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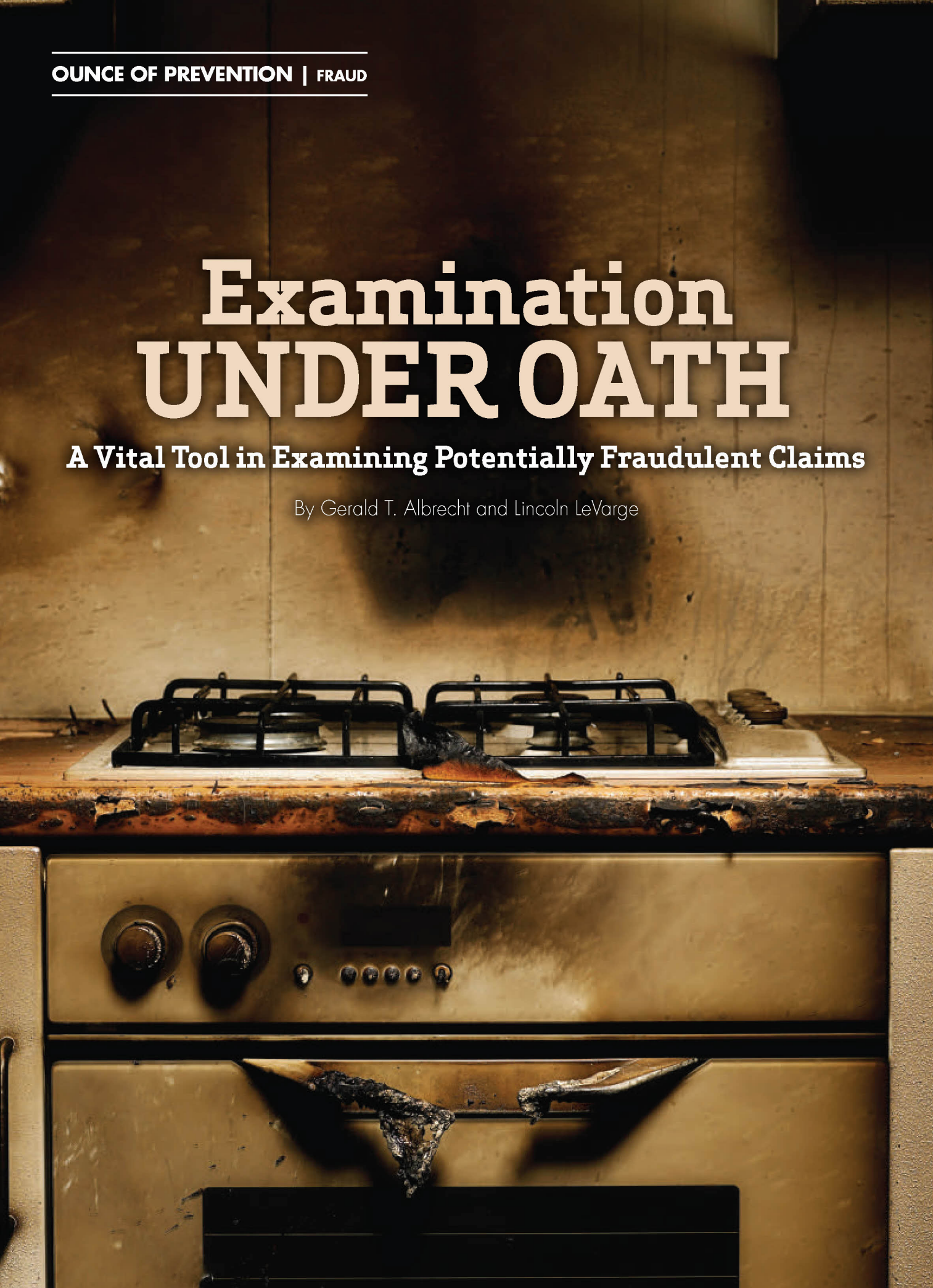
**OUNCE OF PREVENTION | FRAUD**

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# Examination **UNDER OATH**

**A Vital Tool in Examining Potentially Fraudulent Claims**

By Gerald T. Albrecht and Lincoln LeVarge





**S**IU Manager, Ryan West, was used to the smell. You know the smell. It is scorched. It is bitter. It is the seemingly everlasting and sticky odor of smoke. He's at the fire scene to take a recorded statement of Belinda Peters. Her house burned last night. Burned as she started frying some chicken for dinner. Her attention was diverted from the stove while she took a call from her aunt in the Netherlands. Her story, to the fire department, is that she left the stove unattended, unattended, for a mere minute.

In that minute, the cupboards exploded. Exploded into an inferno that devoured the entire home. All was lost. Ms. Peters survived. She fled the home 15 minutes before calling 911. Safe, yet shrouded in a bitter and putrid cloud of smoke.

So Ryan waited. She warily approached. She told him it was just a kitchen fire. She would answer no further questions. She wanted the claim paid and she wanted policy limits now. It was her third fire in the last five years.

## The Investigation

Suspicious claims, such as these, warrant an Examination Under Oath (EUO). The EUO is a vital tool in the investigation of potentially fraudulent claims. Yet we risk losing this tool. There have been too many recent cases where Courts have found that insurers have essentially abused the EUO process. We, as an industry, need to do better. And we can do that.

Insurers should proceed to EUO because we need information. We need facts. Not, as in too many cases, because we "hope they don't show up and we can deny the claim." Some companies, such as Tower Hill, have their legal department approve all requests for EUO.

Some court's have now stated that the insurer must establish that the request to proceed to EUO is "material" to the investigation or handling of the claim. And, once deployed, the EUO should be used with care. Document requests should be reasonable, thoughtful and focused.

Several years ago, an SIU claim representative took the stand in a rather simple trial regarding a stolen car. The car was eight years old and had a value of \$12,000. In that claim, the insurer sent a seven-page EUO request letter and 49 document requests. That letter was Exhibit 2 in the trial — right behind the policy and right before the denial letter.

The trial counsel (OK, it was one of us) spent the better part of three days trying to educate the SIU claim representative why the carrier would have asked for all the documents. (And no, neither one of the authors wrote the infamous letter.)

Alas, at trial, the preparation was for not. The SIU claim representative could only say that "my attorney" wrote that letter. "My attorney" demanded the documents. He had no explanation about why his company requested those documents. No explanation at all.

The attorney doesn't testify at trial, but the adjuster/claims rep may. The adjuster/claim representative should know why her company is requesting documents at the EUO. Discuss with your attorney what documents to request. Don't be afraid to question why a request is relevant. Remember, what documents may be relevant in one claim may not be relevant in another.

Likewise, the questions asked during the EUO should be tailored to the claim at issue. Courts are looking at the scope of the EUO. In a recent Florida case, the Court quoted several pages of the EUO colloquy and wrote:

*Unfortunately, however, the carrier apparently decided to use the usual policy provision requiring a sworn statement as a license to make unwarranted and intrusive inquires into the personal life of any insured who had the temerity to make a claim against it. De Leon v. Great American Assurance Company, 78 So.3d 585 (Fla. 3d DCA 2011).*

The De Leon Court, in the concurring opinion, also noted the length of the EUO. Noting, "It is strains credulity to assert, as the insurer does in this case, that a seven-hour sworn statement of a single individual is necessary to the investigation of a \$8,000 tire loss claim, whatever might be the insurer's suspicions."

Finally, more and more Courts are requiring that the insurer plead and prove prejudice when asserting no coverage because the insured did not appear for EUO. This is a shift from many previous cases that held that no showing of prejudice was necessary. Failure to appear for EUO resulted in denial and Summary Judgment in favor of the insurer. Times are changing.

So, in our fictional scenario, Ryan West must now proceed to EUO. Ms. Peters will have to raise her hand and swear to tell the truth. Mr. Ryan West is smart. He will know what to ask for. He will know to retain an attorney well versed in the twisting and turning law of EUO. He will use the EUO as the tool for which it was designed. He will be focused. He will be thoughtful in what documents he requests. He will unearth and discover the truth. [LM](#)

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