

# BATTLING FRAUD IN THE PROPERTY AND CASUALTY INSURANCE INDUSTRY

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## I. INTRODUCTION

The year was 1977. Jimmy Carter had just been sworn in as President, the Watergate era was finally drawing to an end, disco was just beginning and many persons handling insurance claims today were not even yet born! Nevertheless, on June 27, 1977, the United States Supreme Court issued a decision which has had more impact upon the insurance industry than any other case in the past century.

The decision was *Bates v. Arizona Bar Association*, (1977) 433 U.S. 350, and the issue was a battle between the First Amendment of the United States Constitution and the long established ban by state bar associations against lawyer advertising. The Arizona State Bar Association lost the case and in the past 30 years what began as a “trickle” has turned into a literal flood of attorney advertising.

Add to this the growth of the Internet in the 1990s and the American property and casualty insurance industry faces today perhaps its greatest challenge ever in battling insurance fraud. What was once viewed as a system to compensate those truly injured due to the negligence of others, has now grown into an entitlement system where if you are “fortunate” enough to be involved in an accident, however minor, a financial reward is expected. Although this is certainly not true in every claim or case, in many regards the social fabric underlying personal injury litigation has changed more dramatically in the past three decades than ever before in its entire history.

The problem, however, is not simply limited to lawyer advertising and the ability to communicate more effectively via the Internet. Although these are major driving forces, they are only the “tip” of the personal injury litigation iceberg. Personal injury claims do not survive without medical treatment and evidence of claimed injury. Literally billions of dollars have been

expended by the insurance industry for highly questionable medical care and treatment spurred on by this new era of solicited insurance claims. These treatments run the gamut of the medical profession from chiropractic manipulation to claimed traumatic brain injuries.

These are the topics we will explore in this presentation. We too will only touch upon the “tip” of the iceberg which is floating daily through your claims operation and threatens to tear a gash through the hull of even the best claims investigation process. The sad thing is many insurance professionals today, like the crew of the Titanic, have heard the warnings of risk but continue to fail to see the iceberg which is floating directly in their path. It is my hope in the time we spend together today we begin the process of educating you, and in turn your staff personnel, to be more keenly aware of the forces which are driving potentially fraudulent claims in the American property and casualty insurance industry of the new millennium.

Before we move forward, however, one additional word of caution is also mandatory. I recently was asked to participate in a meeting in Chicago with a small group of persons asked to help redefine how insurance investigations are conducted by insurers. This is a far reaching program which may have implications upon insurance fraud investigations for decades to come. The night before the meeting this group gathered for dinner and we were asked to discuss our perspectives on how the insurance industry has changed in the years in which we have been associated with this profession. All of the “normal” comments which you would expect were made by the various participants. Then the oldest woman in the group, who had obviously been involved in the insurance industry for many decades, spoke up. Her words cut to the core of the issue. In a rather quiet voice she explained when she first began as a young woman handling insurance claims her training was neither elaborate nor flashy. What she was taught, however, was denying coverage to an insured was in her words, “a very sad day.” She stressed her training

taught her role as an adjuster was to compensate the insureds who paid a portion of their wages to buy protection from the insurance company. Having to tell that insured the policy they paid premium dollars upon did not afford them coverage was in no respect something to be enjoyed but instead to be avoided if at all possible. She lamented many of the comments she hears in the profession today focus instead upon keeping claim payouts to the lowest possible average with staff personnel being “criticized” if they overlook or do not fully apply coverage exclusions.

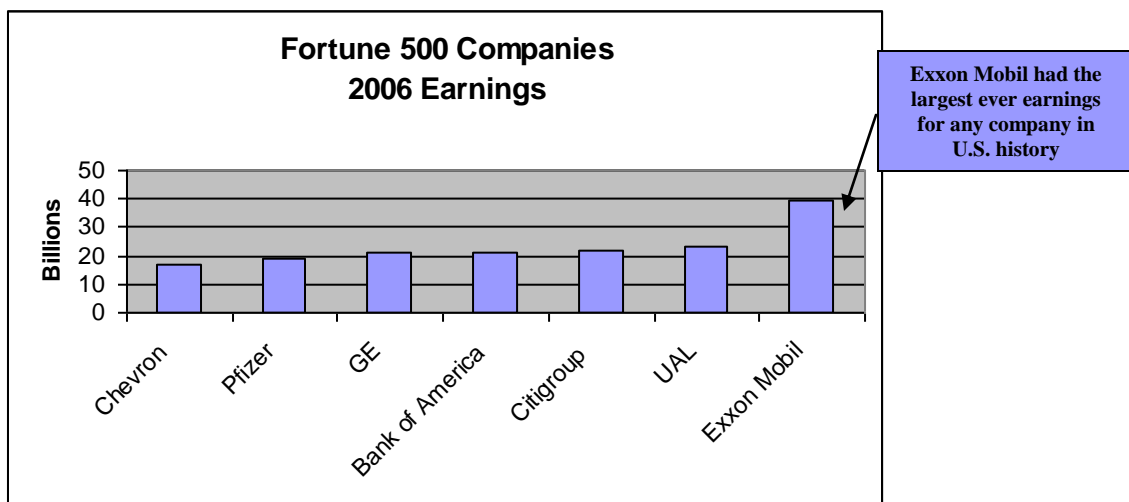
In fairness, perhaps as the pendulum of insurance claims investigation and handling swings back and forth it can go to extremes on both sides. We, however, in the insurance industry are, and should be, held to a higher standard. It is that high standard of providing the best quality of service, combined with thorough and complete investigations of fraudulent claims, which defines this industry and should establish our profession as one of the most respected in the country. For that reason we should aggressively investigate and deny fraudulent insurance claims wherever they may occur but at the same time balance that analysis and investigation with a clear understanding our duty and responsibility is to give the insured, or the injured third party, every reasonable benefit of the doubt in the handling and investigation of the claim process. If, through that type of analysis it is determined there is no other reasonable alternative other than to deny the claim, then the denial should be made if a prompt, thorough, and impartial investigation so warrants. By doing this, we are serving well not only our industry but the American consumer who ultimately pays for fraudulent claims through higher premiums.

## II. THE SCOPE OF THE PROBLEM

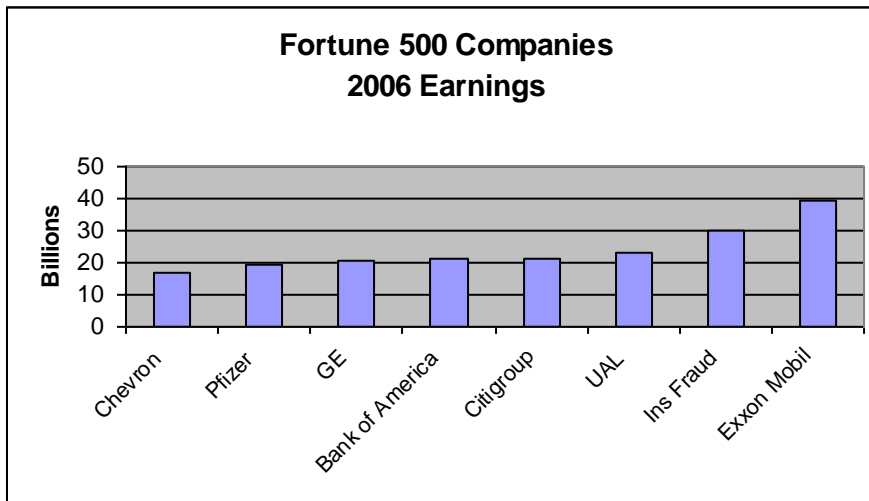
Do you really know how large an issue insurance fraud is in our country? Within your own company? Or even within the number of claims you handle? If you do not, then you are probably already “behind the eight ball” before you even begin. Insurance fraud is a huge issue in America today and is literally robbing billions of dollars from our economy.

Consider these statistics from the Insurance Information Institute. Insurance fraud in America today is a \$30 billion dollar industry. This encompasses the field of property and casualty insurance only and does not include the huge amounts of insurance fraud in the healthcare field or the life insurance industry. This figure focuses solely upon the type of claims you, and I, see and handle every day.

To put this economic impact analysis into perspective, consider if insurance fraud were isolated as a “business” in our economy today, you may wonder where it would rank in the Fortune 500. The following chart lists the top Fortune 500 companies’ 2006 revenue led by Exxon Mobil Corporation.



Now, if you have any doubt regarding the scope and economic impact of insurance fraud in America, consider the following chart using the figures for property and casualty insurance fraud from the Insurance Information Institute to graphically show insurance fraud in American would rival the world's largest corporation in earnings impact.



If insurance fraud in America were isolated as a “business” it would be 7 to 10 billion dollars greater in its revenues than corporations such as UAL, Citi Group, Bank of America and General Electric! No one can, or should, underestimate the devastating economic impact insurance fraud has upon the American economy and ultimately upon the American insurance consumer.

Although the American consumer is ultimately paying for insurance fraud, sadly most Americans do not realize the impact their own actions have on the insurance fraud which runs rampant in our country today. Consider the following information compiled by the Coalition Against Insurance Fraud:

- *Nearly 1 of 4 Americans says it's ok to defraud insurers. Some 8 percent say it is “quite acceptable” to bilk insurers, while 16 percent say it is “somewhat acceptable.” About 1 in 10 people agree it is ok to submit claims for items that aren't lost or damaged, or for*

*personal injuries that didn't occur. 2 of 5 people are "not very likely" or "not likely at all" to report someone who ripped off an insurer. Accenture, Ltd. (2003)*

- *Nearly 1 of 10 Americans would commit insurance fraud if they knew they could get away with it. Nearly 3 of 10 Americans (29 percent) wouldn't report insurance scams committed by someone they know. Progressive Insurance (2001)*
- *More than 1 of 3 Americans says it's ok to exaggerate insurance claims to make up for the deductible (40 percent in 1997). 1 of 4 Americans says it's ok to pad a claim to make up for premiums that they have already paid. Insurance Research Council (2000)*

It is staggering to think the very persons who ultimately pay the price for the crime of insurance fraud frequently view the insurance company as being the source of the problem rather than the source for a solution. Before you quickly jump to the conclusion, however, the American consumer is at fault consider, as we will do later in this presentation, who may truly be to blame for the real problem of insurance fraud in America today? To do that, however, we must first look a little more closely in our own personal "mirror."

What matters more is what effect insurance fraud is having upon your own company and the actual claims you are handling, or are responsible for through handling by staff personnel you supervise on a daily basis. Again, it is important to look to statistical information from the Insurance Research Council. Although more than ten years old, these statistics from 1996 certainly have not gone down!

- *More than one of every three bodily injury claims from car crashes involve fraud.*
- *Seventeen to twenty cents of every dollar paid for bodily injury claims from auto policies involves fraud or claim buildup.*
- *Fraud adds \$5.2 to \$6.3 billion to the auto premiums that policy holders pay each year.*

Although these statistics themselves are overwhelming, the question truly becomes what effect is insurance fraud having directly on your Company. My understanding from the information I have been provided, is on personal injury claims alone in 2006, your Company handled approximately twenty-two thousand seven hundred claims (this figure does not include property claims but does include workers compensation claims). If this figure and the figures from the Insurance Research Council are correct, then approximately seven thousand five hundred claims were paid last year which involved some level of insurance fraud. Consider for a moment the number of claim payments you personally have paid, or authorized, for payment by your Company in the past year alone. Assuming even conservatively that total figure may be \$3 million dollars, then you alone may be personally responsible for payment of more than one half million dollars of fraudulent claim monies in the past twelve months alone!

It is also important to note this figure does not include the amount of staff time with the associated employment taxes, expenses and benefits, the additional costs of the investigation (if any) in handling of these fraudulent claims and the direct cost for postage, coping, utilization of legal counsel, whether in house or from panel firms, let alone the staggering costs for experts and other litigation expenses.

As if this is not enough depressing news by itself, these figures are increasing astronomically each year. In the past ten years since the Insurance Research Council did its last study, even conservative estimates have placed the growth of insurance fraud at a level of at least ten percent (10%) per year in the United States alone. When you consider the future growth plans of your company and the compounded effect of the future growth of insurance fraud, this is a problem which is simply not going to go away, unless, and until, aggressive steps to identify and battle insurance fraud are undertaken.



We could spend many days in detailed training and analysis of how to battle insurance fraud. Today, we do not have the luxury of that type of in depth training and analysis. Instead, what we will do in the time we have together is discuss some aspects of insurance fraud which are operating and driving the cases which pass through your claims department on a daily basis. There is a strong probability many of these claims contain some element of insurance fraud being generated by one or more of the types of activities and programs we will discuss in this presentation. Sadly, I have learned from firsthand experience, many excellent claims professionals simply have no idea these forces are in operation in our country today and are driving an onslaught of solicited and potentially fraudulent claims.

It is important every claim still be judged upon its own individual merit and evidence. Nevertheless, it is also prudent to have a working understanding of the types of programs, marketing efforts and other factors which are contributing to the onslaught of fraudulent insurance claims which are being paid everyday throughout America. These are the claims which need to be identified and stopped so you are truly acting in the best interest of your company and the insureds who legitimately pay premiums for the providing of insurance protection.

### III. ATTORNEY SOLICITATION...FROM A TRICKLE TO A FLOOD

In the past year alone, the Lawyer Group® estimated more than 500 million dollars was expended by lawyers and law firms for solicitation. The vast majority of this staggering figure is targeted toward the personal injury field and the seeking of insurance compensation for claimed injuries. Are many of these claims legitimate? The answer is a resounding “yes!” Many, however, are not. It is those claims which need to be identified and aggressively pursued.

I recall one memorable case when I was still practicing in Florida in the 1980s. I was taking the deposition of the “injured” plaintiff’s wife when I asked her when she first learned her husband was injured in the automobile accident. Her answer was truthful but also enlightening. She testified it was several weeks after the accident when they were sitting at home watching the evening news. An ad for a well-known Orlando plaintiffs’ attorney came on and her husband turned to her and said, “I am going to call him.” Being the “brilliant” lawyer, my obvious follow up question was “what did you say to him?” to which she replied: “Why? There is absolutely nothing wrong with you!” Nevertheless, two years later there we sat in the middle of a lawsuit and a deposition.

Following the *Bates v. Arizona* decision, lawyer advertising began very slowly. The first most people heard of lawyer advertising were solicitation letters which were being sent to persons involved in automobile accidents. In the decades since, lawyer advertising, although still targeting predominately the same group of persons, has taken on an entirely new scope.

Each of you are well aware of the type of solicitation letters which even today are still being sent to persons involved in automobile accidents. You have also become intimately aware of the vast amount of lawyer advertising in the yellow pages and on the back of virtually every phone book you pick up today. These are the obvious types of solicitation which although present do not warrant further discussion in the limited time we have in this program. Instead, what we will focus on in the time we have together, is what is occurring “behind the scenes” leading to the ever growing onslaught of attorney advertising in both electronic media and on the Internet. These are the forces you may not be aware of but which are driving a considerable number of the claims which cross your desk every day.

A. THE RAPID GROWTH AND EXPANSION OF TELEVISION ADVERTISING BOTH LOCALLY AND ON A NATIONAL SCALE.

In case you wonder to what extent television advertising has become an issue in the practice of personal injury law, you may wish to consider this information. Although I am not able to verify this personally, I have learned through a very good source one of the largest law firms doing advertising in the southern part of the state of Ohio recently faced a challenge from a northern Ohio law firm which began television advertising in the southern part of the state. In what may well be an unprecedented agreement, the plaintiff's law firm in the southern part of the state approached and entered into an agreement with the northern law firm for them to cease advertising in southern Ohio in exchange for the southern Ohio law firm agreeing to refer all of their medical malpractice cases to the northern Ohio firm. If you have any doubt regarding the impact of television advertising on generating previously unidentified insurance claims, this should tell you the extent to which law firms are willing to protect their investment in local television advertising. Quite simply if they were not making a substantial amount of money from local advertising, the firm would not be nearly as interested in protecting the local marketplace.

As part of the preparation for this presentation, our firm conducted a survey of various companies promoting television advertising to law firms. Although these types of services are addressed more fully later in this presentation, consider as well the following information which was provided to me regarding the extent of lawyer advertising in the cities of Cincinnati and Columbus, Ohio only. The following excerpt is directly from an email sent to me on May 7, 2007 by Phillip Frankel who is the promoter for the service known as "1-800-HURT-911":

*Cincinnati is now 60 percent less competitive than Columbus. There is a lot of money going into the Columbus broadcast TV market since 2004 and it is heating up fast. All lawyers*

spent \$4.51 per household on broadcast TV in Columbus during 2006 and only \$1.80 per household on Broadcast TV in Cincinnati during 2006. There were 43 lawyers advertising on broadcast TV in Columbus and 48 lawyers advertising on broadcast TV in Cincinnati during 2006. In Columbus, Elk, Plymale and Raser all have substantially increased their spending on broadcast TV every year since 2004. They are now spending big money in Columbus. Plymale spent \$322,000.00 in 2004; \$943,000.00 in 2005 and \$1,450,000.00 in 2006. Elk spent \$382,000.00 in 2004; \$610,000.00 in 2005; and \$720,000.00 in 2006.

In Cincinnati, there are no records on Elk on broadcast TV in 2004. They spent \$330,000.00 in 2005 and \$365,000.00 in 2006. There are no records for Plymale or Raser for 2004, 2005 or 2006.

*I don't have the records here for cable TV, radio and magazines, but I can get them.*

Interestingly, the website for Mr. Frankel's "1-800-HURT-911" company contains in the upper left hand corner a large photograph titled "insurance claim form" with a rubber stamp in red marked "paid" over the top of the form. Clearly there is no doubt the entire focus of this marketing program is to submit claims to insurance carriers. If you utilize the above figures, in the markets of Cincinnati and Columbus, Ohio alone, the following was expended for television advertising in 2006:

City	Population <sup>1</sup>	Persons <sup>2</sup> per household	Spending on lawyer advertising per household	Total expended
Columbus, Ohio	1,708,625	2.7	\$4.51	\$2,998,404.00
Cincinnati, Ohio	2,070,441	2.7	\$1.80	\$1,450,114.00

<sup>1</sup> Source 2005 U.S. Census Bureau Statistics

<sup>2</sup> Source 2005 U.S. Census Bureau Statistics

Consider in metropolitan population rankings, Cincinnati is only number 25 and Columbus number 32. Assuming these markets are “averaged” over the entire country, then below are the following national statistics regarding lawyer advertising in the top 50 U.S. metropolitan markets, with a combined total estimated population of 45,868,071:

Average expenditure for lawyer advertising per household	Average population per household <sup>3</sup>	Total Lawyer Advertising Expenditure
\$3.15	2.57	\$56,417,727.33

These advertising dollars are being expended for the sole purpose of convincing consumers to file personal injury claims against companies such as yours. No advertiser is going to expend money unless there is a tangible financial return for the advertising dollars being expended. If you consider these figures as representing more than \$56 million per year spent in the top 50 markets alone for lawyer advertising, then one can only imagine the resulting attorney’s fees and insurance claim payments which are resulting from this expenditure from television advertising alone!

In preparing this program we could find no statistical analysis regarding what amount of attorney’s fees and insurance claim payments result from each dollar spent for lawyer advertising. Even if such statistics did exist they would still not take into account the staff time expended by insurance carrier personnel, expert witnesses, court personnel and other associated legal and litigation expenses. In an attempt, however, to extrapolate even the potential impact of lawyer television advertising on the insurance industry, consider the following table which is an estimate of the “return” on lawyer advertising from claim payment dollars alone without taking into account any other associated expenses:

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<sup>3</sup> Source 2005 U.S. Census Bureau Statistics

Per dollar return on lawyer advertising	Total amount spent on lawyer advertising in the top 50 U.S. markets	Total amount of claim payments for each dollar of advertising spent
\$5.00	\$56,417,727.33	\$282,088,636.65
\$10.00	\$56,417,727.33	\$564,177,273.30
\$25.00	\$56,417,727.33	\$1,410,443,183.25
\$50.00	\$56,417,727.33	\$2,820,886,366.50
\$100.00	\$56,417,727.33	\$5,641,772,733.00

## B. ADVERTISING SERVICES FOR LAWYERS

When I speak to claims professionals across the United States, most of them have no idea where attorneys secure their advertising materials from. Most assume the individual law firms produce their own print materials or television advertising. Although this was certainly the case even as recently as a decade ago, things have changed dramatically with the advent of the Internet. Today the vast majority of lawyer print, radio, billboard and television advertising are produced by mass marketers who retain law firms as clients. These are not advertising agencies in the traditional sense but instead marketing companies who establish themselves and target law firms and attorneys as their primary focus clientele. These services will be discussed in greater detail in the next section; however, their impact upon television advertising has been dramatic.

The vast majority of lawyer television advertising today is produced by major production companies and then sold to law firms for airing in local television markets. Some of these production services sell the television advertising to local law firms without restriction and others permit the airing of the commercials only in certain markets where the law firm purchases the rights to air the commercials in an agreed geographic region.

The significance of this, however, is it allows even the smallest sole practitioner with a limited budget to present television advertising making it appear his or her law firm possesses the financial resources (and presumably litigation success history) to be able to place in the market what appear to be extremely expensive television ads. This is actually one of the ways in which the companies which produce these television commercials market their services throughout the country. Recently, web-based attorney promotion companies have begun marketing celebrity spokespersons who will now promote local lawyers and law firms in television commercials.

Frequently these mass-marketed commercials are designed to target the insurance company and insurance claims handler in a negative connotation. Examples of these types of advertisements include misrepresenting the insurance company as not being willing to pay claims without the injured party being represented by an attorney or knowingly paying less than a claim is worth when an attorney is not involved on behalf of the injured person.

Given the fact lawyer advertising has now been prevalent for the past 30 years these types of advertisements are not likely to disappear any time in the near future. The impact of these television ads, however, remains highly significant and negative to the insurance industry. In addition to causing persons to potentially file claims for which little or no injury of merit actually exists, one of the things insurance companies frequently overlook is the fact the plethora of these advertisements on local television stations has a negative impact upon all insurance related litigation.

Labeling insurance carriers as being less than truthful and forthright in dealing with claims perpetuates a long standing litigation strategy used by plaintiffs' attorneys when suing insurance companies in UM/UIM or bad faith litigation where it is alleged the insurance

company is somehow operating in an improper manner to the detriment of the individual plaintiff who is simply trying to recover for his or her loss or injury. As an attorney who regularly litigates cases of this nature, it is always an extremely difficult and uphill “battle” to have jurors rule in favor of an insurance company against an individual plaintiff. After a trial, jurors often will say they had no difficulty ruling based upon the evidence for the insurance company but they did not believe at the initial start of the case they would ever render a verdict in favor of the insurance carrier against the plaintiff. These are, of course, the same jurors who during voir dire swore they could be totally fair and impartial. Deceptive television advertising may not create this problem but it certainly does nothing to alleviate the problem either.

The other negative impact of television advertising of this type is to regularly instill in the minds of the jurors, notwithstanding of any other instruction from the judge, liability insurance probably does play a role in most personal injury cases even when the insurance carrier is not a party. We have joked in the insurance litigation arena for decades about this being the worst kept secret under the Rules of Evidence in any civil case. Although it is true most jurors do suspect a defendant probably has liability insurance, the bombarding of the public with television advertising improperly implying insurance companies are not fairly settling claims also leads to more open speculation or assumptions by jurors whatever amount they award to the plaintiff will not come from the defendant personally but from the defendant’s insurer.

Although the issue of television advertising is important and is probably having more of a dramatic effect upon the claims handling process than you have ever imagined, it is still only once again the “tip of the iceberg” regarding the extent of marketing programs and activities which are currently underway throughout the United States and which are definitely impacting



the claims you, and your staff, are handling on a daily basis. Let us now move on to even more aggressive forms of attorney marketing which are growing nationwide.

#### IV. ATTORNEY MARKETING SERVICES AND “800” NUMBER PROGRAMS

The advent of lawyer advertising reached its next generation with the start of national marketing programs to attorneys which began approximately a decade ago.

These companies provide “comprehensive” marketing services to lawyers and law firms in exchange for the attorney paying a fee and buying the marketing programs offered by the company. These companies have also become extremely aggressive in their marketing approach to lawyers.

If you have ever driven through a relatively small town and seen a large billboard promoting a local attorney with an “800” number such as “1-800 Hurt Now”, did you ever wonder how the lawyer in such a small market was able to secure such a high impact “800” number? The answer is relatively simple. The attorney in no respect owns that phone number but merely owns the right to referrals made to that number which is actually owned by one of these large attorney marketing firms.

Services such as “1-800-HURT-911”, the “Injury Helpline” and “The Lawyers Group” have become increasingly prevalent in recent years. These companies promote a “total package” of lawyer advertising in exchange for a relatively modest fee. This package includes everything from solicitation letters to potential clients, through yellow page advertising, newspaper advertising, websites, billboards and radio and television commercials. The latter of these are in many respects the lifeblood of the marketing effort.

In its most simple form, one of these companies purchases the rights to a well-known “800” number or website address promoting personal injury. They then package an advertising campaign focusing upon that web location or “800” number. These companies then solicit attorneys in markets throughout the United States and sell them the right to promote using that web address or “800” number in a given geographic area. This may range from an entire metropolitan market to selected zip codes. When a person sees one of these ads and visits the website or calls the “800” number, it is answered by the staff of the marketing company. Ostensibly the marketing company “screens” the caller and then pursuant to the agreement if the caller is from a geographic district purchased by the lawyer all referrals within the agreed area are then made to that particular attorney or law firm.

The impact of these services should not be underestimated. Consider the following statistics which are being claimed by various marketing companies in terms of the “results” they are generating for lawyers and law firms across the country.

- *The Injury Helpline receives thousands of injury calls each week. All the calls are distributed to law firms in the group program nationwide...Attorneys in the group program own exclusive areas in which they receive all inbound calls from the territories purchased. You own all the calls from your specific territories....Our TV ads reach injured victims in hospital rooms, where yellow pages are not readily available. And our powerful Internet advertising positions our clients at the top of all the major search engines and online directories....We have a proven track record for over 23 years. We have delivered over 2.5 million calls to our clients. RW Lynch, Injury Helpline Website*

- *This campaign is designed to position you as the market's most prestigious law firm and to result in significantly more high-end cases and significantly more total cases overall....The intention of our unique, low cost, trial period is to allow you to more than cover an entire year's budget well before the trial period runs out....This campaign is designed to make your name the best known and most prestigious in your market. This is intended to provide a very pleasant lifestyle change for you and for your family. Your name will be recognized in social and business settings. It is not uncommon for our licensees to be asked for their autographs. It is very commonly reported that they receive more respect and attention than ever before. The goal is to have your firm making more money and building a more satisfying caseload than you ever thought was possible....*

*Market Masters – Legal Website.*

These services also aggressively market law firms. Only several weeks ago I returned to my office to find an unsolicited voicemail message not only aggressively promoting the services of one of these companies but advising me, without our permission, a “sample” website had been set up using our firm’s identifying initials to view the services this marketing company could provide for our firm.

The overriding question regarding these large marketing operations is for decades persons who were truly injured in automobile accidents, or other injuries for which they were not truly at fault, somehow always managed to find an attorney and present a claim if required. This certainly begs the question as to whether these marketing companies are truly targeting persons who are in fact injured or are preying upon persons who, for financial motive, are presenting claims which lack merit. On one level it is easy to criticize these companies for potentially

generating these type of claims, however, as we will discuss subsequently in this program the true responsibility for screening what claims are legitimate and which are not is not the responsibility of a marketing company but the responsibility of the claims professional guided by the overriding standard of investigation set by insurance companies who are routinely presented with these type of claims.

## V. RUNNERS AND CAPPERS

I continue to be amazed by the number of individuals within the insurance industry in general, and even special investigations units, who are not familiar with the terms “runners” and “cappers.” Simply defined, “runners” and “cappers” are any person, firm, association or corporation acting for consideration in any manner or in any other capacity as an agent for an attorney or law firm for the purpose of soliciting, or for acquiring business for the attorney or the law firm. In many states the practice of using “runners” and “cappers” to secure law firm referrals is expressly prohibited. Sadly, however, many states have failed to enact specific legislation barring these types of activities. Organizations such as the National Association of Insurance Commissioners (NAIC) have developed model legislation which can simply be adopted by state legislatures outlawing the practice of “runners” or “cappers” soliciting business for law firms. Although there is very little public support for the type of practices routinely engaged in by “runners” and “cappers” it is largely the insurance industry itself which has failed to take the aggressive steps required to lobby state legislatures, or even the United States Congress, to pass comprehensive legislation outlawing these types of activities.

One of the things which has been noted by the NAIC and others addressing this problem is frequently “runners” and “cappers” will impersonate insurance company representatives to

attempt to convince an accident victim they have in fact been injured and need to seek medical care or treatment often times with a specific physician or clinic. The same individuals then attempt to steer the marketed person to a particular lawyer or law firm so a claim can be presented.

The first time I encountered this practice was more than two decades ago in Florida. A well-known personal injury attorney was disciplined by The Florida Bar for having “runners” sitting in hospital emergency waiting rooms and striking up conversations with persons regarding who they were waiting on and why. If it turned out the person was injured in an auto accident or another manner which could result in a personal injury claim, the “runner” would then steer the conversation to how his family had faced a similar situation in the past and a local attorney had been very helpful in getting them financial compensation for the injury. The “runner” would then claim to remember he thought he still had the attorney’s card in his wallet and would hand the person the attorney’s business card. The only way this ring was eventually broken was the cards were marked to identify which “runner” was entitled to compensation and the bar association finally received enough complaints and cards to figure out the coding system and discipline the attorney.

In the more than two decades since, rest assured the use of “runners” and “cappers” has not gone down but in fact increased. It has become more difficult in that often times the “runners” and “cappers” operate from other states using call centers and police reports which are purchased from local jurisdictions.

You will again be surprised at the economic impact on the insurance industry in general and thereby on your company directly, through the activities of these “runners” and “cappers.” In 2006, our law firm was involved in the investigation of questionable activities in the state of

Wisconsin regarding “runners” for a local chiropractic clinic. One of the ways we were able to learn the inside operation of this organization was through the criminal prosecution of one of the suspected “runners” who had actually chased and assaulted another “runner” whom he claimed was working his territory. This “runner” boasted to the local prosecutor he was earning between \$5,000.00 and \$30,000.00 per month in referral fees from chiropractors and lawyers in the Wisconsin territory he was responsible for. Keep in mind these are monthly figures. They would equate, if correct, to income of between \$60,000.00 and \$360,000.00 per year which one “runner” alone claims to have been making in one territory in the state of Wisconsin. When our firm was advised of this information and attempted to secure deposition testimony of the “runner”, amazingly this person decided to take the Fifth Amendment so as to not incriminate himself regarding his involvement with these lawyers and chiropractic clinics.

In 2002, five insurance carriers (Progressive, Allstate, Encompass, Mutual Service Insurance Companies and Western National) banded together to file a lawsuit in Minneapolis, Minnesota against five chiropractic clinics and four chiropractors alleging “runners” and “cappers” had improperly cost these insurance carriers alone more than \$3 million dollars in fraudulent claims.

The activities these “runners” and “cappers” will engage in do not only include solicitation of individuals via call centers but even in person solicitation by going to the homes of persons who were involved in auto accidents. In one case in Indiana, evidence was uncovered of “runners” and “cappers” targeting mobile home parks where they would go in to the area and give away expensive tennis shoes to teenagers in exchange for the teenagers referring persons who would be willing to make insurance claims. At least one of these organizations was also using stretch limousines to transport the allegedly injured persons to clinics for treatment.

Remarkably when these “injured” persons would arrive at various clinics there was always conveniently a lawyer or law firm representative who just happened to be present at the clinic to aid that person in making an insurance claim.

Quite simply there is no reason for every state to not adopt anti-capper and runner legislation. Currently however, only a limited number of states, Idaho, New York, Arizona, California and New Jersey truly have legislation in place addressing the ever increasing problems associated with “runners” and “cappers” soliciting improper medical treatment and legal representation. These types of laws can, and will, be passed with vast public support when the insurance industry itself rises to the occasion of taking an affirmative stand and requesting, if not demanding, state legislatures to act in stopping this type of rampant insurance fraud.

## VI. THE CORPORATE PRACTICE OF MEDICINE AND ATTORNEY/MEDICAL CO-PRACTICES.

We all know the era of the local family doctor, and especially one making house calls, is now a thing relegated to Norman Rockwell paintings and Marcus Welby, M.D. reruns. Healthcare in America, for good or bad, has changed dramatically in the past decades.

The consolidation of physicians into large practice groups and even consolidation of hospitals into major provider networks in a given geographic area has become common place throughout the United States. The growth of programs such as Health South, Humana and Anthem has dramatically changed how medicine is practiced in the United States.

Most of these major providers are not in any regard connected intentionally with property and casualty insurance fraud. What has grown, however, dramatically in recent years is the attempt at the corporate practice of medicine by smaller medical providers for the specific purpose of targeting personal injury claims. In its most simple definition, the corporate practice

of medicine is where the medical clinics are actually owned by non-medical doctors and simply operated or staffed with physicians or chiropractors hired by the corporate entity. Often these corporate entities are comprised, solely or in part, with ties to personal injury attorneys. Many states have adopted laws which require employment of physicians only by a corporate entity recognized in the state and comprised of licensed medical professionals. The Texas Medical Board, in conjunction with its state legislature, has enacted a law banning the corporate practice of medicine. The Texas Medical Board defines the corporate practice of medicine as follows:

*The corporate practice of medicine is a legal doctrine, which generally prohibits corporations, entities or individuals (i.e. non-physicians) from practicing medicine....A general summary of the corporate practice of medicine doctrine is that it prohibits physicians from entering into partnerships, employee relationships, fee splitting, or other situations with non-physicians where the physician's practice of medicine is in any way controlled or directed by or fees shared with a non-physician.*

These types of operations are frequently difficult to track as the corporate practice of medicine may take on a variety of forms from outright co-ownership of a clinic to situations where the clinic is a “tenant” of the law firm or attorney provider, or situations where improper fee sharing agreements are entered into but never reduced to writing.

One of the ways in which these type of operations can be identified is simply by “data mining” your claim files to look for routine parings or specific law firms and medical providers. For example, anyone handling insurance claims in the state of West Virginia is probably acquainted with one of the better known law firms which routinely utilize a rheumatologist to provide treatment to virtually all of the firm’s allegedly injured clients. Interestingly, at least several years ago, this rheumatologist, who by his profession should specialize in the treatment of arthritic conditions of the joints, refused to accept any type of Medicare or Medicaid payments. Through the “data mining” process we were able to establish in one trial enough



evidence to convince the trial judge to order the physician to turn over copies of all of the 1099 tax forms relative to payments he had received in the preceding year from the particular law firm representing the allegedly injured plaintiff. Although the judge would not permit us to retain or copy the records, the compensation in one year alone exceeded seven figures from this single law firm to this one physician.

In like manner, in Cincinnati, for a number of years various law firms utilized a clinic specializing in “pain management” to treat allegedly injured persons. It was only after researching the background and credentials of the physician providing the treatment it was learned the doctor had no experience in any medical discipline other than urology!

In part to get around the laws prohibiting the corporate practice of medicine various “loan” agreements are now being entered into by questionable medical providers and attorneys who “invest” in each other’s practices in exchange for repayment of loan terms. Certain of these agreements have even become so blatantly obvious as one we were involved in several years ago, where in a moderately low income part of town, one single building with two store fronts conveniently housed the chiropractor’s office on the right side and the lawyer’s office on the left. It was only through property and deed records we were able to establish the actual link between these two allegedly “independent” providers who coincidentally had a very high number of related claims involving the chiropractor and law office. The attorney has since been disciplined by the state bar association and the chiropractor has left the state.

Often times insurance carriers simply overlook the strong evidence right under their own eyes of the corporate practice of medicine or attorney medical co-practices by failing to properly analyze claims which are being presented. Do you see a pattern of activity involving the same medical practitioners and law firms? In a given market what percentages of your claims are in

fact coming from one identifiable law firm and related medical provider? Sometimes it is even as simple as looking at the return address on mailing envelopes or on letterheads to determine perhaps too “cozy” of a relationship may exist for claims you thought were being handled on a routine and normal basis.

Although many states have taken affirmative steps to limit or prohibit the corporate practice of medicine, this trend continues throughout the insurance industry today and is one of the more prevalent arenas for insurance fraud in which insurers are simply not moving forward aggressively enough to identify and tackle the problem which is clearly before them.

## VII. A CASE STUDY INVOLVING WHAT WE HAVE DISCUSSED – THE PLAMBECK CLINICS.

Although not totally comprehensive, we have now had the opportunity to look at a number of marketing efforts over the past three decades which are dramatically affecting the number of claims your company and staff are handling on a daily basis. One of the questions which should be circulating in your mind is, “How does all of this relate together to impact our company and the claims we are seeing?” To address that question we could look at a number of different medical and legal providers either on a global or specific basis. There is one operation, however, which I believe is indicative of the type of activities involving medical, legal and marketing issues which are prevalent in the United States today. We will utilize this organization as simply an example of the type of potential claim producing operations which are impacting the insurance industry in America.

In 1984, a young chiropractor in Texas purchased a single chiropractic clinic known as Behrman Chiropractic. From that humble beginning, Michael Kent Plambeck has become one of the best known providers of chiropractic services in America today. Since starting what has

grown into a chain of chiropractic clinics, Dr. Plambeck is believed to have operated as many as 270 clinics in 18 states. These clinics are extremely difficult to track because each are incorporated separately and often times with different incorporators. To the best of our ability to estimate, we believe Dr. Plambeck is currently operating approximately 52 clinics in 13 states. These clinics are operated under the umbrella organization of Chiropractic Strategies Group, Inc. although it is often difficult to uncover the direct link back to this organization.

The Plambeck operation began in Texas and relatively quickly drew the attention of then Texas Attorney General Dan Morales. The results of the attorney general's investigation lead to the indictment of attorney Eugene Mercier alleging improper solicitation of persons for medical and legal services in violation of Texas state law. Although Dr. Plambeck and Chiropractic Strategies Group, Inc. continued to have operations in Arlington, Texas, the day-to-day operations of the corporation left Texas, and moved to Kenner, Louisiana, where they remain in operation today.

The "Plambeck model" as we have been able to identify it, consists of the following:

- Dr. Plambeck and Chiropractic Strategies Group, Inc. recruit new graduates from chiropractic colleges. An informational meeting is held at the college promoting the ability to make large quantities of money in a relatively short period of time by association with Dr. Plambeck and his clinics. Frequently Dr. Plambeck does these programs personally.
- In a new market, Chiropractic Strategies Group, Inc. goes in and sets up a new clinic. These clinics are in economically depressed areas of town and are certainly not elaborate by any regard. In fact, one clinic was even photographed as having folding lawn chairs used in the waiting room.

- Simultaneous with opening the clinic, a local law firm is either identified or frequently a new law firm office is opened to handle the claims arising from the chiropractic treatment. Often these “law offices” are located near or even next door to the clinic.
- One of the most significant things we have learned is apparently all of the staff of the law firm, other than the licensed attorney, is actually employed by Professional Management Group, Inc. This is a corporation based out of Atlanta, Georgia and owned by one of Dr. Plambeck’s closest associates, Randy Toca. One witness has even identified chiropractors from the clinics, between assignments, have been employed by PMG, Inc. to work in the law offices to handle the process of presenting of the insurance claims to adjusters.
- We have also identified from witness statements Dr. Plambeck “loans” the money to open the law firm. One witness has stated the law firm was required to write a check every month to Dr. Plambeck for between \$30,000.00 and \$40,000.00 labeled as “loan repayment.” This witness stated there are at least five other law firms around the country, and perhaps many more, making the same type of payments to Dr. Plambeck every month. Although this witness ostensibly owned the law firm, the lawyer was never allowed to see the loan agreement under which the payments were made, was never shown the amortization schedule and never permitted to know the interest rate or any information regarding when the loan would be paid off.
- Once the clinic and law firm relationship has been established, “runners” from either the clinic or the law firm then purchase on a daily basis the police reports

for area auto accidents. To show how aggressively the purchase of these police reports is made, consider in 1998 Chiropractor Strategies Group, Inc. instituted a lawsuit against the Commissioner of the Knoxville, Tennessee Police Department asserting the police department was not turning over the police reports to them fast enough. *McCallie Chiropractic Clinic, Inc. v. Dinsmore*. The practice seems to be the only police reports purchased are for clear liability accidents and there is some evidence even then police reports are only purchased for potential injured parties in certain demographic areas of the jurisdiction.

- Once secured, the information from the police reports is apparently then transmitted to the CSG, Inc. office in Kenner, Louisiana. From this site, and potentially several others around the country, telephone solicitation by “cappers” then occurs. The script used for the telephone solicitation strongly implies the call is being made on behalf of the other driver’s insurance carrier which wants to make certain the party being called was not injured. The caller offers a free “10 point” chiropractic examination. If the person agrees to the examination, the call is then transferred to a “confirmer” who schedules the appointment normally for the very next day. What occurs when the “patient” arrives at the clinic becomes more interesting.
- Information we have developed is the law firm is notified of a potential new “patient/client” and the appointment time. One former employee of the organization has stated “runners” from the law firm were actually instructed to wait in the parking lot until the call came in from the clinic to go in and sign up the new law firm client.

- When the person who agreed to the exam arrives, they normally fill out a series of forms which frequently are not turned over in the normal discovery process. These forms contain background information, history regarding prior medical treatment and in almost every case, an assignment of benefits whereby the person being treated assigns over all rights to collect for the billing on the account to the clinic. Our experience has shown the clinics are extremely aggressive in enforcing these assignments to even include filing of direct lawsuits against your company or your insured if the medical bills are not paid in accordance with the assignment. You do need to be cautious concerning this, as failure in certain states to abide by the assignment may result in your paying the medical expenses twice.
- At some point during the sign-in process, or the initial evaluation with the chiropractor, the discussion is steered toward whether, or not, the person is represented by legal counsel. If not, they are strongly encouraged to retain counsel immediately to “protect their interest.” We have developed evidence in at least one clinic the patients are lead into a room where there is a telephone with a direct telephone connection to the clinic related law firm. As noted above, in other situations the “runner” from the law firm is waiting in the parking lot for the cellular phone call to come in and sign up the new client.
- In past years the clinics and law firms have also instituted more of a “two way street” relationship as well. In most of the major markets now, the selected law firm initially established to service the Plambeck clinic is also participating in local television, print advertising and issuing solicitation letters. What we are

beginning to see in major markets where these clinics and law firms operate, is the reverse referral process is now starting as well. What this means is the clinic is referring patients to the law firm and the law firm, through its marketing efforts, is securing clients who are then referred to the clinics. We have seen a recent rise in situations where prior to signing up with the “selected” law firm in a market, the plaintiff may have treated with other medical providers, however, as soon as they are signed on as clients of the law firm, somehow the treatment manages to shift to the local Plambeck owned clinic.

- What occurs next is the real reason why the Plambeck clinics have been able to multiply and continue to collect tens of millions of dollars from the insurance industry. The chiropractic treatment rendered, although often highly questionable, does not appear on the billing statements to be unreasonable or for an extended period of time. In fact, in virtually every case the patient is treated for six to eight weeks with total treatment expenses of between \$2,500.00 and \$3,200.00 and then is discharged with a full recovery and no permanent injury finding. These claims simply “fly under the radar screen” and insurance companies are all too happy to pay what appears to be a reasonable settlement (often between \$6,000.00 and \$12,000.00) on a clear liability case. What is actually occurring, however, is by doing so your company is fueling a flood of future claims which will follow the exact same format.
- For a limited period of time the Plambeck clinics were also operating in conjunction with another Plambeck formed business entity called Pan American Funding. This Nevada Corporation would have a representative at the clinic on

the last treatment visit and would offer to “buy” the insurance claim from the patient in exchange for an immediate cash payment. Although this process has, to our knowledge, since been disbanded it demonstrates the depth to which financial recovery is being sought through this type of organization.

- When you explore further into this operation it is also learned all of the billing from all of the clinics is forwarded to and in turn sent to the insurance carriers from the Kenner, Louisiana headquarters. This is true notwithstanding of the fact the clinics claim to each be entirely independent. If you suspect a Plambeck clinic is operating in your geographic area one of the best ways to identify whether this is occurring is to simply look at the return mailing address envelope for billing statements and other information as often times you will find the mail is postmarked from Kenner, Louisiana.

Although it is truly one of the largest operations of its kind in America today, the Plambeck clinics are only one example of the type of corporate practice of medicine operations which are actively functioning in the insurance related marketplace today. The failure of your company to identify these organizations and the types of claims being presented through your claims handling process may literally be costing your company millions of dollars on an annual basis.

## VIII. WHO IS TO BLAME?

Very few persons disagree there is a problem in America today regarding excessive litigation, that attorney solicitation is contributing to the filing of questionable, if not fraudulent



lawsuits, and these actions are causing the American consumer to pay more for insurance services. So this begs the question: “Who is to blame?”

Although immediate answers may “pop” into your mind of judges, juries and overly aggressive plaintiffs’ attorneys, I would respectfully submit the answer may well be closer to home.

When I began in the practice of law in 1985 as an insurance defense litigator, I learned very quickly the phrase “nuisance value settlement.” At that time a “nuisance value” was generally around \$500.00. Although inflation has played a role, not long ago I had a judge tell me a settlement of between \$10,000.00 and \$15,000.00 should be considered nothing more than “nuisance value.”

Many insurance companies have, in recent years, adopted policies where they will not pay nuisance value to simply be rid of a case. In some companies, that statement is literally true and is applied as a stringent standard. In many others, however, the “standard” may be present but it is not applied in the reality of the claims handling process, especially as a jury trial draws near. I do not, in any regard, pretend to have the wisdom, nor is it my place, to advise your company as to whether or not a settlement should be paid and whether or not payment of a settlement is nuisance value or a correct business decision in light of all the variable factors which comprise the insurance industry.

What I can tell you, however, is the fact nuisance value settlement amounts have risen so dramatically, and far in excess of any reasonable rate of inflation, is the willingness of the insurance industry to routinely pay highly questionable claims. The effect of this is having created situations where companies like Chiropractic Strategies Group, Inc. as well as the marketing companies promoting lawyer advertising have not only been able to survive but

flourish. These companies exist virtually for the sole reason the insurance industry is willing to pay the exact type of claims for which they are soliciting persons for highly questionable medical treatment and often times equally questionable legal representation.

This problem can be solved, however, it can only be solved when the insurance industry itself decides it has had enough and is willing to stand up to these types of claims. When that does occur there is a strong probability these type of claims, questionable clinics and lawyer advertising techniques will have run their course and will begin to fade away. For as long as the insurance industry, however, continues to “feed the monster” these types of highly questionable practices will continue, flourish and grow stronger. The decision as to how to affect these claims in the future rests solely with you. The purpose of this program is simply to acquaint you with the type and extent of the forces which are in operation today which are affecting the claims which routinely pass your desk and the desk of those you are responsible for supervising. Will the problem go away overnight? Obviously the answer to that is no. What is equally obvious, however, is by aggressively identifying and taking on these types of questionable claims and practices, we can begin to swing the pendulum back into the direction of a system based upon fairness and compensation for actual injuries sustained.

#### IX. WHAT CAN YOU DO TO MAKE A DIFFERENCE?

The biggest problem in the battle against insurance fraud is every claims professional thinks there is so little they can do it is simply “a drop in the bucket.” While that may be true, there is very little which can be done of a global nature to battle insurance fraud. I can say that as one of the few persons selected from across the country to participate currently in the complete redevelopment of the national effort to battle insurance fraud and specifically as a

member of the targeted group identified to determine how to affect the battle against insurance fraud through state and federal legislation. Yes, the legislative and governmental affairs efforts are in need of revamping and strengthening in the battle against insurance fraud, but there is simply no piece of legislation which can be passed in any state capital, nor in Washington, D.C., to eradicate and stop insurance fraud.

The only way insurance fraud can be battled is on a claim-by-claim basis with the frontline insurance adjusters having the tools and education necessary to identify and target potentially suspect claims. By creating a “claim tree” containing the names and addresses of the treating physicians, witnesses, attorneys and experts, ISO is able to cross reference the entered information to determine whether any relationship warrants further investigation.

As was stated at the onset of this program, every insured and claimant should always be given the reasonable benefit of the doubt regarding the legitimacy of any injury or claim. When, however, claims are identified which truly are suspect, then additional action is required and the claim should not simply be ignored and paid as a normal claim simply to “lower the claim count” or to make the claims professional “look good.” It is exactly these types of practices which have fostered the growth of insurance fraud which we have discussed today.

What is also necessary is for management of the insurance company to take a serious look at the issue of insurance fraud. Hopefully, we are now well past the days many years ago when one insurance CEO stated the problem of insurance fraud could simply always be “written away” by charging higher premiums. Such an approach to insurance fraud not only ignores the reality this \$30 billion dollar monster has become, but encourages even more fraudulent activity in the future. Instead, insurers must provide the education, training and resources to claims

professionals to not only identify but aggressively defend claims which do warrant further investigation.

The results of taking a proactive approach to claims handling may actually amaze you. For one carrier, their claim count with the Plambeck related clinics we have discussed, dropped by 98 percent in one year alone when the Chiropractic Strategies Group, Inc. organization realized the insurer was not going to pay the claims and was going to aggressively litigate and investigate the practices of the corporation on a multi-state basis. For another insurance carrier, once we started filing suit seeking discovery of information regarding the clinic ownership and billing practices and sought to depose former chiropractors employed by Chiropractic Strategies Group, Inc., the clinics dropped all billing requests which were the subject of the disputed medical bills. In short, taking an aggressive approach to these types of claims does work!

I realize our firm is one of many which have the privilege to do work with your Company. We value this relationship greatly and it is our distinct privilege and honor to have the opportunity to represent your company and your insureds. In preparing this program I asked for an independent audit to be done by your Company of the cases we have handled for your company involving potentially fraudulent claims. You can consider the following results compared to the claims you, or the persons you are responsible for supervising, are handling on a routine basis.

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Please do not misunderstand the reason I am giving this statistical analysis. Yes, I am proud of our law firm and of our relationship with your Company and its affiliated companies. Our firm, however, never makes the decision relative to what cases are identified for investigation nor do we ultimately make the decision regarding whether those claims are tried or

paid. The reason this relationship has been so successful is because of the partnership and team effort we have been able to foster with the representatives of your Company who are responsible for the direct supervision of the claims we handle. By staying in communication with the investigators and claims professionals and being welcomed as part of your Company's "team" we are able to view these cases collectively and with an open flow of communication which allows the company to make a final and informed decision regarding what is in the best interest first and foremost of your insured and then of the company. I am most proud of the fact of the monies paid out by your Company and by every other insurance carrier our firm has had the privilege to represent in over 20 years of practice, there has never been a single dollar paid for any bad faith judgment or settlement of any type or nature!

The fact an insurance carrier chooses to investigate and even aggressively litigate a claim, should never be a foundation for bad faith if the insurance company has done a proper and complete investigation of the claim and can clearly document the issues, problems and concerns which warrant further investigation.

After this meeting you will travel back to your respective offices where you will either handle claims yourself or supervise those who are handling claims under your direction. The question is, what will you have garnered in the time we have spent together that you can take back to more effectively handle the claims which are being presented to your Company to identify insurance fraud and make a difference regarding the claims you are handling. Like the ancient Chinese proverb – *the journey of a thousand miles begins with a single step*. Your journey, on behalf of your Company, in battling insurance fraud will occur on a single claim-by-claim basis.

## X. CONCLUSION

It is a distinct privilege and honor for myself, and our entire law firm, to work with each of you and the claims professionals which comprise your Company. We have enjoyed this working relationship for the past several years and during that time have enjoyed a number of successes in the handling of insurance claims and identifying potentially fraudulent insurance claim activity. We look forward to this continuing relationship for many years to come.

We thank you for this opportunity to participate in this training program and it is my hope the materials we have covered have “opened your eyes” to many of the practices and activities which are underway and of which you might have had some knowledge but perhaps not as in depth information as we have been able to impart in this short time together. This one program will not solve the problem for your Company, nor any other insurance carrier, of improperly solicited claims nor unnecessary medical treatment. The time we have spent together, however, will be tremendously productive if we have opened your eyes and provided you with the resources to identify the type of claims which may warrant further investigation. It is my hope you have found this presentation to be of benefit and will be able to utilize this information to expand the knowledge of these types of practices among your staff and throughout your company. In so doing, we will take the first steps to perhaps not eradicate, but limit, this ever increasing problem which faces the insurance industry and the American consumer and is costing literally billions of dollars each year.