

To: Senator Susan Wagle, Chairman
Members of the Senate Commerce Committee

From: Callie Jill Denton
Director of Public Policy

Date: February 14, 2012

RE: SB 413 Creating the PEO Registration Act (OPPOSED)

The Kansas Association for Justice (KsAJ) is a professional association of attorneys. KsAJ opposes SB 413. KsAJ supports appropriate regulation of professional employer organizations (PEOs). We are concerned that SB 413 does not go far enough to protect Kansas businesses, Kansas workers, and Kansas health care providers from unscrupulous.

It is prudent for the Legislature to enact effective regulation so that Kansas employers and employees are protected from unscrupulous PEOs. PEOs are in positions of trust because employers pay them large sums of money for health insurance coverage, workers compensation insurance coverage, employee payroll, and pension benefit plans. Without adequate regulation, dishonest PEOs can fraudulently divert the substantial funds that are entrusted to them without purchasing the health insurance or workers compensation coverage as promised. Then employers are out millions of dollars, and employees are left without health insurance and work comp coverage. Downstream, doctors and hospitals also lose when there is no insurance coverage to reimburse them for the health care services they provide.

Kansas has not been immune from the fraudulent schemes of fly-by-night PEOs. For years in Topeka, Kansas, a white collar criminal operated several PEOs nationwide until he was arrested in Chanute. In July 2005, a federal grand jury sitting in Greensboro, North Carolina indicted PEO operator Steven E. Edwards on 21 counts of criminal activity, according to an August 30, 2005, press release issued by the United States Department of Justice.

According to the on-line Insurance Journal Southeast Magazine, Mr. Edwards had based his PEO operations in Kansas. Federal prosecutors believe Edwards collected money from his

Senate Commerce Committee

Date: February 14, 2014

Attachment 6

contracted clients and stole \$3.8 million dollars when he never took out workers compensation or health insurance which client employers thought they had purchased through Edwards' PEOs. Prosecutors believe Edwards used the money to buy a mountain villa and to maintain a collection of expensive vehicles and motorcycles.

SB 413 is a step in the right direction. However, additional work is needed to assure that it is an adequate regulatory mechanism, including but not limited to the following:

- Protection for the victims of fraud and insolvency. Individuals and businesses that are harmed by PEO fraud and insolvency need the protection of a guaranty fund like those required of Kansas insurers. SB 413 contains no protections for individuals and businesses that are left holding the bag by unscrupulous PEOs.
- Sufficient registration requirements to guard against insolvency. SB 413 sets a low bar for applicants for a PEO registration. Only minimal information is required to be filed with the Department of Labor, and the financial standards for the PEO--\$100,000 working capital and minimal review of its financial condition--are inadequate.
- Level playing field with other regulated entities. PEOs should not be permitted to evade experience rating requirements that have the effect of setting rates appropriate to the risk of the insured. It must be clear that PEOs must act within the same guidelines when purchasing health insurance and workers compensation insurance products.

KsAJ respectfully requests that the Senate Commerce Committee take no action on SB 413.

'Victims everywhere' in \$100 million Certified Services worker's compensation fraud | Broward Bulldog

October 27, 2010 at 5:00 am Filed under Business, Federal Court {8 comments}

By **Dan Christensen**, BrowardBulldog.org

The \$100 million-plus scam behind the collapse of Fort Lauderdale's Certified Services is a classic South Florida courtroom tale of greed and woe.

Hundreds of investors who bought Certified's publicly traded stock were wiped out as insiders looted the company, buying luxury cars and diamonds. Insurance companies who did business with Certified got stiffed for tens of millions of dollars in claims. And injured low- and middle-income employees across the country who counted on Certified to provide worker's compensation insurance learned too late that their coverage was actually a mirage.

"There are victims everywhere," U.S. Securities and Exchange Commission attorney Christopher Martin said in an interview.

Certified, headquartered next to Executive Airport, was a professional employer organization (PEO) with 1,900 corporate clients that have approximately 53,000 employees in 32 states. It made money by handling personnel services for small- and medium-sized companies – including payroll and workers' compensation coverage supposedly to be purchased through licensed insurance providers.

Former Certified President and Chief Executive Officer Danny Pixler, who once owned a million dollar home on Bayview Drive, is now serving a 60-month sentence after pleading guilty last year to a federal conspiracy charge in the scheme. Two others involved with the company also went to prison.

But the man a federal judge now says was the puppet master, W. Anthony Huff, has not been charged with a crime, though he has been pursued under civil law. In fact, according to the judge, Huff is back in the lightly regulated PEO business with a new company – Tampa-based 02HR – "where he continues his less-than-aboveboard ways."

Huff, a convicted felon and Kentucky resident, was hit with civil fraud charges by the SEC in 2008 as a result of the Certified debacle. Fort Lauderdale U.S. Magistrate Judge Robin Rosenbaum held a week-long bench trial last February.

In a final judgment issued Friday, the judge held Huff liable for federal securities law

6-3

violations and ordered him to cough up more than \$13 million in ill-gotten gains, including interest. He also was fined \$600,000, and enjoined from further violations of federal law, and barred from serving as an officer or director of any publicly traded company.

Huff, who the judge noted once kept "stacks of cash" in his office safe for "business emergencies," has 15 days to pay.

No decision has been made on whether Huff will appeal.

"Mr. Huff is evaluating his options," said his Miami attorney, Russell C. Weigel III.

In a 122-page ruling issued Sept. 30, Rosenbaum recounted Huff's bold-yet-hidden scheme that ultimately duped the investing public and secretly transformed Certified into his "personal piggy bank" between 2001 and 2004.

"Huff deliberately decided to control Certified from the background and not to take a named official position with Certified so he would not have to disclose his prior criminal insurance dealings," the ruling says.

Huff pleaded guilty in May 2003 to federal mail fraud charges in Kentucky regarding his association with a wholesale trucker's insurance brokerage, All Risk Services Ltd.

Working in the shadows at Certified, the court said, Huff enticed investors by overstating the company's financial condition by approximately \$110 million. To do that, he booked \$47 million in bogus letters of credit and veiled \$65 million in liabilities.

Huff also diverted more than \$130 million from Certified to a company he controlled called Midwest Merger Management LLC.

Not all that money went into Huff's pocket, the court said. Millions were spent to keep Certified going, but Huff also siphoned millions to himself and his spouse, Sheri, to buy a jet, boats, diamonds, homes and a farm in Kentucky. Sheri Huff was ordered to give back \$3.8 million.

Certified was a shell corporation with no business operations when Midwest acquired a controlling interest in November 2001. Soon, it began to acquire other PEO businesses, including its Cura Group subsidiary.

A key part of Certified's business was to provide its clients with required workers' compensation coverage through authorized insurance companies. One company it worked with was Continental Casualty Company, the large commercial insurer known as CNA.

At one point, Certified had purchased policies from CNA to cover its clients' workers. But when CNA announced it would hike Certified's deductible, it required Certified to post collateral to maintain coverage needed to continue in business

6-4

In response, Certified produced more than \$40 million in fake letters of credit. CNA didn't find out until it went to draw on them. The scheme led to more than \$60 million in losses for CNA, the court said.

Insurance companies in Oklahoma and Washington were also hit hard by the scheme.

Certified landed in bankruptcy court in 2006 with its subsidiary, Certified HR Services. Its debts were discharged in 2008 as part of a liquidation plan.

In an ironic twist, the company Huff now controls, 02HR, purchased the bankruptcy estate of Certified/Cura - "a turnkey PEO business," as the judge put it - for about \$11 million.

"Huff reacquired the benefits of controlling Certified without having to continue to be responsible for significant debts that Certified, when Huff previously controlled it, had incurred," Rosenbaum said.

In contrast, the judge said, Certified's unsecured creditors, including CNA, will recover between 15 and 30 cents on the dollar and the bankruptcy estate will be left "approximately \$40 to \$50 million under water."

Related posts:

1. South Broward Hospital District accused of aiding Wellcare fraud
2. UPDATE: Former Pompano Beach body armor tycoon convicted in huge fraud trial

Post a Comment

6-5

LexisNexis Communities
Workers' Compensation Law Community Powered by Larson's

LexisNexis Communities | Home | Helpful Tips | Contact Us | Feedback

Featured Content

Add content to My Page

- News
- Blogs
- Podcasts
- Videocasts
- Top Cases
- Emerging Issues
- Free Downloads
- LexisNexis Resources
- Conferences & Events
- Workers' Compensation Advisory Board
- Larson Unplugged
- Workers' Compensation Centennial

Visit Other Communities By

- Practice Areas
- Global
- Professional

Latest Postings

1. [Workplace Violence: Fatal Shooting at Dental Office Was Not Sufficiently Connected to Employment](#)
2. [California: A Tribute to Hon. Susan V. Hamilton](#)
3. [Texas: Potential Enforcement Action](#)

Most Viewed Postings

Title	Views
1 LexisNexis Top 25 Blogs for Workers' Compensation and Workplace Issues - 2009 Honorees	16388
2 Delaware Detour and Frolic	14185
3 Larson's National Workers' Comp	11871

NEWS HEADLINES Former PEO Executives and Brokers Charged in \$1.5 Million Workers' Compensation Fraud Case

Fraud

Recommend Be the first of your friends to recommend this. Share

01/08/2009 10:50:46 AM EST

Former PEO Executives and Brokers Charged in \$1.5 Million Workers' Compensation Fraud Case
 Posted by [LexisNexis Workers' Comp Law Community Staff](#)

TRENTON, NJ - Attorney General Anne Milgram and Criminal Justice Director Deborah L. Gramiccioni announced that a total of seven people and 11 corporations have been charged in two separate indictments for their alleged roles in two workers' compensation scams that netted as much as \$1.5 million for the defendants.

The indictments allege that the defendants lied on insurance applications and failed to remit insurance premiums to the insurance companies, instead keeping the money for themselves. It is also charged that the defendants laundered money so that the scheme would go undetected. As a result, many people were allegedly left without workers' compensation insurance.

According to Insurance Fraud Prosecutor Greta Gooden Brown, one indictment, handed up yesterday, charged Justin M. Sciarra, 59, of Medford, Paul Brown, 43, of Bellmawr, Michael Magee, 34, of Berlin, James Maconaghy, 41, of Mt. Laurel and William Griffith, 53, of Reading, Pa., as well as four corporations: Q-Town, Inc., TJAX Investment Corp., Bay Enterprises, Inc., and 3D Assurance Brokerage, LLC. These defendants were variously charged with conspiracy, racketeering, insurance fraud, theft by failure to make required disposition of property received (all 2nd degree) and fourth-degree workers' compensation insurance fraud.

Q-Town and TJAX, in Audubon, were owned by Sciarra and operated by Brown. Sciarra, Magee and Maconaghy were the owners and operators of Bay Enterprises, located in Marlton. Maconaghy operated 3D Assurance in Audubon. Brown, Maconaghy and Griffith are all currently-licensed insurance brokers. All the defendants except Griffith owned and/or were involved in the operation of professional employer organizations (PEOs). A PEO is a business organization primarily engaged in providing human resources and personnel functions to client companies.

The indictment alleges that between June 2003 and September 2007, Sciarra, a former licensed insurance producer, and his co-defendants fraudulently avoided premium payments for workers' compensation insurance they obtained for clients. The defendants allegedly submitted falsified applications for workers' compensation insurance by misrepresenting and omitting information in the applications. These misrepresentations included understating the number of employees leased, the kind of work those employees did and the number of past injury claims involving the employers, all factors that are relevant to determining the cost of workers' compensation insurance. The defendants also are charged with failing to turn over money that was provided by clients of the PEOs to pay for insurance premiums.

The indictment alleges that as a result of the misrepresentations, the defendants committed insurance fraud by avoiding payment of \$304,244 in workers' compensation insurance premiums. The defendants are also charged with misappropriating as much as \$745,207 from clients of the PEOs by failing to remit the money to the insurance companies.

A second state grand jury indictment returned on June 20, 2007 was unsealed yesterday. The indictment charged Sciarra, Brown, and Paul Hopkins, 58, of Marlton, with conspiracy to commit racketeering, racketeering, conspiracy, theft by failure to make required disposition of property received, theft of services, misconduct by a corporate official and financial facilitation of criminal activity. Sciarra and Brown were additionally charged with workers' compensation insurance fraud, and Sciarra alone was charged with failure to carry workers' compensation insurance. Hopkins's wife, Adrienne Hopkins, 48, of Marlton, was charged with conspiracy to commit racketeering, racketeering, conspiracy, misconduct by a corporate official, and financial facilitation of criminal activity.

Eight corporations were charged in the second indictment: Sciarra Insurance Agency; AJAX Enterprises, a.k.a. AJAX Leasing, Inc.; AJEX Enterprises, Inc.; UJEX Enterprises, Inc.; Q-Town, Inc.; and Homestead Assurance Brokerage, all formerly located in Audubon, as well as s PEO, Inc., a.k.a. s PEO Holdings, Inc., a.k.a. Staff America, formerly of Cherry Hill; and PTD Financial, Ltd., formerly of Mt. Laurel.

6-6

Title	Views
Advisory Board Members	

Popular Downloads

Title	Downl.
1 FREE DOWNLOAD: Employer's Improper Communication With Physician (Calif. WCAB panel)	306
2 FREE DOWNLOAD: Cortez v. Fru-Con (Calif. WCAB panel) (Osilvie analysis)	161
3 FREE DOWNLOAD: Dismissal of Claim Based on Carve-Out Agreement (Calif. WCAB panel)	140

The unsealed indictment alleges that Sciarra, Brown, and the Hopkinses fraudulently obtained workers' compensation insurance through AJAX, AJEX, and the other PEOs between 1996 and June 2002. The unsealed indictment involves allegations that the named defendants falsified workers' compensation insurance applications, evaded payment of premiums, and failed to remit money to insurers, which had been provided by clients to pay for insurance premiums.

The indictment also charges Sciarra and one of his PEOs, AJEX, with failing to provide workers' compensation insurance for the employees of clients. Sciarra and AJEX allegedly issued falsified certificates of insurance to their clients to conceal that no insurance had been obtained. The defendants also allegedly falsified and withheld material information from auditors to evade full payment of premiums. It is charged that the defendants even submitted workers' compensation claims with false or misleading information in an effort to get insurance carriers to pay benefits. The defendants allegedly engaged in money laundering to conceal as much as \$500,000 of the proceeds obtained from those alleged criminal activities.

Detective Andrea Hayes, Analyst Terri Drumm and Deputy Attorney General Peter W. Lee were assigned to the investigation. Deputy Attorney General Lee presented the case to the state grand jury. The Department of Banking and Insurance routinely assists the Office of the Insurance Fraud Prosecutor with the investigation and prosecution of licensed insurance agents. Prosecutor Brown thanked the Department of Banking and Insurance for their assistance.

The indictments are merely accusations and the defendants are presumed innocent until proven guilty. Second-degree crimes carry a maximum sentence of 10 years in state prison and a criminal fine of \$150,000, while crimes of the fourth degree carry a maximum sentence of 18 months in state prison and a criminal fine of \$10,000. The defendants may also face civil insurance fraud fines.

Source: *New Jersey Office of the Attorney General*

To read the indictments, [click](#) and [here](#).

[Share](#)

[Recommend](#) Be the first of your friends to recommend this.

Similar Content

News
Blogs

Related LexisNexis Products

- [AHLA Legal Issues in Healthcare Fraud and Abuse, Third Edition with 2009 Supplement \(AHLA Members\)](#)
- [AHLA Legal Issues in Healthcare Fraud and Abuse, Third Edition with 2009 Supplement \(Non-Members\)](#)
- [AHLA Legal Issues in Healthcare Fraud and Abuse: Navigating the Uncertainties, Third Edition 2009 Supplement \(AHLA Members\)](#)
- [Ninth Circuit Expands Criminal Liability Under Computer Fraud and Abuse Act \(PDF\)](#)
- [Drafting General Releases After Centro: How to Preclude or Preserve Future Claims of Fraud and Breach of Fiduciary Duty \(PDF\)](#)

[More »](#)

6-7