

Crash & Con: Navigating Staged Accident Fraud

Attorneys address how insurers and businesses can protect themselves from staged accident fraud.

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EPISODE NOTES

Attorneys Jeffrey Rapattoni and Adam Calvert from the law firm Marshall Dennehey discuss common staging tactics impacting commercial auto and trucking transportation litigation.

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Transcript

Announcer: This is the “Best’s Insurance Law Podcast” brought to you by Best’s Recommended Insurance Attorneys.

John Czuba: Welcome to Best’s Insurance Law Podcast, the broadcast about timely and important legal issues affecting the insurance industry. I’m John Czuba, manager of Best’s Insurance Professional Resources. Very pleased to have with us today attorneys Jeffrey Rapattoni and Adam Calvert.

Jeff Rapattoni is Assistant Director of the Casualty Department and a member of the board of directors at Marshall Dennehey, one of the country’s leading civil defense litigation firms. Jeff works out of the firm’s Philadelphia headquarters office and leads the firm’s Personal Injury Protection or PIP litigation practice, and co-chairs the firm’s fraud special investigation practice group.

With over 20 years of national experience, Jeff focuses on insurance fraud, bad faith, and SIU matters. He advises domestic and international carriers, coordinates litigation strategies, and consults on provider fraud, underwriting issues, and staged accidents. A frequent national speaker, he’s known for his insight on fraud prevention and data-driven SIU strategies.

Adam Calvert is a shareholder in Marshall Dennehey’s, New York City office with deep experience handling complex casualty claims, including multi fatality vehicle accidents, construction injuries, and product liability cases. He also has a strong track record defending against staged accidents tied to organized fraud, working closely with the firm’s SIU practice and industry experts.

Known for his practical client-focused approach, Adam represents a wide range of clients, from construction firms and amusement parks to retail stores and rideshare companies, guiding cases to resolution with strategic litigation, expert collaboration, and clear, consistent communication.

Jeff and Adam, we're very pleased to have you both with us for today's discussion.

Jeff Rapattoni: Thanks, John. I appreciate you having us today.

Adam Calvert: Yeah. Thank you, John.

John: Today's discussion is on navigating staged accident fraud. Jeff, we're going to start with you. What is staged accident fraud?

Jeff: Thanks, John. Insurance, as you know, by design is made to pay for a sudden and accidental loss. Staged losses by their very nature are the antithesis of that. Instead of a sudden or accidental event, these are actual intentional or fraudulent and therefore staged events in nature. Staged is just another way of saying that the loss was intentionally carried out.

John: Adam, what are the common staging tactics that these threat actors employ?

Adam: John, in the context of automobile staged accidents, there are a lot of different methods that the actors employ, but I'll go with my top five for us today.

The first one is what's called a "swoop and stop." That means that you have a target vehicle in one lane. You have the actors in another lane, they suddenly swoop over in front of the target vehicle, slam on their brakes, not giving that vehicle enough time to stop.

Another one that they often use is a "sideswipe" accident. This is used a lot because companies have adopted or adapted, I should say, to the swoop and stop by putting dash cams in the front of their car. So, sometimes cars will sideswipe a vehicle where there might not be a dash cam, and it's more of a disputable -- on its face -- type of accident.

Another one that they often employ is a "phantom car," and this is where no accident actually happens. The target vehicle is flagged down, is told, "Hey. You've been in an accident. You've been in an accident." They pull over, and then the fraud committer's vehicle has damage on it, which was already there before this phantom accident ever happens.

Another one they employ is using another car to box in the target vehicle so that the target vehicle can't avoid the vehicle that is trying to commit the fraud.

Finally, the last one I'll mention is double-parked cars. They'll double-park a car on a roadway so that the target vehicle has to go into the other lane to get around that double-parked car, and that's when another vehicle strikes and causes the accident.

John: Jeff, Adam's mentioning cars, but how is this impacting commercial auto and trucking and transportation litigation as well?

Jeff: Yeah. Great question, John. Staged losses generally increase policy premiums across lines of business because the fraudulent nature is not caught and disposed of at first notice of loss. The risk in misidentifying these claims is that the commercial entity sees a premium increase to the point of losing profitability or simply becoming uninsurable.

Most of this comes from the misidentification of the claim at the first notice of loss. We know that that's where our attention should be focused as an industry. Too often, there are missed opportunities to properly identify these claims, and without doing so, indemnity always goes up.

In order to avoid these things, we must become better educated at what is actually presenting itself at point of claim.

John: Adam, what can insurers and businesses do to protect themselves from staged accident fraud?

Adam: There are a few things that they can do, and it goes to what Jeff was just saying about identifying these things. At the scene, if you have any sort of suspicious type accident the drivers of these commercial vehicles need to be aware of what they can do to document that and then at a later time be able to show that this was suspicious.

That means taking scene photos. That means pulling the Event Data Recorder, or EDR, from the vehicle so that you can show that our driver was driving safely, or even getting the EDR from the other vehicle if possible. That's a little later-stage thing, but showing that the plaintiff's vehicle maneuvered unsafely.

Getting police to the scene. Oftentimes, in these staged accidents you'll see the actors say, "Well, you know, it's OK. Don't call the police. We'll be fine. We'll be fine." Then those people later go and file a police report with just their version of the accident.

It's important that you get the police to the scene to be able to observe it, to be able to talk to your driver, and then also memorialize your driver's version of the accident through a driver statement, because oftentimes these accidents are staged, and it's not until many months or even years later that a suit is even brought.

Having that memorialized version for your driver so that when you speak to him or her, you can remind him of the nature of the accident and the suspicious factors that we've been talking about.

John: Jeff, what's the best way to defend against claims resulting from these orchestrated collisions?

Jeff: Well, that's the good news, John. I mean, there are a whole host of ways to defend oneself against these types of claims.

Primarily, it goes back to what I said at the onset. We have to get better at identifying these claims at first notice of loss. If we are better able to identify these cases, it allows us to file the declaratory judgment action to void coverage so a lawsuit cannot be presented against us. That's really where we want to be in the fight against fraud.

On the flip side, if this moment of time is missed and a lawsuit is drawn, then we must file a counterclaim when we answer the complaint. An affirmative defense is not enough, and let me say that again to everybody out there listening, an affirmative defense is not enough. It must be a counterclaim.

These two mechanisms alone will posture an insurance carrier better in the fight against fraud. From there, the strategy doesn't stop. It proceeds with an aggressive use of discovery, motion practice, and proper expert retention. I've said it a thousand times, John. Fighting fraud is a specialty and therefore traditional methods of defending litigation are completely inept and are rarely effective.

John: Adam, are there any proactive measures that can mitigate risks?

Adam: Sure. It goes to again, what Jeff was saying about identifying these things early. That means engaging SIU early. That means talking about these suspicious factors early and identifying these claims early.

The medical providers in these cases are usually suspicious. So, it's important to issue subpoenas to the National Insurance Crime Bureau (NICB) early on in the case to identify any fraudulent medical providers. Hands-on training is extremely important here because you've got to educate the client, you have got to educate the adjusters, you have got to educate your field personnel of what to look for in these cases and how to deal with them, with the measures we've been talking about today.

John: I appreciate it. I just would like to share one other thing because this talk really resonated with me. Adam, you asked where I was from. I'm out in Bethlehem, Pennsylvania. My family moved out here shortly after 9/11, so it's been over 20 years now.

I'm going back about 15 years. I was driving back home on Route 78. There weren't many vehicles on the road at all. I'm thinking it was about nine o'clock at night or so at that point. It was a car going past me, pulled out in front of me, and then got to a point and basically slammed on his brakes.

I did all I could. Like I said, there wasn't a lot of traffic on it. I'll never forget this moment. I slammed on my brakes. Did not hit him from behind. He took off in front of me and he was gone.

I'm convinced he was trying to set me up for a hit, and I'm going back, like I said, at least 10 years. I guess it was happening in cars for at least that time. I'm wondering, had I hit him from behind, what recourse, if any, would I have had if either of you would like to comment on that?

Jeff: Well, certainly there's strict liability if you hit somebody from behind. I hate to say it, you would be liable for sure in that instance. I really do appreciate you sharing that story because I think it's impactful because this is nothing new. This has been going on, first off, my entire career.

I've dedicated my career to this fight. I've seen this for more than 20 years, and it's been going on longer than that. There are industry people out there who have dedicated their entire profession 40, 50 years to the fight against fraud, and they'll tell you it was there when they first started.

I think what we're seeing though, John, is post-COVID -- and this was forecasted by the Coalition Against Insurance Fraud -- that we were going to see a very aggressive rise in these

types of cases in multiple jurisdictions. That's what has happened, quite frankly, it's come to fruition.

Not surprisingly, these cases are hitting the commercial lines of insurance harder than personal lines, and it's for no other reason than the fraudster literally knows there are more policy premiums available in the commercial space than the personal lines universe.

We just have to put that into context, and that's why I say we've got to get better at identifying these claims. This misconception that fraud and/or staged losses cannot permeate in a commercial landscape is just wrong. It's flawed, and we've got to build around that.

John: Appreciate your time today, Jeffrey and Adam. Thanks for being on our show.

Jeff: Thanks, John.

Adam: Thanks, John.

John: You just listened to Jeffrey Rapattoni and Adam Calvert from the Marshall Dennehey law firm, and special thanks to today's producer, Frank Vowinkel. Thank you all for joining us for Best's Insurance Law Podcast.

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