



Are You Calling Me a Crook?

How to dive into suspect claims and call out fraudsters without fear.

By Michael Leahy

There is an old saying: "If you come at the King, you'd best not miss." The unspoken addendum to the sentence is "or you undoubtedly will be killed yourself." How often has this phrase inspired a claimant or insured to get away with fraud in the application for a policy or in the presentation of a claim?

At a recent CLM conference, panelists asked the audience, "Do any of you have the guts to call your insured a crook?" One lone voice called out, "You're damned right I do!" All of us are bombarded daily with emails for workshops, online courses, books, and seminars. A recent one comes to mind that had the subject "Holding Others Accountable." But how often are others held accountable, and what are the ramifications of holding someone accountable? Consider the following situations:

A woman filled out an application for health insurance and did not disclose her heart condition. Post heart attack, she claimed that she told her broker about the condition and he signed the application.

A life insurance policy was taken out on a relative who later was allegedly killed. The death took place in a foreign country where life is considered cheap. A body burned beyond recognition was claimed as being that of the insured relative; however, the body was likely not that of the insured.

A car was stolen, and the insured claimed that over \$900,000 in artwork that had not been seen in years was in the trunk. The artwork later was discovered hanging in a museum, serendipitously on loan from a private collection.

An insured filled out an application for professional liability coverage representing that he was unaware of facts or circumstances that could lead to a claim. In fact, he had been sued for embezzling client funds through an elaborate tax scheme—a scheme that had been ongoing for a number of years.

All of these are real claims. Three of the four were fraudulent claims; the health insurance claim was not. In fact, in the health insurance claim, the insured told the broker the facts, and the broker filled out and signed the application. In each scenario, a bad faith case was filed against the insurer, either directly or by way of a cross action on the insurer's declaratory judgment action. The professional liability case was tried and won by the insurer; the other two fraudulent cases were settled. Why were these cases settled if they were fraudulent claims? Either the fraud could not be proven or the risk of being wrong led to the conclusion that such a risk outweighed the cost of settlement.

The risk of being wrong is real and justifies, if not requires, a significant investment of time and money in investigation before heading down the road to accusing your insured of fraud. The law in

most, if not all, jurisdictions requires the insurer to give the insured's interests at least the same, if not more, consideration than its own, and thus, it is very dangerous to make assumptions about your insured's motives or actions. Most jurors are insureds and do not like insurance companies calling their policyholders criminals unless the evidence is clear that they are, in fact, crooks.

Hire an Internet search firm to scour social media sites—you will be surprised at what you find: the employee out on full workers' compensation disability for a bad back dancing in a car commercial dressed as a hamster, the idiot bragging on Facebook how she staged a burglary, or the loud mouth who can't resist bragging about a staged accident. Hire an investigator to dig into the matter thoroughly. Most importantly, get your special investigative unit (SIU) involved and notify the appropriate state, county, or city authorities about what you are doing. Many, if not most, states provide some kind of immunity to insurers that notify the authorities when they suspect a fraudulent claim, allowing claims handlers some comfort that the threat of litigation is usually just that—a threat. Remember, in most jurisdictions, insurers are required to investigate suspected fraudulent claims and must have dedicated units to do so.

If a claim strikes you as suspect, delve into it. Do not be intimidated by threats or claims that the insured or her lawyer will sue you. You not only have the right to investigate suspicious claims, you have an obligation to do so, legally and morally.

Fraud costs all of us money in the form of higher premiums. We all have an interest in fighting fraud. So when you have done your investigation and the claimant or insured asks, "Are you calling me a crook?" do not be afraid to say, "You're damned right I am."