

Illinois Department of Insurance
Workers' Compensation Fraud Unit

2018 ANNUAL REPORT



Bruce Rauner, Governor

Jennifer Hammer, Director



Illinois Department of Insurance

BRUCE RAUNER
Governor

JENNIFER HAMMER
Director

August 10, 2018

The Honorable Bruce Rauner
Governor
207 State House
Springfield, Illinois 62706

Re: Workers' Compensation Fraud Unit – 2018 Annual Report

Dear Governor Rauner:

On behalf of the Department of Insurance and pursuant to Sections 25.5(e-5) and 25.5(h) of the Workers' Compensation Act (820 ILCS 305/25.5(e-5) and 820 ILCS 305/25.5(h)), I hereby submit the Workers' Compensation Fraud Unit's 2018 Annual Report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer Hammer".

Jennifer Hammer, Director
Illinois Department of Insurance

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Exhibit A: North Carolina Form 90

I. Introduction

In 1911, Illinois became one of the first states in the nation to pass comprehensive workers' compensation laws. While state law has changed over the years, the basic principle guiding workers' compensation remains the same: employees and employers deserve a reliable and affordable system of insurance which protects employers, injured workers, and their families from financial catastrophe.

Today, state law requires almost every working resident of Illinois to be covered by workers' compensation insurance. Employers provide workers' compensation benefits either by purchasing insurance policies or by paying for the benefits themselves (known as self-insurance). Employers and employees benefit from the state's mandatory system, which allows employers to avoid costly litigation and provide employees protection and compensation for work-related injuries.

The business environment in Illinois could benefit significantly from greater fraud protection because a decrease in fraudulent claims would lead to more cost-effective insurance and, therefore, a more efficient market. The Illinois market is highly competitive, with 339 different companies competing to write direct workers' compensation premiums in 2017.

II. Recommendations for Additional Fraud Waste and Abuse Detection and Prevention

The WCFU has several recommendations regarding opportunities for additional fraud prevention and detection of fraud, waste, and abuse, including a number of recommendations made in the 2013 through 2017 Annual Reports.

First, the WCFU recommends that the General Assembly repeal Section 25.5(e-5) of the Act for the reasons stated above. The Department believes the state would be better served by

expanding the WCFU by hiring additional investigators to investigate actual or suspected fraud.

Additionally, the WCFU again recommends that insurance companies, employers, and third-party administrators responsible for issuing checks for temporary disability benefits pursuant to the Act include language on those checks requiring the injured employee to affirmatively state they remain entitled to the disability benefits being paid. In the case of temporary total disability benefits, the WCFU recommends that injured employees also be required to indicate that they are not employed elsewhere. Unfortunately, this suggestion may have a limited effect on combating fraud as more and more benefits are being paid via direct deposit. Second, the WCFU again recommends that injured employees be required to submit a form to the IWCC on a monthly basis, similar to the North Carolina Industrial Commission's Form 90,¹ regarding any employment or earnings during that time period.

The WCFU continues to recommend that the General Assembly consider additional amendments to Section 25.5 of the Workers' Compensation Act that would amend the language of Section 25.5(a)(5) to remove any ambiguity as to whether cases involving the underreporting of payroll may be charged under this section by replacing the word *rate* with *amount* and add language to the sentencing provisions of Section 25.5(b) to account for violations of the Act that do not have associated dollar amounts.

The WCFU also continues to recommend that the General Assembly consider adding language to Section 25.5 of the Workers' Compensation Act concerning statements made to medical providers outside the State of Illinois for injuries that are the subject of claims before the Illinois Workers' Compensation Commission. In the past few years, the WCFU has received a number of complaints concerning possible fraud by injured workers where treatment was sought

¹ Attached as Exhibit A

in neighboring states and alleged misstatements were made to doctors in the neighboring state in an effort to obtain benefits pursuant to the Illinois Workers' Compensation Act. As the statements are made outside Illinois there is no jurisdiction to prosecute the alleged misstatements in Illinois despite the obvious connection to the state. The WCFU suggests that the General Assembly consider adding language that would specifically convey jurisdiction to prosecute such out-of-state statements in Illinois.

The WCFU continues to suggest that Sections 25.5(a) and (b), which define the offense of and penalties for Workers' Compensation Fraud, be re-codified within Article 17 of the Illinois Criminal Code, which includes crimes of deception and fraud, including the offense of Insurance Fraud.

Finally, the WCFU suggests that new legislation, requiring Certificates of Insurance (COIs) only be issued by the insurance carrier, be added to the Illinois Insurance Code. Certificate fraud continues to be a problem in this state. The WCFU has investigated numerous cases in the past few years involving false COIs. These cases have not only involved employers issuing false COIs to obtain work, but also insurance producers issuing COIs for policies that were never issued. This type of fraud often results in employers, especially general contractors, being assessed additional workers' compensation premium from their insurance carriers when annual premium audits reveal that sub-contractors have provided false COIs. This type of fraud is preventable, and could be all but stopped, if the insurance companies that wrote the underlying insurance policies also issued the COIs. Additionally, certificate holders could be notified by the insurance carrier if and when a policy was cancelled.

III. WCFU Operations

Section 25.5(c) of the Act charged the Department with establishing the WCFU. The Department established the WCFU in 2006 and now oversees its operations, investigations, personnel, and progress.

A. Complaints

The WCFU tracks reports of workers' compensation fraud. Complainants are required by statute to identify themselves and can report fraud by regular mail, electronic mail, or by calling a toll-free telephone number (1-877-WCF-UNIT or 1-877-923-8648). After receiving a report, the WCFU supervisor reviews each complaint to determine whether the complaint alleges a violation of the Act's fraud provisions that warrants investigation. In conducting this review, the supervisor assigns a case number to each complaint and enters it into the WCFU's case management system. If necessary, the supervisor contacts the complainant or requests additional information in order to complete the review process. If the report is frivolous, legally insufficient, or unsubstantiated, the investigation ceases and the report is closed. If the supervisor finds evidence sufficient to justify further inquiry the case is assigned for investigation.

B. Investigations

The primary responsibility of the WCFU is to conduct investigations and refer worthy cases for prosecution. To fulfill this task, WCFU investigators spend countless hours each year conducting field investigations, reviewing surveillance footage, issuing numerous subpoenas, and reviewing insurance, payroll, medical, and other records. An investigation begins after the WCFU supervisor assigns it to an investigator.

In 2015, the WCFU began the process of hiring full-time investigators to bring the unit to its maximum complement of five investigators, which was accomplished by late 2016. This

increase in staff has allowed for more investigations to be assigned and completed and will lessen the impact the departure of a single investigator has on the unit.

While structurally similar, each investigation differs based upon a host of factors, including the nature and quality of the initial complaint. Most investigations involve: (1) review of documentary and physical evidence; (2) detailed background checks of persons related to the case (*e.g.*, investigative targets and witnesses); and (3) interviews of persons related to the case (*e.g.*, complainants, witnesses, insurance company personnel, medical treatment providers, and the investigative target).

C. Referrals for Prosecution

At the conclusion of each investigation, a review of the sufficiency of evidence is conducted. If the inquiry does not produce evidence deemed sufficient to convict an individual or entity of workers' compensation fraud, the case is dismissed. Investigations that produce sufficient evidence to convict are referred to the Attorney General's office or the State's Attorney of the county where the offense occurred. The power to decide whether to file criminal charges rests solely with the prosecutor who receives the WCFU referral.

The WCFU is building working relationships with relevant prosecuting authorities. Since its creation, the WCFU has referred cases to, and worked with, State's Attorneys representing forty-two (42) counties: Bureau, Cass, Champaign, Christian, Cook, DeKalb, DeWitt, DuPage, Edgar, Ford, Franklin, Gallatin, Jackson, Jasper, Jefferson, Kane, Kankakee, Knox, Lake, Livingston, Macon, Macoupin, Massac, McDonough, McHenry, McLean, Morgan, Madison, Ogle, Peoria, Perry, Saline, Sangamon, Shelby, St. Clair, Tazewell, Union, Vermilion, White, Will, Williamson, and Winnebago.

D. Confidentiality

The confidentiality of all fraud reports and associated medical records is strictly maintained in accordance with the relevant statutes, and is only shared in the course of referring a case for prosecution or in complying with other lawful requests.

IV. Building Relationships

WCFU investigators have learned many valuable lessons since the unit was established in 2006. Primary among them is the importance of building working relationships with various law enforcement authorities. WCFU investigators work to aid prosecutors in the exercise of their discretion. Cases referred for prosecution are presented clearly and succinctly. WCFU investigators are committed to their investigations and, for this reason, assist the Illinois Attorney General or respective State's Attorney throughout any criminal case. This level of communication and continued assistance establishes trust, which improves future referrals and prosecutions.

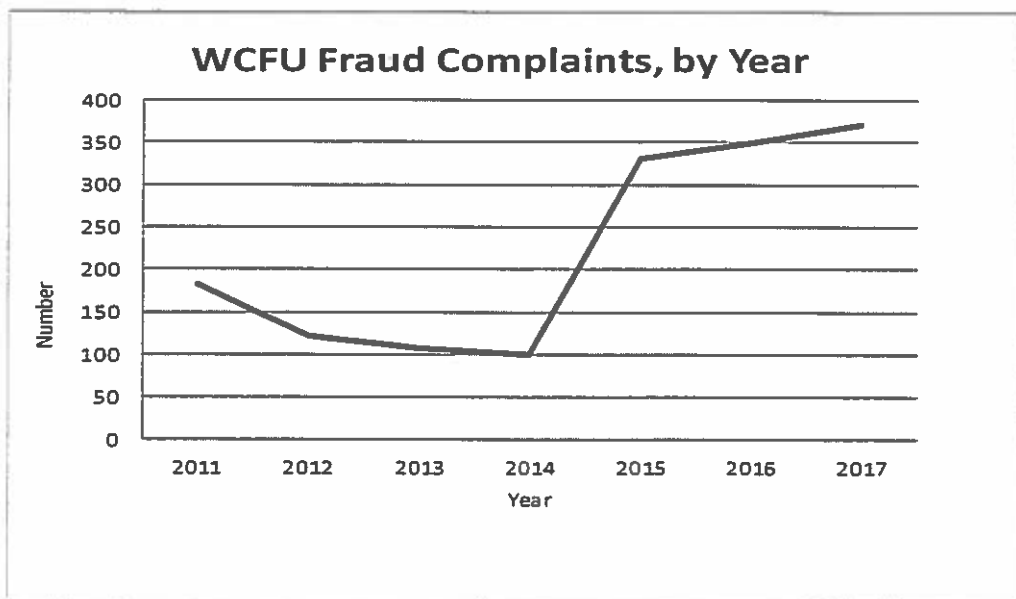
As the WCFU has grown in experience over the years, the WCFU's cooperation and coordination with other investigative and law enforcement agencies has also grown. WCFU investigators have worked with the Federal Bureau of Investigation, the Postal Inspector's Office, the Drug Enforcement Administration, the Internal Revenue Service, U.S. Department of Labor, state medical investigators, local police departments, the Illinois State Police, and numerous State's Attorney investigators. Investigators also share non-confidential information with organizations dedicated to identifying and stopping fraud conspiracies, including the National Insurance Crime Bureau.

The progress of WCFU investigations over the years has improved the general public's understanding of workers' compensation fraud investigations. In the past, some complainants

(e.g., employers, insurers, employees) were confused about what kind of evidence the WCFU needed to successfully investigate an allegation of fraud. Establishing working relationships with workers' compensation stakeholders has helped to clarify the type of information that is required to prove workers' compensation fraud. To advance those efforts, the WCFU conducts a variety of educational presentations to public prosecutors and private law firms, as well as the insurance industry, self-insureds, other state agencies, and third-party administrators, in an effort to assist them in better understanding the Illinois Workers' Compensation Act and the responsibilities of the WCFU.

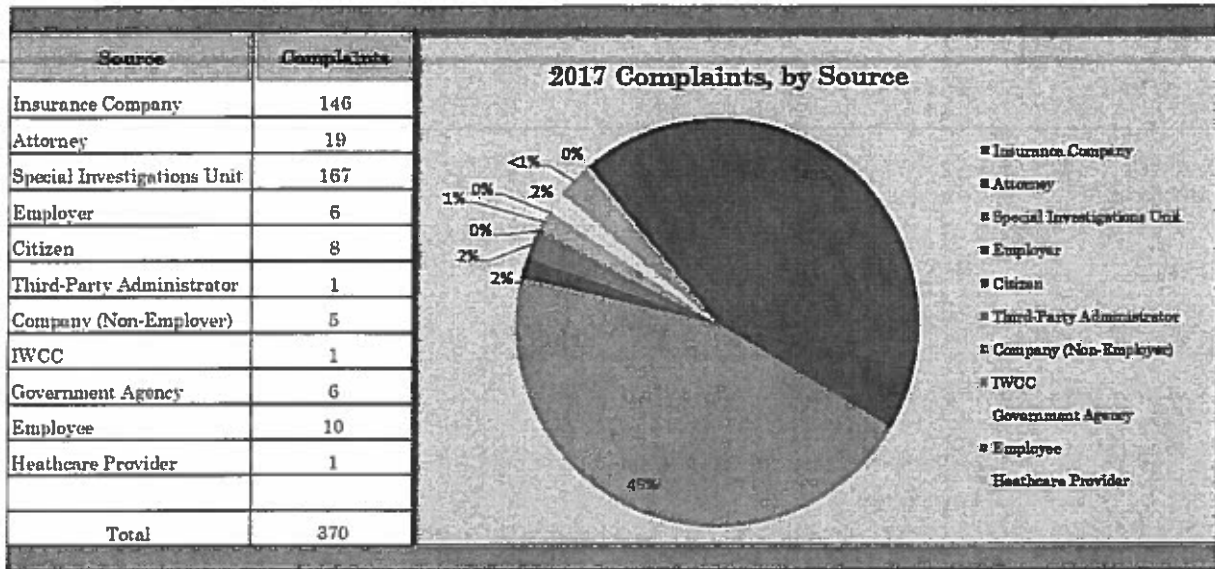
V. Statistics

From 2011 to 2017, the WCFU received an average of 211 complaints of fraud per year. In 2017, the WCFU received 370 allegations of fraud, more than three times the number (100) of allegations received in 2014.² The chart below shows the number of fraud complaints received by the WCFU since 2011:



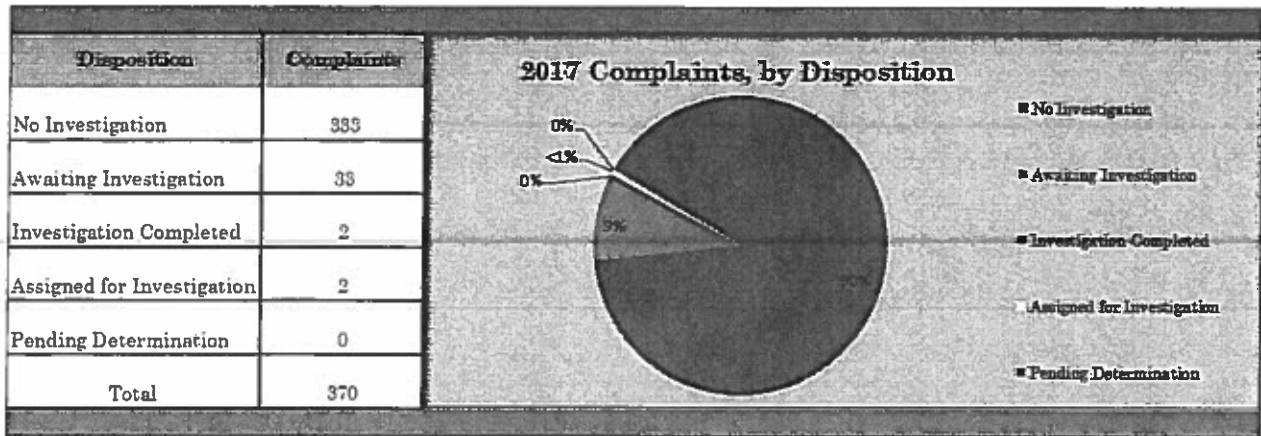
² In June 2015, the WCFU worked with the National Association of Insurance Commissioners (NAIC) to establish a mechanism to receive daily reports of workers' compensation insurance fraud complaints derived from NAIC's Online Fraud Reporting System (OFRS), an online portal consumers and companies may use to directly contact the appropriate state insurance department to report suspected fraud. While the OFRS reports on fraud complaints from all lines of insurance, those complaints involving allegations of workers' compensation fraud are now being reviewed by the WCFU.

The complaints received in 2017 were submitted by a variety of sources. The table and graph below shows the origin of the 2017 complaints:

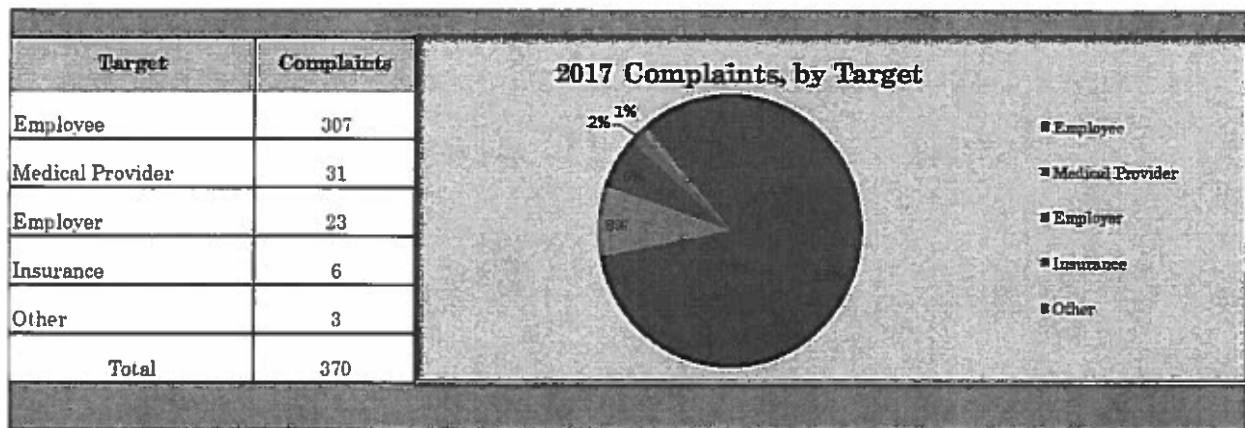


Of the 167 complaints submitted by Special Investigation Units (commonly referred to as SIUs), 144 were referred on behalf of insurance companies, 16 were private SIUs, six were referred on behalf of third-party administrators (TPAs) and one was referred on behalf of employers and third-party administrators (TPAs). Additionally, the Illinois Attorney General’s Office, which defends workers’ compensation cases involving state employees, accounted for one referral (that referral is included within the 19 complaints submitted by attorneys).

The majority (333) of the 370 complaints received in 2017 did not warrant further investigation because of insufficient evidence, lack of jurisdiction, or because the statute of limitations expired. A table and graph showing the disposition of these complaints is below:



As detailed earlier in this report, workers' compensation fraud occurs in many forms. The complaints received in 2017 alleged fraud on the part of various workers' compensation stakeholders. A table and graph showing the targets of these complaints is below:



The WCFU investigated 61 allegations of insurance fraud in 2017. Of these investigations, 25 investigations remained open from 2016, three investigations remained open from 2015, and one remained open from 2014, while an additional 32 cases were opened in 2017. Of the 32 cases opened in 2017, three were reported in 2017, 18 were reported in 2016, and 11 were reported in 2015. Twenty of the investigations initiated in 2017 remained open at the beginning of 2018.

In 2017, the WCFU referred eight investigations for possible prosecution. Four of the investigations were referred to the Office of the Illinois Attorney General, while three investigations were referred to the McHenry County State's Attorney's Office, and one was referred to the McLean County State's Attorney's Office. Of the cases referred in 2017, two were from investigations begun in 2017, while five of the referred investigations were initiated in 2016, and one was initiated in 2015.

Of the investigations referred for prosecution in 2017, five were indicted by a grand jury or initiated by the filing of criminal information, two were still awaiting a prosecution decision, and one was declined. In addition to the cases referred in 2017, charging decisions were made on three cases referred prior to 2017. Two of those cases were indicted (one of which was later declined), and one was declined.

Additionally, one case, involving co-defendant spouses, which was referred for prosecution subsequent to the 2016 Annual Report was resolved. The case was referred to the McHenry County State's Attorney's Office in 2015. One co-defendant pleaded guilty to Forgery (Class 3 Felony) and was sentenced to 180 days in jail (stayed), one year conditional discharge, and was ordered to pay \$1,604 in fines, fees, costs. The other co-defendant pleaded guilty to Attempt (Workers' Compensation Fraud-Class A Misdemeanor) and was sentenced to 180 days in jail (stayed), one year supervision, and ordered to pay \$1,145 in fines, fees, and costs.

REPORT OF EARNINGS

IC File # _____

Emp Code # _____

Carrier Code # _____

Carrier File # _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act Employer FEIN _____

(EMPLOYER/INSURANCE CARRIER TO COMPLETE THIS SECTION)

Employee's Name _____

Address _____

City _____ State _____ Zip _____

Home Telephone _____ Work Telephone _____

Social Security Number _____ Sex _____ Date of Birth _____

Employer's Name _____ Telephone Number _____

Employer's Address _____ City _____ State _____ Zip _____

Insurance Carrier _____

Carrier's Address _____ City _____ State _____ Zip _____

Carrier's Telephone Number _____ Fax Number _____

To Employees: The Employer Insurance Carrier periodically needs to verify your continuing eligibility for workers' compensation benefits and to update their records. You are required to complete Page 2 of this Report of Earnings and return it to the insurer or employer address provided on page 2 of this form within 15 days after receipt of this form, even if you have no earnings.

****YOUR WORKERS' COMPENSATION BENEFITS MAY BE SUSPENDED IF YOU FAIL TO COMPLETE THIS REPORT IN A TIMELY MANNER.****

NOTICE TO EMPLOYEES RECEIVING WORKERS' COMPENSATION

When you are receiving weekly workers' compensation benefits, YOU MUST REPORT ANY EARNINGS YOU RECEIVE TO THE INSURANCE CARRIER (OR EMPLOYER IF THE EMPLOYER IS SELF-INSURED) THAT IS PAYING YOU THE BENEFITS. "Earnings" include any cash, wages or salary received from self-employment or from any employment other than the employment where you were injured. Earnings also include commissions, bonuses, and the cash value for all payments received in any form other than cash (e.g., a building custodian receiving a rent-free apartment). Commissions, bonuses, etc., earned before your disability do not constitute earnings that must be reported.

You must report any work in any business, even if the business lost money or if profits or income were reinvested or paid to others.

Your endorsement on a benefit check or deposit of the check into an account is your statement that you are entitled to receive workers' compensation benefits. Your signature on a benefit check is a further affirmation that you have made no false claims or statements or concealed any material fact regarding your right to receive workers' compensation benefits.

MAKING FALSE STATEMENTS FOR THE PURPOSE OF OBTAINING WORKERS' COMPENSATION BENEFITS MAY RESULT IN CIVIL AND CRIMINAL PENALTIES.

TIME PERIOD COVERED BY THIS REPORT: _____ to _____
(Employer/Insurance Carrier must complete)