



# 108 Managing Your Company's Workers' Compensation Risk

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## Faculty Biographies

### Mark K. Stephens

Mark K. Stephens is vice president legal services for CNA Insurance in Chicago. Mr. Stephens provides oversight, direction, and strategy for staff and panel counsel representing CNA insured in commercial, risk management, and specialty lines business units. Mr. Stephens provides strategic litigation management direction for staff and panel attorneys nationwide. He balances the legal services between in house staff and outside counsel for cost effectiveness and matching the business needs of CNA. CNA staff counsel has 35 offices in 22 states with 217 lawyers and 178 paralegals and secretaries. The legal services group is also responsible for implementation of the visibility Internet based billing system and centralized bill review for CNA.

Prior to joining CNA, Mr. Stephens was the deputy general counsel for the United States Small Business Administration in Washington, DC where he was the top career attorney overseeing the delivery of all legal services for headquarters and all 69-field offices throughout the country. Mr. Stephens was also in private practice in Washington, DC and in western Pennsylvania.

Mr. Stephens is past chairman of ACC's Insurance Staff Counsel Committee and a member of DRI insurance roundtable steering committee. Mr. Stephens is a frequent lecturer on litigation management topics.

Mr. Stephens received his undergraduate degree from Indiana University of Pennsylvania. He is a graduate of Ohio Northern University law school.

Gerald Strachan  
Managing Attorney  
Ohio Casualty



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## What is your Role as Counsel?

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- **Coordinate with your risk manager and your insurance carrier.**
- **Educate your managers.**
- **Create a culture of safety.**
- **Observe and recognize trends.**
- **Cost savings through fraud prevention.**
- **Be aware of federal and state rules regarding privacy issues (i.e. HIPPA)**



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**Workers Compensation Trends**

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- Injury rates are declining
- Costs are still rising
- The rate of regulatory changes is increasing



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**Cost Drivers**

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- Prescription Drugs
- The Workers Compensation System
- Fraud



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## Managing the Big 3 Hazards

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**Workers' Compensation costs (other than auto accidents) are driven by 3 main hazards:**

1. Manual material handling
2. Walking/working surfaces
3. Machine guarding



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## Managing the Big 3 Hazards *(cont.)*

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**3 money-saving rules of manual material handling:**

1. Keep material up off the floor.
2. Place the material near the work.
3. Let the big man lift.



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**Managing the Big 3 Hazards (cont.)**

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**3 money-saving rules for walking/working surfaces:**

1. Keep the floor clear, clean and in good repair.
2. Guard those stairs and platforms.
3. Fall protection is a must.



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**Managing the Big 3 Hazards (cont.)**

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**3 money-saving rules for machine guarding:**

1. Make sure all danger points are guarded.
2. Ensure all safeguards are in good repair.
3. Upgrade to guard that cannot be "cheated."



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**Safety First**

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- **Written Safety Program**
- **Consequences for breaking rules**
- **Reward positive behavior**



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**Scope of Insurance Fraud**

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- The extent of insurance fraud is difficult to quantify because much of it is undetected.
- Insurance fraud is the second most costly white-collar crime, after tax evasion (National Insurance Crime Bureau).
- Estimated annual cost in excess of:

**\$80 billion**



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**Motivational Factors: Workers' Compensation**

- Greed
- Job Dissatisfaction
- Retaliation
- Laziness
- Layoffs/Closings
- Lack of concern by employer



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**Common Workers Compensation Fraud Schemes**

- Falsified or exaggerated injuries
- Malingering
- Falsified Documents
- Working while collecting benefits
- Professional consultant exaggerations
- Organized rings



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**Falsified Claims**

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- Suspect injury
- Non - work related injuries



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**Falsified Documents**

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- Altered medical bills
- Altered prescriptions
- Altered return to work slips
- Counterfeit documents





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## Workers' Compensation Schemes/Indicators

**Scheme:** Falsified  
/exaggerated claims.

- Completely contrived.
- Injury did not occur at work.

**Indicators:**

- Delayed report of injury.
- Unwitnessed accident.
- Monday/Friday injury.
- Recent hire.
- Layoff, termination, strike.
- Seasonal injury.



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## Workers' Compensation Schemes/Indicators (cont.)

**Scheme:** Falsified documents.

- Medical bills.
- Prescriptions.
- Return to work slips.

**Indicators:**

- Sequential document control numbers over extended time periods.
- 2nd or 3rd generation photocopies.
- Overstrikes, whiteout, differing handwriting styles, alternating type fonts.



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**Workers' Compensation Schemes/Indicators** *(cont.)*

- Scheme:** Working while collecting.
- No notice of return to work.

- Indicators:**
- Claimant never home.
  - Requests for verification of previous employment.
  - Frequent relocations while receiving benefits.
  - Informant information.



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**Workers' Compensation Schemes/Indicators** *(cont.)*

- Scheme:** Provider fraud.
- Services not rendered.
  - Services rendered by unqualified personnel.
  - Improper treatments.

- Indicators:**
- Treatment dates on holidays.
  - Unnecessary hospitalization.
  - Physician has financial interest in re-hab clinic.
  - "Boilerplate" reports.



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### Workers' Compensation Schemes/Indicators (cont.)

**Scheme:** Organized rings.

- Doctors, Lawyers and "Cappers" working in concert.

**Indicators:**

- Claimants "recruited."
- Pattern of "referrals" between Doctors and Lawyers.
- Attorney representation letter same date as day of notice.



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### Be Responsive to Reports of Injuries

Provide Medical Attention As Soon As Possible.

Investigate Accidents:

- Identify and Obtain Statements from Witnesses
- Photograph Accident Location
- Preserve Evidence
- Notify Your Insurer Immediately
- Show Concern for Your Employee
- Explain Benefits

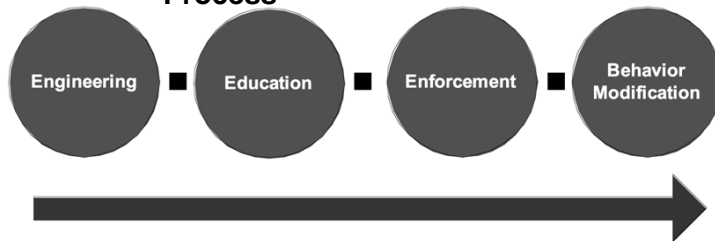


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### Safety Leadership and Costly Cultures

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#### Evolution of the Safety Process



What is the dominant style at your organization?



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### Minimizing Hiring Risks

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**Workers' Compensation risks begin with the hiring process.**

- Are you hiring an individual that will place others at risk?
- Are your employees going to drive the company vehicles safely?
- Are you hiring an individual that will defraud you and the WC system?
- How do you know?



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## Minimizing Hiring Risks

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### **Drug/background screening saves you money.**

- Reduces the risk of accidents caused by substance abuse
- Helps keep violent individuals out of the workplace
- Individuals with histories of WC claims can be identified
- Employers can be held liable for negligent hiring practices
- Better hiring practices increase productivity

## New Employees Get Hurt More Often

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- 33% of injuries occur to new employees
- Effective training to create a culture of safety



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### **Evaluating Claims Programs**

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- Claim denial rate.
- Sustained denial rate.
- Claim cycle time.
- Frequency of reporting and information sharing
- Nurse Case Manager program
- Medical claim review



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### **Tracking & Trending**

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- Both loss control and avoidance require systematic collection and review of detailed data.
- Standardized reporting procedures
- Data collected and shared across departments
- Data review and interpretation (Software Programs)



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## **Preliminary Investigation**

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- Examine scene.
- Document evidence or lack thereof.
- Preserve evidence, photograph.
- Interview injured employee.
- Interview co-workers.
- Determine injury.
- Cold-call contacts of injured.



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## **Reporting Guidelines**

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- Complete reports and promptly report incident.
- Note any red flag indicators.
- Any statements taken should be signed, witnessed and dated.
- Identify specific injuries.
- Advise employer of any new information.



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**Stay In Touch**

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- Hastens return to work.
- Improved attitude upon return.



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**Return To Work Program Elements**

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- Early consistent and sustained follow-up.
- Tailor assistance and case plan to emphasize early return.





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## Recognize Suspicious Claims -

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### *Workers' Compensation Job Aid*

- ▶ Ambiguous Claim
- ▶ Suspicious Time Element
- ▶ Suspicious Nature and Extent of Injury
- ▶ Legal Considerations
- ▶ Intervening Impropriety - Claim Working
- ▶ Suspicious Medical Treatment



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## Recognize Suspicious Claims

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### Suspicious Account of Accident

- No specific date, time and place for injury or claim
- Details of injury are reported on claim are sketchy at best
- Claimant does not promptly report injury to supervisor
- Discrepancies between claimant's Account of injury and medical evaluation
- Discrepancies between claimant's account of injury and witnesses' accounts
- Injury is unwitnessed
- Co-workers share rumors that accident is illegitimate
- Reported accident occurs in an area where claimant does not work
- Claim may be part of a suspicious pattern of claims from the same area or location

### Suspicious Timing of Claim

- Injury is reported as occurring on a Monday or Friday (injury might have occurred away from the workplace or claimant may use claim to extend weekend)
- Claim occurs prior to anticipated layoff, termination, strike or retirement.
- Claim occurs after claimant has been terminated.
- Claim occurs shortly after employee was hired
- Claim occurs after injured worker took unexplained or excessive time off.
- Injury is "seasonal" (before seasonal layoff) or is recurrent (claimant has pattern of reporting an injury before a vacation).
- Claimant is having financial difficulties.
- Claimant has been complaining about his job, supervisor or the company.
- Claimant recently bought at private disability policy.



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## Recognize Suspicious Claims

### Suspicious nature and extent of injury

- Type of injury is unusual in claimant's line of work.
- Injury concerns soft tissues and cannot be objectively verified.
- Discrepancies exist between injury and facts of accident.
- Claimant refuses diagnostic procedures to confirm injury.
- Claimant refuses to cooperate with rehabilitation personnel.
- Claimant refuses to return to work despite doctor's OK to return.
- Claimant files for compensation because of vague complaints of stress.
- Claimant has history of reporting subjective injuries (such as headaches, nausea and sleeplessness).

### Suspicion that employee may be working elsewhere while receiving benefits

- Adjuster has difficulty reaching claimant at home during the day.
- Claimant offers no permanent address or has frequent relocations while receiving benefits.
- Claimant frequently cancels or misses doctor or therapist appointments.
- A potential new employer for claimant calls to verify previous employment.
- Tip has it that claimant is presently employed elsewhere.



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## Recognize Suspicious Claims

### Suspicious Medical Treatment

- Physician has reputation for handling suspicious claims.
- Prolonged or excessive treatment received for minor injury.
- Discrepancies exist between treatment or medication and claimed injury.
- Sketchy details listed on medical bills.
- Medical bills are photocopies, not originals.
- Claimant received unnecessary hospitalization.
- Claimant visits several doctors (possibly in search for a medical opinion that favors the claim).
- Physician directs treatment to occur at a facility where he has had a financial interest.
- Bill lists treatment date that is a holiday.
- Bill is inflated due to "unbundling" - billing for each step of medical procedures.
- Medical report appears exactly the same as other reports from the same physician.
- Insurers for both workers' compensation and group health are billed simultaneously and payment is accepted from both.

### Suspicious Engagement of Legal Assistance

- Your first notice of claim is by an attorney or you learn that the claimant has hired an attorney immediately after filing the claim.
- Attorney lien or representation letter is dated the day of claim.
- Attorney suggests a settlement or buy-out soon after claim is filed.
- Claimant initially shows willingness to settle with insurer but later hires an attorney and files subjective complaint.
- Attorney threatens further legal action if quick settlement is not made.
- Claim involves excessive demands for compensation of a permanent injury.
- Your company experiences a high number of suits from a specific law firm.
- The same combination of attorneys and medical providers are involved in previous claims.



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## Why is the Problem So Large?

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### Public attitudes toward fraud - people are more tolerant of fraud now than in the past:

- The number of Americans who think it's OK to overstate a loss to make up for premiums paid in the past has almost doubled from 19% to 36% in the period 1993 to 1997.
- The number of Americans who think it's OK to pad a claim to make up for a deductible rose from 22% to 40% during the same time period.



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## Top Ten Reasons Why People Commit Insurance Fraud

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1. View insurance fraud as a crime of easy money with little risk of getting caught or of few consequences if they are caught
2. Dissatisfied or disgruntled over disciplinary action, denied time off, lack of promotion, salary/hiring freeze
3. Employee experiencing financial difficulties
4. View insurance fraud as a victimless crime
5. Fear of layoff or downsizing
6. Opportunity to malingering legitimate injury and continue to collect 66 2/3% of salary tax free
7. Feel entitled to commit fraud after paying high premiums or no or few losses for many years
8. Seasonal worker – fear of job ending
9. Opportunity to turn a non-industrial injury into money – greed
10. Retaliation against employer for lack of attention to workplace safety



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## Top Ten Ways to Fight Worker's Compensation Fraud

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1. **Develop a corporate statement for zero tolerance of fraud – fraud awareness campaign – implement fraud hotline for anonymous tips**
2. **Provide a safe workplace – prevention and employee education – prevention costs much less than detecting and investigating**
3. **Respond promptly to employee injuries – implement a workplace response plan and a comprehensive safety program – immediate notification by employee**
4. **Report employee injuries to insurer immediately**
5. **Verify information on employment applications and check references – consider drug testing and criminal background check where legally permissible – verify social security numbers listed on employment application**
6. **Check for red flag indicators when claims are made and notify insurer/Special Investigations Unit of any suspicions claims**
7. **Don't ignore employee complaints and concerns about working conditions. The strongest predictor of fraud is a chronically disgruntled work force.**
8. **Preserve and document evidence and statements of witnesses – obtain photographs of accident locations**
9. **Educate supervisors on worker's compensation issues – how injuries decrease productivity and how costs affect the bottom line – so that they can help with the problem.**
10. **Stay in touch with injured workers and show concern – develop a return to work program**