

# British American Consultants Inc.

## Insurance Industry Client Advice Sheet – Surveillance

In seeking to provide our clients with the most effective and cost efficient professional service available, we look or adherence to the following general guidelines to both minimize the potential for problems and maximize the potential for success:

1. It is both appropriate and expected that the limits of a surveillance project will be clearly defined.
  - a. We should know, in advance, how much time to expend on a case. It is recommended that as least two days of surveillance be executed on the average file.
  - b. Files with high exposure may justify several more days of surveillance.
  - c. We seek confirmation of instructions in writing.
2. We seek to anticipate and determine the approximate costs for an assignment from the outset.
  - a. It is a commonly known industry standard, and otherwise accepted, that an investigative agency charging minimal hourly rates may prove a substantially more costly proposition, than a professional and specialized agency charging appropriately.
3. The greater the advanced notice of an assignment, the greater the potential for success. In the case of emergency surveillance deployment, our skills are fully dedicated and focused for the benefit of the clients, but the results may be achieved more by default than by design under such emergent circumstances. Remember also, the more proximate a case to a trial date, the more likely the claimant will be inactive.
4. We find that most of our clients fully understand the difficulties and complexities to be associated with performing surveillance assignments.
  - a. Claimants are and can remain inactive.
  - b. Due to the quality of issued instructions and/or the absence of complete identification information, the incorrect person may inadvertently be concentrated upon.
  - c. Traffic congestion and like demographics, especially and typically in the Northeast, can combine to frustrate the most evolved professional surveillance tactics.
  - d. In densely populated areas, we recommend the use of two investigators working in tandem with each other in separate vehicles.

## Insurance Industry Client Advice Sheet – Surveillance (continued)

5. Although appreciating the motivation behind the practice, 'partial-day' surveillance operations should be avoided whenever possible.

Some clients request a limited commitment in the morning, with instructions to return another day if the subject is "inactive." This questionable strategy may defeat the potential for success when, to remain assigned over a longer period, may serve to better determine, as quickly as possible, any established schedule and routine of a claimant.

6. The more information able to be provided regarding the background of a claimant, i.e. anticipated or suspected work routines, weekend activities, physical description, extent of alleged disability, vehicles possessed, et-cetera, the better informed our personnel for operational deployment. Such finite data is well received by our investigators and greatly assists in our pre-surveillance and actual operational strategies, more especially when combined with accurately provided claimant identification essentials. A photograph and/or previous investigative report are, by definition, invaluable to our further endeavors on behalf of our clients.
7. A "Surveillance" per-se, is an intense form of investigative discipline and involves the necessity of physically scrutinizing a subject to determine their activities, without compromise or detection, and with the intention of providing court-presentable, direct visual evidence of the facts observed, this being the most dramatic form of evidence possible.
8. An "Activities Check" or "Pre-Surveillance Report" refers to the advanced preliminary process of gathering information and developing intelligence relative to a subject's location and current activities. This procedure is generally developed through database and non-compromising interview techniques, conducted and acquired independently of contact with the subject of inquiry.
9. A visual surveillance presentation provides the best form of supportive and corroborative evidence an investigator can produce in corroborative support of their statement or testimony.

# Essential Information Required to Facilitate Maximum Benefit

In presenting a set of circumstances for surveillance works, we anticipate our clients will provide the following minimally-essential level of information:

## Claimant's Name:

- Correct spelling (Are there any other variations of the spelling in the file?)
- Middle Initial or Name
- Names presented in correct order (especially when dealing with foreign names)

## Claimant's Address:

- Complete postal address (i.e.: zip code, apartment number, building, floor, etc.)
- Independent verification of address (By means of previous investigation, returned mail, etc.)
- Essential in determining the currency and accuracy of information supplied.

## Description:

- Gender Specification: Male or Female (sometimes a name does not immediately differentiate this essential identification facet)
- Height
- Weight
- Ethnicity
- Hair: color, style and length
- Distinguishing characteristics: tattoos, mustache, glasses, etc. (all very important factors in the accurate identification of the correct individual)
- Date of Birth
- Social Security Number
- Dependents

## Miscellaneous:

- Photographs – again, and subject to currency, invaluable in terms of positive identification
- Motor Vehicles – a known vehicle and/or registration plate number is of tremendous potential value to the field investigators

# The Use of Visual Surveillance Evidence

Over the years, we have found that the following rules comprise effective strategies when using electronically produced visual evidence, both as a claim-negotiating tool as well as in the courtroom:

- Rule 1      Our original visual media contents are never tampered with, edited or altered.
- To meet legal requirement, the original production must remain intact to sustain its probative value. However, some lawyers request an edited or reduced version of the digitally produced visual evidence showing the physical activity highlights.
- This is acceptable, as the court can then be offered both the original and specifically edited exhibits as evidence.
- (We preserve all original visual evidential productions under secure conditions, providing clients with a true copy. The original is produced in the event of trial.)*
- Rule 2      The showing of visual evidence to and for the benefit of treating physicians; highlighting the physical conditioning of a claimant, has often resulted in a reversal of a diagnosis.
- Rule 3      Visual evidence that demonstrates – to a standard beyond a preponderance of the evidence – that the level of physical activity memorialized is inconsistent with the allegations of disability, brings to the fore issues of claimant credibility.
- Rule 4      Our attorneys, by New Jersey law dictate, disclose the existence of visual evidence in the early stages of negotiations and generally at or in anticipation of deposition proceedings. The merit to be associated with this disclosure of fact, without providing direct access to the content of that exhibit, is that it avoids a claimant redesigning their injury to fit the contents of the acquired visual evidence.
- Thus, the courts, in preserving the integrity and impeachment value of such evidence, have accepted this strategy.
- Rule 5      In those jurisdictions where thorough pretrial discovery is an accepted protocol, our client's attorneys elect to list the investigator as a witness and, at that time, reveal the existence of a surveillance videotape.
- Rule 6      Our investigators, when called to testify in a surveillance case, remain objective and impartial. They are there to provide evidence of what they saw – direct and pertinent evidence. They are there to convey the truth – nothing more, nothing less.
- Rule 7      We have noted through the years that, the vast majority of cases in which there is established irrefutable visual evidence depicting strenuous physical activity capability in a claimant, there is a tendency to move to settlement prior to trial.
- The most significant value to be associated with such visual evidence is that it induces the claimant, and their representatives, to adopt a more settlement-oriented frame of mind.
- Rule 8      We have found, in deference to the technology we utilize, the provision of selected still-photographic exhibits, extracted and produced from the actual recorded visual surveillance compilation, has been equally beneficial in negotiating proceedings, and can serve to delay the disclosure of the existence of such a visual production.