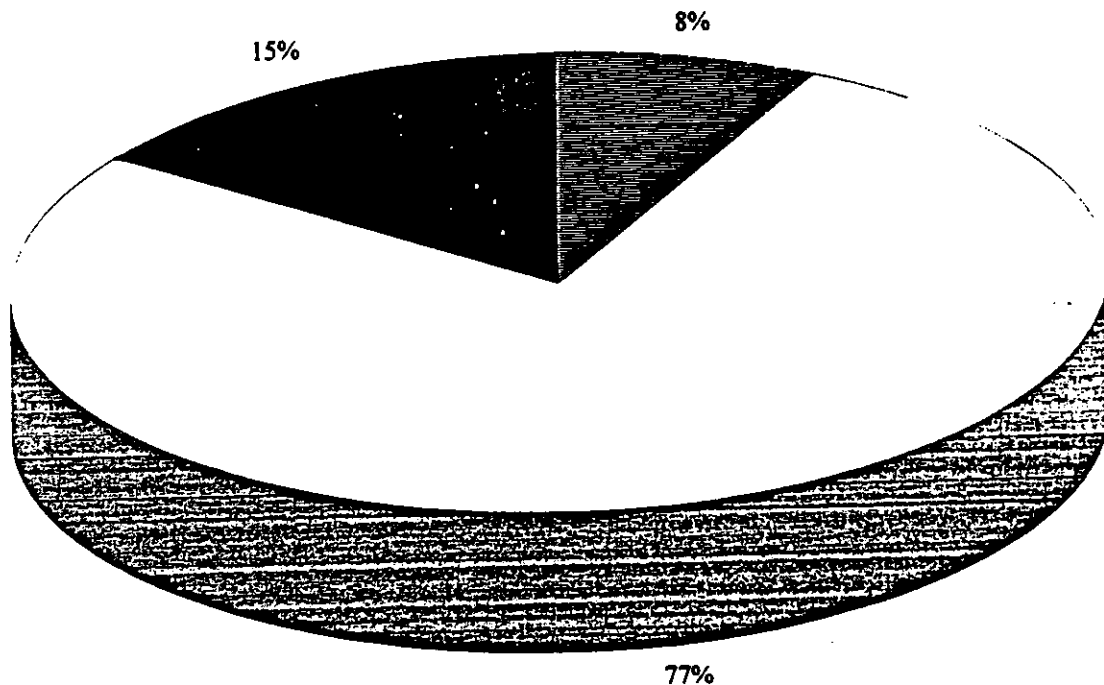
According to the survey information, insurance carriers have been involved in WCF investigations from between one and fifteen years. During this time, insurance carriers developed divisions known as Special Investigations Units (SIU's). Some are known by different names, such as External Fraud Units, while still others are encompassed by the company's WC claims department. See Chart 7.1 for a representation of insurance companies with SIU's.

The majority of insurers have only set up these SIU's during the last few years. Most were established in the time period from 1988 to 1993. One company that was interviewed has just begun to look into founding a general fraud department, and plans to establish SIU's within 1994.

SIU's are centralized investigations divisions, which have been established to handle suspicious claim reports brought to their attention from throughout the company. Cases are referred to the SIU's, usually by a company claims representative.

Smaller insurance companies have only one SIU in their home office, which often handles investigations of all types of insurance fraud that is experienced throughout the entire company. The larger companies have multiple SIU departments, often located in each of their regional offices. many of these are delineated by insurance type, i.e., one SIU concentrates on WC fraud, while a second SIU investigates only automobile insurance fraud.

**CHART 7.1: PERCENTAGE OF INSURANCE
COMPANIES WITH SPECIAL INVESTIGATION
UNITS (SIU's)**



■ SIU's In Development ▨ SIU's Required by State ■ SIU's Not Required by State

Source: UF WCF Insurance Company
Survey, 1994

7.3 Collaboration with State Fraud Units and Prosecutors

The SIU's are very instrumental in providing the preliminary information needed for the state prosecutors to pursue prosecution of WCF claimants. All the insurance companies surveyed indicated that their local adjusters were required to submit suspicious claims to their in-house SIU's, which in turn are reviewed for submission to the state prosecutors (ICQ, 1994).

It was stated during the insurance company interviews that sometimes an investigation of a specific case is initiated by an inquiry from the State Fraud Bureau. The Fraud Bureau may ask for a case file when indicators show that the claimant has been involved in a previous case of fraud, or when it has been found that the case may involve a fraud ring or a conspiracy.

Insurance carriers also collaborate with State Fraud Units and prosecutors at another level of fraudulent claims. Once a case has been turned over to the SIU, investigated, and determined to be fraudulent, it is referred to the state prosecutor or the local district attorney for possible prosecution. Cases are taken to whatever level of law enforcement that will accept them. In most areas, minor cases are taken to local police departments, larger cases to the local district attorney, and only the most substantial claims are sent up to the government agencies.

Only the state can initiate prosecution. It is the insurance carriers' position to sign an official complaint and act as witness if the state determines that prosecution is appropriate. States most active in WCF prevention and prosecution include California, Florida, Texas, Colorado.

Oregon, Maine and New York. In states where criminal prosecution by the state prosecutor is unlikely, the carrier may be able to pursue a civil case.

At this time, Florida and New Jersey mandate that insurers report all fraudulent claims, even if they are not paid out.

7.4 Bad Faith

The underlying doctrine of any agreement is that the agreement was made in "good faith." Insurance companies are particularly vulnerable to attacks for "bad faith." Surveys within the insurance industry have shown that claims personnel often may suspect fraud, but fail to pursue the prosecution effort because they anticipate accusation of acting in "bad faith" (U.F., 1991).

The statutes in Florida are written in a manner that does not make insurance companies as vulnerable as in other states, and the courts have supported this interpretation. As noted in Chapter IX, section 9.1, 440.105(1)(b), Florida law gives immunity to persons or entities reporting WCF in good faith. Accordingly, insurance companies should not be slowed down in their efforts against fraud. Claimants acquire the right to sue for "bad faith" only after all underlying questions of coverage, liability and damages are resolved (U.F., 1991).

To counter concerns about bad faith, the fraud-reporting statute does not call for insurers to make decisions about whether a conviction can be made, but rather requires them to report all suspected fraud. By failing to report fraud to the DOI, they in effect encourage fraud (U.F., 1991).

7.5 Proactive Efforts

Many of the companies surveyed use lists of indicators when evaluating claims. This list allows claim adjusters to spot "red flags" when suspicious circumstances exist in a particular case. These indicators include items such as an injury occurring on a Monday morning, soft tissue injuries, and accidents with no witnesses. There are manuals available that supply lists of indicators as well as a list provided through the NICB. Several insurers have developed their own lists of "red flags," which they have incorporated into their computer systems and/or claim evaluation procedures. Florida's Department of Insurance "red flag" list is provided in Appendix C, section C.5.

High-level employees of insurance carriers also participate in proactive activities for the benefit of their companies. A national Coalition Against Insurance Fraud exists which works toward gaining federal legislation, making WCF illegal throughout the country and raising WCF to the level of a felony. The fifty members of the coalition provide support for this legislation push.

The NICB is also aggressively active in WCF prevention measures. Sixty-two percent of insurers surveyed are members of NICB. This organization has developed and is continuing to enlarge a national

database tracking all prior insurance claims. This is a source for the insurer to check when evaluating incoming claims. If the claimant is in the system, fraud is likely. As mentioned above, the NICB database also provides a list of indicators for use in claims evaluation.

Insurance carriers also recommend that their customers become active in prevention measures on the job site. They suggest education of employees regarding the consequences of insurance fraud. Workers should be notified of the financial detriment to the individual worker, effects on his company, and penalties imposed when a fraudulent claimant is caught. This can be done through work meetings and posting of notices. Depending on the company, educational materials may be available directly through the insurance carrier (ICQ, 1994).

In Florida, the National Council on Compensation Insurance (NCCI) has taken a very active role in supporting the effort to combat WCF. In their position of service in the insurance industry, they have been involved with research and other promotive positions that have helped to enact Florida's current aggressive WCF legislation.

7.6 NICB's Fight Against Fraud

The National Insurance Crime Bureau (NICB) has been very active in their effort to identify and pursue prosecution of insurance fraud offenders. NICB studies have shown that approximately 10% of the value of total household insurance expenditures in the U.S. was lost due to fraud (NICB, 1992). Even more excessive was fraud specific to auto insurance, with 16.44% of insurance claims considered to be fraudulent (NICB, 1992). The NICB has also established a toll-free reporting hotline for insurance fraud, 1-800 / TEL-NICB.

CHAPTER VIII

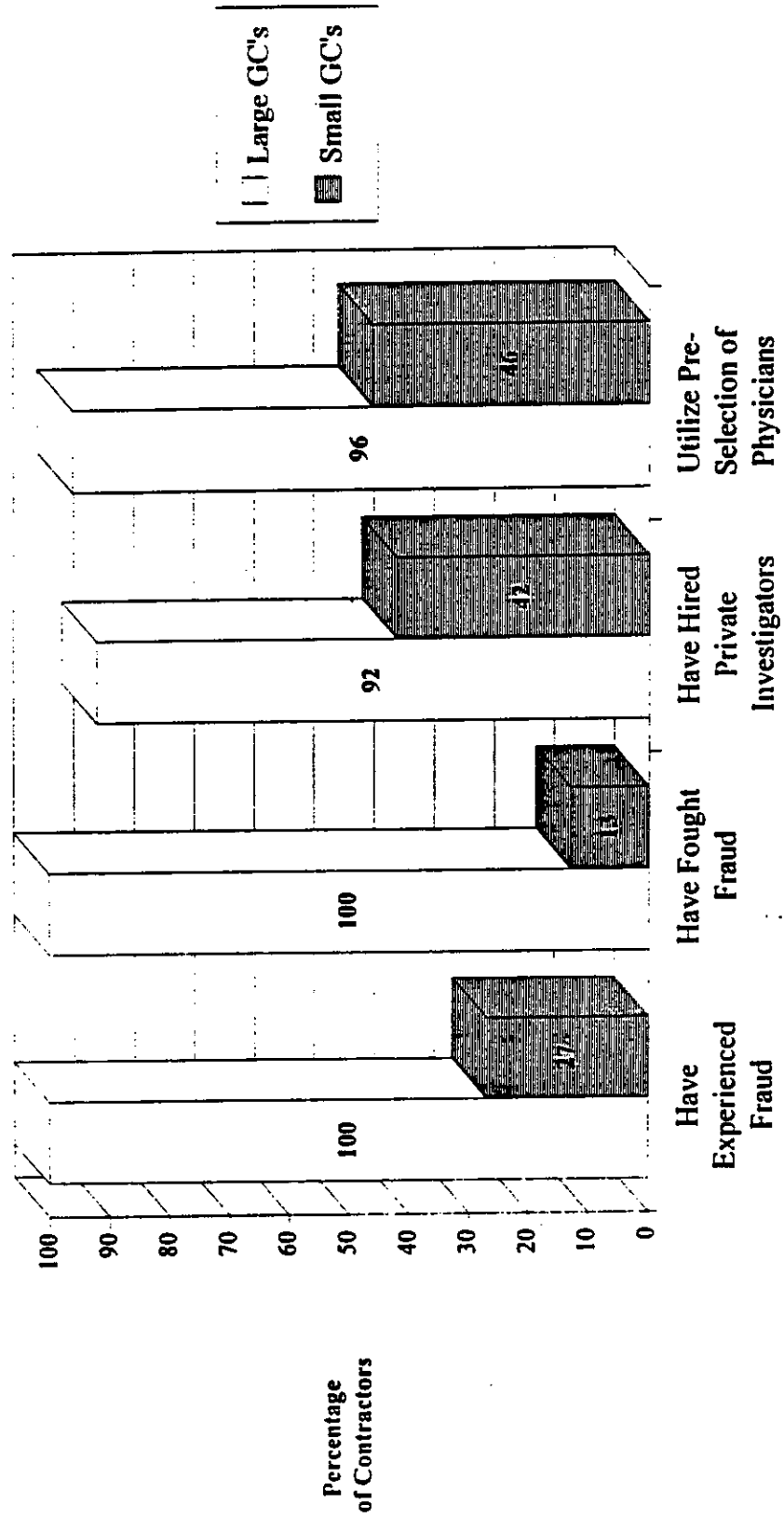
CONTRACTORS' INVOLVEMENT WITH WCF

Contractors have worked as individual companies and also through their associations to combat WCF. The individual contractor efforts have included such efforts as training supervision in the detection of WCF and encouraging disabled employees to return to work in a light duty position.

Through contractor associations like Associated General Contractors of America (AGC), Florida Home Builders Association, and Florida Roofing, Sheet Metal & Air Conditioning Contractors Association, strong efforts have been made to reduce WCF. These associations are typical of what contractors have used in past years to enact legislation and reduce losses in WC. Reducing WCF will be one of their most difficult yet rewarding challenges in the near future.

From the contractor surveys it was found that the larger contractors are interested and are financially able to be active in combatting WCF. This is not unexpected, but is a clear indication that in some format the smaller contractors will need to be brought up to a higher level of awareness and participation in the fight to reduce WCF. Chart 8.1 compares large and small contractors' experience with WCF, as well as some of their actions in combatting fraud.

**CHART 8.1: FOUR KEY FACTORS OF WCF:
LARGE GC's vs. SMALL GC's**



8.1 Private Investigators

Contractors surveyed indicated the benefit of utilizing private investigators for questionable claims. They felt that such a practice sent a two-pronged message throughout the company: one, that WCF violators would be pursued and prosecuted and two, that the company was committed to reducing WCF.

Larger contractors responding used investigators much more than smaller contractors, but all respondents who had hired private investigators reported that this practice was beneficial. Table 8.1 below summarizes contractor responses regarding hiring of private investigators (CCQ, 1994).

TABLE 8.1 : Contractors' Hiring of Private Investigators

	Larger Contractors (Vol > \$200 Mil/Yr)	Smaller Contractors (Vol < \$100 Mil/Yr)
<u>Hired P.I.'s ?</u>		
YES	92%	19%
NO	8%	81%

All 92% of Larger Contractors and 19% of Smaller Contractors responding "YES" to the survey stated that hiring private investigators for questionable claims was beneficial. One Larger Contractor surveyed

even retains a full-time investigator on staff to pursue questionable claims. All 8% of Larger Contractors responding "NO" stated that while they do not, their insurance carriers do hire private investigators for questionable claims.

8.1.1 Surveillance Example

One WCF case involved a chronic back problem. The employee had two surgeries and wore a back brace to his doctor visits. This claim was creating a substantial burden on the contractor, and since he had suspicions regarding the validity of the claim, he hired a private investigator. Through surveillance the investigator found that the employee was performing heavy physical labor while doing contracting work for himself, and was obviously not disabled. Through videotape evidence provided by the investigator, the contractor successfully fought the claim (CCQ, 1994).

8.2 Contractor-Selected Medical Review

Pre-selecting physicians is another way contractors combat WCF. In states where allowed (see Appendix D, Table D.1 for a complete listing of states that allow pre-selection), contractors pre-select physicians to gain a measure of control over where injured workers receive treatment. As indicated in Table 8.2, this practice is common within larger companies.

TABLE 8.2 : Contractors' Use of Pre-Selected Physicians

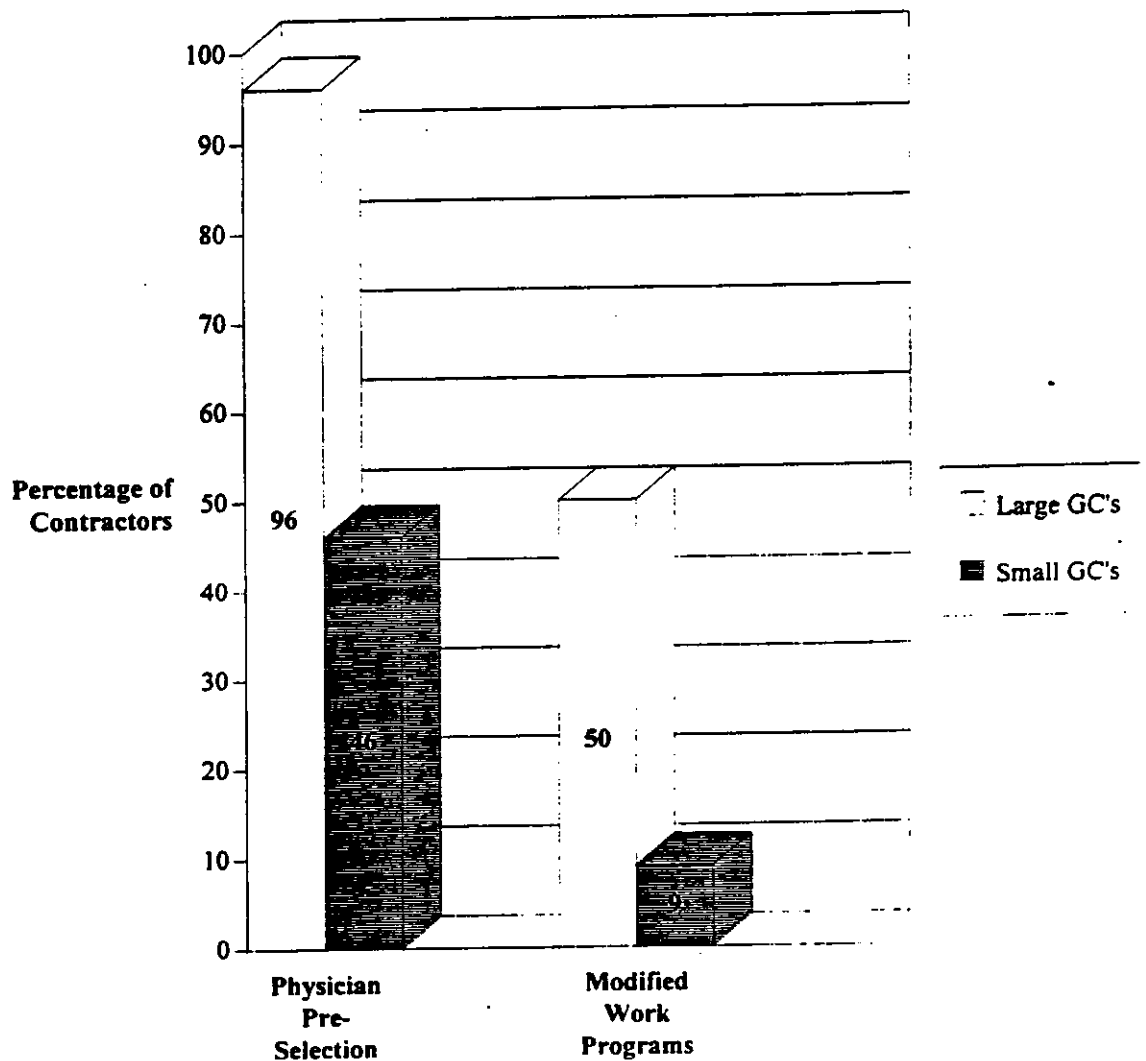
	Larger Contractors (Vol > \$200 Mil/Yr)	Smaller Contractors (Vol < \$100 Mil/Yr)
<u>Pre-Selected Physicians ?</u>		
YES	96%	46%
NO	4%	54%

In addition to pre-selecting, a number of companies also take the opportunity to educate their physicians about the types of work they perform. A doctor who is unfamiliar with a contractor's operation may restrict an injured worker from returning to work until he/she has fully recovered. By this time, the worker would tend to collect the maximum compensation benefits and would also develop fears of losing the edge on his/her skill and would have low self-esteem and morale upon returning to work.

The main benefit of educating physicians is that they learn to work hand in hand with contractors' modified work programs, helping to bring the employee back to work in some type of light-duty productive role. Thus the worker remains part of the team and does not become acclimated to receiving compensation benefits for sitting on the couch and watching television.

Modified work programs should work in conjunction with pre-selection of physicians, but as shown in Chart 8.2, utilization of modified work programs is currently lagging behind pre-selection of physicians.

**CHART 8.2: CORRELATION BETWEEN
PHYSICIAN PRE-SELECTION and
MODIFIED WORK PROGRAMS**



Source: UF WCF Contractor Survey, 1994

8.3 Reporting for Prosecution or other Sanctions.

Contractors, in conjunction with their insurance carriers, fight claims they believe to be fraudulent. The key factor that determines whether they follow through to prosecution is the cost, comprised mainly of legal fees and in-house executive time. One top-twenty contractor reported that they challenge approximately 25% of all claims.

Contractors stated that mediation is a helpful alternative to prosecution. In one case, a general contractor who used mediation to avoid legal fees was able to successfully negotiate a settlement. An employee of a mechanical subcontractor who said he strained his back trying to lift a 600-pound pipe blamed the general for not providing the proper lifting and safety equipment. He wanted \$50,000, but through mediation, the contractor was able to negotiate a settlement of \$5,000.

8.3.1 Costs of Fighting Fraudulent Claims

The three major costs associated with fighting fraudulent workers' compensation claims are legal fees, medical claim costs, and in-house executive time. Table 8.3 rates contractors responses to what costs they have incurred in the process of fighting claims.

TABLE 8.3 : The Top Three Costs Associated with Fighting Fraudulent Claims, as Rated by Contractors.

	Rated #1 Cost		Rated #2 Cost		Rated #3 Cost		"Top-3" Totals	
	<u>Small</u>	<u>Large</u>	<u>Small</u>	<u>Large</u>	<u>Small</u>	<u>Large</u>	<u>Small</u>	<u>Large</u>
Legal Fees	80%	74%	10%	18%	5%	6%	95%	98%
Medical Claims	20%	21%	70%	53%	0%	14%	90%	88%
Executive Time	5%	4%	5%	18%	35%	47%	45%	69%

Source: UF WCF Contractor Survey, 1994

Legal fees was rated as the most costly element by contractors who have attempted to fight fraudulent claims. As the data indicates, 98% of large and 95% of small contractors surveyed (see "Top-3" Totals column) rated legal fees in the top three.

Combining small and large contractors, medical claims costs and executive time expended were rated in the top three costs by an average of 89% and 57% of the contractors, respectively. As shown in Table 8.3, legal fees was by far the top rated #1 cost, while medical claims costs outweighed executive time in this highest cost category by an average of 20.5% to 4.5%.

8.4 Fraud Education for Management and Supervision

Another area in which contractors have become involved is educating their managerial staff to recognize fraudulent claims. Of contractors surveyed, only 48% of large and 7% of small contractors have training programs for field supervisors that deal with recognizing suspicious activities or circumstances surrounding job site accidents. Some of this training is formal classroom instruction, while other training is informal, such as distributing "red flag" lists or holding periodic jobsite toolbox meetings.

Although the remaining 52% of large and 93% of small contractors do not train their superintendents about fraud, many of these contractors feel confident that their field personnel are very savvy individuals who know fraud when they see it, and would be alert to any suspicious circumstances surrounding an accident.

Chart 8.3 summarizes the data collected in this research regarding workers' compensation fraud training for field supervisors.

CHAPTER IX

LEGISLATION TO CURB WCF

Florida continues to lead the way in enacting comprehensive WCF legislation. The Florida Legislature passed the revised Workers' Compensation Bill (SB12-C) in November, 1993. This legislation is pioneering previously unaddressed areas of concern towards eliminating WCF. The authors of this legislation have stated their satisfaction with the content and proposed consequences contained in this legislation.

Under the new legislation, with primary focus on section 440.105, additional investigators have been hired, criminal penalties have been increased, and activities that were once not criminal are now subject to criminal prosecution. Also, cases with potential for prosecution that had previously gone unchecked are now being pursued. The results of this legislation are not yet known, but it has established the framework for serious consequences for those persons committing workers' compensation fraud.

An overview of this legislation, with commentary to help explain some of the new laws, has been included in this chapter.

9.1 Florida's New Legislation to Curb WCF

The Florida Workers' Compensation Law, amended in November, 1993 and effective January 1, 1994, directly affects the construction industry. Highlights of the changes are listed below by statute number, and a brief discussion follows a summary of the statute.

440.02(13)(d)(1)

In order to claim the status of an "independent contractor," an individual must:

- a. Maintain a separate business with his own work facility, truck, equipment, materials, or similar accommodations.
- b. Hold or have applied for a federal employer identification number, except in certain cases of sole proprietorships, as specified under state or federal requirements.
- c. Perform specific services or work for specific amounts of money, and control the means of performing the services or work.
- d. Incur the principle expenses generated by the service or work performed.
- e. Be responsible for the satisfactory completion of the work or services performed, including being held liable for failure to complete the work or services.

f. Receive compensation for work or services performed by way of commission or on a per-job basis or competitive basis, but not by any other basis.

g. Realize a profit or suffer a loss in connection with performing work or services.

h. Have continuing or recurring business liabilities or obligations.

i. Depend on the relationship of business receipts to expenditures for success or failure of his business.

Section 440.02(13)(d)(1) targets those individuals who fraudulently claim independent contractor status in order to avoid WC premiums (1099 Fraud).

440.09(4)

**FRAUD PENALTY
FOR EMPLOYEE**

Excludes an employee from all compensation and benefits if any administrative hearing officer, court, or jury in the state of Florida determines that the employee has knowingly violated any of the acts described in s. 440.105 in order to obtain workers' compensation benefits.

440.102(5)(p)

DENIED BENEFITS

Any treatment provided to an injured employee *before* medical and indemnity benefits are denied per this section (s. 440.102) must be paid for by the carrier or self-insurer. Also, the carrier or self-insurer must give reasonable notice to all affected health care providers that payment for treatment received after a specific date will be denied. A health care provider shall be guilty of a *second degree misdemeanor* if it refuses to continue treatment, without good cause, *before* receiving notice of benefit denial from the carrier or self-insurer. This is punishable as provided in s. 775.082 or s. 775.083.

This provides security of treatment for injured workers until such time as further benefits are officially denied, and thus builds confidence in the system as one that meets medical needs and also pays the bills. In addition, it also provides incentive to insurers to expedite investigations of questionable claims, so that benefits will be stopped if fraud is involved.

The following section, s. 440.105 *Prohibited Activities: Penalties*, contains the "meat" of the Florida Workers' Compensation Law.

440.105(1)(a)

FRAUD REPORTS

Provides that any insurance carrier, individual self-insured, commercial or group self-insurance fund, professional practitioner or medical review committee, or persons licensed under the insurance code, or any employee of these entities, having any knowledge of WCF must report this information to the Division of Insurance Fraud, Bureau of Workers' Compensation Fraud.

After the bureau investigates and reports its findings to the appropriate prosecuting agency, this agency must begin prosecution within 60 days, or inform the bureau of the reasons for delay.

Although the law requires reporting of fraud, at this time there is no penalty for failing to report, mainly because of the difficulty of proving that a given entity or person had enough information to reasonably suspect fraud.

440.105(1)(b)

CIVIL IMMUNITY

In the absence of fraud or bad faith, a person is not subject to civil liability for libel, slander, or any

other relevant tort by virtue of filing reports or furnishing other information, without malice, required by this section or by the bureau.

Anyone reporting fraud has civil immunity from libel or slander as long as they filed the report "without malice," or without intent to harm the reputation of the individual reported.

440.105(2)(a)&(b)

**SECOND DEGREE
MISDEMEANOR**

Specifies acts by (a) employers and (b) insurers that are punishable as second degree misdemeanors.

440.105(2)(a)

(a) It shall be unlawful for any employer to knowingly:

1. Coerce or attempt to coerce, as a precondition to employment or otherwise, an employee to obtain a certificate of election of exemption pursuant to s. 440.05.

2. Discharge or refuse to hire an employee or job applicant because the employee or applicant has filed a claim for benefits under this chapter.

3. Discharge, or take any disciplinary action against an employee for reporting information about WCF to the division or any other law enforcement agency.

4. Violate a stop-work order issued by the division pursuant to s. 440.107.

The above section protects employees from unscrupulous employers, under the penalty of a second degree misdemeanor.

440.105(2)(b)

(b) It shall be unlawful for any insurer to revoke or cancel a workers' compensation insurance policy or membership because an employer has returned an employee to work or hired an employee who has filed a workers' compensation claim.

Analogous to the second injury fund, this reasoning protects both the employer and the employee. The employer is not hurt financially by hiring a worker with a claim history, and the employee does not have a "skeleton in the closet" when applying for a job.

440.105(3)(a)&(b)

FIRST DEGREE
MISDEMEANOR

Specifies acts that are punishable as first degree misdemeanors.

440.105(3)(a)

(a) It shall be unlawful for any employer to *fail* to:

1. update applications for coverage as required by s. 440.381(1) and Department of Insurance rules, or
2. post notice of coverage pursuant to s. 440.40.

The penalty of a first degree misdemeanor for improper administration of workers' compensation plans sends a strong message to employers that they had better adhere to the letter of the law.

440.105(3)(b)

(b) It shall be unlawful for any attorney or other person to receive any fee or any other consideration or any gratuity from a person in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Chief Judge of Compensation Claims.

Note: Under the previous law, this section was punishable as a second degree misdemeanor {see previous law section 440.34(6)}. Under the new law it is a first degree misdemeanor.

440.105(4)(a)&(b)
THIRD DEGREE
FELONY

Specifies acts that are punishable as
third degree felonies.

440.105(4)(a)

(a) It shall be unlawful for any
employer to knowingly:

1. Present or cause to be
presented any false, fraudulent,
or misleading oral or written
statement to any person as
evidence of compliance with
s. 440.38.

2. Make a deduction from the pay
of any employee entitled to the
benefits of this chapter for the
purpose of covering any portion
of

- a. workers' compensation
premium due a carrier, or

- b. contribution to a
benefit fund or department,
maintained by the employer,
which provides compensation
or medical services and
supplies as required by
this chapter.

3. Fail to secure payment of compensation if required to do so by this chapter.

As with subsection (2)(a), subsection (4)(a) protects the employee, making it a third degree felony to funnel employee pay or benefits into WC premium payments, or to fail to secure an employee's WC payment if required by the law to do so.

440.105(4)(b)

(b) It shall be unlawful for any person to:

440.105(4)(b)(1)

1. Knowingly make, or cause to be made, any false, fraudulent, or misleading oral or written statement for the purpose of obtaining or denying any benefit or payment under this chapter.

440.105(4)(b)(2)

2. Present any written or oral statement in support of a claim for payment or another benefit pursuant to any provision of this chapter, knowing that this statement contains false, incomplete, or misleading information.

440.105(4)(b)(3)

Prepare or cause to be prepared any written or oral statement that is intended to be

presented to any employer or insurer in support of any claim for payment or other benefit pursuant to any provision of this chapter, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim.

440.105(4)(b)(4)

4. Knowingly assist, conspire with, or urge any person to engage in any activity prohibited by this section.

440.105(4)(b)(5)

5. Knowingly make any false, fraudulent, or misleading oral or written statement, or to knowingly omit or conceal material information, required by s. 440.381 or s. 440.185, for the purpose of avoiding, delaying, or diminishing the amount of payment of any workers' compensation premiums.

440.105(4)(b)(6)

6. Knowingly misrepresent or conceal payroll, classification of workers, or information regarding an

employer's loss history which would be material to the computation and application of an experience modification rating (EMR) for the purpose of avoiding or diminishing the amount of payment of any workers' compensation premiums.

440.105(4)(b)(7)

7. Knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of compliance with s. 440.38.

440.105(4)(c)

(c) It shall be unlawful for any physician to knowingly and willfully assist, conspire with, or urge any person to fraudulently violate any of the provisions of this chapter.

440.105(4)(d)

(d) It shall be unlawful for any licensed person or governmental entity to knowingly and willfully allow the use of a hospital's facilities for a scheme or conspiracy to fraudulently violate any of the provisions of this chapter.

440.105(4)(e)

(e) It shall be unlawful for any **attorney or other person** to knowingly assist, conspire with, or urge any person to fraudulently violate any of the provisions of this chapter.

440.105(4)(f)

(f) It shall be unlawful for any **attorney or other person** to solicit any business in and about:

1. city or county hospitals, courts, or any public institution or public place;

2. private hospitals or sanitariums;

3. private institution; or

4. any private property

for the purpose of making workers' compensation claims.

440.105(5)

CRIMINAL LAW

This section shall not be construed to preclude the applicability of any other provision

of criminal law that applies to any transaction.

440.105(6)

"STATEMENT"

The term "statement" in this section includes, but is not limited to, any notice, representation, statement, proof of injury, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test result, or other evidence of loss, injury or expense.

Subsections 440.105(2) through 440.105(6) include the majority of the penalty provisions of the Act. They specify fraudulent acts by employees, employers, insurers, attorneys and physicians, and provide for criminal penalties of first or second degree misdemeanors, and third degree felonies, depending on the violation (AIF, 1994).

440.105(7)

CLAIM FORMS/
TRUTH/FELONY

All claim forms as provided for in this chapter shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of

claim containing any false or misleading information is guilty of a felony of the third degree."

By requiring that every claim form be personally signed under the statement in 440.105(7), that all information is true and that false information is punishable as a third degree penalty, employee claimants are alerted to the serious nature of filing any claim. In the case of a fraudulent claim, this signed form is hard evidence that the claimant was aware of the consequences of giving false information.

The following section, s. 440.1051 *Fraud Reports; Civil Immunity; Criminal Penalties*, specifies procedures for the new toll-free WCF reporting hotline.

440.1051(1)

TOLL-FREE
FRAUD LINE

(1) The Bureau of Workers' Compensation Insurance Fraud, of the Division of Insurance Fraud, of the Department of Insurance shall establish a toll-free telephone number to receive reports of WCF committed by an employee, employer, insurance provider, physician, attorney, or other person.

440.1051(2)

(2) Any person who reports workers' compensation fraud is immune from civil liability for doing so, and the

person or entity alleged to have committed the fraud may not retaliate, unless the person making the report knows it to be false.

440.1051(3)

(3) A person who knowingly and falsely reports WCF or who retaliates against a person for making a report, is guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, or both.

The toll-free reporting hotline is being set up as of the time of this report. The number is 1-800 / 378-0445 and will be available weekdays from 8:00 AM to 5:00 PM by the end of June, 1994. The local hotline number is 904 / 922-3261. Phone numbers for the regional offices of the Fraud Bureau are as follows:

Boca Raton	407/451-0996	
Fort Myers	813/338-2323	
Jacksonville	904/348-2740	
Miami	305/377-5957	
Orlando	407/423-6728	
Pensacola	904/444-2394	
Tampa	813/272-3565	
Tallahassee	904/922-3116	(Headquarters)

The following section, 440.106 concerns civil remedies and administrative penalties.

440.106(1)

ATTORNEY
VIOLATIONS/
PROBABLE CAUSE

Provides that any circuit or special grievance committee, acting under the jurisdiction of the Supreme Court, who finds **probable cause** to believe that an **attorney** has violated s. 440.105, the committee may forward to the appropriate state attorney a copy of the findings of probable cause and a copy of the report being filed in the matter.

440.106(2)

HEALTH CARE
PROVIDER/
HEARINGS FOR
VIOLATIONS

Provides that any **physician** determined to have violated s. 440.105 shall have a hearing before the appropriate medical licensing authority to consider the imposition of administrative sanctions as provided by law against the physician.

Subsections 440.106(1) & (2) address professional fraud, outlining procedures of disciplinary action within their profession for lawyers and doctors who commit fraud or are involved in questionable practices.

440.106(3)
INSURER
VIOLATIONS

Provides that any insurer, rating bureau, agent or other insurance representative determined to have violated s. 440.105 may have their authority or certification revoked or suspended by the Department of Insurance.

440.106(4)
CONTRACTOR
VIOLATIONS

Provides that any contractor determined to have violated 440.105 shall be reported to the appropriate state licensing board for disciplinary action.

As with lawyers and doctors, insurers and contractors involved with fraud must face the disciplinary action of their regulatory bodies or licensing boards.

440.106(5)
"VIOLATION"

The terms "violation" or "violated" shall include having been found guilty of, or having pleaded guilty or nolo contendere to a felony or misdemeanor under the law, regardless of whether a judgment of conviction has been entered by the court.

The following section, 440.381(6), allows insurance carriers to sue employers who commit premium fraud.

440.381(6)

TEN-FOLD

FRAUD PENALTY

FOR EMPLOYER

If an employer intentionally

- 1) understates or conceals payroll,
- 2) misrepresents or conceals employee work classifications to avoid proper premium classifications, or
- 3) misrepresents or conceals information used to compute the experience modification rating,

the employer, or his/her agent or attorney will be penalized and pay the carrier an amount ten times the difference in premium paid and the amount the employer should have paid and reasonable attorney's fees (see formula below). The penalty may be enforced in circuit court.

$$\text{Penalty} = 10 \times [(\text{amt due}) - (\text{amt paid})] + \text{atty fees}$$

The penalty under the previous law was only 12% of the amount underpaid, but the new ten-fold penalty is large enough so that it cannot be written off as a "cost of doing business," even without considering the criminal penalties.

In summary, the new law sends a clear message that WCF is serious, and the consequences will match the crime.

9.1.1 Appropriations

In January of 1994, the Florida legislature provided the Bureau of Workers' Compensation Fraud with funding to reimburse state attorneys for the administrative costs associated with the prosecution of WCF cases.

The Bureau has named the program the "Prosecutorial Reimbursement Program," and it provides for prosecutors to receive up to \$100,000 per WCF case. In addition to providing such monetary incentives for the prosecution of WCF, the Bureau will also provide for the training of state prosecutors.

9.2 Effects of Florida's Current Legislation

The new legislation has not been tested, but those who will be presenting the cases for the prosecution are confident that the new laws will deter WCF. Enforcement has drastically increased, to the point of tripling the number of state investigators within the last three months.

CHAPTER X

REDUCING EMPLOYEE WCF WITHIN THE CONSTRUCTION INDUSTRY

The reduction of WCF within the construction industry is a multifaceted task, but this chapter identifies some of the criteria that should be considered in this regard. The recommendations in Chapter XI also include some specifics in this area, although that chapter also covers many other recommendations that are specific to research in WCF beyond employee related fraud.

Prosecution of employee workers' compensation fraud has not been a highly pursued endeavor. Even with a conviction there is little payback potential, which puts prosecution of WCF on a low priority level when prosecutors make decisions on how to best spend their resources. This chapter, although not comprehensive, has attempted to identify some of the prominent ways that employees may be deterred from the act of committing WCF.

In order to reduce employee WCF, the benefit to risk ratio needs to be weighted so heavily on the risk side of the scale that WCF is not worth the exposure. This can be accomplished through multiple methods that can in many cases work with synergistic effects.

10.1 Early Identification

Early identification is essential in the fight against WCF. Contractors, state WCF units, and the insurance companies are all working on reducing WCF, but this effort still in early stages of development. Their individual efforts vary greatly depending on the commitment of their management and the funding available. On the state level, the activity of the WCF units depend first on the legislation that provides for aggressive prosecution.

10.2 Mitigation of Losses

Referring to the previous chapter gives an outline of indicators categorized as early identification items. Training is the key to making this area work effectively. Supervisors must be aware of elements needing primary focus in the area of fraud identification. Getting people back to work is one of the most obvious cost effective ways to mitigate WC cost, and in turn has been linked with keeping some employees from becoming involved with WCF. These types of plans, often referred to as "modified" or "light duty" programs, require additional training, management and supervision.

10.2.1 Getting Workers Back to Work

Contractors reported that one of the most successful ways of mitigating WCF in the case of a temporary partial disability is to get them back to work in a light duty capacity. This is not a new methodology, in fact, it has been used very successfully in the timber

industry in the northwest part of the United States for many years. Their motivation for such action was to reduce the extremely high EMR that had developed.

10.2.2 Pre-Selecting Physicians

Pre-selecting physicians is also a tool used in the early identification of WCF. By the use of physicians trained in WCF identification, fraudulent claims may be identified early. Pre-selection of physicians is also further discussed in Chapter VIII, section 8.2 and in Appendix D.

10.3 Cooperative Interfacing with Agencies Involved

The DOI and the DBPR need to expand their joint efforts to combat WCF. The present cooperative efforts need to include sting operations. Ignorant employees that participate in WCF need special enforcement attention from these two agencies, wherein the consequences of WCF become a high risk activity, with extensive fines and jail time for perpetrators.

10.4 Education and Training of Responsible Managers

According to the surveys from the insurance companies and the contractors, considerable work needs to be done in this area. A systematic training period needs to be integrated within construction companies. This is an area where contractor associations like the

Associated General Contractors of America (AGC) and subcontractor associations like the American Subcontractors Association (ASA) have an opportunity to make significant contribution in reducing WCF within their membership.

10.5 Enforcement of WCF Legislation

Until strict anti-WCF legislation is aggressively enforced, compliance with such legislation will only be an economic business decision, and WCF will be difficult to control. The increased size of Florida's WCF enforcement personnel has been showing positive results, but this effort will be a process which will require continued funding and the support of the state prosecutors. Incentives have been put in place to encourage added emphasis on WCF by the state prosecutors (see subsection 9.1.1 Appropriations).

10.6 Dissemination of Information Regarding Convicted WCF Abusers

Presently the state of Florida is making a conscientious effort to meet with those who desire to know more about WCF (WCFB, 1994). Some insurance companies are doing a very comprehensive job training their claims personnel on what to look for with respect to employee claimant WCF. With tools such as printed materials and video recordings used to communicate with their in-house people and also with their insured, they are making a comprehensive effort in this regard.

10.7 Supervisor Training

Training supervisors in workers' compensation fraud identification is a basic need throughout the construction industry. From the contractor surveys contained in this report, it is self-evident that supervision in the construction industry is lacking in this respect. In addition to WCF training, supervisors need to be in a position where they can follow up with injured employees and encourage them back to work. Their training in this respect needs to be inclusive of fraud indicators, as typified in Chapter IV of this text. The case studies in Appendix E are also useful for giving supervisors actual examples of WCF. In addition, the "red flag" indicators in Appendix C, section C.5, should be understood and utilized in supervisor training. For further discussion and detailed results of contractor surveys, see Chapter VIII, section 8.4.

10.7.1 Accident Reporting

The key to accident reporting is to provide comprehensive accident reporting forms that will provide reviewers with information which expose WCF indicators. Insurance company Special Investigative Units (SIU's) and contractor investigative units could be much more effective with the benefit of comprehensive on-site reporting at the time of an accident, including properly completed forms.

The accident forms utilized by a construction company should be reviewed by their insurance company to assure that the information being requested is both relevant and thorough enough for investigative followup.

CHAPTER XI

RECOMMENDATIONS

This research has raised many questions about WCF that still remain unanswered. It is the intent of this chapter to identify such areas and also to provide an explanation of what can be done to further reduce the activities of WCF perpetrators.

These recommendations can be effective as a composite since they will all work together and supplement each other, or they can be enacted as single step components towards reducing WCF. Some of the recommendations have been echoed by multiple sources, while others are innovative concepts that result from the survey studies conducted through this research.

Some of the recommendations are specifically assigned for implementation by certain entities. Trade associations are an example of such, in that they need to become proactive in WCF information dissemination. This should be particularly desirable to them because workers' compensation costs have become a significant factor in overhead for a contractor. Reducing these costs would make member contractors more competitive and help the industry reduce WCF.

1) The requirements outlined in the legislation related to WCF must be disseminated with a proactive methodology. This dissemination needs to be actively pursued through insurance carriers, to their insured.

2) Trade associations working with States' WCF Units must increase their cooperation to allow for better industry communications. As indictments are handed down, trade associations must communicate these consequences to their members who must in turn communicate with their employees.

3) Legislative efforts within the state of Florida need to stay current as new schemes of WCF are discovered.

4) Better intra-state cooperation needs to be developed. This includes the DBPR, the DOI and construction trade associations cooperation, and ideally the consistency in the enforcement of the WCF laws.

5) There needs to be an effort to strengthen inter-state cooperation, and ideally the consistency of the WCF laws. The professional WCF claimant offenders need to be dealt with in a consistent enforcement format, regardless of the state in which they perpetrated the fraud.

6) Funding for WCF units needs to be commensurate with the offenses that are identified.

7) Better training for WC auditors to identify WCF needs to be provided. Although some insurance companies are doing a good job, the industry needs to stand united against WCF.

8) The public perception and acceptance of WCF must change. This is an issue that will require a great deal of effort to educate employers and employees as to the consequences of participating in WCF. The penalties at this time appear harsh enough that if enforcement can be accomplished, the public will have a new standard to live by. The next step is to disseminate this information to the public.

9) Accidents reporting needs to be modified to be focused on fraud issues. This will require comprehensive forms, which will give the reviewers the indicators that will identify WCF.

10) Rewards need to be put in place to provide incentive for people to turn in WCF violations, including: ex-girl/boy friends, ex-spouses, coworkers or neighbors. Such persons have been very active in identifying fraudulent workers. This concept would be analogous to what the Internal Revenue Service (IRS) does for tax evasion. These rewards should be offered both at the governmental level and within the individual construction companies.

11) The American Medical Association (AMA) needs to take the lead in policing their own members. Sanctions such as suspension or loss of their license to practice medicine need to be included as mandatory actions for WCF perpetrators.

12) A national consortium needs to become effective to eliminate interstate fraud. This is one area in which the federal government may be of benefit, since federal legislation may be necessary to eliminate interstate fraudulent activities if the states fail to cooperate.

13) The Department of Business and Professional Regulations (DBPR) needs to play a much larger role in their efforts to insure that proper WC certificates are in effect when contractors' licenses are issued, and during the time the contractors in the state of Florida are licensed to work.

Their coordination with the Department of Insurance (DOI) is an excellent beginning, but more extensive "sting operations" need to be implemented, wherein contractors that are operating without a license or with deficient workers' compensation insurance are fined and possibly imprisoned, depending on such criteria as repeated violations. Employees need to be made aware of the consequences of abating such actions.

14) As better interstate cooperation is developed, states without felony penalties need to change their laws, and the insurance industry needs to make a concerted lobbying effort to implement these changes.

15) The American Bar Association (ABA) needs to police their own practitioners so as to create stiffer penalties for offenders, including but not limited to disbarment.

16) Contractor Associations like ABC, AGC and ASA should take leading roles in working to inform and educate their members about the benefits of reducing WCF.

17) Contractors need to take proactive positions towards their efforts in reducing the potential for WCF. Such action would include, but not necessarily be limited to:

A) screening employees, prior to employment, to assure they can perform their intended jobs. This is difficult, but is manageable within the parameters of the Americans with Disabilities Act of 1990 (ADA),

B) training supervisors to 1) be aware of employees who show signs of stress or decreased productivity level, 2) effectively utilize a modified or light duty program, 3) promote physical fitness and 4) be aware of WCF schemes,

C) encouraging disabled workers to come back to work in a modified or light duty capacity,

D) educating employees about the consequences of WCF and about the company's commitment to prosecuting violations, and

E) rewarding employees for limited lost time injuries, which hopefully will get employees working jointly and severally to cut claim costs.

18) Federal, state, insurer and contractor entities need to include programs that are proactive regarding soft tissue injuries. A typical back injury program would include the following steps:

A) Develop and present back injury prevention training and Train-the-Trainer classes.

B) Manage the certification of back injury prevention, instructor training, and programs for vendors.

C) Develop and present an ergonomics training program to reduce work place injuries through the adaptation of the work place to the worker.

D) Implement a mandatory back re-injury program, requiring employees who incur back injuries and receive four or more weeks of income benefits to participate (TWCC 1993).

E) Provide an information number where contractors can get more information about soft tissue injuries and what it takes to counter WCF with respect to these injuries.

19) WCF needs to be incorporated into safety prevention programs. Many states have made laws that make an affirmative connection between the two.

20) The insurance industry and contractor organizations need to lobby in the states that do not have WCF legislation so as to remove the safe haven that some WCF offenders now enjoy.

21) Contractors need to evaluate the benefits of having a human resource manager that would handle WCF as part of their duties. The human resource aspect of small to mid-size construction companies has drastically changed in recent years with compliance surrounding such areas as the Americans with Disabilities Act (ADA), the new Equal Employment Opportunity (EEO) requirements, unemployment cases, discrimination cases and Minority Business Enterprise (MBE) regulations.

With workers' compensation being such a significant part of a contractor's cost to do business, it is essential that people knowledgeable about WC are available within a small to mid-size construction company. Although many larger companies have quantified the savings of having such personnel on staff, smaller contractors need to be made aware of these benefits as well.

22) According to the Florida WCF Bureau, the AFL-CIO members have done a good job in reporting WCF violators. This type of activity needs to continue with the AFL-CIO's support in training their membership as to the consequences of participating in WCF.

23) Contractor, insurance and state entities need to compile typical case studies of WCF, as exemplified in Appendix E, which can be utilized as training tools in the avoidance of WCF.

24) Provide incentives to report fraud within the industry. With the help of employees on the front lines, the battle against WCF becomes much more manageable. Incentives should be specifically designed for:

- 1) **Fellow workers** to report employees who commit WCF,
- 2) **Employees of contractors and subcontractors** to report employers who commit WCF and
- 3) **Employees of professionals** (attorneys, doctors) to report employers who commit WCF.

Anonymity should be provided for such reporters of workers' compensation fraud, and specific reporting procedures, along with well defined rewards, need to be outlined.

25) Trade associations need to be provided with the video tapes that the fraud bureau has developed, with the intent of having the associations pursue public televising of this information. Such action would bring this very important issue to the forefront, and hopefully help the public understand the problem and also lead to the identification of WCF offenders.

26) Construction specific video tapes need to be developed, showing the harm that WCF does to the industry and the public as a whole. Since the construction industry is so prone to workers' compensation claims, it needs to place a special emphasis on purging offenders who commit WCF.

27) Anti-fraud plans should be mandatory for insurers. This may include uniform consumer awareness programs. Another idea is requiring employees to view a video on workers' compensation fraud which would both point out their rights under the Act and also put them on notice about the penalties for fraud.

28) Insurers should be required to have either formal or informal SIU's, or be required to contract out investigations of potentially fraudulent claims.

29) Insurance personnel need to understand the doctrine of bad faith, and honor its bounds so as to not compromise WCF prosecution.

30) In funding the fight against WCF, initial investment needs to be increased so that there can be a return on investment in the form of reduced WC premiums.

31) Although some insurance companies are pursuing WCF in the construction industry, this study indicates that such efforts have not yet been in a consistent format. Research needs to be conducted that is organized by insurers as a whole, in a format that is consistent throughout the industry.

32) Research needs to be done to investigate why the highest percentage of accidents occur in workers between the ages of 25 and 34, with the intent of identifying any fraud trends.

33) Further research needs to be ongoing that will provide further data and analysis that will enable the front line WCF combatants to have the tools that are necessary to reduce WCF.

CHAPTER XII

CONCLUSIONS

The "risk to benefit ratio" has been such that employee fraud is still an ongoing problem in spite of the anti-WCF laws and their enforcement. Some states are not taking the initiative to prosecute workers' compensation fraud. Their rationale is simply that the individual case dollar values are usually small and the difficulties faced in prosecuting a case are many.

Some states, however, are proactive in fighting and reducing WCF. Florida is one of those aggressive states which has passed new laws and hired highly experienced professional law enforcement personnel to deal with the growing problem of workers' compensation fraud.

A unified effort is essential in combatting WCF. If workers' compensation fraud is going to be reduced it is not one person, or one company, or one governmental agency that is going to accomplish this end. A cooperative national network of government and industry must work in harmony to make a concerted and consistent effort in this regard.

Workers' compensation fraud is not an issue that will eliminate itself in time. If allowed to go on with minimal, insufficient or inconsistent enforcement, the effects of compensation received through defrauding the system will be continued increases in burdensome workers' compensation premiums.

This research is the first step in identifying and illuminating the actions that cause WCF. Further research and emphasis needs to be placed on the issue of WCF. The employee benefits of the workers' compensation system will never be properly evaluated until the cheating within the system (WCF) is removed or greatly reduced. As long as offenders are not prosecuted, the "risk to benefit ratio" is an incentive that encourages those considering WCF.

From the surveys and interviews contained in this report it, is evident that the construction industry is one of the primary targets for those aspiring to commit WCF. The varied duration of project times, coupled with the high turnover of employees, provides the opportunity by which the fraudulent claimant can often capitalize.

Contractors need to be trained in the identification and avoidance of WCF. An example of this training would be in the area of soft tissue injuries where employers need a better understanding of ergonomic considerations and the importance of past injury histories. Pre-selecting physicians can also play a primary role in helping to eliminate the fraud in the early stages (see Chapter VIII, section 8.2).

The case studies in Appendix E are typical of WCF in the construction industry. Actual examples of this type can be useful in training supervisors about WCF.

WCF "red flag" indicators, as listed in Appendix C, section C.5, are also items that should be included in supervisor training. This has particular importance as the supervisors work with injured employees to get them back to work as soon as permitted by their physician, probably through a modified work program (see Chapter VIII, section 8.2).

To combat WCF, efforts must be made on a high level of priority. Presently in areas where enforcement is insufficient, WCF is permitted to flourish. Where there are large employer bases, the employers often do not pursue the fraud issues and instead consider fraud a "cost of doing business." This attitude must change on the part of the employee and the employer.

Schemes to commit WCF are like a mutating virus, in that when one scheme is controlled, others are often spawned. These schemes are more fully detailed in Chapters III, IV and V. Clearly, the professional claimant is difficult to eliminate, but this process of elimination normally takes place in the following steps:

1. Identification of the WCF schemes.
2. Anti-WCF legislation, which allows prosecution to have the tools necessary to indict WCF violations.
3. Enforcement of existing or new legislation. In Florida, this comes from the Florida Department of Insurance WCF Bureau.
4. Dissemination of the consequences of WCF, which includes loss of WC benefits on the insurance side and criminal indictments initiated by state prosecutors.

Although there are many sub-divisions of the above, the four that are listed are primary in illuminating the schemes of WCF.

The issue of interstate cooperation is a vital concern to the future of

workers' compensation. If some of the states continue to fail in passing and/or enforcing anti-WCF laws, the federal government will be forced to handle the problem. The federal government probably has the ability to handle WCF, but the question is what that would cost. In addition, once the federal government gets involved with an issue, rarely does a state regain control of what it gives up.

The enforcement of workers compensation fraud in Florida will require prosecutors to take a much more active role than their present efforts have exhibited. The "Prosecutorial Reimbursement Program" as described in 9.1.1 of this text is a positive step, but the effects of this program are yet to be determined.

Before the cost of WC benefits can be correctly evaluated, the fraud has to be removed from the system. In Florida, now that the fraud schemes are being clearly identified and legislation is in place to combat WCF, it is time to provide the manpower and funding to follow through with the monitoring and enforcement necessary to discourage WCF by employees, employers, and professionals alike.

Reducing WCF, like developing effective construction safety on the job site, requires initial commitments for resources to provide for long term benefits. It is now time for the construction industry to take strong proactive steps to counter workers' compensation fraud.

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Appendix A

Surveys

A.1 Overview of Questionnaire Design

The sample surveys were the byproduct of the initial research, and also originated from targeted pilot studies that were conducted with the preliminary research assignments.

The questions were designed in such a way that they required the person responsible for answering the question to be an active participant in discussing their experience with WCF. The additional comments' section of the questionnaire allowed those who were interested to provide supplemental information.

These survey questions were sent out to those identified as being responsible within their organization for answering the questions. In some cases, when the surveys were not returned in a timely fashion, the surveys were conducted over the telephone, and were then followed up with written confirmation.

A.2 Contractors

WORKERS COMPENSATION CONTRACTOR'S QUESTIONNAIRE

- 1) **Has your company experienced what it believed to be fraudulent workers' compensation claims? (Please explain).**
- 2) **If you have experienced fraudulent claims:**
 - a) **how have these claims affected your company?**
 - b) **how do these claims affect the construction industry as a whole?**
- 3) **Do you use physicians of your choice to weed out possible fraudulent or contrived injuries, and if so, how effective has this strategy been?**
- 4) **How do you follow up on your workers' compensation cases to**
 - a) **determine how a debilitated worker is managing since the accident?**
 - b) **track payout being made to the injured party?**

- 5) Do you utilize private investigators for questionable claims?
(Please explain).
- 6) Can you identify some of the various schemes that workers might use to commit workers' compensation fraud? (What are typical "red flags" that may indicate questionable claims?)
- 7) Have you ever attempted to fight a workers' compensation claim? (Please explain).
- 8) If you have fought claims, what were the major identifiable costs of this effort?
- 9) Are your supervisors trained to recognize suspicious activity surrounding accidents on the job site?
- 10) Can you estimate the number of:
 - a) somewhat fraudulent claims (began as viable work-related claims but became fraudulent extension of benefits)? vs.
 - b) totally fraudulent claims (non-work-related injuries or contrived injuries)?

- 11) Are you aware of:
- a) the Bureau of Workers' Compensation Fraud?
 - b) incentives to employees to report fraudulent claims?

A.3 Insurance Companies

WORKERS COMPENSATION FRAUD RESEARCH

CONSENSUS OF INSURANCE COMPANIES' RESPONSES TO QUESTIONS ON FRAUD

- 1) **Do you have a workers' compensation claim fraud department?**
- 2) **Who is in charge of this department - What is his title?**
- 3) **How many employees work in your workers' compensation fraud division?**
- 4) **What is your volume of policies in workers' compensation?
List by state, if possible.**
- 5) **How long has the company been involved in workers' compensation fraud investigation?**

- 6) Do you use private investigators or do you have an in-house investigation unit?
- 7) How are the individuals involved in investigation chosen -- what are your criteria?
- 8) What do you estimate are your yearly losses from workers' compensation fraud?
- 9) How are fraud claims reported and by whom?
- 10) Do you use any historical information databases to help identify possible fraud (i.e. NICB database)?
- 11) How many claims are investigated for fraud each month (or year) by your company?
- 12) What happens when someone is caught making a fraudulent claim?
- 13) Do you usually prosecute?

- 14) Is there a minimum amount of money damages that makes prosecution worthwhile? If so, how much?
- 15) How many arrests and/or convictions has your company been involved with during last year?
- 16) How much money has been recovered or awarded due to restitution, fines, penalties, etc.?
- 17) What areas of workers' compensation fraud have you identified in the construction industry (worker claims, employer fraud, etc.)? Which is most prevalent?
- 18) What research or studies has your company conducted on workers' compensation fraud--Have any been specialized in the area of construction?
- 19) Has your company published anything on the subject or are you aware of anything that has been published? If so, where is the material available?
- 20) Additional Comments:

A.4 States

**WORKERS' COMPENSATION FRAUD
QUESTIONNAIRE**

- 1) When was your workers' compensation fraud agency started?**
- 2) Who is the director of your state's workers' compensation fraud agency?**
- 3) How many employees work in the workers' compensation fraud agency?**
- 4) How are fraudulent claims reported and by whom?**
- 5) How many complaints are received every month?**
- 6) What areas of workers' compensation fraud have you identified within your own state?**

- 7) What happens when someone is caught making a fraudulent claim?
- 8) How many arrests and/or convictions has your department made during last year?
- 9) How much money has been recovered due to restitution, fines, penalties, etc.?
- 10) Who are the key people within your state involved with workers' compensation fraud ?

Government:

Private:

11. Please list any other pertinent information:

Appendix B

SUMMARY OF INFORMATION COLLECTED

B.1 Overview

The summary of the information collected has been compiled in the same format as the questions were asked of the contractors, insurance companies, and state agencies. The data contained in this appendix is compiled in Tables B.4.1 and B.4.2, which summarize the effectiveness and lack thereof for various entities. A more detailed discussion about these tables is located in section B.4 of this text.

In some cases, the answers given to these questions were repeated multiple times by different respondents, but have only been identified as a single answer in the compilation of this section. This compilation was prepared to simplify the findings, while at the same time attempting to give a true representation of the results.

The respondents participation in answering these questionnaires was varied, which correlates with their differing degrees of involvement with WCF. In most cases, those actively involved with WCF were very open and willing to share their WCF activities.

B.2 Contractors

CONSENSUS OF CONTRACTORS' RESPONSES TO QUESTIONS ON FRAUD

The following responses summarize various concerns of contractors who deal with WCF and explain some methods of combatting WCF.

- 1) **Has your company experienced what you believed to be fraudulent workers' compensation claims?**

A total of 63.5 percent of all contractors surveyed answered yes, including 100 percent of large contractors and 27 percent of small contractors (see Chart 8.1). Estimates ranged from one case within a small company to four thousand cases per year for a top-twenty contractor.

Some responses to this question indicated a lack of understanding within the construction industry regarding WCF, especially among small contractors. *One small contractor responded that they do not allow fraud. Another said they avoid claims altogether by not allowing their employees to get hurt.*

2) If you have experienced fraudulent claims, how have these claims affected your company and how do fraudulent claims affect the construction industry as a whole?

- Caused needless loss
- Fueled rising insurance premiums
- Impacted bottom line significantly
- Necessitated risk management, in the form of a separate WCF budget
- Had negative impact on entire industry

3) Do you use physicians of your choice to weed out possible staged or contrived injuries, and if so, how effective has this strategy been?

- In states where it is allowed, pre-selection is helpful in fighting WCF
- Typically a physician or clinic is selected per project, based on workers compensation claim history and proximity to the job site
- Using conservative doctors on the first reporting of an injury has proven to be a very effective and worthwhile practice
- Mandatory drug testing by a pre-selected physician for all workers involved in an accident has proven to be effective
- Educating health care professionals about types of work performed and about modified duty programs has been very helpful
- Note: Insurance companies keep records of workers'

compensation claims to track doctors, clinics or geographical areas that have a high incidence of claims.

- 4) **Do you follow up on your workers compensation cases to**
a) determine how the injured employee is managing
since the debilitating accident?

- Some carriers have physicians on staff who do follow-up house calls
- Most contractors have modified/limited duty programs designed to help injured workers get back on the job and to regain productivity

- b) determine what payout is being made to the injured party?**

- Yes, the carrier provides monthly cost reports

- 5) **Do you utilize private investigators for questionable claims?**

- This has been done within larger companies and has been very effective
- For smaller companies, typically the insurance carrier, not the contractor, hires the private investigators
- Typical example: In a claim involving chronic back problems, an investigator took pictures of the claimant doing physical labor for another company

6) Do you believe that your company understands the various schemes workers use to commit workers compensation fraud, and if so can you please identify some of them?

- A New York based company said, "New York invents them!"
- A Florida company said, "We don't allow fraud."

- Typical flags identified by contractors were:

- Claimants with treatments from various doctors within the same clinic
- Relatives of the doctor aiding in treatment (i.e. the doctor's wife performing physical therapy, etc.)
- Claims occurring near the end of a project, especially if the end of the project would mean laying off the claimant
- Claims occurring early Monday morning
- Unwitnessed accidents resulting in strains or similar maladies that are difficult to assess, especially in the case of back injuries
- Frequent claims by the individual in question
- Claims that are reported late

7) Have you ever attempted to fight a workers compensation claim?

- Contractor responses ranged from contesting one or several claims per year to challenging as many as 25% of all claims
- Mediation is a helpful avenue in negotiating the settlement of claims
- Back problems are typically the most contested of all claims

8) If you have fought a workers compensation claim, what were the identifiable costs of this effort?

- Legal fees and medical claims settlements are the major costs
- Time of executives involved in contesting a claim can quickly become a cost factor

9) Are your supervisors trained to recognize suspicious activity surrounding accidents on the job site?

- Accident review training for field supervisors has proven helpful
- OSHA Accident Investigation & Reporting Procedures is a good source of training material for recognizing staged or contrived injuries
- Trade associations have helped their members train their employees in multiple subjects, including accident investigation and fraud identification

10) Can you estimate the number of:

a) somewhat fraudulent claims (began as viable work-related claims but became fraudulent extension of benefits)? vs.

b) totally fraudulent claims (non-work-related injuries or contrived injuries)?

Results were inconclusive. Answers ranged from very low a/b ratios to very high a/b ratios, and others could not even approximate these values. Some smaller contractors, although aware of the existence of WCF, had little or no experience on which to base an answer to this question.

11) Are you aware of:

a) the Workers Compensation Fraud Bureau?

Results: 71% Yes
29% No

b) incentives to employees to report fraudulent claims?

Results: 35% Yes
65% No

WORKERS COMPENSATION FRAUD RESEARCH

CONSENSUS OF INSURANCE COMPANIES'
RESPONSES TO QUESTIONS ON FRAUD

The following data was typical of responses received:

- 1) **Do you have a workers' compensation claim fraud department?**

All insurance companies interviewed responded that they either have Special Investigations Units (SIU's) or have SIU's in development (see Chart 7.1). Most have a SIU which investigates only workers' compensation fraud, but several have a combined SIU's investigating all types of fraud.

- 2) **Who is in charge of this department - What is their title?**

This question was asked to identify the specific person responsible for WCF within the company, and to provide a follow-up review if necessary. The actual names and

companies were left out of this report to protect their privacy. The positions were left in this report so the reader could see the typical positions responsible for WCF within the insurance industry.

Director of SIU's

Director of SIU's and Fraud Management

Director of Claims and Security

Associate Director of Workers Compensation Fraud, SIU's

Assistant Vice President - Fraud and

Investigation Division

Director of Workers Compensation in Florida

3) How many employees work in your workers' compensation fraud division?

The answer to this question ranged from 8 to 82. Size of the company did not correspond to the number of SIU's. The answers also showed that the insurance companies varied in their approach to SIU's. Some insurance companies spread their investigators throughout the country, and others just used the home office as their base operation.

- 4) **What is your volume of policies in workers' compensation?
List by state, if possible.**

Most companies were non-responsive to this question, but the data that was received is listed below.

- 1) Total: One company stated that 40% of their total volume is workers compensation.
- 2) Construction: Another company said that construction is approximately 15-20% of their workers compensation business.

- 5) **How long has the company been involved in workers' compensation fraud investigation?**

Responses varied from one year to over fifteen years.

- 6) **Do you use private investigators or do you have an in-house investigation unit?**

All companies interviewed use both to investigate claims. The companies rely more on their in-house investigators (SIU's) than on private investigators.

7) How are the individuals involved in investigation chosen -- what are your criteria?

- experienced criminal investigators
- law enforcement background
- claims investigation background
- workers compensation claims experience

8) What do you estimate are your yearly losses from Workers Compensation fraud?

The answer to this question had a tremendous variance. With the information listed below typical of answers A, B and C.

- A) Losses are immeasurable.
- B) This data is not tracked.
- C) The company estimate of losses is not known.
- D) Losses are unknown, but savings have been documented between \$5 - 18 million
- E) Losses from fraud are not known , but successful fraud investigation has led to savings of \$26.9 million in workers compensation alone.
- F) Approximately \$75-100 million.

9) How are fraud claims reported and by whom?

The following are typical of the responses. A, B and C are the most common answers.

- A) Employers and anonymous callers alert the insurer
- A) National fraud hotline at home office
- B) Local adjustors submit suspicious claims to SIU's
- C) Company agents report problems
- D) Case referred to SIU's if claim report fits list of indicators

10) Do you use any historical information databases to help identify possible fraud (i.e. NICB database)?

The compilation of this answer was that databases used to identify fraud include NICB, Index Bureau, Trans-Union, CDB Infotech, National Database, AISG, individual company databases, and public records.

11) How many claims frauds are investigated for fraud each month (or yearly) by your company?

This answer varied in response, but most often the companies indicated they were not tracking their investigations, but some of the responses were:

- A) Each month, 500 by SIU's and 300 by private investigators
- B) The number varies but is over 1000 per month
- C) Approximately 150 per month
- D) 400 suspicious claims are reported per month

12) What happens when someone is caught making a fraudulent claim?

The minimum action of an insurer is to deny the claim.

Several of the companies follow this action by documenting the fraud and referring the case to the state's fraud bureau or criminal prosecutor.

13) Do you usually prosecute?

The answers were all consistent in that all cases are referred to the state prosecutor, but not all states prosecute for workers compensation fraud. It is the state's decision whether or not to prosecute.

- 14) Is there a minimum amount of money damages that makes prosecution worthwhile? If so, how much?

Insurance companies consider all cases of fraud to be worth prosecuting even if the claim was never paid out. Once again, though, prosecution depends on the state.

- 15) How many arrests and/or convictions has your company been involved with during last year?

Many companies stated that exact figures are unknown. But among those that responded the following were received:

- A) Over 100 arrests
- B) Two convictions
- C) Nine cases submitted, three convictions
- D) 20 arrests

- 16) How much money has been recovered or awarded due to restitution, fines, penalties, etc.?

This information is not available from most insurance carriers or is unknown.

From those who did track recoveries the largest award by the courts was \$30,000, but none of the money has been recovered.

17) What areas of workers' compensation fraud have you identified in the construction industry (worker claims, employer fraud, etc.)? Which is most prevalent?

- All areas of workers compensation fraud have been uncovered.
- Claimant fraud is considered to be most prevalent, but claimants are often supported by fraudulent doctors and lawyers.
- Premium fraud is also a prevalent problem in the construction industry.

18) What research or studies has your company conducted on workers' compensation fraud--Have any been specialized in the area of construction?

- Research that has been conducted in-house on workers compensation fraud was not made available for this study by any of the insurers.
- None of the insurance companies interviewed were aware of any responsible on-going WCF research.
- No company interviewed has done research specializing in construction.

19) Has your company published anything on the subject or are you aware of anything that has been published? If so, where is the material available?

- There have been articles in publications like Contingencies Magazine.
- Some companies have published internal articles, but respondents had limited knowledge of any other publications.
- None of the respondents were willing to provide examples of internal work products.

20) Additional Comments:

- The respondents believed prevention is extremely important in combatting fraud in construction.
- Educating the workers about the consequences of insurance fraud is the best prevention.
- Collaborative efforts of private and public interests in fighting WCF is very important.
- Funding is a primary prerequisite in developing a program to deal with WCF.
- Aggressive action by insurance carriers must increase and be uniform.

B.4 States

WORKERS COMPENSATION FRAUD RESEARCH

STATES' ACTIVITY REGARDING WCF

The data in this section was obtained from the individual states through questionnaires. These questionnaires were originally sent to the states, but this method yielded very limited results. An extensive phone survey followed, with support data being provided in a written format.

Table B.4.1 summarizes the state insurance commissioners and their phone numbers. Although the person in the position of State Insurance Commissioner will change at times, the phone contact number will provide a basis for tracking the WCF in the state.

A detailed description of each state's anti-WCF activities is summarized in Table B.4.2. There was a tremendous amount of difference from state to state, as to the cooperation in compiling this table. It can be readily seen that some states are doing virtually nothing with respect to their identification and prosecution of WCF.

The last part of this section is a compilation of information obtained from the states surveyed. States not having WCF agencies were reluctant to discuss what their plans were in this respect.

TABLE B.4.1: STATE INSURANCE COMMISSIONERS

STATE	INSURANCE COMMISSIONER	CONTACT NUMBER
Alabama	Mike Weaver	205-269-3550
Alaska	David Walsh	907-465-2515
Arizona	Susan Gallinger	602-255-5400
Arkansas	Lee Douglas	501-371-1325
California	John Garamendi	415-557-9624
Colorado	Joanne Hill	303-894-7499
Connecticut	Robert Googins	203-297-3802
Delaware	Donna Williams	302-739-4251
D.C.	Robert Willis	202-727-8000
Florida	Tom Gallagher	904-922-3100
Georgia	Tim Ryles	404-656-2056
Hawaii	Linda Takayama	808-586-2799
Idaho	Harry Walrath	208-334-2250
Illinois	Stephen Selcke	217-782-4515
Indiana	John Mortel	317-232-2385
Iowa	David Lyons	515-281-5705
Kansas	Ron Todd	913-296-7801
Kentucky	Don Stephens	502-564-3630
Louisiana	Jim Brown	504-342-5900
Maine	Bryan Atchinson	207-582-8707
Maryland	Dwight Bartlett	410-333-6300
Massachusetts	Catherine Doughty	617-727-7189
Michigan	David Dykhouse	517-373-9273
Minnesota	Bert McKasy	612-297-5849
Mississippi	George Dale	601-359-3569
Missouri	Jay Angoff	314-751-4126
Montana	Mark O'Keefe	406-244-2040
Nebraska	William McCartney	402-471-2201
Nevada	Teresa Rankin	702-687-4270
New Hampshire	Louis Bergeron	603-271-2261
New Jersey	Samuel Fortunato	609-292-5360
New Mexico	Fabian Chavez	505-827-4500
New York	Salvatore Curiale	212-602-0492
North Carolina	James Long	919-733-7349
North Dakota	Glen Pomeroy	701-224-2440
Ohio	Harold Duryea	614-644-2370
Oklahoma	Cathy Weatherford	405-843-7660
Oregon	Gary Weekes	503-378-4271
Pennsylvania	Cynthia Maleski	717-787-5173
Rhode Island	Sheldon Whitehouse	401-277-2223
South Carolina	John Richards	803-737-6117
South Dakota	Darla Lyon	605-773-3563
Tennessee	Elaine McReynolds	615-741-2241
Texas	Georgia Flint	512-463-6464
Utah	Robert Wilcox	801-538-3800
Vermont	Elizabeth Costel	802-828-3301
Virginia	Steven Foster	804-786-3741
West Virginia	Hanley Clark	304-558-3394
Wisconsin	Josephine Musser	608-266-0102
Wyoming	John McBride	307-777-7441
Washington	Deborah Senn	206-753-7301

Source: UF WCF State Survey, 1994

TABLE B.4.2: WCF ACTIVITY BY STATE

STATE	WCF AGENCY	ANNUAL BUDGET	FUNDING AGENCY	PROSECUTING ENTITY
Alabama	No	N/A	N/A	N/A
Alaska	Yes	200,000	State	Local District Attorney
Arizona	Yes	500,000	Insurance Carriers	Local D.A. , Attorney General
Arkansas	Yes	600,000	WC Commission	Local/Fraud Unit Authorities
California	Yes	1,300,000	Special Assessments	Local D.A. , Attorney General
Colorado	No	N/A	N/A	N/A
Connecticut	Yes	325,000 (proposed)	WC Commission	Local District Attorney
Delaware	No	N/A	N/A	N/A
D.C.	Yes	5,000,000 *	Insurance Carriers	Insurance Commissioners
Florida	Yes	1,600,000	State	Local D.A. , Statewide Prosecutor
Georgia	No	N/A	N/A	N/A
Hawaii	No	N/A	N/A	N/A
Idaho	Yes	100,000	WC Premiums	State Attorney General
Illinois	No	N/A	N/A	N/A
Indiana	No	N/A	N/A	N/A
Iowa	No	N/A	N/A	N/A
Kansas	Yes	Variable	Insurance Carriers	Assistant Attorney General
Kentucky	No	N/A	N/A	N/A
Louisiana	Yes	353,000	Dept of Labor/WC	State Attorney General
Maine	No	N/A	N/A	N/A
Maryland	Yes	400,000	State	State Attorney General
Massachusetts	No	N/A	N/A	N/A
Michigan	No	N/A	N/A	N/A
Minnesota	Yes	450,000	State	Department of Justice
Mississippi	No	N/A	N/A	N/A
Missouri	Yes	276,000	Admin. Trust Fund	State Attorney General
Montana	Yes	533,000	WC Premiums	N/A
Nebraska	No	N/A	N/A	N/A
Nevada	Yes	451,000	Special Assessments	State Attorney General
New Hampshire	No	N/A	N/A	N/A
New Jersey	Yes	9,100,000 *	Special Assessments	State Atty Gen/U.S. Atty Gen
New Mexico	Yes	400,000	State Trust Fund	Local District Attorney
New York	Yes	360,000	WC Premiums	Local D.A. , Inspector General
North Carolina	No	N/A	N/A	N/A
North Dakota	No	N/A	N/A	N/A
Ohio	No	N/A	N/A	N/A
Oklahoma	Yes	200,000	WC Premiums	State Attorney General
Oregon	Yes	400,000	Permanent Assessment	NCCI
Pennsylvania	No	N/A	N/A	N/A
Rhode Island	Yes	300,000	Insurance Industry	State Attorney General
South Carolina	No	N/A	N/A	N/A
South Dakota	No	N/A	N/A	N/A
Tennessee	No	N/A	N/A	N/A
Texas	Yes	2,000,000	State	Local District Attorney
Utah	No	N/A	N/A	N/A
Vermont	No	N/A	N/A	N/A
Virginia	No	N/A	N/A	N/A
West Virginia	Yes	Approx. 200,000	WC Premiums	Local D.A. , St./U.S. Atty Gen
Wisconsin	No	N/A	N/A	N/A
Wyoming	Yes	Variable	WC Premiums	State Atty General
Washington	Yes	6,400,000	WC Premiums	Local D.A. , Attorney General

* Denotes budget for overall insurance fraud. WCF budget alone was not available

Source: UF WCF State Survey, 1994

ALABAMA

The state of Alabama does not have a workers' compensation fraud agency within the Industrial Commission. Individual insurance companies are left to research and conduct their own investigations. Therefore, if fraudulent claims are proven, denial of benefits is usually the maximum penalty that is set forth.

ALASKA

Alaska has a WCF Bureau which is becoming more active in their prosecution efforts. They are also working with other states in combatting WCF. Although relatively new in their interstate effort in fighting WCF, their work is now starting to show positive results.

ARIZONA

Arizona has recently started a workers' compensation fraud agency within the State Compensation Fund Division. There are 13 investigators within the fraud agency, but only three are forming the specialized WCF unit.

ARKANSAS

Arkansas has developed a workers' compensation fraud agency and has also implemented a safety program within this agency as of June, 1994. This safety program will be an incentive to lower workers' compensation rates. The Insurance Commissioner and Division Chairman were the two key people involved with the creation of the new fraud agency.

CALIFORNIA

California is active in combatting worker's compensation fraud. The Department of Insurance has an Enforcement Division, headed by an enforcement chief. In 1990, the Fraud Bureau was formed within the Enforcement Division. The Fraud Bureau has jurisdiction over *criminal* fraud and does all of its own investigations; police authority is not involved. They have a special investigative unit that detects and investigates all of the claims, after which the case is referred to the local District Attorney. Other employees of the Fraud Bureau include staff investigators and several assistants. The Bureau investigates business operations including areas such as construction, medicine, and law.

Criminal fraud may also be investigated and prosecuted by local district attorneys without the involvement of the Fraud Bureau. In this case, the district attorney applies for grants to fund both investigation and prosecution. The effectiveness of this method of dealing with WCF varies greatly from district to district depending on the attitude of the district attorney towards WCF.

In the case of *civil fraud*, the insurance company involved handles the investigation. In the state of California, insurance companies are required to have special investigation units (SIU's). It is their responsibility to pursue and develop any civil WCF cases. An insurance company SIU may do initial criminal investigation, but such cases are then turned over to the Fraud Bureau for further investigation when it appears that criminal fraud has been committed.

Medical and legal advertising within California is monitored by three separate entities, as follows:

1) Division of Workers' Compensation

- Regulates all workers' compensation advertising *except* medical and legal advertising.

2) Industrial Medical Council, Department of Industrial Relations

- Regulates medical advertising that is related to workers' compensation claims.

3) State Bar Association

- Regulates legal advertising that is related to workers' compensation claims.

Cappers and runners of medical and legal professionals are not regulated by the above entities, but rather are under the jurisdiction of the Department of Insurance Fraud Bureau.

COLORADO

The workers' compensation Division in Colorado does limited investigations into fraud. They contact investigators within the labor department to conduct investigations for them. The Department of Labor in-turn informs the insurance carriers of possible fraud and the details of their investigations. The state of Colorado however, does not have an official workers' compensation fraud agency.

CONNECTICUT

The workers' compensation fraud agency was started on October 2, 1993. The has had 226 complaints, 33 arrests, and \$52,824 recovered from restitution. Through their investigations, they have typically found workers collecting benefits while working for a second employer. They have also found workers claiming to be totally disabled and yet are seen shoveling snow. They have implemented a program called "Accelerated Rehabilitation". This program allows the workers to repay benefits they collected illegally.

DELAWARE

Delaware does not have a workers' compensation fraud agency.

DISTRICT OF COLUMBIA

The investigative unit for the District of Columbia was started on July 26, 1982. The Associate Director and the Administrative Supportive Officer oversee all of the investigators within the fraud unit. There are three insurance examiners and a full time investigator that are employed within the fraud unit. Frauds are reported by telephone and in writing by claimants, neighbors, business associates, and a myriad of other public constituents. The two most prevalent frauds reported are claimants claiming disability while not being disabled and medical fraud caused by doctors.

When a person is caught making a fraudulent claim, their benefits are terminated. The Fraud Unit has had no arrests because they have no criminal enforcement authority. No money has been recovered from any means of collection. The key people involved with workers' compensation fraud within the District of Columbia are the Office of Worker's Compensation, District of Columbia Corporation Counsel, and private insurance companies.

FLORIDA

The state of Florida has been a focal point of this report and accordingly is covered in detail in Chapters II, III, VI and IX of this text.

GEORGIA

Georgia does not have a workers' compensation fraud agency nor an enforcement division. They do not pay any benefits and do not perform investigations.

HAWAII

The state of Hawaii has no formal workers' compensation fraud agency. The statistics include the number of reported cases, the total cost of workers' compensation, the cost per case, average number of days lost, but at this juncture there is no legislation or fraud unit to prosecute offenders.

IDAHO

Idaho began a workers' compensation fraud agency in April of 1994 by establishing a toll-free fraud hotline within the Idaho State Insurance Fund, along with one designated investigator. Four other investigators within the State Insurance Fund are available for assisting with investigations. Funding is provided through WC premiums, and cases are referred to the attorney general for prosecution.

ILLINOIS

The Industrial Commission is the agency that deals with WCF complaints, but the state does not have a workers' compensation fraud agency nor an investigative division. The Commission also does not currently collect statistics on fraud within the state of Illinois.

INDIANA

The state of Indiana has no workers' compensation fraud agency.

IOWA

The state of Iowa does not have a workers' compensation fraud agency. Insurance companies are supposed to handle their own investigations and prosecution of offenders. To date, no cases against alleged WCF offender have been won as civil cases. There is no workers' compensation fraud agency, because legislation has not been enacted that would allow for such an agency.

KANSAS

The state of Kansas recently began a WCF Division. They were authorized by legislation July 1, 1993. The Division's official work started on January 14, 1994. They have hired an assistant attorney general to head this division. They also have two part time investigators and one clerical person. Previously, if fraud was discovered insurance companies were left to handle it, and the funding for the investigation and the prosecution came from the premiums. At this time, they institute an investigation and upon completion of that investigation, they determine whether the case should be handled administratively or criminally. Administrative actions are handled in-house, while criminal actions are referred to the local County or District Attorneys for prosecution.

KENTUCKY

The state of Kentucky has no workers' compensation fraud agency.

LOUISIANA

The workers' compensation Fraud Unit has been in existence since April of 1992. The Unit accepts anonymous tips from phone calls and also from the insurance carriers SIU's. The WCF Unit is responsible for conducting all investigations.

Since its conception, the unit has created one indictment through the attorney general's office and presently has 8 pending claims. The unit is still in development and is testing several different computer programs that will aid in the investigative process.

There are currently 19 employees within the workers' compensation fraud agency. This team consists of one manager, one supervisor, 11 investigators, and six analysts. The 11 investigators spend half of their time investigating employment fraud while spending the other half investigating workers' compensation fraud.

MAINE

The Maine Workers' Compensation Board does not have a unit of abuse investigation within its agency. However, the Maine system is currently undergoing a major transition and may possibly have a fraud unit in the future.

MARYLAND

The Workers' Compensation Fraud Division was started in November of 1992. The Division consists of 10 employees which includes three state troopers, two insurance administrative investigators, three state police investigators, and two secretaries. Workers' compensation fraud is reported through insurance companies and the National Insurance Crime Bureau (NICB). They have 30 to 40

complaints per month. The most common allegations are those of people working while collecting workers' compensation benefits.

Once a person is caught, charges are written up and an application for an arrest warrant is filed. The warrant is then served to the individual to appear in court. A court date will be set but in most instances the court will not take the case because of the lack of money.

MASSACHUSETTS

The state of Massachusetts has a Bureau of WCF, which was started in 1990. They have a help line at 617-521-7794. The attorney general prosecutes after the case is referred to their office from the Fraud Bureau. The entire staff consists of two members, and their sole purpose is to conduct the research for any investigations. The Fraud Bureau does all of the actual investigations.

MICHIGAN

Michigan does not have a workers' compensation fraud agency.

MINNESOTA

The Workers' Compensation Fraud Division was enacted by the 1992 legislature and was effective July 1, 1992. The employees of the unit consist of one senior investigator, three field investigators, and one assistant. All of the investigators are ex-police officers in white collar investigations. They are mainly contacted through their toll-free number. They receive 40 to 50 complaints per month. The majority of the fraud reported is employee fraud. This type of fraud, however, is handled mostly through the insurance carrier. They are mostly concerned with people working at a second job while receiving workers' compensation benefits. The other type of fraud they look for is insurer fraud. An

example of this type of fraud is when a client signs up to receive insurance, but the insurer does not submit the papers to the state. When a complaint seems valid enough to investigate, they start to gather information about the subject. The alleged perpetrator is the last person to be interviewed. If the evidence is good enough to prosecute, they will ask the subject to confess. If the subject does not confess, the case will then go to the County Prosecutor's Office. The penalty structure is shown in Table B.4.3 below.

Table B.4.3: Penalty Structure for WCF in Minnesota

Amount of Fraud:	Charge:
1 - \$ 200	Misdemeanor
\$ 200 - \$ 500	Gross Misdemeanor
\$ 500	Felony
\$ 500 - \$ 2,500	5 Year Felony
\$ 2,500 - \$35,000	10 Year Felony (10 years in jail)
\$35,000 +	20 Year Felony (20 years in jail)

Source: UF WCF State Survey, 1994

They have had one subject arrested on a served warrant. They currently have six criminal cases pending in the county prosecutor's office. They have had no money recovered, but have saved an insurer approximately \$500,000 due to an investigation they conducted. The

subject dropped his case due to various depositions given about the subject. Two people have been ordered to pay restitution totaling \$25,000, but none have paid, to date.

MISSISSIPPI

Mississippi does not have a WCF agency.

MISSOURI

The Division of Workers' Compensation states that the Fraud and Noncompliance Unit was enacted by the 1993 legislative session, and was recently funded. This Unit was formed in May, 1994, and they presently have nine employees.

Fraud claims are reported in writing by virtually anyone. They will be investigating noncompliance as well as workers' compensation fraud. They are unable to tell how many complaints are received every month and what types of fraud they have identified. If a claim meets their standard as being legitimate, they will investigate. If the facts of that investigation are sufficient to prosecute, the file will be sent to the attorney general's office for prosecution.

MONTANA

The state of Montana has a workers' compensation fraud agency that was founded on July 1, 1993. The agency is under the Montana State Compensation Insurance Fund, and has five investigators on staff. The agency also provides funding for four investigators and one attorney within the Department of Justice. Cases are normally prosecuted through the Department of Justice, but some cases are referred to the local county attorney and also the attorney general.

NEBRASKA

The state of Nebraska has no WCF agency.

NEVADA

The Workers' Compensation Fraud Division was started on August 16, 1993. The staff includes two attorney generals, one chief investigator, nine field investigators, two senior investigators, one deputy attorney general, and eight clerical staff members. They are mostly contacted through their toll-free hotline that they advertise on TV and billboards. They also received complaints from the State Industrial Insurance System (SIIS). The SIIS forwards complaints about workers' compensation fraud to the Fraud Division. The Fraud Division then determines whether or not the case is fraudulent.

When the Fraud Division first started, they received approximately 450 complaints per month. Now they receive approximately 60 calls per month. The three types of fraud reported include abuse cases, employer fraud, and provider fraud. Employer fraud is the newest type of fraud reported to them.

According to Nevada law, a person is required to state in writing that they are not working at another job. If they are accused of working another job, an investigation will be conducted and the alleged offender can be charged with two counts. One count will be a felony because of fraudulently receiving money from the SIIS. The second will be a gross misdemeanor for cashing a workers' compensation check while working another job.

They have had six arrests total, two of which were from out-of-state warrants. No money has been recovered at this point

because this is usually dealt with during the plea bargaining.

The Fraud Division estimates that the state has to pay \$3.5 million each year because of WC payments that are paid on behalf of workers of uninsured employers.

NEW HAMPSHIRE

New Hampshire does not have a workers' compensation fraud agency. The legislature just passed a law that allows the Worker's Compensation Division to form a fraud agency, but they have not yet formed such a division.

NEW JERSEY

The unit was started in September of 1992 due to the changing of a 1983 statute. The unit employs approximately 130 investigators, which does not include clerical aides. In 1992 they received approximately 235 complaints per month within the Division of Insurance Fraud (*overall insurance fraud, including WCF*). In 1993 they received over 300 complaints per month. The complaints come from ex-wives, business associates, neighbors, employers, and insurance carriers. The insurance carriers are obligated to file a complaint within 30 days. Insurance complaints make up 80% of their cases. The two most popular complaints are people collecting workers' compensation while working at a second job and people lying on their medical forms.

If a complaint is valid, the investigators will send the subject a consent agreement, which is not an admission of guilt. If the subject refuses to enter the agreement, the case will then go to the attorney general's office and eventually to court. Subjects can be fined up to \$5,000 for their first offense (a civil penalty).

The Division of Insurance Fraud (*overall insurance fraud, including WCF*) collected \$4.7 million in fines during 1992, which includes all insurance fraud and does not include restitution. In 1993, they collected over \$6.0 million in fines.

NEW MEXICO

The New Mexico legislature enacted its WCF agency on January 1, 1991, but the agency did not start until July 1, 1991. The agency employs six administrative investigators and 3 criminal investigators. They are contacted by insurance companies, adjusters, employers, employees, and anonymous calls. Criminal fraud makes up 48% of their cases. The remainder is made up of retaliatory discharge, bad faith, unfair claims protection, late claims, premium fraud and employee leasing fraud. The fraud unit receives 350 to 400 complaints per year.

Investigations are conducted on what is deemed to be legitimate complaints. Investigators use surveillance techniques on administrative frauds. The hardest thing is to prove that the subject had the intent to conduct a fraud. Photographs and video tapes are often provided from the insurance agency's private investigators. Its the responsibility of the workers' compensation investigators to put the case together in a chronological order. Once a perpetrator is caught, the case is referred to the district attorney's office for prosecution. When the case involves administrative fraud, a hearing is held in front of the Director of Workers' Compensation Administrator, Herald B. Stuyvesa. Cases that involve other types of fraud are handled by judges that specifically handle workers' compensation cases.

They have successfully completed 41 prosecutions as of June 15.

1994. Forty were administrative action frauds which resulted in severe penalties. The other fraud was a criminal fraud. No money has been recovered yet from criminal fraud but \$12,000 has been collected from administrative fraud.

NEW YORK

The state of New York does not have a WCF agency.

NORTH CAROLINA

Currently, the North Carolina Industrial Commission notifies carriers to investigate if someone reports fraud to them, and the commission has no formal workers' compensation fraud agency. The General Assembly, however, has recently enacted Senate Bill 906. If passed, this would provide a budget of \$100,000 per year for the next two years effective October 1, 1994.

NORTH DAKOTA

North Dakota has no official workers' compensation fraud agency, because of the lack of money to fund such a division. However, they do have a toll-free hotline, seven field accident investigators, one phone receptionist, six private investigators, and approximately five analysts to handle workers' compensation fraud complaints. They receive approximately 10 complaints per month, and one out of four are legitimate complaints. They are contacted primarily by the general public and all types of fraud are reported.

They have had three civil cases, but have not made any arrests or prosecutions. They are not able to disclose how much money they have recovered because of the confidentiality involved with the cases.

OHIO

Ohio does not have a WCF agency.

OKLAHOMA

The fraud agency for Oklahoma was enacted on August 1, 1993. The unit employs attorneys and other people which includes investigators, assistants, and clerical help. The agency is contacted by the general public, insurance carriers, auditors and underwriters from throughout the state. They receive approximately 30 complaints per week. If a claim is deemed to be legitimate, the investigators will create video tapes and take depositions. They will then submit their findings to the attorneys.

Since its conception, the fraud agency currently has 10 cases filed with the state attorney's office and three cases with the local district attorney's office. They have a Subrogation Unit which works in conjunction with the attorneys to make monetary recoveries and collection of fines.

OREGON

The Workers' Compensation Fraud Division was started approximately three years ago. The division employs eight people. They are contacted by letters, phone calls, attorneys, and the insurance commission. They receive approximately 25 complaints per month. They have had a total of 1,000 complaints during the past three years. All claims are turned over to the insurance company to handle. Oregon reports complaints about individuals to all of the insurance companies. They do not try to prosecute the individual.

The only action taken against a complaint is a written reprimand

to the individual's insurance company. They have not recovered any money nor do they have any restitution programs in place.

PENNSYLVANIA

Pennsylvania has no workers' compensation fraud agency. The legislature has passed a new law allowing a fraud division to be created, but none has started to date.

RHODE ISLAND

Their Workers' Compensation Fraud Division was started in August of 1992. There are a total of nine employees within the Fraud Division. They consists of six investigators, one investigative attorney, one chief investigator, and one secretary.

They receive 25 to 30 complaints per month. They are reported from law enforcement, the courts, employers, letters, insurers, and through their hotline. Most of their complaints revolve around allegations of not reporting outside wages while collecting workers' compensation.

When a subject is caught making a fraudulent claim, an investigation is conducted. From the investigation, it will go to either a workers' compensation court or a criminal court, depending on the evidence. Thus far, they have handled twelve charged criminal cases and seven cases that went to court. The amount of money recovered has not been calculated.

SOUTH CAROLINA

South Carolina does not have a workers' compensation fraud agency.

SOUTH DAKOTA

South Dakota has no workers' compensation fraud agency.

TENNESSEE

The WCF Division for Tennessee is within the Insurance Department. The fraud coordinator oversees investigation of fraudulent claims, with the reports made to him. Audits are made by the insurance companies, and they in turn contact the NCCI Fraud Department for investigations. Their WCF Division started in late 1991. Their programs include investigation and prosecution. They currently have three cases ready to go to the federal court.

TEXAS

The WCF claims are handled by the Division of Compliance. The reports are made to the investigators. The kind of complaints they receive are for fraud committed by attorneys, health care professionals and employees. They receive calls from the general public and insurance audit field officers.

After investigation, the WCF Division is allowed to prosecute, and can fine people depending on the violation.

UTAH

Utah does not have a WCF agency.

VERMONT

Vermont does not have a WCF agency. The Workers' Compensation Division is within the Department of Labor and Industry.

VIRGINIA

Virginia does not have a WCF Division.

WASHINGTON

The Investigation Program, a division of Claims Administration, which has overall responsibility for the investigation of fraudulent activities, has been in operation since October of 1989. A separate division, the Fraud Control Unit, was started approximately three years ago to focus on employer and provider fraud.

Overall, the Investigation Program has a staff of 60. Claimant fraud is investigated by 19 investigators. Six staff of the Fraud Control Unit investigate employer and provider fraud. The Fraud Control Unit also has an assistant attorney general and a legal secretary assigned.

The majority of fraud claims are received by telephone from former spouses, relatives, neighbors, and co-workers. Some are generated by a cross match program which compares worker compensation payments against wage information. The Investigation Program estimates about 100 claimant fraud and eight employer provider fraud complaints are received every month. The three general areas are claimant, employer and provider (medical care, etc.) fraud.

In claimant fraud, the department issues a civil fraud order for the amount of the overpayment plus a 50% penalty. Some cases, after review, are presented to county prosecutors for criminal prosecution. The assigned assistant attorney general of the Fraud Control Unit handles employer and provider fraud prosecution. Three claimant fraud cases have been filed this year, one of which went to trial and the claimant was convicted. The fraud control unit has filed three

prosecutions this year.

They issued administrative (civil) fraud orders involving claimant fraud amounting to over \$1,000,000 in 1993, with less than \$100,000 recovered. They estimate that this has saved the department over \$3,000,000 in case reserves. The fraud control unit has referred \$286,587 in overpayment or premium assessments, \$9,685 in penalties and \$12,689 in interest. They also stated that although they know there is more fraud being committed, they currently lack the staff to pursue it.

WEST VIRGINIA

The West Virginia WCF Unit started in 1990. They have an office assistant/clerk, and 8 field investigators in 6 field offices across the state.

Fraud can be reported by telephone, mail, referral, or personal contact. Reports or requisitions can come from within the division, from employees, law enforcement, health care providers, neighbors and anonymous callers.

Few cases of claimant fraud are actually prosecuted; employer fraud and professional fraud are targeted. Examples of fraud encountered by the WCF Unit are fraudulent extension of benefits while claimant is gainfully employed by another company or in another industry, health care providers billing for services not rendered, double billing, the claimant's benefits being paid and accepted years after the maximum limits have been accepted, alterations of medical records and reports, and forgeries.

In combatting fraud, the state WCF Unit combines its efforts with the Federal Medical Review Task Force. This task force is under the

direction of the U.S. Attorney's office for the Southern District of West Virginia, and provides two criminal attorneys and one civil attorney for assistance in prosecution of WCF cases. When the state WCF Unit encounters a case that appears to be fraudulent, it approaches the task force with the information. The WCF unit and the task force then work together in prosecuting the case.

In addition to the three attorneys, the task force is assisted by the Federal Bureau of Investigations (FBI), United States Postal Inspectors, the Drug Enforcement Agency (DEA), the Department of Labor's Office of the Inspector General, and the West Virginia State Police's Bureau of Criminal Investigations.

The WCF Unit reports that this combined effort has been quite effective, especially in combatting employer and professional fraud (see Chapter I, section 1.5 for further discussion about types of fraud).

WISCONSIN

The state of Wisconsin has no WCF agency.

WYOMING

The state of Wyoming does have a WCF agency. This state also has an enforcement division, and they do all of their own investigations. They deem police authority to be unnecessary. Their staff is primarily composed of investigators, and most of their cases involve claims within the construction and medical industries.

Appendix C

Categories of WCF

C.1 Employer Fraud

Dishonest employers attempt to reduce their WC premiums by manipulating three factors that directly affect the premium rate:

1) payroll, 2) job classification codes and 3) experience modification rating (EMR). Details of each factor are outlined below.

C.1.1 Manipulation of Payroll

Employers who cheat on WC premiums manipulate their payroll in three ways. They:

- 1) Underestimate payroll,
- 2) Delay or prevent a final audit, and/or
- 3) Produce incomplete or disorganized payroll records.

Since projected payroll determines the amount of premium deposit and periodic premium payments, employers committing WCF provide their insurer with an unreasonably low estimate of projected payroll. Then they delay or prevent the final audit, which determines the exact WC premium due for the previous year, in the hopes that the insurer

will not perform the audit, using instead the low estimate for actual payroll. If forced to produce records for an audit, the employer produces incomplete and disorganized records, making it difficult or impossible to accurately determine his actual payroll (Bateman, 1992).

C.1.2 Manipulation of Job Classification Codes

To avoid paying a high WC premium rate for employees with high risk jobs, dishonest employers misrepresent:

- 1) The main types of work their employees perform in order to achieve a lower governing classification code for these workers, and
- 2) The job responsibilities of certain individual employees, classifying them even lower than the discounted governing rate (Bateman, 1992).

C.1.3 Manipulation of Experience Modification Rate (EMR)

Rules have changed in an attempt to stop schemes to fraudulently reduce the EMR. For example, until April of 1988, a business received a new "baseline" EMR if its ownership changed hands. Many contractors took advantage of this by transferring ownership of their business to a family member, so a new rule was passed restricting a family member from counting as a "new owner." Contractors then used loyal employees to serve as "new owners" through stock transfers which were not intended to be binding by either the "real owner" nor the employee, and the operation of the business did not change at all (Bateman, 1992).

C.2 Agent Fraud

Unscrupulous agents have schemes that follow recognizable patterns. Two of the most common are as follows:

C.2.1 Pocketing Premiums - In this scheme, the agent issues a certificate of coverage to the customer but never sends the premium payment to the carrier. This is called a "pocketing scheme." Investigators look for three key indicators that may indicate an agent who pockets premiums, as listed below:

- a) The insurance agency has a large support staff but has only one licensed agent. Typically this agent is hard to reach.
- b) Cash or money order are required for premium payments.
- c) It takes a long time to receive a written policy.

C.2.2 Conspiring to Reduce Premiums - The agent may:

- Alter an application in order to achieve the lowest possible premium and thereby retain the customer.
- Advise an employer incorrectly regarding filling out an application, even though the employer has honest intentions.
- Conspire with an employer to achieve lower rates

by understating payroll, misclassifying employees, or avoiding a high EMR through an employee leasing pool.

Three key indicators of an agent conspiring to reduce premiums are that he:

- a) Completes an inaccurate application.
- b) Lowers payroll through an employee leasing firm.
- c) Lowers the rate classification of employees (WCF, 199

C.3 Employee Fraud

Employee fraud is the basis of the research herein, and is included throughout the text. Accordingly, employee fraud will not be specifically addressed in this section, but can be found in detail by review of Chapters III through VIII.

C.4 Professional Fraud

Professional regulators and professional societies have not policed some of the perpetrators within their professions. This trend has furthered the problem of fraud by professionals, two examples being attorney fraud and medical provider fraud.

C.4.1 Attorney Fraud

Attorneys involved with fraud often exhibit readily identifiable characteristics, including:

- a) The attorney's claimant(s) complain to the carrier's chief executive officer in pursuit of payment.
- b) The attorney threatens additional legal action if the claim is not settled.
- c) The attorney inquires about settlement or buyout of the claim.
- d) The attorney bills or sends a letter dated the day of the claimant's reported incident.
- e) The attorney is known for handling suspicious claims.
- f) The attorney's firm handles a high percentage of workers' compensation claims.

C.4.2 Medical Provider Fraud

WCF as perpetrated by the medical profession has some indicators that are often restated as a standard method of operation, including:

- a) Subjective diagnosis, such as headaches, muscle spasms and other unquantifiable aches and pains.
- b) Medical bills indicate routine treatments being provided on holidays.
- c) The prescribed treatment is always the same.
- d) Diagnosis is inconsistent with treatment.
- e) Medical reports are identical to those from previous claimants.
- f) The claimant consistently misses or refuses to seek appointments for other medical opinions.

- g) Intensive treatment is prescribed for minor injuries.
- h) Psychiatric tests are recommended for claimant.
- i) The doctor has a reputation for handling claims that exhibit the above characteristics.

C.5 "Red Flag" List of WCF Indicators

Chapters IV and V lists various "red flag" indicators of workers' compensation fraud as they relate to the topics discussed in those chapters. This appendix section contains a more complete listing of such indicators, as provided by Florida's Department of Insurance. The list is categorized by the persons or entities potentially involved in WCF.

C.5.1 The Claimant

- Disgruntled, soon to retire, or facing imminent firing or layoff
- Involved in seasonal work that is about to end
- Took unexplained or excessive time off prior to claimed injury
- Takes more time off than the claimed injury seems to warrant
- Is nomadic and has a history of short-term employment
- New on the job
- Is experiencing financial difficulties
- Recently purchased private disability policies
- Frequently changes physicians or medical providers
- Changes physician when a release for work has been issued
- Has a history of reporting subjective injuries
- Review of a rehab report describes the claimants as being
muscular, well tanned, with callused hands and grease under
the fingernails

- Surveillance or "tip" reveals the totally disabled worker is currently employed elsewhere
- After injury, injured worker is never home or spouse/relative answering phone states the injured worker "just stepped out"
- Return calls to the residence have strange or unexpected background noises which indicate it may not be a residence
- Has several other family members also receiving workers' compensation benefits or other "social insurance" benefits, e.g., unemployment
- Demands quick settlement decisions or commitments
- Is unusually familiar with workers' compensation claims handling procedures and laws
- Is consistently uncooperative

C.5.2 Circumstances of the Accident

- Accident occurs late Friday afternoon or shortly after the employee reports to work on Monday
- Accident is unwitnessed
- Claimant has leg/arm injuries at odd time, i.e. at lunch hour
- Fellow workers hear rumors circulating that accident was not legitimate
- Accident occurs in an area where injured employee would not normally be
- Accident is not the type that the employee should be involved in, i.e. an office worker who is lifting heavy objects on a loading dock
- Accident occurs just prior to a strike, job termination, layoff, or near end of probationary period

- Employer's first report of claim contrasts with description of accident set forth in medical history
- Details of accident are vague or contradictory
- Incident is not promptly reported by employee to supervisor

C.5.3 The Claimant's Attorney

- Attorney is known for handling suspicious claims
- Attorney lien or representation letter dated the day of the reported incident
- Same doctor/lawyer pair previously observed to handle this kind of injury
- Claimant complains to carrier's CEO at home office to press for payment
- Claimant initially wants to settle with insurer, but later retains an attorney with increased subjective complaints
- Pattern of occupational type claims for "dying" industries, i.e. black lung, asbestosis
- Wholesale claim handling by law firms and multiple class action suits
- Attorney threatens further legal action unless a quick settlement is made
- High incidence of applications from a specific firm
- Attorney inquires about a settlement or buyout early in the life of the claim

C.5.4 Health Care Providers

Authorization/collusion

- Patterns-Known providers
- Tips from employers (work with your supervisor of employees)
- Yo-Yoing, calling patient back
- Unsolicited written statements from claimant re:how much better they are - but treatment continues and return to work does not happen
- Keeping the "medical" open
- Unauthorized treatment with questionable "emergency"

Services

- Treatment for W.C. injuries follows previous (weeks-months) first-time visit to this provider
- Services would involve patient being in providers office more than one hour at a time, especially on a frequent basis over long period of time
- Same provider always bills for extra time, extra body parts, special consideration
- Unexpected high costs early on for minor injury, soft tissue and subjective findings
- Special supplies, home therapies, diagnostic testing
- Frequent dates of service
- No transportation bills
- Patient elsewhere on same day which would preclude medical treatment; such as job search in another city, interview at same time, vacation, hospitalization

- Gets authorization after 1st treatment or through an attorney
- Steering claimants to attorneys
- Working (billing) through an attorney
- Reluctant to communicate with carrier - initiates calls to claimant attorney
- Receive demand from attorney for referral to one specific provider
- A provider with a high percent of claimants with attorneys or with a specific attorney
- Always sharing patients with same "other" provider
- Referring claimants unnecessarily to specific other providers and getting something for it (ping-ponging)
- Prescribing unnecessary supply and/or care by specific provider

Medical Records

- Pre-fabricated reports
- "Canned" notes
- Missing dates of services
- Non-sequential notes or lot numbers on invoices
- Different hand writing/same dates of service
- Different ink/same date of services
- Identical ink and hand writing for on-going period of time
- Lost, burned, stolen records when requested
- Progress notes consistently reflect high degree of pain on each visit while stating "progressing as planned" or "good improvement"

- Conflicting medical reports:
 - IME's (independent medical examinations)
 - Emergency room report vs. subsequent office visits
 - Operative reports vs. anesthesia reports vs. pathology reports vs. consent forms
- Anesthesia time does not match operative report
- Pathology report conflicts with diagnosis
- Inconsistent findings between providers

Billing

- Sundays and Holidays billing
- Dates of service on billing forms are listed in nonchronological order (double billing)
- Consistent improper billing practices
 - Unbundling
 - Upcoding
 - Double billing
- Early intensive referrals and consultations and/or diagnostic testing on soft tissue injuries or "minor" injuries
- Inflated bills and unnecessary care to "run-up" costs, in order to prompt an early settlement
- Receiving bills from same two providers for services consistently provided on same dates of services, especially if:
 - dates of service are frequent
 - services are similar in nature
 - seen repeatedly in more than one case
 - physical locality is same or close
- Billing WC and another insurer for "same" services-full charge

- Bills from 2 providers for same dates of services
- Holding bills and submitting all at one time, especially through an attorney
- Same provider billing for primary and assistant surgeon
- Changing billing patterns-fishing for company who is not savvy to improper billing
- Changing "codes" for on-going care when prior codes disallowed-fishing for way to maximize returns
- Bills with "odd" coding for services previously billed correctly
- Frequent use of unusual codes
- Use of strange or unlisted codes
- White out on claims
- Xeroxed claims
- Same provider with different Federal tax number
- Legible signature (Doctors usually do not have legible signature)
- Claimants address on bill different than mailing address for benefits
- Billing/Harassing claimants for "unpaid" bills
- Excessive referrals:
 - in absence of apparent serious injury
 - to specific providers-no other will do adequately
 - to co-located facilities or provider with same address but different FEIN's (federal employer identification numbers)
 - for psychiatric testing-especially early on
- Retroactive disability / Post dated MMI (maximum medical improvement) dates
- Inflated impairment ratings

APPENDIX D

STATES ALLOWING CONTRACTORS TO PRE- SELECT PHYSICIANS

As discussed in Chapter VIII, section 8.2, pre-selecting physicians is one way contractors combat WCF. In states where allowed (see Table D.1), contractors pre-select physicians to gain control over where injured workers receive treatment. Larger companies pre-select physicians more than smaller contractors, as indicated in Chapter VIII, Table 8.2 & Chart 8.2.

An important side benefit of pre-selection of physicians is that contractors have the opportunity to educate their physicians about their work. If a doctor is *not* familiar with a contractor's operation, he/she may restrict an injured employee from returning to work until the employee has fully recovered, thinking that working during the recovery time would subject the employee to harmful or strenuous conditions. This practice, however, may have several detrimental effects. In addition to collecting the maximum compensation benefits, the worker may also develop fears of losing the edge on his/her skill and have low self-esteem and morale upon returning to work.

Educating physicians about contractors' work, however, spawns many benefits. Through the education process, physicians learn to work hand in hand with contractors' modified work programs, helping to

bring the recovering employee back to work in some type of light-duty productive role. The worker is then able to produce on the job, and lost-time WC benefits are not necessary. Table D.1 lists the states that currently allow / disallow pre-selection of physicians.

Table D.1: States Allowing / Disallowing Pre-Selection of Physicians

Allow Pre-Selection

Alabama
Arkansas
California
Colorado
Georgia
Florida
Idaho
Iowa
Indiana
Kansas
Michigan
Missouri
Nebraska
New Jersey
New Mexico
North Carolina
Pennsylvania
South Carolina
Tennessee
Utah
Virginia

Disallow Pre-Selection

Alaska
Arizona
Connecticut
Delaware
District of Columbia
Hawaii
Illinois
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Minnesota
Mississippi
Montana
Nevada
New Hampshire
New York
North Dakota
Oklahoma
Ohio
Oregon
Rhode Island
South Dakota
Texas
Vermont
Washington
West Virginia
Wisconsin
Wyoming

Appendix E

TYPICAL WCF CASE STUDIES

The following case studies typify those which the construction industry is experiencing. They certainly do not represent all types of workers' compensation fraud, but are actual situations which commonly occur in this industry. The discussions contained within these case studies are written in a way that they can be used to train supervisors in WCF avoidance within the construction industry.

Since the primary focus of this report is on employees, those are the first case studies discussed in this section. The first actual situation, **Case Study 1**, is quite common to construction. Since the construction industry requires physical exertion, back injuries and other muscular or skeletal injuries are fairly routine. The fraud that is often associated with these injuries needs to be identified and illuminated.

In dealing with fraud, questions arise not only about whether an injury actually occurred on the job, but also about whether it is even a real injury. As discussed in Chapter IV, a Monday morning injury is more suspicious than a mid-week injury. Case Study 1 describes the circumstances surrounding such an injury.

The **second case study** involves a flagrant violation of the most basic intent of workers' compensation. It is very unlikely for an employee to be injured and still be able to perform in a highly strenuous sport like boxing. As shown by the results of this case, the penalties are still very minimal compared to fraudulently obtained compensation benefits.

The **third case study** deals with fraud on two levels. On one level, the employee is still able to work, and therefore the compensation received for working should be subtracted from the workers' compensation benefits. The second violation is that the fraud is disguised by having the payment for the employee's work be made to a third party who is not the one performing the services.

The **fourth case study** deals with a common type of workers' compensation fraud, receiving cash payments for work. This subject is covered in Chapters V and VI, sections 5.5 and 6.4, of this research. Fraud through receipt of cash payments for work is extremely difficult to identify, and usually requires an informant to turn in one or both of the perpetrators.

The **fifth case study** deals with an employee prolonging a claim for an injury based on the advice of an unscrupulous attorney. These circumstances typify what is described in Chapter V, sections 5.2 and 5.3. The question is how to get fellow employees to testify when they know a coworker is committing workers' compensation fraud. Such a case would be a prime situation to test the effectiveness of anonymously rewarding those who turn in WCF offenders. For more details about how a reward/incentive program could be put into effect, see Chapter XI, recommendation No. 24.

Case Study 6 is an example of a failure to prosecute an offender due to non-jurisdiction of the prosecuting entity. This case proves that it is imperative for states to "talk" to each other as far as prosecuting criminals is concerned. If the states had legislation that was interactive, this particular criminal would be prosecuted. The concept of interstate involvement is further discussed in Chapter VI, section 6.2.

Case Study 7 is an example of how contractors from other states can manipulate and abuse the workers' compensation system to give themselves a competitive edge. For further details regarding this type of fraud, see Chapter VI, sections 6.2 and 6.4.

"Independent contractor fraud," as exemplified in Case Study 8, is also known as "1099 Fraud," referring to the IRS Form 1099 required of independent contractors. This type of fraud is common where employers are trying to avoid payment of taxes and workers' compensation premiums. Section 5.4 of Chapter V elaborates on this fraud.

CASE STUDY 1

FALSE INJURY FRAUD BY EMPLOYEE

The employee comes in on a Monday morning. At 8:20 he claims to have a back injury. Only one person is a witness, who happens to be the employee's sidekick. After some investigative research, it is found that both have filed WC claims before. The question now arises, is there any way to prove otherwise?

Too often, supervisors do not document a situation when it occurs. When it comes time for the investigator to reconstruct the incident, he lacks the backup support to deny the claim, and the claimant prevails with the scam.

CASE STUDY 2

FALSE INJURY FRAUD BY EMPLOYEE

A worker claimed he severely hurt his back at work, but he continued to train as a boxer. While receiving thousands of dollars in disability payments, the man actually won three amateur fights. Prosecutor Philip Walden, who is a state prosecutor in California, called the case of this 23 year old man one of the most brazen examples of filing false medical claims he had ever seen. After pleading guilty to insurance fraud, the perpetrator was sentence to one year in jail. He admitted to fraudulently collecting disability payments between November 1, 1990 and April 30, 1992. In the end, the case resulted in a \$5,000 loss to the employer, a \$10,000 medical bill paid for by the insurer and the claimant receiving \$18,000 in disability payments (Walden, 1994).

CASE STUDY 3

PERMANENT PARTIAL DISABILITY FRAUD BY EMPLOYEE

This type of fraud for permanent partial disability was committed by the injured employee. This fraud is usually readily identifiable, as this case study describes.

The injured employee received permanent partial disability for a back injury. The employee is now a private "Bass Fishing Guide" on

Lake Okeechobee. He takes out 2-3 groups a week, sometimes more in the season. The cost is \$ 125 per person per day, paid in cash only.

Our researcher heard the story first hand, because the employee told it to him when the researcher wanted to write a check for his fishing trip. The employee requested that the check be made out to a name other than his own, presumably to a friend or relative. When asked why, he told the story himself.

CASE STUDY 4

PREMIUM FRAUD BY EMPLOYER AND EMPLOYEE

This type of fraud is committed by the employers and the employees. One contractor surveyed needed a relatively small job done on a major construction site, approximately a value of \$ 3,500. A subcontractor was called to price it. He quoted \$ 3,500 in cash, or \$ 5,000 if he had to sign a contract. The reasoning behind this was that if he was paid in cash, he could pay his employees in cash. If he was paid through a subcontract, then he would have to pay them with a check and run it through his books. Using this system, he appears to be honest to his carrier, even if they audit his books.

CASE STUDY 5

EXTENDED DISABILITY FRAUD BY EMPLOYEE AND ATTORNEY

This is a case study with an extended benefits claim for disability in which the claimant tried to receive greater settlement than was rightly due. This type of fraud was committed by the employee and an attorney.

It is presumed that the employee had a valid job-related, partial temporary back injury. However, other employees on the job site tell a different story, heard directly from the injured employee, who they know away from the job site. They report it, but don't want to get involved in testifying against him.

The coworkers say that the employee is being advised by his attorney not to agree to go back to work yet, even though he thinks he could. The reason - the attorney thinks that he can get him \$30,000 more, which would be a down payment on a new home. Also, the attorney says that they have third party claims against other subcontractors on the job and he wants to settle them before he settles with the employer of the injured employee.

How can we get these employees to testify? Can't a reward system go all the way down to an employee who turns in someone who is cheating? If it does already, how can we get the word out about it?

CASE STUDY 6

JURISDICTIONAL PROSECUTION CONFLICT

On March 12, 1991, a complainant made a written statement to one of the investigators of Florida's Bureau of Workers' Compensation Fraud. The complainant was a competitor in the same business. The criminal company, XYZ Company, was supposed to have been defaulting on the premium for adequate workers' compensation for its Florida jobs. The rates for workers' compensation in Georgia are lower than Florida. This is because Florida requires higher benefits. The victims in this case were the insurance carriers. Despite audits, the XYZ Company could not be prosecuted for the fraud. The investigator from Florida's Bureau of Workers' Compensation Fraud carried out an intense, year-long investigation. Investigations revealed that the same company was incorporated several times under different names. The suspicion was that XYZ Company was attempting to hide the amount of active employees on an out of state job (Florida) in an effort to maintain workers' compensation coverage at a reduced rate.

This case was presented to the state attorney's office in Tampa and the state- wide prosecutor in Tallahassee. Their statement was that Georgia has jurisdiction and that there was insufficient evidence to substantiate criminal prosecution in Florida. The case was therefore declined for prosecution. The WCF Bureau, in spite of the efforts to trace the case back to several years ago, has been unable to establish criminal intent by XYZ Company due to not receiving a verifiable payroll of the jobs in Florida. The justification provided by the prosecutors was that there was a problem with prosecuting the case due to lack of jurisdiction, since all the crimes were committed out of the state of Florida.

CASE STUDY 7

PREMIUM FRAUD BY SUBCONTRACTOR

The subcontractor is a Florida subsidiary of an Ohio Roofing Company and is operating in Florida. Ohio has a state-run workers' compensation plan. Benefits are less than Florida, as are the premiums.

The subcontractor hires employees in Florida who have Florida residences. They are required to sign documents stating that they are residents of Ohio, and are given Ohio addresses to complete the application. The subcontractor provides the contractor with an Ohio WC certificate. Most contractors simply put the document in the file and never question it. The subcontractor typically pays for minor accidents without turning in any claim for WC.

The problem comes to light only when a major accident occurs, involving a lost time injury and hospitalization. The employee realizes that his benefits are going to be less using Ohio compensation than Florida compensation, and decides to report it to the WC of Florida. This then implicates both the subcontractor and contractor in the fraud, even though the contractor was trying to do what he thought was correct in getting a certificate of insurance.

Researchers contacted both the Construction Industry Licensing Board and the WC office on this type of claim. The licensing board was not aware of this problem, even though they require a certificate of WC insurance to validate a license. The WC office knew that it was a problem, but acknowledged that they had never notified the licensing office.

Actually, the WC office and the licensing board confirmed that every contractor working in the state of Florida is required by statute to have WC insurance when working in the state. However, they acknowledged that this type of fraud does exist, and often is not prosecuted.

CASE STUDY 8

PREMIUM FRAUD BY SUBCONTRACTOR

The subcontractor is a cabinet company. They manufacture and install thousands of cabinets in South Florida every year. However, they claim that all employees are independent contractors.

They have each applicant for a job fill out the paperwork to apply as an independent contractor from Tallahassee, waiving their right under the system. To get a job installing for the firm, the employee is required to sign one of these documents.

Using the test of an independent contractor under the *previous* law, however, they do not schedule their own hours, they have no written contracts, they have no warranty obligations, etc. (see Chapter IX, section 9.1, 440.02(13)(d)(1) for the *new* law's definition of an "independent contractor."

This goes on every day in the business. Ask any contractor if they know what percentage of its subcontractors' employees are independent contractors. Most of them would not have a clue. Then ask them if they

allow a survey of their subcontractors to determine a percentage. Most of them would probably not allow it, because they presume that most subs are cheating the system.

There is a perception in the construction industry that if a subcontractor complies with the system, then they cannot be competitive. They might be correct. There is so much cheating going on that there seems to be a "look the other way" attitude.

Appendix F

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