



WORKERS' COMPENSATION PREMIUM FRAUD

By: [Anthony Macauley](#), Outgoing Chair

Last year at the ABA annual meeting, Jill Mariani told me her boss, Manhattan DA Cyrus Vance, Jr., had asked her to look into Workers' Compensation Premium Fraud (WCPF). Jill, the chief money laundering and tax fraud prosecutor, was one of the founders of TIPS Animal Law committee. I asked her if she would moderate a panel at our Chicago conference last March and put together a teleconference for our committee last June.

The panelists, who were the same for both programs, discussed the problem, law enforcement, national trends, and the conflicting positions of various stakeholders.

Forty percent of the construction workers in Manhattan work off the books. Jill presented the problem to a grand jury, which issued a report, available online.

\$100 billion is an estimated value of lost premium. I do not know the period on which this premium is based. \$100 billion is approximately the amount of workers' comp premium collected every year. So obviously the estimate of lost premium represents multiple years. Some industries, construction and trucking, for example, have high incidence of WCPF. Consider the 40 percent off the books in Manhattan construction. The WCPF is probably tens if not hundreds of millions.

Many states have premium fraud felony statutes, and some states are considering legislation. California makes WCPF a felony punishable by a five-year jail term and a \$50,000 fine for each act. Companion statutes provide racketeering enhancements. The largest single recovery to date is \$10 million.

How It Works

In a typical WCPF situation, a labor broker promises to provide employees to a top-tier contractor. The labor broker gets his certificates of insurance from a probably complicit insurance broker. The labor broker's company is often a shell with no employees, though its insurance application may say it employs three or four. Insurance is obtained based on the alleged number of employees. Then the labor broker places hundreds of employees on the project. The shell company pays the

workers, directing them to check-cashing stores. Those stores often charge a fee to the worker. Large criminal enterprises launder their money through the check-cashing stores. Millions in international wire transfers are made from individual stores. A tool useful but often unavailable to law enforcement for the WCPF problem is regulation of these types of financial institutions.

Why Should Workers' Compensation Attorneys Care About WCPF?

We are citizens sworn to uphold the law. Our licenses depend on honoring our oaths. There are also statutes that require us to report workers' compensation fraud. In some states—California for example—we are expressly required to report premium fraud.

Do we comply with the statute? Will non-compliance come to light? Are there obvious ethical dilemmas? If our client is an insurance company, will we want to advise them that the insured is involved in premium fraud? Can we then leave it to them? Should we? If we are told to leave the issue alone, must we be OK with that directive? What if that directive comes from our own law firm management?

Broad Exposure

WILG, the national group of workers' comp claimants attorneys, is taking notice of WCPF, as are unions, their attorneys, claimants attorneys, defense attorneys, judges, state insurance regulators, prosecutors, legislators, carriers, and business groups.

Huge dollars are involved, and the entire country is affected. WCPF hurts workers and anyone who does not directly benefit from it. We need a well-thought-out, step-by-step plan with respect to the issue. The plan will need to be regularly addressed and updated as the playing field changes in our states and nationally.

My hope is that our committee builds on our conference panel and teleconference. I would like to see two more panels before the end of the year and individual committee members sharing your thoughts with our leaders about any mechanism that would allow us to be the go-to place for comprehensive, current discussion on this important issue. ⚖️