

# 2010 Annual Report to the Workers' Compensation Advisory Board



Pat Quinn, Governor

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Michael T. McRaith, Director



# Illinois Department of Insurance

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PAT QUINN  
Governor

MICHAEL T. McRAITH  
Director

November 29, 2010

The Honorable Pat Quinn  
Governor  
207 Statehouse  
Springfield, IL 62706

***Re: Workers' Compensation Fraud Unit – 2010 Annual Report.***

Dear Governor Quinn:

On behalf of the Department of Insurance and pursuant to Section 25.5(h) of the Workers' Compensation Act (820 ILCS 305/25.5(h)), I hereby submit the Workers' Compensation Fraud Unit's 2010 Annual Report.

Respectfully Submitted,

Illinois Department of Insurance

A handwritten signature in black ink, appearing to read "Michael T. McRaith".

Michael T. McRaith

Director

cc: Senate President John J. Cullerton  
Senate Minority Leader Christine Radogno  
Speaker of the House Michael J. Madigan  
House Minority Leader Tom Cross  
Mitch Weisz, Chairman of the Illinois Workers' Compensation Commission

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## **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 no-fault system, which allows employers to avoid costly litigation and provide employees protection and compensation for work-related injuries.

Illinois enjoys a favorable business environment in part due to the continued availability of cost-effective insurance to guard against employment-related injuries. The Illinois market is highly competitive, with nearly 130 different companies competing to write direct workers' compensation premiums in 2009.

## **II. General Summary of Reform**

In 2005, representatives from the business sector, labor, and government leaders united to address the problems of fraud and non-compliance in the Illinois workers' compensation system. Later that year, the General Assembly passed House Bill 2137, which would become Public Act 94-277. This historic piece of legislation established in Illinois, for the first time, a statute devoted specifically to criminalizing and combating workers' compensation fraud.

Public Act 94-277, later codified as Section 25.5 of the Workers' Compensation Act (Act) (820 ILCS 305/25.5), introduced two anti-fraud reforms. First, the Act calls for the Illinois Department of Insurance (Department),<sup>1</sup> to create an investigative unit, hereafter referred to as the Workers' Compensation Fraud Unit (WCFU). The sole purpose of the WCFU is to examine reports of workers' compensation fraud and insurance noncompliance. Section 25.5(c) of the Act provides that it "shall be the duty of the [WCFU] to determine the identity of insurance carriers, employers, employees, or other persons or entities that have violated the fraud and insurance non-compliance provisions." 820 ILCS 305/25.5(c).

The Act's fraud and insurance non-compliance provisions constitute the second major anti-fraud reform. Prior to the passage of P.A. 94-277, the Act did not specifically define as unlawful the fraudulent receipt, denial, or application for workers' compensation benefits. The Act now outlaws eight specific fraudulent acts:

1. Intentionally presenting or causing to be presented any false or fraudulent claim for the payment of any workers' compensation benefit;
2. Intentionally making or causing to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any workers' compensation benefit;
3. Intentionally making or causing to be made any false or fraudulent statements with regard to entitlement to workers' compensation benefits with the intent to prevent an injured worker from making a legitimate claim for workers'

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<sup>1</sup> Section 25.5 states that the "Division of Insurance of the Department of Financial and Professional Regulation" shall establish the WCFU. Pursuant to Executive Order 4 (2009) and a statute passed by the General Assembly, the Division of Insurance was re-established as the Department of Insurance effective June 1, 2009. For purposes of this memorandum, any reference in section 25.5 to the Division of Insurance shall be amended to reflect this change.

- compensation benefits;
4. Intentionally preparing or providing an invalid, false, or counterfeit certificate of insurance as proof of workers' compensation insurance;
  5. Intentionally making or causing to be made any false or fraudulent material statement or material representation for the purpose of obtaining workers' compensation insurance at less than the proper rate for that insurance;
  6. Intentionally making or causing to be made any false or fraudulent material statement or material representation on an initial or renewal self-insurance application or accompanying financial statement for the purpose of obtaining self-insurance status or reducing the amount of security that may be required to be furnished;
  7. Intentionally making or causing to be made any false or fraudulent material statement to the WCFU in the course of an investigation of fraud or insurance non-compliance; and
  8. Intentionally assisting, abetting, soliciting, or conspiring with any person, company or other entity to commit any of the acts listed above.

These eight prohibitions define the nature and scope of WCFU investigations.

WCFU responsibilities under the Act involve investigations and referrals for prosecution. The statute requires that violations must be reported to the Attorney General or to the appropriate county State's Attorney's office for prosecution. Penalties vary based upon the offense. For example, persons who make a false report of fraud are guilty of a Class A misdemeanor while those who violate any of the Act's fraud provisions are guilty of a Class 4 felony and must pay restitution in addition to any fine imposed by the

court.

### **III. Creating and Overseeing the WCFU**

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

#### **A. Best Practices**

WCFU operations – from the initial report of fraud, to the investigations and referrals for prosecution – are governed by clear and efficient systems modeled on results from a nationwide survey of best practices in the area of workers’ compensation.

##### **1. Reports**

The WCFU reporting system records and 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 the Unit’s toll-free telephone number (1-877-WCF-UNIT or 1-877-923-8648). After receiving a report, the WCFU supervisor contacts the complainant and, if necessary, requests additional information. The supervisor may refer the complainant to the Department’s website, which prominently displays detailed information about the complaint process, including the information that is required in order for the WCFU to initiate an investigation. *See* <http://insurance.illinois.gov/General/WorkCompFraudCheckList.asp>.

##### **2. Investigations**

An investigation begins after the WCFU receives all the information necessary to initiate the investigation. The supervisor first reviews the report of alleged workers’ compensation fraud. If the report is frivolous or unsubstantiated, the investigation ceases

and the report is closed. If the supervisor finds evidence sufficient to justify further inquiry, the report information is entered into a central computer database and a case number and investigator are assigned.

While structurally similar, each investigation differs based upon a host of factors, including the nature and quality of the initial report. Most investigations involve: (1) review of documentary and physical evidence; (2) interview of persons related to the case (*e.g.*, complainants, witnesses, insurance company personnel, and physicians); (3) analysis of physical and geographic circumstances; and (4) detailed background checks of persons related to the case (*e.g.*, investigative targets and witnesses).

### **3. Referrals for Prosecution**

At the conclusion of each investigation, a review of the sufficiency of evidence is conducted. If the inquiry does not produce sufficient evidence to find probable cause to believe an individual or entity committed workers' compensation fraud, the case is closed. Investigations that produce sufficient evidence to meet the probable cause standard are referred to the Illinois Attorney General or the State's Attorney of the county in which the offense allegedly occurred.

The WCFU has built strong working relationships with relevant prosecuting authorities. Investigators regularly work with the Illinois Attorney General's Office and numerous State's Attorneys. Since its creation, the WCFU referred cases to and worked with State's Attorneys representing 35 counties: Bureau, Cass, Champaign, Christian, Cook, DeKalb, DeWitt, DuPage, Edgar, Ford, Franklin, Gallatin, Jasper, Jefferson, Kane, Kankakee, Knox, Lake, Macon, Macoupin, Morgan, Madison, Ogle, Peoria, Perry, Saline, Sangamon, St. Clair, Tazewell, Union, Vermillion, White, Will, Williamson and

Winnebago.

#### **4. Confidentiality**

The confidentiality of all fraud reports and associated medical records is strictly maintained. The Act provides for two exceptions to this general rule. The first exception exists in circumstances where the WCFU has referred the investigation to prosecuting authorities. The second exception occurs where the Act requires disclosure of limited information about the report. For example, upon initiation of an investigation, the WCFU must immediately notify the individual or entity who has allegedly committed the reported fraud and the verified name and address of the complainant.

#### **5. State Agency Coordination**

In order to promote the efficient administration of state government, the WCFU takes reports from and shares expertise with existing state agencies, including the Illinois Workers' Compensation Commission and the Illinois Department of Employment Security. The WCFU also benefits from expertise provided by the Illinois Attorney General and various county State's Attorney's.

#### **B. Outreach.**

To promote awareness of the WCFU, the Department's Director, Michael T. McRaith, and WCFU members have developed a public awareness program engaging those individuals and entities most likely to be affected by workers' compensation fraud. These groups include elected officials and their constituents, local chambers of commerce, insurance companies, medical providers and insurance-related associations and investigators. WCFU investigators also maintain an ongoing relationship with law enforcement and prosecutorial authorities. During the process of conducting fraud

investigations, the WCFU comes in direct contact with employers, witnesses, local and state police officers, federal agents, prosecutors, and insurance company employees. Developing and maintaining these relationships is a critical component of WCFU's success.

#### **IV. Lessons Learned**

WCFU investigators have learned many valuable lessons since the WCFU was established in 2006. Primary among them is the importance of building working relationships with state law enforcement authorities. WCFU investigators, conscious of the broad discretion but limited resources possessed by hard-working State and county prosecutors, 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.

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 a working relationship with these entities has clarified the information that is required to prove workers' compensation fraud.

As the WCFU has grown in experience over the years, so too has the WCFU's cooperation and coordination with other investigative and law enforcement agencies. WCFU investigators work with the Federal Bureau of Investigation, the Postal

Inspector's Office, the Internal Revenue Service, 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 and the Health Care Fraud Working Group assembled by the U.S. Department of Justice.

## **V. Getting Results**

The primary responsibility of the WCFU is, as described above, to conduct investigations and refer cases for prosecution. To fulfill this task, WCFU investigators each year spend countless hours conducting field investigations, reviewing hours of surveillance footage and issuing numerous subpoenas seeking insurance, payroll, medical, and other records.

One measure of success for WCFU investigators, and for the fraud victims (whether employees, employers or insurance carriers) on whose behalf they act, is the number of cases resulting in convictions. Faced with the State-wide challenge of reduced staffing during 2009, the WCFU still obtained results.

In 2009, the Attorney General and various county State's Attorneys secured convictions against five individuals charged with felony workers' compensation fraud as a result of referrals made by the WCFU. Collectively, the sentences for these individuals included more than \$111,649 in restitution costs, \$1,500 in fines and fees, 30 months of probation and two years conditional discharge. *See Exhibits A and C.*

In addition to obtaining convictions during 2009, the WCFU uncovered fraud in one case that was ultimately resolved by alternative means. During one investigation it was

discovered that an employee submitted fraudulent documents and committed perjury at his workers' compensation trial that allowed him to receive a wage differential award payable for life. As a result of the WCFU's involvement, the employee agreed to settle the case and set aside the wage differential award, saving the insurer almost over \$443,000.

#### **A. Investigations and Referrals – Calendar Year 2009**

The WCFU received reports of workers' compensation fraud in 2009 that did not warrant further investigation because of insufficient evidence or because the statute of limitations expired. Sufficient evidence did exist to initiate 32 investigations. WCFU investigators also continued work on an additional 13 cases that were opened in previous calendar years.

Of the investigations that were completed in 2009, 17 produced evidence sufficient to meet the probable cause standard and subsequently were referred to prosecuting authorities. The following are referral results for 2009:

- 17 cases were referred for prosecution, with an approximate total fraud amount of \$659,367. *See Exhibits A, B, D and E.*
  - 12 referrals involved allegations of workers' compensation fraud committed by an employee, with an approximate total fraud amount of \$372,974.
  - 4 referrals involved employer-based workers' compensation fraud, with an approximate total fraud amount of \$232,661.
  - 1 referral involved allegations of workers' compensation fraud committed by an insurance agent, with an approximate total fraud amount of \$53,732.

- 23 cases were investigated and closed without referral for prosecution due to insufficient evidence or lack of probable cause.
- 5 cases remained active at the close of calendar year 2009.

The investigated cases involve a variety of fraudulent actors (*e.g.*, employees, employers, insurance agents, medical providers) and a range of ill-gotten gains. In some cases the fraud was detected before the payment of benefits; other cases involved total payments ranging from \$1,931 to \$188,835. Examples of cases referred for prosecution include:

- Employee or Claimant Fraud. *See* Exhibit B.
  - An employee claimed he suffered a wrist and foot injury resulting from an altercation at work, ultimately collecting \$57,657 in total disability payments. Evidence uncovered by the WCFU revealed that the employee, during the time he was collecting benefits and in violation of doctor's restrictions, managed and participated in four wheel drive drag races, mud races and exhibition matches. Witnesses also observed the employee performing physically demanding tasks, such as moving heavy equipment, wrestling and driving a stick shift vehicle.
  - An employee received a Permanent Total Disability (PTD) award at the Illinois Workers Compensation Commission (IWCC) which made her eligible to receive cost of living adjustments paid from the Rate Adjustment Fund (RAF) as long as the insurer or employer continued to pay PTD benefits. The employee subsequently settled her case but continued to attest to the Commission that her case had not settled. She

also prepared forged checks and submitted them to the Commission as proof that she was still receiving PTD benefits in order to remain eligible for RAF payments. WCFU investigators discovered that the employee lied on an affidavit, prepared forged documents and collected more than \$56,178 in fraudulent RAF payments.

- Employer Fraud. *See* Exhibit B.
  - WCFU investigators discovered that a transportation company claimed all their employees were subcontractors and then submitted fraudulent certificates to the insurer during an audit to avoid higher premiums. The total amount of lost premiums due the insurance carrier equaled \$188,835.
  - A WCFU investigation revealed that a towing company attempted to lower its workers' compensation premiums by misclassifying employees and under-reporting their payroll expenses. The total amount of lost premiums due the insurance carrier equaled \$9,770.
- Insurance Producer Fraud. *See* Exhibit B.
  - One WCFU investigation uncovered a fraud scheme whereby the insurance producer accepted payments for the purchase of workers' compensation insurance but spent the money for personal use instead. The insurance producer created fraudulent certificates of insurance and declaration pages to mislead clients into believing they had purchased valid workers' compensation coverage. Five businesses were affected by the schemes, with total provable fraud amounts equaling \$53,732.

## **B. Prosecutions**

### *WCFU Referrals Resulting in Felony Indictments*

The WCFU investigates workers' compensation fraud but does not prosecute. The power to decide whether to file criminal charges rests solely with the prosecutor who receives the WCFU referral – the Illinois Attorney General or relevant county State's Attorney. WCFU efforts to develop improved working relationships with state and county prosecutors throughout Illinois are continuing to produce tangible results: 12 WCFU referrals have resulted in felony indictments during 2009 compared to only 12 from all of 2007 and 2008. *See Exhibit F.*

- In 2009, as a result of WCFU referrals, the Illinois Attorney General and State's Attorneys from Ford, Kankakee, Cook, Lake, Will, Macon and Champaign Counties filed charges or secured felony indictments against a total of 12 individuals.
- In the first six months of 2010, as a result of WCFU referrals, the Attorney General and State's Attorneys from Knox, Cook, Winnebago, and Saline Counties secured felony indictments against a total of six individuals.

### *WCFU Referrals Resulting in Convictions*

WCFU investigators are often asked to assist in the prosecution of cases involving workers' compensation fraud and may provide testimony before a grand jury or be called as witnesses in the trial. As mentioned above, WCFU referrals resulted in convictions against five individuals in 2009. *See Exhibits A and C.*

- In one case resulting in a 2009 conviction, an employee reported that she had injured her lower back during work. The employee filed a claim with the IWCC

and received medical benefits and TTD payments. Covert video surveillance conducted on multiple dates during the period in which the employee was collecting TTD benefits showed her working at another job and performing activities inconsistent with her purported injuries and in violation of medical restrictions recommended by her treating physician.

WCFU investigators referred the case to the Cook County State's Attorney for prosecution. The employee/defendant entered a guilty plea and was convicted in June 2009 on an amended count of theft by deception under \$300, a Class A misdemeanor (720 ILCS 5/16-1 (a)(2)(A)). The defendant was sentenced to six months court supervision, ordered to pay restitution to the insurer in the amount of \$6,013 and ordered to pay an additional \$322 in fines and fees.

- In another case resulting in a 2009 conviction, an insurance agent kept payments from clients and failed to secure workers' compensation policies with insurers. At least 24 clients were deceived by the agent when he prepared fraudulent certificates of insurance and documentation that made it appear as if insurance was in force. WCFU investigators referred the case to the Lake County State's Attorney for prosecution. The defendant was indicted on 64 counts of various thefts, wire fraud, forgery and workers compensation fraud. He was convicted in June 2009 on one count of Workers' Compensation fraud (820 ILCS 305/25.5 (a)(4)), two counts of Theft (720 ILCS 5/16-1(a)(2)(A)) and one count of Forgery (720 ILCS 5/17-3(a)(2)). He was sentenced to 30 months probation, two months periodic imprisonment and 10 months electronic home monitoring, was assessed

monthly probation fees of \$25, a random testing fee of \$125 and ordered to pay restitution of \$97,136.

## 2009 REFERRED CASES BY FRAUD AMOUNT (Employee/Claimant Cases Only)

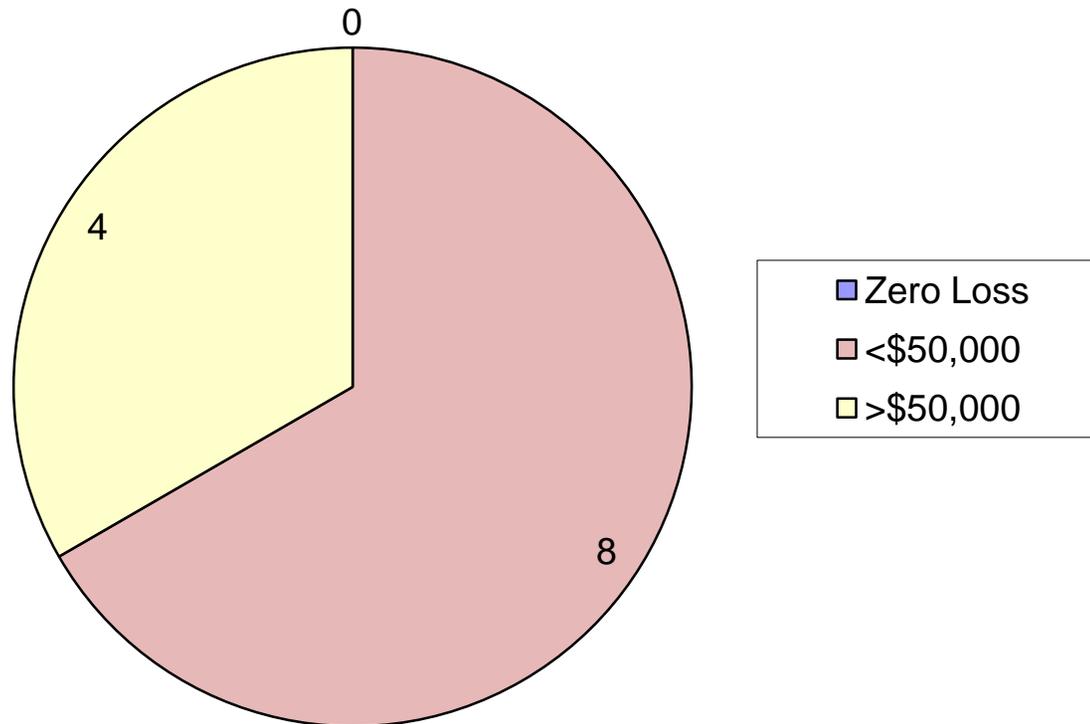


Exhibit E

## 2009 REFERRED CASE FRAUD AMOUNTS BY CATEGORY

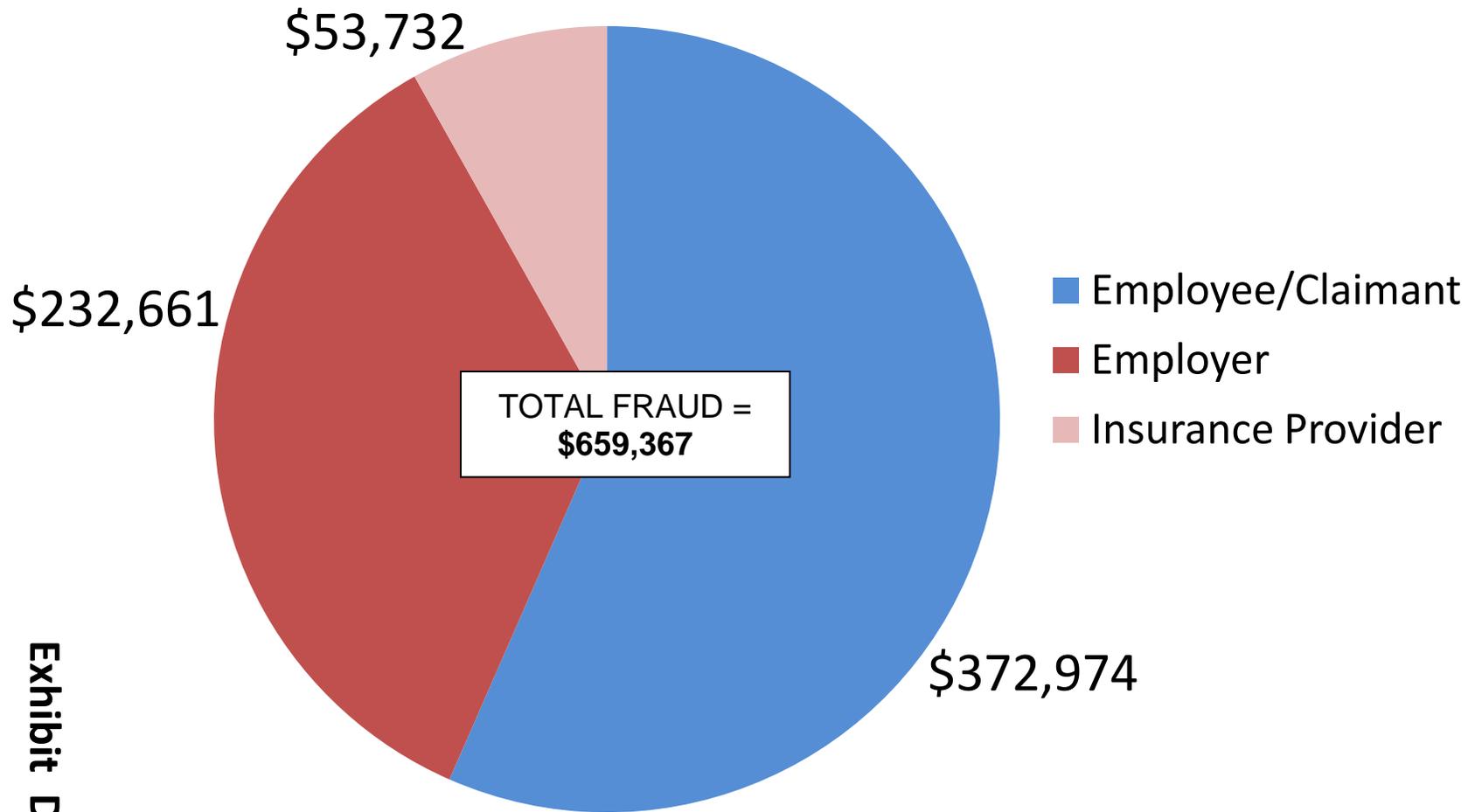


Exhibit D

## 2009 Convictions Resulting from WCFU Referrals

County	Date	Offense	Sentence	Summary
Ford	5/15/09	One count of WC fraud, a Class 4 felony [820 ILCS 305/25.5 (a)(5)] (Pled to lesser offense [720 ILCS 5/47-15(a)]).	Ordered to pay court costs and a crime stoppers fee.	The defendant misrepresented payroll and failed to obtain WC Insurance.
Lake	6/4/09	One count of WC fraud, a Class 4 felony [820 ILCS 305/25.5 (a)(4)] , two counts of Theft a Class 3 felony [720 ILCS 5/16-1 (a)(2) (A)] and one count of Forgery a Class 3 felony [720 ILCS 5/17-3(a)(2)].	30 Months probation, 2 months periodic imprisonment 10 months electronic home monitoring, assessed monthly probation fees of \$25, a random testing fee of \$125, and ordered to pay restitution of \$97,136.	The defendant kept payments from clients intended for workers' compensation insurance and issued fraudulent certificates.
Will	6/8/09	Two counts of theft by deception, a Class A Misdemeanor [720 ILCS 5/16-1 (a)(2) (A)].	Six months court supervision and assessed \$322 fine that included court costs and restitution of \$6,013.	The defendant admitted to working at another job while claiming total disability and receiving TTD benefits.
Kankakee	8/25/09	One count of Forgery a Class 3 felony [720 ILCS 5/17-3(a)(2)(1) ].	18 months conditional discharge plus court costs.	The defendant provided false information on the application for adjustment of claim
Cook	12/4/09	One count of WC fraud, a Class 4 felony [820 ILCS 305/25.5 (a)(4)].	One year conditional discharge, assessed a \$225 fine and ordered to pay restitution of \$8,500.	The defendant furnished fraudulent certificates of insurance to a general contractor as proof of having workers' compensation insurance

# 2009 WCFU Referrals for Prosecution

## Employee/Claimant Fraud

FRAUD AMOUNT	CASE DESCRIPTION
\$57,657	Employee misrepresented disabilities to medical provider and employer to obtain TTD benefits.
\$56,178	Employee misrepresented eligibility status to continue receiving rate adjustment fund benefits.
\$54,470	Employee working at alternate job while claiming to be totally disabled and receiving TTD benefits.
\$53,495	Employee working at alternate job and violating work restrictions while claiming to be totally disabled and receiving TTD benefits.
\$43,469	Employee injured leg while playing soccer and reported injury occurred at work.
\$34,377	Employee working at alternate job and violating work restrictions while claiming to be totally disabled and receiving TTD benefits.
\$31,443	Employee working at alternate job and violating work restrictions while claiming to be totally disabled and receiving TTD benefits.
\$27,368	Employee failed to disclose prior injury to medical providers and employer.
\$5,370	Employee working at alternate job while claiming to be totally disabled and receiving TTD benefits.
\$5,000	Employee falsely claimed injury occurred at work.
\$2,216	Employee working at alternate job while claiming to be totally disabled and receiving TTD benefits.
\$1,931	Employee working at alternate job while claiming to be totally disabled and receiving TTD benefits.
<b>\$372,974</b>	<b>TOTAL CASES = 12</b>

## Employer Fraud

FRAUD AMOUNT	CASE DESCRIPTION
\$188,835	Employer misrepresented employees as independent contractors and prepared fraudulent certificates of insurance to deceive insurer and obtained premiums less than the market rate.
\$22,991	Employer misrepresented employees as independent contractors and prepared fraudulent certificates of insurance to deceive insurer and obtained premiums less than the market rate.
\$11,065	Employer did not have insurance and provided fraudulent certificates of insurance as proof of having insurance.
\$9,770	Employer misreported payroll to receive insurance at less than market rate.
<b>\$232,661</b>	<b>TOTAL CASES = 4</b>

## Insurance Producer Fraud

FRAUD AMOUNT	CASE DESCRIPTION
\$53,732	Insurance agent kept money intended for WC insurance and produced fraudulent certificates of insurance.
<b>\$53,732</b>	<b>TOTAL CASES = 1</b>

**Exhibit B**

## 2009 WCFU Investigations and Results

	<b>Employee / Claimant</b>	<b>Employer</b>	<b>Insurance Provider</b>	<b>Attorney</b>	<b>Healthcare Provider</b>	<b>TOTALS</b>
<b>Assigned</b>	23	5	3	1	0	<b>32</b>
<b>Referred for Prosecution</b>	12	4	1	0	0	<b>17</b>
<i>Fraud Amount</i>	\$372,974	\$232,661	\$53,732	N/A	N/A	<b><i>\$659,367</i></b>
<b>Dismissed</b>	17	2	2	1	1	<b>23</b>
<b>Indictments</b>	6	4	2	0	0	<b>12</b>
<b>Convictions</b>	2	2	1	0	0	<b>5</b>
<i>Restitution</i>	\$6,013	\$8,500	\$97,136	N/A	N/A	<b><i>\$111,649</i></b>
<b>Alternate Resolution</b>	1	0	0	0	0	<b>1</b>
<i>Recovery</i>	\$ 442,924	N/A	N/A	N/A	N/A	<b><i>\$442,924</i></b>

# NUMBER OF INDICTMENTS AND CONVICTIONS RESULTING FROM WCFU REFERRALS 2007-2008-2009

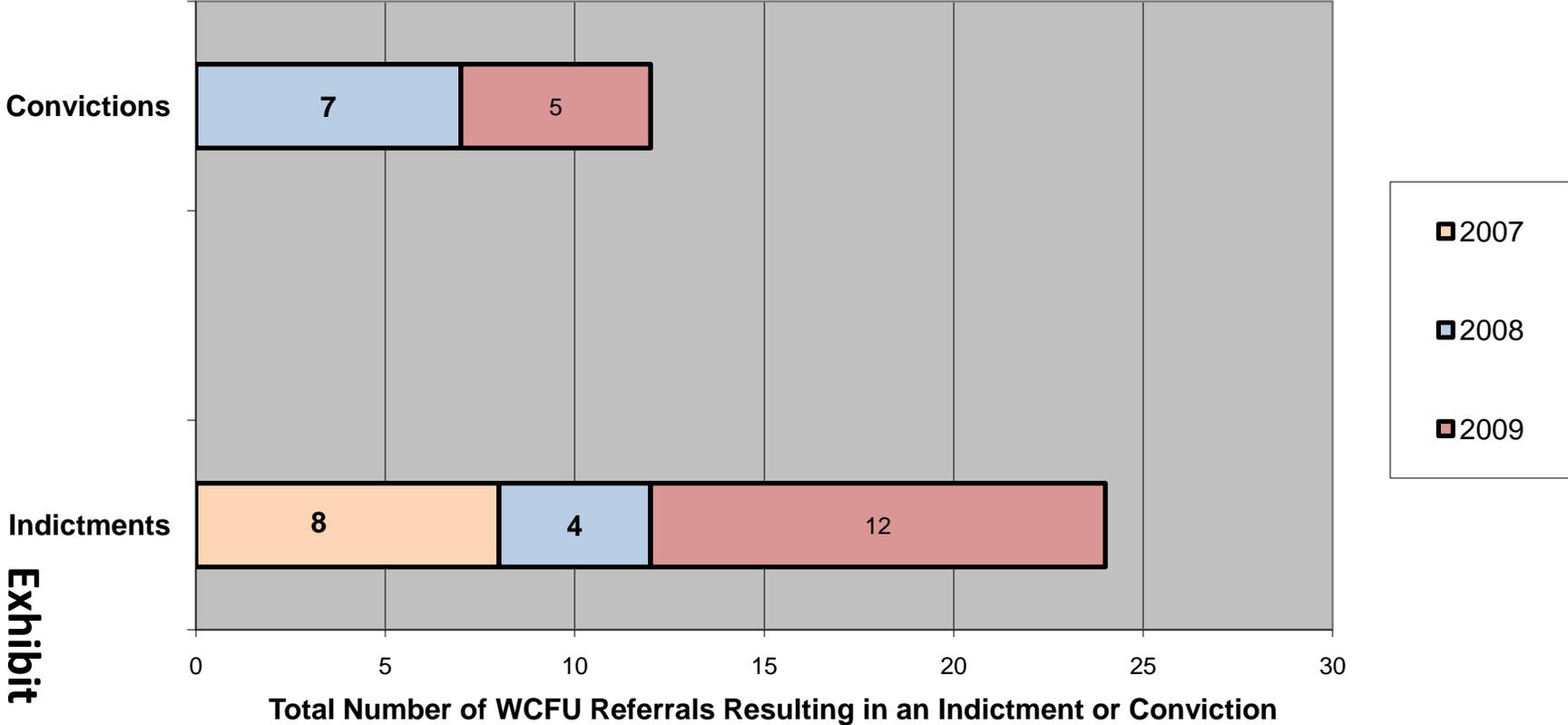


Exhibit F