LANSING CHAPTER OF THE ASSOCIATION OF CERTIFIED FRAUD EXAMINERS

Whistleblower Reporting

As fraud fighters, we recognize the importance of whistleblower reporting mechanisms. For example, the 2020 ACFE Report to the Nations found globally that 43% of the occupational frauds studied were reported by tip, "and half of those tips came from employees."

In the November 2020 newsletter, I referenced a book by Tom Mueller, which contains powerful personal stories of whistleblowers who came forward, putting themselves and their careers at risk to halt a variety of frauds and injustices. The *Quote of the Month* from Katharine Gun reminded us that, "There is always a need for whistleblowers – we don't live in a society which is transparent, fair and just. Whistleblowers hold people to account."

The last article featured in this month's newsletter is lengthy, but I believe it is an important read. The article brings attention to recent changes made to the U.S. SEC's whistleblower program. This program was mandated by Congress following the 2008/2009 financial crisis and the discovery of Bernard Madoff's Ponzi scheme. Opponents of the recent rule amendments say the changes will discourage those with knowledge of illegal activity to come forward and now Jordan Thomas (a former SEC attorney who drafted the original rules) has filed a lawsuit against the government questioning the legality of the SEC's amendments.

We must continue the fight together to mitigate fraud. A key weapon is to have effective whistleblower programs. It is important for us all to stand strong when regulators or companies lessen the ability and desire of tipsters to come forward.

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Fraud Talk Podcast

The 5 Most Scandalous Fraud Cases of 2020

This month's podcast is the ACFE's latest Facebook Live recording during which ACFE President and CEO Bruce Dorris, J.D., CFE, CPA, ACFE Communications Manager Mandy Moody, CFE, and ACFE Senior Research Specialist Mason Wilder, CFE, unveiled the five most scandalous fraud schemes of 2020. The article is available now on Fraud-Magazine.com.

https://www.podbean.com/media/share/pb-jrkxk-f8ee2e?utm_campaign=w_share_ep&utm_medium=dlink&utm_source=w_share

UPCOMING EVENTS

LOCAL:

Michigan Association of Certified Public Accountants
Webcast – Was It Fraud or Just Poor Audit Quality?
Multiple dates and times beginning February 2, 2021
Learn more: https://www.micpa.org/cpe/store/course-detail?ProductId=112996

Michigan Association of Certified Public Accountants
Webcast – Vendor Fraud: Protecting Against a Growing Threat
Multiple dates and times beginning February 4, 2021
Learn more: https://www.micpa.org/cpe/store/course-detail?ProductId=108682

NATIONAL:

ACFE
Virtual Seminar – Developing an Integrated Anti-Fraud, Compliance and Ethics Program
February 23-24, 2021
Learn more: https://www.acfe.com/events.aspx?evtid=a3Y1Q000002kgHfUAI

ACFE
Virtual Summit – 2021 ACFE Women's Summit
March 4, 2021 (early registration ends February 4, 2021)
Learn more: https://www.acfe.com/womenssummit2021.aspx

If you have an event that you would like posted in our newsletter or if you wish to share an article, please contact Jennifer Ostwald at jenny1661@hotmail.com

Pandemic Fires Up Insurance Fraud, Here's What To Watch For

by Jason Metz
Jan 20, 2021
https://www.forbes.com/advisor/car-insurance/pandemic-insurance-fraud/

Insurance fraud isn't the most splashy form of crime and it rarely dominates the news cycle. But it does impact your wallet every day.

These numbers might catch your attention: Insurance fraud (non-health insurance) is a $40 billion dollar a year criminal enterprise that costs the average U.S. family between $400 and $700 per year in increased insurance premiums, according to the FBI.

About 75% of insurance industry professionals believe that 10% or more or all insurance claims have some element of fraud, according to the 2020 Friss Insurance Fraud Report, a company that provides fraud and risk detection software to insurance companies.

And some industry professionals believe the number of claims with some element of fraud has nearly doubled since the COVID-19 pandemic.

Industry respondents to the 2020 Friss Insurance Fraud Report survey estimate that 18% of claims contain some element of fraud. The report suggests that the insurance industry's workplace adjustment to COVID-19 may have contributed to the spike: Remote work resulted in fewer inspections and 75% of respondents reported an increased workload, which may have created gaps in oversight for opportunistic fraudsters to exploit.

For example, due to COVID-19, an insurance adjuster may not have been able to inspect completed auto repairs, which could create an opportunity for inflated billing.

The top pandemic fraud schemes are staged car accidents, billing scams, phantom services and fake accidents occurring at homes, according to the report.

Fraudsters See More Opportunity For Staged Accidents

Staged accidents are the No. 1 pandemic fraud scheme, according to the 2020 Friss Insurance Fraud Report. A staged accident is typically an event where someone purposely causes a car crash in order to make a fake medical claim against your car insurance policy or their own.

Staged accidents more frequently take place in urban areas and in wealthier communities, according to the National Insurance Crime Bureau (NICB). Criminals also tend to target women driving alone and senior citizens, as they are believed to be less confrontational at an accident scene.

A common staged accident scheme is called the "swoop and squat." In this scam, two cars are driven by criminals and the third is driven by an innocent victim. The "squat" car pulls in front of the victim's car and the "swoop" car pulls in front of the squat. The squat car slams on its brakes and the victim cannot react in time, rear-ending the squat car. The swoop car takes off and the occupants of the squat car all make injury claims against your car liability insurance.

Here are some tips from the NICB to avoid staged accidents:

- Avoid driving too close to other vehicles
- If you are involved in an accident, call the police to the scene
- Use your smartphone camera to document the accident scene and number of occupants in the other vehicle
- Watch out for bandit tow trucks, as they are often affiliated with body shops and will try to convince you to use the shop they're collaborating with

Scammers Hope that Inflated Bills Slip Through the Cracks

Scams involving billing and phantom services can take place when a medical professional or mechanic inflates a bill or charges for services that were never actually done.

For example, if you were legitimately hurt in a car accident, an unscrupulous chiropractor might bill your insurance company for treatments you never received. Another example of inflated billing is when a doctor charges multiple times for a treatment that was performed only once.

These types of billing scams can be very hard to detect. You might not closely inspect a doctor's bill and the insurance claims adjuster could quickly process payment based on good faith for an accident in which you were injured. If a claims adjuster suspects fraud, they might contact you to verify the types of treatment you received.

Another form of billing scam is done by auto body repair shops. In this scheme, you file a car insurance claim for an accident and bring your car to a repair shop. A dishonest shop might use used parts for the repairs but charge for new parts. Or they might overstate the damage to your car and charge more money than necessary for repairs.

Fake Home Injuries

Fake home injury claims are typically staged accidents in which a fraudster claims they were injured on your property and file a claim against your home insurance. Examples include slip and falls (such as falling down a staircase) and dog bite claims.

Old Insurance Scams with a COVID-19 Twist

While much of the world has been adjusting to the pandemic, fraudsters have also tweaked their playbook of scams and added a COVID-19 twist. Scammers look for ways to prey upon our anxieties and provide a false sense of hope. The fraud-fighting community has urged consumers to be on the lookout for COVID-19 insurance scams. Here are a few to be aware of:

- Bogus insurance agents. These people claim to be licensed agents and might mimic mainstream insurance companies to sell fraudulent COVID-related insurance products. They're looking to pocket your premium payment for a product that doesn't exist. Don't click on any links or engage with an "agent" who's pitching COVID insurance.
- Phishing/spoofing/spam. These are unsolicited emails with a goal to steal your personal information. They might offer COVID-related products such as home testing kits, cures and insurance. The FBI warns consumers not to fill out any forms in an email that requests personal information and do not click on any links within a suspicious email.
- Robocalls. These are unsolicited phone calls from scammers who might pose as insurance agents or pitch COVID-related products. The Federal Trade Commission (FTC) had previously warned about robocalls from scammers pretending to be from the Social Security Administration offering fake COVID-19 tests to Medicare recipients. The Federal Communications Commission has collected some audio samples of illegal robocalls.

If you get a suspicious email or phone call, the FTC recommends you "think critically" by asking yourself these three questions.

- Who sent the message? If you don't know them, don't immediately trust them. Try to verify that the sender is who they say they are.
- What do they want you to do? A red flag is if they're trying to get you to download something or share your personal information.
- What evidence supports their message? Don't take their word for it. Fact-check their information from trusted, reliable and independent sources. If the information doesn't hold up, don't engage.

There are insurance policies that can help you recover if you are the victim of an online scam. Here are two options.

- Personal cyber insurance. This coverage helps you recover from a direct financial loss from cyber attacks, such as ransomware and phishing schemes. Personal cyber insurance can be purchased as an endorsement to your renters, condo or home insurance, but it's not available from all companies. It's a good idea to ask your home insurance agent if it's available.

- Identity theft insurance. While this coverage won't cover direct financial losses from cyber attacks, it will reimburse you for expenses to restore your identity if you are the victim of identity theft. You can typically purchase identity theft insurance from an insurance company, credit card company or identity theft protection services.

Courtesy of Mooselakecartoons.com

The SEC Undermined a Powerful Weapon Against White-Collar Crime

Now the lawyer who wrote the rules that gave Wall Street insiders a big financial incentive to report crimes to the SEC is suing the government for changing them.

by Lydia DePillis
https://www.propublica.org/article/the-sec-undermined-a-powerful-weapon-against-white-collar-crime

After agonizing about the decision, the top financial adviser had finally gone to the Securities and Exchange Commission with proof of wrongdoing at his firm.

He's blunt about why: the roughly $50 million he stood to make under the agency's whistleblower program, his calculation based on what kind of settlement he thinks the government could extract. It would be enough to offset any lost earnings in the likely event that his former colleagues figured out he'd turned them in and blacklisted him, even at the salary level he'd attained after a long career in a lucrative business.

"I'm not giving up 10 years worth of income to be a good guy," the adviser said. "I've got to weigh the risk against the reward. And the risk is huge." (The adviser requested anonymity to avoid disrupting the case, and the SEC never releases the names of people who blow the whistle.)

But last fall, that risk analysis got turned on its head.

Since going live in 2012, the SEC's whistleblower office has brought in eye-popping settlements from a wide range of financial bad actors, including big names like Merrill Lynch, which paid $415 million in 2016 for trading with cash that was supposed to be in reserve accounts for its customers. By the end of fiscal year 2020, investigations opened thanks to whistleblower tips had resulted in sanctions worth $2.7 billion, out of which $562 million had been paid to 106 individuals.

In a quiet vote on Sept. 23, the Republican-dominated SEC adopted amendments that could allow it to lower payments to whistleblowers. Its argument is that awards should only be as large as necessary to prompt people to come forward, and excessively high payouts might be better spent on other priorities.

Advocates say that may dissuade whistleblowers, insulating the biggest Wall Street banks and investment firms, which are typically subject to the largest fines and whose wrongdoing is often the most difficult to spot without help from highly paid insiders.

The SEC's shift may exacerbate the effects of the Trump administration's blitz of deregulation of the financial services industry, advocates fear. With weaker incentives to report fraud, regulators may have fewer allies as they monitor markets for the kind of bad behavior that can follow such loosening of rules.

Now one of America's top whistleblower attorneys is moving to stop the SEC. Jordan Thomas, who as a former SEC attorney helped write the rules that set up the whistleblower office in 2011, has just filed a lawsuit alleging that the amendments are illegal. The complaint, which he provided to ProPublica exclusively in advance, charges that taking into account the dollar amount of an award contravenes the statute that established the program. Thomas also contends that it improperly sandbags people already in the SEC's whistleblower pipeline.

"Courageous whistleblowers have put their careers and lives on the line to assist the Commission — including wearing FBI wires and smuggling key documents out of China," the complaint reads. "Now, in the middle of the proverbial football game, the Commission has moved the goal posts on literally hundreds of SEC whistleblowers."

Thomas joins a wave of legal challenges to Trump administration actions, from environmental rollbacks to impositions on civil rights, that advocates argue are against the law or were adopted without due process.

The SEC declined to comment. Defenders of the SEC's action point out that the rule also contained some provisions that are good for whistleblowers, such as the ability to more quickly dismiss frivolous complaints that gum up the system and a new presumption that whistleblowers who help the commission attain settlements worth less than $5 million should get the maximum allowable award. Also, fiscal year 2020 saw the highest payouts in the program's history and the most claims processed overall.

Thomas acknowledges that his interest in blocking the amendments isn't altruistic — lawyers who represent whistleblowers operate on a contingency basis, taking usually about a third of their clients' award. But Thomas argues that the public has a stake as well. When payouts become unpredictable, he said, highly paid executives are more likely to stick with the firms that provide their paychecks and sweep cheating under the rug.

This seemed to affect potential whistleblowers after the rule change was originally proposed in 2018. The following year, the volume of tips coming in to the commission declined for the first time in the history of the program.

“Examiners aren’t that good at catching people. The auditors have a knack for missing it. The whistleblowers are the last line of defense,” Thomas said. “And now they’re disincentivizing their most valuable players from coming forward.”

Over the past two decades, financial industry whistleblowing has gone from being a rogue act of moral rectitude to a formalized industry, incentivizing insiders with the prospect of partaking in the financial penalties that an enforcement action might generate using their information.

There was no clear prospect of a reward for Sherron Watkins, the Enron vice president who warned about accounting irregularities that led to the Texas energy company’s bankruptcy in 2001, or Harry Markopolos, who raised the alarm to the SEC repeatedly about Bernie Madoff’s Ponzi scheme. Those cases, however, helped regulators recognize the value of offering whistleblowers protection and some cash for their trouble.

After the 2008 financial crisis, Congress passed the Dodd-Frank Act and established whistleblower programs at the SEC and the Commodity Futures Trading Commission, which oversees financial instruments known as derivatives. At the SEC, awards were set at between 10% and 30% of the final settlement, with specific factors that determine whether an award gets bigger or smaller. (Whistleblowers get more if they tried to report problems internally; delaying or taking part in the wrongdoing would knock it down.)

The SEC’s office didn’t open for business until 2012, and it had a slow start. But it gained momentum as tips started to result in successful investigations.

From inception, the program faced complaints from the largest Wall Street firms. In 2011, the U.S. Chamber of Commerce complained that the fledgling office would “put trial lawyer profits ahead of effective compliance and corporate governance,” alleging that the rewards would disincentivize people from reporting problems internally. In 2017, the Chamber supported a case before the Supreme Court that stripped the SEC’s whistleblower protections from people who did report internally, agreeing with the argument that Dodd-Frank defined a whistleblower as someone who came to the government with evidence of wrongdoing.

And in 2018, when the SEC proposed an additional review process for awards in cases where the settlements exceeded $100 million, the Securities Industry and Financial Markets Association backed the change.

“It is simply not necessary to pay a whistleblower $45 million (instead of $30 million) to convince that person to come forward in the first place,” the organization wrote in a letter to the commission.

That provision, which some interpreted as a cap on awards, drew intense blowback from whistleblower advocates as well as legislators on both sides of the aisle. Internationally, whistleblower programs under which awards are discretionary see lower participation, they say; one of the SEC program’s virtues is its more formulaic approach. In a comment letter, Sen. Chuck Grassley, R-Iowa, who has been a consistent backer of whistleblower protections, wrote that the change would have gone beyond the bounds of the statute, with no compelling reason to do so.

When the final rule was released in September, that provision was gone, a seeming victory for whistleblower advocates. But they worried about why it had been excised. The new version asserts that the change wasn’t necessary because the SEC already had the authority to raise or lower awards as it saw fit — not just in settlements over $100 million, but any settlement.

The commission weakened the law in other ways, too, making it harder for whistleblowers to get a bounty if they did not have inside information but instead provided analysis that SEC staff members could plausibly have inferred on their own — even if the staff hadn’t done so.

The SEC’s two Democratic commissioners strongly objected to the rule. But they were outvoted by the agency’s three Republican appointees with the support of Chairman Jay Clayton, a former Wall Street lawyer who two months later announced his early departure. For Clayton, the rules capped off an almost four-year term of mostly deregulatory actions friendly to banks and big public companies.

Sean McKessy, who served as the Office of the Whistleblower’s first director and left in 2016, said that he had debated with the agency’s general counsel about whether commissioners could lower awards because they thought the dollar amount was too high. In the end, they decided that the SEC did not have that authority.

“They basically made this up to justify an approach that is not supported by the statute,” said McKessy, who now represents whistleblowers. “And then they said, ‘Despite all that, you should just trust us, that we’re going to do this the right way.’”

Steven Peikin, who served as co-chair of the SEC’s enforcement division before returning to private practice last summer, said whistleblower advocates shouldn’t worry.

“The program is set up and designed to pay whistleblowers,” he said. “People in the Office of the Whistleblower are there because they believe in the program.”

For Thomas, who now heads up the whistleblower practice at the plaintiff-side law firm Labaton Sucharow, the rule changes were personal.

At the SEC, he'd been in charge of writing the section of the Dodd-Frank regulations that dealt with how to reward whistleblowers. After Clayton's SEC first proposed its changes, he and other whistleblower advocates had multiple meetings with the chairman, commissioners and SEC staff, trying to explain to them that injecting this degree of discretion into the process would put a huge damper on the incentive to report the most complex and damaging cases of misconduct. That's especially true, he explained, for anybody who might be viewed as undeserving or impure — such as a short seller, or a senior executive who could have reported misconduct purely out of a sense of civic duty, or someone who's criticized the government in the past.

"Because this 'too much' standard has no boundaries, it's open to abuse," Thomas said. "The opportunity for politics within the process gets bigger and bigger."

Thomas thought the SEC understood his argument — so when the final rule came out, he was surprised and disappointed. Thomas decided to challenge the rules in court, filing a 48-page complaint on Wednesday at the U.S. District Court for the District of Columbia, on behalf of himself and the 39 clients he has at various stages of reporting to the SEC. He has a financial interest in the outcome, but he's also taking a big risk if the courts don't go his way.

"I worked there, my entire business goes through there. Nobody sues the SEC," Thomas said. "But because I had a leadership role in developing the program, it really bothers me that they're breaking faith with whistleblowers who are already in the pipeline, and that they're giving away a third of the program's future."

Now that the SEC will be run by Democrats, it's possible the push to reduce whistleblower payouts will be reversed or become moot. But any changes could ripple for a long time because prosecutions usually take years to finish and an award determination can take yet more years on top of that.

Erika Kelton, another whistleblower attorney, says she's already had one client back out explicitly because of the changes to the rules. "The uncertainty was too much. It didn't make sense for him to come forward," she said.

The financial adviser who blew the whistle on his firm says the new rules will surely dissuade some insiders at his level from stepping forward.

"If these guys decide they want to lower their awards, they're going to get $200,000 employees taking a shot, and that's about it," he said. "The only people who know stuff are the people who are at the top."

He understands that Wall Street executives aren't the most sympathetic characters and that some will bridle at enriching already wealthy people to rat out cheating — but otherwise, it may never come to light. In his case, the adviser had observed one of his fund managers bilking investors to the tune of hundreds of millions of dollars. He says he complained about it to his superiors, who swept it under the rug; their firm was also profiting from the misconduct and would be liable if the authorities found out.

"I appreciate the fact that the average guy on the street can't comprehend these numbers," he said. "That it would be offensive to a normal human being making normal money. Lots of people on Wall Street make $100 million every 10 years. They're not risking that for a million bucks."

As he waits for the SEC staff to investigate his allegations, his risk-reward calculus has been knocked out of whack. "I think I made a mistake," the adviser said. "I trusted the process."

Is he going to follow through with the case? The adviser took a long pause. "That discussion is ongoing," he said.

QUOTE OF THE MONTH

"It's easy to make a buck. It's a lot tougher to make a difference."

-Tom Brokaw