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COMPLIANCE & ETHICS FORUM FOR LIFE INSURERS

Antifraud: Update on New Strategies to Address Fraudulent Activities

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Presenters

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Indeed – They Are In The Water

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Producer-Sourced Risks

- Rebating/Collusion Schemes
- Abusive Tax Shelters
- Conflicts of Interest
- Worst of the Worst

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Rebating/Collusion Schemes

- Not just a conspiracy theory
- Heaped commissions + big producers + big cases = significant exposure
- By no other name, this is **fraud**
- Detection after the fact vs. prevention
- What are the red flags?
- Relationship tension with Sales & Distribution

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Abusive Tax Shelters

- Programs and promoters
- Producer co-conspirators (both wittingly and unwittingly)
- Complexity, while superficially impressive (i.e. Tax Opinions), is fraught with danger
- So when do tax shelters turn into tax fraud?
- Litigation, losses, and yes…sometimes jail time
- When things go bad, the focus on recovering money often shifts to the insurer
- If it sounds too good…

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Conflicts of Interest

- The “starter drug” for malfeasance and fraud
- The perils of fiduciary duty long preceded DOL Rule
- Be unambiguous in communicating your rules
- Key controls/restrictions:
  - Agent cannot be or become policy owner, beneficiary or collateral assignee w/no insurable interest
  - Agent cannot serve as trustee or hold POA
  - Agent cannot lend money to customer
  - Agent cannot borrow money from customer
  - Agent cannot commingle funds

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Worst Of The Worst

- Personal encounters of the worst kind
- Liars and thieves
- Ponzi schemes
- “Surrogate” insureds
- Fraudulent death claims
- Murder for hire schemes

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“Traveler” Insurance Fraud

- Industry-wide problem (Life, P&C, Health, Auto)
- M.O. – Confusion, Confusion, Confusion.
- Commonly misrepresented matters:
  - Identity (*e.g.*, DOB, SSN)
  - Health/Medical History
  - Employment, Annual Salary, Net Worth
  - Insured’s relationship to owner/beneficiary
- Misrepresentations harder to detect when agent/producer is in on the scheme, or willfully ignorant.

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Contesting After Two Years?

Texas Insurance Code § 705.104

A defense based on a **misrepresentation in the application** for, or in obtaining, a **life insurance policy** on the life of a person in or residing in this **state is not valid or enforceable in a suit brought on the policy on or after the second anniversary of the date of issuance** of the policy if premiums due on the policy during the two years have been paid to and received by the insurer, **unless**:

(1)the insurer has notified the insured of the insurer's intention to rescind the policy because of the misrepresentation; **or**

(2) it is shown at the trial that **the misrepresentation was**:

(A) **material** to the risk; and

(B) **intentionally** made.

Tex. Ins. Code § 705.104 (emphasis added) (effective April 1, 2005)

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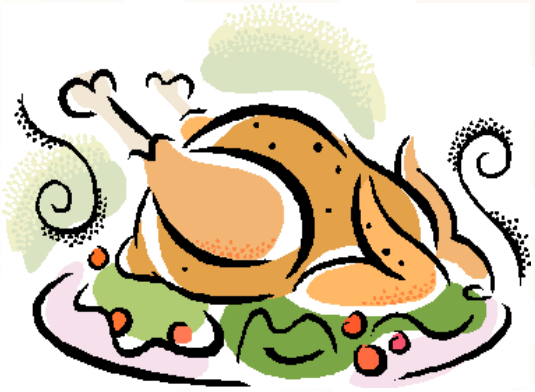
Case Study No. 1 – Anita Fox
The Fraudulent Scheme (Part 1)

Thanksgiving Day 2007

Charles Mercier
(Producer of Record)

Anita Fox
(Insured)



Al Fox
(son)

Virginia Buckland
(daughter)

Mark Buckland
(son-in-law)

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Case Study No. 1 – Anita Fox
The Fraudulent Scheme (Part 1)

- Thanksgiving Day 2007 - Anita Fox applies for two term policies with Athene (same application);
- Athene Application completed in Anita Fox's bedroom; also present in the room:
  - Charles Mercier (producer of record)
  - Virginia Buckland (daughter)
  - Mark Buckland (son-in-law)
  - Al Fox (son)
- Application for Athene Policies:
  - Misrepresented Fox was applying for insurance with other insurers
  - Misrepresented (overstated) Fox's income and net worth
- February 2008 - Financial Questionnaire/Follow Up Application Materials
  - Continued to misrepresentations re: other insurance/net worth

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Case Study No. 1 – Anita Fox
The Fraudulent Scheme (Part 1)

- Spring 2008 – Five term life insurance policies issued on the life of Anita Fox:
  - Three different insurers
  - Same producer of record for all policies
  - $5M in total coverage
- The Athene Policies (2): $1M and $500K
  - Owner: Anita Fox
  - Beneficiaries: All my children
- Summer 2008 – Anita Fox designates Mark Buckland (son-in-law) as sole Owner of both Athene Policies.
- From 2008 – 2013:
  - Numerous beneficiary changes to Athene Policies (from “all children” to Mark Buckland, Al Fox, Virginia Buckland, and/or Anita Fox’s Church)

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Case Study No. 1 – Anita Fox
The Fraudulent Scheme (Part 2)

- Spring 2013 – Anita Fox and/or the Bucklands approach Charles Mercier about converting the term policies to UL
- Mercier recruits "straw agent" for term conversion paperwork on the Athene Policies:
  - Unclear whether Anita Fox's signature was forged on conversion paperwork
  - Bryan never met Anita Fox or the Bucklands
- Athene Policies converted to UL pursuant to their terms (*i.e.* w/o evidence of insurability).
  - BUT…conversions result in large increase in premiums.
- Summer 2013 - Anita Fox and/or the Bucklands decide they want to "sell" the $1M Athene Policy (purportedly for $50,000).
  - Mercier says he will see what he can do…

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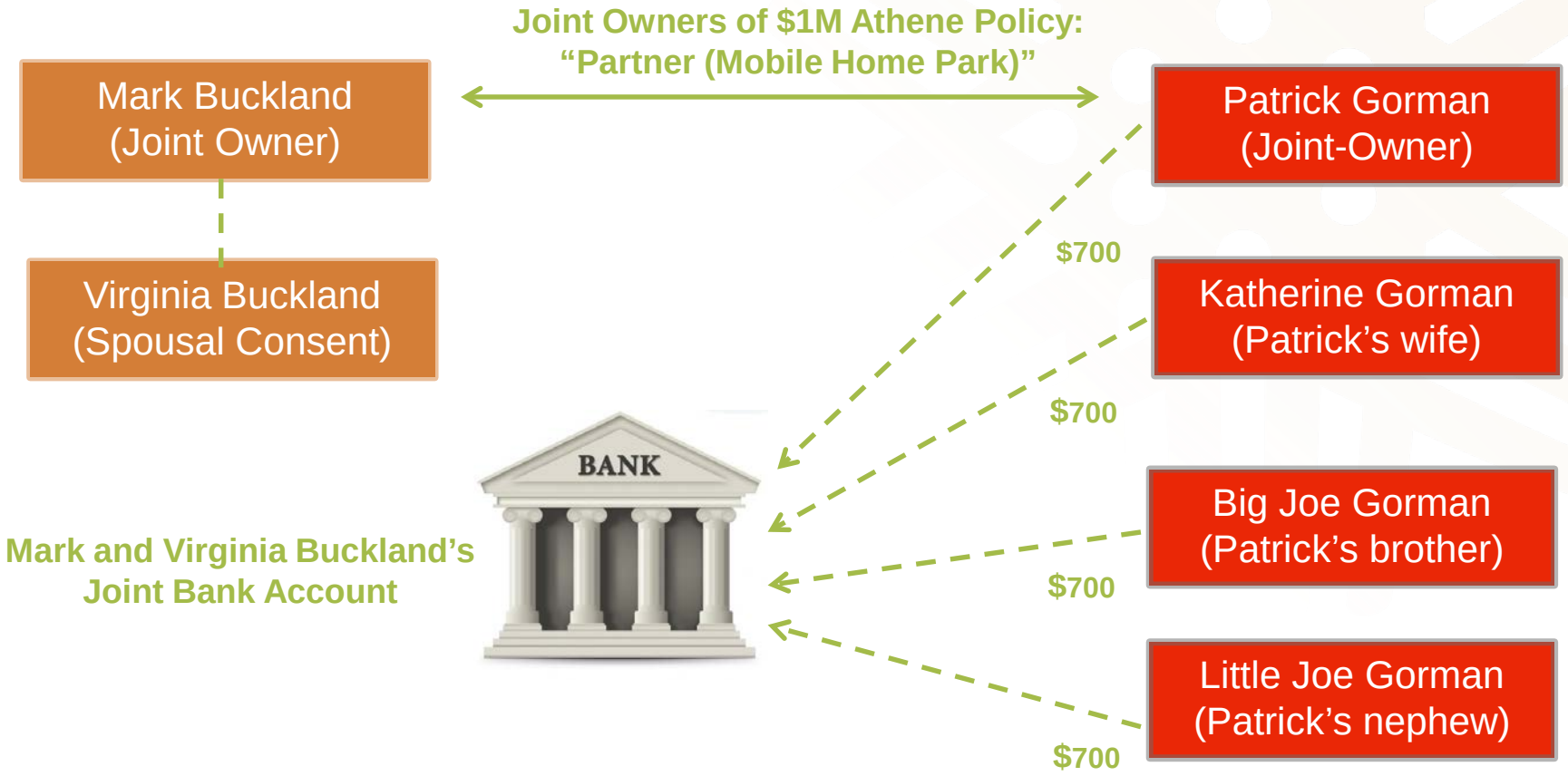
Case Study No. 1 – Anita Fox
The Fraudulent Scheme (Part 2)



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Case Study No. 1 – Anita Fox

The Fallout

- Over the next year, the Gormans deposited $2400/month ($700 each) into the Bucklands' joint checking account.
- But Big Joe Gorman was having trouble maintaining his end of the payment. He kept contacting Mercier wanting to know how long Anita Fox was going to live:

Detective: "Was there a time when those conversations seemed to get a little more, um, for lack of a better word, intense, inquisitive on his part to you about her?"

Mercier: "Yes. He would call up and he says 'Hey man, where is she living?' I said 'Joe, I got no idea. She lives in Fort Worth and from what I hear I think she's living in Al's trailer park.'"

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Case Study No. 1 – Anita Fox

The Fallout

- September 23, 2014 – Anita Fox is found slain inside home she was hired to clean in Colleyville, Texas

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Case Study No. 1 – Anita Fox
The Fallout

Patrick Gorman

"Big Joe" Gorman

"Little Joe" Gorman

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Case Study No. 1 – Anita Fox
The Fallout

February 2015 - “Little Joe” Gorman indicted on capital murder charges

January 2016 – “Little Joe” Gorman agrees to plea deal (conspiracy to commit murder)

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Case Study No. 1 – Anita Fox
The Fallout

Ongoing Police/FBI Investigation (Murder and Insurance Fraud)

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Life Insurance Fraud

Batting .300

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Other Fraudulent Schemes

Insured's Identity &"Clean Sheeting"

- Savvy agents know what underwriting is looking for!
- Common scheme (high volume, low profile):
  - Applicant submits applications to multiple insurance companies
  - Seeks relatively low face amounts of insurance with each insurer ($150K or less);
  - "Clean sheet" applicant's health history to avoid internal guidelines that require follow-up inquiry for "yes" answers;
  - Applicant's name, DOB, and/or SSN are misrepresented to increase difficulty of confirming information via normal underwriting channels (*e.g.*, Script Check, MIB, etc.)
- If 3 out of 10 applications pass underwriting without detection = .300 batting average

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Case Study No. 2 – Danny Marks

Misrepresentations Identified in Danny Marks Application During Claim Review/Discovery

- SSN
- DOB
- State of Birth
- Annual Salary and Net Worth
- Employer/Employment Status
- DL Number/State
- Marital Status
- Medical History (clean sheet)
- Parents/Siblings Medical History
- Prior tobacco use
- Beneficiary's relationship to insured (sister/half-sister)

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Case Study No. 2 – Danny Marks

ScriptCheck Results Based on Incorrect SSN/DOB Combination

SCRIPTCHECK, POWERED BY INGENIX MEDPOINT
DATE REPORTED: 2008-03-07 DOB/SEX/STATE: 1952-04-05, M, TX
Name: MARKS, DANNY L INS TYPE/AMT: LI/0
SOC SEC NO: 638283010 ACCOUNT CODE: EG

INDEPENDENT ORDER OF FORESTERS TICKET NUMBER: 99044590
789 DON MILLS ROAD
DON MILLS, ON M3C 1-T9
ATTN: LESLIE FRADE
INSURANCE KEY 4702439 REQUESTOR: VAL

APPLICANT NOT FOUND.

END OF REPORT

- Using the insured's actual SSN/DOB discovered during claim review/discovery, Script Check disclosed significant medical history, both before and after policy issued, not disclosed on application.

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Materiality of an Applicant's SSN

Garcia v. American United Life Insuance Company
2009 WL 6327459 (E.D. Tex. 2009)

The Court disagrees and finds [the insured's] provision of a false SSN materially affected American's risk. First, as urged by American, **insurers have the discretion to determine what catalog of information they consider as relevant to underwriting considerations** and obtain such information, in part, directly from the applicant. **An applicant's SSN is a vital piece of information pertinent to the insurer's accurate identification of the person seeking to be insured. Without accurate information, an insurer has no way of verifying the proposed insured's identification and, thus, no way of accurately assessing the underwriting risk**. As noted in its denial correspondence, had American been aware of the true identity of [the insured], he would not have been offered an application for coverage under the policy. As such, the information provided by [the insured] was material to American's risk.

Garcia v. Am. United Life Ins. Co., No. 5:07CV63, 2009 WL 6327459, at *20 (E.D. Tex. Dec. 9, 2009), *report and recommendation adopted*, No. 5:07-CV-63, 2010 WL 1379106 (E.D. Tex. Mar. 31, 2010), *aff'd*, 422 F. App'x 306 (5th Cir. 2011).

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Lessons Learned

- Implement rigorous internal guidelines/procedures for agents to follow for purposes of verifying insured's identity at time of application.
- Script Check/MIB – explore partial "hits" on search results (*e.g.*, all inputs match except applicant's state of birth, etc.)
- Red Flags:
  - Medical history - "clean sheeting"
  - "No applicant found" (especially for older applicants)

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Questions?

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