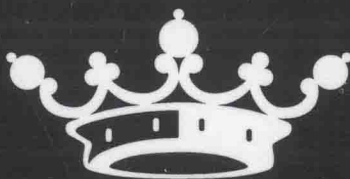


INSIDE THE MINDS™

# DEFENDING AGAINST INSURANCE FRAUD CLAIMS

LEADING LAWYERS ON REPRESENTING INSURERS  
IN INVESTIGATING AND PREVENTING  
FRAUDULENT ACTIVITY



ASPATORE

Michael G. Gee, Porteous Hainkel and Johnson LLP; Joseph L. Cowan II, Haskell Slaughter Young & Rediker LLC  
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I N S I D E   T H E   M I N D S

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## KEY STRATEGIES FOR HANDLING FRAUDULENT CLAIMS

*Defending Against Insurance Fraud Claims* provides an authoritative, insider's perspective on best practices for aiding insurers in handling fraudulent claims. Featuring partners from some of the nation's leading law firms, these experts offer strategies for establishing and implementing successful research and investigative techniques, as well as assisting insurers in preventing fraud in the future. These top lawyers provide advice for consulting experts in the field, preparing for and conducting an examination under oath, and effectively collecting and presenting key evidence. From identifying helpful resources to requesting appropriate information, these authors discuss the increasing importance of using technology and social media in the initial research process and how it can ultimately affect the outcome of a case. The different niches represented and the breadth of perspectives presented enable readers to get inside some of the great legal minds of today, as these experienced lawyers offer up their thoughts around the keys to success within this ever-evolving area of law.

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# Working with Your Client to Achieve a Successful Outcome in an Insurance Fraud Case

Michael G. Gee

*Partner*

Porteous Hainkel and Johnson LLP



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## Introduction

When defending against insurance fraud, it is important to develop the theory of the case. Work with the client to obtain evidence and testimony that supports the theory of the case, and refutes the claimant's position. Look for red flag indicators and deceptions that provide clues to unraveling what really happened. In defending against suspected fraudulent claims, it is imperative to be thorough and persistent in the investigation.

## **"Soft Fraud" Risks Facing Insurance Companies and Medical History Issues**

One of the greatest risks facing insurance companies today is the "soft fraud" involved with inflated medical treatment and exaggeration of injuries received in an accident. This type of fraud is often most difficult to prove, as the injured party usually has experts willing to support his claims of injury including doctors, chiropractors, economists, and other professionals. One can defend against these claims by using surveillance, background checks to disclose pre-existing injuries, subpoenas to obtain prior medical records, and an examination by an independent medical provider. It is also useful to obtain a copy of job applications that will provide a conflicting statement regarding physical complaints and injuries. An insurance services office (ISO) claims history report should also be run to determine the claims history of the plaintiff. A thorough investigation that exposes relevant prior medical treatment and accidents, as well as inconsistent statements, will reduce the claimant's credibility.

## **Worker's Compensation Fraud**

Fraud is also evident in the workers' compensation arena. Oftentimes, prospective employees fail to disclose prior injuries and conditions to an employer. This is a violation of LA. REV. STAT. ANN. § 23:1208.1. See attached statute (Appendix A). Employers can defend against this type of fraud by having the prospective employee complete a post-hire medical history questionnaire. See attached post-hire medical history questionnaire (Appendix B). The failure to truthfully respond to questions regarding previous injuries and physical conditions can result in a forfeiture of entitlement to benefits. In addition, it can also result in a fine of up to

\$10,000 and/or imprisonment for up to ten years. The intent of the prospective employee may not be to deceive the employer with an eye toward making a workers' compensation claim in the future, but rather to deceive the employer for purposes of obtaining employment. However, this failure to disclose is costly to the employer in that it does not have notice of the pre-existing injury.

Without this notice of the pre-existing condition, the employer will not be able to participate in the second injury fund. The second injury fund is a fund that is designed to encourage employers to hire employees with pre-existing conditions. It protects the employer against the increased disability that would result from an accident when the new injury merges with the previous condition. Without the knowledge of the pre-existing condition, the employer is unable to participate in this fund and loses this monetary benefit. Therefore, the employee's right to recover should be forfeited for the failure to truthfully respond to the post-hire questionnaire.

The main workers' compensation fraud provisions are contained in L.A. REV. STAT. ANN. § 23:1208; *see* attached statute (Appendix C). It provides that it is unlawful for any person, for the purpose of obtaining or defeating any benefit, to willfully make a false statement or representation. This statute contains criminal and civil penalties for a violation, as well as forfeiture of benefits.

For example, several years ago, I was representing a privately owned motel in a workers' compensation claim. The worker was a recent hire and had allegedly sustained an injury in an unwitnessed accident. She claimed that she injured her lower back while working in the laundry room. A review of the post-hire medical history questionnaire showed that she denied any previous injuries to her lower back. The employer, however, had his suspicions regarding the facts surrounding the accident and injury. Also, the claimant made several inconsistent statements during the course of submitting her claim.

Further complicating matters, the claimant had engaged an attorney to assist her in her workers' compensation claim. This attorney was pushing for quick approval of a recommended back surgery, as well as threatening the employer with attorney's fees and penalties for failure to approve the recommended medical treatment. This attorney filed suit shortly after initial contact.



When I received the assignment, I wanted to obtain a complete medical history of the claimant. Subpoenas were issued to local health care providers including hospitals, chiropractors, and orthopedists. A return on the subpoenas revealed that the claimant had been recommended for back surgery two months prior to the date of the alleged accident. In addition, the records also showed that she had a long-standing history of lower back pain. Upon taking the claimant's deposition, the claimant continued to deny any treatment in the past for lower back pain. She also denied ever having had an MRI or x-ray of the lower back, or having a doctor tell her that she needed surgery. Obviously, she was looking for someone to pay for her surgery and to receive disability payments.

Ultimately, we had this case dismissed due to a violation of LA. REV. STAT. ANN. § 23:1208, 23:1208.1. The claimant had failed to truthfully answer the medical history questionnaire and had to forfeit her right to workers' compensation benefits when she denied her extensive history of lower back pain. The claimant also made statements in an attempt to obtain benefits in violation of LA. REV. STAT. ANN. § 23:1208, when she gave false and misleading testimony under oath in her deposition. Fortunately for the employer, it did not have to pay for the back surgery nor workers' compensation benefits.

## Property-Related Claims

Recent trends have also appeared in terms of an increase in automobiles being reported stolen and found burned, as well as arson and vandalism claims involving homes. The increase in these types of claims can be partially attributed to the downturn in the economy. Motivating factors for these types of claims include financial pressure, such as owing more on the vehicle or home than the current appraised value. The destruction of the property in question is seen as a way to escape the debt. The person wants the insurance company to pay off the lien holder, and the individual's credit is not adversely affected as it would be in filing bankruptcy. In Louisiana, where I practice, the Louisiana Department of Insurance and the Louisiana State Police both have insurance fraud investigating units, and welcome reporting of suspected fraudulent activity in this area. *See*, Louisiana Department of Insurance Fraud Hotline, [https://www.ldi.state.la.us/Legal\\_services/Fraud/gen\\_fraud\\_report/Default.aspx](https://www.ldi.state.la.us/Legal_services/Fraud/gen_fraud_report/Default.aspx); Louisiana State Police Public Safety Services Insurance Fraud/Auto Theft Unit, <http://www.lsp.org/ifu.html>.