



**Book 'Em, Danno!
Insurance Fraud
and Subrogation
101**

FLC's Special Investigation and Recovery Unit

- Special Investigation Unit (SIU) - created in 1999 to reduce fraudulent claims against the Florida Municipal Insurance Trust (FMIT) and pursue those responsible by any lawful means
- Subrogation Unit - created in 2014 to investigate, assess and settle claims where a third party may be wholly or partially negligent
- In 2022, SIU and Subrogation Unit were combined into one team known as the Special Investigation and Recovery Unit (SIRU)

To date, the SIRU success includes:

- Over \$8.5 million in cost savings for FMIT members
- Over \$2.3 million worth of restitution ordered
- 75 arrests and counting
- Over \$10.85 million in subrogation recoveries
- Recognition by the Florida Governor and Cabinet in 2009



Video 1

This is a FLC claim. The claimant and her family were involved in an automobile accident with the insured vehicle at fault. There were three other family members that filed claims. The claimant reported a bulging C4/5 and herniated L4/5.

The adjuster advised that the surveillance video resulted in at least \$75,000 savings. After the video was disclosed in mediation, the claimant and her family agreed to settle all four claims.

This is ultimately an example of good video evidence and a seasoned adjuster working together.

Workers' Compensation Fraud

- Elements of fraud – false statement of material matter, willfully made, with intent to deceive
- Relevant Florida Statutes include: 440.105, 440.09 and 626.989
- Not all fraudulent claims are a fake injury or accident – many start out with a legitimate injury or accident.
- Examples:
 - false statements regarding prior medical conditions, physical problems, injuries and/or treatment to the same body parts
 - video documentation vs. medical documentation or testimony
 - false submission on mileage statements, attendant care forms, or employee earnings reports

Potential results of pursuing workers' compensation fraud:

- Termination of benefits (F.S. 440.09)
- Criminal conviction/restitution
- Reduced/mitigated settlement amounts
- Modified physician's orders
- Modified judge's orders
- Reduced reserves-lower premiums resulting in \$ to fund other projects
- Deterrent

Video 2

This is a Georgia WC claim. The insured owner filed a claim with complaints of back, neck, both shoulders and the inability to drive or work. He claimed that he could not run his business and the only work being done was by someone else driving one of his trucks.

We worked the surveillance 24 hours spread over 5 days and did not observe the claimant, but noticed the tow truck gone on two of the days.

Two days after the initial surveillance investigation was completed, the investigator observed the claimant driving his tow truck with a car on the bed and followed him to a private auto yard. This 00:01:19 of video resulted in subpoenas to the auto yard, who also reported a second tow yard that the claimant worked for. The video was used to impeach the depo testimony of no employment and the claim was settled for nuisance value.

An estimated savings of 95K.

What can you do?

- Conduct a thorough investigation at beginning of claim to include claimant/witness statements (signed and dated)
- Preserve evidence (e.g., video of event)
- Recognize/report Red Flags to adjuster or insurance carrier's fraud investigation unit
- Have thorough/effective hiring practices
- Know status of injured worker
- Keep suspected fraud and surveillance discussions confidential
- Hold managers accountable for working with insurance carrier
- Communicate to employees fraud won't be tolerated
- Report suspected fraud



Common Red Flags

- Late report of injury
- Late Friday/early Monday injury
- Difficulty contacting injured worker
- Video footage contradictory to claim
- Surveillance footage contrary to capabilities/restrictions
- Social media posts incongruent with claim
- Employed less than 30 days
- Injury occurs after discipline
- History of prior claims/injuries
- Injured worker overly familiar with claims process
- Immediate attorney representation
- Tips from insured/sources
- Subjective complaints not supported by objective findings

Video 3

Claimant 1 filed a WC claim in Florida with complaints of an injured right shoulder and low back. 87 days after the claim was filed, the claimant was documented working on a friend's vehicle for 3+ hours.

The video resulted in the claim being settled at an estimated 20K savings. Red flags considered when assigning the claim for surveillance:

- The claimant was employed less than a month.
- The claim was reported on Monday morning that he was injured the prior Friday.
- He was difficult to reach after the claim was filed.
- He immediately obtained an attorney.
- There were no objective findings to support his subjective claims in any of the initial medical evaluations.
- The video documentation obtained contradicts the reported claims.

Criminal fraud referral process:

- Recognition/reporting to adjuster or insurance carrier's fraud investigation unit
- Investigation by adjuster/insurance carrier's fraud investigation unit
- Reporting to Division of Investigative and Forensic Services (DIFS)
- Referral by DIFS to local State Attorney
- Arrest, prosecution, plea/conviction, sentencing, restitution
- Burden of proof – beyond a reasonable doubt

Civil litigation

- Claims decided by Office of the Judges of Compensation Claims (JCC)
- Appeals heard by First District Court of Appeal
- Misrepresentation defense
- Burden of proof-preponderance of evidence

Video 4

FLC WC claim resulting is successful criminal prosecution based on the following:

- evidence was preserved (e.g., video of event)
- Red Flags were recognized/reported to adjuster
- investigation and referral to DIFS for suspected fraud
- Participation in criminal plea negotiation

Subrogation

What is subrogation? A right held by most insurance carriers to legally pursue third parties who are partially or wholly responsible for the loss to an insured (or an insurer “stepping into the shoes” of their insured to recover damages from liable tortfeasors).

What is liability?

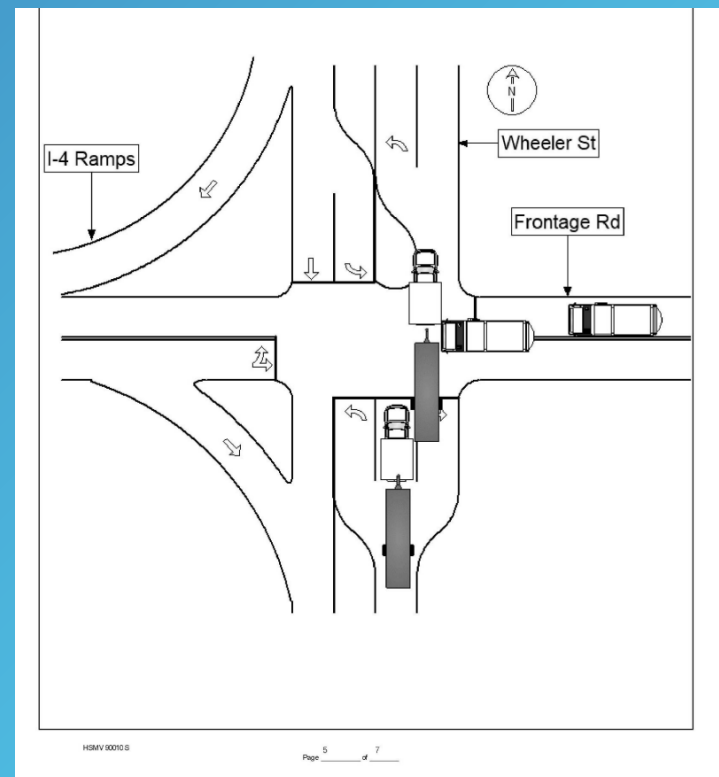
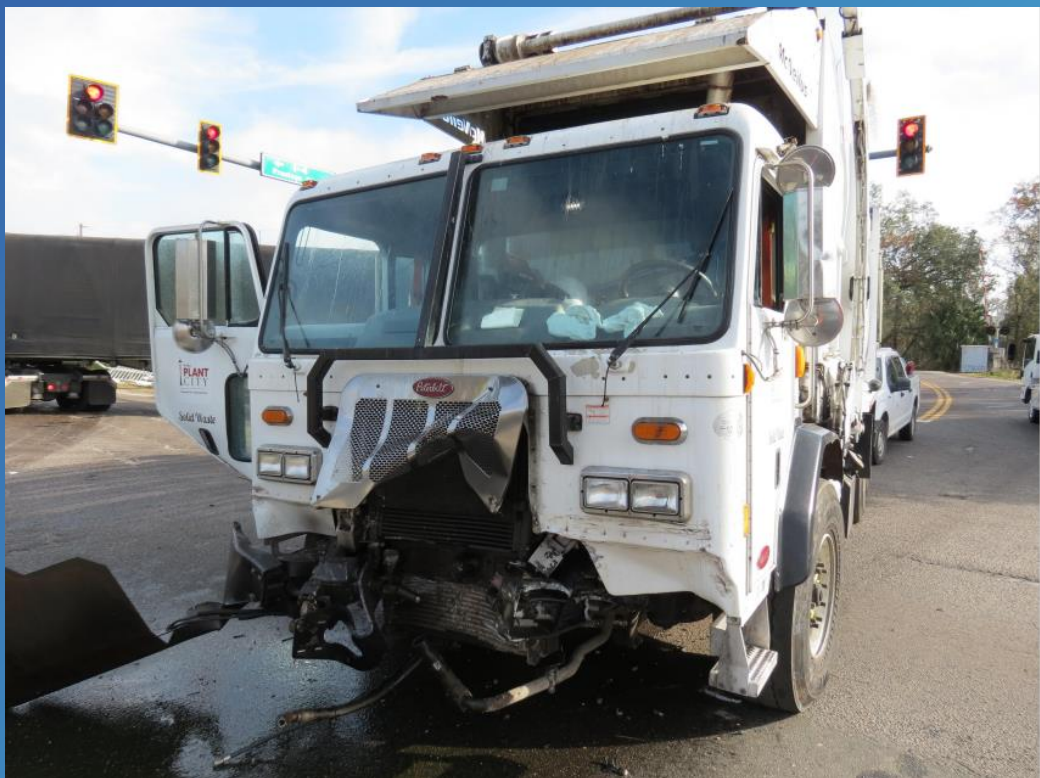
The legal responsibility for costs or damages due to the negligence of a third-party tortfeasor.

- Pure negligence – the at fault party is 100% liable
- Comparative negligence – parties share a percentage of fault, open to interpretation and compromise

Types of liability to pursue:

- Motor vehicle accident-vehicle vs. vehicle, vehicle vs. pedestrian, vehicle vs. animal
- Product liability-machines, equipment, chemicals, etc.
- Slips, trips and falls-unsafe/unkempt areas, unseen holes, improperly marked/lighted areas
- Medical malpractice-wrong body part treated, instrumentation left in body
- Dog/animal bites-owned vs. strays, service animals, wildlife
- Assault-aggressor, multiple parties, patients

Case study – motor vehicle accident



Subrogation claim overview

- Our member's vehicle was a total loss
- Other driver was at fault -100% liable
- Demand sent to at fault carrier
- Recovery over \$232,000

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