

# Why Insurance Fraud Succeeds

Private property and casualty insurers lose \$100 billion every year to insurance criminals. Insurance fraud is a prevalent problem that receives little attention by the police and judicial system. Often seen as a "victimless" crime, it is not. This drain on society can be plugged if insurers, insureds, and others raise their voices to point out the problem and be vigilant about seeing that justice is done.

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There has been much hand wringing and wailing over the malfeasance of the corporate officers and directors of Enron, WorldCom, and others. No one, however, has gone to the root causes of the situation. It is not that some corporate executives suddenly turned to the dark side and became evil. It is, I submit, because they were trained by the Department of Justice and local prosecutors to believe that there was no penalty for their crimes. White-collar crime, especially insurance fraud, has been ignored for the last two decades as a serious crime. A crime unpunished emboldens others who might never consider a life of crime to pursue wealth the easy way.

The prosecutorial obsession with violent crime has instigated massive growth in so-called white-collar crime. Fraud is rampant and unpunished. Every year more than \$100 billion is stolen from Medicare and Medicaid programs across the country while private property and casualty insurers lose a similar \$100 billion every year to insurance criminals.

Prosecution of the massive crime perpetrated against insurers and government "insurance" programs like Medicare are miniscule, to the point of nonexistence. It is so easy, with so little chance of being caught, to commit insurance fraud that schools are being formed to teach gang members to commit insurance fraud so that they can move out of the dangerous field of armed robbery, where, if not killed by the convenience store operator, the robber will surely be hunted down and prosecuted. A prosecutor told me that the robbery of a convenience store, with a gun, where no one is hurt and \$300 is stolen, is more important than a \$2 million fraud against an insurer perpetrated by the stroke of a pen in the hands of an insurance criminal.

## The Victims "Insurers" Pay for Justice

The police and prosecutors ignore the person who commits a white-collar crime. Insurers, as victims of crime, are disfavored. Some police officers, prosecutors, and judges believe that an insurance company cannot be a victim of a crime. Unlike all other crime victims, insurers are required by statute to fund local police agencies and prosecutors, conduct the entire investigation, and present the case to the prosecutor on pain of losing the right to do business. The prosecutor will then review the materials and refuse to prosecute for lack of evidence. Police

agencies "except for insurer-paid-for Insurance Fraud Bureaus" ignore insurance fraud and many other white-collar crimes.

The California Department of Insurance added an extra 25 cents per auto policy tax to pay for the fight against automobile insurance fraud. Insurers are compelled by statute and Regulation to maintain Special Fraud Investigation Units and a detailed antifraud program.

The California Department of Insurance audits insurers regularly to be sure that each insurer works hard to investigate and seek prosecution of the crime of insurance fraud. Simultaneously, the same Department of Insurance punishes insurers for not paying claims rapidly or for not treating insureds or claimants fairly, many of whom are experienced insurance cheats who use the Department's consumer unit to brow-beat insurers into paying fraudulent claims. Courts and juries will assess punitive and exemplary damages against insurers who accuse their insureds of fraud looking with 20/20 hindsight at the investigation.

Similar businesses in the financial sector that are also regular victims of fraud and other crimes are not taxed or compelled to investigate crimes committed against them. No one demands that the banking industry pay for prosecuting embezzlers or bank robbers. No one demands that convenience store operators pay for prosecuting people who hold up their stores on a daily basis. No regulator requires stockbrokers to investigate fraudulent transactions. The imposition on the insurance industry "and the attendant cost passed to the insurance consumer" is unique.

Insurers are treated differently than all other businesses in the United States in this regard. George Orwell was right when, to paraphrase, he had a character in *Animal Farm* say, "All businesses are equal, some are more equal than others."• Clearly, insurers are less equal with regard to crimes perpetrated against them than are other businesses.

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