Investigating the Claims Investigation

Technology's role in insurance continues to grow and its impact on special investigation unit (SIU) investigations has helped to make them more efficient and effective. The advent of social media allows carriers to gain personal insight into claimants and surrounding circumstances to better investigate claims and make decisions.

Likewise, the industry's adoption of data analytics helps better focus SIU investigations by catching fraud either before it starts or in its early stages. Despite these technological advances, both methods may be subject to discovery. As we incorporate more technology into the SIU investigatory framework, carriers should prepare for the eventuality of having to answer challenging questions regarding these technologies within the legal setting.

Social media

In many ways, social media has created an alternate universe in which SIU investigators can immerse themselves to better verify claims, and there is no shortage of outlets to explore. Facebook, Instagram, LinkedIn, Snapchat, YouTube, blogs and other forums are examples of the networking sources available. No longer a generational phenomenon, social media usage continues to expand among users of all ages. New applications and sites appear almost daily, creating yet more landscapes to investigate.

With so much information available, the responsibility to conduct an ethical investigation is critical—especially given the wide spectrum of retention periods that require strict adherence. The documentation and reasoning behind investigations must be clear and without bias, and process review prevents procedures from becoming outdated.

If vendors are to perform these services, expectations should be clearly communicated, and the relationship should be seamless with a clear understanding of how the investigation will be conducted.

When it comes to litigation, investigators should expect their methods and proof to be carefully examined. For example, when deposed, insurance investigators should be prepared to answer questions such as:

- Did you employ a fake online profile to access this information?
- Was the subject induced to disclose confidential information?
- Was the subject being profiled, or was there an improper bias toward the claimant?
- What is your training and level of experience in conducting such searches?
- What is the carrier's methodology to verify the sourced information?

Some of these questions may have merit while others may not; however, the plaintiff's true intention in this type of deposition may be to agitate or further explore a carrier's claims investigation process. Carriers should anticipate questions concerning how their social media investigations are stored, who has access to the findings, and what, if any, training the carrier provides to its employees.

The questions may also be more technical than normal inquiries. Motion practice and objections to certain questions will continue to permit counsel to litigate the discovery request using the rules of court. However, with the advent of electronic discovery in the federal courts, it is important to prepare to answer these questions or proffer someone who can. Technology can help overcome many of these challenges through intelligent case management systems.

Data analytics

Analytics-based referrals are on the rise. The industry is increasingly moving toward a more data-driven SIU investigation for several reasons: Richer data sets are available, technology allows for faster processing of information and analytics

are becoming more robust. Carriers also understand that aggregating the right insights and information ultimately makes them more efficient.

Detection models to ferret out questionable claims and networks for expert review are available through multiple techniques, including industry-accepted indicators, advanced analytics, complex algorithms and mathematically driven anomalies.

One of the biggest efficiency gains is the ability to identify matters in real time instead of catching fraud on the back end. Additionally, having instantaneous insight into how people, providers and other entities are connected throughout claims data is powerful. This is a key ROI from technology investments. Tangible impact opportunities are increased through early detection versus being contingent on the future.

A secondary benefit to this move is that it helps insurers become more familiar with their own data by recognizing trends and gaining greater insight into the actual book of business they write. This type of information will create a new landscape of red flags that is more meaningful to the company. How the output is used is the responsibility of the carrier, but having a consistent approach to assessing referrals identified through analytics helps safeguard the discovery process.

Within this realm, plaintiff attorneys will look to exploit this process if an opportunity should arise, and they do not need a solid technology background for simple inquiries that can develop into more complex questions. An industry professional may need to articulate how a specific claim landed on his or her desk. That singular question could lead to discovery of other internal individuals who would never have been on a deposition list prior to data questioning.

With this question, everyone who touches the process may be subject to deposition, and carriers should be prepared to answer questions such as:

- Who is in charge of the carrier's data analytic unit?
- Do you use an outside vendor?
- How does the process work?
- Where is the data stored?

- Who has access to the data and the findings?
- How were the models created?

From a litigation perspective, this type of discovery is not new, but these types of questions may grant wider access into the internal SIU process. They could open doors that permit discovery of personnel

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who would otherwise be irrelevant. These discovery requests will likely be decided via motion, and the outcome may hinge on relevancy, purpose, scope and the prejudicial effect of not producing the discovery.

The true purpose of the plaintiff's motion may be to simply shake the tree in an effort to obtain a quicker settlement or more favorable resolution. In the worst case scenario, the plaintiff's end game may be to scrutinize the investigation process and probe the investigation for

the sake of creating a bad faith scenario to increase damages.

The bottom line for insurance carriers and claims professionals is to be prepared for this scenario in the claims and litigation space. Utilizing technology-driven fraud detection provides consistency in the detection approach for the initial identification of all claims. Ultimately, our professionals are still responsible for triaging and determining a future course of action. As such, we cannot underestimate the value of training and preparation.

Discovery is a fact of litigation. Technology and analytics level the playing field for the carrier, optimizing opportunities for more effective and efficient fraud detection so that the investigator's skills are fully leveraged. The key is to be aware of the technological evolution and plan accordingly.

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