Insurance Call Centers and Fraud Investigation: What Role Can Customer Service Tapes Serve in Fraud Prosecution?

by Dan Eidsmoe, CPCU

Abstract

For economic and efficiency reasons insurance companies are increasingly evolving toward centralized claims and customer service operations. And for a multitude of reasons, fighting insurance fraud is a constant concern and challenge for insurance companies. For training and monitoring purposes, many carriers legally tape record at least a portion of these common telephone transactions. Surprisingly, these recordings are not necessarily discoverable or admissible as evidence while investigating or prosecuting fraud cases.

The Growth of Centralized Insurance Operations

Like it or not, customer service at most financial services companies, including insurers, is moving away from face-to-face client interaction. Instead, insurers are migrating toward centralized call and claims processing centers for a myriad of functions that were once accomplished by agents, agent assistants, adjusters, and underwriters in an effort to better meet their customers' needs. According to market researchers, the number of call centers (for all businesses) in the United States will reach 78,000 this year. The amount of money spent by all U.S. businesses on call centers has risen from $7 billion in 1998 to $18 billion in 2002.[1]

The efficiency of centralizing these services is clearly justified. Most insurance company transactions do not require the expertise of an agent, adjuster, or underwriter. By centralizing and streamlining the more routine and some administrative tasks and directing them to service centers, those individuals in the higher profile jobs have more time to spend on the higher-value customer service tasks of production, loss adjustment, and risk analysis. The routine tasks such as policy changes and loss reporting are sent to the call centers where the transaction costs are lower due to automation, repetition, and generally lower salaries.

For example, in 1999 SAFECO Insurance Companies announced the closing of its 29 regional call centers in favor of four national ones. At the time, a spokeswoman for the company estimated that the consolidation would reduce its average cost of service per call from $10 to $6.[2]

In addition, based upon marketing research, many insurance carriers have concluded that today's consumers expect 24-hour service via telephone or Internet. In the fall of 1999, Allstate announced the investment of more than $1 billion in its "Customer Information Centers," a high-tech combination of call centers and Internet access.

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According to Allstate, the cost was justified by the fact that: "People's needs, wants, and desires are changing." Allstate management explained that its customers might want to add a car to their policy, get a quote, or report a claim in the middle of the night. "What we accept is Allstate's responsibility to be able to give them that access, however they want it, whenever they want it."[3]

Speedy and Efficient Customer Service: Friends of Fraudsters

It seems that centralization of routine customer service tasks would be good for everyone: good for the insurer because of increased efficiency and decreased costs; good for the agent and home office employees who have more time to spend on the more complex tasks at hand; and good for consumers who want service when it's convenient for them. Unfortunately, call centers and loss reporting units are most likely ***not*** a good thing for fraud prevention, detection, and investigation.

Although speed, efficiency, and the lack of face-to-face interaction on routine tasks are seen as good things from the perspective of busy consumers and cost-conscious insurance company management anxious to embrace any efforts to lower expenses and improve customer service, those factors are also the most significant attributes sought by those individuals seeking the opportunity to perpetrate insurance fraud. "Fraudsters" want quick, painless, and faceless claim transactions. The quicker the claim is resolved in their favor, the less chance they have of being caught.[4]

Consider, for example, the confessions of David Ballog Jr., who in 1993 pled guilty to one felony of insurance fraud despite more than 20 years of fraudulent claim-making activity. Known as Chicago's "king" of slip-and-falls, Ballog estimated that he bilked insurance companies for at least $4 million in various "accidents" over the years leading up to his arrest. Part of Ballog's plea agreement included a requirement that he speak to insurance adjusters and investigators about the tactics that he used.[5]

Ballog stated that he went out of his way to avoid personal contact with adjusters. He also looked for claims situations that would lead to speedy settlements. During Ballog's presentations he boasted of his ability to "charm and cajole" quick settlements from insurers over the phone. According to an article in *Chicago Tribune Magazine*, "[Ballog] was deadliest on the phone. . . . A self-styled hit-and-run scam artist, Ballog wrapped up negotiations quickly, grabbed as much money as possible, and took off after the next victim."[6]

Although all forms of insurance transactions completed over the telephone are subject to the threats of fraud,[7] one of the most susceptible is the claims Loss Reporting Unit (LRU). A fraudulent initial report of loss is generally viewed as one of the most critical pieces of evidence in a criminal or civil insurance fraud prosecution.[8] In addition to being the initial lie in a series of potential untruths, an insured's or claimant's initial oral statements and allegations made and recorded on the initial loss notice by call center representatives are typically less rehearsed or polished than versions presented in response to closer scrutiny. Many customer call centers legally tape record conservations.[9]

Eavesdropping and Wiretapping Laws

Typically, a basic assumption would be that businesses that routinely tape call-center communications would and should bend over backwards to assist law enforcement interested in prosecuting fraud initially perpetrated via a call-center communication. Shockingly, at least one state has a law that makes these legally tape-recorded conversations off limits to investigators in criminal or civil fraud prosecutions. Illinois makes it a crime to release contents of these tapes to police authorities or fraud investigators.[10]

Because the legal issues associated with tape recording conversations are complex,[11] it is wise to consult with counsel before responding to subpoenas directed toward call-center records. The state laws, commonly known as "eavesdropping" or "wiretapping" statutes, basically fall into one of two categories (see Table 1). Most states (38 plus Washington, DC) allow an individual to record his or her conversation without informing the other party. These states are known as the "one-party consent" states.[12] The other 12 states generally require that all parties must consent to the taping of the conversation.

Table 1
Recording of Telephone Conversations: Laws by State*

State	Is consent of all parties required to record?	Can the conversation be taped by a person involved in the conversation?	Can the conversation be taped by others not involved in the conversation?	Statute
Alabama	No	Yes	Yes, with one party's consent.	13A-11-30(1)
Alaska	No	Yes	Yes, with one party's consent.	42.20.300; 42.20.310; and 14,22 of the state constitution, article 1
Arizona	No	Yes	Yes, with one party's consent.	13-3005
Arkansas	No	Yes	Yes, with one party's consent.	5-60-120
California	Yes	No	No	632
Colorado	No	Yes	Yes, with one party's consent.	18-9-303 to 18-9-305
Connecticut	Yes	No	No	52-570d and 53a-187
Delaware	Yes	?	No	11 1335 and 11 2402 c (4)
District of Columbia	No	Yes	Yes, with one party's consent.	23-542
Florida	Yes	No	No	934.03
Georgia	No	Yes	Yes, with one party's consent.	16-11-62 and 16-11-66
Hawaii	No	Yes	Yes, with one party's consent.	803-42(b)(3) and 711-1111(1)(d)
Idaho	No	?	Yes, with one party's consent.	18-6702
Illinois	Yes	No	No	720 ILCS 5/14-2
Indiana	No	?	Yes, with one party's consent.	35-33.5-1-5
Iowa	No	Yes	Yes, with one party's consent.	727.8 and 808B.2
Kansas	No	Yes	Yes, with one party's consent.	21-4002
Kentucky	No	?	Yes, with one party's consent.	526.010
Louisiana	No	Yes	Yes	15:1303
Maine	No	Yes	Yes	15 709
Maryland	Yes	No	No	10-402

*Information for this chart was compiled from various sources including the National Association of Independent Insurers and the Reporters Committee for Freedom of the Press.

Table 1 ***(continued)***
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Massachusetts	Yes	No	No	272 99
Michigan	Yes	No	No	MCL 750.539c and MSA 28.807(3)
Minnesota	No	Yes	Yes, with one party's consent.	626A.02
Mississippi	No	Yes	Yes, with one party's consent.	41-29-531
Missouri	No	Yes	Yes, with one party's consent.	542.402
Montana	Yes	No	No	45-8-213
Nebraska	No	Yes	Yes	86-702
Nevada	No	?	Yes, with one party's consent.	200.620
New Hampshire	Yes	No	No	570-A:2 644:9
New Jersey	No	Yes	Yes, with one party's consent.	2A:156A-4
New Mexico	No	Yes	Yes	30-12-1
New York	No	Yes	Yes, with one party's consent.	400 and 250
North Carolina	No	?	Yes, with one party's consent.	15A-287(1)
North Dakota	No	Yes	Yes, with one party's consent.	12.1-15-02
Ohio	No	Yes	Yes, with one party's consent.	2933.52
Oklahoma	No	Yes	Yes, with one party's consent.	13 176.4
Oregon	No	Yes	Yes, with one party's consent.	165.540
Pennsylvania	Yes	No	No	18 5704
Rhode Island	No	Yes	Yes, with one party's consent.	11-3521
South Carolina	No	Yes	Yes, with one party's consent.	17-29-20
South Dakota	No	Yes	Yes, with one party's consent.	23A-35A-20
Tennessee	No	Yes	Yes, with one party's consent.	39-13-601
Texas	No	Yes	Yes, with one party's consent.	4 16.02; 18:20
Utah	No	?	Yes, with one party's consent.	76-9-401
Vermont	No	?	Yes	No state statute; look to federal law.
Virginia	No	Yes	Yes, with one party's consent.	19.2-62
Washington	Yes	No	No	9.73.030
West Virginia	No	Yes	Yes, with one party's consent.	62-1D-3
Wisconsin	No	Yes	Yes, with one party's consent.	968.31
Wyoming	No	Yes	Yes, with one party's consent.	7-3-702 and 7-3-602

*Information for this chart was compiled from various sources including the National Association of Independent Insurers and the Reporters Committee for Freedom of the Press.

With the law varied by geographic boundaries, how can national call centers continue to tape record conversations? Federal law contains exceptions that allow taping under certain circumstances. Generally, consent for taping of conversations can be granted orally or in writing, or if the parties are advised that their conversation may be recorded.

You have heard these prerecorded messages before: *"This call may be recorded for training or quality assurance purposes."* These warnings are generally accepted by the public and in all likelihood are sufficient to avoid civil or criminal liability for businesses that employ the warning.[13]

As with most laws, the wiretapping exception for business creates financial opportunities for others. Most service industries own devices to record customer calls.[14] So-called "voice loggers" are utilized by businesses as diverse as stockbrokers and public utilities. In addition to the stated purposes of training employees and quality assurance, some businesses use the recordings to preserve a historical record of telephone transactions and resolve, "he said, she said disputes."[15]

Insurance companies have more than their share of customer disputes, although one company's dispute is another company's "training opportunity." Insurers can legally use these tapes for many valuable purposes. Unfortunately, fraud prosecution may not be one of them.

The Illinois Challenge

Illinois, viewed by many in the insurance industry as a pro-insurance jurisdiction,[16] has created a mind-boggling exception to its eavesdropping law that could thwart insurance fraud prosecution efforts.

Illinois is one of the 12 states that require all parties to consent to the taping of a conversation. The law contains a "business telephone" exemption, prohibiting the monitoring of conversations unless the recording is for quality control or training of telephone marketing, opinion research, or solicitation. Businesses such as insurance companies can tape conversations such as customer loss reports because the term "solicitation" is broadly defined to include conversations that "assist in the use of goods or services."[17]

Unfortunately, at least from the perspective of those interested in fighting insurance fraud, the criminal code contains one important sentence regarding the tape acquired under this provision:

> No communication or conversation or any part, portion, or aspect of the communication or conversation made, acquired, or obtained, directly or indirectly, under this exemption . . . may be, directly or indirectly, furnished to any law enforcement officer, agency, or official for any purpose or used in any inquiry or investigation, or used, directly or indirectly, in any administrative, judicial, or other proceeding, or divulged to any third party."[18]

Based upon this statute, insurers who voluntarily hand over call-center tapes following record requests or subpoenas from law enforcement officials could be subject to criminal or civil prosecution for violation of this law.

For example, if an insured were to phone a customer service center and report a relatively simple single-vehicle accident, glass, lightning, or theft claim, chances are high at many insurance companies that the insured's only conversation with an insurance company representative would be during the initial telephone loss report. The claim would probably be routed through some form of fast-track claims process (assuming there were no coverage issues) and after proper documentation was received (receipts, repair estimates, etc.) a check would be issued and in the insured's hands within a couple of days of submitting the claim.

Later, if police somehow learned of the claim and suspected fraud, their only potential sources of evidence would be the customer service tape, the cashed draft, and the minimal file materials associated with the claim. In today's centralized and somewhat automated fast-track claims world, the potential that an adjuster was actually assigned to take a recorded statement from the insured would be very low. Chances are, without the tape, prosecutors are unlikely to pursue the case.[19]

If aggressive prosecutors decided to force discovery of the tape, the insurer in the example cited above would be forced to hire counsel and file a motion to quash the prosecutor's subpoena. A hearing would be held, and the judge would be required to decide which law to enforce—the law against insurance fraud or the law protecting the privacy of customer service tapes. This law should foster a cooperative relationship; instead it promotes an adversarial one between fraud prosecutors and insurance companies.[20] And at a minimum, the law causes unnecessary delays and legal roadblocks to timely and efficient prosecution of fraud cases, creating a disincentive for prosecutors to even consider pursuing small-claim fraud cases. In times of scarce prosecutorial resources, legal impediments such as this law may be deterring much-needed attention to fraud cases.[21]

Lack of fraud deterrence in regard to the small-dollar claims is an expensive proposition for the premium-paying public. Fraudsters looking to commit insurance fraud know that small-value claims receive much less scrutiny by insurance claims personnel. Small-value claims, generally under $5,000, make up the vast majority of claims dollars spent by insurers.[22] Industry experts generally agree that fraud associated with the lower-value claims account for a significant percentage of every American's auto insurance premiums.[23]

In at least the state of Illinois,[24] the advent and continued growth of call-center centralization utilizing telephone-monitoring systems are not good trends for fraud investigators and SIU departments. The trend toward central call centers highlights the issues facing insurance company management today. At what point do the costs associated with efficient insurance business operations outweigh the potential for fraud prevention, detection, and prosecution?[25]

Conclusion

Fraud detection, prevention, and prosecution are clearly high priorities for insurers. As a high-profile item, it is assumed that carriers will work in tandem with law enforcement in order to fight insurance fraud. However, based upon the complicated legal issues associated with releasing customer service tapes, it is imperative that insurers carefully evaluate eavesdropping and wiretapping statutes. Lack of appropriate discretion in response to discovery requests could lead to costly criminal and/or civil liability for you and your employer.[26]

Endnotes

1. "Insurers Scrutinize Call Centers for Greater Savings, Efficiency," *Best's Insurance News*, November 26, 2001.
2. "SAFECO to Replace Regional Call Centers with National Centers," *Best's Insurance News,* August 25, 1999.
3. "Allstate Expands Reach with E-Commerce Initiative," *Best's Insurance News*, August 14, 2000.
4. This problem is not isolated in the United States. One British SIU manager stated the following concerning "fast track" claims (claims paid with seemingly little need for investigation) in his country: "There is an attitude that because a claim is low in value, it should be got rid of quickly, and fraudsters are realizing that." "Claims-Cutting Out Fraud," *Post Magazine*, June 28, 2001.
5. *Accidentally, on Purpose: The Making of a Personal Injury Underworld in America*, Ken Dornstein, St. Martin's Press, 1996, p. 360.
6. "A Fraudulent Life," Matt O'Connor, *Chicago Tribune Magazine,* December 17, 1995.
7. Common examples of non-claim related fraud perpetrated via telephone include misrepresentations affecting coverage on applications or endorsements and after-claim policy changes to deductibles, policy limits, or named drivers.
8. See generally, *Couch on Insurance*, 3rd Edition, Chapter 197, Insured's Fraud, False Swearing, Concealment, and the Like.
9. For example, see the civil (section 400) and criminal (section 250) laws for the state of New York.
10. 720 ILCS 5/14-3(j).
11. For an interesting discussion of the complexity of the laws consider the legal issues involving Linda Tripp's tape recording of her conversations with Monica Lewinsky. Under Maryland law, if Tripp was warned or knew about the illegality of her taping she could have been convicted of a felony. In Washington, DC, similar activity would not have been a crime. See, Celia Guzaldo Gamrath, "A Lawyer's Guide to Eavesdropping in Illinois," *Illinois Bar Journal*, July 1999.
12. These laws are generally patterned after the federal wiretapping statute, title III-Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C.S. 2510-2521, amended by the Electronic Communication Privacy Act of 1986 (ECPA).
13. "Private Taping of Conversations: What the Law Says," Joel Cohen and Claude Szyfer, *New York Law Journal*, May 31, 2000.
14. For example see, "Insurers Scrutinize Call Centers for Greater Savings, Efficiency," *Best's Insurance News*, November 26, 2001. In the article, a research firm estimated that call centers will spend $2 billion by 2005 for telephone-related technology such as interactive voice response, automated phone systems, and related software.
15. "Log a Voice, Chronicle an Account," Timothy Jones, *Teleconnect*, November 1, 2000.
16. Illinois was considered "pro-insurance" prior to the recent election of a democratic Senate and governor.
17. 720 ILCS 5/14-3(j)(iii).
18. Id.
19. Although a tape could be the most damaging piece of evidence against a person committing insurance fraud, some prosecutors may find that the call representative's log notes are sufficient to prosecute the suspect. Detailed log notes of the conversation by the person taking the call could be discoverable without use of the tape in the legal proceeding. The call representative could testify what he remembers from his own notes. Unfortunately, the log notes of fast track claims tend to be minimal, if they exist at all.
20. Because of this law insurers may want to alter their call center procedures. Instead of operating under an exemption to the Eavesdropping Act, a company could possibly avoid the issues created by the act altogether by obtaining an explicit consent to the recording of the conversation if there is a live person taking the call. The other possible alternative would be to follow up all initial reports of loss with a Notice of Claim form, which requires a written explanation of the facts associated with the claim. Both of these alternatives are arguably less efficient and not as customer friendly.
21. A recent study by the Coalition Against Insurance Fraud estimates that state fraud bureaus are annually spending about 43 cents per resident to fight insurance fraud. See, "Staging a Fraud Fight," Ann Longmore-Etheridge, *Security Management*, December 1, 2001.

22. See for example, "Asymmetric Information and the Settlement of Insurance Claims," Paul Fenn and Neil Rickman, *Journal of Risk and Insurance*, December 1, 2001.

23. John D'Alusio, an executive for an insurance fraud detection software company estimates that in the state of Texas alone, the cost of insuring a vehicle in that state is increased by $100 every six months due in large part to fraud associated with so-called "low-profile" claims. D'Alusio stated: "Insurers think it's cheaper to send you a check for $2,200 than to investigate [the claim] and deny it." See, "Tech Makes Fighting Fraud Affordable," Ara Trembly, *National Underwriter,* September 10, 2001.

24. At this time Illinois appears to be the only state with a law such as this.

25. For an interesting insight into societal differences in priorities, consider Britain. British insurance companies make widespread use of the taping of employee/consumer conversations. For example, some British companies believe that taping all conversations leads to a reduction in the amount of insurance fraud. Crawford & Company, an international loss adjusting service, filters conversations in that country through "conversation management" software that acts as a form of lie-detector test based upon voice stress analysis. Don't look for U.S. insurers to adopt similar measures any time soon. See for example, "Sensitivity About the 'F' Word," *Post Magazine*, May 5, 2000; "Why Insurance Fraud Is Serious," Veronica Cowan, *The Times of London*, November 14, 2000; "Fraud—Unmasking the Fraudsters," *Post Magazine*, December 13, 2001; and "UK Insurer Highway is to Declare War on Fraudulent Claims Including Bringing State of the Art Voice Analysis Into Their Call Centers," Jon Guy, *Lloyd's List International*, August 8, 2001.

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