



CLM 2020 Focus: Cannabis, Environmental, Insurance Fraud,
Property, Subrogation, Claims & Litigation
November 3-5, 2020

Narrative

Considering Cultural Background in Conducting Fraud Investigations

I. Importance of Being Aware of The Role Of The Insured's Cultural Background

Conducting a SIU/potential fraud investigation of a company's own insured is a sensitive task. The obligations an insurer owes to its policyholder must be balanced against adequately investigating to determine whether there has been a misrepresentation or concealment of material facts. It is important to be aware of the effect that the insured's cultural background has on his or her living situation and practices to avoid assuming conduct is suspicious when it is culturally normal. On the other hand, cultural practices may provide clues to improper conduct. Making missteps on this subject, whether in a recorded statement or an examination under oath, could lead to a wrong answer regarding whether fraud is being committed, and could expose the insurer to extra-contractual liability due to being perceived as treating the policyholder insensitively and improperly. These considerations are important as an adjuster, investigator or lawyer determines how to obtain information effectively regarding a claim without being inadvertently offensive to an insured's culture, and how to evaluate the information obtained during the investigation.

Significance of understanding the insured who is presenting the claim

It is important to understand who is presenting the claim. Questions regarding whether the insured owned the claimed property, and how the loss occurred, should be considered in the context of the insured's background and circumstances. Among the factors to consider are the policyholder's family, culture, financial situation and history and normal patterns and practices. Is it consistent with these factors that the insured acquired the claimed property? Is there anything in the claim facts and circumstances that is inconsistent with her normal patterns and practices? Is there anything in the person's cultural background that would make the property acquisition, or the loss circumstances, understandable when, in other contexts it

might be suspicious? These factors should be asked about, investigated and considered in the context of conducting an insurance fraud investigation.

In evaluating these questions, it is important to learn facts about the claimant, not just the claim. Find out about cultural influences in acquiring the claimed property. How do cultural practices impact the likelihood that the insured acquired that property?

For example, if the claim involves lost or stolen jewelry, investigation may reveal that some of the jewelry was received as wedding gifts. If the cost or quality of the jewelry appears excessive in light of the policyholder's financial situation, does his culture make it typical to give or receive expensive gifts of that type? Does his culture, or generally the insured's personality, make it likely that the insured had large, expensive or showy items, even if having those items would significantly stretch the budget of someone in his economic situation?

These are questions that should be investigated. That can be done with direct questions, open questions regarding how and when the property was acquired, and by requesting and evaluating photographs of the claimed items. If there are pictures of the claimed jewelry, or similar items, in wedding photographs, or photographs of family events, that could provide evidence to support having that type of property.

Is there certain type of clothing that the claimant would be expected to have in light of her culture? This should be explored. If the answer is yes, when would it be likely that such clothing would be acquired? If the answer is when the claimant was married, 30 years ago, but not likely afterwards, the significance of this information may be different from a practice of buying new such clothing for every family wedding the person attends.

Research into the general cultural practices should be done so that information can be compared with the information the claimant provides.

Role of a claim's context in evaluating potential fraud

A claim's context also plays a significant role in evaluating potential fraud. There should be consideration into how the claim fits into the insured's past, and present, circumstances. Is there any situation upcoming that would provide a financial motive for a claim that the present circumstances might not make apparent?

For example, a claimant may have a good present income, but questioning may reveal that the circumstances are about to change. Is the insured under an employment contract that provides a good income, but is about to expire? One situation is where the insured sold a business and remained as a well paid employee or consultant for two years. If that period will expire soon, what is the insured's plan after the income stream will expire? The expected loss

of income could provide a financial motive that might not be readily apparent by looking only at the past and present.

An insured may provide information about her assets to show that they are substantial enough to eliminate financial motive from the equation. Looking at static financial information will provide an incomplete picture. How are the assets trending? If the insured has \$500,000 in the bank, that may indicate that the \$100,000 claim is not the result of needing the money. But if a year ago there was \$1,000,000 in liquid assets, and two years ago there was \$1,500,000, that may tell a different story.

Are there any significant events upcoming? Does the insured's culture require the bride's, or groom's, parents to finance an expensive wedding? Is there a wedding in the near future? Family circumstances such as this should be explored.

II. Navigating The Minefield Of Considering Cultural Background But Not Stereotyping The Insured

Many years ago, insurance claims investigators were less sensitive to what assumptions and beliefs were actually offensive stereotypes. Claim evaluation may have been conducted in the context of assuming that it was typical for an ethnic or racial group to be dishonest in a certain way. Currently, there are rings that create fraudulent auto accidents, or a type of theft or other property loss claims, that still may trigger assumptions based on the claimant's ethnicity or cultural background. Those factors may not be irrelevant, but it is very dangerous territory to assume that a person with any particular ethnic, religious, national or racial background is more likely, or less likely, to commit insurance fraud.

Determining what aspects of cultural background are significant and what are not

An insurance claim investigator must determine what aspects of a person's cultural background is significant to an insurance claim and what are not. It is worthwhile to research aspects of the culture or ethnicity involved in the context of the property involved in the claim.

Among the things to consider is whether there is a cultural basis for the insured to own the property claimed to have been lost, stolen or damaged. If there is documentation that the property was acquired, but acquiring the property is inconsistent with the insured's financial situation, examining cultural reasons also could lead to relevant information. Is there a cultural reason why an insured would overextend himself to buy the property in question? For example, is there a tradition of giving a prospective spouse or his or her family expensive gifts as part of the engagement process or as wedding gifts?

Armenian culture has a tradition of giving expensive gifts for weddings, including jewelry, fabrics, household goods and money.

In Indian culture, weddings traditionally last for three days and include a variety of ceremonies. In one ceremony, the couple being married exchanges gold rings. The groom's parents present the bride with a basket of gifts. Clothing in traditional Indian weddings is elaborate. Among the traditional items that the bride wears is jewelry, including a giant jewel that the bride wears on her forehead and in her hair. The groom and guests may wear traditional clothing. Weddings can last three days, requiring a number of clothing changes.

In Chinese and Japanese cultures, traditional clothing, typically expensive, is worn. Chinese brides traditionally wear an embroidered, burgundy red satin wedding dress, and additional gowns throughout the ceremony. Japanese newlyweds may wear traditional kimonos.

A traditional Uzbek wedding dress includes a long dressing gown and pants made from khan atlas, the most prized of Central Asian silk textiles. The bride also wears a long overcoat and embroidered coverlet, while a golden cap or crown and a long veil made from handmade lace is worn on the head. Everything is exquisitely embroidered with silk and gold thread that is woven into floral patterns. The groom typically wears a chapan coat embellished with intricate gold thread and an embroidered skullcap.

In Latin American cultures, 15 year old girls have a Quinceanera party, in which they wear a gown. Wedding ceremonies may include the groom giving the bride gold coins in an ornate box or chest.

In Tibetan culture, khatas, a traditional ceremonial silk scarf, is given as a gift for major milestones such as births, funerals, weddings and graduations.

There are a number of other cultures where wedding gifts involve jewelry or precious stones, where wedding clothes are expensive and where dowries of valuable items are given. Understanding what items a policyholder might have received as gifts, or acquired to give as gifts, even if seemingly inconsistent with their financial situation, might require knowledge of their cultural or ethnic background.

How to ask questions when taking statements or examinations under oath that elicit cultural information

Obtaining information without causing unnecessary offense can be tricky. An adjuster, investigator or lawyer does not want to be accused of asking questions that are unrelated to the claim investigation. They do not want to create a perception that the claim decision is

based on the insured's race or ethnicity. But they also want to be aware of facts that might make it more likely that the claimant possessed the claimed items before the loss.

Asking basic questions regarding when and why the items were acquired should lead to answers regarding receiving them as gifts, or acquiring them to give as gifts, if that is the situation. Being aware of that possibility will lead the questioner to be prepared to ask follow up questions on those subjects. It also can lead to requests for wedding photos that may show some of the claimed items. Asking about the traditions when the subject is raised in open ended questions should lead to gathering necessary information without causing offense. Because weddings are a common event that leads to giving or receiving, or wearing, expensive items, finding out about all such events near in time to the claimed loss could lead to significant information.

Viewing the claimant's social media accounts could lead to information regarding his or her ethnic or cultural background, and recent or upcoming significant events. Based on this information, research can be done before questioning to determine what to ask on the subject.

A claimant's ethnic and cultural background, like many subjects that should be covered during a fraud investigation, risks offending the insured. But failing to look into this area could lead to not discovering, or understanding, information that can support a claim.