

Illinois Department of Insurance
Workers' Compensation Fraud Unit

2011 Annual Report to the Workers' Compensation Advisory Board



Pat Quinn, Governor

Jack Messmore, Acting Director



Illinois Department of Insurance

PAT QUINN
Governor

ANDREW R. STOLFI
Acting Director

October 27, 2011

The Honorable Pat Quinn
Governor
207 Statehouse
Springfield, IL 62706

Re: Workers' Compensation Fraud Unit – 2011 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 2011 Annual Report as of June 15, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. R. Stolfi".

Illinois Department of Insurance
Andrew R. Stolfi
Acting 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 300 different companies competing to write direct workers' compensation premiums in 2010.

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),¹ 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'

¹ 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/wcfu>).

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 and assigns a case number. 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 case is assigned for investigation.

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 dismissed. 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 thirty-five 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 Attorneys.

B. Outreach.

To promote awareness of the WCFU, the Department's Director, 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, the WCFU's cooperation and coordination with other investigative and law enforcement agencies has also grown. 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. During 2010 the Department started posting details of convictions on the Department website. Faced with the continued state-wide challenge of reduced staffing and mandatory furlough days during 2010, the WCFU still obtained results.

In 2010, the Attorney General and various county State's Attorneys secured convictions against eight 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 \$75,327 in restitution costs, \$5,125 in fines and fees, 132 months of probation, 81 months in prison, 140 hours of community service and two years supervised release (*see* Exhibits A and C).

In addition to obtaining convictions during 2010, the WCFU referred two cases to

other agencies that resulted in collection of fines totaling \$12,500.

A. Investigations and Referrals – Calendar Year 2010

The WCFU received 103 reports of workers' compensation fraud in 2010 that did not warrant further investigation because of insufficient evidence, lack of jurisdiction, or because the statute of limitations expired. Sufficient evidence did exist to initiate forty-six investigations. WCFU investigators also continued work on an additional fourteen cases that were opened in previous calendar years. During 2010 there were 201 written fraud complaints reported to the WCFU.

Of the investigations that were completed in 2010, thirteen produced evidence sufficient to meet the probable cause standard and subsequently were referred to prosecuting authorities. The following are referral results for 2010:

- Thirteen cases were referred for prosecution, with an approximate total fraud amount of \$2,831,365 (*see* Exhibits A, B, D and E).
 - Six referrals involved allegations of workers' compensation fraud committed by an employee, with an approximate total fraud amount of \$151,333.
 - Three referrals involved employer-based workers' compensation fraud, with an approximate total fraud amount of \$1,485,149.
 - Four referrals involved allegations of workers' compensation fraud committed by an insurance agent, with an approximate total fraud amount of \$1,194,883.
- Twenty-two cases were investigated and dismissed without referral for prosecution due to insufficient evidence or deficient probable cause.

- Fifty-six cases remained open at the close of calendar year 2010.

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 damages ranging from \$1,800 to \$1,436,041. Examples of cases referred for prosecution include:

- Employee or Claimant Fraud (*see* Exhibit B)
 - An employee was discovered to be working an alternate full time job earning regular wages, while he was receiving TTD benefits from his primary employer. During the period he was working the alternate job he was paid \$5,242 in TTD benefits he was not entitled to receive.
 - An employee received a Permanent Total Disability (PTD) award at the Illinois Workers Compensation Commission (IWCC) which made him 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 his case but continued to attest to the Commission that his case had not settled. He also prepared forged checks and submitted them to the Commission as proof that he 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 \$17,099 in fraudulent RAF payments.
- Employer Fraud (*see* Exhibit B)

- WCFU investigators discovered that since 2006 a janitorial company failed to accurately report the number of employees to avoid higher premiums. The total amount of lost premiums due the insurance carrier over five year period equaled \$1,436,041.
- A WCFU investigation revealed that a general contractor misclassified workers as independent contractors and failed to obtain workers compensation insurance. One employee was injured and has remained off work without payment of any workers compensation benefits. The total amount of unreimbursed benefits equaled \$39,000.
- 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 policies, certificates of insurance and declaration pages to mislead clients into believing they had purchased valid workers' compensation coverage. Twenty-three businesses were affected by the schemes, with total provable fraud amounts equaling \$1,048,200.

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: ten WCFU referrals have resulted in felony indictments during 2010 (*see* Exhibit F).

- In 2010, as a result of WCFU referrals, the State’s Attorneys from Cook, Knox, Saline, Shelby, White and Winnebago Counties filed charges or secured felony indictments against a total of 10 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 eight individuals in 2010 (*see* Exhibits A and C).

- In one case resulting in a 2010 conviction, an employee reported that he had injured his shoulder 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 him working at another job and performing activities inconsistent with his purported injuries.

WCFU investigators referred the case to the Cook County State’s Attorney for prosecution. The employee pled guilty to one count of Workers’ Compensation Fraud pursuant to 820 ILCS 305/25.5(a)(1) (intentionally present or cause to presented any false or fraudulent claim for the payment of any workers’ compensation benefit), a Class 4 felony and one count of Workers’ Compensation

Fraud pursuant to 820 ILCS 305/25.5(a)(2) (intentionally make or cause to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any workers' compensation benefit), a Class 4 felony. The defendant was sentenced to twenty-four months probation, assessed probation fees of \$1,200, court fees of \$410, and ordered to pay restitution of \$22,594.61.

In another case resulting in a 2010 conviction, an insurance agent kept payments from clients and failed to secure workers' compensation policies with insurers. At least four 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 Macon County State's Attorney for prosecution and the defendant was convicted on one count of Theft pursuant to 720 ILCS 5/16-1 (a)(2)(A) (knowingly obtains by deception control over property of the owner), a Class 3 felony. He was sentenced to twenty-four months probation, was assessed probation fees of \$600, a genetic marker fee of \$200, and ordered to pay restitution of \$52,732.

2010 WCFU Investigations and Results

	Employee / Claimant	Employer	Insurance Provider	Attorney	Healthcare Provider	Other	TOTALS
Open Prior Yr.	7	5	2	0	0	0	14
Reported	146	29	8	6	5	7	201
Closed	74	12	4	6	2	5	103
Assigned for Investigation	29	12	4	0	1	0	46
Dismissed	12	9	1	0	0	0	22
Referred for Prosecution	6	3	4	0	0	0	13
<i>Fraud Amount</i>	\$151,333	\$1,485,149	\$1,194,883	N/A	N/A	N/A	\$2,831,365
Indictments	8	1	1	0	0	0	10
Convictions	5	1	2	0	0	0	8
<i>Restitution</i>	\$22,595	\$0	\$52,732	N/A	N/A	N/A	\$75,327
Alternate Resolution	0	0	1	0	0	0	1
<i>Recovery</i>	N/A	N/A	\$12,500	N/A	N/A	N/A	\$12,500

2010 WCFU Referrals for Prosecution

Employee/Claimant Fraud

FRAUD AMOUNT	CASE DESCRIPTION
\$71,837	Employee misrepresented eligibility status to continue receiving rate adjustment fund benefits.
\$48,327	Employee working at alternate job while claiming to be totally disabled and receiving TTD benefits.
\$17,099	Employee misrepresented eligibility status to continue receiving rate adjustment fund benefits.
\$7,028	Employee working at alternate job and violating work restrictions while claiming to be totally disabled and receiving TTD benefits.
\$5,242	Employee working at alternate job and violating work restrictions while claiming to be totally disabled and receiving TTD benefits..
\$1,800	Employee working at alternate job and violating work restrictions while claiming to be totally disabled and receiving TTD benefits.
<i>\$151,333</i>	<i>TOTAL CASES = 6</i>

Employer Fraud

FRAUD AMOUNT	CASE DESCRIPTION
\$1,436,041,	Employer misrepresented employees as independent contractors and prepared fraudulent certificates of insurance to deceive insurer and obtained premiums less than the market rate.
\$39,000	Employer misrepresented employees as independent contractors and failed to obtain proper workers' compensation insurance.
\$10,108	Employer failed to get WC insurance and provided false certificates of insurance as proof of having insurance
<i>\$1,485,149</i>	<i>TOTAL CASES = 3</i>

Insurance Producer Fraud

FRAUD AMOUNT	CASE DESCRIPTION
\$1,048,200	Insurance agent kept money intended for WC insurance and produced fraudulent policy information.
\$83,872	Insurance agent provided false information to insurer during WC insurance renewal and settled claims without notice to the insurer.
\$51,000	Insurance agent misrepresented employers loss history to obtain lower rate of insurance
\$11,811	Insurance agent produced fraudulent certificates of insurance
<i>\$1,194,883</i>	<i>TOTAL CASES = 4</i>

Exhibit B

2010 Convictions Resulting from WCFU Referrals

County	Date	Offense	Sentence	Summary
Macon	6/16/10	One count of Theft, a Class 3 felony [720 ILCS 5/16-1 (a)(2)(A)]	24 months Probation, \$800 fines and fees, restitution of \$52,732.	The defendant failed to obtain WC insurance for clients and pocketed premiums.
Northern District	7/6/10	Violation of Title 26 USC 7201 Tax Evasion	33 months in prison, 2 years supervised release and \$100 fine.	The defendant kept payments from clients intended for workers' compensation insurance and failed to pay taxes on the unreported income.
Cook	9/1/2010	One count of Theft from a government entity, a Class 2 felony [720 ILCS 5/16-1 (a)(2)(A) and (b)(5.1)]	3 years probation, 100 hours community service and \$535 in fines and fees.	The defendant misrepresented eligibility for rate adjustment fund benefits that are paid by the IWCC
Kankakee	9/27/10	One count of Theft, a Class 1 felony [720 ILCS 5/16-1 (a)(2)(A)] One count of Theft, a Class 3 felony [720 ILCS 5/16-1 (a)(2)(A)]	4 years prison.	The defendant failed to obtain WC insurance for clients and pocketed premiums.
Cook	10/08/10	One count of WC fraud, a Class 4 felony [820 ILCS 305/25.5 (a)(2)] and one count of Perjury, a Class 3 felony [720 ILCS 5/32-2(a)]	18 months probation, 40 hours community service, and \$625 fines and fees.	The defendant claimed an injury occurred at work; however, security video showed injury occurred off work.
Kane	10/20/10	One count of WC fraud, a Class 4 felony [820 ILCS 305/25.5 (a)(1)] and one count of WC fraud, a Class 4 felony [820 ILCS 305/25.5 (a)(2)]	24 months probation, \$1,610 in fines and fees, restitution of \$22,594.61.	The defendant was discovered working alternate job while receiving TTD benefits.
Cook	10/28/10	One count of WC fraud, a Class 4 felony [820 ILCS 305/25.5 (a)(1)]	18 months probation and \$855 fines and fees.	The defendant was discovered working alternate job while receiving TTD benefits.
Cook	12/7/10	One count of WC fraud, a Class 4 felony [820 ILCS 305/25.5 (a)(2)]	12 months probation and \$600 fines and fees.	The defendant failed to disclose related prior injury and medical treatment to physicians and employer.

2010 REFERRED CASE FRAUD AMOUNTS BY CATEGORY

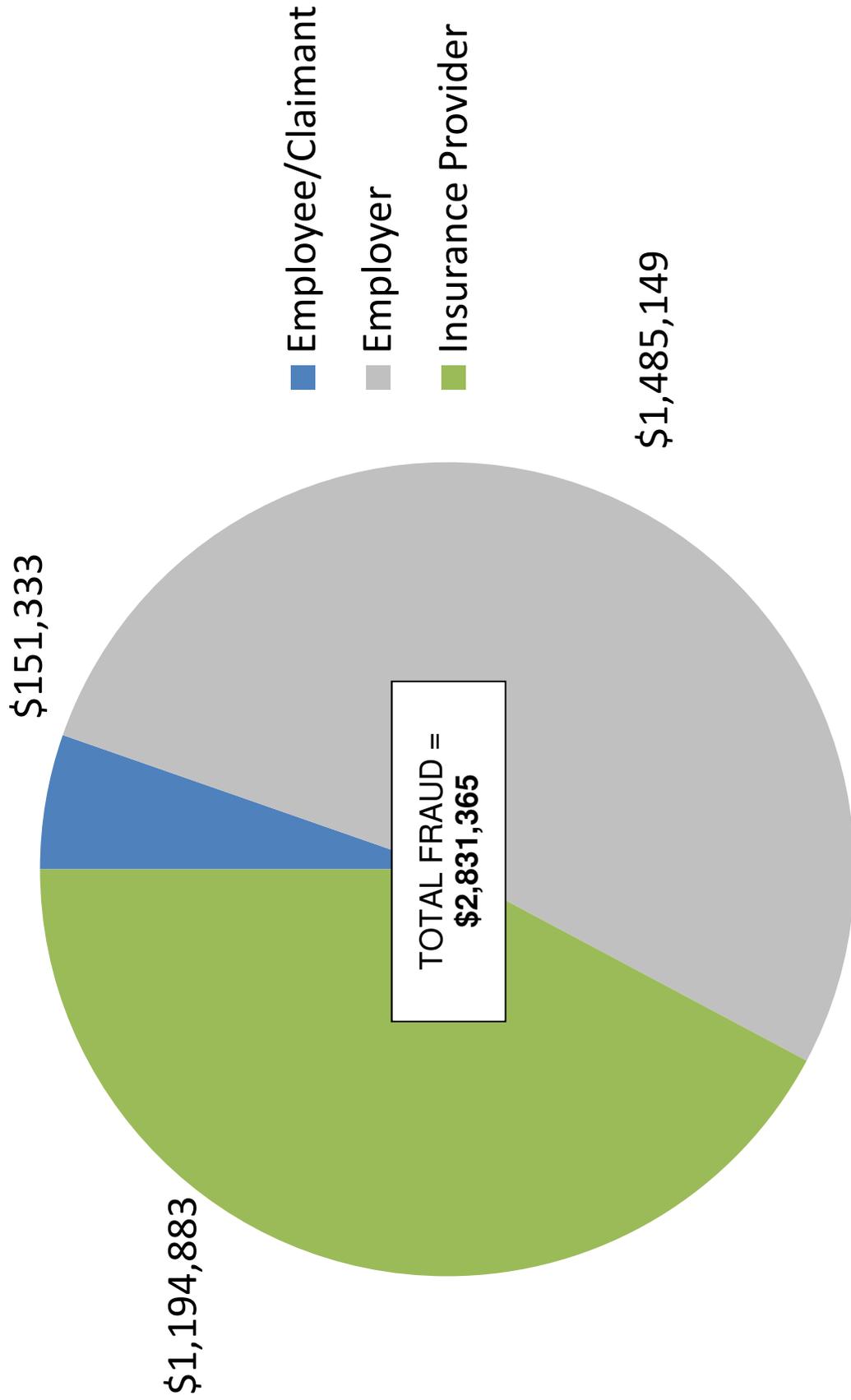


Exhibit D

2010 REFERRED CASES BY FRAUD AMOUNT

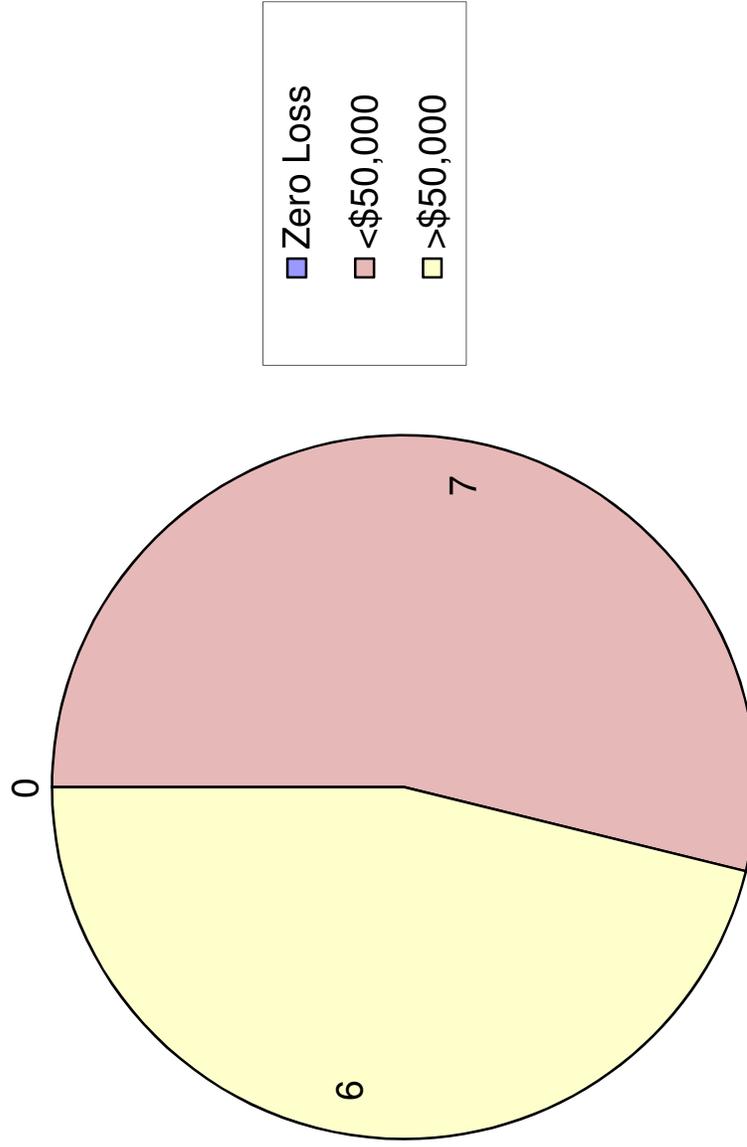


Exhibit E

NUMBER OF INDICTMENTS AND CONVICTIONS RESULTING FROM WCFU REFERRALS 2007-2008-2009-2010

