

Private Motor Insurance Market Investigation

Evidence from Slater & Gordon Lawyers UK

1. Introduction

The House of Commons Transport Committee produced a report in March 2011 focusing on the cost of whiplash claims. They concluded lawyers are responsible for adding £90 to the average motor insurance policy amounting to a two billion pound industry as a result of road traffic claims. We welcome this investigation into motor insurance industry practices. It is our contention that the Committee and thereby the Government have been misled on the real reasons behind the rise in personal injury motor claims and by extension premiums.

An Ipsos MORI poll that Slater & Gordon commissioned has revealed that Insurers are responsible for instigating more claims than any other sector. The Insurance Industry uses a range of strategies that generate multiple revenue streams at the expense of the motorist. We will provide compelling evidence that the Insurance industry practices at present lack transparency and accountability, which ultimately contributes to the increase in insurance premiums. Furthermore they deliberately confuse and mislead consumers and policy makers.

Whilst the referral fee ban¹ aims to curtail the practice of information sharing and case capture by insurers, some are now seeking to replace referral fees with an alternative model by entering the legal service market. This will give those insurers with legal practices greater motivation to generate claims and greater opportunity to distort the costs of claims in the market. Without

¹ Referral fee ban due to come into force in April 2013

transparency on the detail of financial arrangements within insurance profits and premium structures and without adequate oversight and regulation to protect the consumer it is a concern that premiums will continue to rise and the causes will be misdiagnosed and misattributed.

- 1.2 The Transport Committee's follow up report, published on the 13th December 2011, highlighted the increase in car insurance premiums. The annual rate of increase remains well above inflation at 16.4% and quoted premiums for younger drivers continues to rise. In December 2012, the Government launched a consultation in response to a 60% rise in personal injury claims related to road accidents since 2006, despite a 20% reduction in the number of reported accidents.
- 1.3 The legal process for managing claims arising from road traffic accidents has already undergone significant changes with the introduction of the portal system and a cap on legal fees. We believe that it is right that Policy Makers are provided with accurate information on the level of influence by the insurance industry which encourages the making of claims. Currently much of the media campaign by the insurance industry has resulted in misinformation which is likely to cut access to justice for those who are genuinely injured. We welcome the opportunity to contribute to a more thorough analysis of the drivers behind the rise in car insurance premiums.

2. Whiplash

- 2.1 Whiplash is an injury to the neck caused by the neck bending forcibly forward and then backward, or vice versa. The injury usually involves the muscles, discs, nerves, and tendons in the neck. Many whiplash injuries occur when a person is involved in rear-end automobile collision. The term "whiplash" represents the multiple factors associated with the event, injury, and clinical syndrome that are the end-result of a sudden acceleration-deceleration trauma to the head and neck.

- 2.2 A 2008 article produced by leading pain Consultants in America, *Poorbagh K and Pehlips. V amongst others* reported that 14% to 42% of patients are left with chronic symptoms following whiplash injury. They stated that it was unlikely that only minor self-limiting injuries result from the typical rear-end impact.
- 2.3 The insurance industry claims that a quarter of the 600,000 claims made per year are 'fake or over-diagnosed'. However, the Association of British Insurers ('ABI') pointed to German scientific research within their own briefing paper in November 2008 which showed that 20% of people report symptoms of whiplash even where there is not enough physical stress to cause an injury. It suggests that the psychological stress from the collision can cause the same symptoms.

3. The ABI's position in November 2008

- 3.1 The ABI's November 2008 report provided statistics on the rise of whiplash claims describing it as a 'societal problem'. Within the report it encouraged simple changes to reduce the number of accidents:-
 - Safe distancing
 - Safe seating
 - Better Diagnosis and targeted rehabilitation
 - Improving the compensation process
- 3.2 The report also emphasised the importance of early intervention by way of rehabilitation.
- 3.3 Since the publication of this report, there has been a significant increase in whiplash claims whilst the number of other forms of accident claims has decreased. The insurance industry has also moved away from their previous position of improving vehicle safety and utilising early intervention of treatment by way of rehabilitation and placed emphasis on the role of solicitors and

fraudulent Claimants pushing the rise of whiplash claims and thereby the cost of premiums.

4. Research on behalf of Slater & Gordon Lawyers

- 4.1 Slater and Gordon Lawyers commissioned research through IPSOS MORI that has revealed that 7 out of every 10 whiplash claims result from an approach to the consumer by an insurance company or from an approach arising from the sale of their databases.
- 4.2 The encouragement by insurers of motorists to make claims has led to a significant increase in the number of motorists pursuing whiplash claims. The result of this influence is that the insurers have captured cases that would not have otherwise been pursued, the capturing insurer has had the benefit of referral fees. The evidence gathered by the Office of Fair Trading ('OFT') suggests that private motor insurance premiums paid in the UK rose by around 12 % between 2009 and 2010, and by a further 9% in the first three quarters of 2011.
- 4.3 One of the incentives for the insurance industry has been to capture cases and improve profits through referral fee system. There is a policy requirement on the insured driver to notify his or her insurance company following an accident. We know that at the moment they receive notification of an accident by their insured driver, they make enquiries as to a potential injury claim by the motorist and often any other passengers involved in a road traffic collision. Car insurance is mandatory, and as insurers are able to reap the benefits of a mandatory tax on drivers; we believe they are therefore required to act responsibly in relation to promoting claims and therefore the cost of premiums.

The insurer profits from referral fees is understood by industry analysts and by way of example, in September 2011 shares in the Admiral Group, fell by nearly 5% following the Ministry of Justice's announcement to abolish referral

fees. This highlights how embedded the referral fee system has become for the insurance industry to generate claims. Analysts warned the ban would impact profits at the Group. In fact the Group admitted that approximately 6% of its profits come from referral fees.

- 4.4 Some insurers are now seeking to replace referral fees with an alternative model by entering the legal service market. So far, Direct Line, Admiral and RSA are also considering establishing or investing in legal firms, which analysts say would allow them to retain profit margins from personal injury work. However, the Chief Executive of AXA, Paul Evans, warned that such moves will do nothing to aid consumers or prevent motor insurance premiums from remaining artificially high². We agree with AXA's concerns. The only way to lower the cost for drivers is through improved oversight and transparency of all aspects of insurer procedures and profits.
- 4.5 Our research involved a sample of 900 people who have suffered a whiplash injury in the last 3 years and the study shows the growing interest by insurers in promoting claims as there is a marked increase in the third year claims through insurers. (See Appendix 4)

5. Individual motivation

- 5.1 The sample confirmed that the highest influential factor in pursuing a claim was due to the approach of an insurance company at 7 (rounded) out of 10. (See Appendix 2).

²<http://www.ft.com/cms/s/0/99fa9198-0f26-11e2-9895-00144feabdc0.html#axzz2FJxtxtPE> (Financial Times, 7th October 2012)

- 5.2 Of the 7 out of 10 approached by insurers, 4 (rounded) out of 10 say they would not have pursued a claim without the prompt by the insurer. This shows a high level of influence that the insurance companies have over those people's decision to bring forward a whiplash claim.
- 5.3 Of our sample 2/3 (7 out of 10 including those with text messages³) of Claimant's reported that they were approached either directly by their own insurance company or another insurance company. Using national statistics of 600,000 claims for whiplash, this would equate to approximately 400,000 claims being pursued either by individuals own insurance company or being approached by another insurance company or marketing activity from an insurer database sale.
- 5.4 Generalising from our sample size this would lead us to approximate that of the 400,000 Claimants, 4 out of 10⁴ (approximately 210,000) are highly influenced by their insurance company or another insurance company to bring a claim. The average value of a whiplash claim (excluding legal costs) is £3,750. On a conservative basis this equates to approximately £787.5 million worth of whiplash claims being pursued on the influence of insurance companies alone. If we were to include the cost of the average legal fee⁵ for those claims influenced by the insurance industry this would bring the total cost of whiplash claims to just over £1.3 billion. This supports the estimate provided by the insurance industry that whiplash claims cost approximately £2billion, adding around £90 per policy. What the Industry fails to disclose is that they are responsible for encouraging and instigating more claims than any other sector.

³ Note that text messages are generally generated through the insurance company database, which has a strong influential factor in persuading potential motorists to pursue a claim

⁴ 180,000 claims at the lowest range and 240,000 at the highest level. Our conservative estimate will use 210,000 claims as a halfway figure.

⁵ Average cost of legal fees - £1,200 (based on the present portal system)

6. Recovery

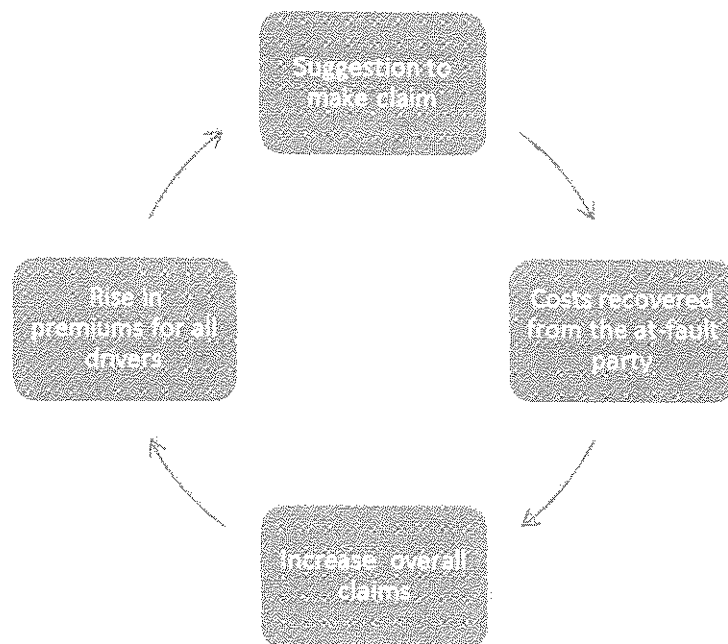
- 6.1 Despite the insurance industry's claim of an increase in fraudulent claims, 60% of our sample of Claimant's reported taking at least 3 months to recover from their symptoms with 720 of those reporting neck pain and 450 of those reporting restricted movement. (See Appendix 5)
- 6.2 The sample also confirmed that they required a combination of at least three treatments to treat the symptoms with 69% relying on painkillers, 58% relying on physiotherapy and 51% relying on anti-inflammatory drugs.

7. Insurance Industry Overview

- 7.1 In June 2011, the Department for Transport released road casualty statistics for the year 2010 and made some interesting comparisons with 2009. There were 208,648 casualties in road accidents reported to the police in 2010. This includes slight and serious injuries as well as any fatalities. This number represents a 6% drop from the equivalent figure from 2009. However the number of claims made for whiplash since 2009 has increased.
- 7.2 The insurance industry points to solicitors pursuing these claims without disclosing their role in actively pursuing potential Claimants and (as shown by our research) influencing Claimant's to bring a claim. The assertion by the insurance industry is therefore misleading.
- 7.3 It is widely known that insurers share personal data information of the insured driver. It is also known that garages pass on details of road traffic accidents to their panel insurers for a fee.
- 7.4 Insurers also frequently incorporate an add-on which provides legal cover. The claimant is then referred to the insurer's panel solicitor. This is not a recommendation based on quality. In fact, the insurer receives a referral fee.

7.5 We believe that this creates a self-serving cycle for the insurance industry which maintains its profit creating model whilst passing the burden of premium increase to the tax-paying insured driver. (See figure 1)

Figure 1: Self-serving cycle for the insurance industry



8. Credit hire companies:

8.1 These companies will provide a replacement vehicle while the injured person's vehicle is being repaired. These companies will often have paid a referral fee, generally of about £500 and typically to a body shop. Their hire costs greatly exceed the market rates. These will be transferred to the insurer of the at-fault driver.

8.2 In 2010 the case of *Clark v City of Edinburgh Council* made the headlines when the Court were required to examine the credit hire arrangement. In this case a 14 year old Toyota Celica had been damaged in a road traffic accident. The Claimant was provided with a replacement car whilst his car was undergoing repair. The daily rate of the hire car cost was £161.63 and

eventually the insurance company advised the Claimant that his vehicle was beyond repair and whilst they disposed of his car, they provided him with a bill for the cost of the hire car in the sum of £12,857.13.

- 8.3 In the case of *W v Veolia Environmental Services (UK) 2011* charges were recoverable in their entirety for the credit hire of a Bentley. Charges were approximately £138,000 for a period of 135 days. The Claimant's car was a 14 year old Bentley valued at £16,000.
- 8.4 In *Vasant Pattni v First Leicester Bus 2011* the Claimants' vehicle, a Porsche 911 Coupe was damaged in an accident. Whilst repairs were being undertaken, the Claimant was provided with a hire vehicle. The period of hire lasted 40 days and equated to just over £25,000. This was suggested to be approximately 1/3 of the value of the Claimants vehicle. 29 days' worth of charges resulted in recovery for the non-fault insurer in the sum of £10,744.50.
- 8.5 In *Bent v Highways Utilities Construction 2011*, the case went to Appeal initially and a retrial was ordered. Following re trial there was a further Appeal. At the final appeal stage credit hire charges were awarded in the sum of £55,791.81. The case involved a Mercedes AMG (valued at £72,000). Following a non-fault accident, the vehicle required repairs totalling £20,000. In the interim the vehicle owner was provided with a hire car (valued at £105,000) for a period of 94 days. The total amount of credit hire charges claimed was £63,406. On appeal the charges were deemed recoverable but at a 28 day rate as opposed to the 7 day rate claimed. £55,791.81 was recoverable (inclusive of VAT).
- 8.6 The above are just a sample of cases being pursued through the Courts for credit hire charges. The Judiciary is now spending a significant period of Court time adjudicating on the recovery of charges sought by insurers for the cost of temporary vehicle replacements. The Office of Fair Trading has raised concerns that private motor insurers responsible for meeting third party claims

for credit hire replacement vehicles and/or vehicle repairs appear to have only limited control over the choice of provider and appear to find it difficult to assess the extent to which the costs claimed are reasonable.

- 8.7 Rival private motor insurers, brokers and credit hire providers may therefore have the opportunity, and the incentive, to carry out practices which allow them to generate revenues through referral fees, while simultaneously inflating the costs that the third party insurer has to meet. This in turn may contribute to car owners having to pay higher premiums. This practice is likely to continue for some insurers who seek to modify their business model in the near future in order to replace the referral fee ban and maintain their profit margins.

9. Third Part Capture

- 9.1 It is now a widely known practice that following a road traffic collision the insurance company of the at-fault driver will make contact with the injured party in order to reach an agreement and pay an award for settlement. Insurers are not adequately regulated or monitored when carrying out Third Party Capture. Whilst the ABI has issued a voluntary 'Code' this is not compulsory and only applies to their members and therefore not all insurers. There are concerns that many legitimate claims are being under-settled through little or no legal advice to protect the Claimant's legal position and long-term treatment needs. Conversely many spurious claims are also encouraged through these means by the insurance industry.

10. Conclusions

- 10.1 We agree with the Transport Committee that injured people regardless of their income should be afforded access to justice.
- 10.2 We also agree that more needs to be done to defeat fraudulent claims and to safeguard access to expert representation for the genuinely injured.
- 10.3 We believe that it is important to highlight that the rise of insurance premiums has a direct correlation to the undue influence of the insurance industry on Claimants pursuing whiplash claims. According to the result of the Ipsos Mori Poll commissioned by Slater & Gordon, the highest influential factor in pursuing a claim was due to the approach of an insurance company at 7 (rounded) out of 10. The insurance industry has so far presented a misleading interpretation of the findings of the Transport Committee report to the media and policy makers.
- 10.4 The common practice of selling and sharing personal contact information of the non-fault driver has a direct impact on the increase of claims. Motorists are often unaware that their details will be sold by garages to insurance companies and will also sell on information to their own panel insurers by the current referral fee system.
- 10.5 Some insurers are now seeking to replace the referral fees business model with an alternative business model by entering the legal service market which would allow them to retain profit margins from personal injury work. The Industry is highly incentivised to keep increasing claims in order to maximise profitability. Consequently their commitment to reducing premiums is unlikely.
- 10.6 Presently there is no accountable oversight body on the collection and distribution of personal injury data by insurance companies. We believe that this information needs to have monitoring procedures and should never be sold to increase claims. This would be a significant and important shift from

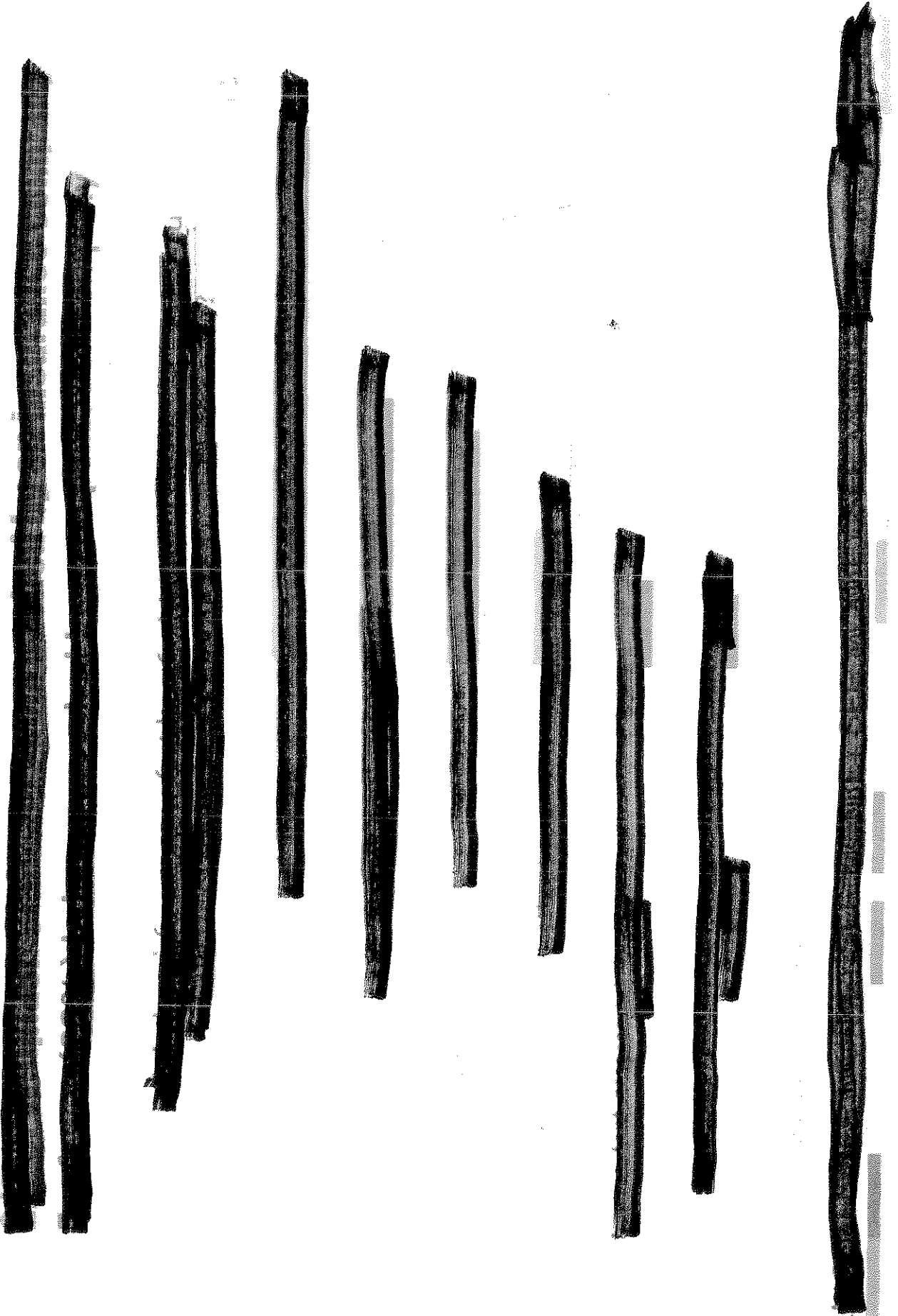
the present opt-out system with assumed tacit consent of drivers for release of personal information.

- 10.7 We believe, based on our research that the increase in claims is due to the pressure placed on non-injured parties to make a claim either by their insurance company or another insurance company. Our conservative estimate shows that this influence alone creates £1.3 billion worth of whiplash claims in this country. This does not include the other distortions within the industry, which results in multiple revenue streams including the recovery of credit hire charges.
- 10.8 There is currently no transparency or independent accountability of the insurance industries role in instigating claims. We are concerned that the greater control over the supply chain by insurers seeking an alternative business model means more data is stored about the motorist leading to greater pressure to market and share information throughout the supply chain.
- 10.9 The consequence of this practice is that more claims are entered into the insurance process by the suggestion of the insurance industry. This creates a self-serving cycle for the insurance industry; by suggesting that the non-fault motorist makes a claim. They will then be able to point to a rise in claims to justify the increase in premiums to insure against such claims. As a result UK motorists are caught in a vicious cycle, as they suffer the increase in premiums regardless of their actual desire or need to pursue a claim.
- 10.10 In conclusion, Slater and Gordon welcome this call for evidence and submit this paper to further widen and support the investigation of the Competition Commission's into Insurance Industry practices.

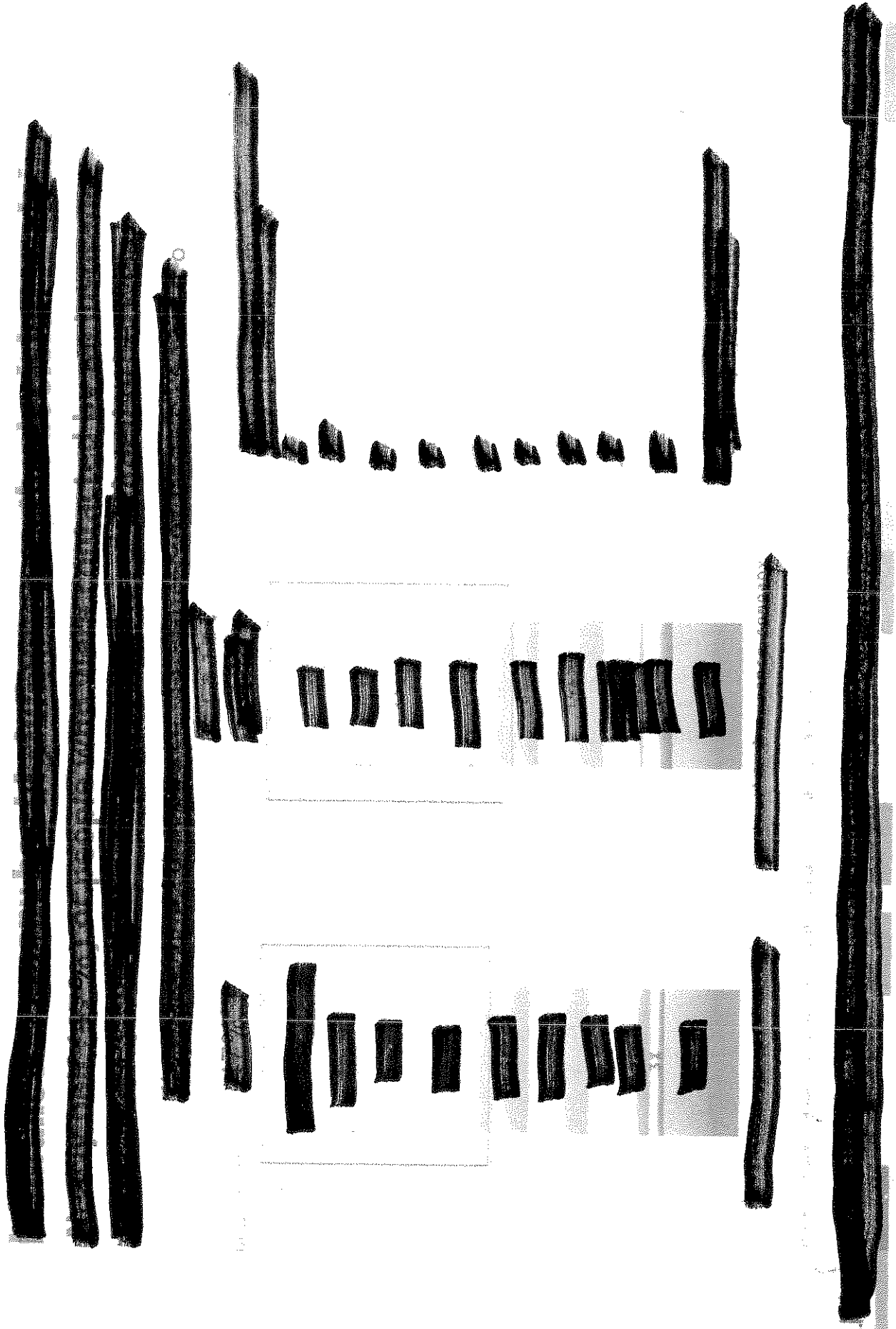
Appendix 1



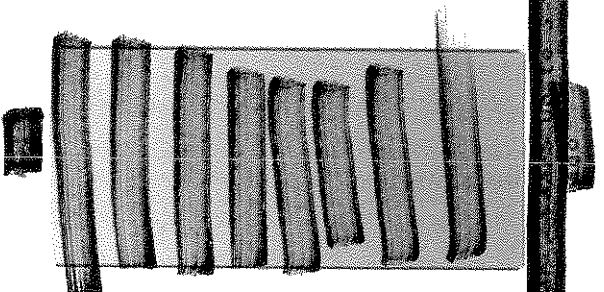
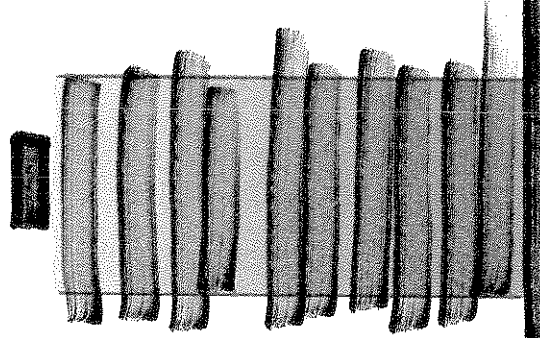
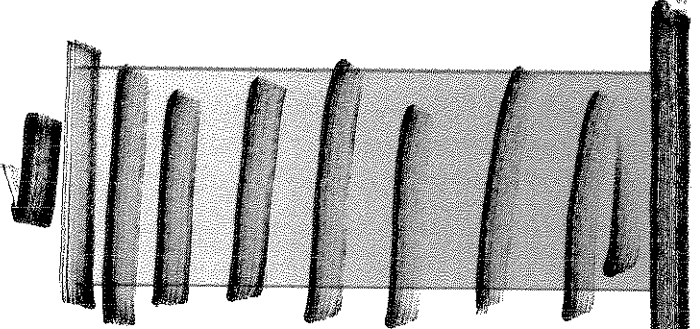
Appendix 2



Appendix 3



Appendix 4



Appendix 5

