

# Spotting Staged Accidents Is Key in Fighting Insurance Fraud

Misidentifying claims in staged accidents can result in premium increases to the point of losing profitability or becoming uninsurable, according to Jeffrey Rapattoni and Adam Calvert, attorneys at Marshall Dennehey.

**S**taged accidents—accidents that are intentionally carried out for fraudulent purposes—have increased aggressively since the COVID-19 pandemic and are having a profound impact on commercial lines, according to Jeffrey Rapattoni and Adam Calvert, attorneys at Marshall Dennehey.

In the *Best's Insurance*

*Law Podcast* episode "Crash & Con: Navigating Staged Accident Fraud," the attorneys said that initially misidentifying these types of claims in the early stages can lead to premium increases to the point of losing profitability or becoming uninsurable.

Marshall Dennehey, a civil defense litigation law firm, is a qualified member in Best's Recommended Insurance Attorneys — General Defense. Rapattoni is assistant director of the casualty department, chair of the personal injury protection litigation practice group and co-chair of the fraud/special investigation practice group. Calvert is a shareholder in the firm's New York City office who is experienced in handling complex casualty claims, including vehicle accidents involving multiple fatalities, construction injuries, and product liability cases.

Following is an edited transcript of their discussion with John Czuba, managing editor of *Best's Insurance Professional Resources*.

## What can insurers and businesses do to protect themselves from staged accident fraud?

**Calvert:** 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.

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



**Jeffrey Rapattoni**



**Adam Calvert**

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.

## What's the best way to defend against claims resulting from these orchestrated collisions?

**Rapattoni:** 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. 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.

## Are there any proactive measures that can mitigate risks?

**Calvert:** It goes to, again, what Jeff was saying about identifying these things early. That means engaging [the special investigations unit] 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 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.

**BR**

—John Czuba



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