



Workers' Compensation Premium Fraud in the Construction Industry

National Council of Insurance Legislators

July 2024

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Rep. of the General President, United Brotherhood of Carpenters & Joiners of America

450

From probable cause affidavit, FL v. Rodriguez, et.al. (2013)

Insurance Broker Leapfrog



The Problem and the Challenge

Construction employers *who do not cheat* on their premiums are punished in the marketplace.

Crooked contractors are taking over markets.

Insurance industry practices need to change to counter this threat.

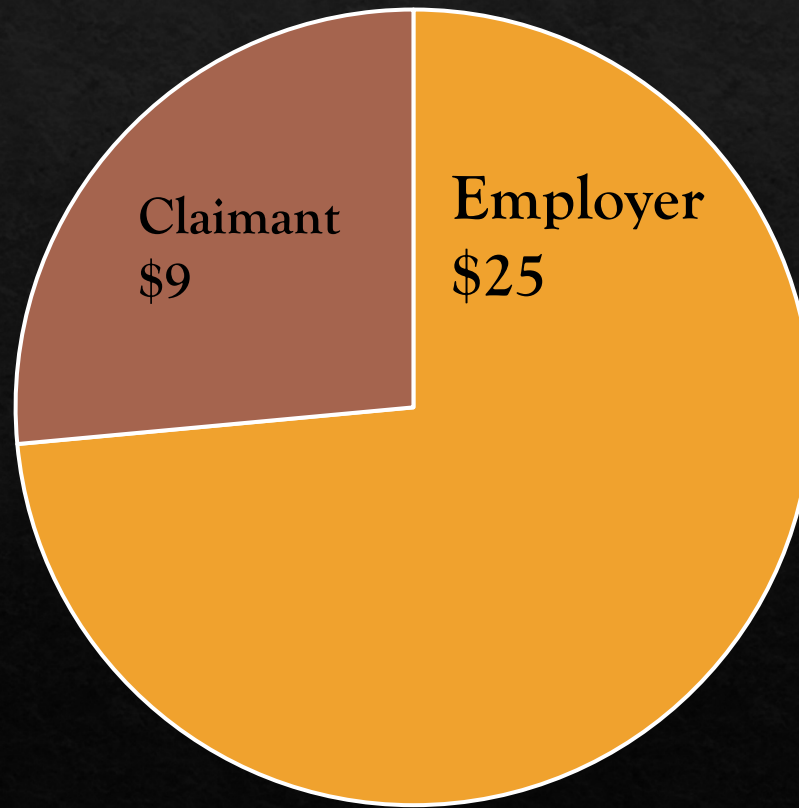
The status quo is unsustainable.



The Stolen Billions

Employer Premium Fraud More Severe than Claimant

Premium Fraud v. Claimant Fraud



\$Billions of Premium Fraud in the Construction Industry

Up to 19% (2.1 million) of construction workers paid off the books or misclassified as independent contractors.

Premium Lost: \$5 billion.

Up to 2.1 Million U.S. Construction Workers are Illegally Misclassified or Paid off the Books, by Laura Gutierrez, Russel Ormiston, Dale Belman and Jody Calemine, The Century Foundation (November 12, 2023).

Less Premiums=Less Resources for State Workers Comp Administration

- ◆ Premium fraud Tenn. Construction industry: \$296 million.*
- ◆ 4.4% assessment: Workers' comp. admin, subsequent injury and uninsured employers fund and TOSHA

\$13 million loss**

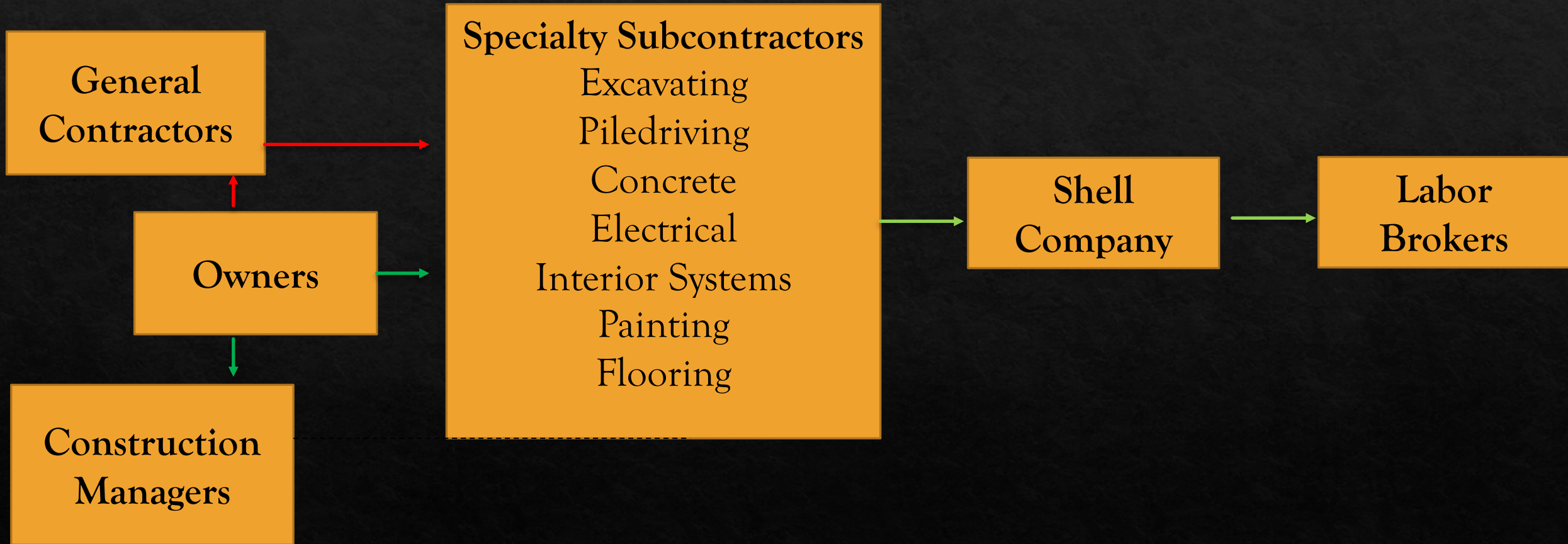
*Tenn. Bureau of Workers' Compensation, *Annual Report on Employer Coverage Compliance*, 6 (February 1, 2019).

**Tenn. Bureau of Workers' Compensation Employee Misclassification Advisory Committee, *The Use of Criminal Prosecution to Reduce Misclassification, Avoidance of Workers Compensation Coverage and Premium Fraud* (Dec. 12, 2019).



The Construction Industry's Very Lucrative and Successful Fraud Scheme

Labor Broker Fraud Scheme



A Cornucopia of Laws Violated



- ◆ Workers' comp. premium fraud
- ◆ Tax Fraud
- ◆ Wage Theft
- ◆ Child Labor
- ◆ Immigration
- ◆ Money laundering
- ◆ Mail and wire fraud
- ◆ Labor trafficking
- ◆ Racketeering
- ◆ Conspiracy



FinCEN NOTICE

FIN-2023-NTC1

August 15, 2023

FinCEN Calls Attention to Payroll Tax Evasion and Workers' Compensation Fraud in the Construction Sector

The Financial Crimes Enforcement Network (FinCEN) is issuing this Notice to call financial institutions'¹ attention to what law enforcement has identified as a concerning increase in state and federal payroll tax evasion and workers' compensation insurance fraud in the U.S. residential and commercial real estate construction industries.²

2024 National Money Laundering Risk Assessment



Special Focus: Tax Crime

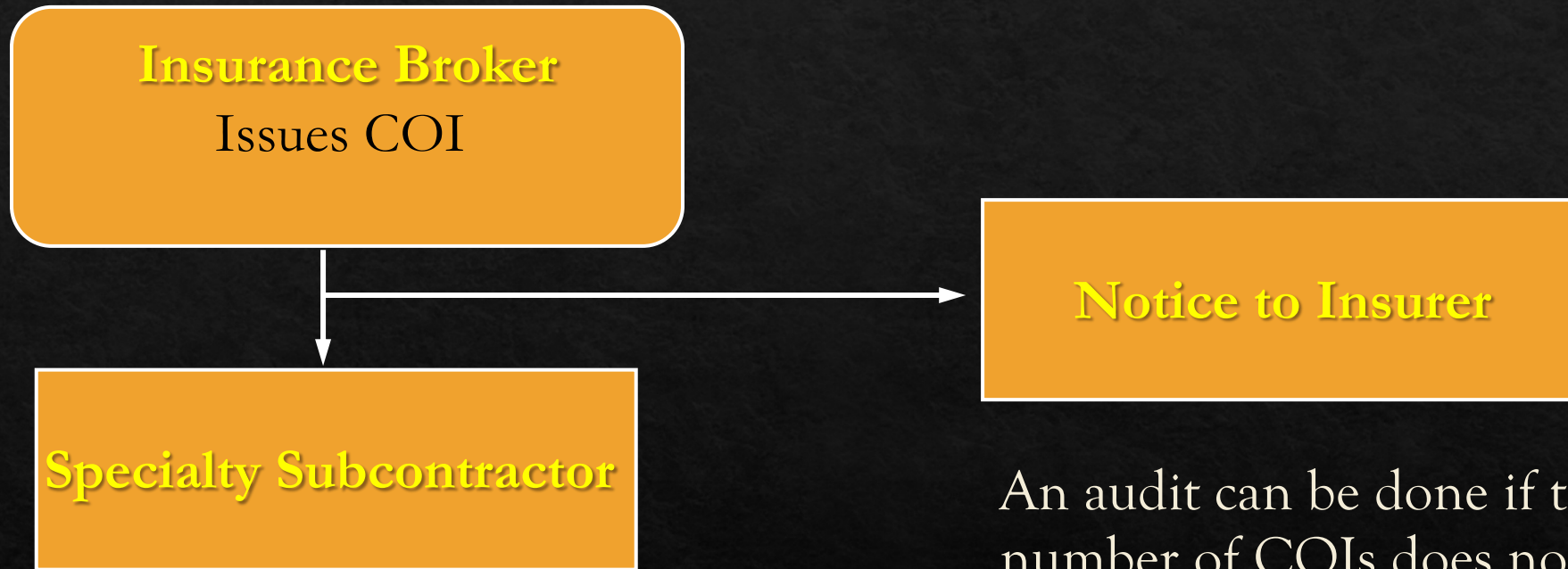
This section was included primarily due to the increase in State and federal payroll tax evasion and workers' compensation insurance fraud in the U.S. residential and commercial real estate construction industries.

In the United States, human trafficking occurs in a broad range of industries, including hospitality, agriculture, healthcare, manufacturing, commercial cleaning services, **construction,** peddling and begging, food service industries, beauty salon services, domestic work, fairs and carnivals, escort services, illicit massage, and health and beauty services.



Change is Needed.
The Status Quo is
Unsustainable.

The Issuing of COIs by Insurance Brokers



An audit can be done if the number of COIs does not align with the declared payroll.

COIs Lack Integrity

CERTIFICATE OF LIABILITY INSURANCE				DATE (MMDDYYYY)		
<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</p> <p>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</p>						
PRODUCER		CONTACT NAME: _____ PHONE: _____ FAX: _____ (A/C, No. Ext): _____ (A/C, No): _____ E-MAIL: _____ ADDRESS: _____ INSURER(S) AFFORDING COVERAGE: _____ NAIC #: _____				
INSURED		INSURER A: _____ INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____				
COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:		
<p>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>						
INSR LTR	TYPE OF INSURANCE	INSO. WVD.	POLICY NUMBER	POLICY EFF. (MMDDYYYY)	POLICY EXP. (MMDDYYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LDC <input type="checkbox"/> SUBJECT <input type="checkbox"/> OTHER: _____					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED. RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NY) If yes, describe under DESCRIPTION OF OPERATIONS below.					PER. STATUTE <input type="checkbox"/> OTH. EX. <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)						
CERTIFICATE HOLDER				CANCELLATION		
				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE		

◆ Payroll amount.

◆ Classification codes.

◆ Safeguards to prevent forgery.

◆ QR codes

◆ Block chain

Other Impactful Reforms



- ◆ Use labor brokers, pay a higher premium.
- ◆ Track bad employers.



Beginning of a Discussion

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