

Claims Handling Through a PROSECUTOR'S EYES

Five Techniques to Enhance How Investigators
and Adjusters Approach Fraud Cases

By Miranda Lundeen Soto

You don't litigate fraud cases, you prosecute them. Claims handling from a prosecutorial vantage point not only will increase adjusters' success rates with their criminal prosecution referrals, but also it will ultimately affect their bottom lines with settlements, claims withdrawals, disposition ratios, and civil trial victories. Prosecutors are required by law to prove their cases beyond and to the exclusion of every reasonable doubt and dispel any hypotheses of innocence. Clearly, this is a much higher burden of proof than in a civil case. So what is it that prosecutors do so differently? More importantly, how can their tactics enhance claims adjusting and special investigation unit (SIU) investigations?

When evaluating a claim through a prosecutor's eyes, the first question every adjuster or investigator should ask themselves is, "How am I going to fairly and accurately assess the claim in order to make the right decision in denying or paying the claim?" If an insurance carrier makes the determination to deny an insured certain rights and benefits under her insurance policy based upon fraud or material misrepresentations, it must be able to confidently present that decision to a jury of its peers without hesitation. To aid in this process, five simple techniques should be utilized by every claims adjuster and SIU investigator when evaluating and handling fraudulent claims.

It's All in the Details

Every misrepresentation should be considered, but not all misrepresentations are substantial enough to deny coverage. Prosecutors are taught that no fact is too small to ignore. In fact, many criminal cases are won or lost based upon the vol-

ume of inconsistencies. More often than not, claims adjusters and SIU fraud investigators look for the proverbial "smoking gun" piece of evidence—a confession in an examination under oath or recorded statement; surveillance or video footage catching a staged accident on tape; independent eyewitnesses who directly conflict with the insured's allegations—to hang their hats on to deny the claim. Just like in criminal cases, the smoking gun rarely exists.

Many prosecutors utilize the "cracked vase" theory in assessing whether or not they can prove their case beyond a reasonable doubt when their case is based primarily upon misrepresentations. One or two inconsistencies may not raise an eyebrow; however, a mountain of lies is a different story. As a tool in determining and evaluating whether a misrepresentation is material or not, an adjuster should visualize all newly assigned claims like a perfect, porcelain vase. As the inconsistencies begin to mount, so do the cracks in the vase. Some inconsistencies are minor fractures, while others are major crevasses. The key is to have enough inconsistencies where the claim clearly does not hold water. Remember, though, the inconsistencies must be material in both quality and quantity.

Think Like a Fraudster

A good prosecutor will always think like a defendant and a defense attorney in preparing her case to ensure that all potential arguments can be rebutted. In adjusting an insurance claim, the best way to stay one step ahead of the fraudster is to view the claim as if the adjuster or investigator was perpetrating the actual crime. Fraudsters will play any role necessary to get the job done. The claims evaluator should ask herself,





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“If I were trying to get away with this fraudulent claim, what would I do or say to the person investigating the claim to get them to pay me? Would I, as a fraudster, be combative or defensive in order to bully my way through the claim? Would I be sugary sweet and over-accommodating to knock the adjuster off of my scent? Would I pull on the heartstrings of the adjuster or investigator with extraneous personal information like illnesses, childcare issues, or divorce? Or maybe I would find something I had in common with the adjuster to connect with her in an attempt to personalize my claim and cloud her judgment?” Recognizing how to respond to the fraudster’s behavioral patterns is not only vital in criminal investigations, but also it is key to objectively assessing the claim.

The adjuster evaluating the claim should listen with an empathetic ear to the insured’s issues and concerns; however, the evaluator must be cognizant that fraudsters rely on extraneous information in order to mislead or distract their opponents. There are many ways to spin fraud, but in the end, it’s still fraud. Getting into the mindset of the fraudster is a powerful tool in wading through the fraud and allows the adjuster to home in on suspicious behavior patterns.

Evaluating the Evidence

Whether you are a trial attorney or a claims adjuster, you learn quickly that files typically do not get better with age—evidence is lost, witnesses will disappear, and memories will fade.

Prosecutors are constantly evaluating and re-evaluating to determine what types of evidence they need to prove their cases beyond and to the exclusion of every reasonable doubt. Likewise, the fraudster is thinking about what she needs to present—physical, testimonial, or circumstantial evidence—to get the carrier to pay the claim as quickly as possible without raising any red flags. Most allegations of fraud are based upon circumstantial evidence. Circumstantial evidence is akin to putting together pieces of a puzzle in order to see the bigger picture. Even if you don’t have all of the pieces, one is still able to see clearly that fraud has been committed.

SIU investigators should closely evaluate the evidence being provided by the insured. Does it pass the smell test? Does something about the claim being presented to the adjuster seem strange or

unusual? Do the receipts appear to be altered or contain insufficient information, such as no invoice/tracking numbers? Do they show the taxes charged, or are they handwritten? Do the documents appear homemade or computer-generated? Are there misspellings in the receipts or invoices? Do the dates contained within the provided documents seem suspicious or contradictory? Do the dollar amounts of the items alleged to have been damaged, lost, or stolen seem high and inflated?


An adjuster or investigator should take her time with the documents provided by the insured and let no stone go unturned when evaluating the validity and reliability of the evidence.

Have a Strategy

It is imperative that the adjuster and SIU investigator have a clearly defined strategy from the outset of every claim they evaluate. A well-thought-out plan with unambiguous goals provides a sturdy roadmap so that adequate preparation can be achieved. Whether it’s civil or criminal, the case is only as good as the individual who prepares the file. Whether you are a trial attorney or a claims adjuster, you learn quickly that files typically do not get better with age—evidence is lost, witnesses will disappear, and memories will fade as time goes by.

The concept of quality over quantity cannot be stressed enough in fraud cases. Fraud claims are not a “check the box and move on to the next” type of claim. Ferreting out fraud requires the adjuster to let certain theories marinate, simmer, and sometimes evolve over time. Lack of planning and last-minute preparation can ultimately destroy a fraud investigation and lead to the fraudster being rewarded for her bad behavior. A trial

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attorney would much rather present fewer pieces of quality evidence to firmly support her case than a mountain of evidence that muddies the water and leaves doubt in the minds of the jurors.

One way to obtain quality evidence to substantiate a fraud claim is to use the tools that are readily available at everyone's fingertips. Google the fraudsters, order an ISO or claims history, pull the criminal and civil history for the county they live in and the surrounding counties, and review their Facebook, Twitter, LinkedIn, YouTube, and other social media accounts, if possible. Often a single photo from a Facebook account may be sufficient to prove a fraudulent claim. The Internet is a free and powerful tool to assist you in investigating fraudsters. Criminal and civil attorneys litigating these cases need a firm leg on which to stand when proving to six random individuals with a driver's license why the claim is fraudulent and coverage was rightly denied.

Sharing Is Caring

It's a well-known fact that prosecutors live, eat, breathe, and regurgitate whatever case they are currently litigating to their friends, colleagues, and family members. They are constantly "polling the jury" to test out whether the theme they have developed throughout the case makes sense to the lay person. During this information-sharing process, prosecutors also learn tricks of the trade from other prosecutors who have been there, done that. It may be annoying to listen to, but it holds a valuable lesson: information sharing is the key to success.

Many companies are being needlessly victimized by remaining tight-lipped and holding fraudulent activity close to their vests. It's almost as if sharing fraudulent activity between insurance companies is taboo. What is more shocking is when fraudulent activity occurs on one side of the state, and the other side of the state is completely unaware within

the same company. Knowledge is power, and with that power comes the ability to combat crime more effectively. There is strength in numbers, and fraudsters know and feed off of the carriers' reluctance to share fraudulent activity within their own companies and among other carriers. Remember, there is no shame in sharing this important information.

You never stop fraud by denying a single claim. Merely going through the motions on fraudulent or suspicious claims is not enough to make an impact on the bottom line of fraud. The only way to end fraud for good is to attack the problem and analyze the fraud with a prosecutorial mindset. **CM**

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