

**Anti-Money Laundering Fundamentals and Flashpoints**  
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Stefan D. Cassella  
Asset Forfeiture Law, LLC  
[www.AssetForfeitureLaw.us](http://www.AssetForfeitureLaw.us)

**INTRODUCTION**

I have been investigating and prosecuting money laundering cases for over 30 years – virtually from the inception of the money laundering statutes in the United States in 1986

- many of my cases involved laundering money through financial institutions, such as banks, and some involved the prosecution of banks and bankers, such as the BCCI case in the 1990s

I retired from the U.S. Department of Justice in 2015 and am now a consultant, assisting law enforcement agencies in the US and around the world in prosecuting money laundering cases and in training their agents and prosecutors

- I also advise banks and other financial institutions in how to maintain anti-money laundering (AML) compliance programs and to avoid being sanctioned for failing to detect money laundering activity, or worse, for becoming complicit in that activity

What I want to talk about today is the intersection of money laundering and the insurance industry

Money laundering cases cover a wide spectrum of illegal conduct

- the cases involve fraud, drug trafficking, public corruption, terrorist financing, human trafficking and hundreds of other crimes
- the money launderers also have a variety of objectives, to include concealing or disguising criminal proceeds, using those proceeds to commit other crimes, or simply spending the money

Finally, money launderers do not have just one way of laundering money

- they use a vast array of methods

- They may use banks, other financial institutions such as money transmitting businesses, casinos, retail businesses, or any other entity through which money flows as the vehicle for their money laundering activity
- And they may use any kind of property, tangible or intangible, as the vessel into which to pour criminal proceeds and extract them when the time comes to do so
- That includes real property, monetary instruments, personal property, investment instruments, electronic funds (like bitcoins), and any other thing of value that might serve as the permanent or temporary repository of illegally-derived funds

It should come as no surprise that some of the ways in which money is laundered involve the insurance industry, and that insurance products can serve as the vessels into which criminal proceeds are poured.

What I'd like to do is first give you a sense of the variety of ways in which insurance companies and insurance products turn up in money laundering investigations and prosecutions,

- and then talk about the particular vulnerabilities of the insurance industry to be used – in ways banks have been used – to launder criminal proceeds
- and consequently the need for insurance companies to maintain robust AML compliance programs if for no other reason than to avoid being sanctioned by Government regulators for failing to prevent their business from being used – wittingly or unwittingly – by criminals, terrorists, corrupt public officials and rogue governments.

## **INTERSECTION OF MONEY LAUNDERING AND THE INSURANCE INDUSTRY**

So how do insurance companies and insurance products turn up in money laundering cases.

- Let me count the ways

### **1. Laundering proceeds of insurance fraud**

The first and most common way in which insurance companies come to be involved in money laundering cases is as the victim of a fraud, the proceeds of which are being laundered

- That is, someone defrauds the insurance company by making a false claim, staging an accident, billing for services not rendered, committing arson, or whatever
- and then launders the proceeds of that fraud *outside of the insurance industry* in a way that makes it difficult for the victim or the Government to find or recover the money

For example:

In, the *United States v. Vico*, the defendants established a rehabilitation clinic for the purpose defrauding auto insurance companies by submitting false claims for “staged” accidents

- then they laundered the fraud proceeds by using the money to buy real estate in West Palm Beach, Florida

- *United States v. Vico*, 2016 WL 233407 (S.D. Fla. Jan. 20, 2016)

In another case, the Defendant used the proceeds of a fraudulent insurance claim (arising out of the BP Oil Spill) to pay off the lien on a car, and then laundered the money by using the car as the collateral for a new loan.

- *United States v. One 2003 Ford Mustang*, 2013 WL 3833030 (S.D. Ala. July 23, 2013)

In a third case, a medical doctor defrauded a health insurance company by submitting claims for services never performed,

- and laundered the proceeds by having the insurer send his payments to a shell corporation in Texas that transferred the money first to New York and then to the Cayman Islands, an off-shore bank secrecy jurisdiction in the Caribbean, where the Defendant could take control of it

- *United States v. Bieganowski*, 313 F.3d 264 (5th Cir. 2002)

There are many similar examples

- Notice in these cases, the insurance company is simply the victim of the underlying fraud
- Neither it nor its products are used to commit the money laundering offense
- but the money laundering has the effect of concealing the proceeds of the fraud so that its harder for the victim – the insurance company – to recover the money

A more sophisticated example of this, involving an insider in the insurance industry, comes from the very recent case of *United States v. Carpenter*.

- in that case, a lawyer and licensed insurance agent defrauded insurance companies by causing them to issue “stranger-originated life insurance” by making misrepresentations regarding the nature of the buyer and the intent to resell the policy
- he was convicted of money laundering when he used the proceeds of the death benefits to repay loans so that the lender would fund additional premiums to keep the scheme going (“promotion money laundering”)
- and when he used other proceeds to buy a multi-million dollar piece of real estate
  - *United States v. Carpenter*, \_\_\_ F. Supp.3d \_\_\_, 2016 WL 3351906 (D. Conn. June 6, 2016);

## **2. Laundering the proceeds of fraud against an insurance beneficiary**

A variation on this theme involves fraud not against the insurance company itself, but against the beneficiary of an insurance product

For example, in *United States v. Deason*, the defendant was a financial planner who defrauded his widowed client of her \$1 million life insurance settlement

- and laundered the money by purchasing cashier’s checks at a bank
- remember, just converting the criminal proceeds to another form can be money laundering
  - *United States v. Deason*, 622 Fed. Appx. 350 (5<sup>th</sup> Cir. 2015)

### 3. “Insurance settlements” as an explanation for cash

Insurance settlements come up in many cases

- In *Deason*, the money being laundered came from an insurance settlement paid to a beneficiary who was defrauded

In other cases – and there are a great many of these – the defendant uses an insurance settlement to explain his possession of a large sum of money that he is attempting to hide from the Government

- the money is almost always cash wrapped in bundles of rubber bands – usually under the seat or in the boot of a car
- Rather than admit that the money came from drug trafficking or another crime, he says that it is “from an insurance settlement”

For example, in one case, a police officer stopped a person for a traffic violation and found \$10,000 wrapped in rubber bands in a plastic bag and a loaded gun under the carpet in the boot of his vehicle

- The driver had no job, but he explained that he had an insurance settlement a year earlier, and had carried the proceeds with him since that time
- The court was not convinced
  - *United States v. \$14,066.00 in U.S. Currency*, 2010 WL 4823375 (M.D. Ga. Nov. 22, 2010)

Virtually the same thing happened in another case

Again, a police officer made a traffic stop and found \$31,000 in bundles wrapped in rubber bands in the car

- The driver said it was a gift from his girlfriend who got it in an insurance settlement
- Evidence obtained from the insurance company, however, showed that the girlfriend deposited her insurance check into a bank account and did not withdraw it as cash until *after* the policeman found the cash in the car

- *United States v. \$31,000 in U.S. Currency*, 2012 WL 5343350 (E.D. Mich. Oct. 29, 2012).

One of my favorite variations on this theme is this third case where a drug dealer's husband goes to bail her out of jail after she's arrested by paying \$11,500 all in \$100 bills.

- he said the money really belonged to his wife who obtained it – you guessed it – from an insurance settlement two years earlier
- Where had the money been all this time? Under the carpet in their house or in the boot of her car
- The court found that that explanation was “implausible”

- *United States v. \$11,500 in U.S. Currency*, 797 F. Supp.2d 1092 (D. Or. 2011).

What is the point of these cases?

First, that criminals who are laundering or concealing criminal proceeds will claim that the money came from an insurance settlement to make it appear that the money had a legitimate source

- It is important that the insurance companies have records to show whether any such settlement was actually paid, and if so, when it was paid and in what form

Second, an extraordinarily high percentage of criminals (and their wives and girlfriends) actually have received insurance settlements

- seemingly out of proportion to the rest of the population
- The insurance industry might want to look into why that is

#### 4. **Buying an insurance product**

Let me turn to some of the cases that actually involve the use of an insurance product to launder money

It is not unusual for a criminal to use his criminal proceeds to pay the premiums on an insurance policy, either as investment vehicle or simply to obtain insurance

In *United States v. Dileo*, for example, the defendants were medical doctors who illegally distributed narcotic pain killers from their clinic

- then they used the illegally-obtained drug proceeds to pay the premiums on their malpractice insurance,
- which was a money laundering offense because the insurance, and hence the premium payments, were necessary to keep the scheme going

- *United States v. Dileo*, 625 Fed. Appx. 464 (11<sup>th</sup> Cir. 2015)

Note: If the insurance company or its employees *knew* that the premium was being paid with criminal proceeds, they would be just as guilty of money laundering as the criminal himself.

- *United States v. Johnson*, 971 F.2d 562, 568 (10th Cir. 1992) (18 U.S.C. § 1957 criminalizes the actions of third parties who have aided drug dealers by knowingly allowing them to dispose of drug proceeds in a commercial transaction);

In another case the defendant used the money obtained from employing undocumented workers to buy a life insurance policy

- again, simply spending the money can be a money laundering offense

- *United States v. \$256,245.97 in Proceeds from Universal Life Ins. Policy*, 691 F. Supp. 2d 932 (N.D. Iowa 2010)

In that case and in others like it, the defendant was simply using criminal proceeds to buy an insurance product for the same reasons one might buy any commodity

- not to conceal or disguise the money, but because the product was something he wanted to have

In other cases, however, the defendant did purchase the insurance product as part of a plan to conceal or disguise his criminal proceeds

For example, in *United States v. Parenteau*, the defendant perpetrated a multi-million-dollar bank fraud scheme and used the proceeds to purchase insurance policies with a combined value of \$23 million

- the court found that the policies facilitated the money laundering offense in three ways.
- First, Defendant paid the premiums by commingling fraud proceeds with legitimate funds, thus concealing the fraud proceeds
- Second, Defendant used the policies to borrow more money, which he used to make it appear that he had sufficient assets to qualify for still more loans.
- Third, the defendant assigned two of the policies to his stepson in an effect to shield them from the Government
  - *United States v. Parenteau*, \_\_\_ F. Supp.2d \_\_\_, 2011 WL 3701916 (S.D. Ohio Aug. 19, 2011);
  - *United States v. Parenteau*, \_\_\_ Fed. Appx. \_\_\_, 2016 WL 2620475 (6<sup>th</sup> Cir. May 9, 2016).

The most famous – or infamous – example of using insurance products to conceal or disguise criminal proceeds is probably the Isle of Man case from back in 2002

- Which I will talk about in a moment

## 5. Insurance Company Commits the Offense

But first, I must say that the most egregious cases involving insurance companies and money laundering that we have seen so far are those in which the company or its employees actually commit the money laundering offense

In *United States v. Cohen*, the defendant was the owner of several insurance companies that were under investigation by the state insurance regulator

- The allegation that the regulator was looking into was that the companies did not have assets sufficient to pay claims
- The defendant skimmed money out of the companies, lied to the regulators about doing so, and laundered the money
  - *United States v. Cohen*, 2015 WL 2261661 (D. Md. May 7, 2015)

In another case, *United States v. Olive*, the defendant used insurance agents to induce annuitants to purchase fraudulent investment contracts

- and committed a money laundering offense when he used the fraud proceeds to pay commissions to the insurance agents.

- *United States v. Olive*, 804 F.3d 747 (6<sup>th</sup> Cir. 2015)

Finally, in another case, the defendant owned a company that provided payroll services to employers, such as collecting payroll taxes and forwarding the money to the IRS the Government's revenue authority

- He also represented that he would obtain workman's compensation insurance for his clients' employees, but he never did
- Instead he used the money that he took the premiums that he collected – which were now fraud proceeds – and laundered them through other insurance companies that he owned
- You'll notice that this case is styled as a civil forfeiture action, not a criminal prosecution of the defendant
- That's because the defendant committed suicide two days before his criminal trial was to begin, and the Government needed to bring a civil forfeiture action to recover the proceeds – which totaled \$15 million – for the victims

- *United States v. \$7,599,358.09 in U.S. Currency*, 953 F. Supp.2d 549 (D.N.J. 2013)

## Summary

These are all actual cases prosecuted in the United States

What they all have in common is that they are money laundering cases involving insurance companies and/or insurance products

As we've seen, insurance can be involved in money laundering in a great variety of ways:

- Someone who commits fraud against an insurance company can launder the fraud proceeds, making it harder for the company to recover its loss
- Someone can defraud the beneficiary of an insurance policy and launder the proceeds of that offense
- Someone who is laundering or concealing the proceeds of another crime, like drug trafficking, can claim that the money is actually the proceeds of

an insurance settlement, forcing the Government to go to the insurance company for records of when such a settlement was paid

- Someone can launder the proceeds of his crime – whether it be drug trafficking, fraud, or anything else – by buying an insurance product, like malpractice insurance or life insurance, and can then multiply the effect of his crime by using that product as collateral for a loan
- And finally, as we just saw in the last few cases, someone employed in the insurance industry itself can commit fraud and use the insurance company that he controls to launder the proceeds of that offense

All of this is serious, and demands the attention of law enforcement, insurance regulators and the insurance industry

- but the fear is that this is but the tip of the iceberg
- that if all of this is happening in cases where someone has been caught, it is likely that other persons are using the insurance industry and insurance products to launder criminal proceeds in far more sophisticated ways
- and it is that fear that led to the promulgation of regulations requiring the insurance industry to adopt robust AML policies akin to those adopted by the banking industry to make it more difficult for professional money launderers to use insurance products to conceal, disguise and enjoy the proceeds of crime

So let me talk now about what some of those ways might be, why the insurance industry is at risk, and why it needs to maintain an AML compliance program as robust as the programs that the banking industry has determined must be maintained.

## **RISKS TO THE INSURANCE INDUSTRY**

The case that in many ways served as a wake-up call to the insurance industry, the regulators, and law enforcement was the Isle of Man case, aka Operation Capstone

### **Operation Capstone**

In 2002, law enforcement in the United States discovered that brokers working for the Cali drug cartel in Mexico had invested \$80 million in drug proceeds in life insurance policies in the Isle of Man

- there were some 250 different investment-grade policies involved, some of which were valued at as much as \$1.9 million
- the money came from street sales of cocaine in the US and was sent to the Isle of Man through checks, money orders and wire transfers to pay for the policies

The laundering of the money then worked like this:

- the policy holders would prematurely cash out the policies, paying a 25 percent penalty for doing so
- and directed the insurance companies to deposit the proceeds into a bank account opened by a shell company that the drug traffickers controlled

In that way, the drug traffickers turned “street money” from drug sales into seemingly legitimate investments,

- paid a penalty as a “cost of doing business” when they cashed out the investments prematurely,
- and ended up with money from a legitimate business deposited into a bank account that they controlled but with which they could not be identified

### **Jaime Eduardo Rey Albornoz**

It’s worth noting that the person who set all of this up on behalf of the drug dealers was not a drug dealer himself, but was someone intimately familiar with the insurance industry

- in fact, while he was doing all of this he was organizing international conferences on money laundering for insurance companies – just like this one -- around the world
- “The Enemy Within”

In the aftermath of the Isle of Man case and others, the insurance industry and law enforcement got together to identify the vulnerabilities to which the industry was exposed, and the typologies – the methods – that money launderers might use to launder money through the industry

This is an abbreviated list of what they identified:

### **Vulnerabilities**

Insurance companies are vulnerable to money laundering for a number of reasons that are common to other parts of the financial sector,

- Like banks and other financial institutions, insurance companies issue products, like permanent life policies and annuity contracts -- that have cash value

but there are that two vulnerabilities that stand out:

- Its products are distributed through brokers and other intermediaries who are not always affiliated with or under the control of the company, and may not be adequately trained or invested in complying with AML policies
- The beneficiary of the insurance policy is often different from the policyholder, making it difficult to determine when and for whom to exercise due diligence

## Typologies

The industry and law enforcement have also identified the methods – or typologies – that are most popular with money launderers who are trying to use the particular characteristics of these products to launder money

- Buying a single premium life insurance policy with money from a bank account and seeking a refund of premium after a cooling off period, or after “accidentally” overpaying, with the refund credited to a different account
- Surrendering a policy and paying the early surrender penalty (as in the *Isle of Man* case)
- Policyholder buys policy in his own name and transfer the policy to a third party (as in the *Parenteau* case) or changes the beneficiary
- Using a single premium policy as the basis for a policy loan that is never repaid

Outside the context of life insurance:

- Paying a high premium for casualty insurance for “phantom” property and making small claims (less than the premiums) to effectively convert most of the premium into a settlement check

- Buying a legitimate claim from a third party for more than the claim is worth, thus creating a legitimate source for the income when the settlement check arrives

## **CONCLUSION**

So what can we learn from all of this about the elements of an effective AML program

- The insurance industry is as vulnerable to money laundering as the banking industry; it needs an equally robust AML program
- The elements of that program include the obvious, such as Know Your Customer (including the beneficiaries or assignees of a policy)
- But the program should also include things that correspond directly to the vulnerabilities and typologies that we have identified, such as
  1. Establish that there is a legitimate reason for a policy purchase or policy transaction: why is the customer cancelling a policy so soon after purchase or willing to incur a significant penalty or loss
  2. Confirm the source of the payment and the reason why any payout or refund is going to a different location
  3. Question the use of a recently-acquired policy as collateral for a policy loan that may not be repaid
  4. Be aware that the insurance company may not just be the vehicle for money laundering, but may be the victim whose money is being laundered
  5. Be wary of The Enemy Within