



Vol. 16 No. 16

April 20, 2001

FIGHTING INSURANCE FRAUD: A PRIORITY IN PENNSYLVANIA

by

Attorney General Mike Fisher

Insurance fraud is an equal-opportunity crime. It entices career criminals, as well as first-time offenders, and appears in many forms. Fraud occurs when someone files an inflated homeowners claim following a burglary, in hopes of getting his insurer to replace items that were never actually stolen. It occurs when someone abandons his vehicle, then reports it as stolen to his insurance company. Fraud occurs when a worker fakes an on-the-job injury in order to collect workers' compensation benefits. It also occurs when an unscrupulous doctor bills a patient's insurance company for medical treatment and services that were never provided. Fraud is committed by individuals from all walks of life and levels of social and economic status. Fraud is also rapidly becoming the newest low-risk, high profit "business" of organized crime.

Fraud hurts us all because we all end up paying for it. The recently published results of an insurance industry study show that insurance fraud forced Americans to pay an estimated \$96.2 billion dollars for higher premiums in 1999. Conning and Company, *INSURANCE FRAUD: RENEWING THE CRUSADE* (2000). This alarming statistic emphasizes the importance of taking swift, effective action against fraud.

In the early 1990s, the Pennsylvania General Assembly did just that. As a member of the Senate Judiciary Committee, I supported the passage of tough anti-fraud legislation. When I first took office as Attorney General in 1997, I made the fight against insurance fraud a top priority for my administration. Now, as I begin my second term, I can say with measured optimism that Pennsylvania's efforts are beginning to make a difference.

The Fight Begins. During the 1980s, rising insurance premiums threatened to spiral out of sight in Pennsylvania. Insurers blamed the higher prices on an unbridled increase in the amount of fraudulent insurance claims, which forced companies to spend more and more revenue on anti-fraud measures.

Pennsylvanians soon realized that the problem required a new solution. In 1990, the Pennsylvania General Assembly responded by adding "Insurance Fraud" to the Pennsylvania Crimes

The Honorable Mike Fisher is currently serving his second term as the Attorney General for the Commonwealth of Pennsylvania.

Code. Act of December 19, 1990 (P.L. 1451, No. 219), amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, Section 4117 (providing for *Insurance Fraud*) (1990). Two years later, the legislature criminalized workers' compensation insurance fraud in an attempt to stem its negative effects on the Commonwealth's job and business climates. Act of July 2, 1993 (P.L. 190, No. 44), adding to Title 77 (Workmen's Compensation) of the Pennsylvania Statutes, Section 1039.1, *et seq.*, (relating to *Insurance Fraud*) (1993).

But insurance fraud continued to expand. Many people viewed insurance fraud as a "victimless" crime. Overworked police and prosecutors simply did not have the personnel or resources necessary to effectively pursue cases involving fraud. During the early 1990s, members of the state legislature worked with insurance industry and law enforcement leaders to develop a multi-faceted solution. In late 1994, the Pennsylvania General Assembly passed the "Insurance Fraud Prevention Act." Act of Dec. 28, 1994 (P.L. 1414, No. 166), known as the Insurance Fraud Prevention Act, adding to Title 40 (Insurance), of the Pennsylvania Statutes, Section 3701-101, *et seq.* (Supp. 2000). The Act provided the necessary organization and resources for Pennsylvania to wage war on insurance fraud, through a consistent campaign of aggressive law enforcement and vigorous criminal prosecution. 40 P.S. §3701-102 (Supp. 2000).

The Act targeted fraud on several levels. First, it created the Pennsylvania Insurance Fraud Prevention Authority (IFPA), 40 P.S. § 3701-301 (Supp. 2000), a quasi-governmental entity responsible for coordinating and facilitating anti-fraud efforts in the Commonwealth. The Act also established an Insurance Fraud Section within the Office of Attorney General and vested it with specific authority to investigate and prosecute insurance fraud. 40 P.S. § 3701-502 (Supp. 2000).

Outlawing Fraud in Pennsylvania. The crime of "Insurance Fraud" appears in Section 4117 in the Pennsylvania Crimes Code. Title 18 (Crimes and Offenses), Pennsylvania Consolidated Statutes, Section 4117 (Supp. 2000). The statute contains subsections which describe specific acts of prohibited conduct. For example, Section 4117(a) precludes a "person" from intentionally submitting false information to an insurance company in support of a pending claim; soliciting or conspiring with anyone to commit insurance fraud; benefitting from the proceeds of insurance fraud; participating in "unlicensed agent, broker or unauthorized insurance activity"; or allowing a health care facility to be used by anyone committing fraud. 18 Pa. C.S. § 4117(a) (Supp. 2000).

The aforementioned criminal acts are classified as third-degree felonies and, as such, are punishable by a maximum sentence of seven years in prison and a \$15,000 fine. 18 Pa. C.S. § 106(b)(4) (Supp. 2000). Section 4117(b) identifies first-degree misdemeanor acts of insurance fraud, which carry a maximum penalty of five years in prison and a \$10,000 fine. 18 Pa. C.S. § 106(b)(6) (Supp. 2000). The insurance fraud statute also provides for restitution to fraud victims, permits civil (as well as criminal) penalties, and grants immunity to insurers for providing information to law enforcement. 18 Pa. C.S. § 4117(e), (j), (f) (Supp. 2000).

Much of the language used to define fraud offenses under Section 4117(a) of the Pennsylvania Crimes Code, 18 Pa. C.S. § 4117(a) (Supp. 2000), is also used to define certain acts of workers' compensation fraud under Section 1039.2 of the Workers Compensation Act. Act of June 2, 1995, (P.L. 736, No. 338), added July 2, 1993 (P.S. 190, No. 44), amended 1996, known as the Workers' Compensation Act, 77 P.S. § 1039.2 (relating to Offenses) (Supp. 2000). However, Section 1039.2 targets fraudulent acts which, by definition, could only occur within the context of the workers' compensation system. For example, one subsection prohibits "totally disabled" workers compensation recipients from "double-dipping" — meaning they cannot earn additional wages or engage in outside employment while receiving workers' compensation payments. 77 P.S. § 1039.2(11) (Supp. 2000). Another subsection prohibits employers, health care providers, lawyers and insurance companies from intentionally "discourag[ing] an injured worker from

claiming benefits or pursuing a claim." 77 P.S. § 1039.2 (Supp. 2000).

Each offense identified in Section 1039.2 of the Workers' Compensation Act is classified as a third-degree felony. 77 P.S. § 1039.5 (Supp. 2000). Convicted offenders may be incarcerated and/or assessed criminal fines of up to "fifty-thousand dollars or double the value of the fraud." 77 P.S. § 1039.5(a) (Supp. 2000). Other sections of the workers' compensation fraud statute give judges the authority to order restitution, 77 P.S. § 1039.6 (Supp. 2000), and impose civil penalties. 77 P.S. § 1039.11 (Supp. 2000). Another section provides insurers with immunity from liability for providing information to law enforcement. 77 P.S. § 1039.7 (Supp. 2000).

A Coordinated Assault. Previously, I referred to the Insurance Fraud Prevention Authority (IFPA) and its duty to coordinate, facilitate and oversee anti-fraud efforts in the Commonwealth. Insurance Fraud Prevention Act, 40 P.S. § 3701-301 (relating to *Insurance Fraud Prevention Authority*), (Supp. 2000). The IFPA is run by a Board, whose members are the Attorney General (or his designee), a member of the Federal Insurance Fraud Task Force, a consumer representative, and four leaders from the insurance industry. 40 P.S. § 3701-301(b) (Supp. 2000). Funding is generated through an annual assessment of Pennsylvania insurers. *No tax dollars are used.*

Assessment monies are placed in a special Commonwealth account known as the Insurance Fraud Prevention Trust Fund, 40 P.S. § 3701-303, (relating to *Insurance Fraud Prevention Trust Fund*) (Supp. 2000), which is overseen by the Treasurer of Pennsylvania. The money supports anti-fraud programs, such as special training for local police and public awareness media campaigns. Perhaps most importantly, the assessment money is granted to law enforcement for the establishment and operation of special fraud units. 50 P.S. § 3701-302(5) (Supp. 2000). The largest of these is the Insurance Fraud Section (IFS) of the Office of Attorney General. 40 P.S. § 3701-501 (relating to *Section of Insurance Fraud*) (Supp. 2000).

The Pennsylvania Attorney General's Insurance Fraud Section. The Insurance Fraud Prevention Act of 1994 created the Insurance Fraud Section (IFS) of the Office of Attorney General and vested it with the authority to investigate, arrest and prosecute persons who commit fraud and related offenses. *Id.* The Attorney General's IFS is charged with reviewing and investigating fraud referrals from insurers, other law enforcement agencies and the general public; independently uncovering, developing and investigating fraud cases; filing criminal charges and prosecuting offenders. 40 P.S. § 3701-502(3) (Supp. 2000).

The Attorney General's Insurance Fraud Section (IFS) operates from offices located in western (Pittsburgh), central (Harrisburg) and eastern (Norristown) Pennsylvania. IFS agents, prosecutors and support staff in each office cover their respective regions and, in turn, the entire Commonwealth of Pennsylvania.

When I first became Attorney General in 1997, the Insurance Fraud Section was up and running. I have continued to encourage its growth and efficacy and am pleased with the results. Since 1996, the IFS has steadily increased its number of investigations, arrests and convictions. Pennsylvania Office of Attorney General, Insurance Fraud Section, IFS Year 2000 in Review Information (2001). During the year 2000, the IFS arrested 120 individuals for insurance fraud and related crimes, the highest number of arrests since the IFS began operations in 1995. *Id.*

The Attorney General's Insurance Fraud Section (IFS) investigates and prosecutes all types of fraud. The crimes vary as much as the offenders who commit them. One IFS case involved a con artist who cheated 33 businesses and individuals in eastern Pennsylvania out of \$153,177, by selling worthless and non-existent health insurance policies to his victims. Many victims were forced to pay out-of-pocket

for expensive, life-saving surgery and other medical treatments, which they believed were covered by their "insurance." After pleading guilty, the defendant was sentenced to serve up to five (5) years in state prison and was ordered to pay \$328,824 in restitution to his victims.

Another IFS case involved an alleged conspiracy between a husband and wife who faked their own deaths in order to defraud multiple insurance companies of \$1,886,493 in life insurance proceeds. The couple's scheme was discovered while they were living in Thailand. Following a thorough investigation, the IFS filed criminal charges. The couple was arrested and extradited to the United States. They are currently being held in a county prison in Allentown, Pennsylvania. If convicted, each will face a maximum penalty of 133 years in prison and \$285,000 in fines.

In a workers' compensation case, the Attorney General's IFS successfully prosecuted a man who received workers' compensation wage loss benefits for more than a decade, while he secretly worked and earned wages by operating heavy equipment. Following an investigation, the IFS filed criminal charges and the defendant pleaded guilty.

The Insurance Fraud Section of the Office of Attorney General and the Insurance Fraud Prevention Authority agree that publicizing successful prosecutions can boost public awareness of fraud and its consequences. The IFPA supports an ongoing, high-profile media campaign, which utilizes billboards, television and radio spots and magazine ads throughout the Commonwealth. The Office of Attorney General keeps the public informed of IFS accomplishments through news releases, speeches and meetings.

Pennsylvania's Efforts Are Paying Off. Increases in the numbers of successful insurance fraud prosecutions and the ensuing publicity appear to be having a positive impact on the way the public perceives fraud. Two years into its targeted anti-fraud media campaign, the Insurance Fraud Prevention Authority noted a 60 percent drop in the percentage of Pennsylvanians who found nothing wrong with exaggerating a workers' compensation claim. NATIONAL INSURANCE FRAUD FORUM WHITE PAPER, DISCUSSIONS OF KEY ISSUES (2000).

The importance of ending public tolerance of fraud was amplified in a recent report published by Conning and Company. Conning and Company, INSURANCE FRAUD: RENEWING THE CRUSADE (2000). The report encouraged insurers to help members of the public realize that it is they who are the ultimate victims of fraud.

The fight is only going to get tougher. But anti-fraud efforts are beginning to make a difference. I am proud that Pennsylvania has been a leader in the battle against insurance fraud. I am equally pleased that other states have taken up the banner. It is my hope that government, law enforcement, private industry, and the public in every state will work together in a sustained, coordinated effort to crack down on fraud and in turn, curtail insurance costs for all our citizens and their businesses.