



2016 CLM Annual Conference
April 6-8, 2016
Orlando, FL

FRAUD: AN UNRULY PREDATOR OF EPIDEMIC PROPORTIONS

I. Evolution of Fraud Claims

This is no longer ambulance chasing; It is attorney puppeteered medical treatment. Historically an attorney would learn of a motor vehicle accident, typically through referral systems and then said attorney would seek to be hired. Subsequently, an attorney would electronically through the State purchase police/accident reports and then would seek to be hired.

Presently, as illustrated by the case study of Lessie Lunn, personal injury attorneys actually direct claimant's to specific medical providers and treaters before said attorney even introduces him/herself to the potential plaintiff. Through a remarkable examination under oath of Ms. Lunn, the following was unveiled disclosing that indeed Ms. Lunn was caught up in a fraudulent scheme wherein she was routed from one provider to another making her nothing more than a pawn.

By way of highlights, Ms. Lunn revealed under oath the following:

- At the age of 89 years old, she was involved in a rather substantial motor vehicle accident. Admittedly, the only discomfort that she felt at the scene was when EMS placed her "on the damn backboard." She did appear at the ER and was discharged shortly thereafter with only strains. Subsequently, she was contacted via telephone by an unknown individual who strategically dropped the name of her insurance company repeatedly. She was advised among other comments that her insurance company wants her to be evaluated. Ms. Lunn agreed and transportation to a medical facility was arranged. She then began an extensive and expensive program of chiropractic, physical therapy, work hardening and massage.
- Subsequently, said unknown individual reached out to Ms. Lunn again and she was routed for MRI diagnostic testing which proved to be over-read, purporting to identify false hernations. Next, she was routed for physical medicine and rehabilitation and steroidal injections costing approximately \$30,000.00 each. She was encouraged to submit reimbursement for attendant care/nursing services which were allegedly performed by family members at a rate of \$20.00/hour. She was also encouraged to submit to her insurer reimbursement forms for daily chores allegedly performed by others.
- Ultimately after much delay, the physical medicine and rehabilitation doctor introduced Ms. Lunn to the Plaintiff's attorney who had been puppeteering her medical treatment all along. Said lawyer filed an extensive complaint for damages including hundreds of thousands of dollars for medical bills, diagnostic studies, as well as over \$100,000.00 for alleged family service reimbursement.

While this scenario is quite offensive, it is currently commonplace and a disturbing practice in the State of Michigan among others to be sure. It was learned in the case of Ms. Lunn that the unknown individual who was telephonically routing her to specific doctors was indeed a retired chiropractor working within her attorney's office. This was discovered especially when this individual's name remarkably appeared on the MRI report as the "referring physician."

2. Detection and Remedy

IyeTek is a relatively new source resource that can be subpoenaed and will disclose who has purchased a police report such as a potential Plaintiff's attorney. Consistency with adjusters and defense attorneys promotes identifying patterns between specific Plaintiff's lawyers and their commonly used providers. Additionally, a collection of witness lists via multiple cases also aids to demonstrate a pattern between Plaintiff's attorneys and their ring of typical providers. (In one instance it has been revealed that a commonly used chiropractor actually purchases Christmas baskets for every single member of a large Plaintiff's firm.) Examinations under oath are extremely useful to secure detailed information and admissions early on. Independent neuroradiologists are crucial to read MRI studies and determine to what extent the MRI was over-read by a Plaintiff attorney referred treader.

In Michigan, a remarkably similar scenario as set forth above resulted in a Plaintiff's attorney advising his client that more treatment to include but not limited to epidural injections would benefit the value of the claimant's case. The claimant proceeded as advised by counsel, complications resulted during the epidural procedure resulting in the client's demise. A civil suit persists wherein the Estate named not only the treating doctors but also the Plaintiff's attorney as a result of this alleged misconduct.

Recently, a detailed published East coast opinion outlines the potential for aggressive criminal prosecution, to be elaborated on at length by Courtney Flanagan, counsel for Farm Bureau Insurance.

II. The Art of Unveiling Claimants True Baseline and True Injury

1. Recognizing red flags

Claimants often and rather cavalierly suggest that life was grand without medical concern before the date of loss. Claimants should be forced to provide detailed information regarding this purported benign history.

A case study of Cheryl Golson illustrates a multitude of red flags which will be further demonstrated by particular documents prepared for trial. Ms. Golson was a 61 year old inner city woman claiming that she was in perfect health prior to a minor injury accident. Indeed she claimed that she was regularly golfing, fishing and playing tennis. She represented that she was not taking any pain medication prior to the incident nor had she required any form of medical treatment as it pertains to the affected extremities at issue.

2. Definitive means to secure claimants true history

There are multiple tools available to identify a claimant's true history which will be discussed in more detail. Claimant's typically contend that they post-accident require assistance from family and friends. Often claimants will submit requests for reimbursement for same. Similarly, claimants suggest at length the nature of their restrictions and inability to perform pre-accident life activities and jobs.

A case study of Charity Harvey illustrates substantive means to evaluate the true nature of such claims. Depositions were secured of all third parties who allegedly provided assistance. Said individuals provided less than consistent testimony establishing the lack of any credibility. Indeed, it was established that while Ms. Harvey claimed her mother was providing nursing services during a certain period of time, a search confirmed that said mother was incarcerated (said mug shot will be distributed).

Similarly while Ms. Harvey contended she was unable to "shop" a criminal search revealed that she had recently been convicted of felony shop-lifting on three separate occasions establishing that Ms. Harvey had no trouble shopping but apparently didn't like going to the cash register. Next, through the use of Facebook and the like, Ms. Harvey's actual activities including vacations, concerts, sporting events and working were discovered.

As an effective tool, meticulous trial demonstratives illustrating true baseline and unveiled fraudulent efforts is quite powerful. In the case of Golson, said demonstratives were shared in advance of trial with Plaintiff's counsel resulting in a dismissal with prejudice.

3. From an internal, insurance perspective, there are multiple avenues to control, minimize and even remedy fraudulent claims.

Insurance policy terms and conditions should provide a variety of options when confronted with false statements and fraudulent activity. Case law likely exists in your State which serves to support clear unambiguous policy terms. Nazhat Bahri v IDS Property Casualty Insurance Michigan Court of Appeals, Docket No. 316869, October 9, 2014. Local Court Rules/Statutes will often provide for costs and sanctions (MCR 500.3148). Court mandated processes may also serve to create potential costs and sanctions (Case Evaluation) Offers of Judgment also serves to trigger costs.

III. Recognizing Tall Tale Signs of a Staged Accident

1. Early thorough investigation and analysis of a claim

Claimant history is crucial to establish baseline and consider credibility concerns. Certain key elements of any given claim often create suspicion.

The case history of Mr. John Doe (case currently pending trial) illustrates numerous suspect elements which ultimately led to confirmation of fraud. Mr. Doe contended that a 3am with two passengers in his vehicle he was exiting a highway. He claimed that he was victim to a hit and run in the rear that forced him into the retaining wall causing him to strike his head on the windshield while restrained. The matter was otherwise unwitnessed and police were not summoned to the scene.

A thorough investigation revealed that the vehicle had a long history of suspect events. The passengers refused to offer supporting testimony. An expert carefully evaluated the vehicle confirming that the rear impact was not caused by a striking vehicle but rather a stationary object such as a masonry wall. Said expert further confirmed that the extensive starring/shattering of the front windshield could not have been caused by the claimant's head but rather likely a baseball bat.

The expert further evaluated the electronic data recorder within the claimant's vehicle. In downloading same, it was confirmed that the passenger seat belts were not latched. In fact the front seat was not occupied as demonstrated by the data establishing that the air bag was not loaded. Finally, said technology confirmed that within five seconds of frontal impact the vehicle was traveling 3 miles an hour

and then accelerated to 7 miles an hour at the point in which the vehicle impacted the exit ramp wall. Of interest, the claimant falsely testified that he was traveling at speeds greater than 40 miles an hour when impact occurred.

IV. From an Expert/Engineer perspective, the following main takeaways are encountered when investigating potential fraud:

- 1) The potential difficulty of proving fraud
- 2) The cost/benefit of only a visual inspection versus a destructive examination
- 3) The difference between fraud vs. lack of maintenance (aging equipment) or security

The following points illustrate how some forms of fraud are presented in forensic engineering:

Vehicle: Insured files claim of stolen vehicle, there are multiple aspects to investigate. Including if the vehicle is later found in a poor condition, caution must be taken during inspection as to not disturb the vehicle's current condition; Substance in engine/transmission –equipment fails due to an unknown substance in the engine/transmission; The insurance suspects vandalism, but unclear if done by owner (due to aging equipment, etc.) or outsider (equipment not secured inside a fence); Vehicle hail damage fraud – requires microscopic analysis; Major injuries from minor car accidents – car accident cases where the vehicle damage is minor (<\$1000), but major knee and other bodily injuries are claimed; The insurance suspects the injury is unrelated to this car accident, but is unsure how to prove it.

Home: Roof Hail Damage – “strike” marks are directionally diverse and inconsistent with hail damage; Sump pump failure causes basement water damage. Owner says that pump failed due to no action of his own. Analysis reveals a highly viscous substance went through pump. Most likely owner was disposing of paint/varnish materials down the drain. Only water should go through the pump.

Fire: Arson. Evidence collection and floor/wall pattern analysis, including the use of accelerants, sabotaged fire protection systems (i.e. sprinklers), and property removed pre-fire.

Data Forensics: Identity Theft

*It is important to remember that “Fraud” is a legal term and the engineer can only opine on whether a given damage or circumstances are consistent or inconsistent with what's being claimed by the insured.