

Best's Insurance Law Podcast

Investigating Commercial Vehicle Claims and Fraud - Episode #174

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Guest Adjuster: James Barbieri of [Claims Advantage, Inc.](#)

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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, Managing Editor of *Best's Insurance Professional Resources*.

We're pleased to have with us today James Barbieri, from independent adjusting and investigation company, Claims Advantage in Georgia. James is the President and CEO of [Claims Advantage](#). He's a former police officer and has a BS degree in criminal justice.

Mr. Barbieri is a certified insurance fraud investigator/adjuster, and has been conducting SIU investigations for over 30 years. Jim, thank you so much for joining us again today.

James Barbieri: John, thanks for having me. It is great to be back on the AM Best's Insurance Law Podcast.

John: Jim, thanks so much. Today's podcast discussion is investigating commercial vehicle accident and commercial vehicle accident fraud. Jim, for our first question today, what are the statistics for commercial vehicle accidents in the US, and how fatalities involve tractor-trailer trucks?

James: According to the Federal Motor Carrier Safety Administration there are over 500,000 tractor-trailer truck accidents in the United States, with over 5,000 fatalities per year.

As you know, John, commercial vehicle policies have high insurance policy limits, and the injuries in these accidents are more catastrophic than most claims.



John: Jim, what is the procedure that you follow as an investigator when you receive an assignment for a tractor-trailer accident with serious injuries or fatalities?

James: First of all, it's imperative to have the investigator or an adjuster respond as soon as possible to the accident scene and canvas the area for any potential witnesses while their recollections are fresh. We normally obtain recorded statements from witnesses.

We also canvas the area for surveillance cameras on nearby businesses, or even on some houses that have Ring doorbells to see if there's any video footage of the accident.

The other thing, that insurance carriers will usually hire defense counsel. All of our work product is protected and privileged when we report to an attorney.

In some cases the attorney will verbally interview or take a statement from the driver, which will be protected under the attorney-client privilege.

John: What else do you do as an investigator at an accident scene?

James: I mentioned that we canvas for witnesses. We document the scene using a camera, photographing, measuring tire marks, skid marks, roadway gauges, as well as debris field.

If we get to the accident and it's already been cleaned up we look for police accident reconstruction marks on the roadway. The police accident reconstructionist will normally spray paint the roadway surface. From the markings we can determine the positions of the vehicles upon impact and their resting locations.

Again, this usually occurs after the accident has been cleaned up and the roadway markings remain.

While at the scene we attempt to get as much information as possible from the police and other authorities. In some cases we verbally interview the driver, if the attorney wants us to do that, regarding the facts of the accident and to determine if there was a dash camera system on the truck, a Bendix system, or some other type of system that may have captured the incident on video.

In most cases insurance companies or defense counsel does not want the investigator or adjuster to obtain the written or recorded statement from the truck driver, as the statement could be discoverable. In several cases that I have handled, as I mentioned, the defense counsel would usually prefer to interview the driver.

John: Jim, how do you handle the situation where there was a fatality or fatalities?

James: In cases of a fatality or fatalities, again, immediate response. One of the first things we need to do is identify the decedents. This can be done by running the license plate on the decedent vehicle if the plate is available.

If the investigator or adjuster is not assigned to investigate the accident that same day, one of the things I like to do is reach out to the heavy equipment tow company and determine if any of the salvage recovery personnel from the tow company obtained scene photographs.

As you can imagine, salvage recovery operations can be very expensive. These guys want to get paid, so I usually get photographs, in most cases, that were taken by the salvage recovery personnel, which could be very helpful.

I handled a double fatality outside of Atlanta. It was a very strange, complicated accident and we could not figure out how this accident happened.

After a fatality accident usually the police report is not available. It could be anywhere from a month to a year before it is available. What is available is the fire department report.

In that particular case, I have never seen this before, but the EMS technician in the ambulance verbally interviewed the woman who caused the accident. That was written in the fire department report. It is helpful to get all reports from the fire department.

I recently handled a triple fatality here in Georgia. When I arrived on scene the back of the decedent's vehicle was demolished, and I could not find the license plate. Unfortunately, Georgia is a one-plate state and there are no front license plates. I was trying to identify the decedents that were involved in this triple fatality, but I wasn't having any success.

One of the things we do as investigators at the accident scene is we take a lot of photographs. I got up to the vehicle and photographed the vehicle. I managed to stick my head in without touching anything, because it's evidence.

I photographed a paper lying on the front seat of the vehicle, which had one of the decedent's names on it. From that I was able to identify at least one decedent, and further investigation identified all three decedents.

John: Jim, how do you handle the physical evidence, such as the involved tractor-trailer?

James: John, in most cases involving fatal accidents the investigative police agency will impound all vehicles involved in the accident. The vehicle is usually removed by a heavy-duty rotator wrecker, which I mentioned previously, about the salvage recovery companies.

They secure the vehicle in their tow facility, pending inspections by the police. We usually request that the tow company leave the key in the truck, but do not start the engine.

After the vehicle is released from impound, we usually have the tractor-trailer towed to a secure facility and secure the vehicle into evidence, especially in cases involving serious injuries or fatalities. We need to preserve all evidence, or we could face a spoliation of evidence claim and possible sanctions by the court if the case goes to trial.

We have even gone to the extent of shrink-wrapping the cab of the trucks so nobody would go into the truck. The reason why we don't want anybody to start or turn over the engine is because the ECM data could be altered if the vehicle is started.

It is therefore important to tag the vehicle as evidence. Sometimes we use evidence tags. I mentioned shrink-wrapping the cab. We even tape a sign on the truck that reads, "Do not start or turn over the engine."

Later in the claims process we schedule inspections of the tractor-trailer, as well as the claimant vehicle or vehicles, where we have our expert and usually an expert from the claimant attorney's office that attends the inspection.

They use a three-dimensional scanner, which is a pretty cool device. It's on a tripod. There's a rotating thing. It turns, it scans the vehicles, and creates a three-dimensional image.

The other thing that they do is they download the ECM, which is electronic control module, on the truck and the EDR, which is the event data recorder, on the vehicle or vehicles.

John: Jim, what are you seeing in terms of commercial and automobile related fraud claims?

James: John, on my previous podcast on insurance fraud I talked about staged collision fraud rings involving personal automobiles. This type of fraud also occurs in commercial vehicle accidents, as they have large commercial policy limits.

When a fraudster sees a commercial vehicle, they see dollar signs. As in the case of fatalities or cases involving serious injuries, it's imperative to respond immediately or as soon as possible to suspicious accidents.

When on the scene the investigator needs to search any nearby businesses for surveillance cameras or Ring doorbell cameras that may have captured the accident on video.

It is important to measure and photograph the damages to both vehicles. In some cases we will hire an accident reconstructionist, especially if you have a case where the damages do not look like they are consistent with the facts of the accident.

We use an accident reconstruction specialist with fatality accidents, but they are also useful in minor or moderate impacts involving suspicious circumstances.

The expert, as he does in inspections with fatalities, will download the ECM, which is electronic control module. It is also referred to as the black box. That records the speed of the truck up to 59 seconds prior to the event and 15 seconds after impact.

It also records sudden deceleration, which is braking or any hard braking, engine settings, accelerator information, audit trails, and any diagnostic fault codes.

In several of these cases that I handled the expert confirmed that the truck never struck the claimant vehicle. A case in point, I had one case where our tractor-trailer was driving in the right lane on Interstate 20 in Atlanta when the alleged claimant vehicle flagged down our driver to report that our truck sideswiped his vehicle.

Our driver was adamant that he was maintaining his lane, he never changed lanes, and he denied sideswiping any vehicles. The claimant obtained our driver's personal identification information, and then he left the scene without calling the police. That, in itself, is a red flag.

The first thing I did when I got the claim was, I got permission to hire an accident reconstructionist to examine both vehicles. There was no damage on the trailer area of the alleged impact and there was a large black scuffmark on the left rear quarter panel on the claimant vehicle.

I obtained a detailed statement from the claimant. The purpose of this statement was to lock them in regarding the damages because the damages didn't add up. They didn't look right.

He confirmed that the black scuffmark was caused by the trailer's rear tires running up against the quarter panel. The expert's report indicated that the black mark was caused by the vehicle rubbing up against a tar-covered object, and not caused by a tire or anything that was on our trailer.

We denied the claim successfully, and the claim went away.

John: Jim, you had a previous podcast with us earlier this year on insurance fraud and COVID-19. You talked then about staged automobile collisions involving personal vehicles. Do you see any large fraud rings that are staged involving commercial vehicle accidents?

James: Absolutely, John. This fraud ring I am going to discuss was covered extensively in the news media.

Back in 2018, I had a large trucking company client send me 30 or 40 files involving suspicious tractor-trailer truck accidents that occurred around the Port of New Orleans in New Orleans, Louisiana.

In virtually all the cases the truck would be merging onto Interstate 10 and would allegedly sideswipe the claimant vehicle. Several of those cases involve witnesses who would flag down the driver and inform him that the truck was just sideswiped.

During my investigation into this extensive fraud ring, I made contact with another insurance SIU investigator through a group that I'm a member of. That SIU investigator had an informant who said that an individual by the name of Damian Labeaud, AKA Big Boy. His alias was Big Boy. He was a runner for a couple of personal injury attorneys in the New Orleans area. They were staging numerous accidents involving tractor-trailers.

The fraudsters would have a chase car on the shoulder of the highway, and they had another vehicle waiting at the bottom of the onramp for any tractor-trailers entering the highway.

In some cases, the truck would sideswipe the claimant vehicle, because the claimant vehicle would drive right up into it. In other cases, the collision never happened, but the setup witness is parked on the shoulder, would chase down the truck, and say, "Hey, you just sideswiped the vehicle back there." They would present themselves as an independent witness.

As I mentioned, there were several news stories on this fraud ring in Louisiana.

One of the advantages we have is that we can get police bodycam footage. There was plenty of police bodycam footage documenting these individuals saying how the accident occurred. In most cases there were several passengers in the claimant vehicles, and they would get representation from the same law firms.

I painted a big 10-foot tall whiteboard on the wall in my office. I had these flow charts of the medical providers and law firms that were involved with these individuals in the cases that I handled. The claimants would claim serious injuries and get numerous injections, expensive diagnostic tests, and almost always they had surgery.

During my investigations I worked with now-retired Louisiana State Police Sergeant Joe Cuccia on several of these cases. Eventually the US Attorney's Office became involved, as the attorneys got settlement checks through the mail, which made it a federal case, because it is considered mail fraud.

This individual, Damian, was indicted by a grand jury, and he pled guilty to staging at least 40 accidents with tractor-trailer trucks. The indictment stated that he was working with a particular law firm.

According to the news articles attorney A was paying Damian, I have trouble saying his last name, Labeaud \$1,000 for every passenger he recruited. In two cases Mr. Labeaud was the driver who would intentionally strike a tractor-trailer. In one case he drove up to the accident scene and presented himself to the police as an independent witness.

This was a multimillion-dollar fraud ring. There have been over 32 arrests in these cases.

The investigators had the benefit in a lot of these cases of having the dash cam videos, and in one case a video from a local business showed this insurance scam in progress.

As a result of the federal charges a trucking company victim filed a federal RICO lawsuit, which as you know is the Racketeering Influenced Corrupt Organization. Usually they go after the mob guys with RICO.

They filed under RICO against attorney Daniel Patrick Keating Jr, Damian K Labeaud, and Mario Solomon.

John: Jim, are there any final thoughts for our audience today?

James: John, the trucking and insurance companies need to be familiar with the red flags or fraud indicators when handling commercial vehicle claims. It is imperative that you have an investigator or adjuster respond to an accident scene as soon as possible, usually within an hour of the accident, for the reasons I outlined earlier in the podcast.

If you have a case like I had regarding suspicious damage on a claimant vehicle the insurance company should spend a little money and set up an inspection with an accident reconstructionist to determine if the damages are consistent with the facts of the accident.

I would rather pay a couple of thousand dollars at the beginning of a claim, rather than tens of thousands of dollars in the settlement, but it's sometimes difficult to get permission to use a reconstructionist because the insurance company doesn't want to spend the money. The old expression penny wise and pound foolish applies in these instances.



Trucking companies should hire an investigator or adjuster to respond, as I mentioned. If it is a fatality, they should have a defense counsel assigned so we can report to the defense counsel, so we have the protection.

There are many trucking companies who do not even report the accident right away to the insurance company, which is not a good practice. They usually have a supervisor respond to the scene.

The problem with that is that they do not, for the most part, have investigative experience. The triple fatality I just handled; the supervisor was sitting with the driver in the truck. He did not get any photographs, so it was good that I responded right away and documented the scene.

Get an investigator to the scene while it is still fresh, and do not be penny wise and pound foolish.

John: Jim, thank you so much for joining us again today.

James: Thank you, John, for having me.

John: That was James Barbieri, President and CEO of [Claims Advantage](#) in Georgia. Special thanks to today's producer Frank Vowinkel. And thank you all for joining us for Best's Insurance Law Podcast.

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I'm John Czuba, and now this message.

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