THE SIGNIFICANCE OF PHYSICAL SURVEILLANCE AS A METHOD IN THE INVESTIGATION OF INSURANCE FRAUD: A DISCOVERY LIFE PERSPECTIVE

by

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DECLARATION

I declare *"The significance of physical surveillance as a method in the investigation of insurance fraud: A Discovery Life perspective"* submitted in accordance with the requirements for the degree of Magister Technologiae in the subject Forensic Investigation is my own work and has not previously been submitted to another institution of higher education. All sources cited or quoted in this dissertation are indicated and acknowledged in the comprehensive list of references.

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ABSTRACT

The primary aim of this study is to determine the significance of the application of physical surveillance as a method in the investigation of insurance fraud conducted by the Surveillance Unit at the Forensic Department of Discovery Life. Various objectives were fulfilled in this study:

- To explore, identify and describe the value of the application of physical surveillance, as a forensic investigation method, in order to determine the significance of this method in the investigation of insurance fraud at the Forensic Department of Discovery Life.

- To determine whether the application of physical surveillance at the Forensic Department of Discovery Life is achieving its intended objective relating to the degree to which the beneficiary's (Discovery Life) situation has changed as a result of this method.

- To apply new information, acquired from the findings of this study, to further develop good practice and enhance performance in order to empower investigators at Discovery Life with new knowledge relating to the application of physical surveillance in the investigation of insurance fraud.

Semi-structured interviews were conducted with forensic investigators employed at the Forensic Department at Discovery Life. The research has revealed that the majority of forensic investigators, other than the Surveillance Unit, at the Forensic Department of Discovery Life do not utilise physical surveillance during insurance fraud investigations to assist them in gathering evidence. These investigators also had a lack of knowledge and skills regarding the utilisation of physical surveillance during insurance fraud investigations and the advantages of this method during insurance fraud investigations. As a result of the non-utilisation of

physical surveillance during insurance fraud investigations conducted at the Forensic Department of Discovery Life, important information and evidence with regard to the movement and actions of identified perpetrators who commit insurance fraud are lost to the investigators. However, the significance of the application of physical surveillance in the investigation of insurance fraud is emphasised by the forensic investigators attached to the Surveillance Unit of Discovery Life who utilise physical surveillance on a daily basis to investigate insurance fraud.

The research has further revealed that insurance fraud is a major concern to the insurance industry, but can be mitigated through the implementation of unconventional investigative methods, such as physical surveillance, to enhance investigative capabilities. It was recommended that all forensic investigators at Discovery Life be trained in the techniques of physical surveillance to address shortcomings of general and out-dated investigation methods.

Key terms

Crime intelligence; electronic surveillance; foot surveillance; insurance fraud; mobile surveillance; physical surveillance; static surveillance; white collar crime.

LIST OF ABBREVIATIONS

ACFE	-	Association of Certified Fraud Examiners
ASISA	-	Association of Savings and Investments South Africa
CAIF	-	Coalition Against Insurance Fraud
CAS	-	Case Administration System
CCTV	-	Closed Circuit Television
CPIA	-	Criminal Procedures Investigations Act
FBI	-	Federal Bureau of Investigation
FIASA	-	Financial Intermediaries Association of Southern Africa
FICA	-	Financial Intelligence Centre Act
GPS	-	Global Positioning System
GWP	-	Gross World Product
HPCSA	-	Health Professionals Council of South Africa
HRA	-	Human Rights Act
ICD	-	International Classification of Diseases
IT	-	Information Technology
MMS	-	Multi Media Services
POPI	-	Protection of Personal Information Act
RIPA	-	Regulation of Investigatory Powers Act
SA	-	South Africa
SANDF	-	South African National Defence Force
SAPS	-	South African Police Services
SMS	-	Short Message System
SSG	-	Surveillance Speciality Group

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CHAPTER 1 GENERAL ORIENTATION

1.1 INTRODUCTION

From the researcher's experience, physical surveillance has been utilised internationally with great success by most police and intelligence departments to gather valuable information about the daily whereabouts and activities of an individual(s) during a forensic investigation. Siljander and Fredrickson (2002:8) are of the view that physical surveillance is an invaluable and significant technique of investigation that should be managed with the utmost care, taking into consideration the potential risks pertaining to all crime investigation dynamics. The main reasons for conducting physical surveillance, according to these authors are to obtain information, or develop leads and to obtain evidence of a crime that has already been committed or to obtain evidence of a crime actually being committed.

Bearing this in mind, the researcher addressed the challenges that physical surveillance operatives are faced with during insurance fraud investigations. Some of these challenges include the application of the different physical surveillance techniques during the investigation of insurance fraud, the legal framework pertaining to the application of physical surveillance and the rights of the person under surveillance. The rights of persons under surveillance are acknowledged by Siljander and Fredrickson (2002:9) who confirm that the person who is undertaking the physical surveillance should be knowledgeable about the various laws governing surveillance activities.

1.2 BACKGROUND TO THE STUDY

"Discovery Life was established in 2000 and is South Africa's (SA) fastest growing major life assurer in the risk market, having captured 25% of the overall risk broker market. The company covers more than 3 000 000 lives. Discovery Life was the first South African insurer to separate risk from investment, and the value of its business is now more than R11.6 billion. Discovery Life was voted the top life assurer in the Sunday Times Top Brands survey for 2009, 2010 and 2011, the top risk and life assurance supplier at the 2010 Financial Intermediaries Association of Southern Africa (FIASA) Awards and the top long-term insurer: recurring savings, at the 2011 FIASA Awards. In 2012, the Pricewaterhouse Coopers' fifth biannual Strategic and Emerging Issues in South African Insurance survey rated Discovery Life's life products as the leader in the industry. Discovery's business units comprise Discovery Health, Discovery Life, Discovery Invest, Discovery Vitality and Discovery Insure" *(Our businesses. Discovery Life, 2013).*

The Forensic Department of Discovery Life was also established in 2000 and mandated to investigate all aspects pertaining to fraud, abuse of benefits, misconduct or unethical behaviour. The Forensic Department is responsible for all forensic investigations of the Discovery Health, Discovery Life and Discovery Insure business units and reports to Discovery Holdings Executive Committee as well as the Discovery Health Audit Committee. Discovery is also accountable to the Health Professional's Council of South Africa (HPCSA). The forensic investigators at Discovery are recruited specifically for their individual skills and knowledge with regard to the specialised fields of medicine, law, forensic investigation, short term insurance, nursing, and information technology (IT).

Due to a steady increase in fraudulent disability claims, a need was identified by the Head of the Forensic Department to establish a physical surveillance capacity to investigate these claims. As a result, the Surveillance Unit of

Discovery Life was established in September 2008 and given the mandate by the Executive Committee of Discovery Holdings to investigate disability and life insurance claims and to assist the other forensic investigators at Discovery whenever necessary. The three main categories of investigations conducted at Discovery entail the following:

- Health investigations (dishonest service providers, hospitals, pharmacies, irregularities regarding medical coding (for example, International Statistical Classification Diseases (ICD) codes) of medical procedures and dishonest members).

- Life investigations (disability, brokers, death, income and business related claims).

- Insurance investigations (short term insurance claims).

1.3 PROBLEM STATEMENT

According to Block, Dabdoub and Fregly (1995:3) the problem and the characteristics of a problem must be analysed in respect of facts that occurred, why and how they occurred and what solutions have been applied. The researcher has identified the research problem that outlines the particulars of the problem and provides the rationale why it is regarded as a research problem, why the problem occurs and the suggested solution.

An analysis conducted by the Association of Certified Fraud Examiners (ACFE) of more than 1 300 fraud cases probed worldwide and published in a *Report to the Nations on Occupational Fraud and Abuse* (ACFE, 2012) revealed the typical organisation loses between 5% and 7% of its revenue to fraud every year. According to this report, applied to the estimated Gross World Product (GWP),

this figure translates to a potential projected global fraud loss of more than 3.5 trillion dollars. A prominent South African audit firm, BDO, revealed in this report that approximately R100 billion is lost annually due to fraud in the business community. According to one of this firm's directors, James Roberts, South Africa boasts the second highest incidence of corporate fraud in the world. Roberts also mentions that fraud, including insurance fraud, committed in companies in South Africa is escalating at an alarming rate (Roberts, 2010).

According to the Association of Savings and Investments (ASISA), which compiles insurance fraud statistics for the insurance industry in South Africa, an average of 4 800 attempts are made annually by policyholders and beneficiaries to access policy benefits through fraudulent and dishonest means (Dempsey, 2012). The South African Police Service (SAPS) *Annual Crime Statistics for 2011/2012* also revealed that commercial crimes in South Africa are on the increase with 53 931 cases reported in 2005 compared to 88 050 cases reported in 2012 (South Africa, 2012(a)). The SAPS *Annual Crime Statistics for 2013/2014* further illustrated a total of 89 138 commercial crimes cases reported (South Africa, 2014) and during 2014/2015 76 744 commercial crimes cases were reported (South Africa, 2015). Fraud is classified by the SAPS in the category of commercial crime. Insurance fraud is, however, not separately categorised as a crime and falls under the category of commercial crimes. According to the SAPS Annual Report 2011/2012, "serious and priority commercial crime refers to, amongst others, fraud, that is of such an extent or complexity that it requires the services of a chartered accountant during investigation, and contraventions of certain statutes (including, amongst others, long and short term insurance)" (South Africa, 2012(b):107). The SAPS *Crime Statistics Overview RSA 2012/2013* (2013:19) furthermore indicates that commercial crimes, with specific reference to fraud, increased and then decreased as follow:

- 45.5% over a 9-year period (2004/2005 – 2012/2013);
- 10% during the past 4 years (2009/2010 – 2012/2013: and
- 0.6% during 2012/2013.
- - 7% during 2013/2014
- - 11.6% during 2014/2015

According to the Discovery Holdings Annual Forensic Statistics report, the department experienced an increase of approximately 2.4% of reported insurance fraud cases during 2011/2012 (De Villiers, 2012). The total number of cases investigated by Discovery's Forensic Department for the mentioned period, amounted to 3 704 cases. During 2013/2014 an increase of 3.1% in reported insurance fraud cases (totalling 5 006 cases) were investigated by the Forensic Department at Discovery Holdings (De Villiers, 2014).

Specialised investigative skills, such as physical surveillance, within the Forensic Department are applied to address insurance fraud to attempt to reduce these statistics. From the researcher's experience, the significance of physical surveillance during forensic investigations should never be under-estimated as it is an internationally recognised investigative method used by law enforcement agencies, private investigators and corporate investigators worldwide. According to Baker and Gunter (2005:1), private surveillance operatives (investigators) outnumber law enforcement officers three to one. Baker and Gunter are furthermore of the opinion that while the surveillance role of a police investigator is usually one of many duties, the speciality of applying physical surveillance is more prevalent in the private sector investigative sphere.

The researcher identified the non-utilisation of physical surveillance during insurance fraud investigations at the Forensic Department of Discovery Life. After preliminary interviews with forensic investigators and perusing case files of insurance fraud and other related investigations conducted by these investigators from January 2005 to December 2007, the following shortcoming was confirmed: Forensic investigators at the Forensic Department of Discovery Life do not utilise physical surveillance during insurance fraud investigations to assist them in gathering evidence. These investigators also have a lack of knowledge and skills regarding the utilisation of physical surveillance during insurance fraud investigations and the advantages that this method can offer during such investigations.

As a result of the non-utilisation of physical surveillance during insurance fraud investigations conducted at the Forensic Department of Discovery Life, important information and evidence with regard to the movement and actions of identified perpetrators who commit insurance fraud are lost to the investigators. As a result, a large number of fraudulent insurance claims are being paid out to perpetrators who have found ways to commit fraud against the insurance and health industry in South Africa that is worth billions. Those few forensic investigators in the corporate environment who have successfully utilised the physical surveillance capacity to prove the involvement of insurance fraud in their investigations are examples of how this forensic investigation method has assisted them with the investigation of fraudulent claims. It was thus important to conduct the research to ensure that forensic investigators are made aware of and realise the significance of physical surveillance during insurance fraud investigations. As a result, insurance fraud at Discovery Life could be minimised and fraudsters could be held accountable.

1.3.1 Experience in physical surveillance as a method in forensic investigation

The researcher has first-hand knowledge and more than 24 years' experience of physical surveillance as a method to gather information for investigation purposes. The researcher was first introduced to physical surveillance in 1990 when he was transferred to the Surveillance Unit of the SAPS Specialised Investigations Branch in Johannesburg. In addition, the researcher was also appointed as the commanding officer of the Surveillance Unit, SAPS Crime Intelligence in Gauteng for 11 years. The primary functions of this unit include the gathering of covert crime information for court related purposes, the effective monitoring and investigation of national and international organised criminal activities, and the gathering of *prima facie* evidence against individuals and organizations involved in criminal activities by means of physical surveillance.

The researcher has successfully been involved with the investigation of high profile cases by utilizing teams of surveillance operatives who applied physical surveillance techniques to identify the whereabouts of wanted criminals, to identify accomplices and to supply investigating officers with significant information to ensure arrests of wanted suspects and their accomplices. The SAPS Surveillance Unit was, among other high profile investigations, also instrumental in gathering information on right wing extremists who were planning to overthrow the ruling government in 2001. These cases clearly illustrate the significance of utilising physical surveillance during any type of investigation and especially the value that it can add to forensic investigations. It is the contention of the researcher that without the application of physical surveillance these investigations would not have been successfully concluded.

The researcher is currently the manager of the Surveillance Unit at the Forensic Department of Discovery Life, since 2008. As a result of the non-existence of a physical surveillance capacity at Discovery Life, the researcher was responsible

for the establishment of such a capacity. The primary objective of establishing such a capacity is to gather *prima facie* evidence on identified perpetrators, who are suspected of committing insurance fraud, in order to assist forensic investigators to successfully investigate such offenders. The primary functions of the researcher are to manage, develop and oversee the operations of this unit. This experience assisted the researcher in understanding the circumstances in which the forensic investigators operate and the evaluation of the data collected through literature and interviews.

1.3.2 Related qualifications and contribution to knowledge

The researcher obtained a National Diploma in Police Administration in 1989 from the Technikon South Africa as well as the degree Baccallaureus Technologiae (BTech) in Forensic Investigation in 2011 from the University of South Africa. The researcher is registered with the Association of Certified Fraud Examiners (ACFE) SA Chapter and has successfully completed the international examination which is recognised in South Africa as an NQF 7 qualification. The researcher has undergone training provided by the SAPS in covert physical surveillance and successfully qualified as a covert physical surveillance expert. Furthermore, the researcher provided training interventions for SAPS and South African National Defence Force (SANDF) covert surveillance operatives from 1992 to 2006.

1.4 AIM OF THE RESEARCH

According to Leedy and Ormrod (2010:48), once the research problem is identified, the aim of the research must be carefully phrased as it represents the single goal of the total research effort. For research to qualify as social research,

it must have clearly listed aims that relate to the knowledge and needs but limited to constraints such as money, time and opportunity (Denscombe, 2002:2).

The aim of this research is to determine the significance of the application of physical surveillance as a method during the investigation of insurance fraud investigations conducted by the Surveillance Unit at the Forensic Department, Discovery Life.

Due to the fact that there are different types of purposes, the researcher must have a clear perception of where the particular purpose fits into the research to evaluate the strengths and the weaknesses of the research and consider how things might be improved (Maxfield & Babbie, 2008:106). According to Mouton and Marais (1996:25), the purpose of research determines the journey and therefore also the destination.

The objectives of this study are:

- To explore, identify and describe the value of the application of physical surveillance, as a forensic investigation method, in order to determine the significance of this method in the investigation of insurance fraud at the Forensic Department of Discovery Life.
  - If the value of applying physical surveillance at the Forensic Department of Discovery Life is identified and described then the significance of physical surveillance in the investigation of insurance fraud can be determined.

- To determine whether the application of physical surveillance at the Forensic Department of Discovery Life is achieving its intended objective relating to the degree in which the beneficiary's (Discovery Life) situation has changed as a result of this method.

- If it is determined that the agreed objective (to gather *prima facie* evidence on identified perpetrators who commit insurance fraud in order to assist forensic investigators to successfully investigate such offenders) of establishing a physical surveillance capacity at Discover Life has been achieved, then the value of this method to the beneficiary's changed situation can be ascertained.

- To apply new information, acquired from the findings of this study, to further develop good practice and enhance performance in order to empower investigators at Discovery with new knowledge relating to the application of physical surveillance in the investigation of insurance fraud.
  - If new information acquired from the findings of this study is applied and further developed, investigators at the Forensic Department of Discovery Life would be empowered with new knowledge leading to enhanced performance in the application of physical surveillance during the investigation of insurance fraud.

1.5 DEMARCATION OF THE STUDY

This study was limited to the Forensic Department at Discovery Life. Discovery Life is one of the four core business units of Discovery Holdings Limited. The Surveillance Unit falls under the Forensics Department and is mandated to investigate disability and life insurance claims nationally. As a result, this study focuses on the application of physical surveillance in the investigation of disability and life insurance claims. Operational information of information gathering methods used by the Surveillance Unit of Discovery Life related to disability and insurance fraud investigations are excluded from the study due to confidentiality and the covert nature of such investigations.

This demarcation prevents confusion in the interpretation and practical application of the research findings and recommendations. This study covered the period 1 January 2007 to 31 December 2014. It is the view of the researcher that this timeframe is adequate for research purposes and sufficiently covers the period prior to the establishment of the Surveillance Unit and after the unit was introduced. As a result, the findings of this study are relevant and timeous.

1.6 CHALLENGES EXPERIENCED DURING THE RESEARCH

The researcher experienced that literature sources on physical surveillance are very limited, not only in the South African context, but internationally. This limitation of literature on the topic is attributed to the covert nature of physical surveillance. As a result, the researcher primarily drew on available international literature. To further overcome this challenge, the researcher also relied on his personal collection of related literature sources obtained over an extensive period as a surveillance operative and trainer, as well as personal experience gained over a lengthy period. As a result, seminal sources on this topic were included and a saturated review of the literature was conducted in Chapter 2.

Empirical research on the application of physical surveillance in the investigation of insurance fraud is limited and is basically non-existent. This gap in research and the resultant vacuum in the literature created a challenge since the researcher could not extensively draw on previous empirical studies to review. However, the researcher's illustration of personal experiences thus narrowed this gap in the literature on the application of physical surveillance, and even more so, on the application of physical surveillance in the investigation of insurance fraud, and subsequently contributed to new knowledge.

1.7 RESEARCH QUESTION

According to Denscombe (2002:31) research questions ask exactly what is to be investigated and which specific things are to be observed, measured and questioned in order to shed light on the topic.

The researcher focused on the following research question to guide the research study: What is the significance of physical surveillance as a forensic investigation method in the investigation of insurance fraud at Discovery Life?

1.8 KEY THEORETICAL CONCEPTS

Key theoretical concepts are those concepts that capture the essence of what the report is about (Denscombe, 2002:292). The key concepts are defined so that both the researcher and the reader of this document understand exactly what the specific concepts mean. The key concepts central to this study are as follows:

1.8.1 Fraud

Robertson and Zlatkovich (1997:5) describe fraud as any intentional or deliberate act to deprive another of property or money by guile, deception or other unfair means. Van Rooyen (2008:128) argues that fraud in its broadest terms means obtaining something of value or avoiding an obligation by means of deception. This embraces many and varied forms of conduct, ranging from false claims against an insurance policy to corporate frauds that are meticulously planned and intricate in their execution.

1.8.2 Insurance

According to Rejda and McNamara (2014:38) there is no single definition of insurance. Insurance can be defined from the viewpoint of several disciplines, including law, economics, history, actuarial science, risk theory and sociology. Additionally, Franzetti (2010:40) defines "insurance" as "the pooling of fortuitous losses by transfer of such risks to insurers, who agree to indemnify insurers for such losses, to provide other pecuniary benefits on their occurrence, or to render services connected with the risk".

The researcher agrees that although this is a lengthy definition that may not be acceptable to all insurance institutions, it is quite useful for analysing the common elements of a true insurance plan. An insurance plan or arrangement typically includes the following characteristics; pooling of losses, payment of fortuitous losses, risk transfer and indemnification. Birds (2013:9) also finds it difficult to define insurance, due to the fact that the statutes dealing with the regulation of insurance business have never contained a definition, no doubt because of the risk of inadvertently excluding contracts that should be within their scope. Birds suggests that insurance is "any contract having as its principal object one party (the insurer) assuming the risk of an uncertain event which is not within its control, happening at a future time, in which event the other party (the insured) has an interest, and under which contract the insurer is bound to pay money or provide its equivalent if the uncertain event occurs".

1.8.3 Insurance fraud

The *ACFE 2010 Fraud Examiners Manual – International Edition* (2010:1.1201) describes insurance fraud as the involvement of deception or misrepresentation that an individual or entity makes, knowing that the misrepresentation could result in some unauthorised benefit to the individual, or to the entity, or some other party.

According to Ferraro (2012:432) insurance fraud is any deliberate deception perpetrated against an insurance company or agent for the purpose of unwarranted or improper financial gain that could occur during the process of buying, using, selling and underwriting insurance.

1.8.4 Forensic Investigation

Van Rooyen (2004:7) describes the term “forensic investigator” as a buzz word used by many people who are directly or indirectly involved with investigations. According to Van Rooyen, forensic investigation has to do with the courts and the legal system and the function of examining and analysing questions that arise from crime or litigation.

1.8.5 Physical Surveillance

Siljander and Fredrickson (2002:3) describes physical surveillance as the direct visual observation of people, vehicles, or activity taking place at some given location for the purpose of obtaining information.

1.8.6 Intelligence

Ratcliffe (2004:4) describes intelligence as the creation of an intelligence product which supports front-line areas, investigations and other operational areas in taking case-specific action to achieve enforcement objectives.

1.8.7 White Collar Crime

According to Bennett and Hess (2004:361), the FBI academy defines white collar crime as “illegal acts characterized by fraud, concealment, or a violation of trust,

which are not dependent upon the actual or threatened use of physical force or violence".

1.9 VALUE OF THE RESEARCH

According to De Vos, Strydom, Fouche and Delport (2011:107), the research study should be useful and valuable to the intended target group. Good research demonstrates its relevance in terms of existing knowledge that contributes something to existing theories, the way it addresses practical problems and the timeliness thereof (Denscombe, 2002:43).

Subsequent to the completion of evaluating the significance of applying physical surveillance during the investigation of insurance fraud, this study and its results, could, if incorporated, firstly be to the advantage of Discovery Life, a leading provider in the insurance and health industry in South Africa. Discovery Life receives large numbers of fraudulent insurance claims that are being paid out to perpetrators who have found ways to defraud the company. As a result, investigators at the Forensic Department of Discovery Life could:

- Gain absolute and explicit information on the areas to specifically focus on during the application of physical surveillance in the investigation of insurance fraud; and

- Use this study as a management instrument, a prospect for further development and an opportunity to rectify shortcomings, such as training interventions for investigators.

Secondly, this study and its results could, if incorporated, benefit the entire forensic investigation fraternity as this evaluation could:

- Raise awareness of this unconventional method and the value of physical surveillance in the investigation of crime, with specific reference to insurance fraud investigations;

- Provide practical advice to other insurance and health service providers experiencing similar challenges;

- Add value by stimulating new thinking on the subject and add knowledge that could enhance the capabilities of investigators across the corporate environment;

- Contribute to knowledge regarding the importance of utilising physical surveillance as a method during the forensic investigation of insurance fraud;

- Benefit clients who make use of the services of forensic investigators to investigate insurance fraud as investigations could be more successful since improved techniques, resources and technology could be implemented by investigators.

Thirdly, the South African community could also benefit from this study and its results, since this study could contribute to an increase in the arrest and conviction of perpetrators defrauding the insurance and health industry. In turn, the insurance and health industry could gain increased control over annual insurance premiums by ensuring that the increase of policy premiums is kept to an acceptable level for all and that the harsh impact of insurance fraud is not filtered through to the consumer.

Lastly, the academic community could also benefit from this study and its results, since this study could be used in related studies, research and included in learning material.

1.10 RESEARCH DESIGN

Welman, Kruger and Mitchell (2007:52) describe a research design as a plan according to which one obtains research participants (subjects) and collects information from them. Empirical research was conducted in this study. The research was based on real life experiences of participants. An interview schedule was compiled and interviews were conducted to explore participants' experiences. According to Mouton (2011:55), a research design is a plan or blueprint of how you intend conducting the research. The sources of information for this research study were gathered from interviewing forensic investigators, obtaining information from studying appropriate and relevant literature and adding the researcher's personal experience of the topic. The researcher went into the "field" to ascertain the personal experiences and knowledge of the participants with regards to the application of physical surveillance in the investigation of insurance fraud.

According to Maxfield and Babbie (2005:6), empirical research is the production of knowledge based on experience or observation. Empirical research allowed the researcher to obtain first-hand information from the participants' real-life experiences with regard to the significance of a physical surveillance capacity assisting them with investigating cases of insurance fraud. The researcher also conducted empirical research due to the fact that physical surveillance is an unconventional forensic investigation method and a relatively unknown subject. Literature on the subject is not easily obtainable or readily available due to the covert nature of the subject. The primary source of information will thus be obtained through conducting interviews, and the secondary source of information will be derived from the literature sources.

1.11 RESEARCH APPROACH

In order to support the empirical research, the researcher chose to follow a qualitative research approach. Mouton (2011:107) is of the opinion that in qualitative research, researchers tend to keep field notes as they participate in the fieldwork – often in natural field settings. In line with Mouton's view, the researcher kept detailed field notes to record the responses during interviews with participants. The qualitative research approach is presented in the form of a comprehensive literature study and responses from participants during semi-structured interviews. According to Welman, Kruger and Mitchell (2007:193), a qualitative researcher's primary task is to uncover and explicate the ways in which people in particular settings come to understand, account for, take action, and manage their situations as well as the problems and difficulties they encounter. The processes of uncovering and explicating are typically based on successive observations and interviews. Similarly, Creswell (2009:4) is of the opinion that qualitative research deals with exploring and understanding the meaning of individuals to a social or human problem and involves asking questions, collecting and analysing data and making interpretations of the meaning thereof. The qualitative approach was best suited for this research as the researcher wished to obtain practical answers from the group of forensic investigators who are responsible for the investigation of insurance fraud at Discovery Life. Semi-structured interviews with the aid of an interview guide (see Appendix B: Interview Guide – page 132) were conducted to obtain information about practical knowledge and personal experience.

1.12 POPULATION AND SAMPLING

Maxfield and Babbie (2005:107) mention that “the population for a study is that group (usually of people) about whom we want to be able to draw conclusions”.

The ideal population for this research would have been all the forensic investigators in the South African long-term life insurance market who apply physical surveillance to investigate incidents of insurance fraud. It was, however, impractical to consult with this wide population; therefore, the researcher made use of a target population.

According to Welman, Kruger and Mitchell (2007:52), the target population is the study object and consists of individuals, groups, organisations, human products and events, or the conditions to which they are exposed. The target population for this study included forensic investigators attached to the Group Forensic Services at Discovery Holdings who investigate insurance fraud. The Group Forensic Services are responsible for investigating insurance fraud in the Discovery Health, Discovery Life and Discovery Insure business units. Discovery Health forensic investigators comprise pharmacists, medical personnel (nurses, sisters and a matron) as well as a lawyer. They are responsible for investigating health insurance fraud cases such as dishonest and unscrupulous service providers, hospitals, pharmacies, and medical personnel who are involved with irregularities regarding medical diagnostic coding (for example, the International Statistical Classification Diseases – Version 10 (ICD-10) coding system of medical procedures and incorrect billing. These investigators are also investigating dishonest members of Discovery Health who commit fraud that allows other non-Discovery Health members to use their medical aid cards for illegal purposes.

Discovery Life forensic investigators comprise surveillance operatives, former law enforcement officials and personnel with experience in life insurance claims

investigation who are responsible for investigating insurance fraud, such as alleged fraudulent disability and life insurance claims. Discovery Insure forensic investigators comprise former law enforcement officials and personnel with experience in short term insurance claims' investigation who investigate insurance fraud such as dishonest and fraudulent short term insurance claims (vehicle accidents, theft of property and goods, bogus break-in at residence, loss of valuables, and so on).

The sample of this study included 26 forensic investigators who are attached to the Forensic Department at Discovery Life. The majority of these forensic investigators do not apply physical surveillance as the primary investigative method in the investigation of insurance fraud. The application of physical surveillance is thus limited to the Surveillance Unit at Discovery. The forensic investigators are responsible for investigating all aspects pertaining to fraud, abuse and unethical behaviour within the Discovery Group. These investigators function within the parameters of the Health Professions Act, 56 of 1974 (South Africa, 1974), the Medical Schemes Amendment Act, 55 of 2001 (South Africa, 2001), the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (South Africa, 2004) and the Financial Intelligence Centre Act, 31 of 2001 (South Africa, 2001) also known as the "FICA" Act. These 26 investigators are considered to be experts due to their knowledge and experience gained over an extensive period of time in their respective previous careers within law enforcement, medical and pharmaceutical environments. Hagan (2005:133) mentions that sampling may be used with any data gathering procedure.

The researcher made use of a non-probability sample, as less time and financial expenses are needed to do the research. The researcher agrees with Welman, Kruger and Mitchell (2007:68) that the advantage of non-probability sampling is less complicated and more economical to use. For the purpose of this research, purposive sampling was applied since the researcher relied on his experience to obtain units of analyses. According to Maxfield and Babbie (2008:235), the

purposive sampling method is based on our own knowledge of the population, its elements and the nature of our research aims. In addition, the purposive sampling method was applied due to the specialised expertise of forensic investigators included in the sample.

Physical surveillance is an unconventional method of forensic investigation, and the application thereof requires highly skilled and trained operatives. Formal training in physical surveillance, received by government and private forensic investigators in South Africa, is limited to a small number of investigators. Data was gathered until saturation had been reached.

1.13 DATA COLLECTION

The researcher gathered data by means of interviews and a literature review. According to Maxfield and Babbie (2005:209), with field research, much of the value of the research depends on how the data was collected. Similarly, Leedy and Ormrod (2005:143) mention that qualitative researchers often use multiple forms of data gathering techniques in a single study such as observations, interviews and anything else that can help them answer their research questions.

1.13.1 Interviews

According to Noaks and Wincup (2004:123), when researchers want to conduct interviews, they need to plan in advance to identify, address and analyse the key concepts. Creswell (2009:181) further adds that the intentions of these interviews are to obtain the participants' views and opinions.

The researcher used the semi-structured interview method to interview participants, who were allowed to speak from experience, knowledge and issues concerning physical surveillance and the introduction thereof in their work

environment. The researcher formulated an interview guide (see Appendix B: Interview Guide – page 132) derived from the problem statement and research question and used this interview guide to obtain certain data from forensic investigators who were able and willing to participate in the study. According to Welman, Kruger and Mitchell (2007:166), in a semi-structured interview, the researcher has a list of themes and questions to be covered, although these may vary from one interview to the next. Instead of an interview schedule, interview guides are used in semi-structured interviews.

1.13.2 Literature Review

Previously collected literature for physical surveillance training purposes was used as well as some literature studies that were obtained from the UNISA library on the subject of physical surveillance. Mouton (2011:88) mentions that a variety of bibliographic tools have been developed to assist in the identification of the literature needed for research. The researcher studied the mentioned literature to explore the local and international arena for best practises concerning physical surveillance. According to Denscombe (2002:86), the objective of the literature review is to inform the researcher about what is already known about the subject, so that this knowledge could be used for an investigation which will progress and guide the study through new learning. The researcher also made use of internet sources to collect data and information about the subject and determine what the latest trends are with regards to physical surveillance both locally and internationally.

1.14 DATA ANALYSIS

According to Rubin and Rubin (1995:226), the beginning of the process of data analysis is to examine the data you have collected, pull out the concepts and themes that describe the world of the interviewees and decide which areas should be examined in more detail. The researcher analysed and compared the data that was received from the interviews and the documentary sources by means of the data analysis spiral. The data was organised and arranged in a manageable form in order to understand it. It was also grouped according to categories and themes. The researcher applied the following data analysis spiral method as described by Leedy and Ormrod (2005:150-151):

- The researcher compiled comprehensive notes during the interviews.
- These notes was then organised into similar topics by making use of index cards.
- These large amounts of data was broken down into smaller manageable texts and grouped under topics developed.
- After the grouping of data under the topics, it was further divided into sub-categories in order to understand their meaning.
- Data was examined a number of times to ensure all data was grouped under relevant topics. Irrelevant data was eliminated.
- Data was then categorised according to topics, themes, sub-themes and analysis performed.
- The conclusion and findings was then incorporated into the dissertation.

According to Maxfield and Babbie (2005:107), one manipulates the collected data for the purpose of drawing conclusions that reflect on the interests, ideas, and theories that initiated the inquiry. The researcher arranged the data according to the spiral method in an organised manner. Leedy and Ormrod (2001:161) describe the data analysis spiral as equally applicable to a wide variety of qualitative studies. The information was scrutinised by the researcher

and then analysed and sorted so that answers and comments that belong together could be placed and stored together for future reference. This information was then integrated, summarised and interpreted.

1.15 METHODS TO ENSURE TRUSTWORTHINESS

According to Marshall and Rossman (2011:39) historically, concerns with the trustworthiness of qualitative research drew from the natural and experimental sciences for direction. Thus, reliability, validity, objectivity, and generalisability – borrowed from more quantitative approaches – were the criteria against which the soundness of a qualitative study was judged. Lincoln and Guba (in Marshall and Rossman, 2011:40) put forward alternative constructs to capture these concerns: credibility, dependability, confirmability, and transferability. According to Creswell (2014:201) and Leedy and Ormrod (2013:105), terms such as 'dependability', 'conformability', 'verification', 'transferability', 'trustworthiness', 'authenticity', and 'credibility' are used to describe the idea of validity. 'Dependability' is the concept used in qualitative research in relation to reliability (Botes, 2003:183).

1.15.1 Validation Strategies (Credibility)

According to Welman, Kruger & Mitchell (2007:142) validity is the extent to which the research findings accurately represent what is really happening in the situation. The researcher used the identified problem statement, research aim and the research question to determine the contents of the interview schedule. Denscombe (2002:100) mentions that validity concerns the accuracy of the questions asked, the data collected and the explanation offered.

The permission of every participant was obtained by means of an informed consent form (which are kept with the researcher) and without any coercion. During data collection it was ensured that a comprehensive body of literature was

obtained on the relevant subject. No data has been changed or manipulated during the research. A standard interview guide (see Appendix B: Interview Guide – page 132) was developed and used for all the participants. This ensured that the interview questions measured what they were supposed to. The same questions were put to each investigator and the process was replicated with each of them in order to ensure and maintain quality throughout. The researcher also remained objective throughout the research. In line with the researcher's process followed, Leedy and Ormrod (2001:98) are of the opinion that content validity measures people's achievements in a particular area, such as their knowledge gained or skill acquired.

1.15.2 Methods to ensure reliability (Dependability)

According to Welman, Kruger and Mitchell (2007:145) reliability is concerned with the findings of the research and relates to the credibility of the findings. The interviews with the forensic investigators were transparent and without any pressure or influence from the researcher. The same questions were asked of the participants and their answers were captured by means of detailed field notes taken by the researcher.

The information gathered from participants was captured by means of detailed field notes with the view of analysing participants' responses. Leedy and Ormrod (2001:100) are of the view that measuring something accurately also entails the consistent measurement thereof. Permission to conduct the interviews was obtained from Discovery Life as well as from the participants. The researcher also ensured that the participants who partook in this study were experienced and skilled investigators in their respective fields and that all their different viewpoints were taken into consideration. All the relevant documentation and detailed field notes were kept available for control purposes.

The literature sources cited were correctly noted and the authors were duly acknowledged for their contribution. The literature sources that were used during the research include seminal sources on the topic and can thus be relied upon. No data was manipulated and the personal experiences by the researcher could be verified by means of case numbers or witnesses and colleagues to ensure that the information is reliable.

The researcher is confident that reliable measures were used throughout the research and that it was done to the best of his ability. The researcher is of the opinion that if the same methods of research were to be used by another researcher, the results would be the same. According to Welman, Kruger and Mitchell (2007:145), if a research finding can be repeated, it is reliable. In other words, if anyone else were to repeat the research, they should be able to obtain the same results as those obtained originally.

1.16 ETHICAL CONSIDERATIONS

The researcher abided by the University of South Africa's code of conduct for researchers as stated in the *Policy on Research Ethics of the University of South Africa* (University of South Africa, 2007:7). The researcher also adhered to the following ethical considerations:

1.16.1 Informed consent

According to Welman, Kruger and Mitchell (2007:181) the principles underlying "research ethics" are universal and concern issues such as honesty and respect for the rights of individuals. The researcher obtained written permission from the head of Discovery Life Forensic Department to conduct the research and obtained the consent of every participant that they were interviewed of their own

free will and that they could withdraw from the process at any time should they feel uncomfortable about the research.

1.16.2 Preserving anonymity, privacy and confidentiality

Participants were assured that their right to privacy would be respected and maintained and the interviews would be conducted at suitable, agreed upon venues. No monetary value was attached to the interviews. All participants were thoroughly informed of the research and the purpose of the interview. The researcher guarded against manipulation of the participants and treated them with dignity and respect. No plagiarism was committed during the research; all sources cited were duly acknowledged in a list of references (see List of References – page 124). The information obtained from participants was also treated and kept confidential and no unauthorised access to this information was allowed. The researcher concurs with Leedy and Ormrod (2005:101) and Babbie and Mouton (2007:38) that ethical issues, such as protection from harm, informed consent and the right to privacy and honesty, must be considered when dealing with the participants.

1.17 SUMMARY

This chapter provided an overview of the conceptual framework followed in the study. The comprehensive statement of the research problem that is, the non-utilisation of physical surveillance during insurance fraud investigations at the Forensic Department of Discovery Life set the tone for the convincing argument as evidence for the need for the research. This identified need to conduct the research was further supported by the formulation of a clear research aim accompanied by research objectives. The research question “What is the significance of physical surveillance as a forensic investigation method in the investigation of insurance fraud at Discovery Life?” emerged from the aim and

objectives that described the research intentions of the researcher. The research design, approach and research methods, and supporting evidence used in this study, provided further justification to satisfy the identified aim, objectives and research question. This chapter concludes with the ethical framework followed in the study.

CHAPTER 2 THE APPLICATION OF PHYSICAL SURVEILLANCE IN FORENSIC INVESTIGATION

2.1 INTRODUCTION

The art of physical surveillance is as ageless as a person's interest in determining the activities of another. This art has progressed from the simple act of eavesdropping to a sophisticated practice requiring much expertise (ACM IV Security Services, 1993:7). According to Buckwalter (1983:3), physical surveillance can be described as a multi-service investigative technique that has many uses in the investigative world. Siljander and Fredrickson (2002:3) describe physical surveillance as the direct visual observation of people, vehicles, or activity taking place at some given location for the purpose of obtaining information.

It is the researcher's opinion that the modern art of physical surveillance has evolved into a virtual and technological science developed through time tested methods and techniques by security, military and intelligence agencies around the world. Physical surveillance cannot be attributed only to the covert operatives of countries such as the United States of America, Israel, Britain, Germany, Soviet Union and Africa, but they are in fact a compilation of skills that have been developed through many years of counter espionage, intelligence gathering and investigative techniques.

According to Van Rooyen (2004:130) physical surveillance has become a common trademark amongst professional investigators. It has evolved into a skill through methods developed by the intelligence and investigative agencies of a number of countries over many years. The researcher also agrees with these authors that physical surveillance is indeed an art and therefore requires a trained "artist" to perform the clandestine functions that are required from the

professional surveillance operative. Bennett and Hess (2004:173) similarly indicate that physical surveillance is used only when normal methods of continuing the investigation fail to produce results.

From experience, the researcher agrees with the above-mentioned authors that physical surveillance is about observing people in a discreet (covert) manner at given locations to ascertain what their actions are. The information gathered throughout the surveillance operation is analysed, and together with multimedia evidence (photos, video and audio footage) compiled into a comprehensive surveillance report which can be utilised as evidence. The researcher's experience of more than 24 years of active service as a physical surveillance operative, together with relevant literature on the subject, will be applied in this chapter to review the application of physical surveillance in forensic investigation.

2.2 TYPES OF SURVEILLANCE

There are two types of surveillance, overt and covert.

2.2.1 Overt Surveillance

Overt surveillance is an open observation where one deliberately lets the target know that surveillance is being conducted (Jenkins, 2010:2). Similarly, Knoesen (2012:84) describes overt surveillance as an unconcealed open surveillance technique. This type of surveillance is rarely conducted and has never been implemented by the surveillance team at Discovery Life since contact with the subject is avoided as far as possible.

2.2.2 Covert Surveillance

Covert surveillance is a secretive watch where the target is not aware of one's presence or activities (Jenkins, 2010:2). This type of surveillance is applied by the Discovery Life surveillance team due to the clandestine nature of the surveillance activities to gather information and also to ensure that the company's good name and image remains intact. Surveillance should never be underestimated or be seen in a negative light or as an attempt to invade someone's privacy. From the researcher's experience, surveillance can also prove an individual's innocence due to the confirmation of certain facts, events and activities that happened with or without the individual's participation.

Van Rooyen (2004) describes covert surveillance as the careful and continuous watching of something or someone, carried on in a secretive or discreet manner, in order to obtain information with regard to the identities or activities of a subject or subjects. Palmiotto (2004:107) similarly refer to covert surveillance as the clandestine observation of places, persons and vehicles for the purpose of obtaining information concerning the identities or activities of a subject.

2.3 OBJECTIVES OF SURVEILLANCE

According to Jenkins (2010:3) there are numerous objectives of surveillance for the law enforcement officer and the private investigator, but the most important objectives are the following:

2.3.1 Obtain evidence of a crime committed or any unauthorised activity

The researcher can confirm that forensic investigators at Discovery daily obtain evidence of insurance fraud being committed against the company by perpetrators who submit claims that are suspicious and wilfully incorrect. This is done in order to deceive the company with the intent of obtaining some form of financial gain. According to Ferraro (2012:19), the evidence that surveillance operatives gather is mostly only corroborative and supports or corroborates other evidence that has already been gathered. The researcher agrees with Ferraro that in some cases (such as subjects with psychological mood disorders, bi-polar disorder, post-traumatic stress disorders and the like.) the surveillance operative can only gather corroborative evidence to indicate whether the subjects daily activities of living confirms or denies these alleged subjective disabilities.

2.3.2 Obtain detailed information on the subject's activities

Siljander and Fredrickson (2002:7) indicate that the purpose of surveillance is to conduct professional and visual observation of people, their vehicles, and their premises in an organised manner to gather information on their daily activities.

The majority of insurance claim investigations at Discovery Life, whereby physical surveillance is required, deal with some or other form of disability that the claimant allegedly suffers from. When the subject under investigation is monitored throughout the day, a pattern of activities is established and it could prove the disability to be real and incapacitating or prove that the subject is malingering or is carrying out certain actions with the intent to commit fraud.

According to the researcher's experience, when it is suspected that an injury is faked, the person who is allegedly injured should be placed under surveillance to determine if he or she indulges in any activities which the injury would prevent

him/her from doing. Palmiotto (2004:107) indicates that physical surveillance could be utilised for the purpose of preventing a crime from being committed, dealing with offenders who are in the process of violating the law or obtaining probable cause to obtain a search warrant.

2.3.3 Develop leads for investigation

The surveillance that was conducted usually provides the forensic investigator with other sources of information or leads that can be followed up to provide further intelligence that can be utilised in the investigation.

2.3.4 Know the whereabouts of an individual at all times whilst executing the surveillance operation

According to Van Rooyen (2008:246), the whereabouts of subject's movements, interactions, activities and associates are of the utmost importance in the investigation of individuals or syndicates involved in white-collar and related crimes. From the researcher's experience, it often happens that subjects will exaggerate their physical condition or disability when getting assessed by a Discovery appointed occupational therapist. These subjects usually inform the assessor that they, for example, are staying indoors and in bed three or four times a week, yet when surveillance is done on them, it is established that they might go to a secondary work address, go shopping, do repairs at home and even partake in physical sports activities such as jet skiing, surf angling and playing golf.

At Discovery, a case of insurance fraud was investigated where the subject had to keep a diary of daily activities for a period of a month in order to establish the disruption of his personal life due to his disability. The subject kept the diary for a month and explained in detail how he suffered daily seizures and was in bed most of the time being cared for by his mother during this time. It was

established, however, through surveillance and intelligence gathered that he got married during this time and then spent a two-week honeymoon abroad which he “incidentally” failed to recall in his diary. The evidence was presented to the subject and his policy was cancelled. The money already paid will be recovered in a civil matter between the perpetrator and Discovery (South African Police Service, 2015. Sandton, SAPS Case Administration System (CAS) 376/6/2015).

2.3.5 Confirm the reliability of the information received

It is quite important to embark on an investigation to prove whether the allegation is true or simply malicious (Jenkins, 2010:3). At Discovery, “tip offs” are frequently received that someone is committing fraud with regard to their life/disability insurance. The fraud awareness program at the company is quite effective and this received information is then channelled to the Forensic Department who will assign the case to a specific forensic investigator. The information is treated as confidential and every effort is made to ensure that the information is reliable and confirmed to be the truth. Information gathered from a surveillance operation can sometimes provide the necessary pieces in an investigation puzzle that could provide the evidence in order to prosecute the case successfully (Van Rooyen, 2008:247).

2.3.6 Compile a comprehensive surveillance report to present as evidence in an enquiry or trial

According to Jenkins (2010:3), a good interviewer or investigator should be confident and there is nothing better to boost that confidence than to have a comprehensive surveillance report with photographs or video footage of the suspect carrying out the illicit act. Similarly, Van Rooyen (2008:250) indicates that every bit of information gathered by a surveillance team must be recorded, documented, and compiled into a report.

At Discovery, the surveillance report and the video/photographic evidence is usually presented as evidence to the subject when confronted at a hearing, meeting or ombudsman enquiry. The majority of these investigations deal with the fact that the subject alleges that he/she is physically disabled and is incapable of performing certain functions like driving a motor vehicle, walking, working, bending, squatting, seeing, hearing, and so forth. With the application of physical surveillance, it is most likely to be proven that the subject is indeed capable of performing these physical functions and this gathered evidence is then presented as a comprehensive surveillance report.

Van Rooyen (2004:133) supports the fact that the surveillance report should reflect the detailed movement of a subject during a certain time period, and stresses the fact that any surveillance operation should be treated in such a way that the operatives involved should be able to testify in a court of law. Private investigators normally have limited sources of information available to them and can only rely on limited access to websites that provide personal information and credit data that is available only for certain subscribers. The Protection of Personal Information Act (POPI), Act 4 of 2013 (South Africa, 2013) also known as the POPI Act, also makes it extremely difficult for the private investigator to get in-depth information and intelligence on someone without their written permission. Informers who can report on the activities of the subject pose a risk to the investigator if the word leaks out that the subject is being monitored by a paid informer. The question is: Where does one obtain quality information about a person who is suspected of committing fraud? Physical surveillance, according to the researcher, is one of the best methods available to the forensic investigator as it is legal, and although relatively costly, very effective and guarantees intelligence and information on the activities of the subject.

2.3.7 Locate and identify people

According to Palmiotto (2004:114) the forensic investigator needs to study the subject, learn the geographic area, and rehearse his/her cover story. At Discovery, it is often found that the residential address given by the subject when taking out the disability policy is not the same as the residential address provided when a claim is submitted. It seems that people who intend to submit dubious or false claims change their residential addresses quite frequently to avoid detection. If the subject(s) cannot be located at the given address, surveillance can be used to locate him/her at known places which they frequent or to observe associates with whom they regularly meet. Surveillance can also commence at the subject's workplace to establish his/her routine, driving patterns, social hangouts and residential address (ACM IV Security Services, 1993:4).

A copy of a person's identity document is one of the requirements that must be supplied when taking out a disability policy. When an investigation for surveillance is warranted at Discovery, the copy of the identity document photograph is usually supplied to identify the subject. The challenge is that some of these identity document photographs were taken 10 to 15 years ago which makes it sometimes demanding to identify the subject without difficulty. The application of surveillance on the person and the taking of recent photographs would then be needed to correctly identify the subject as the claimant. According to Jenkins (2010:4) it may be necessary to identify people to eliminate or discount them from enquiries.

2.4 METHODS OF PHYSICAL SURVEILLANCE

The method of physical surveillance is categorised in four main categories including foot surveillance, mobile surveillance, static surveillance and electronic surveillance. These methods can be conducted separately but more often different types of surveillance are combined (Jenkins, 2010:4).

At Discovery, a combined method of all four categories of physical surveillance is being applied as it is always necessary to gather as much information (evidence) as possible on the subject's daily activities.

2.4.1 Foot Surveillance

With correct planning and thorough groundwork, one should be able to have an idea of where the subject will be going about his business whilst on foot, therefore, the surveillance team should be prepared for such an eventuality. According to ACM 1V Security Services (1993:128), a surveillance team may employ foot surveillance to cover a specific area in which the subject is expected to conduct significant activity. This allows the team to concentrate most of its operatives on the ground with only limited support from surveillance vehicles. Similarly, Jenkins (2010:4) is of the opinion that when the subject exits his vehicle on foot, the team should get in close and obtain as much detailed information as possible of the subject's activities.

According to Buckwalter (1983:26), during foot surveillance the surveillance operatives become the subject's shadow, following him wherever he/she goes. The intent is to observe the subject's activities, contacts, conversations, transactions, and movements to determine what he/she is up to. ACM IV Security Services (1993:4) highlight the fact that in preparation for a foot surveillance operation, the team should become familiar with the anticipated operational area.

From personal experience, the researcher agrees with the above authors that it is very important to follow the subject on foot to obtain knowledge and footage of his/her movements and activities at public places, shopping malls, sports venues, work places, places of entertainment and so on. From the researcher's experience, the surveillance operative who does foot surveillance, must be well trained, be self-confident and able to blend in easily with his surroundings. These characteristics are confirmed by Jenkins (2010:7). The majority of disability claims investigated at Discovery involve severe limitations of the arms, hands, legs, feet and back. These claimants usually assert that movement is extremely painful which renders them unable to do general chores or work. The application of physical surveillance on these claimants proves or disproves such reports.

When surveillance is, however, being conducted on these individuals, it is found that The majority of these claimants are malingering or exaggerating the condition of their illness or physical condition in order to ensure that the claim is successful. It is usually while doing foot surveillance that the operatives have the opportunity of getting close up footage of the hand, foot and body movements of the subject. The subject is unaware of being monitored and does not "play the part" of being physically impaired whilst carrying on as normal. Foot surveillance conducted by the Discovery Surveillance Unit very often reveals indisputable evidence against claimants resulting in claims that are disputed, policies cancelled and fraudsters being held accountable.

2.4.2 Vehicle Surveillance

Most perpetrators who warrant physical surveillance in SA have some means of transport with which they travel. This means that the surveillance operative has to follow the perpetrator's vehicle with another vehicle. Siljander and Fredrickson (2002:20) mention that when moving surveillance is to be conducted using a motor vehicle, it is important that the driver be proficient and capable of reacting quickly to ever-changing traffic conditions. Mobile surveillance operations are

conducted on foot, by vehicle or a combination of both. Vehicle surveillance operations are usually conducted to determine a subject's general travel patterns and are usually employed at the onset of an operation. A combination of foot and vehicle surveillance is usually used (Van Rooyen, 2001:188).

Similarly, Bennett and Hess (2004:175) are of the opinion that the subjects of mobile surveillance are almost always people. Mobile surveillance according to Jenkins (2010:4) is carried out to follow moving targets by car or other motorised vehicle and this should always be carried out in a team or with at least two surveillance operators in separate vehicles. From experience, the researcher is of the opinion that it is almost impossible to do efficient surveillance for longer than an hour with only one operative and one vehicle.

From the researcher's experience, the international standard for a professional surveillance team (police, military and secret service agency) is 12 operatives with 6 vehicles. This standard is confirmed by Jenkins (2010:15). Unfortunately it is not always cost effective and possible to employ such a large team. According to the researcher's experience, the surveillance vehicle to be used should be as inconspicuous as possible without any outstanding features. It was also found that a white or light coloured vehicle from a well-known manufacturer blends in more easily with the surroundings and is not easily noticed as there are many similar vehicles on the roads. Similarly, Palmiotto (2004:111) states that vehicle surveillance requires preparation, precautions and a vehicle whose colour, condition and make does not draw any attention to the operative or the team.

The researcher agrees with Jenkins (2010:117) that mobile surveillance is probably one of the most difficult types of surveillance to carry out, as there are so many factors that could be against the operative. The subject needs to be followed without detection and the operatives should do everything in their power not to lose the subject.

The surveillance operatives in the Discovery Life team have to keep log of the events, communicate via a two-way radio with the rest of the team, navigate, take notes and obtain video or photographic material at any given time.

Mobile surveillance should be executed in a calm and collected manner and the driver should always maintain full control of the vehicle. Irrational and reckless driving behaviour only attracts attention to the surveillance vehicle and when an operative is spotted by the subject, the operation is placed in jeopardy and future surveillance operations might not be possible on the subject. The surveillance driver must have the presence of mind to drive with technical proficiency while ensuring the safety of himself and his passengers (ACM 1V Security Services, 1993:92) as well as other road users.

During vehicle surveillance there will always be a command vehicle that has visual contact of the subject who is followed. This command vehicle is responsible for observing the subject's activities and transmitting this information to the rest of the team, as it occurs. This vehicle is thus the "eyes and ears" for the rest of the team. If the command vehicle feels that it has been with the subject's vehicle for too long, an exchange will take place whereby the second vehicle takes over the command position. A team will therefore rotate to ensure that the subject does not recognise and remember any of the vehicles of the team that are observing him. According to Jenkins (2010:117), the success of an effective surveillance team is dependent on how many operatives are being used during a combined vehicle and foot surveillance operation. The researcher agrees that a sufficient number of surveillance operatives in a team will guarantee better results and more success.

2.4.3 Static Surveillance

Static surveillance takes place when a static position (observation post) is established to observe the actions of the subject. A fixed observation point may also be established (Van Rooyen, 2001:188). Similarly, Jenkins (2010:5) describes static surveillance as a point from where surveillance operator(s) are in a static position where they can observe from a building, a vehicle, a container or any object without being noticed by the subject.

According to Adler, Mueller and Laufer (2013:33), observation is the most direct means of studying the subject's daily behaviour. Investigators may play a variety of roles in observing social situations of the subject. The researcher can confirm that through experience the surveillance operative has to blend in and regularly has to play a different role in order to satisfy the community's inquisitiveness. The operative's legend has to be solid and believable and should attract the least attention possible.

Static observation posts can be long term or short term and may be divided into a further two groups namely; urban and rural, depending on the local topography. From experience, the researcher is of the opinion that a static observation point is invaluable to the surveillance team, if available. If an operative is able to do static surveillance from a safe place or environment and can transmit the subject's activities and movement from that static point to other operatives without being noticed, it enhances the successful surveillance capabilities for the rest of the team who can "disappear" in the background and not be noticed.

A long-term static surveillance point could be the renting of a flat, room or office on a monthly basis from where the subject can be easily observed at his/her residence or the office on a twenty-four-hour basis. Such a long-term static surveillance point will enable the surveillance operatives to establish a pattern of the subject's daily movements and activities within days. According to Jenkins

(2010:185), having the ability to move your observation post into a position, observe and photograph the target and then depart without arousing any suspicion from the subject or locals, is paramount to a covert investigation. Palmiotto (2004:110) indicates that static surveillance can involve simply sitting in a vehicle watching a subject or setting up an elaborate operation with hi-tech and sophisticated equipment. Urban observation posts, such as hotel rooms, guest houses, unused offices, factories, shops, flats, apartments, houses, sheds, lofts, containers and so on, can be extremely useful as long as one is able to obtain a space that overlooks the target area. The operative(s) who will occupy the static observation post must have a realistic cover story and should be able to satisfy the nosiest and most curious of landlords, receptionists, staff and estate agents. Only a suitable pretext will get them the room or space that they want (Jenkins 2010:195).

From experience, the researcher can confirm that a lot of planning needs to be done before a suitable static observation post can be identified and occupied. A thorough reconnaissance should be carried out of the area in which the surveillance team will be operating. The following is basic pre-surveillance tasking that needs to be executed:

- Ensure that the subject's address is correct.
- Check entry and exit routes to and from the address and the area.
- Do a 360-degree check of the subject's premises (vantage points and rear exits).
- Establish drop off and pick up points close to the subject's address.
- Ensure that the target can be seen as clearly as possible for photographic purposes.

- Ensure that the subject's approach to and departure from the address can be observed.

- Ensure that you will not be noticed from the observation post by the subject or anyone.

- Plan for likely hazards such as; traffic conditions, security patrols, CCTV cameras, and so on.

- Plan and decide on what equipment will be needed in the observation post.

- Ensure that reliable radio communication is established with the team.

- Plan for payment of premises (preferably cash).

- Create a credible legend for all operatives who will be operating at the static post.

2.4.4 Technical / Electronic Surveillance

Technical surveillance methods are constantly changing with advanced technology. The equipment that is utilised by the investigator has become smaller, smarter and much more advanced to gather information in different formats. The technical surveillance equipment is mainly utilised to gather intelligence with regards to video recording, audio transmissions and photographic images. Ferraro (2012:19) is of the opinion that electronic surveillance is very similar to physical surveillance, as it permits watching a subject, premises, contacts, vehicles or activities by means of electronic video equipment instead of a surveillance operative who physically observes the

subject. The electronic equipment available for surveillance purposes nowadays is extremely advanced. This equipment will not carry out the investigation for you but can be used to great effect to support conventional investigations and surveillance (Jenkins 2010:255).

Technical surveillance can be divided into various categories but for the purposes of this dissertation, the researcher will concentrate on the following:

2.4.4.1 Covert Closed Circuit Television Cameras

Covert Closed Circuit Television Cameras (CCTV) plays an important role in covert evidence gathering. By means of a video camera linked to a recorder and monitor, one will be able to unobtrusively watch events taking place “live” or alternatively recorded and viewed at a later date. If the covert cameras can resolve a problem, it saves the manpower, time and expense of having to provide a manned observation team (Jenkins, 2010:255).

From experience, the researcher concurs with Jenkins that covert cameras unquestionably save manpower and time, especially if the surveillance team is small and cannot devote operatives to observe the subject’s residence for days to establish a routine. With the high crime rate in SA, everyone is alert to vehicles with occupants parked in neighbourhoods. Security companies, neighbourhood watch and diligent homeowners make it almost impossible for surveillance operatives to monitor a subject’s residence for long periods. Covert cameras disguised in different “props” can perform similar functions without being noticed and drawing any attention. Video cameras are available on the security markets that are smaller than a matchbox and as thin as a wafer. A camera such as this can be concealed in almost any object and placed in a position to view the target area (Jenkins, 2010:255). The latest trend is digital cameras and recorders that store the data (images) on a hard drive that is able to store weeks or months of recorded data. It is also possible to transmit the video signal by radio waves to a

transmitter that is a few hundred metres away from the camera to an observation point that is not visible to the subject. Flying drones that are fitted with cameras and quiet battery powered engines could also be utilised to gather information from the air and above a subject's location. This could be extremely useful in rural areas or areas that are not easily accessible by means of a standard type of vehicle. These drones are small, inexpensive and fairly unobtrusive. At a cost of approximately R20 000.00 for a state of the art outfit it is definitely worthwhile to invest in this type of equipment Ferraro (2012:20), however, warns of the risk involved where the operative should be very careful not to deploy the equipment where its use might violate the rights of other. The right to privacy is strongly upheld by the Constitution of the Republic of South Africa, Act 108 of 1996 (South Africa, 1996(a)) and any infringement thereof could lead to civil or criminal action against the surveillance operative. The researcher confirms that advancement in technology has also brought about an effective system using the mobile cellular network to transmit images. An operative can monitor the movements at the subject's residence from a cellular phone at the office or from any location in South Africa. Similar technology can also be utilised via the internet.

2.4.4.2 Audio transmissions

Radio transmitting microphones (bugs) are small devices that can be left concealed in the target area. It will pick up conversations via a microphone which will transmit the conversation to a receiving device located nearby. Transmitters can be disguised in everyday objects such as calculators, pens, multi plugs, clocks, telephones, etcetera. (Jenkins, 2010:272).

The researcher has utilised transmitters very successfully over the years for information gathering purposes and not necessarily for the purpose of evidence in a court of law. The law with regard to telephone monitoring and interception according to the Regulation of Interception of Communications and Provision of

Communication-related information Act, 70 of 2002 (South Africa, 2002) should always be taken into account when these transmitters are deployed. According to Jenkins (2010:294), a recording made with tape recorders and hardwired microphones are perfectly legal in the United Kingdom and can be used in evidence as long as the integrity of the tapes (evidence) is preserved. The same principle applies in SA as long as a signed interception directive is obtained in terms of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 70 of 2002 (South Africa, 2002).

2.4.4.3 Computer monitoring software

Software is currently available that can download snapshots of another person's computer every 5 seconds and then store this information in a hidden file for retrieval at a convenient time. It means that anything that appears on the computer screen will be recorded. The software takes about 3 minutes to install and is immediately ready for in use by the covert operative. There are also numerous computer software packages on the market that enable a person to monitor the activity taking place on a subject's computer from a remote location (Jenkins 2010:285). The researcher is of the opinion that in the corporate environment it will be very risky to tamper with a subject's computer, or to retrieve information from a computer, without the subject's knowledge as this is a serious breach of the subject's privacy.

2.4.4.4 Vehicle tracking equipment

Vehicle tracking devices are being utilised more in a supportive role when doing conventional surveillance these days. These tracking devices used to be very expensive, but as with all electronic devices these days, have become reasonably priced and are freely available. From the researcher's experience, a tracking device is like having an "invisible" team of surveillance operatives following the subject on a 24-hour basis. Every movement of the vehicle can be

monitored and the location and status of the vehicle transmitted to the control unit as it happens or as requested. These tracking devices normally contain a SIM card as they use a mobile phone network to communicate to mapping software on a computer, a server or to a mobile phone (Jenkins, 2010:71).

Similarly, ACM 1V Security Services (1993:47) indicates that a tracking capability allows the surveillance team to monitor the daily activities of the subject without exposing surveillance vehicles during extended periods of travel. The subject can thus be followed without the surveillance team having to drive within sight of the subject. This is ideal to monitor routine activity of the subject or to recover the subject after a total loss. The researcher's experience of tracking devices is that although they are invaluable to the success of the surveillance operation, the information they provide only indicates the whereabouts of the vehicle. They do not provide information of the subject's activities or with whom he/she makes contact, therefore a physical surveillance operative to observe the subject's actions is invaluable.

2.5 LEGISLATIVE AND POLICY FRAMEWORK REGULATING THE APPLICATION OF SURVEILLANCE ACTIVITIES

According to the Detective Learning Program of the SAPS (South African Police Service, 2004:3) the surveillance operative will often come into conflict with the law whilst doing covert surveillance. The laws pertaining to the privacy of individuals, their constitutional rights and the interception and monitoring of information acts are very similar across the world. In SA, surveillance operatives should be well acquainted with the following legislation since these are the basic parameters within which he/she should perform surveillance:

2.5.1 The Regulation of Interception of Communications and Provision of Communication-related Information Act, 70 of 2002

The Regulation of Interception of Communications and Provision of Communication-related Information Act, 70 of 2002 (South Africa, 2002) deals with the interception of certain communications, the monitoring of certain signals and radio frequency spectrums, and the provision of certain communication-related information. From the researcher's experience, this Act does not place too many restrictions on the performance of the surveillance operative since surveillance (when applied correctly and professionally) should not infringe on the privacy and rights of an individual. Obtaining video footage and photographic images of an individual in a public place or at a place where the general public has access are not prohibited by this Act. As long as the surveillance operative does not have to make any recording in the privacy of a subject's home, office, vehicle or any place that the public does not have access to, no application in terms of this Act is necessary.

2.5.2 The Trespassing Act, 6 of 1959

The Trespassing Act, Act 6 of 1959 (South Africa, 1959), prohibits entry to or on another person's property without permission. The surveillance operative would be in conflict with the law if he is found on someone's property without a credible explanation of his presence there. The surveillance team at Discovery Life is aware that it is a violation to trespass on a subject's property and would rather wait until the subject leaves the private property before commencing the surveillance operation.

2.5.3 The Constitution of the Republic of South Africa, Act 108 of 1996

Section 14 of the Constitution of the Republic of South Africa of 1996, Act 108 of 1996 (South Africa, 1996(a)) states that everyone has the right to privacy, which includes the right not to have (a) their person or home searched; (b) their property searched; (c) their possessions seized; or (d) the privacy of their communications infringed upon. According to Ferraro (2012:20), both physical and electronic surveillance are very important investigative techniques that should be implemented into an investigation, but it must always be borne in mind that the privacy and the constitutional rights of the subject(s) under investigation should always be considered as the violation thereof may be criminally and civilly actionable. From experience, the researcher agrees that as long as the surveillance operative does not infringe on the privacy of the subject under surveillance, he/she can continue doing surveillance without fear of prosecution during a legitimate investigation.

2.5.4 National Road Traffic Act, 93 of 1996

Surveillance operatives should adhere to the National Road Traffic Act, 93 of 1996 (South Africa, 1996(b)). However, traffic violations by surveillance operatives in pursuit of the subject are a common challenge that is experienced on a daily basis while being operational in the field. During vehicle surveillance operations there will be speed involved, traffic lights and stop signs will from time to time have to be ignored, and other road users will get angry and frustrated with the operative's driving techniques. This is unfortunately part of vehicle surveillance and the surveillance team should keep in mind to put their own safety and the safety of other road users first and avoid accidents are far as possible. From the researcher's experience it is advisable that the surveillance team rather lose the subject for the day, than drive recklessly or negligently and cause an accident or be exposed by the subject.

Surveillance operatives in the UK are facing a similar challenge and are also governed by the UK Criminal Procedures Investigations Act of 1996 (CPIA), the Humans Rights Act of 1998 (HRA) and the Regulation of Investigatory Powers Act of 2000 (RIPA). This legislation, however, was passed for the “Public Body” that falls under the umbrella of the Police, Customs & Excise, Security Service, Inland Revenue, Local Authorities, Military Agencies, Social Services, and so on. According to Jenkins (2010:380) private investigators, surveillance operatives or security consultants are not public bodied and so technically they do not have to seek any approval or authorisation in order to launch a surveillance operation. Most corporate teams, however, have their own internal authorisation procedures based on RIPA in order to ensure “best practice” if ever challenged in court.

2.5.5 Discovery Fraud Management and Fraud Risk Management Policy

The surveillance operatives at the Forensic Services of Discovery Life should furthermore perform their functions within the provisions of Discovery’s Fraud Management and Fraud Risk Management Policy (Waksman, 2014). The purpose of this policy is to establish the principles applicable to the management and investigation of any fraud or related offences within the Discovery Group as well as the management of fraud risk across the Group. The policy further describes the governance, roles and responsibilities of the Group Forensic Services Department and defines the mandate of the Forensic Department.

The Group Forensic Services Department is established as an independent function and Forensic Investigators are given access to all information and staff necessary to carry out its responsibilities and investigations. The roles and responsibilities of the Forensic Investigators are to assist and support business by:

- Providing guidance and advice on the implementation of appropriate controls and processes for the deterrence, prevention and detection of fraud;

- Conducting investigations into incidents or possible incidents of fraud and providing feedback on the outcome of these investigations;

- Recommending processes and procedures to improve controls to detect and prevent fraud; and

- Ensuring that appropriate action, such as disciplinary measures or reporting of criminal offences, are taken where necessary.

The surveillance capacity at Discovery Life is part of the Forensic Services Department and its roles and responsibilities are governed by this Policy. Discovery views any non-compliance to this policy as well as any non-compliance with its obligations in terms of legislation in a very serious light.

2.6 THE APPLICATION OF PHYSICAL SURVEILLANCE AS A TECHNIQUE IN THE INVESTIGATION OF INSURANCE FRAUD: INTERNATIONAL EXAMPLES

2.6.1 Group 4 GS Security

Group 4 GS Security was founded in the UK in 1968 and is currently one of the largest security companies in the world. They operate in 120 countries across the globe of which 60 are situated in Africa. They are established in all 9 provinces in SA and are represented in all our neighbouring states such as Mozambique, Swaziland, Botswana, and Zimbabwe. Apart from all the security services that they offer, they also investigate insurance fraud and offer physical surveillance services in countries such as the UK, Canada and Australia. It is usually the larger companies and corporates that make use of its surveillance services to address insurance fraud, counter-espionage and fraud syndicates that are

targeting companies on a global scale. Group 4 GS primarily focuses its operations on providing security services in SA, however, it also provides surveillance services globally for insurance investigations using physical surveillance.

During operational discussions with the operational manager of G4S SA, it was established that the trend is for companies to create their own surveillance capacity within their forensic departments and perform the fraud investigation themselves since outsourcing of surveillance services could be too costly. The operational manager of G4S UK also confirmed during operational discussions that this company is quite in demand in the United Kingdom (UK), Canada, United States of America (USA) and Africa. Its surveillance services are based on similar principles to those applied in SA and the techniques are mostly standard as elsewhere in the world. It was revealed that this company has 110 surveillance operatives in their employment and can put together up to 20 teams as the need arises. Their services are utilised by most of the larger companies in the UK. From the conversation, it became evident that the surveillance methods, techniques and operational support that they use, are similar to those applied in SA. According to the researcher, it illustrates that professional surveillance methods are a universal tool being used by investigators throughout the world.

2.6.2 Surveillance Speciality Group

According to Glad (2012:2) from the Surveillance Speciality Group (SSG), an international company based in Houston, Texas, who specialises in private investigations and surveillance training, their instructors primarily have a police background and have been trained by the Federal Bureau of Investigation (FBI). They employ some surveillance veterans with approximately 164 combined years of experience in criminal investigations and professional surveillance techniques. They also specialise in corporate investigations and insurance fraud

investigations and also deploy surveillance teams to assist with their investigations. Glad, who was a former FBI agent for 30 years, confirmed that they rely heavily on surveillance in most of their investigations due to the fact that it is such a powerful technique to establish who the “good” guys are and who the “bad” guys are. He has also developed and implemented numerous technical, operational and training manuals involving the surveillance trade (Glad, 2012).

2.6.3 Pinkerton Corporate Risk Management

Pinkerton Corporate Risk Management is a global company founded in 1850 in the USA and pride themselves in that they have 160 years of experience in managing risks for the corporate environment. Their investigative service is said to be the founder of the world’s first “private eye”. They specialise in large fraud investigations such as; Ponzi schemes, internet fraud, extortion and insurance fraud. They also specialise in physical surveillance and technical surveillance counter measures. According to the operational and physical risk segment of the company’s profile, physical surveillance is one of the risk areas that is concerned with all factors that can adversely affect business continuity and its impact on a company’s bottom line. They also strongly believe that physical surveillance is an absolute must-have technique in any corporate investigation *(Pinkerton corporate risk management,* 2014*)*.

2.6.4 MBA Security

MBA Security is also an international security company, situated in Mozambique. They are not as big as the above-mentioned companies, but upcoming in the African market and determined to provide compliant services of a high standard. They have employed some former intelligence members of the SAPS who offer the client the latest technology in covert physical and electronic surveillance. They do corporate investigations which include the investigation of insurance fraud and the implementation of counter-surveillance measures. The application

of physical surveillance during private and corporate investigations is essential for them to guarantee success *(MBA Security,* 2014*)*.

2.7 BASIC EQUIPMENT REQUIRED IN SURVEILLANCE OPERATIONS

From the researcher's experience, it is not always the best policy to purchase sub-standard alternative surveillance equipment if the success of the surveillance relies upon it. Equipment has to be durable, efficient, easy to operate and most importantly, reliable. Rightly or wrongly, in the commercial world, you are only as good as your last job so you need to get it right every time (Jenkins, 2010:65).

The minimum equipment an operative should have on his person or in his/her vehicle should be: Two-way radios; digital voice recorder; note book and pen; compact digital video camera with still photo capability; binoculars; mobile phone; basic disguising props such as; caps, spectacles, a wig and extra clothing; cash; Global Positioning System (GPS) unit for the vehicle; penlight torch and first aid kit. According to ACM IV Security Services (1993:24), 98 percent of a surveillance operation is effectively discharged through the use of surveillance vehicles, communications equipment, maps, cameras, and binoculars.

2.7.1 Two-way radios

Communication, according to the researcher, is the most important aspect of surveillance whilst working in a team. It is essential that each member of the team is equipped with a two-way radio and a mobile phone to be in constant communication with the rest of the team. The person who is in direct sight, or closest to the subject (hotspot,) needs to communicate the subject's movements and activities in detail to the rest of the team. This can only be done if every member of the team is in contact via radio with the hotspot. According to ACM IV Security Services (1993:29), the most basic, yet most important piece of

equipment that a surveillance operative should have, is a two-way radio to communicate with the team.

2.7.2 Digital memo recorder

According to Jenkins (2010:65), digital memo recorders are a must and ideal for recording events as they happen, especially when one does not have the time to write down notes during mobile surveillance. The researcher agrees with Jenkins and confirms that when smaller surveillance teams are deployed without the assistance of crew in vehicles, the driver sometimes finds it challenging to write notes whilst driving and valuable information could be lost. The memo recorder could be switched on when activity occurs and important information such as vehicle registration numbers, unknown addresses, descriptions of persons, and so on could be recorded for future use in the report.

2.7.3 Notebook and pen

When operatives are stationary and need to make notes or draw maps of the area, it is necessary to have a pen and notebook available.

2.7.4 Compact digital video camera with still photo capability

From experience, the researcher found that a compact video camera that fits easily in the operative's hand operationally functions better than a camera with a long lens, and is also less conspicuous. The latest digital compact video cameras have optical zoom capabilities of up to 70 times which is similar to the focal length of a 450 mm camera lens. This is completely adequate for mobile and static surveillance. Most of these video cameras also have still photograph capabilities. Video recording is an excellent method of recording a sequence of events to be used as evidence or for other purposes (ACM IV Security Services,

1993:40). With disability claims at Discovery, the focus is directed at a subject's movements and daily activities and therefore requires video footage rather than still images. Video cameras are also much more affordable than a still camera set with matching lenses.

2.7.5 Binoculars

Smaller compact binoculars with a magnification of about 10 times are suitable for most surveillance operations. Binoculars are ideal for confirming registration numbers of vehicles that are parked inside premises, identifying people who are noticeable on premises and spotting security measures such as CCTV cameras, pets and guards.

2.7.6 Mobile phone

The surveillance team's success at Discovery depends on good communication between operatives. Radio communication can sometimes fail due to operatives being too far apart from each other. The mobile phone therefore is an absolute required item as part of the operative's surveillance equipment. Communication can be maintained with other team members especially if the operative is doing foot surveillance in public places where a hand held radio would attract unnecessary attention. Short Message Services (SMS) and Multi Media Services (MMS) of the subject's activities could also be sent between operatives to enhance the surveillance capabilities.

2.7.7 Basic disguising props

When a surveillance operative has been following the subject over a period of time and he/she thinks that the subject might have detected them, it is in the interest of the operation to disguise him/her with basic props to change their

appearance. Only slight changes in appearance are necessary, like putting on a cap, change of glasses, change of clothing and the like. Drastic changes like putting on a wig, a false beard or moustache should be kept to the minimum as an alert subject might notice a change of appearance and again, will only help to confirm any suspicions (Jenkins, 2010:14).

2.7.8 Money

From experience, the researcher is of the opinion that a surveillance operative without cash in his possession is like a professional photographer without a camera. Cash should always be carried and a handful of change should always be left in the car for car parks, tolls and public transport (Jenkins, 2010:67).

2.7.9 Global Positioning System unit for the vehicle

Maps are essential in surveillance, whether they are A-Z street maps or satellite navigation systems (Jenkins, 2010:68). From experience, the researcher agrees with Jenkins confirming the GPS systems that are utilised by the Discovery Life surveillance team are indispensable. If the surveillance operative is in the back of the mobile team and trying to catch up with the rest of the team, it would be increasingly challenging to do so without a reliable GPS. The subject's residential and work address, with favourite visiting spots, can be saved on the GPS and a travelling pattern of the subject could be established. It also gives the operative important information such as; traffic cameras, direction of travel, speed and traffic conditions, closest points of interest and so on.

2.7.10 Penlight torch

A small penlight torch is useful for map reading, note-taking at night and general purpose applications where it is difficult to see due to low light.

2.7.11 First Aid Kit

From experience, the researcher ensures that all surveillance vehicles have first aid kits on board. The surveillance operative spends most of the day in the vehicle, sometimes drives at excessive speeds, sometimes ignores traffic signs and comes across accidents involving other vehicles in the traffic. This exposure could lead to injuries and therefore, it is absolutely necessary to have a proper first aid kit at hand.

2.8 THE SURVEILLANCE OPERATIVE

According to Jenkins (2010:7), not everyone is born as the ‘ideal” surveillance operator. The making of a good operative will depend upon that person’s aptitude, his/her training and, most of all, experience. Similarly, ACM IV Security Services (1993:12) is of the opinion that the only way to establish proficiency in the art of physical surveillance is through a comprehensive knowledge of tactics and the practical application of these skills. The researcher agrees with the above-mentioned authors, however, the first essential quality of a surveillance operative is that he/she should have an interest in being a surveillance operative. The surveillance operative should see the task at hand as a challenge of his wit, patience, knowledge and skills against that of the subject’s. The “ideal” surveillance operative should thus have certain characteristics, skills and qualities to make the most of a career in physical surveillance. Van Rooyen (2008:252) is of the opinion that there are no rules as to the compilation of a surveillance team. The more diverse the make-up of such a team, the better adapted it may be to operate anywhere.

The researcher agrees with Van Rooyen that the diversity of a surveillance team is advantageous for conducting surveillance providing that the team consists of a large number of operatives. However, if a surveillance team operates with a

small number of operatives; such operatives have to be handpicked to be able to blend into most environments. Siljander and Fredrickson (2002:9) mention that it is important to note that there is no one kind of individual who is ideal for conducting physical surveillance. Each investigator or operative will generally possess certain characteristics that are desirable. It has been found however, that there are certain physical and personal qualities that are most favourable for work of this nature, such as:

2.8.1 Characteristics of a surveillance operative

The most basic characteristic that a surveillance operative should have according to Jenkins (2010:7) is to be inconspicuous and be able to blend into a crowd. The subject should not be able to remember the operative, recognise him at a later stage or be able to describe him to another person. Jenkins' view is supported by Van Rooyen (2004:32) who indicates that if the same operative is identified in two separate locations that are not on a logical route, the operation may be compromised. Palmiotto (2004:109) is of the opinion that it is best if the surveillance operative do not possess any unusual physical characteristics, such as being exceptionally short, tall or obese. Such a person must have acting ability and be able to blend into the surroundings. The researcher agrees with these authors and confirms that, especially with smaller teams, it is vital that the operative should not attract any attention from the subject or anyone in the surroundings of the subject.

An operative should not have any physical characteristics or mannerisms to make him/her stand out from other individuals (Van Rooyen, 2004:134). An attractive female operative, for example, will attract attention, the same for an operative who, for example, dresses extravagantly, wearing flashy jewellery, hats, and bright clothing. The operative should thus be able to fit and blend into a variety of backgrounds and ensure that he/she is capable of acting naturally at

all times and move unobtrusively. The operative's choice of vehicle should also be able to blend into the area that he is operating in.

2.8.2 Qualities of a surveillance operative

According to ACM IV Security Services (1993:11) there are certain qualities that each surveillance operative should possess or aspire to develop. Some qualities are essential while others can be adapted. The first essential quality of a surveillance operative is that he/she should have a genuine interest in becoming a surveillance operative. The researcher can speak from experience in the SAPS where operatives wanted to become surveillance operatives only because they get fast cars, may wear informal clothing as work attire and are allowed to have long hair. Such operatives who became surveillance operatives mainly for the "added benefits", did not last long at the unit since they lacked the commitment necessary to being an operative. The making of a good operative will depend upon that person's aptitude, his training and, most of all, experience and skills (Jenkins, 2010:7).

The only way to establish proficiency in the art of physical surveillance is through a comprehensive knowledge of tactics and the application of these skills (Jenkins, 2010:8). The researcher agrees that it is possible to train a person to become a good surveillance operative and with time the operative will gain experience, skills and confidence. However, it is vital that the person has certain qualities which make him/her the "ideal" candidate to be a professional surveillance operative. These qualities represent the most important qualities that a professional surveillance operative need to have and will be individually addressed as follows:

2.8.2.1 Confidence

The researcher is of the opinion that confidence is one of the most important qualities that a surveillance operative should have. Without confidence, the operative would struggle to handle awkward or difficult situations and might compromise an operation. According to Jenkins (2010:7), confidence comes with training and experience and a person who is lacking in either, will be a liability to himself/herself and the team. If a surveillance operative is proficient in the application of physical surveillance, he/she will have confidence in performing surveillance that would lead to enhanced operations. Similarly, Palmiotto (2004:109) is of the opinion that a good surveillance operative gets to know everything about his subject's activities, habits, and routines before embarking on a full scale surveillance operation. It will boost the operative's confidence levels if everything about the subject is well known.

2.8.2.2 Quick thinking and fast reaction

Bennett and Hess (2004:174) state that no other assignment requires as much patience and perseverance while simultaneously demanding alertness and readiness to respond instantly. From experience, the researcher can confirm that surveillance is an ever-changing phenomenon and recognises that the subject could be very unpredictable in his/her actions and movements. The surveillance operative, therefore, has to adapt quickly to ever-changing situations and should be able to react within split seconds. When confronted by anyone during the operation, the operative should stay calm, react quickly and be able to come up with a logical reason for his presence or actions at that point in time.

According to Jenkins (2010:7), the surveillance operative should also be very quick and precise with communication to the rest of the team. Sometimes actions happen very quickly (for example, in parking lots and shopping centres with

multiple exits and entrances) and the team has to rely on every operative to react and report in a quick and responsible manner.

2.8.2.3 Multi-tasking

In the corporate environment, such as Discovery, the surveillance team usually consists of a small number of operatives and will most likely be alone in the vehicle. From the researcher's experience, operatives unaccompanied by other operatives in a vehicle have to manage various tasks, from driving the vehicle at high speed, watching the GPS for direction, reporting on the radio, anticipating the movements of the subject, taking video footage and making notes, all simultaneously. It takes a person with aptitude, practise and multi-tasking abilities to do all of this at once (Jenkins, 2010:7). Similarly, Palmiotto (2004:109) indicates that developing the multiple skills of a good surveillance operative requires training, hard work, and lots of patience.

2.8.2.4 Patience

According to ACM IV Security Services (1993:13), patience and physical stamina are essential qualities that a surveillance operative should possess. Operatives perform challenging operations that require long hours of concentration under a high degree of stress. The surveillance operative must possess a high degree of self-restraint and patience. Many surveillance operations are spent sitting and waiting for something to happen. Van Rooyen (2008:253) reiterates the point that it is not in the nature of every person to be a good operator. To sit in a vehicle, sometimes in hot conditions, for long hours observing a subject, and then be confronted by heavy city traffic, is not for every person.

The researcher agrees with the above-mentioned authors. In addition, the researcher is of the opinion that the surveillance operative should possess the mental discipline and stamina to stay focused on the task at hand and not

become discouraged or disillusioned. This usually results in opportunities to obtain information being overlooked or compromising the operation. Jenkins (2010:7) added that many people consider surveillance as being an exciting occupation. However, on the contrary, surveillance operatives often spend many hours waiting for the subject to move and this waiting requires great discipline and patience.

2.8.2.5 Good memory

Combined with good eyesight and hearing, a good memory is an absolute requirement. The operative must be able to remember facts and the sequence of events as they happened (Jenkins, 2010:8). From experience, the researcher agrees with Jenkins confirming the surveillance operatives at Discovery are trained to collect as much information on the subject as possible whilst doing field enquiries. This information could sometimes not be written down or recorded and the operative has to remember what he/she was told or has seen. According to Van Rooyen (2008:253), the surveillance operative in a small team has to concentrate twice as hard as those operatives who find themselves in a larger team. Information that seemed irrelevant at the time may later turn out to be of vital importance. An eye for detail, and the ability to remember it, is extremely important. Regular in-house memory training sessions take place with the operatives at Discovery to improve their memory skills.

2.8.2.6 Convincing talker and actor

The surveillance operative has to converse with the general public for a number of reasons. It may be to satisfy the curiosity of a concerned member of the public who is not happy with a vehicle being parked in the street for a long time, or the security patrol in the area that has picked up more activity than usual. According to the researcher, it may also be necessary to interact with members of the public

to extract information about the activities of the subject and, during these interactions, the operative has to act the perfect role that fits in with the legend that was created for the operation.

Jenkins (2010:8) mentions that one may even have to speak to the subject to obtain information, although this is not often done. However, the subject might approach one if his suspicions are aroused and so the operative needs to be able to act and talk his way out of a situation with confidence. The researcher can confirm that in approximately two percent of the disability cases being investigated at Discovery over the past few years, the subjects were approached by an operative (using a clandestine approach) and valuable information was collected that enabled the investigator to finalise the case.

2.8.2.7 Creative and capable to work on own initiative

Surveillance operatives have to be creative and ensure that they constantly come up with new and workable solutions that would enhance the surveillance capacity. According to ACM IV Security Services (1993:12), the operative must have the ability to think ahead of the situation and devise solutions to possible contingencies. Similarly, Van Rooyen (2004:134) mentions that the surveillance operative should be resourceful. In an operational situation, unforeseen situations occur all the time. The ability to improvise is very important.

Surveillance operatives at Discovery Life are very creative when it comes to the investigation of disability claims. Discovery Life surveillance operatives often use their own initiative and apply creative means to expose fraudsters who attempt to defraud the company resulting in claims and policies being cancelled.

2.8.2.8 Confident and proficient driver with good navigational skills

Surveillance operatives within the police and military should pass an advanced driving course prior to carrying out any mobile surveillance (Jenkins, 2010:9). In line with Jenkins' view, surveillance applicants' driving skills at Discovery are tested thoroughly beforehand and are also one of the pre-requisites for appointment at this specific section within the Forensic Department. The trained operatives are driving unaccompanied in a vehicle and need to multi task (as explained earlier), and have good navigational skills. Even without a navigational system (GPS) in the vehicle, the operative needs to know in which general direction he/she is travelling. In other words, the person must be able to tell which way is north or south and also distinguish east from west. According to Van Rooyen (2004:140), a good surveillance operative must be able to drive aggressively and also pro-actively, yet always take other road user's safety and their own into consideration.

2.8.2.9 Proficiency in the use of electronic surveillance equipment

The trained surveillance operative has to know the capabilities of the equipment that he is using and for that reason he has to expertly know how to operate the right equipment for the task at hand (Jenkins, 2010:9). The researcher confirms that, especially in the corporate environment, the surveillance operative relies heavily on his electronic equipment such as the video recorder, covert video camera, still camera, two-way radio, and GPS. Every action of the perpetrator under investigation needs to be captured on film, and sometimes the investigator only has a few seconds to capture a particular movement or action to prove a fraudulent claim. To be able to get that split-second evidence, the operative really needs to be proficient in the use of the camera and other electronic equipment. If the operative missed that vital piece of evidence because he/she is unfamiliar with the camera, or due to batteries that have not been charged or replaced at a critical time, the complete surveillance operation is placed in jeopardy and might

have been a waste of time, resources and money. According to Van Rooyen (2008:255), every operative in the team must be able to use any piece of equipment available, issued to the team. Regular training and testing of equipment must take place before it is used in an operation. One cannot let the team and the client down by providing poor excuses of equipment that was not working, due to the incompetency of the operative (Jenkins, 2010:9).

2.8.2.10 Have a "sixth sense"

After training, the most important quality a surveillance operative can possess is experience. An experienced operative will get the "feel" for the job and the way it is progressing. The operative will be able to predict possible outcomes, purely because he has "been there" and seen it before (Jenkins, 2010:9). Similarly, ACM IV Security Services (1993:13) is of the opinion that the surveillance operative must possess a keen sense of perception. The professional surveillance operative observes and deduces items that the common man does not. He/she should be able to read into the detail of a situation and systematically evaluate the circumstances instantly.

The researcher agrees with both authors that with time and on-the-job experience, the operative develops a feeling or 'sixth sense" of what is going to happen next or what next move the subject is going to make. The activities of fraudulent disability claimants are very similar and the vigilant surveillance operative quickly picks up certain "trademarks" that subjects use to fraudulently disguise their ability to function normally. Having a sixth sense should never be compared to making good assumptions. Surveillance operatives from Discovery Life have quickly learnt that making assumptions could cost one dearly. Most of the time when a subject is "lost", it is when it was assumed that he will be travelling from the residence to the same place that he travelled to the day before. This has often led to missing the subject and the frustrating task of finding the subject again. The team now stays with the subject and monitors his

movements all the time and does not make assumptions as to where he might go.

2.9 SUMMARY

The application of physical surveillance during forensic investigation in the corporate environment was reviewed and the literature on surveillance, together with the experience of the researcher, was combined to provide an insight into the types, objectives and methods of surveillance as well as the different types and techniques of physical surveillance. The “ideal” surveillance operative, together with his/her unique characteristics and personal qualities were discussed and the qualities were then divided into sub-sections so that each quality could be discussed individually to give the reader a good idea of what the makeup of a professional surveillance operative entails. In the section on the primary legislation governing surveillance, the South African law was compared to that of the law on physical surveillance in other countries and was found to be very similar with minor exceptions in enforcing the law.

The successful application of physical surveillance by large private institutions such as Discovery, confirms the value of physical surveillance as an important “tool” during forensic investigations. The effectiveness of physical surveillance measured against other aids that are currently at the disposal of investigators has proven to be much higher and more efficient.

CHAPTER 3 THE INVESTIGATION OF INSURANCE FRAUD

3.1 INTRODUCTION

At Discovery, the Forensic Department consists of a devoted team of investigators who are dedicated to addressing the seriousness of insurance fraud by investigating criminals who target the company by submitting fraudulent claims. In this chapter, the researcher will discuss insurance fraud and look at the different methods and techniques that perpetrators use to commit insurance fraud. The features of a typical white collar criminal will also be discussed. Additionally, the different incidences of insurance fraud and the impact thereof to the life and health insurance industry in South Africa, and globally, will be discussed in order to explore preventative measures that could be taken to address insurance fraud. It will also be determined how physical surveillance could play an important role in the investigation of insurance fraud.

According to Gottschalk (2010:189), insurance fraud as a global economic problem threatens the financial strength of insurers and threatens the survival of insurance institutions as we know it. An international survey conducted by the Association of Certified Fraud Examiners (ACFE) of more than 1 800 fraud cases probed worldwide and published in the *Report to the Nations on Occupational Fraud and Abuse* (ACFE, 2014) revealed the typical organisation annually loses between 5 percent and 7 percent of its revenue to fraud. According to this report, if applied to the 2013 estimated GWP, this figure translates to a potential projected global fraud loss of more than 3.7 trillion dollars. A prominent SA audit firm, BDO International, revealed in its report that approximately R100 billion is lost annually due to fraud in the insurance industry. According to one of this firm's directors, James Roberts, South Africa boasts the second highest incidence of corporate fraud in Africa. Roberts also mentions that fraud, including insurance fraud, committed in companies in South Africa is escalating at an alarming rate.

Roberts attributes this partly as a consequence of our contracting economy and reduced disposable income which is seeing people turning to crime, and partly due to less vigilance on the part of companies (Roberts, 2010). Adler et al. (2013:296) shares the sentiment of the above authors confirming that insurance fraud has reached alarming proportions and that the FBI in the USA has now classified insurance fraud as an investigative priority, due in large part to the insurance industry's significant role in the USA economy. Adler et al. further emphasise that the size of the industry, unfortunately, makes it a prime target for criminal activity. The Coalition Against Insurance Fraud (CAIF) estimates that the cost of fraud in the insurance industry in the USA is as high as 80 Billion Dollars each year. This cost is passed on to consumers in the form of higher premiums (*The impact of insurance fraud,* 2015).

The researcher's experience of the investigation of increasing incidents of insurance fraud, as well as the escalation of fraudulent claims (2.6% annually) received at Discovery's Forensic Department supports the above-mentioned sentiments that insurance fraud is escalating around the world and is seen as a major threat to the insurance industry. This threat can only be addressed if owners of insurance companies invest in establishing and managing stronger and better corporate governance. At a macro level, this means establishing adequate governance structures and ensuring that business and risk strategies are aligned. At the operational level, it is crucial to heighten risk consciousness and introduce best risk practises such as sharing good quality risk information in a timeous fashion and regularly reviewing risk analysis trends (Roberts, 2010).

3.2 CATEGORIES OF INSURANCE FRAUD

Gottschalk (2010:189) divides insurance fraud into four categories:

3.2.1 Internal fraud

Internal fraud is fraud against the insurer by an employee, a manager or a board member on a personal level or in collaboration with others who are either internal or external to the insurer.

3.2.2 Policyholder fraud and claims fraud

Policyholder fraud and claims fraud is fraud against the insurer in the purchase and/or execution of an insurance product by obtaining wrongful coverage or payment.

3.2.3 Intermediary fraud

Intermediary fraud is fraud by intermediaries against the insurer or policyholders. Intermediary should be understood to mean an independent broker or agent.

3.2.4 Insurer fraud

Insurer fraud is fraud perpetrated by the insurer against the insured through policy churning or misleading insurance selling.

The researcher agrees with Gottschalk's categorisation of insurance fraud and finds the four categories self-explanatory. In addition to Gottschalk's insurance fraud categories, Van Rooyen (2008:63) argues that insurance fraud can take on many forms, such as:

- Insurance agent submitting fictitious policies in order to obtain commission.

- Fictitious or false claims by insured persons.

- Failure by insurance agent to pay premiums over to the insurer.

- Fraudulent claims with regards to medical claims against a scheme.

- Falsely pretending to be a member of a certain medical scheme.

- Falsely claiming for consultations which did not take place.

- Fictitious or false claims with regards to motor and household claims.

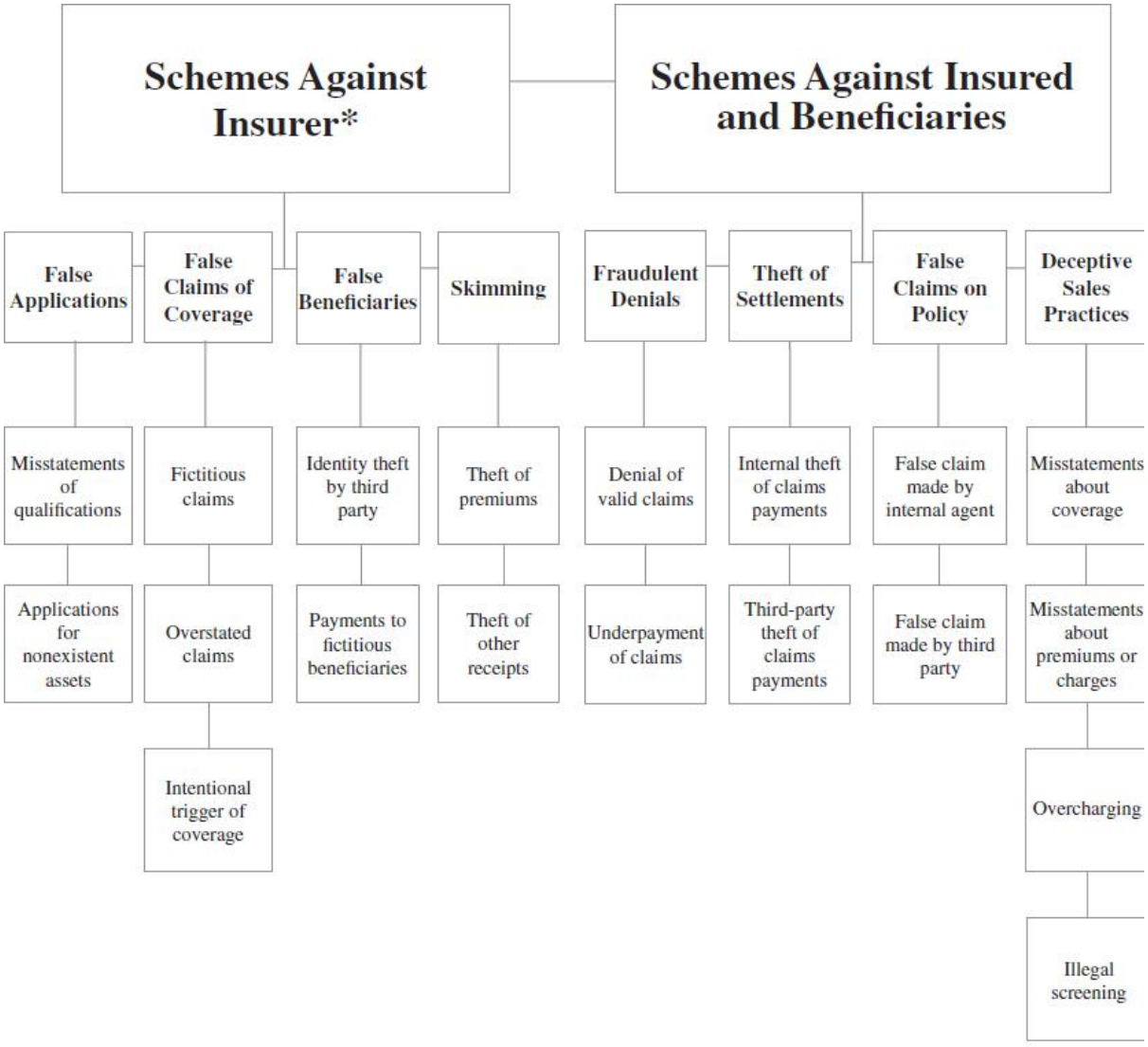
- Fraudulent claims with regards to disabilities.

3.2.5 Insurance Fraud Classification System

The international office of the ACFE developed the Insurance Fraud Classification system to assist fraud examiners with their investigation into insurance fraud. This system is known as the fraud tree (ACFE Fraud Examiners Manual - International Edition, 2010:1302).

Table 3.1 Insurance fraud classification system: ACFE

INSURANCE FRAUD CLASSIFICATION SYSTEM



*We include government health care providers in the category of "Insurer." Although these programs are susceptible to frauds by other insurers, such schemes would fall under the "False Claims of Coverage" branch of this tree.

ACFE
Association of Certified Fraud Examiners

This insurance fraud classification system is accepted internationally by members affiliated to the ACFE. The majority of investigators at Discovery Forensic Department are registered members of the ACFE and use this classification system to assist them in their investigations into insurance fraud.

3.3 Fraud investigation at Discovery Forensic Department

Discovery's Forensic Department is divided into four investigative sections which take responsibility for investigating the following fraud incidents:

3.3.1 Discovery Health

Investigators who are responsible for investigating fraud in the Discovery Health division, investigate all medically related fraudulent claims that involve members, intermediaries, employees of medical aid administrators and health professionals. According to Smit (2010:16), Discovery invested a lot in technology, data analysis and profiling to assist them with analysing claims' behaviour and identifying suspicious patterns and billing behaviour. The red flag system (In Forma system) that was developed over years alerts the investigators to suspicious transactions and member behaviour. The In Forma system employs highly sophisticated software, as well as a skilled team of statisticians and clinically skilled staff. The data is immediate and thus facilitates proactive insurance fraud preventative measures. Even before paying a claim, as an example, the system will alert the team to fraudulent behaviour if identified in the past.

3.3.2 Discovery Insure

Investigators, who are responsible for investigating fraud in the Discovery Insure division, investigate all short term insurance claims that involve vehicle collisions, theft and damage as well as movable household and electronic items that are stolen, damaged or lost. A well-trained team of former detectives from the SAPS vehicle branch and members with years of investigative experience in the short term insurance industry are assigned to investigate these types of claims. Discovery has greatly invested in information systems and electronic equipment that assists these investigators with valuable information in finalising suspected fraudulent claims. According to Adler et al. (2013:294), about 60 billion US Dollars is paid into auto insurance claims annually. It is estimated that 10 percent of those claims are fraudulent which amounts to a loss of 6 Billion US Dollars for insurance companies on auto insurance alone.

3.3.3 Discovery Invest

Investigators, who are responsible for investigating fraud in the Discovery Invest division, investigate intermediaries such as brokers, agents and employees who are involved with investment accounts, life insurance policies, pension and provident funds and retirement annuities to name but a few (Discovery, 2014:7). These investigators are highly skilled in finance, accounting and forensic auditing and most of them are former members from SAPS specialised units who investigated commercial crimes.

3.3.4 Discovery Life

Investigators, who are responsible for investigating fraud in the Discovery Life division, investigate possible fraudulent life insurance claims, misrepresentations, disabilities, material non-disclosure, death and funeral policy claims (Discovery, 2014:7). These types of claims usually involve an illness, incident or injury that

causes temporary disability, permanent disability or death. These claims are investigated by forensic investigators with a background in law enforcement (specialised units) and are mostly operationally bound “out in the field” doing investigations where the subject’s illness, injury, incident or death initially occurred. The Discovery surveillance unit falls under the Discovery Life division of the Forensic Department. Most surveillance operations at Discovery are done for the Discovery Life division.

The significance of the application of physical surveillance in the investigation of insurance fraud is often illustrated by the Discovery surveillance unit. Surveillance reports and video footage of claimants frequently proves that they are malingering and submitted fraudulent claims. As a result, these fraudsters’ policies are cancelled and claims rejected. According to the researcher, physical surveillance as an investigative method has undoubtedly proved that no other investigative method could have achieved the same results.

3.4 FEATURES OF A TYPICAL WHITE COLLAR CRIMINAL

According to Adler et al. (2013:314), white collar crimes are as difficult to detect as they are easy to commit. Fraud might be simple, such as a false death claim, or it might be more complex, especially when multiple policies are concerned. Van Rooyen (2008:62) argues that white collar crime is a very broad category, but in essence one is talking about fraud, theft and corruption. It is a fact that in white collar crimes, the potential rewards are greater, the risk of detection is lower, successful prosecution is more difficult and penalties are less severe.

The challenge with white collar criminals is that they do not look like criminals, they are often highly educated, socially accepted people who hold high-level positions of trust within a company or within society. Because of such positions, they are able to commit crimes involving large amounts. From the researcher’s

experience, most of the policy holders who commit fraud, and are being investigated, are persons who can afford a substantial monthly insurance premium and maintain above average lifestyles. Some are even highly respected business people and politicians.

Van Rooyen (2008:67) is of the opinion that most fraudsters have much in common which makes them unique to profile. Van Rooyen profiles a typical white collar criminal as follows:

- Usually of higher than average intelligence.
- Many have a post high-school qualification.
- Come from all walks of life.
- Stick to modus operandi, refine the fraud that was successful.
- Well-spoken and convincing but also sly and cunning.
- Unscrupulous with little or no conscience. Will defraud own relatives.
- General appearance and conduct will not label him as criminal.
- Lazy and usually take chances or “short cuts”.
- Motivated by greed.
- Operate from a position of trust and usually have access to the finances of others.
- Often have influential contacts at the right places.

- Usually have a good knowledge of the law in respect of fraud.
- Egoistic, overflowing with self-confidence and power to convince others.
- Dedicated in planning the crime.
- Never act impulsively but plan and operate systematically.
- Know what to say in the event of an arrest.
- Defence and explanation worked out long beforehand.
- Knows how to cover tracks and quick to destroy all evidence implicating him.
- Normally well dressed, make a good impression.
- Always assisted by the best lawyers. Money is usually not a problem.
- Socialises with influential people, especially people in Government.
- Likes to join social clubs and secret organisations.

The majority of the subjects that the Discovery surveillance unit investigates closely fit the profile as mentioned by Van Rooyen. Palmiotto (2004:273) is of the opinion that vehicle related fraud such as the “cloning” of vehicles whereby two vehicles are using identical registration papers, are also a principal form of white collar crime. The effects of these organised syndicates can include property loss, personal injury or both. These syndicates usually involve medical doctors, attorneys, paralegals and claims adjusters from insurance companies. From the

researcher's experience, the typical white collar criminal's profile is synonymous with the profile of the white collar criminal that the Discovery surveillance unit investigates as described by Van Rooyen. Among the fraudsters who commit insurance fraud against Discovery are members, medical doctors, physicians, service providers and policy holders. These fraudsters also include friends and relatives who are overcome by greed or debt problems and in their effort to get "easy money", they turn into criminals by committing fraud.

3.5 PREVENTATIVE MEASURES TO ADDRESS INSURANCE FRAUD

According to a media release by the Association of Savings and Investments, South Africa (*ASISA: Zero tolerance from life insurers to fraud and dishonesty,* 2015) a zero tolerance approach from life insurers to fraud and dishonesty have now been implemented in South Africa after claims fraud statistics released recently by ASISA revealed that the value of death, disability and funeral claims involving fraudulent documentation and syndicate activity has escalated from R26.2-million in 2010 to an immense R131.7-million in 2011. Peter Dempsey, deputy Chief Executive Officer (CEO) of ASISA explains that while a small portion of these claims was paid before fraud was detected, most of the fraudulent claims in 2011 were uncovered by life insurers before money was lost. Life insurance companies are often seen as soft targets by criminals hoping to access benefits through fraudulent means. Life insurance companies have, however, put sophisticated fraud detection mechanisms in place to allow for early detection (*ASISA: Zero tolerance from life insurers to fraud and dishonesty,* 2015).

South Africa's life insurance companies share their insurance fraud statistics in an attempt to identify and eliminate criminals and syndicates as early as possible. The ASISA compiles and distributes this information to industry stakeholders on an annual basis. According to the researcher, this information is

extremely valuable to the industry and after analysing the threats; a contingency plan is put in place annually to address fraud prevention by Discovery. This contingency plan involves the identification of weaknesses in the internal controls of the company, the continuous monitoring of the red flag system, the updating of information gathering systems, improvement of claim auditing and the application of new and advanced investigative techniques to prevent and deter fraud against the company. Forensic Investigators have become a vital part of any organisation's personnel structure and they can no longer be perceived as just an "add on" or necessary nuisance to business. Organisations and businesses have to protect and minimise their risks and forensic investigations is a prerequisite to this responsibility (Van Rooyen, 2008:85).

The researcher agrees with Van Rooyen's statement and confirms that the Executive Committee (EXCO) of Discovery fully supports the Forensic Department in a coordinated effort to tackle the menace of insurance fraud against the company.

3.6 THE APPLICATION OF PHYSICAL SURVEILLANCE IN THE INVESTIGATION OF INSURANCE FRAUD

According to Van Rooyen (2008:246), surveillance has evolved into a skill through methods developed by the intelligence and investigative agencies of a number of countries over many years. It has become a common trademark amongst professional investigators to investigate individuals and groups of people operating as syndicates. Similarly, Ferraro (2012:222) mentions that surveillance team members must possess the skills necessary to drive the project forward and achieve its objectives. They must have experience and some working knowledge of the matter to be investigated.

The researcher agrees with Van Rooyen and Ferraro and confirms from experience that a professional surveillance operative needs to have special skills, knowledge, patience, creativity and above all, self-confidence to be successful in physical surveillance. Persons who fit this specific profile are identified, selected and recruited for the surveillance unit at Discovery to ensure well skilled and top performing investigators. According to the researcher, well trained and professional surveillance operatives usually come from an intelligence background and are using their skills and experience to gather information and evidence from an intelligence perspective.

Milne (2013:1) believes that intelligence is an ability to produce solutions or resolve problems in new and novel situations. He also states that intelligence in the context of the investigation of criminal activity, should give those who practise it improved results and fresh leads into new areas of investigation. The surveillance unit at Discovery gathers evidence (intelligence) by means of unconventional investigative gathering methods that distinguishes this unit's method of investigation from the other investigators in the Forensic Department. These investigative methods include:

- Verifying received information and data to be correct (business mandated instruction).
- Profiling the subject (personal, financial, criminal, business and social).
- Briefing the team on all aspects of the operation.
- Creating a legend (clandestine reason to be in an area, blending in).
- Determining the operational area (at residence and workplace).

- Monitoring the daily activities of the subject by means of physical surveillance.

- Debriefing the team and collecting gathered intelligence.

- Compiling a surveillance report with supporting images or video footage.

- Information session with the client to discuss the way forward.

Van Rooyen (2004:131) is of the opinion that a surveillance operation should always be conducted in secrecy and knowledge of the operation must not be divulged to anyone who is not part of it. Surveillance must go undetected by the subject. A subject who is aware that he/she is under surveillance can alter behaviour or apply counter-surveillance. The researcher agrees that a surveillance operation should be kept secret. In a large company, such as Discovery, there is bound to be someone who might know the subject and if word gets out that the person is being investigated, it could compromise the investigation as a whole.

According to Gottschalk (2010:38), collected information is transformed and processed according to a transparent methodology to discover criminal capacity, dispositions and goals. The researcher is of the opinion that the forensic investigator who has experience and knowledge of crime intelligence gathering methods and techniques, such as physical surveillance, definitely has an advantage over the investigator who does not possess such knowledge. When conducting forensic investigation it is essential to be able to confirm that the information gathered and the evidence collected are factual to the outcome of the investigation. The physical surveillance capacity at Discovery enables investigators to prove or refute alleged fraudulent activities against a person which would have been impossible to do with conventional investigative techniques.

Some of the factual information gathered by surveillance operatives during the investigation of insurance fraud includes the following:

- Daily activities at subject's residence (leave in morning, visitors, return at night).
- Identify vehicles in use by the subject, relatives and contact persons.
- Routes that subject takes to work and back.
- Favourite social places visited.
- Places that are visited.
- Contacts that are made.
- Activities at the workplace.
- Illegal activities or involvement in crime.
- Physical impairments.
- Ability to use body extremities (hands, feet, legs, arms and so on).
- Sport activities.
- Vehicle driving abilities.
- Social interaction with others.

- Shopping trends.
- Food preferences.
- Use of public transport.
- Daily time management.

According to the researcher, it is usually one or a combination of these activities that could confirm that a claimant is indeed impaired and has a valid claim or that a claimant is intentionally malingering or misrepresenting a condition in order to get improper financial rewards and in the process commits insurance fraud. Physical surveillance operations conducted during the investigation of insurance fraud could reveal many aspects of a subject's life, his lifestyle and the associates that he/she interacts with. It often leads to the identification of co-conspirators and places where crimes were committed. Information and evidence obtained during surveillance operations are often used as the basis for opening a criminal investigation, arrest or a search warrant (Knoesen, 2012:89).

3.7 SUMMARY

Insurance fraud has become one of the greatest challenges in the insurance environment in recent years. Losses incurred by insurance companies are accounted for by increasing the monthly premiums of policy holders which in turn has a financial impact on millions of lives. Criminals who commit insurance fraud are intelligent, cunning and very inventive when planning and subsequently committing the crime. These so called "white collar criminals" come from all walks of life. There are countless ways to commit insurance fraud but some of the most popular crimes involves misrepresentation, material non-disclosure, disability, over coding, false claims, death and funeral claims.

A zero tolerance approach from life insurers to fraud and dishonesty has now been implemented in South Africa after claims fraud statistics released recently by ASISA revealed that the value of death, disability and funeral claims involving fraudulent documentation and syndicate activity has greatly increased. Most large insurance companies have established internal forensic departments or make use of external forensic departments which implement preventative measures and investigate fraudulent attacks against the insurance industry.

One of the most effective investigative methods against insurance fraud is physical surveillance whereby a perpetrator's actions and activities can be monitored in order to prove or prevent insurance fraud. Physical surveillance is a tried and tested investigative technique and could be of great value to an investigative capacity within the insurance industry as it has been for decades in the intelligence services around the world.

CHAPTER 4 DATA ANALYSIS: PRESENTATION, INTERPRETATION AND DISCUSSION OF THE RESEARCH FINDINGS

4.1 INTRODUCTION

In this chapter, the data analysis and interpretation of the qualitative data (the semi-structured interviews with forensic investigators at the Forensic Department at Discovery Life as discussed in 1.14.1 of Chapter 1) are presented and discussed by means of emergent themes to indicate the achievement of the aim and purpose of this study (see sections 1.4 and 1.5). This chapter commences with the biographical details of the participants which is followed by a discussion of the identified themes. In particular, these themes include participants' understanding, experience and perceptions of the application of physical surveillance during the investigation of insurance fraud.

4.2 BIOGRAPHICAL DETAILS OF THE PARTICIPANTS

In order for the reader to gain an understanding of the participants' background history, a summary of participants' biographical details follows:

- **Age group** – 9 (35%) of participants were aged between 25 and 35 years of age. 17 (65%) were between the ages of 36 and 50.

- **Gender** – 12 (46%) of participants were female while 14 (54%) participants were male.

- **Educational qualification** – 7 (27%) of participants held a university degree. 18 (69%) of participants held diplomas relevant to the forensic investigation field.

- **Investigative experience** – 6 (23%) of the participants had between 1 and 5 years' experience as forensic investigators; 8 (31%) had between 6 and 10 years, 7 (27%) had between 11 to 15 years, 5 (19%) had between 16 and 20 years of forensic investigative experience.

- **Training received in forensic investigation** – 25 (96%) of the participants had received training in forensic investigation. The remaining 1 (4%) respondent had not received training in forensic investigation.

- **Number of years at the Discovery Forensic Department** – 15 (58%) of the participants had between 1 and 5 years' experience at the Discovery Forensic department; 6 (23%) had between 6 and 10 years' experience; while 5 (19%) had 11 to 15 years' forensic investigative experience at Discovery Forensic Department.

- **Number of fraud cases investigated in 12-month period** – 12 (46%) of the participants had investigated between 50 and 100 fraud cases in a 12-month period; 8 (31%) of the participants had investigated between 101 and 150 fraud cases during the same period, while 6 (23%) of the participants had investigated between 151 and 250 fraud cases during a 12-month period.

- **Types of specialised fraud cases specialising** – 10 (39%) of the participants specialise in the investigation of health fraud cases; 12 (46%) of participants specialise in the investigation of life insurance fraud cases and 4 (15%) of participants specialise in the investigation of short term insurance fraud cases.

4.3 THE RESULTS FROM THE INTERVIEWS

In this section, the results of the semi-structured interviews as discussed in section 1.14.1 are presented according to categories and themes to indicate forensic investigators' perceptions (at the Forensic Department at Discovery Life), knowledge and experiences concerning the introduction of the application of physical surveillance in the investigation of insurance fraud. These categories are grouped as follows:

- The application of physical surveillance in insurance fraud investigations, and

- The investigation of insurance fraud.

4.3.1 The application of physical surveillance in insurance fraud investigations

The first category of identified themes to be discussed is the application of physical surveillance in insurance fraud investigations.

4.3.1.1 Exploring forensic investigators' understanding of the term "physical surveillance"

In order to successfully apply physical surveillance during insurance fraud investigations, every forensic investigator at the Forensic Department at Discovery Life should have a clear understanding of the concept "physical surveillance". This theme presents the views of the participants to explore their understanding of physical surveillance.

Participants were asked to respond to the following: *How would you define 'physical surveillance'?*

According to the responses of the sample, participants understood the term ‘physical surveillance’ as follows:

- Monitoring and observing someone’s activities for some time in order to gather information about that person without being noticed (8 out of 26 = 31%).
- Physical surveillance is to follow people around and see what they are doing (4 out of 26 = 15%).
- Physical surveillance is some sort of static observation at a person’s home or workplace (6 out of 26 = 23%).
- Physical surveillance is monitoring people with CCTV cameras (5 out of 26 = 19%).
- Surveillance is an investigative technique but not sure what it entails (3 out of 26 = 12%).

From the feedback received by the participants it is evident that the majority of these participants are familiar with the term ‘physical surveillance’ which is also consistent with this term in the literature as indicated in sections 1.9.4 and 2.1 (Siljander & Fredrickson, 2002:3; Bennett & Hess, 2004:173). However, participants understand the actions of performing physical surveillance differently. The core idea of physical surveillance, namely, to gather information about someone without being noticed is, however, present. The majority of the participants are of the opinion that physical surveillance goes hand in hand with certain skills, techniques and experience that the average investigator does not necessarily have. Due to the “unknown” factor of physical surveillance, the majority of participants have not utilised physical surveillance to the extent that they should have to assist them with gathering information required during insurance fraud investigations.

Furthermore, the researcher is of the opinion that participants’ diverse understanding of the term ‘physical surveillance’ is attributed to a lack of

knowledge and experience with regard to this unique investigative technique that is most commonly used in the intelligence and covert investigative environment, where it is utilised and applied with great success. This diverse understanding suggests that participants need to be made increasingly aware of the true potential of the application of physical surveillance in insurance fraud investigations and the dynamics behind it, and then they would most certainly incorporate it in their investigations. It is also significant that the majority of the participants indicated that they are aware of certain aspects of physical surveillance and that it can be successfully incorporated into fraud investigations. However, operatives with skills, experience and knowledge of physical surveillance need to perform the surveillance since the participants in this research do not have the practical knowledge to do it themselves.

4.3.1.2 Exploring forensic investigators' knowledge of the different types of surveillance

A lack of knowledge of the types of surveillance refers to the ambiguous understanding of the different types of surveillance among forensic investigators at the Forensic Department at Discovery. As a result of this unclear understanding, hesitancy to apply physical surveillance could arise.

This theme presents the participants' knowledge of the different types of surveillance. Participants were asked to respond to the following: *Name and describe the different types of physical surveillance?*

According to the responses of the sample, participants named and described the different types of physical surveillance as follows:

- The majority of the participants (22 out of 26 = 85%) incorrectly named and described the different methods of surveillance, namely, static

surveillance, foot surveillance, vehicle surveillance and electronic surveillance as opposed to the different types of surveillance.

- The minority of participants (4 out of 26 = 15%) correctly named and described the different types of surveillance that is, covert and overt surveillance which is consistent with sections 2.2.1 and 2.2.2 in the literature (Jenkins, 2010:2; Knoesen, 2012: 84; Van Rooyen, 2004; Palmiotto, 2004:107).

The different types of surveillance, namely, covert and overt surveillance were then explained to participants where after they had a better understanding of when the different types of surveillance should be applied. All the participants agreed that for the purpose of investigations at Discovery, covert surveillance is the most likely technique to apply.

From the feedback received from the participants, it is evident that a lack of knowledge exists among participants regarding the different types of surveillance and the application of each type. This lack of knowledge among participants could be attributed to the fact that physical surveillance was never part of their actual investigative processes and they rarely dealt with it. It is not uncommon for the average investigator to think that the types of physical surveillance are foot surveillance, vehicle surveillance, static surveillance and electronic surveillance as it was traditionally used for covert investigations which was unknown to the broader public.

The researcher is of the opinion that this is not a very concerning issue and that once the participants were informed of the different types and methods of physical surveillance, they had a much better understanding of the concept and were able to identify that covert surveillance was the most likely type of physical surveillance to apply by operatives from the Discovery Forensic Department.

The participants from the surveillance unit were able to correctly describe the different types of surveillance as covert and overt surveillance.

4.3.1.3 Determining forensic investigators' views on the objectives of physical surveillance

In order to facilitate successful investigation of insurance fraud at Discovery, every forensic investigator should have a thorough comprehension of the objectives of physical surveillance.

This theme presents the views of the forensic investigators at the Forensic Department at Discovery to determine how these participants understand the objectives of physical surveillance. Participants were asked to respond to the following: *According to you, what are the objectives of physical surveillance?*

According to the responses of the sample, participants viewed the objectives of physical surveillance as:

- Collecting information on the daily activities of perpetrators by means of unconventional investigative techniques that the average investigator does not apply during an investigation (16 out of 26 = 62%). These participants also viewed that such important information about the suspect's daily activities could only be obtained by doing physical surveillance.

- Gathering additional evidence for future use during court proceedings (4 out of 26 = 15%).

- Locating suspects and their residential and work addresses and establish where the suspect is socialising (4 out of 26 = 15%).

- Identifying fraudulent behaviour of suspects (2 out of 26 = 8%).

From the information provided by the participants, it is evident that these participants realise the importance of physical surveillance as a method that could contribute to the gathering of information and evidence during the investigation process. The participants' views of the objectives of surveillance also unanimously included factors such as collecting information or evidence and identifying certain particulars that could assist in the investigation. The literature on the objectives of physical surveillance as cited in section 2.3 confirms the viewpoints of the participants (Jenkins, 2010:3; Ferraro, 2012:19; Siljander & Fredrickson, 2002:7; Patterson, 1978:91; Palmiotto, 2004:107; Van Rooyen, 2008:246; ACM IV Security Services, 1993:4).

The researcher is of the opinion that most participants had a fairly good idea of what the objectives of physical surveillance are and that the idea of collecting information on the daily whereabouts of the subject, was central to the objectives of physical surveillance. This suggests that the participants support the idea of physical surveillance and realise that it could add tremendous value to the investigation of insurance fraud. It is also significant that the majority of participants mentioned that collecting evidence to assist them during the investigation of insurance fraud is very important to them.

4.3.1.4 Exploring forensic investigators' familiarity of equipment needed to conduct a physical surveillance operation

Sufficient equipment is an integral part of a physical surveillance operation. The professional surveillance operative needs to know his equipment and the capabilities thereof.

This theme probes forensic investigators' awareness, at Discovery's Forensic Department, of the necessary equipment required to conduct a physical

surveillance operation. Participants were asked to respond to the following: *What basic equipment is typically needed for a physical surveillance operation?*

According to the responses of the sample, participants were of the opinion that they would include the following equipment in a typical operational kit for utilisation by a surveillance operative during a physical surveillance operation:

- A vehicle for surveillance, a camera to take photos or videos, a mobile phone and a pen and notepad to write down details (26 out of 26 = 100%).

- Two-way radios, binoculars, map books and a GPS system for the vehicle (14 out of 26 = 54%).

- A digital recorder, a torch and a laptop (7 out of 26 = 27%).

- Disguising props such as glasses, caps, wigs and different sets of clothing (3 out of 26 = 11%).

- An iPad and a covert camera that can be hidden away (2 out of 26 = 8%).

- None (0 out of 26 = 0%) of the participants mentioned anything about a first aid kit.

The majority of investigators had a good idea of basic surveillance equipment and a few had very good knowledge of equipment that is essential to the surveillance operative. This suggests that the participants know that physical surveillance would almost be impossible to do without the basic equipment such as a vehicle, a photographic or video recording device, a communication device, a radio or cellular phone and pen and paper, or other electronic devices to make notes of what transpired during the surveillance operation. Apart from the fact that none of the participants mentioned a first aid kit to be part of the equipment,

most of the specialised electronic equipment that is essential to the surveillance operative's "toolkit" was mentioned by the participants. It is also significant that most of the participants mentioned that insufficient equipment would hamper the execution of proper physical surveillance and would result in insufficient information gathering.

The viewpoints of the participants are consistent with the literature in section 2.7 (Jenkins, 2010:65; ACM IV Security Services, 1993:24; Van Rooyen, 2008:252). This confirms the fact that the surveillance operative has to be sufficiently equipped with the correct equipment to do proper physical surveillance and to obtain the necessary evidence therewith.

4.3.1.5 Exploring forensic investigators' views on the characteristics and qualities of a surveillance operative

Executing surveillance operations requires an operative with unique characteristics and qualities in order to successfully fulfil the role as a surveillance operative. A lack of these distinctive features and abilities could hamper surveillance operations and even exploit surveillance operatives.

This theme tests the forensic investigators' understanding, at the Forensic Department, of the required characteristics and qualities a surveillance operative should possess. Participants were asked to respond to the following: *According to you, what characteristics and qualities should a typical surveillance operative possess?*

According to the responses of the sample, participants viewed the following as characteristics and qualities that a surveillance operative should possess:

- A typical surveillance operative should be able to blend into a crowd, in other words, an average-looking person with no outstanding features or

mannerisms. This operative should also wear inconspicuous clothing and be able to go to most places without being noticed. These participants also stated that the operative should be self-confident, creative in thinking, be able to multi-task, be well-spoken and a good proficient driver of vehicles (17 out of 26 = 65%).

- Five participants (5 out of 26 = 19%) agreed with the previous group of participants, but added that an ideal surveillance operative should be well experienced, be able to think fast and make split-second decisions, have patience and be able to memorise what he/she sees. These participants also felt that good communication skills are essential as the ideal surveillance operative should be able to communicate with anyone at any time to be able to extract valuable information for the benefit of the investigation.

- Other participants were of the opinion that a surveillance operative should have perseverance and the ability to adapt to different situations. According to these participants, operatives are exposed to different work environments and threatening situations where security companies, police and the general public want to know why they are in a particular area and what they are doing there. These operatives will then have to convince their “interrogators” that they are there in good faith with a valid reason (2 out of 26 = 8%).

- A few participants regarded good eyesight, hearing and observation skills as characteristics that a surveillance operative should possess (2 out of 26 = 8%).

The researcher was pleasantly surprised that the participants were able to mention such a vast number of characteristics and qualities that a surveillance operative should have. This could suggest that since most of these participants

come from a law enforcement or medical investigative background, they took notice and have learnt some of these qualities in their daily work environment and sometimes have to apply some of these characteristics and qualities themselves. The fact that most of the participants were of the opinion that the surveillance operative should be confident, creative, well-spoken, non-conspicuous and able to blend into his/her surroundings proves that this is the universally accepted standard that is expected from a trained surveillance operative. Participants from the surveillance unit's biggest concern was the safety issues of operatives who are exposed to all kinds of danger in the operational environment, whilst most of the other participants were of the opinion that experience, quick reactions and perseverance are the fundamental qualities that a surveillance operative should possess to stay out of trouble.

The fact that there are slight differences of opinion with regards to the characteristics and qualities of a surveillance operative indicates that it is normal for people to see things from a different perspective and that each surveillance operative would indeed have different qualities and characteristics. It is this uniqueness that every surveillance operative possesses that assists investigators with the successful investigation of insurance fraud in the corporate environment.

The participants' views on the characteristics and qualities that a surveillance operative should possess are consistent with the literature in sections 2.8 and 2.8.1 and 2.8.2 (Jenkins, 2010:7; ACM IV Security Services, 1993:12; Van Rooyen, 2008:252; Siljander & Fredrickson, 2002:9; Palmiotto, 2004:109; Bennett & Hess, 2004:174).

4.3.1.6 Determining forensic investigators' familiarity with the law pertaining to the application of physical surveillance

Surveillance operatives should always function within the parameters of the law notwithstanding the challenges faced during surveillance operations. Non-adherence of the rule of law could jeopardise a surveillance operation, expose surveillance operatives and could lead to criminal or civil proceedings against operatives.

This theme assesses participants' acquaintance with the applicable laws with regard to the application of physical surveillance during the investigation of insurance fraud. Participants were asked to respond to the following: *Are you conversant with the law pertaining to the application of physical surveillance during the investigation of individuals who are suspected of committing insurance fraud?*

According to the responses of the sample, participants expressed their familiarity with the law pertaining to the application of physical surveillance as follows:

- The law regarding the Constitution of the Republic of South Africa 1996, Act 108 of 1996 (South Africa, 1996(a)), and Section 14 states that everyone has the right to privacy. The compliance with section 252(A) of the Criminal Procedure Act, Act 51 of 1977 regulates certain actions during the performance of physical surveillance. These participants further made reference to the Discovery Fraud Management and Fraud Risk Management Policy (22 out of 26 = 85%).

- Four participants (4 out of 26 = 15%) also mentioned the above-mentioned laws, but added the law that deals with the Regulation of Interception of Communications and Provision of Communication-related Information Act,

70 of 2002 (South Africa, 2002) dealing with the interception and monitoring of certain communication.

The participants' responses indicate that all the participants are fairly conversant with the laws that govern physical surveillance as well as the laws pertaining to the investigation of fraud in South Africa. The participants were adamant that adherence to the applicable laws is extremely important if a successful investigation into insurance fraud is to be guaranteed.

All 26 participants (26 out of 26 = 100%) were further of the opinion that the surveillance operative should be conversant with all the laws regarding physical surveillance and ensure that the good name of the company should be kept intact at all times by adhering to these applicable laws. It is significant that the participants feel strongly about the lawful execution of surveillance operations since more corporate companies and corporations are employing this investigative technique in the investigation of insurance fraud. It suggests that physical surveillance operations should be conducted within the parameters of the law.

When the responses of the participants were compared to the views expressed in the literature reviewed, it is evident that the surveillance operative should function within the law and also be conversant with all aspects of the law that deal with physical surveillance. The views expressed by the participants are consistent with section 2.5 in the literature (South Africa, 2002; South Africa, 1996; Jenkins, 2010: 380).

4.3.2 The investigation of insurance fraud

The second category of identified themes to be discussed pertains to the investigation of insurance fraud, with particular reference to the application of physical surveillance during insurance fraud investigations.

4.3.2.1 Exploring forensic investigators' understanding of the term "insurance fraud"

Forensic investigators who investigate insurance fraud should fundamentally be acquainted with the elements that constitute 'insurance fraud'.

This theme offers the viewpoints of the participants' understanding of the definition of the term "insurance fraud". Participants were asked to respond to the following: *How would you define 'insurance fraud?*

According to the responses of the sample, participants understood the term 'insurance fraud' as follows:

- All the participants were able to define the fundamental principles, on which insurance fraud is based, namely; the deliberate involvement of deception or misrepresentation that someone makes to an insurance company or financial institution with the knowledge that the buying, selling or using of an insurance policy in order to gain an improper financial gain is unwarranted or fraudulent (26 out of 26 = 100%).

The fact that all the participants were able to define insurance fraud correctly indicates that investigators from Discovery's Forensic Department are conversant with the laws pertaining to the investigation of fraud and in particular; insurance fraud. This can be attributed to the fact that there is a wealth of experience and knowledge amongst the investigators who were interviewed. It is a significant

factor since more corporate investigation capacities will rather employ investigators who are internationally certified as fraud examiners and those who are acquainted with the laws pertaining to insurance fraud.

Respondent's understanding of the term "insurance fraud" is thus consistent with section 3.3 of the literature (*ACFE 2010 Fraud Examiners Manual – International Edition,* (2010:1.1201; Ferraro, 2012:432; Van Rooyen, 2008:128).

4.3.2.2 Exploring forensic investigators' understanding of the main categories of insurance fraud

As a result of the various forms of insurance fraud, forensic investigators should have a thorough understanding of the different categories of insurance fraud and the dynamics of each category in order to assist the investigator with the investigation.

This theme illustrates participants' understanding of the main categories of insurance fraud. Participants were asked to respond to the following: *Name the main categories of insurance fraud that you are dealing with on a daily basis?*

According to the responses of the sample, participants viewed the main categories of insurance fraud as follows:

- Thirteen participants (13 out of 26 = 50%) mentioned that they were dealing with intermediary fraud whereby members, specialists, physicians, brokers and other service providers intentionally submit or charge for claims that have the intention to defraud Discovery. These participants further mentioned that other categories of fraud included broker fraud, internal fraud and insurer fraud.

- Six participants (6 out of 26 = 23%) indicated that they are dealing with policy holder and claims fraud whereby policy holders submit false claims or purchase insurance products with the intention to submit fraudulent claims during the period that the policy is in power. These participants also mentioned that the other categories of fraud are intermediary fraud, health related fraud, broker fraud and short term insurance fraud.

- Four participants (4 out of 26 = 15%) mentioned that they are dealing with life claims fraud and in particular disability claims whereby policy holders submit fraudulent claims by claiming that they are disabled to perform their nominated occupation and are unable to perform the same life functions as before the commencement of the policy. These participants were also familiar with the other mentioned categories of fraud.

- Three participants (3 out of 26 = 12%) indicated that they are responsible for dealing with internal fraud cases whereby staff, managers, directors or board members who commit fraud against the company are investigated. These participants also indicated that they are acquainted with the other categories of insurance fraud as this sometimes form part of their internal investigations.

When these participants' feedback is compared to the information obtained in section 3.4 of the literature, it is clear that there are different categories of insurance fraud that need to be addressed and investigated in a corporate environment. The researcher can confirm that the Forensic Department of Discovery deals with several categories of insurance fraud and it can thus be argued that different investigators deal with different categories of fraud on a daily basis. The Forensic Department's investigative capacity is conveniently divided into four main categories of fraud investigation namely; intermediary fraud, health claim fraud, life claim fraud and internal fraud. Most of the participants are familiar with the categories of insurance fraud that they

investigate as well as the categories of insurance fraud that the other participants investigate. It is also a significant factor that investigators at Discovery know about and are able to investigate other categories of fraud as the need arises. This contributes to a well-balanced investigative capacity of the forensic department as a whole.

These participants' views are consistent with the literature (Gottschalk, 2010:189; Van Rooyen, 2008:63; Association of Certified Fraud Examiners (ACFE), 2010:1302; Smit, 2010:16; Adler et al., 2013:294).

4.3.2.3 Exploring forensic investigators' views on preventative measures against insurance fraud

To facilitate the effective prevention of insurance fraud, it is important that forensic investigators at Discovery's Forensic Department are familiar with preventative measures to mitigate such crimes.

This theme demonstrates participants' views on preventative measures to mitigate insurance fraud. Participants were asked to respond to the following: *According to you, what preventative measures can be taken to prevent insurance fraud?*

According to the responses of the sample, participants were of the opinion that the following preventative measures could be implemented to facilitate the prevention of insurance fraud:

- A zero tolerance approach should be implemented by companies and more stringent measures should be put into place to prevent insurance fraud by means of built-in early warning systems, red flag systems and available data sharing software programs that could identify insurance fraudsters who use similar modus operandi. Potential policy holders

should also be screened thoroughly at application stage (11 out of 26 = 42%).

- A shared database between all the insurance companies should be implemented. Such a database will assist in identifying fraudsters who will go to great lengths to try to commit fraud against more than one insurance company. These participants were further of the opinion that identifying these fraudsters at an early stage could help prevent fraud that is committed through purchasing different insurance products at a number of insurance companies. Participants also suggested that physical surveillance should be done on policy holders who are insured for large amounts and often request amendments to their policies prior to submitting a claim. With the application of physical surveillance, the perpetrator's daily activities could be monitored to obtain an improved understanding of what the intentions are of such a policy holder towards the claim process (9 out of 26 = 35%).

- A full financial and lifestyle audit of any person applying for an insurance policy and an advanced investigative system that could detect early signs of criminal intent by monitoring all the insurance products that the person applies for (4 out of 26 = 15%).

- A compulsory polygraph test or a layered voice analysis test be done with every claim over a certain amount to establish if there are certain indicators to warrant a full investigation before the claim is paid
  (2 out of 26 = 8%).

From the information received by the participants it is clear that the prevention of insurance fraud is a serious matter and is high on the agenda of companies to address as a matter of urgency. Some participants were of the opinion that stringent fraud prevention measures such as early warning systems, red flag

systems and modus operandi identification systems should be put in place to pre-empt fraudulent behaviour. Other participants suggested database sharing is implemented between insurance companies and financial institutions to identify recurring fraudsters and some even suggested polygraph tests for everyone who submits a claim. It can thus be argued that all participants are of the opinion that some form of preventative measures be put in place to prevent the high incidence of insurance fraud in the corporate environment. The participants also agree with the researcher that insurance fraud is definitely a threat to the insurance and financial industry in SA and the rest of the world, and the losses of billions of rand cannot continue indefinitely and needs to be addressed with dedication and vigilance by law enforcement agencies and forensic departments.

The responses from the participants are consistent with the literature in section 3.6 (Association of Savings and Investments (ASISA), 2012; Van Rooyen, 2008:85).

4.3.2.4 Exploring forensic investigators' knowledge of the advantages of physical surveillance in the investigation of insurance fraud

Insufficient knowledge of the advantages of the application of physical surveillance in the investigation of insurance fraud refers to an unclear understanding among forensic investigators at Discovery's Forensic Department of the benefits that this investigation method holds. Since the advantages of physical surveillance are not known to forensic investigators, hesitancy or sheer unawareness to apply this investigation method may prevail.

This theme explores participants' knowledge of the advantages of physical surveillance in the investigation of insurance fraud. Participants were asked to respond to the following: *According to you, why is physical surveillance not utilised more often to assist with the investigation of insurance fraud?*

According to the responses of the sample, participants expressed the following views with regard to the benefits of applying physical surveillance in the investigation of insurance fraud:

- It clearly transpired from the interviews that the participants have insufficient knowledge of the benefits of applying physical surveillance during the investigation of fraud. According to the researcher this can be attributed to the fact that the participants come from an investigative background and work environment whereby physical surveillance was rarely or never utilised as an investigative technique. This suggests that although the participants may not have sufficient knowledge about physical surveillance, they were more than willing to discuss the topic and get to know how this investigative technique can add value to the investigation of insurance fraud. The fact that all the participants have not utilised the physical surveillance capacity at Discovery indicates that they have not been properly informed of the advantages of this forensic investigation technique in the investigation of insurance fraud.

After discussing the advantages that physical surveillance can add to the participants' investigations, these participants indicated that they have an improved understanding of the dynamics of physical surveillance and the benefits it can offer them as part of the investigation and information gathering process. All these participants indicated that they will definitely start applying for the services of the physical surveillance capacity since the gathered information will assist them considerably to obtain valuable information in their investigations of insurance fraud (26 out of 26 = 100%).

The insufficient knowledge of participants with regard to the role and benefits of applying physical surveillance is in contradiction of the advantages as set out in section 3.7 of the literature (Milne, 2013:1; Van Rooyen, 2004:131; Gottschalk, 2010:38; Knoesen, 2012:89).

4.4 SUMMARY

The significance of physical surveillance as a method in the investigation of insurance fraud brought about a lot of conversation between investigators at the Forensic Department of Discovery Life for quite some time. From these discussions and information provided by them during formal and informal interviews, it has become evident that they came to realise the importance of applying physical surveillance techniques as an aid during the investigation of insurance fraud. The participants also confirmed that physical surveillance is a necessary tool that contributes towards gathering important information and evidence during the investigation process. The participants' views of the objectives of surveillance also unanimously included factors such as collecting information or evidence and identifying certain particulars that could assist in the investigation.

Most participants had a good idea of what surveillance entails but they did not know the exact details of the different types of surveillance as well as the methods of surveillance. Their lack of knowledge on these mentioned issues can be attributed to the fact that physical surveillance is a fairly new concept that had been introduced at Discovery Forensic Department. They have not been directly exposed to the technique of physical surveillance during their investigations and can thus not really comment on physical surveillance as an investigation technique. The opportunity to make use of the services of a physical surveillance capability did not previously exist and investigators had to do with the investigative methods that they are familiar with and that were taught to them by their mentors.

CHAPTER 5 FINDINGS AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter presents the findings and recommendations derived from the information obtained from the interviews with the forensic investigators at Discovery Life, the overview of applicable literature and the experience of the researcher in the field of physical surveillance. The decision to conduct research on this topic was due to a lack of knowledge and skills of the application of physical surveillance as an important investigative method that is not applied by most forensic investigators at Discovery.

The primary purpose of this study was to explore, identify and describe the value of the application of physical surveillance, as a forensic investigation method, in order to determine the significance of this method in the investigation of insurance fraud at the Forensic Department of Discovery Life. In addition, a secondary purpose of this research was to provide factual and well-researched information to forensic investigators at Discovery that physical surveillance should be utilised more during insurance fraud investigations as this is a technique that could add considerable value to an insurance fraud investigation.

The researcher confirmed that insurance fraud is an enormous challenge to the insurance industry in SA as well as internationally and that physical surveillance facilitates the mitigation of some of these threats by adding a new dimension of reliable, unconventional, investigative techniques to the forensic investigator. Intelligence agencies across the globe have used physical surveillance as an investigative technique to gather information very successfully over decades and the researcher is of the opinion that it could be applied successfully to address insurance fraud.

The research question, namely, '*What is the significance of physical surveillance as a method in the investigation of insurance fraud?*' enabled the researcher to focus on the identified problem and ensure that the findings and recommendations of this study relate to the research problem. The findings of this study have been clustered under each identified category as per section 4.3.1 and 4.3.2 and relate directly to the research question addressed by the study.

5.2 FINDINGS

The following findings are based on the interviews and responses received from the participants, information obtained from an in-depth literature study and the researcher's extensive experience as a surveillance specialist.

5.2.1 Findings on the investigation of insurance fraud

- Research has confirmed that insurance fraud is a significant challenge for the insurance, finance and banking industries in SA and internationally.

- Losses due to insurance fraud are costing the economy billions and have a significant impact on policy holders who have to bear the brunt of increased monthly premiums.

- "White collar criminals" are from all walks of life and are usually intelligent and occupy a higher position in the corporate environment.

- Preventative measures are being put in place at most large financial and insurance corporations to address insurance fraud.

- The majority of participants believe that more innovative methods and investigative techniques, such as physical surveillance, should be applied to investigate insurance fraud.

- The investigation of insurance fraud is commonly divided into different categories of fraud such as; intermediary fraud, health/medical aid services fraud, life and disability claims fraud, financial statement fraud, short term insurance fraud, and so on.

- Investigators were able to define the fundamental principles, on which insurance fraud is based on, namely; the deliberate involvement of deception or misrepresentation that someone makes to an insurance company or financial institution with the knowledge that the buying, selling or using of an insurance policy in order to gain an improper financial gain is fraudulent.

- Participants agree that sound knowledge of the laws pertaining to the investigation of insurance fraud is an absolute pre-requisite for any investigator in the corporate environment.

5.2.2 Findings on the application of physical surveillance in insurance fraud investigations

- Physical surveillance as an investigative method has a significant role to play in the investigation of insurance fraud.

- Physical surveillance is a specialised investigative technique that requires proper training, suitable operatives, advanced equipment and patience and determination.

- Surveillance operatives need to employ all the surveillance techniques, that is, foot, mobile, static and electronic surveillance during the investigation of insurance fraud.

- Surveillance operatives must have thorough knowledge of laws governing surveillance activities and strictly abide by these laws.

- Forensic investigators at Discovery Life in general do not make adequate use of physical surveillance methods during investigations. However, the Surveillance Unit, which daily applies physical surveillance in the investigation of insurance fraud, records immense success.

- The forensic investigators at Discovery Life believe in innovative and new methods of investigation and after being informed of the advantages that physical surveillance can offer them in their own investigations, they committed themselves to using the capacity of physical surveillance more often during insurance fraud investigations.

- Information derived from physical surveillance is reliable, accurate, first-hand information and the operative can substantiate his/her observations with images as evidence.

- Information that cannot be obtained through conventional investigative methodologies can be collected by means of unconventional investigative techniques such as physical surveillance.

- Information remains secure since it is mostly only the client and the surveillance team that has knowledge of the investigation.

- Physical surveillance is conducted in a covert manner, thus, the good name and integrity of the client company is always protected.

- Physical surveillance provides the investigator with a holistic overview of the daily activities of a suspected insurance fraudster, his/her physical movements or condition, his/her accomplices, routes driven, social behaviour and illegitimate activities.

- Since the establishment of a physical surveillance capacity at Discovery Life in 2008, the unit has made a significant impact on the successful investigations of fraudulent disability, life and misrepresented claims against the company.

5.3 RECOMMENDATIONS

Based on the findings of the research, the following recommendations are made:

5.3.1 Recommendations on the investigation of insurance fraud

- Companies should be advised to invest in establishing and managing good corporate governance. At a macro level this means establishing governance structures and ensuring that business and risk strategies are aligned.

- At an operational level it is crucial for companies to heighten risk consciousness and introduce best risk practises such as sharing good quality risk information in a timeous fashion and regularly reviewing risk analysis trends.

- Companies should adopt a zero tolerance attitude towards insurance fraud and implement policies that heavily penalise offenders and implement preventative measures that would make the “would be” offender think twice before committing the crime.

- Information with regards to particulars of offenders or “white collar criminals” that most often target more than one insurance company at a time should be shared among relevant companies.

- Insurance companies should make use of more innovative and technologically advanced investigative techniques to address insurance fraud. Conventional investigative techniques are not sufficient when an investigator is up against sophisticated and highly technologically advanced criminals who have turned committing insurance fraud into a specialised skill.

- Insurance companies should endeavour to recruit and employ only the best, trustworthy and reliable investigators available in the market who have the necessary experience and skills to investigate insurance fraud.

5.3.2 Recommendations on the application of physical surveillance in insurance fraud investigations

- All forensic investigators at Discovery Life’s Forensic Department should be trained in the basic application of physical surveillance. When these investigators have an improved understanding of the value that physical surveillance can add to the investigation of insurance fraud they will make use of these services more often.

- Physical surveillance has been proven to be a valuable investigative method in any organisation and should be incorporated into the risk and forensic structures of insurance companies.

- Employees in the insurance industry with particular physical surveillance skills should be identified and utilised as mentors and training facilitators to less experienced colleagues.

- The role of the physical surveillance capacity in the insurance industry should be well defined to provide a service that is invaluable in the collection of information on insurance fraud.

- Physical surveillance should be utilised only for investigations of a specialised nature or when conventional investigative methods do not yield results since it is rather labour intensive and fairly expensive to collect information.

- Hi-tech surveillance equipment should be made available to surveillance operatives to ensure that information gathered is of high standard.

- International trends and developments on physical surveillance should be monitored and evaluated to ascertain if they can be implemented in SA.

- Physical surveillance should always be regarded as a covert information gathering function and operatives must always be alert not to divulge any sensitive information to a third party which could have a negative impact on the good name or social standing of a company.

5.4 CONCLUSION

By means of the design and methodology of this research, the researcher was able to efficiently address the research question which indicated that physical surveillance does play a significant role as a method to investigate insurance fraud in a corporate environment.

Physical surveillance has been utilised for the successful gathering of intelligence over several decades by intelligence agencies across the world. This unique investigative method has recently been implemented in the corporate environment by former law enforcement intelligence operatives who find themselves in this niche market and have also achieved significant successes with physical surveillance. We live in a technological era and criminals (especially “white collar criminals”) are using this new technology to their advantage in committing insurance fraud. Investigators also have to equip themselves with knowledge on new technology and innovative ways to address this threat. By getting trained in the different techniques of physical surveillance, investigators can enhance their investigative capabilities and stay on par with the latest trends in insurance fraud.

This research study should be able to persuade the insurance, financial and banking industry that physical surveillance is one of the reliable and accurate methods of investigation and can be of significant value to any investigative body who is serious in addressing insurance fraud as well as other related fraud. Intelligence agencies around the world have been using physical surveillance as a specialised investigative technique to address serious crime with great success over decades and are still using it today. The researcher has dedicated more than two and a half decades of his life to physical surveillance and from experience is absolutely convinced that physical surveillance is indeed one of the significant methods of addressing insurance fraud in the corporate environment.

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APPENDIX A DISCOVERY PERMISSION LETTER TO CONDUCT RESEARCH

Discovery Life

29 August 2014

UNISA
P O Box 392
Pretoria
0003

Attention: Dr J Van Graan

STUDENT NO. 08069395 B I. VISSER : M-TECH FORENSIC INVESTIGATION : PERMISSION TO INTERVIEW FORENSIC INVESTIGATORS AT GROUP FORENSIC SERVICES, DISCOVERY HOLDINGS : 155 WEST STREET SANDTON

Dear Dr Van Graan, I have received an application from one of my employees (Bernet Visser) to interview the forensic investigators working at the forensic department of Discovery as part of the completion of his dissertation for the M Tech degree in Forensic Investigation,. He has given me an undertaking that the interviews with the investigators will take place during lunch breaks and after working hours and will not interfere with the daily activities of the investigators. As head of Discovery Group Forensics I hereby give my permission that the employee may interview the forensic investigators at times such as agreed upon. The investigators have to do it at free will and no pressure or promises will be made in exchange for their cooperation during the interviews. The interviews will take place at available meeting rooms or offices and the employee will not be charged financially to use these facilities as long as it does not interfere with the daily activities at the department.

Best Regards

Marius Smit CFE
Head of Department
Group Forensic Services
Tel: 011 529 2815
Fax: 011 529 3590

[illegible]

APPENDIX B INTERVIEW GUIDE

Topic: The significance of physical surveillance as a method in the investigation of insurance fraud: A Discovery Life perspective

SECTION 1: HISTORIC INFORMATION

1. What is your age?
2. What is your gender?
3. Educational qualifications?
4. Job description / Title?
5. Total number of years of investigative experience?
6. Training received in the investigative field?
7. Number of years at the Discovery Forensic Unit?
8. Number of fraud cases investigated in the past 12 months?
9. Type of fraud cases that you specialise in?

SECTION 2: APPLICATION OF PHYSICAL SURVEILLANCE DURING FORENSIC INVESTIGATION

10. How would you define 'physical surveillance'?
11. Name and describe the different types of physical surveillance?
12. According to you, what are the objectives of physical surveillance?
13. What basic equipment is typically needed for a physical surveillance operation?
14. According to you, what characteristics and qualities should a typical surveillance operative possess?
15. Are you conversant with the law pertaining to the application of physical surveillance during the investigation of individuals who are suspected of committing insurance fraud?

SECTION 3: THE INVESTIGATION OF INSURANCE FRAUD

16. How would you define ‘insurance fraud’?
17. Name the main categories of insurance fraud that you are dealing with on a daily basis?
18. According to you, what preventative measures can be taken to prevent insurance fraud?
19. According to you, why is physical surveillance not utilised more often to assist with the investigation of insurance fraud?

APPENDIX C LANGUAGE EDITING CERTIFICATE

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PO Box 433, Meadowdale, 1646

22 October 2015

To whom it may concern

This letter serves to confirm that the thesis of Bennet Visser was given to Nikann Transcription and Typing Solutions for proofreading, editing, and formatting. The document was proofread and edited to ensure correct sentence structure, correct use of language, and to check grammar, spelling, and so forth within the document. The document was then formatted to ensure consistency and uniformity throughout the document with regards to font, font size, line spacing, alignment of text, and so forth.

Should you require any further information please don't hesitate to contact me.

Many thanks

Kind regards

Nikki Solomon
Owner