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ADDITIONAL LIVING EXPENSE FRAUD: LIVING THE DREAM AND BUYING A HOME AT THE INSURANCE COMPANY'S EXPENSE

Presenters: Guy ("Sandy") Burnette, *Guy E. Burnette, PA*
Michael Markey, *Chubb*
Gene A. Weisberg, *Gladstone Michel Weisberg Willner & Sloane*
Frank Zeigon, *M&Z Insurance Claims Consulting, Inc.*

1. Defining the issue

Additional living expense (ALE) claims present interesting issues for people who commit fraud in property insurance claims. Mortgagees and additional insureds do not need to be named on checks for ALE payments, encouraging people to try to collect money through this coverage. However, ALE payments are not owed until incurred, making it more difficult to collect money that is not owed to others, such as landlords or hotels. A number of creative ways to overcome this obstacle have been used.

Under homeowners' policies, if a house cannot be lived in because of a covered loss, the insurer will pay the cost for the policyholder to live in a comparable residence for the reasonable time needed to repair or replace the house, or to relocate. The coverage also will pay the cost of other increases in living expenses, such as food expenses. In order to document this portion of the claim, the policyholder will need to provide evidence of costs to stay outside of the house, such as a lease, hotel bills, restaurant receipts, canceled checks and credit card receipts. They also will need to provide evidence of their normal living expenses so the amount of increase can be determined. The insurer will not pay all living expenses, just the increase that an insured loss caused.

When ALE payments are made due to a misrepresentation that the insured incurred those expenses, or for what they were incurred, a material misrepresentation, or concealment of material facts, has been made in violation of the policy's fraud and concealment provision. Verification of the information provided in support of ALE claims can reveal whether the claim is for actually and properly incurred expenses, or as a way to improperly funnel insurance funds to the policyholder.

2. ALE Fraud Examples

In *United States of America v. Didier*, a Ninth Circuit decision from November 2014, the Federal Court of Appeals reinstated a guilty verdict for mail fraud and conspiracy to commit mail fraud in a case from Montana. Ms. Didier made claim to her insurer arising out of a fire loss to a 14-bedroom mansion. When the insurer could not find substitute accommodations that suited the policyholder, she advised that her real estate broker had found acceptable housing with a

\$15,250 monthly rent and \$13,500 in one time deposits and fees. The real estate broker also claimed \$10,875 in fees. The insurer accepted the representations and began making payments on the substitute house, reported to be a 6,900 square foot, five bedroom, two bathroom home.

Upon further investigation, and after substantial payments were made, the insurer discovered that, in fact, the house was an 860 square foot cabin with no indoor plumbing that the policyholder's family trust owned. The policyholder was criminally charged and convicted for this fraud.

Other examples include ALE claims when damage was pre-existing, false documentation and claims for damage to a house after the policyholder was no longer living in it.

3. Investigation tools

It is not uncommon for policyholders to seek payment for substitute housing that they own or control. When a corporation owns a property, investigation into who owns and controls the corporation is worthwhile to determine whether it is the policyholder or his family. Some of this information may be publically available. If not, the insured and/or the landlord can be asked to provide it.

If the insured does not own the property, a friend or relative may. Inquiring into the relationship between the policyholder and the landlord, and interviewing the landlord, can lead to information as to whether the claimed payments actually were made. Payments made to friends or relatives may be real. There is no requirement that ALE payments only be made to strangers. But when payments to friends or relatives are disclosed or discovered, careful investigation into whether the amounts actually were charged, and paid, will help determine whether increased living expenses were, in fact, incurred.

Examining rent payment records can reveal whether there are signs that the payments were not really made. For example, are the check numbers appropriately separated to indicate they were written on the dates indicated? Were the checks deposited, and were they deposited near the date that appears on the checks?

Another tactic that arises from time to time is when the policyholder uses the ALE payments to buy a new home. Making sure the full lease is obtained can help reveal whether this is occurring. If the lease refers to an option to buy, or to other documents that were executed along with the lease, it may be learned that the "rent" payments were in whole or in part a payment to buy the property, not just to rent it temporarily. Evaluating whether the lease documents have anything cut off or blocked out, or contain a reference to another document that was not provided, can lead to useful information.

Leases often are on standard, preprinted real estate forms. Comparing what was provided with the readily available blank form will reveal whether the full lease was provided. The bottom of the standard form states how many pages are in the complete document. Where the lease documents include references to items that are more typical of a sale than a lease, such as an inspection period, more inquiry is needed to see if the ALE money is being sought to help pay for a purchase, rather than for temporary replacement housing.

Contacting the landlord or its management company to obtain a copy of the lease provides an opportunity to determine whether the policyholder provided complete and accurate lease information, and is a good way to verify the lease terms and payments.

A search of lawsuits in which the policyholder is or has been involved, a basic investigation tool, can lead to information that the policyholder has given sworn statements in court that are contrary to representations made to the insurer. For example, if the policyholder swears he cannot live in the damaged house, and collects ALE payments for a substitute rental property, while at the same time swearing in court documents in an unrelated lawsuit that he was living in that house, this would be significant information to the insurer.

4. Legal issues

A consequence of submitting fraudulent ALE documentation can be the loss of all policy benefits, even for legitimate property damage. In *Ken v. State Farm Fire & Cas. Co.*, 685 So. 2d 1002 (Fla. App. 1997), an insured was ordered to repay to State Farm not only the additional living expenses that were obtained wrongfully, but also all of the policy benefits that were paid for hurricane damage to the house. The reason was violation of the policy's Concealment and Fraud provision, which provided that the policy is void if the insured intentionally concealed or misrepresented any material fact or circumstance relating to the insurance.