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## ***Some Truths About Trust***

*By John Haberstroh, DC (CEO-Boston Spine Clinics)*

**“Once more unto the breach, dear friends . . . Disguise fair nature with hard-favored rage.” Shakespeare; Henry V.**

The Commission of Insurance and the Supreme Judicial Court (SJC) of Massachusetts put Trust Ins. Co. into insolvency last year. This action was taken after audits of their financial records showed Trust was not being truthful to their policyholders, their sales agents, the Government and those who had claims against the company which included hundreds of chiropractors for denied charges for services and treatments rendered.

I was one of those that Trust routinely “cut and discounted” charges for my services and treatments which were provided to Trust’s policy holders. The means by which Trust denied claims included IMEs, Peer Reviews, retrospective treatment reviews and billing audits to determine the “usual and customary” charges (with no regard to a practitioner’s overhead and minimal profit margin) of a practitioner. It became clear to me that Trust’s management was either attempting to hide its own fiscal mismanagement and/or line the pockets of a few “connected” law firms they paid large fees to, to “delay” payments rather than “defending” those same claims.

In 1997, Boston Spine Clinics (BSCs) sued Trust Insurance Company seeking to recover \$14,000+ in unpaid bills. At or around that same time, Trust won a stunning victory over a chiropractor in Boston in a rabid legal battle with essentially the same circumstances. They then started to sue another chiropractor. Then, they commenced a move against me. What had happened in the first case was that the DC sued for about \$30K in unpaid bills. What Trust did, their MO, was to turn around and counter-sue for alleged fraud, overutilization and abuse of billing. Once Trust launches a counter-suit, they then seek to prove the allegations after the fact. Trust used the Law Firm of Boyle & Morrissey. The actual point man on the operation was Peter Leary, Esq. To make a long story short, the other DC got hammered. Far from recovering his \$30K, fraud and overutilization were indeed found and proved. This DC had to pay around \$130,000 in fines, restitution and penalties. They then moved for interest on the attorney’s fees. He lost on appeal. Peter Leary and Trust figured they would simply do the same thing to *Boston Spine Clinics* and me. So, the all too predictable counter suit was filed and the war began. In the interim, they moved after the second DC and recovered in excess of \$5Million.

Time wore on and Peter Leary, Esq. continued to depose or contact everyone he could think of as well as filing numerous motions. He somehow managed to locate every single one of my ex-associates including one in NH and one in Vermont. They even deposed my ex-wife. The object of that exercise was to try to coerce them into trashing me and BSCs. Several of these doctors contacted me directly to inform me of their encounter with Attorney Leary and inform me that there was nothing to tell. I thanked these DCs for the support. Since I enjoy a good relationship with most of my ex-associates, there wasn't much to find there. Eventually, John Dorn, DC signed on as the expert witness *against* me. Dr. Dorn is certainly establishing himself in a unique niche in Massachusetts; besides being a very busy IME and Peer Reviewer he is now branching out to become the premier chiropractic expert witness against chiropractors. Needless to say, I am not the only chiropractor Dr. Dorn has worked against.

It was a real dogfight from 1999 through the year 2000. Our records were examined. Any and all notes, letters, billing records etc. Everything was gone over with a fine tooth comb mostly by Dr. Dorn. Trust simply didn't have a case against us. There was nothing fraudulent to find. This after a careful examination of bills, notes, office policies, statements by ex-employees etc. Undaunted by the facts, Attorney Leary and his willing supplicants plowed forward and simply tried to manufacture fraud. They did this by concocting one single possible fraud event: BSCs bills for rehabilitation on a patient. Those fees are time based. For 1-15 minutes of rehab the recognized fee is \$30. For any time after that up to 30 minutes the fee is \$60. Attorney Leary was trying to prove that in at least one case, we billed for \$60 when the patient was only in our rehab facility for 14 minutes. That was their entire case! A fabricated, trumped up bit of clinical hokum designed to close the doors on *Boston Spine Clinics*. By deposing our own patients, they could not get these individuals to say that. On the contrary, our patients spoke of the great treatments they got and all the time spent in the rehab section as well as the rest of the treatment received.

Boyle & Morrissey, PC were racking up an impressive legal bill with Trust the whole time. We estimate the figure to be around \$100,000. All this, to not pay me my \$14,000. After a long series of discovery motions, we were able to ascertain from reading letters, notes and internal memoranda that far from not paying the \$14,000; Trust's hidden agenda was to close me down permanently. BSCs was on their Radar Screen and they were hell bent to "put Dr. Haberströh out of business, if not in jail." The case continued to drag. In the second year, after Trust hired Dr. Dorn, I was advised me to hire Allen Steingisser, DC as our expert witness. Many of you know or know of, this man. Allen has been a controversial figure to say the least in Massachusetts over the years. Many of you will recall that he was on the Board of Registration for years and penned the famous Board opinion regarding "high tech" testing such that it "may" not be appropriate. He is a DABCO and he also pioneered IMEs and paper reviews in this Commonwealth. Allen and I have locked horns many, many times over the years regarding numerous cases but as I got to know him, we slowly became friends and we actually got to a point that we were calling each other quite a bit. Dr. Steingisser peer reviewed each case and even examined most of the patients themselves. As oxymoronic as it seems 3 years after the fact, the IM exams were court ordered. Attorney Leary fought bitterly to exclude Dr.

Steingisser's reports and possible testimony since they substantiated all of our treatments on each patient and completely refuted Dr. Dorn. It was brilliant strategy. The IME chiropractor refuting the other Peer Review chiropractor. Only in this case, Dr. Steingisser had the advantage of having examined the actual patients themselves in addition to the case files. Allen Steingisser came through like a champ and I am here to tell you all this. It was a pivotal moment in the case. For all the practitioners who deal with insurance, PI or Trust, Dr. Steingisser was helping us all. The opposing argument was that Dr. Steingisser was an IME doctor that traditionally worked for Trust; therefore he couldn't be our witness. True, Allen often worked for Trust Insurance. The problem with that argument was two-fold: 1) Oddly, he hadn't worked on any of these cases before the trial. 2) You know how IMEs are always arguing how they are free-agents and not beholden to anyone or any company? As is their want, IME/Peer Reviewers harp on their alleged independence. They invoke the fact that it is a company like North East Medical or some other intermediary paying them, certainly not the insurance company in question. Their "independence" completely turns on this very point. Fine, Allen Steingisser is also a free agent and can IME/Peer Review anyone, anytime he pleases for whomever. The court allowed his reports to the bitter chagrin of Attorney Leary. \*We also hired Richard Sittinger, DC to help us. Dr. Sittinger is another well known IME with whom I have fought with over the years. Together with Dr. Steingisser, they both substantiated treatments and charges by BSCs as "fair, reasonable and necessary."

We also deposed Concentra. Many of you know who that is. It is a company that actually sets fee guidelines for Insurers and thus, when your bill comes through, a Concentra program determines whether or not you should be paid in full, reduced or not paid at all. Trust passed the buck on this issue and told us to go after Concentra to explain some of their rather bizarre and random fee reductions. Many of us have had to deal with this company or a company like it. Discovery was ignored by these people. They showed up for the deposition and only then handed over company paperwork, manuals and memoranda. The deposition lasted 8 hours and still, no one was sure how their mathematical algorithm works. It literally changes during a given day. That is why, if some of you have noticed that one day you get paid a certain fee for a procedure and an identical charge the following day is reduced. Even they can't explain it. The program they use apparently randomly reduces your bills through a logarithmic tabulation. Finally Attorney Provanzano thought to ask if BSCs ever used unfair or deceptive billing. No, Concentra answered. BSCs always bills a certain way and it is never deceptive or unfair. Manna from heaven folks. So much for Concentra. The experts for Trust continued to fold, in one shape or another. Besides having no case, they had no experts left.

Dr. Dorn tried to duck and hide from his scheduled deposition with my attorney as did one of my former associates. Additionally, Concentra refused to return to finish their deposition. Finally a court order was obtained compelling them to appear and be subjected to what can only be described as a potential *pit bull* interrogation. Then, the Commissioner of Insurance stepped in, finding Trust had "cooked" their books with a \$26 million 'accounting error' and thus stayed all litigation. To make a long story short, Trust went bankrupt last summer citing, among other reasons, huge legal fees for their terrible financial state. Attorney Leary stopped answering phone calls regarding this case

because his firm hadn't been paid in a long while and the whole thing settled into an utterly surrealistic "on hold" mode for several months. Supposedly, Trust then left their lawyers with an additional \$25,000 in unpaid legal bills.

Eventually the insolvency fund (IF) took over all of Trust's assets and liabilities. Many of you have probably noticed that some of your old Trust cases are now getting paid, either in full or to a reasonable degree. The IF settled this whole issue, paid my claims and Trust's suits against me have all been dropped. We told Trust that they would be out of business before me. Terms are confidential but it is Trust that is out of Business, not BSCs.

➤ **What we can we learn from all of this?**

1) Trust literally went bankrupt in their bloodlust, in part, to shut down *Boston Spine Clinics*. They failed miserably. The *Law Firm of Boyle & Morrissey* had a fiduciary duty to inform their client, Trust Insurance, that there really was no case. They didn't. They got caught up in their own hubris and like most Law Firms; they couldn't face the prospect of losing a case and thus sully their reputation. This case wasn't exactly won or lost. BSCs withstood legal challenge from a heavily funded Law Firm with no scruples about how to conduct themselves or the case.

2) Don't give in. You work hard; you all treat and service your patients. You bill reasonably and according to your overhead with a minimal profit margin. Don't take these "fee review" or insurance medical examinations. Fight them!

3) Attorneys are all over the place. Find one that will really work for you. Find a pit bull not a poodle. Our legal team performed an essentially similar amount and style of legal work (suit, depositions, discovery, motions, etc.) for only a percentage of what the Firm of Boyle & Morrissey charged and with astonishingly better results. BSCs has withstood a "fraud" challenge of the highest magnitude and prevailed. There was none found, Dr. Dorn's predictable, pre-fab blather notwithstanding. Trust, or now the IF is finally paying off in full on many other cases that they have been cutting on us for years. Most of you are probably benefiting from this too.

Lastly, it needs to be said and repeated again; "If you don't stand for something, you'll fall for anything." Besides Trust not paying all of us, they didn't pay commissions to their agents who brought in the premiums. They didn't pay or attempted to discount numerous other medical providers. Both medical doctors and chiropractors have been complaining about this lack of paying mentality while Trust has been laying out astronomical "defense fees."

I want to thank the DCs who have followed and supported me in this crusade over the years, especially the MCS officers. This is some of the truth about Trust.

Was it all worth it? I would have to still say yes. As for Allen Steingisser, most of you know that he had an unfortunate stroke several months ago. You can contact him through

the MCS. He really came through for us. Wish him well, pray for a speedy recovery and savor the irony.

\*If you have any questions about this feel free to contact me at Boston Spine Clinics, 67 Broadway, Somerville, MA, 02145. 617-666-1767 or at [www.bostonspineclinics.com](http://www.bostonspineclinics.com).

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