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In Review:

- Is MES Solutions hiring cheap labor to document adverse claim decisions?
- Attorneys seem reluctant to take risky cases if there is no money to be gained. As a result insurers are “laughing all the way to the bank.”
- Unum appears to be setting ERDs again—not a good action for insureds.
- Unum’s new target—HIV claims.
- Surveillance special report by Linda Nee
- Trustmark, a name you can trust? We’ll see....
- Unum’s roundtables represent deliberate strategies to take advantage of a block of paid claims that rarely gets updated. Pretty bad luck for those insureds who get selected for random presentations.
- Check out the surveillance laws in your state. If you do, please let me know what they are and I’ll keep a list for future insureds who may want to know.

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MES Solutions—The New Generation of Claim Killers

Some time ago I had trouble with my McAfee antivirus software and quickly discovered I had to call India and deal with customer service representatives who could barely speak English. Cheap labor for customer service isn’t service at all, but even US cable companies are now using phone services from the Philippines.

Likewise, after collecting adverse peer review reports requested by CIGNA and Prudential from MES Solutions, I discovered the majority of physicians preparing these reports have Indian or foreign looking names.

I began to wonder whether MES Solutions had discovered a source of “cheap” reporting to “meet their needs”, possibly offshore. Once you start asking the right questions about these “foreign” reports it’s easy to get carried away by asking, “Are these physicians licensed in the US?”, and “Are these physicians actually IN India”, or “do they have offices in the U.S.?”

Last week I had an opportunity to call MES Solutions and took the opportunity to ask the phone representative about whether or not their “peer” physicians were American and where they were

actually located. I was quickly placed on hold and transferred to a manager. The manager told me the company was “worldwide” and most likely I had just come across MES physicians located in certain areas such as Florida.

She also gave me a few Jewish sounding names which she thought would pacify me and end my questioning. For the most part, the manager provided a “no comment” response and the call was terminated. At least I asked the question and she did have a chance to respond honestly.

Interestingly, I got the same answer when I had to call Dell customer service, also located in India and Pakistan. “Our company is worldwide”, they told me, “and we utilize services worldwide.”

While no one is attempting ethnic profiling here, it is odd that nearly every one of the reports I’ve read from MES Solutions are signed by foreign physicians, and every report documented an adverse decision for the insured.

Is MES Solutions hiring cheap, offshore physicians to document their so-called peer review reports? If so, I’d like to know about it. I suppose it is possible

the reports I’ve read just happen to have been written by physicians from India, but the laws of probability aren’t that generous.

We believe insureds are entitled to “fair and equitable” claim reviews by physicians who are licensed in the United States to practice medicine in this country. And, they should be able to speak English.

It seems unfair for US insurers to send file documents electronically to physicians in foreign countries and pay them next to nothing to document adverse claim decisions.

It could also be possible that companies such as CIGNA and Prudential set up these physicians with temporary low-rent offices in the United States for the purpose of writing adverse reports.

Although MES Solution’s process in hiring its IME physicians hasn’t been adequately investigated and confirmed, I would still like an answer as to why large numbers of physicians have ethnic names and whether or not they are licensed in the United States. Wouldn’t you?

Where Are The Attorney Guts These Days?

Back in 2002 when the disability industry went crazy, US attorneys stepped up to the challenge and filed class action, RICO, and bad faith lawsuits by the thousands. Even Elliott Spitzer and the DOL got involved.

Now, attorneys seem to have lost their interest in chasing punitive damages against disability insurers. One well-known US attorney I spoke to told me it is quite common for attorneys to fully investigate the merits of a case before agreeing to prosecute it.

“Litigation is expensive for both parties”, he said.

As members of the criminal justice system attorneys should be bringing unlawful rogue insurers into accountability, but if there’s no money in it, why bother?



ERDs are often determined by using a well-known software called the Medical Disability Advisor (MDA). Unum purchased the software in the past, but it is unknown whether the company still uses it. However, if Unum is still setting ERDs one of several things are happening: 1) MDA is still in use; 2) claims specialists must present the claim at roundtable to set ERDs; and 3) claims specialists are required to "validate" claims with a consultant or manager who then sets the ERD. In any case, ERDs aren't good for the insured and can be found in the claim file.

In many ways, Unum's targeting of HIV claims reminds me of the company's targeting of 9/11 claims a year after the disaster. While disability insurers have the right to only pay those claims which meet the policy definitions of disability, it does seem tragic for a disability insurer to consistently target claims in groups for which strategies can be devised to get the "biggest bang for the buck."

Also recognizing the fact that it is healthy for insureds to return to work if they can, 9/11 victims and HIV insureds would not normally be at the top of the list for return to work potential.

These groups are, however, high value pay-outs to maximum duration and that fact alone makes the occupation or impairment a profitable insurance target. Leave it to disability insurers to figure out how to profit from tragedy.

The focus here should be that "targeting" is an unfair claims practice regardless of the target..

Unum's ERDs—Expected Denial Dates for Unum Claims

Expected Recovery Dates (ERDs) are UNUMSPEAK for "this is the date we intend to deny your claim." Claims specialists are required to "set" ERDs from the moment the claim is assigned. In a sense, assigning a disability claim an ERD predetermines a target "denial date" and deprives the insured of a fair and equitable review based on the unique circumstances of each claim.

Human beings do NOT improve medically by artificial time lines determined by software used to figure out how long it takes a broken leg to heal, for example.

Therefore, Unum claims specialists are often placed in a position of continually "moving up" the ERDs when an insured doesn't heal or return to work when expected.

I was very surprised recently to find Navilink claim notations documenting ERDs in 2008 and 2009 files since I had thought Unum did away with the indicators after the Multistate Settlement Agreement. Apparently not.

ERDs are cleverly disguised indicators used by claims management to predict whether or not unit financial reserve targets will be met by certain dates.

In the past, there is some evidence suggesting UnumProvident abused ERDs by actually connecting the indicators to financial reserves. This practice may have allowed UnumProvident to look more attractive to investors in and around the time of the 1999 merger, but was later determined to be an unmanageable system.

Still, ERD setting gives each Unum claim a date on which the claim is expected to be denied. If the claims handler doesn't "make that happen" management isn't happy. Unum never changes practices that produce profit.

The New Unum Claim Targets — HIV and AIDS Claims

Last year I wrote several articles about Unum's targeting of Anesthesiologist claims and the damage the company was able to do in denying claims for this particular occupation.

It's easy for DCS, Inc. to discern Unum's new targets when we receive several calls in the same time frame from insureds and claimants with denied claims in certain occupations and/or impairments.

Recently, it came to our attention Unum is now denying claims of those diagnosed with HIV and AIDS.

Unum's philosophy with respect to HIV changed since 1994 when the company paid nearly every HIV claim. However, advances in new and more successful medications extending the lives of those infected, has also led insurers to aggressively risk manage HIV claims by claiming the insured can work under certain conditions.

One of the important laboratory indicators used by Unum in determining HIV disability is the CD4 or T-cell count. Historically,

Unum's representatives request all lab reports looking for T-cell and viral load results. If the CD4 results in >200 Unum will claim the insured is NOT impaired and can return to work.

Normal CD4 counts range from 600 to 1500. A CD4 count of 200 is lower than normal and is used by physicians as a benchmark to determine if the HIV patient is immunosuppressed and is in danger of contracting certain bacterial diseases.

For Unum to claim a CD4 count of 200 is normal is misstating what the indicator actually means. So what's new?

T-cell counts and viral loads might be objective indicators, but they certainly aren't reliable in documenting a wide range of symptoms experienced by HIV insureds, especially with CD4 counts close to 200.

HIV infected insureds experience overwhelming fatigue, vision problems, cognitive and memory problems, peripheral neuropathy, rashes, and are susceptible to a wide range of bacterial diseases which can often be fatal

when the insured is forced back into the workplace.

Once again, it appears Unum is looking for an easy way out on what normally would be claims payable to maximum duration (age 65 or lifetime).

Sun Life also recently denied a claim of an HIV professional who suffered several heart attacks and had multiple stents placed. Cases such as these makes one wonder just how disabled an insured needs to be in order to get paid.

Still, CD4 counts used by Unum to allege at least sedentary work capacity are unrealistic and cause insureds to lose valuable benefits which contribute to living expenses and payment of health insurance premiums to remain in treatment.

HIV insureds are often NOT able to consistently sustain work due to fatigue alone, regardless of CD4 counts. However, it appears Unum found a way to eliminate expensive HIV claims and has targeted that impairment for now.

Trustmark Companies—A Little Known Entity

Trustmark sells itself as a leader in the health and insurance business as a third-party administrator. According to an Internet ad, *“Turn to Trustmark for quality health insurance plans, voluntary benefits, benefits administration, and healthcare and wellness management programs, with freedom of choice, excellent network capabilities, personal service and active cost management.”*

Whenever a third-party administrator uses the hook “active cost management”, it’s time for insureds to sit up and take notice.

Recently, a claims representative told me, *“Trustmark has been looking for a reason to pay this claim.”* Now, that’s a new one I hadn’t heard before.

Specifically, Trustmark notified me it intended to deny a disability claim for a

63 year-old-woman. With two years left on the duration of the claim, the financial reserve certainly wasn’t significant.

In the same Internet ad, Trustmark states, *“Now, and in the future, Trustmark remains a mutual insurance holding company managed for the benefit of its policyholders.”*

First of all, a “holding company” is one which buys up smaller or in-trouble companies, financially repairs them, and then sells them to the next willing buyer for a profit. Second, “mutual insurance companies” are owned by the policyholders, not stockholders.

Therefore, Trustmark is in the business of making a profit for its own policyholders by buying-up less profitable companies (small disability insurers), and denying claims on their behalf. That’s how they make their money.

Core Source, Inc., a wholly owned subsidiary of Trustmark designs and integrated customized employee benefit plans for larger employers who want to self-fund their benefit programs.

In addition, according to the Internet Trustmark is the leading healthcare fraud and claim abuse management services available.

The more you investigate the company, the more you come across amazing catch phrases, marketing hooks, and kudos on behalf of the healthcare industry, and employers.

Although we don’t know very much about the company except what we can pull from the Internet, my personal experience with a Trustmark claims examiner leaves me wondering when I’m told, *“Trustmark is trying to find a reason TO PAY, this claim.”* Way too good to be true in my opinion.

Unum Roundtables— Business Decisions With A Strategy

Another common strategy utilized by Unum in the past is the “Roundtable”. Roundtables have an interesting history beginning first as Unum Life Insurance “huddles” in the aisles to discuss claims before a month end close.

Later, Ralph Mohny took the concept of the “huddle” in 1999 and formalized it into a “multidisciplinary roundtable-RTR or MDR for short” bringing all of the company resources together to figure out how to deny claims quickly and with management approval.

UnumProvident was severely criticized for MDR just prior to and after the multistate settlement agreement which is why I was surprised lately to find documented Navilink file references to Unum’s conducting roundtables again— or still.

Roundtables are attended by the majority of business interests in the claim including departmental vice presidents, vocational and medical staff, consultants, unit claims managers, claims handlers and on occasion, a member of Unum’s legal staff to make sure the meeting could be classified as “confidential and proprietary” and documents about the

roundtable kept out of the claim file.

The purpose of the actual roundtable was to discuss the claim in its entirety and determine not only “how” but “when” the claim could be denied; and, in such a way to withstand the scrutiny of an appeal as well.

My recollections of roundtables are hearing the then VP of psyche/cardiac claims, Mary Fuller, cry out, “Why are paying this claim? Deny it!” Back then, claims handlers were performance managed as to how well he/she “presented” the claim to management. The process was mandatory as well.

In addition, Unum paraded prospective brokers and new employer clients by the roundtable room making a marketing public spectacle of the process. Even when roundtables were not in progress, calls were made to senior claims specialists to grab any claim and pretend a roundtable was taking place for the viewing enjoyment of new customers.

It is unclear whether Unum currently engages in these exact abuses of the roundtable process, but I am surprised the RTRs have continued to take place at all. Unum defended the roundtable process as a “learning experience” for newer claims handlers. The truth, however, is that Unum roundtables provide management with

quick and ready solutions to identifying potentially deniable claims from a tremendous backlog of paid claims (ACM) which claims handlers have no time to update and process.

Having large backlogs of continuously paid claims is near death to a disability insurance company because that’s where most of the company’s profit is.

What do roundtables have to do with your claim you ask? Basically, it means Unum has a strategy in place whereby the claims handler is required to “present” claims to management in a roundtable forum. The purpose of the roundtable is to “direct” the claims handler in what actions need to be taken on the claim in order for the claim to be denied. The roundtable also gives management an opportunity to assign the ERD (discussed earlier) and determine a specific target date on which it expects the claim to be denied and profit realized—a budgeted denial one might say.

Roundtables may not be inherently bad if the forum is honestly used to train newer members of the claims staff but unfortunately the strategy was abused once it was discovered Unum could deny more claims and profit from it.

I am surprised RTRs continue at Unum.

Surveillance Special Report by Linda Nee

While surveillance is an acceptable means in providing disability insurers with proof of physical activity, today's sophistication and new invention of technology raises questions as to when insurance investigators cross the line of legality into invasion of privacy.

Most of the questions raised by insureds involve the use of separate GPS devices placed underneath vehicles by insurance investigators. According to articles written by James Kesel, an expert in GPS technology, the 7th Circuit of the US Court of Appeals ruled that law enforcement's placing a GPS tracking device on a vehicle was lawful and did not require a warrant. The federal government also "argued successfully that placing a device on a vehicle does not violate the 4th Amendment."

However, when it comes to private citizens and those who are not members of a state or federal law enforcement agency, placing GPS devices on vehicles is governed by state law. In general, my research relating to the placement of GPS devices by private citizens strongly recommends contacting the State's Attorney General to determine what the laws are prior to placing any GPS device on the vehicle of an insured. There are severe penalties for breaking state privacy laws pertaining to GPS devices and private citizens. This includes insurance investigators.

In an effort to further clarify the issues of GPS usage among insurance investigators I conducted phone interviews with several licensed private investigators in MA, FL, NH, CA and ME. These investigators, agreed that realistically they do not use GPS devices for insurance investigations because it doesn't make sense to do so.

"First of all", said one PI from Massachusetts, "a GPS doesn't provide visual proof of activity—only where the insured is at any point in time. If I can't keep track of my subject, then I have a more serious problem. I prefer tailing my subject the old-fashioned way."

Another investigator also told me the placement of a GPS tracking device could NOT be placed on a vehicle when it was located on the insured's private property. To do so would be an illegal invasion of privacy. The device would need to be placed when the vehicle was located on public property which in itself is a dangerous activity as he quickly found out.

This same investigator described a situation when in the act of placing a GPS device on a vehicle in the Federal Reserve building parking lot, he was quickly apprehended by federal agents

who strip searched him as a possible terrorist. Having been busted by the fed's own video cameras, he later vowed to be more cautious about placing GPS devices which can be suspected as bombs.

Yet, another private investigator I interviewed spoke about the practicality of using GPS devices (assuming it was allowed). Each device sells for approximately \$500 and "the damn thing could fall off if the driver hit a pothole." "Let's face it", another surveillance expert told me, "both parties know the game and the insured can easily find the device it and remove it."

At least those "in-the-know" are agreed the tracking of insureds via a GPS device does not produce a permanent record of the insured "in the act" of performing activities in excess of reported restrictions and limitations. A GPS device only tells the investigator where the insured is, NOT what they're doing, which is what most insurance companies really want to know. The majority of insurance surveillance experts preferred "tailing the subject the old-fashioned way."

A second issue was raised by one of my clients reporting a suspected incident of surveillance from a distance of around 200-300 ft. with a device capable of watching the insured through a window washing dishes in his sink. My first question to investigators was, "Is this technologically possible?"

All those interviewed reported devices which could record surveillance at long distances, however, several investigators also stated that although the recording could be done with the proper equipment, IT SHOULD NOT HAPPEN.

Again, issues of invasion of privacy were raised and in general most were agreed that surveillance of insureds inside their homes should not be conducted since the insured has an "expectation of privacy." Several of those interviewed admitted that "other agencies often cross the line by doing it anyway."

When asked the cost of conducting a 3-day surveillance the PIs reported fees ranging from \$45-65 per hour. Assuming 3 eight-hour days, that's approximately \$1,560 for the typical insurance tag surveillance. Some PIs offer insurance companies fixed fees if there's sufficient business to support the costs.

Other interesting facts reported to me by those interviewed is that in most instances local police officers give private investigators a one-time pass when they are reported to the police by insureds. In other words, police officers won't ask a PI to stop the surveillance

The first time. Although surveillance teams are not required by law to notify local police of their subject location, most investigators will stop by the police station for no other reason than to show their license just in case. "Courtesy calls" are well-known practices to most investigators, but some do not bother to notify the local police at all.

One investigator I spoke to wanted me to be sure to inform insureds that insurance private investigators have no extra special rights or privileges than any other citizen. "We don't have any legal authority or power over anyone—please be sure to tell your clients that."

My interviews with insurance surveillance experts provided invaluable insight into those who are hired by the major disability insurers to spy on their insureds. My final questions had to do with whether or not investigators have any personal bias toward insureds which could influence their reports to insurance policyholders.

One investigator told me sternly, "If they're out there driving around when they should be home doing nothing, then they deserve what they get." Another FL investigator simply said, "Lady, I call 'em the way I see 'em." I think I got my answer.

In my line of work with over 15 years in the disability claims business I have yet to read a surveillance report completely devoid of at least one sentence expressing the personal bias of the investigator toward the insured. I suppose this is reflective of the world in which we live which assumes all disabled persons with insurance claims are malingers engaging in fraud for secondary gain.

The insurance industry is a prime candidate for the application of modern technology specifically designed to "catch people doing things they shouldn't do". What seems to keep the system in check is the protection citizens still have from invasions of privacy by other private citizens outside of law enforcement and federal agency jurisdiction. At least for the moment the citizen's expectation of privacy inside the home is still protected.

Insurance surveillance is generally viewed by insureds as an invasion of privacy in and of itself. At least for the moment insureds do have some push-back when surveillance is conducted improperly.



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Dedicated to writing letters and appeals for my clients. I appreciate your consideration in making limited calls on these days.

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DCS, Inc. is a Maine Corporation providing consulting services to insureds with private disability insurance both group ERISA and Disability Income. Linda has been providing these services since 2002 and recently passed the Maine State License test for "Maine Life and Health Consultant." As a result, Linda is now able provide consulting services in the areas of life and health insurance and long-term care claims. Yea!

CLIENT CORNER EDITORIAL:

I apologize in advance to my readers. I did not intend to dedicate this issue of the DCS newsletter to Unum; I guess it just turned out that way. In any case, welcome to our new clients who have come on board with us, we hope you enjoy this and future issues of our monthly newsletter.

My interviews with actual insurance investigators concerning surveillance was a big success. I hope to do more journalistic reporting in the future if I can convince people in the industry to grant interviews. If you have any topics you think would be interesting, please let me know by sending an email.

DCS, Inc. is doing quite well for our insureds. Although I still get readers of Lindanee's Blog who are trying to talk me into posting again, I still feel insureds are best served via private distribution email. We've had several successes this past month with initial applications and appeals.

As always, please let me know if you have any questions, and best wishes to all of you. Have a great summer.

Linda