

WHOSE JOB IS IT?

Should SIU or Claims Control a Fraud Investigation?

By Frank Zeigon and Gene A. Weisberg

Should potential fraud investigations be handled by the claims adjuster or the Special Investigation Unit's investigator? That's a long-standing question, and the answer is both. SIU's responsibility is to investigate the facts to determine if the claim is legitimate. The claim professional's job is to continue to evaluate the claim and to analyze the facts to resolve any coverage issues. It is important that both tracks occur simultaneously, with good communication within the company during the investigation.

Working Together

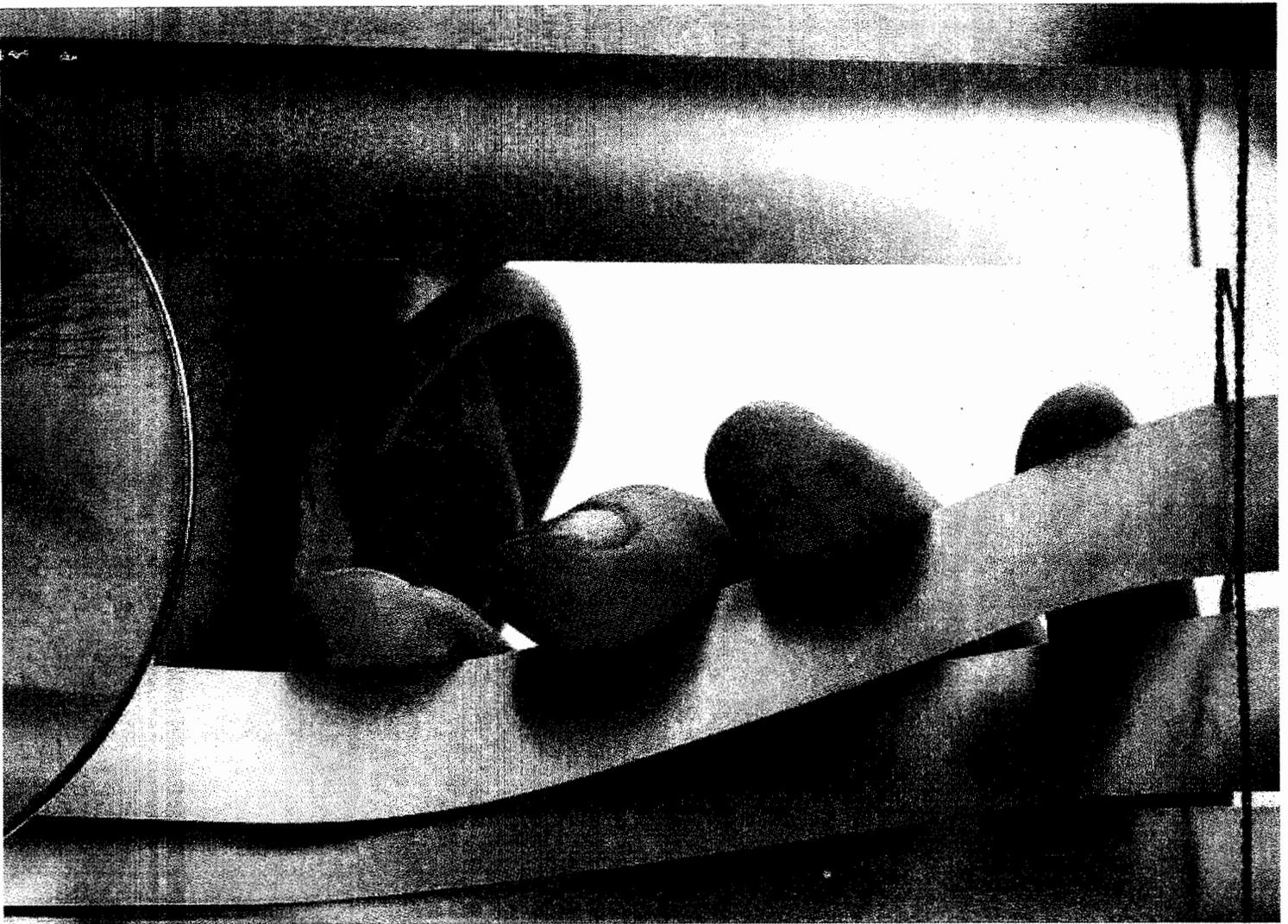
The adjuster needs to oversee the SIU investigation and to help focus that investigation. He or she should make sure that facts needed to resolve coverage issues are gathered. The adjuster and SIU need to work together as a team and focus on the true objective: to prove the loss is legitimate and allow the claim to proceed to payment. The goal is not to prove fraud, but to prove what actually occurred. Although there were a number of fraud indicators that led to the SIU referral, fraud should not be assumed, and proving fraud should not be the goal. Facts that would lead to proving that the claim is legitimate must be developed, not just facts that may establish fraud. When the investigation is completed, an objective observer should be able to see that the investigation was fair, and that the goal was to prove the truth, whatever that is.

Among the issues the claim adjuster and SIU investigator need to consider is how strong is the evidence? Did the investigator conduct only a non-recorded interview with a witness who allegedly had evidence to support a denial? If so, why did they not secure a recorded statement? What efforts did they make to verify the information? Did they take any statements of people who would support the claim? Did they follow up on information that supports the claim as well as information that may not?

It also is important to consider whether experts are needed. The claims adjuster should make that decision, but working together with the SIU investigator to focus on what specific question an expert needs to address. Is an appraiser for the value of art or other property needed? Is a forensic accountant needed to analyze a company's books or a person's financial situation?

Bringing in a Lawyer

It also must be considered whether a coverage attorney is needed. If so, when should a lawyer be hired? What is the lawyer's role in the investigation team? The attorney's job is to guide the investigation and claim process, gather evidence that is credible and likely to be admissible in subsequent litigation and to point out additional areas of investigation to consider. Lawyers should work with the



SIU investigator and claims adjuster to judge how a trier of fact would view the evidence.

A lawyer may be needed if there is resistance to providing the information required to make a decision on the claim. If an Examination Under Oath would assist the claim investigation, a lawyer should be retained. Skilled lawyers who are experienced in taking Examinations Under Oath know how to cross-examine an insured to bring out the facts, and to do it in a tone that will not look like the insured is being persecuted if litigation results.

As a team a decision needs to be made on strategy for the examination. What is the goal? Should the insured be confronted with the facts the investigation has uncovered? In most cases that is the best course. The insured's answers to the questions raised, or conclusions reached, should not be learned for the first time at trial. It should not appear that the insurance company is hiding facts or evidence from its insured. When and how to reveal those facts is a decision for the investigation team.

Ethical Issues

There are ethical issues to consider during the investigation. Everyone on the investigation team should treat the insured courteously and with respect at all times. Coverage counsel must be firm, but not overly aggressive, while

gathering the facts. At no point should anyone misrepresent information to the insured.

While the investigation is being conducted to determine whether the claim is legitimate, the investigation into the value of the claim should proceed. If, after SIU's investigation is completed, it is determined that the claim should be paid, it is not good practice to only then begin investigating the claim's value. This leads to delay in resolving the claim and creates an argument that the goal of the SIU's investigation was to find a way to not pay the claim.

When a claim investigation team of an adjuster, an SIU investigator and a lawyer work together and communicate well, it is more likely that the correct result will be reached. It also is more likely that the claims file will show that a thorough and objective investigation was conducted, which should create a positive impression on a trier of fact if litigation ensues. The goal of a claims investigation is to prove the truth of the claim, not to focus on fraud. The team's actions, and documentation of those actions, should demonstrate that goal. 

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